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TO AMEND THE FEDERAL COAL MINE SAFETY ACT

GOVERNMENT
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HEARINGS BEFORE THE SELECT SUBCOMMITTEE ON LABOR OF THE COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

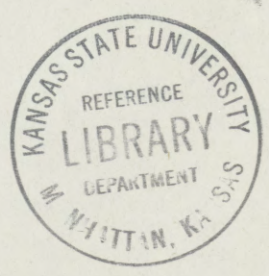
EIGHTY-SEVENTH CONGRESS
FIRST SESSION
ON

H.R. 4237

AND VARIOUS BILLS TO AMEND THE FEDERAL COAL
MINE SAFETY ACT

HEARINGS HELD IN WASHINGTON, D.C., FEBRUARY 21 AND
28, 1961

Printed for the use of the Committee on Education and Labor



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TO AMEND THE FEDERAL COAL MINE SAFETY ACT

TUESDAY, FEBRUARY 21, 1961

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10:35 a.m., pursuant to other business in room 1302, New House Office Building, Hon. Herbert Zelenko (chairman of the subcommittee) presiding.

Present: Chairman Zelenko, Representatives O'Hara, Daniels, Hiestand, and Martin.

Also present: Livingston L. Wingate, associate counsel for labor-management of the Committee on Education and Labor; Melvin W. Sneed, minority staff member; and Mrs. Mollie D. Cohen, clerk to the subcommittee.

Mr. ZELENSKO. The subcommittee has reported favorably H.R. 1258, and will now proceed.

The second legislative proposal which will be taken up by this committee today is H.R. 4237, introduced by our colleague, Mr. Dent.

(H.R. 4237 follows:)

[H.R. 4237, 87th Cong., 1st sess.]

A BILL To amend the Federal Coal Mine Safety Act in order to remove the exemption with respect to certain mines employing no more than fourteen individuals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 201 of the Federal Coal Mine Safety Act is amended to read as follows:

"(b) The provisions of this title shall apply to all mines, except that in the application of such provisions to mines in which no more than fourteen individuals are regularly employed underground—

"(1) the Director may, by regulation established after reasonable notice and opportunity for hearing to interested parties, modify or make inapplicable any provision, or part thereof, of section 209 to any mine or class of mines when he finds that such provision or part thereof does not substantially contribute to the safety of the men working in such mines covered by such regulations; and

"(2) a finding under the provisions of section 203(b) shall be subject to review under the provisions of section 206 and 207 in the same manner as an order made pursuant to section 203(c)."

SEC. 2. Subsection (e) of section 203 of the Federal Coal Mine Safety Act is amended by adding at the end thereof the following new paragraphs:

"(5) No order shall be issued pursuant to subsection (c) of this section in a mine regularly employing less than eight men underground unless, upon prompt request by the operator, a State inspector or an independent inspector appointed under paragraph 3 concurs in such order. Requests for concurrence must be made by the operator to a representative of the State mine inspection or safety agency and notification of such request must be made to a duly authorized representative of the Bureau within twenty-four hours after receipt of the findings made under subsection (b) upon which such order is predicated. The State

inspection must be completed within five days after request by the operator. If the State inspector, upon the timely inspection, does not concur in such order, the operator of the mine, the duly authorized representative of the Bureau who proposes to make such order, or the State inspector may apply within twenty-four hours after the completion of the inspection involved for the appointment of an independent inspector under paragraph 3 of this subsection. Within five days after the date of his appointment the independent inspector shall inspect the mine. The representative of the Bureau and the State inspector shall be given the opportunity to accompany the independent inspector during such inspection. If, after such inspection is completed, either the independent inspector or the State inspector concurs in the order it shall be issued.

"(6) If an order is made pursuant to subsection (a) of this section with respect to a mine regularly employing less than eight individuals underground the operator of the mine may request the State mine inspection or safety agency of the State in which the mine is located to assign a State inspector to inspect the mine."

Sec. 3. Subsection (d) of section 205 of the Federal Coal Mine Safety Act is amended to read as follows:

"(d) The principal office of the Board shall be in the District of Columbia. Whenever the Board deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place. At the request of an operator of a mine in which no more than fourteen individuals are regularly employed underground the Board shall hold hearings or conduct other proceedings at the county seat of the county in which the mine is located or at any place reasonably convenient to the operator of the mine involved in the appeal or proceedings. The Board shall have an official seal which shall be judicially noticed and which shall be preserved in the custody of the secretary of the Board."

Mr. ZELENKO. Subsequent to the introduction of H.R. 4237, the ranking minority member of the House Education and Labor Committee, Congressman Kearns, introduced H.R. 4440, which is identical with 4237. Another identical bill was also introduced by Mr. Griffin of the committee and its number is 4424.

The antecedents of 4237 in the 86th Congress were put into H.R. 1098 and introduced by our colleague, Mr. Bailey, of West Virginia.

In August of 1959, there were a series of hearings and in June of 1960 that bill, H.R. 1098, was reported to the full committee without recommendation from the subcommittee.

The full committee voted the bill out and reported its vote to the House on August 29 of last year and that was contained in House Report 2186.

Somewhere during the course of the legislative proceedings, Congressman Bailey substituted the Senate bill of Senator Cooper for his bill and I believe, although I am not sure, that that was Senate Report 995.

Because Congress concluded its work, that bill could not be finally acted on although I understand the Senate bill was voted out from the Senate.

In any event, because of the legislative history of both bills; that is, the subject being passed by one House and not by the other, it was decided that we could continue the work of the 86th Congress on both of these bills at this time.

I realize there is some controversy on this bill and it is the Chair's intention and the intention of the committee to give as full a hearing as possible within our time limitations to those who wish to be heard.

Originally it was the intention to conclude all of the hearing on both bills today. We have had so many requests on the mine safety

bill that it appears as if we will have another day or two of hearings sometime within the next 2 or 3 weeks.

This committee will recess at 12 until 2 today and continue this afternoon.

We shall inform you further at 2 o'clock today.

We have a list of witnesses whom we invited for the mine safety bill. If any others wish to be heard, sometime during the recess the names may be left with the clerk of the committee, Mrs. Cohen.

The Chair would like to make a statement before calling the first witness.

As most of the people in the room know, and I assume you are all interested, this legislation has been the subject of thorough hearings in the past both in the Senate and in the House and it is not the intention of the committee, nor do we feel that we should, rehash everything that has been said in the past.

The committee has had before it for some time all of the hearings, all of the reports, and all of the prior bills and, without attempting to cut off or limit the testimony of interested parties, we would appreciate it if whoever is called limits the presentation to about 10 minutes.

We have a great many witnesses to be heard and, as I say, we do not wish to go over everything again.

We would appreciate that the witnesses, if possible, emphasize any new material or high points that they wish the committee to consider.

May I say this: The Chair has no feeling at this time one way or another, nor do any of the committee members, on this legislation. We are not predisposed nor have we predetermined our course. However, upon examination, and I speak only for the Chair, of 4237, it appears that the legislation offered, and that goes for the other two bills, makes some kind of a distinction or some distinctions between the regulations as applied to the mines employing over 14 people and those involved in this legislation.

Some of the distinctions in this legislation provide for appeal, provide for hearings at the site.

I do not speak for the full committee, nor do I speak with great exactitude, but substantially these bills provide as follows:

That there shall be a Federal law applying to mines with less than 14; that if there is a Federal inspection and the mineowner is not satisfied, the mineowner may call in a State inspector; if both the State inspector and the Federal inspector agree, then, of course, that will be the ruling from which the mineowner can appeal in any event; appeals are heard at the site, that is the county seat nearest to the site of the mine; should there be a disagreement between the Federal and State inspectors the bill provides for the mineowners or the Federal and State people or perhaps a combination of all of them bringing in a third impartial inspector to decide what, if anything, should be done.

Also the bills substantially provide that the Bureau of Mines may make particular or specific regulations in regard to safety as to these small mines. In other words, there is great latitude here, latitude which does not appear in the law as it exists at the present time.

I think that substantially is what these bills have in them.

Therefore, we would appreciate it, when the witnesses come before us, they direct their attention to these proposals.

I know all of us are interested in the safety of our fellow American workers. I think we all start with that.

The contention and dispute here seems to be how best to arrive at it.

Mr. O'HARA. Mr. Chairman.

Mr. ZELENKO. Mr. O'Hara.

Mr. O'HARA. Might I say that I am in complete agreement with you with regard to our request to the witnesses that they summarize in a relatively short period any new material that has come to their attention since the hearings which were quite extensive during the last Congress.

However, I would like to suggest that, since only two of us here present were members of the subcommittee last year, that perhaps Mr. Ankeny, the Director of the Bureau of Mines, be permitted as much time as he needs, of course, to review the contents of this legislation and its history in some respects so that all of us may have in mind before we hear the other witnesses just what this legislation encompasses and what has been done in the past.

Mr. ZELENKO. I shall adopt the suggestion of the gentleman from Michigan, and the first witness will be Mr. Marling J. Ankeny, who will be permitted as much time as he deems necessary. He is the Director of the Bureau of Mines of the Department of the Interior.

Senator Cooper has asked to be permitted to testify and the committee has agreed that when he appears, we shall ask you to step aside during the course of your testimony to permit him to testify before the committee.

If there are any of our colleagues who are interested in the legislation, we shall ask the indulgence of all those present to permit them to testify in the same manner.

With that understanding, we will call Mr. Ankeny at this time.

Mr. Ankeny, please be good enough to give your name and title to the reporter and then proceed.

I am going to ask you to speak loudly because this is a large room.

STATEMENT OF MARLING J. ANKENY, DIRECTOR, U.S. BUREAU OF MINES, ACCOMPANIED BY HARRY F. WEAVER, CHIEF, DIVISION OF COAL MINE INSPECTION, BUREAU OF MINES, DEPARTMENT OF THE INTERIOR

Mr. ANKENY. Mr. Chairman and members of the committee, my name is Marling J. Ankeny. I am Director of the Bureau of Mines, U.S. Department of the Interior.

In May 1941, the enactment of Public Law 49 empowered Federal inspectors to enter and inspect for health and safety hazards, all anthracite, bituminous coal, and lignite mines in the United States. At that time, Federal inspection standards (anthracite and bituminous) were devised to assist and guide the inspectors in the performance of their duties and to provide definite standards for the promotion of health and safety in coal mines; these were superseded by the Federal Mine Safety Codes. As the powers conveyed by the law were only recommendatory, it was very often difficult and sometimes im-

possible to obtain compliance with the standards and codes, and thus effect the elimination of many dangers.

Mr. ZELENKO. Pardon me, Mr. Ankeny. In accordance with our stipulation, I am going to ask you to step aside.

I see our distinguished senior Senator from Kentucky is here and we have promised the Senator that he can testify.

Senator Cooper, if you are ready, the committee is ready for you.

**STATEMENT OF HON. JOHN SHERMAN COOPER, A U.S. SENATOR
FROM THE STATE OF KENTUCKY**

Mr. ZELENKO. Senator, the committee is privileged and honored by your appearance here. We know that you have a deep interest in this subject and we would appreciate hearing from you.

The subject before us, of course, as you know, is H.R. 4237, and there are two other bills, H.R. 4424 and H.R. 4440, which are copies of H.R. 4237.

Do you have a prepared statement?

Senator COOPER. No, Mr. Chairman. If I might be permitted to do so, I would like to be able to file a prepared statement at a later date if the hearings remain open.

Mr. ZELENKO. Very well. We shall be happy to hear you, Senator. You may proceed with as much time as you believe you require, Senator.

Senator COOPER. First I want to thank Mr. Ankeny for standing aside for a moment and permitting me to testify.

I do thank you, Mr. Chairman and the members of the committee, for this opportunity to come here and speak briefly upon the bills that are before you.

As you have said, I do have a definite interest in this subject. It arises from the fact that my State is the third largest coal-producing State in the Nation and, of course, in our economy coal is of tremendous importance.

I would like to give you also the background of my interest as it has developed in Congress.

In 1958, a bill was introduced in the Senate and I am sure in the House to remove the exemption which is now provided in title 1 of the Federal Coal Mine Safety Act.

I happened to be at the time a member of the Senate Committee on Labor so I had an opportunity to participate in the hearings and hear all the evidence.

Then in 1959 bills were introduced again and again I had the opportunity as a member of the Senate Committee on Labor to participate in the hearings.

Briefly, I would like to give you my position.

As the committee knows so well, the Federal Coal Mine Safety Act of 1952 prescribes, in title 2, mandatory powers concerning mines which employ 14 or more miners. Title 2 provides that, in cases of imminent danger, a Federal mine inspector can close a mine immediately. Then the State Mine Inspection Service would be notified and, if they agreed that the mine should remain closed, of course, that would be the decision. If there should be disagreement, then the matter would be brought before the Federal district judge

and, upon his decision, the mine would be reopened, or remain closed until any dangerous conditions were corrected.

It also has other provisions which deal with conditions in the mine which have not yet reached the point where there is a situation of imminent danger, and, as I remember, in that case recommendations would be made to the mineowner to correct those conditions within a certain time when another inspection would be made and, if the mine inspector decides that they have not been corrected, then he could order the mine closed, and an appeal could be taken by the mineowner by what I consider a rather difficult route to the Bureau of Safety in Washington.

Provisions regarding mines employing fewer than 14 are merely recommendatory, if that is the correct word, and carry no weight now other than as recommendations. Of course it is assumed that recommendations would be carried out by the mines employing fewer than 14 persons.

When the matter came before the Senate Labor Committee in 1958, when I was a member of the committee, at the first instance, without any appeal from any small mineowners in my own State, I read the bill and studied it and also, of course, read the relevant acts and read the original hearings which were held in the Senate and also in the House, in 1952.

I felt that the evidence which was presented to us by the Bureau of Mines and by Mr. Ankeny could not be called accurate. I do not say that in any derogatory manner toward the Bureau of Mines or toward Mr. Ankeny because, as I remember, Mr. Ankeny admitted that the evidence was not complete, that they were unable to secure the full facts about the incidence of accidents, injuries, and deaths in these mines, and so it seemed to me that, upon that basis, if it was claimed it was necessary to bring these small mines under the act, that the case rested upon what could not be called accurate evidence.

I remember that we first heard representatives of the Bureau of Mines publicly, and later, when I raised questions in the subcommittee, Mr. Ankeny and other representatives were asked to come before us and at that time they changed their evidence, presented new evidence, new statistics, different statistics about the incidence of injuries and deaths in these small mines.

I may say that, again in 1959 when we heard the evidence, again new evidence was presented, new statistics, so that it seemed to me that there was nothing which could be called really accurate evidence about the incidence of injuries and deaths in mines employing fewer than 14 persons.

In addition, other witnesses came before us, including the Chief of the Mine Inspection Bureau in my own State of Kentucky, and his evidence clearly was at variance with the evidence which was presented by the Bureau of Mine Safety.

Later some operators came before the committee, operators of small mines who had accumulated evidence, and their evidence was at variance.

I make this point for this reason: The request of the Bureau of Mines and of the United Mine Workers of America, and I may say I think some of the larger mines in this country, is predicated upon the premise that there are more accidents and in-

juries and deaths occurring in mines employing fewer than 14 persons than in the mines employing 14 or more and, of course, that is the basis for appeals to change the act.

My belief is, first, that there has been no accurate evidence, at least before the committee in the Senate and, second, that considering the number of these small mines, I think it could very well be shown, if we had the chance to develop all the evidence, that the premise of the bill is not correct—that there are fewer injuries and deaths in proportion to the man-hours worked in these smaller mines.

Another question presented itself. There are many more of the small mines than there are larger mines. The last figures I had, which was last year when I testified on this subject, which may have changed now, showed that there were approximately 8,000 title I mines in the United States employing less than 14 persons, and approximately 1,500 title II mines in the United States employing more than 14 persons.

Today in Kentucky and West Virginia and Pennsylvania, in Alabama and Tennessee and other States in coal mining areas, there is great economic distress. I do not have to emphasize that point. You gentlemen know it.

President's Kennedy's task force has called particular attention to these areas, and now bills are before the Congress to provide assistance for the coal mine depressed areas.

The point I make is this: If the Congress should pass a bill without adequate justification or reason and its effect would be to close down any considerable number of these small mines, and I repeat without reason or justification, then we would strike a terrible blow, an additional blow at the economies of what I believe are the most distressed areas in the United States.

The proponents of these bills say, "It is not going to bother these mines. It is not going to hurt them," and just seem to dash it off, but the people who operate these mines believe that it would place such burdens upon them considering their size that they could not economically operate these mines and that it might close some of them down.

People who work in these mines, and I have talked to a good many of them, feel the same way, although they are not in a position to testify before these committees, and certainly the people who live in these areas are terribly concerned about it.

I can only speak of my State. I have been in every one of these counties in eastern Kentucky. I live there. I know that is their feeling.

It is difficult to get these points across because no one wants to be against safety. I do not want to be against safety.

I said in my committee in the Senate, and I said on the Senate floor that, if there could be a clear demonstration that this bill were necessary to protect human life and to prevent injuries, of course I place that above anything else. But I was convinced, after sitting through hearings, long hearings, and we had awfully long hearings in 1958 and 1959 in the Senate Committee on Labor, that point had not been established that there was actual need for this legislation, and I felt that full consideration had not been given to the question of the effect it would have upon these small mines.

I do not want to take up much more time. I just want to make a few comparisons.

Today, as you know, to operate a large mine and particularly the type of mine you have in Kentucky, West Virginia, and Tennessee, where you go into the side of a hill rather than the shaft mines, a large acreage of land must be accumulated. It must be at the base of a mountain or a hill, because otherwise you could not get a large acreage.

In the large mine operations go back miles into the interior to bring out the coal.

The small mines, however, can go to the top of a hill and work in a comparatively small acreage of coal. It might be 5 acres of coal. I have seen 5 acres of coal being worked, 10 acres, 15 acres of coal. The average depth of the entry in these mines, which I get from the people in Kentucky who know, might be 1,500 feet. There is no problem there of gas which you have in the larger mines.

Further, if we, in the House and Senate, take action which without justification would place such burdens on these small mines as to close them down, then we will prevent the people who own the land from recovering the natural wealth that they own and which a State has, like my State and other States.

I know situations where the father and son work in a small mine which they own. In other cases an operator will get acreages and employ the neighbors or people who live in the community to work in those small mines. Usually they are older men who have been members of the United Mine Workers of America and have worked in larger mines and have now lost their jobs in the larger mines and will never get them back.

If by mistake we pass a bill which has the effect of putting these small mines out of business, and without knowing actually whether you need to put these mines under the Federal Government for safety, you will deal a death blow to the economy of these counties and States because there are just not many of the larger areas of coal left. But there are, in every county in eastern Kentucky in the coal area, smaller veins, veins at the top of the ground which are today providing employment for just as many men as the larger mines provide, and which are producing wealth.

There is another factor. That relates to procedure. Suppose a Federal mine inspector goes into a small mine and decides they do not meet the provisions of the code or act. I think they will eventually get down to the code in their decisions.

Suppose he tells the mineowner, "Now, you have got to correct this condition." The mineowner feels that his mine is safe, but he would be required to take his appeal all the way to Washington.

Some of these small mineowners who own their own land—and I say it with all deference to them because I live near these people and know them and have been in their mines—many of them do not have the money and many of them would never know how to make such an appeal. To be required to employ lawyers in their own towns and lawyers in Washington would have this effect: while there is a supposed remedy, they would not be able to exercise it.

Now, what is the solution as I see it? I understand that when this bill came over here last year there was a reference to it as the Cooper bill. It is correct that the amendments which were adopted in the Senate Committee on Labor and also one on the

floor were at my instance, and I was glad they were adopted because they certainly made it a better bill than the bill introduced.

I point out to those who try to characterize this bill as a safety bill, and say that those who try to modify it are against human life and against human safety, that after thorough hearings the Senate Committee on Labor accepted these amendments. I do not think they are all against safety. They were not satisfied with the original bill.

In 1958, also, the Senate committee adopted an amendment which I offered and I still believe that is the bill which ought to be adopted by the Senate committee, and, may I say with all deference, by the House committee, and passed by the Congress.

I cannot introduce the amendment but I will leave it, if I may, for the committee and staff to consider.

The amendment which I proposed in 1958 in the committee was adopted unanimously by the Senate Committee on Labor, was reported to the floor, but never came to a vote.

It provided two things. First, it gave to the Bureau of Mine Safety power to go into these mines and, if it found a condition of imminent danger, one which might endanger the life or limb of a miner, they could immediately close the mine down and then follow the provisions of the Mine Safety Act. That is, the State inspector would come in and, if he agreed that it should be closed down, it would remain closed. If they disagreed, they could take the matter to the Federal court which would appoint a third party, an engineer, and then the majority would control.

Further, it directed the Bureau of Mines to make a survey and study of mine safety for all mines covered by the act. Hearings would be held in every State which produced as much as 2 million tons the year before. The Governor would be notified and the official in charge of the mine safety program and employers and representatives of employees. That would be the mine operators and the unions.

It provided that the Bureau of Mines would then report to the Congress full information about the number of mines, the number of employees, the number of man-hours of work, production of coal, fatalities for each year, and injuries in title I and II mines with their causes, and the number of violations.

The point of this was that it would enable the Congress to have before it much more comprehensive information than we were able to get in the hearing in the Senate and, I believe, than you will be able to get in your hearing here.

This was adopted by our committee and voted out.

The Department of the Interior last year recommended that this procedure be followed. I close by recapitulating that there is a great dispute about the accuracy of the record regarding fatalities and injuries in title I mines and title II mines.

I think the best way to determine these issues would be for hearings to be conducted in every State—to get the viewpoints and evidence of the operators themselves in these States, the smaller operators and the miners themselves and the United Mine Workers—to try to secure the most accurate information.

At the same time, my amendment would provide protection against any imminent danger.

I think that provision is necessary while securing accurate information in order to assure safety—which has tremendous appeal and which I am for. Because, if I were sure that the evidence were correct, I would vote for a bill even if it meant closing down mines, because human life is most important. However, I think it would be wrong without full information—and I doubt if we can really secure it in these committees—in the name of safety to take action which is not required, and to risk closing down hundreds of mines and destroying the economy of the mining sections which are now at the lowest depth they have ever been in history.

I am making my request for the opportunity of thousands of miners to continue their work and have employment—for the good of their families and their children.

The ones I have talked to said they do not want this bill for the small mines, but they do not have a voice.

Well, I have talked longer than I expected.

I will, if I may, leave the amendment which I introduced and which was adopted in 1958 by the Senate Committee on Labor. And, if the committee will permit me, I will at a later date file a more detailed statement.

Mr. ZELENKO. We would be very happy to have your statement filed, Senator.

Do you have a few minutes? Maybe some of the members of the committee would like to ask you questions.

Senator COOPER. I certainly do.

Mr. ZELENKO. I know that you are pressed for time.

Senator COOPER. That is all right. I appreciate your courtesy in giving me time.

Mr. ZELENKO. You can see that there is an incidence of accident rate. What the incidence is compared to the larger mines seems to be in dispute but there is an incidence.

You make constant reference to the fact that these bills before us will put the small mines out of business.

As I indicated before you came into the room, the Chair does not not have a feeling one way or another at this time because all of the evidence is not in, but, in reading the provisions of these three bills, where substantially they provide for appeal at the county seat nearest to the mine, where the bills provide that the mine cannot be closed forthwith by a Federal inspector but a State inspector can be called in and in some circumstances a nonpartisan inspector, that the Director of the Bureau of Mines can make regulations here which might specifically or particularly apply to certain of these small mines, in other words, he has greater latitude than in the other business, I would appreciate if you could tell me, sir, how these provisions which seem to be directed to safety without, the way I see it, causing unnecessary financial burden in the first instance, seem to be geared or pointed toward the convenience of the small operator, how this bill would close down these mines.

Senator COOPER. I appreciate your question and I may say that I am familiar with all of these provisions as a result, as I said, of the amendments which I proposed in 1959 and which were adopted either in the Senate Labor Committee or on the Senate floor.

These are the points I make. First, these mines are now inspected by State inspection services. I think that more inspections were made of Kentucky mines by the State inspectors than of mines all over the United States by the Bureau of Mines. So they are now having inspection services.

Second, I still go back to my point that, unless there is adequate and accurate conclusive proof that there is a large disproportion or some disproportion of accidents and injuries and deaths in the small mines as compared to the large mines, there is no reason for this legislation.

The third point I make is this: You asked if this bill should be passed what effect it would have upon the small mines—might it put them out of business? Again that is one of the questions which, I should say, is pretty hard to determine here in the committees of the Congress. That is the reason I think that hearings held in the States, where more mine operators could testify, where miners could testify who work in the small mines, would be helpful.

Now, the next point I make is this: The States have safety codes regarding the small mines. They have drawn those codes taking into consideration the special character of the small mines. These small mines are not like the big mines. That is what I tried to say a while ago.

The big mines drive back into the hills for perhaps a mile, or 2 or 3 miles. You do have to have special provisions for those mines. You have to have, certainly, more air—provisions about gas, equipment, and all that which the State inspection services do not feel are required for small mines which go back a few hundred feet into the hill. But the code and act require that certain provisions must be taken in title II mines. They are applicable to title II mines but they may not be applicable, and I do not think they are applicable, to many title I mines.

For example, the Federal code may require a certain size for your main passageway into the mine. You have to have an airway over at the side of the passageway. There must be channels between the airway and the main entrance. I doubt that you need the same size airway and requirements for a mine that goes back in the top of a hill for 1,000, 1,200, or 1,500 feet that is needed for a mine that goes back into the bowels of the earth.

There are Federal requirements also about the kinds of air equipment the mine must have. Certainly you do not have to have the same kind of air equipment in small mines.

The code even provides that you have to have certain equipment which is approved by the Bureau of Mines. A lot of these small mines buy their equipment where they can. It probably has been proved good enough for their mines. In fact, the fresh air goes back into many of these mines.

There are many other provisions like that in the Federal code, and I would say we do not know whether they are necessary, and certainly they would require additional expense upon the part of these small mines. We have all seen them and know that they cannot stand much additional expense.

The final point I make is that the Federal mine inspectors have to follow the code and the act whether they are really applicable to these small mines or not.

They go into these mines and say, "You must do this" or "You must do that." It might not be necessary. Or the mineowner might undertake to carry out the regulations and the mine inspector might say, "You have not complied."

As to this procedure for an appeal, which I know you have read but I hope every member will read it again, the large mines turning out an average of 14 or 15 tons per man and some of them 30 or 40 tons per man, although they are having their own difficulties now and the whole coal industry is having difficulty, they can manage these things. They have the funds and lawyers to do it.

But to go up into the hills and ask a fellow living on his own farm who has a little coal on the top of the hill, to ask him to employ a lawyer in his own little town and come to Washington to fight these appeals creates a situation where under law there is a remedy, but if you do not have a forum and cannot do it you have lost your remedy.

These are some of the considerations which I think demand a fuller investigation and the course which I recommended and which was adopted by the Senate Committee in 1958.

Mr. ZELENKO. Mr. O'Hara.

Mr. O'HARA. Senator, sir I might for just a moment attempt to review with you the events of the last Congress, and will you correct me if I am mistaken, as I recall in the Senate, Senator Clark had introduced a bill and you did not find yourself in agreement with the provisions of Senator Clark's bill and you yourself introduced a bill.

After some protracted hearings and discussions among the committee members, as I recall, Senator Clark's bill was amended in some particulars which you have mentioned here today, particularly with regard to the Director after hearing making inapplicable to any class of mine in which he does not find that it contributes to safety some of the provisions of the act as they apply to the larger mines; and, the second, the right to appeal to the Director of the Board and the right to appeal by calling in a State inspector and the right to have these appeals heard at the county seat.

As I recall these were amendments adopted more or less at your suggestion and it was then my recollection, and I may have been misinformed, that after these amendments had been adopted and Senator Clark's original proposal modified in this fashion, that you at that time felt that that worked considerable improvement in the bill and you supported that bill in the Senate last year, is that correct?

Senator COOPER. It is correct that I voted for it.

I had worked for those amendments. They were the best we could obtain last year.

They were not the amendments which I had hoped we could obtain, which was the amendment which had been adopted by the Senate committee the year before. It was the close of the Congress and, considering that was the best that we could do on the Senate floor, I did vote for it. But I think I stated on the floor at that time that I preferred the approach that had been made the year before.

If we had not passed that bill, there might have been an attempt to substitute the original bill. Certainly I did not want to see that bill

passed, but that does not remove my judgment, which I have had from the very beginning, that even the bill as passed last year was not the best bill. And my conviction has been strengthened by traveling through eastern Kentucky last fall and seeing the conditions in these counties, where I talked to coal operators and talked to many of the miners themselves about the situation.

So I have presented my judgment as to what it is best to do—as I believed in 1958, as I believed in 1959, as I believed in 1960, and as I believe more strongly today.

Mr. O'HARA. Senator, I think all of us have been in the position of voting for a bill we did not completely agree with but one we felt was the best bill obtainable under the circumstances.

As a help to us, I would like to ask if, in light of these amendments to last year's Senate bill, there is any other amendment you feel should be inserted in this type of legislation if it were to come out of this committee; that is, with regard to modification of the provisions of the act as to the smaller mines, other than those that were inserted last year in the Senate and other than your original proposal of 1959. That is, as I understand it, to simply delay the applications of the act to the smaller mines until such time as this study is completed.

Senator COOPER. Yes.

Mr. O'HARA. If we were not to adopt that approach but were to adopt an approach of applying the provisions of the act, are there any amendments other than those contained in last year's Senate bill which you feel should be used to modify this bill?

Senator COOPER. I think the bill which we reported in 1958 was a better bill because, from my viewpoint, we just do not have accurate evidence. We cannot get it here.

That approach would give the chance for accurate evidence both as to the incidence of injuries and deaths and also as to the effect, if any, changes would have upon the small mines. At the same time it would protect against conditions of imminent danger in the mines.

That is still, in my judgment, the best course.

Now, as to the bill which is before you, which, with the exception of the amendment adopted on the Senate floor, is the bill which was passed by the Senate last year, if I were to make a recommendation about that, it would be this: that you extend to all complaints filed by the Federal inspector the same procedure that now obtains regarding conditions of imminent danger. That is, if a Federal mine inspector should find a condition in a mine which he considered either one of imminent danger or one which could lead to imminent danger, then the State inspector should have the opportunity to be brought into the issue and make his inspection. If the Federal inspector and the State inspector agreed that either condition—one of imminent danger or one which might lead to imminent danger—was such that the mine ought to be closed down, then it would be closed down.

If they agreed that it should not, that would go into effect.

If they disagreed, then the mineowner, if he desired, could go to the Federal court, as is now provided in the act. A third party, an engineer, would be appointed, and that is in the act, and then his vote, of course, would be controlling.

Why is that important? It is important, first, because the procedure required otherwise would, I think, actually have the effect of

putting a lot of the little mines out of business. They just could not go through it. It involves either expense or delay.

Second, a local engineer would be appointed by the district court and you would have to consider that the court would appoint a good one. I think I would trust him better than the ones that might be in there. I trust that a Federal judge would appoint a good engineer and, if he found that what the Federal mine inspector said was a danger was not a danger, then I think his decision would properly be controlling. That would give the opportunity to take into consideration the physical differences that exist between the little mines and these great mines which go back into the hills.

Have I answered your question?

MR. O'HARA. That answers my question, sir.

Senator COOPER. If the committee reaches the decision that it should recommend a bill, I say that all justice ought to be given to the small mineowners. No one can complain against having a day in court. But if you erect a procedure which denies this man his day in court, he has no forum.

MR. O'HARA. Thank you, Senator?

MR. ZELENKO. Mr. Hiestand?

MR. HIESTAND. Senator, I very much appreciate your statement.

Senator COOPER. Thank you, sir.

MR. HIESTAND. It becomes obvious that you are probably better informed than most anybody that we have had a chance to listen to. I gather that you have the position that we all do that maximum safety is the No. 1 requirement and that in small mines there may be some things that within maximum safety still are not necessary.

Senator COOPER. Yes, that is correct.

MR. HIESTAND. And that you are apprehensive that the requirement of some of those things might cause economic disaster to areas which really are in deep trouble anyway.

That, in general, is your position, I take it?

Senator COOPER. Yes, sir.

MR. HIESTAND. It is apparent to me, then, that some of the evidence that you heard in your long and extended hearings could be challenged; is that a fact?

Senator COOPER. Yes.

MR. HIESTAND. In other words, there was a disagreement, a serious disagreement in that testimony.

Senator COOPER. Oh, yes. I think if you will look at the record, it appears on its face as to the differences in the testimony of the Bureau of Mines from time to time.

I think members of the committee, even those who favored passage of a bill removing the exemption altogether, called attention to it.

MR. HIESTAND. Do you then recommend careful and extended evidence?

Senator COOPER. Absolutely. This is vital to thousands of small mines and the communities which depend on them.

MR. HIESTAND. Thank you very much.

MR. ZELENKO. Mr. Daniels?

MR. DANIELS. Is there any particular legislation that you would recommend for the title I mines, Senator?

Senator COOPER. Yes. As I pointed out a moment ago in response to Mr. O'Hara's question, it is my judgment that the amendment which our Senate Committee on Labor adopted in 1958 should be adopted now. Of course, it will be charged that the Congress is delaying final action. But I point out that that amendment gave the Federal inspector power to close any mines having a condition of imminent danger. It gave the opportunity, too, to get the truth about the other types of conditions which might lead to danger, and also about the effect this bill would have upon small mines. If it had been passed in 1958 we would have that information now.

If the committee does not adopt that approach, but adopts the approach of the bill which the Senate passed last year, then I would urge with every bit of strength I have that you write into it a procedure for other conditions the same as that now provided for conditions of imminent danger. That is, if a Federal inspector found there was some condition which could lead to danger that then the State inspector would be brought in. The State inspector knows more about these conditions. If they disagree, then either side could go to the Federal court, the Federal court would appoint an engineer as now provided in the act, and, of course, his vote would be determining. This procedure provides justice, and it removes the danger of arbitrary action upon the part of either the Federal mine inspector or a State inspector. It brings in an impartial observer, and I would say you can trust the Federal courts to appoint such a man.

You would have the feeling, too, on the part of local people—small mineowners and mineworkers—that they have been treated justly, that they would have their day in court. That is terribly important.

You may ask, "What is the difference between them and the big mines?" If you will look at the tables, the average number of people who work in the small mines employing less than 14 men is eight, and then it jumps up as you get into the big mines. The large mines have the money to pursue the presently prescribed tedious and, I may say, expensive procedure. These little fellows have not.

Mr. ZELENKO. Thank you, sir.

Mr. Martin?

Mr. MARTIN. I have no questions.

Mr. ZELENKO. Thank you very much, Senator.

Senator COOPER. I thank you for your patience and courtesy. I will send the report over.

Mr. ZELENKO. It has been our privilege to listen to you.

May I state for those who are with us that we will adjourn now until 2 o'clock. I am quite sure that we will have 1 or 2 or perhaps 3 days of hearings sometime in the next 2 or 3 weeks or a month. That is not definite.

We will announce that at 2 o'clock.

As I informed you folks, also, sometime during the course of the day those who are interested in being heard or submitting statements will leave their names with the clerk this afternoon and we are going to give everybody who is interested an opportunity to be heard within the bounds of our time.

The committee will stand adjourned now until 2 o'clock, and we will continue this afternoon until about 5.

We will make an announcement at 2 o'clock on the continuation of the hearings.

Mr. Ankeny will be heard at 2 o'clock, I hope without interruption. I do not expect any of our colleagues here at that time.

Thank you. The meeting stands adjourned.

(Whereupon, at 11:50 a.m., the subcommittee adjourned to reconvene at 2 p.m., this same day.)

AFTER RECESS

Mr. ZELENKO. The committee will come to order.

The Chair has an announcement to make.

The committee will work today until about 5 o'clock. Hearings will be resumed and possibly we will try to complete them on Tuesday, February 28. I am going to read a list of the witnesses whom we have invited to testify and if there are any others who wish to be heard or submit statements the Chair would appreciate it if, during the course of the testimony of the witness who is testifying, one at a time will go to the right of the podium here where there is a sheet of paper and put their names, titles, and addresses down. If we have time we shall include them.

The Chair would like to make this suggestion. There are a number of persons who have the same interests, either for or against the legislation. In the interest of expedition and with the understanding that we have had a highly informative background given to us by the prior Congresses, perhaps those people with identical interests could have one person appear as a spokesman for their group. That would provide more time for individual groups. So that perhaps somebody representing four or five in the same category could make a better presentation and have more time, whereas if we have too many people up nobody will have a chance to fully present the subject.

With that statement, we are going to ask Mr. Ankeny to return, with the understanding that was made this morning. He will have time to give his presentation in full.

Now I am going to read the names of the other witnesses who have been invited to testify thus far beside Mr. Ankeny: Thomas Kennedy, president of the United Mine Workers of America; Charles Ferguson, safety director of the United Mine Workers of America; Robert Holcomb, Independent Coal Operators Association, of Pikeville, Ky.; B. F. Reed, Turner Elkhorn Mining Co., Drift, Floyd County, Ky.; Raymond See, Kentucky State Department of Mines and Minerals; J. B. Taggart, Wise Coal & Coke Co., Dorchester, Wise County, W. Va.; and C. P. Kelly, chief mine inspector, department of labor and industry, division of mines and quarries, Big Stone Gap, Va.

Those are the persons we have been in communication with and we have sent telegrams to.

Now I notice there are two State officials whose names have been mentioned.

Mr. C. P. Kelly, of Virginia. Is he here? [Response: "He is not here."]

Very well.

Mr. Raymond See, Kentucky State Department of Mines and Minerals. Is he here? [Response: "No, he is not."]

If those gentlemen were here we would put them on first, being State officials.

So in view of the fact that they are not present at this time we will proceed now, hearing from Mr. Ankeny.

As I indicated before, those who feel they want to testify or make a presentation or put in a statement, if they will proceed one at a time over to my right where there is a sheet of paper, you may list your name. Then we will make sure that you receive notice, and we will try to put you on the agenda.

With that you may proceed, Mr. Ankeny. May I suggest perhaps it will be better if you start from the beginning. I do not think you got too far, did you?

Mr. ANKENY. No; just a half page.

Mr. ZELENKO. Thank you.

STATEMENT OF MARLING J. ANKENY, DIRECTOR, BUREAU OF MINES, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY HARRY F. WEAVER, CHIEF, DIVISION OF COAL MINE INSPECTION, U.S. BUREAU OF MINES—Resumed

Mr. ANKENY. Mr. Chairman and members of the committee, my name is Marling J. Ankeny, and I am Director of the Bureau of Mines, Department of the Interior.

In May 1941, the enactment of Public Law 49 empowered Federal inspectors to enter and inspect for health and safety hazards, all anthracite, bituminous coal, and lignite mines in the United States. At that time, Federal inspection standards—anthracite and bituminous—were devised to assist and guide the inspectors in the performance of their duties and to provide definite standards for the promotion of health and safety in coal mines; these were superseded by the Federal Mine Safety Codes. As the powers conveyed by the law were only recommendatory, it was very often difficult and sometimes impossible to obtain compliance with the standards and codes, and thus effect the elimination of many dangers.

In July 1952, the Federal Coal Mine Safety Act became effective, and since then all anthracite, bituminous coal, and lignite mines have been inspected in accordance therewith by inspectors of the Division of Coal Mine Inspection of the Federal Bureau of Mines. The act comprises two titles, as follows:

Title I, advisory powers relating to health and safety conditions in mines (Public Law 49), covering all mines including mines employing regularly less than 15 persons underground, and strip mines.

Title II, prevention of major disasters in coal mines; covering mines employing regularly 15 or more persons underground.

Title II is designed to prevent disasters from mine explosions, mine fires, mine inundation, and man-trip and man-hoist accidents, and incorporates mine safety provisions, which take precedence over similar provisions of the codes, where applicable. Compliance with these mine safety provisions is mandatory in title II mines. To accomplish such compliance, the inspector is empowered to issue an order of withdrawal in the event of imminent danger or for failure to comply with one or more mine safety provisions within a reasonable time. Such order requires the withdrawal of men from the mine or section

thereof in the event of imminent danger or for failure to correct a violation of the mine safety provisions and prohibits normal operations in the mine or section thereof until the danger has been eliminated or the violation or violations corrected and the order is annulled by the Director of the Bureau of Mines or by the Federal Coal Mine Safety Board of Review.

One of the provisions of title II of the act stipulates that "this title shall not apply to any mine in which no more than 14 individuals are regularly employed underground." This is the provision that H.R. 4237 and other identical bills before this committee would amend, and we favor enactment thereof.

Now there is nothing magic or sacred about the number "14." It was adopted after much debate and negotiation with the proponents and opponents of the legislation at the time the Federal Coal Mine Safety Act of 1952 was under consideration. Subsequently, by usage, mines employing 14 or fewer men are frequently referred to as small mines, and mines employing 15 or more men came to be known as large mines. There is no technical significance in the number "14" as the dividing line between mines that are affected by title II of the act and mines that are not so affected. Nor is there any logic in classifying mines as large or small on the basis of the number of persons employed. To say that a mine employing 14 men is a small mine while a mine employing 15 men is a large mine without any other qualifying specification is unrealistic.

In fact, there is so great a variation in the size of mines with respect to mined-out or developed area, area of reserves, rate of production, methods of production, and number of persons involved that it is impossible to make a logical definition as to what constitutes a small mine or a large mine. Bureau of Mines records show that 38 percent of the title II mines employ from 15 to 24 men underground, and these are considered as small mines in the same sense that title I mines are termed small. Fifty-eight percent of the title II mines employ from 15 to 49 men, and I doubt that anyone would consider any such mine as large, but the operators thereof must comply with the mandatory provisions of title II of the act, nevertheless.

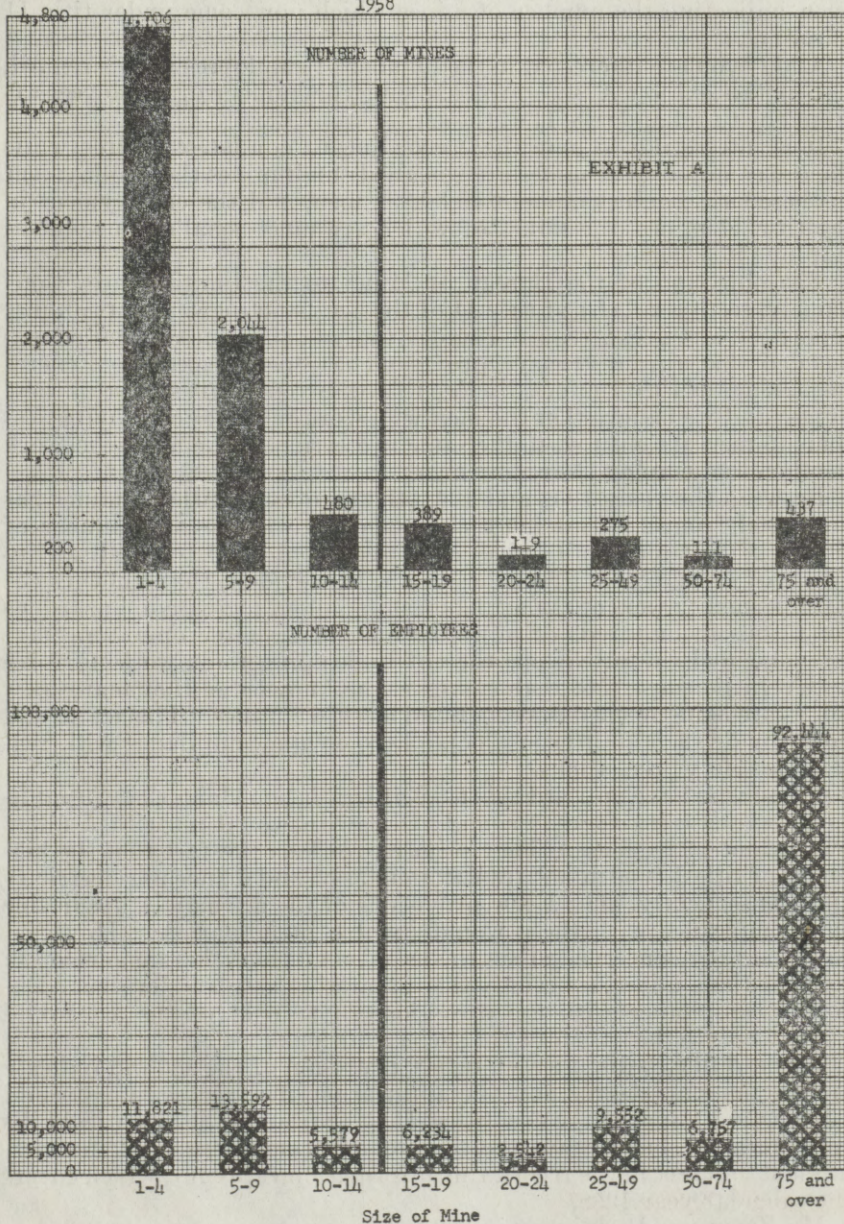
It is not altogether correct either to refer to mines employing 14 or fewer men as title I mines and mines employing 15 or more men as title II mines because, while title II of the act applies exclusively to mines employing 15 or more men, title I of the act applies equally to mines employing 14 or fewer men and mines employing 15 or more men. For want of a better designation, however, we speak of the one category as title I mines and of the other as title II mines.

In previous congressional hearings on this subject claims have been made that the adoption of legislation, similar to that proposed in H.R. 4237, would make it impossible for small mines to profitably remain in operation, or at least would suffer undue hardship. Some people may infer from this deduction that all mines which now come under the mandatory provisions of the act are large mines. Any such impression is erroneous because hundreds of small mines, although they employ more than 14 men, are now operating under the mandatory provisions of the act without suffering undue economic hardship. To illustrate the extent to which small mines are covered by the act, I should like to submit for the record this chart titled "Exhibit A."

(The chart referred to follows:)

ALL UNDERGROUND COAL MINES (EXCLUDING SURFACE EMPLOYEES AT UNDERGROUND MINES)

1958



This chart will give you some idea of the number of mines broken down into categories of from 1 to 4 men, 5 to 9 men, 10 to 14 men, all of which do not come under title II of the act, and then the number of mines ranging from 15 to 19, 20 to 24, 25 to 49, 50 to 74, 75 and over, indicating the number of mines which now come under title II of the act.

And if you are interested in the number of employees in this regard, also on this exhibit A is a graph showing the number of employees affected by title I and title II of the act.

It is interesting to note that according to our latest figures while the great majority of mines are so-called small mines the employment in these title I mines amount to 30,992 men, and the employment in the title II mines, the mines of which are much smaller in number, employ 117,529 men.

The objection of the Bureau of Mines to the limiting provision; namely, section 201(b) of title II of the act, is not new. In its annual reports to Congress, required under the act, the Bureau has recommended that this restrictive provision be repealed because Federal inspections of title I mines disclose that disaster hazards exist in these mines, and we believe that the men who work in mines employing less than 15 men are entitled to the same protection as the men who work in mines that employ 15 or more men.

Between the years 1952 and 1961, the number of title II mines has decreased from 2,233 to 1,094 (54 percent), whereas the number of title I underground mines has increased from 5,281 to 7,581, an increase of 44 percent. From these data, it is evident that limiting the enforcement powers of the act has resulted in an increase in hazardous conditions in hundreds of mines because many mine operators have circumvented the provisions thereof by keeping their working force under 15 persons. More alarming is the knowledge that many new mines are being opened and operated as title I mines. The act should not provide such an inviting loophole to escape compliance with reasonable safety precautions.

Those who have opposed this type of legislation claim that the additional expense involved to comply therewith would put title I mine-owners out of business. They seem to overlook the fact that the majority of title I type mines are wet, nongassy, and do not use electricity and, consequently, only a few provisions of the act may be applicable and compliance with these would involve little expense. However, we are deeply concerned about the lethal conditions that do develop in some of these mines, especially those that are gassy and/or dry. Enforced compliance with the provisions of title II of the act would greatly reduce the possibility of such conditions existing.

I should like to discuss each safety provision of the act and indicate at least in some degree how the application of these measures would affect title I mines in the event that H.R. 4237 and other identical bills were adopted, but to save the time of this committee I ask for permission to insert in the record this information (app. A), which covers the calendar year 1958.

Mr. ZELENKO. Permission is granted.
(The information referred to follows:)

APPENDIX A

HOW THE APPLICATION OF THE SAFETY PROVISIONS OF TITLE II OF THE FEDERAL COAL MINE SAFETY ACT WOULD AFFECT TITLE I MINES

Section 203(a) provides that when a Federal inspector finds danger that a mine explosion, mine fire, mine inundation, or man-trip or man-hoist accident will occur immediately or before the imminence of such danger can be eliminated, he shall order the operator to withdraw the men from the mine or section affected.

It is most unlikely that anyone would object to a Federal inspector having the power to order withdrawal of men from a situation where the men were in imminent danger of being killed. As long as the dangers described in section 203(a) do not exist in a mine, the provision is, of course, inapplicable.

Section 209(b) provides that every operator of a mine, which was classed gassy under the laws of the State, shall comply with the provisions of the act which pertain to gassy mines.

A large majority of title I type mines are situated near the surface under light cover and do not liberate explosive gas. Actually, 95 percent of the title I underground mines inspected in 1958 were considered nongassy under the Federal Mine Safety Code. However, some of the mines that do liberate gas are classed gassy by the State, and I cannot believe that the operators of these mines object to the adoption of reasonable safeguards against explosions.

Section 209(c) requires adequate roof and rib support in all active roadways and travelways.

The seriousness of failure to comply with this safety provision is apparent when it is realized that more men in our coal mines are killed by falls of roof and rib than by all other causes combined. Compliance can be accomplished with the regular working force, and no one can dispute the fact that it costs considerably less to support doubtful roof than to clean up a large fall of roof that was left unsupported.

This hazard was present in 13 percent of the title I mines inspected in 1958.

Section 209(d) (1) requires that the volume and velocity of a ventilating current be sufficient to dilute, render harmless, and carry away flammable or harmful gases, to ventilate adequately the active working places.

Adequate ventilation is essential (1) to dilute and remove the methane liberated before it accumulates to an explosive proportion; (2) to provide sufficient oxygen for the workmen; and (3) to dilute and render harmless any noxious gases that may be present.

Although adequate ventilation is vitally important to health and safety, the ventilating current was not sufficient to comply with this safety provision in 259 or 5 percent of the title I mines inspected in 1958. In five of the mines, gas was detected with a permissible flame safety lamp, indicating the possibility of imminent danger of an explosion.

Section 209(d) (1) also requires that the quantity of air reaching the last open crosscut of any pair or set of entries be not less than 6,000 cubic feet a minute, except in pillar sections where not less than this quantity is being delivered to the intake end of a pillar line.

To supply this comparatively small quantity of air continuously does necessitate the use of a main ventilating fan. For a small mine, a small inexpensive fan would suffice. In most mining areas, low-cost secondhand fans are available for purchase. Main fans are now provided at many title I mines. In some States, all mines regardless of size are required by State law to provide a main ventilating fan.

It is easier to understand just what this requirement means by citing an example: An air velocity of 166 feet a minute, which is less than a leisurely walking gait, through a crosscut 12 feet wide and 3 feet high would amount to 5,976 cubic feet a minute. This could hardly be considered a sufficient amount to cause discomfort as has been claimed.

Adequate face ventilation is the first line of defense against gas explosions, but 24 percent of the gassy title I bituminous coal mines inspected in 1958 lacked this minimum amount of ventilation. Not many, to be sure, but enough to cause the Bureau of Mines great concern.

Section 209(d) (7) requires examination of every active working place and every other place in a gassy mine, where men regularly work or travel, for gas and other hazards by certified persons within 4 hours immediately preceding the beginning of a coal-producing shift.

Compliance with this provision does not mean that fire bosses must be employed, as some would like to imply. Such examinations can be and are now being made by the owner or his supervisor usually within 30 minutes of the shift starting time, at no additional expense, and they assure that the regular shift workmen are not going to blunder into a death trap that may have developed overnight. Even though the operators are aware of this grave possibility, preshift examinations were not being made in 23 percent of the gassy title I mines inspected in 1958.

Section 209(d)(8) requires examination of every active working place and every other place in a nongassy mine, where men regularly work or travel, for gas and other hazards by certified persons within 4 hours immediately preceding the first coal-producing shift on each day.

This provision also can be complied with by using the regular supervisory force at no additional cost to the owner.

Section 209(d)(9) requires that (1) all active working places in a mine be examined for hazards by certified persons at least once during each coal-producing shift; (2) in a gassy mine, such examinations shall include permissible flame-safety-lamp tests for methane and oxygen deficiency; (3) in a gassy mine, examinations for methane shall be made in face workings before electrically driven equipment is taken into or operated in face regions and frequently during such operations.

The purpose of this precaution is to detect and eliminate loose roof, accumulations of methane, and other hazards that develop during a regular shift. Management is responsible for providing safe working places in a mine, but too often we find that title I mines are very poorly supervised.

Section 209(e)(1) prohibits the accumulation of coal dust, loose coal, and other combustible materials in dangerous quantities in the active underground workings of a mine.

The accumulation of such materials presents a fire hazard in any coal mine and a serious explosion hazard in a gassy mine. A blown-out shot or an electric short-circuit could easily ignite the loose coal and coal dust which provides ready fuel for the fire. Should a gas or dust explosion occur, the forces and flame could be propagated throughout the mine.

Dangerous accumulations of coal dust and loose coal were present in 9 percent of the title I bituminous coal mines inspected in 1958 including 11 percent of the gassy mines. Generally, these hazards exist only in mines that are dry, and only those mines that were dry at the time of the inspection were considered in determining the percentage in violation.

Recovery of such accumulations of coal is good business. After all, good money was spent to mine this material, and to leave it in the mine means less profit for the owner. However, such accumulations may be left in the mine, provided they are rendered nondangerous by adequate application of rock dust.

Section 209(e)(3) requires that all mines, in which the dust is not too wet or too high in incombustible content to propagate an explosion, be rock-dusted to within 40 feet of all faces, including open crosscuts.

A dry, gassy mine using electric power in face areas will provide the most favorable conditions for an explosion or fire disaster, but, fortunately, only 41 percent of the title I underground bituminous coal mines inspected in 1958 were dry and only 5 percent were gassy. Inasmuch as dry bituminous coal dust is almost as explosive as gun powder, it is vitally necessary to prevent propagation of a dust explosion by proper rock-dusting—which is the only known effective means available. A widespread dust explosion usually kills every man in the mine. Maintenance of adequate rock-dust applications is the first line of defense against widespread disasters, and does involve the purchase of rock dust, which would not exceed a few cents per ton of coal produced. Such applications can be made by hand if the operator objects to buying a rock dusting machine.

Section 209(f)(1) requires that all electric face equipment used in a gassy mine shall be permissible, but allows the use of nonpermissible equipment that the operator owned, owned the right to use, or had on order before the act became effective or the date such mine became gassy—until it is worn out.

Mining equipment is noted for its rugged, long-lasting construction, and it is pretty obvious that there would be no immediate outlay of money needed to comply with this provision of the act. However, if any electric equipment is purchased for use in the face regions of a gassy mine, it must be permissible

equipment that is designed to assure that it will not cause a mine explosion or fire.

Section 209(g)(1) requires suitable firefighting equipment adequate for the size of the mine.

Such equipment is necessary to combat fires that may start in a mine and to prevent them from assuming disaster proportions. In 63 percent of the title I mines inspected in 1958, adequate equipment was not provided. This is really an incongruous situation because, by the purchase of a few inexpensive fire extinguishers, and some rock dust, the operator can assure better protection of his own property as well as better protection for his employees and perhaps for himself.

Section 209(g)(2) requires that an examination for fire be made after every blasting operation on shift.

The purpose of this safety provision is to discover and extinguish incipient fires caused by blasting and thus prevent their spreading in the mine. In 118 title I mines inspected in 1958, such examinations were not made even though this job can be done in a few minutes by regular employees without a penny of expense to the owner.

Section 209(g)(4) requires that lubricating oil and grease kept in face regions be in portable, closed, metal containers.

Failure to observe this safety provision presents a fire hazard, especially in mines in which open-flame lamps are used. Although this hazard was present in 50 title I mines inspected in 1958, we feel that the few dollars that would have to be spent for a couple of proper containers is good insurance against fires.

Section 209(g)(5) requires that underground structures shall be of fireproof construction.

We have no record of any title I mine being in violation of this provision in 1958. Most title I mines have little or no need for substations, transformer stations, and the like.

Section 209(h)(2) requires that bore holes at least 20 feet long shall be kept in advance of the face and in the ribs of a working place when such place approaches (1) within 50 feet of abandoned workings of such mine that have been surveyed and mapped; (2) within 200 feet of other abandoned workings of such mine which cannot be inspected; (3) within 200 feet of any workings of an adjacent mine.

After a mined area has been abandoned for a period of time, generally the roof caves, which precludes entrance and examination. It is, therefore, possible for explosive or other noxious gases, and under certain conditions, for water to accumulate therein, unknown to the workmen in the mine. The dangers of explosion and inundation are obvious, in the event an active working place unexpectedly taps such abandoned area.

This provision is designed to protect against such hazards; however, in 38 title I mines inspected in 1958, exploratory holes were not being drilled in advance of the faces when abandoned areas were being approached, even though to do this would not have added to the normal operating expenses.

Section 209(h)(3) prohibits smoking and the carrying of smoking materials, matches, or lighters by any person in a gassy mine.

Flame introduced in any mine presents a definite fire hazard, and in a gassy mine, the additional possibility of a gas explosion. This provision seeks to prevent such hazards by keeping sources of flame out of gassy mines, but, despite the dangers, smoking was done in 13 percent of the gassy title I mines inspected in 1958. We all know that stopping this dangerous habit would cost nothing but willpower and alert supervision.

Section 209(h)(4) requires that only permissible electric lamps be used by all persons in a gassy mine for portable illumination.

The use of open-flame lamps presents a serious fire hazard in any mine, gassy or nongassy, but in a gassy mine, the possibility of igniting methane is an additional danger.

This safety provision would prohibit the use of open-flame lamps in gassy mines, but, such lamps were in use in only 22 (7 percent) of the title I gassy mines inspected in 1958. To comply, the owners of these 22 gassy mines would within a reasonable time, have to provide permissible electric cap lamps for the few persons who work underground, but they can be rented for a reasonable charge from the manufacturers, and thus an out-of-pocket expense is not necessary.

Section 209(h)(5) prohibits the storage, handling, and use of black blasting powder in an underground coal mine.

Three hundred and fifty-four (67 percent) of the title I underground mines inspected in 1958 were using black blasting powder, and compliance with this provision would mean that the operators of these few mines would have to turn to safer permissible explosives, but this is not a major problem. Operators of all title II mines had to stop using black blasting powder 6 months after the act became effective in 1952, and I do not know of one operator who had to suspend operations as a result. Furthermore, some States, such as Kentucky and West Virginia, prohibit the use of black blasting powder in all underground mines, and the records prove that such regulations have not meant economic distress for any group of mine operators.

Section 209 (h) (7) provides for certain special safeguards for hoisting facilities: Usually, title I mines are projected horizontally into the coal seam direct from the outcrop, and hoisting facilities are not needed. Therefore, this provision usually is not applicable.

Mr. ANKENY. The adoption of H.R. 4237 and other identical bills will not mean undue hardship to title I mineowners. Their fears, I am sure, are based on the premise that this legislation would require full compliance with the provisions of the Federal Mine Safety Code. I should make it crystal clear at this point that neither H.R. 4237 nor any of its identical companion bills requires compliance with the provisions of the Federal Mine Safety Code. It does require compliance with the mine safety provisions of the Federal Coal Mine Safety Act, but there is a vast difference between said code and act.

The Federal Mine Safety Code is a document that contains 413 provisions for the safer operation of coal mines, and is merely used as a guide for Federal inspectors in inspecting coal mines. It is also used by many coal mine operators and their safety inspectors and by the United Mine Workers of America Safety Committee in maintaining safe conditions in the mines under their respective jurisdiction.

Federal inspectors have no authority to enforce compliance with the code under the present act, and they will have no authority to enforce the code under the legislation presently before this committee. The Federal Coal Mine Safety Act, on the other hand, contains 37 mine safety provisions that are enforceable in title II mines and which will be enforceable in title I underground mines if this legislation is enacted; provided, however, that this number may be reduced if the hearings proposed under section 201 (b) (1) of H.R. 4237 reveal the need for eliminating certain provisions. Such hearings may also reveal the need for modifying other provisions.

I think it would be helpful for the committee to know that West Virginia enacted new and modern coal mining laws in 1958. The administrative procedures thereof are almost identical with those in the Federal Coal Mine Safety Act; they include the mine safety provisions of the act, most of the provisions of the Federal Mine Safety Code, and they apply to all mines regardless of size or employment.

Limiting the number of employees to fewer than 15 men provides no protection against disaster-type accidents in such mines. I am sure you remember the explosion disaster that occurred in the No. 1 mine of the Phillips & West Coal Co. in Tennessee, on March 23, 1959, in which 9 men—the full complement of workmen on the shift—were killed.

This was a title I mine. The explosion was caused by the ignition of methane which accumulated as a direct result of shutting down the main fan over the weekend coupled with the failure to make

preshift examinations of the mine to determine whether any gas was present before the regular workmen proceeded underground following the shutdown.

A question you may ask would be "Could this disaster have been prevented if the provisions of title II of the Federal Coal Mine Safety Act applied to the mine?"

In my opinion, this disaster very likely would not have occurred if Federal inspectors had full authority to require compliance with the Federal Coal Mine Safety Act. In this instance, the Federal inspector would have required preshift examinations under section 209(d)(8) and such examination would have disclosed the dangerous condition of the mine atmosphere before power was applied to the conductors and before the workmen entered the mine.

More recently, December 28, 1960, a vicious gas and dust explosion ripped through a title I mine near Newburg, W. Va., killing the 2 men employed. Here, too, the main fan was not operated over the long holiday weekend, and the Federal investigation of the disaster disclosed that the preshift examination was not made with enough care to detect the gas that had accumulated in the unventilated working places. This was the Phillips No. 1 mine, Parson Coal Co.

We do not claim that disasters will not occur in title I mines if the provisions of title II are made mandatory therein, but we are confident that with the authority provided in H.R. 4237 our inspectors will be able to eliminate many of the hazards they are finding in title I mines—hazards that set the stage for disaster—but cannot now get corrected under Federal statute.

At this point I believe it is appropriate to give our understanding of the amendments proposed in H.R. 4237. This bill causes the present provisions of title II to apply to all coal mines, regardless of employment, except that in the application of such provisions to mines in which less than 15 persons are regularly employed underground:

(1) The Director of the Bureau of Mines may, by regulation established after suitable hearings, modify or make inapplicable any provision or part thereof of the mine safety provisions of the act to any mine or class of mines when he finds that such provision does not substantially contribute to the safety of the men working therein. Such hearings, of course, will be held if H.R. 4237 is enacted.

(2) The operator has the right to appeal a Federal inspector's finding of a violation of the mine safety provisions issued under section 203(b) to the Director or the Federal Coal Mine Safety Board of Review. This means that if such appeal is made, the Federal inspector could take no further action in such instance until the appeal is heard and a decision is issued by the Director or Board. The present act provides for formal appeals from withdrawal and gassy classification orders only, and operators of mines employing more than 14 men underground would still be limited under H.R. 4237 to appealing orders. We are confident that the operators of mines employing less than 15 men underground will not abuse this special privilege.

Gentlemen, I want to make this distinction perfectly clear, that under our present act, an operator of a title II mine cannot appeal to the Director or the Board until after a danger has been found and an order has been issued to withdraw the men and the men have been

withdrawn, and at that point he can appeal to the Board against the finding of the inspector.

But under this law that is under consideration today, except in the cases of imminent danger, whenever an inspector finds a violation in this mine employing 14 or less men, he can merely post a notice of this finding, and he cannot withdraw the men if the operator desires to make an appeal at that point to the Director or the Board.

This is a tremendous advantage to the operator of the small mine. He does not have to suffer the difficulties of having his mine shut down before he can make an appeal to the Director or the Federal Coal Mine Safety Board of Review.

(3) Special consideration is given to operators of mines employing less than eight men regularly underground. In addition to the right of appealing a finding to the Director or Board, the operator of such mine has the right to appeal a finding to a State inspector if he disagrees therewith. If, in such instance, the State inspector does not concur, that is, if he does not concur with the Federal inspector's finding, the Federal inspector would be restrained from issuing an order for failure to abate a violation of the mine safety provisions within a reasonable time. Inasmuch as the laws of many coal-producing States conform fairly closely with the mine safety provisions of the Federal Coal Mine Safety Act, we anticipate little or no trouble with this provision in the act under consideration.

If the operator does not request such special inspection by the State inspector, within 24 hours after receipt of the notice of finding, or if the State inspector fails to comply with the operator's request for a special inspection within 5 days, the Federal inspector is then authorized to issue the order to correct the condition within a reasonable time. If upon timely inspection, the State inspector does not concur in such order, the operator, the Bureau of Mines, or the State inspector may apply for the appointment of an independent inspector to inspect the mine. If, after such inspection is completed, either the independent inspector or the State inspector concurs in the order it shall be issued.

(4) H.R. 4237 amends section 205(d) of the act, by giving the operators of mines employing fewer than 15 men underground the special right to request the Federal Coal Mine Safety Board of Review to hold its hearings at the county seat of the county in which the mine involved is located or at any place reasonably convenient to the operator. The Board, of course, would be required to comply with such request.

I want to emphasize this point in the light of the testimony that was given this morning. If an operator of one of these small mines employing less than 14 men desires the hearing to be held at the county seat of the county in which the mine is located under this bill under consideration the Board is obliged to go to that county seat to hold the hearing.

I conclude this formal statement with the comment that, in our opinion, H.R. 4237 will improve disaster conditions and practices in the mines not now covered by the mandatory provisions of title II of the Federal Coal Mine Safety Act and that compliance with the provisions of this bill will not force the mineowners out of business.

This concludes my prepared statement, sir.

Mr. ZELENKO. Thank you very much for your most informative statement, Mr. Ankeny. I know there will be some questions. The Chair has no questions.

Mr. O'Hara?

Mr. O'HARA. I would like to ask Mr. Ankeny with regard to this right to appeal a finding of the Federal inspector without issuance of an order. First, this would not prevent a Federal inspector from withdrawing men from any size mine in a case of imminent danger, would it?

Mr. ANKENY. That is correct. It would not in that instance.

Mr. O'HARA. Under present law, this is also true?

Mr. ANKENY. This is also true under the present law.

Mr. O'HARA. I think those are all the question I have, Mr. Ankeny.

I know this hearing today and in our subsequent hearings we will likely hear testimony which would point out several difficulties that title I mine operators have experienced under the proposed legislation. I was wondering if it would be possible for you or a representative of your office to keep our office apprised of this testimony and to be prepared to comment upon any of it before we finally undertake executive hearings on this bill.

Mr. ANKENY. Mr. Chairman, Congressman O'Hara, I will have either the Assistant Director for Health and Safety or the Chief of the Coal Mine Inspection Division present at all of the hearings, and I will stand by and be on call anytime the committee would like to have me appear here on short notice.

Mr. O'HARA. Thank you, Mr. Ankeny. Thank you for your testimony.

I have no further questions, Mr. Chairman.

Mr. ZELENKO. Mr. Martin?

Mr. MARTIN. How many Federal mine inspectors do we have at the present time that it takes to handle the inspection of these title II mines?

Mr. ANKENY. We have 276 mine inspectors on the force at the present time.

Mr. MARTIN. I noticed in your figures that there was a quite rapid increase in the number of the title I mines in the last few years. In fact, I think you said something around 47 percent or in that neighborhood, perhaps a little larger. How many inspectors would be required then to police this whole thing, title I and title II mines?

Mr. ANKENY. Our estimate is that it would require approximately 26 additional inspectors at an increased cost of approximately \$400,000.

Mr. MARTIN. For over 7,500 mines it would only take 26 additional inspectors?

Mr. ANKENY. Yes, sir. I would point out in this connection, however, that at the present time we are inspecting these mines, perhaps not as with as great frequency as the large mines, but we are servicing these mines. The difficulty is, though, that we could only make recommendations at the mines. We cannot enforce the requirements of the Federal act.

Mr. MARTIN. Your 276 men that you have now must not have too much work to take care of if it only takes 26 additional. They must have a pretty soft job.

Mr. ANKENY. I am sure that they do not have a soft job, and I am sure that you would agree with me if you were familiar with the setup and with the organization of the Federal inspection force.

Mr. MARTIN. You brought out some disasters in title I mines, I believe, in your testimony here. I think to be fair, from that side of the question, were not there disasters in title II mines during the same period of time?

Mr. ANKENY. Oh, yes. There have been a few disasters in title II mines, and, as I stated in my testimony, we make no claim that passage of this act is going to completely eliminate the chance of major disasters in mines. We believe, however, we know from our experience in these small mines from our, at least, annual visits that there are many disaster hazards existing in these mines. That we can do nothing about under the present act; that we can eliminate if this particular legislation is passed.

Mr. MARTIN. There is one other point, sir. I would like to establish for the record. Is your basic philosophy for a strong federalized government or strong State governments, in contrast?

Mr. ANKENY. My basic philosophy is for strong State governments wherever the States are willing to assume their obligations and not only willing but able to do the things that are necessary to do for the welfare of its people.

Mr. MARTIN. We have State laws and State mine inspectors that cover this same territory. So it seems to me it is a duplication of effort and harassment of the small businessman in this type of legislation.

Mr. ANKENY. State mining laws and State mine inspectors, as such, do not necessarily insure that the job is being done. As for harassment, I do not believe that many of the operators who are subject to the title II of the act today will tell you that will accuse the Federal inspectors of harassment. I think that you would find that by and large the efforts of the Federal inspectors in the inspection of these mines is appreciated by management, for the help that they can get from the Federal inspector, the constructive help in improving the safety conditions of the mines. I am sure of this. I have been identified with this work many years. I know what the attitude of the operators is toward our work.

Mr. MARTIN. In your opinion, how accurate are the figures of the total production of these title I mines as reported? How far off do you think they are?

Mr. ANKENY. The accuracy of Bureau of Mines statistics in hearings that have preceded this one on this same subject has been challenged. We cannot swear to the absolute accuracy of figures which we present because our figures are no better than the figures that are given to us by the operators. I would say that on the basis of the figures that we are able to get we are accurate, and that the inaccuracy of the figures which we have presented in previous hearings is not great.

Mr. MARTIN. I noticed in the testimony last year in regard to these title I mines that the statement was made at the hearings that all the title I mines and their locations were not known, that it would take quite a close scrutiny in the hills and mountains of some of our coal-producing States to locate all of them. So if we do not even know

where all of them are, they surely must be producing coal that is not reported and included in these figures.

Mr. ANKENY. Yes, sir. That is a condition that exists, and you never will know. There is no possible way of knowing at one particular day how many mines there are, because every day among these some 8,000 small mines there are mines shutting down and there are mines opening up, so you would never know with complete accuracy how many there are or where they are. And it is difficult for our inspectors sometimes to keep tract of this because mines open up and the only way they can learn of this is by report from neighboring mines and other contacts which they have.

Now, some States, such as the State of Kentucky, have a licensing law now so that anybody who opened up a coal mine, as I understand it, must obtain a license from the State and where you have this State licensing law it becomes much easier to find out when mines open up and when mines close.

Mr. ZELENKO. Mr. Daniels?

Mr. DANIELS. Sir, Senator Cooper appeared here this morning and expressed the opinion in regard to the bills under consideration that they would impose upon the small mine owners undue hardship and he expressed the judgment that the hardship would be in the nature of causing undue expense and depriving the small mine owner of his day in court. What is your comment upon that?

Mr. ANKENY. I would be glad to comment on that, sir.

In the first place, I must say flatly from my knowledge of these small mines and from the contacts which the Bureau of Mines has had in inspecting these small mines that this would not cause an undue hardship. It is true, compliance with some of the provisions will occasionally cause some expense. It will require some operators to do the things that will cost a little bit of money, that they are not now required to do.

But I would point this out to you, that the problem of mine safety in the small mines is not as great as in the large mines, because many of them are located close to the surface. Therefore, they are nongassy. Many of them are wet mines and, therefore, the expense of rock dusting is not called for. The very fact that they are small mines means that the cost of making preshift examinations, for example, where it might cost a quarter of a man-day or less for the preshift examination in that mine, in a large mine it might cost 5 or 6 man-days to make these examinations. So you see the very fact that they are small mines—one other point I want to make here is that many of these small mines do not employ mechanical equipment or electricity in the mines, and, therefore, a great many of the expensive requirements of the Federal Mine Safety Act are automatically eliminated where there is no electricity or no mechanical equipment in the mine, you see.

Much of the argument last year in which it was said that this would be an undue hardship on the small mines was predicated on the claim of the opponents of this legislation that they would have to comply with the Federal Mine Safety Code which has some 450 recommendatory provisions, which is absolutely not a fact under this proposed legislation. There are only some 37 provisions under this legislation that would be mandatory.

Mr. DANIELS. What about the point of being deprived of his day in court? Is there any merit to that contention?

Mr. ANKENY. I am sorry.

Mr. DANIELS. What about the point that the small owner would be deprived of his day in court? Is there any merits to that point?

Mr. ANKENY. Under the special provisions that have been made for the opportunity of the small mine owner to appeal either to the Director to the Board without the expense of coming to Washington to present his case, I would say eliminates any danger that he would not have his day in court. It might be interesting for you gentlemen to know that since Public Law 52 has been in existence the number of appeals that have been made against the findings of the U.S. Bureau of Mines has been very low. They have not been a great many appeals. There has not been a great amount of dissatisfaction with the way the Bureau has administered the laws which Congress has made them responsible for.

Mr. DANIELS. Thank you.

Mr. ZELENKO. Thank you very much, Mr. Ankeny, for your usually fine presentation.

Mr. ANKENY. Thank you, sir.

Mr. ZELENKO. The Chair omitted before in reading the list of names of those who have been invited to testify Mr. Clyde L. Machamer, president of the Independent Miners and Associates, Masonic Building, Pottsville, Pa.

The next witness listed is Mr. Thomas Kennedy, president of the United Mine Workers of America. Is Mr. Kennedy here?

The Chair has been requested to file a statement of Mr. Kennedy for the record, and the Chair is doing that herewith. I am sorry. Did someone rise?

Mr. FERGUSON. I merely wanted to state that Mr. Kennedy was not present.

Mr. ZELENKO. Thank you.

There has been a request of the Chair to put his statement in the record, which the Chair will do at this time.

(The statement referred to follows:)

STATEMENT OF THOMAS KENNEDY, PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA

My name is Thomas Kennedy, I am president of the United Mine Workers of America. I appreciate the opportunity to make a statement in regard to mine safety bills H.R. 4237, H.R. 4424 and H.R. 4440. While these bills are not entirely to my satisfaction since I would have preferred to have had Public Law 552 amended by striking out section 201(b) completely, I accept them as a step in the right direction and am hopeful that the committee will vote them out as written.

The problem of mine safety has been with the United Mine Workers ever since they were organized. Every president of our union has been dedicated to the problem of safety for coal miners and it has been a continuous fight down the years. The adoption of the 14-man amendment to the bill was a weird piece of legislative juggling. It can be likened to the passage of safety laws governing the speed and safety of public utility buses were they to be modified by an amendment stating that buses must adhere to the laws of speed and safety unless they had less than 15 passengers. It would be just as logical to pass such a law for buses as it was to amend the mine safety law.

There is a continuing need for Federal legislation. Public Law 552 should be broadened and strengthened to a point where it will give protection to all coal miners from the day-to-day accidents which over the years have killed hundreds of thousands of coal miners.

The coal mining industry killed 324 during the year 1960. Many of these men were killed simply because they were not provided with safe working places or dangerous conditions were allowed to exist which in time claimed the lives of one or more persons.

Before the passage of the Federal mine safety bill in 1952 when Federal inspectors were given the right to close any mine where a dangerous condition existed, the coal industry killed as many as 2,500 men in 1 year while injuries amounted to as many as 50,000. Since passage of the act, deaths have fallen to a low of 324 in 1960 and injuries in proportion. Still far too many, but a far cry from the old haphazard inspection services of the years preceding 1952.

Mine safety has not come about voluntarily in the coal industry. It has been a savage fight, step by step, with the majority of the industry opposing every attempt to bring about safer conditions for those who toil below the earth's surface. Only in 1952 when a substantial portion of the coal industry broke with their fellow coal operators and joined the Bureau of Mines and the United Mine Workers in the fight for Federal inspection with regulatory powers was substantial progress made in this vital field.

State inspection has improved remarkably since the passage of the Federal mine safety bill. This is due entirely to the checks and balances provided by this law. The possibility of Federal inspectors inspecting any mine has kept State inspectors on their toes. They have been more diligent, more cooperative and more efficient since Federal inspection has been available. Instead of duplication of effort which was preached by the opponents of Federal inspection services, we find mutual understanding and cooperation instead. Both State and Federal inspectors vie with each other to produce prompt, efficient services to the industry and its personnel.

Why this 14-man exemption was ever made in the first place cannot be justified. It was opposed by the United Mine Workers of America from the beginning and accepted reluctantly in the interests of getting a bill passed which provided for Federal power to close down any mine found to be in a dangerous condition. It was understood at the time that we reserved the right to appeal to Congress to amend this Safety Act and strike from the law a section so obviously unfair and unjustifiable.

There can be no justification for a law which says that a mine with 15 or more workers must come under Federal jurisdiction and be subject to a Federal law while a mine with 14 or less workers is free to ignore Federal law and Federal inspection and ignore safety regulations which are the product of 50 years' experience and practice.

It is our contention that any man or any company which hires men to work in a coal mine owes it to these workers and the public to keep its mine in as safe a condition as possible. That they should be required by Federal law to live up to every modern safety practice that governs mines which employ 15 or more men.

We maintain that there is nothing in the Federal Mine Safety Act which would add prohibitive costs to maintain a small mine in a safe condition. Opponents of last year's bill (S. 743) continuously called attention to the Mine Safety Code in force between the UMWA and signatories to a coal contract and declaimed that its provisions were harsh, expensive, and not necessary to the operation of small mines. They charged that provisions of this code would be enforced by Federal inspectors and that its enforcement would make small mine operating costs prohibitive. This we deny. The only law Federal inspectors are empowered to enforce is the Federal mine safety law which in most instances parallels the mining laws of the large coal producing States. We also deny that even if the Mine Safety Code were to be enforced it would render it prohibitive to operate a small mine manned by 14 or less workers. Among the signatories to the contract are many such small mines which abide by the Federal Mine Safety Act and the Mining Code. They are not plagued with unjustifiable costs. As a matter of fact, any experienced coal miner could tell you that most small mines could be rendered safe by one man with a shovel, an ax and a crosscut saw at his disposal.

A review of the mining laws of the various States will reveal that each inspection department is authorized to enter and inspect all coal mines, and, if necessary, stop production in such mines until dangerous conditions are corrected. This power we ask to be given the Federal Mine Inspection Service for all coal mines regardless of size. A dangerous condition is as dangerous in a mine of 14 or less employees as it is in a mine of 15 or more. It should not be allowed in any mine regardless of size.

Statistics show that during 1959 mines employing 14 or less men underground produced only 12 percent of the underground tonnage and were charged with 30.8 percent of the underground fatalities. The U.S. Bureau of Mines during its inspection of these mines, reports time after time serious violations of safe mining practices but because of the statutory exemption the Bureau is helpless to exact compliance.

As an example of what is happening in No. 1 mines which are not required to live up to Postal Law 552, nine men died in an underground coal mine blast on March 23, 1959, near Robbins, Tenn. In all probability, those men would be alive today if the bill this committee is now considering had been passed by the 85th Congress.

This was a truck mine—a family enterprise which normally employed 8 or 10 persons and produced 50 to 60 tons of coal daily. According to newspaper accounts, gas apparently collected in a pocket over the weekend when the mine's ventilating system was cut off. When the miners returned to work on Monday morning, a spark from an electric motor, an open-flame lamp—or even a lighted cigarette—ignited the gas. There were no survivors.

Mr. Chairman, it is reasonable to believe that this tragedy could have been averted had there been compliance with article V, section 10(g) of the Federal Mine Safety Code which requires:

(1) That all active working places in a mine be examined for hazards by certified persons at least once during each coal-producing shift;

(2) That in a gassy mine such examinations shall include permissible flame-safety-lamp tests for methane and oxygen deficiency; and

(3) That in a gassy mine examinations for methane shall be made in face-workings before electrically driven equipment is taken into or operated in face regions and frequently during such operations.

It is also reasonable to believe, therefore, that the tragedy at Robbins might have been averted had this small mine not been exempt from mandatory compliance with the safety measures established by the Mine Safety Act, under the specific exemption set forth in section 201(b), title II, Federal Coal Mine Safety Act.

Surely it is not asking too much for the Education and Labor Committee to pass this humanitarian measure. I trust it will have the full support of the committee.

Mr. ZELENKO. The next witness listed is Mr. Charles Ferguson, safety director, United Mine Workers of America. Is Mr. Ferguson here?

Mr. Ferguson, do you have a prepared statement?

STATEMENT OF CHARLES FERGUSON, SAFETY DIRECTOR, UNITED MINE WORKERS OF AMERICA

Mr. FERGUSON. No, I have not, sir.

Mr. ZELENKO. Very well.

Mr. Ferguson, will you give your name and title to the reporter? And I am going to ask you if you possibly can to restrict your presentation to about 10 minutes.

Mr. FERGUSON. I will try to do so insofar as possible.

Mr. ZELENKO. The reason the Chair makes that request is that other than Mr. Ankeny and Members of the House or Senate we are going to limit the time of all witnesses, and were we to give the proponents of this legislation more time it would only be fair to give the opponents more time also. So I am going to ask you to limit your presentation to 10 minutes, and then if you have any additional information the committee will be glad to have it filed as a part of a formal statement which you may hand in to the committee at any time after your appearance here today.

Mr. FERGUSON. I will try to conform with your request, sir.

Mr. ZELENKO. Thank you, sir.

Mr. FERGUSON. My name is Charles Ferguson. I am the safety director of the international union of the United Mine Workers of America. I am an experienced miner, with about 18 years of experience in the coal mines of the country, including many years of experience all over the country in times of disaster, exploration after disasters, rescue work and otherwise. I have been the safety director of the United Mine Workers since 1950. During that time I have served in various capacities as a member of the National Safety Council and the Board of Directors, a First Deputy Administrator of the Solid Fuels Administration, and many other things.

I had some remarks that I would like to make. Unfortunately, the time limit does not allow it. However, the record—

Mr. ZELENKO. If I may interrupt you, this will not come out of your time. This will go for all the other witnesses. Those who wish to make a more formal or detailed statement I would suggest that after they finish testifying that they be filed with the committee and we shall read them. We are going to ask all the witnesses, of whom there are many, to touch the highlight of their testimony.

Mr. FERGUSON. Thank you, sir.

Mr. ZELENKO. That is what I am going to ask you to do, sir. You have an additional minute at this time.

Mr. FERGUSON. The record is replete with testimony on this legislation. It has been up over the years before the Senate and the Congress. Our position has been consistent because we see no reason for the exclusion of these small so-called small mines from the benefits to be gained by the passage of Federal legislation to offer them the protection to which we believe they are entitled.

It always seemed strange to the mineworkers that the Congress saw fit to give protection to men who employ more than 15 men and refuse the same protection to mines employing less than 15 men. It appears to us that this is second-class legislation. It appears to us that it is denying to those men who are forced by economic circumstances to enter these small mines for employment to be robbed of their right as American citizens.

That, briefly, is the position of the United Mine Workers of America without elaboration.

But there is one thing to which I would like to address myself here this afternoon, and that is the remarks of the eminent gentleman from Kentucky, Senator Cooper. I was pleasantly surprised to find that he had suddenly become an expert in coal mine safety, and he appears to have gone about the hills and valleys of Kentucky and learned all of the answers to all of the questions.

I wonder how many widows and orphans he talked to. I wonder if he thought of the men who died in those mines when he talked to the children who have been robbed of their birthright.

I look around the room, and I see the opponents of this legislation here this afternoon. Who do I see? Do I see coal miners? I see coal operators. I see ramp operators. I see coal mine salesmen. I see coal mine owners. These people over the years have come to this Congress, and they have said to you, to you, and to you: "We alone believe that they have the God-given right to determine the conditions under which these men in these mines will live or which they will die."

Senator Cooper gave some very serious misleading information to this committee this morning. He talked about the things that need not to be done in these small mines. Mr. Ankeny's statement, I believe, forcibly cleared up this situation.

There are hundreds of these mines today working under the benefit of the Federal legislation, and not a one, to my knowledge, has been forced out of business.

I am a little confused as to how to correlate myself in this presentation, but I merely want to say this, that the men who live and die in these small coal mines are entitled to the same protection that a man who is fortunate enough to work in a mine employing 15 or more men. There are human equations involved here.

All that we hear, as we come before the Congress, from the opponents of the legislation is: "It costs too much. It will run me out of business. I am a small operator. I can't afford these things."

Never once have I heard a one of them say, What about the men who have died in this industry? What about the men who have been crucified by the greed of the people who are down here now opposing this legislation once again?

Gentlemen, you may stop me when you are ready, sir.

Mr. ZELENKO. Three minutes yet.

Mr. FERGUSON. Gentlemen, I want to say to you that it is time that the Congress of the United States of America got off the kick, that these men because they only own a so-called small mine that they should be delinquent in their responsibilities to the people who work for them.

If the Senator, who was here this morning, wants to know what goes on, why does he not travel these hills? Why does he not look in the way these people live? Why does he not see the conditions under which they work? Why does he not see the bookkeeping that goes on in these mines? Why does he not see the hundreds and hundreds of thousands of dollars of tax money that is being given away, taken away from this Government because of the lack of bookkeeping, because of the lack of responsibility, because of the fact they carry their timebooks in their breast pocket and they pay these men on a day-to-day basis, and they kill them with impunity?

These are the things that the Congress ought to think about. These are the things that belong to the human equation.

Mr. Chairman and gentlemen, I am sorry the time limits me. This is a subject close to the heart of the Mine Workers of America. We have been accused of having ulterior motives, and I say to you, and I say to anybody, to the length and breadth of this land, we only have one thing in mind, the protection of the men who mine the coal in the hills and the valleys of Kentucky, Virginia, West Virginia, Tennessee, or any other place.

Thank you.

Mr. ZELENKO. Mr. O'Hara?

The Chair has no questions.

Mr. O'HARA. No questions.

Mr. ZELENKO. Mr. Martin?

Mr. MARTIN. Yes, sir.

I would like to ask you a few questions, Mr. Ferguson.

You make a statement, I believe, quite dogmatically that the enactment of this legislation in 1956 which applies to the title II mines had not resulted in any of them going out of business.

Mr. FERGUSON. That is correct, sir.

Mr. MARTIN. We have figures presented here by the gentleman who preceded you on the witness stand, that between 1952 and 1961 there was a decrease in title II mines in this country of from 2,233 to 1,094, which is a decrease he has figured here of 54 percent.

How can you categorically state that none of these mines closed up because of this bill that was passed in 1956?

Mr. FERGUSON. I can tell you that, sir, because these title I mines, because of their uneconomic way of production posed an economic dis-jointer in the industry that the larger mines could not compete with and because they did not obey the law, because they did not put in the safety feature they were able to undersell and take away the market from these title II mines who were forced under the law to obey it, and, therefore, that was one of the big reasons why they went out of business. That is the only effect this law had on them, the fact that it did not cover these so-called small mines.

Mr. MARTIN. You say here with an absolute certainty that this 54 percent reduction in title II mines, not a single one of them closed because of the enactment of the legislation?

Mr. FERGUSON. To my knowledge, that is an absolute fact, sir, and, as I said before, I traveled all over the land. I have gone to every coal-producing State in the Union. I am familiar with practically every operator of any magnitude in the country.

I know that the economic condition of the industry was brought about, first, because of the unfair competition, secondly, because of the failure of the Congress of the United States to protect the coal mining industry from the oil and gas competition, and that was one of the big things that put a lot of these title II mines out of business, too.

Mr. MARTIN. We were told in the previous testimony that there are approximately 31,000 employees in the title I mines, 30,992 to be exact. How many of those miners belong to the United Mine Workers?

Mr. FERGUSON. That I have no way of knowing, sir. I could not tell you that because that is not my concern. I am concerned merely with the safety of all men who work in all mines. The action that I take not only renowns to the benefit of those who work in the union mines, it renowns to those who have not yet seen fit to join the union.

Mr. MARTIN. You must have some idea. Is it 5 percent, 10 percent, 25 percent, or what? Give us some rough figures.

Mr. FERGUSON. I might state, generally, that on a tonnage basis that we have between 89 and 90 percent of the coal mining industry organized.

Mr. MARTIN. That does not answer my question in regard to title I mines.

Mr. FERGUSON. It answers to the best of my ability, sir. I would say we have some thousands of these small mines under contract.

Mr. MARTIN. I posed that question to one of your representatives yesterday who was in my office, and he said that you had very few of these miners who belonged to the United Mine Workers. So I would like to make this point for the record, that if this legislation

were enacted which forced the closing, as a result of this legislation, of many of these title I mines would it not increase the coal production of the title II mines, because you are going to have a decrease, then, in your production of title I mines, and with so many tons used in the United States, so, therefore, to take up that slack, you are going to have an increase in your title II mine production; is that not correct?

Mr. FERGUSON. Not necessarily so, sir, no, because—

Mr. MARTIN. You are going to lose some of your coal business?

Mr. FERGUSON (continuing). Because as a matter of actual fact there are hundreds of these mines that go in and out of business every year; there are dozens of them that go in and out of business every day, and there are dozens of them every week. It is a continual flux in that part of the industry. These are people who have been forced by economic circumstances to take a pick and shovel and go into the hillside and start to mine coal, and coal mining is the only industry in the world that they can get away with.

It is just like saying: "Well, all right." You are going to pass a law on traffic safety, and you say to a man, "As long as you don't haul over 14 men in your truck you don't have to obey the 60-mile speed limit. You don't have to have a license. You don't have to see that your tires are in good shape. But, on the other hand, if you employ 15 men, then you have to do all of these things."

Mr. MARTIN. That avoids the question, sir.

Mr. FERGUSON. I am not trying to avoid the question.

Mr. MARTIN. We have approximately 7,500, we are told, of these title I mines in the United States. Let us make an assumption. If this legislation were passed and it, say, put one-third of them out of business, 2,500 of these mines, and the number of employees that they employ, say they averaged, well, let us say, 10, because that is easy to multiply. That would be 25,000 miners, with the resultant loss of tonnage. You are going to sell so many tons of coal in the United States. If that tonnage is cut off the title I mines, it is going to come from somewhere, so it obviously is going to come from the title II mines.

Mr. FERGUSON. Not necessarily.

Mr. MARTIN. So you are going to have more production in title II mines.

The point I am making is this, that then perhaps they are going to employ more miners if they have more business in a larger production, and you fellows have those mines organized, so, therefore, you are going to benefit from increased membership in your union and you are going to benefit from an increase in this royalty that you get from the coal mines for every ton of coal that is mined.

Mr. FERGUSON. Congressman—

Mr. MARTIN. So I think you have a monetary interest in this thing. I mean when you get over this talk of humanitarianism, and so forth.

Mr. FERGUSON. Of course, Congressman, I take no thoughts about you having your own expressed opinion. But I want to point out to you that the United Mine Workers has never imposed upon this industry unnecessary employment of men. It is because of the United Mine Workers that the coal mining industry is in existence today, and technological improvements in this industry have displaced hun-

dreds of thousands of coal miners, and the mineworkers have not only not raised their voices against it, they have sponsored it, and that is the reason that with the number of men you are getting in this coal mining industry today the tonnage you are getting.

Mind you, in 1921 the United Mine Workers of America's membership was 755,000; today it is around 200,000, not counting our elderly people.

So you see the mine workers do not featherbed or make jobs. But as to your assumption as to what would happen to the tonnage you are entirely wrong, sir.

Mr. ZELENKO. Thank you very much, Mr. Ferguson.

Mr. FERGUSON. Thank you, gentlemen.

Mr. ZELENKO. If you have anything further in the way of material for the committee you may submit it.

Mr. FERGUSON. Mr. Chairman, I would like to be given a privilege to submit a supplemental statement at the proper time.

Mr. ZELENKO. Yes. I would ask you to do that as quickly as you possibly can. Submitting additional statements in writing is an opportunity that everyone will have.

Mr. FERGUSON. Thank you.

Mr. ZELENKO. Thank you very much.

The next witness we have listed is Mr. Robert Holcomb. Is he here?

Mr. HOLCOMB. Yes, sir.

Mr. ZELENKO. Mr. Holcomb, will you be good enough to come forward. Mr. Holcomb, do you have a prepared statement at this time?

**STATEMENT OF ROBERT HOLCOMB, INDEPENDENT COAL
OPERATORS ASSOCIATION, PIKEVILLE, KY.**

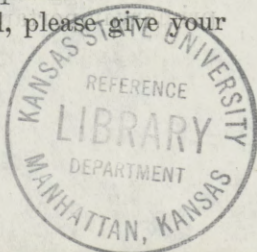
Mr. HOLCOMB. I do not have, sir. I did not have time to prepare one.

Mr. ZELENKO. Very good. Mr. Holcomb, I would ask you to submit any statements you have within a reasonably expeditious time. I understand that you have expressed to me in person the other day the fact that time was short, and I told you I want to give you an opportunity to speak. I would suggest that perhaps if you are opposed to the legislation, which I assume you are, that it might be helpful to the committee—and my statement is not coming out of your time—that you perhaps address yourself to the points raised by Senator Cooper this morning in opposition to the bill, and that is the financial affect on you people, among other things, and any of the problems which you say will be caused by the legislation in the form that it is now. I assume you heard the form of the legislation explained by Mr. Ankeny and by myself.

So I would suggest the committee is interested in your point of view and why this legislation would be detrimental to your interest. I am not precluding you from testifying to anything else, but that is what we are mainly interested in. Your time will start now.

Mr. HOLCOMB. May I make this statement ahead of—

Mr. ZELENKO. By the way, before you go ahead, please give your name and title, if any, or business to the reporter.



Mr. HOLCOMB. I am Robert Holcomb. I am president of the National Independent Coal Operators Association, and I live in Pikeville, Ky.

Mr. ZELENKO. I have one question to ask, and I am going to ask this of the remaining witnesses. Are you for or against the legislation?

Mr. HOLCOMB. I definitely am against it.

Mr. ZELENKO. Very well. We just wanted to get your position and the position of any following witnesses.

Go ahead, sir.

Mr. HOLCOMB. As to your request that I confine my statements to the statements of Senator Cooper—

Mr. ZELENKO. By the way, I must interrupt again, and I want to get this point clear. I am not asking you to confine your statements. I am suggesting that we would be most interested in your taking up that point of view in detail because you are operator. I am not confining you, nor is the committee, to his point. You may take any point you wish.

Mr. HOLCOMB. To begin with, we requested various Congressmen last year and the year before last to appoint a committee to do nothing but get accurate statistics for our title I mines. That request was denied. So last October we started on our own to get what we considered would be the most accurate statistics available on title I mines.

This hearing has come up approximately 2 months sooner than we figured it would. We do not have our studies completed. In other words, we have tried to do in 5 months what the Bureau of Mines states that it has been impossible for them to do in 9 years. But we are working at it, and I think that our statistics will be accurate. They are not complete. We have men here from every coal mining State, and all these men have been working on these statistics. And I would like at this time to request that we have at least 1 more month to prepare these.

Mr. ZELENKO. The committee will be unable to grant that request. I suggest you get those figures in if you are going to get them in within a week.

Mr. HOLCOMB. It would be impossible for us to complete these figures within a week because, as I stated, the Bureau of Mines has not been able to do it in 9 years. We certainly cannot do it in 1 week.

Mr. ZELENKO. Might I suggest, Mr. Holcomb, and this will not come out of your time, to my own mind it is not a question of the figures as to accident rate. It was conceded by Senator Cooper that there were accidents. The Director of the Bureau of Mines stated that it was a question of trying to prevent some of these accidents. An accident to 1 person is just as serious to him as an accident to 100 persons. So the point of the numbers I do not think is of primary importance here. If the committee received the figures, I do not think that the numbers would be too persuasive. We have had figures in other industries, too. We had them in the longshoremen and lumbering industries.

The question is: Are there accidents which might be prevented. So I would suggest to you that the number of the accidents is not of primary importance.

I personally am interested in finding out whether this legislation would, as some folks have suggested, the Senator and you, put you people out of business.

Mr. HOLCOMB. Well, we have several other—

Mr. ZELENKO. It is for that reason that I shall not grant your request to wait a month because I do not think it is that important to the committee.

Mr. HOLCOMB. At previous hearings, they have based their fatal accidents on per million tons of tonnage, on per million hours of man-hours, and evidently it has been very important and they have always managed to present those in an unfavorable light to the small mine operators.

Now, that is the condition we are trying to correct because we do not believe that. And that is why we have tried to get these statistics to show that title I mines are not the death traps that they have been presented to be. We are not trying to murder men. These men who work in these mines are our laborers and our friends, and personally I do not like to go to funerals, and I do not like to visit men in the hospital; and we are just as interested in safety as they are. That is the reason for our request for more time.

We have, as I stated, witnesses here from the various coal-mining States. These witnesses are all in the same position that I am. They have not had ample time to prepare testimony.

We would like to request that these witnesses be deferred until the hearing that you set for next week so that they will have prepared testimony, and that way they will take up less time of the committee. They can present better testimony because they know what they are talking about, and they can present better testimony to the committee, and they can better represent the people that they are here to represent. In other words, if they have to come up here like I am they will do their people a disservice.

We are opposed to the passage of this legislation. I realize that I am not a lawyer and that all of you are, and it is presumptuous of me to read the law to you, but I would like to do just that.

Mr. ZELENKO. Go ahead.

Mr. HOLCOMB. From a book out of the House of Representatives. I will have to put my glasses on.

Mr. ZELENKO. Before you proceed, would just give us the name of the volume from which you are reading?

Mr. HOLCOMB. This volume is United States Code, 1958 edition, titles 27 through 32.

Mr. ZELENKO. Thank you. And also the page and section?

Mr. HOLCOMB. The page is 5541, the section is 479; under paragraph 7 in there:

In a gassy mine within 4 hours immediately preceding the beginning of a coal-producing shift and before any workmen in such shift other than those who may be designated to make the examinations prescribed in this paragraph enter the underground areas of such mine certified persons designated by the operators of such mine to do so shall make an examination as prescribed in this paragraph of such areas. Each person designated to act as such mine examiner shall be directed to examine a definite underground area of such mine and in making his examination such examiner shall inspect every active working place in such area and make test therein with a permissive flame safety lamp for accumulations of methane and oxygen deficiency in the air therein.

I would like to stop reading that paragraph there and go to paragraph 8:

In nongassy mines an examination as prescribed in paragraph 6 of this subsection shall be made at least once in each calendar day during which coal is produced. Such examination shall be made within 4 hours immediately preceding the beginning of the first coal-producing shift.

Now, I would like to also cite the law on page 5533. This defines who is a certified person:

The term "certified person" when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned means a person who is qualified under the laws of a State in which such mine is located to perform such duty, except that in any State the laws of which do not provide for such qualifications the term means a person deemed by the operator of such mine to be qualified to perform such duty.

In other words, the law plainly states that preshift examination shall be conducted only by certified men as defined in this law. I mean that is what the law says. And if I am wrong tell me. You are all attorneys.

Now, the Kentucky mine law says, and this says that the State shall designate the person, qualifications of the person, that only first-class certified mine foremen may test for gas with a flame safety lamp.

In the State of Kentucky on January 1—

Mr. ZELENKO. Pardon me. Did I understand Mr. Ankeny to say, and correct me if I am wrong, that most of these mines do not have a gas problem?

Mr. HOLCOMB. That is right, but this also takes nongassy.

Mr. ZELENKO. How does this affect you then?

Mr. HOLCOMB. All right. I read the paragraph on nongassy mines, too, sir. I cited the paragraph on gassy mines and also nongassy mines.

Mr. ZELENKO. I want to know how does that section affect you detrimentally. That is what I want to know.

Mr. HOLCOMB. All right. I am getting to that.

Mr. ZELENKO. Yes.

Mr. HOLCOMB. In other words, we established that only a first-class certified foreman in the State of Kentucky, not only the State of Kentucky, but the State of Virginia, the State of West Virginia, and the State of Pennsylvania, are allowed to do that, are allowed to handle a flame safety lamp. The law says he must be able to do that.

Now, in the State of Kentucky on January 1, 1960, there were 2,540 title I mines. Yet there were only 592 first-class foremen in the State. If that provision will not automatically force the closing of 2,540 mines, then there is something wrong with my method of thinking.

Mr. ZELENKO. Well, do you mean that if some of these mine foremen decide to become inspectors that the mine then could not operate? I want to get a definition of what you are trying to tell us.

Is that what you are trying to tell us?

Mr. HOLCOMB. I mean unless the mine employs a first-class certified mine foreman that mine must go out of business and that there are one-sixth the number of certified mine foremen that would be necessary.

Mr. MARTIN. To become a certified mine foreman they have to pass a rigid State examination.

Mr. HOLCOMB. A very rigid State examination, sir. I would like to make the point that we have evidence that, of the inspectors of the Federal Bureau of Mines, more than 50 percent of them failed to pass that examination.

Mr. ZELENKO. You have another 2 minutes, Mr. Holcomb.

You see, what we are trying to do is that we want to permit the members of the committee to be able to ask questions and you may be able to get some of your presentation in in answer to the questions.

You have 2 minutes more right now.

Mr. HOLCOMB. We would like to make several recommendations along that line.

We are not against safety. We want safety but this will not bring us safety. All it will do is close us down and it will close down the mines in Virginia. It will close them in West Virginia. And it will close them in Pennsylvania.

Mr. ZELENKO. Mr. Ankeny said that all they would require would be 26 more inspectors. I think those were his figures in answer to Mr. Martin's question.

If only 26 more were required, then I do not see how it would have an effect of closing most of the mines for lack of qualified foremen, if Mr. Ankeny's figures are correct.

Mr. HOLCOMB. Well, it would have it because they are just not available. They are not there. Where are we going to get them? You tell me where we are going to get them.

Mr. ZELENKO. That would assume that all of the certified foremen would take examinations to become inspectors.

Mr. HOLCOMB. We are talking about certified mine foremen, not inspectors.

I said that there are 592 certified mine foremen in the State of Kentucky. There are 2,540 title I mines in the State of Kentucky.

Where will those mines get certified men to make those inspections?

Mr. ZELENKO. Mr. O'Hara?

Mr. O'HARA. Mr. Holcomb, as I understand your objection, to restate this particular one about gassy mines, under the provisions of section 479, title 30, an inspection is required to be performed in gassy mines under subparagraph 7, and under subparagraph 8, a daily inspection of the same nature is required to be performed in nongassy mines.

Mr. HOLCOMB. That is exactly right.

Mr. O'HARA. And these inspections are required to be performed by authorized persons and under the definitions in the act which set the requirements of qualifications for people to make such inspections in a State such as Kentucky there just are not enough qualified inspectors to go around, is that it?

Mr. HOLCOMB. Yes, sir. That is right. In fact, there are only 20 percent of the number that would be required.

Mr. O'HARA. Would you please make a suggestion to the committee by which this difficulty could be avoided with respect to the inspection of nongassy mines?

Mr. HOLCOMB. Yes, sir. I would.

Paragraphs 7 and 8 shall not be applied in title I mines. However, an inspection by a competent person designated by the operator of hallways, escapeways, roof ribs and face for dangerous conditions other than gas shall be made immediately prior to each work shift.

Mr. O'HARA. Mr. Holcomb, as I understand it, that would go beyond your objection, would it not?

Mr. HOLCOMB. No, sir.

Mr. O'HARA. I did not know that your objection extended to required inspections in mines classified by the State as gassy, does it?

Mr. HOLCOMB. No, sir, but an inspection must be made for gas in a nongassy mine.

Mr. O'HARA. Does not subparagraph 7 deal only with mines classified by the State as gassy?

Mr. HOLCOMB. Subparagraph 7 deals only with mines classified as gassy.

Subparagraph 8 says that the same inspection shall be made in nongassy mines except that they shall be made once each day.

Mr. O'HARA. Would we not accomplish the purpose of avoiding the objection you made in your testimony by merely making subparagraph 8 inapplicable?

Mr. HOLCOMB. Yes, sir; subparagraph 8 being made inapplicable would accomplish our purpose, but we are not trying to avoid preshift examination. I want to make that point.

We are trying to avoid preshift examinations by men who are not available.

Mr. O'HARA. Would it not satisfy your objection if you changed the proposed language that you just read to us to eliminate any reference to subparagraph 7?

Mr. HOLCOMB. That is exactly right, but I think that would defeat the purpose of preshift examinations if you eliminated that. In other words, that would make title I mines not subject to preshift examination unless they were gassy mines.

Mr. O'HARA. I meant the proposed language you read would have inserted a new requirement in place of 8.

I do not think it is necessary, is it, to strike out 7?

Mr. HOLCOMB. No, sir. We do not propose to strike out 7. I merely read paragraph 7 to show what is required and that the same thing was required in paragraph 8, but only once a day, and then I cited what is a certified person in the Kentucky mine laws to show that there are not enough men available to do this inspection and that this would result in automatically closing every mine just as fast as the Federal inspector made that mine.

Mr. O'HARA. Do I understand you correctly, then, that you would be willing to have mines classified as gassy, whether they be title I or title II, inspected by a certified person but mines classified as nongassy inspected by some other person?

Mr. HOLCOMB. Let me make this statement: that in title I mines a mine that is classified gassy has no business operating?

Mr. O'HARA. You would object to a requirement?

Mr. HOLCOMB. It creates too much of a dangerous condition and, according to Mr. Ankeny, only a very small percentage of title I mines are gassy mines.

Mr. O'HARA. At any rate, you would not object to requiring a certified person making an inspection in a mine classified as gassy, right?

Mr. HOLCOMB. No, sir. We would have no objection to that.

Mr. O'HARA. Your objection relates to the inspection of mines not classified as gassy?

Mr. HOLCOMB. Of nongassy mines; yes, sir.

Mr. O'HARA. I have no further questions.

Mr. ZELENKO. Mr. Martin?

Mr. MARTIN. Mr. Holcomb, we have been told that the title I mines produce approximately 12 percent of the coal tonnage in the United States and that the accident rate is approximately double that; in other words, roughly 25 percent of the fatal accidents that occur.

Could you throw some light, as an independent coal operator, on how accurate these tonnage figures are? Are they off 25 percent?

I asked this question previously and perhaps you have some information on it.

Mr. HOLCOMB. We have finished our compiling of the statistics I quoted earlier in the Big Sandy district of Kentucky. This district produces approximately 16- to 18-million tons of coal annually.

According to the State bureau of mines from which Mr. Ankney says he gets his information, in 1959, in the Big Sandy district in title I mines, there were 3,690,881 tons mined.

According to railroad weights, and this coal was actually shipped, there were 6,578,398 tons mined in title I mines.

There is a discrepancy there of double. In other words, there was actually twice as much tonnage mined as shown in the Department's figures.

Mr. MARTIN. I realize that you have not completed your studies and investigation along these fields, but would you say that this was typical of other fields in other States in the country?

Mr. HOLCOMB. By the examinations that we have completed in other States and in other areas of Kentucky, I mean partially completed, let me say, this is typical throughout the Nation.

Mr. MARTIN. Well, if that would hold true, then on total production in the entire country from the title I mines, your percentage of accidents would not be any greater than they are in the title II mines?

Mr. HOLCOMB. Our percentage of fatal accidents are far fewer than in title II mines.

Let me cite these statistics here. I have them here. I did not have time to present them in regular testimony.

Total men employed underground was 6,802; total man-days worked underground, 856,576.

Mr. ZELENKO. Pardon me. Will you allude to whether you are talking of title I or title II now in giving these figures?

Mr. HOLCOMB. These are title I.

Total men employed underground was 6,802; total man-days 2,284,202; tons per fatal accident, 2,192,799.

Now, let me give you the figures for title II mines in the same district.

Mr. ZELENKO. Mr. Witness, would you be good enough, please, to tell us from what source you are reading these statistics? You said "we have compiled them" and we would like some background state-

ment on who compiled the statistics, just for the record. We ask that in all fields.

Mr. HOLCOMB. These statistics were compiled by the Mine Operators Association. The tonnage was taken from reports of the C. & O. Railroad, the N. & W. Railroad, and the C.C. & O. Railroad, that this tonnage was actually shipped.

Mr. MARTIN. This comprises an area in Kentucky that you are speaking of?

Mr. HOLCOMB. This is one mining area in Kentucky.

Now, in title II mines, there was 10,570,520 tons mined in the same area. The total men worked was 4,721. The total man-days worked was 783,686. The total man-hours worked was 6,269,488. The man-hours per fatal accident was 626,948 as compared to 2,284,202. The number of tons per fatal accident was 1,057,052 in title II as compared to 2,192,799 in title I.

Now, that is why I think it is necessary that we have a right to complete our studies and that we have a right to present these studies before any legislation is enacted because we want to propose a mine safety bill of our own.

We want it to really bring safety. We do not want hardship clauses in it. We want safety clauses.

Mr. MARTIN. According to your figures, then, there is no more proportionate share of accidents among the title I mines than there is among the title II. In fact, those figures would indicate that there are less.

Mr. HOLCOMB. The proportion is far less in title I mines.

Mr. MARTIN. That is all, Mr. Chairman.

Mr. ZELENKO. Mr. Daniels?

Mr. DANIELS. I have no questions.

Mr. ZELENKO. Thank you very much, Mr. Holcomb. Whatever figures you have, as I indicated before, please get them over to the committee as quickly as possible.

I thank you very much.

Mr. HOLCOMB. I would like to make one other request, that the witnesses for the opponents to this bill be allowed to delay their testimony until the next hearing date because they are not prepared any more than I was prepared and we would like time to prepare our testimony so that we can do a better job.

Mr. ZELENKO. Before I answer your request, or respond to it, I would like to see the list of names.

Mr. HOLCOMB. I might add that I think it will save time of the committee because I have not presented one-half of what we have worked to present, and I have wanted to present.

Mr. ZELENKO. Mr. O'Hara.

Mr. O'HARA. Mr. Holcomb, I wanted to ask you something which will relate to your testimony that you have given now and will give later and the testimony of other operators, I believe. Do you think that the pertinent point is the safety statistics, in other words, the number of accidents in one mine or one type of mine as contrasted to another. I would imagine that we could, if we tried hard enough, determine some statistics about how many people would fall into open manholes in a sidewalk and I would suppose perhaps that open manholes would not pose too much of a hazard. Probably not 1 person

in 10,000 would fail to notice the fact that the manhole did not have a cover and would fall into it, but this would not be a valid argument against a provision of law or a regulation of public employees that required them to keep the manholes closed at all times or to keep them closed, except when guarded by some sort of a proper barricade.

Now, the fact that accidents are not occurring with any greater frequency in title I mines than they are in some other mines would not really mean that we should not follow safety precautions in those mines; would it?

Mr. HOLCOMB. I think I have stated repeatedly today that we are not against safety measures.

The only thing we want are intelligent safety measures that really bring safety, not something that will bring on us an economic hardship.

Mr. O'HARA. You are not making the argument, then, I take it, or you do not try to make the argument that a better accident record in title I mines than in title II mines would necessarily mean that there is no need for safety regulation in title I mines?

Mr. HOLCOMB. No, sir. I do not make that point at all, but I do make this point: that a study of fatal accidents in any type mine will enable you gentlemen to enact legislation to do away with those accidents, the accidents that are happening, not the accidents that might happen because we know that in title II mines, in all mines for that matter, the big death rate is in falls of roof at the working face.

Mr. ZELENKO. Will the gentleman yield for a moment?

Mr. O'HARA. Yes.

Mr. ZELENKO. If what you say is so, I cannot see how you would be prejudiced financially if you would not have to correct a condition which does not exist.

Mr. HOLCOMB. What condition are you talking about that does not exist?

Mr. ZELENKO. The condition you spoke about. You spoke about a certain hazard that exists in the title II mines, and you said, "Well," and I am trying to paraphrase you, "we do not have that."

If you do not have that hazard, you would not be prejudiced in any event, so that it would not cost you an additional penny.

Mr. HOLCOMB. It would not cost us any additional pay to comply. In other words, I have had time here today to bring out only one fact, one thing, and I think that if you read this law and study it and you read the Kentucky mine law, you will realize that that will automatically close those mines down. What have you accomplished?

Let me give you this example—

Mr. ZELENKO. Pardon me, Mr. Witness. The time for your direct statement is over and I just wanted an answer to my question.

I asked Mr. O'Hara to yield and he did to let me ask you the question which you have answered.

Without trying to preclude you, I want to refer back to your request to put over until the next hearing the testimony for all of the other witnesses who are against the legislation.

Now, do you speak for all of the other witnesses when you make that request or are there some here who are against this legislation and wish to testify today?

Just raise your hands.

There is one gentleman.

I would like to call your attention to this, Mr. Holcomb. I have counted up the list of witnesses who have asked to be heard. There are 18 witnesses plus 2 of our colleagues who remain yet to be heard. One is Congressman Jennings and perhaps Congressman Alexander, who either or both, may wish to be heard against the legislation, and, of course, they will be here on Tuesday.

Congressman Dent, the author of the bill, will also be heard.

Now, those 3 and 18 others will be on the schedule for Tuesday.

The point is that if some of the others wish to testify today, perhaps some of the material that they wish to present to the committee and which they have not had the opportunity to present today they could tell those colleagues who are against it to put same into the record on Tuesday. In other words, we have still about an hour and a half of time today and would like to use it.

Mr. HOLCOMB. I can understand that. If you will give the hour and a half, I will use it.

Mr. ZELENKO. I regret that we cannot do that, sir, unless all of those who are against this testimony would yield their time to you. I will give you as much time as you want if those who appear in opposition to the legislation, a number of them, are willing to give you their time. I will allow you a moment, if you wish to inquire.

Mr. HOLCOMB. I would not ask another man to relinquish his time to me.

Mr. ZELENKO. Do you have any further questions?

Thank you very much, Mr. Holcomb.

The next witness we have listed here is Mr. Reed of the Turner Elkhorn Mining Co. Does he wish to testify?

I understand he is not present.

I am going to take the statement of Mr. Holcomb at face value and not proceed in accordance with the list that we have here.

There was a gentleman who indicated a desire to testify at this time and if he will come forward and give his name and his affiliation, the committee will hear him at this time.

Mr. MACHAMER. If you are speaking of me who raised my hand, I am willing and able, I think.

Mr. ZELENKO. Before you come to the stand, sir, are there any others who want to be heard today? Very well.

Would you please be good enough, sir, to give your name and title and a statement as to whether you are for or against the legislation?

STATEMENT OF CLYDE L. MACHAMER, PRESIDENT, INDEPENDENT MINERS & ASSOCIATES, POTTSVILLE, PA., ACCOMPANIED BY JAMES W. THOMPSON

Mr. MACHAMER. My name is Clyde L. Machamer from Pennsylvania. I am president of Independent Miners & Associates, an affiliated group of people in the anthracite areas of Pennsylvania, working at producing, transporting, and preparing anthracite coal to the consuming public; also president of the Anthracite Tri-County Independent Miners, Breakermen & Truckers Association with affiliated groups heavily concentrated in Northumberland, Columbia, and Dauphin and Schuylkill Counties of Pennsylvania.

Let me say this for the record, if I may, Mr. Chairman. I want to thank you for the chance to testify and to thank the rest of the members of the Board.

Let me say that there has been a statement made here today to the effect that there have been no miners present to testify and that they are all landowners and operators and what have you.

So, I think, for the matter of the record, I should give a little bit of past history here for your benefit and the benefit of any other people that I have been working in and about the coal mines of Pennsylvania, and specifically in this case anthracite, since 1930.

Now, I consider myself quite a young fellow in comparison to other individuals that I see every day in life, but I believe that is somewhat of a record that will qualify my statements that I hope to put on the record here and possibly have the courtesy of the board to extend or embellish on those statements later on with a written program by the time the board adjourns, finally.

I, too, have also traveled mostly in anthracite, of course, on accident cases and disaster cases and we have tried to help out where human beings have been in want and in need for work and for relief in time of accident.

For the matter of the record here, I also want to state that I have had no official notification of this hearing here other than a phone call from our office in Pottsville yesterday some time after I arrived in Washington, at which time the vice president of our organization telephoned me in the hotel, and it is the Ambassador Hotel here in Washington at which we are staying, to the effect that a telegram had been received at our offices in Pottsville and was sent out of Washington out of your office, Mr. Chairman, at 11:33, I believe yesterday a.m.

Mr. ZELENGO. If I may interrupt, the reason for that is this: We did not have your name on the list, but I believe one or two of our colleagues gave us your name and said that you would be an interested witness, and, as soon as we learned that, we sent the telegram to you, sir.

Mr. MACHAMER. That is fine.

Mr. ZELENGO. Otherwise you would have gotten it sooner.

Mr. MACHAMER. That is fine. It is very much appreciated.

Mr. ZELENGO. None of this will come out of your time.

Mr. MACHAMER. I want to call to the attention of the board the fact that we are coming here today also sort of cold, that I was not duly notified until I received the telegram as I said that was transmitted to me via the telephone from the hotel room and that we are expected to present here today an adequate case in support of our contention that our people are getting along all right, in Pennsylvania without the added supervision of Federal inspectors in there if this H.R. 4237 or the companion legislation is supposed to pass or will be enacted into legislation and give us added benefit of inspection and supervision.

Mr. ZELENGO. May I interrupt you again to ask you were you here this morning, sir?

Mr. MACHAMER. I certainly was.

Mr. ZELENGO. Then you did hear the statement of the Chair that the members of the committee have had before them the records of all the prior hearings in the prior Congress and that much of the

material that we are hearing today and expect to hear Tuesday has been gone over before.

Now, on the question of adequacy of time, it has been my experience as a member of this subcommittee or its counterpart in the prior Congresses that anytime we decided to call hearings, no matter when they were, we at once heard from interested parties that they did not have enough time and they were compiling statistics.

I believe Mr. O'Hara, as the other member of this committee who served in the prior Congresses, will say that the sentiments that you have just uttered we have heard before. There is never enough time so that, with that remark, which does not come out of your time, you may proceed, sir.

Mr. MACHAMER. At the risk of being repetitious, let me repeat for the record that I do think that we have not been given sufficient notice to prepare our case properly for this board and I think we would be doing a total injustice and disserve to the people we are supposed to represent if we were to come here unprepared to the fullest extent possible to present our case against the furtherance of Federal control in supervising the inspection department of the mining in the several coal-mining States of the United States.

I want to say further for the record that there was a statement made here by a witness to the effect that they were in support of legislation to promote safety.

For the purpose of the record, let me say that we, too, are in support of safety legislation.

I do not believe that you will find that this organization that I am supposed to represent has ever attacked this particular legislation on the grounds that it was unnecessary, et cetera. You will find in my testimony and I again repeat for the purpose of the record here today this one outstanding fact: that we feel that in the State of Pennsylvania we have adequacy of mining laws. We have adequacy of personnel to inspect under the State department of mines and mineral industries and if there is any deficiency in the State of Pennsylvania insofar as inspection is concerned, it is not because of the personnel or the laws in effect. It will have to reflect on the heads of the departments and no place else.

I have come further and again repeat and I want to repeat a statement that was made here attacking the title I mines viciously for a major accident in 1959 and I believe that must have been in February, and the record will clear it, where nine men or eight men were killed in Tennessee or some place with a gas explosion, ignition, or what have you.

But we have no mention made here today of a title II mine, that in January of 1959, and I think it was January 22, another day of infamy, at which time in a title II mine that was supervised by the Federal Department of Mines, we had a breakthrough of the Susquehanna River in Pittston in the Knox mine at which time 12 men were lost forever and they are still floating around in the bowels of the earth, in the cold water from that inundation, and we do not know if they are in Wilkes-Barre or Pittston or maybe down here in Washington, D.C., but that was not a cause of our fault.

That was under Federal supervision and we do not hear a word about it and we pray for that.

Mr. ZELENKO. May I interrupt just one moment, sir, and this will not come from your time.

You alluded to the State of Pennsylvania and said that this law was not needed. You alluded to the State of Pennsylvania where you say they have adequacy of State law.

Two of the bills before us now are from two of our colleagues from the State of Pennsylvania: one, Congressman Dent, a Democrat, and a member of this committee; and one from Congressman Kearns, a Republican, the ranking minority member.

I call that to your attention: that two of the three bills presented here are from Members from the State of Pennsylvania.

Mr. MACHAMER. I appreciate that position and again am terribly distressed because I think that it implies that the State of Pennsylvania Department of Mines and Mineral Industries are unable to administer the duties of their office, and it is better to throw it into the Federal Government, and I dispute that statement and that stand, and I bring to the attention of the committee here again, to answer your statement as to the two men.

Mr. ZELENKO. I wanted to call that to your attention, that two of the men come from your State. I do not want to take this out of your time, but I do not go along with the statement that it implies an inadequacy of inspection on the part of the officials of the State of Pennsylvania. I do not know the situation in Pennsylvania, so my statement does not make any such implication.

I just call your attention to the fact that two of the bills come from Members from the State of Pennsylvania.

Mr. MACHAMER. The trouble, it seems to to me, Mr. Chairman, is the fact that nobody really interested in this program knows the problem of any one given State, and yet we have tried to legislate bills into law that will govern those people without trying to find out their problems and what their desires or criticisms might be.

Mr. ZELENKO. That is just the point I make. I assume that both of the Members from Pennsylvania, one a Democrat and one a Republican, know some of the problems in the State of Pennsylvania vis-a-vis the national problems, I do not think it can be said that we here are attempting to legislate for the State of Pennsylvania without some knowledge on the part of two of its elected Representatives.

Mr. MACHAMER. I question very seriously whether any one of these men who introduce this legislation has ever been contacted by any man belonging to Independent Miners & Associates and been asked to introduce this legislation.

If that is the case, if they will come up with one name, one name among these miners—and if you want miners here to testify, if that is the desire of the board, there will be more besides myself.

However, I am in the capacity of supposing to represent some 5,000 people in the anthracite area of Pennsylvania, and let us not forget the other major important fact and that is that nowhere else in the world can you get anthracite coal; and you do not have the mining conditions that anthracite embraces anywhere else in the world but in the Pennsylvania anthracite fields.

I am not trying to take up too much time of the committee on arguments here which will get us nowhere, and I anticipate the committee might want to ask some questions—I assume some statements entered

here; but for the matter of the record in case we do not get sufficient time later on to get some figures on the official statement. Over the telephone we tried to compile what I think is a fairly accurate statistical résumé of the anthracite independent production in title I mines for the year of 1959.

It will be some time before 1960 can be completed but I want to place this upon the record because it can be substantiated through the department of mines and mineral industries' publications in Pennsylvania and also through the offices of Independent Miners & Associates, situated in the Masonic Building in Pottsville, Pa., who will supply the personnel that accumulated this data for them at any time that the committee so desires to question them as to substantiate what I am going to give here on the record insofar as figures are concerned. Because I am always brought to remember that the old statement, I think, goes that "statisticians can make statistics say exactly what they want them to," in this case let me say that Independent Miners & Associates are going to give you statistics here which are made to speak the absolute truth to the best of our knowledge.

For the record, I would like to put this in before my time runs out.

The following statistical data was compiled by Independent Miners & Associates' personnel and can be substantiated through their office and also through statistics published by the Pennsylvania State Department of Mines and Mineral Industries in their annual reports:

Number of title I mines working and operating in the anthracite areas of Pennsylvania, 887; production, 2,010,450 tons; man-hours worked, 4,701,120; fatals, 4; nonfatals, 94; employees—and I am confining the number of employees to those exposed to the hazard of underground work; the outside personnel and so forth, are not included in this number—3,320; average days worked, 177; tonnage per fatal, 502,812; tonnage per nonfatal, 21,388; man-hours per fatality, 1,175,280; man-hours per nonfatal, 50,012; frequency of all accidents, 20.84.

This will conclude my testimony or my statement to your committee, thanking you for your kindness of letting me appear here today and asking your permission to submit further for the record in writing or in oral testimony, if you so desire, some more testimony.

Mr. ZELENKO. Thank you, sir.

I have just one question. If it is only the question of the number of accidents, do you feel that the Federal Mine Bureau and the Coal Mine Safety Act are not necessary for title II?

Mr. MACHAMER. It seems strange to me, and I will answer this question. Let me answer this question.

Mr. ZELENKO. Let me paraphrase my question to make it more clear. Why should we have it for title II if it is not necessary for title I?

Mr. MACHAMER. Well, in my estimation, of course, and I can include this in the record, insofar as I am concerned, it seems to me as though quite possibly we would have adequate supervision in Pennsylvania, and I speak specifically of the anthracite fields, perhaps without the Federal supervising either title I or II.

I take a statement here, and remember that the Director of the Federal Bureau, Mr. Ankeny, stated in testimony again here today, as he has repeatedly stated in previous hearings, that the small mines or the title I mines of the United States, not only Pennsylvania, have a better safety record than the title II mines despite the fact, and this

is a matter of record also, despite the fact that they only get approximately 70 percent of the tonnage produced, 70 or 75 percent of the man-hours worked; but they get 100 percent of the fatalities; that if they had a totalization of the complete man-hours and tonnage produced, the record would be still better.

Now then, if we already have a better record than the title II mines, is it not reasonable to assume that, if the regulative body down here passes this bill, that instead of providing us with safety, they are going to provide us with further hazard?

Mr. ZELENKO. Are you suggesting that because the Federal Bureau supervised title II, that the accident rate is higher?

Mr. MACHAMER. I am not suggesting that at all. I am just giving a salient fact which can be entered on the record and which can be proven, that this is a matter of statement by the Director of the Bureau himself and the Bureau of Statistics has published this. If this is the true case, perhaps we have better inspection. I do not know. There must be some answer, but certainly it does not appear.

Mr. ZELENKO. Then how would you be affected if the Federal Government took over this duty in regard to title I? Listening to you and your predecessor, you say, "Well, we are not confronted with any of these problems. Our safety record is so good in comparison to title II that this is not really necessary."

If it is not necessary and your mines are comparatively safe, I cannot understand that you will be forced to any great expenditures because, according to you and according to your colleague who testified before you, you are in a reasonably safe condition right now. So, how could you be affected financially?

Mr. MACHAMER. Let me answer this by asking you a question. If you were going to pick a fight, would you pick it with a fellow your size or a fellow that was 8 feet tall? I ask that question.

Mr. ZELENKO. The question will not be answered.

Mr. MACHAMER. We feel that the several coal mining States of the United States have adequate supervision.

Mr. ZELENKO. Mr. O'Hara?

Mr. O'HARA. I have no questions, Mr. Chairman.

Mr. ZELENKO. Mr. Martin?

Mr. MARTIN. What specifically, sir, are your objections to this bill as to how it affects your people in Pennsylvania?

Mr. MACHAMER. The objections, of course, will stem from the fear, and I think it is a basic one, that once you leave some of the policing power of a State—and we might as well get that into the record, too—leave it and go to the Federal, eventually all policing power which rightfully belongs with the State goes; and, to enlarge a little bit on the policing power, let me say this to you. We feel that the inspection supervision of mines of any State, any of the coal mining States of the United States, is a policing duty. It is our feeling that under the Constitution, the policing power of any of the States of the United States of America remains with the several States, except in the case of a national emergency such as war at which time the Federal Government can take over that supervisory capacity but they will relinquish it when the emergency is over.

Mr. ZELENKO. Will the gentleman yield for a moment, please?

Mr. MARTIN. I yield.

Mr. ZELENKO. The word "policing" brings to my mind another area

of the Federal Government. That is the FBI. It does not occur to me that the FBI has usurped the powers of any of the State police organizations. It occurs to me from what the record shows in peacetime, and we are talking of peacetime, that both the State police enforcement agencies and the Federal Government enforcement agencies, work in great cooperation. Why would that not be true in this field?

Mr. MACHAMER. Well, it seems to me that this could occur when there is a call for this type of action and I do not know that there has been any great human cry for what is proposed here today. I think we are talking about fear here or what is our contention that we may be injured.

Mr. ZELENKO. Mr. Martin yielded to me for the purpose of getting that question answered.

Mr. MACHAMER. Are you satisfied with the answer or not?

Mr. ZELENKO. I have heard the answer.

Mr. MACHAMER. You now refer back to Mr. Martin.

Mr. ZELENKO. I yield to Mr. Martin.

Mr. MACHAMER. It has been our fear and I think there are grounds for the fear that when the Federal Bureau gets control of something they are like an octopus that surrounds and never relinquishes but goes around and strangles and reaches out for more.

We feel that if the act is applied that the code is an inseparable companion to the act and will also apply.

Even though witnesses have stated to the contrary here today, we feel that it will apply. We feel that the inspection procedures that will be carried out relative to the smaller mining groups will be that severe that eventually they could well eliminate the entire industry.

We are trying to fight to prevent that because, in our particular areas, there is not any other industry in coal mining but the independents. We have no large affiliated operations up there. We have the large production by the small mines. We have our preparation plants that are affiliated with the industry and give the finest product ever given to a consuming public to market.

Now, these people have abided by the law. We have become legal citizens. They have leases on their lands. They are legitimate operators. They are legitimate workers. They are covered under the Workmen's Compensation Act, social security, old-age employment, and everything else.

If we have gone that far, certainly we do not want to be closed out of the legal bounds that confine the workers in the anthracite fields because I think we are embraced in those legal confines.

Mr. MARTIN. In other words, to get a little bit briefer answer from you, do you feel that if this legislation were passed that it would impose such financial hardships on your independent operators in Pennsylvania that it would have an adverse effect on them remaining in business?

Mr. MACHAMER. I will accept that as my answer.

Mr. MARTIN. That is all.

Mr. ZELENKO. Mr. Daniels?

Mr. DANIELS. How many independent operators do you have in the State of Pennsylvania?

Mr. MACHAMER. I am speaking about now anthracite solely of which we have the statistical data. We can give you a substantially

correct answer and I have stated here for the record, Congressman Daniels, that we have 887 title I mines. That is in anthracite.

Mr. DANIELS. Are they required under the law of Pennsylvania to obtain a license?

Mr. MACHAMER. They are required under the State of Pennsylvania to notify the inspection department immediately upon opening up of a mine opening, even before they start taking a shovelful of clay off the mountain, so to speak, to begin down with a shaft or what have you. They immediately come under the supervision of the State bureau of mines when they start to develop in any stage.

Mr. DANIELS. Now, your primary objection is this fear of the Federal Government coming in and exercising control. Other than that, you have no objection?

Mr. MACHAMER. I will accept that as long as it includes the fact that I feel for the record here that we have adequate supervision in the mining laws in the State of Pennsylvania and are quite proud of that department.

Mr. DANIELS. I will yield to Mr. O'Hara.

Mr. O'HARA. I am sorry that I did not ask the witness this in the beginning. I would like to ask the witness in light of some of his questions, Do you feel that the Pennsylvania Mine Safety Act is a pretty good act; that is, that it exerts whatever requirements are necessary to protect the safety of miners in the operations in the State of Pennsylvania?

Mr. MACHAMER. I believe that the State of Pennsylvania has probably the most stringent laws of any State in the Union. I think that there is room for modernization in some fields but not in the general fields that cover our inspection now.

We have certain things on the statutes that should be removed, some that should be updated insofar as electricity, and some that should be removed insofar as steam engines are concerned, because they are no longer existent around mines; but they have been modernized by additional bills that have been enacted on through the years since 1954 when they were just about completely revised.

Every year in the session of the legislature and senate in Harrisburg in the State of Pennsylvania, you see a myriad of mining bills come up and there are quite a number enacted into law, which is actually amending the mining law from year to year.

Mr. O'HARA. When was the mining law first enacted:

Mr. MACHAMER. In the State of Pennsylvania, you would probably have to ask somebody in the back row here to give you that information as to the exact date.

Mr. O'HARA. All right. Thank you.

Mr. ZELENKO. Mr. Machamer, I thank you. I appreciate the difficulties under which you came here. I realize that you have not been able to marshal all your forces.

I assume that by Tuesday, you will have enough material here to further present your side of the case.

Is there anyone else here who wishes to testify at this time?

Mr. MACHAMER. I thank the chairman and the rest of the members of the board for their time.

Mr. ZELENKO. I regret that we have not been able to give you more time.

Mr. Ankeny, Congressman O'Hara has expressed the desire to ask you a question. In accordance with our statement to you before and your statement to us as to your being available, will you please come to the witness chair again?

STATEMENT OF MARLING J. ANKENY, DIRECTOR, U.S. BUREAU OF MINES, ACCOMPANIED BY HARRY F. WEAVER, CHIEF, DIVISION OF COAL MINE INSPECTION, U.S. BUREAU OF MINES, DEPARTMENT OF THE INTERIOR—Resumed

Mr. O'HARA. Mr. Ankeny, I would like to ask you or one of your staff if you could give me any information on the question brought up by Mr. Holcomb. I would like to know specifically if section 209 (e) (8) of the code requires daily inspection of a nongassy mine by a certified person.

I read the language in subparagraph (8) and I was somewhat uncertain and I wondered if it was so interpreted by the Bureau of Mines that a nongassy mine had to receive daily inspection, of the type described in subparagraph (7), by a certified person. Is it so interpreted by your office?

Mr. ANKENY. Yes, sir. It would require inspection by a certified person but I would like to call your attention to the provision in the legislation which we are considering today that gives the Director of the U.S. Bureau of Mines the right, after holding appropriate hearings, to modify or make inapplicable any provision or part of section 209 to any mine or class of mine when he finds that such provision or part thereof does not substantially contribute to the safety of the men working in such mines covered by such regulations.

The way I would interpret this part of the act would be that if the laws of Kentucky were such as to preclude the possibility of getting a sufficient number of certified people to carry out the provisions of this act, I believe that under this authority the Director could modify the act to the extent that he could set up a certification system of his own; that is, a certification system of the Bureau of Mines, in which we would train people to be able to carry out these inspections, local people, and then certify them so that the law could be complied with.

Mr. O'HARA. I would like to suggest, if I might, at the time we close the hearings on whatever day it is before we go into executive session, that you might attempt to have for us some more definite information about what could be done to solve this obvious problem that Mr. Holcomb has brought up.

Thank you.

Mr. ANKENY. We would be glad to furnish that.

Mr. O'HARA. Thank you very much, sir.

Mr. ZELENKO. Are there any further questions?

This committee will stand adjourned today until 10 o'clock on Tuesday next, February 28, in this room, and we understand the room will be available.

If there is a change, the change will appear on the door of the committee room, or inquiry can be made in room 1432.

Thank you.

The committee stands adjourned.

(Whereupon, at 4:10 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Tuesday, February 28, 1961.)

TO AMEND THE FEDERAL COAL MINE SAFETY ACT

TUESDAY, FEBRUARY 28, 1961

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 429, Old House Office Building, Hon. Herbert Zelenko (chairman of the subcommittee) presiding.

Present: Representatives Zelenko, O'Hara, Daniels, Hiestand, Martin, and Pucinski.

Also present: Livingston L. Wingate, associate counsel for labor-management of the Committee on Education and Labor, and Mrs. Mollie D. Cohen, clerk to the subcommittee.

Mr. ZELENKO. The committee will come to order.

This is a continuation of the hearings on mine safety legislation. Last week the committee took the names of all those who wished to appear. Now, it is the understanding of the Chair that a number of witnesses who stated that they wished to appear have decided to have Mr. George Barnes, vice president of the National Independent Coal Operators Association, act as their spokesman and it is the Chair's understanding that he is going to be the spokesman for G. W. McCall of Richland, Va.; Stafford Williams of Grundy, Va.; Ben Tate, Jr., of Marymont, Ohio; Albert Bartley, Queen Coal Co., Pikeville, Ky.; Frank Woods of the Paragon Jewel Coal Co.; and Charles Richard, executive secretary of the National Independent Coal Operators. Is Mr. Barnes here?

Mr. BARNES. Yes, sir.

Mr. ZELENKO. Mr. Barnes, would you be good enough to come to the witness stand? If you are ready, we are ready to hear you. If you have any associates that you wish to sit with you, Mr. Barnes, they may do so.

Mr. BARNES. Thank you.

Mr. ZELENKO. Please give your name and your affiliation to the reporter, and also the names of those sitting with you.

STATEMENT OF GEORGE F. BARNES, VICE PRESIDENT, NATIONAL INDEPENDENT COAL OPERATORS ASSOCIATION; ACCOMPANIED BY ROBERT HOLCOMB, PIKEVILLE, KY.; THOMAS RATLIFF, PIKEVILLE, KY.; AND BEN TATE, JR., PRESIDENT, UTILITIES ELKHORN COAL CO., PIKEVILLE, KY.

Mr. BARNES. George Barnes, Tazewell, Va., vice president of the National Independent Coal Operators Association; Robert Holcomb,

Pikeville, Ky.; Ben Tate, of Cincinnati, Ohio; and Mr. Thomas Ratliff, Pikeville, Ky.

Mr. ZELENKO. Do you have a prepared statement or are you going to testify from notes?

Mr. BARNES. Mr. Chairman, we have a rough draft here. This is not the finished statement. We are waiting for that. I don't know why it hasn't come, the copy of it.

Mr. ZELENKO. Suppose you proceed in any way you wish at this time, and the understanding is, of course, that if any Members of the House or Senate interested in this legislation come in, in accordance with the stipulation we made last week, we will interrupt the hearing to permit them to testify.

Mr. BARNES. Yes, sir.

Mr. ZELENKO. Will you proceed at this time?

Mr. BARNES. Mr. Chairman and members of the committee, my name is George F. Barnes. I live in Tazewell, Va. I operate two small mines in Raven and Drill, Va. I have been mining coal at the Raven location since 1957. I have mined coal at three different locations in the vicinity of Drill, Va., since 1952. In the off season, I am a farmer. Some of the men who work with me in the mines also work with me on the farm.

I make this statement not only in behalf of those persons whose names appear below and whose identification is attached hereto, but also for the 30,000 or 40,000 coal miners—

Mr. ZELENKO. Mr. Barnes, in view of the fact that you have not commenced your statement in chief, may I ask you to stand aside for a moment? Congressman Dent, who is the author of this bill, is here now and he will testify at this time.

We are very happy to welcome our distinguished colleague, Congressman Dent, the gentleman from Pennsylvania, who is the author of the bill H.R. 4237, which is under consideration at the present time. You may proceed as you wish.

STATEMENT OF HON. JOHN H. DENT, A U.S. REPRESENTATIVE FROM THE STATE OF PENNSYLVANIA

Mr. DENT. Mr. Chairman and members of the committee, first I want to thank the gentleman for giving me the privilege to present my views at this time since my own subcommittee is meeting in another room and we are writing up a very important piece of legislation and I would like to join them.

Mr. Chairman, I don't want to take too much time of the committee, but I would like to give you just some off-the-cuff remarks and also some facts. This legislation goes way back and the desire for its passage stems from the fact that if there is any reason at all for coal mine safety legislation, then that reason must extend beyond the size of a mine and go to the real purpose for such legislation. If it is intended to save lives and to reduce, where possible in any industrial operation, accidents, then it is just as important to reduce these accidents and to save these lives in operations regardless of the cutoff point because of the number of employees working in them.

It is interesting to note that statistics show that there are approximately 30 percent of the 31 percent of accidents sustained in the

mining industry, that that represents the operations that only produce 12 percent of the coal mined in the country. Now these figures are startling when you stop to realize that in many of these small mines—they are really small—and the opportunity for protection is, one to the other, protection by the worker is very good and therefore the accidents have to be and have to come strictly from the proposition that no care is given to the method in which the coal is mined.

Now this is a piece of legislation that is a result of a compromise. There has been a great deal of agitation for this legislation and there has been just as rabid opposition to its passage. However, we have watched strange phenomena come into the coal operating business or the coal mining operations in the last decade. There are many instances where large coal holdings are deliberately broken up into small coal mining operations in order that they can circumvent the 14-man rule, and we find if you will trace the coal to its ultimate owner, you will find that the coal in the large areas is owned by one person and is controlled by one person after the mining operation is over with. This is not new to the coal industry; it happened in the early days in the industrial industry, in the needle trades and then on into the hosiery mills and on into many of the light fabricating plants where jobs were farmed out, in a sense, and which seems to be one of the customs that is growing up in certain fields in the coal mining industry.

We have watched a great decline in the coal mines. There are many reasons for it, but, frankly, the large coal operators, and I speak as one who has been in the business of mining coal from both ends and also from the basis of an operator of a rather large mine and from the operation of small mines, those both covered and uncovered by the mine safety bill, but in our State and States like mine where you have the workmen's compensation for the coal industry set aside into a common pool and its rates are assessed based upon the history of accidents and loss of time due to accidents in that particular industry alone, without any of the benefits of having other industries computed in the pool, we honestly believe that dangerous small mines increase the cost of mining operations in the State for the large operators, except those, of course, that are self-insured, but when you get into the position of being self-insured, you are rather a real large operation. So from that viewpoint alone there is justification, if you are talking about economics, in setting aside the fundamental basis for the passage of this legislation, and that is the question of human lives, and there is no question even in the minds of the bitter opponents of this legislation that such a condition exists in these mines because the record proves it.

Now what do we do in this bill? Yes, we remove the 14 exemptions, but we do better than that. We say that the operator has a right of appeal, where he didn't have or doesn't have under the present law, and we further try to protect the small so-called family run mine where there are less than eight miners in the hole by saying that a complaint can't close the mine down, that there has to be justification for it and an appeal made in a State where they don't have a State inspection, for the appeal to be made from any findings or any complaint that causes the findings to be made through a Federal inspector, that they can call in an independent inspector and he has to corroborate

the testimony given in the findings and prove the findings made by another inspector, rather, a Federal inspector, before the mine can be closed down. If the mine is operating in a safe condition, I am sure that the second inspection will prove it, and if it isn't operating in a safe condition, then the lives of the men working in it are endangered.

I have heard some talk that this legislation is aimed at something other than the safety of the men working in the mines. That may be the purpose that some people have in mind, but I assure this committee that isn't my reason for the sponsorship. I am no longer in the actual ownership of mining operations, so I can say to you that I know of nobody or no one, at least, has talked to me along the lines that this would serve a purpose other than that for which it is intended and that is to make this hazardous industry as safe as we can, with some legal restraints on the manner in which men can be employed and under the conditions that they can be employed.

If there are any questions by the committee, I would be happy to answer them.

Mr. ZELENKO. I have one or two questions, Mr. Dent. You are familiar with mining and come from a State in which it is one of the great industries. Is it a fact that the reason for the exclusion of the small mines, with the arbitrary number of 14, from the original legislation was that it was thought that the burden on the small mine owner would be onerous in maintaining his mine under inspection, and that your bill removes the burden that the small mine owner would have in meeting the inspection and safety requirements by providing for appeal; by providing for hearing on the site; by providing for independent inspection and providing for enabling the mine to remain open during the course of the proceeding? Is that the substance of it?

Mr. DENT. This is absolutely right, but there were other reasons at the time, aside from the plea that it would be costly to them—I mean beyond their ability to sustain the cost in small mines. It was also the very necessary legislative requirement of getting enough votes to pass the legislation and they were too numerous to talk about at the time.

Mr. ZELENKO. One more question. The opponents of the legislation, almost unanimously, have said, and we have this also in correspondence, that this will put the small mine owner out of business. Now the witnesses that we have heard so far in my opinion—I cannot speak for the other members of the committee—have not submitted any proof of that. Perhaps you can help us along that line. Would you care to comment on that very briefly?

Mr. DENT. Well, frankly, Mr. Chairman, all this bill will do is to see to it that mine safety standards are maintained in a mining operation which has 14 men or less employed in it. Now, we have many, many mines with 18 men, 20 men, with 15, 16, 30, and the question of whether it is put out of business or not is not determined solely by the means they provide for safety because all mines are different. One is a low vein coal, another with a bad bottom or a very bad roof condition and yet they compete with one another and yet the cost of producing the coal might vary as much as—water alone, the question of pumping water out might go as high as 18 to 27 cents a ton—I have had it in some of our mines—as against another

mine operating right close to it without the water condition, and certainly this putting in the proper crossbars or keeping the proper ventilation in a mine isn't going to near approach the difference of cost that sometimes is there from natural reasons—the lay of the coal, the type of coal you are getting out, the quality of the coal you are getting out. This is not the determining factor in whether you stay in business or not.

Mr. ZELENKO. Thank you very much.

Mr. O'Hara, do you have any questions?

Mr. O'HARA. I want to thank the gentleman for appearing before us and say that I am sorry that I missed part of his testimony. I will say, however, I have had the opportunity to discuss the matter with the gentleman in the last Congress and I know his interest in this subject and his humanitarian motives in introducing this legislation and asking for its approval. I won't detain him any longer because I know he has a lot of other things to do, but I just wanted to say I appreciate your testimony.

Mr. DENT. Thank you.

Mr. ZELENKO. Mr. Hiestand?

Mr. HIESTAND. Mr. Chairman, again I apologize for not having been here. I was at the witness' other committee meeting waiting for him.

I wonder if I could get him again to summarize briefly as to why this will not work a severe hardship on the small owners.

Mr. DENT. The only way it would work a very severe hardship is if they are working in an operation without any safety factor, but to normally mine coal, regardless of who you are or whether you have 1 man or 8 men or 50 men or a hundred men, there are certain fundamental safety precautions you have to take. You have to timber a bad roof; you have to put a proper amount of air in. Now that has to be done just to sustain the life of the men that are operating in the mine and to protect your property.

Now if anybody is operating without any of these particular fundamental features that he requires, it would probably be a costly feature for him to put them in, but if he is operating on that basis, he is endangering the lives of his employees to such an extent that he ought not to be permitted to do so, but in a normal operation, Mr. Hiestand, this will not increase his cost beyond his ability to carry the load.

Mr. HIESTAND. It will not work a hardship on him?

Mr. DENT. It will not, in my humble opinion, unless he is in complete violation of the law.

Mr. ZELENKO. Mr. Daniels?

Mr. DANIELS. No questions, Mr. Chairman. I do desire to congratulate the Congressman from Pennsylvania for his statement made here this morning.

Mr. ZELENKO. Mr. Martin?

Mr. MARTIN. No questions.

Mr. ZELENKO. Thank you very much.

Mr. DENT. Thank you very kindly, Mr. Chairman.

Mr. ZELENKO. I notice our distinguished colleague from Virginia, Mr. Jennings, has appeared and I wish to ask him whether he desires to testify at this time.

Mr. JENNINGS. Mr. Chairman, if it pleases the committee, I would prefer not to testify at this time because I have not had an opportunity to hear the testimony of those here from my area and actually I have not had the opportunity of preparing the testimony. I had asked for some information to be compiled from my district. They promised to get it to me last night, and when I just left I had not received it, so I would prefer to testify at some later time.

Mr. ZELENKO. We are going to sit all day and perhaps you would want to be heard later this afternoon.

Mr. JENNINGS. That would be fine.

Mr. ZELENKO. We will suit your convenience.

Now we are going to ask Mr. Barnes to resume, please.

STATEMENT OF GEORGE F. BARNES, VICE PRESIDENT, NATIONAL INDEPENDENT COAL OPERATORS ASSOCIATION; ACCOMPANIED BY ROBERT HOLCOMB, PIKEVILLE, KY.; THOMAS RATLIFF, PIKEVILLE, KY.; AND BEN TATE, JR., PRESIDENT, UTILITIES ELKHORN COAL CO., PIKEVILLE, KY.—Resumed

Mr. BARNES. Mr. Chairman, the copies have come in of my statement and I would like to have it distributed.

Mr. ZELENKO. Yes, we would appreciate it very much. In order to save time, I assume you want your statement made a part of the record and it will be considered as a part of the record now. Give the reporter a copy when you have an opportunity.

Now, you may either read the statement, if you wish, Mr. Barnes, or you may give us the highlights of the statement—any way you prefer.

Mr. BARNES. Mr. Chairman, I would like to read it and I would like, since I only finished the first paragraph, I would like to repeat it, please.

Mr. ZELENKO. Go right ahead.

Mr. BARNES. Mr. Chairman and members of the committee, my name is George F. Barnes. I live in Tazewell, Va., and I operate two small mines in Raven and Drill, Va. I have been mining coal at the Raven location since 1957. I have mined coal at three different locations in the vicinity of Drill, Va., since 1952. In the off-season, I am a farmer. Some of the men who work with me in the mines also work with me on the farm.

I make this statement not only in behalf of those persons whose names appear below and whose identification is attached hereto, but also for the 30,000 or 40,000 coal miners who are provided employment in title I mines, but whose employment is again threatened by this proposed legislation. I also appear in behalf of the thousands of people who are indirectly connected with the coal industry in West Virginia, Kentucky, Virginia, Tennessee, and Alabama, but whose livelihood is directly affected by anything the subcommittee may do here. Seated with me are some of the men who have signed this statement. They are ready to answer such questions as this subcommittee may desire to ask them.

We are opposed to H.R. 4237 and all other similar legislation which would seek to make the small title I mines subject to the Federal Coal Mine Safety Act. We believe that this subject requires much

more study than it has been given so that it may be determined whether legislation is needed, and if legislation is needed, whether it should be this legislation or some other form of regulation.

The mere fact that this subject has been before various subcommittees and committees of the House and the Senate in the last few years does not mean that it has received the consideration that its importance justifies. Time and again the Congress has shown itself impatient with the kind of statistical data and the accuracy of the data which the Director of the Bureau of Mines has used to support extension of the act to the small title I mines. The very uncertainty which these inaccuracies have created has made the Congress wary of legislating in such a delicate and dangerous area. Once again, this matter is before the Congress; but there has been no improvement in the data offered in support of the need for such legislation. On the contrary, in the testimony of Marling J. Ankeny, Director of the Bureau of Mines on February 21, 1961, it appears that he has abandoned any effort to offer factual support and has based his position on personal conclusions which have been drawn from sources, the identity of which he has mysteriously omitted. Although additional factual support has not been offered by the proponents of this bill, additional facts are available which render the desirability of any legislation even more doubtful than when it was first offered in 1958. These facts are a matter of common knowledge. They are overwhelming in their significance since they relate to the severe depression that encompasses the coal areas of West Virginia, Kentucky, Virginia, Tennessee, and Alabama. If there was no justification for such legislation before this, there is most certainly no justification for it now. The proponents of this bill could not have considered the depressed conditions in the coal areas. If they had done so, they would not have offered legislation which will add to the difficulties of the people in these areas. If funds are to be spent they would be better spent in alleviating hardship, not in compounding it.

To understand the present situation in the bituminous coal industry, it is necessary to review briefly its history since the Second World War. In 1948 the demand for coal was good. The industry was healthy and employment was high. In late 1948 and 1949 the situation changed both here and abroad. The demand increased. There was a temporary spurt during the Korean situation and during the boom in the export market in 1956 and 1957. Since 1958 the demand for coal has been clearly reduced. During this period, coal mine wages and fringe benefits increased rapidly. A corresponding impetus was given to the mechanization of mines and the development of auger and strip mining as major segments of the industry.

These developments had a natural and inevitable consequence—until today there are far less than half as many men employed in the Nation's underground mines as there were a few years ago.

As mechanization developed in response to increased labor costs, a new field of labor was created by the employment reduction and layoffs resulting from mechanization. The displaced miners by the thousands sought and found employment in the only occupation they knew—digging coal in the old way in small title I truck mines scattered throughout various relatively isolated areas. Mr. Ankeny estimates that between the years 1952 and 1961 title I underground mines

increased from 5,281 to 7,581. He estimates that in 1958 they employed approximately 30,000 men. We are convinced that there are a much larger number of small mines than either the Bureau of Mines or anyone else knows (Mr. Ankeny's figures are demonstrably wrong) and that probably their employment under normal conditions would be in excess of 40,000 men. In any event, the small mines have provided employment for men who would otherwise be on relief and have been the means of salvaging natural resources which would otherwise lie in waste.

Mr. Ankeny's unsupported conclusion, that the increase in small title I underground mines has been due to mine operators seeking to circumvent the provisions of the Coal Mine Safety Act by keeping their working force under 15 persons, fails completely to consider the stimulation toward small operations generated by the layoffs in mechanized mines. Furthermore, he asks this committee to credit his conclusion despite the fact that the chart (exhibit A) he offered in his testimony shows that of the 7,238 mines he lists as title I mines, 6,750 employ 9 men or less, and of these 4,706 employ 4 men or less. In the category of 10 to 14 employees, 480 mines employ 5,579 men. One would suspect that this latter group would be in the area in which circumvention would be most prominent. According to Mr. Thomas Kennedy, president of the United Mine Workers, some of these title I mines are union mines and subject to the mine safety code contained in every UMWA contract. Since the code is more stringent than the Federal Coal Mine Safety Act, UMWA mines could not be included among those that have sought to escape from coverage of the act. Reducing the 480 by the title I union mines and by those mines which are legitimately unable to employ more than 14 men, it is readily apparent that Mr. Ankeny's conclusion and accusation would be applicable to less than 5 percent of the total number of title I mines. This hardly provides a justification for the proposed legislation.

THE NEED FOR COVERAGE OF TITLE I MINES

It is doubtful that any member of this subcommittee or of the Committee on Education and Labor would question the integrity and objectivity of Senator John Sherman Cooper. Senator Cooper has made an extensive study of the Coal Mine Safety Act and its applicability to title I mines. His testimony discloses that he is intimately familiar with all the factual information available and of the position of the proponents and opponents. Yet he remains unsatisfied that this legislation or any legislation other than that which would make a study and survey of mine safety is justified (hearings of subcommittee, Feb. 21, 1961). He also fears that this proposed legislation will have the effect of eliminating the small title I mines.

On July 25, 1958, the Senate Committee on Labor and Welfare reported to the Senate S. 3290, as amended, which was reintroduced as S. 1562 in 1959. This bill called for a study and survey of mine safety. It was reported to the Senate in place of a bill which would have covered title I mines under the act. Appearing before the Senate Committee on July 24, 1959, Senator Cooper referred to the testimony of those persons who supported immediate coverage rather than a preliminary study as follows:

Mr. ZELENKO. Mr. Barnes, may I interrupt for a moment? I assume that these quotations are taken from the prior hearings of last year and the year before.

Mr. BARNES. That is correct.

Mr. ZELENKO. I don't wish to preclude you from reading them, but the committee has had that testimony before it and if you think in the interest of time we could eliminate the quotations from the testimony, which we have had before us, I would appreciate it if you would go ahead from there. However, if you feel it is necessary for the quotations to be read, then you proceed to read them.

Mr. BARNES. Well, Mr. Chairman, I feel that since there are new members on the committee and there are members here today that have not had a chance to familiarize themselves with the evidence, I would like to read it.

Mr. ZELENKO. Very well, but as I indicated when the hearing started, all of the new members were supplied with copies of the hearings of last year. But you may proceed.

Mr. BARNES. Mr. Chairman, my whistle is getting awfully dry. Could I have a drink of water?

Mr. ZELENKO. We have our scouts out right now in search of water.

Mr. Hiestand says the drillers are out. We hope we will strike water shortly.

Mr. BARNES. Thank you. I quote:

May I say that the members of the committee did not question the sincerity or motives of the witnesses, for the denunciation of witnesses also cannot substitute for facts, nor is it an argument on the merits of the matters we consider. Further, the committee believed strongly that additional steps should be taken to assure greater safety in all coal mines—both title I and title II—and it did take such steps.

Yes, it is a fact that cannot be controverted, that the full committee was not satisfied with the testimony, and after thorough consideration it approved by a large vote an amendment which I worked out with the help of other members of the committee.

And, as I have said, that amendment was reported to the Senate on July 25, 1958, without any dissenting report.

For some unexplainable reason it was never called up for a vote and passage by the Senate.

If it had been called up and enacted into law—with the added safety features that it embodies—the power to close down title I mines—small mines, would have been in effect, and perhaps some lives would have been saved.

I do not know, Mr. Chairman, who prevented the bill from being brought up for passage, and who worked to prevent these added safety features from going into effect.

Further, I point out that if the study and survey of mine safety directed by S. 1562 had been made by the Bureau of Mines, its report would have been made to the President, the Secretary of the Interior, and the Congress on last February 15, 1959, and all these issues concerning the accuracy of statistics, and so forth, would have been resolved.

But it appears, for some unexplainable reason, there was objection to securing the facts that this committee decided last July it needed to legislate properly and fairly.

And, I submit to you, the same doubts about accuracy of statistics are just as valid now as they were a year ago. * * *

While the statistics submitted by the Bureau of Mines have been demonstrated to be inconclusive and inaccurate, I submit they point out a very important fact.

There has been no tremendous improvement in mine safety either in title I or title II mines since the Bureau of Mines was given enforcement authority in 1952.

The Senate committee, as well as Senator Cooper, found the testimony of proponents of the legislation unconvincing, and I quote:

Very little authoritative information was presented regarding the economic effects of applying all of the provisions of the act to the smaller mines which are now exempted. The committee, of course, would not hesitate to recommend the application of all of these provisions to such mines, regardless of economic effect, if it were convinced that this would result in increasing safety and eliminating mine disasters with their accompanying injuries and fatalities.

In the light of the inconclusive character of the testimony in support of the proposal to repeal completely the present exemption, the committee preferred to take the steps safeguarding against dangers of imminent disaster while simultaneously providing a method to secure this data necessary for the Congress to legislate intelligently in the near future. The committee believes that the bill as reported accomplishes these purposes.

Senator Cooper stated, and I am still quoting:

What the committee found—and it was a sound judgment—was that evidence which had been presented to it last year as to incidence of fatalities and injuries in title I mines was inaccurate.

The case to extend title II provisions of title I mines and to determine their economic effects must be based on facts, not inaccurate records.

If the committee will read carefully the report of hearings last year they will find the statistics submitted by the Bureau of Mines were contradictory in many instances.

This year Mr. Ankeny has admitted their inaccuracy by submitting new statistics. How can we know the true facts without the kind of an investigation the committee authorized last year and which S. 1562 would direct?

In the same hearings testimony was introduced establishing in detail the unreliability of the statistical data upon which the proponents of the amendment relied.

In testimony before the Subcommittee on Safety and Compensation of the Committee on Education and Labor of the House of Representatives, Mr. J. B. Taggart, president of Wise Coal Co., Dorchester, Va., stated, and I quote:

The disaster record in the small coal mines of America is, I think, a very good record.

There has been an average of at least 5,000 title I mines in operation during this 19-year period, and this means that there have been at least 95,000 mine-years of operation since 1940. Three major disasters during this period means there has been 1 occurrence for each 32,000 mine-years of operation. Assuming that each of these mines has employed an average of six men (that is approximately the figure today) we have had during this period 570,000 man-years of employment. These 570,000 man-years of employment have resulted in 23 deaths in major disasters, or 1 for each 20,000 years of individual per man employment. Let us be reasonable. One could hardly expect a better record. Compare this to the title II record and then judge which group needs further regulation. * * *

Of the above 209 disaster-type accidents, at least 60 resulted in no deaths and no injuries. Excluding the three major disasters this leaves a maximum number of 146 other occurrences which resulted in a total of 66 fatalities and 162 injuries. Reduced to simple terms, this means in title I mines this type accident over a 19-year period has resulted in one fatality per 1,400 years of individual mine operation, and one injury per 600 years of individual mine operation. Again, one could hardly expect to improve upon such a record.

If logic and reason and factual data are to have their proper place in these deliberations it should not be necessary to say anything further about disaster-type accidents in title I coal mines.

Now let us look at the second type of mine accident, the day-to-day type. It is here that the record is in such dispute. In the past 18 months I have devoted hundreds of hours to a study of this subject. I have investigated it thoroughly, and I have had innumerable conferences with people who know about it. I am positively convinced and make the unqualified statement that the Bureau of Mines figures on this type accident in title I mines are completely erroneous, incorrect, and unworthy of acceptance. I make this statement advisedly and in support have attached to this statement a copy of a report prepared by Mr.

B. F. Reed and by me and submitted to the Interior Department February 22, 1959. * * *

I would like to call your attention to a statement made by the Director of the Bureau of Mines on July 24 before a Senate Committee on Labor. Mr. Ankeny, the Director of the Bureau of Mines, under very heavy direct cross-examination by Senator Cooper, made the statement that the Bureau of Mines did not have complete figures, accurate figures, or data on the production of coal in small mines and on the employees in small mines nor on the hours of exposure in small mines nor the nonfatal accidents. The only thing they actually knew about the small mines or how many men got killed was what they read in the newspapers.

Mr. Ankeny further made the statement that he thought maybe the Bureau of Mines figures 80 percent correct. * * *

We have here a statement from proponents asking for legislation because they want it, but they have not demonstrated the need for it.

Neither Mr. Taggart's testimony nor the testimony of other opponents of the bills that have been presented before the Senate and the House have been refuted, either by the Director of the Bureau of Mines or by any other proponents.

Today, if further legislation is being considered by this subcommittee, the situation with respect to supporting data remains precisely the same. There is no evidence that further safety regulation in title I mines is needed and there is no evidence that the legislation proposed to this subcommittee will result in any substantial increase in safety conditions. Since there has been no demonstration of need, why then has this legislation been pressed so fiercely and with such a degree of exigency?

WHY REGULATION OF TITLE I MINES IS BEING SOUGHT

We are not opposed to mine safety or to any legislation which could reasonably be expected to achieve mine safety. We are, however, opposed to legislation which has at its major objective the destruction of the small coal mines and which merely uses the subject of mine safety as a guise for such destruction.

Let us look at the proponents of this legislation—the large operators, the United Mine Workers of America, and the Director of the Bureau of Mines.

Since the Director has no valid statistics upon which to base the need for extension of the coverage of the act, why then does he want such extension? Is it because—in terms of Parkinson's law—he wants an extension of his domain and supervision of an additional staff? Does he, or any appointed official of the Government, have the right to take a position without the factual proof to support it?

Mr. Ankeny estimated that the total cost to the Government to administer this legislation would be approximately \$400,000 per year. (Mr. Ankeny testified he would need 26 additional inspectors. He made no mention of the stenographers, clerks, additional travel expense, additional expense of State inspectors and independent inspectors, et cetera which would be required under the bill.) We submit that this appears to be exceedingly modest. We sympathize with Mr. Ankeny's inability to be more definite about cost but we can understand his dilemma in view of his testimony that he does not know how many title I mines there are and how many people are employed in them. It seems to us, however, that public officials

should make their estimates of budget requirements on the basis of determined facts rather than wishful thinking.

Is there a deeper motive? We incline to the view that the position of the Director of the Bureau of Mines is always the same as that of UMWA. It has never varied throughout the history of this proposed legislation. The motivation of the UMWA is much easier to discern. The development of the truck mining industry has been a thorn in the side of the UMWA. The union has used every conceivable method, including violence, to destroy the small mines. It wants to eliminate the employment in the coal industry of every man who does not pay dues to the union and it wants to eliminate production of every ton of coal upon which it did not collect for its welfare fund 40 cents per ton. In other words, it has powerful economic reasons for supporting this proposed legislation.

The large operators are similarly motivated. Their employees are not directly affected but they are anxious to reduce competition. They have vigorously opposed any factfinding procedures. They obviously feel that if they can injure the small mines it would help them.

That the union is not primarily motivated by safety considerations is readily apparent. One of the major fears of the small mines is that through the device of giving the Director of the Bureau of Mines supervision over the small operators, the Federal Coal Mine Safety Code will be indirectly impressed upon them and the requirements of such code will make it economically unfeasible to allow these small mines to operate. The National Coal Wage Agreement, which is the United Mine Workers contract with operators, incorporates the entire Federal Coal Mine Safety Code as an integral part of that agreement and sets up provisions to enforce compliance with the code. As a matter of contract, the UMWA has the power to enforce the entire code and in any and all mines with which it has contract relations. This power is continuing and is limited only by the extent to which UMWA desires to enforce its contract. The UMWA, therefore, does not need legislation for protection of its members. It is apparent that in seeking to apply more rigid regulations to mines not under contract with it, the UMWA is attempting to obtain the economic advantage which would result from elimination of small operations. We ask that this committee consider the real purpose of this legislation and that it deny to powerful labor and mining interests the use of the congressional forum for further enrichment of themselves.

Now let us see how this proposed legislation lends itself to misuse and abuse by persons interested in furthering the economic advantages of big business and big labor.

H.R. 4237—ITS EFFECT

Irrespective of the merits of the bill, it is our contention that administratively it is unworkable.

Under this bill the Director has the authority to hold hearings, if there are interested parties who desire to obtain modification of the law with respect to any mine or class of mines, and he may find that such provision is not applicable if it does not substantially contribute to the safety of the men working in such mine.

This is a ponderous method of eliminating those inapplicable provisions which have already been determined to be inapplicable. For example, in appendix A to Mr. Ankeny's testimony on February 21, 1961, he states that section 209(b), section 209(d)(7), section 209(f)(1), section 209(h)(3), and section 209(h)(4) are applicable only to gassy mines and that sections 209(h)(7) and 209(g)(5) are not applicable to any title I mines. If this is so, the legislation should be drafted to exclude the mines to which these provisions do not apply. There would be no necessity of going through the procedural steps of section 201(b)(1). On the other hand, Mr. Ankeny stated before the Subcommittee on Safety and Compensation of the Committee on Education and Labor of the House at the hearings on June 17, 1960, that under S. 743, a bill identical (except for one word) to H.R. 4237, and I quote—

from a careful examination of section 209 of the act, the mine safety provisions, it is very difficult to find any provision which would be inapplicable to the very small mine.

He went on to say that there is only one provision, and I quote—

which might not contribute too much to the safety of the mine. That is the provision that requires 6,000 feet in the last crosscut.

We do not know the reason for the change in Mr. Ankeny's opinions in less than 1 year. We are concerned, however, about administration of the law by a person who seems unaware of its applicability, to say nothing of its implications. In administering the law, it is unlikely that he will permit many, if any, modifications. The bill gives him a tremendous range of discretion since he may modify if he finds that the provision does not substantially contribute to the safety of the miners. This provision, in effect, permits him to continue to maintain the same position he has taken up to this time—unsupported by facts or reasons. All he needs to do is to rationalize the substantiability. This is much too much power to give any administrator.

Mr. Ankeny seems to have based his conclusions as to the desirability of this legislation upon the bill's requirement that preshift examinations must be made. How will this work in title I mines?

Under the Coal Mine Safety Act such preshift examinations can be made only by certified persons. A certified person is defined as—

a person who is qualified under the laws of the State in which such mine is located to perform such daily examinations except that in the State the laws of which do not provide such qualifications, the term means a person deemed by the operator of such mine to be qualified to perform such duties.

Most of the coal-producing States have rigid qualifications for certified persons. In these States the number of certified persons is extremely limited. In Kentucky, for example, at least one-half of the Federal inspectors have not been able to qualify for State certificates. With at least 7,000 title I mines involved, the chaos that would ensue if certified persons should be needed to perform daily inspections would stultify the coal industry. In addition the expense of utilizing such persons would be prohibitive to coal mines employing only a few people. The very scarcity of the inspectors makes this a completely impracticable requirement. A proper drafting of this bill would recognize at the outset the impossibility of administering such a provision of the act and would omit it. No one could deny that pre-

shift examination would contribute to the safety of the men working in the mines. But, where can you obtain certified persons? And how do you pay for them after you get them? Under the provision of the proposed bill, the Director of the Bureau of Mines could not exempt the small mines or a small mine from the application of this provision, unless he ignores completely the words "does not substantially contribute to the safety of the men." If this provision is applied and title I mines are not exempted, we have the strange situation of Federal inspectors who are unable to qualify as certified persons under the State laws authorized to perform acts within the State which could only be performed by certified persons. This places the Federal inspector in the unusual position of being directly in violation of State law. For example, a Federal inspector could not use a flame safety lamp in Kentucky since its use can only be undertaken by a certified person under the State laws.

The requirement that the preshift examination be made daily by certified persons becomes somewhat ridiculous when applied to a mine employing anywhere from 1 to 8 or 10 people. The minimum cost of inspection would be at least \$25 a day, or approximately \$500 a month, which in many title I mines represents a substantial portion of the gross income. The cost would be prohibitive to the title I mines.

It has been suggested that it may be possible to set up a training school to train certified persons who could be qualified under the proposed legislation. This is not practical and, in any event, it would take a considerable time to get it underway. Each State has its special laws relating to certified persons. Some of them require lengthy apprenticeships and training in special types of mines. For example, in Virginia, 3 years of experience in a gassy mine is required. There are very few gassy mines in Virginia and, therefore, there is little opportunity to obtain such experience. In West Virginia there is a 5-year requirement of experience, 3 years of which must be in a gassy mine. The opportunity for obtaining the type of training which would qualify a person is extremely limited. In Kentucky 5 years of coal mining experience is required. In addition, a rigid examination relating to safety and other matters must be passed in order for the applicant to be placed on the roster of certified persons.

From the foregoing, it is apparent that the proponents of this legislation have not considered the real effects of their proposal. Most of the provisions of the act which Mr. Ankeny purports to have analyzed are applicable to either title I gassy mines or are not applicable at all. Others have only limited applicability if Mr. Ankeny's testimony is to be given any validity. Only 5 percent of the total number of title I mines are classified gassy. For this 5 percent the proponents seek to regulate over 7,000 mines and 40,000 miners and expend at least \$400,000 each year. It would be far simpler to have this bill apply only to gassy mines.

Senator Cooper pointed out, and I quote—

that the procedures under existing law for reopening a mine, or correcting an unsafe condition, while applicable to large mines would place on small mines an overwhelming burden in cost and time—long procedures before agencies of the Federal Government that would greatly hamper the operators—and could put them out of business. At a minimum these procedures ought to be looked into by the committee to see if they are applicable to small mines, and

whether they are too restrictive * * *. But I repeat that to these men living out in the country areas, many of them without education and without resources, the practical effect of placing on them these procedures to reopen mines would just mean they would go out of business.

The proposed legislation embraces the elaborate and involved procedures of the Federal Coal Mine Safety Act but modifies them somewhat for mines employing less than eight men underground. The proposed modifications are almost as complicated as the existing law and in some respects, they are much less intelligible. For example, section 2 of the bill provides that no order shall issue unless—

upon prompt request by the operator, a State inspector or any independent inspector * * * concurs in such order—

and that—

requests for concurrence must be made by the operator.

Why should an operator ever request concurrence in an order which seeks to close his mine? Perhaps the appropriate word is “nonconcurrence.”

Further, section 2 provides that—

the State inspection must be completed within five days after request by the operator.

The bill is silent as to what happens if inspection is not completed—which is most likely in view of the great shortage of qualified inspectors.

If the State inspector does not concur in the order, the bill states that the operator of the mine, the representative of the Bureau or the State inspector—

may apply within twenty-four hours after the completion of the inspection involved for the appointment of an independent inspector.

Why should either the operator, who is opposed to closing, or the State inspector, who has not concurred, ask for the appointment of an independent inspector? Perhaps the authority to make such a request should extend only to the Bureau representative. He would appear to be the only party interested in such a request at that stage.

It is further provided that, after such inspection is completed, if either the independent inspector or the State inspector concurs in the order it shall be issued. If the matter has reached this stage, only the independent inspector's concurrence is relevant. Why bring the State inspector into the case?

Section 3 provides that the Board—

may hold hearings or conduct other proceedings at any place—

outside the District of Columbia. At the request of a title I operator, however, the Board—

shall hold hearings or conduct other proceedings at the county seat of the county in which the mine is located.

It is not clear here as to whether a hearing requested by a title I mine is mandatory or merely permissive. If it is mandatory, a group of small mines could tie the Board into knots and wreck its effectiveness.

The above comments in substance indicate that the bill is poorly drafted. Perhaps its ambiguities can be corrected by editing. We, however, regard the procedure as ponderous and burdensome and far beyond the capacities of most title I operators. Remedies which are

so difficult to obtain are no remedies at all. In effect, they are a denial of relief.

It is possible that the proposed legislation will reduce accidents in title I mines—if only by reason of the elimination of the small mines altogether. There is no evidence to establish that safety will be improved in any way other than by closing the small mines. This is a drastic method of achieving safety. Were it to be followed in other dangerous industries, we would have no planes or buses, no skyscrapers, no industrial window-washers, and no atomic science. Safety is all-important, but its importance does not outweigh all other considerations. It certainly does not outweigh the necessity of providing employment for thousands and maintaining an important segment of our economy. A man's safety must be measured alongside the public interest. The States are as alert to the need for safety as the Federal Government. The Federal Government has no monopoly on the public interest. There is not one morsel of evidence in the record to justify the Federal Government's intrusion into the safety of the small coal mines. On the contrary, the evidence establishes that under State inspection the disaster and accident record of the title I mines compares favorably with that of title II mines under Federal inspection.

THE DEPRESSED AREAS

The President's Task Force on the Problems of the Depressed Areas revealed the stark suffering and intolerable conditions that persist in the coal areas of the Appalachians. Pursuant to the findings, the President addressed a message to Congress calling for an all-out program of assistance. The only points of difference within the Congress lie with respect to the methods of providing relief. It would come as quite a surprise to our congressional leaders that while the Congress seeks solutions on the one hand, there are those, on the other hand, who are seeking ill-conceived, untimely, and intolerable legislation which will contribute to the suffering. We believe the proposed legislation falls within that category.

The record does not establish that this bill, if enacted, will achieve safety. The record does not establish that such a law is necessary to alleviate unsafe conditions. The record does establish, however, that there are real—not apparent—but real fears that economic suffering will result from an extension of the coverage of the Federal Mine Safety Act to title I mines. Is this a time for gambling with the livelihood of thousands who are already suffering as no American citizen should be required to suffer? We leave this to the conscience of this subcommittee and that of the committee.

RECOMMENDATIONS

We attach hereto a proposed bill which we believe answers all those criticisms of title I mines which have appeared in the record of Senate and House hearings over the years. The incidence of accidents and fatalities is greatest in slope mines, shaft mines, and gassy mines. These would be brought under coverage of the act and, since probably 99 percent of disaster-type accidents occur in such mines, the bill would seem to meet the demands of the proponents of H.R. 4237. Fur-

thermore, this bill would make it impossible for a title II mine to become a title I mine without the Director's approval. This would avoid the circumvention of the act of which Mr. Ankeny complained.

We do not feel, however, that even this legislation is justified. We are interested in achieving safety in the coal mines. To do this, we must find the causes of accidents and develop the methods to eliminate them. We, therefore, recommend that if any legislation is offered, it should be along the line of Senator Cooper's bill for a study and survey. We believe that a factfinding board should be created and that its members should be drawn from title I mines as well as title II mines. This board should be asked to study the entire problem of mine safety—including the effect of mechanization, the number of inspections necessary, and the educational programs which should be developed. Many of the witnesses have testified that the human element is the most important factor in mine safety and this can only be dealt with by education and frequent inspections. Recent advances in mechanical devices have given access to coal that was thought to be lost. In my own mines, I could not mine the coal left behind by the large operations if new types of equipment had not been developed in the last few years. This is fairly typical of the situation in many title I mines. Yet, no one has studied what effect, if any, this equipment has had in the reduction or increase of accidents and fatalities.

The wrong legislation at this time would be a serious and irreparable blunder. The urgency is not such as to warrant blind groping or the passage of a law for the sake of having a law. We urge this subcommittee to meet this problem squarely, deal with it as a problem of safety, and act with proper caution and concern for the welfare of the great number of people whose burdens are already well-nigh intolerable.

Mr. ZELENKO. Does that complete your statement?

Mr. BARNES. No, sir. I have a proposed bill.

A PROPOSED BILL To amend the Federal Coal Mine Safety Act in order to remove the exemption with respect to certain mines employing no more than fourteen individuals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Public 552, Eighty-second Congress, entitled "An Act to amend Public Law 49, Seventy-seventh Congress, so as to provide for the prevention of major disasters in coal mines," approved July 16, 1952 (Ch. 877, 66 Stat. 692; 30 U.S.C. 471), be amended by amending section 201 (b) thereof to read as follows:

"(b) This title shall not apply to any mine in which no more than fourteen individuals are regularly employed underground unless the Director shall have classified such a mine as a slope mine, shaft mine, or gassy mine and has not removed such classification or unless a mine in which more than fourteen individuals are regularly employed underground shall qualify for this exemption by reduction of employment to less than fourteen such individuals and has received the approval of the Director."

That completes my statement.

Mr. ZELENKO. The Chair has no questions.

Mr. O'Hara?

Mr. O'HARA. Mr. Barnes, we have heard a good deal of discussion in this Congress and the last Congress about the inaccuracy of the statistics. I think that you will agree with me, won't you, that whatever the statistics might show, the important question is whether or not this legislation would promote various safety features in these mines. In other words, we have absolute standards to go by. We can't say in any case that inadequate bracing is good, can we? Any legisla-

tion that would promote more adequate bracing, for instance, would provide a safety feature; wouldn't it.

Mr. BARNES. That is right.

Mr. O'HARA. So the question is, without too much regard for statistics, would or would not a particular provision promote the adoption of safety features, isn't it?

You suggested that the motive of some of the proponents of these bills is to close small mines. Your argument was that the imposition of the safety standards of the Federal Coal Mine Safety Act would increase the cost of producing coal in the smaller, largely nonunion, mines and that this would close them; is that correct?

Mr. BARNES. Based on previous testimony, Mr. O'Hara, it is what I read; yes, sir.

Mr. O'HARA. On the other hand, I think you also mentioned in your testimony that United Mine Workers, both in the title I and title II mines where it represents employees, has required employers to follow the Federal Coal Mine Safety Code which is more stringent than the act. Would you say the Mine Workers were trying to put those employers out of business?

Mr. HOLCOMB. May I answer that question?

Mr. ZELENSKO. Yes, sir.

Mr. HOLCOMB. According to Mr. Ankeny's testimony last week before this committee, in 1952 there were more than 2,400 title II mines. In 1959 the number had dwindled to 1,097, I believe, if my memory is correct. I think that is a perfect indication that something has closed these mines down.

Now, we would like to request the permission of the committee to submit accurate statistics to prove that the death rate in title II mines has doubled since the inception of this law in 1952.

Mr. ZELENSKO. Well, the request will not be granted for the reasons stated at the last hearing, and if I may comment, I am just listening and I don't believe your answer is responsive to the Congressman's question.

Mr. HOLCOMB. I think that the testimony of Mr. Ankeny is definite proof that something has closed these mines down, whether it be economic reasons or safety reasons and we know that the number has dwindled by almost two-thirds.

Mr. O'HARA. I would like an answer to that question.

Mr. TATE. You stated, I believe, Mr. O'Hara, that you wanted an answer from us as to whether in title I mines the application of the Federal Coal Mine Safety Code in any UMWA contract has shut down any of these title I mines.

Mr. O'HARA. I referred to your testimony, Mr. Barnes, to the effect that the UMW was motivated in its promotion of this type of legislation by a desire to so increase the production costs of these mines as to close them down. This was your statement.

Mr. TATE. Yes.

Mr. O'HARA. You further stated that, in the title I mines it did represent, the UMW required compliance by the employers with the Federal Mine Safety Code. I asked if it was therefore your conclusion that the UMW was trying to shut down the mines of the represented workers as well.

Mr. TATE. No, sir, we do not make that claim. We feel, and I think it was covered in this testimony, that the code can be enforced at the desire of the union. However, if they do not press that, it will not close them down, but I state that if they wanted to press it, it would definitely shut down title I mines.

Mr. O'HARA. I think that we go a little far when we get into somebody else's motives and I just wanted to try to clear up that point. I don't know that that is the motive for the UMW. From what little I know of it, all elements of the coal industry have shown a pretty high regard for safety precautions and I don't think we ought to accuse the UMW of not being interested in safety. That isn't the point. The point is this: I would like to know in what respect the witness feels that the imposition of the requirements of the Coal Mine Safety Act would not promote safety. If I could go over them briefly with the witness, I would like to have his opinion.

Now, section 209(b) provides that operators of mines classed gassy under the laws of the State shall comply with certain provisions. Do you object to the application of these provisions in mines classified as gassy?

Mr. BARNES. No, sir.

Mr. O'HARA. 209(c) provides for adequate roof and rib support in all active roadways and travelways. Do you consider that promotes safety?

Mr. BARNES. I consider it as promoting safety; yes, sir.

Mr. O'HARA. 209(d)(1) requires that the volume and velocity of ventilating current be sufficient to carry away harmful gasses and to ventilate adequately in the active working places. How about that?

Mr. BARNES. That is a safety requirement. All States require that, also.

Mr. O'HARA. 209(d)(2) requires that the quantity of air reaching the last open crosscut of any pair or set of entries be not less than 6,000 cubic feet per minute. How about that?

Mr. BARNES. I have no objection to that. It promotes safety.

Mr. O'HARA. 209(d)(7) requires examination of every active working place and every other place in a gassy mine by certified persons within 4 hours immediately preceding the beginning of a coal-producing shift. How about that?

Mr. BARNES. We have no objection to that in a gassy mine.

Mr. O'HARA. Now, 209(d)(8) is, I think, one of the provisions to which you do object, as it would apply under the provisions of these bills. It requires examination of every active working place and every other place in a nongassy mine by certified persons within 4 hours preceding the first coal-producing shift. Do you feel that would cause hardship because of the large number of mines involved and the small number of certified persons?

Mr. BARNES. I do, sir.

Mr. O'HARA. 209(d)(9) requires all active working places to be examined for hazards by certified persons at least once during each coal-producing shift and in the gassy mine this includes permissible flame safety lamp tests and examination for methane before electrically driven equipment is brought in. Now, you would have the

same objection to this provision, as it applies to the title I mines, as you would to the previous provision; is that right?

Mr. BARNES. I believe you said during the working day; didn't you? Would you say that again?

Mr. O'HARA. At least once during each coal-producing shift.

Mr. BARNES. Would you continue? I am not familiar with it, Mr. O'Hara.

Mr. O'HARA. 209(d)(9) requires all active working places to be examined for hazards by certified persons at least once during each coal-producing shift. The "certified person" problem would cause you to object to that; would it not?

Mr. BARNES. That is right, sir.

Mr. O'HARA. And then in a gassy mine, the examination would have to include permissible flame safety lamp tests for methane and oxygen deficiencies and also examination for methane before electrically driven equipment is taken in, or operated.

209(e)(1) prohibits the accumulation of coal dust, loose coal or other combustible material in dangerous quantities in the active underground workings of a mine. What about that one?

Mr. BARNES. No objection.

Mr. O'HARA. 209(3) requires that all mines in which the dust is not too wet or too high in incombustible content to propagate an explosion, be rock-dusted within 40 feet of all faces, including open crosscuts. Is that all right?

Mr. BARNES. No objection to that.

Mr. O'HARA. 209(f)(1) requires that all electric-face equipment used in a gassy mine shall be permissible, but allows the use of non-permissible equipment that was already in use until it wears out. Would you object to that provision?

Mr. BARNES. No, sir.

Mr. O'HARA. 209(g)(1) requires suitable firefighting equipment adequate for the size of the mine. What about that?

Mr. BARNES. It is rather difficult to answer that one in the way we think that the type of mine, and so forth, should be defined a little more. Be a little more specific.

Mr. O'HARA. I think your objection is that there is a good deal of difference as to what is adequate equipment in any particular mine; is that right?

Mr. BARNES. That is right; yes.

Mr. O'HARA. 209(g)(2) requires an examination for fire after every blasting operation. You wouldn't object to that?

Mr. BARNES. No, sir.

Mr. O'HARA. 209(g)(4) requires that lubricating oil and grease kept in face regions be in portable and closed metal containers.

Mr. BARNES. No objection.

Mr. O'HARA. 209(g)(5) requires that underground structures shall be of fireproof construction. You don't use many of those in small mines; do you?

Mr. BARNES. No, sir.

Mr. O'HARA. You have no objection to that?

Mr. BARNES. No objection.

Mr. O'HARA. 209(h)(2) requires that boreholes at least 20 feet long shall be kept in advance of the face and in the ribs of a working place

when such place approaches within 50 feet of an abandoned working that has been surveyed, and within 200 feet of other abandoned workings which cannot be inspected, and within 200 feet of any workings of an adjacent mine. You don't object to that; do you?

Mr. BARNES. No, sir; I think that is a State law in Virginia.

Mr. O'HARA. 209(h)(3) prohibits smoking and the carrying of smoking materials, matches or lighters, by any person in a gassy mine. Do you object to that?

Mr. BARNES. No objection.

Mr. O'HARA. 209(h)(4) requires that only permissible electric lamps be used by all persons in a gassy mine.

Mr. BARNES. No objection.

Mr. O'HARA. 209(h)(5) prohibits storage, handling, and use of blasting powder in all underground coal mines.

Mr. BARNES. No objection.

Mr. O'HARA. And 209(h)(7) provides for certain special safeguards for hoisting facilities. You wouldn't run into that very often; would you?

Mr. BARNES. No, sir.

Mr. O'HARA. Well, I think then that we could say there is substantial agreement on just what sort of measures promote safety. You would agree that requirements of the type that I have read to you, with the exception of those to which you expressed objection, would promote safety; wouldn't you?

Mr. BARNES. That is right.

Mr. O'HARA. Then I think the problem lies in those areas in which you voiced objection and in the general administration of the Coal Mine Safety Act if it is made to apply to title I mines; is that right?

Mr. BARNES. Mr. O'Hara, this is the reason we have suggested or advocated further study on this.

Mr. O'HARA. Well, you wouldn't need any further study to know that these things which you felt yourself were good safety measures are actually such.

Mr. BARNES. No, sir; not on those.

Mr. O'HARA. And yet, according to the testimony of the Director of the Bureau of Mines, in their inspections of title I mines, a fairly sizable number of violations of just those requirements were found in title I mines; isn't that correct?

Mr. BARNES. According to his statement, that is correct, yes, sir.

Mr. O'HARA. And at least with regard to those mines inspected, those title I mines, these hazards existed in some greater or lesser degree, depending upon the one we are talking about; right?

Mr. BARNES. That is right.

Mr. O'HARA. And you feel that it would be good safety procedure to go ahead and eliminate these; don't you?

Mr. BARNES. We have never been against safety, sir.

Mr. O'HARA. If the committee could draft a piece of legislation that would appropriately require compliance with these provisions that you and I have discussed and agreed upon, your group would not have any great objection to the application of the act to the title I mines, provided the administration problem could be worked out; is that correct?

Mr. TATE. May I answer that, Mr. O'Hara.

Mr. BARNES. Mr. Tate will answer that.

Mr. TATE. I would say substantially that is correct, sir. I would like to point out that this certified-man business as applied to title I mines is a big problem because in most of the States the only man who can use a flame safety lamp, and that, of course, is the test for gas, is one of these so-called safety persons. Now, there is a definite shortage of those persons. We feel that a preshift examination is desirable. We would like to make one, but if we make one and use a flame safety lamp, we are breaking the law. We feel perhaps a Federal inspector—this is a peculiar situation which should be straightened out—that perhaps a Federal inspector who uses a flame safety lamp during his work of inspection, perhaps he, too, is breaking the State law. We don't know and we think before a bill is passed that all of that should be subjected to study, should be subjected to talk between the various parties interested and we feel that that is one thing that we can definitely state without any argument, that that is definitely something that would shut down title I mines should this law be enacted as it is.

Mr. O'HARA. I have a statement from Mr. Ankeny regarding his proposal to solve that difficulty. I am not entirely sure at this moment that it would do so. I also recognize that there are certain problems in connection with certified person requirements and in connection with the various administrative features of the act that would have to be adequately dealt with. However, I feel that if the committee could adequately deal with them during this session of Congress that it would be in the best interest of the miners and the mine operators to do so, rather than wait.

You could probably establish that air travel is safer than travel in an automobile or on a bus, but I think at the same time the Federal Government has not hesitated to impose certain safety requirements on commercial airlines and I don't feel we should hesitate to do the same in mines if we can work this out in a manner that satisfactorily solves the problem of administration and the problem of certified persons and preshift examinations which you have discussed here today.

Mr. TATE. Could we have some type of agreement with your committee that we could sit down with you gentlemen or one of you and go over this matter and give you what our ideas are? Now, there are other items in this that are maybe not administrative items that are a problem.

For example, there is a Federal Coal Mine Safety Board of Review which is set up to hear appeals which is composed of, as you know, three men; a gentleman who is for the public, a gentleman to represent the workers in the mine, a gentleman to represent the operators. Now, we have no objection to that Board as presently set up. However, a Board which is to hear problems, appeals from title I mines should have representation from title I operators and also from title I mine workers and I submit that the present Board, even though it is a good Board, does not have that representation and therefore is not representative of our body. There is another problem.

Mr. O'HARA. That question would have to be referred to the chairman, but I am sure the chairman wouldn't object to your contacting

counsel and expressing your views on this subject for our consideration before we attempt the drafting or redrafting of this legislation.

Mr. ZELENKO. The Chair suggests, in answer to your question, that you communicate your suggestions to counsel in some form that will be explanatory. Counsel will confer with you, and so will the chairman or any other individual member. I suggest that you do that as expeditiously as possible. I assume that you know what your objections are at this time. I don't think it would take you too long to put them into some form that you could submit to counsel quickly as possible and we would be very happy to discuss it with you if you feel it is necessary.

Mr. O'HARA. I have no further questions, Mr. Chairman.

Mr. ZELENKO. Mr. Hiestand?

Mr. HIESTAND. I want to compliment the witness on the completeness of his statement and the fact that you have organized it with your colleagues to save the committee's time. You have made some very definite statements here, some of which concern me because in other fields I feel that Congress sometimes legislates to cure the symptoms of disease, rather than getting at the causes.

You said on page 19, toward the bottom of the page:

We must find the causes of the accidents and develop the methods to eliminate them.

It has been a fact that every accident has been investigated and the causes of it are listed and classified and so on and so forth, or am I in error in that assumption?

Mr. BARNES. Mr. Hiestand, could Mr. Holcomb answer that? We discussed it last night.

Mr. HOLCOMB. We would like to point out this; that in the past 10 years, especially since the inception of this act, the mining of coal has completely changed. I mean, the methods of mining. It has been more or less revolutionary, and the title II mines as far as the medium-sized mine is concerned is disappearing from the scene, and that the larger title II mines have mechanized. All this equipment we didn't have when this law was enacted. I mean, we had it, but it was scarce. Very few operators were interested in acquiring this equipment because of the high cost. Small mines and title I mines, the equipment now in use was not even in existence in 1952, and that is why we requested the chairman to allow us to submit statistics. We think that statistics are important because in title II mines the accident rate per man-hour of employment has doubled. We think that we need to find out why it has doubled, and it has doubled in the space of 9 years.

Mr. HIESTAND. Haven't adequate causes been classified and tabulated of the accidents in the last 9 years?

Mr. HOLCOMB. We don't think that they have because, for one thing, the State investigates accidents, but the causes of accidents, I mean, small accidents that lead up to major accidents are not classified. I mean, they are not studied. The human error that is involved has not been discussed at all, and we know from other industries and even in the coal mining industry as well that human error is a great cause of accidents and the studies that have been made on these accidents have not taken into account the fact that men should be educated, and we think that is one of the prime provisions.

Mr. Hiestand. Well, I am quite shocked that we haven't had investigations and tabulations of recent accidents, say in the last 9 years.

Mr. Holcomb. We have tabulations, but the tabulations are completely inaccurate and they are not complete.

Mr. Hiestand. I see. Just for my own information—and here I must apologize for my ignorance—in the proposed bill you mention a slope mine, a shaft mine, and a gassy mine. What other general types of mines are there?

Mr. Holcomb. You have strip and auger mining, and you have what we call drift mining or mining underground. That is on a horizontal plane.

Mr. Hiestand. Those are the only general classifications other than these three?

Mr. Holcomb. Yes, sir.

Mr. Hiestand. Thank you very much.

Mr. Zelenko. Mr. Daniels.

Mr. Daniels. The last witness just stated that the tabulation of accidents in the past 9 years in title II mines are completely inaccurate and incomplete. What do you base that statement on?

Mr. Holcomb. I didn't say in title II mines. I said in all mines.

Mr. Daniels. In all mines.

Mr. Holcomb. If I said title II, I qualify that, and I would like to cite one accident here on the human error problem. There was a man killed just a very short time ago. He was entering a mine, and he reached up inadvertently and grabbed a trolley wire. Why, nobody knows. In other words, we need to find out why those things happened, and then we need to take steps to prevent those things from happening. The man was killed. We don't know why he did it, but if we can find out why, then we can prevent things like that in the future.

Mr. Daniels. Well, of course, he should not have done it if he was familiar with the nature of the mine and the operation of the mine.

Mr. Holcomb. The man I am talking about had about 25 years of experience in mining.

Mr. Zelenko. Will the gentleman yield?

I follow logically the gentleman's point that we have to find out the cause of human error.

Mr. Holcomb. That is right.

Mr. Zelenko. I think the gentleman would prefer that we have complete automation which then would eliminate human error.

Mr. Holcomb. If we could have complete automation and eliminate human error, we would have to eliminate humans, because humans have the desire to eat.

Mr. Zelenko. That would apply to management also; wouldn't it?

Mr. Daniels. In the course of Mr. Barnes' testimony reference was made to the fact that the statistics admitted by Mr. Ankeny with reference to title I mines were incomplete and inaccurate.

As a representative of the title I mines, have you any idea of the number of small mines in this country and how many people are employed therein?

Mr. Holcomb. We have reason to believe there are more than 8,000 title I mines in the country employing more than 50,000 men.

Mr. Daniels. What do you base that reasoning on?

Mr. HOLCOMB. We base that reasoning on one thing; that in the State of Kentucky there were in operation on January 1, 1960, 2,540 title I mines employing 20,000 and some over 100 employers, for an average of 8.6, if I am not mistaken, per mine. If we apply that to the whole Nation, to the total of 8,000 mines, then we can see that 50,000 people employed is a conservative figure.

Mr. DANIELS. At the same time that is just a guess, is it not?

Mr. HOLCOMB. It is just a guess. All statistics on title I mines are a guess.

Mr. DANIELS. I yield to Mr. O'Hara.

Mr. O'HARA. If the figures on the number of mines and the tonnage produced by title I mines is incomplete, perhaps information on the number of accidents in these mines is also incomplete. Isn't that a possibility?

Mr. HOLCOMB. On the number of nonfatal accidents. It is very easy to get fatal accidents from the newspapers.

Mr. O'HARA. Nonfatal.

Mr. HOLCOMB. On the number of nonfatal accidents it is my opinion that their statistics are incomplete.

Mr. O'HARA. Perhaps there have been some that we aren't aware of.

Mr. HOLCOMB. That is right.

Mr. O'HARA. And on this reporting business, in the case you spoke of, I presume the cause of the fatal accident was listed as electrocution?

Mr. HOLCOMB. That is right.

Mr. O'HARA. You don't complain this is incorrect, do you? Your complaint is that it doesn't go far enough or deep enough.

Mr. HOLCOMB. It doesn't delve deep enough to give why a man would do something like that, and to take the steps to train a man in the future, the men that will be in there at a later date, not to do those things.

Mr. O'HARA. Then I think your answer to Mr. Hiestand's question might have given the wrong impression. You don't believe these statistics on accidents and their causes are inaccurate; you just believe that they are not complete enough; is that it?

Mr. HOLCOMB. I meant they were inaccurate in that the number of accidents is not known, and that they do not delve deep enough into the cause of why the accident happened.

Mr. O'HARA. The intent of this legislation is to promote mine safety. If, because of enactment of the proposed bill, one life was saved, do you think that would be sufficient justification for its enactment?

Mr. HOLCOMB. No, I think that the public interest also needs to be served. In other words, why save 1 life and starve 50,000 men and their families to death?

Mr. O'HARA. You feel that the enactment of this law would create an economic situation whereby many men would be thrown out of work?

Mr. HOLCOMB. I not only feel that, I am quite certain of it.

Mr. O'HARA. Would the saving of human life be unimportant?

Mr. HOLCOMB. No, sir, I don't say that the saving of human life is unimportant, but I think that facts have been presented before this committee to show that this will not substantially contribute to the saving of human lives.

Mr. DANIELS. Well, you heard Mr. O'Hara address a number of questions with respect to certain provisions of the act to Mr. Barnes.

Mr. HOLCOMB. I most certainly did.

Mr. DANIELS. And in going over the list as to whether or not Mr. Barnes agreed with those safety provisions, I believe Mr. Barnes disagreed on only two or three provisions.

Mr. HOLCOMB. That is exactly right, but I should like to point this out: that in the States that we represent, our State laws also cover those things, and we have been—I mean, we obey those laws now, and that our State inspectors are much more rigid than the Federal inspectors, but we do know from past experience that Federal inspectors apply their regulations much more stringently to nonunion mines, and the reason for that is that they don't want these nonunion mines to operate. I mean, that is strictly an opinion, you understand, but that is the opinion we have formulated from the fact that we do know that they are more stringent.

Mr. DANIELS. Well, do you intimate there is some collusion going on between the Federal inspectors and the unions?

Mr. HOLCOMB. I think that if we were given time we could present accurate evidence to prove that statement.

Mr. ZELENKO. Will the gentleman yield? Why don't you present that to the U.S. Attorney? It would be a crime if your opinion is based on fact. That should be the subject of a grand jury investigation, not the subject of congressional inquiry. If you have any evidence on collusion, which means that a Federal officer is not doing his duty, that he is guilty of malfeasance or nonfeasance, it is your duty as a citizen to present it to the Attorney General of the United States or to the enforcement agency of your State, but not to complain here and pass it off as an opinion. That is not a question, sir. That is a statement.

Mr. DANIELS. No further questions.

Mr. ZELENKO. Mr. Martin.

Mr. MARTIN. Mr. Barnes, in your testimony, in your statement, you gave some reasons why the number of title II mines had decreased quite materially in the last few years. I wonder if you could give us any reasons why the number of title I mines have increased during this same time?

Mr. BARNES. Yes, sir; I believe I can. In my own case I employ several men. I would say a large proportion of them that worked for large mines.

Mr. ZELENKO. Will the gentleman yield for one moment, please? Mr. Martin, would you suspend for a moment?

I am going to ask at some future time, sir, you come back to the committee, and I will have counsel go over the matter with you, to learn what evidence you have, if any, of any collusion between a Federal officer, and, as you say, union officials, because the integrity of the Federal officials has been attacked. If you have any basis in fact the committee will be very happy to hear it. So at some time in the near future, we shall invite you to give us any information you have, and with that I yield back the floor to Mr. Martin.

Mr. MARTIN. Go ahead, Mr. Barnes.

Mr. BARNES. A good many of my men have worked in the large mines. One of them particularly closed because it had worked out.

The other closed because of financial difficulties, and those men needed job opportunities. These small areas of coal were available, and they were able to go in and take out this coal. The opportunity was great there, the only employment they had, and I think that they want to work, and they are proud people, and they believe they are doing the country and their families—they are being helpful in trying to go on and seek employment rather than shrug their hands and go on relief. It takes not a great deal of investment to drive into the hillside, as most of these mines are, to start a mine, and the opportunity was there, and they took advantage of it, and that, I think, is the main reason that they have increased.

Mr. MARTIN. Well, you would say then that the greatest reason for the increase in the title I mines has been economic conditions where these fellows have been without jobs?

Mr. BARNES. Yes, sir.

Mr. MARTIN. One other question I would like to ask you in regard to your State laws on safety inspection versus the proposal to bring your title I mines under Federal inspection. How stringent, relatively speaking, are your State laws? Let's say in your own State of Virginia in relation to Federal regulations?

Mr. BARNES. Well, I might say on that provision that we brought out what we called the preinspection or what we also call the fire boss; that the State of Virginia requires 3 years' experience in a gassy mine for anyone to be eligible to legally handle a flame safety lamp. That is a very stringent requirement. I believe that it is more stringent than the Federal law is in that case.

Mr. MARTIN. Would that be true, Mr. Holcomb, in the State of Kentucky, too, or can you give us some information in regard to the variance of your State regulations and Federal regulations?

Mr. HOLCOMB. Well, a certified man in the State of Kentucky under our laws is a man who has had 5 years of experience in a coal mine and who has passed a very rigid examination after study and instruction. That man is known as a first-class mine foreman.

Mr. MARTIN. How often does he inspect your mines under your State law?

Mr. HOLCOMB. Under our State law a foreman is only required in a gassy mine. We also have second-class mine foremen, but our second-class mine foreman cannot use a flame safety lamp. Our mines are inspected by the State inspectors at least once each 3 months.

Mr. MARTIN. Once each 3 months?

Mr. HOLCOMB. Yes, sir.

Mr. HIESTAND. I have heard it said that in the small mines a number of the operators themselves are qualified and do this preliminary inspection, whatever term you call it. Is that a fact, the operators themselves?

Mr. HOLCOMB. Yes, sir. There are quite a few operators who were first-class mine foremen in the large mines that have been shut down, but I should like to point out this; that in the State on January 1, 1960, according to information furnished by our State bureau of mines, there were only 592 qualified, certified men.

Mr. HIESTAND. Including operators?

Mr. HOLCOMB. Including operators, working in coal mines in the State of Kentucky; yet there were 178 title II mines and 2,540 title I mines.

Mr. HIESTAND. Thank you.

Mr. ZELENKO. Mr. Holcomb, I shall direct counsel to communicate with you and give you the opportunity to speak with counsel in reference to the statement that you made that there is collusion between Federal mine inspectors and the mine union. If the committee then feels that there is substance and you present any evidence, we shall conduct hearings on that subject because that is one of the matters which is in the special province of this committee. I tell you now that if the committee does find that there is any evidence of crime, we shall forward it to the appropriate enforcement agencies. Before you leave today, would you be good enough to give Mr. Wingate your name and address. He will arrange with you to present any evidence that you have to back up your statement.

Mr. HOLCOMB. I shall be happy to meet with him.

Mr. ZELENKO. Very well.

Before we proceed with the agenda for this afternoon, when the committee will sit from 2 p.m. until as long as its business requires this afternoon, I want to ask whether the following people are here?

Is Mr. Collins here, Stamper Collins?

Mr. Ritchie? Mr. Kashner? Mr. Parker? Mr. Patterson? Mr. Dickson?

Mr. DICKSON. Yes, sir.

Mr. ZELENKO. Mr. Thompson?

This afternoon the committee will hear Congressman Jennings, who I assume will speak in opposition to this legislation; Mr. Kashner; Mr. Dickson; and Mr. Thompson.

The committee will resume at 2 o'clock, but before we adjourn Congressman O'Hara has a question and counsel has a question or two to ask.

May I also indicate to those people that were going to submit statements or statistics that they do so before the end of this week.

What is your name, sir? You were going to submit some proposals to counsel.

Mr. TATE. Mr. Tate, T-a-t-e.

Mr. ZELENKO. Mr. Tate. As we discussed before, I assume you have your proposals or you know what they are. I suggest you get them to Mr. Wingate by the end of this week, and then he will discuss any matter he wishes with you.

Mr. O'HARA. I would like to address a question to Mr. Holcomb. You have a second-class fire boss?

Mr. HOLCOMB. No, a second-class mine foreman.

Mr. O'HARA. Under the law of the State of Kentucky, are you required to have an inspection of the roof, the face, and the rib conditions and so forth and so on by a second-class mine foreman in a nongassy mine?

Mr. HOLCOMB. It depends on the size of the mine. In a mine employing 30 or more men—requires, I mean, 30 or fewer men, a second-class mine foreman can perform the duties of a first-class mine foreman, except for preshift examination for gas.

Mr. O'HARA. That is in a gassy mine?

Mr. HOLCOMB. In any mine.

Mr. O'HARA. But, for instance, in a nongassy mine, classified nongassy under the laws of Kentucky—

Mr. HOLCOMB. Yes, sir.

Mr. O'HARA. Is there a requirement that a daily inspection be made by a second class mine foreman?

Mr. HOLCOMB. There is a requirement that a daily inspection be made for dangerous conditions, not by a second class mine foreman, because our mines employing fewer, nine or fewer, require no foreman at all. A person may be designated by a State inspector.

Mr. O'HARA. Well, in discussing the availability of certified persons, as we have here today—

Mr. HOLCOMB. Yes, sir.

Mr. O'HARA. What would be your reaction if persons in Kentucky, who are certified as second class mine foremen were permitted to carry out the required inspections of 209(b)(7) and (8) in these nongassy title I mines?

Mr. HOLCOMB. In the State of Kentucky the law specifically says that only a first class mine foreman may use a flame safety lamp. Now, a second class mine foreman is a man who has taken the examination, but he has failed to make the grade necessary to become a first class mine foreman. In other words, his knowledge is considerably less than the knowledge of a first class mine foreman.

Mr. O'HARA. Well, nevertheless, what if the Federal law in its application to title I mines in the State of Kentucky were to consider second class mine foremen as certified persons for the purposes of making the daily inspections in nongassy mines?

Mr. HOLCOMB. I don't think that the number even of second class mine foremen would be adequate to serve the number of mines involved, because we have—I don't know the number, I am sorry, but we have a considerable number of our mines employ fewer than nine men. Under our State laws not even a second class mine foreman is required, but I can't fully answer that because I don't know the number of second class mine foremen that we have.

Mr. BARNES. Mr. O'Hara, may I say something? In Virginia and also West Virginia, the two States require that anybody that is legally appointed or authorized to use the flame safety lamp has to have 3 years in a gassy mine. I believe that is not peculiar or particularly applied to Kentucky. West Virginia and Virginia have the same law on that particular thing.

Mr. ZELENKO. Counsel has a question or two for you.

Mr. WINGATE. Apparently some members of the committee were concerned with the size of the small mines. I have a letter here directed to the chairman from Turner Elkhorn Mining Co., producers of Elkhorn coal. Are you familiar with that company, Mr. Holcomb?

Mr. HOLCOMB. Yes, sir. I am not familiar with the letter, but I do know the man that operates the mine.

Mr. WINGATE. We find that on the letterhead in smaller print there are six subdivisions: the Twin Seam Elkhorn Mining Co., Kathryn Elkhorn Coal Co., Imperial Elkhorn Coal Co., Liberty Elkhorn Mining Co., Floyd Elkhorn Coal Co., and Guaranty Mines Corp. Is this considered a small mine that is under 15?

Mr. HOLCOMB. Well, let me state this; that the Turner Elkhorn Mining Co. has been a large mine for any number of years, for at least 25 years, to my knowledge, and I would think that the Turner Elkhorn, I mean, I am not positive of this, but I imagine that the Turner Elkhorn Mining Co. is acting as a representative for a number of small mines, and that those small mines are owned individually. In fact, in other words, they purchase the coal of these small mines. To my knowledge, Turner Elkhorn Mining Co. does not even operate a mine at the present time.

Mr. ZELENKO. Let me ask you this, sir. Are they a holding company?

Mr. HOLCOMB. They in all—

Mr. ZELENKO. I withdraw that question.

Do you know of any instances where one company has broken its operation up into one, two, three, four, five, six or any number of small mines and then classifies itself as a small mine, but is in effect one company? Are there any such?

Mr. HOLCOMB. No, sir, I know of no such instance.

Mr. ZELENKO. Do you say this is not one company, if you know?

Mr. HOLCOMB. All those companies—like I said at the beginning I know the history of Turner Elkhorn Mining Co. as far as the company is concerned. As to their internal affairs, I am not familiar with them, and I think that Mr. B. F. Reed, who is president of Turner Elkhorn Coal Co.—

Mr. ZELENKO. You are not bound by your statement on it. We know you are not familiar with it.

Counsel has another question.

Mr. WINGATE. You say you know something about the Turner Elkhorn Mining Co. Do you know anything about Twin Seam Elkhorn Mining Co.?

Mr. HOLCOMB. No, sir.

Mr. WINGATE. Have you ever heard of any of the other six subdivisions I mentioned?

Mr. HOLCOMB. No, sir.

Mr. WINGATE. They are all supposed to be in Kentucky. You never heard of them?

Mr. HOLCOMB. No, sir, I never heard of those mines. I have heard of Turner Elkhorn Mining Co. I don't claim to know the name of every mining company in the State of Kentucky.

Mr. WINGATE. You say you are familiar with the Turner Elkhorn Mining Co. Would you consider them a small company, title I or title II?

Mr. HOLCOMB. I would consider them a major company.

Mr. WINGATE. Your opinion will still subsist if I would inform you that the letter was sent here on behalf of these small mining companies?

Mr. HOLCOMB. I would assume that he was attempting to represent several small mining companies.

Mr. WINGATE. No further questions.

Mr. ZELENKO. The committee stands adjourned until 2 o'clock.

(Whereupon, at 12:05 p.m., the subcommittee adjourned to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

Mr. ZELENKO. The committee will come to order.

Mr. Barnes, I believe we practically concluded with your testimony. I want to ask you one more question, although I believe Mr. Holcomb answered it this morning. That is, do you know of any companies that operate the way this one company does that represents itself as a company, with six minor subsidiary companies? Are there any others like that in the industry?

Mr. BARNES. Could I refer that question to Mr. Ratliff?

Mr. ZELENKO. Certainly.

Mr. RATLIFF. Mr. Chairman, I know this must be a confusing situation as to just what method of operation is employed in this type of mine. It is always pretty hard to visualize the thing if you haven't actually seen it in operation and haven't been around the coal-mining industry.

I can give you a concrete illustration in my own case.

Mr. ZELENKO. All right, if you will make it brief.

Mr. RATLIFF. I will. Even to understand this truck mining business, you have to understand a little bit about the history of coal mining in this area.

Mr. ZELENKO. I didn't want to open up a collateral subject, but I just want to know whether or not there are any other situations like this? I might say we have received a number of letters with captions indicating the name of one company and then with a list of five, six, or seven companies underneath. What I want to know is this: are there any other companies, to your knowledge, and you are not bound by your answer, where we have this one company with, let's say, a half dozen subsidiaries? Are there any other such companies in existence which are title I companies?

Mr. RATLIFF. Your question is, "Are there title I companies that have various subsidiary companies?"

Mr. ZELENKO. Yes.

Mr. RATLIFF. No, sir, in my locality, of course. I can only answer better for that than for your operation there. There are none in my locality. If you will permit me I would like to go into this in a little detail.

Mr. ZELENKO. Well, I do not wish to preclude you, but that is collateral to the main issue of mine safety. It did come to the attention of the committee where some companies profess to be small mine companies and really were just as large perhaps as some of the title II companies. Actually they had a dozen or so subsidiaries in which they had financial interests, or controlling interests, and had divided up their operations so as to comply with the minimum number. Now I say that evidence of that has come before the committee, but it is unimportant for the committee to take it up at this time because our question is in regard to the safety of mines, and not the financial setup of the companies.

Mr. RATLIFF. Yes, I believe this pertains directly to the safety aspect.

Mr. ZELENKO. All right, if you can give us a brief answer on that, because we want to get on with the rest of the witnesses, that will be all right.

Mr. RATLIFF. The thing that is important, I think, in this whole picture, and this is why these people are concerned, is the part played by the tippie which shifts this coal. I think that is where the suspicion has been cast that this is merely a device to circumvent the law while, as a matter of fact, in our locality, and I think this is generally true throughout this area, on the property of ours, we put a sidetrack there immediately after World War II, and bought the coal from these small mines operating in that vicinity, shipped it to the steel plants, overseas, and so forth. These people who operated those mines were formerly employees of large mines. These large mines were the properties of outside interests, in the main, and then it became unprofitable to mine during the depression, they left, and they left a small inaccessible tract of coal that would not attract a large operation. Therefore, to seek employment, to get an income, these people did the only natural thing. They utilized the skills they had in mining and, on a free enterprise system, put in small mines. They were limited by their capital and by the amount of coal available and that is the thing that is directly involved here. You have to differentiate.

Mr. ZELENKO. Well that doesn't answer the question. In other words, the company that owns the sidetrack controls the shipping of the mines?

They control the coal from these people?

Mr. RATLIFF. No, sir. For example, you have a situation in an agricultural product where a man would buy wheat and ships it on to the market?

Mr. ZELENKO. Yes. But if they did not want to transport that coal on the little sidetrack, that small miner would be stuck unless he carried it on his back.

Mr. RATLIFF. No, sir. He sells coal just as you would on a free market, wherever he wishes to sell, at the highest price.

Mr. ZELENKO. Well we do not want to go off on another subject. You see, this is similar to a company I know of that sells coffee to the restaurants of New York but owns most of the restaurants because of chattel mortgages. I have a friend with fleets of taxis, maybe 300 or 400 of them, and each 1 or 2 taxis are under a separate corporation, separate owners, but he runs them and controls them all.

Of course, he gets cheaper insurance if he goes into it on the wholesale rate. The point is, there is something like the corporate veil here, just like the lawyers say, but I would agree with some of the information we have, and, as I say, it is collateral to this issue and some of these people are not as small as they profess to be.

All right, thank you very much.

As the other committee members stated, you have been most helpful here because you brought some facts before the committee which will be of interest to it in its consideration of the bill. In other words, you got down to bedrock here and gave us facts to work on. Again, I thank you.

Now, Congressman Jennings, are you ready?

Mr. JENNINGS. If the rest of the subcommittee is coming in, I would be delighted to wait until such time.

Mr. ZELENKO. Very well, if you have the time, we would prefer that you wait so you can appear before the full subcommittee.

Now is Mr. Clarence E. Kashner, president of the Independent Miners, Brakermen, and Truckers and Associates here?

Mr. KASHNER. With the permission of the committee, I would like to relinquish my time and associate myself with the remarks of Mr. Barnes.

Mr. ZELENKO. Very well.

Mr. Dickson, do you wish to testify at this time?

Mr. DICKSON. Yes.

STATEMENT OF ROBERT DICKSON, DIRECTOR, KENTUCKY RIVER MINING INSTITUTE AT HAZARD, KY.

Mr. ZELENKO. Will you please be good enough, sir, to give your name and title to the reporter and tell us also whether you have a prepared statement that you can give to the committee?

Mr. DICKSON. My name is Robert Dickson, director of the Kentucky River Mining Institute, Hazard, Ky.

This is not a prepared statement.

For 13 years, I have been safety director of the Kentucky River Mining Institute, whose members operate in the Kentucky River district. Prior to 1948, my work in mine safety included 12 or 13 years with the West Virginia Coal & Coke Co., Valley Camp Coal Co., and West Virginia Department of Mines.

In fact, my whole adult life has been spent in and around the mines, and I have had experience in all phases of mining. I appear before you today as a representative of the small mine operators in the Kentucky River district, particularly located in Knott and Letcher Counties of Kentucky.

As I stated, Mr. Chairman, I do not have a prepared statement, but what I have to say is mostly from my notes and also off the cuff. However, I would be glad to forward a prepared statement later.

Mr. ZELENKO. Very well.

May I ask, Mr. Dickson, how long do you think you will take with your remarks?

Mr. DICKSON. About 10 minutes. It will be brief because of the fact I think the previous testimony has had much to say about it, just as much as I have.

Mr. ZELENKO. Very well.

Mr. DICKSON. 649 truck mines are in the 2 counties employing 4,000 miners, with an average of 5 dependents, or approximately 20,000 individuals being dependent on truck mines in these 2 counties. The operators of, and the men employed, in these mines are, for the most part, men who have been employed in larger mines in the past, but have been separated from employment due to advanced mechanization and other causes. That has already been mentioned.

These small operators have secured small tracts of coal land averaging 10 to 15 acres, some of it from abandoned peat mines and some of it from virgin territory. They are firmly of the belief, and I am expressing their thoughts in the statement, that the passage of the small mines bill would impose real hardships on them and that the passage of the bill is not being pursued in the interests of safety and that there is no further need for policing of their operations, nor any

further duplication of efforts of the State departments of mines and the U.S. Bureau of Mines.

Our State mining laws are adequate. Our State mining inspectors are well qualified to cope with the enforcement of the law, as evidenced by the fact that they have authority to close down a mine, or part of a mine, for violations of the law.

Should this bill pass granting Federal inspectors the same authority where less than 14 men are employed, there certainly will be an unnecessary duplication of effort. It would be the same thing as sending the National Guard to supplement or take over the duties of the State police.

What effect would the passage of this bill have upon the small operators? Would the accident record be improved? How can we tell that it would be improved? Is there any proof that by the passage of this bill that more men's lives will be saved. I have heard it remarked many times that you cannot see too much through a crystal ball. But will less fatalities occur? It has only been assumed that there might be less. But the respected Director of the U.S. Bureau of Mines says, and I quote from an article of his in the United Mine Workers Journal of February 1.

We have no magic formula—

And again I quote:

Mine inspections and enforcement of State and Federal law and working codes in themselves are not enough. More education is the answer to bring accidents to a minimum.

In the past 12 years, I have personally conducted classes in safety, first aid, and job relations. In that period, 861 men have received the benefit of this training. About 90 percent of them are employed in truck mines. It is true, and I am referring to the 2 counties that I am talking for, that 5 fatalities have occurred in the past 2 years in the truck mines of the 2 counties mentioned, but when you consider that 4,000 men per day are employed over that period it is not a bad record.

I know, from personal inspection, that many of the small mines are kept in good condition and do not deserve to be called "dog holes." Let us take a look at Kentucky's record for the past 5 years, and I am talking about the State of Kentucky now. First, we will discuss fatalities in rail mines and in truck mines.

In 1956, the rail mines had 37 fatalities and the truck mines had 37 fatalities and open cut had 1, for a total of 75.

In 1957, the rail mines had 34, the truck mines had 25, 2 in the open cut mines, for a total of 61.

In 1958, the rail mines had 28 fatalities, the truck mines had 20, and the open cut mines had 1, a total of 49.

In 1959, the rail mines had 19, the truck mines had 23, and the open cut mines had 1, a total of 43.

In 1960, last year, the rail mines had 29 fatalities, the truck mines had 26, the open cut had 2, for a total of 57.

The total for 5 years in the rail mines is 147 fatalities and in the truck mines 131.

In the year 1959, there were 15,813 men employed in 178 rail mines in Kentucky, and Mr. Holcomb answered a question on that, and 20,071 men employed in the truck mines, and we had 2,540 truck mines. We are reasonably sure that more men have been added to the

truck mines' payroll during 1960. Over a 5-year period there were 16 more fatalities in the rail mines than there were in the truck mines. This would indicate then that the truck mines had the better safety record.

It is erroneous to base accident statistics on tons produced. We have heard much about the small tonnage that the small mines produced. Accidents involve human beings, not tons produced, not tons of coal. Man-hours of exposure is the most realistic basis for computing mine safety experience. In support of this contention, I quote from the latest release of the Joseph A. Holmes Safety Association with respect to awards for mine safety.

Awards based on tonnage produced without a fatality are abolished. The association felt that it is more realistic to use man-hours worked, or the exposure period, when comparing various safety records and experiences.

The record does not indicate that Public Law 552 has actually improved safety in and around the mines nationally. While it is true that there have been fewer fatalities in most of the years since 1953, when this law became effective, the reduction in fatalities has not been on a comparable basis to the reduced man-hours of exposure resulting from a decrease in people employed at the mines.

It is estimated that there were about half as many men working in the mines in 1960 as compared to 1953, but fatalities have not been reduced. It is at the same proportion. I might add that in my own particular area of Hazard, Ky., 10 years ago we had 31 rail mines, large mines. They were employing 7,000 men. Today we have 4 rail mines that employ 1,200 men. Where have these men gone? They have gone to get their bread and butter from these truck mines the best way they can. In fact, there were more fatalities in 1957 than there were in 1953, and I have the record of that, also from the United Mine Workers Journal.

It is a known fact that employment around the small truck mines has substantially increased in the past 5 or 6 years. The fatality record in Kentucky for the past 5 years, which I quoted earlier, shows that fatalities in small mines have decreased while man-hours of exposure were increasing. The same is not true with the big mines. This leads one to the conclusion that further regulation of the small mines would not improve their safety records.

Please do not misunderstand me, however. I do not advocate that controls are unnecessary in the improvement of mine safety. I do believe however that the great need in mine safety is for further education and not for regulation.

The need in mine safety is for further education and not for regulation. The various State departments of mines are both capable and competent to handle mine inspection for both small and large mines. There is no reason for duplication by the U.S. Bureau of Mines of the work done by the State departments of mines. The U.S. Bureau of Mines would perform a far greater service to the industry if its efforts were confined to broadening its safety educational program and research program, the purpose for which it was originally created.

In my 25 years as a mine safety director I have never opposed any effort which would save men's lives in the mining of coal, but I am now, and have been in the past, opposed to unnecessary duplications

and costs which are not based on fact or which have no factual basis for improving mine safety.

Thank you, sir.

Mr. ZELENSKO. Does that conclude your statement?

Mr. DICKSON. Yes, sir.

Mr. ZELENSKO. Mr. Daniels?

Mr. DANIELS. Mr. Dickson, you have testified here with respect to the laws pertaining to the State of Kentucky. Are you familiar with the laws in the other States of the Union?

Mr. DICKSON. No, sir.

Mr. DANIELS. That is all.

Mr. ZELENSKO. Mr. Martin?

Mr. MARTIN. I don't believe I have any questions.

Mr. ZELENSKO. Thank you very much.

Mr. James W. Thompson, secretary of the Independent Miners and Associates.

Mr. THOMPSON. With your permission, I would like to associate myself with the testimony of Mr. Barnes.

Mr. ZELENSKO. Apparently, we have run out of witnesses, so at this time we would be very happy to hear from our distinguished colleague from Virginia. I am sure he speaks for the people in his area and speaks most eloquently. We welcome you here. You may take as much time as you deem necessary.

STATEMENT OF HON. W. PAT JENNINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. JENNINGS. Thank you, Mr. Chairman.

First, I want to thank you and the members for the opportunity to testify before this select subcommittee. I would also like to state, Mr. Chairman, that I have had a number of requests from some of my people who would be very much interested in coming before your subcommittee and offering some testimony in light of what has taken place in the developments of the hearing today and in light of the fact that I am introducing a bill today that I think deserves consideration along this same line.

I first want to reiterate my position which I stated over the years, and that is I certainly am not opposed to safety, either mine safety or safety of any other nature. As a matter of fact, my record in 6 years in Congress has been consistent in supporting safety legislation and in supporting appropriations for carrying out the various safety titles that are on the books.

Also, I would like to preface my remarks by inviting the members of this subcommittee to come down to my district and take a look firsthand at the title I and title II mines and to take the Congress to the people where those who are not financially able and for other reasons cannot attend the hearings in Washington, may have an opportunity to give you their views and where you may have an opportunity to inspect for your own knowledge the title I and title II mines. We actually invite you to go into these mines and see the conditions and know exactly what we are talking about before legislating.

I would like to say also, Mr. Chairman, that I feel that we have overlooked, to some extent, an area of consideration in this bill and that is the Federal-State relations. I think the relation between the State inspectors and the Federal inspectors has been one of cooperation. I think as a result of the original act that mine safety has been increased, and I think it is generally conceded that the State inspectors have a proper role in this job of inspecting the mines.

As a matter of fact, I believe I am correct in saying that a study commission during the last administration recommended that this is an area that could properly be turned back to the States and that they might carry on the inspection of mines which were located in the State boundaries. So I would like to say that perhaps this additional legislation to a great extent is unnecessary.

I know that the comparison has been used about a bus, that if it carried more than 15 people a certain rule would be applicable, and if it carried less than 15 people another rule would be applicable. I don't think that is a completely fair analogy for this reason. I have a farm truck and I have a truck that is used in my business. Prior to coming to Congress, I had some over-the-road tractor and trailer trucks. They were both subjected to inspection, safety inspection, but my farm truck and my garage truck, motor company truck, was subjected only to a State inspection and my over-the-road trucks were subjected to ICC inspection and I felt that they should be but I don't think it would be fair and proper to ask the Interstate Commerce Commission to come down and inspect my farm truck and apply the same regulations to that farm truck as are applied to a tractor and trailer rig that travels from one coast to the other.

Now a great deal has been said about the inspection or the hearings that the Director of the Federal Bureau of Mines would hold. I would like to pose these questions: What is going to happen to these small miners while these hearings are being held? What is going to happen to their operation while the Secretary or the Director is making up his mind as to which of these sections will be applicable from the Mine Safety Act and which will not be applicable? What is going to happen to these people during that time?

Now you have heard the testimony to the effect that many of them are going out of business, and that concerns me a great deal. You have also heard it testified here that the standards provided in the code determines the regulation or the standards by which these people are going to be judged. I have no way of knowing whether that is 100 percent true or not, but apparently there is a great deal of fear that the code standards will be the act, regulations, or standards by which these mines are judged.

I call your attention to just one that was brought to my attention last fall when I was touring my district, and that is the fact that a regulation or an order was issued by the Assistant Director of Mines that any mine would be closed where a piece of machinery was running over a cable that was supplying the electricity. Now if those same types of standards or interpretations were applied to many of the small mines, I can see why they would be genuinely concerned.

I would also like to call your attention to the fact that it is my understanding that the Federal inspector does not have one sheet for

his inspection and report whether he is reporting on the sections of the act and have another where it pertains to the code.

Instead he lists on one sheet all of the violations and these little operators simply do not know which one is code and which one is act and it would be very confusing for them and it would be detrimental to their operations. I definitely feel that the law should be carefully examined, even in its present state, so as to eliminate the things that are not applicable to the small mines and I think both the operators and the men who work in the mines should have a clear understanding as to which of these provisions are applicable to the small mines and which are not applicable to the small mines.

Now I heard this question asked this morning: "Why are these small mines increasing and why are the large mines decreasing?" I think, to a great extent, it is a matter of economics. The larger operations have, because of the lack of orders, of necessity, had to go to mechanization because of high prices, and they have to lay off some of the men who have been producing the coal.

To make a comparison, I think in my district we have a large title II mine that produces in excess of 50 tons of coal per man per day, and that includes the men on the outside of the mine and men on the inside of the mine. Now the average for these little mines would be something in the neighborhood of possibly 10 to 15 tons per man per day. Now why the difference?

One of the differences is the fact that these small mines are operating a seam of coal generally that was left by the large operators. It wasn't economical or it wasn't practical for them to take their large machines into these small seams and in many cases these seams of coal are owned by the larger operators or by the large coal companies, and they lease out to the small operators who go in with a pick and shovel or with some improvised machinery, made through their own ingenuity, and they bring this coal out which was left there.

Now are we going to abandon those resources? That is one of the reasons these smaller mines have increased. Another reason they have increased is due to the fact that the large mines, because of mechanization and the lack of orders, have laid these men off and because they are hard working and they are ingenious, although in many cases they are uneducated, and because they have a lot of native intelligence and ability they want to work. So what do they do? They go out to one of these small mines and get a job. It is true it probably does not pay as much as the larger operation. It is true they do not mine nearly as much coal, but they are self-sustaining and they provide their families with an opportunity to go to school. They keep themselves off of the relief rolls and off of the commodity distribution lists.

Another reason why we have more of these small mines is because of the high cost of mechanized machinery. The smaller boys just cannot afford this high-priced equipment, consequently four or five or even more families have banded themselves together and have gone out and opened up one of these small mines.

Counsel referred to what I believe to be a situation that perhaps exists in my district also. A large tipple-processing-washing plant was formerly operated by one of these large companies. They mined out a 6-foot, 10-foot, or 12-foot seam of coal. It was no longer

feasible for them to keep their machinery and their operation intact and operate when this dwindled down to 2 or 3 feet or even 5 feet of coal, so what happened? They leased it out to the very small individual operators. Many of them had been foremen or many of them had been experienced miners in their own operation, but they were closing down and leased these small plots of ground to those people and they combined under one operation insofar as their processing or their tippie was concerned and they all operated under different names.

This was not for the purpose of circumventing title I and title II. It was just a matter of pure economics. I would imagine that is the same type of situation that was referred to a few moments ago.

Now, Mr. Chairman, I think I have seen evidence in the testimony that I have listened to today of a wide area of agreement in this bill. I think that all of these people are interested in safety. I think the big operators, I am certain the United Mine Workers are interested in safety, and I know these small mine operators are interested in safety because they are complying with practically every one of the acts, every one of the sections of the act today, even though it is under the State's jurisdiction. I realize you have had some testimony here from the Bureau of Mines, that they have found several discrepancies, but I would imagine also that they have found several discrepancies in the larger mines.

I would like to point out what happened in my district over the past few years. It was my understanding that at the beginning this bill was created to prevent major disasters. Those disasters were described as "five or more men."

Now to me a major disaster is just one man if he is the head of a family. That is a major disaster to that family. But the intent and purport of this bill, in its origin, was the fact that this was to prevent major disasters and it did not necessarily deal with the day-to-day factors. I think a great deal has been done along that line. I would be less than honest if I did not tell you that I think great strides have been made in safety and that the men who have conscientiously enforced these regulations are to be commended and that those who have not I am sure they will have their own reward. But in my own district, where we have probably some of the largest title II operations that exist anywhere in the country, and where I believe we have as many small mines, title I mines, that exist any place in the country, the largest disasters have been in the title II mines. In other words, this inspection has not prevented those deaths. As a matter of fact, in the disaster at Bishop in 1957, which is in my district, causing 37 deaths, 24 of the people that were killed in that one explosion were my constituents. This mine is located on the Virginia-West Virginia border. It is true it comes under the jurisdiction of the West Virginia Bureau of Mines, but the entrance is in Virginia and to all intent and purposes these were my people, because I wrote their families letters of condolences. In the disaster at Amonate, which is in my district, and which caused 11 deaths, 6 of those people were my constituents. In the disaster at Bishop in 1958 which caused 15 deaths, 11 of those 15 were my constituents. I point this out simply because the testimony has been presented that would lead you to believe that a large majority of these accidents were happening in the small title I mines.

Now there is more exposure in a title I mine per ton of coal mined

than there is in a title II mine for the simple reason that it takes a man longer to dig it out with a pick and shovel than it does for a man to take a big machine or auger or automatic coal-loader and get that coal out? In view of this I have today introduced what I believe could be well called somewhat a compromise to the various views. It is a mine safety bill and I want to put myself on record as being for mine safety and being for something rather than just against something.

What does this bill do? This bill gives to the Federal Bureau of Mines jurisdiction over all gassy mines, whether they employ 1 man or whether they employ 100 men. It gives jurisdiction to the Federal Bureau of Mines, as well as the State, of shaft mines. A great deal has been said about the various mechanisms such as the hoists and the dangers that exist with those.

It gives jurisdiction over mines that are of a slope nature. Those are the mines which, for the most part, cause a hazard from inundation where the water can flow in and trap these people in the mines.

It gives jurisdiction to the Federal Bureau of Mines in all three of these cases; and, from the testimony which we have heard this morning, that includes 99 percent of the "disaster" danger that exists.

By the same token, if this situation exists where some of the people are coming out of a title II category into a title I category to prevent the inspection, this will give the Federal Bureau of Mines jurisdiction over any mine which was at any time a title II mine until such individual mine has received the approval of the director to return to title I status.

It seems to me that that is a very fine idea on this proposition of safety. It will not, to all intents and purposes, cause the emotional stir that we have concerning this bill. Believe you me, my telegrams are about a foot high, asking that this bill not be passed because it is going to put them out of business because they cannot continue to operate if these rules and regulations are imposed on them. It is true that many of them have in mind that it is the code that is going to be imposed rather than the act itself.

However, if this will cause hardship on any number of people, it is entirely too much if no safety is gained.

I think it was somewhat ironic that last week I was down to the Interior Department testifying before the Secretary, and a committee, against the import of residual oil, and then on the following day of last week I was over testifying before the Rules Committee on the national fuels policy, and today with distressed area legislation, which will very definitely include my area because I have thousands who are unemployed and drawing surplus commodities, but today this distressed area legislation is being considered on one side of the House and we are considering legislation here that many of the people feel is going to put them out of business and cause a loss of job opportunities.

Mr. ZELENKO. May I interrupt you for this observation? This work that you are doing, which is typical of the work of all of our colleagues, is never recorded as an attendance or lack of attendance on the House floor. However, it comprises 90 percent of our work.

Mr. JENNINGS. I couldn't agree with you more and especially during an election year, I might say. Now I would like to make just one more observation.

Mr. ZELENKO. If I may, I should like to say that if any of the constituents of the Congressman are here I wish you would inform the folks back home of the long hours and diligent efforts that Mr. Jennings is always putting in on their behalf.

Mr. JENNINGS. Thank you. You are most kind.

Now I would like to bring up a little different situation than we have in the coal industry with respect to mechanization. When lack of orders hit some other industry, for instance the automobile industry, a man who is working in the automobile industry does not go out and start making automobiles or an automobile, but this man who is laid off from the coal industry may go out with a pick and shovel and dig back into the side of a mountain and start producing a little coal, enough to give him a livelihood and keep him off of the relief rolls.

Thank you, Mr. Chairman.

I would be glad to answer any questions. I said in the beginning I am no expert on this, but certainly I visited these areas. Again, I would like to most sincerely request that before you gentlemen legislate on this matter, you visit a title I and title II mine so that you will have at least the limited knowledge that I have pertaining to these two different types of operation.

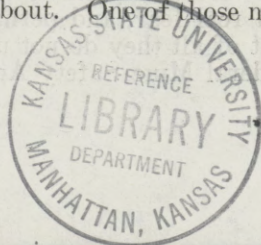
Mr. ZELENKO. May I say that the gentleman from Virginia is too modest in his statement of his knowledge of the subject. He has been most informative and I repeat I do hope his constituents appreciate his services as much as this subcommittee appreciates his services.

With that I should like to ask you a question. Not having any title I or title II mines in my district I will try to legislate nonetheless fairly in this area. But can you point out to me what it is in 4237 that you find objectionable?

I know there are some areas of agreement. I think this would be helpful to us. Do you have a copy of the bill?

Mr. JENNINGS. No. I think, though, I understand some of the areas, and, first of all, I think it is this inconsistency or this overlapping of power, particularly as it applies to the preshift inspection and as to who is going to make these preshift inspections. I think it has been testified and I think definitely it is true in the State of Virginia we do not have sufficiently qualified fire bosses to make these inspections. I think it would also be fair to say that that would pose an economic hardship on a real small operator which would be insurmountable because we could not afford to hire the people who are qualified to make these preshift inspections.

Now I think those are very necessary in a gassy mine. I do not think there is any question about that. I think some qualified person or some designated person, believed to be qualified, should make a preentrance examination on the nongassy mines to prevent the type of disaster or to go as far as we can go in preventing the type of disaster that might occur when gas is accumulating in what was never known to be a gassy mine. However, I point out that will not stop the accumulation of gas and it will not stop the explosion. I understand that one of the inspectors was among those who were killed in one of the explosions that I talked about. One of those men was an inspector.



But, in any event, all three of these that I referred to were title II mines. The preshift inspection supposedly had been made, and I assumed that it had, but even then we had those explosions which killed this large number of men that I talked about. So I think that from an economic standpoint and from an impractical standpoint this is one of the largest areas that we have in that bill which would pose an economic hardship and burden on these people.

Mr. ZELENKO. Does your bill offer a solution or compromise view or a position against this portion of 4237 which you object to?

Mr. JENNINGS. Yes, it does, in this manner. There is no compromise or no disagreement between the two bills as pertains to gassy mines because we definitely feel that a preinspection should be made in a gassy mine or one that has been adjudged in the past to be a gassy mine. We feel that the preshift inspection should be made on the shaft mines and on the slope mines to see if any inundation might have taken place or if there is a hazard there. So it does make that distinction. What it does is it comes 99 percent of the way by saying that all of these will be included, but it says that the others will be excluded because there does not seem to be a real necessity for it.

Now if there is a necessity we have no objection to having some man go in and make the inspection, but to say he must be a qualified State mine fire boss or an examiner is just absolutely prohibitive and restrictive.

Now if I am working, say, 10 or 12 men in a little mine, I am responsible for those men and I would like to be designated myself or designate my foreman as the man who would go in this mine and make the preinspection, but under the Federal law I could not do it and I do not believe Mr. Ankeny could appoint me to do it, because I do not think he can preempt that law.

Mr. ZELENKO. Mr. Jennings, I have another point and I do not wish to cut off your train of thought. In order to help the committee, would you say your bill is similar to the one suggested by Mr. Barnes this morning?

Mr. JENNINGS. That is right. Let me say this in connection with that bill. It isn't a Johnny-come-lately bill. Frankly, I have had this bill in my office all during this session, but I had no idea that this was going to be called up and that it was going to be so urgent and that they were going to push it so fast. I wanted to get a report from the Department and a report from some of the interested people before introducing the bill and it was only today that I introduced it, so I am not introducing it as a Johnny-come-lately proposition. It is something I had in my office all during this time and I had started working on it last year because I recognized we had to be for something rather than against something. And we wanted to be for safety. It prevents these mines from doing what I know in fact has been happening. I have no knowledge of them going out of title II to title I and shifting back and forth. When they are once in title II they stay in title II even if they come down to only three men, unless they receive the approval of the Director.

Directing myself to the specific question you asked, I think there is a real fear, and perhaps there is a basis for it, because, as I say, first of all they do not use a different report for an inspection in the Federal Mine Safety Act and in the Federal Mine Safety Code and

it is the general feeling, and this feeling exists today in both title II mines and in the inspection of title I mines, that the code itself tends to set the standards by which they judge its application to the act, and they are fearful, just as I pointed out in this little area a while ago, they are fearful that if these rules and regulations come down they will be restrictive and prohibitive for the little operator to be able to utilize his men and his resources and certainly they cannot be utilized by the larger operators because they cannot get the machines in there.

Mr. ZELENKO. Are there any other features of the bill under consideration that you find objectionable?

Mr. JENNINGS. Yes, there are others and here is another one of them. This is the reason I think it is so important that you go down and see a title I and title II mine and talk with some of these people and try to understand them. They are good, God-fearing mountain folk with a lot of native intelligence and a lot of native ability, but just do not have the resources at their command. I think absolutely they would be scared to death to even use the appeal route that is so burdensome, even though it says in the bill that we will take it down to the county seat. I think it would scare them and I think it would have the same effect as going to court has on some people. They can get their recourse in court but they would rather go ahead and take the punishment than go before the judge.

Mr. ZELENKO. This is a common fear.

Mr. JENNINGS. Yes, I agree with you. I do not know why but I share their view.

Those are just three of the areas. Perhaps there are others if I would take them and go over them one by one, but I think that is sufficient to point out the fears that we have.

Mr. ZELENKO. You told us before, Congressman Jennings, that during the past several years many of the larger companies, not being able to or willing financially to mine or process the resource, had leased it out to former employees or to foremen or to families in certain areas and that they could work these and could produce coal.

Now in those situations, who is it, if anybody, if you can tell us, who generally supervises, in the case of these leased-out mines, the safety factor?

Mr. JENNINGS. Yes; I can tell you and I think it is very important.

Mr. ZELENKO. Take a large company which has a foreman and safety director, who takes care of the safety of the workers in these leased-out properties?

Mr. JENNINGS. In many operations, and I can call one to mind in particular: they have their own mine safety inspectors. I am talking about the big or large operations now. Those inspectors go around to the various little individual lessees and make inspections of their mines.

In addition to that, the State inspectors, who make far more frequent inspections than do the Federal inspectors, make an inspection and then the Federal inspector makes an inspection. Now, it is true that the Federal inspector cannot close those down, and I would say to you further that in your deliberations we would have no objection to your giving any qualified inspector the right to close any mine in the case of imminent danger.

Mr. ZELENKO. They have that right now, do they not?

Mr. JENNINGS. Yes.

The inspection is made by three groups. Actually, I guess they are inspected more than any other particular group. It is made in many cases by the safety inspector for the large company who gave them the lease to start with, and it is made by the State mine inspector and it is made by the Federal mine inspector.

Mr. ZELENKO. All right; I have just two more questions.

Mr. JENNINGS. If I may continue, these lessees, you understand, are, of course, independent operators. You may own a thousand-acre tract and you may lease to me, my brother-in-law, my uncle, or anyone else, but I am an independent operator.

Mr. ZELENKO. I realize that. My question was not directed to the financial structure but just to the point of who would supervise the safety factors.

Mr. JENNINGS. I will tell you now they do not accept any of the financial responsibility in those cases. If they go broke, they go broke on their own, as many of them do.

Mr. ZELENKO. One or two of the witnesses have indicated that their fear of this legislation has been the fact that they feel there will be too much Federal regulation, without going into some of the specifics that you did, and I believe one or two of the witnesses did so testify.

Do you think that is a factor in and of itself which should be given great weight by the committee? Is that factor itself important?

Mr. JENNINGS. That factor itself should be given some weight. I would say, however, that if evidence would be presented to this committee or if your investigations would prove that the States have not accepted their responsibility, then I think that would diminish and I would use that fear in the proportion that the States have or have not accepted their responsibility.

I share the view to some extent because I do not think that this is an area that the Federal Government need get into down on the little level any more than, as I said, the ICC needs to inspect my farm truck. But if the State is not accepting its responsibility, then I do not think that is sufficient reason to permit a man to go ahead and operate under unsafe conditions. I think in the bill proposed here we are giving to the Federal Government along with the States—we are not taking anything away from the States. We are giving additional authority to the Federal Bureau of Mines. That would take care of 99 percent of these cases. At least that was the testimony this morning. It will take care of the gassy mines, and that is where the danger exists, and it will take care of the shaft mines and the slope mines where they might be inundated. But these little mines that we are talking about here, I do not know. I am sorry that some people refer to them as “dog holes” because these are human beings who work in there; they are not dogs.

It is true most miners have to work like dogs, but they are still human beings. They go back into the side of a hill or on a horizontal plane and they do not go too far back to the mountains and the air generally is good and their safety conditions are good. I just do not see the necessity of imposing upon them the same restrictions that should rightfully be imposed upon a gassy mine, whether it is title I or title II, whether there is equipment that makes it dangerous from

the standpoint of a shaft or whether there is the danger of a cave-in and the water would come falling in and drown them.

Mr. ZELENKO. Did you feel that perhaps this position of yours could be covered amply, let us say, if, in the legislation, the Director of Mines were given discretion to omit from his supervision this particular class of mine?

Mr. JENNINGS. I think that would be an improvement over the present bill. I think you are getting to the meat of this now, but it is that discretion that worries me. Those are really the facts, and I think that would be an improvement, but why give him discretion if we are going to take it piecemeal. We have given him this.

They have proven a need for it, and, frankly, we cannot argue with the fact that maybe the need exists here in some cases on the gassy mines and the shaft mines and the slope mines. Let's give him that, and if in fact someone is slipping out from under this title II provision to escape the Federal inspection, I do not think they should be permitted to do that, and my bill will not permit them to do it, but I do believe we should not give them the whole bite here because I think it is going to create a hardship on the Federal Bureau of Mines to be all encompassing. Let's kind of take it like the "cat ate the grindstone," by degrees, and if they come back later and prove they need it in these nongassy drift mines, we will be here arguing if we do not agree with them; but we do agree on the gassy mines. We do not have any objection.

We are for safety just as much as any other man is for safety.

Mr. ZELENKO. I have two more points.

Mr. JENNINGS. I did want to bring out the good points but I could not bring them out because I did not have time to prepare my testimony fully. I was hoping that this would not come off as soon as it did. However, I appreciate your asking me these questions because it does bring out the necessary testimony.

Mr. ZELENKO. You may be able to help me on this point. You mentioned, before, your constituents were truly in a depressed area.

Mr. JENNINGS. Yes, sir; seven counties.

Mr. ZELENKO. And in your view, will some of the Federal aid to help the depressed areas go to these small mines?

Mr. JENNINGS. No; it will not go to these small mines. Primarily, it will go to those people who are out of employment in the title II mines and the title I mines. There is nothing in the depressed area bill, as I see it, per se, that will help the title II or the title I mines for that matter. However, I want you to know that I have supported distressed area legislation over the years, when it was vetoed, and I intend to support it again this year because that is a promise.

Mr. ZELENKO. I have one more question, but may I say in using the word "distressed" the people of your district have no reason to be distressed by their Representative in Congress.

Mr. JENNINGS. You are very kind. I hope when you come down to inspect these mines before you pass this legislation, you will pass that around all over the district, and I am sure you will.

Mr. ZELENKO. Mr. Jennings, I will not vouch for the authenticity of what I am about to read, but this has been presented to me and I will ask you to comment on it. We agree that a truck mine is one of the small mines?

Mr. JENNINGS. Well, it could be, or it could be one of the large ones. There are several truck mines in my district that come under the class II category—many, many of them. The mere fact it is a truck mine does not classify it as a title I or title II.

Mr. ZELENKO. I am going to read this statement. I told you I am not vouching for it or for its authenticity, but you perhaps may help me. It states:

Five hundred and ten truck mines were closed for unsafe practices in the State of Kentucky in 1959, but no rail mines were closed for such practices—this data coming from the 1959 Report of the Kentucky Department of Mines.

Truck mines made up approximately 80 to 85 percent of the Title I mines.

Do you care to comment on what I have just read?

Mr. JENNINGS. No. Well, I am like you. I could not vouch for its authenticity either.

Mr. ZELENKO. Well, on the facts?

Mr. JENNINGS. Yes. Let me say this. We would have to, of course, operate on the assumption that what those people say there is a truthful statement. I think it points out the fact that the State mine inspectors are doing a good job. If they closed that many mines in 1 year, it indicates to me that they are "on the ball" and that they are doing a pretty good job. It also indicates that perhaps there are too many violations, but those mines were not closed by a Federal inspector because a Federal inspector did not have jurisdiction. Well, that would indicate to me also that there are a great many of these little title I mines coming into existence all of the time and that the State inspectors are kept busy looking after them and closing them down. Now what we do not have is the information, after having once been closed, as to how long they stayed closed, and when they opened up again. We do not have that information.

Not knowing anything about the facts in this case, I was just addressing myself to those points pertaining to that letter.

Mr. ZELENKO. Do you have any questions, Mr. Daniels?

Mr. DANIELS. No.

Mr. ZELENKO. Mr. O'Hara?

Mr. O'HARA. I want to say that I share the Chairman's opinion of the gentleman from Virginia.

I have great respect for his integrity and his willingness to do what he thinks is right in spite of the political pressures to which he is subjected. I would be happy to say so in his district too, but I am afraid it wouldn't do him any good.

Mr. JENNINGS. We would be delighted if you would and I extend the invitation in all sincerity and I cannot tell you how deeply I feel about the fact that you are legislating on a matter which is so vital to my constituents so that I earnestly feel that you should come down and take a look at the title I and title II mines.

Mr. O'HARA. As I recall the testimony of Mr. Ankeny, 95 percent of the title I mines are nongassy, is that right? I think that was the figure.

Mr. JENNINGS. Mr. Ankeny would be in a far better position to testify to that. I do not know what the percentage is.

Mr. O'HARA. I would imagine that just a relatively small percentage of title I mines are either shaft mines or slope mines, that probably around 90 percent of all title I mines are drift mines, not classified as gassy, so if we were to accept your proposal we would not be covering the vast majority of the title I mines.

Mr. JENNINGS. Did he also give you the testimony as to the frequency of the accidents and the accident rate in this 10 percent that you are talking about?

Mr. O'HARA. No.

Mr. JENNINGS. If we can cover 10 percent and get, as was testified here this morning, get 99 percent of the "disaster" safety involved, why do we not just take that 10 percent and let these others go until such time as we have the facts and if the facts do not support and substantiate what has been testified to, then there will be another Congress here, or we will be in session in our second session and we can come back and take a look at this thing if the facts do not support it and then we can go into this other field if it is necessary. But if we can get 90 percent safety or 99 percent, as was testified to here this morning, by putting this group which comprised 10 percent or 20 or 25 percent, I think that is the proper step to take and I think it is a pretty good area of compromise and people are genuinely concerned.

Mr. O'HARA. I was wondering if the gentleman would be willing to consider possibly breaking title I mines into classes and applying one set of standards to the gassy mines and to the slope and shaft mines and then perhaps a less onerous set of standards to drift mines that are not gassy.

Mr. JENNINGS. Yes, sir. We have that with the State inspectors today. They have it in the Federal inspection also. But the only difference is, and you did not hear this portion of the comments and excuse me for being repetitious, but the difference is in the fear and I think perhaps they substantiate it, if for no other reason than the fact that when the Federal inspector comes around he has just one sheet that he uses for his inspection and he does not separate those things that apply to the code and those things that apply to the act.

Now this little fellow down there, after the inspector has left and tacked this up on the mouth of the mine, sees all of these violations. Now some of them are not applicable to him as far as the law is concerned and some of them are of minor importance. This fellow does not know what is what and which is which and the tendency has been, Mr. O'Hara, that the mine code tends to set the standards and the regulations by which the act is applied, which means that if a man goes out to make the inspection they use the code and the terminology in the code and the intent of the code to inspect the provisions of the act and to all intents and purposes they are almost inseparable, but I think we would all agree that the provisions of the code, all of them, are not applicable, and we also would agree that certain sections of the act are not applicable to the small mines.

I said in my earlier testimony that we would have no objections, even in the nongassy mines, to having a preinspection by someone who was designated as a qualified person but as it stands today under the law the only person who may make or can make that inspection is someone who has been certified by the State and their requirements are quite rigorous, as they should be, because they are the same people

that are inspecting gassy mines, title I and title II mines, and I do not think Mr. Ankeny or anyone else can designate someone to make a preshift inspection on a nongassy mine and preempt that section of the State code which says that it has to be a certified inspector.

Mr. O'HARA. At any rate, am I correct in assuming that one of your principal points is that whatever this committee might decide with regard to the application of the Federal Mine Safety Act to title I mines, that we attempt to spell out that application rather than to leave it up to any discretionary authority, is that right?

Mr. JENNINGS. That is one of the best statements I have heard today and I think it gets right down to the meat of this situation. That is exactly what we would like the committee to do. That is to state what is applicable and what is not applicable and not leave so much discretion to any individual, and I am not talking about Mr. Ankeny and his successor, or anyone else, State inspectors, or anyone else, but I do not think you should leave such latitude in this area so that personalities even might enter into it and discrimination can exist where no intention was meant for it to exist. I think you are exactly right. That is the crux of this thing to a great extent.

Mr. O'HARA. I want to thank the gentleman for appearing before us and helping us out. I have no further questions.

Mr. ZELENSKO. Mr. Martin?

Mr. MARTIN. No questions.

Mr. ZELENSKO. Mr. Daniels?

Mr. DANIELS. I would like to thank Congressman Jennings for coming here today and giving us such a clear, informative statement. I think your remarks here today were most beneficial to the committee and particularly in my case because I come from an urban area and do not have any mines in my area, and, secondly, I am a new member of this committee, so your testimony has been most helpful to me.

Now as I understand your testimony, Congressman, your primary objection is to the dual controls, that is, the Federal Government and the State government overlapping in this particular area?

Mr. JENNINGS. Yes, especially in areas where the major disaster possibilities are somewhat remote and in areas where the need has not been proven and in the areas where I feel that the States are doing a good job, and if they are not they should be doing a good job, but in the fields of safety and safety alone, gassy and the other conditions, I do not feel that there is any fear of overlapping because I do not think you can do too much inspecting for the safety of an individual that has to work under these conditions.

Mr. DANIELS. You also made reference to the fact that some of the inspectors were not qualified under the laws of the State of Virginia or Kentucky.

Mr. JENNINGS. Yes, sir, that is true.

Mr. DANIELS. Under those circumstances, do you not feel that we should have more qualified inspectors and a program of education to provide able and qualified inspectors?

Mr. JENNINGS. Well, the truth of the matter is this: the program of education is the solution to this problem over the long haul. That is just as much a part of safety as inspection. Your education factor is exactly right. But, no, I cannot agree with the fact that we need these highly qualified, highly technical people for these small mines. I do not think that you need the same caliber man to teach the primer

as you need to teach at Harvard or Yale and I think for these big mines you need well-educated, highly qualified men, but I think for the smaller mines where there is no gas or no real danger to be concerned about, I think if I as an operator could appoint my foreman or could take the best man that I have and tell him to go into that mine and check it for safety, for cracks, for gas, for water, or any electrical connections or other deficiencies, that that man would be well-qualified and he could do that, and he is going right in with the men and work so he is not going to certify something is safe if it is not.

We do not need the highly technical man who can use the lamp and all the chemical knowledge required to make the tests in the gassy mines. We need education and training, but not to the same degree for the small mines as we need for the more dangerous-type mines.

Mr. DANIELS. Thank you. That is most helpful.

Mr. ZELENKO. I have another question. I also come from an urban area, as you know. Do they have anything like liability insurance in the title II mines?

Mr. JENNINGS. Yes.

Mr. ZELENKO. Do the companies write insurance for disaster and injury?

Mr. JENNINGS. Yes.

Mr. ZELENKO. Do they have it in the title I mines?

Mr. JENNINGS. Workmen's compensation, liability insurance, social security, unemployment compensation.

Mr. ZELENKO. I realize that.

Mr. JENNINGS. Yes, indeed, they have that. They have that available to these people.

Mr. ZELENKO. Now would you, Mr. Jennings, very briefly, give me an idea, if you know, if there is any difference in the insurance rate or the premiums paid between title I and title II mines? I say this because usually in a situation where insurance is being written for safety there are, many times, reflected in the premiums the degree of the accident rate. Can you give me, in an offhand manner, whether, to your knowledge, there is any difference in the rate between the title I and title II?

Mr. JENNINGS. I cannot answer your question specifically. I do not think they would make a difference in the class I and class II. I think they would make a difference in the type mine. If it were a gassy mine it would cost more than a nongassy mine. This would apply more than whether it was in class I or II. I think, in all fairness, a shaft mine would cost more than a drift mine. A slope mine would cost more than a drift mine. So I think you made a good point and one which I think the committee would want to rightfully determine, but I am of the opinion that they would base their rates on the type of mine rather than on the size or the number of men.

Mr. ZELENKO. Now can you tell me whether or not that liability insurance is compulsory in title II mines and whether or not it is compulsory in title I mines?

Mr. JENNINGS. I really cannot tell you whether it is compulsory in either of them, except to say that from State to State it varies as to the number of men you have working and the amount of your workmen's compensation.

I think it is "five men or more" you are required to carry it.

Mr. ZELENKO. I see. You are not bound by this answer, and I appreciate your answering it.

Mr. JENNINGS. I feel I am not really acquainted with this field.

Mr. ZELENKO. Now you are not bound by this answer but from what you have told us, do you know of some States, let us say, where with less than five workers they would not require insurance?

Mr. JENNINGS. I cannot address myself to the mining industry. I am talking now of some businesses that I am connected with, such as the garage business and a former bus business. They had to have it applicable there. It was applicable there, but I am not sure it applies to the mining business.

Mr. ZELENKO. I believe the gentleman from Virginia knows the respect in which we hold him. We have served many, many years together. Unfortunately, though, the Chair cannot accede to the request made by the gentleman from Virginia in regard to continuing these hearings into next month. The calendar of the committee is such that we wish all of the documentary evidence to be in the hands of this committee by Friday of this week. It is not the intention of this committee to conduct any further hearings for the reason that the committee has had before it all the material and the hearings of the past Congresses on the subject which has been made available to all of the members of this subcommittee for sometime now. I know that all of us, those of us who have not sat in the prior hearings particularly, are making a study of it now, so we really have before us the entire problem.

However, I will say this. The witnesses this morning, and you, sir, have given us insight into some of the particular problems involved and that was what was urged upon the witnesses last week.

Whatever legislation will come out of this committee, if any does, we want it understood it will be in the best interests of all. We desire to meet the objections, if possible, that have been raised here in order to fit them into the legislation, that is, if any legislation will come out of it.

I want to thank you again. I think you indicated that our questions brought out much of the material that you had wished to present.

Mr. JENNINGS. Mr. Chairman, I will be less than honest if I did not thank you for those kind remarks, but I also want to call attention to the committee of the fact that you now have another bill before you which I introduced today and I want to repeat again this was not a Johnny-come-lately bill but it was only because of the shortness of time, the apparent urgency of your hearing, that I introduced it. I had the bill, as I say again, in my office studying it and was trying to perfect it before introducing it. I did not know this was going to come up so early.

I would like to respectfully request that you get a report, which I am sure you will, from the Department as to my bill and that you give that consideration in your deliberations. I am satisfied that there are those here who would like to address themselves to the new bill which has now been introduced, so I do respectfully request again that you give some of my constituents an opportunity to come and testify, at least one or two of them, because in my campaigning and traveling over the district I assured them they would have ample opportunity to be heard and now, frankly, they do not have ample opportunity to be heard, but I would frankly request that they be given, along with

others, an opportunity to address themselves to the bill which I introduced today.

Let me say I have the utmost faith in this subcommittee. I know you are motivated only by the thought of what is right and the best interests of all and I can only close by saying that all of those kind words you have said about me, "the truth of the pudding is in the eating," and we will see how it shall be.

Mr. ZELENKO. May I say that one of the reasons for the urgency here, and perhaps you were not present when we instituted the hearing, was the past history of the consideration of this legislation and I for one sat in on much of it. You prefaced your remarks by stating this is not a Johnny-come-lately bill. We know that you have been working on this. However, in some of the past deliberations on this legislation somehow or other every time the committee began to indicate that it was going to conduct hearings or that it was going to get a bill out there were always requests for delay, delay, delay.

Unfortunately, you find yourself in that situation, but I assure you we shall give your bill the utmost consideration and try to give it as full a deliberation as we possibly can.

Mr. JENNINGS. I am sure you will.

Mr. ZELENKO. If we do not agree with your request 100 percent, please be sure it is not that we do not wish to, but sometimes duty points the other way. I do not say it will in this instance, but we will try to do what we can in the interests of everyone in this industry.

Mr. JENNINGS. Surely.

Mr. ZELENKO. It is not our intention to impose burdens so as to put an industry out of business, because if we do that you will not have to worry about safety.

Mr. JENNINGS. Let me say this, in response to your remarks, Mr. Chairman. Please do not penalize me for what might have taken place in the past. Thank you.

Mr. ZELENKO. Mr. James Westfield, Assistant Director of Health and Safety, U.S. Bureau of Mines.

STATEMENTS OF JAMES WESTFIELD, ASSISTANT DIRECTOR OF HEALTH AND SAFETY, U.S. BUREAU OF MINES; AND HARRY F. WEAVER, CHIEF, DIVISION OF COAL MINE INSPECTION, U.S. BUREAU OF MINES

Mr. ZELENKO. Mr. Westfield, I notice you were present during all of the hearings this morning and have been present during our hearings.

Mr. WESTFIELD. Yes.

Mr. ZELENKO. You have heard objections to this legislation raised by some of the witnesses and I assume you may be familiar with some of the statements filed by some of the witnesses against the legislation.

Mr. WESTFIELD. Yes, sir.

Mr. ZELENKO. We indicated, at the commencement of the hearings, it would be our pleasure to hear you or your superior, at the conclusion or somewhere along the line, for the purpose of commenting on some of the opposition so we call you now and ask if you will

be good enough to give us your comments on the propositions advanced by the proponents of the legislation.

You have heard the arguments. The Bureau has taken a position in favor of this legislation. You have heard the arguments against it. We would like your comment now on the propositions advanced by the proponents of the legislation. You may give them to us now orally or file a prepared statement.

Mr. WESTFIELD. I think it would be better, sir, so that the answer will be more concisely and directly to the point, if we had testimony so that we could speak directly to these things and give you the facts. However, what I would have to do here in this case, particularly in referring to the State laws, I would have to give it off the top of my head. We do not like to do that. We would like to give exact facts. We do not want to put any excess information into the record. We would like to give it to you in this way, so, if it please the committee and the chairman, we would much rather make a definite statement, I mean a statement in writing to this committee.

Mr. ZELENKO. Mr. Westfield, I think your point is well taken because you do represent an arm of the Government and whatever you say or wish to submit should be the result of considered study; however, in view of the fact that you are here, perhaps some of the members would like to direct questions to you.

Mr. WESTFIELD. I would be glad to answer any question that I can.

Mr. ZELENKO. We may get more information in that way.

Mr. O'Hara?

Mr. O'HARA. I would like to ask the gentleman, if I could, a few questions about this problem of certified inspectors. You recall that this question came up at our last hearing and subsequently Commissioner Ankeny has written a letter on the subject to the chairman of the committee and I received a copy thereof.

Commissioner Ankeny's answer seemed to boil down to say this, more or less: that it will be possible to certify a lot more people in the areas where a shortage exists.

I am wondering, with relation to nongassy mines, that is mines not classed as gassy under the State law, if it would be possible to accept, as the agent for these inspections, persons who do not meet the requirements of a certified first-class mine foreman, for instance, in the persons possessing fewer qualifications perhaps than are required for a first-class mine foreman?

Mr. WESTFIELD. In answer to that question, I would say "Yes." In other words, here again is the interpretation of the word "certification." In answering the question I would like to relate some of the things that have actually appeared in connection with Public Law 552, which is the carrying of flame-safety lamps in gassy mines. The State of Kentucky, which has for instance been given very much discussion here, they interpret the law that no one can carry a lamp unless certified by a State mine inspector. The State mine inspector interpreted it so. But in connection with the enforcement of 209-D9, which is the requirement for inspection, making a gas inspection before taking electrical equipment into the face areas. Within the last year we found violations in some of the mines in Kentucky where these inspections were not made. It involved a large number of operators and machines. The Bureau of Mines contacted the State, recognizing

the interpretation of the State law, contacted the chief inspector, and he agreed that they would issue permits to these men to carry flame-safety lamps and test for gas before taking these machines into the face. He insisted, the same as we insisted, that these men be competent in the use of the lamp. As a result of this, the Bureau of Mines and the State together trained these men, put on a special course for a great number of men, and over 100 were trained in two or three mines in Kentucky with the presence of the chief mine inspector. All of these men were given certificates.

This is also true in the State of West Virginia at the present time. The State of West Virginia has just changed their laws, which now require the preshift examination of all nongassy mines employing over a certain number of men. I do not know the number of men, the cutoff. It might be five and it might be nine, I do not remember. But in this case the Bureau of Mines and the State are now out training individuals in these small mines, the nongassy mines, in the proper use of the flame-safety lamp, so that they can make these preshift examinations to comply with the law.

Now the State of West Virginia does not require that these men be certified fire bosses, but they do require that these men be competent persons able to make the proper test with the flame-safety lamp.

This is also true in the State of Pennsylvania. The State of Pennsylvania does not require the preshift examination of nongassy mines, but the mines, your title II mines that are nongassy, to comply with the provisions of the code and the law, the Federal law I am speaking of at the moment, the State has given again permits to these men to carry flame-safety lamps after proper training by the Bureau of Mines in the State and these inspections are being made. They do not call it a fire boss inspection, but call it a preshift examination.

This is also true in some of our Western States. We had the same difficulty in the State of Indiana, when Public Law 552 went into effect. The requirement of inspecting for gas before taking electrical equipment into the face had never been done in these States. The mining companies contested it and said they would have to have reasonable time to do this. The Bureau of Mines extended this time until the training program could be put on to train all of these individuals. Now here again it meant not just a few men, but it meant hundreds of men that had to be trained. These men were trained.

We do find that there are some cases where there is considerable trouble in the interpretation of the law. If the State requires that they be certified, in this case we, I think we speak for the Director in this case, we have no objection for the requirements to be changed to a "competent man to make this examination" rather than a "certified man".

Mr. O'HARA. In other words, in the drafting of this legislation you would be willing to see the committee try to spell out the qualifications of persons who are to make these examinations, the calendar day examinations in certain circumstances and the preshift examination in others.

Mr. WESTFIELD. Yes. I do not think there would be any objection to that whatsoever, because this is the practical manner. In other words, to get each and everyone of these men with a fire boss examina-

tion or certificate would be almost an impossible task. We agree with the opposition on this point, but we say these men should be competent and we do believe that this examination should be made because this is where we have our disasters.

In other words, these men do not want to have an ignition of gas in their mines, but if they do not test for it they cannot find it. The only way they can find it is by igniting it. This has been the case of a few disasters we have had in the last year or two, where it has been in the nongassy mines, drift mines where there has been no preshift examination made.

The men that went in this place, did not recognize the igniting of gas and in one case it killed quite a number of men, as well as in another.

Mr. O'HARA. Could the Bureau of Mines prepare, for the consideration of this committee, some suggested amendment to the bill as it would apply to the title I mines which would spell out, in the fashion you have discussed, the qualifications of persons making these examinations? I do not mean to spell out whether the man should have so much experience and so forth, but to make it clear as to the kind of qualifications that will be required of people making these preshift examinations in the nongassy mines, and clearly setting forth that it is not a first-class mine foreman that we are talking about.

Mr. WESTFIELD. I think this can be done very easily by just changing the word, or not using the word "certified" and using the word "competent" and then making a definition of the word "competent" but which I think is already in the law. Now the only difficulty with this is, though, providing the State of Virginia or the State of Kentucky, either one, says: "All right, any time a man carries a flame-safety lamp in a mine in Kentucky or Virginia, to comply with the State law he has to be a certified man." We cannot, or the Bureau of Mines cannot dictate to a State as to their requirements.

Mr. O'HARA. Well, at any rate, I think we agree that the objections with regard to this point that have been raised by those opposing the bill have a certain degree of merit and if legislation is to be reported out by this committee, something will have to be done to clarify that point and we want suggestions of the Bureau of Mines.

Now you mentioned the different types of mines a few minutes ago. With respect to the bill introduced by the distinguished gentleman from Virginia, Mr. Jennings, which would apply to slope mines, shaft mines, and gassy mines, would this not exempt from the application of this bill the vast majority of title I mines?

Mr. WESTFIELD. It would exempt a large number, yes, particularly in Kentucky, Virginia, and in this area, the mines that are drift, or on the horizontal surface. Although we would have in some cases a very hard problem of defining which is a shaft or drift mine.

A good example of this, of course, is a mine driven into the mountainside some distance and then, for ventilation purposes, the man drives a short shaft to intersect this mine, this being for ventilation. What would you then call this, a shaft mine or a drift mine?

This is a case of interpretation. A good example of that is one mine in this man's district, the mine that he explained as having one of these major disasters. This mine was originally opened by a drift. The coal is hauled out of the drift. But so the men can be trans-

ported to work and take up much less time, they drove a number of shafts in for ventilation and also for getting their men to work.

Now, is this a drift mine or a shaft mine? That is the point. Originally, it was opened up as a drift mine but this one example, answering your question, this would exempt a large number of small mines.

Mr. O'HARA. I think the committee would like to have the comments of the Bureau of Mines with regard to the bill introduced by Mr. Jennings. I think we should also have the comment of the Bureau of Mines on the relative percentage of title I mine accidents that occur in drift mines and the percentage of accidents that occur in the type of mine which would be covered by Mr. Jennings' bill.

If you could break out your accident figures into such classifications, we would appreciate having that information.

Mr. WESTFIELD. In answer to your question, and I think you asked for it in the three cases, we would be glad to report on the bill introduced by Congressman Jennings. We will also be glad to come up with some wording as to the change of a part of the law that applies to preshift examination and qualifications and we will be glad to supply this group with the information on the accidents in connection with the drift mines versus the shaft, slope, and gassy mines.

Mr. HIESTAND. I would like unanimous consent to ask one question out of order.

Mr. ZELENKO. You are now in order.

Mr. HIESTAND. I would like very much to get the witness' opinion about some of these other mines. This bill, of course, has to do only with the Coal Mine Safety Act. Do we not have hazards in all of the vast number of other mines over which your Bureau has supervision? Are the coal mines the only disaster mines? Or is there any necessity for safety regulations in all other kinds of mines?

Mr. WESTFIELD. Mr. Congressman, there is pending legislation asking for Federal inspection of metal and nonmetallic mines. This is a bill very similar to title I of Public Law 552, or the original act, Public Law 489 which was the right of entry and the right of inspecting the mine, making recommendations, and to make the reports public.

This has no enforcement powers whatsoever. It is just a form of recommendation. Now, in answering your question as to the hazards, the disaster-type hazards in the metal and nonmetallic mines are normally far less than in the coal mines primarily because where you are dealing with the metal or nonmetallic mines, these are areas which do not contain methane gas.

This is the rule. We have a few exceptions to this. We also find that the dust in the mine, the dust of the product they are mining itself is not explosive. I think possibly the one exception to this is this Gilsonite Mine in Utah, where we find the dust is explosive, but in general you can say the disaster-type hazards are far less prevalent in the metal and nonmetallic mines than in the coal mines.

Mr. HIESTAND. There is no fear then of these hazards in the tri-State area with lead and zinc and so on?

Mr. WESTFIELD. Well the day-to-day type accidents are the same. In other words, you cannot fight that, because if you make a hole in the ground you have something over your head and the material in the metal mine possibly will fall just the same as it will in the coal

mine. These dangers, the day-to-day type hazards, are there, but the disaster-type are not. Now here again we have a case of dealing with trying to compare one group against the other and it is pretty hard to explain without getting these statistics together and showing you. I might say the accident rate per million man-hours exposure is less in the metallic mines than in the coal mines.

Mr. ZELENKO. Mr. Daniels?

Mr. DANIELS. No questions.

Mr. ZELENKO. Mr. Martin?

Mr. MARTIN. No questions.

Mr. ZELENKO. Mr. O'Hara?

Mr. O'HARA. One thing I neglected to mention is that the statement of Mr. Barnes criticized some aspects of the procedure to be followed with regard to the appointment of independent inspectors and so forth. I hope that the Bureau of Mines, in its statement to us, will examine those criticisms and comment upon them and if it feels that they are justified it will propose revisions of these procedures that we can have before us as we deliberate.

Mr. WESTFIELD. I will be glad to do that.

Mr. ZELENKO. Now, Mr. Westfield, how long do you think it might take you to get your material to the committee? Can you give us an approximate time?

Mr. WESTFIELD. We will attempt to get this to you by Friday. That is the deadline you are putting on the other people so we think we should keep to it.

Mr. ZELENKO. Very well. These hearings are concluded with the understanding that anyone who wishes, either individuals or groups, may submit to the committee a statement which will be made part of the record and which will be considered by the committee.

The hearings are concluded and the committee stands adjourned.

(Whereupon, at 3:50 p.m., the committee adjourned.)

(The following prepared statements were submitted:)

STATEMENT OF CLYDE L. MACHAMER, PRESIDENT, INDEPENDENT MINERS & ASSOCIATES AND THE ANTHRACITE TRI-COUNTY INDEPENDENT MINERS, BREAKERMEN & TRUCKERS ASSOCIATIONS

Your select committee is presently conducting hearings on H.R. 4237, H.R. 440, H.R. 4424 wherein it is proposed that section 201 of the Federal Coal Mine Safety Act (30 U.S.C. 471) be amended by striking out subsection (b). This amendment removes the exemption with respect to certain mines employing no more than 14 individuals to Federal supervision.

My name is Clyde L. Machamer. I am president of Independent Miners & Associates and also the Anthracite Tri-County Independent Miners, Breakermen & Truckers Associations. I appreciate the opportunity to make a statement in regards to the herein mentioned bills in the hope that your committee will give this statement complete consideration. The independent mining industry, in the anthracite regions of Pennsylvania, has heavy concentration in the counties of Dauphin, Schuylkill, Northumberland, and Columbia. This industry embraces men mining anthracite coal, men trucking anthracite coal to preparation plants and men engaged in the preparation of anthracite coal for market. The industry creates employment for approximately 7,000 workers and represents an industry in the four counties grossing approximately 50 million dollars annually. No one else has been authorized to speak in their behalf. In view of the possibility of detrimental effects of the proposed amendments in H.R. 4237 and similar legislation upon small mines, we must vigorously oppose this legislation.

Independent Miners and Associates and affiliates are of the opinion that the independent segment of the anthracite industry has not been properly presented to you. It is our position that adequate inspection and supervision of small

mines is presently supplied by the Commonwealth of Pennsylvania and statistics indicate that the small mines have a most acceptable safety record. It is our further belief that a study of the economics involved will prove to you that this proposed legislation would further defer the anthracite industry, at a time in which these areas have already been officially designated as distressed without the addition of any safety factors not now in existence. Independent Miners and Associates and affiliates are in accord with any regulation in the interest of safety. It is quite possible that the enactment of this legislation would be the means by which our independent industry would be slowly strangled and finally eliminated to the great delight and personal satisfaction of other anthracite groups despite the fact that under their supervision anthracite has declined 75 percent in production and employment during the past 25 years.

Our industry has been the cushion that lessened the shock of the so-called decline of anthracite. Ours is a deep-mining anthracite industry, established and maintained through a true example of free enterprise at work. We feel that a true appraisal must be made of our industry before your committee, or any legislative committee or lawmaking body passes legislation to regulate. The rape and ravage of the anthracite fields that has been responsible for much of the decline has not been of our making, but, if you will investigate, you quite probably will find that our industry has partially obliterated the blight that was unjustly and maliciously imposed on our peoples, our areas, our economy.

Independent mining was born in the depression years and has survived that era and has grown continually, despite malicious attempts at restrictive legislation and abortive moves by opposition forces to disrupt, until we now contribute to our once shattered economy a multimillion dollar business yearly. This has been accomplished by the initiative, ingenuity, and the will to work and live as free peoples have the right and privilege to enjoy. This work once forced on us in order that we might get a loaf of bread for our loved ones and ourselves, is now one of our peoples' own choice. This is an American heritage guaranteed to under our Constitution and we will not stand idly by and see our people deprived of this right.

I speak for thousands of men working in title 1 mines. I speak on authority granted to me by these men through our organizations that has been made possible through their voluntary membership and undivided cooperation. It is unrealistic for anyone to assume that some other person is speaking in behalf of our people for ours are independent organizations not to be misconstrued as being affiliated with any other group. I must, vehemently, remind you our independent industry was conceived out of a chaotic mess in the anthracite areas. The tragic circumstances, caused by the collapse of the mining industry, that quite probably is your only awareness, were not relieved to any extent by the then prevailing labor group and their cooperating producers. The downward plunge of anthracite was arrested when independent mining began and the ascent back to normalcy, although a slow, tedious, heartbreaking task was a challenge our people accepted and overcame. This has been a continuous task, and movement, not new, but over the past three decades. I must note here that this industry, a vital factor in the economy of the anthracite areas, with increasing scope, has been achieved without an iota of assistance from Federal or State Government.

The independents are legitimate in every respect. Our people adhere and respect the safety regulations on mining. We have unbounded faith in our mining laws and the inspectors of our areas. If there are any failings, they are surely not due to our mining laws, for these are more than adequate. If there are failings, it is not because of the ability of our State inspectors for they must possess qualifications far above those required by the U.S. Bureau. Although we have the highest respect, personally, for the Federal Bureau and its personnel, and have always had friendly relationships, we must emphasize that anthracite mining is not comparable to any other kind and is unique unto the anthracite coal areas in Pennsylvania alone, and thereby should be supervised by personnel possessed with complete, intimate knowledge of anthracite mining. We must take issue with the statement that Federal supervision will reduce accidents, for this is an assumption and nothing else. I would call the attention of this committee to testimony in the hearings on S. 743 and S. 1562 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare held July 21, 22, and 24, 1959. It was during the course of these hearings that a spokesman for the Federal Bureau of Mines stated for the record, and it is a part thereof, that the small mines have a better safety record than the large mines. That despite the fact that the department receives 100 percent

complete information on fatalities they never receive more than a maximum of 80 percent of man-hours worked in the small mines. I believe that we can assume from this statement that the department does not receive more than a maximum of 80 percent of the tonnage produced in the small mines and it is quite conceivable that they receive substantially less than the maximum 80 percent mentioned. I believe these statements and others that are contained in the proceedings of the above-mentioned hearings should make a most vivid impression on the minds of this distinguished committee. I further believe these statements designate the need for a conclusive study into the areas to be affected by the proposed legislation to determine whether or not this legislation is necessary. I respectfully request your consideration of the Knox Coal Mine disaster near Pittston, Pa., on January 22, 1959, and remind you of the Federal supervision and also other disclosures connected therewith.

I must inform you that the independent mining industry is the last vestige of deep mining in certain entire areas of the anthracite coal fields. I must further inform your distinguished body that ours is the new frontier in anthracite. Large numbers of our independents have distinguished themselves in combat on the fields of battle to preserve our Nation's freedom and then have had to fight in their home areas to retain the right to work and sustain themselves and their families and bring up their children in the true tradition of a democracy. This is a strange paradox, when it is necessary for Americans to fight in order to keep working. The opposite is usually true where we see idleness and extreme efforts to get jobs back. The big question. Why does a situation such as this exist? I must further inform you that in a very short period of time the independent industry will be tops in the deep mining industry and quite conceivably the only deep mining in anthracite. In our industry are the people who envisioned an opportunity to mine, prepare, and market anthracite. With foresight and courage, and an unswerving faith in their ability to build instead of tear down, they have succeeded beyond anyone's expectations. Security belongs only to those who help in its acquisition. The independents in anthracite have helped, immeasurably, to provide security of employment and advancement. Modern mining, preparation, and transportation of coal are the accepted practice in the independent industry. This practice has given the independents a lead on the others in anthracite areas who were content to accept the false prophecy, in every respect, that anthracite was a dead industry. The independents are in a specialized field of endeavor made possible through their own initiative and ability.

It is unmistakably clear that further Federal supervision is unnecessary, and that enlarging the Federal jurisdiction would be further usurpation of States rights. It is incumbent on this committee to take a critical look at the qualifications needed in Pennsylvania to become a certified miner and more important to become a State mine inspector. This committee must refresh its memory as to the pitching seams of coal in anthracite and that it takes years of experience to become adapted to this type of mining and that it takes 10 years of experience in all phases of anthracite mining in order to qualify to take an examination to be eligible for an appointment as a Pennsylvania State mine inspector. This committee must question whether the Federal Bureau of Mines has qualified personnel, in sufficient numbers, to inspect the anthracite mines. If this legislation is enacted, our State people might become less diligent with a resultant increase in fatalities. If we are to accept this as a criteria on future events, and reluctance on the part of the Pennsylvania officials to show the way, if this legislation is enacted, your committee will be held accountable for the needless loss of lives. It is quite conceivable that due to the inexperience of the Federal people in the efficient and economical mining methods in anthracite, that, through the application of the Federal regulations, if this legislation is enacted, they could quite easily disrupt the orderly procedure of mining we are now enjoying. An occurrence of this type could quite easily upset the delicate stability in our economy we now enjoy since the advent and progressively advancing strides by the independent mining industry.

It is our belief the duplicity of two inspection departments and two separate sets of regulations which would be at wide variance, could only add confusion to this industry instead of beneficial aspects. It is our further belief that the increased appropriation recommended, which is now part of the official record of these hearings, stated as necessary to administer the potentially enlarged scope of the Bureau, could be used to far greater advantage in the anthracite areas. The independents have for many years sought Federal

aid to relieve a hazardous underground water accumulation, not of their making, but rather is a heritage acquired by them when the large affiliated mining operations closed down with no consideration for the hardship inflicted on the miners and their families, business, and the economic structure generally.

I vehemently denounce the damning implication made by a previous witness to the effect that all small mines need only a rag, a bone, and a hank of hair to improve safety. This implies that all small mines are merely a hole, somewhere on a hill. This is a prevarication of the basest sort, for in anthracite the independent mines, small mines, employ the most up-to-date equipment and safety devices. These are substantial operations with substantial investments and are an integral and basic foundation of the very livelihood of our regions. Thus it must accrue that they provide stability to Pennsylvania and the Nation.

All of these things are an integral part of the great moral issue at stake, and, therefore, our prayer is for your earnest and humane consideration of this statement and a closer look into our industry and its various component parts and that the proposed legislation be rejected.

We request that this statement be recorded as being filed with the Select Committee on Labor of the House Education and Labor Committee and that the statement in its entirety be read into the records.

STATEMENT OF CLARENCE E. KASHNER, PRESIDENT, INDEPENDENT MINERS, BREAKERMEN & TRUCKERS ASSOCIATION, SHAMOKIN, PA.

My name is Clarence Kashner, age 44, and I have been an independent miner since 1933. I have an assistant mine foreman certificate, a mine foreman certificate, and a certificate as a miner. I hold first-aid and mine-rescue certificates, and at the present I am the president of the Independent Miners, Breakermen and Truckers Association of Shamokin, Pa., which covers the areas of Northumberland and Columbia Counties. I have been active in mine rescue over all these years.

Gentlemen, I would like you to know that our association is equipped second to none in equipment to aid our fellow men in case of any mine accident or disaster.

We constantly try to teach our people safety by having safety meetings, first-aid classes, and mine-rescue classes. All of these things help to make a safe miner, but regardless of how safe a person may be, there will be accidents. This committee can crowd us out by overinspections, but this will not stop accidents. You must remember accidents do not only happen in the mines. If accidents occurred only in the mines, then I would see a need for more inspections.

And I might add that this equipment is mounted on trucks and is available at any mine in our area within minutes, and in case it would be needed in any adjoining counties, it would be available within a few hours.

The chairman of this committee asks, "Why did two Pennsylvania representatives submit legislation of this sort?" I want to tell you these two representatives do not know our problems, and what the independent mining industry means to my people and the communities in our area.

Legislation of this sort should be carefully scrutinized; consideration should be given to where it came from, who was behind it and for what reason, and then it should be thrown in the wastebasket before some innocent committee is made responsible for passing legislation to hurt the people they represent, and to cause untold hardships in many communities that can never be undone.

All of the big mining operations, through the United Mine Workers Union, lost the market for coal, through strikes which left the people without coal, in order to have their own way. All this time, the title I mines were supplying coal to as many people as possible thus saving what market remains today. Now the United Mine Workers would like to gobble up this market, which the independents strived so hard to keep. In my estimation, the United Mine Workers Union is like a jealous neighbor—they know they are slipping and they would like to take the independent mining industry out along with them.

The statement was made by a witness at this hearing that the larger coal companies were forced out of business by unfair competition. I want to tell you today that the shoe is on the other foot, because the independents are trying hard to keep up with the competition that the larger coal companies are putting

on them. I might add that the independent miners have been on the offensive ever since independent mining began way back in the 1930's. Now they are getting innocent men to pass legislation to drive my people out of the only employment they ever had, and the only thing they know how to do. It has been admitted in this hearing and in past hearings on similar bills that the independent mines—title I mines—have a better safety record than the title II mines. Therefore I see no need for any more inspections which would tend to confuse my people by overlapping inspections. The State mine inspector versus the Federal mine inspectors issuing conflicting orders would lead to confusion and end up causing more accidents, rather than promoting safety.

Committees of this sort should be more active in finding out how they can help the working class of people and the distressed areas in which they live, rather than to act on legislation that is submitted by big business to take away jobs that rightfully belong to the people that have them, namely, the independent miners in title I mines.

In conclusion, I wish to state that the independent miners in title I mines, never, in the 30 years of business, have asked the Federal Government for any assistance or special aid. Now big business is trying to shove untold burdens on them, which my people don't want and which they certainly do not need.

I thank you for granting me this opportunity to submit this statement to you.



