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NOMINATION

HEARING

BEFORE THE

COMMITTEE ON HUMAN RESOURCES
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

JEROME R. WALDIE, OF MARYLAND; MARIAN P. NEASE, OF MARYLAND; FRANK F. JESTRAB, OF NORTH DAKOTA; RICHARD V. BACKLEY, OF VIRGINIA; AND A. E. LAWSON, OF PENNSYLVANIA, TO BE MEMBERS OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

AUGUST 24, 1978

Printed for the use of the Committee on Human Resources

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Gregory Fusco, *Minority Staff Director*

NOMINATION

THURSDAY, AUGUST 24, 1978

U.S. SENATE,
COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman) presiding.

Present: Senators Williams, Cranston, Javits, and Schweiker.

The CHAIRMAN. We can begin our hearings on the nominations for the members of the Federal Mine Safety and Health Review Commission.

The Federal Mine Safety and Health Act of 1977 provides for the first time in our Nation's history, a unified program to assure safe and healthful working conditions for all our miners, both in the coal and the hard rock segments of the mining industry. Such a unified mine safety and health enforcement effort should reduce the frequency of fatalities and disabling injuries and illnesses which occur in the mining of our energy and mineral resources.

One of the essential reforms of the mine safety program is the creation of an independent Federal Mine Safety and Health Review Commission charged with the responsibility for assessing civil penalties for violations of safety or health standards, for reviewing the enforcement activities of the Secretary of Labor, and for protecting miners against unlawful discrimination.

It is our hope that in fulfilling its responsibilities under the act, the Commission will provide just and expeditious resolution of disputes, and will develop a uniform and comprehensive interpretation of the law. Such actions will provide guidance to the Secretary in enforcing the act and to the mining industry and miners in appreciating their responsibilities under the law. When the Secretary and mine operators understand precisely what the law expects of them, they can do what is necessary to protect our Nation's miners and to improve productivity in a safe and healthful working environment.

The President has nominated five individuals to be the first members of the Mine Safety and Health Review Commission, and to assume these important responsibilities.

The five nominees are all here. They come from several States and many Senators want to be part of this important day in the hearing on these nominations.

We are really pleased that the President has presented these nominees to us.

There has not been a ripple of discontent that has reached us, which these days, I will have to make the observation, is a bit unique.

So we feel that this is an auspicious beginning for this the first of the Review Commissions.

We are pleased to see that Senator Cranston from California is here to introduce a nominee.

We ask you to introduce your constituent and former colleague, who is designated to be chairman.

STATEMENT OF SENATOR ALAN CRANSTON ON BEHALF OF JEROME R. WALDIE

Senator CRANSTON. Thank you very much, Mr. Chairman.

I appreciate very much the opportunity to introduce to the committee Jerry Waldie who is seated at my left.

Jerry and I have been close friends and associates over many years in California in politics and in government. We worked closely together at the time when we were both in the State government, I as State controller, and he as majority leader in the assembly.

His leadership and ability to create agreement among differing viewpoints enabled our State to accomplish major programs which formed the basis for California's transition to a leading influence in the development of State programs all across the country.

From the State legislature Jerry moved to the House of Representatives where he served for about 10 years.

There he played a major role in the development of consumer protection legislation, protection of civil liberties, protection of the environment, and land use reforms.

He left the Congress voluntarily to make what turned out to be an unsuccessful try for the governorship in 1974, and since then he has been practicing law here in Washington.

I believe Jerry Waldie will be a constructive, very able member of the Federal Mine Safety and Health Review Commission.

I am delighted that he has been nominated. I trust that he will be approved forthwith, and I know he will perform very effectively and well.

I thank you very much.

The CHAIRMAN. Is he as good a member—counter as you are?

Senator CRANSTON. Yes.

The CHAIRMAN. I wonder if we could proceed this way.

We will have the members introduce the nominees. I will turn to Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

I, too, want to support Mr. Waldie. I had the opportunity to serve with him in the House, and am very glad to see him take on this assignment.

He has my congratulations and strong support.

I am very pleased to testify on behalf of a Pennsylvanian here this morning, Mr. Chairman, A. E. Lawson of Pittsburgh, Pa. He is a person who has a very excellent background for this appointment.

Mr. Lawson is an Army veteran, a Phi Beta Kappa graduate of the University of Pittsburgh, and a graduate of the Harvard Law School. For the past 12 years he has been assistant general counsel of

the United Steelworkers of America, where he has had much litigative experience.

He has done a great deal of work for the steelworkers in the area of occupational safety and health, including litigation before the Occupational Safety and Health Review Commission.

He has a keen appreciation of the difficulties we have experienced with the OSHA Review Commission, and I am sure he is going to use that knowledge for the benefit of the MSHA Review Commission.

I might say that he has also had substantial involvement in mine safety matters, including the 1972 Sunshine Mining Co., disaster in Idaho.

I think this is an excellent background for this position. I would also like to add that Mr. Lawson and I have been working together to try to resurrect a steel company that has been inactivated in my State, and that he has been very helpful in this effort. I feel he will be a very valuable asset, and am proud to recommend confirmation of his nomination to be a member of the Federal Mine Safety and Health Review Commission.

Thank you.

The CHAIRMAN. We have Senators Young and Burdick.

We are very pleased to have both Senators from North Dakota here to introduce the nominee from their State.

STATEMENTS OF SENATORS YOUNG AND BURDICK ON BEHALF OF FRANK R. JESTRAB

Senator YOUNG. I strongly urge confirmation of Frank R. Jestrab. He is an able, fine, very decent sort of person.

He is ideally qualified for this position. The only thing I can see wrong with him is he is a Democrat.

The CHAIRMAN. Senator Burdick.

Senator BURDICK. Mr. Chairman, and members of the committee, it is a pleasure for me to introduce Frank Jestrab to the distinguished members of this committee.

Frank has been a friend of mine since first moving to my hometown of Williston some 26 years ago.

Frank came to us with a fully deserved reputation for excellence in practicing law. In North Dakota he has lived up to that description. Frank received a law degree, cum laude, from Montana State University in 1938. He followed that with a tour of duty in the Army in World War II.

Frank had been a special law student at Harvard and New York University. He was a lecturer at the University of Houston before coming to North Dakota.

He is admitted to the bar in North Dakota, Montana, New York, Texas, and Wyoming.

I believe he is thoroughly qualified for this position and will put himself avidly in the execution of his duties.

It is a pleasure to recommend him to this committee.

The CHAIRMAN. I appreciate that, Senator Burdick.

Senator Javits is a member of this committee and is most anxious to be here to introduce Ms. Nease, but he could not be here at this moment because of one of the bills from this committee, the Elementary and Secondary Education Act, on the floor at 9:30, and it is essential he be there.

Ms. Nease, would you come forward and join us with a warm recommendation and introduction, in absentia, from Senator Javits.

We have a letter from Senator Adlai Stevenson. He advises us of the high capabilities of Mr. Richard V. Backley.

We have another letter addressed to us, warm endorsement from Congressman Herbert E. Harris, strongly recommending and commending to us Judge Richard Backley.

We also have a warm statement in support of Mr. Waldie from Congressman Harley Staggers who, regretfully, could not be here today.

Finally, Senator Melcher wanted to be here to introduce Judge Backley, but I know that Senator Melcher is detained elsewhere. He has asked that his statement be included in the record.

[The letters and statement referred to follow:]

SENATOR ADLAI E. STEVENSON
Human Resources Committee
August 24, 1978
Nomination of Mr. Richard V. Backley for
Federal Mine Safety & Health Review Commission

MR. CHAIRMAN,

This morning the Committee on Human Resources will consider the nomination of Mr. Richard V. Backley for appointment to the Federal Mine Safety & Health Review Commission.

Mr. Backley was educated and practiced law in Illinois before embarking on his long and distinguished career in the Federal Government. Of special importance is Mr. Backley's five-year association with the Department of Interior's Division of Mine Health & Safety where he served as a senior trial attorney, an administrative law judge and as Assistant Solicitor. His role in the investigation of the Sunshine Mine disaster in 1972 resulted in special recognition by the Secretary of the Interior.

Because of his professional experience and devotion to the cause of mine safety, I urge the Members of this Committee to consider favorably Mr. Backley's nomination.

MEMBER OF:
COMMITTEE ON THE JUDICIARY
COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
COMMITTEE ON
THE DISTRICT OF COLUMBIA
CHAIRMAN, SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT AND
REGIONAL AFFAIRS

CHRISTOPHER J. SPANOS
ADMINISTRATIVE ASSISTANT

GLENDA B. SUROVELL
LEGISLATIVE ASSISTANT

HERBERT E. HARRIS II
8TH DISTRICT, VIRGINIA

Congress of the United States
House of Representatives

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(703) 569-2540

9256 MOSBY STREET
MANASSAS, VIRGINIA 22110
(703) 368-1331

JAMES J. KENNEY
DISTRICT ADMINISTRATOR

August 16, 1978

Honorable Harrison A. Williams, Jr., Chairman
Committee on Human Resources
4230 DSOB
United States Senate

Dear Mr. Chairman:

I regret that I am unable to be here personally, to introduce my friend and constituent, Judge Richard V. Backley.

I do want you to know, however, that I have strongly supported Dick for this position of Commissioner on the Federal Mine Safety and Health Review Commission. He has long been involved with the enforcement of the Federal Coal Mine Health and Safety Act of 1969 and there is no question in my mind that his qualifications are excellent.

Thank you for according Dick every consideration at this time.

Sincerely yours,

HERBERT E. HARRIS II
Member of Congress

1978 AUG 19 AM 9:49
SENATOR
WILLIAMS, N.J.

HEH:nb

HARLEY O. STAGGERS
2D DISTRICT, WEST VIRGINIA

HOME ADDRESS:
KEYSER, WEST VIRGINIA

CHAIRMAN:
COMMITTEE ON
INTERSTATE AND FOREIGN
COMMERCE

Congress of the United States
House of Representatives
Washington, D.C. 20515

August 24, 1978

To: The Honorable
Harrison A. Williams
Chairman
Human Resources Committee
4230 Dirksen Building
Washington, D. C.

From: Representative Harley O. Staggers
Second District, West Virginia

Subject: Nomination of Jerome Waldie as Chairman of the Federal Mine Safety and Health Review Commission

Mr. Chairman:

I wish to thank you for giving me this opportunity to testify before this Committee on the nomination of Jerome Waldie to be the first Chairman of the Federal Mine Safety and Health Review Commission.

I am especially interested in the work of this new Federal Mine Safety and Health Review Commission particularly because of the large coal mining operations in the Second District of West Virginia, which I represent, and in the entire State of West Virginia, one of the Nation's leading coal producing states. With the energy situation the way it is, coal is becoming increasingly more important to our nation and more and more men will be engaged in mining this coal which is vitally needed by the entire world.

We have had our share of tragedies in the coal fields of West Virginia, and anything that can be done to cut down the accident rate and loss of life is

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certainly a step in the right direction and something I am certain is desired by all of our citizens.

While we are expanding coal production we must continue our efforts to make our mines as safe as humanly possible.

I have personally known Jerry Waldie since the first day he came to Congress back in June of 1966, and we served and worked together in the Congress until he left at the end of 1974. You can get to know a man pretty well after working with him for almost nine years.

Jerry Waldie came to the Congress in 1966 well prepared for his legislative duties. He was a graduate of the University of California Law School. He had been serving as a California State Assemblyman since 1958 and was Majority Floor Leader of the California State Assembly from 1961 through 1966.

Jerry was an active and vigorous member of the House of Representatives. His activities in the House include important legislation affecting the environment, tax and land use reforms, full financial disclosure for public officials, consumer protection and major bills providing for protection of civil liberties.

There is a time and season for all things and all positions, and I think this is Jerry Waldie's time.

Knowing Jerry Waldie as I do, if confirmed, I am sure he will pursue his responsibilities vigorously, efficiently, thoroughly and completely.

As Chairman, I think he will make this a most meaningful Commission and will be responsive to the needs of this country.

It is a pleasure to endorse the nomination of Jerome Waldie to be Chairman of the Federal Mine Safety and Health Review Commission, and I certainly urge this Committee to favorably consider his nomination.

Thank you again for this opportunity to testify.

Respectfully submitted,

Harley O. Staggers

HARLEY O. STAGGERS

STATEMENT OF SENATOR JOHN MELCHER
IN SUPPORT OF
JUDGE RICHARD V. BACKLEY
August 24, 1978

I am pleased to introduce to this Committee Judge Richard V. Backley, Presidential nominee for the position of Commissioner of the Mine Safety & Health Review Commission.

The Federal Mine Safety & Health Act of 1977 stressed that the members of the proposed Commission should not only be well-qualified by reason of training, education and experience but should also, and more important, have practical experience in mine safety and health. Judge Backley's qualifications, as members of this committee are aware, are exemplary in every way, especially his past practical experience in this field.

Dick Backley will bring to the Commission nearly twenty years expertise as a trial and prosecuting attorney. He worked in the Solicitor's Office of the Department of Interior as attorney advisor to the Federal Water Pollution Control Administration from 1967 to 1970, during which time he represented the Department in cases before the Federal Power Commission. When the Federal Coal Mine Health & Safety Act was enacted in 1969 Judge Backley became senior trial attorney with the Division of Mine Health & Safety and, as such, tried more than 200 enforcement cases. After his certification as

an administrative law judge in 1974, Judge Backley became Assistant Solicitor in the Division of Mine, Health & Safety. In little more than a year Judge Backley and his staff reduced the caseload they had assumed from 10,000 to less than 3,000.

To conclude, I would like to bring up Judge Backley's participation in the work that was carried out in 1972 by the Solicitor's office relating to the Sunshine Mine disaster in Kellogg, Idaho. Judge Backley represented the Department at the hearing into the cause of the fire which took the lives of 91 miners at the Sunshine Silver Mine in Kellogg, for which he received a Special Achievement Award and letter of commendation from the Secretary. I personally am delighted that the President has recommended a person of Judge Backley's caliber to the Mine Health & Safety Commission and hope that this Committee and the full Senate will confirm his nomination promptly.

The CHAIRMAN. We are all present and now accounted for.

Mr. Chairman, do you have a statement that you would desire to make?

We will give all of you an opportunity.

STATEMENT OF HON. JEROME R. WALDIE, NOMINEE FOR CHAIRMAN OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Mr. WALDIE. I have no prepared statement.

I would like to make just a few remarks.

I think every member of this proposed Commission that is before us is cognizant of the opportunity that is being presented to us and also cognizant and I think sensitive to the challenge that you have placed before us.

I personally believe that this act is in a sense a ground breaking effort in terms of bringing about efficient and prompt and reasonable regulation of this industry.

I have had some familiarity with the preceding acts that the Congress has adopted to address the problems of health and safety in the working environment of the mines of America.

I have some understanding of the deficiencies that have been revealed in those previous attempts.

As I understand, what the Congress has attempted, and, particularly the Senate, is that you have sought to bring about a more efficient dispatch of the regulatory activities of the Federal Government in terms of mine safety and health and that you have found deficiencies in terms of the speed with which standards have been promulgated, the efficiency with which enforcement activities have been conducted, and the efficiency and the justice with which judgments have been ultimately passed upon operators' responsibilities and accountabilities to safety and health in the mines.

I gather also from the structure of the new agency that has been created, the Review Commission, that a great deal of the responsibility of attempting to bring about the objectives that you speak of in this act will fall upon our shoulders. I personally assure the Chairman and members of this committee that I am sensitive to and sympathetic to the objectives of the act.

I believe the issue of safety and health in the mines has been a proper and overwhelming area of concern that has not been properly or fully addressed during many years of this Nation's existence, and of the miners' problems.

I hope this act will be a model in terms of that effort, and I am fully aware that our ability or inability in bringing about the intent of the Congress as expressed in the act will be determinative of that hope.

The challenge is unique. It is a new agency and hopefully if we are able to perform in the manner that the act suggests performance is desired, that we can set a standard for similar efforts in other areas wherein safety and health are involved.

I am most pleased that I have been selected to engage in this responsibility, and I respectfully appreciate the courtesy that you and your staff have shown me during the period that we have been consulting on this matter.

I want to also personally express my gratitude and my pride in Senator Cranston for his introduction of me and for the service that he has given the State of California and this Nation.

I have nothing further to say.

[The biography of Mr. Waldie follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: WALDIE (LAST) JEROME (FIRST) RUSSELL (OTHER)

Position to which nominated: CHAIRMAN - FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION Date of nomination: JULY 28 1978

Date of birth: 15 (DAY) 2 (MONTH) 25 (YEAR) Place of birth: ANTIOCH CALIFORNIA

Marital status: MARRIED Full name of spouse: DOROTHY JOANNE GREGG WALDIE

Name and ages of children: JILL JEROLYN EVANS - 25
JONATHON JEROME WALDIE - 22
JEFFREY JAMES WALDIE - 20

Education:

Institution	Dates attended	Degrees received	Dates of degrees
ANTIOCH HIGH SCHOOL	1938-42	H.S. DIPLOMA	1942
SANTA ROSA J.C.	1946-48	A.A.	1948
UNIV. CALIFORNIA, BERKELEY	1948-50	A.B.	1950
UNIV. CALIFORNIA SCHOOL OF LAW (BOALT)	1950-53	L.L.B.	1953

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

A.B. CUM LAUDE, U.C. BERKELEY, 1950
HONORARY DEGREE ST. MARY'S COLLEGE, CALIF

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
ODD FELLOWS LODGE	NONE	1946 TO DATE
AMERICAN BAR ASS'N	NONE	1975 TO DATE
CALIFORNIA BAR ASS'N	NONE	1975 TO DATE

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1- 2/53 - ROBT. J. FOLEY, ATTY AT LAW, ALBANY, CALIFORNIA LAW CLERK - 9-54.

2- 9-54 - SELF EMPLOYED ATTORNEY, ANTIOCH, CALIFORNIA, UNTIL 6/58.

3- 6-58 - MEMBER LAW FIRM, HAMM, ARNASON + WALDIE, ANTIOCH, CALIF. UNTIL 6-66

4. 1-59 - MEMBER CALIFORNIA STATE ASSEMBLY, SERVED 5 YEARS AS MAJORITY LEADER, ENDED 6-66 WHEN ELECTED TO CONGRESS.

5. 6-66 - MEMBER CONGRESS FROM 14th DIST., CALIF, UNTIL 1-75. WAS DEFEATED FOR HIGHER OFFICE IN '74 DEMOCRAT PRIMARY FOR GOV.

6- 1-75 - SELF EMPLOYED ATTORNEY, WASHINGTON, D.C. PRIMARY CLIENT, NATIONAL ASS'N. OF LETTER CARRIERS, AFL-CIO.

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

1954- MEMBER OF CITY OF ALBANY, CAL., PLANNING COMMISSION

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

(1) "FAIR PLAY FOR FROGS", HARCOURT, BRACE + JOVANOVICH, 1977.

(2) I wrote a ~~ko~~ weekly column on subject of federal + postal employees for Federal Times for about a year beginning in 1977.

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

SEE EXHIBIT "A"

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Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

YES

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

NO

3. Has a commitment been made to you for employment after you leave Federal service?

NO

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

YES

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflcts of interest with the position to which you have been nominated.

NONE

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

NONE. OTHER THAN OWNERSHIP OF 100 SHARES OF KAISER STEEL WHICH I SOLD JULY 5, 1978 + 200 SHARES PUBLIC SERVICE NEW MEXICO, WHICH I SOLD JULY 5, 1978

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

MY PRACTICE SINCE LEAVING CONGRESS HAS BEEN MOSTLY LEGISLATIVE ADVOCACY. IN THE FIELDS OF FEDERAL EMPLOYEES BENEFITS, POSTAL EMPLOYEES BENEFITS, + CONSERVATION ISSUES FOR FRIENDS OF EARTH + THE AMERICAN LEAGUE OF ANGLERS. I ALSO HAVE REPRESENTED THE RECORDING INDUSTRY IN COPYRIGHT + POSTAL MATTERS + FRANCHISEES IN FRANCHISE LEGISLATION. I ALSO REPRESENTED CONTRA COSTA CO. WATER DISTRICT IN WATER LEGISLATION.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I KNOW OF NO POTENTIAL CONFLICT OF INTEREST

The CHAIRMAN. We greatly appreciate that statement, Mr. Waldie. Ms. Nease, did you want to express yourself in any way?

STATEMENT OF MARIAN PEARLMAN NEASE, NOMINEE TO THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Ms. NEASE. As you may know, I did file a statement with the committee which I would like to have put in the record.

I am very happy to appear before you as a nominee for a position on the Federal Mine Safety and Health Review Commission.

I do not have anything to add to the statement on file with the Commission, but I think I would just like to emphasize one point.

I have traveled extensively through the coal fields. I have been in underground mines and in surface mines, and I would hope the Commission would have the opportunity to make its presence felt in the mining communities throughout this Nation.

As I understand it, the administrative law judges now presently hold their hearings throughout the country in various mining locations.

I look forward to a possibility of the Commission having some of its meetings out in the mining areas.

Again, I thank you for the opportunity to be here this morning.

The CHAIRMAN. The tradition of women not being permitted in the mines was broken long ago, I know. Well, not so long ago, perhaps.

Ms. NEASE. In fact, I have worked for the United Mine Workers Health and Retirement Funds for 4½ years.

On my first trips I spent a lot of time in parking lots, while other people went down in the mines. In the last 2 years I have been able to go in the mines with the men.

[The prepared statement and biography of Ms. Nease follows:]

STATEMENT OF MARIAN PEARLMAN NEASE
BEFORE THE SENATE HUMAN RESOURCES COMMITTEE
AUGUST 24, 1978

Good morning. I am Marian Pearlman Nease. President Carter has nominated me to the Federal Mine Safety and Health Review Commission and I am very pleased to appear before you this morning as you consider these nominations.

I was born and raised in New York City, educated in New York City public schools and at Cornell University and the University of Pennsylvania Law School. I am a member of the bars of New York, the District of Columbia and the United States Supreme Court.

I began my legal career as an attorney in the division of water and power in the Solicitor's Office of the Department of Interior. I left Interior to become the legal adviser to the Four Corners Regional Commission, a federal-state regional economic development commission located in Farmington, New Mexico. In 1969 I returned to Washington to enter the general practice of law with the firm of Stroock & Stroock & Lavan.

In June of 1971 I had the opportunity to join the small staff of Senator George McGovern's presidential campaign and served first as finance director of the primary campaigns and then as treasurer of the national presidential campaign. After settling the financial affairs of the campaign, I became the legal director of the Washington office of the Commonwealth of Puerto Rico.

In early 1974 I was asked by the trustees of the United Mine Workers Health and Retirement Funds to come there on a

full time basis and serve as their special counsel. In that capacity I have been actively involved in all aspects of the Funds operations. As a result, I have become quite familiar with the Employees Retirement Income Security Act. As part of my duties, I have traveled extensively through the coal fields, meeting with pensioners, working miners, their families, health care providers, and coal operators. I have been in underground mines and at surface mines, both in the east and in the west. I have become very familiar with the health problems and working conditions of the soft coal miner.

I would very much like to serve on the Federal Mine Safety and Health Review Commission. I believe the Commission is principally a judical body which must deal as expeditiously as possible with the cases brought to it. All too often, there are long delays in the adjudicative process which tend to frustrate the intent of the law and unfairly burden the litigants.

I believe it is the responsibility of the Commission to issue well reasoned, clearly written, consistent decisions. The reason for health and safety regulation is, obviously, to make the workplace environment a safe one. If miners and operators can understand and follow Commission decisions, perhaps we will see fewer violations and more voluntary, informed compliance with the Act.

Finally, I would hope that the Commission would make its presence felt in the mining communities. I favor the continuation

of the present practice of having the administrative law judges conduct their hearings in the field. I look forward to a time when it might be appropriate for the Commission to hold some of its meetings in mining areas.

I am ready to go to work. I look forward to devoting my efforts to the challenging task of helping to organize and operate this important Commission.

Thank you very much for the opportunity to appear before you.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Nease, Marian Pearlman
(LAST) (FIRST) (OTHER)

Position to which nominated: member, Federal Mine Safety & Health Review Commission Date of nomination: May 25, 1978

Date of birth: 20 May, 1940 (DAY) (MONTH) (YEAR) Place of birth: New York, New York

Marital status: married Full name of spouse: Jack W. Nease

Name and ages of children: None

Education:

Institution	Dates attended	Degrees received	Dates of degrees
U. of Pennsylvania	9/61-5/64	LL.B.	1964
Cornell University	9/57-6/61	A.B.	1961

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

New York State Regents Scholarship

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
American Bar Association		
D.C. Bar		
Federal Bar Association		
ACLU	local bd member	1974-1976

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1974-present: Special Counsel, UMWA Health & Retirement Funds

1973-1974: Director, Legal Section, Puerto Rico Wash. office

1971-1973: Treasurer, McGovern for President, Inc.

1969-1971: Associate, Stroock & Stroock & Lavan, Wash., D.C.
Farmington, N.Mex.

1968-1969: Legal Adviser, Four Corners Regional Commission

1966-1968: Attorney, Dept. of Interior, Wash., D.C.

33-087 O - 78 - 4

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

None

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

McGovern for President $200

National Womens Political Caucus $200

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has a commitment been made to you for employment after you leave Federal service?

No

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I do not anticipate being in a situation involving any potential conflict of interest.

The CHAIRMAN. Access is something we are familiar with in this and other connections.

But I think Mrs. Roosevelt was given special dispensation to go underground. This was unique to this country.

Literature back 200 years showed women working in the mines elsewhere.

The barriers came down in the United States, fortunately.

We are glad you are part of this.

Mr. Jestrab.

STATEMENT OF FRANK R. JESTRAB, NOMINEE TO THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Mr. JESTRAB. Mr. Chairman, thank you very much.

I would like to express my gratitude to both Senator Young and Senator Burdick for taking time to come here this morning to introduce me.

I am very proud of both of them in my State. We believe they serve us with great distinction.

I am excited about the statute. I did not think it would be possible—after reading statutes, litigation cases for 40 years—to be excited about a statute, but I am excited about this statute.

I think it presents exceptional opportunity to effectively solve problems that seem to have plagued the administration of mine safety and health statutes.

I propose to work very hard, study the statute, apply the statute to the facts, and if any problem develops in the statute, see that they are reported to Congress.

I plan to work very hard and learn as much about mining as I can.

That concludes my statement.

Thank you very much, Senator.

The CHAIRMAN. That is an encouraging statement.

You honor those of us who worked on this legislation with your remarks that this statute excites you.

Mr. JESTRAB. Yes.

[The biography of Mr. Jestrab follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Jestrab (LAST) Frank (FIRST) Ferdinand (OTHER)

Position to which nominated: Member - Federal Mine Safety and Health Review Commission Date of nomination: May 24, 1978

Date of birth: 28 (DAY) 1 (MONTH) 1914 (YEAR) Place of birth: Havre, Montana

Marital status: Married Full name of spouse: Elvira Waidt Jestrab

Name and ages of children: Laurel Ann Jestrab Lesch - 28
James David Jestrab - 27

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Havre Public Schools	1920-1933	--	--
Northern Montana College, Havre, MT	1933-1935	None	--
Univ. of Montana Missoula, MT	1935-1938	L.L.B.	June, 1938
Harvard Law School Cambridge, MA	1946	None	--
New York Univ. Law School, New York, NY	(Night classes) 1947-1948	None	--

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society membership, and any other special recognitions for outstanding service or achievement.

Bronze Star for Valor - 1945 - 45th Infantry Nam Khan, Burma; Order of the Coif - Honorary

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
State Bar Association of North Dakota	President	1966-1967
Montana Bar Association	--	
New York State Bar Association	--	
Association of the Bar of the City of New York	--	
Texas Bar Association	--	
Wyoming Bar Association	--	
American Bar Association	--	

Please see attached.

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	
7/38	2/42	Anaconda Copper Mining Co., Butte, Montana, Lawyer
2/42	11/45	U.S. Army, China-Burma-India-Aleutian Islands, Soldier
11/45	1/46	Anaconda Copper Mining Co., Butte, Montana, Lawyer
8/46	3/48	Stanley W. Schaefer, New York City, Lawyer
7/48	2/49	Self employed in Houston, Texas, General Practice Lawyer
2/49	3/52	Amerada Petroleum Corp., Casper, Wyoming & Williston, North Dakota, Staff Lawyer
4/52	Present	Partner, Bjella & Jestrab, Williston, ND, Lawyer

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Appointed 1956 by Gov. Norman Brunsdale to National Conference of Commissioners on Uniform State Laws, continued to serve since that time, elected Life Member 1974; Appointed 1/16/60 by Gov. John Davis as non-legislative member of legislative committee to draft labor statute-later enacted by N.D. legislature as N.D. Labor-Management Relations Act; Appointed 1965 as citizens member of

(continued on attach.)

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

--

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Democratic Precinct Committeeman for the past five years.

ATTACHMENT TO STATEMENT FOR COMPLETION

Memberships - continued

Organization	Office held	Dates
Inter-American Bar Association	--	
Association of the Bars of Northwestern Plains and Mountains (Jackrabbit Bar)	--	
World Association of Lawyers	--	
International Academy of Trial Lawyers	--	
American Bar Foundation	State Chairman	1977-date
International Society of Barristers	--	
American Law Institute	--	
American Counsel Association	President	1973
American Judicature Society	--	
Selden Society	--	
Honorable Society of the Middle Temple	--	
Phi Delta Phi	--	
Order of the Coif	--	
Rotary Club of Williston	President	1957-58
	Dist. Gov.	1959-60
Sons of Norway	--	
Bjarne Lodge No. 86	--	
A.F. & A.M., Royal Arch Masons, Knights Templar	--	
Benevolent Protective Order of the Elks	--	
Action Committee for Rural Electrification (ACRE)	--	
American Birding Association	--	
American Civil Liberties Union	--	
Century Club (Democratic Political Club)	--	
National Audubon Society	--	

Government experience - continued

a legislative research committee for constitutional revision for North Dakota, served on a subcommittee under late Honorable Fred Aandahl; Represented Governor William Guy and Governor Arthur Link on the Interstate Oil Compact Commission from 1967 to date, served as vice-chairman in 1974; Served as chairman of the National Gas Survey Supply-Technical Advisory Task Force on the Regulatory Aspects of Substitute Gas in 1976, survey conducted under Federal Power Commission; Appointed by President Carter to the United States Circuit Judge Nominating Panel for the 8th Circuit, April 11, 1978; Appointed August 11, 1970 as Special Assistant Attorney General by Attorney General Helgi Johanneson and by his successor Attorney General Allen I. Olson to serve on special assignment with the State Securities Commissioner and the State Banking Department of the Department of Banking and Financial Institutions of the State of North Dakota from 1970 to date.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes.

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No.

3. Has a commitment been made to you for employment after you leave Federal service?

No.

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes.

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

I do not now have any arrangement. No doubt my partners will need to borrow money to compensate me, and some portion may be deferred.

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

--

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

I have represented oil and gas exploration companies in oil and gas matters. Some of these may own coal interests. We have not represented them in connection with coal matters. One of our clients, Northwest Coals, Inc., is a Canadian company whose business is that of a mining contractor for the mineral owners or lessees of the mineral owners.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

If stock ownership represents a potential conflict I will divest myself of the stock.

The CHAIRMAN. Thank you.
Mr. Backley.

STATEMENT OF RICHARD V. BACKLEY, NOMINEE TO THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Mr. BACKLEY. Thank you, Senator.

I did prepare a statement and I would like to touch briefly on this statement.

I consider it a privilege to be here today. I am also honored to be nominated to what I consider a very important, challenging job.

There are many, many improvements in the present act over the 1969 act.

I would just like to, if I may, take a little of your time to set before you my experience in the area of mine safety and how I view the role of the Commission.

I am a career Federal employee with approximately 23 years of Federal service. Since 1975 I have been an administrative law judge, the last 2½ years having been spent with the Civil Aeronautics Board. From January 1970 to February 1974, however, I was a senior trial attorney with the Division of Mine Health and Safety, Officer of the Solicitor, Department of the Interior. This division was formed with the enactment of the Coal Mine Health and Safety Act of 1969, the predecessor of the present act.

Initially, I worked with coal mine inspectors in the drafting of regulations required by the 1969 act. I further defended these regulations before administrative and judicial tribunals.

During this same period I tried every type of case that arose under the act. Most of these hearings were conducted in the field, in towns such as Charlestown, Huntington, Beckley, Princeton, and Bluefield, W. Va.; Pikesville and Hazard, Ky.; Big Stone Gap and Norton, Va.; Pittsburgh, Johnstown, and Harrisburg, Pa.; and Kellogg, Idaho.

I have been in mines where the height was no more than 4 feet and as deep as 5,000 feet. As a result of this activity, I believe I have developed a certain appreciation for the mining industry.

Insofar as other, more formal, mining experience is concerned, I attended classes at the Bureau of Mines technical facilities at Pittsburgh and programs sponsored by the Bureau in Washington. However, with all due respect to this form of orientation, most of my experience in the field of mine operations came from the inspectors with whom we worked constantly. I submit that experience so obtained is difficult to forget, if for no other reason than that it is given directly and explicitly with little chance of misunderstanding.

In 1972, I received a special achievement award and letter of commendation from then Secretary of Interior Morton for my work in connection with what has been called the Sunshine Mine Disaster.

I represented the Department at the hearing into the cause of fire that took the lives of 91 miners at the Sunshine Silver Mine in Kellog, Idaho. I believe that this case was the first adversary proceeding that arose under the Federal Metal and Nonmetallic Mine Safety Act.

In January 1974, I was promoted to Assistant Solicitor in the Division of Mine Health and Safety where I supervised a staff of 19 attorneys which handled all administrative proceedings involving mine safety before administrative law judges.

In mid-1975 I left to become an administrative law judge. I left simply for the reason of professional advancement. At no time, however, have I been completely out of touch with mine safety, and followed the path of the legislation that is now the Mine Safety and Health Act of 1977.

In my opinion, the establishment of an independent agency to interpret and enforce the law is a major step in achieving the purposes of the act. I believe that one of the prime responsibilities of the Commission is to promptly dispose of those cases that come before it, hopefully, in well reasoned and lucid decisions.

Having been a trial lawyer for 20 years and an administrative law judge for 3, I think I can speak for others of the profession when I say that decisions delayed and/or ambiguous may, in effect, be no decision at all. Certainly, such action—or lack thereof—is unfair to miners, operators, and inspectors alike.

Accordingly, I view my role as Commissioner, if confirmed, as one of interpreting, implementing, and enforcing the law you have passed, in a manner fair to all parties. Further, to carry out this role without undue delay. I believe I have the qualifications necessary to perform this function.

Thank you for your indulgence.

The CHAIRMAN. Thank you. We will include your prepared statement in the record.

[The prepared statement and biography of Mr. Backley follows:]

STATEMENT OF RICHARD V. BACKLEY BEFORE
THE SENATE COMMITTEE ON HUMAN RESOURCES

Mr. Chairman, Members of the Committee it is a privilege to appear before you with regard to your consideration of my nomination as a member of the Federal Mine Health & Safety Commission. I consider it an honor to be nominated to what I consider an important and challenging position. The Committee has the requested information on my professional background, but I would like to briefly summarize that data if I may for the record. Particularly, I would like to set before you my experience in the area of mine safety and how I view the role of the Commission.

As you know, I am a career federal employee with approximately 23 years of federal service. Since 1975 I have been an administrative law judge, the last 2½ years having been spent with the Civil Aeronautics Board. From January 1970 to February 1974, however, I was a senior trial attorney with the Division of Mine Health & Safety, Office of Solicitor, Department of Interior. This division was formed with the enactment of the Coal Mine Health & Safety Act of 1969, the predecessor of the present Act. Initially, I worked with coal mine inspectors in

the drafting of regulations required by the 1969 Act. I further defended these regulations before administrative and judicial tribunals.

During this same period I tried every type of case that arose under the Act. Most of these hearings were conducted in the field, in towns such as Charleston, Huntington, Beckley, Princeton and Bluefield, West Virginia; Pikeville and Hazard, Kentucky; Big Stone Gap and Norton, Virginia; Pittsburg, Johnstown and Harrisburg, Pennsylvania; and Kellog, Idaho. I have been in mines where the height was no more than 4 feet and as deep as 5000 feet. As a result of this activity I believe I have developed a certain appreciation for the mining industry.

Insofar as other, more formal, mining experience is concerned, I attended classes at the Bureau of Mines technical facilities at Pittsburg and programs sponsored by the Bureau in Washington. However, with all due respect to this form of orientation, most of my experience in the field of mine operations came from the inspectors with whom we

worked constantly. I submit that experience so obtained is difficult to forget, if for no other reason than that it is given directly and explicitly with little chance of misunderstanding.

In 1972, I received a Special Achievement Award and Letter of Commendation from then Secretary of Interior Morton for my work in connection in what has been called the Sunshine Mine Disaster. I represented the Department at the hearing into the cause of fire that took the lives of 91 miners at the Sunshine Silver Mine in Kellogg, Idaho. I believe that this case was the first adversary proceeding that arose under the Federal Metal and Nonmetallic Mine Safety Act.

In January 1974, I was promoted to Assistant Solicitor in the Division of Mine Health and Safety where I supervised a staff of 19 attorneys which handled all administrative proceedings involving mine safety before administrative law judges.

In mid-1975 I left to become an administrative law judge. I left simply for the reason of professional advancement. At no time, however,

have I been completely out of touch with mine safety, and followed the path of the legislation that is now the Mine Safety and Health Act of 1977.

In my opinion the establishment of an independent agency to interpret and enforce the law is a major step in achieving the purposes of the Act. I believe that one of the prime responsibilities of the Commission is to promptly dispose of those cases that come before it, hopefully, in well reasoned and lucid decisions. Having been a trial lawyer for twenty years and an administrative law judge for three, I think I can speak for others of the profession when I say that decisions delayed and/or ambigious may, in effect, be no decision at all. Certainly, such action — or lack thereof -- is unfair to miners, operators, and inspectors alike.

Accordingly, I view my role as Commissioner, if confirmed, as one of interpreting, implementing, and enforcing the law you have passed, in a manner fair to all parties. Further, to carry out this role without undue delay. I believe I have the qualifications necessary to perform this function.

Thank you for your indulgence.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Backley (LAST) Richard (FIRST) Vincent (OTHER)

Position to which nominated: Commissioner Mine Safety & Health Review Commission Date of nomination: July 13, 1978

Date of birth: 21 (DAY) July (MONTH) 1927 (YEAR) Place of birth: Chicago, Illinois

Marital status: married Full name of spouse: Nathalie Hannon Backley

Name and ages of children: Martin R. Backley Age 20
Kathleen A. Backley Age 19
Karen C. Backley Age 17

Education:

Institution	Dates attended	Degrees received	Dates of degrees
DePaul U.	1948-1955	LL.B	June 1955

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Department of Interior Special Achievement Award

Letter of Commendation from Secretary of Interior

United Nations Medal

Korean Service Medal 1 Star

Victory Medal World War II

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
Federal Administrative Law Judge Conference	None	Member since 1975

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Administrative Law Judge, CAB, Washington, D.C. 12-75 to present

Administrative Law Judge, HEW, Roanoke, Va., 6-75 to 12-75

Assistant Solicitor, Interior, Washington, D.C., 2-74 to 6-75
(Division of Mine Health & Safety)

Senior Trial Attorney, Interior, Washington, D.C., 2-70 to 2-74
(Division of Mine Health & Safety)

Attorney Advisor, Interior, Washington, D.C., 2-67 to 2-70
(Division of Water Resources)

District Attorney, Trust Territory of Pacific Islands, 1-62 to 2-67

Land Title Officer, Trust Territory of Pacific Islands, 4-60 to 1-62
(also served as Public Defender on several occasions)

Trial Counsel, Montgomery Ward, Chicago, Ill., 4-57 to 4-60

Private Practice, Chicago, Ill., 1-56 to 4-57

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

None

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

None

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

yes

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has a commitment been made to you for employment after you leave Federal service?

No

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflcts of interest with the position to which you have been nominated.

none

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

none

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

not applicable

The CHAIRMAN. Mr. Lawson.

Mr. LAWSON. Thank you very much, Senator.

STATEMENT OF A. E. LAWSON, NOMINEE TO THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Mr. LAWSON. I greatly appreciate the confidence that has been thus far placed in me by all those involved, and the cooperation of not only the White House, but the Senate staff personnel, particularly, in bringing me to this point.

I also want to express my special thanks to Senator Schweiker for his introduction of me here today.

I intend to do my utmost to merit your support if the Senate approves my nomination, which I hope will prove to be the case.

As has been indicated, I have had fairly extensive experience under the Occupational Safety and Health Act, and some under the 1969 act, in particular in conjuction with the Sunshine Mine Disaster.

I have given considerable thought to what the Federal Mine Safety and Health Review Commission should do to implement the act, the will of Congress, and the administration.

I have discussed this in some detail with what I hope will be my counterparts at the Occupational Safety and Health Review Commission, the problems they have encountered, and the way in which they operate in performing their similar functions, with the hope that perhaps we can avoid some problems they have encountered with their particular statute, in administering this somewhat comparable law.

Many of the problems in OSHA are problems of delay.

My personal sense of priorities would be to put the prompt issuance of decisions first.

I have been distressed that nearly 6 months have passed since the act became law and I am advised there is already a significant backlog of appeals.

I would personally make it my first order of business and I am sure the rest of the Commissioners designate share my view, to make the calendar current.

I am sure it is a truism, but any law is only as good as its administration. I view our task, as a reviewing body, to carry out the intent of the Congress, in having decisions issued and a clear body of law developed, as promptly as possible, enabling everyone to know where they are and will be under this new act.

I hope I can act in the position for which I have been nominated fairly, conscientiously, and diligently. I certainly intend to do my utmost.

Thank you.

[The biography of Mr. Lawson follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Lawson (LAST) A.E. (FIRST) (OTHER)

Position to which nominated: Commissioner, Federal Mine Safety and Health Review Commission Date of nomination: 5-25-77

Date of birth: June 23, 1929 (DAY) (MONTH) (YEAR) Place of birth: Altoona, Pennsylvania

Marital status: Married Full name of spouse: Louise Walsh Lawson

Name and ages of children: Barbara S. 23 Diana E. 11
Karl A. 20
Erica L. 13

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Stowe Twp. H.S. (Sto-Rox Sr. H.S.)	1942-1947	Academic	1947
University of Pittsburgh	1948-1951	BA	1951
Texas Western University	1952-1952	none	
Harvard Law School	1954-1957	LLB	1957

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Harvard Law School scholarship student

University of Pittsburgh, AB, magna cum laude, Phi Beta K

Honorable Discharge, United States Army

Good conduct medal

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
American Civil Liberties Union	Board Member	1963 - 1977
University of Pittsburgh	Trustee	1969 to date
Executive Committee thereof		1973 to date
Board of Visitors, Graduate School of Social Work	Chairman	
Board of Visitors, Law School	Member	
Board of Visitors, School of General Studies	Member	
Unitarian Church	Trustee	
Allegheny County Bar Assn.	Former Secretary	1963 to date
Prepaid Legal Services and Labor Law Committees	Member	

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

11/47 - 5/51	Burrell Corp.	2223 Fifth Ave.,Pittsburgh,Pa.	Warehouseman/Teamste
5/51 - 5/53	U.S.Army Hdqrs Guided Missiles Hdqrs.Northern France	Ft. Bliss El Paso,Texas Verdun, France	Hdqrs., Guided Missiles
9/53 - 9/54 6/55 - 9/55 6/56 - 9/56	Retail Credit Co. (Equifax, Inc.)	6 Parkway Center,Pittsburgh,PA	Investigator
6/55 - 6/57	Browne & Nichols School	Gerrys Landing Cambridge, Mass.	School Bus Driver
8/57 - 7/62	Fogarty & Schreiber,Esqs.	1 Hoyt Street Brooklyn, N.Y.	Attorney
9/62 - 11/66	Columbia Gas Company	800 Union Trust Bldg. Pittsburgh, PA	Attorney
11/66 - Present	United Steelworkers of America	Five Gateway Center Pittsburgh, PA	Attorney
1977	Carnegie-Mellon Univ.	Forbes Ave., Pittsburgh,PA	Instructor

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Member, Governor's Tax Study and Revision Commission (General State Business Taxation Committee, 1967 - 1968)

Alternate, member, Governor's Commission on Priorities (1968 - 1969)

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Vice Chairman, Democratic Party, Mt. Lebanon, Pennsylvania currently; Committeeman and Ward Chairman since 1964.

Regular contributor to Democratic candidates and Democratic party, personally and through United Steelworkers of America Political Action Committee. Total contributions no more than $2,000.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No present plans.

3. Has a commitment been made to you for employment after you leave Federal service?

No

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflcts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

During the past ten years I have testified, written letters and contacted various state and federal personnel in regard to legislation of interest to the United Steelworkers, on behalf of the University of Pittsburgh of which I am a Trustee, and matters of interest to me personally as well as on matters which concern me as a Democratic party official.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

If my appointment is approved I would serve in such manner as to eliminate any conflict of interest which may be disclosed herein.

The CHAIRMAN. We have one or two questions here.

I will preface the questions with a little review of the law and perhaps some attitudes that we who wrote the law have.

Now mandatory civil penalties are intended to promote meaningful compliance with the requirements of the act. To have this effect, however, such penalties must be assessed and paid with reasonable promptness.

For this reason the act puts time limits on each phase of the assessment, administrative and judicial review mechanism. For example, section 105A requires the mine operator to contest the proposed penalty assessment within 30 days.

Similarly, if a mine operator is dissatisfied with the decision of an administrative law judge, he must seek review of that decision by the Commission within 30 days, but to make such a process effective, the decisions of the administrative law judges and the Commission itself must be reached with reasonable promptness.

I would like first to ask Mr. Waldie what steps he proposes to take to insure that the decisions of the Commission and the Commission's administrative law judges will be rendered within reasonable time limits?

Mr. WALDIE. Senator, in terms of the decisions of the Commission, I think we will have no difficulty in developing standards for disposition of cases that are effective and expeditious.

Just from preliminary conversations that I have had with each of the Commission designates, their commitment to that objective is total, and I have no question but that we will be able to devise procedures for that.

I have less certainty that we will be able to deal as effectively with the problem that exists in the delay in the administrative law judges' decision.

We are very much aware, and we are very much committed to efforts to bring about an accountability on the part of the administrative law judge for work standards.

Now, we recognize in that effort there is a sensitivity and a proper sensitivity that no accountability as to quality or content of an administrative law judge's opinion should be sought by any other person.

But as to the time within which the work product is finally disposed of, I think there is every right and reason for the Commission to set forth work standards within which we expect administrative law judges' decisions to be rendered.

As I look at the act now and at the process, I find that the clock runs from the beginning of the process when citations are issued and continues running against all parties involved in the particular issue until such time as the evidentiary hearings are completed and the decision is to be written by the administrative law judge. At that moment in time the clock stops and the clock does not begin ticking again until the administrative law judge concludes his or her written opinion.

Then the clock begins running again on all parties.

That does not seem to me to be a reasonable distinction that no clock should run on an administrative law judge during the time when he or she is writing his or her opinion.

I am not quite certain how that clock should be started up, and I am fully aware that the time limits upon the administrative law judge should be flexible enough to accommodate the differences in the nature of the cases that they have heard and the complexity of the cases, and therefore the complexity of the decision.

But I at least am fully committed to devising means of attaining accountability for the work product of the administrative law judges to accomplish that objective of the act of which I am in wholehearted agreement and thoroughly committed to, namely, that this process of decision at all levels beginning with MSHA through the Commission and the administrative law judges be done as quickly and as effectively as possible.

The CHAIRMAN. And your colleagues of the Commission are of a similar mind?

Mr. JESTRAB. We have discussed this, Mr. Chairman.

There is total agreement that some device or devices, some system must be developed to expedite decisions by the administrative law judges.

I share Mr. Waldie's confidence that the Commissioners will act very promptly, with respect to this position of appeals.

But I think all of us are fully cognizant of the devastating effects of delay.

We are examining some of the alternatives that are available to us and we propose to move with some vigor, some dispatch, and reach what I hope will be a workable solution, and if one plan does not work, we will try something else.

The CHAIRMAN. That is spoken like one of the great Democrats.

Franklin Roosevelt used to say that. I am sure you share the respect.

You look as old as I am almost, so you have had that history of living under the greatness of a man who tried so much that——

Mr. JESTRAB. He did indeed.

The CHAIRMAN. Yesterday we had a hearing here—we have had a lot of things around here that deal with areas that were also dealt with by Roosevelt in the beginning of his term, and he said under the Works Project Administration there will be employment.

He said it would provide employment everywhere there was unemployment, including among artists. He put artists to work. That was part of the hundred days, I think.

We have an idea here now, an art bank, a Federal art bank to go out across the country to find excellence in art, with emphasis on artists that are not widely known. The Federal Government would purchase that art and lend it out, lease it out, where people can see and enjoy that art.

I think we are going to be 2 years on that bill.

I was thinking about that yesterday when some people were talking about WPA.

Are you one of the Democrats? Is this a three-two panel?

Mr. JESTRAB. It happens I am a Democrat as Senator Young pointed out.

The CHAIRMAN. You are all Democrats?

How did we get away with that?

The responsibilities assigned by the statute enables the Commission to develop unified and comprehensive case law interpreting the act. This should assist the Secretary of Labor in enforcing the act and should enable all mine operators and miners to understand clearly their rights and obligations under the law.

Do you think the authority for the Commission to act in subpanels of three members will complicate development of such a unified and comprehensive interpretation of the law, and how do you think possible inconsistent application of the law by such panels can be avoided?

Is this a problem?

Mr. WALDIE. Senator, at least initially we do not intend to break down into subpanels for a variety of reasons, probably the most prominent of which is the necessity of all the Commissioners understanding each other and each other's attitudes better, as well as the necessity of the industry understanding the Commission.

We think there is merit for us not to break down into subcommissions at this particular stage.

I think that the necessity of doing so may very well present itself as our case load expands, where you are then operating against the disadvantages of the Commission breaking down to attain the advantage of a prompt disposition of the workload.

I think I would opt at that point, and I think the Commission would probably opt for prompt disposition of workload since we had a better understanding of ourselves as an entire Commission.

Within that problem, though, we were discussing just last night another issue that we have not disposed of, and many of the questions, if you are asking me, at least, will probably require further definition and clarification as I become more conversant with the law. But one of the problems that we have in developing the case history and precedent upon which the industry can rely is that the act requires that the decision of the administrative law judge becomes the final order of the Commission absent a petition for discretionary review being filed or absent the Commission taking independent action to review a particular decision.

I think those of us who were discussing this issue in the last day or so are concerned that administrative law judge decisions not written by the Commission, even though the statute determines them by law to become a final order of the decision, not become precedent-setting decisions of the Commission.

I only bring that discussion to your attention to indicate to you our awareness of the desire that you have expressed that Commission decisions become a body of law and have a precedent-setting nature.

We are aware of that necessity, and we want to prevent any erosion of that conclusion by administrative law judge decisions we have not reviewed becoming final orders of the Commission and thereby becoming precedent.

We do not believe at this moment in time, at least, as I understand our preliminary conversations, that that would be desirable in obtaining the objective of precedent in terms of Commission review.

Mr. JESTRAB. I think if it develops that there is a conflict or disparity of view in the two panels, that it would be appropriate to have what would be the equivalent of an en banc hearing to settle any conflict in the panels.

This is the way it is handled in the courts of appeal, and I can see no reason why it would not work quite well with us.

The CHAIRMAN. But at any rate, as you begin operations, you see no necessity for division?

Mr. WALDIE. I would see none whatsoever.

Ms. NEASE. It appears, Mr. Chairman, there are a number of similar issues raised by a large number of cases which have been filed since the new act went into effect.

We are hoping we will be able to make some early policy decisions that will dispose of many of those cases on the same grounds.

It is much too soon for us to know because we do not have a full appreciation of all the issues being raised in all of the cases before us.

But we are aware of the need for uniformity.

The CHAIRMAN. The Federal Mine Safety and Health Act assigns administrative law judges of the Interior Department, who had previously heard mine safety cases, to the Commission, and authorizes the Commission to hire such additional ALJ's as are needed.

How many ALJ's were transferred to the Commission from Interior and the second question following that: Are there current plans to hire more ALJ's?

Mr. WALDIE. At the present time, Senator, the statute enables all of the administrative law judges that had been acting in this field to transfer to the new Commission. Thirteen such ALJ's are presently operating for the Commission and in this field now.

There is a recommendation that we are entertaining, though we have not been in a position yet to judge its validity with sufficient certainty to conclude yet, that we expand the numbers of ALJ's because of an anticipated increase in case load coming about from the inclusion of the western noncoal mines, particularly.

Statistics thus far, Senator, are not compelling as we understand them to mandate a determination that we have additional ALJ's.

The staff that has been temporarily handling the matters before the Commission until it has been formed originally recommended that we immediately bring the 13 up to 30 in terms of ALJ's.

I find no sentiment on the part of any Commission designate for such a rapid expansion. Neither, however, do we desire to preclude a decision to expand if such a decision is dictated by an increased case load from the western mines, particularly.

I think that most of us believe that there will be such an influx of cases in the very near future, and our budget formulation will anticipate the opportunity to expand by an additional 8 or 9 administrative law judges, but not up to 30 within a reasonable length of time.

We do not intend at this moment as I see it before you at least, Senator, to begin expanding the ALJ's in the very near future until we become more conversant with the nature of the case load, the extent of it, and some better projections than we now have available to us as to what will confront us in the future.

We are hoping to operate, if I can just add one more thought to that, in a very restrained sense, when we begin this effort, because we have much to learn and we hesitate to make decisions that would commit us to the future without a better understanding of what we are confronted with in the present, and better ability to project that which we might confront in the future.

I think most of the Commissioners are of the nature that this should be a lean, careful operation, at the beginning.

The CHAIRMAN. Thank you very much.

Before I go into another question, Senator Javits wants to greet you all.

Senator JAVITS. Thank you very much for yielding to me.

As the Chairman knows, he has charged me with a big duty on the floor, so I cannot stay.

But I did meet personally yesterday with Mr. Backley, Mr. Jestrab, and Ms. Nease, who is a former New Yorker, I am glad to say.

I did not see Mr. Lawson, but of course I know Jerome Waldie. As to the four of them I know, Mr. Chairman, I wish to commend them to the committee. I think they are excellent choices for these particular posts.

As to Mr. Lawson, I know of no reason why I should not be favorable.

He certainly is with a union, or was with the union, that I respect very, very highly.

I am sure the Chairman will ask such appropriate questions that may be necessary.

Also, Mr. Chairman, I wish to state on the record my consent and approval of polling the committee for the purpose of reporting these nominees at the earliest possible time.

The CHAIRMAN. I noted earlier, Senator Javits, that we are pleased indeed, in this day of delays on nominations, delays on considering nominees and holds, that we have had nothing but favorable comments on these nominees, and there has been no suggestion of questions that would hold these nominees.

I hope we can poll them today, as a matter of fact.

Senator JAVITS. Good.

The CHAIRMAN. That is, poll the nominations through committee.

Thank you very much, Senator Javits.

In the committee's hearings on the Mine Safety and Health Act, the one thing that nearly all witnesses agreed upon was that heightened miner awareness of safety and health matters, was essential if the act was to be effective in reducing fatalities and injuries and eliminating exposures that create illnesses in the mines.

For this reason the act requires extensive safety and health training of miners and encourages participation by miners in the inspection of mines and in administrative and judicial review of citations, orders, and penalties.

What steps do you envision that the Commission should take to encourage just such participation by miners in cases before the Commission to review citations, orders, and penalties?

This is an important element of the law that you will be working with—have you considered it in terms of miner participation, and I wonder how you would look at this?

Mr. WALDIE. Mr. Chairman, I will attempt to respond, but I do not want to have the other Commissioners feel I am foreclosing them.

The CHAIRMAN. I appreciate that.

You are designated the Chairman, but if there are any viewpoints from the other members, we would be glad to have them.

Mr. BACKLEY. We have met quite extensively prior to today, as Mr. Waldie and the others have indicated, and I think Mr. Waldie expresses the feelings of the other members.

I would be glad to answer any and all questions.

We have been meeting quite regularly.

The CHAIRMAN. You have been out there as an ALJ.

Is this realistic—to quicken interest and participation of the miners in the basics of this law, and that is safety and better health in the mines?

Mr. BACKLEY. I think it is very significant if that is what you are asking. You are asking about training at this point or the law, in general?

The CHAIRMAN. More particularly, about attitudes, and the means of stimulating miners to be part of this process.

Mr. BACKLEY. I think it is. I think you changed the law now where they are becoming parties to more actions than previously in the 1969 act.

I think this is a very interesting part, and I think it makes them feel they are a part of the law. Prior to this, they were excluded from certain types of actions under the act.

Of course, expanded further to require rights of inspection, accompanying inspectors on inspection, participation in penalty cases, and I think this has all gone to give it a broader spectrum.

If I read the law and the debate correctly, the whole idea here was this is a cooperative effort on the part of the operator, on the part of the miner, and of course on the part of the enforcement.

The CHAIRMAN. Safety is not an adversary situation in labor-management anymore?

Mr. BACKLEY. No.

I think we found that out.

Mr. Lawson and I appeared—it is ironic—we both appeared at the *Sunshine Mine* case, and while we were sitting next to each other, we were representing different sides of the coin.

I think we did find at that time that it is a cooperative effort on both parts.

The CHAIRMAN. Perhaps 10-years ago we were told that there was a curve downward on mine employment particularly in coal mines. We were told that young people were not enchanted with a career in coal mining and were not following family patterns of working in the mines.

Is this changing? Are there not increasing numbers of younger miners?

Again, I am dealing now with coal, but is that what you sense, or maybe what you know—that there are increasing numbers of younger miners?

Mr. BACKLEY. I sense that, I think Ms. Nease would know.

Ms. NEASE. There has been a significant increase in the last 4 years in the number of younger and new miners coming into the industry. Apparently there is real stratification.

You have a large number of miners in their twenties, according to our actuarial date, and you have a large number of miners in their fifties.

That middle ground reflects your comment that 10 years ago people were not entering the industry. Ever since the oil embargo, there has been a resurgence of interest and activity in coal mining.

The numbers of working miners in the last 4 years that are represented by the UMWA, I believe, has gone up something like 50,000.

The CHAIRMAN. My knowledge is superficial as to the attitudes of younger miners about their health and safety in this employment, but that superficial knowledge suggests to me that the young people are more alert to thieir own safety and to the conditions that affect their well-being and their health.

That came out, I will tell you, during the recent strike. There was a lot of television coverage, and this seemed to be one of the things that many young miners were mentioning—conditions in the mines.

Ms. NEASE. It is my understanding from the traveling I have done that the interest among working miners now is much more on health and safety than it is on direct compensation issues.

I find a lot of people very concerned about safety conditions in the mines.

The question that you raised earlier, it seems to me that the unions that I know of are very active in pursing miners' interest and representation in the proceedings that will come up before the Commission.

There may be some need to publicize miners' rights in those mining situations where there are no unions, and individuals may not know that these rights are now available to them.

Mr. LAWSON. I think the Senator's question is very well taken.

Speaking on behalf of the steelworkers, we held a conference in Denver the end of June in which we had some 300 local union leaders, as well as international personnel present and the sole purpose of the conference was to explain the new act.

Of course, this takes some time to filter back to all the miners in the Steelworkers, and I am sure to the other big union in mining, the UMW, but I do believe there is an educational function to be performed, and to the degree that the Commission can appropriately do so, we have something of an obligation to carry the message to all miners as well. Perhaps the Secretary's office does also.

But the experience under OSHA would indicate that there is a certain time lag before the statute becomes known, and before people are aware of the protections which are provided by this statute.

I think that the younger miners, as Ms. Nease has said, are more interested in the quality of their work life, than the compensation, which sometimes they tend to take for granted, perhaps.

But I think the quality of work is an important, very important element in the lives of all miners.

Mr. WALDIE. In terms of a direct responsibility of the Review Commission to facilitate the ability of an individual miner to involve himself or herself in these proceedings, I have at least sought a memo on the issue of what can the Commission do in the way of rendering legal assistance, in the way of rendering assistance in filing necessary forms, in the way of making accessibility to the forms in order to involve the individual miner in the proceedings as efficiently as possible.

I think the thrust of the act in seeking individual miner participation is extremely worthwhile.

Unless the individual miner has considerable technical assistance to avail himself or herself of that opportunity, it would be a meaningless right extended to them.

I think our immediate responsibility, through the Commission at least, is to immediately provide that sort of technical assistance and legal assistance, and hopefully to devise means through MSHA where

information in the field through MSHA facilities which are much more widely spread than our own, could considerably be utilized to make that right more accessible and available.

The right is there in the law, but unless there is some real serious thought given as to how best to get them to avail themselves of that right, it will be a rather meaningless right.

The CHAIRMAN. Do you foresee the time when it would not be essential that a party before the Commission be represented by an attorney?

Mr. WALDIE. I would hope so.

I would hope such a time would come. I do not see the necessity now of us ever requiring a party to be represented by an attorney.

I think a party, since I am an attorney, represented by an attorney, may have certain advantages, and it would be wise that they do so.

But in the case of an individual miner, it would simply be a right without any realistic ability to exercise it, if you require him or her to have an attorney. I think the Commission has to provide that through our staff, through our services, the legal advice, the legal assistance in permitting that person to have the right the statute gives him.

Now, I say this with only a very superficial understanding of the extent the Congress desires that right to be exercised, and I think the exercise of that right has some other problems that were touched on just briefly by Ms. Nease in terms of work site where there is a union representative of the workers, the extension of the individual right of the miner beyond the union representative has certain consequences that are not present in a work site where there is no designated representative of the workers.

I, personally, am troubled but I have not thought that out or come to any conclusions as to whether or not those distinctions have impact upon the manner in which that right is extended, assisted, and exercised.

The CHAIRMAN. Section 110(k) of the act authorizes the Secretary to compromise, mitigate, or settle proposed penalty assessments, but requires the approval, of any such settlement by the Commission in the case that is being contested before the Commission.

I wonder what criteria would you impose in approving any such settlements?

Mr. BACKLEY. You have, of course, the six statutory criteria, Senator, that are built into the law itself. Except for implementing them, I personally have no idea at this point.

I would take into consideration, as I say, statutory criteria you have set forth as guidelines.

Mr. WALDIE. Senator, I would share Judge Backley's reservations as to being able to give you any precise response to that, but the report of the Senate has at least some direction as to what the Senate's view is on that, and you have within that report this paragraph.

I presume this paragraph is warranted by the evidence.

> Mine operators still find it cheaper to pay minimal civil penalties than to make the capital investments necessary to adequately abate unsafe or unhealthy conditions.

If that remains a proper finding, then it would seem to me that the response to you question would be: Is the penalty that is being assessed, whether by stipulation or whether by other action, sufficient to avoid the kind of admonition that is set forth in that report?

I would at least at this point say I am not able to go much farther than that in my own judgment on that.

Mr. JESTRAB. The reason that you settle cases or you reduce penalties is because it accomplishes something. The act here, as I understand it, once the assessment becomes final there seems to me to be very little reason to reduce it or mitigate it.

I cannot really see any special thing to be accomplished, contrary to most lawsuits, there is usually some reason, and I cannot see any reason. There may be some that I do not see to reduce or mitigate penalties after the thing has become final.

I think then it ought to be paid. I would think it would be an exceptional case where that could be reduced or mitigated.

The CHAIRMAN. We came to this provision with a lot of history, a history that was appalling from the standpoint of members of this committee.

This is one subject that we got into in depth, going back to 1969 on the coal mine side, when we enacted the basic comprehensive law dealing with coal mines.

A lot of our hopes were never realized, and one of the reasons was the failure of enforcement to really stimulate compliance.

We saw them settle cases in wholesale lots, and we saw penalties that really did not reflect the seriousness of the violation in any way. So this was part of what we had to deal with in developing this law—the need to make the procedure realistic in terms of enforcement that is designed to get compliance through penalties.

We also wanted to leave with this Commission that final authority, so maybe you are right.

Mr. JESTRAB. I think as I read the Senate report, it seemed to me that because of the reluctance of the U.S. district courts, because of the way it had to be handled administratively, that there was a reason, there was an accumulation of this backlog, and there was a reason that they wanted to clear dockets and so on.

I did not anticipate that problem. It was a shocking thing for a lawyer to see for the first time, the practice that had developed, because in effect that really nullified the statute—the delay and settlements nullified the purpose of the penalties.

I cannot see any reason, you see. You gain nothing. We would gain nothing by having any wholesale compromise.

Of course, cases, there may be individual cases where it would be desirable to do so. But I cannot think of any reason, any wholesale reason why we would do it.

The CHAIRMAN. We feel that the effectiveness of the whole enforcement scheme here would be advanced with this provision, giving the Commission the final right of approval of such compromises. Well, it all comes to you in the end.

That leads me to the final point. It will be coming to a great panel. We are very impressed.

The absence of members of the committee, here, is the best testimony to the fact that you are respected and well received.

We hope we can have you confirmed with dispatch.

Thank you.

[Whereupon, at 10:40 a.m., the committee was adjourned, subject to the call of the Chair.]

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