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99th Congress }  
1st Session }

COMMITTEE PRINT

*[Misc. pub.]*

**INVESTIGATION OF THE HYDEN, KENTUCKY  
COAL MINE DISASTER OF DECEMBER 30, 1970**

**THE OFFICIAL REPORT, MINORITY AND  
ADDITIONAL VIEWS**

OF THE

**GENERAL SUBCOMMITTEE ON LABOR**

OF THE

**COMMITTEE ON EDUCATION AND LABOR  
HOUSE OF REPRESENTATIVES**

*U.S. Congress*



JULY 1971

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CARL D. PERKINS, *Chairman*

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HOUSE OF REPRESENTATIVES,  
 COMMITTEE ON EDUCATION AND LABOR,  
 GENERAL SUBCOMMITTEE ON LABOR,  
 Washington, D.C., July 14, 1971.

HON. CARL D. PERKINS,  
*Chairman, Committee on Education and Labor, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In March 1971, the General Subcommittee on Labor undertook initial oversight responsibilities for the Federal Coal Mine Health and Safety Act of 1969 and conducted a public inquiry into the causes of the coal mine disaster at Hyden, Ky., on December 30, 1970. Attached is our report.

The purpose of the inquiry was to ascertain: (1) what, if any, specific actions or inactions contributed to the disaster; (2) was the mine being operated in accordance with the safety and health standards of the act; and (3) was there an adequacy of Federal intervention and concern relative to the safety and health of the miners?

The scope of the subcommittee's inquiry required staff investigations in and around Hyden, including detailed interviews with interested and knowledgeable people; and 5 days of public hearings in Washington and the Hyden area.

The report is based almost entirely on extensive testimony from Bureau of Mines personnel, miners who worked at the mine where the disaster occurred, and widows of miners killed in the disaster.

It is transmitted to you, the full committee, and all interested parties, with the deepest regret at the needless loss of 38 lives at Hyden.

The Hyden disaster, like the Farmington disaster of 1968, had a shocking and outrageous effect on the general public; but, I think, particularly so on those of us with some additional measure of responsibility for insuring—to the fullest extent possible—safe and healthful working conditions in our Nation's coal mines. I believe the Federal Coal Mine Health and Safety Act of 1969 was an appropriate congressional response to the Farmington disaster and the accident record of the coal industry. I fear, however, that it has not been permitted to operate the way it was intended.

Our investigation into the Hyden disaster should not have been necessary. The disaster could have been prevented and—by any reasonable yardstick—danger could have been foreseen.

I believe our report is exhaustive in its coverage of the Hyden disaster, and represents a full and fair reflection of our investigation. I cannot help but acknowledge the extraordinary effort put forth by those members of the subcommittee who participated in the entire investigation, and whose interest and concern for the disaster and the health and safety of all coal miners was demonstrated by their very personal reactions.

The report was overwhelmingly adopted by the subcommittee in open session on July 7, after each member had several weeks in which to consider thoroughly its contents.

With kindest regards, I am

Sincerely yours,

JOHN H. DENT, *Chairman*

## PROLOGUE

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In reporting the bill H.R. 13950, ultimately the Federal Coal Mine Health and Safety Act of 1969, the Committee on Education and Labor—at the conclusion of a lengthy recitation advancing the need for the legislation—stated:

\* \* \* For too long the Congress has countenanced the passage of piecemeal measures which have failed to provide the Bureau (of Mines) with the enforcement power it needs. Too many injuries and too many lives have filled the gap left by inadequate laws. A strong law is necessary to protect the men who extract one of our Nation's most vital resources. Coal miners deserve the safest, healthiest work environment our technology will enable us to provide.

Passional advocates of the act acclaimed it as “revolutionary” and “sweeping” and believed it would topple the coal industry from its unenviable preemptive perch as the most hazardous in the Nation. The most outspoken disparagers of the act decried its potential for crippling an essential industry and warned of widespread electric power blackouts due to a coal supply rendered insufficient by extensive mine closings.

During 1968, 311 miners were killed in coal mine accidents, and 9,639 were injured. In 1969, as the Congress formulated and approved the health and safety legislation, 203 miners were killed and 9,917 were injured. During 1970, the year the act became fully effective, 260 miners were killed and 10,570 were estimated injured. And on December 30, 1970, the small eastern Kentucky town of Hyden was shrouded in national notoriety when a disaster occurred at the Finley Coal Co.'s No. 15 and No. 16 mines, taking the lives of 38 of the 39 miners working that fateful first shift.

As of June 5 of this year, 87 miners have been killed in coal mine accidents, compared with 89 during the same period in 1970.

Neither the expectations of the advocates nor those of the disparagers of the act have been realized; only the continued grim and monotonous toll of life and limb.



## PRELUDE

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On December 30, 1969, the three members of the Committee on Education and Labor most responsible for the act were in various parts of the country. The committee chairman, the Honorable Carl D. Perkins, spent most of the day driving over the striking mountains that comprise most of the terrain of his Kentucky congressional district, and visited with constituents he had long been unable to see because of the length of the first session of the 91st Congress. He had been telling many of them of the new coal mine law which would not only bring safety to the mines, but would also provide payments to miners who suffered from the dread miners' respiratory disease, pneumoconiosis, or "black lung," and to the widows of those who died from "black lung." The Honorable John H. Dent, chairman of the labor subcommittee with original jurisdiction over the legislation, and its chief sponsor, was north along the Appalachian Mountain chain, in his western Pennsylvania congressional district. Representative Dent was tending to constituent affairs and enjoying the holiday season with his children and grandchildren. The Honorable Phillip Burton, a member of the committee and key forger of the act—especially the "black lung" benefits provision—was authoring an article for a union journal while vacationing with his wife in the Far West. All three had labored tenaciously throughout the year for a meaningful health and safety law for coal miners. And all three left Washington with considerable apprehension about the possibility of a Presidential veto. President Nixon had expressed particular displeasure with the "black lung" benefits provision, and the possible cost of such a program, and suggested on more than one occasion his reluctance to approve the legislation. Yet, without ceremony and followed only by a terse announcement, the President put his signature to the document during the early afternoon hours of December 30, and the Federal Coal Mine Health and Safety Act of 1969 became reality. Chairman Perkins and Representatives Dent and Burton especially, as well as many others who supported the legislation, breathed sighs of relief at what appeared to be the end of an arduous ordeal.

One year later—to the day and almost to the minute—A. T. Collins started back into the Finley Coal Co.'s No. 15 mine at Hyden, Ky. He had come out of the mine to obtain some supplies and decided to have lunch while on the surface. As he began his reentry into the 30-inch seam of coal, he first heard a sound like nothing he had heard before. And then he was confronted with a great blast of hot air and smoke and dust and flying coal and debris. Steel rollers from the conveyor belt he was crawling along tore loose as a result of the blast and slammed into his back sending terrible pain throughout his body. He was picked up and carried along and slammed down continuously by the force until he finally lay stunned and racked with pain some 50 feet from the mine entry. Inside the mine, his 38 coworkers on that shift, unlike him, were not semiconscious or unconscious or writhing with pain; they were dead.



## COMMITTEE ACTION

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The General Subcommittee on Labor, exercising legislative oversight responsibilities pursuant to the Legislative Reorganization Act of 1970, convened March 9-13 to inquire into the Hyden disaster and its relationship to the Federal Coal Mine Health and Safety Act of 1969. Prior to the hearings, committee staff investigators expended considerable time in and around Hyden acquiring information relative to the disaster. Five days of public hearings were held; 3 in Washington and 2 in Hazard, Ky., near the site of the disaster. Testimony was taken from representatives of the Department of the Interior and Bureau of Mines during the Washington portion of the hearings. Testimony was taken from employees and former employees of the Finley Coal Co., widows of miners killed in the disaster, and other individuals experienced at mining in the Hazard No. 4 seam of coal (in which seam the mining operations took place) during the Kentucky portion of the hearings. Charles and Stanley Finley, owners and operators of the No. 15 and No. 16 mines, were scheduled to appear voluntarily in Washington to present testimony but did not do so. A subpoena was then issued for their appearance at Hazard on March 13, at which time they presented testimony.

In opening the subcommittee hearings on March 9, Chairman Dent made the following statement:

These hearings are being held to inquire into the Hyden, Kentucky, coal mine disaster of December 30, 1970, which took the lives of 38 men. Today and tomorrow, we will hear representatives of the U.S. Bureau of Mines. Thursday is being kept open at this point. On Friday and Saturday, the committee will conduct hearings beginning at 9:00 A.M., at the Perry County Court House in Hazard, Kentucky.

All of the hearings this week will be confined to the Hyden disaster. We do not intend that these hearings be oversight hearings into the administration of the Federal Coal Mine Health and Safety Act by the Department of the Interior. Extensive oversight hearings will take place later this month.

We do intend to arrive at an understanding of what happened at the Finley mines on that fateful day, and the conditions and circumstances that led to the tragedy. And we intend to do all we can to prevent a similar disaster from ever afflicting a community again.

In presenting testimony to the subcommittee on March 9, Dr. Elbert F. Osborn, Director of the U.S. Bureau of Mines, said:

*\*\*\* The operator (Finley Coal Company) has been assessed civil penalties and the case has been referred to the Department of Justice for its consideration as to prosecution under section 109(b) of the Federal Coal Mine Health and Safety Act of 1969. (emphasis supplied)*

The text of section 109(b) of the act follows:

"(b) Any operator who willfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under section 104 of this title, or any order incorporated in a final decision issued



under this title, except an order incorporated in a decision under subsection (a) of this section or section 110(b)(2) of this title, shall upon conviction, be punished by a fine of not more than \$25,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed after the first conviction of such operator under this Act, punishment shall be by a fine of not more than \$50,000, or by imprisonment for not more than five years, or by both."

The subcommittee respects the gravity and propriety of a criminal action and the need for absolute objectivity in statements relating to the action prior to and during its adjudication. The subcommittee has no wish to publicly prejudge or prejudice the case. The chairman of the full committee, who participated in all of the hearings, and members of the subcommittee, all have clear beliefs as to the cause of the disaster and those primarily responsible for it. Those beliefs directly relating to the case, however, will be carefully stated—if at all—in this report, so as not to upset the delicate judicial proceedings. The report which follows therefore, will essentially underscore those issues and elements the subcommittee felt were most closely related to the disaster, and the events preceding, accompanying, and subsequent to it. The issues and elements will be discussed largely in the context of testimony and facts presented and available to the subcommittee. The reader will be left largely to draw his own conclusion, based upon a factual presentation; which conclusion the subcommittee believes will be clear and unmistakable.

The report will be in two parts; the first part dealing with the Bureau of Mines and its activities with respect to the Finley mines and the disaster, and the second part dealing with the No. 15 and No. 16 mines and their operations.

## SUMMARY OF SALIENT POINTS

The following represents a brief description of the contents of each section of part I of this report. The presentation is in the form of salient points taken literally from the respective sections.

It is not intended to serve as the basis for conclusions; nor is it, by any measure, a comprehensive analysis of part I. It is only included as a convenient guide to understanding the scope of part I, and the general issues discussed therein.

(1) The subcommittee (hereinafter referred to as the "committee") is of the belief that the technical aspects of the Bureau's postdisaster investigation were carried out efficiently, effectively, and creditably.

Conversely, the committee is of the opinion that the procedural aspects of the postdisaster investigation left much to be desired . . .

The Bureau conducted a public hearing at Hyden on January 6 . . . . . the Bureau's hearing was so poorly handled it might be said to have actually impeded the purpose of the investigation.

. . . the public hearing was a sham and the later field interviews an essential adjunct to preserve a modicum of integrity to the overall Bureau effort.

Another striking deficiency of postdisaster Federal activities was the fact that no one apparently advised the widows of their right to have an autopsy performed on their husbands and, in fact, no autopsies were made.

From the standpoint of several of the widows—perhaps as many as 10—an autopsy may have provided evidence of pneumoconiosis. An autopsy may have established pneumoconiosis in a degree sufficient to have enabled the widows to receive benefits of up to \$306.10 per month.

(2) On December 19, 1969, the Finley brothers made application to the Kentucky Department of Mines and Minerals for a license to operate two adjoining deep mines to be designated No. 15 and No. 16.

The first entry for the No. 15 mine was made in March 1970, and that for the No. 16 mine in June. The interconnection took place in August.

Yet, given . . . official acknowledgements that the Bureau considered the two mines as one, they were in fact inspected as two separate and distinct entities.

. . . violations cited for one mine were often subsequently cited for the other. It can also be seen that certain types or categories of violations recurred—when considered collectively—with alarming regularity. Had the Bureau indeed treated the mines as one, as it acknowledges they were, there is every reason to believe the collective and persistent violations would have been more than sufficient to institute action pursuant to section 104(c) of the act—the provision relating to an "unwarrantable failure" on the part of the operator to comply with the required health and safety standards.

By deciding to classify the mines separately, dividing duties and responsibilities pursuant to that decision, and permitting the accumu-

lation of both the total of violations and the seriousness of many to be isolated and considered distinct according to their discovery in "separate" mines, the Bureau may well have contributed to the potentiality for the disaster.

(3) According to the Bureau's official report, eight inspections or investigations were made of the mine; six in the No. 15 portion, and two in the No. 16 portion. The inspections disclosed a total of 43 violations of health or safety standards for which notices of violation were given; well above the national average of 19. The inspections also resulted in the disclosure of conditions of imminent danger on three occasions . . .

The mine also had three accidents, two of which were known to and investigated by the Bureau.

. . . this all occurred prior to the disaster and, since the first inspection was made in June, during only a 6-month period.

. . . the pernicious nature of the mine should have put the Bureau on notice with respect to exercising an extraordinary degree of attention to enforcing the law at the mine, and a particular responsibility to followup in determining whether all cited violations were actually abated by the time required.

Section 104(c) of the act relates to withdrawing men from or closing a mine for the "unwarrantable failure" on the part of the operator to comply with the health and safety standards prescribed by the law.

This section . . . seems almost to have been written with a foreknowledge of the Finley mine. Yet, none of the violations found at the mine were ever cited pursuant to section 104(c).

(4) On December 15—15 days before the disaster—Mr. Sammy Henson, a loading machine operator's helper at the mine, was burned on the hip when a cable short-circuited as a result of being run over by Mr. Henson while trammig the machine.

Although the accident was not reported to the Bureau (as required) until the investigation of the disaster, and there is every reason to believe it would not otherwise have been reported, the Bureau has not to date cited the operator for a violation of section 103(e) of the act . . .

The Finley Coal Co. had no record of the accident (as required) at the mine office . . .

The Bureau has not to date cited the operator for a violation of this . . .

It is serious indeed to suggest that operators will not be penalized for failure to report, investigate, and maintain records of accidents.

(5) Mr. (Charlie) Wagers was a tractor operator on the second shift. From the outset of that shift on November 9, he began experiencing difficulty with the malfunctioning tractor he was operating. . . . (on) a third effort to forward the tractor, it lurched backward and pinned his head between the corner and a rib of coal. Mr. Wagers died instantly from massive head injuries.

The Bureau's report (on the accident) . . . cites the direct cause . . . as "Management's failure to take the defective tractor from service for repairs, and to assure that the battery-powered equipment was in good mechanical condition before being placed in service."

An imminent danger order was written for four pieces of malfunctioning mechanical equipment in the mine, including the tractor that killed Mr. Wagers . . .

(6) To further assist in understanding the nature of the mine . . . one additional violation should be mentioned.

The spot inspection of November 19 was presumably prompted by a finding that "the cumulative concentrations of respirable dust analyzed from four samples collected by the operator during an original sampling cycle conducted in the working environment of the coal cutting machine operator . . . amounted to 33.9 milligrams of respirable dust." The operator was cited for a violation . . . of the act which requires the operator to maintain the concentration of respirable dust at or below 3 milligrams per cubic meter of air.

The finding of a respirable dust level more than ten times that permitted by law is shocking enough; but the failure of the Bureau to recognize that similar dust levels most likely existed throughout the mine, and not only in the section cited, is incomprehensible.

The operator was apparently mining without regard to the dust generated and was not employing techniques designed to maintain dust levels below the permissible limit . . .

. . . the mine was so heavily polluted with respirable dust—throughout its entirety—there existed a virtual certainty that each miner exposed for a period to its environment would have contracted some development of pneumoconiosis, or "black lung" disease.

(7) Perhaps the preceding sections justify a belief that the hazardous nature of the Finley mine had been established well before the disaster date. The committee believes ample justification existed for such belief and further believes the Bureau—by virtue of its own findings with respect to the mine—should have been on notice as to the dangerously atypical conditions in the mine, should have inspected it with greater frequency, carried out more complete inspections, and perhaps most importantly, been present to insure that cited violations were actually abated when required.

The Bureau report on the disaster outlines eight inspections or investigations of the mine during the 9-month period of operation. In fact, on only one occasion was a complete inspection—that required by law—conducted.

(8) . . . the Bureau's logic in pointing to a lack of ample inspectors as justification for failure to meet the act's minimum inspection requirements while admitting to a sufficiency of funding for the inspectorate needed, is escapable.

The Bureau has been on notice with respect to inspection requirements for some time.

The existence of the deficiency is unjustifiable. The dimension of it, is inexcusable.

(9) To complete the description of the type of mine the Bureau knew the Finley mine to be—prior to the disaster—additional mention should be made of the gravity of the violations cited before December 30.

For only the first finding (of four findings of inadequate rock dusting) was an imminent danger order issued; and it was issued on the basis of that finding and six other violations of safety standards.

Had imminent danger orders been issued on all the occasions required, it is more than conceivable one of the following would have occurred: (1) The operator might have found compliance with the act's rock dusting requirements more convenient and less expensive than incurring closures for each disclosure of inadequate rock dusting, or (2) the Bureau might—just possibly—have taken greater notice of a mine issued twice as many imminent danger orders as the Finley mine actually did incur. The probability is great that either possibility would have precluded the disaster of December 30.

(10) To establish circumstances in the mine before the fatal blast . . . excerpts from the Bureau's official report are included (in this section).

(11) On December 21, 1 day before Inspector Gordon Couch was to revisit the Finley mine to determine whether violations he had cited during an earlier inspection were abated as required, Inspection Supervisor C. E. Hyde, stopped at the mine to conduct what the Bureau called a "spot inspection."

He cited the operator for failing to submit a ventilation and dust control plan to the Bureau, as required by section 303(o) of the act . . .

Ventilation and dust control plans, like the roof control plans required by section 302(a), were to have been approved by the Bureau well before December 21 . . .

The "orders" Mr. Hyde . . . (was carrying out in visiting various mine offices—while not conducting underground inspections—to cite operators for failing to submit the required plans) emanated from a memorandum of December 9, 1970, from (Bureau headquarters) . . .

With this memorandum, the Bureau effectively relegated complete inspections—required by statute—to a lesser priority than that for plans which were to have been approved months before, and virtually precluded inspectors from returning to a mine to determine abatement of (earlier) violations.

It is difficult to understand the wisdom associated with requiring an admittedly understaffed inspectorate to visit each mine to determine if the required plans were in fact submitted to the Bureau.

Tragically, the memorandum of December 9 also served in part to prevent Inspector Couch from returning to the Finley mine prior to the disaster date.

(12) During a spot inspection of November 19, Inspector Couch cited the mine for five violations of health and safety standards.

All of the violations were required to be abated by 8 a.m. on December 22, 1970.

Mr. Couch did not return to the mine on December 22 (as required, because he was told the mine would not be operating on that date and through the Christmas week).

(13) The failure of an inspector to return during that 8-day interval (December 23–30) is the subject of (this section) . . .

It is significant that six violations of safety standards were required to be abated by 8 a.m., December 28. This is in addition to the . . . violations previously mentioned and required to be abated by December 22.

Mr. Couch did not return to the mine on December 28 (as required) because . . . he and his fellow inspectors were actively complying with the Bureau memorandum of December 9, 1970.

(14) The disaster occurred on December 30 (and Mr. Couch did not inspect the Finley mine on that date because he was elsewhere investigating a fatal accident in a mine the Bureau did not know was in operation).

(15) (This section) . . . relates to the assessment of civil penalties against operators for violations of the act . . .

The entire issue of the Bureau's inability, until relatively recently, to assess civil penalties will be one of the major points of inquiry during the future hearings into the Bureau's overall administration of the act . . .

(16) After the disaster, the Bureau found quantities of dynamite and Primacord—illegal for use underground—in a trailer used for storage near the mine portal. The (act's) definition of "coal mine" would include the trailer within the scope of an inspection (but it was never inspected).

(17) (This section points) . . . to the excessive rate of blasting loading points (boom holes) in the mine; indicating it evidenced mining at excessive speed and the concomitant probability of unsafe mining practices.

(18) The . . . matter (of this section) was referred to by several witnesses during the Kentucky portion of the hearings, and will appear with some regularity in part II of this report, but is included at this point since the issue was first raised during the Washington portion of the hearings . . .

(19) Therein (the Bureau report), from the first sentence through the last, lies the Bureau's self-absolution from the tragedy of Hyden; all contained in that pathetic attempt at justifying what is tantamount to a gross and exceedingly negligent dereliction of responsibility.

\* \* \* \* \*

The committee would be derelict, or would beguile, if it did not acknowledge the glaring fact that the Bureau of Mines must bear a heavy burden of responsibility for the Hyden tragedy.

The evidence shows conclusively that it was generally known in the communities in which the miners lived that Primacord, a nonpermissible and dangerous detonator for use underground, was being used in the Finley mine. It was generally known that dust conditions in the mine were clearly exaggerative in violation of the law. And it was generally known that the lives of the men were in danger. Many of the miners killed looked hopefully but vainly to the Bureau for closure, or the imposition of safe working conditions in the mine. These themes were repeated again and again in testimony.

If, in the face of this broadly disseminated knowledge throughout the area, the inspectors could not recognize that an extremely hazardous situation existed; and, perhaps more importantly, if Bureau officials in other levels of authority could not properly analyze the reports placed in their hands by the inspectors and apply the unmistakable and forthright declarations and requirements of the law—then the whole structure of Federal coal mine health and safety enforcement becomes a farce. We are then, deceiving only ourselves; surely not the widows and orphans of those who perished at Hyden.

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## PART I—THE BUREAU OF MINES

(1) On January 29, 1971—one month after the disaster—the Bureau of Mines released its official report to the public. The Department of the Interior news release announcing the report follows:

[Department of the Interior, Bureau of Mines, Jan. 29, 1971]

### MINES BUREAU REPORTS ON HYDEN, KY., MINE DISASTER

Use of illegal explosives, illegal blasting practices, and failure to control coal dust effectively were cited today by the Interior Department's Bureau of Mines as the principal causes of the mine disaster that claimed 38 lives in the Finley Coal Company's No. 15 and 16 mines near Hyden, Ky., last December 30.

The Bureau said the Department of the Interior will refer results of the investigation of the disaster to the Department of Justice, which is the agency empowered to conduct criminal prosecutions. Conviction of a criminal charge under the Act can bring a penalty of up to \$25,000 and a year in jail.

Proposed civil penalties will be assessed later, the Bureau said.

Bureau Director Elburt F. Osborn said that he also has ordered an intensive review of the Bureau's coal mine inspection and enforcement procedures to determine ways in which they can be further strengthened to achieve greater mine safety.

According to the Bureau's report on the disaster, the explosion at the Finley mines occurred when coal dust was thrown into suspension and ignited by Primacord (a type of detonating fuse banned by law from use in underground coal mines) or by "permissible" explosives used in a "nonpermissible" manner. Excessive accumulations of coal dust, and inadequate applications of rock dust (mixed with coal dust to make it incombustible) permitted the explosion to spread throughout the mines, the report says.

The report says that the explosion originated in the No. 16 mine, while rock was being blasted from the mine roof to make room for a coal loading point, or "boom hole."

Searching the mine workings after the disaster, investigators found several pieces of Primacord and two spools of this explosive fuse near the spot where a boom hole had been blasted on December 22, 1970. Later, while rock blasted from the December 30 boom hole was being moved, another piece of Primacord was found along with only a single length of detonator "leg" wire.

(Setting off multiple shots with Primacord requires only one detonator. If each shot had been fired with a detonator and two leg wires in each shothole, a large number of such leg wires would have been found.)

The report says that this evidence, indicating that Primacord "was used and had been used previously to detonate charges of explosives," subsequently was corroborated by several company employees who testified to the fact under oath.

The Bureau is not sure whether it was the Primacord or charges of permissible explosives which had been improperly (and illegally) confined in their shotholes with "wads of paper and brattice cloth" that actually ignited the coal dust and caused the fatal explosion. Tests at the Bureau's Explosives Research Laboratory, using explosives and coal dust samples taken from the Finley mines, proved that the dust could have been ignited either way.

More than 300 samples of mine dust, collected systematically in areas affected by the explosion forces, were carefully analyzed, the report says. Results showed that almost 90 percent of the samples contained less than the 65 percent incombustibles which is the minimum required by law. Seventy-four percent of the samples contained less than 50 percent incombustibles.

Copies of the Bureau's report have been placed on open file, together with copies of inspection and accident-investigation reports on the Finley mines, and

a transcript of a public hearing on the disaster held at Hyden, Ky., on January 6, 1971, at the following locations. They can be consulted by interested persons during regular Bureau working hours at:

Office of Mineral Information, Room 2611, Interior Building, 18th and E Streets NW., Washington, D.C.	Office, Blue Stone Road, Mt. Hope, W. Va.
Coal Mine Health and Safety, District Office, 4800 Forbes Avenue, Pittsburgh, Pa.	Coal Mine Health and Safety, Subdistrict Office, Federal Building, Barboursville, Ky.
Coal Mine Health and Safety, District Office, 501 Busseron Street, Vincennes, Ind.	Coal Mine Health and Safety, District Office, 546 Alexandria Avenue, Norton Va.
Coal Mine Health and Safety, District	Coal Mine Health and Safety, District Office, 1457 Ammons Street, Denver, Colo.

A summary of the Bureau's findings, as contained in the official report, follows:

#### SUMMARY

This report is based on an investigation made pursuant to the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742).

A coal dust explosion occurred in the interconnected Nos. 15 and 16 mines of the Finley Coal Company, Hyden, Leslie County, Kentucky about 12:20 p.m., Wednesday, December 30, 1970. Thirty-eight of the 39 men who were underground at the time were killed. Observations made during the investigation of the disaster indicate that 14 men who were employed in No. 16 mine were apparently killed instantly by the explosion, and 3 others who may have moved a short distance after the explosion possibly died from asphyxiation or carbon monoxide poisoning. Nineteen men, who were employed in No. 15 mine were apparently killed instantly by the explosion, and 2 others who may have moved a short distance after the explosion presumably died from asphyxiation or carbon monoxide poisoning. The lone survivor was near the portal in the belt entry of No. 15 mine when the explosion occurred. He was injured slightly by the explosion force and the debris coming out of the mine.

The names of the victims, their social security numbers, ages, occupations, experience, and the number of their dependents are listed in Appendix A of this report.

The Bureau's investigation of the disaster included extensive examinations of the underground workings of the Finley Coal Company mines following the disaster, a public hearing held at Hyden on January 6, 1971, a study of all previous reports on inspections and accident investigations at the mines and interviews of all but 13 Finley Coal Company employees. On the basis of this investigation, the Bureau has concluded that the explosion occurred when coal dust was thrown into suspension and ignited by Primacord, by permissible explosives used in a nonpermissible manner, or by use of nonpermissible explosives during the blasting of roof rock for a loading point (boom hole). These practices are not permitted under the Act. Excessive accumulations of coal dust, and inadequate application of rock dust in parts of Nos. 15 and 16 mines permitted propagation of the explosion throughout the mines.

The subcommittee (hereinafter referred to as the "committee") is of the belief that the technical aspects of the Bureau's postdisaster investigation were carried out efficiently, effectively, and creditably. This includes the rescue and recovery operations, in which the Bureau assisted, as well as the examinations of the underground workings of the mines, and the scientific analyses made of findings during the examinations.

Conversely, the committee is of the opinion that the procedural aspects of the postdisaster investigation left much to be desired and were evident of the lack of a basic plan on the part of a Federal agency that had been established more than 60 years previous and charged

with, among other responsibilities, “\* \* \* diligent investigation of the methods of mining, especially in relation to the safety of miners, \* \* \* the prevention of accidents, and other inquiries and technologic investigations pertinent to said (mining) industries \* \* \*”.

The Bureau conducted a public hearing at Hyden on January 6, the purpose of which—as stated by Director Osborn in opening the hearing—was “to obtain additional information that will help us to reach a conclusion as to the cause of this disaster.” The hearing was apparently conducted pursuant to section 103(d) of the act which states in part:

“For the purpose of making any investigation of any accident or other occurrence relating to health or safety in a coal mine, the Secretary may, after notice, hold public hearings \* \* \*”.

Although the hearing was chaired by Director Osborn, he acknowledged it was a continuation of “the concurrent Federal and State investigation,” and permitted active participation to Mr. H. N. Kirkpatrick, Commissioner of the Department of Mines and Minerals of the State of Kentucky, and Mr. J. H. Musgrove, Assistant Commissioner.

Most of the questioning of witnesses was undertaken by Mr. Musgrove and, on behalf of the Bureau, Mr. James Westfield, Assistant Director, Coal Mine Health and Safety. The technical competence of these individuals notwithstanding, the hearing was poorly conducted and bore little resemblance to the quasijudicial procedure it should have been. The questioning was almost totally unimaginative and imprecise and telling facts and points were missed by the absence of proper examination of witnesses. The witness list was void of widows of miners killed in the disaster; widows who, based upon past experiences with their counterparts of other disasters, could have provided a plethora of information relative to the operating conditions of the mines. The questioning did not enter into areas where circumstances preceding the disaster date could have been ascertained to shed valuable insight into the causes leading up to the explosion. Moreover, there was almost a complete absence of procedural decorum. Only one witness was advised of his constitutional rights and witnesses were permitted to commingle to the point where some felt intimidated by the presence of others.

In substance, the Bureau’s hearing was so poorly handled it might be said to have actually impeded the purpose of the investigation. It is not in the general nature of the mountain people of southeastern Kentucky, scrupulously honest though they may be, to bare their souls before white-shirted strangers from Washington without the benefit of pointed and pertinent inquiry. Theirs is a difficult life at best and they are well aware that the strangers will someday depart, leaving them to live amongst themselves again and, in most cases, at the economic mercy of a relative handful of entrepreneurs—for the most part, coal operators. Given the opportunity, however, the testimony of these individuals would complete the puzzle of what happened at Hyden on December 30. The Bureau’s hearing did not provide that opportunity. Subsequent interviews and hearings undertaken by the committee, did.

In an apparent realization that the January 6 hearing may not have tapped the information potential that existed, Department of the

Interior attorneys returned to the Hyden area later that month to take additional testimony. The testimony was taken in private, under oath, and was provided by several individuals who testified at the earlier hearing—the testimony of some of which appeared to change dramatically during the interval. These subsequent interviews, although much improved over those of January 6, were still short of the precision required of a thorough examination and lacked the technical competence which seemed to prevail on the earlier date.

In retrospect, it appears the Bureau was so anxious to quiet a growing public outrage over the disaster, it leaped into the hearing without adequate preparation. Wisdom would have dictated an investigation by Interior Department attorneys prior to a public session; not subsequently. As it happened, the public hearing was a sham and the later field interviews an essential adjunct to preserve a modicum of integrity to the overall Bureau effort. To the committee's knowledge, the Bureau has yet to delineate regulations establishing a procedure for such investigations.

Another striking deficiency of postdisaster Federal activities was the fact that no one apparently advised the widows of their right to have an autopsy performed on their husbands and, in fact, no autopsies were made. The county coroner, Dwayne Walker, certified as to the causes of death but had no medical training. The physician who examined each body as it was taken from the mine, Dr. William B. R. Beasley, expressed a reservation about the cause of death of several of the men. Some of the miners apparently survived the concussion of the blast and may have lived until they succumbed to carbon monoxide poisoning. For these men, a self-rescue device may have extended their lives. The mine in which these men were found (No. 15) was cited by Bureau inspectors in June and November for having an insufficient quantity of self-rescue devices. The November citation required the violation to be abated by December 22—8 days before the fatal explosion; that is, the operator was required to have a sufficient number of self-rescue devices underground by that date. He did not and, as will be outlined later, no inspector returned to the mine to see that he had.

From the standpoint of several of the widows—perhaps as many as ten—an autopsy may have provided evidence of pneumoconiosis. Section 203(d) of the act authorizes an autopsy, paid for by the Secretary of Health, Education, and Welfare, with the consent of the surviving widow or the surviving next of kin, "if the death of any active miner occurs in any coal mine." It is known that some of the miners had made application for "black lung" benefits pursuant to title IV of the act. An autopsy may have established pneumoconiosis in a degree sufficient to have enabled the widows to receive benefits of up to \$306.10 per month. And given the accumulations of respirable dust known to have existed in the mines, there is every reason to believe one or more of the widows would have qualified for the benefits.

(2) General information regarding the mines, as contained in the Bureau's official report, follows:

#### GENERAL INFORMATION

The Nos. 15 and 16 mines are on Hurricane Creek off State Highway 80 about 4 miles east of Hyden, Ky. Coal from these mines is hauled by autotruck to a preparation plant on a siding of the Louisville and Nashville Railroad Company at Sibert, Ky.

The names and addresses of the operating officials of the company at the time of the explosion were:

Holt Finley, Co-owner, Sibert, Ky.

Charles Finley, Co-owner, Manchester, Ky.

Stanley Finley, Co-owner, Manchester, Ky.

Walter Hibbard (victim of explosion), Superintendent and Mine Foreman, Manchester, Ky.

A total of 100 men were employed, of which 95 worked underground on 2 coal-producing shifts and 1 maintenance shift a day, 5 days a week. An average of 1,500 tons of coal a day was loaded by mobile loading machines into rubber-tired mine cars. These cars transported the coal to a belt conveyor system which carried it to the surface. The mines were opened by eight drift entries into the Hazard No. 4 coalbed, which ranged from 29 to 36 inches in thickness locally. They are classed nongassy by the Commonwealth of Kentucky, and are above drainage level. The immediate and main roof was generally firm shale, and the floor was also firm shale.

\* \* \* \* \*

On December 19, 1969, the Finley brothers made application to the Kentucky Department of Mines and Minerals for a license to operate two adjoining deep mines to be designated No. 15 and No. 16. The Department issued licenses for both mines on December 29.

The first entry for the No. 15 mine was made in March 1970, and that for the No. 16 mine in June. The mines were each opened by four drift entries with a 190-foot coal barrier between. "When the entries in the No. 16 mine were driven to a point about 260 feet underground," according to the Bureau report, "management decided to interconnect the two mines so that the one main belt conveyor which had been installed in No. 4 entry, No. 15 mine, could be used for transporting coal from both mines to the surface." The interconnection took place in August. The report continues: "\* \* \* Two additional entries were started in each mine and the 12 entries were driven to a depth of 2,500 feet from the surface with several connections made through the barrier pillar at various intervals between the mines. *After the first interconnection (in August), the mines were developed as a single mine.*" (Emphasis supplied.)

In testifying before the committee, Mr. James Westfield, Assistant Director, Coal Mine Health and Safety, Bureau of Mines, said: "These two mines, so-called two mines, after they were connected there was no question that they were one mine."

Yet, given these official acknowledgements that the Bureau considered the two mines as one, they were in fact inspected as two separate and distinct entities. Of the eight occasions Bureau inspectors visited the mines, six inspections or investigations were made of No. 15 and two inspections of No. 16. On no occasion did Federal inspectors inspect one mine while present to inspect or investigate the other. The full impact of this reality will become more apparent during a later discussion of the Bureau's admitted shortage of inspectors and its policy to achieve optimum efficiency and coverage with respect to their limited availability. In contrast, the State of Kentucky, in conducting its only inspection of the mines from the time of their interconnection to the disaster date, inspected the "two mines" concurrently—on August 20.

One aspect of Bureau policy regarding enforcement of the law to interconnected mines is contained in a comprehensive memorandum issued by the Associate Director, Health and Safety, to Bureau district offices on March 27, 1970, which states:

**INTERCONNECTED MINES**

Where areas considered to be a single mine because of underground connections are being mined by different operators or by the same operator, any danger found in one mine that may affect the safety of the miners in a connected mine should be covered by orders issued to the operator of each such mine.

A related directive is also contained in the "Coal-Mine Inspector's Manual, August 1969," which Bureau personnel are currently utilizing in the conduct of inspection activities.

A history of the violations cited at the mines as a result of Federal inspections or investigations now follows:

Date	Mine No.	Type of inspection	Legal reference	Description	Action taken by Federal Mine Inspectors	Action required of coal company	Remarks
June 9, 1970	15	Partial but representative.	Sec. 104(a) order of withdrawal.	Imminent danger from excessive accumulation of coal dust; inadequate rock dusting; evidence of smoking underground; lack of short circuit protection; gas tests not made before and after blasting; uninsulated splices in trailing cables; gas test before and during use of electrical equipment in by last open crosscut. Power connection points in the main entry were in return air.	Abatement before termination of order.	Abatement before termination of order.	Termination of order issued at 2:45 p.m. on June 22, 1970.
June 22, 1970	15	do	Sec. 305(d) notice of violation.	Map of mine electrical system not provided.	Abate by 8 a.m., June 29, 1970.	Abate by 8 a.m., June 29, 1970.	Abated by June 22, 1970.
Do	15	do	Sec. 305(e) notice of violation.	Qualified persons not used to maintain, test and examine electrical equipment.	Lightning arresters were not provided for the power circuits leading underground.	Correction recommended.	This notice is for information only; no penalty to be assessed. Do.
Do	15	do	Sec. 305(f) notice of violation.	Lightning arresters were not provided for the power circuits leading underground.	High-voltage circuit was not provided with grounding resistor.	do	Abated by June 29, 1970.
Do	15	do	Sec. 308(b) notice of violation.	Daily examinations of the mine fan were not made.	Weekly examinations for hazardous conditions were not made.	Abate by 8 a.m., June 29, 1970.	This notice is for information only; no penalty to be assessed. Abated by June 29, 1970.
June 23, 1970	15	do	Sec. 303(a) notice of violation.	Weekly ventilation examinations were not made.	Frame ground protection was not provided on the direct current equipment.	do	Do.
Do	15	do	Sec. 303(f) notice of violation.	Mine map did not show required information.	Notice of violation; no sanitary toilets, surface or underground.	Correction recommended.	This notice is for information only; no penalty to be assessed. Do.
Do	15	do	Sec. 317(i).	Notice of violation; no sanitary toilets, surface or underground.	Only 9 self-rescue devices were provided for the 39 men underground.	do	Do.
Do	15	do	Sec. 317(n) notice of violation.	Notice of violation; no potable water underground.	The 250-volt direct current feeder line was in contact with timbers and rib from the rectifier to the nip station in the 1 left section.	Abate by 8 a.m. on June 29, 1970.	Abated by June 29, 1970.
Do	15	do	Sec. 317(s).	Imminent danger from trailing cables being run over.	Abatement before termination of order.	Abate by 8 a.m., Aug. 17, 1970.	Abated by Aug. 17, 1970.
Aug. 14, 1970	15	Nonfatal explosion accident investigations.	Sec. 305(k) notice of violation.	Loose coal, coal dust, and float dust were accumulated along conveyor belt entry from portal to tail piece. Short circuit protection for trailing cable for the loading machine in 1 left was not provided with automatic circuit breaker.	Abate by 8 a.m., Aug. 17, 1970.	Abatement before termination of order.	Termination order issued by 2:45 p.m., Aug. 14, 1970.
Do	15	do	Sec. 104(a) withdrawal order.				Abated by Aug. 17, 1970.
Do	15	do	Sec. 304(a) notice of violation.				Extended to 8 a.m., Aug. 24, 1970, abated by Aug. 24, 1970.
Do	15	do	Sec. 306(b) violation notice.				



Date	Mine No.	Type of inspection	Legal reference	Description	Action taken by Federal Mine Inspectors	Action required of coal company	Remarks
Oct. 19, 1970	16	Complete	Sec. 302(a) violation notice	Roof support plan not being followed		Abate by 8 a.m., Oct. 20, 1970	Abated by Oct. 20, 1970.
Do.	16	do	Sec. 303(b) violation notice	Insufficient air reaching faces No. 5 and No. 6 main entries		do	Do.
Oct. 19, 1970	16	Complete	Sec. 304(c) violation notice	Rock dust not applied to within 200 feet of No. 1 main entry		Abate by 8 a.m. Oct. 20, 1970	Abated by Oct. 20, 1970.
do	16	do	Sec. 305(m) violation notice	Mine fan motor was not protected by an automatic circuit breaker		Abate by 8 a.m. Oct. 26, 1970	Abated by Oct. 26, 1970.
do	16	do	Sec. 306(d) violation notice	Trailing cables for loading machine and coal drill contained several temporary splices		do	Abated by Oct. 20, 1970.
do	16	do	Sec. 307(b) violation notice	Frame ground protection not provided for any of the electric face equipment		Abate by 8 a.m. Nov. 17, 1970	Extended to 8 a.m., Dec. 28, 1970.
Oct. 20, 1970	16	do	Sec. 303(o) violation notice	A wet ventilation system methane and dust control plan not submitted by operator		do	Do.
do	16	do	Sec. 303(t) violation notice	Operator had not submitted a fan stoppage plan		do	Abated by Nov. 16, 1970.
do	16	do	Sec. 304(b) violation notice	Water or water with wetting agent not used to abate dust created by mining operations		do	Extended to 8 a.m., Dec. 28, 1971.
do	16	do	Sec. 305(g) violation notice	Electric equipment not examined, tested, and maintained by qualified persons		do	Extended to Dec. 28, 1970.
do	16	do	Sec. 308(d) violation notice	The 4,165-volt alternating current circuit leading underground did not contain a ground check monitor		do	Do.
do	16	do	Sec. 308(t) violation notice	A disconnect device was not installed on the branch line of the high voltage circuit for No. 16 Mine		do	Extended to Dec. 28, 1970.
do	16	do	Sec. 313(d) violation notice	Explosives were carried underground in their original shipping containers		Abate by 8 a.m. Oct. 25, 1970	Abated by Oct. 26, 1970.
Oct. 20, 1970	16	do	Sec. 317(t) violation notice	A program for training and retraining qualified and certified personnel not established		Abate by 8 a.m., Nov. 17, 1970	Extended Nov. 16, 1970.
Oct. 22, 1970	16	do	Sec. 303(g) violation notice	Weekly ventilation examinations not made		Abate by 8 a.m., Oct. 26, 1970	Abated by Oct. 26, 1970.

Do.....	16	.....do	Sec. 304(a) violation notice.	.....do	Do.
Do.....	16	.....do	Sec. 304(a)(4) violation notice.	Abated by 8 a.m., Nov. 17, 1970.	Abated by Nov. 16, 1970.
Do.....	16	.....do	Sec. 317(c) violation notice.	.....do	Do.
Do.....	16	.....do	Sec. 317(l)	Correction recommended.	Notice for information only.
Oct. 26, 1970	16	Spot	Sec. 317(m) violation notice.	Abate by 8 a.m., Nov. 17, 1970.	Abated by Nov. 16, 1970.
Nov. 13, 1970	15	Fatal accident investigation.	Sec. 104(a) withdrawal order.	Abatement necessary before termination of order will be issued.	Order terminated.
Nov. 19, 1970	15	Spot	Sec. 317(n) violation notice.	Abate by 8 a.m., Dec. 22, 1970.	
Do.....	15	.....do	Sec. 317(l) violation notice.	.....do	
Nov. 19, 1970	15	.....do	Sec. 305(e) violation notice.	Abate by 8:00 a.m. Dec. 22, 1970.	
Do.....	15	.....do	Sec. 307(b) violation notice.	.....do	
Do.....	15	.....do	Sec. 202(b)(1) violation notice.	.....do	
Do.....	15	.....do	Sec. 202(b)(1) withdrawal order.	Abate by 8:00 a.m. Dec. 22, 1970 (see above).	Operator abandoned area and withdrawal order remains in effect.
Dec. 21, 1970	15	.....do	Sec. 303(o) violation notice.	Abate by Jan. 4, 1971.	

Total

It can be seen that violations cited for one mine were often subsequently cited for the other. It can also be seen that certain types or categories of violations recurred—when considered collectively—with alarming regularity. Had the Bureau indeed treated the mines as one, as it acknowledges they were, there is every reason to believe the collective and persistent violations would have been more than sufficient to institute action pursuant to section 104(c) of the act—the provision relating to an “unwarrantable failure” on the part of the operator to comply with the required health and safety standards. This provision permits more expeditious implementation of procedures to withdraw miners from a mine than does the provision under which the mines were nearly always cited. A more thorough discussion of this aspect will also be presented later.

Moreover, on three occasions prior to the disaster, the operator was cited for conditions of imminent danger which led to the issuance of orders to withdraw immediately men from the areas affected by the orders. All of the violations which caused the issuance of such withdrawal orders were found in the No. 15 mine, and the orders only covered areas of the No. 15 mine. Mining operations were permitted to continue uninterrupted in No. 16, even though the least knowledgeable coal mine observer could derive an obvious connection between the dangers in one affecting the other; given especially the history of violations found at the mines, and the known volatility of the coal dust present—often in illegal quantities and in locations that contributed a very real element of danger to mining operations.

With respect to this issue, the following dialogue between Chairman Perkins and Mr. Gordon Couch, a Federal coal mine inspector stationed at the Bureau's Barbourville, Ky., subdistrict office is presented:

**Chairman PERKINS.** After you made that inspection in June, Mr. Hyde signed your report. How long was it thereafter until you completed your apprenticeship and were turned loose on your own as a mine inspector?

**Mr. COUCH.** I was turned loose July 28, 1970, sir.

**Chairman PERKINS.** You were turned loose on July 28, 1970, and the Finley mines, Nos. 15 and 16, were under your jurisdiction, is that correct?

**Mr. COUCH.** Yes, sir; that is correct.

**Chairman PERKINS.** And you were chiefly responsible for all intents and purposes for the investigation of Nos. 15 and 16 mines, am I correct?

**Mr. COUCH.** Yes, sir; you are correct.

**Chairman PERKINS.** Now, on occasions you would investigate the No. 15 mine, and make a separate report; and then inspect No. 16 mine and make a separate report. And if you found problems in No. 16 mine, where the loading point was shot that caused the disaster, people were permitted to work in No. 15 mine when the same conveyor belt carried all the coal out of the mine.

Would you explain that to the committee?

**Mr. COUCH.** Yes, sir; when we made an inspection of the No. 15 mine, the No. 16 mine was just starting in from the outside. They were about 40 or 50 feet underground.

**Chairman PERKINS.** They opened the No. 16 mine in about June.

**Mr. COUCH.** Yes, sir.

**Chairman PERKINS.** And they opened the No. 15 mine about March, is that correct?

**Mr. COUCH.** That is correct.

**Chairman PERKINS.** And when were they connected, do you know?

**Mr. COUCH.** I believe it was around August, sir.

**Chairman PERKINS.** After August, you were back there in Nos. 15 and 16, and continued to make separate inspections, instead of treating them as one entity, am I correct in that statement?

Mr. COUCH. I don't follow you on that, sir.

Chairman PERKINS. Well, in other words, when these mines were connected, for all intents and purposes, they were one mine, all the coal came out on one belt, transported to various loading points in the mine. But you continued to make separate inspections of Nos. 15 and 16, and if violations were of imminent danger in No. 15, they would continue to work in No. 16, am I correct in that statement?

Mr. COUCH. You are correct, sir.

The responsibility of inspecting and treating the mines separately is not necessarily that of Mr. Couch or, for the matter, that of any inspector as such; although it was certainly within the province of an inspector to have recommended that the mines be considered as one. Rather, it is with higher Bureau officials—possibly the district or sub-district office manager.

The practice in this case can be contrasted with the Bureau's enforcement of the Connellon Coal Co. Pocahontas Division Nos. 3 and 4 mines in McDowell County, W. Va. According to inspection reports, the Nos. 3 and 4 mines, adjacent and connected, open into separate seams of coal; yet, for inspection purposes, they are considered to be a single mine. Any observation of the Finley Coal Co. Nos. 15 and 16 mines certainly makes it difficult to draw any meaningful distinction between the two mines.

By deciding to classify the mines separately, dividing duties and responsibilities pursuant to that decision, and permitting the accumulation of both the total of violations and the seriousness of many to be isolated and considered distinct according to their discovery in "separate" mines, the Bureau may well have contributed to the potentiality for the disaster.

(3) Throughout the course of the committee's hearings, Chairmen Perkins and Dent particularly, made continual references to the history of violations at the mines—hereinafter referred to as the "mine." According to the Bureau's official report, eight inspections or investigations were made of the mine; six in the No. 15 portion, and two in the No. 16 portion. The inspections disclosed a total of 43 violations of health or safety standards for which notices of violation were given; well above the national average of 19. The inspections also resulted in the disclosure of conditions of imminent danger on three occasions and the issuance of three consequent withdrawal orders. One of the withdrawal orders was based upon a condition of imminent danger caused by seven separate violations of the safety standards. According to Bureau testimony at the hearing, the national average for imminent danger conditions per mine is less than one.

The mine also had three accidents, two of which were known to and investigated by the Bureau. The third accident was not reported by the operator, as required, and will be discussed later. Of the two accidents known to the Bureau, one was fatal to a miner and the other resulted in the blinding of one miner and the loss of hearing to another.

It is important to remember that this all occurred prior to the disaster and, since the first inspection was made in June, during only a 6-month period.

Chairmen Perkins and Dent, in discussing this history, condensed and amplified it into a pattern somewhat like the following:

(a) The mine had repeated violations of loose dust covering everything from roadways to machinery.

(b) The mine had been cited for rock dust violations.

(c) A dust fire in August had caused an accident; one man remains blinded by it, and another had his eardrum shattered.

(d) The fatal accident in November was caused by defective mechanical equipment and the resultant investigation turned up four machines which had every ill from missing arc shields to an absence of fuses in the power and control circuits.

(e) The mine was in constant violation of trailing cable standards, and one piece of equipment—a roof-bolting machine—was found to have 44 temporary splices in its cable; the law permits one, and only for a 24-hour period.

(f) The State of Kentucky inspections of April and August disclosed a myriad of violations in the mine; including findings of “dangerous accumulations of loose, highly explosive dust,” \* \* \* “haphazard and insufficient rock-dusting,” and “\* \* \* the improper handling of explosives.”

(g) It was known that the volatile ratio of coal dust in the mine was 0.42. Tests by the Bureau have proven that coal dust with a volatile ratio of 0.12 and higher is explosive.

(h) A citation of November 19, was for a respirable dust finding of 33.9 milligrams—more than 10 times the limit permitted by law.

(i) The mine’s production and the number of loading points—boom holes—gave evidence of mining at an unusually rapid and unsafe speed.

The following hearing dialogue between Representative Erlenborn and Mr. C. E. Hyde, Federal coal mine inspection supervisor, is presented at this point:

**Mr. ERLENBORN.** Mr. Chairman, let me ask Mr. Hyde, is this the only mine in your area that has had notices of violations, closure orders, and repeated notices of violations based upon inspections by your inspectors?

**Mr. HYDE.** No, sir; it is not the only one.

**Mr. ERLENBORN.** Is it the one that was most outstanding in that it had more violations, and more serious violations than others in the area within your jurisdiction?

**Mr. HYDE.** I would have to refer to our records to answer that correctly, but to hazard a guess, I think they would be very close to the top.

This is precisely the point the committee sought to make and the point the history of the mine substantiates; that the pernicious nature of the mine should have put the Bureau on notice with respect to exercising an extraordinary degree of attention to enforcing the law at the mine, and a particular responsibility to follow-up in determining whether all cited violations were actually abated by the time required. This, as will be seen, was not the case.

The pattern of violations at the mine also leads to another line of inquiry. Section 104(c) of the act relates to withdrawing men from or closing a mine for the “unwarrantable failure” on the part of the operator to comply with the health and safety standards prescribed by the law. The conference report on the legislation defines an “unwarrantable failure” as “the failure of an operator to abate a violation he knew or should have known existed, or the failure to abate a violation because of a lack of due diligence, or because of indifference or lack of reasonable care, on the operator’s part.”

This section of the law seems almost to have been written with a foreknowledge of the Finley mine. Yet, none of the violations found

at the mine were ever cited pursuant to section 104(c). The question occurs, why? The following dialogue between Chairman Dent and Mr. Henry Wheeler, Deputy Director, Health and Safety, may provide the answer:

Mr. DENT. It is interesting to note the pattern started within the first months of the opening of the Finley mine. The very first violation was an imminent danger violation and that was in June.

It was also the very last violation and the last page could have been a copy of the first page of the violations.

For instance, "qualified persons not used to maintain tests and examine electrical equipment," 6-22-70.

A later violation is the same identical violation, "a program for training and retraining qualified and certified personnel not established." "Self-rescue devices short," in the first violations notice.

Three different times that same violation, "insufficient self-rescuers in the mine."

The ventilation system has been cited four times and on four pages. If that does not fit the description of section 104(c), which reads that you have the absolute right to close that mine down, then nothing in the world fits it.

Why did the committee put section 104(c) in there? Because of the continuing pattern in certain mines, certain mines will start with a type of violation and they will abate them, but they don't stay abated any longer than it takes for the mine inspector to come into the mine and look and get out of the mine, and it is always back.

Throughout this whole pattern, the operator cares little or nothing, when you give him every opportunity. I would say you were overly liberal, because among the first citations, a map of the electrical system was not provided; that was only notice for information, no penalty assessed, correction recommended.

Did he correct it? All through here, two other violations in the same identical language that was cited in the first violation.

At no time did he ever put any kind of a permanent type of remedy for violations that have continued to exist in that mine from the very first day it was opened, and the separation was only created to have a good dodge when you had a violation of dust in No. 15, and it was ordered to abate, you ordered it abated the very same day in No. 15.

In No. 16, which is a continuation of the very same mine, because all the men were killed that were in the mine, whether they were in Nos. 15 or 16, which means there is no separation or a barrier of any kind between those mines.

And yet No. 16 then, is so cited for the same violation within exactly 8 days.

\* \* \* \* \*

Mr. DENT. If we allow continuing pattern violations to exist and I don't care if any person has ever been in the inspection field that does not find a pattern in this which is made part of the record by you, if he does not find pattern violations throughout the whole history of the Finley mining operations then there is no such thing as a pattern and there was no necessity for the Congress to insert section 104(c) into the new mining law.

I want to ask to what extent has section 104(c) been enforced?

Mr. WHEELER. Unwarrantable failure.

Mr. DENT. How many violations under that have ever been noted or the operator penalized in any way?

Mr. WHEELER. We have issued 281 notices of violation for unwarrantable failure.

Mr. DENT. What did you do in those instances?

Mr. WHEELER. We have closed mines on 297 occasions.

Mr. DENT. How long were they closed?

What period of time did it take them to get the mines in line with the law?

Mr. WHEELER. I can't answer that directly but I can tell you that in most cases when we issue a withdrawal order it does not take longer for the mine to get into compliance.

Mr. DENT. Why wasn't this done then in the Finley mine?

Mr. WHEELER. Congressman, I think we have made a mistake. I am not going to sit here and say that we don't make mistakes because I am sure we do.

Mr. DENT. I want you to know that we can't afford to make mistakes in this.

(4) In the preceding section, it was pointed out that the Bureau was aware of only two of the three accidents at the mine prior to the disaster. It may be useful, in terms of viewing the Bureau's commitment to a literal enforcement of the act, to discuss that accident and the Bureau's action with respect to it. The facts which follow were provided by Mr. Hollis Dole, Assistant Secretary of the Interior.

On December 15—15 days before the disaster—Mr. Sammy Henson, a loading machine operator's helper at the mine, was burned on the hip when a cable short-circuited as a result of being run over by Mr. Henson while tramming the machine. Mr. Henson visited a physician at the Hyden Hospital on December 28, and was then placed on compensation.

Although the accident was not reported to the Bureau until the investigation of the disaster, and there is every reason to believe it would not otherwise have been reported, the Bureau has not to date cited the operator for a violation of section 103(e) of the act which requires:

In the event of any accident occurring in a coal mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof.

The Finley Coal Co. had no record of the accident at the mine office but did report the injury to the insurer, Underwriters Safety and Claims, Inc., Paintsville, Ky. Section 111(a) of the act states:

All accidents \* \* \* shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence, and further requires that

Records of such accidents, roof falls, and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative or the appropriate State agency.

The Bureau has not to date cited the operator for a violation of this section of the act.

An argument might also be made, since the operator did not report the accident to the Secretary or maintain a record of it, for the possible applicability of a criminal violation pursuant to section 109(d) of the act:

Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act or any order or decision issued under this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both. (emphasis supplied)

The Bureau did not investigate the accident and according to Secretary Dole, "Such accidents are not ordinarily investigated by the Bureau unless something unusual occurs, which did not in this case." One is compelled then to wonder why the Bureau did investigate the nonfatal accident at the Finley mine of August 12, since both accidents were caused by short-circuits in the trailing cable of machinery and miners suffered injuries in both instances.

The penalty provisions of the act exist for the purpose of encouraging compliance; both to the operator in violation of the act and to those who might consider short-term economic or other advantages to noncompliance. It is serious indeed to suggest that operators will



not be penalized for failure to report, investigate, and maintain records of accidents.

(5) In that same vein of thought, it might be helpful to discuss the death of Mr. Charlie Wagers in a coal mine haulage accident at the Finley mine.

Mr. Wagers was a tractor operator on the second shift. From the outset of that shift on November 9, he began experiencing difficulty with the malfunctioning tractor he was operating. He sought assistance from a maintenance man and two attempts at repair were made. The difficulty was with the forward and reverse electrical contacts. After the second repair, the trailer attached to Mr. Wagers' tractor was being loaded with coal. He again experienced a similar problem and on a third effort to forward the tractor, it lurched backward and pinned his head between the corner and a rib of coal. Mr. Wagers died instantly from massive head injuries.

The "Summary of Findings" from the Bureau's report of its investigation of the accident states:

1. The battery-powered tractor had a contact stuck in reverse, and any attempt to move forward would move the tractor in reverse; the position of the victim's body indicated that he was attempting to move the tractor forward.
2. The Kersey trailer is 2½ feet wider on each side than the tractor, which caused the trailer to hang against the rib.
3. The maintenance program was not effective, in that contacts were not kept in good operating condition.
4. The overall safety program at the mine was not effective in that new tractor operators were not informed of the hazards that surround overall maintenance and operation of battery-powered equipment. The employees at this mine have not been trained in coal mine accident prevention and first aid.

The Bureau's report then cites the direct cause of the accident as "Management's failure to take the defective tractor from service for repairs, and to assure that the battery-powered equipment was in good mechanical condition before being placed in service."

An imminent danger order was written for 4 pieces of malfunctioning mechanical equipment in the mine, including the tractor that killed Mr. Wagers, on November 13—a Friday—and terminated on November 16—a Monday. No coal production was lost.

On March 9, 1971—exactly 4 months after Mr. Wagers was killed and the first day of the committee's hearings into the disaster—the Bureau announced the assessment of civil penalties against the Finley Coal Co. for violations of the act; one of which was in the amount of \$10,000 for the imminent danger order issued upon investigation of the accident causing the death of Mr. Charlie Wagers.

(6) To further assist in understanding the nature of the mine, evidenced by Bureau records and supposedly as recognized by the Bureau prior to the disaster, one additional violation should be mentioned.

On November 19, a spot inspection was made of the mine. A Bureau memorandum of August 19 from the Assistant Director for Coal Mine Health and Safety to all district offices required that spot inspections be made at least once each 5 working days of mines liberating an excess of methane and of mines in which a methane or other gas explosion occurred which resulted in death or serious injury during the preceding 5 years. It also required that same schedule of spot inspections for "mines in which other especially hazardous conditions exist."

The requirements of the memorandum were like those contained in section 103(i) of the act.

Notwithstanding the committee's belief that a substantial case for "other especially hazardous conditions" had been made early in the operation of the Finley mine—again, according to the Bureau's own records and knowledge at the time—the memorandum also required spot inspections three times a year for "all other underground mines."

The spot inspection of November 19 was presumably prompted by a finding that "the cumulative concentrations of respirable dust analyzed from four samples collected by the operator during an original sampling cycle conducted in the working environment of the coal cutting machine operator \* \* \* amounted to 33.9 milligrams of respirable dust." The operator was cited for a violation of section 202(b) (1) of the act which requires the operator to maintain the concentration of respirable dust at or below 3.0 milligrams per cubic meter of air. The notice of violation was issued November 19 requiring that the violation be abated by December 22. The operator thereupon abandoned the section to which the violation applied and ceased mining operations there. At that point, an order was issued requiring that miners be withdrawn and prohibited from entering the affected area until the violation was abated. Technically then, that order represented the fourth imminent danger condition cited at the mine.

During that same spot inspection, the operator was also cited for four violations of safety standards—all of which were required to be abated by December 22, 8 days before the disaster.

On October 20, the operator had been cited for failing to use water or water with a wetting agent to abate dust created by mining operations. No such violation was cited during the spot inspection of November 19, although water or water with a wetting agent was not used at that time and, in fact, was never used by the operator to abate the extraordinarily high levels of respirable dust created by his mining operations.

The finding of a respirable dust level more than ten times that permitted by law is shocking enough; but the failure of the Bureau to recognize that similar dust levels most likely existed throughout the mine, and not only in the section cited, is incomprehensible.

The levels of respirable dust in a given mine are more a reflection of the method of mining than of a particular location in the mine. The operator was apparently mining without regard to the dust generated and was not employing techniques designed to maintain dust levels below the permissible limit—such as water. And his mining technique was consistent throughout the entirety of the mine.

In essence, the mine was so heavily polluted with respirable dust—throughout its entirety—there existed a virtual certainty that each miner exposed for a period to its environment would have contracted some development of pneumoconiosis, or "black lung" disease.

(7) Perhaps the preceding sections justify a belief that the hazardous nature of the Finley mine had been established well before the disaster date. The committee believes ample justification existed for such belief and further believes the Bureau—by virtue of its own findings—with respect to the mine—should have been on notice as to the dangerously atypical conditions in the mine, should have inspected it with

greater frequency, carried out more complete inspections, and perhaps most importantly, been present to insure that cited violations were actually abated when required.

Section 103(a) of the act requires, for each underground mine, an inspection by the Bureau "of the entire mine at least four times a year." The Bureau report on the disaster outlines eight inspections or investigations of the mine during the 9-month period of operation. In fact, on only one occasion was a complete inspection—that required by law—conducted.

Chairman Perkins referred to this during the hearings, and pointed to the Bureau visit of October 19, 20, and 22 as the one complete inspection; and complete only in the sense that the Bureau considered the mine as two mines and inspected only the No. 16 portion during the visit referred to.

A partial inspection was made on June 19, 22, and 23.

On August 14 and 19, the inspectors investigated an explosives accident.

The "inspection" of August 14 the Bureau refers to, was actually a very limited spot inspection made while inspectors were at the mine investigating the accident.

On October 26, an inspector visited the mine but did not go underground.

The November 10 and 13 visits were to investigate another accident—this one fatal.

Only 10 days after the fatal accident, an inspector visited the mine again; but only to conduct another limited spot inspection.

On December 21, an inspector stopped at the mine office but did not enter the active workings. This was considered a spot inspection.

Yet, even these limited visits to the mine disclosed 43 violations of health or safety standards, and three instances justifying the issuance of imminent danger orders. Many of the violations cited were of the type the Bureau later said contributed to the December 30 disaster.

(8) The following exchange between Representative Erlenborn, Director Osborn, and Messrs. Wheeler and Westfield, provides the Bureau's reason for not inspecting the Finley mine at the required frequency and extent:

**Mr. ERLENBORN.** As a result of the passage of the new coal mine health and safety law, we need a good many more inspectors. Was it possible, or was it last year just before this explosion occurred, to make all of the inspections required under this law with the number of inspectors that were available to the Department?

**Mr. WESTFIELD.** No.

**Mr. OSBORN.** Do you want to answer that?

**Mr. WHEELER.** Well, it was not. We simply were not able to recruit, hire, and train inspectors at a rate which would enable us to do this immediately. At the present time, and back, I would say, when this explosion occurred, we were doing about, I would say, about a fifty percent job of making the required inspections.

In order to put into perspective the question of what the Congress required by mandating a minimum of four complete inspections of each underground mine each year against the Bureau's ability to anticipate and absorb such a requirement, it should be noted that on March 4, 1969, the then Secretary of the Interior Walter J. Hickel, testified in support of the administration's coal mine health and safety

proposal—which contained a requirement for three complete inspections of every mine each year. It was apparent throughout 1969 that some such minimal inspection provision would be part of the final legislation. It is to be remembered that the effective date of the requirement was more than 1 year later, and the committee's Hyden inquiry, a year after that. Therefore, 2 years passed between the time Secretary Hickel advocated the three inspections per year requirement—obviously reflecting the Bureau's thinking on the subject—and the following exchange took place:

Mr. DENT. It is too bad. This thing could have been avoided, and I think everybody in this room knows it now, and it should never happen again. I know there is a disparity here in the information given this committee on the number of inspectors.

We were led to believe there were 540 inspectors at one time. In fact, in 1967 and 1968 from information from the Bureau, they had 248.

However, at one time, the Bureau spokesman said there were less than 500. Then there were 425, but at no time did we find any list that gives us the number of inspectors that are on the roll at the time.

I want to know at this time for the record, how many qualified inspectors are employed by the Bureau of Mines at this time—not trainees, I mean inspectors.

Mr. WHEELER. Excuse me just a minute, Congressman.

At the present time, we have a total of 340 inspectors. This is not including the district managers who are also qualified inspectors.

These are qualified, duly authorized representatives of the Secretary of the Interior.

Mr. DENT. You have 340. Isn't it true that you would need 440 to meet the requirements of the law itself?

Mr. WHEELER. It requires about 750, Congressman.

\* \* \* \* \*

Mr. DENT. I am talking about a pattern. Here is a mine with three imminent danger violations and three accidents; two of them fatal. When we added the small mines under the 1965 act, we asked the Department how much more money will you need, how many more inspectors will you require to do the job on the new duties that we have given you?

They gave us the figures and the Congress accepted the figures I gave them on the floor without question. The Department has failed to recruit up or to their own estimate of mine inspectors that they need.

That was 5 years ago.

Mr. WHEELER. Five years ago from when, Congressman?

Mr. DENT. The record shows that they asked for a certain number of inspectors and have never reached that figure.

Mr. BELL. Maybe they have not got the appropriation.

Mr. DENT. Last year they turned money back.

Mr. WHEELER. Congressman, give us a few more months.

Mr. DENT. We have given 5 years on it, on the act of 1965. What are we going to do with this act of 1969?

Mr. WHEELER. I can't talk about the act.

Mr. DENT. How many do you really need now for the record?

Mr. WHEELER. We need 750 inspectors.

Mr. DENT. Do you have enough money?

Mr. WHEELER. We have enough money and if we could inspect mines with dollars we would be in no trouble at all.

Mr. DENT. Then the appropriation is sufficient. Congress has done that much.

\* \* \* \* \*

Mr. BURTON. As I recall, there is no limit to the authorization for the training or the hiring of inspectors. Is that correct?

Mr. WHEELER. There is no limit to the authorization.

Mr. BURTON. Yes; it says needed and appropriate.

Mr. WHEELER. That is correct. The law specifies a minimum number of things that might be done, but there is no top limit.

Mr. BURTON. Has Congress fully appropriated all the amounts requested by the administration?

Mr. WHEELER. Yes, sir; it has.

Mr. BURTON. You testified that you had an inadequate number of inspectors?

Mr. WHEELER. An inadequate number of as of now; yes, sir.

Mr. BURTON. Have you expended all the money that has been appropriated for the training and hiring of inspectors?

Mr. WHEELER. No, sir.

Mr. BURTON. What percentage of the appropriated fund have you failed to expend?

Mr. WHEELER. Well, of course—

Mr. BURTON. About.

Mr. WHEELER. I can't answer that, because we are not at the end of the fiscal year yet. We will come very close, before the end of the fiscal year, to spending all the money that has been appropriated.

Mr. BURTON. How about last year?

Mr. WHEELER. Last year, believe we did. I would want to check on that but I am quite certain that we did.

Mr. BURTON. It is perfectly clear that the Congress has fully funded all the administration's requests in this area?

Mr. WHEELER. Yes, sir. We have not been hampered by lack of funds.

\* \* \* \* \*

Chairman PERKINS. You are telling us, then, that more inspection, that the presence of more inspectors would reduce the probability of disaster. Is that correct?

Mr. WHEELER. Yes, sir.

Chairman PERKINS. Are you going back—are you going to make a recommendation of that kind this next year, for funds to get more inspectors?

Mr. WHEELER. I don't right now, I don't think we are getting the number we need to do the job we have to do now.

Chairman PERKINS. Have you asked for any increase in your inspection money in this year's budget?

Mr. WHEELER. No, sir; we did not.

Somehow the Bureau's logic in pointing to a lack of ample inspectors as justification for failure to meet the act's minimum inspection requirements while admitting to a sufficiency of funding for the inspectorate needed, is escapable.

The Bureau has been on notice with respect to inspection requirements for some time. Prior to and since the date of enactment of the act, Members of Congress have repeatedly urged the Bureau to be more attentive to such requirements and more active in enlisting inspectors. In a meeting with Bureau officials on May 1, 1970, staff representatives of appropriate Congressional committees and interested Members consumed the greater part of a lengthy discussion period in pointing to deficiencies in this area. At that time, Mr. Wheeler stated: "We have 310 people on board who are qualified to inspect coal mines." That figure included inspector-trainees, engineers, and roof-control and electrical specialists. A February 1970 "walk-in" civil service examination produced 387 applicants rated "eligible." At that time, Mr. Wheeler estimated the Bureau would achieve an 80 percent inspection requirement capability by the end of fiscal year 1971. He was basing his percentage estimates on an anticipated need for "between 1,000 and 1,100 inspectors to make all of the inspections that are required under the law . . ." He was therefore, speaking of a Bureau inspection force numbering between 800 and 880 by the end of June 1971. But in March 1971, at the committee hearings, he stated: "at the present time, we have a total of 340 inspectors."

The existence of the deficiency is unjustifiable. The dimension of it, is inexcusable.

(9) To complete the description of the type of mine the Bureau knew the Finley mine to be—prior to the disaster—additional mention should be made of the gravity of the violations cited before December 30. The following excerpt is from the committee's hearings:

Chairman PERKINS. \* \* \* of course, after this tremendous explosion, you could not tell whether the mine at this point was rock dusted or not rock dusted. When did you take those samples to make a determination on whether adequate rock dusting had taken place?

Mr. WHEELER. After the disaster.

Chairman PERKINS. What did the samples disclose, that is what I want to know, after you sent them to the laboratory. Or did you send them to the laboratory?

Mr. WHEELER. This was handled by Mr. Westfield, and to give you the best first hand information I will let him answer.

Chairman PERKINS. All right. Go ahead Mr. Westfield.

Mr. WESTFIELD. The major part of the number of samples, the report carries about—it states that the large percentage, the great percentage, of the samples taken after the explosion were low in incombustible content, less than the 65 percent required by law in the intakes.

The requirement of the law is 80 percent in the returns to take care of the float dust. The greater majority of these did not comply with the law.

Chairman PERKINS. You are telling the committee that your sample after the explosions conclusively disclosed that inadequacy of rock dusting contributed to this explosion.

Mr. WESTFIELD. That is correct.

\* \* \* \* \*

Chairman PERKINS. Now on January 8, 1971, as you said, effective at once, when a mine or a portion thereof is not rock dusted in accordance with the provisions of 304 (c) and (d) of the Coal Mine Health and Safety Act of 1969, the person who observes such conditions shall take immediate action under the imminent danger provisions of section 104(a) and I am wondering why you did not do that beforehand. Go ahead.

Mr. WHEELER. I am going to be perfectly candid with you, Congressman.

Chairman PERKINS. Yes.

Mr. WHEELER. I thought that was what we were doing. When I found out that was not what we were doing, we issued that order.

Chairman Perkins was referring to a January 8, 1971, message—presumably prompted by the Hyden experience—from Bureau headquarters to all district offices which stated:

Effective at once, when a mine (except anthracite) or portion thereof is not rock dusted in accordance with the provisions of sections 304(c) and (d) of the Federal Coal Mine Health and Safety Act of 1969, the authorized representative of the Secretary who observes such condition shall take immediate action under the imminent danger provisions of section 104(a). There shall be no exception to this instruction.

Although this was an entirely appropriate action, it may not have been necessary if the Bureau had fulfilled the requirement of section 101(j) of the act:

"(j) All interpretations, regulations, and instructions of the Secretary or the Director of the Bureau of Mines, in effect on the date of enactment of this Act and not inconsistent with any provision of this Act, shall be published in the Federal Register and shall continue in effect until modified or superseded in accordance with the provisions of this Act."

On January 24, 1969, John F. O'Leary, Director of the Bureau of Mines at the time, issued (34 F.R. 1133) "interpretations" of the im-

minent danger provisions of the 1952 Federal Coal Mine Safety Act. Section 45.3-1 of the interpretations provides:

Experience has demonstrated that the presence of inadequately inerted coal dust in mines can propagate explosions initiated by the ignition of methane or other ignition sources. Consequently, in a mine the presence of observable inadequately inerted coal dust creates a danger that a mine explosion or a mine fire will occur in such mine immediately or before the imminence of such danger can be eliminated and shall be cause *for the making of an order of withdrawal* \* \* \* (emphasis supplied)

An identical statement is also contained in the "Coal-Mine Inspector's Manual, August 1969."

On March 31, 1970, however, the Bureau published a "Notice of Regulations Continued in Effect" under the 1969 act, which did not contain any reference to the interpretation of Director O'Leary.

A limited review of some of the violations cited at the Finley mine is now in order:

(a) On June 19, "dangerous accumulations of loose coal and coal dust" were found. They were found along the shuttlecar roadways from the loading point to the faces of the six main entries, a distance of about 400 feet. It was also found, that "rock dust had not been applied to within 160 to 240 feet of the faces of the main entries."

(b) On August 14, "loose coal, coal dust, and float dust were (found) accumulated along the belt-conveyor entry."

(c) On October 19, it was found that "rock dust had not been applied to within 200 feet of the face."

(d) On October 22, it was found that "float coal dust was deposited on the rock dusted surfaces in all crosscuts along the main conveyor belt haulage entry from the portal to the loading point."

For only the first finding was an imminent danger order issued; and it was issued on the basis of that finding and six other violations of safety standards.

Representative Mazzoli developed the point further in the following dialogue with Mr. Wheeler:

Mr. MAZZOLI. This is the regulation that Mr. Couch and all his colleagues worked under. May I refer to 1969, when O'Leary was the director, and I believe I am correct in saying that his description, and this was again in the Federal Register, 34.1133, the interpretation of the imminent danger provisions of the act, section 45.3-1 is as follows:

Experience has shown that the presence of inadequately inerted coal dust in mines can propagate explosions initiated by the ignition of methane or other ignition sources.

Mr. MAZZOLI. This was in 1969. On March 31, 1970, the Bureau published a notice of regulations continued in effect, and that particular explanation was not in it.

Now is there any reason why that was deleted?

Mr. WHEELER. There is no reason why that was deleted, Congressman. What were you reading from?

Mr. MAZZOLI. From the Federal Register, January 24, 1969. Bureau Director O'Leary issued his interpretations of the Coal Mine Safety Act.

That was published in the Federal Register.

Mr. WHEELER. I think the best way to answer your question would be for me to introduce for the record, if you will accept it, sir; a memorandum dated January 31, 1969, from O'Leary to, it looks like our district managers and sub-district managers, in which he also says, "the phrase 'presence of inadequately inerted coal dust' means the general and consistent existing presence of quantities of loose coal or coal dust in an area which are not adequately inerted and which constitute an imminent danger. It does not mean small, isolated pockets or small quantities of inadequately inerted loose coal."



So what he did, he put out an order on December 10, which is essentially like the one we just put out in January, but on January 31, 1969, he modified this in his instructions to our inspectors, and in my opinion, our inspectors were following the instructions given in this memorandum from Mr. O'Leary so dated January 31, 1969.

Mr. MAZZOLI. Let me suggest that whether or not Mr. O'Leary's explanation was conditioned or later qualified, the fact is that his letter of January 1969, did express concern with collections of inadequately inerted coal dust, didn't it in—

Mr. WHEELER. Yes.

Mr. MAZZOLI (continuing). May I ask you the effect in Finley Nos. 15 and 16, because on June 19 there was a citation to the effect that dangerous accumulations of loose coal dust were on the premises.

It also found on June 19 that this rock dust had not been applied to within 160 to 240 feet of the facings of the main entries.

Again, on August 14, loose coal, coal dust and float dust were found accumulated.

Again on October 19, rock dust had not been applied to within 200 feet of the face. Again on October 22, float coal dust was deposited on rock dusted surfaces and all cross cuts along the main conveyor belt haulage entry from the portal to the loading point. Now if that does not establish—well, let me ask you whether in your opinion that establishes a sufficient pattern to qualify as more than a simple, small accumulation, which you say Mr. O'Leary thought was not enough to cause imminent danger?

Mr. WHEELER. I think so, but I think the inspectors were exercising judgment that was afforded to them by Mr. O'Leary's memorandum. In their opinion, these situations did not constitute an imminent danger.

I think any evidence of inadequate rock dusting is important enough that his enthusiasm should be considered imminent danger, and this is the reason we went back to Mr. O'Leary's original position.

Mr. MAZZOLI. If you may use this word, a casual collection of coal dust is not enough to require closure or withdrawal, but again, would not the pattern, and the use of the words on Mr. Couch's part, "dangerous accumulation," this is more than just a sprinkling here and there—I see you nodding for the record.

Mr. WHEELER. Yes.

Mr. MAZZOLI. Let me ask this final thing, Mr. Chairman. Would your instructions on this to your men, your inspectors at this point, and Dr. Osborn as well, would it require under the January 1971, interpretations an immediate withdrawal then?

Mr. WHEELER. Yes, it would.

Mr. MAZZOLI. On June 19, given the report that Mr. Couch made, would you require immediate closure?

Mr. WHEELER. On June 19, I believe he did now close the mine.

Mr. MAZZOLI. On August 14, loose coal and loose coal dust and float dust were accumulated.

Mr. WHEELER. Under this new order, it would require closure.

Mr. MAZZOLI. October 22, what I read, would that cause closure?

Mr. WHEELER. Yes.

Mr. MAZZOLI. Under the interpretations of January 1969, finally, 15 and 16 would have been closed down, would it not?

Mr. WHEELER. Until the mine was adequately rock dusted, yes.

Had imminent danger orders been issued on all the occasions required, it is more than conceivable one of the following would have occurred: (1) The operator might have found compliance with the act's rock dusting requirements more convenient and less expensive than incurring closures for each disclosure of inadequate rock dusting, or (2) the Bureau might—just possibly—have taken greater notice of a mine issued twice as many imminent danger orders as the Finley mine actually did incur. The probability is great that either possibility would have precluded the disaster of December 30.

In addition, a Bureau memorandum of March 27, 1970, from the Associate Director, Health and Safety, to all district offices, contained

a listing of "examples of conditions and practices that may constitute imminent danger." Among the examples were:

- The presence of loose coal, coal dust, and float dust in a mine or accumulations of loose coal, coal dust, and float dust that have not been properly inerted.
- Accumulations of oil, grease, and/or coal dust on electric face equipment.
- Defective splices in trailing cables.
- The general practice of running over unprotected trailing cables.
- Evidence of smoking underground.
- The presence of trolley or feeder wires within 150 feet of pillar workings.
- Storage (of) loose coal underground.
- The practice of transporting explosives in other than approved containers. \* \* \*

All of these conditions were found by the Bureau and existed in the Finley mine prior to the disaster.

With regard to the closure orders, a Bureau memorandum of April 2, 1970, issued to all district offices stated: "Until further notice, please promptly notify this office by telephone or telegraph of the issuance of all closure orders." That memorandum led to considerable confusion among the inspectorate and interested parties, and seemed to suggest the judgment of inspectors on the scene would be subject to oversight by Bureau officials far removed from the exigency. The memorandum was ultimately rescinded after the integrity of its intentions was publicly challenged.

(10) With all of the preceding providing the prior-to-the-disaster perspective of the Bureau with respect to the Finley mine, it is now appropriate to turn to the Bureau's activities and responsibilities immediately before December 30. To establish circumstances in the mine before the fatal blast, the following excerpts from the Bureau's official report are included at this point:

#### EVIDENCE OF ACTIVITIES PRIOR TO EXPLOSION

The day-shift crews, consisting of 39 men, entered the mines about 6:45 a.m., December 30, 1970, and were transported in rubber-tired trailers to their respective sections. Apparently, routine coal-loading operations were in progress on each of the two conventional loading sections until shortly before the explosion.

Work was in progress to prepare for installation of a belt conveyor from the active section in No. 16 mine to the main belt conveyor in No. 15 mine. On Tuesday night, December 22, 1970, a boom hole, about 54 feet long and 10 feet wide, had been blasted in the roof to accommodate the headpiece for the belt conveyor. On Wednesday, December 30, 1970, a boom hole 18 feet long, 28 feet wide, and 30 inches deep was being prepared for blasting to provide space for the tail section of the belt conveyor and two elevating conveyors (feeders). According to testimony, the shot holes in the roof for blasting boom holes were not stemmed properly; small pieces of wadded paper and brattice cloth materials were placed against the explosives charges to hold the cartridges in the 30-inch deep holes. According to testimony of persons responsible for or actually engaged in the preparation of boom holes, it was common practice to fire all the shots in a boom hole at the same time, from power cables or from the batteries of the tractors (48-64 volts).

Three pieces of Primacord were found about 300 feet out by a boom hole in No. 3 entry, No. 15 mine.

Two spools containing Primacord and three short pieces of Primacord were found near where a boom hole had been blasted on the second shift December 22, 1970, and four short pieces of Primacord were found in the vicinity of the boom hole that was blasted at the time of the explosion. Such evidence indicates that Primacord was used and had been used previously to detonate charges of explosives in blasting boom holes. The usual practice was to drill the 30-inch deep shot holes about 2 feet apart. Evidence found during the investigation indicated that some of the shot holes in the boom hole involved in the explosion were

placed on less than the 24-inch standard pattern; therefore, it can be concluded that as many as 120 shot holes would have been required for this blasting operation.

During the official hearing at Hyden, A. T. Collins, utility man (beltman) testified that he entered No. 15 mine at 7:00 a.m., returned to the surface at 11:30 a.m., and observed no unusual conditions in the mine. Collins also stated that he saw Primacord in the mine some time before Christmas and was instructed by the superintendent to hide the Primacord. He stated that the superintendent told him at about 11:00 a.m. on December 30, 1970, that he had a man in the mine to shoot a couple of holes and that the blast would be light, but indicated by a wink and a nudge that the blast would be something unusual. Collins further stated that he saw no explosives transported underground on this date. Two other witnesses, both employees of the Finley Coal Company, testified that Primacord was used in conjunction with one electric detonator to detonate the explosives charges at the boom holes. Some of the testimony indicated that shots were fired from power cables and from battery connections of the battery-powered tractors, although permissible-type blasting units were provided in each active section of the mine.

According to former practices in blasting boom holes and evidence presented by various persons, and found during the investigation, it must be concluded that on the day of the explosion, 100 or more shot holes were drilled into the roof, each charged with one or two cartridges of explosives, connected by a trunk line of Primacord with short leaders of Primacord to each charge with one electric detonator, held in place with pieces of paper, and fired by means of a blasting cable attached either to a shot-firing unit, power cable, or to the battery connections of a nearby battery-powered tractor.

On January 14, 1971, an employee of the Finley Coal Company, using a Load-A-Tram scoop, moved the rock blasted from the boom hole in No. 1 entry, 2 left, No. 16 mine, and the operation was observed by representatives of the Department of Mines and Minerals and the U.S. Bureau of Mines. On the second scoop load, a detonator leg wire, 14 inches long, was found at the outby edge of the pile of rock. The thirtieth scoop load uncovered an 11-inch piece of Primacord near the center of the fall. On January 15, 1971, the remainder of the rock was moved, but Primacord, leg wires, or explosives were not found. The fact that one detonator leg wire and the Primacord were found substantiates the conclusion that illegal blasting practices were being followed. Primacord is detonated by one detonator. If the shots had been fired electrically with a detonator (each with two leg wires) in each shot hole, a large number of such leg wires would have been found. Furthermore, the location of the nearest power source and the location of the blasting cable after the explosion indicated that Primacord may have been used to extend the length of the blasting cable. The cable was 29 feet short of reaching the boom hole from its location after the explosion. On January 14, 1971, a 48-foot piece of Primacord was found near the belt entry in No. 26 crosscut in No. 15 mine.

Testimony indicated that the operator did not apply additional rock dust prior to blasting boom holes.

During the investigation, observations in the area of the boom hole in No. 1 entry, 2 left, No. 16 mine, revealed that small pieces of rock from the boom hole were scattered at the outby end of the boom hole for a distance of about 40 feet toward the mouth of the entry. This indicated that an open, unconfined shot or shots (explosives laid atop the piece of rock to be broken) may have been used to break rock that was too large for handling by the loading machine. However, after considering all the evidence, it is the opinion of the Bureau of Mines investigators that the scattered rock was the result of blasting the boom hole and not the result of an unconfined shot used to break the rock.

#### METHANE AND/OR DUST AS A FACTOR IN THE EXPLOSION

Mine records indicate that methane has not been detected in Nos. 15 and 16 mines by company officials. The analyses of two air samples collected in the immediate returns from the mines during previous Federal inspections indicated that methane was not present. The analyses of air samples collected during the investigation, and analyzed by the U.S. Bureau of Mines, are shown in Table 1, attached. The composite evidence of air samples collected during the regular inspections, and during this investigation, and numerous instrument tests made during recovery operations, establishes that methane was not a factor in the

explosion. However, two air samples (bottle Nos. J7083 and K3118) did indicate the presence of methane. The concentrations of carbon dioxide, carbon monoxide, methane plus ethane, and hydrogen in the atmosphere after an explosion may range from traces to high percentages, depending on the quantity of coal dust, percentage of water in the dust, and the amount of dry inert present (See Appendix G).

During the underground investigation of the explosion, it was evident that coal dust propagated the explosion. Evidence of pressure and/or explosion forces was found at numerous locations, and evidence of burning coal dust, such as soot streamers and heavy deposits of coke, was found. The floor, roof, and ribs of the active 1 left section (explosion area) were dry, and excessive accumulations of loose coal and coal dust were present in the tractor roadway and in the area where the explosion originated. It was apparent that rock dust had been applied. The quantity, however, was inadequate. The floor of the active 2 right section ranged from wet to dry with standing water at several locations. The roof and ribs were dry. Rock dust had been applied to the floor but excessive accumulations of loose coal and coal dust were present throughout the section.

The 3 right belt conveyor was empty and the main belt conveyor was loaded with coal for a distance of about 2,000 feet and it appeared that coal dust from the conveyor did enter into the explosion. Investigations of past explosions have proved conclusively that coal dust from loaded conveyor belts, mine cars, and chain conveyors does enter into and help propagate explosions.

Following the explosion, 308 samples of the mine dusts were collected systematically according to a predetermined pattern in areas affected by the explosion forces (See Table 2). About 89 percent (277) of the samples collected contained less than 65 percent incombustibles, and 229 of the samples, or 74 percent, contained less than 50 percent incombustibles. Of the 6 samples collected in 1 left section all contained less than 65 percent incombustibles and 2 of these samples, or 33 percent, contained less than 50 percent incombustibles. Of the 29 samples collected in the 2 right section all contained less than 65 percent incombustibles and 25 of these samples or 89 percent, contained less than 50 percent incombustibles. Samples were collected in the vicinity of the point of origin and of the 14 samples collected all contained less than 65 percent incombustibles and 13 of those samples or 93 percent, contained less than 40 percent incombustibles (See Table 2A).

Dust samples collected after an explosion are not necessarily representative of mine dust conditions prior to an explosion, as coal dust thrown into suspension and deposited on rock dusted surfaces decreases the incombustible content. However, dust samples collected over extensive areas in a mine after an explosion will indicate the average incombustible content prior to the explosion (Appendix I). The samples collected determined the extent of flame and heat by the presence of coke. The presence of coke in the samples together with soot or coke on roof-bolt plates proves that coal dust propagated the explosion.

From visual observation during the investigation, and the reports of previous Federal inspections, rock dust definitely had been applied to the surfaces of the mines. Further, the 2 right section ranged from wet to dry and there was standing water in several locations. Although these conditions existed prior to the explosion, the surfaces of the major part of the mines were not rock dusted adequately as evidenced by extensive propagation of the explosion by coal dust, and the results of the analyses of the dust samples which indicated that 74 percent of the samples taken had less than 50 percent incombustibles. The Federal Coal Mine Health and Safety Act of 1969 provides that where rock dust is required, it shall be distributed upon the top, floor, and sides of all underground areas in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust shall not be less than 65 percent, but the incombustible content in the return air courses shall be no less than 80 percent.

#### SUMMARY OF EVIDENCE

Conditions observed in the mines during the investigation following the explosion, together with information available from Federal coal mine inspection and investigation reports and from company officials, workmen, and mine records, provided evidence as to the cause and origin of the explosion. The evidence from which the conclusions of the Federal investigators are drawn is summarized below. Those paragraphs marked with an asterisk indicate conditions or practices that contributed to the explosion :

1. This was a dust explosion, and there was no evidence indicating that methane entered into the explosion.

2. Most of the victims were burned in some degree, which proves there was flame and intensive heat.

\*\*3. Coal dust, including float coal dust, was deposited on rock-dusted surfaces, and loose coal and accumulations of coal dust were observed in parts of Nos. 15 and 16 mines. Rock dusting was substandard preceding the explosion. Testimony revealed that water was not being used to allay dust during cutting and loading operations, although the 1 left section was supplied with water through a 2-inch pipeline.

4. Permissible explosives, electric detonators, permissible blasting units, and blasting cables were provided for underground blasting.

5. Two full cartons, 5 pounds each, and about one-half of an additional carton of 40 percent strength dynamite (about 125 pounds) were stored in a truck-type trailer about 105 feet from the nearest mine portal. Two full cartons of Primacord (4,000 feet) were also stored in this trailer.

\*\*6. Two spools containing Primacord were found in the mines following the explosion, and short pieces of Primacord were found near the boom hole that was blasted on the day of the explosion. While moving the rock blasted from the boom hole, additional Primacord and one detonator leg wire were found.

\*\*7. While moving the rock blasted from the boom hole, additional Primacord and one detonator leg wire were found. Primacord is detonated by one detonator. If the shots had been fired electrically with a detonator (each with two leg wires) in each shot hole, a large number of such leg wires would have been found.

8. Explosives were generally stored underground in the original cardboard shipping containers.

\*\*9. According to evidence given by various persons during the investigation, boom holes had been blasted with Primacord, and the charges were improperly secured with paper or brattice cloth.

\*\*10. According to testimony of some of the persons responsible for or actually engaged in the blasting of boom holes, all shots in a boom hole, 45 to more than 100, were fired at the same time from power cables or from the battery connections of battery-powered tractors (48-64 volts).

11. Unsafe practices in handling explosives in these mines were discovered during the investigation of a nonfatal explosives accident that occurred in No. 15 mine on August 12, 1970, (See Appendix F).

\*\*12. Additional rock dust was not applied in the vicinity of boom holes before blasting.

13. Boom holes customarily were blasted when production employees were underground.

14. Evidence of smoking underground, such as burnt matches, cigarette butts, and empty cigarette packages was observed at numerous locations in the mines during the recovery operations and ensuing investigation, and opened packages of cigarettes were observed in the pockets on the bodies of some of the victims. A suitable search program for smoking materials and flame-making devices was not in effect at the mines as evidenced by these conditions and practices.

15. Samples of explosives taken during the investigation from storage areas and lying scattered on the mine floor in 1 left section were tested by the Bureau of Mines. The tests and analyses indicated that the explosives conformed to specifications for permissible explosives.

\*\*16. A sample of explosive found in a shot hole for a boom hole that was blasted earlier was determined to be 40 percent strength dynamite.

#### CAUSE OF EXPLOSION

It is the conclusion of the Bureau of Mines that the explosion occurred when coal dust was thrown into suspension and ignited by Primacord or by permissible explosives used in a nonpermissible manner or by use of nonpermissible explosives during the blasting of roof rock for a loading point (boom hole). Excessive accumulations of coal dust, and inadequate applications of rock dust in parts of Nos. 15 and 16 mines permitted propagation of the explosion throughout the mines.

(11) On December 21, 1 day before Inspector Gordon Couch was to revisit the Finley mine to determine whether violations he had cited during an earlier inspection were abated as required, Inspection Super-

visor C. E. Hyde, stopped at the mine to conduct what the Bureau called a "spot inspection." This description is a misnomer at best, in that Mr. Hyde did not inspect the underground workings but only went to the mine's office.

He cited the operator for failing to submit a ventilation and dust control plan to the Bureau, as required by section 303(o) of the act, and required the violation to be abated in early January. Mr. Hyde's citation was for the "No. 15 mine." It should be noted that the operator was cited on October 20 for failing to submit such plans for the No. 16 portion. That violation was required to be abated by November 17, but was not; an extension of time to December 28 was granted.

Ventilation and dust control plans, like the roof control plans required by section 302(a), were to have been approved by the Bureau well before December 21, or October 20 for that matter. The act required an approved ventilation system and methane and dust control plan for each mine within 90 days after the effective date of the safety standards. The effective date was March 30, 1970. Approved roof control plans were required within 60 days of the effective date.

Chairman PERKINS. When Mr. Hyde was there on the 21st he stopped at the mine to give them a notice, but did not go in. Is that correct?

Mr. WESTFIELD. That is correct.

Chairman PERKINS. Where you found the evidence of dynamite, it was from that boom hole that was shot on the 22nd.

Am I correct in that statement?

Mr. WESTFIELD. That hole had been shot.

Chairman PERKINS. And you found evidence of dynamite there?

Mr. WESTFIELD. That is correct.

Chairman PERKINS. Now, Mr. Hyde, why didn't you go in this mine when you were there on the 21st?

Mr. HYDE. I was there for a specific reason, and I had no occasion to go in the mine that day. I had several other places to go. I actually did not have the time, and I did not have any particular reason to.

Chairman PERKINS. You just more or less took a notice there then on that day. Is that right?

Mr. HYDE. Yes, sir; I wrote a notice there—

Chairman PERKINS. Let me ask you under a set of circumstances of this nature if you don't feel that you should have gone into the mine on this occasion. You took a notice there, even though you knew that the mine had repeated violations of loose dust covering everything from roadways to machinery.

The mine had been cited for rock dust violations. A dust fire in August had caused an explosion. One miner was blinded by it and another had his eardrums shattered.

You had a fatal accident in November, just before you were there on December 21, which was caused by faulty mechanical equipment, and the inspection turned up four machines that had defects.

The mine was in constant violation of tralling cable standards, and one piece of equipment, a roof-bolting machine, was found to have 44 temporary splices in its cable, the law permitting only one, and only one for a 24-hour period.

The State inspections of April and August, which I presume you are aware of, found a myriad of violations in the mines, including dangerous accumulations of loose, highly explosive dust, haphazard and insufficient rock dusting, and improper handling of explosions.

It was known that the respirable dust finding there was 33.9 milligrams, 10 times more than was permitted by the law.

Yet, in the face of all that, the mine was permitted drilling through the mountain at speeds which should have evidenced unusual or unsafe mining operations.

Now, you tell this committee just where you had a more important appointment than doing your duty there on the 21st when you may have gone into this mine and discovered what was going to take place there when the unpermissible explosives were used on the 22nd in the shooting of this other boom hole?

What other important engagement did you have that took you away and kept you out of the mine on that occasion?

Mr. HYDE. We had a memo directing us to go to the mines that were not already cited or had not complied with certain provisions of the act.

We had a deadline to meet on timbering plans, and dust and ventilation control plans, and they took priority over certain other things. I was following instructions. I had several mines to visit that day.

I did so.

Mr. MAZZOLI. Mr. Chairman, may I ask a question?

Chairman PERKINS. Yes. Let me say to you that the notice you delivered there could have been sent out from the Washington or the district office or anywhere else, could it not have been?

Mr. HYDE. Sir?

Chairman PERKINS. You just delivered a notice there, didn't you?

Mr. HYDE. No, sir; you did not deliver a notice there.

Chairman PERKINS. What was the occasion for your stopping there?

Mr. HYDE. I went there with these two sections of the act in mind, section 302(a) and 303(o), which concerned roof control plans, dust and ventilation control plans.

We had a deadline to meet in implementing these two programs, and this was a priority deal. I had several places to go that day, and I determined that they had not submitted these plans. Then I wrote a notice, and I went on to other mines.

Chairman PERKINS. What I am trying to drive at, Mr. Hyde, with all these repeated violations here at the Finley Coal Co., and in the course of your duties you were aware of these inspections if you looked at the reports. Why did you not go in that mine on that occasion, which may have resulted in lives being saved, instead of passing it up?

Do you mean to tell me that the Bureau of Mines only operates when they have specific orders? If you go into a mine community and know something is wrong in the mines and go by the mine and stop and know something is wrong at that time that you have to have a directive from the Bureau of Mines before you will go in that mine?

Mr. HYDE. No, sir; I do not, ordinarily, but I am subject to orders just like everyone else in this Bureau of Mines, and when I am given a direct order, I do my best to carry it out.

Chairman PERKINS. You knew of the conditions that existed in this mine there, didn't you, Mr. Hyde, when you were there on the 21st?

Mr. HYDE. I knew what was in the reports, because I prepared part of them. I was perfectly aware of what was in the other reports, because I handled them.

Chairman PERKINS. Don't you think that if you had exercised any degree of care that it was your duty to have gone in that mine on that occasion and not pass it up?

Mr. HYDE. Again, I say that I follow orders as they are given to me.

\* \* \* \* \*

Chairman PERKINS. \* \* \* There was a violation there on the 21st of December—you took a notice there. That notice could have been mailed from anywhere, couldn't it, and it would have been appropriate to mail that notice from anywhere, from Washington, from Barbourville, or the district office in Norton.

Just to go there on that occasion and not go into that mine was wasting time for all intents and purposes from the standpoint of utilizing the inspection services of the Bureau of Mines.

Am I correct in that statement?

Do you have any further comment on that, Mr. Hyde?

Mr. HYDE. No, sir.

The "orders" Mr. Hyde referred to emanated from a memorandum of December 9, 1970, from the Assistant Director, Coal Mine Health and Safety to all district offices which stated:

In order to complete the initial approvals of plans required in the subject provisions, it has become necessary to establish a deadline. Therefore, all of the subject plans submitted shall be approved by February 7, 1971. The only priority taking precedence over these instructions is the requirement to make spot inspections under section 103(i).

With this memorandum, the Bureau effectively relegated complete inspections—required by statute—to a lesser priority than that for plans which were to have been approved months before, and virtually precluded inspectors from returning to a mine to determine abatement of violations.

It is difficult to understand the wisdom associated with requiring an admittedly understaffed inspectorate to visit each mine to determine if the required plans were in fact submitted to the Bureau. Common sense dictates that this activity could have been conducted by clerks in the Washington headquarters, or in the district or subdistrict offices, where the plans were being received. The absurdity of this procedure might be more apparent by considering the situation of Internal Revenue Service agents visiting the home of each citizen to determine whether tax returns have been filed.

It is also not unreasonable to expect someone in the Bureau's district or subdistrict offices to coordinate the schedules of inspectors so as to make the most efficient use of their time. The notice Mr. Hyde delivered on December 21 could have been delivered by Inspector Couch the next day, or even later, when he was required to be at the mine; granting, for the purpose of discussion only, the Bureau's notion that an actual inspector should have done so.

Tragically, the memorandum of December 9 also served in part to prevent Inspector Couch from returning to the Finley mine prior to the disaster date.

(12) During a spot inspection of November 19, Inspector Couch cited the mine for five violations of health and safety standards. One such violation was the concentration of respirable dust finding discussed previously. The remaining four were:

- (a) Qualified persons were not used to maintain, test, and examine the electrical equipment.
- (b) Frame-ground protection was not provided on the direct-current equipment.
- (c) Sanitary toilet facilities were not provided on the surface and underground.
- (d) *Self-rescue devices were not provided for the miners underground.* (emphasis supplied)

All of the violations were required to be abated by 8 a.m. on December 22, 1970.

Mr. Couch did not return to the mine on December 22. In appreciating the full significance of the excerpts from the committee hearings which follow, it is to be remembered that illegal blasting took place at the mine on that day. The blasting was performed during all three shifts, and involved the use of dynamite and Primacord—both illegal for use in underground mines. They were used in enormous quantities, and without the benefit of preblasting precautions—such as rock dusting and withdrawing miners.

Chairman PERKINS. Why didn't you get back there when you were supposed to get back there on the 22nd of December?

You gave the Finley brothers time to make some corrections, and abate certain practices that existed in those mines, by December 22nd.

Mr. COUCH. On December 18, Mr. Charles Finley called me at home about 8:30 p.m. and he said the roof had gotten bad in the No. 15 mine and at this time he had both sections in the 15 mine.

\* \* \* \* \*



Chairman PERKINS. Mr. Couch, I believe you told the committee yesterday that you received a telephone call from Mr. Finley who said he was not going to work on the 22nd, and that you had some other business to take care of on the 22nd.

What mines did you go to that deserved greater priority than the Finley Coal Co.? And what was the nature of the work that you did there during that entire interval that Finley told you that the mine was going to be closed down?

Mr. COUCH. On the 22nd day of December 1970, I made four spot inspections.

Chairman PERKINS. Where did you make those inspections?

Mr. COUCH. These were down in Bell County.

Chairman PERKINS. What mines did you go in in Bell County on that day?

Mr. COUCH. Sir, I don't have a list of those mines at this time.

Chairman PERKINS. Do you have a record of the mines that you went into on December 22, 23, 24, 25, 26, and the 27th? If there is any record, we want to make it part of the evidence here.

Mr. COUCH. I have the four spot inspection reports. I don't have them with me.

Chairman PERKINS. Where are they at now? Does the Bureau have them here?

What were the inspections for?

Mr. COUCH. They involved section 303(o), ventilation and dust control plan, and 303(a), which is the roof support plan.

\* \* \* \* \*

Chairman PERKINS. Now, tell us about your conversation with Mr. Finley. What exactly, what explanation did he have, or make, what was his reason for telling you that he was not going to operate that mine during Christmas?

Did you suspect that he wanted to avoid an inspection or anything along that line?

What motivated this conversation?

Mr. COUCH. Mr. Finley called me about 8:30. He said the roof had gotten bad at the No. 15. At this time, both sections were in the No. 15 mine.

He said he would like to go back into the No. 16 mine with one section and wanted to know if I had recorded the No. 16 mine as abandoned, which I had not done, because they were using the No. 16 mine for ventilation.

He said he did not think he would get to run coal in this section until after Christmas, and I asked him if he intended to work next week, and he said, "I don't think I can, because I won't get enough men to come back and work."

Chairman PERKINS. You, from your experience in making the inspections in the past, you knew that they were repeated violations and were you satisfied with that conversation, did it lull you into a false sense of security, or what was the reason?

Mr. COUCH. I did not have any reason to doubt the man, but there is no way we can inspect a mine and it being idle—there was no reason to doubt the man.

Chairman PERKINS. There is no law that says you don't inspect while the mine is idle. It is your duty, if you are in a vicinity of a coal mine, and assuming that it is idle, it is your duty to go in that mine and make an inspection to utilize the efficiency of your limited inspection force.

Am I correct in that statement?

Mr. COUCH. We are instructed to only inspect a mine when it is in production.

Mr. Couch is referring to a Bureau policy of conducting inspections only when a mine is operating. This policy is not well founded in that certain provisions of the act apply to nonoperating activities as well as operating activities (e.g.—the examination requirements of section 303(d)).

Mr. DENT. As I understood your testimony, you said you had been called on the telephone and told there was a bad roof in No. 15.

Wouldn't that demand immediate attention from the inspector whether or not the mine was going to produce coal that day?

In fact, you might have been within your rights to call and say, "Don't produce in that area," if you had a telephone call that the roof was bad.

Mr. COUCH. He told me he had already pulled out of that section.

Mr. DENT. But do you know the very day you were due back there on December 22, that they shot out a hole with dynamite and Primacord, the very day you were supposed to be there inspecting?

They knew you were not going to be there that day, because they violated the law, and could have created that which happened 8 days later, the very day you were due there, Mr. Couch.

\* \* \* \* \*

Mr. WHEELER. I certainly have no sympathy for Mr. Finley, Congressman, and if this was a subterfuge on his part to assure that our inspector was not there on that day, then I have less sympathy for him than I have had in the past.

But I think that in fact the mine did not operate on the 22nd.

Mr. DENT. Mr. Couch, have you been called on other occasions by Mr. Finley and told he would not be operating then?

Or not to come on a certain day, or come on a certain day? Are you in the habit of talking to the mine operators about your plans?

Mr. COUCH. No, sir; this is the only time he called me and told me he would not be operating.

Mr. DENT. Did he tell you he was going to operate on the 30th?

Mr. COUCH. He said he would start operations in the new section next week. That would be the 28th, sir.

Mr. DENT. In the meantime, he operated it?

Mr. COUCH. He did not produce coal on the 22nd, up until the 28th. He started back production on the 28th, sir.

Mr. DENT. What was the reason he gave you for that? What reason did he say he was going to be down?

Mr. COUCH. He said he was going to get—to set up a new section, and that he could not get enough men to come back to work on the Christmas holidays.

Mr. DENT. Is it normal for an owner to call an inspector and tell him he was going to close the mine down?

Mr. COUCH. No, I don't think so.

Mr. DENT. I don't know what reason was given, but the reason is apparently contained in the Bureau of Mines' investigation report, where it states the actions that took place on the 22nd. The Bureau itself found evidence of dynamite being used on the 22nd and Primacord being used on the 22nd, and if there had not been a disaster they would still be doing it down there yet.

(13) The preceding section discusses the failure of an inspector to return to the mine on December 22. The disaster occurred on December 30. The failure of an inspector to return during that 8-day interval is the subject of the following dialogue:

Chairman PERKINS. You were not busy making the spot checks all those days there. Why didn't you go back and see whether Mr. Finley had made the corrections that you ordered him to make by the 22nd? Why didn't you go back, if you could not get to it on the 22nd, on the 23rd, or 24th, or even taking Christmas off, why couldn't you get back there on the 26th, 27th, 28th, or 29th? Why couldn't you do that?

Mr. COUCH. On the 23rd, I wrote the spot inspection reports and the coal mine inspection report. On the 24th, I took 4 hours annual leave.

Chairman PERKINS. You were in the office the rest of the day on the 24th?

Mr. COUCH. Sir, President Nixon gave us 4 hours administrative leave.

Chairman PERKINS. You did not make any inspections anywhere on the 24th?

Mr. COUCH. No, sir; I was home the 24th.

Chairman PERKINS. And you were home Christmas.

Mr. COUCH. Yes, sir.

Chairman PERKINS. And on the 26th, did you make any inspections anywhere?

Well, you know whether you made any inspections during that period of time, the 26th and 27th, following Christmas.

Or the 28th, or 29th.

Mr. COUCH. Would you give me those dates again, sir?

Chairman PERKINS. All the dates except the 23rd—the 24th, 26th, 27th, 28th, and 29th. You did not make any inspections after the 23rd, did you?

Mr. COUCH. The 22nd? I wrote reports on the 23rd. And the 24th, I took 4 hours leave. President Nixon gave us 4 hours leave.

Chairman PERKINS. But you didn't do anything after the 23rd until this fatal accident, until it occurred?

Mr. COUCH. Monday, December 28, we visited four mines, which included a spot inspection at one mine.

Chairman PERKINS. What mines did you visit on December 28?

Mr. COUCH. I don't have those reports with me, either, sir.

Chairman PERKINS. You know where they were, don't you?

Mr. COUCH. Yes, sir; I do. The spot inspections were at Kentucky's East Corps, which is down in Bell County, I believe, and I also——

Chairman PERKINS. What did you do there? It was just giving them a notice, wasn't it?

Mr. COUCH. Yes, sir.

Chairman PERKINS. It was something that should have been sent out from Washington?

Mr. COUCH. I would not know about that.

Chairman PERKINS. The same thing that Mr. Hyde talked about. That is all you did. In other words, after the 22nd, did you go in a mine at all on the 22nd?

(Mr. Dent resumed the chair.)

Mr. COUCH. I don't believe I did, sir.

Chairman PERKINS. From the time that you were supposed to have been back on the premises of the Finley Coal Co. on the 22nd, you never did go in another coal mine up until the time of the fatal explosion at the Finley Coal Co., did you?

Mr. COUCH. I don't recall that I did, sir.

It is significant that six violations of safety standards were required to be abated by 8 a.m., December 28. These violations were disclosed in an October inspection and were originally to have been abated in November, but an extension of time for compliance was granted. This is in addition to the four violations previously mentioned and required to be abated by December 22. The six violations required to have been abated by December 28 were:

- (a) Frame-ground protection was not provided for any of the electric face equipment.
- (b) A ventilation system, methane and dust control plan had not been submitted by the operator.
- (c) Water or water with a wetting agent was not used to abate the dust created by mining operations.
- (d) Electric equipment was not examined, tested, and maintained by qualified persons.
- (e) The 4,160 volt alternating current circuit leading underground did not contain a ground check monitor to insure continuity of the ground wire and monitor wire.
- (f) A disconnecting device was not installed at the branch line of the high-voltage circuit for No. 16 mine.

These violations were all cited for the No. 16 portion of the mine—the portion where the explosion was initiated. Mr. Couch did not return to the mine on December 28 because, as stated, he and his fellow inspectors were actively complying with the Bureau memorandum of December 9, 1970.

(14) The disaster occurred on December 30.

Chairman PERKINS. But you never did go into that mine after you were supposed to come back there on the 22nd. You stayed away after your conversation with Mr. Finley.

Mr. COUCH. I was in a mine on Beechfork, Ky. on December 30, sir.

Chairman PERKINS. That is the day of the accident. Whose mine was that?

Mr. COUCH. This mine was operated by Roy Shottin. It was Beechfork Coal Co.

Chairman PERKINS. Where is it located?

Mr. COUCH. At Hilton, Ky.

Chairman PERKINS. Why were you there on the 30th?

Mr. COUCH. I was there to investigate a fatal roof-fall accident.

Chairman PERKINS. How many times had it been inspected before?

Mr. COUCH. I could not answer that. That was my first visit there.

Chairman PERKINS. It had never been inspected before?

Mr. COUCH. I could not answer that, sir.

Chairman PERKINS. Don't you know from your records? You were called there because of a fatality.

Mr. COUCH. I am told the mine was inspected, but not under this name, sir.

Mr. HYDE. The mine had been worked years before by this Roy Shottin's brother, Jess Shottin. I don't recall the name of the company.

Mr. MALESKY. S. & H.

Mr. HYDE. S. & H. Coal Co., and it was operated by Jess Shottin, the brother of the guy, who was reopening it.

Chairman PERKINS. You did not even know it was in operation again, did you?

Mr. HYDE. No.

Chairman PERKINS. What have you done to see that an instance of that kind never happens again, when you don't even know mines are in existence?

Mr. HYDE. At the present time, the operators are not required to notify us immediately when they open a mine.

Chairman PERKINS. Well, do you have a regulation that would prohibit coal operators from opening a mine until they notify you and give you the name of the company, or anything of that nature?

Mr. HYDE. No, sir; we do not have a regulation to that effect.

Mr. BELL. The law does not require that, Mr. Chairman.

Chairman PERKINS. Don't you have the authority under the act to make those requirements under the regulations?

We gave you that authority, didn't we?

Mr. HYDE. I believe so, yes, sir.

Chairman PERKINS. But you have just not made a regulation of that type?

Mr. HYDE. So far as I know, we have not to date.

Chairman PERKINS. Do you intend to make a regulation of that type under the act?

Mr. HYDE. Someone else will have to answer that.

Mr. WHEELER. Yes, we do, Congressman.

Chairman PERKINS. Do you know of any other instance that slipped on you like that?

Mr. WHEELER. I don't even know which mine you are talking about. I was not listening too closely.

Chairman PERKINS. We are talking about the mine that your Bureau did not know was back in existence again.

Mr. WHEELER. Without regard to that particular mine, I know the situations exist, and it is something we must do something about, and we will.

Later:

Mr. MAZZOLI. \* \* \* If I am not mistaken, Mr. Wheeler indicated that the mine which Mr. Couch or Mr. Hyde was examining on the 30th was a mine that had been previously operated and was being reopened and you were unaware of its reopening and you were there to examine it.

Is that correct?

Mr. WHEELER. I believe that was Mr. Couch's testimony.

Mr. MAZZOLI. Very good. The S. & H. mine and so forth. You were unaware the mine was opened. I believe one of my colleagues asked if you had any responsibility to know in advance, and there presently is no responsibility, is that correct?

Mr. WHEELER. I think there is a responsibility, and I think we have not measured up to carrying out our responsibility.

Mr. MAZZOLI. I would like to pursue that point a bit.

Do you now have any regulations pending or contemplated which would require those who open a mine to bring this to your attention?

Mr. WHEELER. We are in the process now of preparing one, Congressman.

Mr. MAZZOLI. Well, when do you anticipate that this is in the book?

Mr. WHEELER. I propose to submit it to our lawyers for their review and consideration by next week.

Mr. MAZZOLI. Was this idea formed today or yesterday, or has it been in your mind?

Mr. WHEELER. It has been in my mind since the disaster.

Mr. MAZZOLI. Did you contact your counsel prior to yesterday?

Mr. WHEELER. No, I spoke with them yesterday.

Mr. MAZZOLI. Was it in response to our questions?

Mr. WHEELER. Yes, it was.

(15) A few additional points deserve mention before proceeding to the final part. The following dialogue between Chairman Perkins and Mr. Wheeler relates to the assessment of civil penalties against operators for violations of the act:

Chairman PERKINS. Now, Mr. Wheeler, you indicated that the law requires that after violations have been abated, that the mine can operate again.

You also indicated that the way you expect to get compliance is to escalate penalties, if I understood you correctly a while ago.

Mr. WHEELER. That is one way.

Chairman PERKINS. What is the history of penalties at this mine and throughout the industry for that matter?

Has there been any escalation?

Mr. WHEELER. As you know, Congressman, up until recently there were no penalties assessed, because we had no procedure in the Department to utilize them in assessing penalties.

We tried and we were enjoined in a court in Virginia from utilizing that plan. Until that argument was resolved, we did not assess any penalties.

Chairman PERKINS. As a result, you have not in fact been able to really use the escalation principle to get any better compliance. Am I correct in that statement?

Mr. WHEELER. I would say up to now the assessment of penalties has had very little or no effect in that regard.

The entire issue of the Bureau's inability, until relatively recently, to assess civil penalties will be one of the major points of inquiry during the future hearings into the Bureau's overall administration of the act promised by Chairman Dent in remarks opening the Hyden inquiry.

(16) Section 3 of the act contains the following definition:

"(h) 'coal mine' means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities."

After the disaster, the Bureau found quantities of dynamite and Primacord—illegal for use underground—in a trailer used for storage near the mine portal. The definition of "coal mine" would include the trailer within the scope of an inspection. Representative Mazzoli pursued this point:

Mr. MAZZOLI. I would like to ask Mr. Couch something at this point, and you might check my fact situation, but I understand subsequent to the explosion is when you first looked in the trailer on the premises and found Primacord?

Mr. COUCH. The Primacord was found after the explosion.

Mr. MAZZOLI. After the explosion, someone went into the trailer, some hundred feet away from one of the entrances, and Primacord was stored there?

Mr. COUCH. Mr. Finley made the statement that he had the Primacord in the trailer.

Mr. MAZZOLI. Did you see it?

Mr. COUCH. No, sir.

Mr. MAZZOLI. Is there anyone here who saw it?

Mr. WESTFIELD. Yes, I saw it.

Mr. MAZZOLI. Why did you look in the trailer only after the explosion?

Mr. WESTFIELD. We saw the Primacord had been used in the blast holes and we wanted to find out where it came from. When we looked, we found not only Primacord, but we also found two and a half boxes of 40 percent dynamite.

Mr. MAZZOLI. May I go back, then, to Mr. Couch and ask him: Do you consider vehicles on the premises or frame structures, or any part of the storage buildings as part of the mine that you inspect?

Mr. COUCH. Yes, sir.

Mr. MAZZOLI. Why didn't you inspect that?

Mr. COUCH. I did not have any reason to inspect it, to suspect anything was hidden there.

Mr. MAZZOLI. I did not ask you if you thought anything was hidden there. If you considered the building as an adjunct to the mine, why didn't you inspect it until it was too late?

Mr. COUCH. I don't have any excuse for not inspecting it, sir.

Mr. MAZZOLI. Is it your practice now to inspect outbuildings and such on the mine property?

Mr. COUCH. Our new standards were not in effect at that time, sir, and this trailer was primarily used for storage of supplies and so forth.

Mr. MAZZOLI. You can't say that it was used for storing of supplies, because you are taking somebody else's word.

Mr. COUCH. Yes, sir.

Mr. MAZZOLI. A coal mine means all structures, areas, machinery and tools, and so forth on the property.

Am I asking too much to suggest that you, in exercise of normal duty, should have looked at or into the trailer?

Mr. COUCH. Well, sir; I don't know of any apparent reason why I should have looked into the trailer.

Mr. MAZZOLI. May I suggest to you that there is no apparent reason to look at many things you look at when you inspect a mine, because you don't know there would be a violation?

Mr. COUCH. I did not understand you.

Mr. MAZZOLI. When you inspect a mine, you go deeply into all aspects of the mine's operations, and you are inspecting things which turn out to be within the safety standards?

Mr. COUCH. Yes, sir.

Mr. MAZZOLI. So you can't be sure ahead of time that you will find a violation, but you still make the inspection of that particular piece of equipment or that area?

Mr. COUCH. Yes, sir.

Mr. MAZZOLI. Could not we ask you to do the same thing, or could we not say that within your normal degree of care you could examine this structure, not expecting to find something in it, but expecting to find a full picture of the mine operations?

Mr. COUCH. It would not be a bad idea to do that, sir.

(17) Chairman PERKINS particularly, pointed to the excessive rate of blasting loading points (boom holes) in the mine; indicating it evidenced mining at excessive speed and the concomitant probability of unsafe mining practices.

Chairman PERKINS. In your practice as inspectors isn't it one of the requirements that you know the type of explosives that are used in these coal mines?

Mr. MALESKY. That is part of the inspection procedure.

Chairman PERKINS. Why were you derelict in these inspections, not knowing the type of explosives that were used in this coal mine?

Mr. MALESKY. Magazines were checked and the explosives in the mines were checked and they were found to be permissible.

Chairman PERKINS. But you knew they were driving mighty fast, didn't you, if you have observed these reports, for the number of men working?

Mr. MALESKY. They were driving fast.

Chairman PERKINS. Excessively fast with the number of men that were working, enough to put you on notice that the way these boom holes were being shot that something was a little bit out of the ordinary, if you had observed these reports closely?

Mr. MALESKY. I did not make an inspection of that mine.

Chairman PERKINS. What is that?

Mr. MALESKY. I say I did not make an inspection of that mine.

Chairman PERKINS. You saw the reports, and a man of your training and experience, educated in the field, and you have got to analyze the reports, haven't you, to know what is going on?

And you did not do it in this case, is that what you are telling the committee? Mr. MALESKY. When I said in this case, what I said was that I did not inspect the coal mine.

I was not underground.

Chairman PERKINS. Who reviewed these reports?

Mr. MALESKY. We had various ones in our various offices.

Chairman PERKINS. Don't you think you should have detected that something was wrong here in this particular mine by the exercise of ordinary care in analyzing these reports?

Don't you think that on top of that that you should have been back there on the 22d by all means and given no other mine preference anywhere along the line in view of the continuous violations, with over 40 violations and many of them creating imminent danger?

Mr. MALESKY. When we set up a mine for inspection, we make every attempt to get back on the special inspection.

Chairman PERKINS. I am not trying to develop any fact here, except what I think you inspectors should ordinarily be charged with in the way of duties and responsibilities, and I have always known that these little mines down home were not gassy. You again may find one in a thousand next to the water table. But otherwise, there is no gas in them. In many of them you can build a fire and go safe, but they use this type of explosive and the amount of explosives, the like of which is almost unheard of, in shooting boom holes.

I am just wondering why your inspectors could not pick up this negligence, I mean this type of callous disregard for the lives of human beings when explosives of this nature and of this quantity would be calculated to explode any seam of coal, anywhere.

Even if this was pretty well rock dusted, but here you have a mine that was not rock dusted. What is your comment on that?

Go ahead. All of you answer it if you want to.

Mr. WESTFIELD. The point you are trying to bring out is this, that there is no question that the number of boom holes shot in this mine might have raised the question as to how they were blasted.

The boom holes could have been blasted in a permissible manner just as well as their shooting the coal in a permissible manner. They were following this.

As I understand it, the inspector did inspect the magazines where they normally keep the explosives and found nothing but permissible explosives in their storage indicating this is what they were using underground.

They never found any unpermissible explosives underground or in their inspections. It was found after the disaster that dynamite was found not in the magazine, but in a trailer or on the surface. I think—I forget the number now—there were about two and a half cases of 40 percent dynamite.

There was also some Primacord. I think there were 4,000 feet of Primacord. In questioning the operator, he stated that this was being used to do some blasting on the surface, and there had been some done, but we also found it was used underground.

Now as to why the blasting practice was not picked up by the inspector, apparently at no time when the inspector was there, according to their reports, were they doing any blasting of boom holes.

But the boom holes can be blasted permissibly without any difficulty at all. It takes a little longer, and that is about all.

Chairman PERKINS. Let me say this to you, Mr. Westfield. You are a man of much experience, and you knew from the number of men working that you were shooting at a high rate of speed, a great number of boom holes and driving back in that mine, and the production was up for this No. 4 seam of coal.

Don't you think that was enough to put you on notice that the boom holes were being shot in a manner contrary to the law?

Wasn't it obvious if you had looked at your inspectors reports?

Mr. WESTFIELD. I don't think that is obvious, in that the point is that in shooting these boom holes you could still have shot them in a permissible manner, and I don't think it would have even affected the production.

Chairman PERKINS. Suppose you shot them in a permissible manner. Your inspections would have disclosed, even if it was a single case, that they were shooting 50 holes at a time, and that was two and a half times, two and a half times as much as allowed under the law, even though they used permissible explosives.

Mr. WESTFIELD. That is right. What I am saying, those boom holes still can be shot in a permissible manner shooting less shots at one time and still accomplishing the job.

Chairman PERKINS. Certainly. You can shoot 10 holes or 20, and let them detonate in sequence and follow each other.

But you should have observed, or I feel that somebody among the inspectors should have observed that something was wrong by the pace that was being made in this No. 4 seam of coal, and the necessity to require so many loading points so rapidly was enough to put you on notice that something was wrong in this mine.

(18) The following matter was referred to by several witnesses during the Kentucky portion of the hearings, and will appear with some regularity in part II of this report, but is included at this point since the issue was first raised during the Washington portion of the hearings:

Chairman PERKINS. Gordon, did you ever, while you were there, and you told the committee there that you were there on numerous occasions, did you ever—whether you were there in your capacity as inspector, or whether you were there just visiting—did you ever observe any drinking around the Finley mine?

Mr. COUCH. Sir, not being an authority on whether a man was drinking or anything, I could only say that I smelt whiskey.

That is about all.

Chairman PERKINS. Who did you smell the whiskey on?

Mr. COUCH. Mr. Charles Finley.

(19) Before concluding part I of this report—that dealing with the Bureau of Mines and its activities with respect to the Finley mine—comment on the following statements in the Bureau's official report on the disaster is required:

The Nos. 15 and 16 mines were not in production from December 22 through 27, 1970. Some maintenance work and blasting were done during this period. During a spot inspection of No. 15 mine on November 19, 1970, made because of a reported respirable dust violation, the Federal inspector issued four Notices of Violation and gave the mine operator until 8 a.m. on December 22, 1970, to abate them.

On November 19, 1970, Federal Coal Mine Inspector Gordon Couch made a spot inspection of No. 15 mine. Five Notices of Violation were issued to the operator requiring abatement of these violations by 8 a.m. on December 22, 1970. Statements by experts indicate that none of these violations had anything to do with the December 30, 1970, disaster which resulted from an explosion in No. 16 mine.

Inspector Couch received a call from the operator, Charles Finley, prior to December 22, 1970, at which time Finley advised Couch that his mines would be closed December 22, 1970, through December 27, 1970. Federal Inspectors are required to return to a mine on the date set for abatement of violations, but they must inspect mines when they are operating.

On December 28, 1970, Inspector Couch was assigned priority duties for another Inspector who was taking his annual leave. On December 29, 1970, Inspector Couch made plans to visit three mines in an area other than the area of the Finley mines so that he could maximize the use of his time for mine inspection. He planned to return to the Finley mines on December 30. On the morning of December 30, he was assigned to investigate a fatality in another mine.

In the event Inspector Couch had gone to the Finley mines prior to the disaster to see if the five violations had been abated, he would have gone into only No. 15 mine to verify the abatements. If the operator had advised him that the violations had not been abated, he would not have gone underground, but would have issued Notices granting additional time to abate the violations, if such action was justified. His duties would not have taken him, in any event, into No. 16 mine, which was the point of origin of the explosion which led to the disaster.

On November 16, 1970, Inspector Couch issued to Finley Coal Company, for No. 16 mine, three Notices granting the operator additional time to (1) "obtain and install a ground check monitor" which was on order, (2) "obtain personnel



to train and retrain qualified and certified persons," and (3) "train and certify persons to perform work on electric equipment." The operator was given until 8 a.m. on December 28, 1970, to abate these violations. None of these violations would have required an underground inspection by the inspector.

On November 16, 1970, Inspector Couch issued a Notice of Abatement or Extension on an Extension granting the operator additional time "to complete work of installing water to abate dust created by mining operations."

It is to be noted that none of the items required to be abated on either December 22, 1970, or December 28, 1970, were violations contributing to the December 30, 1970, disaster.

The Bureau of Mines inspectors will continue to be required—except in higher priority cases—to return to a mine on the day set for a violation to be abated.

Some of the inspectors attached to the Barbourville, Kentucky Subdistrict office were on leave during the period December 14–30, 1970, since leave accumulated during the year had to be used prior to January 9, 1971, or lost; however, a force including a supervisory official remained on duty in the event an emergency should arise. The inspectors on leave were subject to instant recall if needed for an emergency.

The leave situation was aggravated during 1970 because of the new Act which required the time of all personnel on a virtual full-time basis to acquaint all mines as rapidly as possible with the requirements of the Act and enforce it to the utmost.

The new Act with far more mandatory provisions and increased requirements on mine inspections became operative with no time allowance for staffing, thus leave was virtually cancelled and most inspectors ended the year with leave to take or forfeit. The personnel at this station collectively lost 244 hours of leave for the year.

When the force of inspectors reaches the number the Bureau of Mines will require, annual leave of inspectors will be staggered throughout the entire year.

The following statement appears in the first paragraph of the preceding excerpt: "During a spot inspection of No. 15 mine on November 19, 1970, \* \* \* the Federal inspector issued *four Notices of Violation* and gave the mine operator until 8 a.m. on December 22, 1970, to abate them." (Emphasis supplied.) Yet, the second paragraph states: "On November 19, 1970, Federal Coal Mine Inspector Gordon Couch made a spot inspection of No. 15 mine. *Five Notices of Violation* were issued to the operator requiring abatement of these violations by 8 a.m. on December 22, 1970." (Emphasis supplied.) This inconsistency in succeeding paragraphs is poor testament to a full knowledge of facts. There were actually *five* Notices of Violation issued.

"Statements by experts," the report continues, indicated that none of the violations in the "No. 15 mine" required to be abated by December 22—and which demanded an inspector's presence to determine abatement—"had anything to do with the December 30, 1970, disaster which resulted from an explosion in the No. 16 mine." This interminable treatment of the "No. 15 mine" and the "No. 16 mine" suggests they were miles apart, when they were actually interconnected. The explosion in "No. 16" was, in fact, an explosion in "No. 15" as well. The explosion originated in "No. 16," but existed throughout the mine.

And the declaration that "\* \* \* none of these violations had anything to do with the December 30, 1970, disaster \* \* \*" is far too sweeping. One of the violations was for an insufficient number of self-rescue devices. Some of the miners in the portion of the mine where the self-rescue devices were to have been apparently survived the blast; and for them the absence of self-rescuers might have had something to do with the disaster.

Continuing from the report: "Inspector Couch received a call from the operator \* \* \* advising (him) that \* \* \* (the) mines would be closed December 22, 1970, through December 27, 1970. Federal inspectors are required to return to a mine on the date set for abatement of violations, *but they must inspect mines when they are operating.*" (Emphasis supplied.) This Bureau policy was apparently known to the operator in view of the type of blasting which took place at the mine on December 22.

The report goes on: "On December 28, 1970, Inspector Couch was assigned *priority duties* for another Inspector who was taking his annual leave." (Emphasis supplied.) The report is silent as to December 24, granting that the next day was a national holiday and the 26th and 27th were during the weekend. The "priority duties" arose out of the Bureau's December 9 memorandum regarding approved mine plans, and were obviously of such a concern that the Bureau delayed "priority" action 6 months beyond the date the statute required the plans to have been completed. Moreover, the time of all inspectors was occupied in this belated and absurd procedure for implementing two sections of the law; not alone that of "another Inspector who was taking his annual leave."

The report then says that Inspector Couch, on December 29, 1970, "made plans to visit three mines in an area other than the area of the Finley mines so that he could maximize the use of his time for mine inspection." Maximizing the use of an inspector's time for mine inspection is a meritorious goal, given the shortage of inspectors. Inspector Couch, however, did not then conduct any mine inspections as such. He was off passing out more Notices of Violation, which could have been more efficiently and effectively handled from a Bureau office. He was off on more "priority duties." If the Bureau is sincere in realizing that conducting mine inspections is truly maximizing the use of an inspector's time, it is all the more incomprehensible to recognize the "priority duties" in no way involved the actual inspection of a mine.

The report states Inspector Couch planned to return to the mine on December 30—the day of the fatal explosion. But, on "the morning of December 30, he was assigned to investigate a fatality in another mine." Another mine, incidentally, the Bureau did not know was in operation. The Bureau's subdistrict office in Barbourville was notified of the explosion at 12:30 p.m. By 2:30 p.m., four inspectors and two mining engineers from the Barbourville office had already arrived at the mine. It is interesting that none of these other individuals or inspectors investigated the fatality Inspector Couch did on December 30, thereby availing Mr. Couch of the opportunity to return to the Finley mine—and witness the preexplosion activities.

Continuing from the report: "In the event Inspector Couch had gone to the Finley mine prior to the disaster to see if the five violations had been abated (Note: although five notices of violation were issued, only four violations were required to be abated by December 22), he would have gone into only No. 15 mine to verify the abatements." If he would have gone "into only No. 15 mine," however, he would have seen not only illegal blasting activities taking place, but would probably have had to crawl over rolls of Primacord and boxes of dyna-

mite—both illegal for use underground—to do so. Here again, however, is the fiction of “two mines.”

The report continues: “If the operator had advised him (Inspector Couch) that the violations had not been abated, he would not have gone underground, but would have issued notices granting additional time to abate the violations, if such action was justified.” The way the sentence is constructed, one could conclude the granting of notices for additional time to abate violations is standard operating procedure. The statement barely suggests that the inspector also had the authority—given noncompliance—to withdraw the men from the mine. Every one of the four violations required to have been abated by December 22 was a repeat violation; that is, the operator had been cited for identical violations during previous inspections—and in the same location, the No. 15 portion of the mine. It is more than conceivable then, that Inspector Couch had good cause not to issue an extension of time for compliance; but could, and should, have withdrawn the miners.

Another disclaimer in the report follows: “His duties would not have taken him, in any event, into No. 16 mine, which was the point of origin of the explosion which led to the disaster.” On December 22, the day Inspector Couch was to have returned to the mine, the holes for the fatal boom hole were not even drilled. It is insignificant to state that “(h)is duties would not have taken him \* \* \* into No. 16 mine \* \* \*.” His duties would, in fact, have taken him into the No. 15 portion, and that is precisely where the illegal blasting activities were taking place on December 22.

The report then turns to three violations disclosed during an October inspection, which were originally required to have been abated in November, but for which notices were issued granting the operator additional time to abate them. The abatement date was extended to December 28—2 days before the explosion. According to the report, “None of these violations would have required an underground inspection by the inspector.”

The next paragraph states: “On November 16, 1970, Inspector Couch issued \* \* \* an extension granting the operator additional time (to December 28) to complete work of installing water to abate dust created by mining operations.” Unlike in the preceding paragraph, no mention is made here as to whether the inspector would have found it necessary to go underground to determine whether water or water with a wetting agent was being used to abate dust created by mining operations. To be charitable, it is a convenient omission. The answer is, that the inspector certainly would have been required to have done so. Nor is any mention made of three other violations required to have been abated by December 28, two of which would have also demanded underground inspection to ascertain compliance. Moreover, the inspector would have had to go into the No. 16 portion of the mine since the violations were cited there; which, as the Bureau report was quick to point out earlier, “was the point of origin of the explosion which led to the disaster.”

The next paragraph, however, is a succinct summary of the Bureau’s view of the preceding: “It is to be noted that none of the items required to be abated on either December 22, 1970, or December 28,

1970, were violations contributing to the December 30, 1970, disaster." That statement is not only untrue and grossly misleading, but seeks to impute an innocence to the Bureau that is defiling on its face.

The report then turns to the annual leave problems of the Bureau with respect to its inspectorate. It states: "The new act with far more mandatory provisions and increased requirements on mine inspections became operative with *no time allowance for staffing*, thus leave was virtually canceled and most inspectors ended the year with leave to take or forfeit." (Emphasis supplied.) The committee cannot accept this feigned surprise on the part of the Bureau. More than 2 years have already elapsed since the inspection demands of the act became generally known, and the Bureau remains substantially understaffed—but admits to a sufficiency of funds and has not requested additional funding for more inspectors.

The next paragraph is the final diversion from the Hyden tragedy—about which the report was written: "When the force of inspectors reaches the number the Bureau of Mines will require, annual leave of inspectors will be staggered throughout the entire year." This represents a clear, concise, unequivocal, and laudable statement of policy—albeit irrelevant.

Therein, from the first sentence through the last, lies the Bureau's self-absolution from the tragedy of Hyden; all contained in that pathetic attempt at justifying what is tantamount to a gross and exceedingly negligent dereliction of responsibility.

\* \* \* \* \*

The committee would be derelict, or would beguile, if it did not acknowledge the glaring fact that the Bureau of Mines must bear a heavy burden of responsibility for the Hyden tragedy.

The evidence shows conclusively that it was generally known in the communities in which the miners lived that Primacord, a nonpermissible and dangerous detonator for use underground, was being used in the Finley mine. It was generally known that dust conditions in the mine were clearly exaggerative in violation of the law. And it was generally known that the lives of the men were in danger. Many of the miners killed looked hopefully but vainly to the Bureau for closure, or the imposition of safe working conditions in the mine. These themes were repeated again and again in testimony.

If, in the face of this broadly disseminated knowledge throughout the area, the inspectors could not recognize that an extremely hazardous situation existed; and, perhaps more importantly, if Bureau officials in other levels of authority could not properly analyze the reports placed in their hands by the inspectors and apply the unmistakable and forthright declarations and requirements of the law—then the whole structure of Federal coal mine health and safety enforcement becomes a farce. We are then, deceiving only ourselves; surely not the widows and orphans of those who perished at Hyden.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is essential for ensuring transparency and accountability in the organization's operations.

2. The second part outlines the various methods and tools used to collect and analyze data. It highlights the need for consistent and reliable data sources to support decision-making and strategic planning.

3. The third part focuses on the role of technology in enhancing data management and analysis. It discusses how modern software solutions can streamline processes and provide valuable insights into organizational performance.

4. The fourth part addresses the challenges associated with data security and privacy. It stresses the importance of implementing robust security measures to protect sensitive information and maintain compliance with relevant regulations.

5. The fifth part concludes by summarizing the key findings and recommendations. It reiterates the significance of data-driven decision-making and the need for continuous improvement in data management practices.

6. The following section provides a detailed overview of the data collection process, including the identification of data sources, the design of data collection instruments, and the implementation of data collection procedures.

7. This section also discusses the importance of ensuring the reliability and validity of the collected data. It outlines the steps taken to minimize measurement errors and ensure that the data accurately represents the phenomena being studied.

8. The next part of the document describes the data analysis techniques used to interpret the collected data. It includes a discussion of both qualitative and quantitative analysis methods, highlighting their respective strengths and limitations.

9. This section also addresses the issue of data interpretation, emphasizing the need for careful consideration of the context and potential biases when drawing conclusions from the data.

10. The final part of the document provides a comprehensive summary of the research findings and their implications. It discusses the practical applications of the research results and offers recommendations for future research and organizational practice.

## PART II—THE MINE

(1) The committee hearings on the Hyden disaster moved to Kentucky on March 12. The scene was the Perry County Courthouse in the county seat of Hazard—not far from the mine. The first witness was Robert Combs, a 38-year-old part-time preacher and a veteran coal miner of 21 years. Mr. Combs was fire boss at the Finley mine on the third shift.

Chairman PERKINS. Fire boss on the third shift? And what were your duties as fire boss on the third shift?

Mr. COMBS. I would check the air, check for gas, see that the rockdusting was done, see that the rockdust was got in, see that the water was got up, see that the line brattices was up and the wing curtains. That was my job then as a fire boss.

Chairman PERKINS. Now tell the committee whether or not, on the third shift, you were on the midnight clean-up shift, weren't you?

Mr. COMBS. That's right.

Chairman PERKINS. And you were required to make the mine inspection for the first shift, that is the next day, the daylight shift?

Mr. COMBS. That's right.

Chairman PERKINS. And you worked on the 22nd and were off until the mine reopened, until after Christmas, is that right?

Mr. COMBS. That's correct.

Chairman PERKINS. And when did the mine reopen after Christmas, if you recall the date?

Mr. COMBS. Well, it was—I believe Christmas come on Thursday, wasn't it? I think Thursday—Friday, I guess it was, and then the mines reopened on Monday or Sunday night. We went back to work on Sunday night.

Chairman PERKINS. Now what took place there on the night of the 21st or on the 22nd when you were working at the Finley Coal Company, in your position there? Would you go ahead and tell us, in connection with your observing the drilling of the boom hole and whether the loading point was shot while you were around there, and what you observed? Go ahead and relate the story of that occasion.

Mr. COMBS. I guess it was December 22nd, I think maybe the second shift before us had shot—they took about three different occasions to shooting out for a—what we call a head drive, for a belt line. They had shot it out over to the belt; they couldn't shoot out across the belt on account of running coal and had to do that on the off shift, so the third shift was the off shift, so we had to take the belt truck down the line and bore down against the bottom and drill the hole and shoot it.

Chairman PERKINS. How many holes did you drill?

Mr. COMBS. I would say about ten or fifteen holes.

Chairman PERKINS. Well, what did you use in connection with shooting these holes?

Mr. COMBS. I really don't know where—which kind of explosives it was. I never really paid any attention to that, but we detonated it with Primacord.

Chairman PERKINS. Detonated it with Primacord?

Mr. COMBS. Yeah.

Chairman PERKINS. Did you use one cap to set off all the shots on that occasion?

Mr. COMBS. Yes, we did.

Chairman PERKINS. Did the foreman ever give you any orders—or Charles Finley—about how he wanted this mine rockdusted and about the use of Primacord or anything of that nature in the mines?

Mr. COMBS. The only thing that I knew about Primacord was this Bentley man that they had hired as a shot fireman; one morning—I don't recall what morning it was—but it was about two weeks I guess before this explosion happened, that Mr. Bentley, he said "Let's go around out here a minute", said "I want to show you how to use that Primacord". I never heard tell of the stuff, I never knew what it was or what it was for or anything like that. He said "I want to show you how to use this, and if you have to shoot any on the third shift, I won't have to go in there with you".

\* \* \* \* \*

Mr. FORD. Didn't you testify or state to members of the staff of this committee recently that the Primacord you used was hidden at the mine at a place where you wouldn't have seen it prior to the time that you were taken to it and told to use it?

Mr. COMBS. Yes, I believe I made—I made the statement it was hidden in a trailer.

Mr. FORD. It was hidden in a trailer?

Mr. COMBS. Yes.

Mr. FORD. It wasn't hidden there, for you could see it.

Mr. COMBS. Yes.

Mr. FORD. I want to be sure. I didn't choose the word "hidden". Can you, when you describe this now, is there a better word to describe the way it was placed than "hidden." I'm not trying to be cute with you, I want to be sure you understand what you are saying.

Mr. COMBS. It was—in my opinion, it was put in the place that the men, working men, wouldn't have had any reason for being in that position or being where it was at.

Mr. FORD. Are you talking now about the trailer outside of the mine?

Mr. COMBS. Yes, sir.

\* \* \* \* \*

Mr. FORD. You took the responsibility of taking the Primacord from that place—it was very carefully kept, according to your own description, in the trailer, so you had some understanding it was getting special treatment; not just anybody could walk up and get Primacord, you had to go to Bentley to get it?

Mr. COMBS. No, I didn't have to go to Bentley to get it.

Mr. FORD. Who else could get you Primacord out of the trailer if it wasn't Bentley?

Mr. COMBS. There wasn't anybody else on third shift could have got it other than some of my crew.

Mr. FORD. Do you know how they knew it was there?

Mr. COMBS. Yeah, I guess I probably told one of them to go out there and get it and I told them where it was at. That's right.

Mr. FORD. You told one of them where the Primacord was and told them to go get it?

Mr. COMBS. Yes, I did.

Mr. FORD. What night was that?

Mr. COMBS. That was on December 22d.

\* \* \* \* \*

Mr. FORD. You came in on the third shift on the 22d, was there any shooting on the shift before?

Mr. COMBS. Yes, I think they had shot some of that same place; they shot in about three or four different sections.

Mr. FORD. Right in the same spot that you did the shooting like that on the 22d?

Mr. COMBS. Yes, the place was shot out and the ceiling was about as long as this courtroom here.

Mr. FORD. Who did that shooting?

Mr. COMBS. I think they did some on the second shift before we come on.

Mr. FORD. You don't have any idea who did the shooting?

Mr. COMBS. No, I didn't. Dill Finley was the foreman.

Mr. FORD. Dill Finley was the foreman on the second shift on the 22d?

Mr. COMBS. Dill Finley.

Mr. FORD. And they did some shooting before you got there?

Mr. COMBS. Yes, I think they did. They had been some done.

Mr. FORD. There was no Primacord left over from this shot?

Mr. COMBS. I didn't see no Primacord at that time.

\* \* \* \* \*

Mr. FORD. Who drilled the holes that you put this charge in?

Mr. COMBS. Allison Collett I believe is the one who drilled the area. On December 22d?

Mr. FORD. Yes.

Mr. COMBS. Allison Collett is the one who drilled the holes.

Mr. FORD. And who put the charge into it?

Mr. COMBS. I really don't remember which one of them.

Mr. FORD. Could I refresh your recollection? Didn't you tell the staff that you put the charge in? You put the explosives in?

Mr. COMBS. Yes, I put the Primacord in it.

Mr. FORD. And when Mr. Perkins asked you a little while ago you didn't recall what, if anything, was stuffed into the holes.

Mr. COMBS. No, I don't recall that.

Mr. FORD. But didn't you tell the staff you shot them open?

Mr. COMBS. I may have done it.

Mr. FORD. So there was nothing there?

Mr. COMBS. Probably have been.

Mr. FORD. Except the explosives? Well, are you just agreeing with me to be nice or which is the case? Were the holes tamped with something or shot open?

Mr. COMBS. I really don't think they was. I don't believe they was tamped with anything.

Mr. FORD. Did you believe that was the accepted way to do it in that mine?

Mr. COMBS. Yes, I thought at the time, when I first was told about the Primacord, I really thought it was just maybe a safer and better way of shooting. I didn't know anything about it. I was ignorant to it.

\* \* \* \* \*

Mr. FORD. You did use the Primacord in the mine at that time?

Mr. COMBS. Yes, on December 22d.

Mr. FORD. Did you use the whole spool?

Mr. COMBS. No, sir.

Mr. FORD. What did you do with the Primacord left over on the spool?

Mr. COMBS. It was still right there.

Mr. FORD. You left it in the mine?

Mr. COMBS. Yes.

\* \* \* \* \*

Mr. DENT. At this point I would like to ask a question. Does the State of Kentucky demand a license or any sort of certification for a fire boss?

Mr. COMBS. Yes, sir.

Mr. DENT. And you have fire boss papers?

Mr. COMBS. Yes, sir. (He attempts to show his papers).

Mr. DENT. That's alright. I take your word for it. Yet, you had fire boss papers and at no time were you ever instructed in the permissible and non-permissible types of explosives, and detonators to use in a coal mine?

Mr. COMBS. That wasn't my job to use them things in the mines at all. I was to check for the gas and the oxygen.

Mr. DENT. I understand what you were to do, but you did use it the night of the 22d?

Mr. COMBS. Yes, we did.

Mr. DENT. Wasn't there a shotfirer, a qualified man, who does that normally?

Mr. COMBS. Yes, there is; he was on the day shift, and he was one of the victims in the accident.

Mr. DENT. Yes, I know. Was it a usual occurrence at the Finley mine to substitute untrained men, unqualified men, to do jobs just because they were there at the moment, regardless of whether or not they knew what they were doing?

Mr. COMBS. Well, I really don't know about it.



Mr. DENT. Well, would you say you were qualified doing the job that you did, on the 22d?

Mr. COMBS. No, I wouldn't say I was qualified for a shot fireman, no, because I don't know that much about the stuff.

\* \* \* \* \*

In summary, Mr. Combs' testimony revealed the following:

- (a) Primacord was used underground at the Finley mine.
- (b) Walter Bentley, shot firer at the mine and one of the victims of the explosion, taught Combs in the use of Primacord.
- (c) Primacord was kept relatively concealed in a supply trailer on the surface of the mine, although all workers had access to the trailer.
- (d) Mr. Combs actually detonated explosives with Primacord while participating in the blasting of the boom hole on December 22.
- (e) Similar blasting was done on the preceding shift.
- (f) The explosives used were not stemmed with incombustible materials, as required, and were essentially fired open.
- (g) Mr. Combs was, admittedly, unqualified to perform shot firing activities.

In addition to the violations of the safety standards of the act previously mentioned, Mr. Combs admitted to firing the shot with the battery from a personnel car acting as the power or ignition source. The act requires firing "only with permissible shot firing units."

Subsequent witnesses corroborated Mr. Combs' testimony with respect to the blasting of December 22.

The following dialogue between Chairman Perkins and Mr. Combs raises another issue, and relates to the use of water to combat excessive amounts of dust created by mining operations.

Chairman PERKINS. It was likewise your duty, the fire boss, to see that you got water up to the face of the coal, am I correct?

Mr. COMBS. That's correct.

Chairman PERKINS. What happened in connection with getting the water line up to the face of the coal or water on the cutting machine?

Mr. COMBS. We had a hydrant hose about a inch and a half I guess or quarter, inch and a half, of hose, that we connected the water up, the 2 inch line, steel line, that come from the outside, and we run this—we run this big hose, inch and a quarter I guess it was, across the last crosscut, all the way across from the #1 entry off of first left. We run that line all the way across the crosscuts, plumb over to #1 on this last section we started, and then at each working place, at the mouth of each working place, there was a connection that we could put a water—garden hose—on the end—sprayer on the end of it. This was done on the morning of December 30th.

The committee believes there is significance to the fact the work of installing a water line to the working faces was completed "on the morning of December 30th." One of the violations cited at the mine during the October 20 inspection was, "water or water with a wetting agent was not used to abate the dust created by mining operations." The violation was originally required to have been abated by 8 a.m. on November 17, but Inspector Couch granted an extension of time to December 28 to complete the work.

It is not significant that the work was completed; but that it was not completed by December 28, when the operator should have expected an inspector to visit the mine to determine abatement of the violation.

By not completing the work until December 30—the day of the explosion—the operator seemed to indicate his expectations with respect to a visit by a Federal inspector. This suggestion will take on more meaning in a later discussion of the rather leisurely pace with which the blasting of the single boom hole was undertaken on December 22, compared to the frenetic pace in blasting the double boom hole on December 30.

(2) Mack Collins was employed on the second shift as a drill helper and shot firer. On August 12, he suffered a ruptured eardrum in an explosives accident at the mine.

Mr. DENT. Mr. Collins, were you present the day the blasting took place on Tuesday, the 22d of December—were you part of the crew?

Mr. COLLINS. Yeah, I was one of them.

Mr. DENT. I think, for the record, we have established you were a member of the crew on the date of the 22d of December when the boom hole was shot in #15?

Mr. COLLINS. Yeah.

Mr. DENT. Would you tell this committee whether or not you, at that time, saw any Primacord around the operation at that particular part?

Mr. COLLINS. Yeah, I seen it in there.

Mr. DENT. You did see it?

Mr. COLLINS. Yeah, I seen it.

Mr. DENT. Can you tell me whether or not the shot was stemmed or were they open shots? Did they put any packing into the hole? Did they tamp them?

Mr. COLLINS. They tamped with paper.

Mr. DENT. Tamped with paper?

Mr. COLLINS. Yeah.

Mr. DENT. Do you know whether or not the foreman—was there a foreman in charge?

Mr. COLLINS. Yeah.

Mr. DENT. Do you know whether or not that foreman knew that it was illegal to tamp with paper?

Mr. COLLINS. I don't know where he knowed it or not, but he did.

Mr. DENT. Well, for the record, it is, because the paper is exactly the same as not using anything, and leaves an open shot.

Mr. COLLINS. I know that.

Mr. DENT. May I ask you this then: Did you notice whether or not rockdusting was done before the shooting on that date?

Mr. COLLINS. It wasn't done.

Mr. DENT. It wasn't done?

Mr. COLLINS. No.

Mr. DENT. What area? Do you have any idea of how many yards away on either side, or was there any done in the vicinity of the shot?

Mr. COLLINS. I didn't see none.

Mr. DENT. None at all?

Mr. COLLINS. None at all.

Mr. DENT. Was that the first time that you had ever seen Primacord used in that mine?

Mr. COLLINS. Yeah, the first time.

Mr. DENT. Do you know whether or not it was dynamite that was used or whether it was permissible explosives?

Mr. COLLINS. Well, I would call it dynamite.

Mr. DENT. You would call it dynamite?

Mr. COLLINS. Yes.

Mr. DENT. Had you ever seen dynamite used before?

Mr. COLLINS. That's the first time I had seen it used in there.

\* \* \* \* \*

Mr. DENT. How many shots did they fire at that time?

Mr. COLLINS. Well, they loaded it up; I was standing by; they was about forty holes.

Mr. DENT. About forty holes in one shot?

Mr. COLLINS. Yeah.

Mr. DENT. Do you have anything to say as to your own feelings about the operation? Do you think it was done in the manner that it should have been done? As a worker there, did you feel that it was a safe way of procedure?

Mr. COLLINS. No, I didn't think it was safe.

\* \* \* \* \*

Mr. FORD. Mr. Collins, who was in charge of the shooting when you observed it being done?

Mr. COLLINS. They was two foremen there. Red Hoskins and Dill Finley was there. They was the one fired the shot off.

Mr. FORD. Did you ask Mr. Hoskins or Mr. Finley what the material was they were using for blasting?

Mr. COLLINS. Yeah, I asked Red.

Mr. FORD. You asked Red Hoskins?

Mr. COLLINS. Yeah.

Mr. FORD. What did he say?

Mr. COLLINS. That it was Primacord.

Mr. FORD. Said it was Primacord?

Mr. COLLINS. Yeah.

Mr. FORD. Did you ask him how they were going to use it?

Mr. COLLINS. I asked him how he was going to let it off and he said he was going to light it with a match and then he said "I'm going to use one cap for it."

\* \* \* \* \*

Mr. DENT. Was there any evidence that there had been any work done at this spot before you came on? Was the first shift doing any shooting there?

Mr. COLLINS. Yeah, the first shift shot another hole there before I went on that night; shot a lot of it down.

Mr. DENT. The first shift did shooting?

Mr. COLLINS. Yeah. We finished up on our second shift.

Mr. DENT. You finished up on the second shift?

Mr. COLLINS. Yeah.

\* \* \* \* \*

Chairman PERKINS. How many of you were present there on the 22d—on the second shift—when all this took place and Primacord was used? Tell the committee.

Mr. COLLINS. They was two crews of men, there.

Chairman PERKINS. Two crews of men?

Mr. COLLINS. Yeah, 15 and 16 were there.

Chairman PERKINS. Well, tell us who the two crews were.

Mr. COLLINS. Well, didn't know them all by name. I just knowed 'em when I seen 'em.

Chairman PERKINS. Who do you really know by name that you can recall?

Mr. COLLINS. Red Hoskins was there and . . .

Chairman PERKINS. Red Hoskins?

Mr. COLLINS. And Dill Finley, Teddy Harris . . .

Chairman PERKINS. Dill Finley and Mr. Harris?

Mr. COLLINS. James Collins.

Chairman PERKINS. James Collins?

Mr. COLLINS. And a lot more but they ain't got them here—ain't no use telling you the names of them.

Chairman PERKINS. Who tamped the holes?

Mr. COLLINS. Red Hoskins and Dill Finley tamped the holes.

Chairman PERKINS. And who fired the shot, if you know?

Mr. COLLINS. Red Hoskins; he was the man that pressed the cord out.

Chairman PERKINS. Well, now, who brought the Primacord in there on that occasion? Do you know?

Mr. COLLINS. I don't know that.

Chairman PERKINS. You did know it was Primacord?

Mr. COLLINS. No, I didn't.

Chairman PERKINS. When did you first learn it was Primacord?

Mr. COLLINS. That night.

Chairman PERKINS. Who told you it was?

Mr. COLLINS. Red Hoskins.

Mr. Collins' testimony supported that of Mr. Combs in revealing that Primacord was used in the boom hole blasting of December 22, and that incombustible materials were not used to stem the bore holes. It also disclosed the following:

(a) No rock dusting was performed in the area prior to blasting.

(b) Dynamite was used as an explosive, instead of required permissible explosives.

(c) Forty shots were fired at one time; twice the maximum number permitted by the act.

(d) Similar blasting was done on the preceding shift.

(e) Ernest (Red) Hoskins actually fired the shot, in the presence of fellow supervisors Dill Finley and Teddy Harris, and told Mr. Collins Primacord was being used as the detonator.

(f) James Collins was also present on that occasion.

(3) James Collins was hired as a loader helper for the second shift and had been employed at the mine approximately two months.

Chairman PERKINS. And then you, on the 22d, on your shift, at night, finished the rest of the boom hole, is that correct?

Mr. COLLINS. Yes, sir, we left a little bit of rock laying, maybe half a ton or something, we didn't have time.

Chairman PERKINS. Would you tell us what took place there when you were firing that boom hole that night? And what kind of explosives were used?

Mr. COLLINS. Well I just—I helped; at first, I saw the Primacord I didn't know what it was . . .

Chairman PERKINS. Well . . .

Mr. COLLINS. And they told me.

Chairman PERKINS. Who told you what it was?

Mr. COLLINS. Red Hoskins, Mr. Ernest Hoskins.

Chairman PERKINS. What caused you to ask him what it was?

Mr. COLLINS. Well, it looked—strange outfit—and I figured I may have to do it again, and I wanted to know what it was anyway.

Chairman PERKINS. You wanted to know what it was anyway?

Mr. COLLINS. Yes, sir.

Chairman PERKINS. It looked strange to you—was it different from the ordinary fuse you were accustomed to?

Mr. COLLINS. Yes, sir. I never did help tie anything up like that before to shoot.

Chairman PERKINS. And what happened then that made it strange to you on that occasion, on the night of the 22d, in connection with this shot? Go ahead and tell the committee.

Mr. COLLINS. Well, as I said, I started helping unroll this spool; I think it was a thousand feet on each roll, they had already unrolled a whole bunch of it, and seemed to be in a pretty good hurry, trying to get everything out, trying to get the place cleaned up.

Chairman PERKINS. Why were they in a hurry, do you know?

Mr. COLLINS. I don't know.

Chairman PERKINS. Go ahead and tell us what happened?

Mr. COLLINS. And then we got all unrolled that they needed and I went over there and helped Ernest Hoskins and another man, he was loader helper at this time, I don't remember his name, he hadn't been there very long, and we helped—I helped tamp the holes, what was left.

Chairman PERKINS. How did you tamp them?

Mr. COLLINS. Tamped 'em with paper.

\* \* \* \* \*

Chairman PERKINS. All those shots were fired at one time?

Mr. COLLINS. Yes, sir, we fired every one we had. Somebody did.

Chairman PERKINS. And you say there were about forty?

Mr. COLLINS. Forty or more.

Chairman PERKINS. Forty or more at one time? And was one cap used or forty caps?

Mr. COLLINS. Well, Hoskins told me they was going to use one cap to detonate the Primacord, said that's all they needed.

Chairman PERKINS. Said that—Hoskins told you they only needed one cap to detonate the Primacord?

Mr. COLLINS. That's right, he held up the cord and showed me how he was going to bend it, and I asked him how he was going to get that cap to stay on there and he said he was going to tape it on.

Chairman PERKINS. Well, go ahead and describe this to the committee, that point in detail, Hoskins' conversation there, with the cord in his hand, when he held it up, describe it in detail to us.

Mr. COLLINS. Hoskins was setting there with a cigar in his mouth, and Mack Collins first asked him how he was going to fire that shot; he said—he kinda kidded around—he said "I'm going to touch the match to it." I said "How are you going to touch the match to this?" And then he said "No," he said "I was just kidding you," he said "We'll take a cap" and said "One cap sets the whole thing off," and he held that cord up and showed how—he bent the cord and the cap was going to lay in that bend, and going to tape it on or something.

Chairman PERKINS. But you tell this committee that there were forty shots or more there shot at one time?

Mr. COLLINS. Yes, sir.

Chairman PERKINS. And you know enough about blasting that all those went off at one time and not in a sequence of series of shots, am I correct in that statement?

Mr. COLLINS. Yes, sir, I wouldn't have to know anything about blasting to know that all that went off at one time, because we went straight in on it and it blowed it out. There was only one shot.

Chairman PERKINS. And were you in a big rush to clean it up?

Mr. COLLINS. Well, I thought we were. Of course I always try to work pretty hard anyway, if I've got anything to do.

Chairman PERKINS. Now, did you see any rockdusting near the boom hole?

Mr. COLLINS. No, sir, I didn't see any rockdust.

\* \* \* \* \*

Chairman PERKINS. Who was present now when this Primacord was used there on the 22d, James?

Mr. COLLINS. I can't think of all the men's names. I didn't know them that well. There was two sections combined there, and I didn't even know all the men's names on my section.

Chairman PERKINS. Was Teddy Harris there?

Mr. COLLINS. Yes, sir, he was there in some of the process.

Chairman PERKINS. Dill Finley was there?

Mr. COLLINS. Yes, sir.

Chairman PERKINS. Ernest Hoskins was there?

Mr. COLLINS. Yes, sir.

Chairman PERKINS. But you know that no rockdusting was done in that area there that night, and there was considerable coal dust, at the point where this boom hole was shot on the 22d?

Mr. COLLINS. To my knowledge there was no rockdusting done, and I don't see how they could be—so much coal dust—I think I would have seen it.

\* \* \* \* \*

Chairman PERKINS. How do you know that they shot part of the boom hole on the day shift before you did on the 22d?

Mr. COLLINS. You mean how do I know it was shot?

Chairman PERKINS. Yes.

Mr. COLLINS. It was still—I guess half of their shots still laying there and not moved; half of their's; they just leaded enough of their's out to get it out of the way of the jeeps and things.

Chairman PERKINS. And you cleaned up where they had shot down?

Mr. COLLINS. Cleaned up their's and then shot the rest of the holes, yes, sir.

The testimony of James Collins supported that of Robert Combs and Mack Collins in establishing the fact that Primacord was used in the blasting of December 22, and that incombustible materials were not used to stem the boreholes. His testimony was also consistent with that of Mack Collins, his coworker on the second shift, in stating the absence of rock dusting in the area of the boom hole prior to blasting. The firing of at least forty shots, similar blasting on the preceding shift, and the physical presence of Ernest Hoskins, Dill Finley, and Teddy Harris.

The total characterization of the blasting technique undertaken at the Finley mine on December 22, based upon the testimony of these three workers, is one of impudent disregard for the requirements of the act and, most horrifying, reckless abandon with the lives of innocent and unsuspecting miners.

The same blasting technique was apparently employed on December 30. And the tragedy that visited the mine on that date, might be said to have been barely averted on December 22.

The testimony of the three workers also indicated that the boom hole referred to was blasted over a period of at least three shifts. This will be related, in a later discussion, to the limited amount of time—about 5 hours—consumed in blasting the double boom hole on December 30.

Before proceeding, one further excerpt from the testimony of James Collins deserves inclusion.

Mr. FORD. Mr. Collins, I notice that your testimony on January the 6th before the hearing conducted by the Bureau of Mines was almost identical with your testimony here today concerning the circumstances surrounding the shooting on the 22d of December, and at that time you stated that it was Mr. Hoskins who told you that the material being used was Primacord.

Mr. COLLINS. That's right.

Mr. FORD. Mr. Hoskins was recalled to the stand after you testified on that occasion and according to the transcript he denied that there was any Primacord in the mine or that he had ever said that.

Mr. COLLINS. I'm telling the truth and I've told the truth. I ain't got nothing to hide.

(4) Excerpts from the testimony of Ernest (Red) Hoskins will be presented without comment, for reasons which may become apparent at a later date.

Chairman PERKINS. Tell the committee your name.

Mr. HOSKINS. Ernest Hoskins.

Chairman PERKINS. Where do you live?

Mr. HOSKINS. Hyden, Kentucky.

Chairman PERKINS. Where do you presently work?

Mr. HOSKINS. High Flame Coal Company.

Chairman PERKINS. Who owns the company?

Mr. HOSKINS. Finley Coal Company—Finley Brothers.

\* \* \* \* \*

Chairman PERKINS. Now how long have you worked for the Finley Coal Company?

Mr. HOSKINS. About ten years, sir.

Chairman PERKINS. About ten years? Were you working for them at the time the mine opened on Hurricane Creek?

Mr. HOSKINS. Yes, sir.

Chairman PERKINS. And you worked in that mine continuously until they closed it down?

Mr. HOSKINS. No, sir. When they opened I worked about seven shifts; I quit and went to work for another company.

Chairman PERKINS. Well, when did you come back?

Mr. HOSKINS. In November.

Chairman PERKINS. In November?

Mr. HOSKINS. Yes, sir.

Chairman PERKINS. When you came back to the Finley Coal Company in November, what capacity did you come back in?

Mr. HOSKINS. What do you mean by capacity, sir?

Chairman PERKINS. Were you in a supervisory capacity of some kind?

Mr. HOSKINS. Yes, sir, mine foreman.

Chairman PERKINS. You were mine foreman then?

Mr. HOSKINS. Yes, sir.

Chairman PERKINS. On what shift were you mine foreman there?

Mr. HOSKINS. I started on the day shift.

Chairman PERKINS. Started on the day shift, but when did you go to the night shift?

Mr. HOSKINS. I went to the night shift; I worked about three weeks on the day shift and they transferred me to the night shift.

Chairman PERKINS. And when you transferred, what were your duties as foreman on the night shift?

Mr. HOSKINS. Well.

Chairman PERKINS. Was that the second or third shift?

Mr. HOSKINS. Second shift.

Chairman PERKINS. Alright, tell us your responsibilities.

Mr. HOSKINS. Your first responsibility is for the safety of the men.

Chairman PERKINS. Safety of the men?

Mr. HOSKINS. Right.

\* \* \* \* \*

Chairman PERKINS. You had in mind, you've told the committee, the safety of the men. Now how many holes did you shoot on the 22nd there?

Mr. HOSKINS. The first time we shot six and the second time we shot eight or ten, I don't remember exactly whether it was eight or ten.

Chairman PERKINS. And you are telling the committee that these witnesses who stated that forty or more shots were all fired at one time were mistaken?

Mr. HOSKINS. Yes, sir, they are.

\* \* \* \* \*

Chairman PERKINS. Now you were present there when this boom hole was shot on the 22nd?

Mr. HOSKINS. Right.

Chairman PERKINS. And did you make a statement to the gentleman from the Bureau of Mines by the name of Phillip Smith, out of the Department of the Interior Solicitor's office, J. Phillip Smith, and others, in their presence, that you were around but you were busy at other things—doing other things—and if any Primacord was used there on the 22d you didn't know about it at the time that boom hole was shot. Did you make that statement?

Mr. HOSKINS. I guess so.

Chairman PERKINS. You guess so?

Mr. HOSKINS. Yes.

Chairman PERKINS. Well, is that statement true or not?

Mr. HOSKINS. Well, as I say, we was busy doing other things; we had a rib to cut off, a pillar to line us a belt line up, and we had a lot of repair work to do, and I had to check on it.

Chairman PERKINS. You were in different places, I believe you told Mr. Smith in that statement?

Mr. HOSKINS. Yes.

Chairman PERKINS. And you really couldn't state but that you didn't see any yourself, that you didn't fire the shot, am I correct in that statement?

Mr. HOSKINS. I loaded the first shot that was fired.

Chairman PERKINS. You loaded the first shot?

Mr. HOSKINS. Yes, sir, and I may have helped on the second, I don't remember. We was kinda shorthanded that night.

Chairman PERKINS. Kinda shorthanded that night?

Mr. HOSKINS. Yes, sir.

Chairman PERKINS. Well, James Collins was there wasn't he?

Mr. HOSKINS. Yes, sir, I think so.

Chairman PERKINS. Mack Collins was there, wasn't he?

Mr. HOSKINS. I think so, yes, sir.

\* \* \* \* \*

Chairman PERKINS. So if Primacord was used on that occasion, according to your previous statement, you didn't see it yourself?

Mr. HOSKINS. No, sir, I didn't.

Chairman PERKINS. Now, Mr. Hoskins, didn't you know that it was unlawful to use Primacord in the mines—for any Primacord to be in the mines?

Mr. HOSKINS. Yes, sir, I did.

Chairman PERKINS. And did you ever instruct any of your employees that you did not want any shooting done in the mines with Primacord?

Mr. HOSKINS. No, sir, I didn't know what Primacord was until this come up.

Chairman PERKINS. You did not know what Primacord was until this came up, so then you are really telling this committee that you don't know how long they had been using Primacord in that mine because you didn't know what it was, is that correct?

Mr. HOSKINS. That's right.

Chairman PERKINS. You stated that's right?

Mr. HOSKINS. Yes, sir.

\* \* \* \* \*

Chairman PERKINS. I don't know whether you heard James Collins make a statement this morning but if my recollection serves me right, he stated that you told James Collins what Primacord was on December the 22d, and that you fired the shots on that shift. Now, do you remember having that conversation with James Collins?

Mr. HOSKINS. No, sir, I don't.

Chairman PERKINS. You do not?

Mr. HOSKINS. No, sir.

Chairman PERKINS. You are not stating that you did not have the conversation?

Mr. HOSKINS. I didn't say it, sir.

Chairman PERKINS. You are stating that you did not say that to James Collins, and you are telling the committee now that you did not know what Primacord was until after this disaster took place, is that correct?

Mr. HOSKINS. Yes, sir, it is.

(5) Excerpts from the testimony of Dill Finley will be presented with limited comment, again for reasons which may become apparent at a later date.

Chairman PERKINS. Tell the committee your name.

Mr. FINLEY. Dill Finley.

Chairman PERKINS. And who do you work for?

Mr. FINLEY. I was working for Finley Coal Company.

Chairman PERKINS. And what relation are you to Charles Finley?

Mr. FINLEY. I'm first cousin.

Chairman PERKINS. And how long have you been working for your first cousin, Charles Finley?

Mr. FINLEY. I started in '61, I believe it was.

Chairman PERKINS. And you were working for him when this mine opened last March, and at the time of the fatal explosion?

Mr. FINLEY. Yes, sir.

Chairman PERKINS. And in what capacity were you working?

Mr. FINLEY. I was general foreman on the second shift.

Chairman PERKINS. You were general section foreman or general foreman?

Mr. FINLEY. General foreman on the second shift.

Chairman PERKINS. General foreman on the second shift, and what did your duties consist of?



Mr. FINLEY. Well, it's hard to say what all it would be—a general foreman is about anything that goes on, and part of my duty.

Chairman PERKINS. Well, you know what you did there in that mine.

Mr. FINLEY. Yeah.

Chairman PERKINS. Go ahead and tell the committee what some of your duties were. To look after the safety of the men or what?

Mr. FINLEY. Yes, sir.

Chairman PERKINS. And to see that coal was produced?

Mr. FINLEY. Yes, sir.

Chairman PERKINS. And did you carry out those responsibilities?

Mr. FINLEY. I tried to.

Chairman PERKINS. You tried to; now it has been testified here that Primacord was used on the shift and that you were present. Did you observe any Primacord yourself?

Mr. FINLEY. No, sir.

Chairman PERKINS. I believe you have made a statement the second time you were called upon to make a statement, that if any Primacord was used you were around with other duties and responsibilities and you didn't see it yourself, is that the statement that you made in front of Mr. Smith?

Mr. FINLEY. If they were any used I didn't see it.

Chairman PERKINS. What?

Mr. FINLEY. If they was any Primacord used I didn't see it. I never did shoot none.

Chairman PERKINS. If any Primacord was used you never did see it yourself.

Mr. FINLEY. No, sir.

Chairman PERKINS. Is that correct?

Mr. FINLEY. That's right.

Chairman PERKINS. In fact, if I read your statement correct, the last statement that you made to the Solicitor's office, that if any Primacord was used there you didn't see it, didn't know about it, in other words you were busy doing other things and did not know what took place?

Mr. FINLEY. That's right.

Chairman PERKINS. You stated that's correct?

Mr. FINLEY. Yes, sir.

Chairman PERKINS. Now did you ever caution your men about the danger of explosives and the type of explosives to use in the mine, or anything of that nature? On any occasion?

Mr. FINLEY. I don't recall it, sir.

Chairman PERKINS. What?

Mr. FINLEY. I don't recall making such a statement.

Chairman PERKINS. You don't recall? Were you ever instructed by the owner of the mine, Mr. Charles Finley, against the use of Primacord in the mine, or ever discuss it with Charlie at any time?

Mr. FINLEY. No, sir.

Chairman PERKINS. Never did discuss it with Charlie? And when this Primacord was found in the mine there by some of the employees, you knew about that, didn't you?

Mr. FINLEY. No.

\* \* \* \* \*

Chairman PERKINS. I believe you have stated in your previous statement that you didn't observe any rockdusting where that boom hole was shot on the 22d, am I correct?

Mr. FINLEY. That's right.

Chairman PERKINS. What was your answer.

Mr. FINLEY. They was no additional rock dust put there.

Chairman PERKINS. No additional rockdusting put there?

Mr. FINLEY. No.

Chairman PERKINS. Now it was your duty to see that rockdusting took place, am I correct in that statement?

Mr. FINLEY. It might have been my duty but I didn't know it.

Chairman PERKINS. It might have been your duty but you didn't know it was your duty, is that right?

Mr. FINLEY. No, sir. I didn't know I was supposed to put extra rock dust before I shot a place, no, sir.

Chairman PERKINS. You didn't know that you were supposed to put extra rock dust before you shot?

Mr. FINLEY. No, sir.

\* \* \* \* \*

Chairman PERKINS. One further question. You knew that the law required adequate rockdusting, and further knew, and realized or should have known that the law likewise required the exercise of a high degree of care in connection with explosives in the mine, and if I understand your statement correctly, you never did discuss these matters with your employees—am I correct?

Mr. FINLEY. That's right.

Chairman PERKINS. Were James Collins and Mack Collins present when these shots were fired?

Mr. FINLEY. Yes.

The Bureau determined that inadequate applications of rock dust permitted propagation of the December 30 explosion throughout the mine, thereby substantially contributing to the disaster. Previous witnesses testified to the absence of adequate rock dusting near the location of the boom hole blasted on December 22. Mr. Finley's testimony therefore, is consistent in that respect. But it is incomprehensible to believe that he, as the chief supervisor on the second shift, did not recognize that his responsibilities—in the most elementary sense—included knowledge of the vital importance of rock dust in mining operations; particularly so, with respect to the use of explosives. Equally inexcusable, was his admitted failure to exercise his obligation to advise and inform his employees in the proper utilization of rock dust and explosives. Mr. Finley's negligence in such matters, however, was totally eclipsed by that of Teddy Harris.

(6) Excerpts from the testimony of Mr. Harris will also be presented with limited comment, and once again, for reasons which may become apparent at a later date.

Chairman PERKINS. Give the committee your full name.

Mr. HARRIS. Teddy Harris.

Chairman PERKINS. Teddy Harris?

Mr. HARRIS. Yes.

Chairman PERKINS. And where do you live, Teddy?

Mr. HARRIS. I live at Manchester.

Chairman PERKINS. At Manchester, Kentucky?

Mr. HARRIS. Yeah.

Chairman PERKINS. And who is your employer?

Mr. HARRIS. Finley Coal Company.

Chairman PERKINS. Finley Coal Company—and how long have you worked for the Finley Coal Company?

Mr. HARRIS. Oh, six and a half or seven years; something like that.

Chairman PERKINS. Six and a half or seven years, and how old are you?

Mr. HARRIS. Twenty-nine.

Chairman PERKINS. In what capacity do you work for the Finley Coal Company?

Mr. HARRIS. You mean what position I hold?

Chairman PERKINS. Yes.

Mr. HARRIS. I was a section foreman.

Chairman PERKINS. Section foreman? And as section foreman, you were familiar with the shooting of loading points or boom holes and plans to get extra height to repair the equipment in the mines?

Mr. HARRIS. Yes, sir.

Chairman PERKINS. I believe you told the Department of the Interior in their investigation, that if Primacord was used on the 22d, that you did not personally observe it, that you were involved doing other things around there, and for that reason you did not know what really took place, am I correct? Am I summing your statement up correctly—the second statement you made to the Solicitor?

Mr. HARRIS. I would say that—that they didn't shoot no Primacord, because . . .

Chairman PERKINS. Now in your second statement to the Solicitor, if my recollection serves me correctly, you did state that, if Primacord was used, you did not know about it, am I correct in that statement?

Mr. HARRIS. Well, that's pretty well close. I . . .

Chairman PERKINS. That's pretty well close?

Mr. HARRIS. I don't know . . .

Mr. PERKINS. Well, that was the statement that you made to the Solicitor . . .

Mr. HARRIS. Well . . .

Chairman PERKINS. To Mr. Smith, after this disaster?

Mr. HARRIS. Well, I was working, but what I done, I was loading some holes there, I made some of the shots up, and give to Ernest Hoskins, and I was moving some rock on the right.

Chairman PERKINS. Now . . .

Mr. HARRIS. But you know when you load them holes you don't . . . you put them wires in your shots and so I heard them say you don't have to have . . .

Chairman PERKINS. Mr. Collins stated that there were forty shots shot there on that one occasion, were you present as section foreman on that occasion?

Mr. HARRIS. I ain't been section foreman but three weeks when that disaster happened.

Chairman PERKINS. But on the 22d?

Mr. HARRIS. Yes—yeah.

Chairman PERKINS. You were present when those forty shots were shot at one time?

Mr. HARRIS. Yeah, but they wasn't no forty shots, I don't think.

Chairman PERKINS. You don't think? How many shots do you think there were?

Mr. HARRIS. Well, we shot the hole twice, and I would say not more than eighteen or twenty of 'em no way.

Chairman PERKINS. You don't think more than eighteen or twenty of them went off at any one time? How many times did they shoot then on that shift?

Mr. HARRIS. Well, we shot twice there, I mean two shots.

Chairman PERKINS. And how many shots in each shift?

Mr. HARRIS. I would say they was about eight or ten holes at the time there.

Chairman PERKINS. It has been stated here—by several witnesses—that many more shots were fired than that, Mr. Harris, and you are not certain as to the number, I take it?

Mr. HARRIS. No, I don't. I don't know.

Chairman PERKINS. And did you ever give any of your men instructions about Primacord?

Mr. HARRIS. No, I didn't know even what it was.

Chairman PERKINS. You are telling the committee that you were section foreman in the mines and did not know what Primacord . . .

Mr. HARRIS. That's right.

Chairman PERKINS. Happened to be, on the 22d, now is that correct?

Mr. HARRIS. That's right. I didn't know what Primacord was, you know, not 'til after this happened.

Chairman PERKINS. Well, what did you use to string up the shots with on the 22nd?

Mr. HARRIS. They used them leg wires, strung from one to the other.

Chairman PERKINS. Now, when did you first learn about Primacord?

Mr. HARRIS. After the explosion happened.

Chairman PERKINS. After the explosion happened, and who told you about it?

Mr. HARRIS. They had some out there in the trailer, and I don't know—they talked about shooting it on that road.

Chairman PERKINS. You mean they had some out in the trailer and you had talked about shooting it on the road?

Mr. HARRIS. Yeah.

Chairman PERKINS. But I believe the statement that you made to the Solicitor, that if any Primacord was used there, you did not know anything about it, and if you did not know what it was, you did not know what they were shooting with then, is that correct?

Mr. HARRIS. Well, you tie on leg wires there, you sure ain't got no Primacord, I don't reckon.

Chairman PERKINS. What's that?

Mr. HARRIS. You know you tie your leg wires together, you ain't got Primacord.  
Chairman PERKINS. Tear the label off, you've not got . . .

Mr. HARRIS. You know you tie your leg wires together.

Chairman PERKINS. You mean then that you shoot with separate caps?

Mr. HARRIS. Yes.

Chairman PERKINS. Do you know how to shoot with Primacord now?

Mr. HARRIS. No, sir,—oh, yeah, I do now—yeah.

Chairman PERKINS. When this boom hole was shot there on the 22d, there was only one pair of leg wires there, wasn't there?

Mr. HARRIS. 22d?

Chairman PERKINS. Yes.

Mr. HARRIS. I don't know how many was there.

Chairman PERKINS. Well, you did not observe close enough to know whether then the shooting was with Primacord or not, if you don't know how many pairs of leg wires there were, do you?

Mr. HARRIS. No.

Chairman PERKINS. How many leg wires were used, do you know?

Mr. HARRIS. Well, they was two to each cap.

Chairman PERKINS. What's that?

Mr. HARRIS. They was two to each cap, you know.

Chairman PERKINS. And how many were left over from the 22d, if you know?

Mr. HARRIS. I don't know.

Chairman PERKINS. Well, you were supposed to do the blasting on the 22d, were you in charge of that section, and you don't know what took place—am I correct?

Mr. HARRIS. Now, let's see, the 22d?

Chairman PERKINS. Yes.

Mr. HARRIS. No, we got them two places there mixed up, or I have.

Chairman PERKINS. Well, where was it that the Primacord was used and when was it used there, if you've got it mixed up?

Mr. HARRIS. It wasn't used no time, the Primacord wasn't.

Chairman PERKINS. You told the . . .

Mr. HARRIS. I don't reckon.

Chairman PERKINS. You've told the committee you did not know what Primacord was until after the explosion took place, am I correct?

Mr. HARRIS. Yeah. I know what it is after it happened.

Chairman PERKINS. That is after it happened?

Mr. HARRIS. Yeah.

\* \* \* \* \*

Mr. DENT. Tell me, did you take an examination? Do you have papers for foreman in your mine?

Mr. HARRIS. No, sir, I don't.

Mr. DENT. Is there such a thing as a paper?

Mr. HARRIS. Yeah.

Mr. DENT. In the seven years you had worked, did you know that they used Primacord for outside blasting and outside shooting and clean-up and for a lot of on-surface work around the mines?

Mr. HARRIS. Well, I knowed they used it on that road. I know they talked about using it in shooting rock.

Mr. DENT. You know it when you see it?

Mr. HARRIS. Yeah, now—yeah.

Mr. DENT. Now? You knew it when there was some used on roads?

Mr. HARRIS. No, unuh, not until after this happened, I didn't know it.

Mr. DENT. You never knew what Primacord was?

Mr. HARRIS. That's true; I never knowed what it was.

Mr. DENT. Is there anybody in your mind that you would think knew what Primacord was, in this mine?

Mr. HARRIS. I don't know where they would or not.

Mr. DENT. Have you heard any of the testimony or read any of it?

Mr. HARRIS. No.

Mr. DENT. We have men that worked in the mines that say they saw it there, they knew what it was, blasted before, but these were just miners in the mine, men that just worked.

Mr. HARRIS. That's right.

Mr. DENT. Would you say that Mr. Finley knew what Primacord was?

Mr. HARRIS. I guess he would—yeah. He had it outside.

Mr. DENT. Did you ever hear there was any Primacord around the place?

Mr. HARRIS. Just on that road is all; yeah, I heard about it, I mean after it happened there.

Mr. DENT. You only heard about Primacord after the accident happened?

Mr. HARRIS. Yeah.

Mr. DENT. Well, did you know anything about the blast on the 22nd of December, a few days before this fatal accident? When they blew out the boom hole in #15?

Mr. HARRIS. The 22d?

Mr. DENT. Did you know that they had blown out a boom hole in #15 on the 22d, with about forty—at least forty sticks of permissible or non-permissible explosives, or did you not know there was any such action in the mine?

Mr. HARRIS. Yeah, I knowed.

Mr. DENT. Well, did you make inquiry as to what they used?

Mr. HARRIS. No. This 22d now—well, that was before the explosion. It has been so long I forget.

Mr. DENT. You didn't know what kind of explosives they used in that mine?

Mr. HARRIS. I knowed they used permissible powder and stuff.

Mr. DENT. What is permissible powder? What's the name of it? How is it distinguished between non-permissible powder? How can you tell it apart?

Mr. HARRIS. It says right on it, there on the box.

Mr. DENT. What's that?

Mr. HARRIS. It says right on the stick or on the box.

Mr. DENT. And you never saw any without the distinguishing marks of permissible powder in and around that mine?

Mr. HARRIS. I don't.

Mr. DENT. You never saw anything but permissible powder, is that right?

Mr. HARRIS. That's right.

Mr. DENT. You never saw Primacord around the mine. You never saw non-permissible powder?

Mr. HARRIS. No.

Mr. DENT. Is that your testimony? "No. I didn't see none." How did you know about it after the explosion?

Mr. HARRIS. Well—

Mr. DENT. Did they show you some?

Mr. HARRIS. Yeah.

Mr. DENT. Where did it come from?

Mr. HARRIS. Well, they'd bring it over there and somebody would call or something and want to see it.

Mr. DENT. How is that?

Mr. HARRIS. Somebody would call and want to see it and they would bring a spool over there to the shop where it was at, and look at it.

Mr. DENT. Well, where did it come from? From some other mine or do you think it came from the premises you worked on?

Mr. HARRIS. It came out of that trailer and out of the premises, Yeah.

Mr. DENT. You were a foreman in that mine and you didn't know that was going on?

Mr. HARRIS. No; not Primacord.

Mr. DENT. Nor dynamite?

Mr. HARRIS. Nor dynamite.

Mr. DENT. Well, do you think that the Bureau of Mines is qualified to judge whether or not dynamite has been used in the mines? Do you think that the Bureau of Mines is sufficiently expert to know whether there has been dynamite used in an explosion?

Mr. HARRIS. I don't know. I can't get exactly what you mean there.

Mr. DENT. I'm asking you if you think the Bureau of Mines is trained enough to know when and how an explosion was set off?

Mr. HARRIS. Yeah, I would say they do; I guess so.

Mr. DENT. Do you know that information contained in the report of the Department of the Interior, the Bureau of Mines, says this: "A small sample of explosives was found in a partially detonated shot hole in a boom hole in #15 mine which had been shot on December the 22d, 1970, and that samples were analyzed by the Bureau of Mines, Explosives Research Laboratory, and was de-

determined to be 40 percent strength dynamite"? Now you know where that boom hole was shot; you had seen it?

Mr. HARRIS. Yeah.

Mr. DENT. Did you see any of the holes after it was blasted or any residue around there of any kind?

Mr. HARRIS. No.

Mr. DENT. How would the Bureau of Mines find it?

Mr. HARRIS. I don't know. I just don't know.

Mr. DENT. Were you shooting? Did you shoot that shot, on the 22d?

Mr. HARRIS. I helped shoot it.

Mr. DENT. Did you help load?

Mr. HARRIS. I made this stuff up for to load it.

Mr. DENT. How is that?

Mr. HARRIS. I made the detonators up to load it, ever what you call it.

Mr. DENT. What kind of shot cord did you use?

Mr. HARRIS. We used a little cable.

Mr. DENT. How many caps did you use?

Mr. HARRIS. I don't know how many caps there was.

Mr. DENT. Well, if you helped to explode it? And you helped to wire it up?

Mr. HARRIS. Yeah, you have to wire the leg wires together.

Mr. DENT. Yes, but was it a single shot affair or a series shot?

Mr. HARRIS. It was a series I guess you would call it. You put all your cables—all your legs together.

Mr. DENT. Did it all go off at once like a big boom or did it go off like a bunch of firecrackers?

Mr. HARRIS. Yeah, when you done that it went off at once.

Mr. DENT. How could it do that if it wasn't hooked up in a series with a single blast?

Mr. HARRIS. I reckon well, I would say it was hooked up in a series. I don't know nothing about series.

Mr. DENT. But a single shot?

Mr. HARRIS. Well, this single—

Mr. DENT. Isn't it true that there was only one cap used in the entire blast?

Mr. HARRIS. No.

Mr. DENT. How many?

Mr. HARRIS. Just one shot here see. You wire all your wires together, eight or ten of them, ever what you want to use, and it comes all down to two little wires, and you tie each end of the cable to it . . .

Mr. DENT. Testimony has been given that there were forty or more shots and we presumed they were sticks of dynamite because the Bureau discovered the explosive used to be 40 percent dynamite and so stated in its report; we also know that after the explosion over half a roll of Primacord was found on the scene. What would it be doing there if it wasn't used?

Mr. HARRIS. I don't know.

Mr. DENT. No other type of detonator—no leg wires or nothing else was found around there—how would it dissappear?

Only incriminating Primacord was there—yet you follows who worked there and had a responsibility, didn't see it?

Mr. HARRIS. We—see, we just shot part of it. We shot two shots of it and they was about eighteen or twenty holes, something like that. We just . . .

Mr. DENT. And you say you shot with permissible powder and permissible explosives? Right?

Mr. HARRIS. Yeah.

Mr. DENT. How come there is no evidence of that? They didn't find that?

Mr. HARRIS. Well, we moved what we shoot that night, and the third shift follows us.

Mr. DENT. Oh, you think the third shift might have done something different than what you people did?

Mr. HARRIS. They could have done it; could have been.

Mr. DENT. I have no more questions, Mr. Chairman.

Chairman PERKINS. I think it's fair to the witness, since there is a lot of contradiction here, that if we understand your statements, in trying to reconcile your statements, that you did not know what Primacord was until after the disaster, and you were a section foreman, is that correct?

Mr. HARRIS. That's right.

Chairman PERKINS. And if Primacord was used there on the 22d when these shots were fired, you did not know it?

Mr. HARRIS. I wouldn't know it if I had seen it.

Chairman PERKINS. You would not know it if you had seen it, and you don't know really what kind of explosives were used there on that occasion then, because you were involved in doing some other things, . . . ?

Mr. HARRIS. Yes.

Chairman PERKINS. And I think you've made that statement heretofore, is that correct?

Mr. HARRIS. Yeah—yes, sir.

Chairman PERKINS. You stated yes, sir?

Mr. HARRIS. Yeah—yes.

Chairman PERKINS. That's all.

Mr. FORD. Mr. Harris, where are you working now?

Mr. HARRIS. I'm still working for High Flame Coal Company.

Mr. FORD. Who owns that coal company?

Mr. HARRIS. It's the same company I guess.

Mr. FORD. Are you still a foreman?

Mr. HARRIS. No—unh uh.

Mr. FORD. What's your title now?

Mr. HARRIS. I'm just a mechanic.

Mr. FORD. A mechanic?

Mr. HARRIS. Yeah.

Mr. FORD. How long were you a foreman in #15 and 16?

Mr. HARRIS. Three weeks, something like that.

Mr. FORD. You had just become a foreman?

Mr. HARRIS. Yeah.

Mr. FORD. Do you have to have any special qualifications to become a foreman—take any test?

Mr. HARRIS. Yeah, you are supposed to, you know, you're supposed to have papers, yes.

Mr. FORD. When you were promoted to foreman were you given any kind of a test by your employer or by the Kentucky Bureau of Mines or anybody else?

Mr. HARRIS. No, sir.

Mr. FORD. . . . with regard to your knowledge of safety precautions in the mine?

Mr. HARRIS. No.

Mr. FORD. What kind of formal training, if any, have you had in the application of the Coal Mine Safety Act that the federal government passed in 1969?

Mr. HARRIS. I ain't got no—none, as far as that is.

Mr. FORD. Were you ever briefed by anybody, from your employer or from the Bureau of Mines, or anybody else about the Coal Mine Safety Act before you became a foreman?

Mr. HARRIS. No.

Mr. FORD. After you became a foreman?

Mr. HARRIS. No.

Mr. FORD. Anybody ever give you a copy of the act?

Mr. HARRIS. Unhuh (meaning no).

Mr. FORD. Anybody ever give you a copy of the regulations—the safety regulations?

Mr. HARRIS. No.

Mr. FORD. Are there any posted any place?

Mr. HARRIS. Yeah, I guess they are, on that bulletin board.

Mr. FORD. Did you ever read them?

Mr. HARRIS. No.

Mr. FORD. You didn't feel you had a responsibility as a foreman to read the safety regulations?

Mr. HARRIS. No.

Mr. FORD. Do you know whether or not the safety regulations provide that water is to be used to lay down dust?

Mr. HARRIS. Oh, yeah, I knowed some of that now.

Mr. FORD. During the period you were foreman did you use water?

Mr. HARRIS. No.

Mr. FORD. Never?

Mr. HARRIS. No.

Mr. FORD. Did you ever see, in the six and a half or seven years that you worked at Finley mines, water used in the way it was supposed to be at the face?

Mr. HARRIS. No, not on the section, I never.

Mr. FORD. How about the rockdusting? Have you ever seen that done?

Mr. HARRIS. Yeah.

Mr. FORD. Did you see any of that done prior to the explosion?

Mr. HARRIS. Just before?

Mr. FORD. Yes.

Mr. HARRIS. Yeah, I've seen it done before.

Mr. FORD. When did you see that done?

Mr. HARRIS. Well, we done it Saturday before that.

Mr. FORD. Saturday before the explosion?

Mr. HARRIS. Yeah.

Mr. FORD. What would that date be?

Mr. HARRIS. I don't know. We rockdusted that belt line.

Mr. FORD. And the day after Christmas you are talking about?

Mr. HARRIS. Well, it was on Saturday, we rockdusted.

Mr. FORD. Well, the Friday before the explosion was Christmas day. Are you talking about the day after Christmas day?

Mr. HARRIS. Well, it was probably a little later than that.

Mr. FORD. A little later than that?

Mr. HARRIS. Yeah, or earlier there.

Mr. FORD. Did anybody tell you that the mine was being closed down from the 22d of December until the 27th of December?

Mr. HARRIS. Yeah.

Mr. FORD. Who told you that?

Mr. HARRIS. Charles, I guess—Charles Finley.

Mr. FORD. Charles Finley?

Mr. HARRIS. Yeah.

Mr. FORD. When did he tell you that the mine was going to be closed down from the 22d through the 27th?

Mr. HARRIS. We knowed it about two or three days I guess before it closed down there.

Mr. FORD. Did you close down on the 22d?

Mr. HARRIS. I don't remember when the 22d was.

Mr. FORD. Well, you have been testifying for the last hour about what you did on the 22d.

Mr. HARRIS. Oh, that was—now the 22d, that's when the hole was shot?

Mr. FORD. That's what all the witnesses seem to agree on, . . .

Mr. HARRIS. Yeah, that's what it was.

Mr. FORD. Even though they disagree on everything else.

Mr. HARRIS. OK.

Mr. FORD. There has been no question up until now about that being so. Did the mine operate on the 22d of December, the day you were there on the second shift and participated in this blasting?

Mr. HARRIS. Yeah.

Mr. FORD. They were taking coal out that day?

Mr. HARRIS. No, they wasn't; no.

Mr. FORD. How many men were working?

Mr. HARRIS. I don't know exactly.

Mr. FORD. The same number as usual?

Mr. HARRIS. No, they wasn't that many there.

Mr. FORD. Some had been let off that day?

Mr. HARRIS. Yeah.

Mr. FORD. Why?

Mr. HARRIS. Well, they just needed so many to work that day.

Mr. FORD. They were fewer on the 22d than there were on the 21st?

Mr. HARRIS. Yeah.

Mr. FORD. Was there any particular reason why they were fewer?

Mr. HARRIS. Well, we didn't have much to do, is all I know.

Mr. FORD. It wasn't because the mine was shut down?

Mr. HARRIS. No.

Mr. FORD. How about the shift that came in after you? When did you go in after it was over?

Mr. HARRIS. On the second shift?

Mr. FORD. What time?

Mr. HARRIS. 3:30.

Mr. FORD. You worked until midnight?



- Mr. HARRIS. Yes; 11 :30 or something.
- Mr. FORD. Did the third shift come in after you?
- Mr. HARRIS. Yeah. They didn't use many men on the third shift.
- Mr. FORD. Was it the regular third shift?
- Mr. HARRIS. Yes.
- Mr. FORD. The mine wasn't shut down at the end of your shift?
- Mr. HARRIS. Let's see now. I don't remember where it was shut down or wasn't then. After we . . .
- Mr. FORD. Well, there have been witnesses who testified they worked that night on the third shift.
- Mr. HARRIS. Yeah, I thought they did. I didn't remember exactly.
- Mr. FORD. They testified they used Primacord that night, and they didn't use all the Primacord and left a reel of it in the mine.
- Mr. HARRIS. Yeah.
- Mr. FORD. But you never saw that prior to the blast on the 30th?
- Mr. HARRIS. No.
- Mr. FORD. You were foreman on the second shift and at no time did you see Primacord stored in the mine?
- Mr. HARRIS. Never did.
- Mr. FORD. Who was responsible for doing the shooting on your shift?
- Mr. HARRIS. Ernest Hoskins.
- Mr. FORD. Who was responsible for getting the explosives and detonating equipment?
- Mr. HARRIS. I forget that guy's name that brought it in there.
- Mr. FORD. Did you go back in the next day after the 22d and work?
- Mr. HARRIS. I don't remember where we did or not.
- Mr. FORD. Did you work Christmas Eve?
- Mr. HARRIS. No.
- Mr. FORD. Did you work the day before Christmas Eve?
- Mr. HARRIS. I don't remember where we did or not.
- Mr. FORD. You were foreman, weren't you responsible for keeping a record?
- Mr. HARRIS. Yeah.
- Mr. FORD. Do you keep a day book of who showed up on your shift and how many hours they worked?
- Mr. HARRIS. Yeah.
- Mr. FORD. Would you be able to tell us from that day book how many that have worked on the shifts preceding Christmas?
- Mr. HARRIS. Yeah.
- Mr. FORD. When did they come back after Christmas?
- Mr. HARRIS. The 28th, I guess, or 29th.
- Mr. FORD. A couple of days after Christmas?
- Mr. HARRIS. Yes, something like that.
- Mr. FORD. Now, one thing that bothers us about the role of the inspectors in this is that the inspectors tell us they were told by your boss that your mine wasn't going to work on the 22d, 23d, 24th, 25th, 26th or 27th of December, and therefore the violations that they had been cited for and should have been cleared up before 8:00 o'clock on the morning of the 22nd couldn't have been inspected—you are telling us the mines didn't shut down during that time? Do you think the inspector was mistaken or misinformed, or do you want to change your story?
- Mr. HARRIS. I don't know what happened.
- Mr. FORD. You don't remember?
- Mr. HARRIS. I don't remember.
- Mr. FORD. You do have records however, that as a foreman you keep that would tell you whether or not you showed up on the shift or how many worked for you?
- Mr. HARRIS. I've got a book if I can get hold of it and find it.
- Mr. FORD. If you can find it?
- Mr. HARRIS. Yeah.
- Mr. FORD. Do you think you might not be able to find it?
- Mr. HARRIS. I don't know. It would be pretty hard.
- Mr. FORD. You had never been a foreman before in your life?
- Mr. HARRIS. No.
- Mr. FORD. The first time in your life you were foreman three weeks and didn't think that book was important enough to keep?

Mr. HARRIS. Yes, I can find it.

Mr. FORD. What's your hunch—can you find it?

Mr. HARRIS. Yeah.

Mr. FORD. And bring it back to us?

Mr. HARRIS. Yeah.

Mr. FORD. And tell us whether the mine was working?

Mr. HARRIS. Well—

Mr. FORD. Well, you do remember working on the 22d but you don't remember the day after you did this shooting whether you came back to work or not?

Mr. HARRIS. Oh, after the shooting, I don't think we did. No, we didn't come back that day.

Mr. FORD. Were you, as foreman, made aware of any of the violations the inspectors cited your mine for on the 19th of October or November?

Mr. HARRIS. Repeat that, sir.

Mr. FORD. Were you foreman on the 19th of October?

Mr. HARRIS. No.

Mr. FORD. Were you at the mine when Mr. Couch came and inspected the mine?

Mr. HARRIS. No, he came on the day shift.

Mr. FORD. Who was your supervisor? Who gave you your orders?

Mr. HARRIS. Dill mostly and Charles.

Mr. FORD. Dill?

Mr. HARRIS. Yes.

Mr. FORD. And Charles Finley, one of the owners?

Mr. HARRIS. Yes.

Mr. FORD. Did they at any time talk to you as one of the foremen about the list of violations that had been served on them on November 19th by the mine inspector?

Mr. HARRIS. No.

Mr. FORD. Now you were working on November 19th, weren't you?

Mr. HARRIS. November 19th—yeah, I guess so. If it wasn't on Sunday or something I was.

Mr. FORD. Well, that day the mine operator was given four notices of violation by the mine inspector but it was supposed to be cleared up by the morning of December 22d—did the mine owner ask you to do anything, as foreman, to clear up those violations?

Mr. HARRIS. No.

Mr. FORD. Did they tell you what the violations were?

Mr. HARRIS. No.

Mr. FORD. You didn't know there were any violations?

Mr. HARRIS. No.

Mr. FORD. Do you know about any violations the inspectors cited this mine for?

Mr. HARRIS. No.

Mr. FORD. You mean after the inspectors cited this mine for dozens of violations over a period of time, you, as foreman, were never informed in any way at all about a change in procedure to comply with the Mine Safety Act?

Mr. HARRIS. No, they always come back on Saturday and if anything needed doing we would do it.

Mr. FORD. Alright, for example, do you know what a self rescue device is?

Mr. HARRIS. Yeah.

Mr. FORD. If your mine was cited and re-cited again for not having these self rescue devices in the mine where the men were working, did anything happen, after these citations from the mine inspector, to change that condition?

Mr. HARRIS. I don't know.

Mr. FORD. Did you, as foreman, see any additional self rescue devices put into the mine?

Mr. HARRIS. No.

Mr. FORD. Are you saying as a foreman—you cannot tell us of a single action taken by your employer to comply with this whole list of violations? They didn't do anything different during the month of November and December, after this list of items was given to them?

Mr. HARRIS. Yeah.

Mr. FORD. What kind of things did you start doing differently after the federal mine inspector came to the mine?

Mr. HARRIS. We started putting more rock dust.

Mr. FORD. Started putting more rock dust?

Mr. HARRIS. Yeah, we rock dusted that belt line.

Mr. FORD. On the 22nd when you participated in doing the blasting did you put down rock dust that day?

Mr. HARRIS. No.

Mr. FORD. Didn't you just tell us a few minutes ago you put down rock dust?

Mr. HARRIS. Yeah, we put down rock dust on Saturday or Sunday.

Mr. FORD. But not on the day you did the blasting?

Mr. HARRIS. No.

Mr. FORD. Was it customary to do rock dusting on the day of the blasting?

Mr. HARRIS. No.

Mr. FORD. Who decided whether the rock dusting was actually done or not? You were the foreman, was that your responsibility?

Mr. HARRIS. They never asked me. I never thought nothing of it.

Mr. FORD. Well, who did decide you should put down rock dust before you detonated explosives in the mines?

Mr. HARRIS. It wasn't never named.

Mr. FORD. It wasn't your responsibility?

Mr. HARRIS. No. I didn't know we was supposed to put it down when we shot or something.

Mr. FORD. You said in your testimony back in January that you specifically observed how these explosions took place and how the explosives and the explosive devices were attached—but you told Congressman Dent a few minutes ago you couldn't remember how many went off and how they were exploded. Would it help you if I were to let you read your testimony from January or read it myself to clear up the apparent defects in what you said then and now? Has anybody talked to you about the testimony you were going to give to this committee?

Mr. HARRIS. No.

Mr. FORD. No one?

Mr. HARRIS. No.

Mr. FORD. Who did you come to the hearing with today?

Mr. HARRIS. Dill.

Mr. FORD. Dill?

Mr. HARRIS. Dill Finley.

Mr. FORD. Dill Finley? You didn't discuss what you were going to say at the hearing with him?

Mr. HARRIS. No.

Mr. FORD. Do you want us to believe you rode here together and didn't discuss what was going to be said at this hearing?

Mr. HARRIS. No, we didn't know what was going to be said, or was going to be discussed or nothing else.

Mr. FORD. How far did you ride here today?

Mr. HARRIS. From here to Manchester.

Mr. FORD. Are you close friends—you and Finley?

Mr. HARRIS. Yes.

Mr. FORD. You don't have any animosity between you?

Mr. HARRIS. No.

Mr. FORD. You are not opposed to him or his activities?

Mr. HARRIS. No.

Mr. FORD. Wouldn't it be kind of unusual for you not to discuss what you were going to testify to today, before a friend that close?

Mr. HARRIS. No, but we didn't know nothing about this; didn't know what to discuss nor nothing.

Mr. FORD. Well, you testified before in January, just a few days after the accident, in great detail about the blasting on the 22d, and you said at that time you saw caps being attached to the permissible powder, is that the way you described the explosives that day.

Mr. HARRIS. Yeah.

Mr. FORD. Is that right? You do now remember you saw caps being attached to each one?

Mr. HARRIS. Yeah, they was caps. I know we used caps.

Mr. FORD. I thought you explained the explosive was set up so they would all go off at once?

Mr. HARRIS. Yeah, but that many holes.

Mr. FORD. Would you get a simultaneous or instantaneous explosion if you put separate caps on—is that the way you do it?

Mr. HARRIS. Well, you make one shot and it will shoot eight or ten holes, if you wire the leg wires together.

Mr. FORD. Did you stay there on the 22d and clean up the hole, the debris, after the shot?

Mr. HARRIS. Yeah, we cleaned up the rock.

Mr. FORD. What did you do with the wire left over and not attached?

Mr. HARRIS. I guess it was right in that explosion.

Mr. FORD. But you do remember picking up that detonating wire?

Mr. HARRIS. No.

Mr. FORD. You don't recall? Isn't there usually detonating wire left after a shot?

Mr. HARRIS. Yeah, it would be in that rock.

Mr. FORD. But when you use Primacord there is no detonating wire left?

Mr. HARRIS. I don't know.

\* \* \* \* \*

Mr. DENT. You don't know if Primacord was used on the December 22d blast, the first boom hole in 15 shot on the 22d, and you didn't know whether they had used permissible or non-permissible explosives or detonators because you didn't know if you shot Primacord or what?

Mr. HARRIS. You shoot caps you know what you're shooting with, you know that from anything else.

Mr. DENT. You don't use a cap shooting with Primacord?

Mr. HARRIS. I don't reckon.

Mr. DENT. How would you recognize it, since the only distinguishing thing you know is the cap? What if they use Primacord with a cap?

Mr. HARRIS. What is that?

Mr. DENT. Don't you use a cap with Primacord or do you use it?

Mr. HARRIS. I don't know; I don't know about that.

Mr. DENT. Then you wouldn't know if this was a legal blast or wasn't a legal blast, because you could use the cap with the Primacord?

Mr. HARRIS. Yeah, but you put caps in the holes and it's not Primacord.

Mr. DENT. If you don't know what Primacord is, how do you know that?

Mr. HARRIS. Well, I've seen too much of that wire and stuff.

Mr. DENT. Were these holes tamped with paper or untamped?

Mr. HARRIS. They was tamped, I guess, with anything you can get a hold of—brattice cloths and paper.

Mr. DENT. How is that?

Mr. HARRIS. Brattice cloths and paper, anything.

Mr. DENT. Tamped with anything?

Mr. HARRIS. Yes.

Mr. DENT. Do you know it's illegal to tamp with paper because it doesn't do any good?

Mr. HARRIS. No, I didn't know it was illegal.

\* \* \* \* \*

Mr. FORD. A few witnesses volunteered. We are really concerned here, not so much with who is at fault but what is the fault.

Mr. HARRIS. Yeah.

Mr. FORD. In taking the lives of these men—so if it's possible to do so we can keep it from happening again.

Mr. HARRIS. Yeah.

Mr. FORD. There are more people involved than just the people here; each man that goes under the ground to make his living; now what can we do to prevent this happening again, that wasn't done?

Mr. HARRIS. I don't know. That air, I reckon, is the biggest thing.

Mr. FORD. What?

Mr. HARRIS. They said they had too much air.

\* \* \* \* \*

Mr. LANDGREBE. Alright, let me ask you: You mentioned something about air, what is this air bit about?

Mr. HARRIS. It dries it all out, it dries everything in the air.

Mr. LANDGREBE. You've got to have air to breathe?

Mr. HARRIS. Yeah, but these curtains hanging up, they are the dangerous thing ever was, you know these curtains that . . .

Mr. LANDGREBE. Yeah, that gathers the air, to ventilate it to where you have to have it?

Mr. HARRIS. Yeah.

Mr. LANDGREBE. But what do you mean by too much air?

Mr. HARRIS. Well, you get too much air it will dry a place out.

Mr. LANDGREBE. Why did you have too much air in this mine?

Mr. HARRIS. It's what the law requires.

Mr. LANDGREBE. What?

Mr. HARRIS. The law requires you to have so much air.

\* \* \* \* \*

Mr. FORD. I'm curious; what does the law require in terms of air?

Mr. HARRIS. About 9000 feet, ain't it? 6000?

Mr. FORD. Is that in the same safety regulations you said you had never read?

Mr. HARRIS. I don't know.

Mr. FORD. Who told you the requirements are 9000 feet?

Mr. HARRIS. I heard Dill say something about it. I don't know exactly where that is right or not.

Mr. FORD. You heard Dill talking about it?

Mr. HARRIS. 6 or 9000.

Mr. FORD. Before or since the blast?

Mr. HARRIS. Before.

Mr. FORD. Before the blast?

Mr. HARRIS. Yes.

Mr. FORD. You had that much instruction, you knew some measure.

Mr. HARRIS. I knew a little bit but not very much.

Mr. FORD. You were given some information about how much air was required by the law to be in the mine—right?

Mr. HARRIS. Yeah, I still didn't know exactly.

Mr. FORD. The information we have is that there was three times as much as the law required; did you have any way of knowing that?

Mr. HARRIS. No, somebody used something to check it by I guess.

Mr. FORD. There was three times as much air as required though. When you are talking about too much air did you know there was an excess of air pumped in there or just an average?

Mr. HARRIS. Yes.

Mr. FORD. Who told you there was?

Mr. HARRIS. I have heard everybody talking about it.

Mr. FORD. Who is everybody?

Mr. HARRIS. Around the mines there.

Mr. FORD. Dill is one of them?

Mr. HARRIS. Yeah.

Mr. FORD. And he's an experienced miner?

Mr. HARRIS. Yeah, he's got mine foreman papers.

Mr. FORD. Anybody else tell you that?

Mr. HARRIS. No.

Mr. FORD. It was just common gossip there was too much air in that mine?

Mr. HARRIS. Yeah.

Mr. DENT. In order to get it correct, you have to have 9,000 cubic feet of air at the last crosscut and 3000 across the face, and its our information that your mine was pumping 25,000 feet.

Without passing judgment on the veracity of Mr. Harris' statements with respect to the boom hole blasting of December 22, and the use of Primacord in the mine, it can be safely said that his incompetence as a mine supervisor of men and operations is reason enough for exasperation. For an operator to have entrusted the safety of miners to his judgment, was to show near open contempt for the lives of employees.

(7) The committee hearings next turned to widows of miners killed in the December 30 explosion. The Bureau did not receive testimony

from widows at its January 6 hearing, and no such testimony was taken by Department of the Interior attorneys who returned to the Hyden area later that month. Apparently, the Bureau did not feel the windows could contribute to an understanding of the conditions at the Finley mine. The committee did.

Chairman PERKINS. Tell us—you are one of the widows, I think?

Mrs. GIBSON. Yes.

Chairman PERKINS. Tell us your husband's name.

Mrs. GIBSON. Alfred Gibson.

Chairman PERKINS. Alfred Gibson, and he was in this tragedy that took place on December 30th at the Finley mine?

Mrs. GIBSON. Yes, he was.

Chairman PERKINS. And what is your full name?

Mrs. GIBSON. Emily Gibson.

Chairman PERKINS. How many children did you have, Mrs. Gibson?

Mrs. GIBSON. Just one.

Chairman PERKINS. How long had your husband worked at the Finley Coal Company?

Mrs. GIBSON. Well, I don't know just exactly how long he had worked for them. I guess around about four years.

Chairman PERKINS. About four years?

Mrs. GIBSON. Or two or something.

Chairman PERKINS. Did you have any conversations with your husband shortly before he died, and if so when, concerning the working conditions at the Finley mine? Go ahead and tell the committee if you did have.

Mrs. GIBSON. Well, the week that he was off for Christmas, one night we was laying there, we hadn't went to sleep, and he said . . .

Chairman PERKINS. Talk just a little louder, Mrs. Gibson.

Mrs. GIBSON. And he said "Well, I will . . . if they don't straighten up over there", he said "we are all going to get killed". Well, I said "Looks like you would quit". And we laid for some time, he didn't say nothing else, and along after while he said "Well", he said "I have to work somewhere," and said "I can make it if the rest can", so that's . . .

Chairman PERKINS. What did he say the reason that he thought they were going to get killed? What statement did your husband make on that occasion?

Mrs. GIBSON. Well, he said that Stanley stayed drunk so much—or Charles I guess it was—stayed drunk so much, and he said then they used to stuff to shoot with that is not supposed to be underground, so I didn't go on to ask him what it was.

Chairman PERKINS. Stuff to shoot with that wasn't supposed to be in there?

Mrs. GIBSON. Yeah, that he knowed it wasn't safe.

Chairman PERKINS. But he told you it was unsafe?

Mrs. GIBSON. Yes.

Chairman PERKINS. And he thought they were all going to get killed?

Mrs. GIBSON. Yeah, he said that.

Chairman PERKINS. And when was this in connection with the time of the fatal explosion when he did get killed?

Mrs. GIBSON. Well, it was on Saturday and the next Wednesday he got killed.

\* \* \* \* \*

Chairman PERKINS. Mrs. Jones, tell us how long your husband worked for the Finley Coal Company.

Mrs. JONES. Well, four or five years I guess. I'm just guessing at it now. I don't know for sure.

Chairman PERKINS. What was your husband's name?

Mrs. JONES. Rufus Jones.

Chairman PERKINS. And your first name?

Mrs. JONES. Betty Jones.

Chairman PERKINS. Betty Jones? How many children do you and Rufus have?

Mrs. JONES. Just got two.

Chairman PERKINS. Two?

Mrs. JONES. Yeah.

Chairman PERKINS. Are they both grown and married?

Mrs. JONES. Yeah.

Chairman PERKINS. And how long had your husband worked—about four or five years—at the Finley Coal Company?

Mrs. JONES. Yeah, just guessing at it now.

Chairman PERKINS. Did you ever have any conversations with Rufus Jones, your husband, about working conditions at the Finley Coal Company?

Mrs. JONES. Well, all he told me, he said Charles drunk all the time.

Chairman PERKINS. Repeat that—go ahead.

Mrs. JONES. He said Charles drunk all the time; he never talked much to me now.

Chairman PERKINS. Did he . . .

Mrs. JONES. Then he come home with the headache and said . . .

Chairman PERKINS. And what?

Mrs. JONES. The shooting cables, said give him the headache ever evening; he come home with the headache, about ever evening; that's all I ever heard him say.

Chairman PERKINS. Came home with the headache because of the shooting?

Mrs. JONES. Yeah.

\* \* \* \* \*

Chairman PERKINS. Tell the committee your name.

Mrs. GRAY. Nancy Gray.

Chairman PERKINS. And do you have any children?

Mrs. GRAY. Yes, I have two.

Chairman PERKINS. You have two children? And your husband's name?

Mrs. GRAY. Lawrence Gray.

Chairman PERKINS. And he was one of the victims of the fatal accident over there on the 30th in the Finley Mining Company?

Mrs. GRAY. Yeah.

Chairman PERKINS. How long had your husband been working at the Finley Coal Company?

Mrs. GRAY. He had been working two years or more.

Chairman PERKINS. And he was there when the mine opened up and lost his life there on December the 30th?

Mrs. GRAY. Yeah.

Chairman PERKINS. What capacity did he work? We know he worked on the day shift. Speak up a little, Mrs. Gray.

Mrs. GRAY. What do you mean?

Chairman PERKINS. What was his job?

Mrs. GRAY. He was a drill man.

Chairman PERKINS. He was what?

Mrs. GRAY. He was a drill man.

Chairman PERKINS. He was a drill man?

Mrs. GRAY. Yeah.

Chairman PERKINS. Did you hear him say anything about holes to drill on the day of the 30th?

Mrs. GRAY. No. When he left for work that morning he didn't say anything about the holes to drill but he said it was dangerous over there.

Chairman PERKINS. Said what?

Mrs. GRAY. He said it was dangerous over there.

Chairman PERKINS. Said it was dangerous over there?

Mrs. GRAY. Yeah.

Chairman PERKINS. And what did he say to describe the dangerous condition?

Mrs. GRAY. He said they was shooting with Primacord, said it was illegal.

Chairman PERKINS. He told you that they were shooting with Primacord and said it was illegal?

Mrs. GRAY. Yeah, he said they got some stuff to shoot with and it was illegal.

Chairman PERKINS. And did that seem to be worrying your husband?

Mrs. GRAY. Yes, he was a worrying 'til he couldn't sleep at night.

Chairman PERKINS. Worrying to the point, you tell the committee, that he couldn't sleep at night?

Mrs. GRAY. Yes, 'til he didn't want to go to work on Monday morning.

Chairman PERKINS. And didn't want to go to work on Monday morning?

Is that right?

Mrs. GRAY. Yes.

Chairman PERKINS. And this is the day that he got killed?

Mrs. GRAY. Yeah. I mean he didn't particularly want to go that day; he would talk, said he didn't care if he went to work or not.

Chairman PERKINS. And why did he specifically state that he didn't care whether he went to work or not?

Mrs. GRAY. Because it was dangerous.

Chairman PERKINS. What?

Mrs. GRAY. Because it was dangerous.

Chairman PERKINS. Because it was dangerous?

Mrs. GRAY. Yeah, he said Charles was going to get some men killed over there or hurt, and said when they did they was going to sew him up.

Chairman PERKINS. Said what?

Mrs. GRAY. He said Charles was going to fool around over there until they got some men hurt or killed, and said they would sew him up.

Chairman PERKINS. Do you know anything about any other acts or conduct of any individuals around that mine there?

Mrs. GRAY. Well, everybody states that Charles was drunk; was over there drunk, and Lawrence told me, said he would be over there drunk, and things.

Chairman PERKINS. Your husband told you that?

Mrs. GRAY. Yes, he has come home on Friday evenings, and he said that Charles would be over there drunk.

Chairman PERKINS. He came home on Friday and told you that?

Mrs. GRAY. Yeah, a few times.

Chairman PERKINS. Now how many times did he tell you that?

Mrs. GRAY. Well, I don't remember; he would just come home and he would say "Charles is on one, over there at the mines"; and I've seen him drunk; he come to my house one Saturday night; me and Lawrence was watching television, and he come in drunk, and he wanted Lawrence to take him home, and Lawrence took him home; he had run his truck in the ditch.

Chairman PERKINS. Who ran the truck in the ditch?

Mrs. GRAY. Charles Finley.

Chairman PERKINS. When was that?

Mrs. GRAY. It was one Saturday night; it wasn't too long ago.

Chairman PERKINS. It was one Saturday night?

Mrs. GRAY. It was about November, I think it was. I really don't remember.

Chairman PERKINS. He had got his truck in the ditch?

Mrs. GRAY. Yeah.

Chairman PERKINS. And what was his condition did you say?

Mrs. GRAY. He was drunk. He come in to my door and he was a stuttering; I didn't know what was wrong with him; that's the first time I ever seen the man up close.

Chairman PERKINS. And who do you say took him home?

Mrs. GRAY. Lawrence took him home.

Chairman PERKINS. Why did your husband take him home?

Mrs. GRAY. Well, he just felt sorry for him, I guess, because he asked him to take him home.

Chairman PERKINS. And where was his truck at?

Mrs. GRAY. It was across the hill in a ditch somewhere.

Chairman PERKINS. And who told you that? Charles?

Mrs. GRAY. Charles come in and he told us about it.

Chairman PERKINS. Did your husband have any conversations about any other conditions existing there at the mines on any other occasion?

Mrs. GRAY. He said something about—something about 'em drilling some holes one night and they didn't shoot 'em. It was on Monday, I think when he told 'em; I heard him telling my brother while he was bathing.

Chairman PERKINS. When was that? The Monday . . .

Mrs. GRAY. I believe it was on Monday; I'm not sure now.

Chairman PERKINS. How long was that before he got killed?

Mrs. GRAY. It was on Monday.

Chairman PERKINS. And.

Mrs. GRAY. I think it was on the Monday; I'm really not sure, because I don't . . .

Chairman PERKINS. Was he talking about the holes the night before?



Mrs. GRAY. He said the night men—I don't know which shift of night men it was—said they drilled some holes and they didn't shoot 'em or something.

Chairman PERKINS. And said—did they say they were going to be shot the next day?

Mrs. GRAY. No, I don't remember. They must have drilled 'em for the day men to shoot, and left them for the day men to shoot.

Chairman PERKINS. But your husband seemed to be worried about that?

Mrs. GRAY. Yeah, he was always worried; he said Charles was going to fool around until he got a bunch of men hurt or killed, and said they would sew him up when he did, and I asked him to quit and he said "Well," said "they are looking to get the mines shut down at anytime," the inspectors come around and shut it down, and he said he didn't want to quit, said he wanted to try to draw his unemployment when they laid him off.

Chairman PERKINS. Said he didn't what?

Mrs. GRAY. Said he didn't want to quit; said he wanted to try to draw his unemployment when they laid him off.

Chairman PERKINS. Didn't want to quit because he said they were looking to get the mines shut down any time?

Mrs. GRAY. Yeah. And he said something about the inspectors acoming over there, and said they wouldn't go inside the mines. I don't know which ones it was, the federal or . . .

Chairman PERKINS. He told you the inspectors would come over there and wouldn't go in the mine?

Mrs. GRAY. Yeah, said most of the time they'd just stand out in their suits and things and wouldn't go inside the mines.

Chairman PERKINS. How long was that your husband told you that before this.

Mrs. GRAY. Well, I really can't swear to it because I don't know.

Chairman PERKINS. Did he tell you that more than one time, that the inspectors would come there and wouldn't go in the mines?

Mrs. GRAY. Yeah, I heard him say that the inspectors and things was a coming to the mines.

Chairman PERKINS. How many times do you think that he made the statement that the inspectors would come there and wouldn't go in the mines?

Mrs. GRAY. Well, I don't remember; he made it quite a few times.

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Chairman PERKINS. Now, did he say anything about dynamite—did your husband say anything about dynamite underground? What did you mean to tell us about that?

Mrs. GRAY. About the dynamite?

Chairman PERKINS. Yes.

Mrs. GRAY. He said something about them taking some dynamite in there one night, one time.

Chairman PERKINS. And told you about the Primacord?

Mrs. GRAY. Yeah, they shot some with Primacord over there in the mines; Lawrence said, and he come home a telling about it, and he said it blowed the men's caps around sideways on their heads.

Chairman PERKINS. Blowed the men's caps around . . .

Mrs. GRAY. Yeah, some man, the men there was shooting or something, and said it blowed their caps around sideways on their head.

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Chairman PERKINS. Let me ask you one more question. Do you remember having a conversation with Charlie Finley where he stated to you about taking someone in the mines?

Mrs. GRAY. Oh, yeah.

Chairman PERKINS. Tell us about that.

Mrs. GRAY. He took two Frontier Nursing Services into the mines, back in the summer; I don't remember what date it was, and he took his two little boys in there all last summer when they was out of school.

Chairman PERKINS. Took two ladies in the mines?

Mrs. GRAY. Yeah.

Chairman PERKINS. Who told you that?

Mrs. GRAY. Lawrence told me, they drove right up beside Lawrence where he was at, drilling coal; Charles and Monroe Mitchell with the two women.

Chairman PERKINS. Charles and Monroe who?

Mrs. GRAY. Monroe Mitchell.

Chairman PERKINS. Were the two men?

Mrs. GRAY. Yeah. Monroe Mitchell was the boss there at the time. I think it was.

Chairman PERKINS. And you say he also took two children in the mines?

Mrs. GRAY. He took his two little boys in there in the mines and Lawrence said he was worried about them, all the time.

Chairman PERKINS. Was this the same occasion or a different occasion?

Mrs. GRAY. No, it was a different occasion when he—I don't guess he had his children there the day he took the two nurses in there. Now, I don't want to strike back at Charles for revenge or anything, because I don't know how I feel about him (Crying).

Chairman PERKINS. Well, we are sorry we had to call you here today, and we are mighty thankful that you had the courage. . . .

Mrs. GRAY. I really don't know how I feel about him. . . .

Chairman PERKINS. To tell us just what took place. And we thank you.

Mrs. GRAY. I don't know if it was his fault or not, but I just wanted to tell everything that I know and it's no lie.

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Chairman PERKINS. Tell us your name, Mrs. Sizemore.

Mrs. SIZEMORE. Bobby Sizemore.

Chairman PERKINS. And what was your husband's name?

Mrs. SIZEMORE. Arnold.

Chairman PERKINS. And how long had he been working for the Finley Coal Company?

Mrs. SIZEMORE. Well, I guess about four years the last time but he had worked most of the time for them.

Chairman PERKINS. The last time about four years?

Mrs. SIZEMORE. Yes.

Chairman PERKINS. He worked on the day shift?

Mrs. SIZEMORE. Yes.

Chairman PERKINS. He lost his life there on December the 30th last year?

Mrs. SIZEMORE. Uh huh.

Chairman PERKINS. Do you have children?

Mrs. SIZEMORE. I have three.

Chairman PERKINS. You have three children? Now what conversations did your husband, Arnold, have with you concerning the condition in this mine there?

Mrs. SIZEMORE. Well, he didn't talk too awful much about it, but he told us a couple of times that it was dangerous and said when they would be shooting, you know . . .

Chairman PERKINS. Talk louder.

Mrs. SIZEMORE. Said when they would put off shots sometimes the fire would fly across the top.

Chairman PERKINS. Put out shots sometimes the fire would fly where?

Mrs. SIZEMORE. Across the top.

Chairman PERKINS. Across the where?

Mrs. SIZEMORE. Top.

Chairman PERKINS. Across the top? Did he tell you what kind of explosives were being used?

Mrs. SIZEMORE. No, he didn't.

Chairman PERKINS. And what else did he say?

Mrs. SIZEMORE. Well, he had been talking about quitting and finding another job but my brother worked there and he was just young and didn't want to leave, unless he could find them both a job, and through Christmas now, some of them didn't work but he did, and he went back on Saturday morning and worked too.

Chairman PERKINS. And did he comment to you any about him working after he came in on that Saturday?

Mrs. SIZEMORE. No, he didn't.

Chairman PERKINS. Before he went over there?

Mrs. SIZEMORE. No.

Chairman PERKINS. On Sunday did he make any statement?

Mrs. SIZEMORE. No, he didn't.

Chairman PERKINS. Well, what other conditions did he say that he was worried about there in the mines? Tell the committee.

Mrs. SIZEMORE. Well, he just said, you know, that the man, some of them wasn't too careful and that Charles would come drunk and they— . . .

Chairman PERKINS. Now repeat. What did you say? You said some of the men wouldn't be careful and what else?

Mrs. SIZEMORE. Yes, sir, and he said Charles would come to the mines drunk, and he just didn't keep the right kind of bosses.

Chairman PERKINS. And just didn't have the right kind of bosses, is that what he said?

Mrs. SIZEMORE. Yes.

Chairman PERKINS. Did your husband seem to be worried about conditions existing there?

Mrs. SIZEMORE. Yes, he did.

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Chairman PERKINS. Tell the committee your name.

Mrs. YOUNG. Daily Young.

Chairman PERKINS. And your husband was one of the victims of this Finley Coal Company mine disaster?

Mrs. YOUNG. Yes.

Chairman PERKINS. Did you and your husband have any children?

Mrs. YOUNG. Yeah, we had one little boy.

Chairman PERKINS. One little boy, and how long had your husband worked at the Finley Coal Company?

Mrs. YOUNG. About four years.

Chairman PERKINS. About four years, and what was his job on the day shift?

Mrs. YOUNG. He helped out on the machine.

Chairman PERKINS. He helped on the machine; what did your husband tell you about working conditions in the mine?

Mrs. YOUNG. That they was all bad over there.

Chairman PERKINS. What did he tell you?

Mrs. YOUNG. He talked about the dust and the cable smoke, and about the equipment running over the cable—it was all bad; they done everything wrong.

Chairman PERKINS. Did your husband repeatedly make those assertions to you?

Mrs. YOUNG. About the cable and the dust, yeah.

Chairman PERKINS. About the cable and the dust?

Mrs. YOUNG. Talked about how dangerous it was when they run over the cables with the—I imagine it was the jeeps, I didn't know much about the mines.

Chairman PERKINS. And when was he making these complaints with reference to the time of the fatal day there?

Mrs. YOUNG. I don't know about the time but they made them statements all the time. The inspectors would come but the men would know all about when they would come; they would smoke until . . .

Chairman PERKINS. You are telling the committee that when the inspectors would come the Finleys would know about it?

Mrs. YOUNG. Yeah, because they would smoke until that day and then they would buy tobacco, because my husband bought tobacco, to chew when the inspectors come, but the inspectors didn't care and neither did Charles Finley, because he stayed drunk all the time. If that mines had been operated right this wouldn't never happened.

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Mr. FORD. Was there more than one occasion when your husband indicated to you that he knew before he went to work that day that was when the inspector was going to come?

Mrs. YOUNG. Well, there's a little grocery store up there, and he would go and buy tobacco; I've still got a lot of his tobacco papers—when he pulled his mining clothes off he would leave them in the box and I've still got them over

there; he chewed tobacco—just in the mines—I never did see him chew tobacco but he bought it so—it was empty.

Mr. FORD. Did your husband chew tobacco at other times?

Mrs. YOUNG. No.

Mr. FORD. So you relate the times that he would go and buy chewing tobacco to the times that he knew the inspectors were going to come and he wouldn't be permitted to smoke in the mine? Did that happen frequently?

Mrs. YOUNG. Yes, because I found just the other day when I was cleaning his box out I found three little tobacco empties—packs empty.

Mr. FORD. Just so we are sure he told you without equivocation that that was the reason he was taking chewing tobacco into the mines was because he expected the inspector?

Mrs. YOUNG. Yes, sir.

Mr. FORD. That's rather startling since the law that we passed specifically prohibited any advance notice to the people in the mine that an inspector is on his way.

Mrs. YOUNG. I don't know nothing about it but I know he knewed.

Mr. FORD. Thank you.

Mr. LANDGREBE. Mam, did he ever mention how this information was transmitted?

Mrs. YOUNG. He said—he would say “the inspector is supposed to be there tomorrow” or something like that, and he said when they did come that they loaded them down with some kind of equipment—I think they was them little things you put on your face and things, on their belts they carried, they didn't carry them no time except then.

Mr. LANDGREBE. Do you suppose there was ever a time when this was just an ill founded rumor and they didn't come? Did this seem to be pretty accurate information?

Mrs. YOUNG. I don't know, but I do know ever once in a while he would buy tobacco because he was a looking for the inspectors.

Chairman PERKINS. And those were rescuers that they would wear when the inspectors were coming?

Mrs. YOUNG. Some kind of little things because he talked about it.

Chairman PERKINS. You had heard him talk about the inspectors coming on several occasions?

Mrs. YOUNG. Yes.

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Chairman PERKINS. Mrs. Phillips, what is your first name?

Mrs. PHILLIPS. Dorothy.

Chairman PERKINS. Dorothy Phillips?

Mrs. PHILLIPS. Yes, sir.

Chairman PERKINS. And your husband was one of the victims of the Finley mine disaster?

Mrs. PHILLIPS. Yes, sir.

Chairman PERKINS. And how many children did you and your husband have?

Mrs. PHILLIPS. We had eight.

Chairman PERKINS. How many?

Mrs. PHILLIPS. Eight.

Chairman PERKINS. Eight children?

Mrs. PHILLIPS. Yes.

Chairman PERKINS. Now tell the committee how long your husband had been working at the Finley Coal Company?

Mrs. PHILLIPS. Well, he had worked off and on for Charles for about nine years. This last time he had been working five months.

Chairman PERKINS. The last time about five months?

Mrs. PHILLIPS. Yes, sir.

Chairman PERKINS. And what was the condition of the mine during those five months that he worked, or shortly before the fatal accident, if you know, Mrs. Phillips? Tell the committee.

Mrs. PHILLIPS. I just know what Earl said, he would come in of the night . . .

Chairman PERKINS. Let's have it real quiet, so we can hear the witnesses.

Mrs. PHILLIPS. He would come in of the night and have to take his coat off and dust the dust off before he would come in the house and he always kicked his shoes off and try to get the dust off, and he said Charles was going to fool around, and wasn't paying no attention to what they was doing, 'til he got a bunch of men killed, and when he first started talking about it he hadn't been working too long, and he got up one morning, and always of the night when he would come in he would get him a extra pack of cigarettes, you know, went and—and then he would just lay them up that night and the next morning he would get him a full pack to take to work—and I noticed him one morning he had already got him a pack to take to work, and he picked up another pack that he had opened the night before and I says "Earl, don't tell me you've gone to smoking that much", and he said "No, they told us to bring a extra pack to leave outside in case the inspectors come", he said he wanted to leave that piece of a pack outside, and he said they was so much dust in there that you couldn't hardly breathe for it, and he said they wouldn't water it down nor nothing else.

Chairman PERKINS. He told you that they were bringing an extra pack of cigarettes to—in other words as a camouflage to leave outside?

Mrs. PHILLIPS. Yes, sir, that's right.

Chairman PERKINS. So that the inspectors would think that they were—

Mrs. PHILLIPS. Smoking outside instead of inside.

Chairman PERKINS. Smoking outside instead of inside? Now what else did your husband convey to you, Mrs. Phillips?

Mrs. PHILLIPS. Well, he just said Charles was drunk all the time, said he didn't even know what was going on at the mines, said he didn't know half the time who was working for him, said he couldn't operate a mine like that, and he didn't know what they was doing, and he said they brought some kind of—

Chairman PERKINS. Talk just a little louder. (Let's have it quiet here, please, so we can hear the witness).

Mrs. PHILLIPS. He said they brought some kind of equipment with them to test the dust—I mean they brought them to give to the miners to take inside to test the rock dust on inside, and they was supposed to carry them on the inside with them, and he said that they didn't give them to none of them but I believe he said Walter Bentley was one of them and another'n or two, and when they went in they tried to hide them to keep from concealing so much dust in them.

Chairman PERKINS. Did your husband complain about excessive coal dust in this mine?

Mrs. PHILLIPS. Yes, sir, he did; he said it was a sight how much dust they was in there, and he would come home of the night and he would cough it up and blow it out of his nose and it wouldn't even come out of his handkerchiefs when I would wash them.

Chairman PERKINS. He would cough up dust when he would come home of the night?

Mrs. PHILLIPS. Yes, sir.

Chairman PERKINS. Was this a constant and continuous thing?

Mrs. PHILLIPS. It started—he had been working there about three months when it started getting so bad, where he coughed like that.

Chairman PERKINS. And you are telling the committee that he got worse continuously?

Mrs. PHILLIPS. Yes, sir, it did.

Chairman PERKINS. Was it generally understood throughout the community there that this mine was in a dangerous condition from the standpoint of operation and it was dangerous to work in the mine?

Mrs. PHILLIPS. Yes, sir; he said they were liable to be closed down just any time.

Chairman PERKINS. Now, Mrs. Phillips, do you have anything else you care to tell the committee?

Mrs. PHILLIPS. No, not that I know of.

Chairman PERKINS. How long had your husband been complaining about the conditions in that mine?

Mrs. PHILLIPS. Ever since he had been started back working for Charles.

Chairman PERKINS. And what time did he start back to work?

Mrs. PHILLIPS. It was the last week in July 196—

Chairman PERKINS. The last week in July?

Mrs. PHILLIPS. 1970, yes.

Chairman PERKINS. Did he say anything about quitting or anything along that line?

Mrs. PHILLIPS. Yes, sir, he said that he was going to work 'til the first of the year and then he thought he would go back to Chicago and get his job back at Bell & Howell, where he used to work.

Chairman PERKINS. Did he make any statements that he was afraid to continue working in the mines?

Mrs. PHILLIPS. Yes, sir, he sure did; he said it was too dangerous to work in there, the way the mines were and all that dust and everything.

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Chairman PERKINS. Tell us your name.

Mrs. COUCH. Daisy Couch.

Chairman PERKINS. And what was your husband's name?

Mrs. COUCH. Howard Couch.

Chairman PERKINS. He was in the unfortunate accident that took place on December the 30th?

Mrs. COUCH. Yes.

Chairman PERKINS. And what was his job with the Finley Coal Company?

Mrs. COUCH. He drove a loader.

Chairman PERKINS. What's that?

Mrs. COUCH. He drove a loader; a loader.

Chairman PERKINS. Loader? Yeah. Now how long had he been working for the Finley Coal Company?

Mrs. COUCH. About four years.

Chairman PERKINS. About how many years?

Mrs. COUCH. Four.

Chairman PERKINS. Four years? He had worked ever since the Finley brothers had opened this particular mine?

Mrs. COUCH. Yeah.

Chairman PERKINS. Had he made any complaints about the conditions in the mine recently before the accident?

Mrs. COUCH. Yeah, he always talked about how dusty it was; said that Charles Finley wasn't fit to run a mine.

Chairman PERKINS. How was that?

Mrs. COUCH. Charles Finley—he said that Charles Finley wasn't fit to run a mine. Ever since November he hadn't wanted to work there.

Chairman PERKINS. I don't think some of the members heard you.

(Let's have it real quiet and refrain from leaving until after the witnesses get through.) Go ahead, again.

Mrs. COUCH. Howard said that Charles Finley wasn't fit to run a mine.

Chairman PERKINS. What other conversations did he have with you about the mine?

Mrs. COUCH. Well, he talked about Charles a-talking to the men, said the men couldn't work for him.

Chairman PERKINS. Said what?

Mrs. COUCH. Said that the miners couldn't work for Charles, aggravating them, being over there drunk all the time.

Chairman PERKINS. When was it—when did he make these remarks, and how often did he make remarks like that to you?

Mrs. COUCH. Ever since he worked under Charles Finley.

Chairman PERKINS. What?

Mrs. COUCH. Ever since he's worked in under Charles Finley.

Chairman PERKINS. You tell us that he was complaining about the dust?

Mrs. COUCH. Yeah.

Chairman PERKINS. Any other conditions in the mine that your husband complained about?

Mrs. COUCH. No, just the dust.

Chairman PERKINS. Did he ever make mention of the fact that he was going to quit or anything along that line?

Mrs. COUCH. No. He said they was going to shut it down after Christmas.

Chairman PERKINS. Said they were going to shut it down after Christmas?

Mrs. COUCH. Yes, said the inspectors was supposed to come, but they never come.

Mr. FORD. Are you saying that your husband, as apparently other husbands who are quoted here, felt sure that the federal inspectors were going to close the mine right after Christmas?

Mrs. COUCH. Yeah.

Mr. FORD. Did he give you any indications of any change in the pace or in the operation of the mine in anticipation of this closing?

Mrs. COUCH. No. He said it ought to be shut down a long time ago.

Mr. FORD. Did you and he ever discuss the question of his rights to unemployment if he stayed until the federal inspectors shut the mine down?

Mrs. COUCH. If Howard would have quit he wouldn't draw no unemployment.

Mr. FORD. But if he stayed on until the inspectors closed the mine, he would?

Mrs. COUCH. He could have drawn it.

Mr. LANDGREBE. Mrs. Couch, how many children do you folks have?

Mrs. COUCH. Four.

Mr. LANDGREBE. Four?

Mrs. COUCH. Uh huh.

Mr. LANDGREBE. And your husband worked for this company for four years?

Mrs. COUCH. Yes.

Mr. LANDGREBE. And had he worked in the mines before that?

Mrs. COUCH. He worked in the mines fifteen years.

Mr. LANDGREBE. A total of fifteen years?

Mrs. COUCH. Yes.

Mr. LANDGREBE. How old was he when he passed away?

Mrs. COUCH. Thirty-four.

Mr. LANDGREBE. Thirty-four? You are another one of the people that emphasized that this—at least the rumors or comments from your deceased husband—was that this Charles was a heavy drinker.

Mrs. COUCH. I don't have to have Howard's word for that. I've seen him with my own eyes.

Mr. LANDGREBE. What?

Mrs. COUCH. I've seen Charles Finley drunk.

Mr. LANDGREBE. Do you know of any time—could you give us a specific instance when he, because of his inebriated condition, he had done something in the mine that would endanger the life of the men in the mine?

Mrs. COUCH. Well, there was this Wagers boy, in November, got killed, and Kenneth Ray Morgan worked over there and Kenneth Ray Morgan told them what caused it; well, Charles talked so bad to him he had to quit, because he told the truth about it.

Mr. LANDGREBE. I don't believe I have any more questions, Mr. Chairman.

Chairman PERKINS. What was the conversation that he had with the employee that quit the mines? Repeat that again.

Mrs. COUCH. He talked so bad to him that he had to quit.

Chairman PERKINS. And his name was?

Mrs. COUCH. Kenneth Ray Morgan.

Chairman PERKINS. M O R G A N?

Mrs. COUCH. Uh huh. And the boy that got killed was a Wagers.

Chairman PERKINS. Do you know what the conversation happened to be?

Mrs. COUCH. No. I just heard Howard say that Charles talked so bad to him that he had to quit.

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Chairman PERKINS. Tell the committee your name.

Mrs. COLLINS. Jewell Collins.

Chairman PERKINS. And where do you live?

Mrs. COLLINS. I live at Bear Branch, in Leslie County.

Chairman PERKINS. And who was your husband?

Mrs. COLLINS. Lonnie Collins.

Chairman PERKINS. Was he one of the victims in this fatal accident on December 30th?

Mrs. COLLINS. Yes, he was.

Chairman PERKINS. And did you—how many children do you and Lonnie have?

Mrs. COLLINS. One.

Chairman PERKINS. Did you have any conversation with Lonnie about working conditions in this mine over there at the Finley Coal Company?

Mrs. COLLINS. Well, he very seldom ever told me anything because he knew how I worried over him, but the week of Christmas they was supposed to work Monday, Tuesday and Wednesday, and he came home on Tuesday evening and he said "Jewell," he said "I don't work tomorrow," I said "Well, why"? He said "The inspectors are supposed to come" and said "We're not working", and so—we just—we dropped it there; I didn't say anything else, I mean, and the next day we went to town and as we was going along.

Chairman PERKINS. That's on Wednesday?

Mrs. COLLINS. On Wednesday, we went by where they are building a new Daniel Boone Parkway, and he said "I wish that I could operate one of them big trucks", he said "If I could", said "I wouldn't go back in the mines no more", he said "because I'm afraid", and I said "Well, what are you afraid of"? I said "I know they're dangerous", he said "Well, Jewell," he said "they are using some things in there that they shouldn't be using", and he said "I'm afraid I'm a going to get killed, away from you and the baby". Well, I said "If you feel that way," I said "don't go back no more", I said "We can live on bread and water", I said "until you find some work". He said "Well," said "If I quit and can't find a job," said "I can't draw my unemployed", and he said "I think they'll close it down anyway" and he said "I'll just work on", he said, "and take a chance", he said "until they do close it" but he said "I'm sure they'll close it", and we went to my mother and father's house on Sunday evening and my father is sick; he's a coal miner, he had been a coal miner all his life, and he's not hardly able to walk across the floor,

Chairman PERKINS. What is your father's name?

Mrs. COLLINS. Burley Stubblefield.

Chairman PERKINS. And where does he live?

Mrs. COLLINS. He lives at Bear Branch.

Chairman PERKINS. Alright, go ahead.

Mrs. COLLINS. And he's down almost, just about all the time, from injuries he got in the coal mines, and my husband went over to the side of the bed and set down and was talking to him and he was telling my father of some kind of curtains they was stretching in the mines, I don't even know what he told him they was, but I do remember he said "curtains", and my father told him, he said "Son," he said "I'm a old coal miner", he said "I've spent my entire life in 'em" and he said "if they're stretching those curtains", he said "you'd better be careful, son", he said "That's all I know to tell you", and I begged my husband that night, I said "Don't go back to the mines".

Chairman PERKINS. This was on Sunday night?

Mrs. COLLINS. This was on Sunday night. I said "Don't go back to the mines", I said "I'll get a job if I have to", I said "and work", I said "until you find something" but he didn't want to quit because he was afraid he couldn't draw unemployed, and we had a car and had to make a car payment, and he just was afraid to quit work, and then he went on and was killed.

Chairman PERKINS. But he mentioned to you on several occasions the dangerous conditions that existed in that mine?

Mrs. COLLINS. Yes, and he would come home sick from breathing coal dust, and as he walked through the floors he would say to me, he would say, "honey, I hate to carry this coal dust through the house but I can't help it," and as he would go through the house you could see it a fogging in the air around his clothes, and sometimes it would be 8:00 and 9:00 o'clock in the night before he could bath, he would be sick and he would have to lay down in the floor and I would have to put ice on his head, he would have such a headache.

Chairman PERKINS. Did he think that his headache resulted from the exposures or coal dust?

Mrs. COLLINS. He said from cable smoke and dust.

Chairman PERKINS. Cable smoke and dust?

Mrs. COLLINS. And dust, yes, and when I would wash his clothes the wet dust and stuff in the bottom of the washing machine would be a inch or two thick, I couldn't hardly get it out.

Chairman PERKINS. Regardless of how often you washed?

Mrs. COLLINS. Yes, regardless of how often I washed, and he would change sometimes two and three times a week, I wouldn't let him wear a outfit over maybe a day or two because he would get so dusty.



Chairman PERKINS. Did he complain? Did he make remarks about the dust in the mines to you?

Mrs. COLLINS. Yes, he told me it was knee deep. I begged him to quit the mines, but he thought that he couldn't survive if he didn't work. He was educated—he had a high school education, and he didn't have to work in the mines but that's all there is in this country.

The statements of the widows speak to the working conditions at the Finley mine prior to the disaster with ringing clarity; and comment would be superfluous. The question might be asked, however: Why would a miner remain employed under such circumstances? Perhaps the answer is in part contained in the following dialogue between Representative Ford and Thomas Mark, Manager of the Bureau's subdistrict office at Barbourville, Kentucky:

Mr. FORD. As a practical matter, you just indicated that if somebody had called you and told you—you are well acquainted in this area—do you really expect that very many of the people who are depending on the little mines of this kind for their livelihood are going to report on safety conditions?

Mr. MARK. Well, we don't get many notifications.

Mr. FORD. You don't frequently find a violation because an employee tells you about it?

Mr. MARK. We don't learn of very many.

Mr. FORD. You have to go out and root it out yourself?

Mr. MARK. That's right.

Mr. FORD. And it's not hard to understand why employees would be extremely reluctant to jeopardize their jobs by telling you there was something like that going on?

Mr. MARK. That's right.

At a later point during the hearing, Frank Salyers, a 74-year-old veteran miner in the Hazard #4 seam of coal testified, and the question was again raised.

Mr. FORD. Let me ask—you mentioned the years of the depression. Over the years that you have been with the mines, is it noticeable that when the economy gets bad and jobs are tough, that safety goes out the window?

Mr. SALYERS. Yes.

Mr. FORD. Is that a fair assumption, that there is a relationship between the availability of jobs and willingness of men to work under unsafe conditions?

Mr. SALYERS. It oughtn't to be but they do it; just like that fellow told me I ought to know better and he made me—he learned me better—and pulled me out of there.

Mr. FORD. But you are telling me in this part of the country these people would rather work in a dangerous mine than be out of work, when they have families?

Mr. SALYERS. Well, sometimes they are forced to. Let's say when the Union left this coal field, if a man had a family he had to go to work, at something—you know that. See, the Union left this Kentucky River; that's caused a lot of trouble here. I don't reckon they ever was nothing like it in this part of the country. You are forced to do things you don't want to do, you know what I mean. I've been forced to do things I didn't want to do.

Chairman PERKINS. But you had never seen an operation carried on in your lifetime like this one, is that—

Mr. SALYERS. I never heard of that before.

Chairman PERKINS. Never heard of an operation like that?

Mr. SALYERS. Never heard of nothing like that before. Hope I don't no more because that's worrisome, to think about thirty-eight dead—about a hundred little orphan children.

(8) Only one miner—A. T. Collins—working the first shift on December 30 survived the disaster.

Chairman PERKINS. Mr. Collins, I believe you have told the committee that your duties and responsibilities had to do with keeping the conveyor belt in order and keeping the rockdusting along the conveyor belt, was that your chief responsibility?

Mr. COLLINS. That's right.

Chairman PERKINS. Now, where were you on the morning of the explosion?

Mr. COLLINS. Well . . .

Chairman PERKINS. What had you done on the morning of the 30th up until the time of the explosion? Tell the committee.

Mr. COLLINS. Well, they had hired a guy by the name of Lee Mitchell and they had what they called a head drive, see, which was a cross belt about 500 feet over from the main belt line leading outside. Well, I had went up there to break him in on this job, showing him what he needed to do, see, and while I was up there showing him what part of it to grease or to take care of it the Superintendent, Walter Hibbard, come up and hollered at me.

Chairman PERKINS. What time was that?

Mr. COLLINS. Well, that was around liked a little being 11:00 o'clock. I wouldn't say exactly.

Chairman PERKINS. Go ahead.

Mr. COLLINS. We talked a few minutes, me and Walter did, and . . .

Chairman PERKINS. Tell the committee what you talked about and who was Walter Hibbard.

Mr. COLLINS. Walter Hibbard was the Superintendent on the inside of the mines. He was in charge of all the mines, Walter was, at that time.

Chairman PERKINS. What did you talk about? Go ahead.

Mr. COLLINS. And Walter told me, he said "Well, I've brought Walter Bentley down here to shoot a couple of holes" and he said "Don't let it excite you." I mean I wouldn't say exactly the words like that but in words not let it scare me, you know. Just exactly the words that he said I don't remember right now, but anyway he meant not to let it bother with me, see, and kinda punched me.

Chairman PERKINS. And when he kinda punched you what did that indicate to you? When he said not to let it bother you, that he was going to shoot a couple of holes, and kinda punched you?

Mr. COLLINS. Well, they had shot one hole before that and shot out seventeen brattices on one shift. I wouldn't recall exactly what shift they shot it on.

Chairman PERKINS. How long was it before they had destroyed the 17 brattices?

Mr. COLLINS. I wouldn't say. I don't remember. It hadn't been too awful long.

Chairman PERKINS. A week, two weeks, three weeks or four?

Mr. COLLINS. Well, it could have been around three weeks, but anyway I know if they shot seventeen—I mean shot one boom hole and it shot out seventeen . . .

Chairman PERKINS. How do you know they shot seventeen on that occasion and blew the brattice cloth or destroyed seventeen brattices?

Mr. COLLINS. I help put the seventeen brattices back.

Chairman PERKINS. What is the purpose of these brattice cloths in the mines? Tell the committee.

Mr. COLLINS. Well, your belt line goes like that, see, (indicating); well, your brattice line, each one, well, goes up through here, and seals that, see. Well, you got a in take and out take, and come up one way and go back out the other, see, and follow the belt back out. These brattices holds that air.

Chairman PERKINS. Now, the brattices, were they concrete blocks or were they just regular cloth?

Mr. COLLINS. They was concrete blocks.

Chairman PERKINS. And how far away were they from this loading point that was shot that destroyed these 17 brattices?

Mr. COLLINS. Well, I wouldn't say exactly; it wasn't too far—Maybe—I don't remember because I didn't count the breaks or anything like that.

Chairman PERKINS. Did you know about Primacord being used in that shot?

Mr. COLLINS. Well, I don't know what they used but I found a roll of Primacord right where they shot it at, half a roll.

Chairman PERKINS. And it was about three weeks before, to the best of your knowledge?

Mr. COLLINS. The best of my knowledge, something around like that.

Chairman PERKINS. Did you find any of the Primacord on any other occasion?

Mr. COLLINS. Yes, I did.

Chairman PERKINS. When was the other occasion that you found it?

Mr. COLLINS. When they set this 500 foot head drive cross belt we called it, which was a head drive going down to the right, why they shot 15 out, what they called 15. Well, right across the belt they was shooting for 16, which would have been head and head like that (indicating), well on 15, I looked over there and seen that, half a roll of Primacord laying there and . . .

Chairman PERKINS. About how long was that before the 30th in your judgment?

Mr. COLLINS. Well, I don't remember exactly how long they run that now before they moved back down.

Mr. FORD. Mr. Collins, Mr. Robert Combs testified before you that on the 22nd, on the third shift, he did some blasting and that he used Primacord that was on a reel, and that when he finished blasting the reel was left in the mine and was pulled back from the point, from where the shooting took place, which to the best of his knowledge, he testified here a little while ago, it was left in the mine, so that would tend to back you up.

Mr. COLLINS. I imagine so because it was at the same spot which everything took effect.

Mr. FORD. And that would have been the 22nd?

Mr. COLLINS. It might have been. I wouldn't swear to the date, didn't keep no record.

Chairman PERKINS. That was the second roll of the Primacord you picked up?

Mr. COLLINS. It wasn't a full roll, it was only a half a roll in each one.

Chairman PERKINS. What did you do when you first found the first roll, did you mention it to the Superintendent, or the second roll,—and what was stated—describe it to the committee.

Mr. COLLINS. Well, Decker Whitehead, I gave it to him, the first one I found, and I said, "Here is a roll of Primacord, ain't that a little dangerous in here?" And he said, "Yeah," and he gave it to his son-in-law, Dynamite Wagers, we call him; Arnold.

Chairman PERKINS. Arnold Wagers?

Mr. COLLINS. Yes.

Chairman PERKINS. What did he say?

Mr. COLLINS. I gave it to him and he said, "Take that to the shop and get that out of here," said "I told you boys to take that out of here," and I don't know what he done with it. I gave it to him.

Chairman PERKINS. Did you see anybody carrying explosives in the mines on the 30th?

Mr. COLLINS. No, I didn't. I went in, you know, it hardly got daylight that morning, and I just went on in to my belt line, see.

Chairman PERKINS. But Walter told you about 10:00 o'clock...

Mr. COLLINS. It was a little later than 10:00.

Chairman PERKINS. A little later than 10:00?

Mr. COLLINS. Yes.

Chairman PERKINS. Where were you going at that time, when he told you that?

Mr. COLLINS. I was up there showing that guy how to run this head drive, breaking him in on it, and they was a couple of blocks had some holes in them, leaking, maybe four or five blocks out, and he asked me would I put them back in, and I told him yeah, and I put them back in.

Chairman PERKINS. And then what did you do?

Mr. COLLINS. I headed outside.

Chairman PERKINS. What did you head outside for?

Mr. COLLINS. Well, I thought if they shot one and it shot out seventeen, I figured if they shot two then it probably would shoot out seventy; shook up a little bit.

Chairman PERKINS. Where were you when this shot took place? Tell the committee.

Mr. COLLINS. About 20 feet of the face, outside.

Chairman PERKINS. Go ahead.

Mr. COLLINS. Well, I went outside and started back in, messing around.

Chairman PERKINS. What happened when you were about 20 feet of the portal and the blast went off?

Mr. COLLINS. Well, I was standing there—I was my own boss, in other words, I took care of what needed to be done.

Chairman PERKINS. We will discuss that in a moment. Go right ahead and tell what happened at that time.

Mr. COLLINS. I was just strolling around there, standing next to the belt and all at once why they—something begun hitting me in the back, up and down through there, and it downed me, and it knocked me down, and my coveralls—I had on a new set of coveralls—and it hung in them, and my light cord hung, and got me about 10 or 15 feet further, and it got me in the air, like that, and I got to where I couldn't breathe by that time, that pressure had took my breath, and I couldn't breathe, and it muscled me and throwed me on over and they was

a road about that high (indicating) went under the belt, when it threwed me over in this road why the pressure was going on me by that time, so I got down on my face and caught my breath and every time I would raise up they was so much pressure that I would have to go back down, and I went back down . . .

Chairman PERKINS. By that time were you on the outside of the mine?

Mr. COLLINS. Yeah, I was outside. It had blowed me about 50 feet maybe.

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Chairman PERKINS. How far were you away from the point of the explosion, in your judgment, from where the double boom hole was shot on the 30th?

Mr. COLLINS. Around 2200 feet.

Chairman PERKINS. 2200 feet, and you felt all this pressure to the extent you were unable to get up when you came to yourself?

Mr. COLLINS. That's right.

\* \* \* \* \*

Mr. LANDGREBE. Mr. Collins, how long have you worked in the coal mines? Mr. COLLINS. Well, in and out, around 22 years, not steady.

Mr. LANDGREBE. How long did you work for the Finleys?

Mr. COLLINS. Once before I worked for them about eight years, but this last time I have only been with them, I would say, around four months.

Mr. LANDGREBE. But 22 years you spent in and around coal mines?

Mr. COLLINS. That's right—trucking and working around the mines.

Mr. LANDGREBE. In other words you feel you could be called an experienced coalminer?

Mr. COLLINS. That's right.

Mr. LANDGREBE. Now, did you—you obviously were aware that Primacord was a dangerous explosive or type material to use in the coal mine, you experienced that before?

Mr. COLLINS. That's right.

Mr. LANDGREBE. Then you mentioned talking to the boss—was this "Dynamite", this nickname, he was the son of one of the owners, is that right?

Mr. COLLINS. Pardon me?

Mr. LANDGREBE. You pointed out that there was a—that you mentioned a roll of Primacord to someone, one of the people who owned the mine—son—this was one of the Finleys, you said "Here is a roll of dangerous material?"

Mr. COLLINS. No. That was Decker Whitehead; that was one of the bosses inside.

Mr. LANDGREBE. And he gave it to his son in law?

Mr. COLLINS. Son in law, right.

Mr. LANDGREBE. Said "Take this out of here"?

Mr. COLLINS. Yes.

Mr. LANDGREBE. Did you think about mentioning this to any of the owners of the mine? One of the Finleys?

Mr. COLLINS. Well, I went outside one evening, after I had found this second roll of Primacord, see, in 15, and like I say, they was a shooting 15 where we—well, they was—they done had 15 ready to go, running coal through it. Well, they was shooting 16 over there, which would have been head and head. That's where I found the second one at. Well, Walter Bentley and Charlie Finley was standing outside, and I told Charlie Finley, I said "I found half a roll of Primacord up there, and Walter Hibbard told me to take it over there and put it behind a rib" and I said "If you guys needs it", I says "it's laying up there, just get it or do something with it, if you want to". I told Charlie Finley and Walter Bentley both that.

Mr. LANDGREBE. Did you know at the time that the use of Primacord in an underground mine was illegal?

Mr. COLLINS. Sure, I did.

Mr. LANDGREBE. Did you know it was extremely dangerous?

Mr. COLLINS. That's right.

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Chairman PERKINS. Tell us at this point when it was that you talked to Charles Finley with reference to the 22nd, or when the seventeen brattices were destroyed.

Mr. COLLINS. It was one evening—I don't remember exactly what evening it was.

Chairman PERKINS. How long before the 30th would you say that he was present when you discussed Primacord with him?

Mr. COLLINS. Well, they had shot 15 up there and was getting ready to shoot 16, like I said.

Chairman PERKINS. In the best of your judgment how long before was it and where did this conversation take place with him?

Mr. COLLINS. Outside.

Chairman PERKINS. Near the trailer?

Mr. COLLINS. At the end of the shop, between the trailer and the shop.

Chairman PERKINS. Between the trailer and the shop—and what was Charles Finley's comment?

Mr. COLLINS. Well, he just run off—he—begin talking to him, he just take off, when you begin talking to him; he's in a hurry all the time.

Chairman PERKINS. Didn't make any comment at all?

Mr. COLLINS. Not a bit.

Chairman PERKINS. Who made the comment there, told you what to do with it?

Mr. COLLINS. On the inside, this foreman told me what to do with it, but outside I didn't get none.

Chairman PERKINS. The gentleman standing with Charles Finley when you told him that, who was that?

Mr. COLLINS. That was Walter Bentley. He didn't make none either.

Chairman PERKINS. Neither one of them made any comment?

Mr. COLLINS. Neither one of them made any comment.

It is significant to interrupt the presentation of Mr. Collins' testimony at this point to state that the committee hearing was the first occasion at which evidence was presented to associate Charles Finley with knowledge of the material underground presence of Primacord at his mine. To that date, neither the Bureau nor any other governmental instrumentality had publicly established such knowledge; and knowledge which, incidentally, would be an essential element in contemplating the referral of the case to the Department of Justice for its consideration as to prosecution under section 109 (b) of the Act.

The Bureau's public contact with A. T. Collins is related on eleven pages of transcript from the January 6 hearing on the disaster. At the hearing, Mr. Collins volunteered the information that he found Primacord in the mine on two separate occasions, but interrogators allowed the admission to pass as though Mr. Collins had said nothing of significance. At the conclusion of aimless questioning of the sole survivor of the explosion—and the one person who could potentially contribute some greater insight into the disaster—Mr. Collins was told he had been "a very good witness", and was excused.

Continuing from Mr. Collins' testimony:

Mr. FORD. Mr. Collins, on January 6th of this year a formal hearing was held at Hyden, in the county court house, and Mr. Osborn, director of the Interior Department, Bureau of Mines, presided over it. There were other representatives of the Bureau of Mines, including Mr. Westfield, the assistant director of the Coal Mine Health & Safety Division, Mr. Henry Wheeler, Deputy Director of Health & Safety, and I'm reading from the official transcript of this hearing, and Mr. Joseph Malesky, District Manager, of the Bureau of Mines, and I have read carefully the questions asked you and the answers you gave, and I was surprised to discover that after you informed the people at that hearing that you had found Primacord and called it to the attention of some superior, nobody at that hearing asked you the name of the supervisor or boss that you told about this. Considering the seriousness of the Primacord issue, it seems rather surprising; therefore, Mr. Collins, it becomes very important for us to know exactly who you told this to and when. Now, as I gather from what you have told us here today, you do recall that the second time you picked up the reel of Primacord was after Mr. Combs used it on the 22nd, or a couple of days before Christmas?

Mr. COLLINS. Something like that, yeah.

**Mr. FORD.** Was that the occasion when you put the Primacord behind something and covered it up with paper?

**Mr. COLLINS.** Behind the buggy and put a piece of brown paper poke over it.

**Mr. FORD.** And after you covered it up with the paper you walked out of the mine?

**Mr. COLLINS.** Yes, sir, crawled out.

**Mr. FORD.** Crawled out?

**Mr. COLLINS.** Yes.

**Mr. FORD.** And when you got outside these two men you describe were standing there talking to each other?

**Mr. COLLINS.** No, this was that evening I went out there with them, that evening they were going to shoot 16, so I told Charlie and Walter Bentley that it was laying up there.

**Mr. FORD.** Now were you concerned there was some danger in having that Primacord laying where you had put it at the time the shooting was taking place in the mine?

**Mr. COLLINS.** Well, the only thing that impressed me any was like this—if they went up there and went to work and it laying there, people could have got hurt, so I told them it was up there.

**Mr. FORD.** Were you aware that Primacord is explosive enough to have caused an explosion of dust?

**Mr. COLLINS.** Well, it went off so many different ways.

**Mr. FORD.** But you recognized this as an explosive hazard, and when you told these two gentlemen about this, were you telling them because you realized you had placed this hazardous material in the mine?

**Mr. COLLINS.** That's right. And because I knew there would be other men up there working, and I didn't know who would run into it or what would happen, see.

**Mr. FORD.** Neither Mr. Bentley nor Mr. Charles Finley did anything about it when you told them about it?

**Mr. COLLINS.** Didn't say a word to me about it, just wheeled and went to the buggy.

**Mr. FORD.** Now the first time you found a reel of Primacord, was not the first time you had ever seen Primacord, was it?

**Mr. COLLINS.** No, it wasn't.

**Mr. FORD.** You know what Primacord is?

**Mr. COLLINS.** That's right.

**Mr. FORD.** How long have you known about Primacord?

**Mr. COLLINS.** Well, not exactly, but I would say a right smart while. I have been in this country forty-seven years and I'm pretty well acquainted with about anything they've got.

**Mr. FORD.** How long have you known of Primacord being used in mines in this country?

**Mr. COLLINS.** Well, they have been using it shooting these interstates and dead levels and things like that.

**Mr. FORD.** So you have seen it on many occasions?

**Mr. COLLINS.** That's right.

**Mr. FORD.** Did you ever see it around this mine on occasions other than the two when you picked up the partially used reels?

**Mr. COLLINS.** That's all.

**Mr. FORD.** That's all?

**Mr. COLLINS.** That's the only time.

**Mr. FORD.** Do you know where they kept the Primacord supply at the mine?

**Mr. COLLINS.** Yes.

**Mr. FORD.** Where did they keep the supply of Primacord?

**Mr. COLLINS.** They kept it out on the bus.

**Mr. FORD.** On the bus? How much did they keep on hand there?

**Mr. COLLINS.** I wouldn't say; I never did count what all they had or how much; any time I went to the bus I went in a hurry and back out in a hurry.

**Mr. FORD.** But you did see some in the bus?

**Mr. COLLINS.** I did see some in the bus.

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**Mr. LANDGREBE.** Do you have—did you have any idea of the number of shot holes that were going to be used in that boom hole shot on the 30th?

**Mr. COLLINS.** No, I didn't. I didn't ask any questions and I didn't know.

Mr. LANDGREBE. I would just like to pursue just a little further—the young man up there gave you a good natured punch, that was Mr. Bentley?

Mr. COLLINS. No, that was Walter Hibbard.

Mr. LANDGREBE. That's—and he told you they had engaged Bentley to come and do some shooting?

Mr. COLLINS. He told me he had brought Walter Bentley down there to shoot two boom holes. We called them head piece holes.

Mr. LANDGREBE. Do you share Mr. Combs' opinion that Mr. Bentley was considered to be an expert in the use of dynamite—not dynamite, but explosives? Is he recognized by you as being a top notch man in this business?

Mr. COLLINS. Well, I wouldn't say anything about him being a top notch about anything like that. If he had been qualified, he probably would have been alright.

Mr. LANDGREBE. He gave you a good natured punch there and he obviously—what happened after? He said "Don't let it bother you"—what happened then?

Mr. COLLINS. I went over there and put these brattices up like he told me and rushed on outside.

Mr. LANDGREBE. But then why did you re-enter the mine, if you were so suspicious and felt there definitely was imminent danger that you left the mine, but then you had a change of heart or something?

Mr. COLLINS. Well, I didn't aim to go all the way back. I had went as far as I was aim to go. (Laughter)

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Mr. FORD. Do you ever remember having conversations with Inspector Couch?

Mr. COLLINS. Yes, I do.

Mr. FORD. At the mine?

Mr. COLLINS. That's right.

Mr. FORD. Before the time of the explosion?

Mr. COLLINS. Yes, sir.

Mr. FORD. And did Mr. Couch ever approach you and ask you anything about Mr. Finley?

Mr. COLLINS. One day they was what we call a froze roller, that's a truck roller, a bottom one, a long one on the inside just under the drift mouth, had stuck on us, and I was walking out, going outside, going over to where we had the rollers piled up, to get one, and I met Mr. Couch between the jeep barn and the substation, and he had been out to the substation looking around, and he asked me what was—what day was Finley more fit to talk to—in plain words—I mean the only way I could bring it around—what day was he more eligible to talk to than any other time.

Mr. FORD. Which Finley is that?

Mr. COLLINS. That is Charles.

Mr. FORD. What did he mean by when would he be fit to talk to?

Mr. COLLINS. Well, I would take it to—when he would be sober.

Mr. FORD. Is that the way you understood the question?

Mr. COLLINS. That's the way I understood the question.

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Mr. FORD. Mr. Collins, has anyone—I want to be very careful with this because I don't want to suggest an answer—has anyone, in any way, tried to affect you in any way to prevent you from telling the facts as you know them, after the disaster took place?

Mr. COLLINS. Well, the only thing—what you mean in the way of threats or something?

Mr. FORD. Yes.

Mr. COLLINS. When I was in the hospital over at Red Bird and Dr. Schaeffer come down and told me, he said "Mr. Collins," he said "you have been threatened", and said "What has happened"? I said "I don't know. I have been in the hospital ever since this explosion, I don't know what has happened." Well, he said "We can't allow you no more visitors", he said "you have been threatened", so he sent me over to Dr. Buttermore over at Corbin, and I went over there and stayed about seven days, and about three or four days the nurse come down to the foot of the bed and she said "Mr. Collins", said "you are having any company"? "No, nothing more than just maybe a member of the family", well, she said "they will have to stop up at the nurses' station and get information to come

on down", said "you have been threatened", said "we can't allow you no more visitors".

Mr. FORD. You don't know how they learned of the threats?

Mr. COLLINS. I don't know. They didn't tell me; they just tell you what they want to in these hospitals anyway.

Mr. FORD. Mr. Collins, I feel, in view of things that are in the record, and I don't see much point in repeating them further at this point, that I would like to ask leave of the Chairman to remind everybody who is within earshot of this committee that the United States House of Representatives has very rigidly enforced rules that are held very sacred by us concerning the activities of anybody who directly or indirectly attempts to take a reprisal against or intimidates a witness before our committee, and I would like to say, Mr. Collins, without passing on the veracity of what you have said here or its weight or value, that this committee, as a component of the House of Representatives, stands ready to protect you against the actions of anybody, and I would like to invite you to inform us of any further threats or any reprisals taken directly or indirectly against you or any of your family, as a result of your testimony.

(9) Charles and Stanley Finley, co-owners of the mine, were subpoenaed to appear before the committee in Hazard on March 13. Charles Finley was first called, and was accompanied by James Wilson, his counsel. The testimony of Mr. Finley will be presented with singular comment, out of deference to Department of Justice contemplations.

Chairman PERKINS. Now, from your experience as an operator of coal mines, what instructions did you ever give your men about safety? For instance Red Hoskins, Dill Finley, and some of these other gentlemen who have testified, made statements before the committee, stating that they received no instructions concerning safety in connection with the mines . . . .

Mr. FINLEY. Well . . .

Chairman PERKINS. If I recall correctly.

Mr. FINLEY. Well, I have always told them to be sure to get nobody hurt; any time they run into a dangerous conditions that they couldn't handle to always let me know and I would go check it and see, and I do know they have had more instructions than that.

Chairman PERKINS. Witnesses have stated that you were present when Primacord was mentioned and that you made no comment when told you that Primacord was found in the mines.

Mr. FINLEY. Well, I don't think that anybody ever mentioned that to me. If I do, I can't recall it.

Chairman PERKINS. You are not saying positively?

Mr. FINLEY. I'm saying positive that they never said . . .

Chairman PERKINS. What's that?

Mr. FINLEY. I say that nobody ever mentioned that they ever used Primacord, to my knowledge, in the mines.

Chairman PERKINS. Well, the . . .

Mr. WILSON. Are you referring to the hearing at Hyden?

Chairman PERKINS. I'm referring to the hearing at Hyden and the statements that were made here yesterday.

Mr. WILSON. Well, he was there during the testimony of the witnesses at Hyden.

Chairman PERKINS. I know he was there. Yes.

Concerning the statements that were made at Hyden by Robert Combs, Mack Collins, A. T. Collins and others, concerning the use of Primacord in the mines, do you care to comment on those statements?

Mr. FINLEY. Well, the only thing I heard them say that—I don't know—I didn't know anything about it.

Chairman PERKINS. But you are not denying that Primacord was used in the shooting?

Mr. FINLEY. Well, I would say I didn't know anything about it.

Chairman PERKINS. You are telling the committee that if it was used, you knew nothing about it?

Mr. FINLEY. That's right—definitely.

Chairman PERKINS. How could it be used there in your mines and you not know anything about it? Can you explain that to the committee, Mr. Finley?



With your experience in operating a coal mine and the numerous mines that you have told the committee about, how could this happen and you know nothing about it?

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Mr. FINLEY. Well, with a hundred and some men working and that mine starts working on Sunday night, at about 10:00 something, and they are men working three shifts a day, until Saturday night at 11:00 o'clock, how can I watch it and control that?

Chairman PERKINS. You are telling the committee then that because you worked three shifts, you were unable to watch and control the men insofar as their duties in operation were concerned, is that correct?

Mr. FINLEY. As far as me personally, I couldn't control it all, but I had men there that was supposed to do that.

Chairman PERKINS. Now, I want to ask you another question. If I understand you correctly, you stated that you personally could not control it, but who did you delegate the authority to, to control situations of that type?

Mr. FINLEY. Well, I had foremen of the day, first class foremen.

Chairman PERKINS. Well, who were your first class foremen of the day?

Mr. FINLEY. Well, it was Walter Hibbard, Decker Whitehead, and we was looking for another one which we couldn't hire. We didn't have.

Chairman PERKINS. Well, what instructions about shooting, if any, did you give Walter Hibbard and Walter Bentley or any others? What instructions did you give them?

Mr. FINLEY. Well . . .

Chairman PERKINS. About shooting and about the use of Primacord or rock dusting or any of those things that are necessary for the safety of the coal miners?

Mr. FINLEY. Well, I always told them to do—to use permissible where permissible is supposed to be used, I think, which I had in the magazines, and I had some Primacord but it was definitely hid in a trailer where I didn't think anybody would know it except Walter Bentley or maybe the man that put it in there. I had it separated completely which shouldn't have went in the mines, if it did. I don't know that it did.

Chairman PERKINS. Well, but if it did go in the mines, you are telling the committee, as owner and operator, in partnership with your brother, that you knew nothing about it—

Mr. FINLEY. That's right.

Chairman PERKINS. Even though you were the owner and operator?

Mr. FINLEY. That's right—definitely.

Chairman PERKINS. Just how close did you—how often did you confer with your foremen and the superintendent of mines 15 and 16, and discuss safety problems with them, if you did?

Mr. FINLEY. Well, it was usually whenever I could get hold of them.

Chairman PERKINS. You mean you had difficulty getting hold—

Mr. FINLEY. No.

Chairman PERKINS. Of your superintendent and foremen?

Mr. FINLEY. No. A lot of times I could have called them off the job but I didn't; if I had anything important that I thought needed attention to, I did, and I would make it my habit to catch them of the afternoon if they wasn't out of the day, I would make it personally to catch them and tell them.

Chairman PERKINS. Don't you think it was most important to see that the men had a safe place to work?

Mr. FINLEY. Sure.

Chairman PERKINS. You knew that some of the men were complaining about unsafe conditions in the mine, didn't you?

Mr. FINLEY. No, sir; nobody never said anything to me about that.

Chairman PERKINS. Well, you knew that the mine had been cited on numerous occasions for violations, for the inadequacy of rock dusting, for bad cable cords—many other violations? You knew about all those violations, didn't you?

Mr. FINLEY. Yeah, I knew about rock dusting and I tried to straighten that up, by adding about seven—adding about fourteen more extra men after the first citation on the rock dust.

Chairman PERKINS. Now, Mr. Harris, yesterday, along with Mr. Hoskins, and Dill Finley, if I recall correctly, stated that they received no instructions from

you concerning correcting those conditions about rock dusting in the mines. Why didn't you instruct them about rock dusting before the shooting on the 22nd, since they were in charge of the operation?

Mr. FINLEY. Well, I don't know. I can't tell everybody what to do, but they were first class foremen and they've got as much knowledge of it as I've got.

Chairman PERKINS. In other words you just left it up to your first class foremen to go ahead and operate the mines without any supervision on your part?

Mr. FINLEY. No. No, not all the time—no.

Chairman PERKINS. Not all the time?

Mr. FINLEY. But . . .

Chairman PERKINS. To what extent and to what degree?

Mr. FINLEY. Well, in other words, if I knew anything, if they had any problem anyway, that they had, I told them to never worry about it, to come on and let me know, we would solve them, which we did, but on all the miners, like going on a section, taking care of it, I didn't have time to do it.

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Chairman PERKINS. Mr. Finley, you opened your #15 mine in March?

Mr. FINLEY. I think that's right, close to around the first of March.

Chairman PERKINS. And they were connected in August—15 and 16?

Mr. FINLEY. I think that's probably so. We looked on the map over there when they were connected. I don't recall the date.

Chairman PERKINS. And one conveyor belt conveyed all the coal from both 15 and 16 out of the mines, after they were connected?

Mr. FINLEY. Yes.

Chairman PERKINS. You applied for a license for 15 and 16, I believe, separately? Am I correct?

Mr. FINLEY. Yes, sir.

Chairman PERKINS. Why did you do that?

Mr. FINLEY. Well, I intended to run two different mines.

Chairman PERKINS. But in truth and in fact you are only operating one mine, is that correct?

Mr. FINLEY. No, sir, we were operating two mines.

Chairman PERKINS. Operating two mines?

Mr. FINLEY. Yes, sir.

Chairman PERKINS. The State Department of Mines treats them as one mine. Am I correct in that?

Mr. FINLEY. No, sir.

Chairman PERKINS. What?

Mr. FINLEY. No, sir.

Chairman PERKINS. The Federal Bureau treats them as separate mines then, is that correct?

Mr. FINLEY. Yes, sir, they treat them the way they are licensed.

Chairman PERKINS. Now, according to the state report, no state inspector was at your mine for four months until August 20th, when inspector Albert Alexander visited both the #15 and 16 mines. From his report, which is limited in detail—

Mr. FINLEY. Yeah.

Chairman PERKINS. But the state did, in that inspection, treat them as one mine?

Mr. FINLEY. I don't think so. I don't recall that.

Chairman PERKINS. They inspected them both together?

Mr. FINLEY. No. I'll tell you what he told me now, when I left, he told—

Chairman PERKINS. He left and you never did get the report to know if—

Mr. FINLEY. Oh, yeah, I got the report. I looked at the report but I didn't pay any attention to that but I mean he was talking about making them both the same—making one on the day shift, and probably the other one of the night, I believe that's the words he told me—I wouldn't say for sure, but I . . .

Chairman PERKINS. Did you have the workers separated so they worked in separate mines or did they work in both mines?

Mr. FINLEY. They worked in separate mines most of the time, maybe one man would switch or something like that.

Chairman PERKINS. Are you sure about that, Mr. Finley?

Mr. FINLEY. Well, I would say might be one man would switch or something if we were short crewed, or if a supply man was off, we might let him supply both sections or something like that, and that was it.

Chairman PERKINS. But they brought all the coal over this one belt?

Mr. FINLEY. Yes.

Chairman PERKINS. And these mines were so inspected then, you are telling the committee, that if #16 was closed, that you could still operate #15, is that what you telling us?

Mr. FINLEY. Well, I never thought about that at the time I done it.

Chairman PERKINS. You didn't think about that at the time you did it?

Mr. FINLEY. No.

Chairman PERKINS. But that's the way it worked out, am I correct in that assumption?

Mr. FINLEY. Well, I would say if one was down you would be down with both of them, if you closed the belt down on them.

Chairman PERKINS. Now you are acquainted with more than forty violations, that were called to your attention, and they were repeated violations, of loose dust, covering everything from roadways to machinery, and for rock dust violations along the belt line, and no rock dusting in the face of the coal, and for a dust fire in August that caused an accident, one man is still blinded by it, and another had his ear drums shattered, and you know about the fatal accident in November that was caused by defective mechanical equipment, and the resultant inspection turned up four machines which had every ill from missing arc shields to no fuse in the power and control circuits, and the violation of trailing cable standards, one piece of equipment—a roof bolting machine—was found to have forty-four temporary splices in its cable, while the law permits one, and only for a 24-hour period. The state inspections of April and August also disclosed numerous violations, including findings of dangerous accumulations of loose, highly explosive dust, haphazard, and insufficient rock dusting, and the improper handling of explosives. When you received word of all the violations you had been cited for did you ever get your men together, your foremen, and discuss these situations with them? I noticed yesterday that Mr. Hoskins and your cousin, Mr. Dill Finley, and others, stated that they did not discuss these problems, and did not receive any orders from you, in connection with abating these conditions that existed there. What do you care to tell the committee along that line?

Mr. FINLEY. Well, it's according to which shift it was, we abated them all. We usually—a lot of times maybe another foreman wouldn't even know of the little minor—a lot of that was minor.

Chairman PERKINS. Well, you had twenty-four violations from the State of Kentucky that were cited and they wrote you a letter, is that correct?

Mr. FINLEY. I would say so.

Chairman PERKINS. And did you ever respond to that letter, to the Bureau of Mines in the State of Kentucky in any way, shape or form?

Mr. FINLEY. I don't recall getting any letter on it. They usually send out a letter on that, when they inspect, and if you've got any violations the State of Kentucky sends you out a letter on it.

Chairman PERKINS. But you don't recall in this particular case getting a letter about twenty-four violations?

Mr. FINLEY. Well, I would say that I might have got it. I know about the violations they wrote up because they handed them to me.

Chairman PERKINS. Now, let me ask you whether you answered the letter that you received from the state?

Mr. FINLEY. I don't remember doing it. I don't recall.

Chairman PERKINS. Did you clean up those violations that the state cited you for?

Mr. FINLEY. Sure.

Chairman PERKINS. Did you report to the state that you had cleaned up those violations?

Mr. FINLEY. I don't recall writing any letter on it—no. They usually come back and check.

Chairman PERKINS. Did you ever instruct your foremen there about these violations?

Mr. FINLEY. I think I told them about it and they probably helped clean up a lot of the violations.

Chairman PERKINS. Well, Mr. Hoskins and Mr. Finley and Mr. Harris, if I recall their statements of yesterday, stated that they did not receive any instructions concerning rock dusting near the face of the boom hole that was being shot, or keeping water up to the face of the coal, or anything along that line. Were they correct in those statements?

Mr. FINLEY. What kind of water are you talking about?

Chairman PERKINS. On the cutting machines.

Mr. FINLEY. Oh. We had never got that. We had just go it up there at the time. The water had just been got up there. I would say that.

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Mr. FORD. How many times did the federal inspectors come to your mine in the eight months preceding the end of this year when the disaster took place?

Mr. FINLEY. I don't know; they was there five days in November I think.

Mr. FORD. Were they there at least three times as a result of accidents that you had?

Mr. FINLEY. Let's see—once, twice, I think. Let's see—I think it was twice.

Mr. FORD. June the 19th, August the 14th, November the 19th, those dates don't mean anything to you?

Mr. FINLEY. Well, we had one boy killed. I don't remember the day it was.

Mr. FORD. You don't remember what day he was killed?

Mr. FINLEY. I know it was on a Monday night.

Mr. FORD. Do you know what month it was?

Mr. FINLEY. No, I don't recall that.

Mr. FORD. Do you know whether it was summer or winter?

Mr. FINLEY. Well, it was warm weather I think.

Mr. FORD. Who is in charge of this mine?

Mr. FINLEY. You mean of the day? You mean superintendent?

Mr. FORD. Who's the boss? Who ran the mine?

Mr. FINLEY. Walter Hibbard was supposed to have been running it at the time.

Mr. FORD. Everybody that has testified before you, Mr. Finley, has indicated that you were the boss.

Mr. FINLEY. Well, I was the operator.

Mr. FORD. I don't know what that means.

Mr. FINLEY. What do you mean? Well, I was the operator and the owner.

Mr. FORD. Well, what does that mean—the operator?

Mr. FINLEY. Well, the operator, I would say is the man that owns it.

Mr. FORD. Well, our statute talks about the operators and the owners; in your role as the operator, what did you do with regard to this mine?

Mr. FINLEY. Well . . .

Mr. FORD. Did you just own some stock certificates?

Mr. FINLEY. No, it's a company.

Mr. FORD. You had two partners?

Mr. FINLEY. Three partners.

Mr. FORD. Three partners?

Mr. FINLEY. Yes.

Mr. FORD. Your father, your brother and who else?

Mr. FINLEY. Me—Charles Finley.

Mr. FORD. Three of you altogether?

Mr. FINLEY. Yes.

Mr. FORD. Which one of the partners had more responsibility for running the mine?

Mr. FINLEY. I had the most responsibility.

Mr. FORD. As a matter of fact, you previously told the Bureau of Mines they didn't even come around more than once every couple of months, and they had never been in the mines, and for all intents and purposes you were the boss and you ran the mines?

Mr. FINLEY. Well, that's right, yes; we talked about it, I mean, at home or something.

Mr. FORD. If you told the Bureau of Mines, why are you reluctant to tell me the same thing?

Mr. FINLEY. What?

Mr. FORD. Why are you reluctant to tell me the same thing you told the Bureau of Mines? Were you the boss? Did you run the mine?

Mr. FINLEY. Yes. Well, I run it while I was there, sure, but if they was any questions come up or anything like that.

Mr. FORD. All right, we sit up there in Washington and we write some regulations and say that the operators of coal mines will do certain things. Now, in the case of this mine, who is that that we are talking about in our legislation? Who is supposed to see that the safety violations are abated? Whose responsibility was that, in your view?

Mr. FINLEY. Well, I would say it was mine, at the time.

Mr. FORD. It was yours?

Mr. FINLEY. I would say.

Mr. FORD. So you were . . .

Mr. FINLEY. Probably the rest of them too, I mean, it's according to where it was minor, major or what.

Mr. FORD. Well, is there somebody else in your organization that you want to tell us that is responsible for abating the violations that were cited to you by the federal inspectors, on several occasions prior to the disaster?

Mr. FINLEY. I would say not.

Mr. FORD. It was your responsibility?

Mr. FINLEY. Well, I guess it would be—I don't know.

Mr. FORD. You mean it would be?

Mr. FINLEY. Well, when you are a company and you are all brothers and family, why you just do—you just work between yourselves. Mr. FORD. And your brother and your father only come around every two months, according to your previous testimony.

Mr. FINLEY. My father didn't come around, maybe just visit.

Mr. FORD. Your father never came around?

Mr. FINLEY. Just visit; no, once or twice.

Mr. FORD. Your brother came around every couple of months?

Mr. FINLEY. Possibly, if he had time.

Mr. FORD. You didn't expect them to take care of the safety violations, did you?

Mr. FINLEY. No, I tried to take care—I tried to handle most of that.

Mr. FORD. What do you mean—most of it?

Mr. FINLEY. Well, I would say I tried to handle most of the violations.

Mr. FORD. I am trying to understand what you mean when a federal inspector goes out and bothers you by giving you a violation—what do you do with it?

Mr. FINLEY. Well, I try to correct it as soon as possible.

Mr. FORD. You say you try to take care of most of them. How do you decide which ones to take care of and which ones you won't?

Mr. FINLEY. Well, you just caught me wrong there. When I said most of them, what I meant was them, I mean if I had something that was major or something I would call my brother on something. I did, but as far as the violations there at the mines, when the federal gave them to me, I went on and abated them as of then, if I could get the equipment, for a lot of this new equipment which I had some of the write-ups on, it was impossible to get.

Mr. FORD. What's a regular inspection?

Mr. FINLEY. Well, a regular inspection is when they come and, you know what I mean, come on a regular inspection, and a spot inspection is probably when they come back and spot you for those abatements, see, and as I recall—

Mr. FORD. Were you always informed when a regular inspection was going to take place?

Mr. FINLEY. No sir.

Mr. FORD. Never?

Mr. FINLEY. No sir; never.

Mr. FORD. Nobody passed the word to the employees that an inspection was going to take place?

Mr. FINLEY. No sir; no sir.

Mr. FORD. You never . . .

Mr. FINLEY. I never knew it.

Mr. FORD. All those people that talked about knowing that the inspectors were coming, how did they know that?

Mr. FINLEY. I don't know how they knew. I didn't know it.

Mr. FORD. You never knew when an inspection was taking place?

Mr. FINLEY. No, sir. Well, I might have knew when—spot checks—yeah; like December 22nd, I knew about that, sure, but I mean the regular inspections, no, but on a spot check, yeah, you knew that, because it was wrote down there on the paper and handed to you.

Mr. FORD. The Bureau of Mines told us that some time prior to the 22nd you called Gordon Couch on the telephone and said that it wouldn't do any good to come over to the mine on the 22nd to check on the violations that were to be abated by 8:00 o'clock that morning, because you weren't going to be operating, and that you were going to be down, and the Bureau of Mines said that was the reason they didn't send an inspector back there until after this thing happened. Now did you call Mr. Couch and tell him that? Not to come?

Mr. FINLEY. I called Mr. Couch on the—I was changing a section back where I had moved one out; I was taking dust samples at the time, and I was talking to him and Dolan about it, and they told me that when I went back to this section that I thought we were talking about possibly maybe closing, I mean just closing that section, and I didn't know if he did or not, but I would have to resume dust operations, so—this thing is so—well, if I can get my words right—I don't know; it's hard to find out, this dust thing; I called him on this to find out.

Mr. FORD. You called him.

Mr. FINLEY. Yeah.

Mr. FORD. . . . because of some other problem, not to tell him you were going to be shut down?

Mr. FINLEY. I called him on the dust problem, you know what I mean, on the dust samples.

Mr. FORD. When, during the course of the conversation, did you decide to tell him you were going to shut down? Did you know before you called him you were going to shut down?

Mr. FINLEY. I didn't know when I was going to shut down.

Mr. FORD. Did you, in fact, shut down?

Mr. FINLEY. Yes, we shut down.

Mr. FORD. When did you shut down?

Mr. FINLEY. We shut down on Monday night.

Mr. FORD. What—on what day?

Mr. FINLEY. I don't know what day it was.

Mr. FORD. Monday before Christmas?

Mr. FINLEY. I would say it was—yeah.

Mr. FORD. Christmas was Friday, the 25th?

Mr. FINLEY. That's right.

Mr. FORD. Thursday was the 24th?

Mr. FINLEY. That's right.

Mr. FORD. Wednesday, the 23rd, Tuesday the 22nd?

Mr. FINLEY. That's right.

Mr. FORD. Monday, the 21st?

Mr. FINLEY. That's right.

Mr. FORD. All these witnesses who testified about blasting on both the second and third shift on the 22nd were making a mistake, and they were lying?

Mr. FINLEY. Well . . .

Mr. FORD. Now there is a very good friend of yours sitting right over there now, and you just described him as one of your foremen, and he said that on the 22nd he used Primacord in blasting a hole in the mine.

Mr. FINLEY. I don't know.

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Mr. FORD. On the 22nd, we have been told, Mr. Finley, that there was blasting done using Primacord; that there was some left over Primacord that was kept in the mines, and I want to know now whether you told the mine inspector, before the 22nd, that there was no need to come over because the mine wasn't going to be operating?

Mr. FINLEY. I don't know. I don't recall that I did.

Mr. FORD. What your lawyer is trying to tell you here—

Mr. FINLEY. Yeah.

Mr. FORD. There is a technical difference in the record here on the word "operating".

Mr. FINLEY. Yeah, that's right.

Mr. WILSON. Shut down.

Mr. FINLEY. We wasn't shut down. We wasn't—I might have told him we wasn't going to mine any coal, that we were going to do other work, see.

Mr. FORD. You might have told him?

Mr. FINLEY. I might have told him.

Mr. FORD. What did you tell him?

Mr. FINLEY. I don't know. You do so much; I do a lot—I done a lot of telephone calling, and done a lot of work, and done a lot of headache work, so I just don't know everything I done.

Mr. FORD. Well, my goodness! You have never talked to a federal mine inspector more than half a dozen times, have you?

Mr. FINLEY. Yes. I have talked to them there at the mines.

Mr. FORD. On the telephone, how many times have you had occasion to call a federal mine inspector?

Mr. FINLEY. Oh, I have called the Bureau at Barboursville more than that.

Mr. FORD. Well, Mr. Couch, how many times have you called him?

Mr. FINLEY. Oh, I've not called him, I would say, over two or three times probably.

Mr. FORD. Two or three times?

Mr. FINLEY. Yeah.

Mr. FORD. Is it too much of a problem for you to remember what you talked to him about on these two or three occasions that weren't important enough to stick in your mind?

Mr. FINLEY. One was on that dust control thing, and I know that.

Mr. FORD. But what was the occasion? I have just told you what the Bureau of Mines said.

Mr. FINLEY. Yeah.

Mr. FORD. Is that true or not, you called them and said "Don't come because we are going to be shut down"?

Mr. FINLEY. I don't recall of doing that. The only thing I said—I might have told him we wasn't going to be mining any coal at the time, I just don't know, because I went over there—if you want me to explain it to you—Christmas is a big thing around here; the other holidays these men work, but when it comes up close to Christmas, why they've worked all year, I didn't know if I was going to work Tuesday or not. Monday evening I had the men—I had my foremen and things to check with the men, and some of them wanted to work and some of them didn't want to work. I said "There is no use of me trying to work with half or two thirds of a crew", so I knocked off.

Mr. FORD. Had you decided to knock off before you called the Bureau of Mines or after you talked to them? The federal inspector rather?

Mr. FINLEY. Monday afternoon is when I decided not to run coal.

Mr. FORD. And then you called the inspector and said "There is no need to come out here, I'm going to . . ."

Mr. FINLEY. No, I never done no more—I called the office and told the office we wouldn't be running no more coal after Monday night.

Mr. FORD. Now, you didn't call the office. I'm asking you . . .

Mr. FINLEY. Yeah, I did, then I did.

Mr. FORD. Mr. Couch has testified on previous occasions, under oath; the Bureau has told us that you called Mr. Couch specifically, and said "Although I have these violations"—in effect—"Although I have these violations that are to be abated by 8:00 o'clock on the 22nd of December, there is no need to come out on the 22nd of December for the inspection, because we won't be working?"

Mr. FINLEY. No, I didn't say "not working". I might have told him now that we might not be running any coal, but we always do extra work on off days that way, the men will work.

Mr. FORD. Alright.

Mr. FINLEY. I might have told him—I don't know.

Mr. FORD. How many men did you have in the mine that day?

Mr. FINLEY. I don't know. I don't count every man.

Mr. FORD. The testimony here by other witnesses indicates that you had a full shift in there, and not only a full shift but three shifts and both the second and third shifts were shooting.

Mr. FINLEY. We work men on every shift but I don't count every man every day.

Mr. FORD. I'm not asking you whether "we work men on every shift". After telling the mine inspector you weren't going to be working in the mine, did you have a full shift in there or . . .

Mr. FINLEY. No, I would say there was a partial shift on each section. We worked three shifts that day.

Mr. FORD. And they were doing some shooting there?

Mr. FINLEY. They was doing a lot of work in there.

Mr. FORD. Now, we have testimony and everybody agrees that has talked about the 22nd that they were using Primacord in there.

Mr. FINLEY. Nobody told me about that.

Mr. FORD. Several witnesses have testified that on the 22nd there was blasting that took place in the mines. You have indicated now that you did not call the federal mine inspector and say you would be down from the 22nd through the rest of the month and they needn't come around—is that right?

Mr. FINLEY. It indicated I was—I called him on the Thursday night—I don't know the exact words, but I didn't say . . .

Mr. FORD. You mean Thursday, Christmas eve?

Mr. FINLEY. No, I think it was Thursday night; I don't know.

Mr. FORD. You said Christmas was pretty important around here.

Mr. FINLEY. Yes.

Mr. FORD. You don't remember when Christmas was?

Mr. FINLEY. It was before that.

Mr. FORD. A couple of days before Christmas?

Mr. FINLEY. No, it was on the week before.

Mr. FORD. The week before?

Mr. FINLEY. Yes, I would say Thursday before. Christmas came the following . . .

Mr. FORD. Christmas was on Friday.

Mr. FINLEY. That's right. It was a week before, and Monday and Tuesday we was down.

Mr. FORD. A full week before Christmas you called the mine inspector?

Mr. FINLEY. Yes, I would say so.

Mr. FORD. Why did you call him?

Mr. FINLEY. I called him on dust control.

Mr. FORD. You called to discuss dust control?

Mr. FINLEY. Yes.

Mr. FORD. And the specific violation that was brought here against you for dust control, that was to be abated by 8:00 o'clock on the morning of December 22nd?

Mr. FINLEY. I didn't have any dust control abatement; done already.

Mr. FORD. Well, what were the violations to be abated?

Mr. FINLEY. I know one was a toilet. I don't recall all of them but I know that one.

Mr. FORD. Do you recall any of them?

Mr. FINLEY. Yes, I recall them.

Mr. FORD. That was one of the things required to be abated on the 22nd?

Mr. FINLEY. Yes, that's one of them; that's right.

Mr. FORD. What about the violation that qualified persons were not used to maintain, test and examine electrical equipment; that was to be abated by 8:00 o'clock on December 22nd, did you discuss that when you talked to him?

Mr. FINLEY. No. Yeah, I had to find out about that.

Mr. FORD. You had to find out about that?

Mr. FINLEY. I asked Dolan—one of the inspectors walked up—and he didn't know where to send it to, and told me to send it to Barboursville. What I had to do was type up a letter—a statement—that the same man worked for me, that he was qualified, and how long he worked for me, and sign it and send it to Barboursville. That's all the violation was.

Mr. FORD. Well, you had another violation at the same time, "self rescue devices not provided for all underground workers".

Mr. FINLEY. I couldn't get them.

Mr. FORD. You couldn't get them?

Mr. FINLEY. That's right.

Mr. FORD. Did you tell them you weren't going to be able to comply with that by the 22nd, when you called him?



Mr. FINLEY. I don't know about that. No, I didn't; no, but I couldn't have got them no way, and still they are begging for what has been got right now.

Mr. FORD. You mentioned a toilet. Had that been taken care of when you called?

Mr. FINLEY. Yes, sir, but I didn't tell him. I didn't tell him nothing about that.

Mr. FORD. The inspection report shows it wasn't taken care of on the 30th, when the disaster took place.

Mr. FINLEY. Yes, the sanitary toilet was there.

Mr. FORD. That was taken care of?

Mr. FINLEY. I had a toilet built out there. I don't know if they used it or not.

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Mr. FORD. Mr. Finley, what you have been telling us in essence this morning is that although you had the distinction of being the owner and the operator of this mine, you don't know what happened there for months preceding the accident? You indicate that someone else might have records; someone else is responsible for knowing about the blasting practices and so on. As the owner and operator, did you ever at any time sit down with these people that you put in charge of your mine and discuss the safety regulations promulgated by the Federal government and State of Kentucky?

Mr. FINLEY. Well, I told them all about safety, as much as I know about it.

Mr. FORD. That's not what I asked. Did you ever sit down with them and tell them about the Federal and State safety regulations?

Mr. FINLEY. Well, I have told them all I knew about it.

Well, I don't know. What I read of this new law, it's hard to know.

Mr. FORD. Have you read it?

Mr. FINLEY. I read the required part.

Mr. FORD. Before the disaster of the 30th?

Mr. FINLEY. Yes, I sat down and tried to read it here back but I can't understand it.

Mr. FORD. In previous testimony you indicated that many of your employees were unable to read and write and that's why you felt you had to hide the Primacord from them, because they wouldn't know what it was.

Mr. FINLEY. Definitely, I had it hid outside in the trailer, for outside use, building roads.

Mr. FORD. But you knew full well, without reading it in the safety regulations, it was a real danger in letting that Primacord get into the mine?

Mr. FINLEY. Well, sure, I had it hid. That's what I was trying to do.

Mr. FORD. And who then, besides yourself, had authority to remove Primacord from the place where you had it hidden?

Mr. FINLEY. Well, Walter Bentley knew about it, because he's the one had me to get it for him, on the road.

Mr. FORD. Walter Bentley had you to get it for using on the road?

Mr. FINLEY. That's right, yeah.

Mr. FORD. The fact that some people have speculated that you might save as much as five or six thousand dollars a year by using this Primacord instead of the prescribed blasting devices had nothing to do with your decision to purchase Primacord?

Mr. FINLEY. Well, let's put it this way—if you had been shooting everything you had in the mines with it, you might have, but Lord! for just shooting a little old hole with it, that's no expense to that. I mean—what I'm getting at we wasn't trying to save no money.

Mr. FORD. Do you think that's the only time Primacord was used in this mine?

Mr. FINLEY. I didn't know it was used then.

Mr. FORD. You do not know that the inspectors picked up 4000 feet of unused Primacord after the disaster, on your premises?

Mr. FINLEY. I don't know it.

Mr. FORD. You don't know?

Mr. FINLEY. Yes. You mean they brought out of the mines?

Mr. FORD. Well, now, it became a matter of common knowledge in the whole community within hours after the explosion occurred that Primacord was involved.

Mr. FINLEY. Yes, sir.

Mr. FORD. You had, according to your own testimony, known of the Primacord on the premises, because you hid it from those people who couldn't read or write and might make a mistake?

Mr. FINLEY. Yes.

Mr. FORD. And with that knowledge, you weren't curious enough to go to see if any of the Primacord you were hiding away was there or not?

Mr. FINLEY. I had too much to do, and it was already done, so what was the use of me going and checking? I didn't know how much was there, because I had done only partial of this ordering. This ordering was done through the mechanics.

Mr. FORD. How many mechanics ordered it? You hid it.

Mr. FINLEY. I definitely hid it so it wouldn't be in the magazines where the men used.

Mr. FORD. You talked to Mr. Smith, from the Bureau of Mines some time back?

Mr. FINLEY. Yes.

Mr. FORD. You were very specific in telling him, in the presence of your attorney, you hid it because you had a lot of men working for you who couldn't read and write.

Mr. FINLEY. I definitely had it in front of the trailer, covered up, definitely, and where else could you put it but hiding it in a place where the only place anybody there would be, would be at the doorway, a mechanic, to get a part, in case of a major breakdown, because that's all we had in that trailer was big stuff, big parts.

Mr. FORD. Are you saying that anybody that took that Primacord out of the trailer was doing so against your instructions or your wishes?

Mr. FINLEY. Well, I would say they was doing it against my wishes, to take it in the mines, yes.

Mr. FORD. We have testimony here, Mr. Finley, that following the use of Primacord on at least one occasion prior to the disaster, one of your employees went to you and said "I have just been told to bring the remainder of a reel of Primacord out of the mine, and it's in there and you better do something about it."

Mr. FINLEY. No, sir.

Mr. FORD. No employee ever did that?

Mr. FINLEY. No, sir, not to my memory—no, sir.

Mr. FORD. Then the man that told us that was lying?

Mr. FINLEY. Well—

Mr. WILSON. I object.

Mr. FINLEY. Well, I don't know.

Chairman PERKINS. And the witness has answered not to his recollection.

Mr. FORD. The witness has testified on the record that he did tell you there was Primacord in the mine and that it ought to be gotten out of there, sometime around the 22nd of December.

Mr. FINLEY. Well—

Mr. FORD. That testimony is incorrect?

Mr. FINLEY. To my recollection, no.

Mr. FORD. Well, now, I want to know. "To your recollection"—Why don't you deny it instead?

Mr. FINLEY. Well, I'll deny it then.

Mr. FORD. Okay, that's a little better.

Mr. FINLEY. I didn't know how you wanted it.

Mr. FORD. Up until now everything has been "to your recollection", "you are not responsible" for anything—you "don't know." You have an amazing capacity not to know anything that would be helpful to this committee about what kind of conditions led to this disaster.

Mr. WILSON. I protest that line of interrogation of this man. He's not here to be ridiculed. You can ask for information but he's not here to be ridiculed.

Chairman PERKINS. No question has been put to the witness for the purpose of ridicule.

Mr. FORD. If I have ridiculed I will apologize now and most profusely at the end of this interrogation, but the fact is that we have a tragic disaster on our hands.

Mr. FINLEY. Yes.

Mr. FORD. And what appears to be monumental failure of the federal legislation, and we now have the amazing situation of a mine owner and operator sitting here before us, even with all of the vivid recollection that must be present in his mind as a result of this disaster, telling us that our legislation is so weak and insipid that you, as a mine owner and operator, can go on and say you don't know

who is responsible; you don't know who has charge of the blasting; you don't know what was used; you don't know if safety regulations were ever discussed with your employees; you don't really know who was running the mine.

Mr. FINLEY. Yes, sir.

Mr. FORD. You don't impress me to be that dumb.

Mr. FINLEY. I was trying to run the mine.

Mr. FORD. You were there every day?

Mr. FINLEY. Yes, sir.

Mr. FORD. Everybody looked to you as the boss?

Mr. FINLEY. Well, they looked at me as the operator, and trying to help—definitely.

Mr. FORD. Weren't you the man responsible for seeing to it that the safety violations called to your attention by the State of Kentucky and federal mine bureau were attended to?

Mr. FINLEY. Well, yes, but . . .

Mr. FORD. If you had not called the federal mine inspector and he came over as was previously planned, on the 22d of December, would he have discovered that the violations that were to be abated on that day were taken care of?

Mr. FINLEY. I don't know.

Mr. FORD. You don't know?

Mr. FINLEY. I don't know that question. I don't know . . .

Mr. FORD. If you are familiar with the federal mine safety legislation, that says if there is a condition of imminent danger, the federal mine inspectors are under an obligation to close your mine?

Mr. FINLEY. Yes.

Mr. FORD. Is that true?

Mr. FINLEY. That's right—definitely.

Mr. FORD. Alright. On November 19th you were given a violation notice citing imminent danger, too much respirable dust in the work area. But they gave you until 8:00 a.m. on December 22d, to clear it up, which meant that if they came on December 22d and it was not cleared up, your mine would be closed.

Mr. FINLEY. I would say it would be closed but I had it done.

Mr. FORD. You had abated it?

Mr. FINLEY. I probably did. I abated everything they gave me; when they give us an order I usually went right straight on, as quick as I could, and abated it, and had it abated then when they came.

Mr. FORD. The good name and fame of the federal inspectors is kind of involved here because their excuse for not coming back to the mine after they cited the violations, until after the disaster, is that you told them not to come back because the mine wasn't in operation. You have indicated that the reason they did not return to the mine after all of the violations that you were cited for were given to you, prior to the time of the disaster, was that you called and said "We are going to be shut down, so it won't do any good to come over here". Now, what I'm concerned about is if the inspectors had come back on the day called for, on the 22d of December, would they have found the violations to have been corrected or not?

Mr. FINLEY. Yes, I think so.

Mr. FORD. Including the self rescue devices?

Mr. FINLEY. No doubt that, I couldn't get them.

Mr. FORD. After the disaster were you informed the self rescuing devices that you had purchased were still stored in the trailer where the Primacord was?

Mr. FINLEY. I had twenty-one on a section; I had a hundred on order, I believe. We couldn't get all the rescuers, and I was told to put twenty-one in a box—I mean enough to cover a section, if I could get them, and that would cover the first shift, the second shift and third shift.

Mr. FORD. When did you buy the rescuers that were found in the trailer after the disaster?

Mr. FINLEY. Oh, they just come a short time before that.

Mr. FORD. Just a day or two before that?

Mr. FINLEY. Yes, we discussed where to put just a few in, in a box.

Mr. FORD. If they came a day or two before . . .

Mr. FINLEY. I don't know exactly.

Mr. FORD. . . . they couldn't have been in there in order to comply with an order on the 22nd.

Mr. FINLEY. No, those in the box had been there a long time; they had been in the mines a long time.

Mr. FORD. I'm talking about the new ones.

Mr. FINLEY. I don't know what day they come. I never checked on it, but it was our intentions . . .

Mr. FORD. If they were there before the 22nd, are you telling us even though you were cited by the mine inspector for not having the self rescuers and not having them in sufficient quantity, and not having them in the mine with the men . . .

Mr. FINLEY. That's right.

Mr. FORD. Are you saying to us you had them before the compliance date of December 22nd, but on the 30th, when the disaster took place, they were still wrapped in the shipping carton, in your trailer, and you hadn't distributed them as of that time?

Mr. FINLEY. I can tell you how this happened.

Mr. FORD. I'm not asking—did it happen?

Mr. FINLEY. Yes, they were there. They were there.

Mr. FORD. They were there ten days or a week?

Mr. FINLEY. I don't know when they come.

Mr. FORD. Were they there in time to comply with the violation notice from the mine inspector?

Mr. FINLEY. Well, I could put them on and they still wouldn't clear the violation up.

Mr. FORD. That was only one of the violations.

Mr. FINLEY. Yes. To clear that one up, you would have had to had a rescuer for every man, and we were trying to get enough; I was told that if you put say fifteen in a box . . .

Mr. WILSON. Who told you?

Mr. FINLEY. The inspector told me; we debated on it, if you put fifteen in a box here and put them on a section, something happened, they all start fighting over them. Alright, maybe some of them could get out that would have lost their life, fighting over them, so there's your question.

Mr. FORD. I'm not asking you to speculate about that, I'm concerned about the legislation before us, and the legislation says there will be regulations and enforcement; I'm trying to find out how a mine owner, under the present legislation, reacts to a violation notice. We had a great deal of discussion in Washington, which indicated the mine owners were men of good faith, who should not be decried by very strict rules that would govern their conduct. You are indicating to me we perhaps made a mistake because you found no reason to be specifically concerned with these violations, to the point where you can recall, after these few months after this great disaster, what you did about reacting to the federal inspections. One of the violations was you didn't have the self rescuers for the men.

Mr. FINLEY. That's right.

Mr. FORD. That was to be abated by the 22nd of December?

Mr. FINLEY. That's right.

Mr. FORD. But after the disaster happened, they found that you had sixteen self rescuers wrapped up in the package they were shipped to you in, never distributed to the men, and you apparently didn't feel that, after you purchased these things to comply with the federal inspector's order, that it was important to go ahead and do what they intended to do?

Mr. FINLEY. Well, as I said, I could have put them on two or three—I could put them on fifteen men, but I would have had—that would have made me twenty-one and sixteen—thirty-seven, and I would still have had thirty-seven, forty—I would still have had fifty more men with no rescuers.

Mr. FORD. You are like a captain of a ship who says "I don't have enough life savers for everybody, so nobody gets one", is that what you are saying?

Mr. FINLEY. No, I had them in there for one section—twenty one, and understand too, in other words I was trying to cover eighteen, thirty six; thirty six—about forty five or fifty men with twenty one rescuers, which I couldn't get, but if I had put them on twenty one men or thirty some men, that's all they would have been on, and I was trying to get them so I could cover all the men with what few I had.

Mr. FORD. You know back in October you had an inspection that resulted in a number of violations and you were given until November 17th to abate them, but

according to the record of the Bureau of Mines, by the 17th you had given them an excuse and you got an extension. . . .

Mr. FINLEY. What was it on?

Mr. FORD. . . . on many of them to some time in December, including several of them that were extended to the 28th of December; most of them were the electrical violations.

Mr. FINLEY. That's right; you couldn't get them.

Mr. FORD. You couldn't get parts? Couldn't get the repairs done?

Mr. FINLEY. That's right, I called Bill Forsyth; Duke was there on me, your electrical man was right on me; I got on the telephone and called him and let him talk to him personally on this electrical matter, explaining it, and I got the breaker box under pressure that I had to have then before the other fellows got them, by maneuvering around—I don't know how I got it; some of them ain't got them yet.

Mr. FORD. How much Primacord did you buy last year?

Mr. FINLEY. I don't know.

Mr. FORD. Who does the purchasing for the mine?

Mr. FINLEY. Well, I've got eight or ten there does it.

Mr. FORD. Eight or ten?

Mr. FINLEY. Eight or ten men.

Mr. FORD. Eight or ten men can make purchases in your name?

Mr. FINLEY. That's right.

Mr. FORD. On the day of the disaster you were sitting with the salesmen who were trying to sell to the mine. Did they ordinarily see you or somebody else?

Mr. FINLEY. If I was there they seen me; if I wasn't there the boys done the buying—we had credit.

Mr. FORD. You are saying you don't know how much Primacord was purchased?

Mr. FINLEY. Well, I don't know.

Mr. FORD. You don't know who bought it?

Mr. FINLEY. No.

Mr. FORD. No, sir?

Mr. FINLEY. I don't know who bought it all.

Mr. FORD. You didn't buy any of it?

Mr. FINLEY. Yes, I bought two rolls.

Mr. FORD. Just two rolls.

Mr. FINLEY. That's all it was, I believe. I went personally and got that new, they was using a little bit there, and took it to the strip job.

Mr. FORD. Who pays the bills?

Mr. FINLEY. That went to the strip job, what I went to Delaware Powder and got; I know I went and got the dynamite.

Mr. FORD. How many rolls did you hide in the trailer?

Mr. FINLEY. I don't know how many. They could have went and ordered some more.

Mr. FORD. I didn't ask if they ordered some more. How many did you hide in the trailer?

Mr. FINLEY. I didn't hide any myself.

Mr. FORD. Wait a minute. You have told us, and testified previously under oath, that you hid the Primacord in the trailer so that the employees who were unable to read and write—and if you want me to use the language you used to describe your employees, but I prefer not to use the same language to describe them—but you did say could not read and write. How many rolls did you hide?

Mr. FINLEY. I had them to hide them.

Mr. FORD. You had them to hide them?

Mr. FINLEY. Yes, I had them, but . . .

Mr. FORD. Who?

Mr. FINLEY. I believe it was J. C. Farmer—I believe that's who it was—that I had to put it in there the first time, and then some dynamite I had bought for the road out there, and told them to put it in there, and from then on, I don't know.

Mr. FORD. That was some dynamite you shot on the road?

Mr. FINLEY. Yes, sir.

Mr. FORD. How much dynamite did you use on the road last year? How much did you pay for?

Mr. FINLEY. I don't know. I have to check the bills each month; I don't have that in my mind.

Mr. FORD. Ten dollars worth or ten thousand?

Mr. FINLEY. What do you mean that question? I don't know. They've got a record, they should know.

Mr. FORD. But you are the mine owner and operator, and this legislation says you are the man responsible.

Mr. FINLEY. Yes, sir.

Mr. FORD. And if you don't know, who in God's name do we expect to look to?

Mr. FINLEY. I looked up for the month before that, I paid forty nine thousand and some dollars worth of bills, the month before that sixty thousand.

Mr. FORD. Who prepared the bills for payment?

Mr. FINLEY. The office. What I do is go up and glance through them.

Mr. FORD. You glance through them and if they gave you a bill for ten thousand dollars for 40 percent dynamite, would it cause you to raise an eyebrow?

Mr. FINLEY. Let's put it this way: When these bills come in, if they—everything attached to them and with them, already clipped together, everything; mostly I just look at them and glance through them and okay them, if I thought we got them. The way we work it, they've got a copy at the office, that is a copy to us and a copy to the mines, we forward that on. If everything comes out right it was all clipped together, and mostly what I checked was when we didn't have the duplicate copy, and a lot of times I wouldn't know about that; I would have to go back to the mines and check on the duplicate and find out if it did come in there.

Mr. FORD. What you are saying is, as the owner and operator of the mine, you did not have any way of controlling the purchase of explosives, to know whether or not the permissible explosives were being purchased and used as distinguished from those which were prohibited by the law?

#### COUNSEL FOR MR. FINLEY OBJECTS

Mr. FORD. The witness is being advised by his attorney and I'll respect the fact. Chairman PERKINS. The witness has not stated on it—exactly—the question propounded by the gentleman from Michigan, the gentleman from Michigan will re-state his question.

Mr. FORD. If counsel believes that the answer to that question may tend to incriminate his client, I am most happy to withdraw it.

Mr. WILSON. My main claim, Mr. Ford, was to the form of the question.

Mr. FORD. As the owner and operator of this mine, are you telling us that in the normal procedures that you followed, to own and operate the mine, you did not have control over the purchasing of explosives to the extent that you would be able to tell us whether permissible or prohibited explosives were being purchased and used in your mine?

Mr. FINLEY. Sure, it was supposed to be purchased as permissible; that's what they did purchase. Tell them "to look in the magazine"; part of the time the salesmen would go look in there and part of the time the boy working for me would ask me sometimes how many cases to get, if I was there, and if I wasn't there why he would go ahead and order how many it took to do us for the week or whatever.

Mr. FORD. What do you suppose your explosives bill was for last year?

Mr. FINLEY. I have never figured it up. I would have to go to the office.

Mr. FORD. Would it be as much as \$10,000?

Mr. FINLEY. It would be more than that, I guess.

Mr. FORD. \$20,000?

Mr. FINLEY. I don't know; I don't know; I couldn't give an answer to that; I would have to go to the office and figure it up.

Mr. FORD. How long have you been engaged in the mining business?

Mr. FINLEY. I would say approximately twenty-two years.

Mr. FORD. For twenty-two years?

Mr. FINLEY. That's right.

Mr. FORD. Been an owner most of the time?

Mr. FINLEY. Now, no, I worked—I started out the hard way, working.

Mr. FORD. How long have you been running this mine?

Mr. FINLEY. Well, I started in March—you mean this one at Hurricane? We started in March.

Mr. FORD. You mean if you and I sat down and I discussed with you the possibility of buying your mine, you couldn't give me an idea of how much you spent a year on explosives?

Mr. FINLEY. Not unless I went to the office.

Mr. FORD. Do you know how much you spent on roads, Mr. Finley?

Mr. FINLEY. No.

Mr. FORD. Trucks?

Mr. FINLEY. I know approximately.

Mr. FORD. You know approximately what you spent on trucks?

Mr. FINLEY. Yes.

Mr. FORD. Could you tell me approximately what it costs you for explosives?

Mr. FINLEY. I would say it costs you five—well, I figured it up, that was labor, rock and all, and it was costing me around 17 cents; I would say you could shoot for around 10 cents a ton. It's according, and figuring the labor in with it; it's according to your conditions—your coal, your size; one coal you can shoot it for one expense and another coal another expense, and it varies, even in the same mines, from sometimes from three holes to a cut to four holes—that's extra expense there.

Mr. FORD. In this estimation you spend something upward of \$10,000 a year for explosives?

Mr. FINLEY. I would say it would run—I have looked at a lot of bills—seven or eight, nine hundred a month; I have looked at a lot of bills.

Mr. FORD. Of this upwards of \$10,000 you spent, how much of that expense would you attribute to your blasting of road?

Mr. FINLEY. I don't know now how much. We shot a lot of rock, that's a cost extra.

Mr. FORD. For the road?

Mr. FINLEY. Yes.

Mr. FORD. And that's where you used the 40 percent dynamite you bought last year?

Mr. FINLEY. That's right.

Mr. FORD. Never used it in the mine?

Mr. FINLEY. No, sir, not to my recollection; it wasn't supposed to be.

Mr. FORD. Did you ever personally instruct individuals in the mine that 40 percent dynamite on the premises was not to be used inside the mine?

Mr. FINLEY. No, sir, I don't recall mentioning it to them. I hid it in there to keep it from being used.

Mr. FORD. You hid it in there to keep it from being used?

Mr. FINLEY. Well, if I hadn't I would have put it in the magazine.

Mr. FORD. But you never felt it necessary to instruct the foremen you didn't want this kind of material used in the mine?

Mr. FINLEY. No, I didn't.

Mr. FORD. Did you ever instruct your foremen on any safety regulations?

Mr. FINLEY. Well, sure, I told them to be—not get anyone hurt.

Mr. FORD. Not to get anyone hurt?

Mr. FINLEY. That's right. I warned them to keep it rock dusted, and the curtains up.

Mr. FORD. Who did you assign the responsibility for clearing up the violations that were given to you by the State of Kentucky and the federal mine inspectors?

Mr. FINLEY. I don't know, buddy, I've done so much since the mine inspectors was there.

Chairman PERKINS. Let me ask the witness if he can estimate, since he has stated, in his judgment, the explosives expenditure ran seven or eight hundred dollars per month, what percentage of this bill would be for 40 percent dynamite, in your judgment?

Mr. FINLEY. I don't know. I would have to go back. They got our records; I can go back to the records and give you exact on it and tell it to you.

Chairman PERKINS. Give us an estimation. Would it be half of it?

Mr. FINLEY. No, it wouldn't be no half.

Chairman PERKINS. What would you say—20 percent, 30 percent, or 40 percent was dynamite?

Mr. FINLEY. Sir, I can't answer that question, but I can go back and get it and write you a letter on it and verify it.

Chairman PERKINS. Will you get that for us and put it in the record and break it down as to permissible explosives and non-permissible, and as to 40 percent dynamite, and the total amount of Primacord that was purchased either by yourself or by any of your agents?

Mr. FINLEY. Yes, sir.

Chairman PERKINS. Including everything that the Finley Coal Company paid for in the way of explosives in connection with mines 15 and 16 on Hurricane Creek, and give us a breakdown?

Mr. FINLEY. Yes, sir, I can do that.

Mr. WILSON. Have they returned the records to you yet?

Mr. FINLEY. Yeah, I think they have.

Mr. WILSON. They had the records.

Chairman PERKINS. Will you get that to us next week, Mr. Finley?

Mr. FINLEY. Yes, I will try to.

Mr. LANDGREBE. Mr. Chairman, we have been going over two hours now and I would suggest that the Republican side of this committee have a chance some time before sundown to ask a couple of questions.

Charlie, how old are you?

Mr. FINLEY. I'm forty five.

Mr. LANDGREBE. Forty five, and you have been in the coal mine business of worker or operator for twenty two years?

Mr. FINLEY. Yes, I would say so.

Mr. LANDGREBE. How many high school graduates do you have working in your mine? Would you say of your employees?

Mr. FINLEY. I couldn't say—not knowing. I have never questioned them particular on it; I've got some—yeah.

Mr. LANDGREBE. There has been a number of questions asked of you today, why you didn't supervise this or supervise that. Do you—you say you have people purchasing, but are you in charge of the purchase of supplies? Would you say you generally are the purchasing agent for your company?

Mr. FINLEY. No, I do part of the purchasing and they get what is needed; if it's anything—a big order, you know what I mean, anything special, why yes, I'm the man, but if it's just general supplies, they do it.

Mr. LANDGREBE. How about your personnel? Who hires the personnel?

Mr. FINLEY. Well, most of the time the foreman. I would let the foreman most of the time—yeah.

Mr. LANDGREBE. How about the hiring of leased equipment and the sales of coal, is that part of your work?

Mr. FINLEY. No, sir; Stanley does the selling of the coal, yeah, on the other end.

Mr. LANDGREBE. Would you consider this coal mine business to be a competitive business?

Mr. FINLEY. Yes, very much.

Mr. LANDGREBE. What happens when one of your employees, or if this ever occurs, when an employee would come to you and tell you that there was—he thought there was illegal material being used in the mine or complaining about anything? Would you listen to him? Would you talk to him? Would you investigate? What would be your normal reaction?

Mr. FINLEY. Well, I always—any time anybody told me anything, I might not go and say anything, but I will observe it and check it and see if it is, you know what I mean, yeah, until I find out.

Mr. LANDGREBE. How do you think your mine compared with other mines in the region, same area, for cleanliness and safety and so forth?

Mr. FINLEY. Well, it's the cleanest mine and the best mine that I ever run.

Mr. LANDGREBE. How many mines are there in this general area? Do you know about how many? I mean in southeast Kentucky, that would be similar to yours or underground mines?

Mr. FINLEY. Oh, I don't know—similar to ours, in this vicinity, would be Shamrock, would be the only one I would know of.

Mr. LANDGREBE. I have been told there are about 1400 mines. A number of your people have been with you for some time now?

Mr. FINLEY. Yes.

Mr. LANDGREBE. They testified four or five or six years, and also, some of them indicated they had left you and went—perhaps went to Shamrock and came back. Do you know—do you have any reason they would come back to you after finding employment elsewhere?

Mr. FINLEY. Well, I don't know; maybe it would be working conditions, they would have different, you know, working conditions, or maybe get laid off or didn't earn a day's work—missed a day's work or something like that, in general terms.



Mr. LANDGREBE. How long had this coal law been in effect, the National Coal Mine Act? Do you know how long or when it went into effect?

Mr. FINLEY. Yes, it was supposed—it started going in different times; part of it went in in June; some in September, didn't it?

Mr. LANDGREBE. It was passed a year ago.

Mr. FINLEY. Yeah, that's right.

Mr. LANDGREBE. You are informing me now, I didn't really know the staging in of the Act. It has been reported, or we have heard testimony that the inspectors visited your mine on—at least on thirteen occasions, thirteen days; did you feel that's about right, that they did visit your mine or were there—rather frequently—during the summer and fall?

Mr. FINLEY. Yes, they were there frequently.

Mr. LANDGREBE. What was your impression of the inspectors? Were they—did you consider them tough or easy to get along with or did they seem to know their job? What was your reaction to the inspectors that came to your place in the coal mining business?

Mr. FINLEY. As far as their personal, they were nice, but as far as the laws they were tough.

Mr. LANDGREBE. They were there to enforce the law and they knew the law?

Mr. FINLEY. What they knew of it they enforced it on me, definitely, yeah.

Mr. LANDGREBE. How about the state inspectors? Is there a co-relation, are they working together or what is happening on that?

Mr. FINLEY. Well . . .

Mr. LANDGREBE. Do you continue to have state inspectors?

Mr. FINLEY. Yes.

Mr. LANDGREBE. Are these people taking over the state inspectors' job?

Mr. FINLEY. No, we still have state inspectors.

Mr. LANDGREBE. I was told that the federal inspectors had a training school for mine workers, and I believe this was testimony given yesterday, that there were only two enrolled and one of those dropped out. Do you find it difficult to get your employees to, when they are off some work, to attend safety program, safety schools?

Mr. FINLEY. Yes. They had a couple at Manchester; one of the boys was on the night shift; I tried to get him to go to take the license test for a fire boss; he promised me to go but he didn't go.

Mr. LANDGREBE. In other words would this be a safe statement? Would you agree with this? That it's going to take some time and some encouragement to get the general coal miner to attend these training schools and to learn what these federal inspectors want and to become fully cognizant of the Act and what they are trying to do?

Mr. FINLEY. Yes, it's going to take time.

Mr. FORD. Would you include a mine owner in that too?

Mr. LANDGREBE. Yes, I will. I will include that.

Mr. FORD. I will agree if you will put the mine owner in it. I don't think he spent five minutes—he said he didn't spend five minutes in there.

Mr. WILSON. He didn't say that.

Mr. FINLEY. What I was talking about . . .

Mr. FORD. Have you ever attended any of these courses offered by the federal inspectors?

Mr. FINLEY. The only thing they offered was fire boss papers and which I've already got, and the First Aid, I had that in the Navy.

Mr. FORD. That's not what the federal government has offered.

Mr. LANDGREBE. I do not intend to argue any further. I let you take the floor and I would like to proceed with a few more questions. You fellows had this man for two hours and twenty minutes; I would like to have him for ten, and if you haven't made me lose my place altogether, we will go on. In other words, we are here trying to determine the relationship to this Coal Mine Act, and if it would relate to this coal mine catastrophe, and I have spent a good bit of time examining people and papers not totally related to the Bill and its effects. Do you have any idea of the amount of time in discussion that was given to the dust regulations when we were writing this Bill? Do you have any idea of how much debate, and discussion, and how much time was spent by the committee trying to determine satisfactorily the dust minimums that would be—that you could comply with? Have you any idea how much time was spent by the committee on that?

Mr. FINLEY. No, sir, I don't.

Mr. LANDGREBE. Do you know that a representative group from our committee went to England and visited coal mines to determine the dust standards and dust regulations? Do you know that a committee did go to England?

Mr. FINLEY. Yes, sir.

Mr. LANDGREBE. You know that?

Mr. FINLEY. Yes, sir.

Mr. LANDGREBE. Do you have any idea what their report was when they came back?

Mr. FINLEY. Well, I think I read that, but I don't think we can get it down to what . . .

Mr. LANDGREBE. My recollection of it, without trying to prompt you, is that we had rather divergent results and comments and views of what England is accomplishing over there. You have operated mines for twenty two years; how many explosions have you had in your mines during those twenty two years?

Mr. FINLEY. This was the first one; this was the first one.

Mr. LANDGREBE. I think I mentioned that in totaling up here, you had these people working for you with over five hundred years of mine experience.

Mr. FINLEY. Yes, sir.

Mr. LANDGREBE. Obviously you had some very competent, very well trained people working for you, didn't you? People who really knew coal mining?

Mr. FINLEY. Yes, sir.

Mr. LANDGREBE. They might not be able to read all the regulations but they grew up in the coal mine area and they knew mine regulations?

Mr. FINLEY. Yes.

Mr. LANDGREBE. Getting back to the dust standards again, would you like to tell me what your personal opinion is of the regulations as they are now written, and whether you think that the violation requirement and so forth are realistic and give you—that will give you a safer mine than you have had in the past?

Mr. FINLEY. Well, I just don't like the ventilation system because you have too much of it.

Mr. LANDGREBE. Too much of it?

Mr. FINLEY. It causes your float dust that you can't move.

Mr. LANDGREBE. I'm going to just ask you a couple more questions; I really am about done for this moment. Do you think that having a sanitary toilet facility underground had anything to do with this accident or this tragedy?

Mr. FINLEY. No.

Mr. LANDGREBE. Would self rescue devices have probably saved the lives of many of these men?

Mr. FINLEY. No, sir.

Mr. LANDGREBE. Plans for emergency medical assistance, do you think that had any relationship to the blasting—to the tragedy?

Mr. FINLEY. What do you talk about? Explain that.

Mr. LANDGREBE. It says here you lacked a plan for emergency medical assistance, "A plan for emergency medical assistance not submitted by operator."

Mr. FINLEY. Well, I had talked to this undertaker and he was supposed to give me a letter on that, but he hadn't, but he said "I will serve you any time" and he was supposed to do it. Now, in the hospital now, on keeping somebody there all the time to take care of you, you can't even get that done in civilian life, unless—I would say you will never get that done.

Mr. LANDGREBE. In other words, Charlie, the fact there were some 44 or 45 violations written up in this mine by competent inspectors, you would not agree that, all of those, the 45 together, really had an effect on what happened there on the 30th of December?

Mr. FINLEY. No, sir; most of them was minor violations, you know what I mean, paper work, a lot of it. We didn't understand—they hadn't sent the forms out to us. I recall on the bolting plan, they was one inspector come around, and I had requested to drop down on the roof bolt size, and he jumped right down my throat because I didn't have it out, and I said "I didn't have any forms to put it on."

Mr. LANDGREBE. What kind of luck do you think we are going to have in the future in getting you small mine operators, who have such a maze of responsibilities, what success do you think we are going to have in getting you to come in to schools—training schools—and what success do you think we are going to have in getting these thousands of miners to become acquainted with the new regulations? How long do you think it's going to take us to do that?

Mr. FINLEY. Oh, it's going to take time. It's going to have to be done at the mines.

Mr. LANDGREBE. Alright. What would be your reaction to a new section in this law that would prohibit your employees from discharge when they approach you and state they—and give you evidence that there is illegal material being used in the mine or some very—well, we will have to say illegal actions or procedures in that mine? Would you agree? Would you be satisfied with that Act or would you observe it?

Mr. FINLEY. I don't think I would even lay a man off for telling me anything was used illegal or done anyway. I would go check on it and see.

Mr. LANDGREBE. In other words you would not object to a new section in the Act that would protect the workmen?

Chairman PERKINS. Let me say to the distinguished gentleman that the section is already in the law; and that it has been for some time.

Mr. LANDGREBE. Alright, that's fine. I'm glad to know it, because there is a gentleman in this room, a coal miner for thirty years—Mr. Perkins, what only proves my point, how difficult it is for us to get these coal mining people to become acquainted with these laws. I'm glad it's in the Act, and this is just great, and I think we should put it in the paper.

Mr. FORD. Congressman Mazzoli from Kentucky had already called that to my attention and perhaps Congressman Mazzoli would like to read the section into the record at this point.

Mr. MAZZOLI. I think we should, Mr. Ford. (Reading):

"Section 110. Discrimination. (b) (1) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that such miner or representative (A) has notified the Secretary or his authorized representative of any alleged violation or danger, (B) has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or (C) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act. (2) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) of this subsection, may, within thirty days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact.

"If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein. Any order issued by the Secretary under this paragraph shall be subject to judicial review in accordance with section 106 of this Act. Violations by any person of paragraph (1) of this subsection shall be subject to the provisions of sections 108 and 109(a) of this title. (3) Whenever an order is issued under this subsection, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation."

Mr. LANDGREBE. Well, I appreciate Congressman Ford's hearing me just a little bit further, and I would hope that the news media who are here will note or headline this fact, that the people in this state and this coal mining area will know their rights, even more than a right, it's their responsibility because this is not only their life but the lives of others.

Chairman PERKINS. Let me respond to that. There is not a coal operator in eastern Kentucky that should not know what is in this law. An operator that is unacquainted with this Act, certainly should not be operating a coal mine. Now Mr. Finley stated this morning that he did not exercise supervision, did not instruct any of the foremen or supervisors in connection with any mine safety, but he likewise stated that he pretty well knew—that he read the Act—but he didn't understand it all, but that he knew what were safety practices. This is an unusual case. There has never been a coal mine in eastern Kentucky, in my judgment, outside of this coal operation, where the operator didn't know fully what the Act contained that he was operating under. It's just elementary, and I regret that the gentleman from Indiana did insinuate that the coal operators don't know the requirements in the Act that was passed by the Congress. They all know. There have been regulation meetings conducted by the Bureau of Mines, educational meetings, from the time of its enactment. There have been regulation meetings in every coal field in this country, and the operators have been invited to attend, and it's mandatory upon the operators that they instruct their foremen and supervisors to carry out just what is in this Act, and Mr. Finley has honestly stated that he never did do that.

Mr. LANDGREBE. Mr. Perkins, the law does protect—I'm glad to know this; I was told by a miner with thirty years experience that he did not have this protection, but I'm glad to know that; I'm happy I know it; I'm glad it's in the law, but I am now stressing the point, perhaps there are many miners—obviously one miner here today, does not know he has this protection, so let's be sure the people working in that mine, the hundreds of them, do know their rights and know there is protection under the Act.

Chairman PERKINS. And the Act goes further and states they can have a representative, if they want one, and this mine never did designate a local representative to represent them, to go to Mr. Finley on any charge.

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Chairman PERKINS. The Bureau of mines found some 40 percent dynamite from the boom hole that was shot on the 22nd, and they sent samples of their findings to the laboratory and it was analyzed as 40 percent dynamite. Do you know why you permitted that dynamite to be used in connection with the boom hole there on the 22nd?

Mr. FINLEY. I didn't know anything about it.

Chairman PERKINS. Who was supposed to have been in charge when approximately forty shots were fired there on the 22nd?

Mr. FINLEY. Well, as I recall, I told you there.

Chairman PERKINS. Well. . .

Mr. FINLEY. I don't know. If you work three shifts, you go in there, whatever one shift gets finished, and if they are finished, the next shift takes over and goes on and moves on, if you work three shifts, see.

Chairman PERKINS. So you don't know the foreman that was in charge.

Mr. FINLEY. That's right.

Chairman PERKINS. You did not know the explosives that were being used and did not know about the Primacord that was used there on the occasion of the 22nd, is that correct?

Mr. FINLEY. That's right.

Chairman PERKINS. You do tell us that you knew the boom hole was going to be shot on the 22nd?

Mr. FINLEY. Well, I think so, yes. I knew it.

Chairman PERKINS. If you knew it was going to be shot on the 22nd, don't you know something about who was going to shoot it? The explosives that were going to be used in shooting that boom hole, and who was going to clean up the debris, and so forth there on that occasion, Mr. Finley?

Mr. FINLEY. Well, as I recall, we were working three shifts on that. Well, now, when you start drilling this hole, you don't know if you are going to get it drilled that shift or not. That's guess work. Well, if they do, then they will go ahead and probably shoot part of it.

Chairman PERKINS. Well, did you give anybody—did you talk to any of your foremen on the night of the 21st or the 22nd or at any time near the 22nd, about this boom hole that was being shot on the 22nd, or the night of the 21st?

Mr. FINLEY. I talked to Walter Hibbard. I knew he was supposed to—he was going to start drilling it. I don't recall when he started drilling it, possibly—I

think maybe they drilled that on the third shift—I wouldn't say for sure when they drilled it. You know . . .

Chairman PERKINS. It was drilled and shot in two different sections?

Mr. FINLEY. Well, it might have been drilled in three sections, I don't know—and shot.

Chairman PERKINS. You don't know how many sections?

Mr. FINLEY. That's right.

Chairman PERKINS. Do you know how many shots were fired at one time?

Mr. FINLEY. No, sir. A lot of times I would go a week and maybe I'd never see the third shift. In other words there was boys on the third shift I didn't even know.

Chairman PERKINS. You would go a week and never see the third shift?

Mr. FINLEY. The foremen. That's right.

Chairman PERKINS. With over forty violations down there, cited by the Bureau of Mines since last June, how could you go a week without seeing your foremen, if any corrections or abatements were to be made, insofar as these violations were concerned?

Mr. FINLEY. Well, I would leave him word with the second shift foreman.

Chairman PERKINS. You would do what?

Mr. FINLEY. I would tell him—probably a lot of times I would tell the second shift foremen to tell the third shift foremen if I knew anything needed to be done or abatement, or possibly they . . .

Chairman PERKINS. Who was your second shift foreman?

Mr. FINLEY. The abatements, could possibly be corrected maybe on the first or second shift.

Chairman PERKINS. Who was your second shift foreman?

Mr. FINLEY. Well, Ernest Hoskins; well, now, we made a switch there, on the wind-up.

Chairman PERKINS. Tell us who your foremen were on the 22nd, on the first, second and third shift, and on the 30th, at the time the boom hole was shot? Who were your foremen?

Mr. FINLEY. Well, Walter Hibbard and Decker Whitehead was on the day shift.

Chairman PERKINS. Go ahead.

Mr. FINLEY. Ernest Hoskins, Dill Finley and Teddy Harris was on the second shift, and I would say, if they all worked, it was Finley Davis and Robert Combs on the third shift.

Chairman PERKINS. You know Robert Combs well, don't you?

Mr. FINLEY. Well, I'm supposed to.

Chairman PERKINS. You heard his statement when he said that Primacord was used, and that the rock dusting and so forth had not been done up to the place where they shot the hole? Do you recall that statement that Robert made?

Mr. FINLEY. I never heard the statements. I read it in the paper, so I just don't know about that.

Chairman PERKINS. Well, the statement that you read that he made, you don't know whether that is true or not?

Mr. FINLEY. Well, I don't know.

Chairman PERKINS. Well, how could you operate that mine—I want to repeat this question—and not know about these conditions that Robert Combs, A. T. Collins, Mack Collins, James Collins and others have described in connection with the shooting there and the unsafe conditions in the mines, Mr. Finley?

Mr. FINLEY. Well, as I tell you, I worked three shifts and I can't be there all the time, and if they don't come and tell you, what are you going to do? There was no one told me about it. In fact I didn't even know they was using it.

Chairman PERKINS. In other words you relied on your people to tell you and that's the only way that you could find out about anything that needed to be done in the mine, is that right?

Mr. FINLEY. Sure. I had too much to do to stay in that mine. I was lucky to get in there every now and then. That's the reason . . .

Chairman PERKINS. You had too much to do to spend much time in this particular mine, 15 and 16, which is one operation, is that correct?

Mr. FINLEY. No. I spent a lot of time there. Too much in fact; too much in fact.

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Mr. MAZZOLI. Were you yourself a good boss?

Mr. FINLEY. Who? Me?

Mr. MAZZOLI. Yes.

Mr. FINLEY. Well, I tried to do everything right.

Mr. MAZZOLI. Did you consider yourself a friend to the men?

Mr. FINLEY. Yes, sir.

Mr. MAZZOLI. Could they come to you and talk to you, not about just mining business, but personal problems and maybe U.S. baseball and events?

Mr. FINLEY. Yeah; borrow money or anything they needed.

Mr. MAZZOLI. Have a cup of coffee, shoot some pool?

Mr. FINLEY. All the time come to my house, through sickness; I loaned them money and talked to them.

Mr. MAZZOLI. So you knew your men?

Mr. FINLEY. Yes.

Mr. MAZZOLI. Knew their first names?

Mr. FINLEY. I can't tell you I knew their first names right off, for they had too many nicknames.

Mr. MAZZOLI. But you knew the way they thought, getting ideas of those men?

Mr. FINLEY. Yes. . . .

Mr. MAZZOLI. You knew their wives?

Mr. FINLEY. . . . Yes, I had a box which I started writing in and use.

Mr. MAZZOLI. You knew their kids?

Mr. FINLEY. Yeah, part of them, yeah.

Mr. MAZZOLI. You know where the men came from—which creek or house?

Mr. FINLEY. Yes.

Mr. MAZZOLI. A lot came from Clay County?

Mr. FINLEY. Yes.

Mr. MAZZOLI. Which is your home county—Manchester?

Mr. FINLEY. Yes.

Mr. MAZZOLI. You would talk, driving back and forth—sometimes they would take you home?

Mr. FINLEY. Sometimes.

Mr. MAZZOLI. And you talked, didn't you, about a lot of different things?

Mr. FINLEY. That's right.

Mr. MAZZOLI. And at no stage of the game did anything ever come up about Primacord being used in the mine?

Mr. FINLEY. Not as I ever knew of.

Mr. MAZZOLI. You say you knew pretty much about your men and about their personal lives, and they confided in you to the extent of borrowing money and telling you their problems and you would bear them out?

Mr. FINLEY. That's right.

Mr. MAZZOLI. But they didn't tell you at all what they were using the mine?

Mr. FINLEY. No, sir, not as I recall.

Mr. MAZZOLI. I'll ask for an opinion at this point, and you can confer with your counsel before you answer. I would like to ask your opinion. Is that a believable thing for us? Is that something we ought to believe? That the men would tell you everything in the world—about events, and their wives and children, and everything but not about what was going on in the mines?

Mr. WILSON. He can answer it.

Mr. FINLEY. How was that?

Mr. MAZZOLI. Do you think we ought to accept—this panel—accept the view that they would tell you everything in the world—you would know them, their families, their friends, their disappointments, their hurts—and yet you didn't know what they were doing in your own mine?

Mr. FINLEY. I didn't know all that. I knowed what come to me. I didn't know their wives and I didn't know their children.

Mr. MAZZOLI. I didn't say—but you knew their wives, some of them, and children, and knew them enough to have a little beer with them once in a while, and talk about baseball and the weather, and yet you didn't talk about the one thing that you all had in common? Is that believable?

Mr. FINLEY. Well, I don't know.

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Mr. MAZZOLI. In your connection with Shamrock Coal Company, as operating under contract some of their coal, did you ever run into Mr. Gordon Couch?

Mr. FINLEY. I never seen that man but twice in my life before he became a mine inspector.

Mr. MAZZOLI. I asked you specifically did you know him prior?

Mr. FINLEY. No, sir.

Mr. MAZZOLI. While you were with Shamrock?

Mr. FINLEY. No, sir.

Mr. MAZZOLI. While he was with Shamrock?

Mr. FINLEY. No, sir.

Mr. MAZZOLI. Did Gordon visit with you once in a while on the mine site other than in his role as inspector?

Mr. FINLEY. No, sir.

Mr. MAZZOLI. In other words, if I can clarify, that means he would come and examine, inspect and leave?

Mr. FINLEY. That's right.

Mr. MAZZOLI. There would be no socializing whatsoever?

Mr. FINLEY. That's right.

Mr. MAZZOLI. Never at any time when you and Mr. Couch would just sit down and maybe talk over some things, prior employment, or anything like that?

Mr. FINLEY. No, he never did work for us.

Mr. MAZZOLI. I'm talking about prior employment with Shamrock.

Mr. FINLEY. No, that was never mentioned.

Mr. MAZZOLI. Did Mr. Couch ever tell you the details of his examinations and his specific inspections? Did he ever numerate those inspections to you while you all might have been sitting in that trailer on the property?

Mr. FINLEY. No, I don't recall it. I was talking to him, as we did, a lot of times I have seen him come out and maybe he would sit down, if it was lunch time, if he was outside, and I would try to find out about these new mining laws.

Mr. MAZZOLI. You would talk about the improvements to make?

Mr. FINLEY. Yes.

Mr. MAZZOLI. Did he ever talk about mining laws or your new responsibilities, in that trailer?

Mr. FINLEY. What are you taking about?

Mr. MAZZOLI. I'm talking about the trailer where the dyamite was.

Mr. FINLEY. No, we were never in that. I had another trailer.

Mr. MAZZOLI. It was in the office trailer?

Mr. FINLEY. In the office trailer.

Mr. MAZZOLI. But not the other trailer?

Mr. FINLEY. No.

Mr. MAZZOLI. Did Gordon Couch ever ask you about that other trailer?

Mr. FINLEY. Well, I don't recollect if he ever did. It was out there; it was out there with parts in it.

Mr. MAZZOLI. You say it had marks on it?

Mr. FINLEY. No, it was setting there with parts in it, and he never did ask me about it as I know of.

Mr. MAZZOLI. But he never got inside that other trailer or inspected or examined it?

Mr. FINLEY. No, not as I know of.

Mr. MAZZOLI. Are you aware—did he ever tell you, under the definition of this public law, that all the outbuildings and lean-tos comprise a part of the mine which is to be examined and inspected? Did he ever mention that to you?

Mr. FINLEY. I don't know if he ever did or not.

Mr. MAZZOLI. But most of the inspectors did look into your jeep barns and electrical equipment and magazines and all?

Mr. FINLEY. Yeah.

Mr. MAZZOLI. But Gordon Couch never did that?

Mr. FINLEY. Yeah.

Mr. MAZZOLI. He looked into the jeep barns and outbuildings?

Mr. FINLEY. Yes. I would say I have seen him up there looking at the high voltage.

Mr. MAZZOLI. But to the best of your knowledge he never did go into that explosives trailer?

Mr. FINLEY. No. He checked a transformer up there at the mines, one day up there.

Mr. MAZZOLI. Did you ever invite him to check it?

Mr. FINLEY. What do you mean?

Mr. MAZZOLI. Did you ever say, "Mr. Couch, why don't you look in that trailer"?

Mr. FINLEY. No, there is no use telling somebody to do something.

Mr. MAZZOLI. Would you have feared or been afraid to have permitted him to look in that trailer?

Mr. FINLEY. No, I don't think so.

Mr. MAZZOLI. Do you know he would have found the Primacord and dynamite if he had looked in it?

Mr. FINLEY. I don't know. I doubt it.

Mr. MAZZOLI. You had it pretty well hidden?

Mr. FINLEY. I tried to.

\* \* \* \* \*

Mr. MAZZOLI. Let me suggest one thing, if I might at this point: You mentioned earlier you had never had an explosion in there, is that correct?

Mr. FINLEY. That's right.

Mr. MAZZOLI. Had no explosion—what is that?

Mr. FINLEY. Well, you were talking about a dust explosion?

Mr. MAZZOLI. Talking about an explosion. Mr. Landgrebe asked the question. Had there been a previous explosion?

Mr. FINLEY. I thought he was referring to a dust explosion. No, we've never had any.

Mr. MAZZOLI. Did you not have a non-fatal explosion?

Mr. FINLEY. Oh, yes.

Mr. MAZZOLI. In 15?

Mr. FINLEY. Yes.

Mr. MAZZOLI. What's the difference between a non-fatal explosion and an explosion?

Mr. FINLEY. I don't know. Two eye witnesses—I mean the boy lived and it—he got over it—and I never could find out from there what happened. They don't know.

Mr. MAZZOLI. Do you think an explosion took place?

Mr. FINLEY. I don't know. Something happened.

Mr. MAZZOLI. The report indicates "an accident involving a premature detonation of explosives occurred in the 1 left section, No. 15 Mine, Finley Coal Company, about 6 p.m., Wednesday, August 12, 1970, in which two persons were injured. Rufus Whitehead, mobile face drill operator, received serious injuries to both eyes, chest, and right arm. Mack Collins sustained a ruptured eardrum. Gordon Couch was notified of the accident"; it indicates what happened and as a result listed defects with explosives and detonators, trailing cables, coal dust, so do you consider that an explosion?

Mr. FINLEY. Well, I don't know. I don't know what happened. It looked to me like something happened, but what happened, I don't know.

Mr. MAZZOLI. Are you challenging them—the work procedure, or challenging the determination of the Bureau of Mines as to what happened in August?

Mr. FINLEY. No, I'm not challenging; you just go along with it, whatever they say happened, why that's more or less their opinion.

Mr. MAZZOLI. Is that kind of the way you feel about the Bureau of Mines, you just accept what they throw at you?

Mr. FINLEY. They usually have four or five on the inspection, or something like that, and I've never seen no two men had the same opinion.

Mr. MAZZOLI. Let me ask you, Mr. Finley, is your general attitude about mine safety—by that I mean this new federal law and mine examinations by the federal bureau—pretty much just a burden you have to bear, and you just have to grit your teeth, and you know how to mine better than they do?

Mr. FINLEY. Well, I had done a pretty good job at it, but I've done a bad one under your new one, looks like, so that's all I can answer.

Mr. MAZZOLI. Do you feel if they would get out of your hair, you could do a better job for yourself and your family?

Mr. FINLEY. No, I would say you have to have inspectors; you need inspectors.

Mr. MAZZOLI. Do you think inspectors who come in and indicate there has been an explosion ought to be believed?

Mr. WILSON. I object and I advise him not to answer.

Mr. MAZZOLI. Let me read into the record, please, Mr. Chairman, Section 111 of the Public Law. This has to do with Mr. Finley and this accident that occurred on August 12th. "All accidents, including unintentional roof falls, shall be investi-



gated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents, roof falls, and investigations shall be kept and the information shall be made available to the Secretary \* \* \*. Now, did you investigate that accident and make a record of it?

Mr. FINLEY. Yes, they sent me a record on it.

Mr. MAZZOLI. Did you determine in your own mind there had been an explosion or did you report that explosion?

Mr. FINLEY. It didn't look like no hose busted; it looked like an explosion.

\* \* \* \* \*

Mr. FORD. You suggest, Mr. Finley, that mine safety would be better enforced by the state than by the federal government.

Mr. FINLEY. I didn't say it that way. I said when the law was wrote they should have got together and wrote each—the laws for each state separately, I mean with—in conjunction with the state.

Mr. FORD. Let's forget what happened in this mine on December 30th for a moment, and take advantage of the fact we have a mine operator with twenty-two years experience before the committee. As a mine operator with twenty-two years experience, would it make more sense to you to enforce mine safety in each individual state by state law, or should we have a federal mine safety law?

Mr. FINLEY. Well, I don't know the answer to that.

Mr. FORD. You don't have an opinion on that?

Mr. FINLEY. Not in your words there.

Mr. FORD. We talked about it a little while ago, but you received written notice of twenty four violations from the State bureau of mines last summer, and according to what they inform us, or they tell us, you have never even written them a letter telling them you got the notices. Have you done anything to abate these twenty four violations?

Mr. FINLEY. Sure.

Mr. FORD. Were they all taken care of before the disaster?

Mr. FINLEY. I abated all of them I'm pretty sure, and a lot of that paper work gets mixed up in the office and maybe I don't get it.

Mr. FORD. And you stated in this mine you had nothing but a few minor violations.

Mr. FINLEY. Well, I might have had—what I would call most of them, right, is what I said.

Mr. FORD. In fact you had forty-three federal violations?

Mr. FINLEY. Yes.

Mr. FORD. You had three notices of imminent danger; you had three accidents, one was for loss of life of one of your men?

Mr. FINLEY. Yes.

Mr. FORD. And one disaster. Does that sound like a minor?

Mr. FINLEY. Well, that's all—

Mr. FORD. That's all in a period of nine months?

Mr. FINLEY. Well, that disaster thing, I don't know, and the others—now when you put a man on a piece of equipment and go back to—you can only do so much, for you get out here in your car and kill yourself. That's all you can do about it—I don't know—I don't know how to answer that.

Mr. FORD. You stated that in this twenty-two years this is the cleanest and safest mine you have ever operated, is that right?

Mr. FINLEY. That's right.

Mr. FORD. If we are to use everything that has been developed in the record about the operation of this mine as a standard, then we are led to believe that in spite of our legislation, most of the mines are less safe than the one you are operating?

Mr. FINLEY. They were throwing the book at me, I know that, every violation they could find.

Mr. FORD. Aside from that, does the effect of your opinion amount to a statement that most of the mines in this area are less safe than the one you are operating?

Mr. FINLEY. I would have to go look at them.

Mr. FORD. Well, you did say, in your twenty-two years, this was the safest mine you ever operated, and the cleanest?

Mr. FINLEY. The cleanest; safest, except one, it is or two. Well, I better not comment on that.

Mr. FORD. Mr. Mazzoli asked you about the section of the statute requiring you to investigate accidents and keep records. Didn't you have an accident on December 15th involving the Henson boy?

Mr. FINLEY. Sammy Henson? Sammy Henson?

Mr. FORD. Yes; December 15th.

Mr. FINLEY. Yes; had a little place about like that (indicating) he said it hit on the loader.

Mr. FORD. Did you make an investigation of the accident?

Mr. FINLEY. No, I was already gone from the mines; they took him to the doctor before I knew it. He went over and got a little salve put on it from a doctor, used a little first aid on it, and from there I checked, but the boy said—he never did go back; he said it wasn't enough to bother him, and didn't go back to the doctor no more.

Mr. FORD. Did you investigate to find out what caused it?

Mr. FINLEY. Yeah, I checked it out, why he backed up with a loader, setting on a seat.

Mr. FORD. Mr. Finley, I asked you particularly about the injury sustained by Sammy Henson on December 15, 1970, and ask you if you investigated that accident and made a record and report on it?

Mr. FINLEY. I went and talked to him about it; he backed upon the cable and burned a little place on his hip about the size of a quarter, and he said it didn't amount to anything, and he would be back to work. He drewed compensation. I checked on it.

Mr. FORD. Well, did it amount to anything?

Mr. FINLEY. No.

Mr. FORD. Wasn't he in fact placed on compensation as a result of the accident?

Mr. FINLEY. Well, he wouldn't have been, but we was going to be down.

Mr. FORD. I didn't ask if he wouldn't have been, but wasn't he placed on compensation?

Mr. FINLEY. Yes.

Mr. FORD. Isn't it also true that they had an inspection, visited your mine on the 21st, and you didn't report it then?

Mr. FINLEY. I probably forgot about it.

Mr. FORD. You didn't make a record of it?

Mr. FINLEY. I sure didn't; we had a medical report.

Mr. FORD. But you did report it after the disaster occurred on December 30th?

Mr. FINLEY. No, sir, I didn't.

Mr. FORD. Well, you have made a report now, haven't you?

Mr. FINLEY. Somebody made one; they come and checked on it.

Mr. FORD. They checked on it but you still haven't made a report on it?

Mr. FINLEY. I don't know if I have or not.

Mr. FORD. You called your insurance company and told them about it?

Mr. FINLEY. My secretary made it probably at the office.

Mr. FORD. Somebody at the office did?

Mr. FINLEY. Yes.

Mr. FORD. So it was reported to the insurance company but not to the mine inspector?

Mr. FINLEY. Well, I don't know; it's possible; I don't know if it was or not.

Mr. FORD. Some of these minor incidents you are talking about included an accident that occurred last fall that caused the death of Mr. Wagers?

Mr. FINLEY. Uh huh.

Mr. FORD. Did you make an investigation of that accident?

Mr. FINLEY. Yes, sir.

Mr. FORD. Did you make a record of your investigation?

Mr. FINLEY. No, the bureau told me they would send me one and I've got it.

Mr. FORD. The bureau said they would send you one?

Mr. FINLEY. Yeah, them and the state—yeah, and I've got it.

Mr. FORD. It's your understanding you are to wait until somebody else investigates? You don't have the responsibility, as a mine owner, to make the investigations and make the record?

Mr. FINLEY. I went in there and looked at it, yes.

Mr. FORD. You didn't understand why it is we want you to make an investigation and a record?

Mr. FINLEY. Yeah.

Mr. FORD. Do you understand that it's so you will be able to prevent a similar accident happening in the future?

Mr. FINLEY. Well, I had the necessary papers there on it. I got the necessary papers on it.

Mr. FORD. And the investigation conducted by the mine inspector indicated that Mr. Wagers was killed as a result of defective equipment.

Mr. FINLEY. Well, that's a matter of opinion.

Mr. FORD. Well, that was their opinion.

Mr. FINLEY. Well, that's right.

Mr. FORD. Well, we don't have any contrary opinion or any opinion at all from you, because contrary to the law, you didn't make an investigation and a record of what happened in the accident.

Mr. FINLEY. Well, I was there. They said the contractor hung up but also that two or three fuses out of the jeep, and they wrote me up on it but that particular jeep, which I've got three of them, has got automatic circuit breakers on them, if anything happens, anywhere, and a short circuit, it knocks, and if it don't, he could have reached with his hand, all he had to do was reach and trip it with his own hand, but it's got automatic circuit breakers on it, yeah.

Mr. FORD. Well, you now are indicating that you acquired somewhere knowledge and you did give an explanation of why the man—how he could have avoided being killed. Did you ever reduce that information to the form of a report and a record so that you could instruct your people not to do what he did in the future?

Mr. FINLEY. Well, the only thing of it is, I have instructed them all, I mean to be safe about those things, and if anything was wrong; well, they said they was messing up three or four times that night.

Mr. FORD. Well, his head was crushed against the side of the mine . . .

Mr. FINLEY. Yeah, that's right.

Mr. FORD. . . . with the machine which was placed in a forward position but moved to the rear instead of forward?

Mr. FINLEY. That's right.

Mr. FORD. And on investigation of the machine after the fatal accident indicated that there was no way to make it go forward. When you put it in a forward position it went backward.

Mr. FINLEY. That's right. I don't know. I'll answer that. There was two eye witnesses. They were two eye witnesses to that, they couldn't see the man but they could see the car, and they could see the tractor—the mine tractor; two eye witnesses to that know it. The man went ahead, he backed up, one boy hollered at him, said "Wait and I'll push your car out of the way" and he went ahead again, and when he backed up the next time he never did move no more. Now, he was juggling the car backwards and forth, what the two men told me.

Mr. FORD. Do you know what the condition of the machinery was when it was inspected after the accident?

Mr. FINLEY. Well, we pulled it outside and it would work, is the only thing I can say.

Mr. FORD. And as a result of that accident you received a number of recommendations with regard to the equipment?

Mr. FINLEY. It was—a little old safety fuse.

Mr. FORD. A little old safety fuse?

Mr. FINLEY. That's right.

Mr. FORD. As a matter of fact a number of these minor violations that you have had included such things as forty-four splices in one cable, with only one permissible?

Mr. FINLEY. I'll explain that.

Mr. FORD. Also the failure to have spark shields on the electrical contacts and electrical equipment, also the failure to repair obvious violations with regard to the wiring of electrical equipment, also the failure to have fuses built into the power systems, so that the equipment would abort if something went wrong, also the failure to have the power switch within reach of the working men in the mine—you had it outside instead of inside, those were all electrical type violations, similar to the cause of this accident. Are you going to still say that on the 22nd when they were all to have been abated, you didn't know whether they had been corrected or not corrected?

Mr. FINLEY. Yeah, those were corrected then but the fuse, as I was telling you, a little old . . .

Mr. FORD. Well, what had not been corrected on the 22nd?

Mr. FINLEY. 22nd? They were nothing that wasn't corrected, as I know of.

Mr. FORD. All the violations had been taken care of?

Mr. FINLEY. Well, yeah, that's right. In fact I had done more than some of them said to do.

\* \* \* \* \*

Mr. FORD. One final question. There has been testimony here, Mr. Finley, that it was a matter of common discussion in the community that there were dangerous conditions in your mine; that the federal inspectors were on your neck; that in the opinion of a number of your employees the conditions were such that the feds were probably going to close you down in the near future. This is during the period preceding the December 30th disaster. Did you have any feeling that the federal inspectors were about to close your mine as a result of these violations that they had outstanding against you?

Mr. FINLEY. Well, you know what I think most of the dangerous conditions they were talking about was their line curtains, which we . . .

Mr. FORD. Now I didn't ask you to discuss the specifics. Did you feel . . .

Mr. WILSON. Let him answer the question.

Mr. FINLEY. That's the only way I can answer your question, that the line curtains that we had up there, we like to got five or six men killed, to my knowledge, and that was more of your dangerous situation that they complained on, that we had to put . . .

Mr. FORD. That's not my question, Mr. Finley. My question is very simply, did you share with these other members of the community, the apprehension that the federal inspectors were about to close your mine because of outstanding safety violations?

Mr. FINLEY. I never heard nothing about it. I don't know.

Mr. FORD. You didn't feel any . . .

Mr. FINLEY. I can't get what you're talking about here.

Mr. WILSON. He's asking you did you believe that the federal inspectors were going to close your mine down.

Mr. FINLEY. Well, I don't know. No. No, I didn't know nothing about it. I don't know nothing nothing about it. That's what I can't understand. How did the people know, if I didn't?

Mr. FORD. Well, are you saying, therefore, since you didn't know anything about it, that you didn't think they were about to close it down?

Mr. FINLEY. That's right. I didn't know nothing about it.

Mr. FORD. You had no concern that if they came on the 22nd, as they originally intended before your phone conversation with Mr. Couch, that you would have been closed down?

Mr. FINLEY. Well, no; why no. I had all the abatements off.

Mr. FORD. There has been testimony here that there were approximately a hundred and twenty holes drilled and shot at one time before the explosion that was at the root of the disaster on the 30th. Did you ever—in the twenty two years that you operated before, have that kind of a shot in your mine? That many at one time?

Mr. FINLEY. Well, sir, I don't know. I've never helped shoot a hole, and I never did ask them how they shot 'em, most of them.

Mr. FORD. Did you ever remember hearing of a shot of that magnitude in any of your mines in twenty two years?

Mr. FINLEY. Well, I don't know. Now I don't know if I have or not. We've not shot those holes in twenty two years.

Mr. FORD. As a man with twenty two years experience, as an operator, does that seem like an extraordinary amount of explosives set off at one time?

Mr. FINLEY. That's right, it does; especially on a working shift. That's right, it does; it shouldn't have been done.

Mr. FORD. It shouldn't have been done? Especially on a working shift?

Mr. FINLEY. That's right.

Mr. FORD. But you . . . suggested to us . . .

Mr. FINLEY. It wasn't company policy to shoot those that way either.

Mr. FORD. It wasn't company policy?

Mr. FINLEY. That's right.

Mr. FORD. You had a company policy with regard to how many holes should be shot at one time?

Mr. FINLEY. Well, we had permissible shotfirers which went up to Pittsburgh to shoot ten holes at the time.

Mr. FORD. That was your company policy to shoot ten holes at a time?

Mr. FINLEY. That's right; that's according to law, and those first class mine foremen knowed that. I mean ten . . .

Mr. FORD. On the 22nd they shot forty holes at one time on just one of the shots that took place on that day, and nobody reported that breech of company policy to you?

Mr. FINLEY. No, not as I know of.

Mr. FORD. What was the urgency about getting that hole done all at one time instead of over the several days it would have taken if you did it in the customary way that you had operated in the past?

Mr. FINLEY. There wasn't any urgency as I see of. I mean they wasn't that much urgency, no; no.

Mr. FORD. There was no advantage to the coal operator . . .

Mr. FINLEY. No.

Mr. FORD. . . . in doing this all at one time instead of stringing it out in a safer way?

Mr. FINLEY. No—no, sir, because we was going to have to be down to make that change over anyway.

Mr. FORD. Who made the decision to go ahead and shoot a hundred and twenty?

Mr. FINLEY. I don't know. They are gone. I don't know.

Mr. FORD. Well, who was in charge?

Mr. FINLEY. Walter Hibbard was in charge.

Mr. FORD. You were in charge!

Mr. FINLEY. I was the coal operator.

Mr. FORD. But you were the boss, on the scene, weren't you?

Mr. FINLEY. No. I was outside. I didn't know anything about them going to shoot it.

Mr. FORD. Alright. You weren't at the place where the shooting took place?

Mr. FINLEY. That's right.

Mr. FORD. But you were the "top dog" in that operation that day, weren't you?

Mr. FINLEY. Well, I didn't know what was going on. I might be the "top dog". I own it.

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Mr. FORD. Would you consider it an unreasonable imposition on your operations if we were, under the federal law, to require that you and anyone else who exercises supervisory authority over miners in a mine, subscribe to a written test on the federal safety regulations?

Mr. FINLEY. Well, I don't know how many could pass it.

Mr. FORD. Do you think that a man who couldn't pass a test on basic safety regulations should be allowed to supervise other men in the mine?

Mr. FINLEY. Well, who are you getting back to? The mine foremen?

Mr. FORD. Yes.

Mr. FINLEY. Well, they pass the test; they pass the test already.

Mr. FORD. Well, your foremen didn't.

Mr. FINLEY. Well, they passed the state test.

Mr. FORD. Did Harris pass the test?

Mr. FINLEY. Who?

Mr. FORD. Harris.

Mr. FINLEY. No, but Dill was supervisor . . .

Mr. FORD. He was a foreman, wasn't he?

Mr. FINLEY. No. Now wait a minute. He was supervisor. I was starting him, but this other boy stayed with him 90 percent of the time.

Mr. FORD. He testified here yesterday that he was a foreman for three weeks and never had seen a book of safety regulations in his life.

Mr. FINLEY. Alright, alright. You've got to go to school for that. Dill, and the other boy stayed right with him, on that section all the time.

Mr. FORD. Would it be unreasonable to require that before you put some body like Harris in charge of other men, as a foreman or supervisor, that he appear before one of the mine inspectors at some appropriate place and take a test showing that he understood the basic safety regulations concerning mining, including the use of permissible and non-permissible explosives?

Mr. FINLEY. Well . . .

Mr. FORD. Would that be a reasonable thing for us to put into law?

Mr. FINLEY. Well, if you want to put it in.

Mr. FORD. I'm not asking whether we want to put it in...

Mr. FINLEY. Well, I don't know...

Mr. FORD. I'm asking you, as an operator, with all these years of experience, and this most recent tragedy experience...

Mr. FINLEY. Yeah.

Mr. FORD. Would it be reasonable or unreasonable to require this kind of a qualification for you, as a mine owner, and your counterpart mine owners, all over the country...

Mr. FINLEY. Yeah.

Mr. FORD. . . . or anybody that you delegate your authority to, to tell other men under the ground what they should do?

Mr. FINLEY. Well, that's right. It wouldn't hurt, I would say, do what you want...

Mr. FORD. You would be willing to see that kind of a—do you think that . . .

Mr. FINLEY. Well, the state is supposed to do that, see, here. You are getting back and hitting me...

Mr. FORD. The state is supposed to do that here?

Mr. FINLEY. Yeah.

Mr. FORD. Don't they do it?

Mr. FINLEY. They was going to give a permit, but now, here, I didn't put this boy on his own. This boy was just in there, in other words, he had been greasing, and doing other work, which he didn't have time to do this work; I had put him in there and Dill was staying on that section, in fact they was riding the same personnel carrier, with him, learning the boy.

Mr. FORD. Yes.

Mr. FINLEY. In other words, I had raised his pay up, and learning him. In other words, he wasn't with his self. He was with a man.

Mr. FORD. He wasn't really a supervisor then...

Mr. FINLEY. No, he was—we was learning him. In other words he was—we was making a foreman out of him. I had raised his pay up in order for him to take it. You know we are having trouble getting those boys.

Mr. FORD. Well, he and the other employees thought he was the section foreman.

Mr. FINLEY. Well, that's right; that's right. We told him he was section foreman, and then the boss was going right with him. Another man was with him. Sure.

Mr. FORD. Do you know that he actually supervised the men while they set off a shot?

Mr. FINLEY. I don't know.

Mr. FORD. Told them how to wire it up?

Mr. FINLEY. I don't know.

Mr. FORD. He participated himself, by his testimony, in attaching the detonators to the charge, although he had never ever done it before?

Mr. FINLEY. I don't know.

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Mr. FORD. As the owner of, and operator, you are not able to tell this committee who was responsible on the occasion of the 22nd of December, or on the occasion of the 30th of December, for determining what specific explosives and detonating devices were going to be used?

Mr. FINLEY. I can tell you on each shift who was responsible for it. As I said, I can tell you on each shift who was responsible for it, and we worked three shifts, and one shift can't tell the other shift what to do—so there you go. When one man goes off, he hangs his light up, he's gone and another man takes over.

Mr. FORD. Who was responsible on the 22nd?

Mr. FINLEY. You mean the first—was on the first shift? I would say Walter Hibbard and Decker Whitehead was on the first shift. Walter Hibbard was actually the superintendent. I don't know where he told these boys or anything.

Mr. FORD. Did both of them at that time know what Primacord was?

Mr. FINLEY. I don't know.

Mr. FORD. Did they know the difference between permissible and non-permissible explosives?

Mr. FINLEY. They should, if they can read.

Mr. FORD. They should, but did they?

Mr. FINLEY. Well, they've got first class papers and they are able to read ; both of them are able to read and write.

Mr. FORD. But as the owner and operator of the mine, you were never curious enough to find out whether they did in fact know such things about explosives?

Mr. FINLEY. Well, you know I've not got time to take the time to look at every little thing at that mine. If you ever run one, why you would find it out too.

Mr. FORD. You just got through telling us you weren't running a big mine, you were running a little bitty one?

Mr. FINLEY. I'm running a little one, that's right.

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Chairman PERKINS. Now on the 30th, it has been testified to that there were approximately a hundred and twenty shots fired, at one time, through the use of Primacord. Did you know—do you know who drilled those holes?

Mr. FINLEY. No, sir, I don't.

Chairman PERKINS. You are telling the committee that you do not know who drilled those holes, whose responsibility it was ; whether they were drilled on the night shift, the day before, or that morning?

Mr. FINLEY. From what I could check up—I checked on the second shift. I didn't tell the second shift to drill any because I knew we was going to drill the hole.

Chairman PERKINS. Who had the responsibility then of seeing the holes were drilled?

Mr. FINLEY. Well, let me go back, let me tell you here. The second shift was short crewed, the second shift mine foreman usually relayed on to the next shift what should have been done, and the third shift didn't do any drilling.

Chairman PERKINS. Do you have a record, as required by law, where the second shift transmitted what they had done to the third shift in connection with these holes there?

Mr. FINLEY. No, sir, I don't have no record.

Chairman PERKINS. You mean to tell the committee that you do not keep records of that kind, from the first shift right on to the second shift and the second shift to the third shift?

Mr. FINLEY. Our fire bosses, we keep fire boss records.

Chairman PERKINS. You keep fire boss records?

Mr. FINLEY. Yes.

Chairman PERKINS. But shooting records, that's one of the main things there.

Mr. FINLEY. No, I don't keep records on it.

Chairman PERKINS. Keep no records on who's doing the shooting?

Mr. FINLEY. No.

Chairman PERKINS. You mean to tell the committee that information is not at your command there at your mines?

Mr. FINLEY. Part of the time I might know it and part of the time I don't know.

Chairman PERKINS. Well, what does your record show?

Mr. FINLEY. I've got no records on it.

Chairman PERKINS. You've got no records on it?

Mr. FINLEY. That's right.

Chairman PERKINS. You don't know what happened on the first shift there then, the morning of the 30th?

Mr. FINLEY. No, sir, I never got there until approximately 11:00 o'clock and the explosion happened about 12:15.

Chairman PERKINS. On the day shift then, on the shift immediately preceding the day shift, what shift was that?

Mr. FINLEY. That would be the third shift.

Chairman PERKINS. The third shift?

Mr. FINLEY. That's right.

Chairman PERKINS. Do you have any records showing whether any if these hundred and twenty holes were drilled?

Mr. FINLEY. No, sir. I went back and checked, and they said they hadn't drilled any, the second shift or third shift hadn't.

Chairman PERKINS. Who told you they hadn't?

Mr. FINLEY. Robert Combs, I asked him after this thing happened, I believe Robert Combs told me that, and I asked Dill Finley, if they drilled, and they said no, and Finley Davis.

Chairman PERKINS. Now who else did the drilling?

Mr. FINLEY. Well, it was—these holes, if they drilled them now on the day shift, was drilled by a boy by the name of—let me see—what is his name—they call him—a Sizemore boy, an extra boy.

Chairman PERKINS. Why were they in such a big hurry, if they were drilling on the day shift, to shoot a hundred and twenty holes by 12:30 that day?

Mr. FINLEY. That's what I want to know. I would like to know that myself.

Mr. Finley may know the answer to that question; but then again, he may not. The committee can only speculate with respect to it.

The evidence presented to the committee is substantial in support of the belief that the single boom hole of December 22 was blasted over a minimum period of three shifts. There is no evidence to indicate the double boom hole of December 30 was blasted on any other than the first—and fatal—shift. Therefore, while the single boom hole was blasted over a 24-hour period, the double boom hole was blasted during a period of not more than five hours. This includes the time required for drilling, loading, stemming, and wiring the holes, as well as igniting the explosives. It was a remarkable performance in terms of operating efficiency; but the committee cannot escape the belief that a reason beyond operating efficiency was the justification.

Prior to December 22, the operator had virtually precluded the responsible Federal inspector from visiting his mine on that date to determine whether required abatement of violations had been performed. He had telephoned him and, during the course of the conversation, stated that the mine would not be in operation from December 22 through December 27. A single boom hole was blasted—using dynamite and Primacord—on December 22.

But the operator had reason to expect a Federal inspector on December 28, the first day the mine resumed production after the Christmas holiday. The abatements required by December 22 had yet to be determined, and violations for which extensions of time to abate by December 28 were due to be determined. A Federal inspector did not visit the mine on December 28 or, for that matter, on December 29. And, based upon the facts known to the committee, it is doubtful the operator actually expected one to appear on those days.

On the morning of December 30, however, the operator completed the work of installing a water line to the working faces—responding to one of the violations cited in an earlier inspection and required to be abated by December 28. And after the explosion, a number of self-rescue devices were found in the supply trailer on the premises of the mine; a partial response to a violation cited in November, and required to be abated by December 22. Unlike the comparatively leisurely pace with which the single boom hole was blasted on December 22, the blasting of the double boom hole on December 30 was hurriedly completed. It is believed the operator did not expect a Federal inspector before that date.

The committee recognizes the inherent limitations of the proposition, but puts it forth as an hypothesis. The committee has essentially exhausted its ability to confirm the presumed knowledge of the operator, and believes the need for such conclusiveness is clearly beyond the scope of this investigation.

(10) Stanley Finley followed his brother in presenting testimony, but—although a partner in ownership—had no responsibility for operating the mine and was largely unfamiliar with its operations.



## EPILOGUE

On February 23, 1971, the Bureau mailed to the Finley Coal Company a Proposed Order of Assessment in the amount of \$53,600, as a civil penalty for violations cited at the mine from June through the disaster date.

On March 31, in a 28-page response, the Company protested the Proposed Order. Among other contentions, the Company stated that the Federal Coal Mine Health and Safety Act of 1969 "is unconstitutional and void and violates the Constitution of the United States of America"; that the "assessment of a civil penalty for any one or more of the claimed violations . . . is . . . contrary to law, and in violation of the Constitution . . ."; that the failure of the Department of the Interior to impose a civil penalty at the time a violation was cited, while inflicting a cumulative penalty, is "flagrantly unjust, cruel, unusual, illegal, and unlawful and contrary to the spirit, purpose, intent and provisions of said Act and the law and, furthermore, constitutes cruel and unusual punishment contrary to the Eighth Amendment to the Constitution of the United States"; that the "aggregate civil penalty of \$53,600.00 is . . . grossly and flagrantly excessive and exorbitant . . ."; and, that the civil penalty is "unjust, illegal, unlawful, and unauthorized by and contrary to law . . ."

The Bureau will now review the penalty and, if it declines to make modifications, the Company is entitled to other procedures, including judicial review. Given the Constitutional issues raised in the protest, the matter could take years to litigate.

While the debate goes on, the graves of 38 near forgotten Kentucky coal miners will grow cold.

## MINORITY VIEWS ON THE HYDEN COAL MINE DISASTER

We cannot agree with the major premise of the majority report—that the Bureau of Mines “must bear a heavy burden of responsibility for the Hyden tragedy” because in effect it should have been aware of the possibility of disaster and should have closed down the mine prior to the tragedy. In our view this represents a classic example of legislative hindsight and is contradicted by the record which clearly established that flagrant violations of the law were the cause of the disaster; second, the handling of this report within the subcommittee violated basic concepts of due process.

In setting forth our views as to both substantive and procedural matters, we do not seek to minimize the tragedy at Hyden or the dreadful loss of life that occurred there since the safety and health of coal miners has and will continue to be a major concern of this subcommittee. However, emotional rationalization and legislative hindsight is no substitute for objectivity—and objectivity is needed not only in determining the cause of the disaster but in determining what steps can be taken to prevent a recurrence of this or similar coal mine disasters. At a later point in this report, we discuss other areas that should be explored in this committee’s exercise of its legislative review authority.

### I. REAL CAUSES OF THE HYDEN DISASTER

The investigation and report of the Bureau of Mines conclusively established the causes of the coal mine explosion and the further investigation by this committee has not altered or undermined one iota the findings of fact and conclusions of the Bureau of Mines report. It is undisputed that the causes of the disaster were threefold and involved flagrant violations of law, namely: (1) use of materials that are illegal for use in underground mines, that is, use of primacord and possibly dynamite; (2) firing of an inordinate and illegal number of blast holes; (3) excessive accumulations of coal dust which were ignited by the blast and propagated the explosion throughout the mines.

It is clear, therefore, that blatant violations of law and common-sense were the reasons for the disaster. In light of the allegations contained in the majority report the question arises, however, whether there was in fact any failure on the part of the Bureau of Mines or its inspectors which contributed to the disaster.

The record discloses that inspectors of the Bureau of Mines were at the Hyden (Finley) mines on eight different occasions for a total of 13 days in the 9 months between the effective date of the safety standards in the new law and the date of the disaster, December 30, 1970.

In testimony before the subcommittee on March 9, 1971, Dr. Elburt

F. Osborn, Director of the Bureau of Mines, pinpointed the real cause of the disastrous explosion when he concluded :

The point I am making, Mr. Chairman, is that the Bureau's inspections of the Hyden mines did not prevent the unsafe practices which caused the disaster. We can and we will penalize operators for violations when we find them ; but neither the inspection nor the punishment *will guarantee that an operator will comply with the law in all of its respects when our inspectors are not there.* [Emphasis supplied.]

It is clear that neither the Bureau of Mines nor its inspectors were aware that the Finley mines were using illegal materials, primacord and dynamite in its blasting operations or that on the day of the fatal explosion, 120 shot holes were to be set off simultaneously, a number six times greater than the permissible number under the law. Absent any prior known violation as to such matters it is difficult to perceive how the Bureau's inspectors could have foreseen that such blatant violations of law were to occur.

While it is true that the mines in question had been cited for certain safety violations which were to be rectified on or about December 28, 2 days before the fatal explosion, none of the violations cited contributed to or in any way caused the fatal explosion.<sup>1</sup> The Bureau of Mines report stated on this point :

On November 19, 1970, Federal Coal Mine Inspector Gordon Couch made a spot inspection of No. 15 mine. Five Notices of Violation were issued to the operator requiring abatement of these violations by 8 a.m. on December 22, 1970. Statements by experts indicate that none of these violations had anything to do with the December 30, 1970, disaster which resulted from an explosion in No. 16 mine.

There was nothing cited in the majority report which established the contrary.

The Bureau's investigation and report also made it clear that the failure of the inspector to return to the Finley mines on December 22 to check whether these violations had been remedied prior to the fatal disaster on December 30 neither caused nor contributed to the disaster. An inspector is required to return on days that the mine is in full operation to check on abatements and in this instance was advised that the mine would not be operative during the period of December 22 through the 27th. Although Inspector Couch did not return to the mines prior to the disaster on December 30, even if he had he would only have checked the No. 15 mine for abatements and not No. 16 mine where the fatal explosion occurred.

Nor is there any merit to the claim that if the No. 15 and No. 16 mines had been treated as one entity after their interconnection in August, the explosion in No. 16 mine might have been prevented. It should be noted that of six violations cited for the No. 15 mine on November 19, 1971, only the one involving too much respirable dust in a work area was serious enough to warrant a withdrawal order. Thereafter but prior to the fatal explosion on December 30, the operator abandoned the area in question but continued to operate other sections of No. 15 mine.

<sup>1</sup> Violations cited included : sanitary toilet facilities not provided for surface and underground ; qualified persons not used to maintain, test, and examine electrical equipment ; frame-ground protection not provided on the direct-current equipment ; self-rescue devices not provided for all underground workers. Devices on order : concentration of respirable dust amounted to 33.9 milligrams in the area of the coal cutting machine operator ; imminent danger, too much respirable dust in the work area. The last cited violation prompted a withdrawal order and thereafter the operator abandoned that area of the mine.

The supervisor of Inspector Couch, Mr. Mark, of the Bureau of Mines, after pointing out that inspectors do not return to a mine to check on abatements of violations when the mine is not operating, i.e., not producing coal, informed the committee that the No. 15 mine was not subject to a closure order on December 22 when he stated:

Mr. MARK. There wasn't no closure order on that mine, only on the—a closure order on the two right sections of the 15 mine, or one right section of 15 mine, for respirable dust.

Mr. FORD. Then the mine owner was not in violation? You hadn't closed him down or stopped him before that. He was within his rights in operating on the 22nd?

Mr. MARK. That's right.

It is rather obvious that if the respirable dust violation in a section of the No. 15 mine did not result in a complete closure of the No. 15 mine, it certainly would not have resulted in a closure of the No. 16 mine even if they had been considered one entity.

With respect to the No. 16 mine itself, it was completely inspected for 3 days on October 19, 20, and 22, and a spot inspection on October 26. None of the violations found were of an imminent danger type requiring a withdrawal order and a cessation of work there. Of the violations found, the citation required abatement in some cases by October 26 and in others by November 17. There was, therefore, no indications of any imminent danger in No. 16 mine in the months preceding the fatal explosion there on December 30, 1970.

## II. THE MAJORITY REPORT—AN EXAMPLE OF “LEGISLATIVE HINDSIGHT”, INCORRECTLY CHARACTERIZES THE RECORD AND REACHES ERRONEOUS CONCLUSIONS

In addition to certain erroneous factual findings in the majority report which form the basis for its erroneous conclusions, the use of a prologue, prelude, and epilogue and its use of lurid prose are characteristic of the report and more befitting a dime novel approach.

### *A. Allegations regarding the Bureau of Mines public hearing and post-disaster activities.*

The majority report characterized the Bureau's public hearing on the disaster as “poorly handled” and a “sham”; criticized the failure to call widows of the victims as witnesses in such hearings; and spoke critically of the failure to advise widows of the mine victims of their right to have an autopsy on their husbands to establish claims for “black lung” benefits. An examination of these allegations discloses their lack of merit.

To say that the public hearing on the disaster at the Finley mine that was held following the Bureau's technical investigation was a “sham” and that it “actually impeded the purpose of the investigation” is an emotional charge not substantiated by the facts. As Bureau of Mines Director Osborn stated at the outset, it was the purpose of the hearing to “obtain additional information that will help us reach a conclusion as to the cause of this disaster”. The hearing did produce information in addition to that developed by the technical investigation, which was in turn followed up by Interior Department attorneys.

The success of the Bureau of Mines hearing and investigation is

best illustrated by the fact that on June 23, 1971, the U.S. District Court in Pikesville, Ky., returned indictments against the Finley Coal Co. and its manager, Charles Finley, charging 24 separate violations of Federal coal mine safety standards at two mines operated by the firm, based on results of the hearing and investigation by the Interior Department's Bureau of Mines.

Except for the fact that the Bureau Director chaired the hearing, it did not differ in concept and procedure from previous disaster hearings conducted over many years. It has been the practice to conduct those hearings jointly with the State agency responsible for coal mine safety; to permit questioning by State as well as Federal officials; to interrogate all witnesses that could possibly contribute evidence or corroborate the evidence of others.

The majority report, after criticizing the Bureau of Mines conduct of the hearing for its lack of quasi-judicial procedure, promptly turned critical for not calling the widows of mine victims to testify, stating:

The witness list was void of widows of miners killed in the disaster; widows who, based on past experiences with their counterparts of other disasters, could have provided a plethora of information relative to the operating conditions of the mines. [Majority report, p. 3.]

It has never been the practice, except in a rare instance, to call the widows of the victims to the stand to testify. It is difficult to imagine that they "could have provided a plethora of information relative to operating conditions of the mines." Having never been underground, their testimony at best would have simply been hearsay. It was obviously more logical to seek competent evidence from the 62 remaining employees who actually worked at the mines in question.

The majority report implicitly attempts to lay at the doorstep of the Bureau of Mines, the alleged failure to perform or to seek autopsies on the bodies of the deceased miners for possible "black lung" claims. While the report carefully characterizes it as a "deficiency" of post-disaster Federal activities, a later point in the report stresses that the Secretary of Health, Education, and Welfare is authorized to pay for such autopsy. It is possible, of course, that authorized autopsies might have revealed advanced stages of pneumoconiosis in some of the victims. However, since the act does not direct him to perform autopsies on all dead miners there is a question whether the Secretary of HEW has an obligation or whether it is ever proper for him to initiate autopsies in such circumstances. In the Hyden instance, there is no record of any request having been made of HEW for an autopsy to be performed. Rather obviously, whether or not a miner had grounds for a claim for "black lung" benefits, it had no relevancy whatsoever to the Bureau's investigation and determination of the cause of the disaster. If any deficiency as to black lung exists, it should lie at the doorstep of this committee for failure to provide in the existing law for initiation of mandatory autopsies on behalf of the widows. The Coal Mine Health and Safety Act of 1969 specifically designated the Social Security Administration as the responsible agency for administering black lung benefits. It therefore, ill behooves the majority to implicitly hold the Bureau of Mines responsible for the matter, which in any event, is irrelevant to the cause of the disaster.

*B. The majority report blatantly distorts the record.*

1. With respect to the use of primacord the report states:

The evidence shows conclusively that it was generally known in the communities in which the miners lived that Primacord, a nonpermissible and dangerous detonator for use underground was being used in the Finley mine. [Majority report, page 41.]

However, at the committee hearing, when Mr. Combs, the fire (safety) boss for the Finley mines who had over 21 years of mining experience and had recently used primacord was asked whether he knew that primacord was an illegal material to use in the mines, he responded:

I never heard of it being illegal until after the explosion, they said it was really a dangerous stuff and they said it was illegal to handle it. I never heard it mentioned that it was illegal at all. I didn't even know anything about it.

At another point in the committee record Chairman Perkins interrogated Mr. Harris, a section foreman in the Finley mines as follows:

Chairman PERKINS. I think its fair to the witness, since there is a lot of contradiction here, that if we understand your statements, in trying to reconcile your statements, that you did not know what primacord was until after the disaster and you were a section foreman, is that correct?

Mr. HARRIS. That's right.

Chairman PERKINS. And if primacord was used there on the 22nd when these shots were fired, you did not know it?

Mr. HARRIS. I wouldn't know it if I had seen it.

In light of what is contained in the committee record about knowledge or lack of knowledge about primacord by experienced men who actually worked in the mines in question, it is sheer hypocrisy to attempt to blame the Bureau of Mines for not acting on some vague claim of community knowledge that unlawful material was being used in the mines.

2. At page 29 of the majority report it cited a violation given the Finley mines as follows:

(d) *Self-rescue devices were not provided for the miners underground.* [Emphasis supplied.]

A review of the complete wording of the actual citation reveals a strikingly different picture however. The full citation reads as follows:

*Self-rescue devices were not provided for all underground workers. Devices on order.* [Emphasis supplied.]

In any event the absence or presence of such self-rescue devices was irrelevant because it played no part in causing the explosion nor was it of such nature as to put the inspectors on notice of any imminent danger.

3. Conclusion of the majority report that many of the miners looked hopefully to the Bureau of Mines for closure of the mines or the imposition of safe working conditions:

The record does not disclose any instance of miners reporting unsafe working conditions at the mines to the Bureau or its inspectors despite a provision in the act that specifically protects miners from discharge for complaining about or reporting unsafe working conditions. If anything, the record reveals that miners themselves attempted

to evade safety requirements prohibiting the carrying of cigarettes into the mines. This is illustrated by the following testimony in the record:

Mr. LANDGREBE. Did your husband smoke when he was down in the mines?

Mrs. YOUNG (widow of a mine victim). He took cigarettes but he would take tobacco when he found out the inspectors was coming.

This was confirmed again in further interrogation of Mrs. Young:

Mr. FORD. Did your husband chew tobacco at other times?

Mrs. YOUNG. No.

Mr. FORD. So you relate the times he would go and buy chewing tobacco to the times that he knew the inspectors were going to come and he wouldn't be permitted to smoke in the mines? Did that happen frequently?

Mrs. YOUNG. Yes, because I found just the other day when I was cleaning his box out I found three little tobacco empties—packs empty.

C. Allegations that the inability to frequently inspect mines was due to the failure of the Bureau to actively recruit and expand its inspection force.

It is true and the Bureau conceded that the 1,750 underground mines in the Nation could not be inspected with the frequency and completeness required by law because of the shortage of qualified inspectors. The Federal Coal Mine Health and Safety Act of 1969 specified that its interim health and safety standards became enforceable 90 days after enactment; that all of the Nation's underground mines be inspected at least four times annually; and that especially hazardous mines be spot-inspected at 5-day intervals.

However, in contrast to the kind of inspections required by the previous superseded laws under which about 40 standards had been enforced, the new act entailed a check on about 200 mandatory health and safety standards. Thus not only the frequency of inspection but the time necessary to make an inspection dictated at a minimum a four-fold increase in the size of the Bureau's inspection force—a sudden leap from less than 250 qualified and trained men to 1,000 inspectors, engineers, and supervisors.

A program of recruitment, hiring and training was initiated. Active recruitment was begun, examinations were scheduled, selection boards were set up and all other preparations made right after enactment of the law. The early results met with some success, but fell short of the projected goals, partly because the mining industry itself, striving to meet the increased demands for coal, sought the same experienced and talented people for their production operations.

To attract more applicants for inspection work out of this tight personnel market, the Bureau conducted a broad, active, intense recruitment campaign using posters, press releases, radio and TV announcements, and paid newspaper ads. The examination was simplified; the pass-fail score was successively lowered; the requirement for advance application was eliminated; the examination was given at a large number of places (42 different mining communities) where applicants could simply walk in at any time, morning or evening, 6 days a week.

The hiring and training of inspectors prior to passage of Public Law 91-173 took about 2 years. Since the passage of the current act, the hiring and training period reduced the time from a man's application for employment to the time he is qualified to inspect a mine on his own to about 10 months.

When the mandatory standards became enforceable, the Bureau had available a field inspector force of 327 persons of which 205 were fully trained inspectors, 57 were in training, 40 were engineer specialists and 25 were supervisors.

Currently (as of June 25, 1971) the field force for coal mine inspection and investigations comprises 1,039 persons including:

- 52 supervisory inspectors;
- 252 health and safety inspectors;
- 104 respirable dust inspectors (duly authorized representatives);
- 30 other DAR's/performing special duties;
- 368 inspector trainees;
- 54 specialists (roof control, ventilation and electrical);
- 65 non DAR's assisting inspectors in health and safety work;
- 47 engineers; and
- 67 technicians aides.

The existence of the deficiency in mine inspections is therefore readily understandable. The dimension of it was dictated by the critical shortage of qualified personnel which was experienced in 1970 by both the Bureau and the coal mining industry. At the subcommittee hearing in Washington on March 9 and 10, 1971, the problem of securing qualified inspectors was illustrated in the exchange between Chairman Dent and Mr. Henry Wheeler, Deputy Director of Health and Safety of the Bureau of Mines:

Mr. DENT. How many [inspectors] do you really need now for the record?

Mr. WHEELER. We need 750 inspectors.

Mr. DENT. Do you have enough money?

Mr. WHEELER. We have enough money and if we could inspect mines with dollars we would be in no trouble at all.

Mr. DENT. Then the appropriation is sufficient. Congress has done that much.

The Bureau has taken positive steps to recruit and expand its inspection force since the passage of the 1969 act. In all candor, however, it does appear that the Bureau should have accelerated its hiring and training programs so that it would have had its full inspection force at least 1 year after enactment. To a certain extent we agree with portions of the majority report which are critical of the Bureau of Mines for its failure to expand its corps of inspectors more quickly to meet the inspection requirements under the new act. As we have indicated elsewhere in this report, however, we find no basis for believing that the Hyden disaster would have been prevented even if the Bureau had had its inspection force fully manned.

### *III. The procedural issue—how the operation of the subcommittee makes a mockery of due process*

On or about June 19, 1971, a so-called report by the General Subcommittee on Labor entitled "Investigation of the Hyden, Ky.. Coal Mine Disaster of December 30, 1970" was issued as a committee print and released simultaneously to the newspapers. The most shocking feature of this "report" was that although issued in the name of the subcommittee, with but one known exception,<sup>2</sup> none of the members of the subcommittee had been allowed to review the report prior to

<sup>2</sup> Carl D. Perkins, D. Ky., is chairman of the Education and Labor Committee and ex-officio member of the General Labor Subcommittee who admittedly was instrumental in directing the preparation of the report.



issuance—none of the members of the subcommittee had an opportunity to discuss its contents—none of the members of the subcommittee had an opportunity to vote on its conclusions.

After written protests were made, the subcommittee met in an executive session on July 7, 1971, and belatedly a majority voted to adopt the committee print as the report of the subcommittee. This belated approval occurred some 18 days after issuance of the original report and after some 1,000 copies had been printed and more than 200 distributed. The belated ratification resulted in no change in the initial report—not even correction of typographical errors.

*IV. The subcommittee's opportunity to play a constructive role in its exercise of its legislative review authority*

We are hopeful that this committee will eschew its policy of "legislative hindsight" and play a more constructive and proper role. It should, for example, explore the following areas:

(a) Requiring safety training for mine management personnel to include mine superintendents, mine foremen, shift foremen, fire (safety) boss, and any employee engaged in any unusually dangerous operation including mandatory attendance at safety meetings administered by the Bureau of Mines for a minimum number of hours each calendar quarter.

(b) Mandatory educational and safety training programs on the sites for all miners and administered by Bureau of Mines safety engineers.

(c) Possible amendment of existing law to require coordination of inspections between Federal and State inspectors and providing for an exchange of inspection reports.

(d) Consideration of more frequent spot inspections for mines with a poor safety record.

(e) Consideration of whether current ventilation standards are too rigid, and thus inappropriate for different types of mines, for example, does this cause a high velocity of air which may itself be dangerous.

(f) Review of certain health and safety standards to determine their appropriateness for the small mine operators.

(g) Consideration of stricter individual safety standards and their enforcement with penalties against individual miners for violations.

These items are a necessary part of the area of concern of this committee which not only deserves but demands constructive inquiry by this committee.

#### CONCLUSIONS

The report and investigation by the Bureau of Mines and by this subcommittee has made crystal clear that the Hyden disaster was caused by flagrant violation of law, and not by any delinquency on the part of the Bureau of Mines or its inspectors.

Mine safety is everyone's business—the coal mine operator, the miner, the Bureau of Mines and its corps of inspectors, and the Congress, as exemplified in part by this committee. The Hyden mine disaster is now history—hopefully a history lesson from which will grow affirmative actions to build a better coal mine safety record.

The Department of Interior recently announced some positive action which should help achieve that safety goal. They include: the

quadrupling of the Bureau of Mines staff involved in safety enforcement with more than 1,000 men now in the inspection work force compared with only 250 inspectors in April 1970; the stepping up of its health and safety education and training activities in first aid, accident prevention and mine rescue; the development and implementation of new programs to achieve an increased alertness to mine safety techniques and procedures.

In the final analysis, no law even if well implemented is going to make the mines safe. It will take a cooperative effort on the part of everyone concerned to help achieve some meaningful safety goals. Of paramount significance is the necessity to motivate and educate both the coal operator and the individual coal miner in an effort to get their voluntary compliance and acceptance of all safety rules and regulations. Unless such motivation and education are incorporated into meaningful safety programs, safety in the mines will remain a distant, unattainable goal.

ALBERT H. QUIE.  
JOHN N. ERLNBORN.  
ALPHONZO BELL.  
EARL F. LANDGREBE.  
ORVAL HANSEN.  
WILLIAM A. STEIGER.  
JACK F. KEMP.

## ADDITIONAL VIEWS OF CONGRESSMAN LANDGREBE

I am in substantial agreement with the dissenting views but am impelled to conclude that the inflexibility of the safety standards set forth in the Coal Mine Health and Safety Act of 1969 may have contributed to the Hyden disaster.

My personal inspection of the premises of the Finley mines where the tragedy occurred, my conversations with mine operators in the area and the testimony adduced by the subcommittee in hearings held at Hazard, Ky., and in Washington have confirmed my suspicions that it is unwise and impossible to apply uniform national safety standards to the different type mines that exist throughout America.

The impossibility of writing uniform safety standards and attempting to apply them properly and effectively across the board to different type mines is illustrated by the ventilation standards. The act provides (sec. 202(b)(1)) that respirable dust must be at or below 3.0 milligrams per cubic meter of air in active working areas of the mines and this standard is being reduced to 2.0 milligrams in 1972. For a deep coal mine as typified by many mines in Pennsylvania which are usually larger in size, wet and gassy—this may be an acceptable and achievable standard. High altitude mines as typified by the mines in the Hyden, Ky., area are less likely to be gassy, and are usually dry and dusty and, of course, much smaller in size. The Finley mines involved in the Hyden disaster were about 42 inches in height. Attempting to reduce the respirable dust levels to statutorily set standards in the Finley mines required fans producing and forcing air at greater velocity through these small shafts than is required in the larger mines throughout Pennsylvania. Many experienced mine operators were of the opinion that forcing air at such high velocities is dangerous in that it tends to further dry out the mine and to actually create a greater dust explosion hazard.

In my view, therefore, this subcommittee as part of its legislative oversight responsibilities should inquire and hear testimony of experienced men in the field on the possibility of amending the act so as to provide for flexible standards to reflect the nature and type of mine being regulated.

EARL F. LANDGREBE.

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