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# Fighting For Survival: Coal Miners And The Struggle Over Health And Safety In The United States, 1968-1988

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**FIGHTING FOR SURVIVAL: COAL MINERS AND THE STRUGGLE OVER  
HEALTH AND SAFETY IN THE UNITED STATES, 1968-1988**

by

**RICHARD FRY**

**DISSERTATION**

Submitted to the Graduate School

of Wayne State University,

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in partial fulfillment of the requirements

for the degree of

**DOCTOR OF PHILOSOPHY**

2010

MAJOR: HISTORY

Approved by:

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Advisor

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Date

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## **DEDICATION**

I dedicate this dissertation to my family – my father Derek, my mother Lillas, my brothers Michael and Peter, and my sister Louise.

## **ACKNOWLEDGEMENTS**

I would like to thank the people whose generosity and support enabled me to complete this dissertation. I am grateful to J. Davitt McAteer, Richard McDorman, Helen Powell, Ralph Nader, and Donald Rasmussen for giving up their time and sharing their memories. I would especially like to thank Ken Hechler, former U.S. Congressman and Secretary of State for West Virginia. Mr. Hechler participated in two lengthy interviews in August 2008 and June 2009. He also provided me with extensive letters, documents, and newspaper clippings from his personal collection. His tireless activism on behalf of the coal miners and communities of West Virginia provides a model I can only hope to emulate. Steve Fesenmaier facilitated my communication with Mr. Hechler and kept me updated on cultural events in West Virginia.

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## Chapter One

### **Introduction**

#### **Introduction: December 1907 and Beyond**

At 10:30 a.m. on December 6, 1907, there was a massive explosion at the interconnected No. 6 and No. 8 mines of the Fairmont Coal Company in Monongah, West Virginia. The explosion spread rapidly through the two mines and was heard up to eight miles away. Hundreds of men and boys were burned alive, crushed by rubble, or asphyxiated by the lethal quantities of methane gas, or “black damp,” released by the blast. As the rescue operation started, grief-stricken families and relatives congregated at the entrance to the mines. The methane gas hindered rescuers’ efforts to find survivors by limiting the time they could stay underground to fifteen-minute intervals. Even working in relay teams, many of the rescue workers became ill or died as a result of entering the mines. On December 8, the *Washington Post* reported, “A score of men of the rescuing parties are in critical condition tonight from inhaling black damp. Several of them are expected to die. One of these men, John Gabber, was carried from the mine tonight almost a raving maniac. His lungs were filled with black damp, which produced a delirium, and the services of four men were necessary to hold Gabbert while doctors attended him.”<sup>1</sup> In the days that followed the disaster, the rescue workers recovered sixty-six burned and mutilated bodies, many in such bad condition that immediate burial was

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<sup>1</sup> *Washington Post*, December 8, 1907, 1.



necessary. They found only one survivor, a Polish immigrant named Peter Urban, who was sitting on top of the body of his twin brother.<sup>2</sup>

There has been considerable debate over exactly how many people died in the Monongah disaster. The official death toll was 372, but evidence suggests that more than 500 miners lost their lives. The Fairmont Coal Company, a subsidiary of the Consolidation Coal Company, did not keep accurate records of its workforce, particularly the ‘unofficial workers,’ such as mule drivers and trapper boys.<sup>3</sup> The exact cause of the disaster also remains unclear, although investigators concluded that the most likely explanation was that a blown fuse caused the “black damp” to ignite the combustible coal dust in the mine.

Five days before the Monongah disaster, thirty-four miners died in an explosion at the Naomi mine in Fayette City, Pennsylvania. Later in the month, on December 19, a methane explosion killed 239 men and boys at the Darr coal mine in Jacob’s Creek, Pennsylvania. The blast was so powerful that many of the bodies recovered from the

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<sup>2</sup> For extensive coverage of the Monongah mining disaster, see *New York Times*, December 7, 1907, 1; *New York Times*, December 9, 1907, 3; *New York Times*, December 10, 1907, 2; *New York Times*, December 11, 1907, 7; *New York Times*, December 12, 1907, 1; *New York Times*, December 13, 1907, 18; *Washington Post*, December 7, 1907, 1 and 3; *Washington Post*, December 8, 1907, 1 and 8; *Washington Post*, December 9, 1907, 1 and 3; *Washington Post*, December 10, 1907, 5; *Washington Post*, December 11, 1907, 5; *Washington Post*, December 12, 1907, 5. For an extensive account of community, culture, and the mining economy in Monongah see Davitt McAteer, *Monongah: The Tragic Story of the 1907 Monongah Mining Disaster, the Worst Industrial Accident in U.S. History* (Morgantown: West Virginia University Press, 2007). An extensive discussion the Monongah disaster in the larger context of workplace safety in the Progressive Era can be found in William Graebner, *Coal Mine Health and Safety in the Progressive Era: The Political Economy of Reform* (Lexington: The University Press of Kentucky, 1976).

<sup>3</sup> For a complete discussion of the debate surrounding the Monongah death toll, see McAteer, *Monongah*, especially 218-241.

mine were headless or burned beyond recognition. In addition, hundreds of other miners died in isolated accidents throughout 1907. That year, there were over three thousand fatalities in the coal mines of the United States.<sup>4</sup> In response to the Monongah disaster, the federal government created an agency called the Bureau of Mines to provide safety recommendations to the coal industry and carry out research, while many state legislatures revised their mining codes with the intention of reducing the hazards that miners faced on the job. The United Mine Workers of America, the largest union in the coalfields, mostly engaged in retroactive policies, by campaigning for improved workers' compensation and hospital care for miners.

The events of 1907 emphasized the dangers of coal mine labor. Historian Price Fishback notes that coal mining was one of the most dangerous jobs ever devised.<sup>5</sup> Miners faced a wide range of safety hazards in their work. They labored deep underground in near total darkness. They were at constant risk of being crushed to death, with tons of shifting rock overhead supported only by fragile wooden timbers. Throughout the twentieth century, roof collapses were the most common cause of death in underground mines. Coal miners also faced the constant threat of being injured or killed in an explosion, as they worked with explosives in an atmosphere filled with methane and other ignitable gases. Miners were often responsible for making their own

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<sup>4</sup> For coverage of the Naomi disaster, see *New York Times*, December 3, 1907, 1; *Washington Post*, December 2, 1907, 1; *Washington Post*, December 3, 1907, 1. For a detailed account of the Darr mine disaster, see *New York Times*, December 20, 1907, 1 and 2; *New York Times*, December 21, 1907, 8; *New York Times*, December 22, 1907, 4; *Washington Post*, December 20, 1907, 1 and 2; *Washington Post*, December 21, 1907, 1.

<sup>5</sup> Price Fishback, "The Miner's Work Environment: Safety and Company Towns in the Early 1900s," *The United Mine Workers of America: A Model of Industrial Solidarity?*, edited by John Laslett (University Park: The Pennsylvania State University, 1996), 201.

explosive devices, and were frequently involved in accidents as a result of overloading the explosives or going back to a device after it had been lit. The cars that hauled coal through the mines also posed a significant risk. Miners were often killed by runaway cars or as a result of falling off the ‘mantrip’ that transported workers through the mine. With the advent of electrification in the mines, the wires that powered cars and lighting were often exposed. Miners frequently died of electrocution when they brushed against the wires.<sup>6</sup>

As the twentieth century progressed, coal miners faced new hazards in their working environment. The mechanized loading machine gradually replaced miners who loaded coal onto cars by hand. The loading machine forced miners to work more quickly, increasing the chance that they would cause an accident through error or carelessness. When production demands were especially high, miners often neglected to carry out roof control procedures. Moreover, the loading machines generated more methane gas and higher quantities of coal dust.<sup>7</sup> This not only made explosions more likely, but also greatly increased miners’ chances of developing pneumoconiosis, or ‘black lung,’ a debilitating, work-related respiratory disease. Coal operators increasingly mechanized their operations after World War II. Consequently, black lung disease became more prevalent among miners, causing long-term chronic suffering and early death for the men who labored underground. In the coal industry, there was a distinct connection between

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<sup>6</sup> Fishback, “The Miner’s Work Environment,” 201-203. For a more thorough account, see Price Fishback, *Soft Coal, Hard Choices: The Economic Welfare of Bituminous Coal Miners, 1890-1930* (New York: Oxford University Press, 1992).

<sup>7</sup> Keith Dix, “Mechanization, Workplace Control, and the End of the Handloading Era,” *United Mine Workers of America: A Model of Industrial Solidarity?*, edited by John Laslett (University Park: The Pennsylvania State University, 1996), 176.

the safety hazards that caused immediate injury or death and the health hazards that resulted in ‘black lung’ and other long-term occupational diseases. The coal dust that permeated the atmosphere in underground mines both caused explosions and led to crippling occupational lung disease in miners.

The federal government’s creation of the Bureau of Mines in the aftermath of the Monongah disaster emphasized that legislative change in the coal industry was driven by the public outcry resulting from large-scale disasters. The routine hazards that miners faced, and the thousands of deaths that occurred from isolated accidents such as roof falls and mechanical failures, typically did not influence the federal government and state legislatures to improve health and safety regulations. During the twentieth century, each major reform of mining legislation in the United States occurred as a result of the widespread publicity and research efforts generated by major disasters. In 1941, the Franklin Roosevelt administration passed the Federal Coal Mine Inspection and Investigation Act, which enacted limited safety measures for the coal industry.<sup>8</sup> The passage of the 1941 legislation followed two major disasters the previous year. On January 10, 1940, ninety-one miners perished in an explosion at the Pond Creek No. 1 mine in Bartley, West Virginia.<sup>9</sup> Two months later, on March 16, seventy-two miners lost

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<sup>8</sup> For details of the 1940 Inspection and Investigation Act, which was part of a larger federal appropriations program for the Department of the Interior, see *U.S. Statutes* 54 (1939-41): 441-445.

<sup>9</sup> For a full account of the Bartley disaster, see *New York Times*, January 11, 1940, 1; *New York Times*, January 12, 1940, 11; *New York Times*, January 13, 1940, 1 and 16; *New York Times*, January 14, 1940; 3; *New York Times*, January 15, 1940, 3; *Washington Post*, January 11, 1940, 1; *Washington Post*, January 12, 1940, 1 and 5; *Washington Post*, January 13, 1940, 1.

their lives in an explosion in the Willow Grove No. 10 mine at St. Clairsville, Ohio.<sup>10</sup> Similarly, the next major legislative development in mine health and safety occurred as a result of a major coal mine disaster. The Harry Truman administration passed the Federal Coal Mine Safety Act in 1952 after a massive explosion at the Orient No. 2 mine in Frankfort, Illinois, in 1951, killed 112 miners.<sup>11</sup> The 1941 and 1952 legislative acts are discussed later in this chapter. Most notably, the Richard Nixon administration passed the Federal Coal Mine Health and Safety Act of 1969 following a major coal mine disaster in Farmington, West Virginia in 1968, which claimed the lives of seventy-eight miners. The 1969 Federal Mine Act mandated strong enforcement measures, as well as compensation for black lung victims. Nixon strengthened the terms of the 1969 Federal Mine Act by signing the Black Lung Benefits Act in 1972. Further emphasizing the link between safety and health, the congressional debate that preceded the passage of the Federal Mine Act of 1969 incorporated both issues into a single legislative bill. The Farmington disaster also led to changes in West Virginia's worker compensation laws.<sup>12</sup>

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<sup>10</sup> For a full account of the St. Clairsville disaster, see *New York Times*, March 17, 1940, 3; *New York Times*, March 18, 1940, 10; *New York Times*, March 19, 1940, 26; *Washington Post*, March 17, 1940, 1; *Washington Post*, March 18, 1940, 1; *Washington Post*, March 19, 1940, 3.

<sup>11</sup> For the full text of the Federal Coal Mine Safety Act of 1952, see *Federal Coal Mine Safety Act of 1952. U.S. Statutes At Large* 66 (1952): 692-710. For a full account of the Frankfort mine disaster, see *Chicago Tribune*, December 22, 1951, 1; *Chicago Tribune*, December 23, 1951, 3; *Chicago Tribune*, December 24, 1951, 1; *Chicago Tribune*, December 26, 1951, 20; *New York Times*, December 22, 1951, 1 and 30; *New York Times*, December 23, 1951, 1 and 16; *New York Times*, December 24, 1951, 1 and 7; *New York Times*, December 25, 1951, 1 and 24; *New York Times*, December 26, 1951, 40.

<sup>12</sup> The Farmington disaster and its political and legislative implications, particularly the emergence of the West Virginia Black Lung Association, are discussed in detail in chapter two. The Federal Coal Mine Health and Safety Act of 1969 is the main focus of chapter three, while the Black Lung Benefits Act of 1972 is covered in chapter six.

It is ironic that the most significant advances in coal mine health and safety legislation in the twentieth century occurred during the Richard Nixon administration. Nixon was a Republican president whose political philosophy opposed government regulation of economic enterprise and favored corporate interests over those of labor and the environment. Nixon decided to sign the Federal Mine Act of 1969 and the Black Lung Benefits Act of 1972, both passed by a Democratic-controlled Congress, for two key reasons. First, he sought to strengthen his blue-collar support for the 1972 presidential election and, second, he wanted to secure the Democrats' approval for his defense and foreign policy objectives.<sup>13</sup> Yet other factors also influenced Nixon's decision to sign the legislation. To a large extent, he was responding to the Farmington disaster and the grassroots protest that spread through the coalfields in its aftermath.

In this dissertation, I show that the Farmington disaster gave rise to a generation of coal mine health and safety advocacy and legislation. Coal miners used the Farmington disaster to convince distant and hostile elected officials of the need for stronger health and safety and compensation laws, at both the state and federal levels. I argue that miners and their supporters achieved substantial legislative change through community-driven activism. A large number of rank and file miners rejected the national leadership of their union, the United Mine Workers of America (UMW), which was corrupt and inattentive to their concerns, and instead used local branches of the union and grassroots

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<sup>13</sup> Nixon's efforts to win blue-collar support and to court the Democrats for his defense and foreign policy aims are discussed in chapter three. Jefferson Cowie has researched Nixon's efforts to win blue-collar support for the 1972 election in great detail. See, for example, Jefferson Cowie, "Nixon's Class Struggle: Romancing the New Right Worker, 1969-1973," *Labor History* 43 (2002); Jefferson Cowie, "Vigorously Left, Right, and Center: The Crosscurrents of Working Class America in the 1970s," *America in the Seventies*, edited by Beth Bailey and David Farber (Lawrence: University Press of Kansas, 2004).

organizations as the foundation for challenging weak coal mine laws. Supported by their families, miners' widows, retired and disabled coal miners, and local volunteers, as well as politicians and medical physicians, the miners' campaign for legislative change was rooted in the community of the Appalachian coalfields.

The support from the wider community was the most important dimension in the miners' campaign. While many elected officials were hostile to reform, a small minority provided crucial support for the miners' cause. In particular, Representative Ken Hechler (D-WV) and Representative Phil Burton (D-CA) exerted considerable pressure on the U.S. Congress to adopt strong preventative health and safety measures and compensation provisions, which were embodied in the Federal Coal Mine Health and Safety Act of 1969. Dissenting members of the medical establishment also contributed to the miners' campaign. Dr. Isidore Buff, Dr. Hawey Wells, and Dr. Donald Rasmussen rejected their peers' claim that miners' lung disease was the result of cigarette smoking. Instead, they linked miners' lung ailments directly to the inhalation of coal dust. They formed the Black Lung Association (BLA), which initiated grassroots protest across the West Virginia coalfields by organizing miners, their families, and local communities. The Black Lung Association's campaign persuaded the state legislature to provide workers' compensation to the victims of black lung disease in 1969. Furthermore, the physicians' testimony on the impact of coal dust on miners' lungs influenced the passage of the Federal Mine Act that year.

Miners and their supporters continued to engage in community-driven, grassroots protest when they realized that their legislative achievements were being undermined by an inefficient and industry-orientated federal bureaucracy, represented by the U.S.

Bureau of Mines and the Social Security Administration (SSA). The Bureau of Mines failed to enforce the health and safety legislation in the Federal Mine Act of 1969, while the SSA denied compensation to tens of thousands of miners who were suffering from black lung disease. Rank and file miners and local and district union leaders protested against the Bureau of Mines by sending letters to their Congressman and the UMW national leadership. They highlighted the Bureau's lax enforcement policies and its neglect of non-union mines. While the letters did not significantly influence the Bureau's policies, they showed that the miners were conscious, determined protestors who actively protested the federal government's failure to enforce health and safety. The Black Lung Association, which expanded beyond its West Virginia origins into several other states, launched a sustained campaign of lobbying and protesting against the Social Security Administration. The campaign resulted in significant changes to the federal black lung compensation program in 1972.

Miners also believed that the corrupt national leadership of the United Mine Workers, fronted by President Tony Boyle, was an obstacle to safe working conditions in the coalfields. When Jock Yablonski, Boyle's opponent in the 1969 union presidential election, was murdered, a small group of rank and file miners formed Miners for Democracy. Convinced that the national leadership was behind Yablonski's death, they sought to make the UMW more democratic and attentive to health and safety issues.

The success of community activism in the coalfields in the early 1970s was undermined by the energy crisis, which prompted coal operators to prioritize higher production ahead of safe working conditions. While President Jimmy Carter signed legislative acts in 1977 to improve mine health and safety and regulate the environmental



abuses of the coal industry, the activists' achievements were further undermined by the deregulatory policies of the Ronald Reagan administration.

To undertake this study, I conducted research at several archival institutions. The Walter P. Reuther Library of Labor and Urban Affairs at Wayne State University, which contains many valuable materials on coal mine health and safety, was particularly useful. I examined documents in the Richard J. Jensen Collection, John Herling Collection and, most significantly, the Miners for Democracy Collection, which contains the papers of the grassroots organization of the same name that seized control of the United Mine Workers in 1972. I also undertook research in the Special Collections Library at Pennsylvania State University, which holds the extensive Safety Division Office Files of the United Mine Workers. At the West Virginia State Archives, I researched reports, documents, and studies pertaining specifically to coal miners in that state. Elsewhere in West Virginia, I consulted materials in the Historical Collection of the Mine Enforcement and Safety Administration in Beckley and UMW Welfare and Retirement Fund papers in the West Virginia Collection at West Virginia University. As well as carrying out research in archival institutions, I conducted several oral history interviews and studied a range of periodicals, magazines, and national and regional newspapers. During a trip to the Library of Congress in Washington, D.C., I conducted research using regional newspapers from Kentucky. Finally, I expanded my primary research with government reports, the U.S. Congressional Record, and the minutes of legislative hearings before Congressional committees and subcommittees.

### **The Historiography of Coal Mine Health and Safety, 1968-1988**

While this study diverges from the existing literature, it is necessary to place it in the context of the larger historiography. Several historians and writers have addressed the issue of coal mine health and safety in the United States, most notably labor historian Alan Derickson, whose book, *Black Lung: Anatomy of a Public Health Disaster*, is the definitive work on the cultural, political and social evolution of black lung disease from the late nineteenth century to 1969. In *Black Lung*, Derickson argues that social movements were key to the gradual recognition of miners' lung disease. He also contends that the real tragedy of black lung was the failure of operators, physicians, and legislators to address the disease in the late nineteenth century, even though they possessed enough knowledge to do so.<sup>14</sup> Derickson concludes his study by explaining that the passage of the Federal Coal Mine Health and Safety Act of 1969 represented the culmination of activism in the coalfields. Aside from a few brief paragraphs, he does not assess the effectiveness of the act in addressing black lung disease among coal miners, nor does he carry the story forward to incorporate the burgeoning activism in the coalfields in the early 1970s.

Derickson also addresses 'black lung,' or pneumoconiosis, in several articles, most notably, "Down Solid: The Origins and Development of the Black Lung Insurgency," in which he argues that West Virginia miners did not abandon their union, the United Mine Workers of America (UMW), in pursuit of state black lung compensation legislation in early 1969, but rather used local union branches as the

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<sup>14</sup> Alan Derickson, *Black Lung: Anatomy of a Public Health Disaster* (Ithaca, New York: Cornell University Press, 1998), xii-xiii.

foundation of their activism.<sup>15</sup> In “The United Mine Workers of America and the Recognition of Occupational Respiratory Diseases, 1902-1968,” Derickson argues that the UMW played a crucial role in advancing recognition of miners’ lung disease, particularly through the dissemination of information by its Welfare and Retirement Fund in the 1950s and 1960s.<sup>16</sup>

In *Digging Our Own Graves: Coal Miners and the Struggle Over Black Lung Disease*, Barbara Smith also focuses on black lung disease. She argues that miners gained recognition of occupational lung disease by emphasizing their personal experience of the disease and engaging in collective action. Smith’s study is supported by an extensive number of oral history interviews with coal miners, activists, and politicians. The book ends in 1977, with the passage of amendments to federal black lung legislation during the Carter administration. In her coverage of events from 1969 onwards, however, Smith neglects to analyze the federal agencies responsible for health and safety enforcement. She focuses mostly on black lung activists’ campaign for legislative amendments and the change in leadership of the United Mine Workers in 1972.<sup>17</sup>

Bennett M. Judkins examines the Black Lung Association, especially its organizing activities in its pursuit of amendments to the Federal Coal Mine Health and Safety of 1969. In his dissertation, “The Black Lung Association: A Case Study of a

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<sup>15</sup> Alan Derickson, “Down Solid: The Origins and Development of the Black Lung Insurgency,” *Journal of Public Health Policy* 4 (1983), 25-44.

<sup>16</sup> Alan Derickson, “The United Mine Workers of America and the Recognition of Occupational Respiratory Diseases, 1902-1968,” *American Journal of Public Health* 86 (June 1991), 782-90.

<sup>17</sup> Barbara Smith, *Digging Our Own Graves: Coal Miners and the Struggle Over Black Lung Disease* (Philadelphia: Temple University Press, 1988).

Modern Social Movement,” Judkins focuses on the internal dynamics of the Black Lung Association (BLA), particularly the role of central leaders in guiding BLA policies and the relationship between different local chapters.<sup>18</sup> Judkins develops his work on the black lung movement in his book, *We Offer Ourselves As Evidence: Towards Workers’ Control of Occupational Health*, which focuses on the politics of two specific diseases, coal miners’ lung disease and ‘brown lung,’ a lung disorder affecting textile workers.<sup>19</sup> He argues that retired and disabled miners and textile workers played a crucial role in the advancement of occupational health laws. By looking beyond the role of active workers in the campaign for legislative reform, Judkins makes an important contribution to the historiographical debate on coal mine health and safety. Again, however, the focus of his research is limited to black lung disease, rather than a broader analysis of safety and health. Two additional articles by Judkins provide a detailed examination of black lung disease and the black lung movement.<sup>20</sup>

Other books discuss coal mine health and safety from the perspective of the United Mine Workers of America, the main labor union in America’s coalfields. Brit Hume’s *Death and the Mines: Rebellion and Murder in the UMW* examines the decline

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<sup>18</sup> Bennett Mallory Judkins, “The Black Lung Association: A Case Study of a Modern Social Movement (Ph.D. diss., University of Tennessee, 1975).

<sup>19</sup> Bennett M. Judkins, *We Offer Ourselves As Evidence: Towards Workers’ Control of Occupational Health* (New York: Greenwood Press, 1986).

<sup>20</sup> Bennett M. Judkins, “Mobilization of Membership: The Black and Brown Lung Movements,” *Social Movements of the Sixties and Seventies*, edited by Jo Freeman (New York: Longman, 1983), 35-51; Bennett M. Judkins, “The People’s Respirator: Coalition Building and the Black Lung Association,” *Fighting Back in Appalachia: Traditions of Resistance and Change*, edited by Stephen L. Fisher (Philadelphia: Temple University Press, 1993), 225-241.

of the UMW, giving particular focus to the period from 1968 to 1971.<sup>21</sup> Much of the book covers the union's neglect of health and safety under W. Anthony "Tony" Boyle, who assumed the UMW presidency in 1963. Published in 1971, Hume's book is a contemporary expose of the union, not a historical monograph. Furthermore, Hume's background as a journalist means the book should be treated with caution. It does not list citations or a bibliography, and his arguments are largely based on his observations and investigations. Yet, even accounting for such limitations, *Death in the Mines* is rich in detail, and its content is verifiable through other primary and secondary sources. In *The Corrupt Kingdom: The Rise and Fall of the United Mine Workers*, labor lawyer Joseph E. Finley provides a general history of the union, devoting substantial focus to its health and safety policies. Finley traces the history of the UMW until 1972, the year the book was published, emphasizing internal corruption and the decline of coal mine health and safety under Boyle.<sup>22</sup> Both monographs are limited in that they do not provide a long-range perspective of the 1969 Federal Coal Mine Act.

Published in 1973, J. Davitt McAteer's *Coal Mine Health and Safety: The Case of West Virginia* is perhaps the most comprehensive account of coal mine health and safety in a single coal mining state. Based on an earlier study conducted by McAteer and a team of graduate students working for consumer advocate Ralph Nader, the book examines health and safety from the perspectives of the miners, the UMW, the coal operators, the federal government, and the West Virginia state government. McAteer depicts the

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<sup>21</sup> Brit Hume, *Death in the Mines: Murder and Rebellion in the United Mine Workers* (New York: Grossman, 1971).

<sup>22</sup> Joseph E. Finley, *The Corrupt Kingdom: The Rise and Fall of the United Mine Workers* (New York: Simon and Schuster, 1972).

residents of the coalfields as victims of the mining operators, who exploit West Virginia's mineral resources and evade payment of local taxes. McAteer's analysis shows that institutions such as the U.S. Bureau of Mines and the West Virginia state government perpetuated the status of coal miners as victims.<sup>23</sup>

### **Defining Miners' Occupational Lung Disease**

To understand the struggle over coal mine health and safety from 1968 to 1988, it is necessary to examine the key participants, as well as the significant issues, from the late nineteenth century. One of the central issues has been the conflict over the definition of pneumoconiosis, or 'black lung,' a debilitating work-related disease afflicting coal miners. Despite miners' insistence that coal dust impaired their breathing, physicians and coal operators minimized the severity of the disease by classifying it as miners' asthma, thus preventing the passage of preventative legislation until the late 1960s.

By the turn of the century, American coal miners suffered from a range of chronic occupational illnesses, including miners' asthma, bronchitis, and emphysema. 'Miners' asthma,' now more commonly known as pneumoconiosis or 'black lung disease,' was the contemporary name given to lung disease caused by the inhalation of coal dust. In his post-mortem examinations of coal miners in the late nineteenth century, Dr. John O. Malley, of Scranton, Pennsylvania, frequently discovered that their lungs had absorbed excessive quantities of fine coal dust particles."<sup>24</sup> Coal operators, nor the United Mine

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<sup>23</sup> J. Davitt McAteer, *Coal Mine Health and Safety: The Case of West Virginia* (New York: Praeger Publishers, 1973).

<sup>24</sup> Alan Derickson, "The Role of the United Mine Workers in the Prevention of Respiratory Disease," *The United Mine Workers of America: A Model of Industrial*

Workers, and certainly not the federal and state governments made significant efforts to address miners' lung disease. Beginning around 1910, operators typically followed engineers' recommendations of using mechanical fans or spraying water, but such techniques did not significantly reduce the quantities of airborne coal dust. The limited political and economic power of the United Mine Workers restricted its efforts to obtain preventative measures for occupational disease, so it focused more on providing compensation for the victims. In contract negotiations, however, the union opted to push for wages to renumerate miners for the dangers they faced.<sup>25</sup>

In 1902, miners in the Pennsylvania anthracite coalfields went on strike for higher wages and a shorter working week.<sup>26</sup> The Anthracite Coal Strike Commission, created by President Theodore Roosevelt in response to the strike, arbitrated a settlement between the United Mine Workers and the coal operators that provided the miners with limited concessions, including a ten percent wage increase and reduced working hours. After the strike, physicians, engineers, and industry representatives started to deny that coal dust was harmful to miners, in what Alan Derickson refers to as "an amazing reversal."<sup>27</sup> Many denied that anthracosis, or black lung, was a legitimate disease, while several investigators, disregarding miners' black spit, argued that blackened lung tissue was

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*Solidarity?*, edited by John Laslett (University Park: The Pennsylvania State University, 1996), 225.

<sup>25</sup> Ibid., 224-227.

<sup>26</sup> For a detailed account of labor relations in the anthracite coalfields, see Perry K. Blatz, *Democratic Miners: Work and Labor Relations in the Anthracite Coal Industry, 1875-1925* (Albany: State University of New York Press, 1994).

<sup>27</sup> Alan Derickson, *Black Lung*, 43.

nothing more than “a harmless discoloration.” In 1924, British physician Thomas Oliver maintained that miners’ coughing up of black fluid was beneficial, as it cleaned the lungs of coal dust. Most notably, an increasing number of physicians argued that miners could protect themselves from tuberculosis by inhaling coal dust. Anthracite coal operators had tried to convince the 1902 strike commission of the “antiseptic properties” of carbon dust, and they had argued that hard coal dust was “more than ordinarily healthful,” but without success.<sup>28</sup> In the years following the strike, the argument that coal dust was beneficial to miners became increasingly widespread. Physicians’ claims about coal dust contrasted with the prevailing medical logic on silica dusts, such as marble, slate, and flint, which were found in some coal seams and other hard rock mines, and regarded as a key cause of tuberculosis and lung diseases.<sup>29</sup>

Edgar Collis, a British scientist, conflated pneumoconiosis with silicosis, a disease that afflicted hard rock miners. He argued that if miners had lung disease, then they must have inhaled rock dust. He further maintained that coal dust was “not injurious” and that miners who breathed it were less susceptible to tuberculosis. For Collis, tuberculosis was primarily caused by silica dust.<sup>30</sup> In a lecture before the British Medical Association, he emphasized, “Some dusts, such as coal... not only appear to

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<sup>28</sup> Derickson, *Black Lung*, 44-45; Derickson, “The United Mine Workers of America and the Recognition of Occupational Respiratory Diseases, 784.

<sup>29</sup> Derickson, *Black Lung*, 47.

<sup>30</sup> *Ibid.*, 48.



have no power of producing pneumoconioses, but even may possess some inhibitory influence on phthisis.”<sup>31</sup>

Similarly, medical researchers Eugene Pendergrass and Henry Pancoast used radiology to dismiss the threat posed by coal dust. They argued that X-rays clearly showed the effects of silica, in the form of nodules on the lungs, but they downplayed the shadows that indicated deposits of coal dust. They pointed to the large number of elderly, seemingly healthy miners who had such X-rays. In using X-rays to dismiss the severity of coal miners’ asthma, they ignored the physical symptoms caused by the inhalation of coal dust, including miners’ struggle to breathe and their expectoration of thick, black sputum, a process commonly referred to as melanoptysis. Like Collis, Pendergrass and Pancoast used the terms ‘silicosis’ and ‘pneumoconiosis’ interchangeably to describe lung disease caused by the inhalation of silica dust. Yet, in their study, *Pneumoconiosis [Silicosis]*, Pendergrass and Pancoast mentioned, but failed to account for, the high incidence of pneumoconiosis among locomotive firemen, who were not exposed to rock dust in their work.<sup>32</sup>

By 1920, medical professionals and researchers, supported by the coal operators, were widely extolling the benefits of coal dust. They dismissed anthracosis as nothing more than a slight discoloration of the lungs. A minority of critics continued to argue that coal dust was harmful to miners’ long-term health. Miners disputed the claim that they were not suffering from a disease specific to the coal industry. For almost half a century,

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<sup>31</sup> Ibid., 49.

<sup>32</sup> Ibid., 50-52.

there was little change in this dispute. Great Britain, meanwhile, recognized the health implications of coal dust by passing a black lung compensation law in 1943.<sup>33</sup>

### **The Federal Response: The U. S. Bureau of Mines and (Ineffective) Safety Laws**

As noted above, the federal government only engaged in legislative change in response to large-scale disasters. The Monongah disaster of 1907 prompted the federal government to examine the issue of coal mine health and safety more closely. In the first three years after the Monongah disaster, Congress provided funds for the Technologic Branch of the Geological Survey to carry out scientific research and provide educational programs on safe mining practices. Because these functions stretched beyond the Geological Survey's mandate, Congress sought an alternative means of improving health and safety. It created a new agency, the Bureau of Mines, located in the Department of the Interior, and appointed the head of the Technologic Branch, Joseph A. Holmes, as its first director.<sup>34</sup> Holmes had been advocating a national mining agency since becoming head of the Technologic Branch in 1905. Formerly a professor of geology and natural history at the University of North Carolina, and the head of the department of mining and metallurgy at the 1903 Louisiana Purchase Exposition, Holmes had long sought to

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<sup>33</sup> Ibid., 121.

<sup>34</sup> Arthur L. Donovan, "Health and Safety in Underground Coal Mining, 1900-1969: Professional Conduct in a Peripheral Industry," *The Health and Safety of Workers: Case Studies in the Politics of Professional Responsibility*, edited by Ronald Bayer (New York: Oxford University Press, 1988), 108-112.

improve the efficiency of mineral production and the conditions of the men who labored underground.<sup>35</sup>

The Bureau's key functions were conducting scientific research and making recommendations on mine safety. In its early years, it did not have the authority to inspect mines or to formally enact the recommendations it made, nor could it investigate the social and legal aspects of mining companies' operations. For instance, the Bureau proposed reducing coal dust in underground mines through the use of rock dusting, a practice that involved spraying the walls and roof with a substance containing limestone and silica, but most companies resisted this measure. It did not become mandatory. The Bureau also had little success in encouraging coal operators to avoid using types of equipment it identified as liable to cause explosions. The Bureau did, however, successfully facilitate the creation of mine safety stations, but only because the federal government assumed the cost. The United Mine Workers attacked the Bureau because it focused principally on responding to disasters and not preventing them.<sup>36</sup> The UMW also condemned Joseph A. Holmes, because he gave the impression of being more concerned with production than safety.<sup>37</sup>

The Bureau's role remained unchanged for thirty years until Congress passed the Coal Mine Inspection and Investigation Act in 1941. The act gave the Bureau the authority to inspect mines and write reports concerning safety recommendations. The

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<sup>35</sup> Graebner, *Coal Mining Safety in the Progressive Era*, 1.

<sup>36</sup> Donovan, "Health and Safety in Underground Coal Mining, 1900-1969," 108-112.

<sup>37</sup> Daniel Curran, *Dead Laws for Dead Men: The Politics of Federal Coal Mine Health and Safety Legislation* (Pittsburgh: University of Pittsburgh Press, 1993), 67.

Bureau, however, still had no powers of enforcement, and operators were not legally bound to follow its recommendations. The 1941 act stipulated that only state governments had the authority to enforce safety measures in the coal industry. Without the ability to enforce its recommendations, the Bureau was powerless to stop operators from using equipment that was liable to cause explosions. In the following nine years, 835 miners died in coal explosions across the United States, and half of those explosions resulted from faults in electrical devices that the Bureau had identified as dangerous or, in its own language, “non-permissible.”<sup>38</sup>

The Federal Coal Mine Safety of Act of 1952, signed into law by President Harry Truman, extended the Bureau’s role beyond an advisory capacity by giving Bureau inspectors the power to issue violation citations to operators who committed safety violations or, where conditions posed an immediate risk to miners, to close down mines.<sup>39</sup> However, the act did little to regulate operators’ use of hazardous equipment. It contained a clause that permitted mining operators to use non-permissible equipment for an indefinite period if they had owned it before the legislation came into force. Several years later, in 1967, the Bureau carried out an investigation and found that 150 mines still owned non-permissible equipment.<sup>40</sup> The 1952 Federal Mine Safety Act also perpetuated

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<sup>38</sup> Ben A. Franklin, “The Scandal of Death and Injury in the Mines: More Than 120,000 Miners Have Died Violently,” *The New York Times Magazine*, March 30, 1969, 124-126.

<sup>39</sup> Curran, *Dead Laws for Dead Men*, 67.

<sup>40</sup> Franklin, “The Scandal of Death and Injury in the Mines,” 124-126.

the states' responsibility for the actual enforcement of safety in underground coal mines.<sup>41</sup>

### **State Legislation and Workers' Compensation**

In the late nineteenth and early twentieth centuries, state legislatures generally did not adopt specific health and safety laws for the coal industry. Pennsylvania did, however, enact minor provisions for coal miners. In 1893, it passed a law stipulating that "gassy" mines should provide 100 feet of cubic air per employee per minute, although its main objective was to reduce the threat of methane explosions.<sup>42</sup> In 1903, working with the United Mine Workers, the Pennsylvania legislature passed a law that provided Miners' Homes for old, sick, and injured former mine workers over the age of 60, including those suffering from 'miners' asthma.' The institutions were financed by deductions from miners' wages and tonnage royalty payments from the coal operators. Some UMW representatives hoped to extend Miners' Homes to all states. At the union's 1905 convention, however, delegates voted against this plan, because they felt that the state governments should provide miners with pensions instead.<sup>43</sup>

The states' lack of regulation for coal mines reflected the absence of health and safety laws for other sectors of industry. Before 1900, Massachusetts and Illinois were the only two states that passed factory inspection acts. The acts were unenforceable,

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<sup>41</sup> Curran, *Dead Laws for Dead Men*, 113.

<sup>42</sup> Derickson, "The Role of the United Mine Workers in the Prevention of Respiratory Disease," 227.

<sup>43</sup> *Ibid.*, 228.

because regulators did not have the power to impose sanctions on employers who violated them.<sup>44</sup> From 1906, the American Association for Labor Legislation (AALL), in an effort to address the lack of regulation by the states, campaigned on a state-by-state basis for uniform workplace laws. Focusing on issues such as industrial disease, accident prevention, and workers' compensation, its main goal was to prevent companies from moving to states with less restrictive labor laws.<sup>45</sup>

Before 1910, coal miners, like workers in most other sectors of industry, found it difficult to obtain compensation for work-related injuries and impossible to attain remuneration for occupational disease. Workers could only obtain compensation through the employer liability scheme. Employers were responsible for making compensation payments for injured employees, and common law doctrines stated that workers had to prove the employer was at fault. This was a particularly hard task for seriously injured workers and the families of people killed on the job, as they had to depend on the testimony of co-workers and supervisors who were susceptible to manipulation or intimidation by the employer. Moreover, the companies could take three separate lines of defense: They could argue the worker had caused the accident through his or her own carelessness, that the worker had assumed the risk of injury by accepting the job, or that a co-worker had been responsible. Most employers were able to evade a lawsuit by arguing one of those defenses.<sup>46</sup>

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<sup>44</sup> Daniel Berman, *Death on the Job: Occupational Health and Safety Struggles in the United States* (New York: Monthly Review Press, 1978), 15.

<sup>45</sup> *Ibid.*, 18.

<sup>46</sup> Berman, *Death on the Job*, 18-19. For a full account of the evolution of worker compensation in the United States, see John Fabian Witt, *The Accidental Republic:*

From 1910, workmen's compensation gradually replaced the employer liability scheme. Employers were supportive of the shift, even though evidence showed that workmen's compensation would actually increase their costs. Over the next fifteen years, the majority of state legislatures passed workmen's compensation acts. In most cases, employers were liable for funding workers' compensation payments through private insurance contributions.<sup>47</sup> In the coal industry, serious injuries or death caused by accidents in the mines were eligible for compensation. Black lung disease, however, was not recognized as a legitimate occupational disease, and so victims were unable to claim compensation. In 1966, Pennsylvania became the first state to make black lung a compensable disease.

### **The United Mine Workers of America (UMW) and Health and Safety in the Mines**

As the largest miners' union in the coalfields of Appalachia and the West, the United Mine Workers of America (UMW), founded in 1890, was at the forefront of the struggle over health and safety.<sup>48</sup> In its founding statement, the UMW promised to fight for better working conditions and stronger mine legislation. In its early years, however, the UMW had little substantive power to improve health and safety in the coal mines. By the mid-1920s, operators almost succeeded in driving the union entirely from the West

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*Crippled Workingmen, Destitute Widows, and the Remaking of American Law* (Cambridge, Massachusetts: Harvard University Press, 2004).

<sup>47</sup> Mark Aldrich, *Safety First: Technology, Labor, and Business in the Building of American Work Safety, 1870-1939* (Baltimore: The Johns Hopkins University Press, 1977), 93-100 and 214-215.

<sup>48</sup> Berman, *Death on the Job*, 136.

Virginia coalfields. The passage of the National Industrial Recovery Act in 1933 provided a foundation for UMW organizers to become more active, and membership of the union rapidly expanded from 100,000 to 400,000.

Endorsing the principles of state workmen's compensation laws, the UMW argued that the victims of work-induced respiratory disease should receive compensation funded by higher insurance premiums on employers. The union hoped that higher premiums would act as a preventative measure, by forcing employers to improve working conditions. Union representatives were aware that compensation for miners would do little to prevent black lung disease; some even feared that it could lead to mass firings by the coal operators. Such fears limited the enthusiasm of the union's national leaders for 'black lung' compensation. But district leaders quickly became firm advocates of compensation. Their anger at the omission of lung disease from state compensation laws superseded their fears about mass dismissal.<sup>49</sup>

In 1916, Districts 7 and 9 in the Pennsylvania anthracite region passed resolutions to fight for state compensation for miners' disabled by 'black lung disease.' For Thomas Kennedy, the head of District 7, the compensation resolution was part of a broader agenda that included mothers' pensions, old age pensions, and unemployment insurance. Because they focused solely on compensation for occupational disease in their own industry, the anthracite districts' campaign to win compensation was unsuccessful. In the late 1920s, John Walker, the president of the Illinois State Labor Federation, was unable to persuade the state legislature to adopt an occupational disease amendment sponsored by District 12 of the UMW. From 1924, the UMW International also began to campaign

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<sup>49</sup> Derickson, *Black Lung*, 82-83.



for social insurance coverage for miners' asthma. Its focus on occupational disease afflicting miners contradicted the universalistic approach promoted by the American Association for Labor Law. On the eve of World War II, none of the state governments in the United States had added black lung disease to their workers' compensation programs.<sup>50</sup>

In March 1946, UMW President John L. Lewis was negotiating a new contract with the coal operators. At the opening of the wage conference on March 12, Lewis gave a speech in which he emphasized the record numbers of men killed and injured in the mines. As a solution to this crisis, he presented the operators with a list of "negotiable suggestions," rather than firm demands, which included a welfare fund, an unspecified wage increase, recognition for the foreman's union, and improvements to miners' working and living conditions. To support his demands, Lewis presented details from a recent UMW investigation into mining accidents, living and working conditions, sanitation, and health care in the coalfields. He informed the operators that he would not negotiate wages and hours until they had agreed to support a welfare fund.<sup>51</sup> Because his history of manipulation and secret dealings gave the impression of man with few principles, the national media doubted the sincerity of Lewis's commitment to improved health and safety. At the same time, Lewis had been a staunch health and safety advocate since the late 1930s. He had used the poor conditions in the mines to turn public opinion against the mine health and safety policies of President Franklin Roosevelt and the coal

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<sup>50</sup> Ibid., 83-85.

<sup>51</sup> Melvyn Dubofsky and Warren Van Tine, *John L. Lewis: A Biography, Abridged Edition* (Urbana: University of Illinois, 1986), 330-331 *New York Times*, March 13, 1946, 1.

operators, and he devoted considerable time to the improvement of the union's health and pension coverage. His attention to health and safety also evolved out of necessity. By 1944, the average age of the union's members was 45, and only sixteen percent were under the age of 30.<sup>52</sup>

In response to the operators' refusal to support a welfare fund, miners across the bituminous coalfields went on strike on April 1. When additional negotiations failed, and, the decline of the country's coal supplies threatened to impede its post-war economic recovery, the Truman administration intervened by overseeing a conference between Lewis and the operators at the White House. On May 10, the White House announced that the mine owners agreed in principle to a welfare fund. The operators, however, still refused to endorse the fund in the miners' contract, even after a further conference at the White House. The Truman administration responded by establishing government control of the mines.<sup>53</sup>

Secretary of the Interior A. J. Krug negotiated a contract with Lewis that included a Welfare and Retirement fund for the bituminous miners, to be jointly supervised by the UMW and the federal government. It was to be funded by a five-cent royalty on every ton of coal mined. The contract also mandated a separate hospital and medical fund, which operated by transferring miners' dues to a union-controlled hospital, rather than

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<sup>52</sup> Dubofsky and Van Tine, *John L. Lewis*, 330-331.

<sup>53</sup> Dubofsky and Van Tine, *John L. Lewis*, 331; Alan Derickson, "The United Mine Workers of America and the Recognition of Occupational Respiratory Diseases, 1902-1968," *American Journal of Public Health* 81 (June 1991): 785.

company doctors.<sup>54</sup> In addition to the two welfare funds, the contract included a wage increase for miners of 18.5 cents per hour, recognition of the foreman's union, and an increase in vacation pay.<sup>55</sup>

Having achieved a favorable agreement for bituminous miners, the UMW struck the anthracite coalfields in June. The outcome of that strike was a unified benefit program, the Anthracite Health and Welfare Fund, which was funded solely by a tonnage royalty. Under the new anthracite fund, several black lung victims received treatment at Jefferson Memorial College Hospital in Pennsylvania.<sup>56</sup> The following year, the union negotiated the unification of the two funds in the bituminous industry.<sup>57</sup>

The coal operators expected Lewis to reciprocate the gains the UMW had made, by supporting its program of mechanization in the mines. He also assured the operators he would allocate union resources to improving the coal industry's productivity and eliminating non-unionized operations. Paradoxically, the mechanization program created additional health risks for underground bituminous miners. Lewis commented, "We've encouraged the leading companies in the coal industry to resort to modernization in order to increase the living standard of the miner and improve his working conditions."<sup>58</sup> Lewis

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<sup>54</sup> There is extensive coverage of the strike in the *New York Times* from April 1, 1946 to May 31, 1946. See also Dubofsky and Van Tine, *John L. Lewis*, 331; Alan Derickson, "The United Mine Workers of America and the Recognition of Occupational Respiratory Diseases, 1902-1968," *American Journal of Public Health* 81 (June 1991): 785.

<sup>55</sup> Dubofsky and Van Tine, *John L. Lewis*, 332.

<sup>56</sup> Berman, *Death on the Job*, 138.

<sup>57</sup> Derickson, "The United Mine Workers of America and the Recognition of Occupational Respiratory Diseases," 785.

<sup>58</sup> Dubofsky and Van Tine, *John L. Lewis*, 357.

was convinced that opposing the mechanization of the industry would lead to a reduction in miners' wages. In reality, it led to mass unemployment, as the 'continuous miner' and other machines replaced thousands of miners. More significantly, mechanization vastly increased the quantities of respirable coal dust in the mines, which subsequently led to a sharp rise in cases of black lung disease. Because mechanization facilitated higher production and, consequently, increased operators' payments to the Welfare and Retirement Fund, Lewis and the UMW leadership did not question the health risks it created. In fact, Lewis believed that a more hazardous work environment was an inevitable cost of the fund.<sup>59</sup> There was, therefore, a significant hidden cost to the Welfare and Retirement Fund. It provided miners' with hospital treatment and health care, but it ultimately contributed to a greater prevalence of occupational disease.<sup>60</sup> Lewis's policies showed that the union's commitment to improve health and safety was limited by the economics of coal production.

Health and safety in the Appalachian coalfields declined further after Lewis retired as UMW president in 1960. Thomas Kennedy, the union vice-president and former secretary treasurer, succeeded to the union presidency. He had a long history of union activism, having led the campaign for miners' compensation in District 7 in 1916. Soon afterward, the executive board accepted Kennedy's appointment of Tony Boyle as

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<sup>59</sup> Derickson, "The United Mine Workers of America and the Recognition of Occupational Respiratory Diseases, 787.

<sup>60</sup> For a more detailed discussion of the mechanization of underground mines, and its impact on miners' health, see Keith Dix, *What's A Coal Miner To Do?: The Mechanization of Coal Mining* (Pittsburgh: The University of Pittsburgh Press, 1988).

union vice-president. Over the next three years, Kennedy, who was old and in declining health, trusted Boyle with much of the daily management of the union.<sup>61</sup>

In 1947, Tony Boyle had become a member of the union headquarters staff as Lewis's administrative assistant. He was born in a Montana mining camp in 1906, the son of an Irish immigrant miner. His father had worked as a child in the coal mines in Scotland, and both his grandfathers and great-grandfathers had labored in British mines. After working for several years as a rank-and-file miner, Boyle became president of District 27 in Montana in 1940. On being summoned to Washington by Lewis in 1947, he appointed his brother Dick to replace him as district leader. The union constitution stipulated that at least five years of mining experience were necessary to assume a leadership position, but Richard Boyle had never worked in a coal mine.<sup>62</sup>

Even during his time as Lewis's assistant, Boyle seemed more concerned with profits than safety. In 1957, he went to Montana to attend a legislative hearing on modernizing the state's mining laws. In his testimony, he vigorously contested the proposed mine safety bill, particularly its requirement of roof bolts for all mines. Roof bolts were the most effective device for preventing roof falls, by far the most common cause of death in the coal industry. However, because Boyle feared that coal operators would incur substantial financial costs by installing roof bolts, he distorted the logic behind the bill. He argued that it "would legalize the killing of men in coal mines." He threatened that his brother Richard would shut down all his mining operations in the state

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<sup>61</sup> Joseph A. Finley, *The Corrupt Kingdom: The Rise and Fall of the United Mine Workers* (New York: Simon and Schuster, 1972), 236.

<sup>62</sup> Finley, *The Corrupt Kingdom*, 236-237; Hume, *Death and the Mines*, 25.

if the legislature enacted the bill. Less than one year later, four men died in a roof fall at Richard Boyle's "Montana Queen" mine. The state mine investigator later announced that the roof had not been properly supported.<sup>63</sup>

When Thomas Kennedy died in 1963, Boyle succeeded him as UMW President. By the time Boyle came to power, the union was plagued by corruption and mismanagement. Most of the staff representatives were not democratically elected, having been directly appointed by Lewis. The union's constitutional rules were unused and meaningless.<sup>64</sup> Boyle exploited the corruption and mismanagement in the union to his own personal benefit. From 1963 to 1969, he spent vast quantities of members' dues, totaling almost \$200,000, on portraits of himself and other union officers, which he sent to local headquarters around the country. He used the *United Mine Workers Journal* as his personal campaign organ during presidential elections. At the 1964 UMW Convention provided delegates with expensive gifts, such as electric alarm clocks with his name and picture engraved on them, to increase his support. In addition, he exploited the union's financial reserves for himself and his family. He made his daughter Antoinette a staff attorney, while still allowing her to keep her private law practice in Montana. She received an annual salary of \$40,000, the same as UMW General Counsel Edward Carey in Washington D.C. He also provided his brother Richard with an annual salary of \$25,000 for his continuing role as District 27 president. Most notably, however, he and vice-president John Owens diverted \$650,000 of members' dues into their own private pension fund. Boyle's behavior reflected his disdain for the union's rank and file

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<sup>63</sup> Hume, *Death and the Mines*, 26.

<sup>64</sup> Finley, *The Corrupt Kingdom*, 237.

members, and their key concerns such as wages, pensions, and health and safety in the mines. His disregard for miners' welfare became a major obstacle in the campaign to reform coal mine health and safety legislation.<sup>65</sup> Chapter two will show that Boyle vehemently opposed the inclusion of black lung disease in West Virginia's workmen's compensation program. As highlighted in subsequent chapters, he also sought to limit improvements to federal coal mine legislation.

### **Defining Appalachia: The Geography, Economy, and Culture of the Coalfields**

While this dissertation analyzes coal mine health and safety in the United States, and devotes substantial attention to the creation and enforcement of federal legislation, much of its discussion of coal mine disasters, miners' activism, and community protest focuses on the Appalachian region. The geography, economy, and culture of Appalachia played a central role in the development of the coal industry, and in the miners' fight for stronger health and safety legislation and workers' compensation. In order to determine exactly how the region shaped the coal mine health and safety movement, it is necessary to address one of the fundamental questions of the dissertation: What is Appalachia?

First, it is necessary to consider the region in purely geographical terms. The Appalachian Mountains extend for over 2,000 miles, from Newfoundland in eastern Canada to northern Alabama in the southeastern United States.<sup>66</sup> However, they are not

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<sup>65</sup> Finley, *The Corrupt Kingdom*, 241-242; Hume, *Death and the Mines*, 43 and 163.

<sup>66</sup> Chad Montrie, *To Save the Land and People: A History of Opposition to Surface Coal Mining in Appalachia* (Chapel Hill: University of North Carolina Press, 2003), 7; Karl B. Raitz and Richard Ulack, *Appalachia, A Regional Geography: Land, People, and Development* (Boulder, Colorado: Westview Press, 1984), 9-11.

a unified mountain system, but rather divided into two segments, the glaciated northern segment and the unglaciated southern segment, which meet at the Hudson and Mohawk Valleys in New York State. Within the southern unglaciated segment, there are four separate provinces, each of which run parallel to the whole chain: the Appalachian Plateau, the Valley and Ridge Province, the Blue Ridge Province, and the Piedmont Fold and Thrust Belt.<sup>67</sup> For the purposes of this dissertation, I will consider southern Appalachia.<sup>68</sup> I further narrow the geographical focus by examining only the major coal-producing regions within southern Appalachia: eastern Pennsylvania, southern Illinois, western Virginia, eastern Kentucky, the entire state of West Virginia, and northern Tennessee. Coal mining takes place in 165 of Appalachia's 445 counties.<sup>69</sup>

Within the southern Appalachian mining regions, there are distinct geological differences that affect the physical properties of the coal. With the exception of northeastern Pennsylvania, all the coal mining regions contain a soft-rock coal called bituminous coal. Miners first excavated bituminous coal in West Virginia in 1750, although initially it did not gain widespread popularity. There was no industry to facilitate demand for it and the unpleasant smell it generated when burned made it unsuitable for domestic use. From the late nineteenth century, however, the commercial market for bituminous coal rapidly expanded. It played a key role in the industrial development of the United States and, from the mid-twentieth century, in the provision of

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<sup>67</sup> Montrie, *To Save the Land and People*, 1-2.

<sup>68</sup> For Raitz and Ulack's complete definition of Appalachia – what they refer to as a “delimited” version of Appalachia – see *Appalachia, A Regional Geography*, chapter one.

<sup>69</sup> *Ibid.*, 217-218.



electrical power. The mining districts of northeastern Pennsylvania contain a hard-rock coal called anthracite. The exact date of anthracite coal's discovery is unclear, although the Nantichoke Indians settled along the Susquehanna River started burning a form of hard rock coal in the 1760s. Anthracite coal is cleaner. It burns more slowly and at a higher temperature than bituminous coal, and until the 1920s it was widely used to heat homes.<sup>70</sup>

As the coal industry developed, the differences between the bituminous region and the anthracite region expanded beyond mere physical characteristics. In each region, the geological composition of the coal determined mining practices, working conditions, employers' attitudes to health and safety, and the economic welfare of the miners. The anthracite operators actively tried to prevent employees from organizing. They frequently evicted union sympathizers from company homes. The absence of a strong union presence meant that the miners worked longer hours and were paid less than their bituminous counterparts. The anthracite coal mines also were more dangerous, with a higher incidence of roof-falls, floods, toxic gases, and explosions. In the early twentieth century, weak and ineffectual coal mine legislation prompted miners to improvise safety measures, such as observing the behavior of the rats. Miners believed that rats were susceptible to changes in the atmosphere, and they followed them if they suddenly darted away.<sup>71</sup>

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<sup>70</sup> Thomas Dublin and Walter Licht, *The Face of Decline: The Pennsylvania Anthracite Region in the Twentieth Century* (Ithaca, New York: Cornell University Press); Barbara Freese, *Coal: A Human History* (New York: Penguin Books, 2004), 110-113

<sup>71</sup> Freese, *Coal*, 138-139.

Appalachia has long exported its natural resources of coal and timber, yet the profits from these resources have not provided the native people with a standard of living equivalent to most other people in the nation.<sup>72</sup> According to Raitz and Ulack, the widespread poverty in the region constitutes ‘the paradox of Appalachia.’ There is an “imbalance in fiscal well-being across a region of immense resource wealth.”<sup>73</sup> Large corporations from outside the region have exploited natural resources for short-term profit, and their irresponsible use of these resources has contributed to many of the region’s social and economic problems.<sup>74</sup>

Similarly, Barbara Smith argues that the poverty of the region did not, as the Appalachian Regional Commission stated, stem from its geographical isolation, but rather its exploitation by outside investors. She writes that the investors’ exploitation of natural resources led to “the systematic development of underdevelopment: corporations headquartered elsewhere drained off the region’s natural wealth, returning almost nothing in tax revenues and exploiting the people as coal miners.”<sup>75</sup> Smith interprets this exploitation as part of a long historical process. Even in the nineteenth century, before the onset of industrialization, she argues, most natives labored on farms owned by absentee landowners. Yet, as a native Appalachian, Smith also cautions against creating a

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<sup>72</sup> Raitz and Ulack, *Appalachia, A Regional Geography*, 189.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Barbara Ellen Smith, “Legends of the Fall: Contesting Economic History”, *Christianity in Appalachia: Profiles in Regional Pluralism*, edited by Bill Leonard (Knoxville: The University of Tennessee Press, 1999), 6.

dichotomy of ‘us and them.’ There were and are prominent economic and social divisions within the region.<sup>76</sup>

Finally, it is also necessary to examine the culture of Appalachia, particularly religious faith, which played a significant role in the lives of coal miners and their families. When disasters, such as explosions and roof falls, occurred, trapped miners coped with the imminent threat of death by turning to religion. Similarly, religion was a source of comfort for the families who congregated around mine entrances after a disaster. According to Bill J. Leonard, “Religious life was, and to some extent remains, a primary source of identity for many southern Appalachian people. It provided a place, a source, of security in the face of poverty, disease, and the many unpredictable elements of life.”<sup>77</sup> Coal mine disasters were one such ‘unpredictable element of life,’ occurring on a regular basis and profoundly shaping the religious faith of mining communities. In *Work and Faith in the Kentucky Coalfields: Subject to Dust*, Richard Callahan explores the relationship between coal miners and religious faith, arguing that miners’ labor concerns “intertwined at a basic level with religious expression, sentiment, and imagination in the coalfields of central Appalachia.”<sup>78</sup> Callahan further maintains that the broader labor movement in the United States could be defined as “a form of religious

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<sup>76</sup> Ibid., 7-8.

<sup>77</sup> Bill J. Leonard, *Christianity in Appalachia*, xix.

<sup>78</sup> Richard J. Callahan, *Work and Faith in the Kentucky Coalfields: Subject to Dust* (Bloomington: Indiana University Press, 2009), 9.

expression that has emerged from the struggle to express and meet particular concerns in the context of industrial capitalism.”<sup>79</sup>

In Kentucky, religious meaning was embedded in the daily lives of coal miners and their families. Preachers in mining communities often permitted the use of their churches for union meetings, and regarded labor unions as the “worldly” counterpart to the church. Callahan writes, “Work remained a fundamental human experience that linked self, society, and the world, and extended into spiritual issues... Indeed, religion itself is a form of work, involving constant production and reproduction with old and new resources.”<sup>80</sup> Religious belief helped miners to make sense of the realities they faced, particularly the continuous threat of injury and death, the exploitation of their labor by the coal operators, and the anxieties of their families. To adapt to their uncertain circumstances and the obstacles of life in the coalfields, the Kentuckian coal miners adopted their own religious idioms.<sup>81</sup> Such idioms provided a ‘bodily experience’ to tolerate the hard and dangerous physical labor of coal mining, while also connecting the limitations of the body to “a more enduring and eternal dimension of life.”<sup>82</sup>

Miners’ adherence to religious ritual was by no means unique. In many industries across Appalachia, religion was a fundamental part of workers’ daily lives. As Ken Fones-Wolf explains in *Glass Towns: Industry, Labor and Political Economy in Appalachia, 1890-1930s*, the church enabled glassworker families to integrate with the

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<sup>79</sup> Ibid.

<sup>80</sup> Ibid., 194.

<sup>81</sup> Ibid., 195-196.

<sup>82</sup> Ibid., 196.

local community. Fones-Wolf presents the example of Joseph Martin, a flint who died at the age of twenty-seven and was memorialized by several local organizations, including the Cavalry Methodist Church.<sup>83</sup> He also notes that churches were important for establishing cohesion between immigrant glass workers and their communities.<sup>84</sup>

### **Chapter Outline**

This study is organized thematically rather than chronologically. Chapter two examines the origins and development of the West Virginia black lung movement. It shows how three radical doctors, known as the Committee of Physicians on Miners' Health and Safety, not only legitimized 'black lung' as a serious medical disease, but also significantly increased public awareness of it. Their efforts, combined with the catastrophic disaster at the Farmington mine in November 1968, led to the formation of the West Virginia Black Lung Association (BLA). Through sustained grassroots protest, which included a massive wildcat strike in the West Virginia coalfields in early 1969, the organization convinced the state legislature to make black lung a compensable disease. The chapter provides a case study of how community-driven protest in a single state resulted in significant legislative change.

Chapter three widens the scope of the study, focusing on how the Farmington disaster and the emergence of the black lung movement in West Virginia prompted the federal government to reshape coal mine health and safety legislation. It explains how President Richard Nixon's political ideology and policymaking decisions hindered his

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<sup>83</sup> Ken Fones-Wolf, *Glass Towns: Industry, Labor, and Political Economy in Appalachia, 1890-1930s* (Urbana: University of Illinois, 2007), 97.

<sup>84</sup> *Ibid.*, 37.

administration's efforts to reform working conditions in the coal industry. The chapter also scrutinizes the legislative hearings in the United States Congress in the early months of 1969. Both the House of Representatives and the Senate deliberated a number of draft bills on coal mine health and safety, in a series of hearings that were beset by conflict and tension. The hearings, as well as legislative debates in Congress in the summer and autumn of that year, had a significant impact on the passage of the Federal Coal Mine Health and Safety Act of 1969. Chapter three also presents a separate narrative strand that focuses on the conflict within the United Mine Workers of America. In May 1969, Joseph Yablonski, a high-ranking union official, announced his intention to challenge W. A. Boyle for the union presidency. His decision to contest President Boyle's leadership had significant implications for the union's approach to health and safety issues. Boyle had long neglected the interests of the rank and file, particularly with regard to working conditions, while Yablonski made health and safety a key issue of his election campaign.

Chapter four considers the escalation of grassroots protest in the coalfields in 1970. On one level, this protest was directly connected to the United Mine Workers of America. In April of that year, a group of dissident miners and organizers, responding to the murder of UMW presidential candidate Joseph Yablonski, broke away from the union to form an organization called Miners for Democracy (MFD). The new organization sought to win the UMW presidency at the next election, with the goal of democratizing the union and reforming its health and safety policies. On a wider level, rank and file miners, along with their families and communities, protested the federal government's poor enforcement of the Federal Coal Mine Health and Safety Act. The U.S. Bureau of Mines, the Department of the Interior agency responsible for enforcing the act, was

largely ineffective, while the Social Security Administration, which processed miners' claims for federal black lung compensation, was encumbered by bureaucratic red tape. Several key organizations facilitated the protest in the coalfields, including the Association of Disabled Miners and Widows (DMWA), the Disabled Miners and Widows of South West Virginia (DMW/SWV) and the revived Black Lung Association (BLA), which began to operate as a national organization.

Chapter four will also discuss the mine health and safety hearings in the U.S. Senate in August 1970, which were a direct response to the short-term failure of the 1969 Federal Mine Act. While the hearings concluded that the act's failure was largely attributable to the Bureau of Mines, they did not establish legislative solutions. Nixon's conservative approach to staffing the Bureau of Mines and the Department of the Interior exacerbated the weaknesses of the Federal Mine Act. After dismissing Bureau director John F. O'Leary, who miners and liberal politicians regarded as a strong proponent of mine health and safety, Nixon waited several months before appointing a new director. O'Leary's successor, Elburt F. Osborn, outwardly supported strong enforcement measures, but did not support his rhetoric with his actions. Ultimately, Nixon's staff policies were detrimental to coal miners' welfare.

Chapter five will focus in depth on the U.S. Bureau of Mines from late 1970 to the end of 1971, focusing in particular on coal miners' perception of the agency. From November 1970, local and district union leaders began to protest the Bureau's health and safety enforcement procedures at non-unionized mines. Many of the coal miners who transferred from non-union mines to unionized operations informed their union leaders of the Bureau's lax inspection policies at their former places of employment. In response,

the local and district representatives wrote letters to their Congressmen and high-level UMW officials. They feared that if such accusations were true, then union employers would be encouraged to ban the UMW from their mines. As the chapter shows, to a large extent, miners' allegations about the Bureau's neglect of non-union mines were valid. In December 1970, an explosion at the non-union Hyden mine in Kentucky killed 38 men. A subsequent Congressional investigation attributed the disaster to the Bureau's failure to inspect the mine properly. With their suspicions seemingly confirmed, miners continued to write letters of protest.

Chapter five also shows that the Bureau's defects went beyond its neglect of non-union mines. Bureau managers often overturned citations issued by inspectors for health and safety violations, while many inspectors lacked the necessary training to carry out their duties. The Department of the Interior's extensive reorganization of the Bureau in the spring of 1971 further undermined its ability to provide effective health and safety enforcement. Miners conveyed their disdain towards the Bureau by writing letters of protest to the agency's director, Elbert F. Osborn. The Bureau's performance finally showed signs of improvement in late 1971. Because historians have yet to devote attention to the Bureau of Mines in the early 1970s, chapter five is constructed almost entirely from primary sources, notably letters from the United Mine Workers Safety Division Office Files, oral interviews, archival documents, and newspapers.

Chapter six examines the resurgence of the national Black Lung Association (BLA), particularly its efforts to amend the federal black lung benefits program. Developing the analysis of the BLA in chapter four, the chapter discusses the organizational tactics used by the organization, including its demonstrations against the



Social Security Administration. The chapter also examines the factors that limited the BLA's organizational activities, including a lack of funding and dissension within and between different local chapters. Most significantly, it shows how the Black Lung Association's lobbying campaign in Washington D.C., combined with extensive Congressional hearings on the federal black lung program, led to the Black Lung Amendments Act of 1972.

Furthermore, chapter six explains how the continuing deterioration of the United Mine Workers' health and safety policies, combined with the lack of democracy within the union, resulted in two important changes. First, a legal ruling by the U.S. District Court made it easier for miners to claim benefits to which they were entitled from the union's Welfare and Retirement Fund. Secondly, the Miners for Democracy won control of the union in the 1972 election, displacing the Boyle regime and, over time, making the union more attentive to the concerns of the rank and file. Finally, the chapter discusses the major changes in the federal government's health and safety enforcement policies in 1973. The Nixon administration, conscious of the Bureau of Mines' poor record, created a new agency, the Mine Enforcement and Safety Administration (MESA), which was responsible for enforcing health and safety. The Bureau was still responsible for research into coal production and technology, a function it had maintained since its inception in 1910.

Chapter seven focuses on the impact of the energy crisis on miners, local communities, and the environment. It takes as its starting point the Buffalo Creek disaster of 1972, in which the collapse of a coal slag dam killed 125 people, injured hundreds more, caused widespread homelessness, and contaminated the landscape with toxic

chemicals. As the chapter shows, the Buffalo Creek disaster was indicative of the broader environmental devastation caused by the coal industry in the early 1970s. During this time, surface coal mining was becoming more widespread across Appalachia and the western states, resulting in the erosion of mountains, the destruction of homes and properties, and the pollution of valleys and streams, which conversely also caused serious health problems among local communities. With oil becoming more costly and more difficult to import, and domestic oil reserves declining, the United States increasingly relied on coal for generating electrical power.

Chapter seven also considers how the energy crisis impacted miners laboring in underground marginal mines. The renewed emphasis on coal as a source of energy meant that operators were less attentive to health and safety. The hazards of such mines were clearly emphasized by the Scotia disaster in Kentucky in 1976, which resulted in several fatalities. In addition, the chapter will provide an overview of coal mine health and safety under the Jimmy Carter and Ronald Reagan administrations. While the Carter administration made important legislative changes that improved miners' conditions, most notably the Federal Mine Safety and Health Act of 1977, the Reagan administration engaged in a program of deregulation that undermined many of the gains miners had made over the past decade. Ronald Reagan actively supported private business at the expense of workers' health and safety, and was responsible for a growing number of injuries in the coal mining industry.

## Chapter 2

### **The Origins of Reform:**

#### **The Farmington Disaster and the West Virginia Black Lung Movement, 1968-1969**

##### **Introduction**

On the morning of May 6, 1968, twenty-six miners entered the Gauley Coal and Coke Company No. 8 mine at Hominy Falls, West Virginia. They divided into separate groups and began working in different sections of the mine. The smaller group, consisting of ten miners, unintentionally cut through a wall into an abandoned, water-filled tunnel. They were quickly trapped in the path of the oncoming water. As millions of gallons of water surged towards the other group, one miner was able to escape, while fifteen managed to climb to safety in the higher reaches of the shaft.. Several hours later, a miner in the group of fifteen contacted rescuers on the surface by telephone, informing them that the air was safe to breathe. The rescuers became increasingly concerned, though, for the remaining ten miners, who were still trapped in the deepest part of the mine. Although two of those miners had telephoned the surface at 5.00 p.m., the rescuers lost contact soon afterwards. The miner who escaped, 39-year old buggy operator Ernest Fitzwater, told reporters that he suddenly was engulfed in water. He said, “It was about a foot from the roof and rising fast. I grabbed this piece of yellow burlap and put it over my face.” He continued, “By now, the buggy had jack-knifed... so it was all I could do to get ahead of the water.”<sup>1</sup>

The Hominy Falls mine was located beneath a steep mountain around sixty miles from Charleston, the state capital. The following day, the rescue team drilled an air vent

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<sup>1</sup> *New York Times*, May 7, 1968, 22.

into the mountain and sent food, oxygen, and blankets to the fifteen men on higher ground using the mine's conveyor belt. Company officials said it was unlikely that the other ten miners had survived, as several sections of the mine floor were completely filled with water. For the rescuers, bringing the trapped miners to the surface was a long, arduous task. Engineers installed several water pumps at the mine site a few hours after the disaster, but they were slow and ineffective. The company decided to install a larger, high-capacity pump, but the engineers faced considerable problems drilling a 15-inch hole in the mountain to accommodate it. It took more than twelve hours to install the pump. By the third day of the rescue operation, the pumps had drained enough water from the mine to allow rescuers to enter the shaft. Their initial efforts to reach the miners were hampered by water seeping into the mine from another abandoned tunnel. Eventually, on May 11, more than five days after the disaster, the rescue team made contact with the 15 miners and led them back through the mine to safety.<sup>2</sup>

Relieved families greeted the miners at the entrance. Father-of-five Ottie Junior Walton declared, "I knew we were going to get out. We prayed and sang and talked about living a better life when we got out. We had a real religious bunch down there." Another man in the group told reporters that the miners had survived because of their refusal to panic and shared sense of humor. Physicians who examined the men said that they were in good physical condition, despite being confined to damp, airless conditions for several days. Despite the recovery of the fifteen miners, many of the families at the mine entrance were despondent, as the remaining ten miners had still not been found. They

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<sup>2</sup> *New York Times*, May 8, 1968, 24; *New York Times*, May 9, 1968, 51; *New York Times*, May 10, 1968, 17; *New York Times*, May 11, 1968, 69; *New York Times*, May 12, 1968, 65.

were presumed dead. Company president C. E. Richardson vowed to keep pumping water from the mine until search teams located them.<sup>3</sup>

Several days later, on May 16, rescuers found six of the men alive deep inside the mine. They had protected themselves from the rising water by constructing an emergency barricade with roof timbers and canvas, and had survived for ten days by rationing the contents of two lunch buckets and drinking scum-covered water. The other four men had been swept to their deaths by the force of the water. Doctors at a local hospital were surprised to find the miners in good physical shape and discharged all of them within 48 hours. The miners emphasized how discipline and teamwork had kept them alive. Eugene Martin said, “At no time did any man try to leave and make it on his own.” Several of the miners emphasized how religion had got them through their ordeal. From his hospital bed, Joseph Fitzwater said, “I was a sinner when I went into that mine, but I came out a Christian... Each day we grew weaker, but we kept our heads. We survived through the grace of God. It was a miracle of God’s.”<sup>4</sup>

The deaths of four men at the Hominy Falls mine showed that coal mining in the post-war United States remained a dangerous and hazardous occupation. The disaster also highlighted a number of other characteristics of the United States coal industry in the late 1960s. First, it was indicative of coal miners’ resilience and ability to survive under harsh conditions. Second, it showed that miners’ identities were deeply rooted in their local communities. The men who were trapped in the Hominy Falls mine for ten days ultimately survived because they supported each other and envisioned life beyond the

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<sup>3</sup> *New York Times*, May 12, 1968, 65.

<sup>4</sup> *New York Times*, May 17, 1968, 34; *New York Times*, May 18, 1968, 67.

mine. The miners' connection to their community was reflected by the disaster's emotional impact on their families and relatives. Those waiting on the surface at Hominy Falls experienced an agonizing wait before they learned the fate of their loved ones. Third, the story of coal mine health and safety up to the late 1960s had been one of repeated failure. The Hominy Falls disaster emphasized that state mining codes and the federal mine acts of 1941 and 1952 had done little to protect coal miners. It was precisely this failure that set the stage for the Hominy Falls disaster and countless other small, yet fatal, mine accidents across the country.

As bleak as circumstances seemed for Appalachian coal miners, the events at Hominy Falls occurred at a turning point for health and safety regulation. In the late 1960s, the Lyndon B. Johnson administration was investigating ways to make coal miners safer, while the media, including the burgeoning television networks, were giving more coverage to mine health and safety. Moreover, coal miners were beginning to reject W. Anthony (Tony) Boyle's national leadership of the United Mine Workers in favor of organizing at the local level. From 1968, such opposition was especially prominent in West Virginia, where young workers with Volunteers in Service to America (VISTA) and welfare rights activists advocated justice and equality for powerless members of society, including the state's coal miners. The activists were particularly concerned with obtaining more stringent legislation and compensation for miners suffering from pneumoconiosis, a debilitating, work-related lung disease otherwise known as 'black lung.'

The issue of black lung disease prompted a determined band of radical physicians, liberal politicians, activists, local union leaders, and rank-and-file miners to create a

separate organization called the West Virginia Black Lung Association (BLA) at the beginning of 1969. Engaging in local, community-based organization, the BLA led a massive strike across the coalfields in February and March 1969, which ultimately persuaded the state legislature to introduce a compensation program for black lung victims. As this chapter will highlight, the BLA's achievements marked a crucial turning point in the improvement of coal mine health and safety, not just at the state level, but across the nation.

### **The “Discovery” of Black Lung Disease: Fiery Rhetoric and Union Apathy**

The emerging mine activism in West Virginia started with a small band of pioneering doctors and medical specialists. In the late 1960s, those physicians, working largely outside the institutional settings of the U.S. Public Health Service and the coal companies, brought visibility to one particular aspect of mine health and safety, a disease called pneumoconiosis, otherwise known as ‘black lung.’ By far the most prominent was 60-year old Dr. Isidore E. Buff, a heart specialist from Charleston, West Virginia.

Buff had started to take an interest in coal miners’ lung disease when the continuous mining machine came into widespread use in the Appalachian coalfields in the early 1950s. Company doctors were increasingly sending him miners who had collapsed as a result of the excessive dust generated by the new machinery. While the company doctors typically diagnosed heart failure, Buff soon discovered that most were victims of miners’ lung disease. Although Buff felt it was imperative that he learned more about the connection between environmental conditions and lung disorders, he was unable to obtain funding from either the U.S. Public Health Service or the Bureau of

Mines to conduct a study.<sup>5</sup> His inability to obtain support for the study reflected the power of the coal operators, who had strong economic and political influence in Washington, D.C. Buff also tried to create an educational program about the dangers of coal mining for West Virginia high schools, but he was unsuccessful in this effort. He had intended the program to function as a counterweight to an extensive, federally supported recruitment campaign by the coal operators, but industry pressure ultimately forced him to back down. Even as head of the West Virginia Air Pollution Control Commission, a position he took in 1967, Buff struggled to convince the general public about the environmental hazards of underground coal mining.<sup>6</sup>

By mid-1968, Buff had become the self-appointed leader of the emerging welfare-rights movement in West Virginia. He became actively involved in the Poor People's Campaign. More significantly, he pressed for workers' compensation for miners' lung disease. In defining miners' lung disease, he abandoned the term 'silicosis' in favor of 'black lung.' Silicosis was a lung disease common among miners who worked in western hard rock mines. He played to miners' belief that the coal operators were destroying their health.<sup>7</sup> Buff argued that coal miners did not suffer from silicosis, a disease typically caused by the inhalation of silica dust, but from a unique disease caused by coal dust. He

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<sup>5</sup> Bennett M. Judkins, "Mobilization of Membership: The Black and Brown Lung Movements," *Social Movements of the Sixties and Seventies*, edited by Jo Freeman (New York: Longman, 1983), 38; Bennett M. Judkins, *We Offer Ourselves As Evidence: Towards Workers' Control of Occupational Health* (New York: Greenwood Press, 1986), 64; Philip Trupp, "Dr. Buff Versus the Black Lung," *The Reader's Digest*, June 1969, 102.

<sup>6</sup> Judkins, *We Offer Ourselves As Evidence*, 64; Trupp, "Dr. Buff Versus the Black Lung," 102.

<sup>7</sup> Alan Derickson, *Black Lung: Anatomy of a Public Health Disaster* (Ithaca, New York: Cornell University Press), 147.



quickly gained a reputation for his fiery rhetoric. The miners felt that they had found someone who understood them and could communicate with them.

Just days after the Hominy Falls disaster, Buff spoke to around 100 miners at a small local union hall in Clifftop, West Virginia. He showed them a picture of a normal lung, then one of a lung afflicted by black lung disease, before breaking into an impassioned speech:

Black lung is what's killing all of you. But the company says you're sick in the head, shiftless, or stupid. They ask, 'Don't you care about your family?' And those cute little girls in miniskirts over at the welfare department feel your head and say, 'You're not sick. Don't you want to work?' You believe them! But don't you know that they just don't want to pay you compensation? You have a mind like anyone else. You're sick and the company knows it. But they won't pay a dime... The miners of this state ought to demand compensation and safer working conditions. And if you don't get them – use whatever means are necessary!"<sup>8</sup>

As Buff worked to focus public attention on pneumoconiosis, two other physicians were making important advances in the battle against black lung disease. Pulmonologist Dr. Donald Rasmussen was carrying out research on miners' lung disease at the Miners' Memorial Hospital in Beckley. Rasmussen had arrived in West Virginia in 1962 with no knowledge of black lung. Some internists drew his attention to the disease when they asked him to perform medical evaluations on a group of miners. At an early stage of his evaluations, Rasmussen realized that the miners exhibited breathing difficulties, but X-rays, physical examinations, and even pulmonary function tests failed to provide concrete evidence of lung disease. Electing to adopt a different approach, Rasmussen carried out exercise studies and analyzed the miners' arterial blood. He obtained conclusive proof of lung disease from the first miner he examined, which

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<sup>8</sup> Trupp, "Dr. Buff Versus the Black Lung," 103-104.

prompted him to start investigating the disease in much greater depth. In order to obtain the funding that was necessary to conduct further studies, Rasmussen transferred to the local branch of the U.S. Public Health Service. He spent just over two years touring local coal mines and conducting evaluations when the PHS cut off his funds and transferred his research program to Morgantown University. Despite losing the federal government's support, Rasmussen and one of his colleagues, Earl Stafford, testified before Congressional mine safety hearings on a regular basis.<sup>9</sup>

The other physician at work on miners' lung disease was pathologist Dr. Hawey Wells, director of a chest laboratory in a Pennsylvania hospital. He also taught medicine at the University of West Virginia, Morgantown, and had worked with Rasmussen during the early 1960s. Wells gained a thorough knowledge of the effects of coal dust on miners' lungs by conducting autopsies. He was a strong advocate of black lung preventative legislation and compensation and, like Isidore Buff, flamboyant and outspoken. He frequently stood before audiences of miners and crumbled blackened lung tissue into small pieces with his fingers, informing them that the same would happen to their lungs if they were continuously exposed to high quantities of dust.<sup>10</sup> In the summer of 1968, Buff, Rasmussen, and Wells formed an alliance. They began collectively touring the coalfields of West Virginia to emphasize the impact of pneumoconiosis on coal miners and their families.

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<sup>9</sup> Dr. Donald Rasmussen, interview by author, tape recording, August 21, 2008, Department of Labor, Charleston, West Virginia; Judkins, *We Offer Ourselves As Evidence*, 65.

<sup>10</sup> Judkins, *We Offer Ourselves as Evidence*, 65; Derickson, *Black Lung*, 148.

Despite the physicians' efforts, there was little progress in defining, treating, or compensating miners' occupational illnesses. In general, advancements in coal mine health and safety faced significant obstacles, not least a union leadership that was bound to the coal operators. In September 1968, UMW President W. Anthony (Tony) Boyle used the union's convention as an opportunity to consolidate his position as national leader of the union. Despite recent mine accidents, and new medical findings, Boyle had little interest in reform. In keeping with the 1964 convention in Florida, Boyle held the 1968 meeting far from the bituminous coalfields, in Denver, Colorado. He purposely selected a distant location to restrict the attendance of rank-and-file miners who might criticize his leadership. He also plundered union funds to provide financial incentives for his supporters to attend the convention and circumvented the union's constitution by allowing the participation of "bogus" local unions. Under constitutional rules, local unions had to have at least ten members to maintain active status within the national organization. Despite the fact that at least 566 locals did not have enough members, Boyle and his colleagues still permitted them to send delegates. The national leadership supplied delegates for locals that were not able to provide them. It typically placed the delegate on a committee and instructed him how to vote, with the promise of financial reward.<sup>11</sup>

At the 1968 convention, delegates from across Appalachia passed several resolutions concerning pneumoconiosis. Twelve of the resolutions called for

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<sup>11</sup> Ken Hechler, interview by author, tape recording, August 22, 2008, West Virginia State Archives, Charleston; Joseph E. Finley, *The Corrupt Kindgom: The Rise and Fall of the United Mine Workers* (New York: Simon and Schuster, 1972), 243-245; Barbara Smith, *Digging Our Own Graves: Coal Miners and the Struggle Over Black Lung Disease* (Philadelphia: Temple University Press, 1987), 108-109.

compensation for miners disabled by lung impairments and advocated measures to achieve it, such as overhauling workers' compensation laws, increasing operators' contributions to the union's Welfare and Retirement Fund, and making operators responsible for paying compensation directly to miners. The other six resolutions advocated preventative measures, including dust suppression in mines and mandatory dust limits. In an impassioned speech, Dr. Lorin Kerr of the UMW Welfare and Retirement Fund urged the national leadership to become more actively involved in health and safety issues. Boyle retorted that changes in mining laws could happen only at the state level. He made Kerr read a resolution that called on all union districts to press for legislation that would make pneumoconiosis eligible under workers' compensation laws. In the aftermath of the convention, however, Boyle and his colleagues abandoned most of the health and safety resolutions that delegates had passed.<sup>12</sup>

The convention took place just before the union started contract negotiations with the coal operators. The union's 1966 contract with the Bituminous Coal Operators' Association was scheduled to expire in early October 1968. On October 1, believing that the contract had ended, over 10,000 bituminous coal miners in Appalachia engaged in a wildcat strike. They were protesting what they perceived as the inadequacies of the 1966 contract, particularly the failure of Boyle and the coal operators to negotiate an increase in the tonnage royalties that funded the UMW Welfare and Retirement Fund. For the majority of miners, the WRF was the only available source of subsidized health care.

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<sup>12</sup> Brit Hume, *Death and the Mines: Murder and Rebellion in the UMW* (Grossman: New York, 1971), 65-71. Published in 1971, journalist Brit Hume's book is a contemporary expose on the United Mine Workers of America. For an in-depth account of the 1968 convention, see United Mine Workers of America, *Proceedings of the 45<sup>th</sup> Constitutional Convention*, 2 vols. (Washington D.C.: United Mine Workers of America, 1968).

Boyle, who was already negotiating the new contract with the BCOA, declared that the strike was illegal, as the existing contract included a one-week grace period and thus did not end until October 8. District union officers urged the men to return to work, but their pleas went largely unheeded, as only a fraction of the miners resumed their jobs. The strikers were joined on October 9 by thousands more coal miners who walked off the job.<sup>13</sup>

By the time the union signed a new contract on October 14, 130,000 miners were on strike. Boyle boasted that a wage increase of three dollars per day meant that the contract was “the best ever negotiated by any union in history,” but the new contract did not include higher royalty payments for the Welfare and Retirement Fund. Throughout the negotiations, the coal operators had firmly refused to agree to such a provision. The miners returned to work, as the national leadership of the United Mine Workers continued to demonstrate its lack of commitment to better health care for coal miners.<sup>14</sup>

### **The Farmington Disaster: The Catalyst for Change**

In mid-November, a horrific disaster intensified the nation’s focus on coal mine health and safety. Shortly after 5:00 a.m., on November 20, 1968, an explosion ripped through the Consolidation Company’s No. 9 mine in Farmington, West Virginia. It destroyed the main entrance to the mine, trapping inside the majority of the 99 miners who were on the nightshift at the time. Only 21 of those miners, working far from the

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<sup>13</sup> *New York Times*, September 15, 1968, 42; *New York Times*, October 2, 1968, 44; *New York Times*, October 3, 1968, 93; *New York Times*, October 10, 1968, 95; *New York Times*, October 12, 1968, 16; Curtis Seltzer, *Fire in the Hole: Mines and Managers in the American Coal Industry* (Lexington: The University Press of Kentucky, 1985), 88; Finley, *The Corrupt Kingdom*, 250

<sup>14</sup> *New York Times*, October 15, 1968, 98.

source of the blast, managed to escape through portals and airshafts. A second explosion followed just a few hours later, by which time anxious families and relatives had descended on the site of the mine. In the days that followed, they kept a constant vigil at a local church, as several more explosions hindered the efforts of rescue crews to locate the trapped miners. On November 29, Consolidation President John Corcoran ordered rescue crews to seal the mine to prevent further explosions. While few people on the mine site believed the miners had survived the explosions, not least because surface tests showed that lethal amounts of methane in the mine could not support human life, Corcoran's decision brought a sense of finality to their deaths. It also provoked mixed reactions among the families and relatives of the miners. Some vehemently opposed the action while others passively accepted it. "We knew it was coming, we knew there was nothing else to do," commented the wife of one of the trapped miners.<sup>15</sup>

The exact cause of the disaster was unclear. Investigators cited high levels of methane, poor ventilation, and the accumulation of large quantities of combustible coal dust as possible causes. During its inspections at the Farmington mine over the previous six years, the Bureau of Mines had consistently discovered inadequate rock dusting. The practice of rock dusting, a requirement of the 1952 Federal Mine Act, involved covering the walls of underground mines with limestone to prevent the spread of combustible coal

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<sup>15</sup> Smith, *Digging Our Own Graves*, 101-102; *New York Times*, November 21, 1968, 34; *New York Times*, November 24, 1968, E6; *Washington Post*, November 29, 1968, 6; *Washington Post*, November 30, 1968, 4.

dust, thereby reducing the risk of explosions. Furthermore, the bureau had recorded an additional 25 safety violations in the Farmington mine since 1966.<sup>16</sup>

Lewis E. Evans, Safety Director for the United Mine Workers of America (UMWA), asserted that Consolidation had prioritized large profits over preventing accidents. However, his view was not typical of the UMWA leadership. On the first day of the catastrophe, Tony Boyle made a speech that, remarkably, defended Consolidation. At the scene of the disaster he proclaimed, “I share the grief. I’ve lost relatives in a mine explosion. But as long as we mine coal, there is always this inherent danger of explosions. This happens to be, in my judgment as President of the United Mine Workers of America, one of the better companies to work with as far as cooperation and safety is concerned.” William Poundstone, Consolidation’s executive vice-president, echoed Boyle’s claims by arguing that his company followed lawful practices and was not therefore responsible for the disaster.

Assistant Secretary of the Interior J. Cordell Moore, one of Washington’s most influential mine legislators, provided further support for the company during a brief trip to Farmington. “We have tried our very best to make mines safe and I think the company has done all in its power to make the mine safe,” he declared. “Unfortunately, these things happen – we don’t understand why they happen, but they do happen.” The comments of the men who vindicated Consolidation Coal provoked outrage among the relatives of the victims. Judy Henderson, widowed at the age of just 21 as a result of the disaster, had particular contempt for Boyle. “I hated him right then,” she later

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<sup>16</sup> Ben A. Franklin, “The Scandal of Death and Injury in the Mines,” *New York Times Magazine*, March 30, 1969, 27.

remembered.” I couldn’t believe someone could say that right in front of the mine where all our husbands were buried alive.”<sup>17</sup>

The Farmington disaster exacted a heavy toll on the local community. Of the 78 miners who died, 73 were married and 55 had dependent children.<sup>18</sup> One of the deceased miners, Hartsel L. Mayle, left behind a wife and 13 dependent children.<sup>19</sup> While the widows were distraught at the loss of their husbands, they also were determined to fight for changes to federal mine legislation. Representative Ken Hechler (D-WV) agreed to meet with the widows shortly after the disaster occurred, assuming he would be giving them consolation and emotional support. The widows, however, displayed a resilient attitude. They demanded that he take immediate action to prevent future disasters and the conditions that resulted in black lung disease. They implored him, “You’re a Congressman, why don’t you do something about this?”<sup>20</sup>

First elected to Congress in 1958, Hechler had long been an advocate of safer coal mines. During his inaugural term in office, shortly after the completion of the 1960 census, the West Virginia legislature redrew the state’s Congressional districts. Under the

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<sup>17</sup> *Washington Post*, November 30, 1968, 4; *New York Times*, November 22, 1968, 1 and 50; Smith, *Digging Our Own Graves*, 103; Robert W. Gordon, “Environmental Blues: Working-Class Environmentalism and the Labor-Environmental Alliance, 1968-1985” (Ph.D. diss., Wayne State University, 2002), 71; Bill Peterson, *Coaltown Revisited: An Appalachian Notebook*. (Chicago: Henry Regnery Company, 1972), 49.

<sup>18</sup> Report entitled “Farmington Mine Fatalities,” Box 9, collection entitled Department of Mines Coal Mine Fire and Disaster Reports, West Virginia State Archives, Charleston, West Virginia. This brief report lists the name, age, marital status, and number of dependent children for each of the miners who were killed. Dependent children were those under the age of eighteen.

<sup>19</sup> *Ibid*, 2.

<sup>20</sup> Ken Hechler, interview by author, August 22, 2008.



United States Constitution, state legislatures were required to engage in redistricting after every ten-year census, in order to democratize the election process for the U.S. House of Representatives. As part of the West Virginia redistricting, the state legislature removed Tyler County from Hechler's control and gave him authority over Logan County instead. The redrawing of county boundaries actually facilitated Hechler's re-election in November 1960, as Tyler County was traditionally a Republican County, whereas Logan County leaned more towards the Democratic Party. Moreover, it prompted Hechler's involvement in coal mine health and safety. While there were no coal mines in Tyler, there were several in Logan County, which meant that many of his new constituents were coal miners and their families. As a Congressman, Hechler became aware of the problems and injustices that workers in the coal industry faced.<sup>21</sup>

The re-election of Lyndon B. Johnson to the U.S. Presidency in 1964 further advanced Hechler's interest in coal miners' welfare. President Johnson sought to tackle mine health and safety head on with preventative legislation, in contrast to his predecessor, John F. Kennedy, who had adopted a relatively passive approach. President Kennedy's administration had only provided relief for mine disaster victims after the fact, instead of advocating preventative measures. In Hechler's own words, Kennedy, "instead of putting a fence around the cliff, put an ambulance in the valley." Hechler cited President Johnson's introduction of a draft bill on mine health and safety to Congress in September 1968 as a signal event, despite the fact that only he and two other Congressmen supported it.<sup>22</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

By the time he met the Farmington widows, Hechler was knowledgeable about the issues affecting miners. The meeting prompted him to become more active in coal mine policy and legislative issues.<sup>23</sup> In a written statement, dated November 25, 1968, Hechler proclaimed, “Coal miners don’t have to die. In a civilized society, it is nothing short of criminal to allow the present conditions to continue in the coal mines.”<sup>24</sup> He contended that federal and state mine safety laws were weak and hindered by bureaucratic obstacles, that most companies had advance warnings of inspections, and that dust levels in mines were unacceptably high. He further argued that miners accepted the constant risk of death and injury, while Congress and the general public were apathetic to the dangers of coal mining. Hechler was particularly scathing toward mine company officials and union leaders who claimed they were doing all in their power to protect miners. The nation had a duty, asserted Hechler, to push Congress for more effective mine safety legislation.<sup>25</sup>

The Department of the Interior, meanwhile, was hastily planning a conference on mine health and safety in response to the Farmington disaster. Two weeks after the mine first exploded, Secretary of the Interior Stewart Udall announced that the conference would take place on December 12, with the participation of members of Congress, industry representatives, and union leaders. Udall stated, “We are looking into ways in

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<sup>23</sup> Ibid.

<sup>24</sup> ‘Statement of Ken Hechler,’ November 25, 1968, Folder 6, Box 1, Richard J. Jensen Collection, Walter Reuther Archive of Labor and Urban Affairs, Wayne State University, Detroit. Hereafter, this collection will be referred to as Jensen Collection, Reuther Archives. See also “Too Late for 78,” *Time*, December 6, 1968, 32-33.

<sup>25</sup> ‘Statement of Ken Hechler,’ November 25, 1968, Folder 6, Box 1, Jensen Collection, Reuther Archives.

which we can better discharge our current responsibilities under existing law, and are considering what additional legislation is needed to provide practical remedies for the hazards to which our miners are exposed.”<sup>26</sup> Udall’s announcement prompted an outbreak of activity at the offices of the United Mine Workers. President Boyle instructed several delegates, including Safety Director Lewis Evans, to collate evidence that would enable the union to retract Udall’s charges that it “had not done enough in the field of safety,” and to show conference attendees that it had “been the crusading force in improved safety in the coal mines of [the United States].”<sup>27</sup> Boyle was reacting to the increased national focus on the UMW in the aftermath of the Farmington disaster. The union was now under pressure to justify its contributions to coal mine health and safety.

The substantial media coverage of the Farmington disaster also heightened public awareness of West Virginia miners and the black lung movement. After the initial explosions, reporters from national newspapers and television networks descended on the local community. For almost a week, renowned anchorman Walter Cronkite presented a nightly segment on the events at Farmington, as the nation waited in suspense for news about the entombed miners. Given that nearly all the trapped men in the Hominy Falls disaster had escaped the mine alive, there was initially hope that the Farmington miners might also survive. For long periods of time, however, there was nothing for the media to

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<sup>26</sup> Department of the Interior, “News Release, For Release December 2, 1968: Public Conference on Coal Mine Safety Set,” Folder 10, Box 3, United Mine Workers Safety Division Office Files, Special Collections Library, Pennsylvania State University, State College, PA. Hereafter, this collection will be referred to as UMW Safety Division Files, PSU Special Collections.

<sup>27</sup> United Mine Workers of America Memorandum, November 27, 1968, Folder 10, Box 3, UMW Safety Division Files, PSU Special Collections.

report. While awaiting news of the trapped miners' fates, journalists started to investigate other aspects of miners' lives. Isidore Buff capitalized on the media's presence by informing them about black lung and its harmful effects on miners. He had no compunction about criticizing the coal operators, the UMW, and the Bureau of Mines.<sup>28</sup>

In his book *Forcing the Spring*, Robert Gottlieb argues that the Farmington disaster only "tangentially affected the black lung movement," but he fails to take into consideration the highly visible campaign orchestrated by Buff and others in the aftermath of the disaster.<sup>29</sup> Moreover, Gottlieb ignores the fact that in underground coal mines immediate safety risks and long-term health hazards were interconnected. The deaths and injuries caused by explosions and the lung disease caused by coal dust were both reflections of weak legislation and the disregard of coal operators and federal and state governments to miners' welfare. Furthermore, coal dust was both a cause of explosions and serious lung disease in the miners who toiled in underground mines.

In the aftermath of the disaster, Buff, Wells, and Rasmussen intensified their efforts to increase awareness of black lung disease. They brought a more formal nature to their partnership by establishing the Committee of Physicians on Mine Health and Safety. The committee toured the West Virginia coalfields extensively, talking to miners about the effects of the disease and the need for preventative legislation and compensation. Buff typically spoke first, much to the chagrin of Rasmussen, who frequently disapproved of his frenzied, inaccurate speeches. In a booming voice, Buff told the miners, "You've all

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<sup>28</sup> J. Davitt McAteer, telephone interview with author, tape recording, May 11, 2009; Finley, *The Corrupt Kingdom*, 226.

<sup>29</sup> Robert Gottlieb presents this argument in *Forcing the Spring: The Transformation of the American Environmental Movement* (Washington D.C.: Island Press, 1993), 280.

got black lung! You're all gonna die!"<sup>30</sup> Rather than accept such rhetoric with silent fatalism, most miners broke into loud shouts and applause. Buff sometimes exaggerated the proportion of miners who had the disease, claiming on some occasions that four fifths of West Virginia miners were afflicted by it.<sup>31</sup> Like Buff, Hawey Wells relied on theatrics to highlight the threat posed by the disease. He continued to stand before miners and crumble lung tissue from deceased black lung victims between his fingers. Rasmussen's research had demonstrated that not every miner was susceptible to black lung. After Buff and Wells had finished playing to the emotions of the audience, Rasmussen was left to discuss the disease in more scientific, grounded terms. This was often a difficult task, as the miners were often still clapping and cheering for Buff.<sup>32</sup>

Craig Robinson, a law graduate working in West Virginia with the Volunteers in Service to America (VISTA), collaborated with local unions to organize the physicians' appearances.<sup>33</sup> With the help of his colleague Rick Bank, he used the dialogue that emerged from the meetings to draft changes to the West Virginia compensation law. Robinson and Bank formulated the new changes on the presumption that miners who had worked underground for a significant length of time should automatically receive

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<sup>30</sup> Donald Rasmussen, interview with author, August 21, 2008.

<sup>31</sup> Derickson, *Black Lung*, 148.

<sup>32</sup> Donald Rasmussen, interview with author, August 21, 2008.

<sup>33</sup> For a detailed account on the emergence and development of Volunteers in Service to America (VISTA), see Ronald D. Eller, *Uneven Ground: Appalachia Since 1945* (Lexington: The University Press of Kentucky, 2008), 90-176.

compensation from the state. The miners embraced this idea, for they had long recognized that working underground diminished their labor capacity.<sup>34</sup>

The West Virginia state legislature responded to the Farmington disaster by holding a hearing from December 5 to 7, 1968. Representatives from the U. S. Bureau of Mines, the West Virginia Department of Mines, the United Mine Workers of America, and the Mountaineer Coal Company, the subsidiary of Consolidation responsible for operating the Farmington mine, gathered in the Federal Building in Fairmont to deliberate the cause of the disaster. Several of the miners who survived the disaster, or who had not been on shift when it happened, testified at the hearing, giving their perspective on the working conditions in the mine. Although preliminary evidence showed that a dangerous accumulation of methane gas had caused the disaster, the miners' conflicting testimonies only served to complicate the investigation into what happened at Farmington.

Lawrence Riggs, the General Superintendent of the No. 9, asserted early in his testimony that rock dusting procedures in the mine were adequate. As questioning progressed, however, he implied that the procedures for monitoring methane levels in the mine were flawed. When Frank C. Memmott, the Associate Director of Health and Safety in the Bureau of Mines asked Riggs to describe his experience with methane monitors, he responded, "We had a methane monitor in 6 right, 7 south, and in main west, and I believe they were both operating. I wouldn't make that for a face, but I believe they

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<sup>34</sup> Derickson, *Black Lung* 150-151; Curtis Seltzer, "Moral Dimensions of Occupational Health: The Case of the 1969 Coal Mine Health and Safety Act," in *The Health and Safety of Workers*, edited by Ronald Bayer (New York: Oxford University Press, 1988), 249.

were.”<sup>35</sup> Quickly trying to cover up any sense of hesitation or doubt, Riggs stated that neither the mine’s own inspection staff nor the inspectors from the Bureau of Mines had found problems with the monitors. He further claimed, “... I’ve watched them operate lots of times, and I never did see an operator continue to run when those meters showed that there was methane in there.”<sup>36</sup>

Walter Slovekosky, a main-line motorman, cited his belief that section managers had too many responsibilities to carry out their duties effectively. He said, “Well, one of our problems that I have thought for a long time, especially in our mines, has been the fact that a section boss isn’t really a section boss. He has a belt system to look after and he has everything else to look after and he doesn’t really have the time to spend on the section to be sure that the section is safe. I know that to be a very real fact.”<sup>37</sup> Asked by Memmot if the section managers gave utmost priority to safety, Slovekosky responded, “I would say that although that boss may have safety at heart and maybe that was what he was wanting and worrying about, it’s not something that he can look after continually like he should and spend time right there on his own section with his own men at the working face...”<sup>38</sup> Ralph Starkey, who was responsible for running the loading machine,

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<sup>35</sup> West Virginia Department of Mines, *Official Hearing: Coal Mine Explosion, Consol No. 9 Mine, Mountaineer Coal Company, Division of Consolidation Coal Company, Farmington, Marion County, West Virginia, November 20, 1968*, Box 9, (Ar1527), Department of Mines Coal Mine Fire and Disaster Reports Collection, West Virginia State Archives, Charleston, WV. Riggs’ testimony appears on pages 28-44; the quotation is taken from page 36. The report is contained separately in the box, and does not have its own folder.

<sup>36</sup> *Ibid.*, 36.

<sup>37</sup> *Ibid.*, 61-77; the quote is on page 71.

<sup>38</sup> *Ibid.*

further cast doubt on operating procedures in the mine. He said that there could have been better dust control on the continuous mining machine. In contrast to the testimony given by Riggs, he also emphasized his belief that there could have been more rock dusting in the mine.<sup>39</sup>

A common theme emerged from the testimonies given at the hearing. All of the witnesses questioned indicated there were irregularities or flaws with safety procedures in the No. 9 mine, but they appeared reluctant to discuss them in great detail. Their hesitation reflected that the balance of power in the coalfields still favored the coal operators and their supporters in the United Mine Workers. The presence of a legal assistant from the Mountaineer Coal Company on the interrogation panel was hardly conducive to establishing an accurate testimony from the miners. Moreover, the witnesses were reluctant to acknowledge that the disaster could have been prevented. The delegates concluded the hearing without establishing a definitive cause for the disaster.

The federal government was concerned not only with determining the cause of the disaster, but also its wider implications for coal mine health and safety. To that end, the Interior Department's conference on mine safety opened in Washington D.C. on December 12. In his opening speech, Stewart Udall placed much of the onus for improving underground working conditions on management and labor. He told attendees, "The Federal Government can establish the standards and assist in the process through inspections and training, but, in the last analysis, management and labor must see to it

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<sup>39</sup> Ibid., 167-173.



that good safety practices are observed.”<sup>40</sup> Udall clearly envisioned a limited role for the federal government in the enforcement of mine regulations. He also realized, however, that it was necessary to modify the operating practices of the Bureau of Mines, as it did not do enough to enforce safe working conditions. He recommended giving the Bureau more power to carry out surprise inspections and the authority to shut down mines that were particularly unsafe. A further, crucial measure for Udall was the passage of President Johnson’s 1968 mine health and safety bill, albeit with a few modifications, including the addition of minimum dust standards for coal mines. Secretary Udall also highlighted the need for non-legislative measures, such as better training for mine inspectors.<sup>41</sup>

In his statement to the conference, Consolidation Coal President John Corcoran cautiously admitted that the Farmington disaster reflected the inadequacy of the company’s safety enforcement practices, despite its commitment to reducing underground fatalities. He assured the delegates that ‘Consol’ was re-evaluating its operating procedures and that its first priority was the welfare of its employees: “There can be no question that the health and safety of employees in the coal mining industry must be given first priority... Our trained and experienced employees constitute our most valuable resource and the protection of their health and safety is an absolute prerequisite

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<sup>40</sup> “Statement by Secretary of the Interior Stewart L. Udall Before the Mine Safety Conference, Department of the Interior, Washington D.C., December 12, 1968,” U.S. Department of the Interior, p. 2, Folder 10, Box 3, UMW Safety Division Files, PSU Special Collections.

<sup>41</sup> Ibid., 1-21.

to the successful and continued operation of our business.”<sup>42</sup> Corcoran indicated that he would support changes to health and safety laws, so long as the federal government actively reinforced them. In doing so, he indirectly challenged Udall’s assertion that the federal government should have only a limited role in safety enforcement.<sup>43</sup>

UMW President Tony Boyle brought a large entourage of fellow union officers to the mining safety conference, to ensure an appreciative audience for his speech.<sup>44</sup> From the outset, Boyle sought to exaggerate the union’s contribution to coal mine health and safety legislation. In a protracted discussion of the history of mine legislation during the twentieth century, he exaggerated and misrepresented the union’s role. For instance, he credited the union as a major influence in the creation of the Bureau of Mines in 1910, while underplaying the role of the federal government. He completely ignored the impact of public and media pressure in the wake of the 1907 Monongah mining disaster.<sup>45</sup> In fact, Boyle credited the UMW with the passage of all previous mine health and safety laws, including the 1952 Federal Mine Safety Act and the 1966 law that extended the terms of the 1952 legislation to small mines.<sup>46</sup>

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<sup>42</sup> “Statement of John Corcoran, Conference on Coal Mine Safety, Washington D.C., December 12, 1968,” p. 1, Folder 10, Box 3, UMW Safety Division Files, PSU Special Collections.

<sup>43</sup> *Ibid.*, 1-2.

<sup>44</sup> Hume, *Death and the Mines*, 80.

<sup>45</sup> “Statement of Mr. W. A. Boyle, President, United Mine Workers of America, at the U.S. Department of the Interior Public Conference on Coal Mine Safety, Washington D.C., December 12, 1968,” pp. 1-2, Folder 10, Box 3, UMW Safety Division Files, PSU Special Collections.

<sup>46</sup> Hume, *Death and the Mines*, 80.

The Department of the Interior conference was more than a forum for the discussion of coal mine health and safety; it was nothing less than a contest over who was responsible for protecting the nation's miners. Moreover, Boyle's manipulation of his leadership position, and his contempt for the rank-and-file, meant that the average coal miner was not represented at the conference. The Department of the Interior, therefore, was unable to assess the impact of federal legislation on miners' working conditions, or miners' interpretation of the legislation.

From mid-December, Bureau of Mines director John F. O'Leary, conscious of the measures advocated by Udall at the conference, adopted a stronger approach to enforcing mine safety. He instructed Bureau inspectors to make unannounced spot-checks on mines and to close any that posed an immediate risk to miners' health and safety. Stewart Udall had appointed O'Leary in late October, just prior to the Farmington disaster, as part of his drive to reform conditions in the mines. Although the Bureau had gained the authority to shut down mines after the passage of the Federal Mine Act in 1952, it rarely used this power. O'Leary's new policy, therefore, marked an important shift in the Bureau's role in regulating the coal industry.<sup>47</sup> The Bureau's more active role in mine policy did not have an immediate effect. Throughout 1968, a total of 98 miners in the bituminous coal industry died from roof falls or collapses of the mine face or ribs, four more than the previous year. The 1968 fatality rate represented 0.67 casualties per million man-hours worked, and 36.7 percent of the total underground bituminous fatalities. The 1967 fatality rate for roof falls and face and rib collapses represented 0.63 casualties per million man-hours worked, although a larger proportion of the total bituminous fatality rate, at 56.6

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<sup>47</sup> *New York Times*, February 17, 1969, 32; Finley, *The Corrupt Kingdom*, 115.

percent. Thus, even discounting the Farmington disaster, safety in bituminous coal mines was worse in 1968 than it had been the previous year.<sup>48</sup>

The Farmington disaster not only resulted in stronger enforcement policies by the federal government and increased activism by the black lung movement. It also prompted consumer advocate Ralph Nader to campaign for tougher legislation. A graduate of Harvard Law School, Nader had established a visible public profile through his recent investigation of automobile safety. In his 1965 book *Unsafe At Any Speed*, he criticized the safety of many American cars, particularly General Motors' Chevrolet Corvair.<sup>49</sup> Nader described the Corvair as "one of the greatest acts of industrial irresponsibility in the present century."<sup>50</sup> Most notably, the Corvair's swing-axle rear suspension occasionally caused the car to spin out of control or roll over. General Motors responded to Nader's claims by conducting extensive investigations of his private life and hiring undercover detectives to follow him.<sup>51</sup> Nader sued the company for \$26 million for

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<sup>48</sup> U.S. Department of the Interior, Bureau of Mines, "Coal-Mine Injuries and Worktime Monthly: Coal Injuries and Worktime, December and Annual Summary 1970," *Mineral Industry Surveys*, Folder 4, Box 45, Miners for Democracy Collection, Walter Reuther Library of Labor and Urban Affairs, Wayne State University, Detroit. Hereafter, this collection will be referred to as Miners for Democracy Collection, Reuther Archives.

<sup>49</sup> For a detailed account, see Justin Martin, *Nader: Crusader, Spoiler, Icon* (Cambridge, Massachusetts: Perseus Publishing, 2002), chapter four.

<sup>50</sup> Charles McCarry, *Citizen Nader* (New York: Saturday Review Press, 1972), 9.

<sup>51</sup> *Ibid.*, 13-21.

invasion of privacy, and eventually won a settlement of \$425,000.<sup>52</sup> His investigation led to the passage of the National Traffic and Motor Vehicle Safety Act in 1966.<sup>53</sup>

Nader became involved in coal mine health and safety after learning of Dr. Buff's travels through Appalachia.<sup>54</sup> He had already demonstrated his commitment to the issue by pressing the Johnson administration to overhaul federal mining legislation. He also published an article on black lung, entitled "They're Still Breathing," in *The New Republic*. In the article, Nader criticized the U.S. Public Health Service's lack of attention to black lung disease, as well as the federal government's failure to enforce coal mine health and safety laws.<sup>55</sup> Moreover, Nader argued, "both the operators and officials of the United Mine Workers are more concerned about the problems of competing energy sources and anti-air pollution drives than the slow death in the mines. UMW hospitals are available for the sick worker but the UMW seems far less interested in the toxic environment of the mines."<sup>56</sup> In essence, Nader argued, the coal operators and the United Mine Workers were more concerned with maintaining the financial profits of the coal industry than miners' welfare.

As 1968 drew to a close, Nader escalated his campaign for better coal mining conditions. In a letter to Wilbur Cohen, Secretary of Health, Education, and Welfare, Nader argued that pneumoconiosis was the "major public health problem in several states

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<sup>52</sup> Ibid., 28.

<sup>53</sup> Ibid., 80-81.

<sup>54</sup> Ralph Nader, telephone interview with author, tape recording, May 1, 2009.

<sup>55</sup> Ralph Nader, "They're Still Breathing," *The New Republic*, February 3, 1968, 15.

<sup>56</sup> Ibid.

-- especially West Virginia and Kentucky.” He attributed a large degree of responsibility for this problem to the coal operators, the Bureau of Mines, and the United Mine Workers, but he was particularly critical of the Department of Health, Education and Welfare. He argued that the department’s Division of Occupational Health had failed to capitalize on a study of black lung it had conducted more than a decade earlier. Nader wrote, “The \$5 million in appropriations that the Department has received since 1953 for research on the causes and prevention of soft coal workers’ pneumoconiosis has little to show for itself, apart from the afore-mentioned prevalence study and the aborted research effort at Beckley, West Virginia.” The Department, therefore, had failed to devise effective preventative measures for black lung disease, even though it had received substantial funding to do so. As Nader pointed out, it had abandoned its research on the disease at its health field station for miners in Beckley. He asserted the department’s failings were the result of “poor management, petty bureaucratic in-fighting, and a well-known belief by the physician in charge of the research program that a safe dust level for coal mines could not be set because of political and economic factors.” According to Nader, the physician in question, Dr. Murray Brown, placed the coal industry’s financial interests ahead of his scientific obligations to miners.<sup>57</sup>

Nader proposed that a group of impartial observers should carry out an investigation of the Department’s mismanagement of the program. He argued that the investigation should address several specific issues, including the closure of the miners’ health field station in Beckley and the department’s failure to use its only qualified

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<sup>57</sup> Letter from Ralph Nader to Hon. Wilbur Cohen, Secretary of Health, Education, and Welfare, December 27, 1968, pp. 1-2, Folder 1, Box 4, UMW Safety Division Files, PSU Special Collections; Hume, *Death and the Mines*, 82.

mining engineer in the investigation of underground dust levels.<sup>58</sup> Nader also used the letter as an opportunity to criticize the medical profession's role in the black lung crisis. He reiterated a comment made to him by Dr. Lorin Kerr, that physicians' general indifference was "one of the greatest disgraces in modern medicine."<sup>59</sup> Nader's intervention gave the miners a powerful new ally, and increased national attention on black lung disease.

Even so, beyond the United Mine Workers' mismanaged and under-funded Welfare and Retirement Fund, there was little financial relief available for miners. Only Pennsylvania, Alabama, and Virginia provided state compensation for coal miners suffering from black lung. Outside those states, sick miners could claim social insurance benefits, but they were administered through a set of tough and often unrealistic criteria. In order to receive benefits, miners typically had to demonstrate the quantity and chemical composition of the dust they had inhaled throughout their working life. Coal miners in West Virginia fared particularly badly, as only silicosis, and not pneumoconiosis, was classified as a compensable miners' disease. Local branches of the UMW had pushed to expand workers' compensation laws in 1964 and again in early 1968, but without success.<sup>60</sup>

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<sup>58</sup> Ibid., 2.

<sup>59</sup> Ibid.

<sup>60</sup> Derickson, *Black Lung*, 144.

### **The West Virginia Black Lung Association (BLA) and Community Activism**

In early January 1969, a handful of rank-and-file miners in West Virginia formed the Black Lung Association (BLA).<sup>61</sup> Lacking the support of the UMWA national leadership and the mine owners, they believed that any movement for change had to stem from the miners themselves. The Committee of Physicians played an instrumental part in the creation of the organization, which intended to press the West Virginia legislature for the addition of pneumoconiosis to the state workers' compensation law. Charles Brooks, president of the Winifrede local branch of the UMW in West Virginia, became the association's first president. Brooks mortgaged his home to help raise the \$10,000 needed to hire a lawyer for the new organization, while other local union branches across the state engaged in fund-raising efforts. The BLA appointed attorney Paul Kaufman, a former state senator, to draft legislation and provide legal support. He immediately drafted new black lung compensation bill with the assistance of Craig Robinson and Rick Bank. The draft contained the radical clause that any miner with a breathing impairment was presumed to have work-related pneumoconiosis. It also proposed that doctors should be able to use evidence other than X-rays to prove the existence of the disease and that those afflicted with the disease should be allowed to sue their employers for damages.<sup>62</sup>

The Black Lung Association met for the first time on Saturday, January 4, 1969, at the community center in Vivian, West Virginia. Dr. Isidore Buff told an audience of 450 miners, "You get a black lung from working in the mines, not from cigarettes, not from

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<sup>61</sup> Gordon, "Environmental Blues," 77; Smith, *Digging Our Own Graves*, 111.

<sup>62</sup> Derickson, *Black Lung*, 151; Smith, *Digging Our Own Graves*, 111.



tobacco.”<sup>63</sup> Buff was arguing against propaganda issued by coal companies, conservative politicians, and several physicians, that black lung was not a legitimate disease and miners’ lung ailments were the result of cigarette smoking. The association concluded its first meeting by scheduling a statewide demonstration for January 26 in Charleston. In the aftermath of that first meeting, the BLA spread throughout the West Virginia coalfields. The Committee of Physicians continued to play an important role in mobilizing support. Speaking to miners at Park Junior High School on January 18, Buff drew cheers of applause as he denounced the influence of major railroad and mining companies on the coal industry and promised changes to the existing compensation laws. He urged audience members to attend the meeting scheduled to take place in Charleston at the end of the month. Robinson and local union leaders also organized Black Lung Association meetings throughout South West Virginia, to inform miners’ about the campaign for compensation and the forthcoming meeting in Charleston.<sup>64</sup>

On January 26, over 3,000 miners attended the BLA’s first statewide meeting at the Charleston Civic Center. They were joined by a number of significant people, including Ken Hechler, Paul Kaufman, and the three doctors from the Committee of Physicians. Sixty year-old James Wyatt, a pneumoconiosis victim, opened the meeting by performing his own song, “Black Lungs.” Accompanied by a guitarist, and struggling to breathe throughout, Wyatt encapsulated the decline in health that countless miners experienced during their working lives:

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<sup>63</sup> *New York Times*, January 7, 1969, 24.

<sup>64</sup> *Sunday Gazette-Mail* (Charleston), January 19, 1969, 4A; Derickson, *Black Lung*, 152.

A young miner's lungs may be hearty and hale  
 When he enters the mine with his dinner pail  
 But coal dust and grime  
 In a few years time  
 Fills up his lungs and they begin to fail  
 Black lungs, full of coal dust  
 Coal miners must breathe it or bust  
 Black lungs, gasping for breath  
 With black lungs we are choking to death.<sup>65</sup>

The song, which truly captured the impact of pneumoconiosis on coal miners, set the tone for the speeches that followed.

Ken Hechler read a message to the coal miners from consumer advocate Ralph Nader, who was unable to attend the rally. Hechler had agreed to read the message after meeting Nader in the office of Congressman James O'Hara of Michigan a few days earlier. Nader's message accused Tony Boyle and his colleagues of abandoning the miners at their time of need:

The record is overwhelming that Mr. Tony Boyle has neglected his responsibility to protect coal miners... You may conclude that he is no longer worthy of being your leader, that you need new leadership that will fight for your rights and not snuggle up close to the coal operators and forget about the men who are paying the dues and paying the price.<sup>66</sup>

This bold assertion crystallized what had long been apparent, that there was a massive gulf between the national union leadership and the rank-and-file on the issues of black lung and mine safety. In the hope of addressing the union's failure, those present unanimously passed a resolution calling on Boyle to assist the West Virginia miners in their fight for improved legislation. In addition to reading out Nader's message, Hechler

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<sup>65</sup> *Washington Post*, January 29, 1969, C1 and C3; Derickson, *Black Lung*, 153.

<sup>66</sup> Ken Hechler, interview with author, August 22, 2008; *Charleston Gazette*, January 27, 1969, 1; *New York Times*, January 27, 1969, 30; Finley, *The Corrupt Kingdom*, 256; Hume, *Death and the Mines*, 83-84.

gave his own speech, in which he publicly condemned the West Virginia Medical Association for giving him a document with the slogan, “Black Lung is Good for You.” In response, the Congressman produced a 12-pound slab of baloney from his bag and shouted, “That is baloney,” to the cheers of the miners. Hechler also criticized those who argued that prolonged studies of black lung were necessary before the introduction of a new compensation program.<sup>67</sup>

Donald Rasmussen spoke of the need to disseminate knowledge among the state’s physicians. He argued that doctors in Kanawha and Cabell counties had passed resolutions condemning the Committee of Physicians on Mine Health and Safety only because they did not fully understand the nature of black lung disease: “Part of our problem is the lack of education of physicians in West Virginia in modern techniques. If it takes too long to educate the doctors, we will educate the miners and the legislators.” Rasmussen did not trust the medical profession to identify black lung in miners. He envisioned miners and legislators playing an important role in the diagnosis of the disease.<sup>68</sup>

Isidore Buff was less critical of the medical profession. To loud applause, he thundered, “There is no person more dedicated in the country than the country doctor or the general practitioner... The country doctor likes people, but some specialists don’t like people. Specialists work for the coal companies.” Buff, therefore, believed that independent doctors, who were not under the influence of the coal companies, had an important role to play in diagnosing black lung disease. Showing the audience slides of

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<sup>67</sup> Ken Hechler, interview with author, August 22, 2008; *Charleston Gazette*, January 27, 1969, 1; Judkins, *We Offer Ourselves As Evidence*, 69.

<sup>68</sup> *Charleston Gazette*, January 27, 1969, 8.

blackened lungs, Buff reiterated what he had long been saying: “There are many coal miners who think they have heart disease, but they have lung disease.”<sup>69</sup> As he continued his speech, Buff also repeated his assertion that the coal workers had to empower themselves to achieve legislative change.<sup>70</sup> Paul Kaufman also spoke at the event. He explained to the miners the features of the bill he had drawn up with Robinson and Bank.

Although not present at the meeting, UMW President Boyle denounced the miners as “black-tongue loudmouths.” He claimed that the Black Lung Association was a “dual organization.” This was a serious charge, as it jeopardized the activists’ membership in the United Mine Workers. Under the union’s constitution, members could be expelled for participating in other unions or external organizations.<sup>71</sup> Boyle’s criticisms, however, did little to detract from the success of the meeting. The gathering at Charleston reflected the Black Lung Association’s ability to mobilize West Virginia’s miners. It was also indicative of the discontent and anger that had long been simmering beneath the surface in the state’s coalfields. The BLA gave the miners a focal point for their anger, and it demonstrated its potential to invoke real legislative change. In his pivotal study, *Black Lung Disease: Anatomy of a Public Health Disaster*, Alan Derickson argues that the Charleston rally enabled the BLA’s members and supporters to realize the strength of the movement they were building, and showed that high-profile political and medical figures were willing to support the miners’ cause. Moreover, he contends, the

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<sup>69</sup> Ibid.

<sup>70</sup> Derickson, *Black Lung*, 154.

<sup>71</sup> Judkins, *We Offer Ourselves As Evidence*, 69; Seltzer, *Fire in the Hole*, 98.

rally increased the miners' trust of the Committee of Physicians on Mine Health and Safety.<sup>72</sup>

The Charleston demonstration reflected the groundswell of support for black lung compensation in West Virginia. In addition to pneumoconiosis, however, coal miners still faced the kind of safety hazards that had resulted in the Farmington disaster and countless other mine catastrophes. The lack of progress in addressing such hazards became apparent just two days after the Charleston demonstration, when, on January 28, rescue workers pulled twelve men from the burning Humphrey No. 7 mine in Mount Morris, Pennsylvania. The mine, owned by Consolidation Coal, had caught fire after a roof collapse triggered an electrical fault. On this occasion, there were no fatalities, although one man was treated at hospital for smoke inhalation and exhaustion. In addition to the twelve men who were rescued, another 126 miners escaped the shaft using elevators and safety bucket hoists. During its last three inspections of the mine, the Bureau of Mines had uncovered more than 100 safety violations. It dismissed the violations as common occurrences for an underground mine, and did not compel the owner to address them. The fire's occurrence in the face of those violations demonstrated that the bureau lacked any real regulatory will.<sup>73</sup>

Despite the high fatality rate emanating from disasters and safety failures, the Black Lung Association's sole priority was tougher preventative legislation and compensation for black lung disease. Its focus on a single issue was its greatest strength, contributing to its ability to mobilize a broad coalition of support. Even so, the

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<sup>72</sup> Derickson, *Black Lung*, 154.

<sup>73</sup> *New York Times*, January 29, 1969, 21.

association still faced an uphill climb to achieve its goals. Events in early February 1969 reiterated the challenge that the association and its supporters faced. First, Stephen G. Young, Vice President of the West Virginia Coal Association, accused the organization and its supporters of “clowning around.” In a thinly veiled attack against Buff, Rasmussen, and Wells, Young said the vast majority of physicians were more concerned with establishing scientific, medical facts about pneumoconiosis than spreading mistruths. Second, a joint hearing between the West Virginia Senate Judiciary Committee and its counterpart in the House of Delegates on February 11, while giving a public forum to the reformers, did not result in immediate change to the legislation, despite the strength of their evidence.<sup>74</sup>

Dr. Murray Hunter, director of the UMW Welfare and Retirement Fund clinic in Fairmont, attended the February 11 hearing with a panel of “expert” witnesses, while the Committee of Physicians and UMW leaders put aside their differences to present a united front. Thousands of miners also missed work to attend the hearing in Charleston. Hunter’s panel opened the hearing by stressing their desire to make compensation more widely available. In Hunter’s view, Buff’s term “black lung” was medically inaccurate, but useful because of the attention it had generated for pneumoconiosis. Welsh pathologist Jethro Gough bolstered the panel’s claim by testifying that lung diseases other than silicosis affected miners, and that ‘simple’ coal workers’ pneumoconiosis – that is, pneumoconiosis that had not reached an advanced stage – could be disabling. Radiologist Eugene Pendergrass, meanwhile, reiterated the assertion that Rasmussen had long been making, that X-rays were an inadequate method of detecting black lung. The advocates of

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<sup>74</sup> *Charleston Gazette*, February 10, 1969, 1 and 4; Derickson, *Black Lung*, 156-157

reform were so forceful in their arguments that their opponents had a hard time presenting their own case, particularly when it emerged that one of them, Rowland Burns, was being paid by the coal operators to testify.<sup>75</sup>

Although the West Virginia state legislature was deliberating several legislative bills that provided workers compensation for the victims of pneumoconiosis, it was slow to enact legislative change. Growing resentment in the coalfields, however, quickly led to industrial action. On Tuesday, February 18, 1969, at the East Gulf mine in Raleigh County, 282 miners walked off the job after a dispute with the management. As the strike quickly spread across West Virginia, the miners demanded the state legislature's swift passage of the new black lung legislation. One man threatened, "If necessary, we will stop every lump of coal in the state until we get this legislation through... We support the state and the federal government with our taxes. It's time we did something for our benefits." Two days after the walkout began, the strike had already escalated to 5,000 miners. Its rapid growth was largely attributable to the roving pickets that traveled around the state's coalfields. Although the BLA had not started the strike, it supported the miners. Ken Hechler and Paul Kaufman, in contrast, opposed the walkout, believing the action was premature. By the weekend, 30,000 miners across the state were staying away from work in protest over the state legislature's failure to respond to their concerns. Coal production had stopped in the southern part of the state, while many of the northern mines had temporarily shut down.<sup>76</sup>

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<sup>75</sup> Ibid.

<sup>76</sup> *Charleston Gazette*, February 20, 1969, 1; Judkins, *We Offer Ourselves As Evidence*, 70; Smith, *Digging Our Own Graves*, 115.

On Sunday, February 23, a large crowd of miners gathered for a meeting at the local union hall in Affinity, Raleigh County. Five hundred crammed into the hall, while another 700 waited outside in the snow. The large attendance meant that the speakers, which included the Committee of Physicians, state delegates Warren McGraw and Ted Stacy, and BLA representatives, had to climb in and out of a window in the hall to address both groups. At the meeting, Buff roused the miners with another fiery speech, extolling them to fight for the compensation they deserved. Ernest Riddle, the BLA treasurer, then spoke of black lung as a disease that affected entire families, not just individual miners:

We appreciate every bit of support, we appreciate everything we see here today. And we know that everybody that's got a father – each and every one of you – when Dad comes home in the evening and he can't breathe, you know what's a-hurtin' him ["Yes, sir," "That's right"]. And a woman that's living with a man and seeing him slowly die, nobody has to tell her. Nobody has to explain to them babies what was wrong with Daddy that he couldn't get his breath at night..."<sup>77</sup>

Riddle recognized that many families were familiar with the physical symptoms of black lung disease, and thus had an important role to play in the black lung movement. In *Digging Our Own Graves*, Barbara Smith argues that while the meeting at Raleigh County was disorganized and unfocused, it enabled the black lung leaders to lay the foundations for a march on the state Capitol on February 26, the purpose of which was to pressure state legislators into signing their black lung bill. Later that evening, a roving picket stopped the midnight shift at several mines across West Virginia.<sup>78</sup>

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<sup>77</sup> Quoted in Smith, *Digging Our Own Graves*, 117.

<sup>78</sup> Ibid.



As a result of the growing agitation among the miners, there was a tense atmosphere in the state Capitol. A number of legislators were hostile to the Black Lung Association leaders and their demands for legislative change. Harry Pauley, a member of the House of Delegates, was especially critical of Ken Hechler:

Hechler is a celibatic, misogynic, extrovert putting himself before the public at every opportunity. He is a political acrobat who would swing by his tail, if he had one, on the flagpole in front of a polling place to get attention. He is like a jackass who becomes lonely at night for attention and keeps the neighbors awake by making braying noises at one end and unrestrained noises from the other and thinks he is pleasing his audience with his melodious voice.”<sup>79</sup>

Pauley implied that Hechler was more concerned with gaining public approval and furthering his own political career than supporting the coal miners. His speech was a direct personal attack on Hechler, rather than a criticism of his legislative policies. He clearly intended to undermine the power of the black lung movement by condemning one of its key leaders. Moreover, his speech illustrated the significant fractures in the West Virginia political establishment over the issue of black lung compensation. In the House and the Senate, there was enough opposition to black lung compensation to prevent the passage of the Black Lung Association’s legislative bill.<sup>80</sup>

Despite the obstacles it faced, the black lung movement continued to gain momentum. On Wednesday, February 26, three thousand miners and their supporters from across the state gathered for a rally in Charleston’s Municipal Auditorium. A number of speakers, including Ken Hechler, Paul Kaufman, Isidore Buff, Hawey Wells, and Donald Rasmussen, discussed the state government’s ongoing legislative debates

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<sup>79</sup> The quote from Speaker Harry Pauley, West Virginia House of Delegates, is included as an extract in the collection of Ken Hechler. It was originally printed in the *Charleston Daily Mail* on February 26, 1969.

<sup>80</sup> *Charleston Gazette*, February 27, 1969, 1; Derickson, *Black Lung*, 160.

over black lung compensation. The miners responded cautiously to Hechler at first, because of his initial opposition to the strike. Hechler regained their trust with a rousing speech, in which he admitted had made a mistake. He proclaimed, “The greatest heroes are you coal miners who have taken your future in your hands and said, ‘No longer are we going to live and die like animals.’” He went on, “The national searchlight is on West Virginia. I can report to you that the hope and prayers of many people throughout this land are with you.” Hechler also indicated that he had made a \$1,000 donation to the Black Lung Association as part of his support for tougher legislation. His contribution, notes historian Alan Derickson, far outweighed the five dollars given to the association by West Virginia Secretary of State John D. Rockefeller IV. Reiterating the tension between the BLA and the leadership of the United Mine Workers, Hechler reminded the miners that the union leadership had labeled him a “fink,” because of his assertion that it was not doing enough to help them.<sup>81</sup>

At the rally, BLA attorney Paul Kaufman discussed the association’s stance regarding the legislative bills under debate in the Capitol. He explained to the miners that the association supported Senate Bill 216 and House Bill 814, which contained presumption clauses. Under those clauses, black lung victims who had worked a certain number of years in the mines could receive compensation, without having to provide X-ray evidence. Rasmussen, meanwhile, contested legislators’ claims that VISTA workers

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<sup>81</sup> *Charleston Gazette*, February 27, 1969, 1 and 2; *New York Times*, February 27, 1969, 28; Derickson, *Black Lung*, 160; Hume, *Death and the Mines*, 140-141; Smith, *Digging Our Own Graves*, 121.

were responsible for the statewide strike, asserting that the miners were intelligent enough to undertake the strike of their own volition.<sup>82</sup>

After the rally, the miners marched to the state Capitol, many of them bearing placards with slogans such as “No Law, No Work” and “78 / 4,” a reference to the miners killed in the Farmington and Hominy Falls disasters. One legislator recalled watching the procession approach the Capitol. “We were in a committee meeting,” he remembered. “Our room was on the third floor facing Kanawha Boulevard. You could look out and watch them come – watch them march up the steps and into the building... Well, none of us had ever seen anything like that!”<sup>83</sup>

Historian Alan Derickson argues that the February 26 demonstration symbolized the miners’ revolt against UMW President Boyle’s leadership. It did not mean that they had rejected the union itself. Miners who booed at the speakers’ mention of national union officials and jeered while marching past the District 17 headquarters carried placards displaying the name of their local union. Moreover, local union leaders played a significant role in organizing the demonstration, while many local union presidents, such as Arnold Miller, Charles Brooks, and Elmer Brown, were leaders in the Black Lung Association.<sup>84</sup>

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<sup>82</sup> Ibid.

<sup>83</sup> Bennett M. Judkins, “The Black Lung Association: A Case Study of a Modern Social Movement,” (Ph.D. diss., University of Tennessee, 1975), 212.

<sup>84</sup> Alan Derickson, “Down Solid: The Origins and Development of the Black Lung Insurgency,” *Journal of Public Health Policy* 4 (March 1983), 31-33. A general account of the role of local unions in labor protest can be found in Staughton Lynd, “The Local Union: A Rediscovered Frontier,” *The Transformation of U.S. Unions: Voices, Visions, and Strategies from the Grassroots*, edited by Ray M. Tillman and Michael S. Cummings (Boulder, Colorado: Lynne Rienner Publishers Inc., 1999).

Governor Arch A. Moore Jr. addressed the assembled group from the steps of the Capitol. When he announced that the state government's efforts to establish a new bill might be delayed until the July legislature was in session, however, the miners interrupted him, chanting, "No! We want it now. If we don't get it now, we won't work." Moore explained that he was already committed to a new black lung law, but he could only extend the current legislative session for budgetary matters. In an attempt to persuade the miners to end the strike, the governor said they would only be hurting their families by continuing. Wives, children and widows, however, were present at the demonstration to show their support for the miners. Mrs. Hall, from nearby Gallagher, complained to the *Charleston Gazette* that physicians were dismissive of her husband's claims that he was disabled by black lung disease. Eight-year old Mark Legg, whose father Charles worked in a coal mine in Raleigh County, bore a placard that said, "My daddy is a coal miner. He need's [*sic*] protection."<sup>85</sup>

Hundreds of the miners made their way into the public galleries in the Capitol building. In response to their presence, the House Judiciary Committee reported a draft bill to the floor of the House. Although the bill incorporated many of the miners' demands, it was still weaker than they had been anticipating. Delegate Robert Nelson said the bill accomplished 60 percent of the miners' proposals. Similarly, delegate Warren McGraw, who had consistently supported the miners' cause, commented, "The bill doesn't go as far as I hoped it would but it goes much further than the coal industry thought it would." Most significantly, the bill contained a 'presumptive' clause, which

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<sup>85</sup> *Charleston Gazette*, February 27, 1969, 1 and 2; *Wall Street Journal*, February 28, 1969, 6; Smith, *Digging Our Own Graves*, 121.

stipulated that miners suffering from pneumoconiosis would be presumed to have contracted the disease as a result of their work if they had spent ten of the past fifteen years in underground mines. Under the presumptive clause, victims would be entitled to collect compensation from their employer.

The bill also stipulated that X-rays were insufficient for diagnosing pneumoconiosis, as they were unable to detect the disease in its early stages. Under the existing law, if X-rays detected nodules on miners' lungs (that is, signs of advanced pneumoconiosis) then they were deemed to be suffering from silicosis, not pneumoconiosis. The bill advocated the replacement of the silicosis medical board with an occupational disease medical board and setting disability benefits as a percentage of miners' weekly wages, as opposed to a set dollar amount.<sup>86</sup> For the most part, the bill would not be retroactive, except where a miner met the criteria for the presumptive clause and could prove he contracted the disease in the three years before the passage of the bill. Stephen Young, of the West Virginia Coal Operators Association, attacked the bill as "social legislation," and a "signed blank check" for all kinds of illness not related to work. Coal operators and the UMW leadership falsely claimed that pneumoconiosis was "already compensable under the existing laws."<sup>87</sup>

Several of the black lung leaders were pessimistic about the Judiciary Committee's bill. Paul Kaufman rejected the bill, because it covered only pneumoconiosis and not other dust-related occupational diseases. Appearing before the House Rules Committee to request the complete rewriting of the bill, Kaufman argued

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<sup>86</sup> *Charleston Gazette*, February 27, 1969, 1-2.

<sup>87</sup> *Ibid.*

that the passage of the bill in its existing form would be more detrimental than beneficial to the miners. He was particularly opposed to the bill's stipulation that the diagnosis of pneumoconiosis was dependent on the assessment of individual physicians. Dr. Hawey Wells, meanwhile, accused the Judiciary Committee of colluding with the mine operators. Responding to his claims, J. E. Watson, the head of the committee, said a few doctors and "a baloney waving Congressman" were unfairly creating hysteria among the miners. In a speech on the House floor, Watson said that the behavior of some miners had gone "beyond the conduct which can be tolerated." Watson, a native of West Virginia, was the great-grandson of the founder of the Consolidation Coal Company.<sup>88</sup>

The continuing pressure from the black lung movement pushed the full House of Delegates to make several amendments to the bill. In a prolonged session on Friday, February 28, during which the doors to House chamber were locked and guarded by state policemen, the legislators modified the bill by incorporating several of the activists' demands. The new version of the bill placed less emphasis on medical opinion in the diagnosis of pneumoconiosis, stressing instead the importance of pulmonary function tests. It also placed the onus on employers to prove that miners had not contracted lung disease as a result of their work. In a significant victory for the Black Lung Association and the striking miners, the House voted 95-0 to pass the amended bill.<sup>89</sup>

Warren McGraw commented that the bill "[was] the most important piece of labor legislation in this state in this century." But not everyone was satisfied with the bill. Paul Kaufman feared that doctors would still play a significant role in diagnosing miners' lung

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<sup>88</sup> *Charleston Gazette*, February 27, 1969, 1-2; *Charleston Gazette*, February 28, 1969, 1.

<sup>89</sup> *Charleston Gazette*, March 1, 1969, 1.

disease. For Kaufman, the only way to diagnose pneumoconiosis was by mechanical tests of lung efficiency. In contrast, several House delegates contended that the modified bill did not allow for a broad enough spectrum of medical opinion.<sup>90</sup> A spokesman for the coal industry claimed the bill could cost operators up to \$16 million per year. Paul Morton, the President of the West Virginia Coal Association, referred to the bill as “not just social legislation, but galloping socialism in one of its purest forms.”<sup>91</sup> Having given unanimous approval to the bill, the House passed it on to the Senate for consideration.

While the miners were jubilant about the House bill, they resolved not to go back to work until the Senate and Governor Moore had endorsed it. A number of coal operators, including the U.S. Steel Corporation and the Eastern Associated Coal Corporation, sought an injunction against the strikers. They charged that the strike violated their contract with the UMWA and resulted in the loss of \$4,488,000 in revenue and 748,000 tons of coal production. The operators’ court suit targeted in particular the UMW International and Districts 17 and 29; it sought \$1.1 million for each day the strike had been in progress. A hearing before Federal Judge John A. Field on March 1 did not result in a court injunction. By March 1, the strike had escalated to over 40,000 miners, and coal production in West Virginia had come to a halt.

Thousands of impatient miners marched to the State Capitol on March 2 to pressure the Senate and Governor into endorsing the House bill. The Senate Judiciary Committee responded by releasing a draft bill the next day. To the miners’ dismay, the bill significantly weakened the House legislation. It stipulated that pneumoconiosis could

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<sup>90</sup> Ibid.

<sup>91</sup> *Charleston Gazette*, March 1, 1969, 1 and 2; Derickson, *Black Lung*, 160.

only be diagnosed with an X-ray, or other “objective medical evidence,” and included a more stringent presumptive clause. The Senate’s presumptive clause rested on the word “continuous,” stipulating that miners’ exposure to occupational dust had to amount to at least two “continuous” years during the ten years before their last exposure.<sup>92</sup>

The West Virginia Black Lung Association immediately released a statement condemning the bill. The statement quoted Donald Rasmussen, to the effect that “there is no relationship between what an X-ray shows and the degree of symptoms the patient complains about.” The statement also quoted Dr. Eugene Pendergrass, treasurer of the BLA and former president of the Radiological Society of North America. According to Pendergrass, “Black lung cannot be seen on conventional X-rays. An X-ray does not provide any reliable evidence for evaluation of pulmonary function or disturbed pulmonary function in early pneumoconiosis.” Jeanne Rasmussen, wife of Donald Rasmussen and spokesperson for the BLA, said the miners opposed the bill’s rule on “continuous” exposure to coal dust.<sup>93</sup>

The Senate had the option of either passing its amended bill or the House bill in its original form. On Wednesday, March 5, it rejected the House version of the bill and voted by a clear majority of 34-0 for its own amended version. A crowd of over 400 miners watched silently from the galleries as the bill was passed. The Senate’s endorsement of the bill was a major setback for the Black Lung Association. After close scrutiny of the bill, the House rejected the amendments, which meant the bill became the

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<sup>92</sup> *Charleston Gazette*, March 4, 1969, 2; *Wall Street Journal*, February 28, 1969, 1; *Washington Post*, March 2, 1969, 2; Derickson, *Black Lung*, 160-61; Smith, *Digging Our Own Graves*, 118.

<sup>93</sup> *Charleston Gazette*, March 4, 1969, 2; Judkins, *We Offer Ourselves As Evidence*, 71.



subject of negotiation in a conference committee. By March 7, the 59th day of the 60-day legislative session, the committee had neared a compromise. Its failure to agree on a final version of the bill prompted Governor Moore to allow deliberation for three more days. Across West Virginia, 42,000 miners were still on strike, awaiting the results of the committee's negotiations. It was the largest strike in response to a health and safety issue in American history, and the largest political strike in the country's history.<sup>94</sup>

On March 8, at 11:45 p.m., just fifteen minutes before the scheduled legislative session ended, both branches of the legislature passed a rewritten version of the black lung act. The House voted 93-0 in favor, while the Senate endorsed the bill by 32-2. The revised bill closely resembled the original House version, restoring the more liberal clause on presumption and authorizing an occupational disease medical board. It also gave a broad definition of pneumoconiosis, using the term to describe a range of occupational-related lung ailments. While the legislation still emphasized the importance of X-rays and expert medical opinion as evidence of pneumoconiosis, it stated that X-rays were not sole proof of the disease. Nevertheless, the bill rejected the utility of pulmonary function tests, and it mandated a fixed weekly sum of \$55 for compensation, rather than establishing rates connected to miners' wages. Furthermore, the presumption clause only applied to miners who were actively working as of July 1, 1969. Although an improvement on the conservative black lung legislation passed by the Senate, the final version of the bill fell short of the original bill drafted by the BLA. Paul Kaufman stated

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<sup>94</sup> *Charleston Gazette*, March 5, 1969, 1; *Charleston Gazette*, March 6, 1969, 1; *Charleston Gazette*, March 8, 1969, 1; Derickson, *Black Lung*, 160-161.

that he wished to study the bill in detail before commenting. Donald Rasmussen, meanwhile, praised the bill's rejection of X-rays as definitive evidence of black lung.<sup>95</sup>

Only a few hours after the state legislature's endorsement of the bill, two thousand miners gathered for the Black Lung Association's final rally in West Virginia, at Park Junior High School in Beckley. One miner later recalled that miners spilled out of the crowded auditorium into adjacent hallways and even onto the streets. "I remember there was one guy that got up and asked for a vote to go back to work," he said. "And I can't describe it... but there was a great big roar – "No!" – that they wouldn't go back to work. They were going to wait until the governor signed the bill."<sup>96</sup> Another miner at the rally perceived a lack of consensus over what the next course of action should be. The miners ultimately decided to continue the strike until Moore signed the bill. As the rally was taking place in Beckley, a group of around fifteen black lung activists stopped a coal train in Kanawha County, delaying it by several hours. The activists only dispersed with the arrival of the local sheriff.<sup>97</sup>

Governor Arch Moore signed the black lung bill in a ceremony on March 11. By this time, 15,000 coal miners had already returned to work, confident of his endorsement of the bill. After signing the bill, Moore commented, "As I noted in my message to the legislature only three days after taking office, coal mining is an essential part of the

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<sup>95</sup> *Sunday Gazette-Mail*, March 9, 1969, 1A and 16A; Derickson, *Black Lung*, 161-162; Seltzer, *Fire in the Hole*, 99.

<sup>96</sup> *Raleigh-Register* (Beckley, WV), March 9, 1969, 12; quote published in Smith, *Digging Our Own Graves*, 125-126, and originally taken from Smith's interview with a black lung activist in Raleigh County, West Virginia, September 26, 1978.

<sup>97</sup> *Charleston Gazette*, March 10, 1969, 1; Smith, *Digging Our Own Graves*, 126.

economy of this state, therefore it is incumbent upon us to provide for the health of those engaged in that vital industry.”<sup>98</sup> His approval of the legislation marked the end of the West Virginia miners’ strike. Shortly afterwards, the remaining 30,000 miners ended their walkout.

## **Conclusion**

Governor Moore’s signing of the black lung bill represented a significant advance in coal mine health and safety in West Virginia. Although the legislation did not fulfill all the demands of the black lung activists, it was far more progressive than the existing state law. That the activists were able to achieve their demands so quickly reflects a number of significant points. First, the rank-and-file miners’ decision to align themselves with the Black Lung Association, rather than the union leadership, shows just how fragmented and aloof the United Mine Workers had become. The miners were no longer able to rely on organized labor to better their working conditions, to the point where they sought an alternative medium to achieve their demands. Furthermore, the events of late 1968 and early 1969 revealed the corrupt practices of Tony Boyle and the UMW national leadership. Regardless of his public statements to the contrary, Boyle viewed his position as UMW President as a way to advance his own personal interests. The union, miners believed, no longer fought for its own members, but rather supported the interests of the coal industry.

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<sup>98</sup> The executive address can be found in Arch A. Moore Jr., *Eight Years: Official Statements and Papers. The Honorable Arch A. Moore, Jr., Governor of West Virginia, 1969-1977, Volume 1* (Beckley, West Virginia: BJW Printers, 1978), 71-72. See also *Charleston Gazette*, March 12, 1969, 1.

Second, the passage of the new West Virginia black lung legislation demonstrated the effectiveness of grassroots protest. The pressure exerted by the Black Lung Association leaders and thousands of rank and file miners was instrumental in persuading the state legislature to endorse comprehensive legislation. By engaging in a lengthy strike and halting coal production, the miners were able to demonstrate both the significant role they played in the state's economy and that they were entitled to more comprehensive black lung legislation. The association's leaders not only framed the miners' demands in politically comprehensible terms, but provided the motivation and determination the miners required to maintain their protest. Furthermore, miners organized through local unions to achieve improved compensation measures.

Third, the black lung movement in West Virginia showed that coal miners' identities were deeply rooted in their local communities. After major disasters such as the ones at Hominy Falls and Farmington, families and relatives kept vigil at the mine sites as they waited for news. Similarly, they marched with the miners through downtown Charleston and attended rallies and demonstrations. The black lung movement transcended the individual injuries and diseases of coal miners. More importantly, it was about miners achieving justice for the small communities in Appalachia that were often overlooked and exploited by corporate interests.

The success of the black lung movement in West Virginia had much broader ramifications. It led to the growth of similar movements in Ohio and Kentucky, and while these movements, which will be discussed later, were not as large and successful, they still led to notable improvements in black lung compensation at the state level. It also had a significant influence on coal mine health and safety legislation at the federal level -- the

events in West Virginia prompted Congress to look for ways of improving the existing laws, and of making the mines safer places to work.

## Chapter Three

### **A Conflict of Interests:**

#### **Political Dissent, Union Rivalry, and the Federal Coal Mine Health and Safety Act of 1969**

##### **Introduction**

In early 1969, the U.S. Senate and the U.S. House of Representatives both opened legislative hearings on coal mine health and safety. They sought to strengthen federal mining laws and ultimately prevent catastrophes such as the Farmington disaster from happening in the future. At both sets of hearings, several legislative bills were the focus of debate. The Senate passed a bill with strong health and safety measures on October 1, 1969. Later that month, as the House of Representatives was debating the final terms of its own bill, a group of fifty miners stormed unannounced into Congressman Ken Hechler's office in Washington D.C. The miners challenged Hechler for not endorsing the two draft safety bills the United Mine Workers had submitted to the House and for presenting his own, more stringent legislative bill. The leader of the group, a man named Eli Zitkovich, started shaking his fist at Hechler, demanding to know why he had rejected the UMW bill. Zitkovich was an aide to Tony Boyle, the president of the UMW. The confrontation was interrupted when the bell started ringing to signal that Congress was in session. Hechler tried to leave his office, as he was scheduled to deliver a speech, but the miners jostled him, shouting "Damn traitor!" Outside in the corridor, Hechler noticed UMW leader Tony Boyle standing in a corner. Assuming that Boyle had orchestrated the

confrontation, Hechler went over to shake his hand. Boyle promptly turned his back on Hechler, refusing to have any contact with the congressman.<sup>1</sup>

As this chapter will show, the encounter between Hechler and the miners symbolized a number of larger issues. First, the UMW leadership clearly opposed the radical overhaul of the nation's mining laws. Boyle's use of a small, aggressive group of his own supporters to intimidate Hechler suggested that Boyle was out of touch with the majority of rank-and-file miners. He was still hostile to broad reform and unwilling to jeopardize his financially lucrative position as UMW leader. Boyle more closely represented the standpoint of the coal operators, who claimed that more stringent health and safety standards would lead to economic catastrophe and declining production in the coal industry. Thus, an important priority for Boyle was stamping his influence on the legislative debates on mine health and safety in Congress.

The confrontation also highlighted Ken Hechler's political representation of the rank and file at the national level. His submission of a tough legislative bill to the Congressional hearings reiterated the support he had shown to West Virginia coal miners in their campaign for black lung compensation. On a broader level, the confrontation between Hechler and the miners emphasized the political divisions and internal labor conflict that jeopardized the overhaul of the United States' inadequate mine laws. Many conservative politicians were, like Tony Boyle, opposed to strong federal legislation. In contrast, Hechler and other liberal Congressman such as Phillip Burton sought tough legislative measures such as limits on underground dust levels and federal compensation

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<sup>1</sup> Ken Hechler, interview by author, tape recording, August 22, 2008, West Virginia State Archives, Charleston; Brit Hume, *Death in the Mines: Murder and Rebellion in the UMW* (New York: Grossman Publishers, 1971), 219; Charles Moffat, *Ken Hechler: Maverick Public Servant* (Charleston, West Virginia: Mountain State Press, 1987), 221.

for the victims of black lung disease. Political rivalries characterized the Congressional hearings throughout the spring of 1969. This chapter further shows that President Nixon's political ideology complicated the legislative debate. While Nixon supported the improvement of federal mine health and safety legislation, he did so largely to attract more blue-collar votes in the 1972 presidential election and to obtain support from Congress for his defense and foreign policies. Furthermore, he was fundamentally opposed to a federal compensation program for the victims of black lung disease.

The same conflict and dissension that characterized the legislative debates in Congress was evident within the institutional framework of the United Mine Workers of America. In May 1969, Joseph A. "Jock" Yablonski challenged the national leadership of Tony Boyle by announcing he intended to run for the union presidency. Yablonski sought to reinstate democratic practices to the union, such as the election of district leaders, and address the health and safety concerns of the union's members. His candidacy prompted the most bitterly contested election campaign in the union's history.

During 1969, there was an intensive struggle over the redrawing of America's federal mine laws. Rank-and-file miners, union leaders, federal government officials, and medical researchers clashed over the most effective ways to improve working conditions and to compensate victims of work-related injury and disease. This chapter will show that pressure from liberal politicians and high-profile activists, combined with the influence of mining communities, led to significant improvements in federal mine laws.



### **The Limits of Reform: The Nixon Administration and Coal Mine Health and Safety**

The public outcry resulting from the Farmington disaster, combined with the rising militancy of the Appalachian coal miners, expressed most visibly in the West Virginia black lung movement, prompted the Nixon Administration to address the issue of coal mine health and safety. On March 3, 1969, after less than two months in office, President Richard Nixon sent a special message to the United States Congress, accompanied by new draft legislation. The Senate had already opened its own hearings on coal mine health and safety on February 27. Nixon's message vividly described the risks that characterized underground coal mining and stressed the importance of eradicating them:

The workers in the coal mining industry and their families have too long endured the constant threat and often sudden reality of disaster, disease, and death... Death in the mines can be as sudden as an explosion or a collapse of a roof and ribs, or it comes insidiously from pneumoconiosis or black lung disease... The time has come to replace this fatalism with hope by substituting action for words. Catastrophes in the coal mines are not inevitable. They can be prevented, and they must be prevented.<sup>2</sup>

Nixon stated that he had authorized several measures to create a safer and more healthful working environment for coal miners, including the expansion of government-funded research into pneumoconiosis, the creation of a program to foster greater cooperation between management and labor in mine safety, and an increase in the federal mine inspection force. He outlined the key proposals in the draft legislation, known as the Javits bill, after its main author Senator Jacob K. Javits (R-NY). The Javits bill proposed

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<sup>2</sup> Richard Nixon, "Special Message to the Congress on Coal Mine Safety, March 3, 1969," *Public Papers of the Presidents of the United States, Richard Nixon, 1969* (Washington D.C.: United States Government Printing Office, 1971), 177.

the improvement of state workmen's compensation programs, the modernization of underground equipment, and the expansion of the Secretary of the Interior's power to modify coal mining regulations when required. Moreover, it sought to "provide strict deterrents and enforcement measures and, at the same time, establish equitable appeal procedures to remedy any arbitrary and unlawful actions." The bill also advocated a mandatory dust limit of 4.5 milligrams per cubic meter of air in underground coal mines and the elimination of the distinction between 'gassy' and 'non-gassy' mines. Nixon urged Congress to adopt the new legislation immediately.<sup>3</sup>

The Javits bill was, in many respects, stronger than the bill introduced by the Johnson administration the previous September, but the West Virginia Black Lung Association argued it did not go far enough and immediately rejected it.<sup>4</sup> Despite the positive measures embodied in the Javits bill, there were clear limits to Nixon's plans to reform the coal industry. First, by advocating the improvement of state workmen's compensation programs, Nixon was stopping short of recommending a federal compensation program for the victims of black lung disease. In fact, Nixon was wholly opposed to such a program because of its substantial financial cost.<sup>5</sup> Second, the conservative 4.5-milligram dust standard would only partially reduce miners' risk of developing pneumoconiosis, and it would still present a significant explosion hazard in

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<sup>3</sup> Nixon, "Special Message to Congress," March 3, 1969, 177-78; "Black Lung Bills Stir Dust Storm in Congress," *Business Week*, May 31, 1969, 32; Robert Gordon, "Environmental Blues: Working Class Environmentalism and the Labor-Environmental Alliance" (Ph.D. diss., Wayne State University, 2004), 77.

<sup>4</sup> Gordon, "Environmental Blues," 77.

<sup>5</sup> Alan Derickson, *Black Lung: Anatomy of a Public Health Disaster* (Ithaca, New York: Cornell University Press, 1998): xi

underground mines. Third, Nixon's call for "strict deterrents and enforcement measures" against operators did not include concrete or tangible sanctions for those who violated the law. In a broad sense, then, President Nixon's proposals to reform coal mine health and safety were limited in scope.

The weaknesses in the bill stemmed from Nixon's inherent political beliefs, many of which were not conducive to significant reform. Nixon believed that the federal government had become too unwieldy in the realm of domestic politics, a problem he intended to rectify by giving more power to state and local governments. Furthermore, Nixon viewed Lyndon B. Johnson's 'Great Society' reforms as too expansive. Instead, Nixon favored a welfare program reminiscent of Franklin D. Roosevelt's 'New Deal.' His criticism of the 'Great Society' program had enabled him to win votes of disillusioned Democratic voters who felt that the Johnson administration had become too intrusive with its broad, far-reaching social policies. The same voters, however, did not completely embrace Nixon's conservative beliefs. They were still attached to the liberal consensus that had dominated American politics in the immediate post-World War II years. The liberal consensus was essentially a centrist approach that believed in the importance of a strong economy, the New Deal political order, and aggressive foreign policy.<sup>6</sup>

Nixon's political ideology meant that he had to work within narrow parameters in his quest establish a new Republican majority and win reelection to a second term. In

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<sup>6</sup> John Robert Greene, *The Limits of Power: The Nixon and Ford Administrations* (Bloomington: Indiana University Press, 1992), 27-33; Iwan W. Morgan, *Beyond the Liberal Consensus: A Political History of the United States Since 1965* (London: Hurst and Company), 1 and 109-110.

*Beyond the Liberal Consensus*, Iwan W. Morgan argues that the approach Nixon adopted was a combination of neo-conservatism and populist conservatism. Neo-conservatives were typically intellectual elites who favored government policy that mirrored the old liberalism, while ‘populist conservatives’ were the suburban and Sun-Belt masses who rejected the extensive liberalism of the North East and wanted to protect their new-found economic status. Both camps opposed extensive bureaucracy, taxes, and federal regulations.<sup>7</sup> They were, therefore, hardly conducive to reform of federal mining laws or extensive government regulation of the mines.

Nixon’s commitment to strong federal regulation of the coal industry was hindered by the fact that he had come to office with a slender domestic policy agenda. He based his election campaign largely on his promises to end the war in Vietnam and to reform Cold War diplomacy. Moreover, he had little interest in courting the support of Congress. He relied instead on senior White House staff to set policy. During his first term in office, Nixon, however, faced a Congress with Democratic majorities in both the House of Representatives and the Senate, so he understood that compromise was necessary in the realm of domestic policy.<sup>8</sup>

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<sup>7</sup> Morgan, *Beyond the Liberal Consensus*, 109-111. Morgan bases his analysis on Kevin P. Phillips, *The Emerging Republican Majority* (New Rochelle, New York: Arlington House, 1969). Phillips’ book analyzes the demographic make-up of Republican voters during the 1968 election campaign. It considers voting patterns in different regions of the United States, and the varying reasons that caused people to vote for the Republican Party.

<sup>8</sup> Michael A. Genovese, *The Nixon Presidency: Power and Politics in Turbulent Times* (Westport, Connecticut: Greenwood Press, 1990), 30-32; Greene, *The Limits of Power*, 27-33; Melvin Small, *The Presidency of Richard Nixon* (Lawrence: University of Kansas Press, 1999), 155.

His political ideology aside, Nixon was uninterested in, if not woefully ignorant of, coal mining policy. While meeting with congressional representatives shortly after his election, he was accosted by Ken Hechler, who informed Nixon that federal mine health and safety laws were ineffective and in dire need of reform. Nixon merely responded, “I have a wonderful Secretary of Labor, I’ll tell him to look into it.” He was unaware that it was the Department of the Interior, not the Department of Labor, that was responsible for coal mine health and safety.<sup>9</sup>

Many of Nixon’s staff appointments did not bode well for the improvement of coal mine health and safety laws. His appointment of Alaska Governor Walter J. Hickel to the position of Secretary of the Interior particularly concerned advocates of reform. Hechler argued that Hickel’s previous ties to the oil industry jeopardized the implementation of effective mine legislation and might erode miners’ rights. Shortly after entering office, Hickel met with seven widows from the Farmington disaster. He later claimed in his memoir, *Who Owns America*, that the meeting convinced him of the need to improve miners’ working conditions. He wrote, “This meeting, unscheduled and unannounced, illuminated for me one of the most pressing and oppressing problems on the agenda of the American people. When I talked to these women of West Virginia, I was deeply moved. I decided that if it was humanly possible, I would change the situation.” The widows, however, were unimpressed with Hickel’s attitude. Similarly,

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<sup>9</sup> Ken Hechler, interview by author, August 22, 2008.

Ken Hechler felt that Hickel had been unresponsive to the widow's concerns. Hechler had arranged the meeting and personally financed the widows' visit to Washington D.C.<sup>10</sup>

In *Who Owns America?*, Hickel identified the U.S. Bureau of Mines as the main source of the coal industry's poor safety record. He criticized the Bureau's failure to shut down coal mines that posed an imminent danger to miners, as well as its policy of educating operators rather than imposing sanctions against them. According to Hickel, the Bureau's failings could be resolved by giving it the power to impose civil and criminal penalties on operators who committed safety violations.<sup>11</sup> In early 1969, however, Hickel did not take any substantive action to implement such measures. Moreover, the problems with the Bureau went far beyond those highlighted by Hickel in his memoir. In the past two decades, it had typically failed to follow up on its preliminary inspections, a fact that the Farmington disaster made all too clear. The Bureau was caught between two competing functions: upholding health and safety standards on the one hand and promoting the interests of the coal industry on the other. During its sixty-year existence, it had always leaned more towards the production aspects of the coal industry.

Despite the Bureau's failures, its director John F. O'Leary had made significant efforts to improve its health and safety enforcement policies after the Farmington disaster. Consequently, there was an outcry when President Nixon announced in February 1969 that he planned to replace O'Leary. Outraged by Nixon's decision, Ken Hechler

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<sup>10</sup> Ken Hechler, interview by author, August 22, 2008; *New York Times*, January 2, 1969, 8; Walter J. Hickel, *Who Owns America?* (Englewood Cliffs, New Jersey: Prentice Hall, 1971), 131-32; Joan Hoff, *Nixon Reconsidered* (New York: Basic Books, 1994), 21; Moffat, *Ken Hechler*, 215.

<sup>11</sup> Hickel, *Who Owns America?*, 132

urged miners across West Virginia to send letters of support for O'Leary to the White House. At a press conference, Hechler voiced his concern that O'Leary's departure would be a setback to the thousands of coal miners who were continually at risk from injury and death and "a victory for the special interests who opposed vigorous enforcement of the law." Hechler found support from Speaker of the House John W. McCormack (D-MA), who argued that the Nixon Administration should reappoint O'Leary because of his efforts to reduce the mine fatality rate. UMW President Boyle also declared his endorsement of O'Leary. This was surprising given his opposition to strong health and safety enforcement. Nixon defended his plan to remove the bureau director. In a public statement, he said he was under pressure from coal operators who disliked O'Leary's tough policies.<sup>12</sup>

Walter Hickel later claimed he felt uncomfortable about removing O'Leary from office. He commented, "It bothered me, because I had not yet had the time to evaluate the quality of his work. However, my instructions were clear. Remove O'Leary. Following my orders from the White House, I took steps to let O'Leary go."<sup>13</sup> One of those steps was to interview Dr. Beecher H. Charmbury, Secretary of Mines and Mineral Industries, as a potential replacement for O'Leary. According to reports in the national media, Hickel offered Charmbury \$36,000 per year for the position. Charmbury, whose experience centered more on the production aspects of the industry than health and

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<sup>12</sup> *New York Times*, February 17, 1969, 32; *Washington Post*, February 18, 1969, A2.

<sup>13</sup> Hickel, *Who Owns America?*, 133.

safety, rejected the position, leaving the immediate future of the U.S. Bureau of Mines uncertain.<sup>14</sup>

Although Hickel was ready by late February to dismiss O’Leary, the administration’s plan for a new defense program prevented him from doing so. Nixon was anxious to gain Congressional approval for his Anti-Ballistic Missile (ABM) program. The previous year, before he began his presidency, his initial proposal to provide extensive ABM protection for major cities and missile silos across the country had not been received favorably by Congress. He therefore pursued a scaled-down version of the plan, which centered on ABM coverage for America’s offensive missile silos. To gain support for the program, the Nixon administration aggressively lobbied Congress.<sup>15</sup>

Nixon feared that dismissing O’Leary, a tough bureaucrat who was highly regarded by the Democrats, would alienate potential supporters for the ABM program, and he decided to postpone firing O’Leary. Nixon told his Congressional liaison Bryce Harlow, who had been at the forefront of the White House’s lobbying efforts for the ABM plan, to prevent Hickel from making a formal announcement about O’Leary. Hickel later recalled: “Before I could make the official announcement, I received a call from Bryce Harlow telling me to hold off for a while... he said this would mean two more votes on the Administration side of the ABM question. I thought to myself, ‘Okay,

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<sup>14</sup> *New York Times*, February 17, 1969, 32; *New York Times*, February 18, 1969, 20; *New York Times*, February 19, 1969, 7; *New York Times*, February 23, 1969, 59; *New York Times*, February 25, 1969, 3.

<sup>15</sup> Greene, *The Limits of Power*, 34-36; Robert David Johnson, *Congress and the Cold War* (New York: Cambridge University Press, 2006), 148-151.



so I'll be a team player.'” As directed by the administration, Hickel refrained from firing O’Leary, who remained in his position. Despite Nixon’s political maneuvering, and the addition of a weakening amendment to the ABM bill by Republican Margaret Chase Smith, the outcome of the final vote was a 50-50 tie. The vote was enough to allow the ABM program to proceed, but on another level it represented a defeat for Nixon in Congress. Hickel wondered, “What about the miners? How in the hell do all these political games help solve *their* problems?”<sup>16</sup>

In early 1969, President Nixon was ambivalent about coal mine health and safety. While he outwardly criticized the injustices coal miners faced, there were limits to his plans for legislative reform. The Javits bill was a calculated response to the Farmington disaster and the black lung movement in West Virginia. Nixon felt he had to act, but he sought to do so within the parameters of his own political ideology. Similarly, Nixon’s decision to halt the termination of John F. O’Leary did not reflect commitment to strong enforcement measures, but rather his prioritization of defense strategy and foreign policy over domestic affairs. In the months that followed, as Congress held coal mine health and safety hearings, the support of the Nixon administration for a radical and far-reaching overhaul of the nation’s mining laws was by no means certain.

### **Congressional Hearings and the Search for a Legislative Solution**

The Farmington disaster and the West Virginia black lung movement spurred Congress to take decisive action to combat the work-related hazards faced by the nation’s coal miners. In the early months of 1969, the House of Representatives and the Senate

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<sup>16</sup> Greene, *The Limits of Power*, 36; Hickel, *Who Owns America?*, 133.

both scheduled hearings on coal mine health and safety. The purpose of the hearings was to debate several draft legislative bills, including the Javits bill submitted by the Nixon administration. Historian Alan Derickson argues that federal preventative legislation for coal mines was long overdue by 1969. The technology to reduce the risks of coal dust had existed since the early twentieth century, and for several decades coal companies had understood the need to suppress coal dust.<sup>17</sup> Yet the lobbying power of the coal industry, combined with political divisions on mine health and safety, kept the legislation weak. In both the House and the Senate, the search for a legislative solution was a bitterly contested process. Federal politicians, coal miners, officials from the United Mine Workers, coal companies, physicians, and state legislators clashed over how best to afford coal miners greater protection from the hazards of their work.

In the House of Representatives, mine health and safety fell under the mandate of the Education and Labor Committee, chaired by Congressman Carl Perkins of Kentucky, while the specific task of drafting and presenting new bills was the responsibility of the Labor Subcommittee, chaired by John Dent of Pennsylvania. Before the hearings, the House afforded all its members the opportunity to submit draft bills on coal mine health and safety. Ken Hechler introduced a bill on February 6 that recommended harsher penalties for safety violations than those set by local and state governments, the transferal of safety enforcement from the Department of the Interior to the Department of Labor, and a minimum dust standard of 3.0 milligrams per cubic meter of air. His bill also included a provision for a national insurance scheme, whereby the federal government

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<sup>17</sup> Derickson, *Black Lung*, 166-167.

would make up any shortfall in state compensation payments to miners.<sup>18</sup> Hechler said his bill was necessary “to break the dismal chain of disasters in the coalfields and to check the slow death caused by the ravages of black lung.”<sup>19</sup>

The House Subcommittee on Labor opened its hearings on March 4, with several bills under consideration. In addition to the Hechler bill (H.R. 6504) and the Javits bill (H.R. 7976), the subcommittee introduced bills by John Dent (H.R. 1047), Carl Perkins (H.R. 4047), and the United Mine Workers (H.R. 4295 and H.R. 7747). Dent’s bill H.R. 1047 was a duplicate of the bill presented by President Johnson in September 1968, while H.R. 4047 by Perkins embodied the most recent legislative proposals of the Johnson administration made in early 1969. The UMW introduced two bills, because its national leaders felt that health and safety were two distinct, separate issues. As such, H.R. 4295 dealt with health concerns, while H.R. 7747 focused on safety matters.<sup>20</sup>

In an opening statement during the House hearings, Secretary of the Interior Walter Hickel endorsed the Nixon administration’s bill, but he also argued that safer mines were the responsibility of mine owners and miners, not just federal government inspectors.<sup>21</sup> Framing the legislative debate in moral terms, Hickel stated, “There is more

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<sup>18</sup> Hume, *Death and the Mines*, 153-154; Derickson, *Black Lung*, 176.

<sup>19</sup> Frank Reynolds, “Coal Mine Legislation / Black Lung,” ABC Evening News, February 6, 1969, Record Number 4115, Vanderbilt Television News Archive, Vanderbilt University, Nashville, Tennessee. Included on a DVD provided by Ken Hechler.

<sup>20</sup> House Committee on Education and Labor, Subcommittee on Labor, *Coal Mine Health and Safety: Hearings Before the General Subcommittee on Labor of Committee on Education and Labor on H.R. 4047, H.R. 4295, and H.R. 7976*, 91st Cong., 1st sess., 1969 (Washington, D.C.: U.S. Government Printing Office, 1969), 48-49. Hereafter referred to as House, *Coal Mine Health and Safety Hearings*.

<sup>21</sup> House, *Coal Mine Health and Safety Hearings*, 50.

at stake here than the lives and health of 144,000 coal miners, though they surely merit out most strenuous efforts on their behalf. The problems we are wrestling with have an impact that extends beyond any coal mine. If we fail, those problems can weaken the physical and moral fiber of our whole society.”<sup>22</sup> Hickel stressed the importance of finding a balance between improving health and safety while maintaining coal production at level that would sustain the nation’s energy requirements. “Coal is our most abundant fuel resource,” he cautioned. “Right now, it supplies nearly a fourth of our total energy demand and every forecast, whether by the Government or the private sector, indicates that coal must continue to play a significant role if this country’s future energy requirements are to be satisfied.”<sup>23</sup>

Bureau of Mines director John F. O’Leary also emphasized his support for the Nixon administration bill in his appearance. In his statement before the subcommittee, he explained that Bureau’s existing powers of enforcement, as dictated by the 1952 Federal Mine Act and its 1966 amendments, were too limited:

The Bureau needs broader authority, and it needs it now, in order to bring coal mine injury and fatality rates into line with those of other major industries, and to assure that our coal miners do not escape accidental injuries onl to fall victim to an insidious industrial disease. The administration’s bill would, in our opinion, provide the kind of authority that is urgently required.<sup>24</sup>

O’Leary emphasized the importance of research, which he argued was the key to providing long-term solutions to hazardous conditions in coal mines. He also argued that

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<sup>22</sup> Ibid., 52

<sup>23</sup> Ibid.

<sup>24</sup> Ibid., 56.

the dust standard in the administration's bill was not too restrictive, but rather provided the foundation for a lower standard in the future once the necessary technology had been developed. Both he and Hickel claimed that the technology to create a 3.0-milligram dust limit did not yet exist, but they neglected to mention that such technology had been in use in Britain and most parts of Europe for the past three decades.<sup>25</sup>

The House hearings continued on March 19, with Ken Hechler and coal miners Elmer Yocum and Elijah Wolford as the opening witnesses. The appearance of Yocum and Wolford showed that rank and file miners were aware of the contemporary legislative debate on coal mine health and safety. Prior to that day's hearing, Yocum and Wolford had visited Hechler in his Charleston office without invitation and asked to speak before the Subcommittee. Hechler, reluctant to dismiss their request, agreed to bring them to the hearing.<sup>26</sup> In a lengthy testimony, Wolford emphasized that miners were partly responsible for safe working conditions. He proposed that miners should be penalized a full day's wages for any health and safety violations they committed. Wolford also stressed the importance of clearer escape routes in underground mines and better roof maintenance.

In his prepared statement, Hechler charged that the government and coal industry had invested millions of dollars in coal production, but had spent only "pennies" on research and development in health and safety. Such neglect, he argued, underscored the necessity of devising and implementing protective measures for the nation's 144,000

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<sup>25</sup> Ibid., 56-57.

<sup>26</sup> Ken Hechler, interview by author, tape recording, June 15, 2009, Cultural Center, Charleston, West Virginia.

miners.<sup>27</sup> Hechler devoted much of his statement to reiterating the key measures in his own bill (H.R. 6504), including the introduction of minimum qualifications for inspectors, harsh financial penalties against operators, and the transferal of safety enforcement from the Department of the Interior to the Department of Labor. He proposed the Bureau of Mines should not be responsible for enforcing mine health and safety because it “[had] been subservient to every special interest, to every interest except the man who mines the coal,” although he acknowledged there had been some improvement under O’Leary. He reiterated the importance of a dust standard of 3.0-milligrams and the assignment of miners who already displayed signs of pneumoconiosis to a work environment containing not more than one milligram of dust per cubic meter of air. And, in agreement with Walter Hickel, Hechler stressed the importance of including both health reforms and safety measures in one bill.<sup>28</sup>

During the Labor Subcommittee hearings, Hechler added lawyer David Finnegan to his staff. Recently, while working for the Department of the Interior, Finnegan had assisted Senator Jacob K. Javits in drafting an early version of the Nixon administration’s coal mine bill. When, on the insistence of Javits, Finnegan included a dust standard of three milligrams, in contradiction to the administration’s goal of 4.5 milligrams, Walter Hickel fired him for insubordination. On learning of Finnegan’s dismissal, Hechler, who had already consulted Finnegan in drafting his own bill, offered him a staff position.<sup>29</sup>

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<sup>27</sup> House, *Coal Mine Health and Safety Hearings*, 93-94.

<sup>28</sup> *Ibid.*, 93-98.

<sup>29</sup> Ken Hechler, interview by author, August 22, 2008.

Finnegan aided Hechler's quest for strong legislation in two ways. First, he was in contact with several inspectors at the Bureau of Mines, who were able to identify loopholes in the different bills passing through Congress. The inspectors advised Hechler not to weaken his own bill (H.R. 6504) with vague clauses such as "where economically possible," or "where technologically feasible," and to use strong, assertive language. Secondly, Finnegan's close ties with the House Subcommittee on Labor enabled him to observe committee meetings and to participate in technical debates. His connections proved invaluable to Hechler, who was not a member of either the subcommittee or the Committee on Education and Welfare. He was able to gain an insight to the workings of the subcommittee, and he relayed his views to the subcommittee through Finnegan.<sup>30</sup>

As the hearings continued, UWM President Tony Boyle informed the subcommittee that he opposed a single health and safety bill. Unlike Walter Hickel and Ken Hechler, he advocated two separate bills, one for health issues and another for safety. He argued that health and safety were distinct subjects that required separate treatment and that the union's introduction of two bills was the most effective way to secure the passage of new legislation.<sup>31</sup> Boyle failed to recognize the strong connection between health and safety in the underground working environment. For instance, the issue of dust control was pertinent to safety, as limiting the quantities of airborne dust prevented explosions. It was also pertinent to health, as dust control was a key factor in preventing miners' occupational lung disease.

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<sup>30</sup> Ken Hechler, interview by author, August 22, 2008; Hume, *Death and the Mines*, 159-160.

<sup>31</sup> House, *Coal Mine Health and Safety Hearings*, 231.

The House subcommittee hearings marked the emergence of an unlikely advocate for the coal miners' cause. Democratic Representative Phillip Burton from San Francisco was the first Congressman to propose a federal compensation scheme for black lung victims. Burton argued that new health and safety legislation should include a federal compensation program that covered all black lung victims, including those who developed pneumoconiosis prior to the legislation's enactment, and widows. Burton had been searching for a cause to promote since failing to gain enough support to run for the Senate the previous autumn. His past accomplishments marked him as one of the most liberal representatives in the House. In 1966, Burton, working with John Dent, had orchestrated the largest extension of the U.S. minimum wage program since the early 1930s.<sup>32</sup>

Alan Derickson argues that Burton's commitment to federal compensation was not as unlikely as it first appeared. Although there were no coal mines in San Francisco, there was an extensive network of docks. Burton's knowledge about the federal compensation program for the city's injured longshoremen and harbor workers provided a foundation for drafting similar legislation for miners. Moreover, Burton was a member of both the Committee on Education and Labor and its Labor Subcommittee. According to Derickson, Burton's position on the full committee provided him with the ideal position to criticize both the Nixon administration and the coal operators. His position on

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<sup>32</sup> John Jacobs, *A Rage for Justice: The Passion and Politics of Philip Burton* (Berkeley: University of California Press, 1995), 178-80; Derickson, *Black Lung*, 176-177.



the Labor Subcommittee afforded him an intimate role in the creation of the coal mine legislation.<sup>33</sup>

At the hearing on March 26, Burton vehemently challenged Undersecretary of Labor James D. Hodgson for his recommendation that state governments should assume responsibility for sick miners' compensation payments. Ken Hechler later recalled, "Burton came into the hearing late. He looked as if he'd just gotten out of bed. He was unshaven and you could smell his bad breath, as he was drinking black coffee to try to stay awake."<sup>34</sup> The dialogue that ensued between Burton and Hodgson exemplified Burton's brusque and often aggressive manner. Burton emphasized that workers injured or disabled prior to the bill's enactment would be ineligible for compensation unless they lived in a state that provided workers' compensation to black lung victims. Ignoring Hodgson's efforts to provide an explanation, Burton argued:

All the previously injured people, through all the history of the failure of the States and the Federal Government to act, are going to get no relief or assistance at all under this bill. And when you use a State scheme of compensation there is no way that I am aware of that you can impose liability on private insurance companies to pay for injuries that took place prior to the time they received premiums.<sup>35</sup>

Hodgson admitted, "There is no ex post facto aspect to this bill." In response, Burton commented, That is a very fine set of three Latin words to say that this proposal isn't going to provide any help to 95 percent of the workers affected.<sup>36</sup>

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<sup>33</sup> Derickson, *Black Lung*, 176-177.

<sup>34</sup> Ken Hechler, interview by author, June 15, 2009.

<sup>35</sup> House, *Coal Mine Health and Safety Hearings*, 262.

<sup>36</sup> *Ibid.*

Representatives Marvin Esch (R-MI) and John Dent tried to convince Burton that state compensation would allow for retroactive payments to miners who were already sick. Dent highlighted the “grandfather’s clause” in the Pennsylvania compensation law, which enabled miners to collect benefits if they had developed pneumoconiosis before the state government made it a compensable disease in 1966. They also contended that federal investment in the state compensation programs would ensure they were adequately funded. Burton, however, was convinced that only a broad federal program would provide adequate compensation.<sup>37</sup>

Burton’s unwavering avocation of federal black lung benefits broadened the scope of the Congressional hearings. Prior to his outburst on March 26, delegates had not considered a federal plan that provided retroactive coverage to miners and widows. Furthermore, Burton cast further doubt on the legitimacy of the Nixon administration’s bill, and marked himself, along with Hechler, Nader, and the Committee of Physicians, as a firm supporter of the rank and file in the coalfields.

The conflict that characterized the hearings before the House Subcommittee on Labor also was evident in the Senate hearings on coal mine health and safety. In the Senate, mine safety issues fell under the mandate of the Labor and Public Welfare Committee, chaired by Ralph Yarborough (D-TX), while the General Labor Subcommittee, chaired by Harrison Williams (D-NJ), held the specific role of drafting new legislative bills. Jennings Randolph, the Democratic Senator from West Virginia, played a significant role in both committees. He was the most senior Democrat after Yarborough on the Labor Public Welfare Committee and held second place on the

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<sup>37</sup> Ibid., 263-270.

General Labor Subcommittee. As a senator from a coal mine state, Randolph was in a difficult position, as he had to placate the coal operators who dominated the state's economy and the miners who represented the majority of West Virginia's voting bloc. In trying to appeal to a broad constituency, he adopted a moderate attitude to coal mine health and safety.<sup>38</sup>

In contrast, Harrison Williams was a strong advocate of coal mine reform, having encouraged the black lung activists in West Virginia to expand their movement into Kentucky. However, Williams' hopes for extensive legislative changes faced two significant obstacles. First, Jennings Randolph, who did not want to burden mining operators with unnecessary regulations, outranked Williams on the full committee. Second, Williams' political reputation had been sullied by a long battle with alcoholism. Although undergoing treatment for the disease, his capabilities as a Senator were still in question.<sup>39</sup>

When the Labor Subcommittee's hearings opened on February 27, Randolph and Williams each introduced two new legislative bills on mine health and safety. Randolph introduced S. 355, which represented the original view of the Johnson administration. It was the equivalent of bill H.R. 1047 in the House, along with S. 467, which embodied the safety demands of the United Mine Workers and acted as a companion bill to H.R. 7747. Senator Harrison Williams, meanwhile, presented S. 1094, which mirrored Ken Hechler's

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<sup>38</sup> Donald Rasmussen, interview with author, tape recording, August 21, 2008, West Virginia Department of Labor; Hume, *Death and the Mines*, 153-155

<sup>39</sup> Ibid.

bill H.R. 6504, as well as his own draft bill S. 1178.<sup>40</sup> The subcommittee considered several other bills later in the hearings, including the United Mine Workers' separate health bill.

During the first day of the hearings, the representatives lamented that it had taken a tragedy of the magnitude of the Farmington disaster to force them into action. John Dent argued that the decline in health and safety standards was attributable to members of Congress and state legislators, because they had failed to pass strong protective laws. While there had clearly been inaction on the part of the federal and state governments, much of the responsibility for death and injury in the mines rested on the coal operators. Despite the coal industry's culpability in the nation's shocking mine fatality rate, the National Coal Association (NCA), the organization that protected the coal industry's interests, openly approved of the Senate's hearings. By publicly supporting the hearings, the NCA gave the impression that it was concerned about miners' welfare. Behind closed doors, however, it planned to take measures to dilute the legislation.<sup>41</sup>

UMW President Tony Boyle's testimony on the first day of the hearing was far more aggressive than the statement he later made in the House. Boyle informed the committee that he had more knowledge of black lung disease than most people, having watched his father and two of his uncles die from the disease. He condemned the "instant experts" who spoke out in support of sick and injured miners, arguing they had not

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<sup>40</sup> Daniel Curran, *Dead Laws for Dead Men: The Politics of Federal Coal Mine Health and Safety Legislation* (Pittsburgh: University of Pittsburgh Press, 1993), 115.

<sup>41</sup> Hume, *Death and the Mines*, 154; Curtis Seltzer, "Moral Dimensions of Occupational Health: The Case of the 1969 Coal Mine Health and Safety Act" in *The Health and Safety of Workers*, edited by Ronald Bayer (New York: Oxford University Press, 1988), 250-51.

supported the union's previous struggles for better legislation. Casting doubt on the credibility of these 'experts,' Boyle said, "Such false prophets lead people astray by distorting the truth, indulging in falsification and distort every facet of the truth in order to create evidence of self importance." He claimed that both the UMW leadership and the coal industry agreed that coal operators should be penalized for unsafe mines, and that miners should not lose their jobs if they refused to work in a dangerous mine. He further claimed that he "[had] no other ambition in life but to protect the underdog coal miners of this country."<sup>42</sup>

Several times during his speech, Boyle singled out Ken Hechler for criticism, although he mostly refrained from referring to the congressman by name. At one point, referring to Hechler's appearance at the black lung rally in Charleston on January 26, he ranted:

How many dollars have we [the union] spent? Over \$2 billion to rehabilitate these people. I didn't say millions, I said billions of dollars to rehabilitate these people. Then we are characterized as doing nothing. We didn't get any donations, we didn't get any help, we didn't get any assistance from these bologna experts. I didn't know he was a bologna expert until the other day, didn't know he existed.<sup>43</sup>

In a fierce attack on consumer advocate Ralph Nader, Boyle stormed, "He has never been in a coal mine. He has never come to see me. He has not asked me anything about coal mines. He is not an expert." Boyle threatened, "I will tell him, too, when I see him,

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<sup>42</sup> "Excerpts from remarks of W. A Boyle, President of the United Mine Workers of America, Senate Subcommittee on Labor, February 27, 1969," pp.1-5, Folder 6, Box 1, John Herling Collection, Walter P. Reuther Archives of Labor and Urban Affairs, Wayne State University, Detroit. Hereafter, this collection will be referred to as Herling Collection, Reuther Archives.

<sup>43</sup> *Ibid.*, 6.

physically, mentally, in the alley or anywhere he wants to see me.”<sup>44</sup> Boyle was especially critical of Nader’s letter to the West Virginia coal miners, which had been read at the January 26 black lung rally. In that letter, Nader had disputed Boyle’s capabilities as union president and called on the miners to displace him. Responding to the letter, Boyle boasted that several delegates at the 1968 UMW Convention had submitted resolutions calling for his election as union president for life. He claimed that the 2,000 delegates at the convention represented local unions, which showed there was strong support for him among the rank and file. Moreover, he argued that because delegates discussed every resolution on the convention floor, the convention “was more democratic than the Congress of the United States.”<sup>45</sup> Boyle was asserting that he, not the Black Lung Association or political figures such as Hechler or Nader, was the true voice of the miners on health and safety issues.

Boyle distorted the truth, as he had on other occasions. He had filled the 1968 convention with his own supporters and used intimidation to prevent anyone from voting against him, especially on mine safety and health issues. Furthermore, his staging of the event in Denver, Colorado, far from the Appalachian mining communities, meant that most genuine rank-and-file miners were unable to attend. With his aggressive and self-serving rhetoric, Boyle was trying to deflect criticism of the ineptitude and lethargy that characterized his UMW leadership. His personal attacks on Ken Hechler and Ralph Nader aside, not everyone was persuaded by Boyle’s representation of the union’s health and safety record. In an interview for NBC television news, Hechler responded:

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<sup>44</sup> Ibid., 9.

<sup>45</sup> Ibid., pgs. 6-9.

[Since] the last coal mine safety legislation was passed [in 1952], only one significant amendment was achieved as a result of the UMW's efforts, and that was to extend the provisions to those mines employing less than fifteen. All these years, that's the only little mouse that has been produced with all this laboring at the mountain. The UMW should have been leading the parade for effective safety legislation, when, as a matter of fact, all they've done is watch to see where the parade was going and then try to run around in front of it.<sup>46</sup>

Several witnesses at the Senate hearings clashed over the incidence of pneumoconiosis among coal miners. Most of the people who testified about the disease used recent United States Public Health Service statistical data as their starting point. The PHS figures showed that 1 in 10 active miners and 1 in 5 inactive miners suffered from pneumoconiosis. U.S. Surgeon General Dr. William H. Stewart established a firm connection between coal dust and Coal Workers' Pneumoconiosis (CWP), which he referred to as "an occupational disease of previously unrecognized magnitude." He claimed that the disease afflicted as many as 100,000 coal miners. Dr. Lorin E. Kerr, the head of the UMW Welfare and Retirement Fund, lambasted the medical profession for its failure to recognize the disease and take preventative measures against it. He estimated that 125,000 of the country's 144,000 coal miners were suffering from it. Consumer advocate Ralph Nader further insisted that 150,000 active and retired miners had advanced black lung disease and that tens of thousands more had it to a lesser degree.<sup>47</sup>

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<sup>46</sup> Fred Briggs and Chet Huntley, "UMW Criticism / Nader / Pension Plan," NBC Evening News, April 28, 1969, Record Number 445322, Vanderbilt Archive. Included on a DVD provided by Ken Hechler.

<sup>47</sup> *National Observer*, March 3, 1969, included as a clipping in Folder 3, Box 12, Herling Collection, Reuther Archives; Derickson, *Black Lung*, 173-175; Seltzer, "Moral Dimensions of Occupational Health," 254-255; Barbara Smith, *Digging Our Own Graves: Coal Miners and the Struggle Over Black Lung Disease* (Philadelphia: Temple University Press, 1988), 145.

Other witnesses who appeared before the General Labor Subcommittee downplayed the prevalence of black lung disease, and even argued that it was not a legitimate occupational disease. Dr. Paul Goss argued that coal dust was not harmful to the lungs. Miners' breathing problems, he argued, were more likely bronchitis or emphysema induced by cigarette smoking, while Dr. Charles E. Andrews, a lung specialist at West Virginia University, argued that pneumoconiosis affected only a small minority of miners. The National Coal Association (NCA), assuming that the ratio of active to inactive miners was four to one, calculated that 15,000 miners had the disease. In a cautious statement that reflected the Nixon administration's stance, Walter Hickel stated that the PHS data on black lung disease was inadequate. In fact, Hickel maintained, the extent of the disease could not be adequately measured.<sup>48</sup>

As the hearings progressed, additional legislative bills appeared before the Subcommittee, including S. 1300 and S. 2917. The former, reflecting the official line of the Nixon Administration, was conservative in its standards. It advocated an underground dust limit of 4.5 milligrams per cubic meter of air, in contrast to the limit of 3.0 milligrams proposed by the Hechler bill. In keeping with Nixon's opposition to federal compensation, it did not contain any provisions for black lung compensation, and placed few obligations on coal mine operators. Bill S. 2917, endorsed by Ken Hechler, was more liberal than most of the other bills under deliberation. It proposed an intermediate dust standard of three milligrams, with a further reduction to two milligrams within six years. It also placed much of the responsibility for safety enforcement on the coal operators.

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<sup>48</sup> Derickson, *Black Lung*, 170



Immediately after the hearings ended, on May 12, Jennings Randolph added another bill to those already under consideration. It was far more conservative than any of the bills submitted up to that point. Randolph's bill abolished all monetary penalties for safety violations. It also did not provide for basic underground amenities such as toilets and had a weak dust standard. It further perpetuated the existence of the Federal Coal Mine Health and Safety Board of Review, an outdated agency set up to enforce the 1952 Mine Act.<sup>49</sup> Although his action went largely unnoticed, the bill quickly drew the attention of consumer advocate Ralph Nader. Outraged by the terms of the bill, and by Randolph's surreptitious introduction of it after the hearings had ended, Nader wrote an open letter to Randolph, which he also distributed to several newspapers and media organizations. In the letter, Nader complained that Randolph's bill prioritized the coal operators' interests at the expense of the welfare of miners and their families. He accused Randolph of being insensitive to the risks that coal miners faced, particularly the dust that caused black lung disease. In a scathing attack on the Senator, Nader stated:

Coal mining is the most dangerous occupation in the country in the category of trauma and far and away the most hazardous in the country in the category of disease. Black lung strikes at about fifty percent of the working miners to a significant degree, often ending in death. The misery and pain were brought to the Senate hearings. You saw miners in such pain, you saw an actual black lung [from an autopsy], you heard the testimony of experts abstracting the anguish and bodily destruction of these cruelly depleted human beings who rely on you to represent them. Why have you forsaken them?<sup>50</sup>

Nader identified what he described as “forty separate weakening provisions” in Randolph's legislation that nullified the terms of the Javits bill. For example, Randolph's

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<sup>49</sup> Hume, *Death and the Mines*, 157-58.

<sup>50</sup> *Charleston Gazette*, May 18, 1969, 1; Hume, *Death and the Mines*, 156.

bill did not grant the Secretary of the Interior authority to change mining laws without the consent of Congress, and it maintained the distinction between “gassy” and “non-gassy” mines, a provision that would exempt so-called non-gassy mines from installing safety equipment.<sup>51</sup>

Nader surmised that Stephen Dunn of the National Coal Association had inspired Randolph’s bill. His guess was partly true, as the NCA had participated in the drafting of the bill. To Nader, Randolph’s actions reflected the prevalence of coal industry lobbying in congressional politics.<sup>52</sup> When questioned by the media, Randolph claimed that he had not read Nader’s letter. He also stressed that he was not “inflexible” to supporting a different bill, as he had introduced two other legislative bills earlier in the year. He flatly denied representing either the coal industry or the United Mine Workers. Two days after the story first came to light, John Corcoran of the National Coal Association publicly rejected Nader’s claim that his organization had played a significant role in authoring the Randolph bill. While Corcoran admitted that he had met with Jennings Randolph on several occasions, he said that the bill was largely the Senator’s own work.<sup>53</sup>

In his analysis of the Congressional hearings, Nader relied heavily on the expertise of his general counsel, 32-year old Gary Sellers. Nader had originally hired Sellers, a graduate of the University of Michigan Law School, to help him run the Center for the Study of Responsive Law. The center was the base for Nader’s consumer

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<sup>51</sup> “Black Lung Bill Stirs Dust Storm in Congress,” *Business Week*, May 31, 1969, 32-33.

<sup>52</sup> Ralph Nader, telephone interview with author, May 1, 2009; *Charleston Gazette*, May 18, 1969, 1; *New York Times*, May 18, 1969, 29; *Washington Post*, May 18, 1969, 3

<sup>53</sup> *Washington Post*, May 21, 1969, A7.

investigations, which were executed by Ivy League college students known as “Nader’s Raiders.” Prior to working for Nader, Sellers had been employed in the Natural Resources Division of the Bureau of the Budget under the Johnson Administration. During his time in the Bureau, Sellers had devoted much of his time to learning about coal mine legislation. By the spring of 1969, he had compiled extensive data on coal mine health and safety.<sup>54</sup>

The intense debate during the House and Senate hearings, which concluded in mid-May, emphasized the political divisions that impeded the passage of new legislation. The hearings solidified the lines of opposition between the competing interests in the struggle for a new health and safety bill. On the one hand, there was a notable movement for legislative reform. For example, Ken Hechler recommended stringent measures for health and safety enforcement, including the dust standard of three milligrams, while Phil Burton proposed a federal compensation program for black lung disease. On the other hand, there was strong opposition to tougher coal mine laws. Senator Jennings Randolph and UMW President Tony Boyle both actively tried to limit the scope of legislative reform. Congress therefore faced a complicated task in its quest of strengthening coal mine health and safety laws.

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<sup>54</sup> Ralph Nader, telephone interview with author, May 1, 2009; Hume, *Death and the Mines*, 159; Jacobs, *A Rage for Justice*, 180-181.

### **Jock Yablonski: A Major Challenge to the Boyle Regime**

On May 29, a small group of reporters gathered in the Pan-American room of the Mayflower hotel in Washington D.C. The previous evening, Ralph Nader had telephoned each of them to request their presence at a secret press conference by a key United Mine Workers representative. The conference began with the arrival of Joseph “Jock” Yablonski, a 33-year veteran of the union, and labor attorney Joseph Rauh. With Nader sitting in the audience, and three men guarding the doors to the room, Yablonski announced that he intended to challenge Tony Boyle for the presidency of the union in the forthcoming election. By doing so, the relatively unknown Yablonski thrust himself into the national spotlight and made the first significant challenge to the Boyle regime.

Born in Pittsburgh in 1910, Yablonski started working in the mines as a young boy. He became actively involved in the United Mine Workers after his father died in a mine explosion. He was first elected as a local union leader in 1934. Although Yablonski had been a member of the union’s executive board since 1942, he was not the most likely candidate to challenge Boyle’s leadership. Before he announced his candidacy, Yablonski had always publicly supported Tony Boyle. In 1964, he campaigned for Yablonski’s re-election as president over rival candidate Steve Kochis. And, in his delivery of the keynote speech at the 1968 UMW Convention, Yablonski praised Boyle’s accomplishments as union leader. Boyle had recently appointed Yablonski the head of the Labor Non-Partisan League, the political arm of the United Mine Workers, as a reward for his loyalty.<sup>55</sup>

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<sup>55</sup> Joseph E. Finley, *The Corrupt Kingdom: The Rise and Fall of the United Mine Workers* (New York: Simon and Schuster, 1972), 259; Hume, *Death and the Mines*, 167-170.

Privately, however, Yablonski detested Boyle. In 1966, Boyle had forced him to resign as leader of District 5 in retaliation for his unauthorized bid for the UMW national presidency in the 1964 election.<sup>56</sup> Yablonski reluctantly stepped down when Boyle threatened to place District 5 into trusteeship. The district was one of only four that still held democratic elections; in most districts, leaders were appointed directly by the union president. Furthermore, Yablonski was convinced that Boyle was uninformed about modern labor practices in the coal industry. In December 1962, an explosion at U.S. Steel's Robena mine in Pennsylvania had killed 37 men. At the scene of the disaster, a reporter overheard Boyle, who was union vice-president at the time, dismissively asking, "Did a trapper boy leave the door open?"<sup>57</sup> The industry had not used trapper boys, who controlled the streams of ventilation traveling through mines, for several decades. Yablonski also knew that Boyle was using miners' union dues to provide himself and several of his family members with large salaries and lucrative pensions. Finally, he disapproved of Boyle's refusal to renegotiate the miners' contract on their own terms and his apparent disregard for health and safety.

Yablonski's speech at the press conference reflected his private contempt for Boyle. He launched into a blistering attack on Boyle's record as UMW leader:

... In recent years, the present leadership has not responded to its men, has not fought for their health and safety, has not improved grievance procedures, has not rooted itself in the felt needs of the membership and has rejected democratic procedures, freedom to dissent and the right of rank and file participation in the small and large issues that affect the union.

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<sup>56</sup> *New York Times*, June 13, 1969, 24.

<sup>57</sup> Hume, *Death and the Mines*, 166.

Contrary to Boyle's claims at the recent Congressional hearings, Yablonski believed that the UMW President had been inactive on the issue of health and safety. He attacked Boyle for denying the rank and file the opportunity to vote on union policies, as they were entitled by the UMW constitution. Yablonski was particularly critical of Boyle's failure to address black lung disease. He stated, "In recent months, the shocking ineptitude and passivity of the union's leadership on black lung disease – not to mention its ignoring this massive disability of its men for years – became apparent to the nation, not just those inside the union."<sup>58</sup> Yablonski believed that Boyle had conveyed his disregard for black lung to the nation when he condemned the West Virginia Black Lung Association earlier in the year.

Yablonski argued his decades of union experience made him a strong candidate with the rank-and-file. As part of an eleven-point program, he proposed increasing the 40 cents per ton royalty for the union's Welfare and Retirement Fund, adopting a more assertive stance in contract bargaining, pushing industry to adopt the latest safety equipment, and levying local and state extraction taxes to fund education programs in Appalachia. He also advocated an increase in workers' compensation and the expansion of the union's Safety Department.<sup>59</sup>

Yablonski knew that capturing the union presidency would be a difficult task. He commented, "I am not naïve enough to think that there is not going to be much difficulty

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<sup>58</sup> Hume, *Death and the Mines*, 173; Finley, *The Corrupt Kingdom*, 259; John Gaventa, *Power and Powerlessness: Quiescence and Rebellion in the Appalachian Valley* (Urbana: University of Illinois Press, 1982), 165.

<sup>59</sup> *Charleston Gazette*, May 30, 1969, 1 and 6; *New York Times*, May 30, 1969, 9; Hume, *Death and the Mines*, 165-67; Finley, *The Corrupt Kingdom*, 258; Smith, *Digging Our Own Graves*, 129.

put in my way.” To run for the presidency, he first had to secure the nominations of fifty union locals. Boyle had increased the number of required nominations from five to fifty after his election in 1964. In acquiring the requisite number of local nominations, Yablonski faced a significant challenge. Every local union was affiliated with a larger district branch, and Boyle essentially controlled all the districts. Even in the districts where there were still elections and Yablonski had firm support, Boyle had enough financial and institutional power to manipulate the nominations in his favor. Although the United States had filed suit five years previously to return full autonomy to the local unions, the outcome of the case was still pending. The union had planned the nomination period for one month beginning on July 9.<sup>60</sup>

Joseph L. Rauh from the Department of Labor was Yablonski’s attorney for the campaign. Nader for his part provided Yablonski with a full time legal researcher, Beverley Moore, Jr., from Harvard Law School.<sup>61</sup> Yablonski encountered obstacles from the outset of his campaign. On June 2, he wrote to Boyle to ask the union to mail out his campaign literature at his own expense, under the terms of the Landrum Griffin Act, Section 401(c). Attorney Edward Carey, representing the union leadership, denied Yablonski’s request. He argued that since Yablonski was not yet a ‘bona fide’ candidate, the terms of the law did not apply to him. Joseph Rauh filed a motion with the federal district court in Columbia, which later ruled that the union had to send out Yablonski’s

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<sup>60</sup> *Charleston Gazette*, May 30, 1969, 1 and 6; *New York Times*, May 30, 1969, 9; Finley, *The Corrupt Kingdom*, 258; Hume, *Death and the Mines*, 176.

<sup>61</sup> Ralph Nader, telephone interview with author, May 1, 2009.

campaign materials.<sup>62</sup> The union leadership also ignored Yablonski's request for publication space in the *United Mine Workers Journal*.<sup>63</sup>

Although Boyle did not comment directly on Yablonski's decision to run for office, his actions showed he was unwilling to accept the challenge to his leadership. In early June, he dismissed Yablonski as the head of the Labor Non-Partisan League, claiming he had been neglecting his duties, and ordered him to report to District 5 for reassignment. Joseph Rauh filed suit, arguing that Boyle's actions were political in nature and a violation of labor law.<sup>64</sup> He challenged Boyle for dismissing Yablonski without prior notice. Boyle responded that Yablonski had given his own notice the moment he decided to challenge the union hierarchy by deciding to run for president. The coal operators' reaction to Yablonski's announcement was mixed. Some welcomed the news, while others feared that a union led by Yablonski would be harmful to their interests.<sup>65</sup>

Opposition against Yablonski intensified throughout the month of June. At a meeting in Springfield, Illinois, on June 28, someone gave him a karate-chop to the back of his neck and rendered him unconscious. His family doctor informed him the next day that he had narrowly escaped paralysis or death.<sup>66</sup> The identity of the perpetrator was never discovered. On June 29, John Karlavage, a prominent Boyle staff campaigner, led

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<sup>62</sup> Finley, *The Corrupt Kingdom*, 266; J. Davitt McAteer, *Coal Mine Health and Safety: The Case of West Virginia* (New York: Praeger Publishers, 1973), 71.

<sup>63</sup> Hume, *Death and the Mines*, 176-177.

<sup>64</sup> *New York Times*, June 13, 1969, 24; Hume, *Death and the Mines*, 177.

<sup>65</sup> Finley, *The Corrupt Kingdom*, 259.

<sup>66</sup> Hume, *Death and the Mines*, 179-180.



the disruption of a Yablonski campaign meeting in Shenandoah, Pennsylvania. Still recovering from the assault the previous day, Yablonski had appointed his vice-president nominee Elmer Brown to head the meeting. Karlavage and his cronies burst into the hall where the meeting was taking place and paraded around with banners and placards in support of Boyle. One week later, at a meeting of local union 7113, John Aiello, a staff member for district 17 and the financial secretary for local 7113, nominated Boyle for the presidency, even though the nomination period had not started. He rejected another miner's nomination of Yablonski and declared that the nominations were closed.<sup>67</sup>

The attitude of the Boyle regime to Yablonski's challenge reiterated its stance on union democracy and key issues such as health and safety. It was unresponsive to the concerns of the rank and file, and sought to maintain control of the coalfields. As the nomination period began, Yablonski offered the miners the chance of safer and more equitable working conditions, but he faced an enormous challenge to gain the required amount of nominations, far less win the UMW presidency.

### **The Summer of Discontent**

Throughout the summer of 1969, as the debate over coal mine legislation continued, the divisions between competing interests became more even pronounced. Representatives from the coal industry and the federal government assembled in New York in June for the annual convention of the National Coal Association (NCA). The convention emphasized that the majority of coal industry leaders were opposed to

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<sup>67</sup> Finley, *The Corrupt Kingdom*, 262-264.

legislative reform. As the convention unfolded, the mine operators' prioritization of coal production ahead of miners' welfare became clear.

At a convention panel discussion on June 16, John Corcoran, the head of the NCA and President of Consolidation Coal, announced that Consolidation had decided to reopen the Mannington (Farmington) mine. Although the company had not established a fixed date, it planned to make the mine operational as soon as it had approval from the Department of the Interior, the Bureau of Mines, the West Virginia Department of Mines, and the United Mine Workers. Corcoran assured the audience that the bereaved families would learn of the opening date before the general public, and that the company would undertake the reopening as safely as it could. Consolidation's decision to reopen the site of the worst mining disaster in the post-World War II era suggested the coal industry was obsessed with increased production.<sup>68</sup>

At the same time, Corcoran insisted that the Farmington disaster had persuaded Consolidation of the need for tough federal health and safety legislation. He urged his fellow operators to accept new mining laws, if not for humanitarian reasons, then out of economic necessity. The industry would not be able to attract the required workforce unless it offered a safe and healthful working environment. However, his company's decision to reopen the Farmington mine undermined the sincerity of his remarks. He cast further doubt on his professed commitment to reform by objecting to the closure of unsafe mines, as advocated by several recent legislative bills. Emphasizing the coal

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<sup>68</sup> "Panel Discussion on Mine Safety at the NCA Convention, June 16, 1969," p. 1, Folder 10, Box 3, United Mine Workers Safety Division Office Files, Special Collections Library, Pennsylvania State University, State College, PA. Hereafter, this collection will be referred to as UMW Safety Division Files, PSU Special Collections.

industry's production-orientated focus, Corcoran justified his objection to mine closures by arguing that coal was vitally important to the national economy and that production could not be disrupted. He stated that Congress should create legislation based on factual evidence, not emotions.<sup>69</sup>

George Judy, the president of the Bituminous Coal Operators Association (BCOA), was more conservative than Corcoran in his assessment of mine health and safety. In his view, safety could not be regulated because "Mother Nature reacts violently and unexpectedly in countless ways to civilized man's intrusion in her private domain to steal her private treasures."<sup>70</sup> Furthermore, Judy argued, coal miners were prone to human error, and such error could not be controlled by legislation. He conceded that certain minimum legislative standards were necessary, but only to the degree that operators could strive for better working conditions. To Judy, the Federal Code, a set of rules applying to companies that had signed a labor agreement with the United Mine Workers, contained acceptable standards. With only vague health and safety provisions, the code was limited in scope. It certainly did not address many of the industry's biggest risks, such as excessive underground dust levels.

Judy also condemned the United Mine Workers' recent campaign to phase out the flame safety lamp. He argued that the lamp, used to detect dangerous accumulations of methane gas, operated on scientific principles. There was nothing better, he insisted, to replace it. His most extreme proposal, however, was to prevent the Secretary of the Interior from enforcing health and safety regulations. The Secretary's role, maintained

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<sup>69</sup> Ibid., 1-2.

<sup>70</sup> Ibid., 5-6.

Judy, should be limited to ensuring conformity to standards in the context of daily operations, not regulating health and safety from a distance.<sup>71</sup> The position of the BCOA, then, was that mine owners should be able to run their operations with minimal regulation and government intervention. The BCOA had always strongly opposed federal regulation, particularly preventative measures and compensation programs.<sup>72</sup>

James R. Garvey, the president of Bituminous Coal Research and vice-president of engineering in the National Coal Association, denied that the industry opposed coal mine dust standards. He complained that the bills before the House and the Senate were open to conflicting interpretations and that the extraction of coal was just as important as miners' health. He argued that the dust standard of three-milligrams per cubic meter of air, as proposed in the Hechler and UMW bills, would not guarantee better health standards. Coal dust affected individual miners differently, contended Garvey, and a better understanding of dust levels was required for a workable law to take effect.<sup>73</sup>

Bureau of Mines director John F. O'Leary also addressed the NCA convention. While he admitted that the Bureau had "been remiss in [its] attention to health," he felt that the interim dust standard of 4.5 milligrams in the Nixon administration bill was adequate. He believed it was unrealistic to expect operators to establish minimum dust levels of three milligrams in less than three years.<sup>74</sup> O'Leary's speech reflected the

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<sup>71</sup> Ibid., 6-7.

<sup>72</sup> Curtis Seltzer, *Fire in the Hole: Miners and Managers in the American Coal Industry* (Lexington: The University Press of Kentucky, 1985), 101.

<sup>73</sup> "Panel Discussion on Mine Safety," 8-10.

<sup>74</sup> Ibid., 2-5.

official line of the Nixon administration, but it was also marked by an underlying tension. O’Leary, who had adopted a stricter approach to enforcement after the Farmington disaster, was trying to avoid conflict with the administration, following the dispute over his resignation earlier in the year. His speech also indicated that he was conscious of the need to bring a more humanitarian perspective to the Bureau’s research activities. He remarked, “Our mining research to date has been preoccupied with one element of cost: those that we can list as economic. I think more and more, not because we want to but because we must, we are going to be forced to look upon human cost and environmental cost as well.”<sup>75</sup>

The NCA conference did not bode well for the prospects of a broad, liberal health and safety law, particularly given the coal industry’s lobbying power in Washington D.C. More so than the Congressional hearings, the conference revealed the industry’s opposition to tough legislative standards. By way of confirmation, in the weeks that followed, the coal operators stepped up their efforts to shape the terms of new coal mine legislation.

In early July, Phillip Burton and Gary Sellers began collaborating on their own health and safety bill. Burton was still convinced that new legislation should include federal compensation for black lung victims. Sellers had approached him on the recommendation of Representative Morris Udall (D-AZ), who served with Burton the House Labor Subcommittee. Udall informed Sellers, “He’s got the personality of a brillo pad, but he gets a lot done.”<sup>76</sup> Sellers and his employer Ralph Nader also realized that

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<sup>75</sup> Derickson, *Black Lung*, 174.

<sup>76</sup> Jacobs, *A Rage for Justice*, 181.

Burton, as a representative from San Francisco, was not beholden to the coal industry's money or influence. Moreover, because he was not the head of a major Congressional committee, they perceived him as "a tremendous strategist and tactician in the House."<sup>77</sup> The bill that Sellers and Burton began drafting proposed strict limits on coal dust, improved standards for the quality of air and ventilation in underground mines, and, crucially, federal payments to miners and miners' widows affected by pneumoconiosis. The bill was loosely based on the Johnson administration bill from the previous September, which Sellers had helped to draft. Burton and Sellers focused in particular on that bill's "presumptive clause," which stipulated that miners with lung ailments were presumed to have an occupational illness and were thus automatically eligible for compensation.<sup>78</sup> The Johnson administration bill had been presented in modified form as H.R. 1047 at the House Labor subcommittee hearings earlier in the year.

Burton hoped successful passage of the bill would allow him to establish new connections, particularly with influential politicians in coal mining states, and enhance his reputation among national labor unions. His determination to see strong federal mining legislation passed, however, was not just rooted in his own political ambitions. His intense engagement in the issue also emanated from genuine concern for miners and their families. He was distressed by accounts of the hardships they suffered and committed to using his expertise to solve their problems.<sup>79</sup> In his single-minded approach to creating new legislation, Burton refused to abandon his own political values. He

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<sup>77</sup> Ralph Nader, telephone interview with author, May 1, 2009.

<sup>78</sup> Jacobs, *A Rage for Justice*, 185.

<sup>79</sup> *Ibid.*, 187.

shunned the so-called “philosophical liberals” in Congress, who he perceived as weak and unable to implement legislative proposals, and refused to compromise or negotiate with Republicans, much to the despair of House Committee leader John Dent. In fact, he openly advocated a coal mine dust limit of zero, rather than trying to reach a middle ground with the Republicans.<sup>80</sup>

The Committee of Physicians, meanwhile, continued to rail against the coal operators. On July 4, Dr. Isidore Buff led a miners’ rally at the Jefferson Memorial in Washington, D.C. Brandishing a plastic bag containing what he claimed was blackened tissue from a deceased miners’ lungs, he delivered an impassioned 40-minute speech, in which he attacked “the enslavers and killers of coal miners.” He promised that the miners would strike if operators did not take the health and safety issue more seriously. “This is a warning, not a threat,” he stated, “but if the miners do not dig coal the economy of this country will stop for 90 days. You would have no electricity. Factories would close. And the country would be almost gone.” Ken Hechler, also attending the rally, stated, “Let the word go forth to every coal miner throughout the nation, we will no longer tolerate the conditions in the coal mines which produce disasters like Farmington. Let the word go forth, the coal miner refuses to work in conditions of coal dust so high that it produces the deadly black lung.”<sup>81</sup>

Buff’s threat of a strike was rendered less potent by the small attendance of less than fifty miners. He alleged that United Mine Workers and the coal operators had falsely

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<sup>80</sup> Ibid.

<sup>81</sup> Harry Reasoner, “Miner Safety / Washington D.C. Protest,” CBS Evening News, July 4, 1969, Record No. 204869, Vanderbilt Archive. Included on a DVD provided by Ken Hechler; *Charleston Gazette*, July 5, 1969, 1.

broadcast messages on West Virginia radio that the event was cancelled, a charge the accused parties strongly denied. In reality, Buff was being over-ambitious in expecting a large attendance of miners at the Washington, D.C. rally. Most Appalachian miners lived far from the nation's capital, and many did not have access to their own transportation. The black lung movement in West Virginia had been successful because it was a local movement, grounded not just in miners' grievances about their working conditions, but also in community and family. Nevertheless, the demonstration reaffirmed the black lung leaders' determination to use radical measures to make operators' more sensitive to the miners' plight.

At a press conference on July 31, Buff's two colleagues on the Physicians' Committee, Dr. Hawey Wells and Dr. Donald Rasmussen, publicly announced their endorsement of Jock Yablonski and Elmer Brown for the UMW leadership. Rasmussen argued that the UMW leadership had completely failed to protect miners from the health and safety hazards in the coal industry, and had offered them nothing but "a stale diet of alibi and artifice." He continued, "Because I believe the rebirth of the UMW into a vigorous and progressive labor organization is vital to the future well-being of the miner, I am compelled to express publicly my endorsement of the candidacy of Joseph Yablonski and Elmer Brown."<sup>82</sup> Dr. Isidore Buff, also present at the conference, emphasized that, while he did not support his colleagues' endorsement of Yablonski, this did not mean he supported Tony Boyle. Buff demanded the resignation of Charleston physicians Dr. William C. Stewart, Dr. James H. Walker, and Dr. W. Paul Elkins,

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<sup>82</sup> *Charleston Gazette*, August 1, 1969, 1.



members of the state silicosis medical board, who, he claimed, had neglected miners' interests.<sup>83</sup>

Yablonski, who had recently won his fight to remain head of the Labor Non-Partisan League, did not attend the press conference. His continuing efforts to gain the support of fifty local unions for his nomination meant he was working in his office in the capital.<sup>84</sup> Elmer Brown made an appearance, though, informing reporters that UMW staff members were trying to stop the Yablonski-Brown ticket from gaining enough local union support. He stated that he had been the recipient of several threatening phone calls. His testimony was indicative of the ongoing difficulties that he and Yablonski faced in challenging the Boyle regime.

Two weeks later, the UMW headquarters announced the results of the election nominations. Yablonski had secured 96 nominations, enough to run for the presidency, while his running mate, Elmer Brown, also was eligible with 86 nominations. Tony Boyle had obtained 1,056 nominations.<sup>85</sup> In a public statement, Yablonski commented, "Boyle assumed that, with all the power at his command, no man could ever win the support of fifty local unions, but he was wrong."<sup>86</sup> Despite securing his place as an election candidate, Yablonski still faced a significant challenge. Boyle had secured over ten times more nominations, which hindered Yablonski's chances of winning the December election.

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<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Hume, *Death and the Mines*, 196.

<sup>86</sup> *New York Times*, August 11, 1969, 16.

Throughout the summer, the Senate Labor Subcommittee deliberated the various bills presented during the hearings, in the face of considerable outside pressure. The Nixon Administration continued to push for a dust standard of 4.5 milligrams, while Ken Hechler urged the subcommittee to endorse a bill with a standard of three milligrams per cubic meter of air. The coal companies favored a weak bill with minimal dust regulations and worked through Senator Jennings Randolph to achieve it.<sup>87</sup> When the Senate subcommittee started leaning towards S. 2917, a tough, progressive bill introduced in the later stages of the Senate hearings, operators pressured Randolph to weaken a number of its more stringent provisions. Still reeling from Nader's accusation that he had abandoned the nation's miners, Randolph was maintaining a low profile, and he did not accede to their demands. Bill S. 2917, endorsed by Harrison Williams, eliminated the distinction between "gassy" and "non-gassy" mines, set the underground dust limit at three milligrams, with a further reduction to two milligrams after six years, and mandated the introduction of new equipment to reduce the risk of explosions. The subcommittee ultimately passed bill S. 2917 to the full Committee on Labor and Public Welfare. On July 31, the last day of Congressional proceedings before summer recess, the Committee voted 17-0 to send bill S. 2917 to the Senate floor.<sup>88</sup>

Jennings Randolph concluded that the bill was an important step forward in the improvement of health and safety standards, but he was still torn between his conflicting support for both the miners and the operators. He acknowledged that the bill would exact

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<sup>87</sup> Seltzer, "The Moral Dimensions of Occupational Health and Safety," *The Health and Safety of Workers*, edited by Bayer, 252.

<sup>88</sup> *New York Times*, August 1, 1969, 30; *Wall Street Journal*, August 1, 1969, 2; Seltzer, "The Moral Dimensions of Occupational Health and Safety," 262.

“heavy costs” on the coal industry.<sup>89</sup> Jacob K. Javits, the ranking Republican member of the Labor Subcommittee, praised the bill’s stringent dust standard. “By setting maximum standards for coal dust, we have taken the major step necessary to seek to end the scourge of black lung, which, up to now, has afflicted thousands of coal miners,” he said.<sup>90</sup> Javits had supported the three milligrams limit from the outset, having tried to include that provision in the Nixon administration’s original bill. However, the administration instructed him to include the less stringent limit of 4.5 milligrams.

In the House of Representatives, the Labor Subcommittee’s deliberations extended into the summer recess period. As the basis for its legislative bill, the subcommittee used H.R. 1047, originally introduced by Representative John Dent. By late summer, the bill was radically different from Dent’s original version. It included Burton and Sellers’ federal black lung compensation program, as well as several health and safety measures devised by Ken Hechler, including an immediate dust standard of three-milligrams per cubic meter of air, the prohibition of smoking in underground mines, and regular inspections by the Bureau of Mines. Phil Burton, David Finnegan, and Gary Sellers played an instrumental role in convincing the subcommittee to adopt Hechler’s amendments.<sup>91</sup> On August 6, the subcommittee made minor changes to the language of bill H.R. 1047, before sending it to the full labor committee. The committee voted in

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<sup>89</sup> *Wall Street Journal*, August 1, 1969, 2.

<sup>90</sup> *Congressional Record*, 91st Cong., 1st sess., 1969, pt. 16: 21576-21577; *Charleston Gazette*, August 1, 1969, 1.

<sup>91</sup> Moffat, *Ken Hechler*, 222-223.

favor of H.R. 1047 by 29 votes to 3 on September 18, and passed the bill to the House floor.<sup>92</sup>

### **The Troubled Road to Change**

The first day of full Senate deliberations on bill S. 2917 began on September 25, 1969. A key theme that emerged was the obligation of the federal government and the coal operators to improve coal miners' working conditions. In his opening address, Harrison Williams, the chairman of the Senate Labor Subcommittee, predicted, "The bill, however effective it may be, will never achieve adequate health and safety for the miner unless the Department of the Interior acquires new perspective and focus concerning the importance of the miner and unless there is strong and vigorous administration by the Department." Williams noted that the bill incorporated measures to address the failing health and safety research program of the Bureau of Mines, the stagnant enforcement agency in the Interior Department.<sup>93</sup>

For Williams, the success of the bill S. 2917 depended on the commitment of the federal government: "The officials and employees of the Interior Department and the Bureau of Mines must reorient their attitudes towards the miner. Business as usual is no

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<sup>92</sup> United States House of Representatives, House Report No. 91-563, "Federal Coal Mine Health and Safety Act," October 13, 1969, *United States Code: Congressional and Administrative News*, Vol. 2, 91st Cong., 1st sess., 1969 (St. Paul, Minnesota: West Publishing Company, 1970), 2506.

<sup>93</sup> United States Senate, *Legislative History of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173) as Amended Through 1974, Including Black Lung Amendments of 1972*, 94th Cong., 1st Sess. (Washington, D.C.: Government Printing Office, 1975), 242. Hereafter, this document will be referred to as Senate, *Legislative History*.

longer acceptable. They must develop the role of the “advocate” for the miner. They must vigorously seek sufficient manpower and funds to do the job.”<sup>94</sup> Williams’ assessment of the federal government’s role emphasized the distance between the Subcommittee and the Nixon Administration, which still favored a restrained and limited role for the Department of the Interior in mine health and safety. More importantly, Williams framed the obligations of the Department of the Interior not just in legal and political terms, but also in moral terms. He stressed the need for the department to protect miners’ welfare, and to direct considerable effort and finance into protecting miners from the hazards of their work. Williams highlighted some of the other key components of the bill, including its elimination of the distinction between ‘gassy’ and ‘non-gassy’ mines. The bill stipulated that all mines, regardless of their classification, were required to install machinery to reduce methane gas. Although gassy mines were more prone to explosions because they contained higher levels of methane, Williams argued that applying the same standards to both categories of mine was the only way to afford equal protection to all coal miners.

Not everyone shared Williams’ perspective. Senator Jacob K. Javits, the author of the Nixon administration’s health and safety bill, opposed eradicating the scientific distinction between the two types of mine. He claimed that non-gassy mines had a much better safety record than gassy mines.<sup>95</sup> To support his argument, Javits presented statistics from Bureau of Mines director John F. O’Leary, which showed that 374 workers had died and 427 had been seriously injured in methane explosions in the

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<sup>94</sup> Ibid., 247.

<sup>95</sup> Ibid., 353-354.

country's 392 gassy mines over the past sixteen years. In contrast, there had only been 27 deaths and 54 injuries in non-gassy mines during the same period.<sup>96</sup> Javits argued that non-gassy operations posed far less risk of pneumoconiosis because, unlike gassy mines owned by large corporations, they typically did not deploy the continuous mining machine, and as a result were far less dusty.<sup>97</sup> He neglected to mention that coal miners had been suffering black lung disease since the late nineteenth century, long before the continuous miner came into widespread use in the 1950s. The Senate rejected his proposal to maintain the distinction between gassy and non-gassy mines.

Before voting on bill S. 2917, the Senate adopted an amendment that provided federal compensation for black lung victims not covered by state workers' compensation. Under the terms of the amendment, single miners would receive \$1,635 per year, while miners with three dependents would receive up to \$3,264 annually. The compensation measure was originally part of a separate bill presented to the Senate by Robert C. Byrd and a number of co-sponsors on behalf of the United Mine Workers. Following the black lung movement's success in West Virginia, the UMW devised the bill to provide benefits for black lung victims in other states who were unable to apply for workers' compensation. Senator Jennings Randolph played a crucial role in convincing the Senate to approve the compensation measure. On October 2, the Senate unanimously passed bill S. 2917 by 73-0, demonstrating that the improvement of miners' working conditions outweighed issues such as the financial cost of the bill's implementation.<sup>98</sup>

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<sup>96</sup> Ibid., 361-363.

<sup>97</sup> Ibid.

<sup>98</sup> *Washington Post*, October 3, 1969, A8; Hume, *Death and the Mines*, 216.

In early October, the House was still engaged in debate over H.R. 1047. As representatives began to negotiate the final terms of the bill, Phillip Burton embarked on an intensive lobbying campaign to gain support for the bill's black lung compensation provision. Both he and Gary Sellers exerted considerable pressure on Labor Subcommittee Chairman John Dent. For two weeks, they spent their evenings in Dent's apartment in the Congressional Hotel, playing poker and eating Italian food, to ensure that he did not attempt to dilute the bill. Burton told Sellers, "This is when the lobbyists come out of the woodwork, and Dent will want to make concessions."<sup>99</sup> When the lobbyists visited the apartment, Burton merely informed them that he and Dent would discuss their proposals.<sup>100</sup> Sellers, worried that Dent was going to submit to the pressure of the lobbyists, proposed enlisting the help of Ken Hechler. He suggested that Hechler should call a press conference and accuse Dent and the Labor Subcommittee of supporting the coal industry. Burton agreed that the conference would erode the lobbyists' influence over Dent, but he cautioned Sellers, "Please don't leave any fingerprints."<sup>101</sup> Unaware he was being manipulated, Hechler appeared at the press conference, where he attacked the committee for 'selling out' the coal miners. The conference, which made national news headlines, worked. Dent was infuriated, as he could no longer accede to the demands of the coal companies.<sup>102</sup>

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<sup>99</sup> Jacobs, *A Rage for Justice*, 190.

<sup>100</sup> Ibid.

<sup>101</sup> Ken Hechler, interview with author, June 15, 2009; Jacobs, *A Rage for Justice*, 190.

<sup>102</sup> Ibid.

To ensure support for the bill, Burton set the compensation rate for black lung victims at fifty percent of the benefits rate paid to GS-2 government employees. Explaining the rationale of this move to Labor Subcommittee Staff Director Bob Vagley, he predicted that no one would vote against compensation for a black lung victim who received only half the benefits of the lowest-paid government worker. He also knew that they would never have to increase the benefits again, as government raises were automatic. Under Burton's compensation scheme, individuals would receive \$136 per month, and miners with wives and three dependent children would receive \$272.<sup>103</sup>

Burton obtained additional support for the bill by courting southern Congressmen. On October 9, the House was scheduled to vote on a bill to limit agricultural subsidies to \$20,000 for a single farming business. Large farming corporations were opposed to the bill, as it would cost them millions of dollars. Because many southern Congressional representatives were dependent on the same corporations to stay in the office, they wanted to see the bill overturned. Burton persuaded several liberal northern Congressmen to vote against the bill, which was defeated by just four votes, 181-177. In the weeks that followed, Burton used the defeat of the agricultural bill to pressure the southern representatives into voting for the coal mine bill. He continually reminded them that he was responsible for overturning the subsidies bill, and now they were obligated to repay him.<sup>104</sup> Burton's political maneuvering was highly effective. On October 29, the House passed the coal mine bill H.R. 1047 with the federal compensation provision intact, by a

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<sup>103</sup> Jacobs, *A Rage for Justice*, 191.

<sup>104</sup> Ken Hechler, interview with author, June 15, 2009; Jacobs, *A Rage for Justice*, 192-193.



majority of 389 to 4. Federal benefits for coal miners were by no means assured, as the provision still had to pass through the joint House-Senate conference committee. The compensation measures in the House bill were stronger than those in the Senate version. In the weeks that followed, the committee deliberated the final terms of the coal mine health and safety legislation.

On December 9, the UMW held its presidential election with Tony Boyle and Jock Yablonski as the candidates. While Yablonski had been successful in gaining the enough local union nominations, he had encountered several other problems in recent months. Despite frequent requests by his attorney Joseph Rauh, the Department of Labor had refused to investigate the UMW for evidence of corruption and illegal practices against Yablonski and Brown. The Department also refused to monitor the polling stations on the day of the election. It stated it would not consider investigating the UMW leadership until after the election.<sup>105</sup> Yablonski had further damaged his own credibility by failing to campaign in the first three weeks of August.<sup>106</sup>

When voting commenced, Boyle's staff used violence or intimidation to prevent Yablonski's supporters from entering the polling station at a number of locations. In other places, the UMW leadership changed the location of the polling station at the last minute. Ralph Nader employed a number of his "raiders" to ensure the UMW followed fair voting practices, but they had little overall impact. They were too small in number to monitor all the polling stations and mostly were unable to stop the intimidation or

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<sup>105</sup> For a complete discussion of the obstacles faced by Yablonski during his campaign, see Hume, *Death and the Mines*, chapters 9 and 10.

<sup>106</sup> *Ibid.*, 200-201.

manipulation of Yablonski's supporters. Boyle won the election by a margin of almost two to one, gaining 74,335 votes to Yablonski's 40,847. Following his victory, Boyle stated, "We regard this victory as the miners answer to those outside forces seeking to substitute their judgment and values for those of the men who have risked life and limb to dig the nation's coal."<sup>107</sup> Yablonski accused Boyle of stealing votes by violating the Landrum Griffin Act, otherwise known as the Labor Management Reporting and Disclosure Act, a 1959 law designed to prevent internal corruption in labor unions.<sup>108</sup> The Department of Labor still refused to carry out an investigation. The significant margin of Boyle's victory, combined with the union's illegal practices on election day, emphasized the corruption within the UMW. The re-election of Boyle to the national leadership prevented the union from adopting democratic practices, such as the election of district leaders, and stifled the reform of its health and safety policies.

### **The Federal Coal Mine Health and Safety Act of 1969**

By late November, the conference committee had consolidated the House and Senate bills into a single coal mine health and safety act.<sup>109</sup> The final legislation retained the strong health and safety measures from the individual bills in the House and Senate. It prohibited underground smoking, mandated strict guidelines on roof supports, and instructed operators to install 'permissible' equipment and machinery. Small operators were given a deadline of five years to install the equipment, in contrast to the four years

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<sup>107</sup> *United Mine Workers Journal*, December 15, 1969, 3.

<sup>108</sup> *Washington Post*, December 11, 1969, A4

<sup>109</sup> For the full act as written, see *Federal Coal Mine Health and Safety Act of 1969, U.S. Statutes at Large* 83 (1970): 743-805.

accorded to large corporations. The bill also set an immediate mandatory dust standard of three milligrams per cubic meter of air, with a further reduction of one milligram within three years. The Bureau of Mines, the mine safety agency in the Department of the Interior, was responsible for enforcing the legislation by conducting inspections of all underground coal mines and imposing financial penalties on operators who violated the law. Where conditions posed an immediate threat to miners' safety, the Bureau was required to shut down the mine. The law, however, did not incorporate Ken Hechler's recommendation of assigning safety enforcement to the Department of Labor.

The final bill retained the federal compensation program for miners totally disabled by pneumoconiosis and widows of miners who had died from the disease. The Social Security Administration (SSA), a branch of the Department of Health, Education, and Welfare, was to process all benefit claims filed before December 31, 1972. It was responsible for conducting medical examinations to determine which miners qualified for benefits, and for administering benefits of \$272 per month to those who were eligible.<sup>110</sup> The Federal Mine Act defined pneumoconiosis as "a chronic dust disease of the lung arising out of employment in an underground coal mine."<sup>111</sup> The key diagnostic test for detecting total pneumoconiosis was the X-ray exam. If a miner's X-ray was positive, additional medical testing was required. The Department of Health, Education and Welfare was responsible for conducting research into dust abatement and other measures to prevent black lung disease. Furthermore, it was required to conduct studies into the

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<sup>110</sup> Ibid., 792-793.

<sup>111</sup> Ibid., 793.

prevalence of black lung disease in the coal industry by subjecting miners to regular compulsory X-ray exams.<sup>112</sup>

On December 17, the House of Representatives assembled to vote on the bill. A small faction of Republicans who were opposed to the bill's liberal terms tried to redirect it back to the conference committee. Representative John Erlenborn (R-IL) claimed the bill would provide compensation to miners with diseases other than pneumoconiosis. He argued that the conference committee version made 'simple' pneumoconiosis a compensable disease, while the individual bills passed by the House and the Senate only provided compensation to the victims of complicated pneumoconiosis. His assessment was completely inaccurate and designed solely to diminish congressional support for the bill. The language of the bill stated clearly that only miners who were completely disabled by pneumoconiosis should receive compensation.<sup>113</sup> A number of Democratic Representatives strongly contested Erlenborn's claims. Carl D. Perkins argued that the conference report was far more precise in its instructions and guidelines than the original Senate version. Similarly, Representative James O'Hara (D-MI) asserted that the conference committee report had not gone beyond the Senate bill in its health and safety measures.<sup>114</sup> John Dent emphasized that the federal compensation program provided an income for black lung victims who were unable to work.<sup>115</sup>

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<sup>112</sup> Derickson, *Black Lung*, 181.

<sup>113</sup> *New York Times*, December 18, 1969, 1; *Congressional Record*, 91st Cong., 2d sess., 1969, pt. 29: 39704.

<sup>114</sup> *Ibid.*, 39705.

<sup>115</sup> *Ibid.*, 39706.

The bill was opposed not only by a minority within the Republican Party, but also by the Nixon administration. The same day, the administration stated it would veto the legislation if it passed through the House and Senate. The president publicly claimed he objected to the bill in both “substantive and fiscal” terms, but he mainly opposed it because he was unwilling to finance the cost of the pneumoconiosis compensation program, which his aides estimated would cost \$385 million per year. The administration had delayed making its opposition known, despite having had access to a copy of the legislative bill for almost a month.<sup>116</sup>

In contrast, Ken Hechler, who was responsible for most of the bill’s key preventative health and safety measures, highlighted his satisfaction with the new bill. He commented, “Mr. Speaker, this is a magnificent piece of legislation. It is strong and effective in its terms. It is a tribute to the initiative and hard work of Congress.” Referring to the conservative mine health and safety bill drafted by the Nixon administration, Hechler said, “Had the Congress followed the advice of the executive branch, this would have been a milk and water piece of legislation instead of a brick and mortar piece of legislation. Had the Congress followed the advice of the executive branch, there would have been little protection for the health and safety of the coal mines of this Nation.”<sup>117</sup>

Hechler warned the Nixon administration not to veto the legislative bill. He commented, “Every action taken by the White House during the consideration of this legislation was in the form of trying to weaken, delay or eliminate provision for the protection of coal miners. Now it ill behooves the President and a member of the

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<sup>116</sup> *New York Times*, December 18, 1969, 28.

<sup>117</sup> *Congressional Record*, 91st Cong., 2d sess., 1969, pt. 29: 39718-39719.

President's Cabinet to send a message here at the last minute in an effort to stall or kill this legislation."<sup>118</sup> Hechler acknowledged the impact of the Farmington disaster in the creation of the new legislation. "The major drive for this legislation began immediately after the tragic fire and explosions at Consol No. 9 Mine in Farmington, W. Va. resulting in the deaths of 78 miners on November 20, 1968. Passage of this legislation is a fitting monument to the memory of the 78 miners who lost their lives at Farmington. Their widows have waited 12 months since Farmington for the passage of this legislation."<sup>119</sup>

The House voted by a clear majority of 258 to 83 to pass the bill. The following day, December 18, the Senate approved the bill by majority voice vote. President Nixon's opposition to the federal black lung program, however, meant the enactment of the legislation was still in doubt. On December 29, 1,2000 miners went on strike in West Virginia in response to Nixon's plan to veto the bill. Nixon, worried that the strike would spread through the coalfields and jeopardize coal-fuelled energy for New Year week, decided to sign the bill. His announcement that he would sign the bill coincided with the arrival of seven Farmington widows in Washington D.C. The widows had been flown there at the personal expense of Ken Hechler to press Nixon to enact the legislation.<sup>120</sup> Speaking before television cameras, one of the widows, Mrs. Kaznoski, said, "This is a wonderful day for all miners." The widows were taken on a tour of the White House, although they did not meet the president.<sup>121</sup>

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<sup>118</sup> Ibid., 39719.

<sup>119</sup> Ibid.

<sup>120</sup> *New York Times*, December 30, 1969, 1 and 12.

<sup>121</sup> *New York Times*, December 30, 1969, 12; Derickson, *Black Lung*, ix.

On December 30, Nixon signed the Federal Coal Mine Health and Safety Act of 1969 into law, describing it as “an historic advance in industrial practices.” Reiterating his opposition to the compensation provision, Nixon stressed that the bill was not a precedent for federal compensation programs in other industries. He also emphasized that the federal compensation program for miners was only a temporary measure, until the states assumed control of the program in 1973.<sup>122</sup> The passage of the Federal Coal Mine Act followed almost a year of heated legislative debate. It introduced long overdue health and safety reforms for the coal industry, designed to improve the working conditions of the nation’s miners and provide compensation to those suffering from pneumoconiosis. The Act was set to become effective on March 30, 1969, giving the U.S. Bureau of Mines just three months to draft the technical standards required for operators to implement the act.

## **Conclusion**

The passage of the 1969 Federal Coal Mine Health and Safety Act emphasized the importance of coal mining to the American economy at the end of the 1960s. President Nixon signed the legislative bill to avoid a potential nationwide strike and, consequently, the disruption of the nation’s coal production. Although Nixon was not unfavorable to coal mine health and safety reform, having introduced the Javits bill in March of that year, he was strongly opposed to a federal compensation program for miners, which he felt was both too costly and an infringement of states’ rights. His passage of the bill therefore reflects the substantial political and economic power the

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<sup>122</sup> Ibid.

nation's coal miners had gained during 1969.

In a broader sense, though, the bill emphasized that the United States federal government had finally recognized the occupational hazards faced by the nation's coal miners. The Federal Coal Mine Act symbolized greater awareness of the human costs of industrial production. This awareness was driven in large part by the efforts of dedicated Congressional representatives such as Ken Hechler and Phil Burton, and was also sustained by activists such as Ralph Nader, UMW insurgent Jock Yablonski, and the three renegade doctors in the Committee of Physicians. Despite heated conflict in both the House and Senate over the new coal mine legislation, their efforts were critical in the passage of the final bill.

Yet, the re-election of Tony Boyle to the presidency of the United Mine Workers suggested there were clear limits to the reform of miners' conditions. As Joseph Yablonski and Elmer Brown continued to press the Department of Labor for an investigation of the election, Boyle's record on health and safety cast doubt on the union's commitment to the new legislation. At the end of 1969, there was, therefore, a clear split in the UMW. Despite this tension, coal miners still faced a brighter future and the prospect of a safer, more healthful working environment.



## Chapter Four

### **A Turbulent Year:**

#### **Grassroots Protest and the Failure of Federal Health and Safety Enforcement in 1970**

##### **Introduction**

On January 5, 1970, Kenneth Yablonski, the son of United Mine Workers presidential candidate Joseph A. Yablonski, went to his parents' home in Clarksville, Pennsylvania, after being unable to contact them by telephone. On entering the house, he found his father, his mother Rita Wasicek, and his sister Charlotte shot dead. The state police quickly determined that they had been murdered. They concluded that more than one perpetrator was involved. Charlotte and Margaret had been killed as they slept, while Joseph Yablonski's body was sprawled on the floor of the spare bedroom. He had been sleeping there to avoid disturbing his wife with his loud snoring. Detective Munz speculated that he had awoken and made "an instinctive grab" for a rifle in the far corner of the room. Based on the contents of the mailbox outside, the police determined that the family was killed on New Year's Eve. The phone wires to the house had been cut, while the tires of the cars in the driveway had been slashed.

Joseph "Chip" Yablonski, the other surviving son, immediately charged the United Mine Workers with his father's death. He told reporters. "You guys just didn't believe how rotten this union was." Tony Boyle denied that the union was involved in the murders. In a public statement, he said, "I do not know at this time what caused the deaths of Brother Yablonski, his wife, and his daughter, but whatever the cause, the violent deaths of three members of the Yablonski family can only be called a tragedy."

Boyle offered to give his full cooperation to the authorities' investigation of the murders. At the request of the surviving Yablonski family members, the Federal Bureau of Investigation (FBI) became involved in the investigation.<sup>1</sup>

On hearing the news of his death, West Virginia politicians paid tribute to Yablonski. Secretary of State John D. Rockefeller IV said, "I was very strongly moved by his intensity and commitment to making the life of the coal miner better. And if the life of the coal miner does get better – and I think it will – Jock Yablonski deserves a lot of the credit." Ken Hechler commented, "He was not afraid of threats or beatings. Coal miners throughout the nation owe Joseph Yablonski a lasting debt for speaking out for the rights of the rank and file coal miner."<sup>2</sup> Ralph Nader, although shocked by the news, felt the murders typified the violence and harsh realities of Appalachian coal country.<sup>3</sup>

While the national media was reluctant to make direct accusations about who was responsible for Yablonski's death, it hinted strongly at union involvement. The editorial staff at the *New York Times* had its suspicions that the United Mine Workers was involved in the murders. Without substantial evidence, the newspaper refrained from saying as much explicitly. It stated, "Violence is part of the tradition of mine unionism, and it was no secret to Joseph Yablonski, a man as rugged as coal, that death might be the price of his challenge to the leadership of the United Mine Workers." The *New York Times* was referring indirectly to another incident that almost cost Yablonski his life. As

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<sup>1</sup> Joe McGinniss, "A Bitter Struggle for Life in the Mines Slides into Savagery," *Life*, January 23, 1970, 37; *New York Times*, January 6, 1970, 1 and 20; Trevor Armbrister, *Act of Vengeance: The Yablonski Murders and Their Solution* (New York: Saturday Review Press / E. P. Dutton and Company, Inc., 1975), 176-180.

<sup>2</sup> *New York Times*, January 6, 1970, 1 and 20; *Washington Post*, January 6, 1970, A4.

<sup>3</sup> Ralph Nader, telephone interview by author, tape recording, May 1, 2009.

illustrated in chapter two, he narrowly avoided death in June 1969 when someone gave him a karate chop to the back of his neck during a campaign meeting. The editorial further stated:

There is, of course, no evidence to support the assertion of Pennsylvania state police that his murder and that of his wife and daughter represented “an act of vengeance.” Much less can anyone know whether Yablonski’s distraught sons are right in charging that the deaths were the work of “professional assassins.” The union has condemned the killings and plans to post a large reward to help bring the murderers to justice.<sup>4</sup>

The newspaper refused to support claims by the Pennsylvania state police that UMW representatives had murdered Yablonski for contesting Tony Boyle’s leadership in the recent presidential election. It also refused to endorse accusations made by Kenneth and Joseph “Chip” Yablonski that the UMW had hired professional assassins to kill their father, their mother, and their sister. Furthermore, it evaded making direct accusations by highlighting the union’s condemnation of the murders and its promise of a reward for the arrest of the killers. Yet the *New York Times* hinted shrewdly at union involvement in the murders by commenting, “But the public will be glad that Attorney General Mitchell has assigned the F.B.I. to the probe. Even the shadow of terror must be removed from union affairs, and that cannot be done until every fact in this monstrous tragedy has been brought to light...”<sup>5</sup>

The January 7 editorial in the *Washington Post* adopted a similar approach. It stated, “Seeking the presidency of the union, [Yablonski] spoke out, as Rep. Ken Hechler put it, for the rights of the rank-and-file coal miner. Apparently that challenge cost him, as he feared it might, his life – and the lives of his wife and daughter.” Like the *New York*

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<sup>4</sup> *New York Times*, Editorial, January 7, 1970, 42.

<sup>5</sup> Ibid.

*Times*, the *Washington Post* noted that Yablonski had perceived death as a possible cost of his election campaign. The *Post* also did not blame the UMW explicitly for the murders, stating, “To say this is by no means to say, or even to suggest, that the union leadership he attacked had anything to do with the assassination of the Yablonski family. The killings may have been the work of chance, sadistic intruders.” It went further than the *New York Times*, however, by implying that miners opposed to Jock Yablonski’s election campaign may have carried out the killings. It also acknowledged claims by Kenneth and Chip Yablonski that vengeance was a motivating factor in the murders:

More probably, however, they were in some way, direct or indirect, a consequence of the bitterness of the union election campaign and of Mr. Yablonski’s exposed position on the front lines, and may well have been perpetrated by fanatical individual partisans. Robbery seems not to have been a motive. Revenge might have been...<sup>6</sup>

The editorials in the *New York Times* and the *Washington Post* implied that the union was characterized by intimidation and violence and unwilling to engage in open dialogue or follow democratic principles. As the *New York Times* noted, this was not a new development, but rather part of a long history of violence and corruption within the UMW. The editorials also encapsulated the hostility and resentment that defined the union’s presidential election in 1969. While the *New York Times* and *Washington Post* refrained from naming a suspect to avoid libel charges, their editorials also reflected an element of fear, that if the union was responsible for Yablonski’s death, then no one was safe. The murders made Yablonski’s close associates particularly apprehensive. In a handwritten letter to Ken Hechler on the day the murders were reported, Jesse Stuart, an author from Kentucky, warned:

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<sup>6</sup> *Washington Post*, January 7, 1970, A14.

Whatever you do be careful with your own life. I think you are in danger. Once I was warned – didn't heed the warning and almost got killed. You were with Yablonski – and I think both of you honest men are definitely right – now he, his wife, and daughter are dead. I'll say you are a marked man in this situation because you stand for law, order, and right. You cannot stand any other way. Do be careful. I think you should have protection when you return to West Virginia.<sup>7</sup>

Stuart believed that opponents of political and legislative reform had killed Jock Yablonski. He was concerned that the killers would target Hechler because of his support for Yablonski and his pivotal role in the Federal Coal Mine Health and Safety Act.

The union was not the only source of danger in the coalfields. The coal operators had long engaged in violence and intimidation to control their workforce and prevent dissent from company policy.

The death of Joseph Yablonski, the only person who had been able to mount substantial opposition to Boyle's leadership, effectively meant that the majority of rank and file miners were without a representative voice in the union. With the 1969 Federal Mine Act, the Nixon Administration had shown its commitment to afford coal miners greater protection, but the one institution that was supposed to fight for safe working conditions, the United Mine Workers, was still more concerned about the coal operators than its members. Angered by Yablonski's murder and the lack of democracy within the union, thousands of miners across Appalachia took matters into their own hands by declaring a wildcat strike. On January 6, around 7,000 miners in Ohio, Pennsylvania, and northern West Virginia walked off the job. By the following day, the strike had escalated

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<sup>7</sup> Letter from Jesse Stuart to Ken Hechler, January 5, 1970, from the personal papers of Ken Hechler.

to 20,000 miners. The strike paralyzed production at a number of mines, threatening to jeopardize coal supplies to electrical power plants.<sup>8</sup>

At a rally in Monongah, West Virginia, 150 striking miners vowed not to return to work until Boyle and other UMW leaders had taken lie detector tests about the murders. Captain Joseph C. Snyder of the Pennsylvania state police said such tests would only be effective if the evidence pointed towards a particular suspect. He revealed that the police had not yet uncovered any clues about the perpetrators. Ken Hechler added weight to Snyder's comments, stating that "[he was] convinced that the top leaders of the U.M.W did not direct the brutal murders." Hechler contended that a low-ranking union official might have carried out the murders to cover up illegal activities during the union election campaign. Despite the assurances of Hechler and Snyder, by January 10, the day of the Yablonski family funeral in Pennsylvania, thousands of miners remained on strike.<sup>9</sup>

Two weeks later, police arrested three men on suspicion of the murders. Two of them, Paul Gilly and Aubran Martin, were later convicted and sentenced to death, while the third, Claude Vealey, received a life sentence after agreeing to testify against his fellow accomplices. Gilly's wife also received a life sentence for her role in the murders. Police continued to investigate, and by 1973, they had uncovered evidence directly implicating Tony Boyle in the murders. The UMW president had provided union funds to Albert Pass, a member of the executive council, to hire assassins to kill Yablonski. Both Boyle and Pass, along with a third union representative, Silous Huddleston, received life sentences for their role in the murders. Boyle had ordered the murder of Yablonski

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<sup>8</sup> *New York Times*, January 8, 1970, 17.

<sup>9</sup> *Ibid.*

because of his campaign pledge to remove voting rights from retired miners, which were the main source of Boyle's power.<sup>10</sup>

Although the Yablonski murders created an atmosphere of fear and apprehension in the Appalachian coalfields, the subsequent wildcat strike foreshadowed the grassroots protest that spread across the coalfields in 1970. The most visible manifestation of this protest was the small group of miners and labor activists who formed the Miners for Democracy (MFD), an organization that sought to bring democracy to the UMW and to reform its approach to health and safety issues. The rank and file, along with disabled and retired miners and the widows of black lung victims, also engaged in protest. Most notably, they challenged the failure of the new Federal Coal Mine Act. They were particularly aggrieved at its black lung compensation program, which was denying benefits to many pneumoconiosis victims. They also criticized its preventative health and safety measures. Throughout 1970, the federal government's enforcement of the 1969 Federal Coal Mine Health and Safety Act was woefully inadequate. The Bureau of Mines, the agency in the Department of the Interior charged with enforcing the legislation, was under-staffed, under-funded, and encumbered by bureaucratic red-tape. As a result, it was unable to fulfill its role as an enforcement agency. It continued to lean more towards production and the interests of the coal operators than safety enforcement. President Nixon also showed a lack of sincere commitment to health and safety, particularly in his policy decisions regarding the Bureau of Mines.

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<sup>10</sup> For a full account of the investigation and legal trials pertaining to the Yablonski killings, see Armbrister, *Act of Vengeance*; Paul Clark, *The Miners' Fight for Democracy: Arnold Miller and the Reform of the United Mine Workers* (Ithaca, New York: Cornell University Press, 1981); "The Yablonski Contract, *Time*, May 15, 1972, 23.

Crucially, miners built on the experience of the activists in West Virginia in early 1969, empowering themselves to press for more equitable distribution of black lung benefits and better enforcement of the 1969 Mine Act. Throughout 1970, a conscious and determined activism swept the Appalachian coalfields, as miners and their communities campaigned for improved working conditions.

### **The Bureau of Mines and the Problems of Enforcement**

In the early months of 1970, the Nixon Administration had already cast doubt on its commitment to reform coal mine working conditions. Before the Federal Coal Mine Health and Safety Act went into force on March 30, 1970, the Bureau of Mines had to clarify a number of issues, including the standards for coal mine dust levels and the specifications for underground roof support systems. The Bureau's work on the new standards, however, was hindered by President Nixon's decision in January to fire director John F. O'Leary. Nixon had attempted to dismiss O'Leary the previous year, but reversed his decision to gain support for his domestic defense program. When Nixon dismissed O'Leary in 1970, he used a letter of resignation O'Leary had submitted in early 1969 as the basis of his dismissal. The letter did not reflect O'Leary's desire to leave his position. O'Leary, a Democrat, had become head of the Bureau in September 1968 while the Johnson Administration was still in power. When Nixon became president, every member of the outgoing Johnson administration was required to submit a resignation letter as a matter of course. Nixon retained O'Leary because of the intense public focus on mine health and safety generated by the Farmington disaster.<sup>11</sup>

The rationale behind Nixon's decision to fire O'Leary went beyond a simple letter

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<sup>11</sup> *New York Times*, March 1, 1970, 67.



of resignation. The president was reacting to pressure from the coal operators, who disliked O’Leary’s strong measures to enforce health and safety in the coal industry. O’Leary later claimed he was dismissed because he was pushing for a tough interpretation of the new legislation. Referring to the coal operators, he said, “I think they felt it was not in their best interest to have me administering the Act once it went into effect. You know, the mining industry doesn’t like to be regulated.”<sup>12</sup> He also sensed that “the Nixon Administration would rather have someone administering a program who was accepted by the people against whom that program was directed.”<sup>13</sup> Several Democratic representatives argued that Nixon was acquiescing to pressure from the coal industry by removing O’Leary from the Bureau. Ken Hechler contended that the industry was determined to dilute the 1969 Federal Mine Act. The president gave credence to such arguments by neglecting to appoint another director after O’Leary had served out his notice in March. In fact, the debate over who should succeed him dragged on for almost six months. In the interim period, Secretary of the Interior Walter Hickel managed the Bureau.<sup>14</sup>

Other problems in the Bureau of Mines did not bode well for its role as a safety enforcement agency. On passing the Federal Mine Act, Congress advised the Bureau to publish the specific coal mine safety regulations by February 28, 1970. The Bureau had

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<sup>12</sup> Transcript of ABC “News Close-up: West Virginia -- Life, Liberty and the Pursuit of Coal,” ABC Television Network, Thursday, October 18, 1973, from the personal papers of Ken Hechler, with the quote appearing on pages 1172 to 1173; *New York Times*, March 1, 1960, 67

<sup>13</sup> *Ibid.*

<sup>14</sup> *New York Times*, March 5, 1970, 22.

not published the regulations by that date. Officials attributed the missed deadline to the complexity of the legislation and the narrow deadline set by Congress to prepare it. Frustrated by the Bureau's inaction, one coal miner and three Democratic Representatives filed a lawsuit to compel the Nixon administration to publish the legislation immediately, but without success. The Bureau eventually published the regulations on March 28, just two days before the new legislation was scheduled to go into effect.<sup>15</sup>

The law went into effect at the end of March as scheduled. In the first ten days, Bureau inspectors issued 1,830 penalty notices and shut down ten mines. Mine operators did not hesitate to raise their grievances against the Bureau's zealous approach. Many argued that the severe terms of the act might jeopardize the provision of coal-fuelled electrical services. The owners of small mining operations complained to federal officials that the substantial financial costs of adhering to the new legislation would drive them out of business, a claim that was not unfounded. In the same ten-day period, 272 mines voluntarily closed because they could not adhere to the new law. According to some industry representatives, however, the operators deliberately shut down their operations to protest the Federal Mine Act. Across the Appalachian coalfields, operators pressured the Bureau of Mines to modify the regulations. At the American Mining Congress convention in Ohio in May, Jesse F. Core, the vice-president of the U.S. Steel Corporation, said the federal law "was conceived in an emotionally charged atmosphere and must be sent back to Congress for reconsideration." In Virginia, a group of small

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<sup>15</sup> *New York Times*, March 23, 1970, 15; *New York Times*, March 24, 1970, 18; *Wall Street Journal*, June 25, 1970, 1 and 23.

operators obtained an injunction against the Bureau, which prevented it from issuing harsh penalties or sanctions.<sup>16</sup>

Yet, the Bureau was not as tough and unrelenting as the mine operators and their supporters in Congress made out. Hollis M. Dole, Assistant Interior Secretary for Mineral Resources, argued that coal industry was exaggerating the impact of the new law. The enormous scope of the Bureau's task meant that it struggled to enforce the law. On April 4, Secretary of the Interior Walter Hickel announced that the Bureau would be unable to enforce the Federal Mine Act to its full extent for several months, as it did not have enough inspectors. He admitted that the Bureau had just 220 inspectors for 2,832 coal mines. Until the Bureau had acquired enough staff, it would inspect coal mines "on a partial but representative basis." During its inspections between April 19 and 25, the Bureau found more than 1,000 violations of the law across 108 mines, but the shortage of inspectors meant it was unable to impose sanctions on those mines or set deadlines for modification of the violations. Because the inspectors were stretched so thinly across a large area, they would not be able to follow up on the violation notices.<sup>17</sup>

Even in light of the Bureau's ineffectiveness, the mine owners found support for their grievances in Congress. On April 22 1970, Democrat John H. Dent condemned the Bureau of Mines for not allowing flexibility in its enforcement of the new law. Other representatives in the House echoed Dent's comments, accusing Interior Secretary Walter Hickel of not exercising enough discretion in his enforcement policies. Their objection

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<sup>16</sup> "Will Tough Laws Stifle Coal Mining?," *Business Week*, May 16, 1970, 31; *New York Times*, April 12, 1970, 39.

<sup>17</sup> "Will Tough Laws Stifle Coal Mining?," *Business Week*, May 16, 1970, 31; *New York Times*, April 5, 1970, 36.

was not that the law was too harsh on mine owners, but rather that federal mine officials' stringent enforcement policies had given mine owners the incentive to fight it. Moreover, they held the view that there was not enough distinction between different violations of the legislation. Operators who did not maintain a bulletin board faced fines as severe as those who were found responsible for endangering human life.<sup>18</sup>

In its first month, the Federal Coal Mine Act had little impact on injuries and fatalities in the coal industry. The Bureau of Mines came under further scrutiny in early May, when the Nixon Administration officially nominated 41-year old J. Richard Lucas to be its new director. Lucas was head of the mining engineering department at Virginia Polytechnic Institute, where he had headed a number of studies for the coal industry and the Bureau. As an undergraduate, he had spent time working in an underground coal mine in Pennsylvania. His nomination resulted in large part from the influence of Virginia Governor Linwood Holton, who was acting on behalf of a coalition of operators who opposed the 1969 mining law. The operators hoped that Lucas's background in the coal industry meant he would protect their interests.<sup>19</sup>

Representative Ken Hechler and Senator Harrison William led the attack against Lucas, arguing that he did not have the correct qualifications for the position. Representative John P. Saylor (R-PA) also criticized the administration's choice. In a letter to Nixon, Saylor charged that Lucas was "totally unqualified" for the position and that his lack of experience was "a roadblock" to the effective functioning of the Bureau.

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<sup>18</sup> *New York Times*, April 23, 1970, 7.

<sup>19</sup> *Chicago Tribune*, May 7, 1970, B7; *New York Times*, May 1, 1970, 15; *Wall Street Journal*, May 7, 1970, 18; Brit Hume, *Death and the Mines: Murder and Rebellion in the United Mine Workers* (New York: Grossman, 1971), 253.

The biggest threat to Lucas's candidacy, however, was not political rhetoric, but a series of damaging articles in the national press. According to reports, the Johnson Administration had rejected Lucas for the same position in 1965, in response to a Federal Bureau of Investigation report that alleged he plagiarized his doctoral thesis. During its routine screening of Lucas, the F.B.I. had interviewed several professors at Columbia, some of whom charged that he had copied sections of his thesis. Lucas's doctoral research challenged the popular conception that nuclear power was set to become the main source of energy in the United States to the detriment of coal. Although a more extensive F.B.I. investigation showed the allegations were unfounded, Lucas was still forced to deny them at a hearing before the Senate Committee on Interior and Insular Affairs on May 27. The allegations tainted Lucas's public profile and jeopardized his appointment as Bureau director.<sup>20</sup>

The pressure on Lucas continued to escalate. Writing to Senator Henry M. Jackson, chairman of the Senate Committee, Ken Hechler stated that the new Bureau director "must be a man with a thorough knowledge of the law, a capacity for leadership, a man who places the highest priority on the health and safety of the miners. Dr. Lucas has failed to demonstrate that he possesses the qualities enumerated."<sup>21</sup> Pressure from Hechler and other members of Congress caused Jackson's committee to twice delay its vote on Lucas's appointment. By July 7, Hechler was predicting that Lucas would either reject the position or be turned down by the Senate Committee. Four days later, on July

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<sup>20</sup> *New York Times*, May 17, 1970, 88; *Washington Post*, May 25, 1970, B13; Hume, *Death and the Mines*, 253.

<sup>21</sup> Letter from Ken Hechler to Henry M. Jackson, dated May 28, 1970, from the personal papers of Ken Hechler.

11, Lucas asked President Nixon to withdraw his nomination as Bureau director. In his letter to Nixon, Lucas attributed his decision to personal reasons, including “financial hardship.” Thus, four months after O’Leary’s departure, the Bureau was still without a director.<sup>22</sup>

The controversy over Lucas’s appointment emphasized the Nixon administration’s attitude to coal mine health and safety. Clearly, Nixon did not see rigorous enforcement of the Federal Mine Act as a priority. Many of his administration’s decisions in the past six months had been indicative of a desire to weaken the effectiveness of the act. The influence of Governor Holton and the Virginia operators’ coalition in the nomination of Lucas demonstrated that Nixon placed the interests of coal companies ahead of the miners who extracted the coal from the ground. In a broader sense, though, Nixon’s actions reflected the larger political climate of the early 1970s. The liberalism that had prevailed just a few years earlier had collapsed, and the United States was leaning towards a more conservative order.

### **The Fight Continues: The Revival of Coalfield Activism**

The ineptitude of the Bureau of Mines and Nixon’s questionable attitude to reform were not the only problems hindering health and safety enforcement in the early months of 1970. Joseph Yablonski’s supporters also were faced with the problem of how to deal with a corrupt and potentially dangerous union leadership. The funeral of the late union activist and his wife and daughter in early January provided the vehicle for continued rank and file activism against the Boyle regime. At a meeting in a local church

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<sup>22</sup> Ken Hechler, interview by author, tape recording, June 15, 2009, Cultural Center, Charleston, West Virginia; *New York Times*, June 7, 1970, 35.

hall after the funeral, a small group of activists decided to continue their fight against the union leadership. Elmer Brown, the vice-presidential candidate on the Yablonski ticket, reluctantly agreed to participate. After the murders had been perpetrated, but before they had been discovered, he had received a death threat by telephone. Married with eleven children, Brown feared for the safety of himself and his family. J. Davitt McAteer, a young law student who was studying coal mine health and safety in West Virginia for Ralph Nader, was also present. So too were Chip and Kenneth Yablonski and Harry Patrick, a union activist who had supported Yablonski's campaign.<sup>23</sup>

At first, they struggled to attract supporters. The majority of coal miners lived in fear that they and their families would be the next targets of the same people who had killed the Yablonski family. One black lung activist later commented, "Everything kind of went underground. Everybody started carrying guns, getting floodlights for their yards, running around with big dogs, that kind of thing. It was a very scary time."<sup>24</sup>

Those willing to protest openly renewed their appeal to the Department of Labor to investigate the irregularities in the union election. In a letter to Secretary of Labor George Shultz, written on behalf of the Yablonski family, lawyer Joseph Rauh argued the Department of Labor had contributed to Joseph Yablonski's murder by failing to investigate the election. Rauh demanded an immediate probe of the union leadership, particularly its tactics during the election campaign. Elmer Brown took a more direct

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<sup>23</sup> J. Davitt McAteer, telephone interview by author, tape recording, May 11, 2009; McGinniss, "A bitter struggle for life in the mines slides into savagery," 37.

<sup>24</sup> Barbara Smith, *Digging Our Own Graves: Coal Miners and the Struggle Over Black Lung Disease* (Philadelphia: Temple University Press, 1987), 156. The quote is taken from Smith's interview with a former black lung activist.

approach, writing to Shultz and John Mitchell of the Justice Department to request his immediate appointment as union president. Brown believed that an investigation of the election and Yablonski's murder would show "that a new election is not necessary, but rather that I should be appointed President."<sup>25</sup> Brown reaffirmed this belief in a letter to the UMW International Tellers, the officials appointed to count the election votes. He argued that the substantial evidence of irregularities on election day should bar Boyle from continuing as president. Brown charged that Boyle had misused union funds to buy votes, used violence and intimidation against Yablonski's supporters, and unlawfully instructed retired miners to vote.<sup>26</sup>

While Rauh and Brown's letters touched on internal union politics, they also indicated the activists' growing hostility towards Tony Boyle. The activists aimed not just to challenge Boyle's leadership, but also to reform the United Mine Workers of America. Their campaign ultimately sought to reshape the union so it was more responsive to rank and file concerns. Rauh and Brown attacked seven years of corruption under Boyle and declining safety standards in the mines. They still believed, however, that the union was an effective vehicle for reform; it was the leadership itself they were attacking.

The activists soon abandoned their initially cautious approach. In April 1970, they formed a new organization, Miners for Democracy (MFD). During the meeting, Mike

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<sup>25</sup> Letter from H. Elmer Brown to George Shultz and John Mitchell, March 4, 1970, Folder 10, Box 23, Miners for Democracy Collection, Walter P. Reuther Library of Labor and Urban Affairs, Wayne State University, Detroit. Hereafter, this collection will be referred to as Miners For Democracy Collection, Reuther Library.

<sup>26</sup> Letter from H. Elmer Brown to UMW International Tellers, March 4, 1970. Folder 10, Box 23, Miners For Democracy Collection, Reuther Library.



Trbovich was elected as leader of the organization. MFD saw itself as a viable alternative to the UMW leadership. It pursued a number of tactics, such as putting forward candidates for district elections, assessing occupational health legislation before Congress, and actively seeking to overturn the 1969 election result. In early summer, the activism in the coalfields started to escalate. The Miners for Democracy was by no means the only organization involved. Several groups pushed for different, although not incompatible, objectives. The Association of Disabled Miners and Widows played an instrumental role in campaigning for black lung benefits for widows and retired miners. A group called Designs for Rural Action also played a prominent role, by narrowing its original focus on poverty and community work to black lung activism. Robert Payne, a militant black miner, formed the Disabled Miners and Widows of South West Virginia (DMW/SWV), a more radical organization than the Association of Disabled Miners. The DMW/SWV was at the forefront of the protest movement that swept Appalachia in late June and July.<sup>27</sup>

On June 9, Payne wrote to Boyle to request a meeting about the union's Welfare and Retirement Fund. The DMW/SWV opposed the union's practice of seizing disabled miners' hospital cards after one year of care and not returning them until the miners had reached the age of sixty-five. The union also refused to provide hospital cards to miners' widows. The DMW/SWV also sought to improve the pension coverage provided by the Welfare and Retirement Fund, especially given the lucrative pension plan Boyle had established for himself, his family, and his colleagues. Boyle was set to retire with his full annual salary of \$60,000, while most retired miners were scheduled to receive only \$125

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<sup>27</sup> J. Davitt McAteer, telephone interview by author, May 11, 2009; *New York Times*, June 26, 1970, 26; Clark, *The Miners' Fight for Democracy*, 49.

per month from the Welfare and Retirement Fund. Payne warned Boyle that, if he did not respond to his letter by June 20, miners in the Appalachian coalfields would go on strike.<sup>28</sup>

When Boyle did not reply, miners in southern West Virginia walked off the job at midnight on Sunday, June 21. Led by Payne and the DMW/SWV, picket lines were established by men, women, and children, including several disabled miners in wheelchairs. The picketers bore placards with slogans such as, “We Want Justice” and “Return Welfare Cards and Pensions.” Children, widows and disabled miners played a pivotal role in the strike. In one county in West Virginia, a group of ten widows successfully shut down an entire mine. The strike quickly spread across the state and into eastern Ohio and western Pennsylvania. By the following day, Monday June 22, 18,000 miners had walked off the job. The activists threatened to “put out the nation’s lights” if the union did not address their demands. This was not an idle threat, as national coal supplies were already running low. Further shortages had the potential to jeopardize the provision of coal-fuelled electricity.<sup>29</sup>

Miners for Democracy, the dissident union reform group, supported the strike, although denied any involvement in its organization. Payne indicated that the major goal of the strike was to improve hospital coverage for disabled miners and widows. MFD

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<sup>28</sup> George W. Hopkins, “Southern Appalachian Coal Miners and Union Insurgency, 1968-1972.” In *Southern Workers and their Unions, 1880-1975: Selected Papers, The Second Southern Labor History Conference, 1978*, edited by Merl E. Reed, Leslie S. Hough, and Gary M. Fink. (Westport, Connecticut: Greenwood Press, 1981), 151.

<sup>29</sup> *Beckley Post-Herald*, June 23, 1970, 1 and 8; *Charleston Daily Mail*, June 22, 1970, 1 and 2; *Raleigh Register* (Beckley, WV), June 22, 1970, 1 and 2; Hopkins, “Southern Appalachian Coal Miners,” 151; the reference to the group of ten women shutting down a mine is in Smith, *Digging Our Own Graves*, 157.

leader Trbovich said that many of the miners, in addition to demanding improved hospital care, were striking because their employers were not taking adequate safety precautions. A meeting on June 23 between coal industry representatives and Department of the Interior officials fuelled miners' suspicions that the federal government was compromising safety for corporate demands. Walter Hickel had called the meeting in response to numerous pleas from mining companies and operator associations to modify the Bureau of Mines' enforcement procedures. Since March of that year, operators had filed over 2,000 appeals against safety enforcement actions. The purpose of the meeting was to allow operators to suggest how the legislation could be changed. Before the meeting, MFD representative Joseph "Chip" Yablonski commented, "I don't claim to be the greatest expert on mine safety... but I have the strong feeling that, at a closed meeting of that kind, no-one will be in there fighting for the miners' welfare."<sup>30</sup>

Not all district and local union leaders supported the strike. James Leeber, the head of UMWA District 29, urged the miners in his district to return to work immediately. In an official statement, he commented that the strike action violated the National Bituminous Coal Wage Agreement and the union constitution. Miners participating in the strike action were not only jeopardizing their union membership, he argued, but also stopping the flow of royalties to the Welfare and Retirement Fund. He concluded, "This office is insisting that all officers and members of local unions involved ignore the activity of such pickets since it is a subterfuge to undermine the United Mine Workers of America." Meanwhile, Carson Hibbits, president of UMW Districts 28 and

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<sup>30</sup>*Beckley Post-Herald* (West Virginia), June 23, 1970, 1 and 8; *Charleston Daily Mail*, June 22, 1970, 1 and 2; *New York Times*, June 22, 1970, 17; *Raleigh Register* (Beckley, WV), June 22, 1970, 1 and 2.

30, claimed that none of his members were participating in the strike. Miners in Kanawha and Logan counties in West Virginia ignored the pickets and continued to work.<sup>31</sup>

On Tuesday, June 23, some of the striking miners in Wyoming, Boone, and Raleigh counties in West Virginia decided to go back to work, but this did not lessen the impact of the strike, as several other mines closed down.<sup>32</sup> Elsewhere in the state, 1,000 miners disobeyed an injunction issued by Judge Everett Cox of the Marshall County Circuit. Ultimately, the strike petered out as quickly as it had started. On June 24, at a meeting in Wyoming County, Josephine Roche, the head of the union's Welfare and Retirement Fund, agreed to explore the possibility of implementing the miners' demands on the condition they ended the walkout. Moreover, at a hearing in Wheeling, West Virginia, Judge Ralph Pryor reiterated the ruling made by Judge Cox that the strike was illegal under state law. In Pittsburgh, Federal Judge Wallace S. Gourley responded to a petition for an injunction from four major steel companies by ruling that in the absence of immediate danger underground, the miners' dissatisfaction with their employers' enforcement of the 1969 mine act was not sufficient reason to strike. Gourley emphasized that the miners' obligations under their contract with the steel companies had precedence. The judge, however, also criticized Tony Boyle for not doing enough to promote unity among the rank and file, and condemned the coal companies for not doing enough to enforce safe working conditions.<sup>33</sup>

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<sup>31</sup> *Beckley Post-Herald*, June 22, 1970, 1; *Charleston Daily Mail*, June 22, 1970, 2; *Raleigh Register* (Beckley, WV), June 22, 1970, 1.

<sup>32</sup> *Beckley Post-Herald*, June 25, 1970, 1 and 10; *Charleston Daily Mail*, June 24, 1970, 8; *Charleston Gazette*, June 24, 1970, 1.

<sup>33</sup> *Wall Street Journal*, Thursday June 24, 1970, 9.

By June 25, the miners had gone back to work; but the DMW/SWV vowed to resume the strike in two weeks if Boyle did not meet its demands. The end of the strike came one day before the start of the annual vacation period. Most of the miners were scheduled to take a week's paid leave starting on June 26, while others were set to begin their holiday on July 11. The operators planned to use the vacation period to carry out maintenance and repair work on the mines.<sup>34</sup>

Boyle failed to respond to the Disabled Miners and Widows of South West Virginia before the two-week deadline, so the group resumed the strike as promised. Pro-Boyle union members and representatives of the coal companies used shotguns to intimidate the strikers and protect mine property. The coal companies' use of physical violence against the strikers, combined with District 29 officials' claims that they were "welfare bums," drew more support for the group's actions. The strike, which at its peak involved 25,000 miners, had become more than a protest over hospital care or unsafe working conditions; it had evolved into a heated conflict between reform elements in the union and the entrenched UMWA leadership.<sup>35</sup>

The U.S. District Court issued a temporary restraining order against the miners, many of whom had started carrying guns to protect themselves. The order did little to quell the strike. The federal government's imprisonment of Robert Payne and several others for contempt of court, combined with Boyle's continuing refusal to meet the protestors' demands, however, brought an end to the industrial action. The activists had

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<sup>34</sup> *Beckley Post-Herald*, June 25, 1970, pg. 1; *Charleston Daily Mail*, June 25, 1970, 1 and 2; *Wall Street Journal*, June 25, 1970, 23.

<sup>35</sup> Helen Powell, telephone interview by author, tape recording, August 10, 2009; Hopkins, "Southern Appalachian Coal Miners," 151-152.

not obtained recognition from the legal system or the UMW. In addition, many of the miners were compelled to go back to work because of financial difficulties. Barbara Smith argues that the strike was symbolically important because it renewed the spirit of activism and determination among miners who sought to overthrow Boyle's leadership. While Smith also acknowledges the community dimension to the strike, she under-emphasizes its importance. The role of miners' families and disabled miners was instrumental in driving the momentum of the strike.<sup>36</sup>

According to George Hopkins, during the protests of 1970, the activists in the United Mine Workers split into two disparate groups, one located in southern Appalachia and the other in the north. The southern miners, represented most visibly by the Disabled Miners and Widows of South West Virginia, sought tangible gains such as black lung compensation and pensions for disabled and retired miners. Miners in the north, epitomized by the Miners for Democracy, were more concerned with the reform of the union itself. According to Hopkins, the northern faction did not disregard the issue of health, but it was more concerned with working miners than those who were disabled or retired.<sup>37</sup> Hopkins' analysis, however, oversimplifies the objectives of the activists working for reform. The Miners for Democracy supported the strike action by the Disabled Miners and Widows of South West Virginia; equally, the DMW/SWV, like the MFD, supported the reform of the United Mine Workers.

In late July 1970, the release of a major report, sponsored by Ralph Nader, further contributed to the criticism of the Coal Mine Health and Safety Act. The report was based

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<sup>36</sup> Smith, *Digging Our Own Graves*, 157.

<sup>37</sup> Hopkins, "Southern Appalachian Coal Miners," 150.

on extensive research by a group of graduate students over a two-year period. J. Davitt McAteer, a young law student from West Virginia who had contacted Nader after the Farmington disaster, was head of the group.<sup>38</sup>

In setting up the study, McAteer knew that Nader's typical method of carrying out investigations, where "Nader's Raiders" gathered in Washington D.C. for research, was not conducive to a study of the coal industry. McAteer feared that mine operators would accuse researchers from beyond the state of being "outsiders," who did not have the requisite knowledge about the industry to make sound judgments. To avoid this problem, McAteer convinced Nader to employ students from West Virginia in the study. Once Nader had given his support, McAteer formed a taskforce with colleagues from West Virginia University Law School, which started raising funds for the study. The taskforce had considerable financial backing from sources as diverse as the UMWA, political state and federal political representatives, academic research foundations, the Bureau of Mines, and even the Carbon Fuel Coal Company of West Virginia. McAteer was convinced that the contribution of the latter was not an anomaly, but rather a conscious effort to influence the outcome of the study.<sup>39</sup>

The report condemned the administration's "calculated indifference to the unnecessary and avoidable hazards of life in the nation's coal mines." It also criticized the Nixon administration's failure to appoint a new director to the Bureau of Mines. The report stated, "To fail to appoint a Bureau director for the six most critical months in its history is atrocious, but further to appoint a man [Lucas] who sadly lacked a history of

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<sup>38</sup> J. Davitt McAteer, telephone interview by author, May 11, 2009.

<sup>39</sup> Ibid.

strong safety and health activities is despicable.” McAteer commented that he did not think the new legislation had significantly improved miners’ chances of survival. He emphasized that 100 men had already died in the coal mines in the first half of 1970. A federal official retaliated that the report had little merit. McAteer continued the study, however, and eventually published a book entitled *Coal Mine Safety: The Case of West Virginia*.<sup>40</sup> As McAteer and his research team conducted their study of the West Virginia coal industry in 1970, the black lung movement protested the Nixon administration’s mismanagement of the federal black lung benefits program.

### **Reigniting the Fuse: The Resurgence of the Black Lung Movement**

The collapse of the miners’ strike in 1970 was not, by any means, a sign that activism in the coalfields was in decline. In fact, the five-week long strike was only one component of a burgeoning network of protest that summer. The black lung movement also reemerged, now headed by an independent group called Designs for Rural Action (DRA). Founded in West Virginia in 1968 by Gibbs Kinderman, DRA initially adhered to the broad goal of tackling poverty and social inequality through community action. Designs for Rural Action was one of several organizations fighting for social justice in Appalachia in the 1960s and early 1970s, including the Appalachian Volunteers and the

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<sup>40</sup> *Chicago Tribune*, July 26, 1970, 3; *New York Times*, July 26, 1970, 29; see also J. Davitt McAteer, *Coal Mine Safety: The Case of West Virginia* (New York: Praeger Publishers, 1973).



Volunteers in Service to America (VISTA). The latter played a crucial role in the original West Virginia Black Lung Association.<sup>41</sup>

The focus of Designs for Rural Action on black lung compensation resulted in large part from the political and social circumstances of the summer of 1970. By this time, the Appalachian Volunteers and other groups in the region were coming under increasing attack from conservative forces. In 1968, for example, the Kentucky Un-American Activities Committee had brought several AV activists before public hearings in the state legislature, under the premise that they were planning to overthrow the state government and redistribute public wealth. The committee labeled the Appalachian Volunteers as communists and outside agitators, concluding that the AV program “has served as a tremendous detriment to the deserving people of this region.” In West Virginia, AV members faced similar charges. As a result, the Appalachian Volunteers lost much of their funding from state governments.<sup>42</sup> Internal dissent also hindered the work of the group.

By 1970, the radical social activism of the previous decade was in sharp decline, and reformers began to focus more on legal and administrative issues. With few other avenues of social action open, Designs for Rural Action made fair and equitable

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<sup>41</sup> See Thomas Kiffmeyer, *Reformers to Radicals: The Appalachian Volunteers and the War on Poverty* (Lexington, Kentucky: The University Press of Kentucky, 2008); David E. Whisnant, *Mobilizing the Mountaineer: People, Power, and Planning in Appalachia* (Knoxville: The University of Tennessee Press, 1994), 187-208; Curtis Seltzer, *Fire in the Hole: Mines and Managers in the American Coal Industry* (Lexington: The University Press of Kentucky, 1985), 102-103.

<sup>42</sup> For a full discussion of the decline of the Appalachian Volunteers, see Kiffmeyer, *Reformers to Radicals*, chapter seven; see also Chad Montrie, *To Save the Land and People: A History of Opposition to Surface Coal Mining in Appalachia* (Chapel Hill: The University of North Carolina Press, 2003), 93-97.

distribution of black lung benefits one of its primary goals. During a meeting with representatives from the West Virginia Black Lung Association in summer 1969, DRA leaders became aware of the impact of pneumoconiosis on miners and their families. They also learned that a substantial number of black lung victims had been denied benefits by the Social Security Administration. The DRA quickly began to allocate most of the organization's resources to the reform of the black lung program.<sup>43</sup>

While the Federal Coal Mine Act defined pneumoconiosis as a "chronic dust disease of the lungs arising out of employment in an underground coal mine," the Social Security Administration used a much narrower definition of the disease to judge claimants' eligibility for benefits. To qualify for compensation, miners had to pass a series of rigorous medical tests. They first had to pass an X-ray examination by displaying evidence of nodules on their lungs. If the X-rays did not show damage to the lungs, the SSA terminated their application. The administration contended that miners with severe breathing problems who did not match the X-ray criteria had contracted lung disease through cigarette smoking or a non-occupational hazard.<sup>44</sup>

Miners who passed the X-ray requirement were required to undergo a pulmonary function test to prove that they were "totally disabled" by black lung disease. A large proportion of disabled miners discovered their applications did not advance beyond this stage. Physicians generally interpreted their test results as evidence of only partial disability. The small number of miners who passed the first two stages faced a long wait

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<sup>43</sup> Bennett Mallory Judkins, "The Black Lung Association: A Case Study of a Modern Social Movement," (Ph.D. diss., University of Tennessee, 1975), 158.

<sup>44</sup> Smith, *Digging Our Own Graves*, 146-147.

as a secondary physician scrutinized and analyzed the results. Employed by the SSA, the physicians who reassessed the results rarely confirmed diagnoses. Many applicants who assumed they would receive compensation had their applications turned down. Widows in particular struggled to prove their husbands' deaths were caused by black lung. They had to prove that their husband had worked underground for at least three consecutive years and had either died conclusively from black lung or had been receiving benefits at the time of death.<sup>45</sup>

Aside from the rigorous medical criteria, the under-staffing and under-funding of the SSA local offices prevented disabled miners from collecting benefits. The offices were not prepared to deal with the huge volume of claims, over 100,000 in the first month of the program.<sup>46</sup> Because they were under immense pressure, staff members often did not collect comprehensive medical evidence for each applicant, and they frequently neglected to tell miners that the SSA was financially responsible for obtaining background evidence beyond X-ray results. Frustrated miners took out their anger on the local staff with verbal abuse and occasional physical violence, even though staffers were only the 'human face' of a much larger bureaucracy.<sup>47</sup>

DRA activists planned to use miners' frustration over the black lung compensation program to create a new network of activism. They also supported Miners

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<sup>45</sup> For more details of the standards used to determine eligibility, see "Summary of Black Lung Benefit Provisions of Federal Coal Mine Health and Safety Act of 1969," Folder 3, Box 12, John Herling Collection, Walter P. Reuther Library of Labor and Urban Affairs. Hereafter, this collection will be referred to as Herling Collection, Reuther Archives. See also Smith, *Digging Our Own Graves*, 147-148.

<sup>46</sup> Bennett M. Judkins, *We Offer Ourselves As Evidence: Towards Workers' Control of Occupational Health* (New York: Greenwood Press, 1986), 78.

<sup>47</sup> Smith, *Digging Our Own Graves*, 145-148.

for Democracy's campaign to overthrow Tony Boyle, because they believed that the union was the only viable institutional mechanism for challenging the power of the coal operators. One activist commented that the UMW had to be reformed before any pressure could be placed on the coal operators to improve health and safety. Designs for Rural Action made black lung disease its lead issue, however, because it was uncontroversial and would easily draw support from the miners. In mid-1970, many people still felt too intimidated by the established Boyle regime to risk openly opposing it.<sup>48</sup>

Establishing its headquarters in Charleston, Designs for Rural Action mainly communicated with the public through the *Black Lung Bulletin*, which provided extensive coverage of the campaign for more equitable federal compensation and the union insurgents' campaign to overthrow the Boyle regime. The DRA distributed newsletters to publicize its cause and frequently held press conferences and media events. The Charleston office hired Arnold Miller, who had been a key leader in the West Virginia strike the previous year, to lead the new black lung movement.

Miller acted as a link between the BLA and the DRA.<sup>49</sup> Born in 1923, Miller started working as a coal loader when he was fourteen. After a period of service in World War II, during which he lost part of an ear, he started participating in local union politics, and eventually became the head of Local 2093. He used his experience at the local level to involve himself in the national union leadership. He soon distanced himself from it in opposition to Tony Boyle's policies. Miller was diagnosed with pneumoconiosis in 1965

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<sup>48</sup> Smith, *Digging Our Own Graves*, 157-160; Hopkins, "Southern Appalachian Coal Miners," 150. The emphasis DRA placed on union reform further undercuts Hopkins' argument that the campaign for the Miners for Democracy emanated mostly from northern Appalachia.

<sup>49</sup> Judkins, *We Offer Ourselves As Evidence*, 230.

and began devoting his energy to helping other miners afflicted by the disease. In early 1969, he was a key activist in the West Virginia black lung movement, notably in the February 26 march on the Capitol Building in Charleston. The same year, he retired as a coal miner; he was unable to continue working as a result of black lung disease, arthritis, and high blood pressure.<sup>50</sup> Dr. Donald Rasmussen, another notable black lung activist, was also part of the ‘Charleston Office Crew.’<sup>51</sup>

In its previous incarnation in West Virginia in 1969, the Black Lung Association had been spontaneous and unplanned, but the leaders of the revived movement emphasized the importance of efficient organization and clear goals. Most notably, with the assistance of VISTA workers and rank and file miners, they set up several county chapters of the Black Lung Association across southern West Virginia and the wider Appalachian region. Unlike the West Virginia Black Lung Association, the new movement was focused at the national level, with the intent of challenging the federal bureaucracy responsible for the compensation program. The individual chapters provided disabled miners and widows with assistance in their benefits claims, worked to overhaul the existing compensation system, and helped to organize dissident UMW members.<sup>52</sup>

Because the central office staff did not trust the large, bureaucratic structure of the Social Security Administration, they tried to prevent the Black Lung Association from

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<sup>50</sup> *Los Angeles Times*, July 12, 1985, 2; *Washington Post*, July 13, 1985, B6.

<sup>51</sup> Bennett Mallory Judkins, “The Black Lung Association: A Case Study of A Modern Social Movement,” (Ph.D. diss., University of Tennessee, 1975, 170.

<sup>52</sup> Bennett M. Judkins, “The People’s Respirator: Coalition Building and the Black Lung Association,” *Fighting Back in Appalachia: Traditions of Resistance and Change*, edited by Stephen L. Fisher (Philadelphia: Temple University Press, 1993), 227.

evolving into a centralized organization. As one office member commented, their main goal was for the local chapters to guide national BLA policy:

It seems that it is done better when we work under the direction of the BLA chapter offices... That way, our work can be guided better by BLA policies. While this may make more work for you all, it will help insure that what is done in the name of the BLA is actually always in accordance with policies set by the members.<sup>53</sup>

When it was necessary to make decisions on regional and national policy issues, the central office sought to involve representatives from each local branch. However, it sometimes caused uncertainty among branches by failing to keep them informed of its actions at the regional and national level.<sup>54</sup> Furthermore, most chapters did not contribute directly to the larger organization, with the result that it often lacked a clear sense of purpose, and many of them were divided by internal conflict and differences of opinion.<sup>55</sup> The local branches frequently disregarded the BLA charter, which stipulated that the central office had to approve all expenses, that officials should be elected in a timely manner, and that chapters should hold meetings at least twice per month. Most local BLA meetings did not have a set agenda, but often focused on the organization's struggle with the Social Security Administration. Many people who attended the meetings wanted help to obtain benefits. Applicants who were waiting on news of their claims often interrupted the proceedings of local meetings to complain about their specific case.<sup>56</sup> According to

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<sup>53</sup> Judkins, "The Black Lung Association," 171.

<sup>54</sup> Judkins, *We Offer Ourselves As Evidence*, 81.

<sup>55</sup> Judkins, "The Black Lung Association," 170.

<sup>56</sup> Bennett M. Judkins, "Mobilization of Membership: The Black and Brown Lung Movements," *Social Movements of the Sixties and Seventies* (New York: Longman,

Bennett M. Judkins, the chaotic nature of the meetings fulfilled a key organizational function, by providing members with a forum to raise their grievances and showing them that others were having similar problems. Moreover, the meetings enabled BLA leaders to help their constituents.<sup>57</sup>

The BLA was limited in its work by a lack of funding. The organization did not have a constant source of finance, and relied mostly on donations from members. The central office's plan for a large central fund did not come to fruition, as local members spent most of their time challenging the Social Security Administration for black lung benefits. While the BLA received a limited amount of funding from the Appalachian Regional Commission (ARC), it was not enough to fund organizing efforts across the coalfields. Some members believed that the BLA destroyed its chances of becoming a prominent nationwide organization by not devoting more time and effort to fundraising.

The centralized, bureaucratic nature of the Social Security Administration also hindered the Black Lung Association's efforts to obtain compensation for its members. In contrast to the BLA, which stressed the importance of local autonomy, the SSA made its decision regarding compensation at the central level. The director of the SSA office in Beckley, West Virginia, commented, "It must be remembered that all decisions come from the Baltimore office and that the local offices only get the claims filed and request the necessary medical information and then send it to Baltimore – that is where the hang

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1983), 46; Judkins, "The Black Lung Association," 180-182; Judkins, "The People's Respirator," 227.

<sup>57</sup> Ibid., 187.

up is.”<sup>58</sup> An article in *The Black Lung Bulletin* stated, “Decisions are made on bureaucratic convenience rather than on serving human needs. For efficiency’s sake workers in the SSA operate almost like machines. A decision is made, a button is pushed, and the workers do what they are told – losing the ability to understand the people with whom they are talking.”<sup>59</sup>

Applicants for benefits did not always understand the enormous task faced by the SSA. In a 1973 study on the dangers of coal mine work, the BLA asserted, “There appears to be a need not only for a better understanding of the miners by the agencies, but also a better understanding of the agencies by the miners.”<sup>60</sup> Certainly, the SSA encountered problems with black lung compensation it did not experience in the administration of its other benefit programs. A large number of applicants filed for compensation at the same time, overwhelming local branch offices and causing delays in the processing of claims. Furthermore, because many of the applicants were from similar economic, cultural, and geographical backgrounds, the SSA organizational and bureaucratic network was too inefficient to manage the new black lung compensation program, and there were not enough clinics throughout Appalachia to gather medical evidence from applicants.<sup>61</sup>

Lay advocates, who came into direct contact with the miners and their families, were the most important representatives of the new BLA. They advised claimants about

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<sup>58</sup> Ibid., 221.

<sup>59</sup> Judkins, *We Offer Ourselves As Evidence*, 84.

<sup>60</sup> Ibid., 83.

<sup>61</sup> Ibid., 88-89.



their applications, accompanied them to SSA medical centers for testing, and, when necessary, represented them in court. Lay advocates were mostly disabled miners, widows, or people from coal mining families. Many of them had not completed high school but became legal experts, as a result of extensive training provided by the Appalachian Defense Fund. Their knowledge and skills provided applicants with vital support in their quest for compensation. One advocate, a miner disabled by pneumoconiosis, recalled:

I liked the work, I enjoyed it. It gave me something to put my mind to. When I'm retired, I can't do no physical work. Being a lay advocate was a lot of work, but it seems like it takes your mind off your sickness. Now I just lie here. I have to take three to six Davron a day, been taking them since 1957. When I'm here, I don't eat nothing til supper, but when I was on the road, I ate three meals a day. We might – maybe I'll talk to some of the others and just get this Black Lung Association started all over again.<sup>62</sup>

His work as a lay advocate gave him a sense of purpose after he became too ill to continue working in the mines. Eventually, his black lung disease became severe enough that he was unable to work even as a lay advocate. Many of the disabled miners working as lay advocates faced the same problem.

Helen Powell from West Virginia was one of the most prominent activists in the revived black lung movement. Powell's father had spent his life working in underground mines until black lung disease made him too sick to work and he was laid off. Subsequently, Powell gathered evidence for a compensation suit, which she passed to a qualified lawyer. Her father successfully won compensation in court, which led many

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<sup>62</sup> Quoted in Smith, *Digging Our Own Graves*, 164.

other people in Powell's community to ask her for assistance. As a result of her work, she was drawn into the black lung movement.<sup>63</sup>

Even in the male-orientated world of the Appalachian coalfields, Powell's experience was by no means unique for the early 1970s. As Kathleen M. Blee highlights in *No Middle Ground*, women across the United States became actively involved in radical protest movements in the decades after World War II. In employing the term 'radicalism,' Blee uses a broad definition, describing radical protestors as "those who [sought] social, political, or economic changes meant to produce great equality within society, or those who [sought] changes meant to restructure society in a less egalitarian fashion." While some of this protest occurred within formal organizations, much of it was shaped by the informal environments of family, kinship, and neighborhood. Furthermore, the protest was linked to women's concerns about economic inequality.<sup>64</sup>

Powell, then, shared a common experience with many other women. In her role as an activist, her family environment and the context of the black lung movement intersected. Using her personal experience of witnessing close family members suffer from black lung, she played a key role in one of the most visible social movements in Appalachia in the early 1970s, helping a substantial number of miners to obtain black lung benefits. In doing so, Powell helped to reduce the economic inequality on which the black lung compensation system rested.

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<sup>63</sup> Helen Powell, telephone interview with author, August 10, 2009.

<sup>64</sup> Kathleen M. Blee, ed., *No Middle Ground: Women and Radical Protest* (New York University Press, 1998), 1-8.

Despite the commitment of its participants, the revived Black Lung Association faced a number of obstacles. Individual leaders of county chapters, fiercely protective of their territory, often refused to collaborate with other chapters. Moreover, as Helen Powell recalls, it was difficult to maintain a sense of unity within each individual chapter:

We just kind of fell apart. And a lot of people left who were working with us and supporting us. After they got their benefits... they went home and sat down. "I have my part of the loaf and now you get yours the best way you can," you know, that kind of thing. So then our numbers fell off and we didn't have as much support as what we used to.<sup>65</sup>

Few members of the Black Lung Association were involved in the organization on a long-term basis. Between meetings, each chapter typically experienced a membership turnover rate of between 40 and 60 percent. In large part, this was because the majority of attendees at meetings required help with their benefits claims. Once miners had started receiving benefits, there was no incentive to keep attending the meetings.<sup>66</sup>

Furthermore, like its previous West Virginia counterpart, the new national BLA struggled with the medical establishment over the definition of black lung disease and who was eligible for disability compensation. Conservative physicians and SSA representatives continued to argue that the term "black lung" should only cover advanced pneumoconiosis, not other lung diseases developed as a result of underground mine work. By adhering to such a restrictive definition of the disease, they precluded the majority of miners from receiving compensation, as recent studies showed that only three percent of miners suffered from advanced pneumoconiosis. Progressive physicians and activists

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<sup>65</sup> Helen Powell, telephone interview with author, August 10, 2009.

<sup>66</sup> Judkins, "The Black Lung Association," 187-188.

challenged this line of thinking by arguing that miners were susceptible to developing a range of diseases underground, many of which did not show up on X-rays. They also emphasized that the majority of miners with simple pneumoconiosis had severe breathing problems.<sup>67</sup>

The SSA did not respond to pressure from the black lung movement, as the compensation program was a significant drain on its finances and resources. The administration advocated what it described as “objective scientific evidence,” such as X-Rays, and not clinical examinations grounded in medical opinion, as the best mechanism for proving black lung disease. As a result, observes Barbara Smith, coal miners’ pneumoconiosis came to exist independently of the miners’ symptoms. To the miners who were so crippled by black lung disease that they became breathless from walking up the stairs or moving from the bedroom to the kitchen, the Social Security Administration’s position undermined their suffering. They attributed the disease not just to many years spent underground in dusty conditions, but also to the coal companies who had exploited them, and felt they deserved compensation.<sup>68</sup>

### **Reassessing the Federal Coal Mine Act: Hearing Before the Senate Subcommittee on Labor**

In early August, the Senate Subcommittee on Labor resumed in Washington D.C. the hearing it had opened in Centerville, Pennsylvania earlier in the summer. The subcommittee’s main goals were to assess the effectiveness of the Federal Coal Mine Act over the previous four months and to determine how its enforcement could be improved.

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<sup>67</sup> Seltzer, *Fire in the Hole*, 102; Smith, *Digging Our Own Graves*, 150-151.

<sup>68</sup> Smith, *Digging Our Own Graves*, 147-156.

As the hearing progressed, a consensus emerged that the legislation, despite its stringent terms, had failed to improve health and safety in the coal mines. Although there was some disagreement over who was responsible for this failure and the best way to address it, several witnesses at the hearing singled out the Bureau of Mines for condemnation.

In his opening statement on August 6, subcommittee chairman Harrison Williams lambasted the recent performance of the Bureau:

The record of the Bureau of Mines is outrageous. During 1968, the Bureau of Mines conducted 9,000 regular inspections. Since the new law went into effect, the Bureau has been conducting substantially fewer safety inspections than in 1968. In the past 4 months, the Bureau has conducted only 153 regular inspections, an annual rate of less than 450 regular inspections per year. In my judgment, this is just plain unbelievable... This decrease in the number of inspections is all the more shocking in light of the fact that the Congress backed up its far reaching health and safety law by almost quadrupling funds for inspections from \$9 million for the year beginning on July 1, 1968, to \$33 million for the year which began last month.<sup>69</sup>

The Bureau's ineptitude, Williams went on to argue, had perpetuated the unsafe conditions that caused injury and death to the nation's miners. Therefore, one of the key tasks of the hearing was establishing how the Bureau could improve its performance. Williams also stressed the importance of passing a health and safety bill that would cover the country's entire workforce.<sup>70</sup>

Leading off the witness testimony, UMW President Tony Boyle strongly criticized both the Department of the Interior and the Bureau of Mines. He claimed that,

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<sup>69</sup> Senate Committee on Labor and Public Welfare, Subcommittee on Labor, *Health and Safety in the Coal Mines: Hearing Before the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate*, 91st Cong., 2nd sess., 1970 (Washington D.C.: U.S. Government Printing Office, 1971), 191.

<sup>70</sup> *Ibid.*, 192-193.

over the past five months, the union had begged President Nixon to appoint a new director to the Bureau, but without success. “This period,” he stated, “has been marked by jealousy and bickering within the Bureau while the coal miners continue to suffer and die.” For Boyle, the Interior Department’s reduction of the fine schedule for first-time violations was also an obstruction to health and safety enforcement, as was the temporary restraining order issued by a federal judge on behalf of small operators in Virginia. Later that day, Boyle gave testimony with two UMW attorneys, Edward Carey and Charles Widman. While they acknowledged they had not supported the rank-and-file strike in Pennsylvania in June, they denied that the union had played an instrumental role in obtaining the injunction against the strikers.<sup>71</sup>

UMW Safety Director Lewis Evans argued that the Bureau of Mines had hindered its ability to enforce the law by delaying the appointment of new inspectors. According to Evans, the Bureau should have started hiring and training new inspectors the previous summer, rather than waiting until two months after Nixon signed the mine act into law. The success of the Federal Mine Act, he asserted, was dependent on the Bureau swiftly appointing a new director and expanding its inspection force. In response to Evans’ comments, Senator Jennings Randolph urged the subcommittee to send Nixon a telegram requesting the immediate nomination of a new bureau chief. Evans closed his testimony by highlighting problems in the federal black lung compensation program. He believed that the Secretary of Health, Education and Welfare had not established adequate measures to protect miners’ privacy, which put them at risk from employers’ reprisals, and that the Bureau of Disability Insurance needed to adopt more liberal criteria for

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<sup>71</sup> Ibid., 195, 266-289.

miners' X-ray examinations. Evans also disapproved of the Social Security Administration's decision to subtract the Pennsylvania workmen's compensation payment of \$100 per month from the federal black lung awards.<sup>72</sup>

Consumer advocate Ralph Nader also attributed responsibility for the health and safety crisis to the Department of the Interior and Bureau of Mines. He stated, "The strategy of evasion, misfeasance, and malfeasance practiced by the Department of the Interior, its Bureau of Mines, and other Federal officials reflects an institutional mutiny against a law they have sworn under oath to uphold." Like Boyle before him, Nader argued that the Bureau had used the federal restraining order issued in Virginia as an excuse to abandon its original penalty schedule and exempt operators from tough sanctions. He also criticized the Bureau's for neglecting to carry out regular spot inspections, even in light of a massive budget increase, and its delay in publishing the underground dust control standards. Nader condemned the United Mine Workers, the White House, and Congress for not doing enough to address the Bureau's dismal performance. The UMW, he argued, had failed to file legal proceedings against the Bureau in Washington, and to participate in the recent meetings between the Department of the Interior and coal industry officials. The White House, meanwhile, "[had] done nothing except to try and appoint a Director for the Bureau of Mines whose qualifications and allegiances were such that they led to the withdrawal of the candidacy." There had

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<sup>72</sup> Ibid., 199-219. A copy of Evan's official statement "Non-Enforcement of the Coal Mine Health and Safety Act of 1969" is also included in the United Mine Workers Safety Division Office Files: "Statement Submitted by Lorin E. Kerr, M.D., M.P.H., on the Non-Enforcement of the Coal Mine Health and Safety Act of 1969 to the Subcommittee on Labor, Senate Committee on Labor and Public Welfare, August 6, 1970," Folder 2, Box 2, United Mine Workers Safety Division Files, PSU Special Collections.

been little action on the part of Congress, too, with the exception of the lawsuit filed by Representatives Hechler, Dent, and Burton.<sup>73</sup>

Summing up the poor record of the Department of the Interior and the Bureau of Mines, Nader commented:

There is a total anarchy, institutionalized in the administrative branch of Government and I think it requires something more than a telegram of concern by any committee of Congress. I think it requires a demand for resignation, a demand for repudiation of these officials who have violated their oath of office and demand for disciplinary proceedings where such proceedings can be brought under the civil service law and other precedents.<sup>74</sup>

As a long-term solution to the Bureau's problems, Nader proposed the separation of its two competing functions, the promotion of the coal industry and the enforcement of health and safety. Senator Williams, responding to several additional short-term measures advocated by Nader, agreed to authorize a General Accounting Office investigation of how the Bureau had spent its funding increases, and indicated he would ask the Justice Department to rule if the federal government's poor enforcement the mining legislation constituted a violation of the Federal Tort Claims Act. This was a legislative act dating to 1946, which allowed citizens to sue the United States for injuries resulting from the actions or neglect of federal representatives.<sup>75</sup>

Nader's suggestion that the UMW had not done enough to address the Bureau's inefficiency echoed his earlier criticisms of Tony Boyle. During the West Virginia black lung movement in early 1969, Nader had condemned Boyle's leadership on health and

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<sup>73</sup> Senate, *Health and Safety in the Coal Mines*, 221-224; *Washington Post*, August 7, 1970, A8.

<sup>74</sup> Senate, *Health and Safety in the Coal Mines*, 225.

<sup>75</sup> *Ibid.*, 225-227.



safety in a telegram to miners at a demonstration in Charleston, read by Ken Hechler. Boyle had responded by labeling Nader a “fink.” Therefore, the fact that the two men were united in their criticism of the Bureau showed just how ineffectual the beleaguered agency had become.<sup>76</sup>

In the afternoon testimony on August 6, the strong criticism of the Bureau of Mines continued. Industry representative John L. Kilcullen attacked the Bureau for discriminating against the small mine owners he represented as counsel for the National Independent Coal Operators Association. He complained that the Bureau had started to issue violation and penalty notices when the legislation went into force on March 30, only two days after the safety guidelines were published in the Federal Register. Kilcullen explained:

Many small operators found themselves being cited for violations over which they had no control such as failure to have automatic coupling devices on shuttle cars and automatic brakes on coal hauling equipment. The fact that this equipment was not available for purchase, and that no manufacturer actually manufactured such equipment was not accepted as an excuse by the Bureau of Mines inspectors in issuing penalty notices.<sup>77</sup>

Several small operators, reported Kilcullen, had shut down their operations rather than accept financial penalties for violations beyond their control. However, in contrast to the speakers before him, Kilcullen did not believe that the Virginia restraining order had affected the Bureau’s performance. He argued that the restraining order merely prevented it from issuing violation notices when operators were not at fault. Kilcullen actually felt that the Bureau had been too severe about enforcement. Emphasizing that it was not his

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<sup>76</sup> *New York Times*, August 7, 1970, 24

<sup>77</sup> Senate, *Health and Safety in the Coal Mines*, 255-256.

intention to defend it, he highlighted small operators' disdain for the Bureau's new inspection procedures: "They feel that the Bureau has been extremely zealous, and has greatly increased the stringency of its inspection methods and procedures. We know of no instances where a Bureau of Mines inspector has condoned or deliberately overlooked violations of the new standards."<sup>78</sup>

Few others shared the coal industry's views about the Bureau. When the hearing resumed before the Subcommittee the next day, a delegation from the Miners for Democracy (MFD) resumed the criticism of the Bureau's poor record in health and safety enforcement. All the members of the delegation held key leadership roles in the MFD, and had attended the organization's founding meeting in April 1970. In a series of scathing testimonies, they argued the Bureau had been detrimental to the improvement of coal mine working conditions. However, they also contended that much of the blame for death and injury in the mines lay with the United Mine Workers. Joseph "Chip" Yablonski said, "Coldly and calculatingly, this administration and the Bureau of Mines have emasculated the toughest occupational health and safety bill ever enacted... The men who work in the mines are being denied their right to earn their daily bread under safe working conditions by a callously indifferent bureaucracy which is floundering in its own fat." Yablonski cited the lack of experienced staff in the bureau, including a qualified director, as the main impediment to safe working conditions. Later, in response to questions from the subcommittee, he argued that coal miners were highly qualified to become mine inspectors, but that many refrained from taking the qualifying exam

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<sup>78</sup> Ibid., 256-257.

because of their fear that the Bureau might place them in a distant region of the country, far from their families and community.<sup>79</sup>

Mike Trbovich, the MFD vice-presidential nominee, focused his statement on the ineptitude of the United Mine Workers:

The leadership of the United Mine Workers is not interested in safety. Their concern is to keep production going without consideration for the people who pay their salaries and mine the nation's coal... A law passed by the Congress of the United States, signed by the President, is meaningless because the relationship between the operators and the United Mine Workers is something like a cancer that eats out the foundation of a structure that stands for decency in our democracy.<sup>80</sup>

He also urged the federal government to appoint a Bureau director with no ties to either the coal industry or the UMW. Leader Arnold Miller, meanwhile, commented that he had not witnessed any improvement to working conditions since the passage of the act. He alleged that the UMW leadership was refusing to support local safety committeemen who insisted on enforcement of the law. In one instance, claimed Miller, a safety committeeman had lost his job for trying to enforce safety himself without union backing. He warned the subcommittee: "If we don't solve the problems of mining today, we are not going to have a coal shortage; we are not going to have any coal miners to mine coal."<sup>81</sup>

Harry Patrick, another founding member of the MFD, stated bluntly, "On the question of the new mine health and safety bill and what it has done for the miners, I

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<sup>79</sup> Ibid., 292-293, 349.

<sup>80</sup> Ibid., 339.

<sup>81</sup> Ibid., 340-341.

would say absolutely nothing. If anything, it has lulled many into a false sense of security which simply is not there. In talking to the miners over my district, I hear the same story. Conditions are as bad if not worse than before.” In Patrick’s view, spot-inspections were ineffective: “On the question of spot inspections which is required by the new mine safety law, it is a favorite joke among miners that the company knows exactly what spot the inspectors are coming to.” He argued that one of the main causes of accidents was the coal industry’s prioritization of production over health and safety. However, he also cautioned against labeling all coal companies in the same way. Some employers, he argued, were more attentive to safety than others -- for example, Bethlehem Steel his present employer, was more conscientious about holding monthly safety meetings than his previous employer Consolidation Coal.<sup>82</sup>

Following additional testimony from the Miners For Democracy representatives, several witnesses from the Department of the Interior made statements. They vigorously defended both the Interior Department and the Bureau of Mines from the charges against them. Hollis M. Dole, the Assistant Secretary of Mineral Resources, criticized Congress and the miners for having unrealistic expectations about the time required for the Bureau to draw up new regulations:

Unfortunately, the publicity concerning the development – and eventually, the enactment – of the new law centered almost entirely upon the improvements it would bring about, and very little was said about the time that would be required to achieve them. Consequently, the mineworkers and the public generally were encouraged to expect the improvements in mine health and safety immediately, and because they have not been achieved so quickly, they are dismayed. They should not be dismayed, because the health and safety revolution in the mines is

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<sup>82</sup> Ibid., 342-343.

underway; their expectations will be fulfilled; but it will take longer than 90 or 180 days.<sup>83</sup>

Dole was convinced the Bureau had done everything possible to improve health and safety with the limited time and manpower available. “It is not true we are dragging our feet,” he said. “We believe that we have made as much progress as possible under the circumstances and, more importantly, that our efforts are paying off in the form of improvements that are already underway in the mines which makes the mines healthier and safer now than they ever have been before.” To support this assertion, he showed that the coal mine fatality rate had declined in the first six months of 1970 in comparison to the same period the previous year.<sup>84</sup>

In his lengthy statement, Dole also claimed that the Virginia restraining order had not significantly affected the Bureau’s ability to enforce the law, that ‘Partial But Representative’ inspections, despite their flaws, were more effective than spot inspections, and that the Bureau was entirely capable of handling its dual function. Moreover, he revealed that the Interior Department was expanding the mine inspection force by appointing new inspectors from civil service registers and by reducing the training period for both safety and dust inspectors. He assured the subcommittee that the Bureau would have a full complement of inspectors by July 1, 1972.<sup>85</sup>

James Westfield, Assistant Director for Coal Mine Health and Safety, explained how recent advances in the methane monitor had given miners greater protection from

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<sup>83</sup> Ibid., 367.

<sup>84</sup> Senate, *Health and Safety in the Coal Mines*, 368; *New York Times*, August 8, 1970, 11.

<sup>85</sup> Senate, *Health and Safety in the Coal Mines*, 368-369, 569-573.

dangerous accumulations of methane gas. In response to additional questions from Senators Randolph and Schweiker, he also emphasized that the Bureau was moving from PBR inspections to full examinations of underground mines as quickly as possible.<sup>86</sup>

The witness testimony on August 7 also included statements by Mazie B. Gutshall, the Executive Deputy Secretary of the Pennsylvania Department of Mines and Mineral Industries, and Paul C. Riley, Deputy Director of the West Virginia Department of Mines. Both argued that better health and safety enforcement could be achieved through greater cooperation between state and federal governments.<sup>87</sup>

### **Maintaining a Conservative Approach**

On October 7, 1970, President Nixon appointed Elburt Franklin Osborn, a geologist and vice-president of research at Pennsylvania State University, as the new director of the Bureau of Mines. Osborn had been offered the position by the Lyndon B. Johnson administration twice before, in 1966 and 1968, but had turned it down because he felt the coal industry had too much influence over the Bureau's affairs. After the Senate confirmed Osborn later that month, he announced that his immediate priority was protecting miners' welfare. To that end, he went on a two-week long inspection tour of the nation's coal mining states. He also visited the National Mine Training Academy in Beckley, West Virginia, the bureau's college for training new inspectors. There he announced the introduction of an intensive new course, which he predicted would alleviate the bureau's shortfall of inspectors by early the following year.

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<sup>86</sup> Ibid., 578-580, 589-590.

<sup>87</sup> Ibid., 660-665.

Coal industry officials opposed the appointment of Osborn, especially in light of his statement that the bureau needed to be more demanding of mine operators. Yet, despite the industry's concerns, Osborn's scientific background made him more suited to handling the bureau's research programs than its role as an enforcement agency. As with Lucas before him, Osborn's credentials for the job were questionable. His assertive stance did not necessarily mean that operators would experience tougher sanctions, or that miners' working conditions would significantly improve.<sup>88</sup>

The previous year, Nixon had halted proceedings to fire O'Leary to garner more support for his new Anti-Ballistic Missile Program.<sup>89</sup> The influence of defense strategy and foreign policy on coal mine safety again became apparent when Nixon fired Secretary of the Interior Walter Hickel and six of his officials on November 25, 1970, the day before Thanksgiving. The key reason for Hickel's dismissal was his condemnation of the U.S. invasion of Cambodia earlier in the year. In a letter to the president, Hickel had said he was "terribly disturbed" by the administration's decision to send American troops from South Vietnam across the Cambodian border. He criticized Nixon for failing to engage in a dialogue with America's youth, who largely opposed the invasion. An Interior Department staff member leaked the letter to the *Washington Evening Star*, which printed it in full. H. R. Haldeman, Nixon's Chief of Staff, witnessed Nixon's reaction to the leak: "He was pretty calm about it last night, pretty cold-blooded today,"

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<sup>88</sup> *New York Times*, October 8, 1970, 22; *New York Times*, October 14, 1970, 26; *New York Times*, October 24, 1970, 18; *New York Times*, November 1, 1970, 45.

<sup>89</sup> For a full account of this incident, see chapter two of this study.

he wrote in his diary. “[Nixon] feels Hickel’s got to go as soon as we’re past this crisis [the controversy over Nixon’s decision to invade Cambodia.]”<sup>90</sup>

The president’s response to the letter reflected not only his emphasis on aggressive foreign policy, but also his unwillingness to accept criticism that might diminish his public profile. More importantly, it showed that Nixon could not comprehend domestic issues independently, but rather viewed them as being inextricably linked to his larger foreign policy goals. Hickel’s outspoken criticism of the American oil industry’s disregard for environmental protection also played a role in his dismissal. While his less than convincing record in coal mine health and safety was not a contributing factor, his departure had significant implications for the federal government’s enforcement of the 1969 mine legislation. The Bureau of Mines had been paralyzed for ten months by the absence of a director, and without direction from the Interior Department, it potentially faced another period of inaction and uncertainty. After losing his job, Hickel retreated to his home state of Alaska. On arriving at Anchorage airport, he insisted before waiting reporters and supporters that his primary concern had always been the welfare of his fellow countrymen. “I made my decisions keeping in mind the next generation,” he said, “not the next election.”<sup>91</sup>

On December 30, 1970, Nixon extended protective legislation for the workplace by signing the Occupational Safety and Health Act into law. With the exception of the

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<sup>90</sup> *Los Angeles Times*, December 20, 1970, C8; *Washington Post*, December 4, 1970, A23; H. R. Haldeman, *The Haldeman Diaries: Inside the White House* (New York: Berkley Books, 1995), 193; Walter Hickel, *Who Owns America?* (Englewood Cliffs, New Jersey: Prentice Hall, 1971), 224; Small, *The Presidency of Richard Nixon*, 199.

<sup>91</sup> *Los Angeles Times*, December 20, 1970, C8.



coal industry, which was still covered by the 1969 Mine Act, the OSH Act applied to all workplaces in the private sector. The idea of comprehensive legislation for the workplace was by no means new; Lyndon B. Johnson had mooted a similar plan in his January 1969 “Manpower Message,” before abandoning it when he decided not to run for office again. The act created two new agencies, the National Institute for Occupational Safety and Health (NIOSH) and the Occupational Safety and Health Administration (OSHA). NIOSH was located in the Department of Health, Education, and Welfare, and responsible for conducting research on accident and injury prevention. Over time, it expanded its scope to include research on underground and surface coal mines. OSHA, a separate agency, was responsible for setting health and safety standards and, in conjunction with the Secretary of Labor, enforcing the law. Employers who violated the legislation were subject to sanctions and financial penalties. The OSH Act also gave workers the right to access information regarding conditions at their place of employment, and to demand protective clothing and equipment where necessary.<sup>92</sup>

Rather than marking an important advance in workers’ rights, the terms of the OSH Act affirmed Nixon’s conservative attitude to workplace reform. Ralph Nader condemned the legislation because it did not include a compensation system or place

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<sup>92</sup> For a detailed account of the passage of the Occupational Safety and Health Act, see Charles Noble, *Liberalism at Work: The Rise and Fall of OSHA* (Philadelphia: Temple University Press, 1986). For additional discussion and analysis of the Act and its functions, see Patrick G. Donnelly, “The Origins of the Occupational Safety and Health Act of 1970 in *Social Problems*, Vol. 30, No. 1 (October 1982), 13-25; Robert Gottlieb, *Forcing the Spring: The Transformation of the American Environmental Movement*, 359-360. For information on the historical precedents to the Act, see David Rosner and Gerald Markowitz, “Research or Advocacy: Federal Occupational Safety and Health Policies During the New Deal,” *Dying for Work: Workers’ Safety and Health in Twentieth Century America*, edited by David Rosner and Gerald Markowitz. (Bloomington: Indiana University Press), 1987.

employers under obligation to create health and safety committees. Yet Nixon's omission of a compensation system was not surprising, given his vigorous opposition to black lung benefits. In *Liberalism at Work: The Rise and Fall of OSHA*, Charles Noble argues that the OSH Act merely expanded Nixon's existing legislative approach rather than altering it. In doing so, Noble touches on one of the key characteristics of the Nixon administration's policies. Clearly, President Nixon had little interest in supporting broad, substantial workplace regulation, in the coal industry or otherwise.

## Conclusion

Exactly one year after President Nixon signed the Federal Coal Mine Health and Safety Act into law, there had been little improvement to coal miners' working conditions. The death of 38 miners in a series of explosions at the Finley Brothers' mine in Hyden, Kentucky, on December 30 1970, which will be discussed in the following chapter, only confirmed that the legislation had not provided miners with greater protection. In fact, the coal mine fatality rate for the whole of 1970 was significantly higher than in 1969. Over the course of the year, 260 miners died, at a rate of 1.02 per million man-hours of work time. In comparison, 203 miners died in 1969, at a rate of 0.85 per million man-hours of work time. The increase in the fatality rate was attributable partly to the Hyden disaster, and partly to the persistence of isolated accidents such as roof-falls and electrical shocks.<sup>93</sup> The fatality rate, however, did not tell the whole story about death among coal miners. Many of the victims of black lung disease were dying in

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<sup>93</sup> Statistics on the coal mine fatality rate are taken from U.S. Department of the Interior, Bureau of Mines, "Mineral Industry Surveys, U.S. Coal Mine Injuries and Worktime, December and Annual Summary, 1970," Folder 3, Box 45, Miners for Democracy Collection, Reuther Archives.

severe discomfort and abject poverty, having failed to obtain compensation from the Social Security Administration. Why should legislation that looked so promising on paper have failed so completely? Just how committed was the Nixon Administration to enforcing and upholding the Federal Mine Act? What role did the United Mine Workers leadership play in perpetuating the cycle of death and injury in the mines? And why, despite their determination, did social movements in the coalfields have only limited success, particularly in light of the success of the coalfield activism in 1969?

First, the Federal Coal Mine Act failed because of the ineptitude and mismanagement of the Department of the Interior and the Bureau of Mines. To enforce the act, the Bureau was required to undertake frequent and rigorous inspections of all underground mines. However, it was unable to fulfill this task because it did not have enough inspectors. Moreover, the Bureau clearly sought to avoid disrupting the coal industry in its enforcement of the act. When a federal judge in Virginia issued a restraining order, which prevented the Bureau from levying penalties against small operators, the Bureau used the order to limit the penalties it imposed on larger companies. As a result, by the end of 1970, it had issued few violation notices, and had not collected any monetary penalties from operators. The absence of a director throughout most of 1970 further hindered the Bureau's effectiveness. The Bureau's abysmal record was, in many ways, a reflection of the Nixon Administration's lack of commitment to health and safety enforcement. President Nixon did not fill mine-related staff positions in the Interior Department or the Bureau swiftly or with the most qualified, appropriate candidates.

The United Mine Workers played a significant role in allowing the death and injury of coal miners to continue. Despite his sharp criticism of the Bureau of Mines at the Senate hearings in August 1970, UMW President Tony Boyle gave little indication that he was truly committed to health and safety enforcement. To an extent, his disregard for reform was reflected in his opposition to the Miners for Democracy, which made improved working conditions one of its main priorities. More significantly, though, it was borne out by his refusal to negotiate with the Disabled Mines and Widows of South West Virginia, who charged that the union's Welfare and Retirement Fund did not provide adequate coverage for sick miners or coal mine widows. Boyle's rhetoric may have displayed a commitment to the miners, but in practice, he followed the same course of inaction that had characterized his presidency to date.

## Chapter Five

### **The Limits of Regulation:**

#### **Coal Miners and the U.S. Bureau of Mines**

##### **Introduction**

In the year after Nixon signed the Federal Coal Mine Health and Safety Act into law, there was an unexpected increase in the mine fatality rate. Rank and file miners and liberal politicians attributed the continuing crisis in mine safety to the Bureau of Mines. The lack of inspectors in the Bureau limited its ability to enforce the Federal Mine Act, and often failed to issue citations and enforce penalties. In particular, coal miners were convinced that the Bureau was neglecting to carry out full inspections of non-unionized mines. Miners who transferred from non-unionized operations to union mines frequently informed their co-workers and local and district leaders of the Bureau's neglect of their former workplaces.

District and local union leaders highlighted their concerns about the Bureau in letters to their Congressmen and, to a lesser extent, the national leadership of the United Mine Workers. Their correspondence revealed several important aspects of the miners' fight for improved health and safety. First, district and local unions continued to act independently of the national leadership. As in the 1969 black lung movement in West Virginia, the rank and file regarded local unions and community organizations as more effective vehicles for protest and achieving their objectives. Moreover, the letters show that coal miners were not passive actors, but conscious protestors who actively challenged the failures of the new federal coal mine legislation. Perhaps more importantly, however, the correspondence highlighted the Nixon administration's failure

to enforce the legislation. Miners' charges against the Bureau, particularly that it was neglecting non-union coal companies, were justified, especially given the major disaster at the non-union Hurricane Creek mine in Kentucky on December 30, 1970. While the Bureau attributed responsibility for the disaster to the carelessness of the miners and the lax policies of the mine's owners, a congressional investigation found that the Bureau's neglect was a significant contributing factor to the explosion.

Miners also were concerned by Elburt F. Osborn's reorganization of the Bureau in mid-1971. Osborn's stated goal was to improve the Bureau's efficiency and provide closer supervision of mines at the local level. However, miners viewed the reorganization as further evidence that the Bureau was neglecting their concerns. They did not regard the reorganization as a measure to improve the working environment in the coalfields, but rather a political move to create more high-level administrative positions.

This chapter focuses specifically on the Bureau of Mines from December 1970 to late 1971. The chapter presents original research of neglected primary sources to tell the story of the Bureau's relationship with the nation's coal miners during this period.<sup>1</sup> It focuses in particular on letters from local and district branches of the United Mine Workers, which are located in the United Mine Workers Safety Division Files in the Special Collections library at Pennsylvania State University, local and national newspapers, and government reports. It also incorporates material from the Historical Collection at the National Mine Safety Academy in Beckley, West Virginia, and oral interviews. The chapter shows that the Bureau actively discriminated against non-union coal mines in its inspection procedures. Coal miners were aware of this discrimination,

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<sup>1</sup> Historians have largely neglected the role of the Bureau of Mines in coal miners' health and safety after 1969. As a result, secondary literature on the subject is sparse.

and protested by corresponding with labor and political representatives. Yet miners did not envision an alternative method of health and safety enforcement to the Bureau. Their letters emphasize that they still viewed the Bureau as a legitimate vehicle for the enforcement of the Federal Mine Act. Rather, the miners wanted the Bureau to improve its performance and to become more attentive to their health and safety concerns. The chapter further shows that the reorganization of the Bureau in the spring of 1971 was detrimental to its ability to enforce health and safety, a fact that the miners recognized and again protested by corresponding with politicians and labor representatives.

### **Evading Responsibility: The Bureau of Mines and the Hurricane Creek Disaster**

By mid-December 1970, miners were highly critical of the Bureau's health and safety enforcement record. In fact, a number of local and district unions were convinced that the Bureau was actively evading the inspection of non-union mines. In a letter to Representative Carl D. Perkins, Squire Feltner, the UMW Safety Coordinator for District 30, wrote:

... I am deeply concerned over the conditions that exist in the non-union coal mines in this district. We have coal miners every day that are coming from non-union mines and obtaining employment in our union operations who tell us of the deplorable conditions that the non-union coal miners are working under. As I am sure you are aware, the non-union coal miners do not have safety committees to represent them or speak in their behalf for safety and the Federal Bureau of Mines are certainly not making the inspections required by the new law in the non-union operations.<sup>2</sup>

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<sup>2</sup> Letter from Squire Feltner, District 30 Safety Coordinator, to Congressman Carl D. Perkins, December 14, 1970, Folder 33, Box 2, United Mine Workers Safety Division Office Files, Special Collections Library, Pennsylvania State University, State College. Hereafter, this collection will be referred to as UMW Safety Division Files, PSU Special Collections.

His letter not only emphasized the Bureau's neglect of non-union mines; it also showed that local and district branches of the UMW were aware of the health and safety concerns of their members. Feltner included with his letter a list of 140 non-union mines that he alleged had not submitted new roof support plans by the December 8 deadline, as required by guidelines in the Federal Register. In addition, he commented that the Bureau's lax enforcement procedures might "drive our union operations into the non-union camp." In doing so, he conveyed just as much concern for the union's survival as miners' safety.<sup>3</sup>

Feltner also conveyed his fears about the Bureau's enforcement policies to Bureau of Mines District C Manager Joe Malesky in Norton, Virginia. He advised Malesky that "we are having a large number of the non-union miners today coming into our local unions and they are advising us that there is no effort whatsoever of the Federal Bureau of Mines to enforce the Federal Mine Safety Law in the non-union operations, which if true is not right."<sup>4</sup> He concluded that the Bureau should not distinguish between union and non-union mines and should enforce the law evenly across all mining operations. While this conclusion partly rested on Feltner's desire to protect miners, it was also grounded in his determination to ensure the continued existence of the UMW. As he stated in his letter to Perkins, the Bureau's neglect of non-union mines might encourage union operators to relinquish their UMW contract and enter the non-unionized sector.

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<sup>3</sup> Ibid.

<sup>4</sup> Letter from Squire Feltner, District 30 Safety Coordinator, to Joe Malesky, District C Manager of the Bureau of Mines, December 14, 1970, Folder 33, Box 2. UMW Safety Division Files, PSU Special Collections.



Although based solely on the testimony of fellow district union members, Feltner's charges against the Bureau were by no means unusual. The leaders of UMW local 1405, based at the Westmoreland Coal Company in Big Stone Gap, Virginia, shared Feltner's concerns. In a letter to Tony Boyle, President Haskell Swiney and Recording Secretary J. D. Wheatley highlighted claims by some of their members, formerly employed at non-union operations, that the Bureau was permitting non-union mines to evade the law. They cited the Scotia Coal Mine in Kentucky, run by the Blue Diamond Coal Company, as one of the worst violators of the law.<sup>5</sup> (By way of confirmation, five years later this non-unionized mine was the site of a major disaster that killed 26 miners.)<sup>6</sup>

Swiney and Wheatley predicted that if the lack of enforcement in non-union mines continued, the Westmoreland Coal Company would ban the union so it could evade the terms of the Federal Mine Act. They urged Boyle to make sure the federal government was enforcing the law evenly across all mines. They emphasized that immediate action was in the national union's best interests: "We certainly do not want to sit idly by and see our Union destroyed because the Federal inspectors are inspecting the Union mines regularly and are not enforcing the law in non-union mines."<sup>7</sup> Boyle did not perceive an immediate threat to the United Mine Workers. In a measured reply, the

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<sup>5</sup> Letter from President Haskell Swiney and Recording Secretary J. D. Wheatley, Local Union 1405, to W. A. Boyle, UMW International President, December 18, 1970, Folder 22, box 3, UMW Safety Division Files, PSU Special Collections.

<sup>6</sup> The Scotia Mine Disaster will be discussed further in chapter seven.

<sup>7</sup> Ibid.

UMW President merely thanked Swiney and Wheatley for writing and informed them he had passed on their letter to UMW Safety Director Lewis Evans for further investigation.<sup>8</sup>

Local and district unions' charges against the Bureau of Mines were valid. As Squire Feltner rightly suggested, Bureau inspectors were more likely to spend time inspecting unionized mines because of the presence of safety committees. J. Davitt McAteer and UMW Safety Director Lorin Kerr trained and educated safety committee members across Appalachia about the Federal Mine Act, with the result that the committees were equipped with the knowledge to point out health and safety hazards to inspectors.<sup>9</sup> In non-union operations, where miners lacked such training, Bureau inspectors often failed to recognize, and even ignored, such hazards. Yet, the union leaders who protested the Bureau's failure to inspect non-union mines were not seeking to replace the Bureau, but rather wanted it to enforce the law consistently across all mines, whether they were unionized or not. They still regarded the Bureau as a viable enforcement mechanism. They petitioned high-profile figures such as Perkins and Boyle in the hope they would address the Bureau's inconsistent performance. The local and district unions' correspondence emphasizes that the miners were not passive actors who always followed the lead of the national leadership, but rather conscious protestors who realized they had a vested role in maintaining safe working conditions.

Miners' suspicions about the Bureau's inattention to non-union mines were seemingly confirmed on December 30, 1970, when a major explosion occurred at the

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<sup>8</sup> Letter from W.A. Boyle to J. D. Wheatley, December 21, 1970, Folder 33, Box 3, UMW Safety Division Files, PSU Special Collections.

<sup>9</sup> J. Davitt McAteer, telephone interview with author, tape recording, May 11, 2009.

non-union Finley Brothers mine in Hurricane Creek, Kentucky. The explosion, which occurred just after midday, instantly killed eighteen miners and trapped an additional twenty deep within the mine. One miner, A. T. Collins, was thrown out the mineshaft by the force of the blast. Collins referred to the dust that came spewing from the mine as “a wheeze of wind” that carried rock dust for over 200 feet. “When I tried to get up, I couldn’t stand. I kept falling down,” he commented.<sup>10</sup>

Hurricane Creek, located five miles east of the town of Hyden, was not a single mining operation but two separate mines that were interconnected. For the purposes of its investigation, the Bureau of Mines stipulated that both mines were involved in the disaster. Investigators could not immediately determine where the explosion originated, as the dead miners were spread across both mines. At 7.30pm, with grief-stricken families waiting nearby, rescuers began removing the bodies of the eighteen dead miners. The bodies were taken to a nearby school gymnasium for identification. Many had been so badly disfigured by the blast that relatives had to identify them by the social security numbers on their belts. Miners wore the numbers on their belts as a form of identification if they were involved in an accident. Everett Bartlett, supervisor for the Hazard district of the Kentucky Department of Mines and Minerals, believed the other trapped miners had not survived. He told assembled reporters, “We’ve found 18 men, some in each of the two shafts of the mine, all of them are dead. As to the chances of the others, we’ll say this: Their chances are zero.”<sup>11</sup>

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<sup>10</sup> *The Courier-Journal* (Louisville, Kentucky), December 31, 1970, A1 and A12; *New York Times*, December 31, 1970, 1 and 21.

<sup>11</sup> *The Courier-Journal*, December 31, 1970, A1 and A12; *New York Times*, January 1, 1971, 1 and 21

The families of the trapped miners maintained a vigil near the mine entrance. Laura Morgan, whose 33-year old son was among those missing, lamented, “Oh Lord, I hope my baby’s alive. I only had two left, Lord, and I started with five. I had to give up my youngest one two years ago. Oh Jesus, Jesus-children! He had a good education, Lord, but he had to go into them mines. He just went up on his brothers’ graves on Christmas day. I had a vision the other night... I told them boys I saw a new-dug grave.” Similarly, the mother of 23-year old Elmer White said, “I never wanted him to work in the mines. His grandfather and his uncle were both killed – his daddy and brothers have all been mashed up. I never wanted him to work in the mines.” White’s 18-year-old wife, struggling not to cry, added, “Seems like I don’t really believe he’s dead or anything. It just doesn’t seem real to me. That’s why I’m so calm.” On December 31, rescuers confirmed that the other twenty men had perished in the blast. By the end of that day, they had recovered all the bodies.<sup>12</sup>

The responses of the victims’ families emphasized that there was a clear relationship between mine disasters and religion in the Appalachian coalfields. In *Work and Faith in the Kentucky Coalfields*, Richard Callahan explains that work, religion, and death were inextricably linked in Kentucky mining communities. For example, miners and their families attached religious significance to dreams about coal mine disasters, and interpreted them as a vision of future events. The folksong, “The Dream of the Miner’s Child,” by the Reverend Andrew Jenkins, expressed fears that such dreams were an indicator of reality:

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<sup>12</sup> *The Courier-Journal*, December 31, 1970, A1.

A miner was leaving his home for work  
 He heard his little child scream  
 He went to the side of the little girl's bed—  
 "Oh! Daddy, I've had such a dream

Chorus:  
 Oh! Daddy, don't work in the mines today  
 For dreams have so often come true,  
 Oh! Daddy, my Daddy, please don't go away  
 I never could live without you."<sup>13</sup>

The verses that follow contain images of the mines aflame and "sweethearts and wives" crowded around the mine entrances. According to Callahan, folksongs like "Dream of the Miner's Child" gave miners a sense of control over the unpredictable conditions in their work environment, by emphasizing that disasters were not just contingent and accidental, but events they could avoid if they knew how to recognize the signs.<sup>14</sup> The last verse of Jenkins' song emphasizes this point:

Go down to the village and tell your dear friends  
 That as sure as the bright stars do shine,  
 There is something that's going to happen today;  
 Please, daddy, don't go to the mines.<sup>15</sup>

Some relatives of the Hurricane Creek victims believed that they had known about the disaster before it happened. Culture such as "The Dream of the Miner's Child" reinforced miners' belief that they faced the constant risk of injury or death on the job. In the early 1970s, they viewed the Bureau of Mines as a tangible source of this risk. For non-union

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<sup>13</sup> Richard J. Callahan, Jr., *Work and Faith in the Kentucky Coalfields: Subject to Dust* (Bloomington: Indiana University Press, 2009), 110.

<sup>14</sup> *Ibid.*, 111

<sup>15</sup> *Ibid.*, 110.

miners and their families, the Bureau's lax inspection procedures increased the likelihood that a disaster would occur. As the miners went to work each day, they anticipated disasters such as the explosion at the Hyden mine.

Federal and state officials promised an extensive investigation of the Hyden disaster, while President Nixon assured victims' families they would receive substantial federal aid. In a public statement that resembled his March 1969 special message on coal mine safety, Nixon said, "Every appropriate step must and will be taken to identify the causes of his tragedy and to prevent future mining accidents." He continued, "I extend our deepest sympathies to the families and friends of those who lost their lives in this tragic accident." Nixon announced he planned to visit the mine to console the bereaved families. When he cancelled the trip, his staff claimed that inclement weather prevented him from traveling to Kentucky. Nixon did, however, send a task force to Hurricane Creek to provide assistance to the families.<sup>16</sup>

Representative Carl D. Perkins announced that his Committee on Education and Labor intended to carry out a separate investigation, pending the outcome of the Bureau's investigation. He also asked the Bureau to investigate the mine's health and safety record and to determine if its previous inspections had met federal requirements. Senator Henry M. Jackson (D-WA), the Chairman of the Committee on Interior and Insular Affairs, and Senator Harrison Williams (D-NJ), the Chairman of the Committee on Labor and Public Welfare, charged that the Bureau had not satisfactorily enforced the 1969 mining

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<sup>16</sup> *The Courier-Journal and Herald* (Louisville Kentucky), January 1, 1971, A1 and A32; *New York Times*, January 1, 1971, 1 and 21.

legislation. They urged the Department of the Interior to organize a hearing that would include testimony from miners, widows, and federal mine officials.<sup>17</sup>

After twenty-four hours, the exact cause of the Hurricane Creek disaster was still unclear. Everett Bartlett speculated that the most likely explanation was a blown electrical cable or the shooting of dynamite by the miners. It was clear, however, that the Bureau of Mines had uncovered a series of health and safety violations in the mine over the past seven months. In June, Bureau inspector Gordon Couch had discovered “imminent danger” posed by loose coal, excessive accumulations of coal dust, faulty electrical equipment, and illegal underground smoking. He ordered the closure of the mine until the owners, Charles and Stanley Finley, rectified the violations, a process that lasted three days. Couch inspected the mine again on August 14, when a non-fatal accident injured two miners, but ultimately decided not to impose sanctions. On November 9, the Bureau conducted another investigation of the mine after a worker was crushed to death by operating machinery. As on its previous visit, the Bureau did not issue a penalty notice. It justified its decision by arguing that its shortage of inspectors prevented it from continuously monitoring every mine for violations.<sup>18</sup>

Couch visited the No. 15 mine again on November 19 to carry out a routine spot inspection and found several violations, including excessive quantities of harmful coal dust and an absence of qualified personnel for maintaining electrical equipment. He ordered the Finley Brothers to correct the violations by 8:00 am on December 22, when

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<sup>17</sup> *The Courier-Journal and Herald*, January 1, 1971, A1 and A32; *New York Times*, January 3, 1971, 34.

<sup>18</sup> *The Courier-Journal*, December 31, 1970, A1 and A12.

an inspector would return to re-evaluate the mine. No one from the Bureau, however, visited the mine on the specified date. The six men employed in the Bureau's nearby Barbourville office were either on holiday leave or engaged in more urgent duties elsewhere, such as inspecting roof supports or ventilation systems in other mines. On December 24, only one inspector was on duty, and on December 30, the day of the explosion, four inspectors were still on leave. When this information came to light after the disaster, the Bureau explained that the inspectors had faced losing accumulated holiday time after December 31. Ralph Nader demanded a congressional investigation of the Bureau to determine who was directly responsible for the missed inspection on December 22.<sup>19</sup>

Representatives from the Bureau of Mines and the Kentucky Department of Mines and Minerals began a full investigation of the disaster on January 1. Although they had already conducted a preliminary inspection, their efforts to enter the deepest parts of the No. 15 and No. 16 mines had been hampered by lethal quantities of methane gas. Before the investigation, Everett Bartlett was convinced that explosives had played the biggest role in the explosion. He commented, "Explosives were involved in it, probably more than coal dust. The mine had been pretty heavily rock-dusted from what we could see." He acknowledged that coal dust also had been a factor, adding, "We feel like it was too much of an explosion for it to have been the explosives alone." Similarly, James

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<sup>19</sup> *The Courier-Journal*, January 1, 1971, A1 and A12; *New York Times*, January 1, 1971, 1 and 21; *Washington Post*, January 1, 1971, A1 and A4.



Westfield, the assistant director of the Bureau of Mines, theorized that explosives had ignited the coal dust inside the mine.<sup>20</sup>

Over the next three days, investigators uncovered evidence of blasting in the No. 16 shaft and discovered illegal primer cord in both sections of the mine.<sup>21</sup> While they provisionally concluded that a blasting operation had ignited the coal dust, they refused to comment if the illegal device had contributed to the explosion. Referring to the primer cord, Westfield said, “It is not practice in the coalfields. It is not permissible.”<sup>22</sup> It was typically used for blasting during strip mining and the construction of roads. According to one expert, primer cord greatly increased the risk of explosions underground because it flashed and flamed during operation. Westfield said the Bureau had sent the cord to its Pittsburgh laboratory for analysis, but he did not say what role, if any, it had played in the explosion.<sup>23</sup>

In an effort to determine the cause of the disaster, the Bureau of Mines and the Kentucky Department of Mines and Minerals held a public hearing in Hyden on January 6. Bureau director Elburt Osborn presided over the one-day hearing, with the assistance of James Westfield and Henry P. Wheeler, the Bureau’s deputy director of health and safety. Harreld N. Kirkpatrick, the commissioner of the state agency, and his assistant J.

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<sup>20</sup> *The Courier Journal*, January 2, 1971, A1 and A14.

<sup>21</sup> *The Courier Journal*, January 3, 1971, A1 and A20; *New York Times*, January 6, 1970, 18.

<sup>22</sup> *The Washington Post*, January 5, 1971, A12.

<sup>23</sup> *Los Angeles Times*, January 5, 1971, 7; *The Washington Post*, January 5, 1971, A12.

H. Musgrove, also participated in the questioning of witnesses.<sup>24</sup> Osborn cast doubt on his ability to lead the hearing objectively by commenting, “This disaster wasn’t unexpected. We’ve had two good years since the last disaster... and I think we can expect almost one of these a year.”<sup>25</sup> Osborn’s callous attitude mirrored the comments made by Tony Boyle after the Farmington explosion, that disasters were an inherent risk of coal mining and could not be prevented. Furthermore, it implied that he wanted to protect the reputation of the coal industry, not the health and safety of miners.

At the hearing, the state and federal officials questioned Finley employees if they had witnessed explosives shooter Walter Bentley, who died in the blast, using illegal primer cord or detonating explosives without the necessary safety precautions. Most denied having seen illegal or unsafe working practices, but three, including A. T. Collins, the sole survivor of the explosion, reported having noticed primer cord inside the mine. On the morning of the disaster, alleged Collins, a fellow employee had warned him to expect “a small explosion,” then “punched [him] with his elbow like it might be a lie.”<sup>26</sup> Carl D. Perkins and Ken Hechler attended the hearing, although Perkins departed at lunchtime to inspect the Hyden mine with his own technical advisers. While Hechler was convinced that the mine’s long history of safety violations had contributed to the blast, officials focused mostly on the events immediately beforehand.<sup>27</sup>

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<sup>24</sup> *New York Times*, January 6, 1971, 18; *New York Times*, January 7, 1971, 15.

<sup>25</sup> “Mine Safety Slips Through a Loophole,” *Business Week*, January 30, 1971, 19.

<sup>26</sup> *New York Times*, January 7, 1971, 15.

<sup>27</sup> *Ibid.*

On January 21, the Kentucky Department of Mines and Minerals published its report, in which it concluded that two of the miners, Walter Bentley and day-shift foreman Walter Hibbard, were partially responsible for the explosion. The report stated that Bentley had used explosives in a “non-permissible” manner, used illegal primer cord, and failed to evacuate the mine before detonating the explosion. Bentley was criticized for failing to compact the dynamite properly and for setting off 100 sticks with a single detonation, ten times the lawful amount. Commenting on the report, Harreld Kirkpatrick said, “He [Bentley] could have gotten all of these men out and had them eating their lunch, and the man who set off the shot, who was supposed to be the expert, would have killed himself and all this wouldn’t have happened.”<sup>28</sup> The report also claimed that Charles and Stanley Finley were unaware of Bentley’s working methods that day and therefore should not have to face penalties.<sup>29</sup> However, it based this claim on testimony directly from the Finley Brothers, which raised doubts about its accuracy.

The Bureau of Mines published its own report on the explosion the following week. The report concluded that the improper use of explosives, combined with excessive quantities of dust, had primarily caused the disaster. “The explosion occurred,” stated the Bureau, “when coal dust was thrown into suspension and ignited by Primacord or by permissible explosives used in a non-permissible manner or by use of non-permissible explosives during the blasting of roof rock for a loading point (boom hole).”<sup>30</sup> According

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<sup>28</sup> *New York Times*, January 21, 1971, 21.

<sup>29</sup> *Ibid.*

<sup>30</sup> U.S. Department of the Interior, Bureau of Mines, *Official Report of Major Mine Explosion Disaster, Nos. 15 and 16 Mines, Finley Coal Company, Hyden, Leslie County*,

to the Bureau, the accumulation of coal dust in the mine, combined with inadequate rock dusting, facilitated the rapid spread of the explosion. The Bureau also cited electrical faults in the mine as a possible cause of the explosion.<sup>31</sup>

The Bureau did not reveal who was responsible for the violations. In previous disaster reports, it had always cited the guilty parties or assessed who was responsible. Bureau officials announced, however, that they were intending to ask the Justice Department to bring charges against the guilty parties.<sup>32</sup> One representative stated, “There are one or more criminal violations involved in connection with the disaster which warrant a recommendation for prosecution.”<sup>33</sup>

The Department of the Interior imposed a fine of \$53,000 on the Finley Company that covered both the disaster and the violations preceding it, a considerable reduction in the fine of \$77,000 it had originally intended to levy against the company.<sup>34</sup> Prior to the report’s publication, Undersecretary of the Interior Fred J. Russell had deleted all references to the fine from the report, enabling the Department to change the amount of the fine.<sup>35</sup> Michael Sabaugh, an assessment officer for the Bureau, claimed that Russell

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*Kentucky, December 30, 1970* (Washington, D.C.: U.S. Government Printing Office, 1971), 25.

<sup>31</sup> *Ibid.*, 27-29.

<sup>32</sup> *New York Times*, January 30, 1971, 1.

<sup>33</sup> *Ibid.*

<sup>34</sup> J. Davitt McAteer, *Coal Mine Health and Safety: The Case of West Virginia* (New York: Praeger Publishers, 1973), 194.

<sup>35</sup> *Ibid.* McAteer bases his information about the fine on an article in the (Kentucky) *Courier Journal* by Ward Sinclair, published on March 13, 1971.

removed the information about the fine because the Finely Brothers were in the process of appealing it. However, Ken Hechler wrote to Elburt Osborn, informing him that such action violated federal mine law, resulting in the Bureau's announcement of the fine shortly after it published the report.<sup>36</sup>

In both its report and its announcement that it intended to press charges, the Bureau absolved itself of any responsibility for the events at Hurricane Creek. Despite absolving itself, coal miners firmly believed that the Bureau was to blame. In the aftermath of the explosion, several local and district unions renewed the charge that the Bureau was overlooking non-unionized mines. In a strongly-worded letter to Congressman Carl D. Perkins, members of UMW local 5741, based at Kentucky's Bethlehem mine, argued the Hyden disaster was proof that small and non-union mines were able to "get by with murder." The local 5741 members alleged that the bureau shut down major mines for safety violations, while only giving warnings to non-union mines. Most significantly, they charged that if the bureau had shut down the Hyden mine after it had discovered the violations on November 19, it would have prevented significant loss of life. For the miners of local 5741, the solution was clear:

It is time that someone with the authority tell the Federal and State Inspectors to treat ALL MINES ALIKE AND SHOW FAVORE TO NONE and it will help prevent things like this from happening again.

They holler that they don't have enough Inspectors, FOOEY [sic], They inspected this mine [Hyden] and found severe violations, didn't they? Why wasn't it corrected before he was allowed to operate again. If they had a MILLION INSPECTORS it wouldn't help any, if, after an inspection and severe violations were found and nothing was done to correct them. This also goes to prove that

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<sup>36</sup> Ibid.

ALL MINES SHOULD BE CLASSED AS GASSY AS RULED ACCORDINGLY. [*Emphasis in original letter*]<sup>37</sup>

The members of local 5741 attributed the disaster to the federal government's failure to apply the Federal Coal Mine Act equally to 'gassy' and 'non-gassy mines.' Under the terms of the act, all coal mines were classified as 'gassy,' regardless of their size and the quantity of methane they produced. The miners believed that the Bureau of Mines had failed to classify the Hyden mine as a 'gassy' mine during its inspections. Furthermore, the members of local 5741 reiterated that the Bureau was remiss in its inspections of non-union mines. Moreover, they obviously did not accept the Bureau's claim that a shortage of inspectors prevented it from fulfilling its duties. They argued that the Bureau had an obligation to shut down unsafe mines regardless of how many inspectors it employed. The letter by the local 5741 emphasized that miners were actively engaged in the issue of coal mine health and safety. They had a clear understanding of the federal legislation, and they were knowledgeable enough to critically analyze the Bureau's lax inspection policies.

In a letter to Joe Malesky, Carson Hibbits, the president of District 30, also challenged the Bureau's record in enforcing the law at non-union mines. Its continuing focus on union mines, he argued, would push those mines "to go non-union," so they could evade federal inspections. According to Hibbits, Squire Feltner, the District 30 Safety Coordinator, had visited the Hyden mine before the disaster and witnessed several

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<sup>37</sup> Letter from Local Union 5741 (President Robert Carter) to Congressman Carl D. Perkins, January 4, 1970, Folder 33, Box 2, UMW Safety Division Files, PSU Special Collections.

violations even outside the mine.<sup>38</sup> Hibbitts also wrote to Lewis Evans, director of the UMW Safety Department, inviting him to a meeting of District 30 Safety Committeemen on January 9.<sup>39</sup>

It was not just coal miners who felt the Bureau of Mines had contributed to the Hyen disaster. The Labor Subcommittee in the House of Representatives was dissatisfied with the Bureau's report, and on March 9 opened its own hearing in Washington, D.C. The committee members focused largely on the Bureau's inspection practices at the Finley mine in the months prior to the disaster. On March 10, Carl D. Perkins, addressing Bureau inspector C. E. Hyde, said the Bureau could have saved lives by carrying out more extensive investigations of the mine. He criticized Hyde for not inspecting the mine when he visited on December 21 to deliver ventilation instructions. Perkins stated, "You knew something was wrong with that mine but you did not inspect it. Do you need a directive to inspect a mine?" Hyde replied that the Bureau "only [investigated] accidents after they [happened]."<sup>40</sup>

Representative John H. Dent, meanwhile, alleged that inspector Gordon Couch had not followed up on his November 19 inspection because of a "special arrangement" with one of the mine owners, Charles Finley. The previous day of the hearing had revealed that Couch and Finley both lived in Manchester, Kentucky, a small town of

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<sup>38</sup> Hibbitts misspells Malesky's name, using "Malenski." Evidence from other sources, including Bureau of Mines reports, indicates that "Malesky" is the correct spelling. Letter from Carson Hibbitts, District 30 President, to Joe Malesky, January 4, 1971, Folder 33, Box 2, UMW Safety Division Files, PSU Special Collections.

<sup>39</sup> Letter from Hibbitts to Evans, January 4, 1971, Folder 33, Box 2, UMW Safety Division Files, PSU Special Collections.

<sup>40</sup> *New York Times*, March 11, 1971, 78.

4,000 residents, and they had once worked together at the same mine. Couch explained that he did not return to the No. 16 mine on December 22 because Finley reported that he had closed it down because of roof problems.<sup>41</sup> He further testified that the Washington headquarters of the Bureau had established more urgent priorities elsewhere.<sup>42</sup> In response, Dent noted that Bureau investigators had uncovered evidence of illegal blasting on December 22. He commented, “Somebody knew you wouldn’t be there. Didn’t that call make you suspicious? It sounds to me like some kind of working arrangement.”<sup>43</sup> In his 1973 publication, *Coal Mine Health and Safety*, J. Davitt McAteer criticized the subcommittee for not posing additional questions about the priorities that had prevented the Bureau from returning to the Hyden mine in December. He wrote, “This failure of the subcommittee to examine the overall attitude of the bureau’s administrators in Washington is inexplicable in view of the obvious permissiveness of the bureau since O’Leary’s removal.”<sup>44</sup> For McAteer, the evidence of the Bureau’s failure to enforce health and safety warranted further investigation by the subcommittee. He felt the subcommittee had a responsibility to examine how the incompetence of the Bureau’s administrators in Washington D.C. had contributed to the disaster.

On March 11, Charles Finley failed to attend the hearing as scheduled. The subcommittee issued a subpoena for him to testify at the hearing when it resumed at

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<sup>41</sup> Ibid.

<sup>42</sup> McAteer, *Coal Mine Health and Safety*, 195.

<sup>43</sup> *New York Times*, March 11, 1971. 78.

<sup>44</sup> McAteer, *Coal Mine Health and Safety*, 195.



Hazard, Kentucky.<sup>45</sup> Appearing before the subcommittee in the Hazard district court on March 12, several Hyden widows said their husbands had spoken of dangerous working conditions and unlawful inspection practices at the Finley mine. Emily Gibson, who lost her husband in the explosion, said, “We was laying there before going to sleep, and my husband said, ‘If they don’t straighten up over there we’ll all get killed.’”<sup>46</sup> Gibson said her husband also had noticed explosives in the mine “that wasn’t supposed to be in there – that wasn’t safe.”<sup>47</sup> Another witness, Nancy Gray, said that her husband Lawrence had talked about “inspectors standing outside in their suits but they wouldn’t go inside the mines.” According to Gray, her husband had witnessed this five or six times. She also claimed that Charles Finley had purchased a cart to “haul the dynamite into the mine.”<sup>48</sup> Daisy Young said the Finley brothers were aware of inspection dates in advance. “They’d tell my husband to chew instead of smoke tobacco that day,” she said. “That was the only time he’d ever buy chewing tobacco.”<sup>49</sup>

On the final day of the hearing, Charles Finley denied that he had been aware of miners using primer cord, or that survivor A. T. Collins had warned him about its dangers. He insisted that he kept the primer cord, which he used for road work and surface mining, concealed in a trailer, to prevent miners from using it deliberately or by

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<sup>45</sup> *New York Times*, March 12, 1971, 74.

<sup>46</sup> *New York Times*, March 13, 1971, 35.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

accident.<sup>50</sup> Finley said that while he could personally supervise every shift, he had knowledgeable, well-paid foremen to oversee his 100 employees. “I thought this was the safest mine I ever ran,” he commented.<sup>51</sup> The Hyden owner rejected the subcommittee’s claims that he was acquainted with inspector Gordon Couch. During his testimony, Finley complained that small mines could not adhere to the Federal Mine Act without jeopardizing their profits.<sup>52</sup> His testimony provided direct evidence that mine operators prioritized profit margins ahead of the welfare of their workforce. It also revealed, however, that smaller mines had greater difficulty in enforcing the Federal Mine Act.

The subcommittee published its final report on the hearing on June 19, 1971. It attributed much of the responsibility for the Hyden explosion to the Bureau of Mines, because it had ignored the dangerous working conditions in the mine. The subcommittee concluded that the Bureau “should have been on notice as to the dangerous 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.”<sup>53</sup> Furthermore, the subcommittee accused the Bureau of betraying the miners who depended on it for the enforcement of safe conditions. It asserted that “[it] would be derelict if it did not acknowledge the glaring fact that the Bureau of Mines must bear a heavy burden of responsibility for the

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<sup>50</sup> *New York Times*, March 14, 1971, 45; *Washington Post*, March 14, 1971, 16.

<sup>51</sup> *New York Times*, March 14, 1971, 45.

<sup>52</sup> *Ibid.*

<sup>53</sup> *New York Times*, June 20, 1971, BQ75.

Hyden tragedy.”<sup>54</sup> However, the subcommittee attributed no specific blame to the Finley brothers for the explosion.

Unconvinced by the Bureau and Labor Subcommittee’s overall assessment of the disaster, the Coal Miners’ Legal Defense Fund released its own report, pointedly titled “The Hurricane Creek Massacre.” The Fund explicitly blamed both the Finley Brothers and the Bureau of Mines for the events at Hurricane Creek. In the conclusion, the authors stated, “Since the explosives were purchased by the mine operator, and since the operators made no attempt to keep them under lock and key, he is responsible for the fact that they were used, and must be imprisoned under Section 109 (b) of the Federal Coal Mine Health and Safety Act...”<sup>55</sup> They also listed several other violations committed by the Finley brothers that endangered their employees’ health and safety. The report condemned the inspection practices of the Bureau of Mines. It surmised that, if the Bureau had fully inspected the Finley mines in 1970, it would have uncovered the illegal blasting practices.<sup>56</sup> It also criticized the Bureau’s hearing in Hyden on January 6: “Despite the presence of Bureau of Mines director Osborn and a supporting staff of Interior Department attorneys, the January 6 hearing constituted an astonishing display of

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<sup>54</sup> Ibid.

<sup>55</sup> Coal Miners Legal Defense Fund, “The Hurricane Creek Massacre: A Report on the Circumstances Surrounding the Deaths of 38 Men in a Coal Mine Explosion in Eastern Kentucky, December 30, 1970,” (Charleston, West Virginia: Coal Miners Legal Defense Fund, 1971), 47. This report is located in Folder 15 (entitled ‘Hyden Disaster’), Box 46, Miners for Democracy Collection, Walter Reuther Library of Labor and Urban Affairs, Wayne State University, Detroit.

<sup>56</sup> Ibid., 49.

downright incompetence that casts doubt on the ability of the Bureau to investigate any matter relating to mine safety.”<sup>57</sup>

The Hyden mine disaster reflected the dangers faced by coal miners, particularly those working in small, non-unionized operations. In the absence of a union presence at the mine, the Finley brothers committed serious health and safety violations to limit expenditure on labor and increase their profits. They bore a large degree of responsibility for the explosion that killed 38 miners. However, the behavior of the Finley brothers was consistent with that of many other coal mine operators over the past several decades. More significantly, the Hyden disaster reflected the complete failure of the Bureau of Mines to enforce the 1969 Federal Coal Mine Health and Safety Act.

### **Politics Before Partisanship**

Beyond the controversy surrounding the Bureau’s role in the Hyden disaster, by late January 1971 the Nixon administration had moved toward the appointment of a new Secretary of the Interior. The administration announced it was considering Rogers C. B. Morton for the position. On January 25, Morton testified at a Senate hearing on his impending appointment as Interior Secretary. He stated that he would make environmental issues a top priority, but stressed he would not allow them to jeopardize economic and defense policies. Environmental groups were skeptical of Morton’s concern for the environment, particularly in light of his voting record in the House and his solicitation of corporate donations while he was head of the Republican National

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<sup>57</sup> Ibid.

Committee.<sup>58</sup> In the recent past, the Sierra Club had accused him of “a dismal, lackluster performance” on environmental policy and of representing oil interests in Congress. The president of the Sierra Club, Phillip Berry, said, “The list of his votes against the environment is a very long one. We believe we should have a man in this job who has shown himself to be a committed and dedicated conservationist. The record of Rogers Morton does not show he is this man.”<sup>59</sup> If appointed, the position of Interior Secretary would give Morton a unique voice, not to mention significant authority, in the Nixon administration’s environmental policies, which was precisely why environmental groups opposed him.

On January 26, after the conclusion of the hearing, the Senate Interior Committee gave unanimous consent to Morton’s appointment. The committee members scrutinized Morton’s financial records before granting their approval. While Morton had limited shares in the oil industry, he already had informed the committee of his intent to sell them, as they might be a conflict of interest. The Department of the Interior, for example, controlled offshore oil leases and the Alaska pipeline.<sup>60</sup> Two days later, the full Senate confirmed Morton’s appointment. Despite his optimistic rhetoric, Morton’s appointment reinforced the Nixon administration’s conservative stance on coal mine health and safety. Morton’s rejection of the Federal Coal Mine Act in the final congressional vote,

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<sup>58</sup> *Washington Post*, January 26, 1971, A18.

<sup>59</sup> *Los Angeles Times*, January 21, 1971, A5.

<sup>60</sup> *New York Times*, January 27, 1971, 18; *Washington Post*, January 27, 1971, A2.

combined with his history of voting against progressive environmental policies, meant that any improvement in the Bureau of Mines was unlikely.<sup>61</sup>

In late January 1971, Edward D. Failor, appointed by the Bureau of Mines to oversee enforcement procedures, imposed fines totaling \$5,000 on 200 mine operators for 400 violations of the Federal Mine Act. Failor announced that the Bureau planned to issue fines for an additional 30,000 violations that had occurred since April 1970.<sup>62</sup> This was the Bureau's third attempt in the past ten months to impose penalties for violations of the law. The federal injunction against the Bureau in April 1970 had thwarted its first effort to collect fines. The Bureau tried again to collect fines from operators once the injunction expired, using a new fee schedule drafted by Undersecretary of the Interior Fred J. Russell. Inspectors, however, failed to adhere to the new schedule and told operators guilty of infractions that the Bureau would impose fines later. Even Failor's limited third attempt to collect fines did not represent significant progress. The Bureau's paltry fines for only a small fraction of violations emphasized the Bureau was not upholding its mandate for tough health and safety enforcement.<sup>63</sup>

While the new penalty schedule gave the Bureau the authority to impose fines of between \$5,000 and \$10,000 for serious violations, it also exempted operators from financial sanctions when "[a violation] clearly could not have been avoided at the time

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<sup>61</sup> See voting record for the Federal Mine Act in *Congressional Record*, 91st Cong., 2d sess., 1969, pt. 29: 39270-39721.

<sup>62</sup> "Mine Safety Slips Through a Loophole," *Business Week*, January 30, 1971, 19.

<sup>63</sup> Ibid.

the violation was cited.”<sup>64</sup> Bureau officials defended this strategy, claiming that the Occupational Safety and Health Act of 1970 contained a similar clause and reflected Congressional thinking on workplace safety. UMW Safety Director Lewis Evans complained that the “absence of fault” clause rested on the discretion of individual inspectors. He said the UMW only agreed with exempting operators from violation notices when the unavailability of equipment, personnel, or technology prevented them from adhering to the law. The union, he emphasized, opposed exemptions for operators who were simply unaware of violations in their mine.<sup>65</sup>

By questioning inspectors’ freedom to interpret the law, Evans was touching on a fundamental problem within the Bureau of Mines. In many cases, the decisions of individual staff members, particularly at the management level, prevented it from uniformly enforcing the Federal Mine Act. Bureau managers frequently decided not to act on the violation notices issued by coal mine inspectors. They could avoid acting on a violation by classifying it either as “vacated” or “void.”<sup>66</sup> By labeling a citation notice as “vacated,” managers were stipulating that it had been wrongfully issued, even if the inspector was able to provide compelling evidence to the contrary. “Vacated” citations, however, remained part of the Bureau’s official record. “Void” citations were those deemed by managers to have been issued in error, or on reassessment had been addressed by mine owners. While the Bureau filed “void” citations, they did not remain part of the

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Richard McDorman (former coal miner and mine inspector), interview by author, typed notes, June 17, 2009, National Mine Safety Academy, Beckley, West Virginia. This interview took the form of an informal conversation, where Mr. McDorman discussed his experiences as an inspector.

official record. Managers frequently overturned the citations issued by mine inspectors using one of those classifications.<sup>67</sup> They also exercised their autonomy in other ways. Some employed family members and friends as inspectors, even when they had no mining experience and lacked the appropriate qualifications.<sup>68</sup>

The significant influence of the Bureau's management over safety enforcement had been revealed previously in the responses to a 1970 inspector questionnaire devised by W. R. Park, a district Bureau manager in West Virginia. In the responses, the majority of inspectors claimed that the upper levels of Bureau management hindered their effectiveness by limiting their authority. They cited the provisions of the 1969 legislation as a key factor impeding their performance. The inspectors specifically cited the Bureau's "middle managers" as the main obstacle to their work. One commented, "It's not Park or O'Leary [Bureau director]; it's someplace in between them. Those fellows in between have lost track of what is going on out there."<sup>69</sup> Inspectors who performed their job too effectively were often subject to an "incompatibility transfer." In many cases, coal operators who felt a particular inspector was being too strict about the enforcement of the law contacted the Bureau District office and requested the inspector be transferred elsewhere. Park contended he only transferred inspectors if he could find evidence of misconduct. Many of the inspectors subject to this measure, however, claimed they were not allowed to testify on their own behalf.<sup>70</sup>

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<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> McAteer, *Coal Mine Health and Safety*, 201.

<sup>70</sup> Ibid.



Even decisions by inspectors on the ground prevented the Bureau from consistently enforcing the Federal Mine Act. According to former mine inspector Richard McDorman, well-qualified inspectors did not always understand the mandatory standards of the Act, which were often complex and ambiguous. The inspectors often had to make their own interpretations of the Bureau's annual inspection manual, which contained too many generalizations and not enough specific guidelines. In addition, many inspectors lacked the requisite knowledge to interpret the guidelines for themselves. The Bureau's inspector training program course provided only rudimentary education, particularly from 1970 to mid-1971, when the Bureau was more concerned with addressing the shortage of mine inspectors.<sup>71</sup>

The Bureau's ongoing shortage of inspectors further impeded its enforcement of health and safety. Despite the shortfall in its inspection force, the Bureau was rigid in the qualifications and physical requirements it demanded of inspectors. On March 26, 1971, Michael F. Widman, a national leader in the United Mine Workers of America, wrote to Senator Richard S. Schweiker (R-PA) regarding Norman Rumburg, whose application to become a Bureau inspector had been rejected. Widman complained that the Bureau had denied Rumburg the opportunity of becoming an inspector because he was slightly overweight. He emphasized the Bureau's urgent need for inspectors and Rumburg's ten years of previous experience as a federal mine inspector from 1953 to 1963, and urged Schweiker to intervene on Rumburg's behalf.<sup>72</sup> Widman also wrote to Representative

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<sup>71</sup> Richard McDorman, interview by author, June 17, 2009.

<sup>72</sup> Letter from Michael F. Widman to the Honorable Richard S. Schweiker, March 26, 1971, Folder 35, Box 1, UMW Safety Division Files, PSU Special Collections.

John P. Saylor (R-PA), who addressed the matter by writing to Bureau director Elburt F. Osborn. On April 15, 1971, Osborn responded to Saylor, informing him that Rumburg had failed to meet the stringent physical criteria required for underground inspection work. He wrote, "Mr. Rumburg has been unable to meet the physical requirements for appointment as a Federal Mine Inspector... Because of the arduous nature of our inspector positions, the stamina and other physical requirements are necessarily rigid to help make certain that the one appointed can perform his duties adequately without hazard to himself or others."<sup>73</sup> In all likelihood, the Bureau's rigorous physical requirements for inspectors were not solely connected to the strenuous demands of inspection work. The Bureau may have adopted these requirements to ensure a pliable labor force. By rejecting skilled, well-qualified applicants for minor physical reasons, the Bureau avoided employing inspectors who sought to issue tough sanctions for health and safety violations. In turn, the Bureau avoided alienating itself from the coal operators.

Widman also engaged in correspondence with Osborn. He informed Osborn that he had reviewed Rumburg's qualifications and perceived him to be well qualified for the position of federal inspector. He asked Osborn to hold a meeting with Rumburg and union representatives, but Osborn's response precluded such a measure.<sup>74</sup> In his reply to Widman, he stated that such a meeting would have no utility, particularly given Rumburg's employment record with the Bureau. Osborn went on to reveal that from April 1 1960 to March 31, 1961, Rumburg, while employed as a Bureau inspector, had

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<sup>73</sup> Letter from Elburt Osborn to John P. Saylor, April 15, 1971, Folder 35, Box 1, UMW Safety Division Files, PSU Special Collections.

<sup>74</sup> Letter from Michael F. Widman to Elburt F. Osborn, April 21, 1971, Folder 35, Box 1, UMW Safety Division Files, PSU Special Collections.

been rated deficient in quality of work, work habits, and work attitude, despite receiving an overall rating of satisfactory. Osborn continued, “On April, 1961, he was officially reprimanded by the Director, Bureau of Mines. On November 28, 1962, Mr. Rumburg was separated for cause from the Bureau.”<sup>75</sup> Despite this, the Bureau had given Rumburg another opportunity to qualify as an inspector, on the condition that he passed the physical examination. According to Osborn, Rumburg’s past employment record, combined with his failure of the physical examination, had prevented him from obtaining employment with the Bureau.<sup>76</sup>

Rumburg’s case was by no means unique, as a significant number of applicants for the Bureau’s inspection team failed to gain employment. An examination of correspondence in the United Mine Workers Safety Division Office Files reveals that many candidates, such as James DeFail of Loyalhanna, Pennsylvania, were turned down because they did not meet the required standards of physical fitness.<sup>77</sup> However, the Bureau turned down other candidates for more abstract reasons. John Chiesa, for example, an experienced miner from Blairsville, Pennsylvania, passed the qualifying requirements but did not receive an offer of employment. The Bureau determined that “other applicants were better suited.”<sup>78</sup>

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<sup>75</sup> Letter from Elburt F. Osborn to Michael F. Widman, May 19, 1971, Folder 35, Box 1, UMW Safety Division Files, PSU Special Collections.

<sup>76</sup> Ibid.

<sup>77</sup> For the correspondence pertaining to James DeFail, see Folder 35, Box 1, UMW Safety Division Files, PSU Special Collections.

<sup>78</sup> For the correspondence pertaining to John Chiesa, see Folder 35, Box 1, UMW Safety Division Files, PSU Special Collections.

At first glance, it might be argued that the Bureau had stringent criteria for applicants who wished to qualify as an inspector and sought to conduct its mine inspections by the highest standards. A closer examination shows this was not the case. The Bureau's rejection of applicants for minor technicalities, including slight discrepancies in weight and physical fitness, makes little sense, given that it did not provide comprehensive training to new inspectors. It also relied on "Partial But Representative" inspections, which did not require inspectors to undertake a full examination of the mine. Moreover, the Bureau should have accounted for unqualified candidates in its hiring procedures by interviewing more people. Ultimately, the Bureau's rejection of a large number of candidates accounted for its ongoing shortage of inspectors and in turn its failure to enforce federal mine legislation.

In the spring of 1971, the Bureau embarked on a program of extensive reorganization, creating new inspection districts and redrawing the boundaries of existing ones. The purpose of this reorganization, according to Elburt Osborn, was "to provide for closer supervision, lend better technical assistance, and to make all districts more manageable."<sup>79</sup> By late March, local unions in western Kentucky were concerned by the Bureau's plan to transfer its jurisdiction for the region from its Madisonville office, run by William Craft, to new offices in Morganfield and Beaver Dam, overseen by Donald Martin. They were particularly worried that William Craft would no longer be in charge of enforcing safety at their mine. When the Bureau proceeded with the opening of the

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<sup>79</sup> United States Department of the Interior, Bureau of Mines, Memorandum, from Bureau of Mines Director to Assistant Secretary of Mineral Resources, "The Federal Coal Mine Health and Safety Act of 1969," November 18, 1971, page 3, Folder labeled '1971,' Historical Collection, National Mine Health and Safety Academy, Beckley, West Virginia.

Madisonville office, miners were outraged. Several local unions wrote letters to Elburt Osborn to convey their opposition to the new office.<sup>80</sup>

Local 1071 leader James Smith, writing to Osborn on behalf of his fellow miners at the Uniontown mine, asserted, "During the time that Mr. Craft was in charge of the Madisonville office we made more progress safety wise, than we ever made in a like period of time. Mr. Craft knew the federal code, and made strong effort to see that the coal company complied with it."<sup>81</sup> According to Smith, safety conditions had been deteriorating ever since the Morganfield office opened under Donald Martin's control. He contended that the Bureau's lax enforcement policies made it easier for the mine's owners to evade the law. Smith believed that "the company knows who is coming, when he will be there, and what section of the mine he will visit." Articulating his frustration about the situation, Smith wrote:

Somebody in the Bureau of Mines is playing politics and they are doing it at the expense of our safety. We resent it. We don't feel that we have to tolerate this and we don't intend to. We cannot believe that you would condone such action and we don't believe the Secretary of the Interior, Roger Morton [sic], knows of what is going on. If he did, we believe that the Madisonville office of the Bureau of Mines would again assume jurisdiction over our mines and all other mines in western Kentucky and restore the degree of safety and confidence which Bill Craft built up in Western Kentucky.<sup>82</sup>

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<sup>80</sup> For an overview, see correspondence in Folder 27, Box 2, UMW Safety Division Office Files, PSU Special Collections.

<sup>81</sup> Letter from James Smith, President of UMW local 1071, to Elburt Osborn, Director of the Bureau of Mines, April 28, 1971, Folder 27, Box 2, UMW Safety Division Files, PSU Special Collections.

<sup>82</sup> Letter from President James Smith and Safety Committeemen Thomas O'Leary and Tom Duncan, UMW Local 1071, to Elburt Osborn, April 28, 1971, Folder 27, Box 2, UMW Safety Division Files, PSU Special Collections.

Smith's letter shows his conviction that low-level Bureau officials were carrying out the reorganization without the knowledge of Elburt Osborn and Rogers C. B. Morton. Further, by stating that the miners did not intend to tolerate the Bureau's political maneuvering, Smith hinted at the possibility of future strike action. He also conveyed an implicit assumption that Morton would place the western Kentucky mines back under the control of the Madisonville office.

Like James Smith, President James Jones Jr. and the Safety Committeemen of Local No. 1636 framed the institutional reorganization in political terms. In an agitated letter, they wrote, "The Bureau of Mines is now playing politics instead of promoting safety. We have a good director of the Bureau of Mines in the Madisonville KY office [Craft], but it looks as though that doesn't make any difference to the powers that be; they want to create a new office in Beaver Dam, Kentucky to make a job for someone who may have some influence either in the Bureau or politically. We don't like it."<sup>83</sup>

Similarly, miners of local union 1740, based at the Hamilton No. 2 mine in Union County, complained about the deterioration of conditions at their mine and the nearby Uniontown mine, both operated by the Island Creek Coal Company. They felt that the opening of the Morganfield office had restricted the Bureau's enforcement of the 1969 Federal Mine Act. The authors of the letter, local president Raymond Tate and safety committeeman Walter Adams, wrote, "We have confidence in Mr. Craft and we say to

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<sup>83</sup> Letter from President James Jones and Safety Committeemen, UMW Local 1636, April 28, 1971, Folder 27, Box 2, UMW Safety Division Files, PSU Special Collections.

you, if you are sincerely interested in safety, you will put Mr. Craft back in charge of all the mines in western Kentucky.<sup>84</sup>

In late April, miners wrote to Osborn in an effort to prevent the opening of the new Beaver Dam office. President James Dukes and safety committeemen Walter Swain and Luther Grayson of local union 9925 pleaded, “Bill Craft who is in charge of the Madisonville office of the Bureau of Mines has proven himself and we assure you that he has our cooperation and the last thing we would want would be to see a change made in the present arrangements in regard to the Bureau of Mines Safety Division.”<sup>85</sup> Meanwhile, the representatives of local union 1178 contended, “This report [about the opening of the Beaver Dam office] seems to have received considerable enthusiasm among the coal companies in this area and we can see that well it might have the support of the coal companies. Under the present director, Bill Craft, the Federal law is enforced.”<sup>86</sup>

Even in the light of the Bureau’s reorganization and the expansion of its inspection force, Department of the Interior representatives still tried to minimize the Bureau’s responsibility for health and safety enforcement. At a department meeting on July 1, Interior Secretary Rogers C. B. Morton argued that most accidents were the result

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<sup>84</sup> Letter from Raymond Tate and Walter Adams, UMW Local 1740, to Elburt Osborn, Director of the Bureau of Mines, May 19, 1971, Folder 27, box 2, UMW Safety Division Files, PSU Special Collections.

<sup>85</sup> Letter from President James Dukes and Safety Committeemen of Local 9925 to Elburt Osborn, Director of the Bureau of Mines, dated April 28, 1971, Folder 27, Box 2, UMW Safety Division Files, PSU Special Collections.

<sup>86</sup> Letter from President Joe Oates and Safety Committeemen Thomas Wiet and Glen Stewart, UMW Local 1178, April 14, 1971, Folder 27, Box 2, UMW Safety Division Files, PSU Special Collections.

of miners' carelessness or operators' failure to implement safe working practices. Morton stressed that educating miners was of the utmost importance, particularly in small mines where companies did not have the resources to provide such educational programs. Senator John Sherman Cooper (R-KY) defended Morton's initiative in Congress, arguing that while the Bureau had failed in many of its obligations, much of the criticism against it was unjustified. He launched a scathing attack on former Bureau director John F. O'Leary for imposing fines on operators that did not have the necessary safety equipment required by the new regulations. According to Cooper, the strict regulations had forced many small mines in Kentucky to close, in turn leading to an increase in surface mining and related environmental problems.<sup>87</sup>

The Department's lack of support for the Bureau's enforcement role also was emphasized by its budget from 1970 to 1971. In 1970, the Department spent a total of \$23 million on health and safety, including \$12 million for inspections, investigations, and rescue work, and \$11 million for health and safety research. The following year, it almost doubled its expenditure for health and safety, allocating a total of \$42 million for that purpose. That same year, however, it spent \$47,698,000 on mineral and resource production, the other component of its dual function.<sup>88</sup> Moreover, according to McAteer, the Bureau's Conservation and Development Division, which focused on the business and production aspects of the mining industry, employed more people than its Health and

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<sup>87</sup> For both Morton's testimony at the Department of the Interior meeting and Cooper's testimony in Congress, see *Congressional Record*, 92nd Cong., 1st sess., 1971, pt. 19: 25621-25622.

<sup>88</sup> McAteer, *Coal Mine Health and Safety*, 197.



Safety Division. In 1971, the former employed 2,564 people, compared to the Health and Safety Division's employment of 2,242 people, of which 618 were field inspectors.<sup>89</sup>

An article in *Coal Patrol*, a bi-weekly newsletter that reported on coal industry developments, further emphasized the Department of the Interior's efforts to downplay its role in the coal industry's fatality record and to blame miners for accidents. The article reported that Rogers C. B. Morton was considering a proposal by Harry Treleaven, an advertising magnate from New York who ran Nixon's 1968 presidential campaign, to enhance the Interior Department's public image. The proposal's central premise was that Treleaven's company should undertake an expensive publicity campaign with the message that miners would not get killed or injured if they were more careful. Treleaven's proposal was based on a "fact-finding" study of the department's information programs he had undertaken shortly after Morton's appointment in January. The article noted that Treleaven's business partner, Harry Allison, had worked with Morton on the Republican National Committee.<sup>90</sup>

*Coal Patrol* went on to provide a starkly critical assessment of the proposal. It noted that just months earlier, President Nixon had sent a memorandum to government agencies ordering the termination of "self-serving and wasteful public relations efforts," and the end of "inappropriate promotional activities." Therefore, Morton's consideration

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<sup>89</sup> Ibid., 197-198.

<sup>90</sup> "The Selling of the Interior Department," *Coal Patrol: Reports and Commentary on Coal Related Developments in Labor, Industry, and Government*, No. 14 (1971), p. 1. Contained in a folder entitled 'Doctor Lorin E. Kerr General Correspondence,' Box 35 of 52, 8/R35C (box is also labeled A&M 2769), Series III, Executive Medical Officer Subject Files, UMWA Health and Retirement Funds, West Virginia Collection, West Virginia State University, Morgantown, WV.

of Treleaven's proposal directly violated Nixon's instructions. More significantly, the article contended that the biggest impediment to safe working conditions was the bureau's failure to make operators comply with the 1969 Coal Mine Act, not recklessness on the part of miners. The newsletter attacked the proposed move as a conflict of interests, noting that Morton was considering a proposal by a man who was not only in partnership with one of his former colleagues, but who had also run the 1968 presidential campaign.<sup>91</sup>

In a public address in Lexington, Kentucky, on September 16, 1971, Bureau of Mines Director Elburt Osborn outlined some of the problems the Bureau had encountered over the previous eighteen months. He opened his address by quoting Assistant Secretary of the Interior Hollis M. Dole's statement at the Senate hearing on mine health and safety in August 1970. Dole had emphasized to the hearing that the health and safety act required "a safety revolution in the coal mines within 90 days and a health revolution to follow within 90 days."<sup>92</sup> In Osborn's view, the significant lack of inspectors hindered the Bureau's initial efforts to enforce the new federal mine act. He explained, "Our principal asset was the inspection force, which at that time consisted of 210 inspectors, 30 inspector trainees, and 60 specialists in such technical areas as roof control, ventilation, electricity, and other areas of mining technology. We had a force of 300 all told, less than a third of the number needed to meet the minimum requirements of the law." Osborn was

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<sup>91</sup> Ibid., 1-2.

<sup>92</sup> Department of the Interior News Release, "Remarks of Elburt F. Osborn, Director, Bureau of Mines, Departmental Survey on Coal Mine Health and Safety, Lexington, Kentucky, September 16-17, 1971," p. 1, Folder 20 (entitled "Bureau of Mines Press Releases 1970-72"), Box 45, Miners for Democracy Collection, Reuther Library.

convinced, however, that the Bureau had made significant progress in rectifying the shortage of inspectors, by reducing the length of the training program and opening a new academy in temporary headquarters in Beckley, West Virginia.<sup>93</sup>

Furthermore, Osborn claimed that since the beginning of 1971, the number of Bureau inspections in all types of mines had markedly increased. He asserted: “The Bureau, to the limit of its resources, has enforced the Federal Coal Mine Health and Safety Act rigorously and fairly. As of the beginning of September, 48,346 penalties, totaling more than \$6.3 million, had been proposed for violations of the Act, and over \$800,000 of that amount has been paid.”<sup>94</sup> While Osborn highlighted recent improvements in the Bureau’s performance, he glossed over its many failures, which he attributed to intrinsic weaknesses in its bureaucratic and political structure.

By late October 1971, however, there were signs that the Bureau’s performance was improving. During the summer, it had expanded its qualified inspection staff to over 1,000 people, a significant increase on the 250 inspectors employed the previous year. It had also started construction on the new National Mine Academy in Beckley, which would provide more comprehensive training for inspectors.<sup>95</sup> Harrison Combs argued that the new inspection districts were more efficiently organized than their predecessors, with improved management of personnel and faster approval of operators’ roof support and

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<sup>93</sup> Ibid., 2.

<sup>94</sup> Ibid., 3.

<sup>95</sup> U.S. Congress, *The U.S. Bureau of Mines* (Washington, D.C.: U.S. Government Printing Office, 1976), 66.

electrical plans.<sup>96</sup> In conjunction with the Department of the Interior, the Bureau also had created a team of mining engineers for touring the coalfields, with the purpose of ensuring that inspectors were uniformly implementing the Federal Mine Act.<sup>97</sup> The Bureau was also in the process of replacing several of the managerial staff at its Washington, D.C. office. Its main goal, wrote Elburt Osborn in a memorandum to the Assistant Secretary of Mineral Resources, was to “professionalize top level management in the Washington office of Coal Mine Health and Safety as well as in the field.”<sup>98</sup>

By the end of the year, there was further evidence that the Bureau’s performance was gradually improving. Throughout 1971, there were 180 deaths in the coal industry, equivalent to a rate of 0.71 fatalities per million man-hours worked and 0.12 fatalities per million tons of coal extracted in the bituminous and anthracite sectors combined.<sup>99</sup> It was a marked decrease in the fatality rate for 1970, when there were 260 deaths in the coal industry. The 1970 frequency rate was 1.02 deaths per million man-hours worked, and 1.26 deaths per million tons of coal mined.<sup>100</sup> There had been a significant improvement

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<sup>96</sup> U.S. Bureau of Mines, Memorandum from Bureau of Mines Director to Assistant Secretary of Mineral Resources, “The Federal Coal Mine Health and Safety Act of 1969,” November 18, 1971, p. 3, Folder labeled ‘1971,’ Historical Collection, National Mine Health and Safety Academy, Beckley, West Virginia.

<sup>97</sup> *Ibid.*, 5.

<sup>98</sup> *Ibid.*, 6.

<sup>99</sup> U.S. Department of the Interior, Bureau of Mines, “Mineral Industry Surveys: Coal-Mine Injuries and Worktime, December and Annual Summary 1971,” pp. 1 and 5, Folder 9, Box 45, Miners for Democracy Collection, Walter Reuther Library.

<sup>100</sup> U.S. Department of the Interior, Bureau of Mines, “Mineral Industry Surveys: Coal-Mine Injuries and Worktime, December and Annual Summary 1970,” pages 1 and 5, Folder 3, Box 45, Miners for Democracy Collection, Walter Reuther Library.

in coal mine health and safety in 1971. As with previous years, falls of roof, face, and ribs in underground mines were the primary cause of death, rather than explosions, major disasters, or other accidents. Of the 180 deaths in 1971, 60 were attributable to this cause. Fatalities from the collapse of the internal mine structure occurred in three percent of all coal mines inspected by the Bureau that year.<sup>101</sup>

## **Conclusion**

Despite the notable reduction in coal mine fatalities by the close of 1971, the Federal Coal Mine Act still did not afford miners the safer conditions it had promised when Nixon signed it into law in December 1969. Miners faced the constant danger of being crushed to death by a falling roof or collapsing ribs, or perishing in a disaster such as the Hurricane Creek explosion. Much of the responsibility for the continuing hazards in underground mines was attributable to the Bureau of Mines. The Bureau was lax in its inspections and, as the Hurricane Creek disaster showed, frequently neglected to follow up on health and safety violations. The Bureau's performance was attributable to a shortage of inspectors and poor training for the inspectors who qualified. Moreover, ill-informed decisions by middle-level managers detracted from the Bureau's health and safety policies. While the Bureau sought to improve its performance through an extensive program of reorganization, this program had a negligible impact. Although it had addressed the shortage of inspectors and contributed to a decline in the fatality rate by the end of 1971, many believed that the Bureau was a major impediment to safer conditions

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<sup>101</sup> U.S. Department of the Interior, Bureau of Mines, "Roof-fall fatalities, Annual," page 1, Folder 10, Box 45, Miners for Democracy Collection, Walter Reuther Library.

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The Bureau's dismal performance was, in many ways, a reflection of the Nixon administration's labor policies and its conservative stance on coal mine health and safety. The administration's appointment of Elbert F. Osborn as the head of the Bureau of Mines and Rogers C. B. Morton as Interior Secretary limited the Bureau's ability to engage in significant reform. Osborn and Morton both lacked real mining experience and were more supportive of the coal industry than miners. In fact, from October 1970 to December 1971, the Bureau of Mines actively undermined many of the legislative gains that miners and their supporters had fought so hard to achieve.

## Chapter 6

### **Making Amends:**

#### **The Black Lung Benefits Act, New Union Leadership, and the Mine Enforcement and Safety Administration**

##### **Introduction**

By early 1971, the Black Lung Association consisted of fourteen chapters across Virginia, Tennessee, Kentucky, and West Virginia. The BLA chapters continued to protest the Social Security Administration's management of the federal black lung compensation program, particularly its denial of benefits to tens of thousands of black lung victims and widows. On January 11, 1971, around 50 miners marched to the SSA office in Logan County, West Virginia, to present a list of demands by the Logan County and Mingo County chapters of the BLA. The director of the office sent the list to the central SSA office in Baltimore. Later that month, SSA officials from Baltimore and Washington, D.C. met with representatives from the Logan County and Mingo County chapters to discuss their grievances. While the officials promised to investigate the miners' concerns, the meeting did not result in direct changes to the Social Security Administration's management of the compensation program.<sup>1</sup> In their quest to achieve a more equitable compensation system, the local BLA chapters believed that persistence was the most effective tactic. Their main priority was to get the SSA to legitimize

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<sup>1</sup> Judkins, "The Black Lung Association," 220; Barbara Smith, *Digging Our Own Graves: Coal Miners and the Struggle Over Black Lung Disease* (Philadelphia: Temple University Press, 1987), 168.

applicants' claims for compensation.<sup>2</sup> To that end, local chapters of the BLA continued to engage in protests, which although organized locally, were targeted at high-level officials of the Social Security Administration. Such protests, however, did not yield tangible results.

The same day as the march in Logan County, Dr. Buff publicly attacked a new breathing test recently introduced by the Social Security Administration. Buff argued that the test, administered for claimants who exhibited positive X-ray evidence of black lung disease, was "at its best very inaccurate." Complaining that the breathing test often showed normal results for miners with severe black lung, Buff argued it was created to deny benefits to miners. His charges reinforced the Black Lung Association's conviction that the SSA was making arbitrary decisions about compensation payments based on flawed evidence.<sup>3</sup>

For the Black Lung Association and its supporters, the Social Security Administration was a significant obstacle to miners' receipt of federal black lung benefits. The large number of miners who were denied compensation was not only attributable to the individual decisions of the SSA. It also stemmed from inherent weaknesses in the black lung compensation legislation in the Federal Mine Act of 1969. This chapter focuses on the Black Lung Association's campaign to amend the federal black lung benefits program. It shows that the association's sustained grassroots activism was instrumental in the passage of the Black Lung Benefits Act of 1972, which provided a more liberal compensation system. In addition, the chapter examines how Miners for

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<sup>2</sup> Judkins, "The Black Lung Association," 186.

<sup>3</sup> *Washington Post*, January 12, 1971, C2.



Democracy won control of the United Mine Workers in the presidential election of 1972. The new UMW president, Arnold Miller, was more attentive than Tony Boyle to miners' working conditions and issues such as compensation. Furthermore, this chapter discusses how the Nixon administration, conscious of the failures of the Bureau of Mines, created a new health and safety enforcement agency called the Mine Enforcement and Safety Administration.

The passage of new federal black lung legislation, the ascension of Miners for Democracy to the UMW national leadership, and the Nixon administration's creation of MESA were significant advances in coal mine health and safety. Yet, as this chapter also shows, there were limitations to those advances that had negative consequences for the nation's rank and file coal miners.

### **Grassroots Resurgence: Challenging the Black Lung Benefits Program**

In the realization that the Black Lung Association's local demonstrations were not working, Don Bryant, the president of the Logan Country chapter, began to plan a march on Washington. He complained, "We have waited two months for social security to move on their promises but we see no evidence of changes... Thousands of disabled miners and widows are being treated like dirt... We have tried to work things out but all we get is unkept promises and no action. We want what is right and we will get it even if it takes a trip to Washington."<sup>4</sup> The activists were particularly frustrated by senior officials' refusal to meet with them. Commissioner Robert M. Ball, head of the Social Security Administration, Bernard Popick, chief of the Bureau of Disability Insurance, and Elliot

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<sup>4</sup> Judkins, "The Black Lung Association," 221.

Richardson, head of the Department of Health, Education, and Welfare, all denied the activists' requests for meetings. Bernard Popick eventually agreed to meet with BLA representatives in April, but he failed to attend the meeting. The activists' decision to take their campaign to the nation's capital was, in large part, driven by the refusal of SSA officials to acknowledge them. One black lung activist remembered:

On April 29, leaders from 10 BLA chapters were supposed to meet with Popick, the head of the Bureau of Disability Insurance, which handles the Black Lung Program. This meeting was originally set for March 15, but the Social Security pencil pushers kept stalling. April 29 came – but Popick did not show up. Instead he sent his assistant Bill Rivers and some other flunkies. Some men thought we should walk out, but we decided to give the messenger boys the word to take back to their boss.<sup>5</sup>

The BLA members wrote down a list of demands for Rivers and his associates to give to Popick, with a deadline of two weeks to implement them. Popick's failure to address their demands was one of the key factors that convinced the activists of the need to widen their campaign. The Black Lung Association's main priority was the reform of the federal black lung compensation program.<sup>6</sup> Representatives from the BLA central office in Charleston planned to visit Congress and establish pickets at the UMW-owned National Bank of Washington, the United Mine Workers headquarters, and the Department of Health, Education, and Welfare. While the central office provided instructions, much of the organization of the demonstration fell to local chapters. Leaders of the local BLA chapters distributed forms to obtain more information on who planned to attend the demonstration, and what they wanted to achieve on the trip.<sup>7</sup>

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<sup>5</sup> Ibid., 224.

<sup>6</sup> Smith, *Digging Our Own Graves*, 169.

<sup>7</sup> Judkins, "The Black Lung Association," 227-228.

As the BLA organized its march, Congress began to address the weaknesses in the federal black lung compensation program. On May 10, the General Labor Subcommittee in the House of Representatives opened a hearing to consider legislative amendments to Title IV of the Federal Coal Mine Act. The subcommittee had introduced a number of Democrat-sponsored bills, which, among other things, prohibited the denial of claims solely on the basis of X-ray evidence, prevented the deduction of black lung benefits from other compensation payments, and mandated benefits for double orphans.<sup>8</sup> The Subcommittee acknowledged, therefore, that X-rays did not provide definitive proof of black lung and that miners should receive black lung benefits without having other benefits reduced. Furthermore, it recognized that several of the miners who died from black lung were the only surviving parent of their children or had been raising their children alone. The subcommittee felt it was necessary to provide financial assistance to children who became ‘double orphans’ as a result of black lung disease.

Testifying before the subcommittee, Ken Hechler explained why miners in Kentucky and West Virginia experienced the highest rate of denials by the Social Security Administration. In his testimony, he emphasized the lack of medical facilities in those states and the administration’s reliance on X-ray exams as evidence of pneumoconiosis: “Many doctors examining these X-rays have historically down through the years been individuals who have denied that pneumoconiosis as a disease actually

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<sup>8</sup> *New York Times*, May 20, 1971, 33.

exists. There has been disagreement between doctors and radiologists reading the same X-rays.”<sup>9</sup>

In addition, Hechler charged that the Nixon administration had ordered the SSA to adopt a conservative approach in its implementation of the 1969 Federal Mine Act, in order to limit the amount of successful compensation applications.<sup>10</sup> Hechler contended, “I have never seen this order in writing, but it seems to me that when you have this kind of repeated denial of applicants who are short of breath, and obviously disabled, who cannot qualify, that such an order must have been handed down, because otherwise we would have had the provisions of the act carried out with the intent of Congress.”<sup>11</sup> Given that President Nixon had almost vetoed the Federal Mine Act for its black lung benefits provision, Hechler’s claim made sense. Hechler’s statement emphasized his ongoing mistrust in the Nixon administration’s commitment to coal mine health and safety. More importantly, his testimony highlighted one of the most contentious issues of debate surrounding the program, the validity of X-rays as a source of medical evidence.

Bernard Popick, the head of the Bureau of Disability, defended the record of the Social Security Administration. He commented, “With the limited knowledge available in the early months concerning the specific criteria for eligibility, it was to be expected that this all-out effort on our part to protect individual benefit rights would result in

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<sup>9</sup> U.S. House Committee on Labor Education and Labor, Subcommittee on Labor, *Black Lung Benefits: Hearing Before the General Labor Subcommittee on Labor of the Committee on Education and Labor, House of Representatives*, 92nd Cong. 1st sess., 1969 (Washington, D.C.: U.S. Government Printing Office, 1971), 29.

<sup>10</sup> *Ibid.*, 29-30.

<sup>11</sup> *Ibid.*, 30.

applications from a very substantial number who were eventually found not to meet the requirements of the law.”<sup>12</sup> According to Popick, there had been 290,000 applications for compensation since the program began, and 190,000 of those had been successful.<sup>13</sup> Yet, he also argued that the SSA needed to acquire more knowledge about the scientific and medical properties of pneumoconiosis so it could improve its procedures for identifying the disease.<sup>14</sup> Like Hechler, Popick highlighted the divisions over the definition of black lung disease and the most effective means of identifying it. Additionally, he criticized the Federal Coal Mine Act for its failure to award compensation to double orphans. To that end, he voiced his support for legislative bill H.R. 42.<sup>15</sup>

Representing the Black Lung Association, Arnold Miller testified at the hearing with a delegation of six witnesses. Miller complained that the SSA was undermining the compensation program by defining pneumoconiosis more narrowly than Congress had intended. One of the witnesses, Verlan Golden of the Economic Opportunity Council in Knox County, Kentucky, was far more scathing in his attack of the SSA, protesting, “We people that go down to the Social Security Office are misled, abused, lied to, and you name it we can furnish it.”<sup>16</sup> Golden further stated that the hearing should have taken place in southern Kentucky or West Virginia, as the people most severely affected by

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<sup>12</sup> Ibid., 46.

<sup>13</sup> Ibid., 46-47.

<sup>14</sup> Ibid., 51.

<sup>15</sup> Ibid., 52.

<sup>16</sup> Ibid., 79.

pneumoconiosis were too sick to travel to Washington.<sup>17</sup> He claimed that the SSA clinics were not equipped with the necessary medical equipment and that they rushed the medical examinations of coal miners. To exemplify his point, he related a story about a miner who had been denied black lung benefits:

And I have a man that told me that he went and was X-rayed and turned down. The doctor told him he had two perfect lungs. He said, "Doc, did you see the 18-inch scar on my back that I had one of my lungs removed?" This is the type of thing that you have got going on in the black lung services and this has come from the Social Security Administration.<sup>18</sup>

Golden implied that the doctors working on behalf of the SSA were willfully denying miners the opportunity to collect black lung benefits. His testimony provided support for Hechler's claim that the Nixon administration had issued the SSA with instructions to limit the number of miners who received compensation.

Miller submitted anonymous written testimonies for the official record of the hearing. Written by disabled miners and widows who were unable to attend, the testimonies encapsulated the true human cost of pneumoconiosis, as well as applicants' negative experience of the federal compensation program. One widow who had written to Miller described the effects of black lung disease on her husband. She wrote, "He had shortness of breath his last month of life he lived in the hospital under oxygen he coughed large blackish clots of blood, had chest pains, weakness and could not work, he developed a viral pneumonia, had 3 blood clots go into his heart and died of a Myocardical Infarction [sic]."<sup>19</sup> She also stated that an autopsy of her husband had

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid., 80.

<sup>19</sup> Ibid., 93.

revealed black scarring on his lungs. Doctors were unable to determine, however, if this caused his health problems. The widow conveyed to Miller her fear that she would not be able to obtain compensation because her husband worked in the mine for less than six years. She hoped, however, that her testimony might help another widow in her position to obtain benefits.<sup>20</sup> Her letter confirmed that even clear evidence of black lung from an autopsy was no guarantee that the SSA would award compensation to miners' widows. Moreover, it conveyed the immense physical suffering caused by pneumoconiosis.

A 52-year old miner, who had spent twenty-five years underground, wrote to Miller after being denied benefits. Despite exhibiting clear signs of black lung disease, the Social Security Administration did not award him compensation. He explained that Dr. Donald Rasmussen had examined him twice, in 1966 and 1969, and found evidence of the disease on both occasions; in fact, the disease had worsened by the second examination. The miner wrote, "I had to hire a lawyer to get on disabled social security even though I had black lung, a heart murmur and arthritis of the neck and spine that was caused by a mine injury."<sup>21</sup> His application for black lung benefits was denied because the SSA determined that he was not 'totally' disabled. Yet, in making this assessment, the Social Security Administration had failed to obtain his medical records from Donald Rasmussen. The miner commented, "I believe a big factor in the failure of some miners to get their rightful benefits is caused by the Social Security office not getting their records." At the time of writing to Arnold Miller, the unnamed miner was in the process

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid., 94.

of making an appeal.<sup>22</sup> The Social Security Administration's failure to obtain the miner's medical records was as much attributable to its bureaucratic disorganization as its conscious effort to evade paying compensation.

Another miner wrote to Miller to complain about the Social Security Administration's system for determining eligibility for black lung benefits. In his letter, the miner stated:

... So one more thing that I want to call your Attention to is this, there is some of the Miners all around me Here that they filed thay Claims the same date of the same month that I did and Thay was payed for thay Claims and didn't have to go no where to Get no Proof of Eligibelty for to get it comeing to them So I'M saying right here that this Mr. Robert M. Ball Knows All About these Matters as he has the records right There at his Finger tips for to check so this makes Me feel like that I'M being given Some Discrimination on getting my Claim Settled...[sic]<sup>23</sup>

The letter conveyed the miner's belief that the SSA was making arbitrary decisions about compensation payouts. Moreover, it conveyed the suspicion of many coal miners that the administration was awarding benefits to some applicants without full medical evidence.

The letters that Miller submitted for the record depicted the disarray in the federal black lung compensation program. Moreover, they showed the important contribution of miners and their families to the national debate on the compensation program. The letters also emphasized the applicants' belief that the central black lung office in Charleston, particularly its leader Arnold Miller, could resolve their individual disputes with the Social Security Administration. Conversely, the letters also showed that the applicants were becoming disillusioned with local protest as a means of resolving their grievances.

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid., 95.



By writing to Miller, they were bypassing their local Black Lung Association chapter and seeking action from the centralized main office. The letters emphasize the short-term failure of local black lung chapters to address the failures of the compensation program.

In his testimony at the subcommittee hearing, Dr. Donald Rasmussen criticized X-rays as a method of detecting pneumoconiosis. He described how his medical team frequently encountered miners with severe breathing difficulties that rendered them almost inactive. Yet the X-rays of those miners either displayed simple pneumoconiosis or did not show evidence of pneumoconiosis at all. Rasmussen also dismissed the Social Security Administration's breathing test, previously criticized by Buff, as an effective method of determining black lung disease.<sup>24</sup> "In our opinion, then," said Rasmussen, "the use of these tests alone is inadequate. Our experience with the chest X-ray leaves us to conclude, again, that pneumoconiosis of coal workers is difficult to identify." According to Rasmussen, slight differences in X-ray technique, including the voltage used to take pictures, had a significant impact on the detection of pneumoconiosis, and thus in calculating disability and compensation.<sup>25</sup>

The House Labor Subcommittee hearing clearly showed the failure of the black lung compensation program, but also demonstrated the emerging movement for reform at the national level. A hearing before the full House Committee on Labor on May 19 revealed many of the same tensions. Carl D. Perkins, the chairman of the Labor Committee, highlighted the disparity between states, claiming that 72 percent of applicants in his state of Kentucky were denied benefits, compared to 52 percent in West

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<sup>24</sup> Ibid., 102.

<sup>25</sup> Ibid., 103.

Virginia and 31 percent in Pennsylvania. He identified the X-ray examination as the cause of this injustice. “I hate to see disabled people robbed this way, in one sense of the word. To undertake to deny black lung benefits solely on X-ray evidence as they are doing was never intended by the Congress and it is a disgraceful situation.” He further condemned the way that miners were “lined up like sheep” for X-ray examinations.<sup>26</sup>

The hearings in the House of Representatives brought national attention to the black lung benefits program, creating a favorable climate for the Black Lung Association’s planned demonstration. On June 7, 1971, after almost two months of preparation, the association undertook an extensive lobbying campaign in Washington, D.C. Around 150 people, consisting mostly of retired and disabled miners and widows, participated. The majority of the protestors were from West Virginia, although the group also included people from Virginia, Kentucky, and Pennsylvania. The group visited several Congressmen, emphasizing the risk of disease that miners faced and the problems that applicants, particularly widows and orphans, encountered in their pursuit of benefits.<sup>27</sup> Christine Warwick of Red Star, West Virginia, led a delegation of 30 people to see Ken Hechler, who told them that their failure to obtain compensation stemmed from President Nixon’s dislike of the program. Hechler repeated the claim he had made at the hearing on May 10, that Nixon had ordered the SSA to apply the law as selectively as possible, “with the result that you and others are being denied your rights under the law that we in Congress passed.”<sup>28</sup>

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<sup>26</sup> *New York Times*, May 20, 1971, 33; *Washington Post*, May 20, 1971, A8.

<sup>27</sup> *New York Times*, June 8, 1971, 78; *Washington Post*, June 8, 1971, C1.

<sup>28</sup> *Washington Post*, June 8, 1971, C1 and C6.

Another group of activists visited Senator Robert C. Byrd in the U.S. Capitol Building. The activists emerged confident that he planned to advance the federal compensation laws. Also present at the meeting were Hugh Johnson, Assistant to the Commissioner of the Social Security Administration, and Bernard Popick, Director of the Bureau of Disability Insurance. They explained the compensation law to the ten delegates permitted to enter Byrd's office and promised to evaluate their individual situations.<sup>29</sup> Senator Jennings Randolph, meanwhile, was back in his home state of West Virginia, but his staff assured the black lung activists that he fully supported amending Title IV of the 1969 Federal Mine Act. The activists informed Randolph's staff that they supported an amendment to provide compensation to the orphans of coal miners. They highlighted two children in Mingo County, aged 10 and 13, whose father was certified to have died from black lung, but who were receiving no benefits, because their mother had abandoned them.

At a news conference later that day, John Mendez, an activist from Chapmanville, West Virginia, criticized the Social Security Administration for denying claims on the basis of a single X-ray test.<sup>30</sup> The BLA delegation threatened to disrupt the provision of America's coal-generated electricity by going on strike unless Congress acted on their complaints. The activists displayed a number of posters at the conference, including one that stated: "President Nixon: We aint got much, but we sure got electric power. Give us our black lung pay."<sup>31</sup> This threat was particularly resonant given the impending energy

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<sup>29</sup> Ibid., C6.

<sup>30</sup> *New York Times*, June 8, 1971, 78.

<sup>31</sup> *New York Times*, June 8, 1971, 78; *Washington Post*, June 8, 1971, C6.

crisis in the United States. That summer, a number of East Coast cities were facing the threat of power “brown outs.” Disruption to coal supplies would further jeopardize the provision of electricity. Existing supplies of coal, oil, and natural gas were barely meeting Americans’ demand for energy.<sup>32</sup>

Although the Black Lung Association had invested considerable planning in the lobbying campaign for June 7, the relatively small attendance called into question its ability to persuade Congress of the need for legislative change. This was confirmed the following day, when the House Labor Subcommittee failed to pass a bill granting black lung benefits to orphans. Yet the activists increased the national focus on their cause and consolidated alliances with powerful Congressman. The demonstration might not have brought immediate results, but the activists laid an important foundation for future action. The events of June 7 also showed that criticism of the program was, increasingly, specifically targeted at President Nixon.<sup>33</sup>

### **Clearing the Air: The Black Lung Amendments Act of 1972**

The House Labor Subcommittee’s rejection of the bill that provided compensation to black lung orphans did not stall the process of reform in the House of Representatives. The following week, on June 16, 1971, Carl Perkins introduced bill H.R. 9212 to the Committee on Education and Labor, which contained a number of legislative measures to amend the compensation program in Title IV of the Federal Coal Mine Act. Specifically, it advocated benefits for double orphans, extended federal management of the

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<sup>32</sup> *New York Times*, July 6, 1971, 1 and 24.

<sup>33</sup> *New York Times*, June 9, 1971, 23.

compensation program until January 1975, and clarified that black lung benefits did not constitute state workmen's compensation.<sup>34</sup> The latter provision was important, because the Social Security Administration erroneously classified federal black lung benefits as workmen's compensation. Under its guidelines, the SSA reduced injury disability payments to miners if they also received state workmen's compensation payments, especially if the combined benefits exceeded 80 percent of a worker's total earnings. Thus, miners receiving both disability insurance and black lung benefits often found their disability payments reduced.<sup>35</sup>

The bill also included a 'presumptive' clause, which stipulated that miners with fifteen years of underground experience and outward signs of a "totally disabling respiratory disease" had work-related pneumoconiosis, even if X-rays did not confirm this diagnosis. Furthermore, the bill expanded the range of evidence for detecting black lung to include blood gas studies, electrocardiograms, and other diagnostic tests. The bill even stipulated that lay testimony was an acceptable form of evidence.<sup>36</sup> Whereas Title IV of the Federal Mine Act stipulated that miners were not disabled if they could perform light work, Perkins' bill included an amendment that tied the definition of disability to a

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<sup>34</sup> U.S. Senate, *Legislative History of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173), As Amended Through 1974 Including Black Lung Amendments of 1972* (Washington D.C.: U.S. Government Printing Office, 1975), 1706-1711. Hereafter referred to as U.S. Senate, *Legislative History*.

<sup>35</sup> Ibid.

<sup>36</sup> Smith, *Digging Our Own Graves*, 171.

miner's ability to perform his regular job. Finally, the bill called for a review of all previously denied claims for black lung benefits.<sup>37</sup>

The Black Lung Association viewed Perkins' bill as the key to the liberalization of Title IV of the Federal Mine Act and campaigned for its passage. One activist commented that the campaign was "the most effective grassroots lobbying he had ever seen." The activists regularly organized carpools to Washington D.C., where they lobbied congressmen and picketed the offices of the Social Security Administration.<sup>38</sup> Helen Powell, one of the most prominent leaders, later recalled, "We would go around to different Congressmen and Senators' offices. They didn't know us from Adam, we would make them believe we were from our home state and... we would put demands on them, because they had no way of knowing who we were. So we got a lot of help that way."<sup>39</sup> Powell also recalled that it was not always easy to sustain the momentum behind the campaign. She stated, "We would plan trips to D.C., sometimes without a dime in our pockets, and [when we got there] we lived off baloney, peanut butter and jelly, the churches would take us in and they'd fix meals for us."<sup>40</sup> Despite the obstacles they faced, the network of BLA chapters persisted with their lobbying efforts, determined to persuade Congress to pass Perkins' legislative bill. They engaged in more planning and organization than the 1969 black lung protest movement in West Virginia, in the hope of finally winning the passage of an adequate compensation bill.

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid., 169.

<sup>39</sup> Helen Powell, telephone interview with author, tape recording, August 10, 2009.

<sup>40</sup> Ibid.

The lay advocates in the Black Lung Association were key participants in the lobbying campaign for the amendments. Their experience of assisting coal miners and widows with benefit claims enabled them to merge complex legal and technical arguments with a humanitarian approach.<sup>41</sup> The Appalachian Research and Defense Fund provided limited financial support for the advocates, while Designs for Rural Action helped them to coordinate their lobbying efforts.<sup>42</sup> Even the coal operators supported the activists' campaign for Perkins' bill, because it would absolve them from having to pay towards black lung compensation. Under state compensation laws, employers were liable for a substantial part of the cost. The coal operators sought to evade responsibility for black lung benefits payments.<sup>43</sup> Some politicians opposed the amendments because they would delay the transfer of the compensation program to the coal industry.

The House of Representatives began deliberations on the Perkins bill on October 18, 1971.<sup>44</sup> Perkins took the unusual step of announcing that members would be voting on the bill as written, without being given the opportunity to propose amendments. The bill needed to gain a two-thirds majority, however, to pass the House in this manner, or it would be subject to debate under the normal congressional regulations.

Much of the opening debate centered on the amendment that prohibited the denial of claims solely on the basis of X-ray results. The validity of the X-ray as a form of medical evidence was one of the most contested issues in the struggle over black lung

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<sup>41</sup> Smith, *Digging Our Own Graves*, 170.

<sup>42</sup> Seltzer, *Fire in the Hole*, 103.

<sup>43</sup> Smith, *Digging Our Own Graves*, 170.

<sup>44</sup> *Congressional Record*, 92nd Cong., 1st sess., 1971, pt. 28: 36494.

compensation. Representative John N. Erlenborn (R-IL) led the Republican criticism of the amendments. Erlenborn had fronted the Republican opposition to the compensation plan (Title IV) in the original Federal Coal Mine Act. While he supported benefits for orphans, Erlenborn was adamant that X-rays were the only reliable method to distinguish victims of pneumoconiosis from miners with conditions such as emphysema and bronchitis. The amendment on medical evidence, he insisted, would enable miners without black lung to collect benefits. “That is not the real purpose of this bill,” he maintained. “It is not a matter of simple justice. It is a matter of extending benefits and giving them to people who are disabled for reasons other than the fact they have coal workers pneumoconiosis. There is no social justification for doing that. There is no medical justification.”<sup>45</sup> He also cited findings by the British Medical Society that it was possible to determine conclusively from an X-ray if a miner was suffering from pneumoconiosis.

Erlenborn was unable to respond, however, to a comment by Representative Frank Evans (D-CO) that some miners with negative X-rays exhibited substantial evidence of pneumoconiosis when autopsied after their death. He merely responded that a miner could simultaneously have black lung disease and other ailments.<sup>46</sup> Responding to Erlenborn’s comments that the extension of federal benefits was a “windfall” for coal operators, Phil Burton argued that virtually none of the states had implemented the necessary measures to update their worker compensation programs. In fact, only three small states, none of them coal producers, had taken the necessary measures. He argued

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<sup>45</sup> U.S. Senate, *Legislative History*, 1766.

<sup>46</sup> *Ibid.*, 1776-1777.



that two years was a reasonable time extension for the states to update their programs and implement the appropriate legislation.<sup>47</sup>

Representative Tom Bevill (D-AL) said the amendments were “one more step towards the resolution of an enormous debt which the people of this Nation owe to coal miners.” Drawing a stark connection between the nations’ growing energy consumption and the suffering of its coal miners, Bevill stated, “We have involved a number of our citizens in the hazardous task of extracting coal under conditions which we now consider unacceptable in order to use this coal for the production of energy to benefit us all.” Noting the failure of Congress and the coal industry to protect the miners who created such benefits, he continued, “The conditions of coal mining were so hazardous that many of these miners became disabled or died as a result of preventable accidents or diseases.”<sup>48</sup>

Bevill argued that the federal government should not view coal miners’ lives as an expendable resource in the production of energy. He felt the miners were entitled to a more equitable compensation program because of the significant risks they faced in their work. Moreover, his statement highlighted the importance of coal miners to the nation’s energy supply. Bevill also argued that a negative X-ray should not be used to deny compensation to miners. He opposed Title IV’s stipulation of uniform testing criteria on all miners, as “individuals respond in different ways to an attack by a disease and the dust of a mine affects individuals in different ways.”<sup>49</sup>

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<sup>47</sup> Ibid., 1779.

<sup>48</sup> Ibid., 1767.

<sup>49</sup> Ibid., 1767-1768.

In support of Bevill's claim, Ogden Reid (D-NY) explained that other testing methods for black lung disease were readily available, such as the pulmonary function test or the blood gas test developed by Dr. Donald Rasmussen. Such testing, he argued, could detect black lung where previously there was no evidence of it. Reid disapproved of miners not receiving compensation solely "because medical facilities and detailed records are unavailable. I say that coal miners, who risk their lives almost daily, are entitled to the best medical tests, not the cheapest or the easiest." Reid acknowledged that he supported the bill as written; he did not adhere to Erlenborn's suggestion of debating it under normal regulations.<sup>50</sup>

Representative Robert Michel (R-IL) expressed his concern about widening the black lung benefits program without adequate protective mechanisms against increased costs. He proposed debating the bill under regular Congressional procedure to allow for the addition of such mechanisms. More significantly, however, Michel proposed an amendment not included in H.R. 9212, the extension of Title IV to all coal miners, including surface coal workers and strip miners. He argued that strip miners were entitled to benefits because they inhaled the same coal dust as underground miners. He noted there some strip miners in his district had been inhaling coal dust for years at the coal tipple or crusher.<sup>51</sup> With his proposed amendment, Michel brought into focus a segment of coal miners that had been neglected by the 1969 legislation. Although strip miners did not work in the confined environment of underground mines, they were still exposed to significant quantities of coal dust, particularly if they worked at the tipple, where the

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<sup>50</sup> Ibid., 1782-1783.

<sup>51</sup> Ibid., 1784.

loading of coal into railroad cars generated large clouds of dust. Michel recognized that all coal workers, not just those working underground, were susceptible to pneumoconiosis.

John Dent rejected the cost arguments against bill H.R. 9212, asserting that the profits from coal production in the following six years would far outweigh the cost of implementing the bill. Similarly, Kenneth Gray (D-IL) condemned the members of the Republican Party who opposed the bill for its financial cost. He argued they would support the bill if they worked underground for thirty or forty dollars a day, while facing the constant threat of disaster. Gray advised them to talk with families affected by black lung disease, which would convince them of the need for more equitable black lung compensation.<sup>52</sup> The testimonies of Dent and Gray emphasized that most of the Republican opposition to the black lung bill was attributable to its financial cost. In that regard, the hearing echoed the legislative debate over the original black lung benefits program, embodied in the Federal Mine Act of 1969. Many Republicans argued the program would be too expensive, while President Nixon nearly vetoed the Federal Mine Act for the cost of the black lung program.

Commenting on his own state of West Virginia, James Kee (D-WV), said, “A third of the black lung benefits claims which have been turned down to date have been disallowed because the miner was not totally disabled. In fact, what the Federal Government is saying to these miners is that they do not qualify because they are not totally dead. I have contended from the very beginning that the requirement for determining ‘total disability’ should be made more realistic. To that end, Kee indicated

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<sup>52</sup> Ibid., 1787.

that he was fully supportive of the bill and its improvements to the original 1969 Act.” In his argument for a more realistic definition of ‘total disability,’ Kee advocated the payment of benefits to miners who had stopped working as a result of black lung disease, not just those who were completely incapacitated by it. He recognized that miners were not only affected by the physical discomfort of black lung, but also by the loss of income that came with unemployment.<sup>53</sup>

When the members of the House voted on the bill, it did not gain the two-thirds majority necessary to pass. The deliberations on October 18 stressed a clear line of division in the House, between the largely Republican faction that opposed liberalizing the benefits program and the Democrats who sought to compensate miners for the dangers of their labors. The House agreed to deliberate the bill again in November under the standard rules, which meant that there would be an opportunity to propose amendments.<sup>54</sup>

The House reopened debate on the bill on November 10, 1971. Perkins reaffirmed his main complaint with the existing legislation. He argued that the Social Security Administration was “setting off black lung benefits against social disability payments, even though the law states that the payments are not to be treated as workmen’s compensation.” He maintained that some miners received less benefits after filing black lung claims if they were already receiving social security disability.<sup>55</sup>

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<sup>53</sup> Ibid., 1788-1789.

<sup>54</sup> Ibid., 1792.

<sup>55</sup> *Congressional Record*, 92nd Cong., 1st sess., 1971, pt: 31: 40429.

John Erlenborn criticized the bill's amendment that prevented the classification of black lung benefits as state workmen's compensation. He argued the federal black lung program should only be a stop-gap measure to allow the federal government to make payments to miners not covered by other compensation programs. A number of state governments, he explained, failed to recognize how coal dust affected miners' lungs and consequently did not have adequate compensation measures. Erlenborn also renewed his opposition to the expansion of medical evidence beyond the X-ray exam. He argued that this would allow miners with other breathing disorders such as emphysema and asthma to claim benefits.<sup>56</sup>

John Dent retorted that Erlenborn's objection to the bill was merely about its financial implications and that it was impossible to place a cost on human lives. He believed that medical evidence had clearly shown the need to go beyond X-rays when determining the existence of pneumoconiosis. Furthermore, he replied to Erlenborn, "If the X-ray is all that you say it is, then the additional testing will also correlate with the X-ray findings. We are not proposing to pay benefits to ineligible miners. We just want them to have the benefit of the doubt, and the benefit of the division of medical opinion on the subject." In contrast, Representative Albert Quie (R-MN) agreed with many of Erlenborn's objections, particularly the extension of federal control of the program. He argued that the states had been given ample time to prepare for the transfer of the program.<sup>57</sup>

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<sup>56</sup> Ibid., 40432.

<sup>57</sup> Ibid.

Towards the end of the day's proceedings, both Hechler and Erlenborn proposed amendments to bill H.R. 9212. Hechler's amendment focused on protecting the rights of minor children to collect benefits, while Erlenborn's amendment was designed to provide further clarification on benefits for double orphans. The House passed both amendments. More significantly, it passed Robert Michel's earlier amendment to extend Title IV of the Federal Mine Act to strip miners. The members rejected an additional proposal by Erlenborn to remove the X-ray provision from the bill. The House then voted to pass the amended bill by a majority of 311 to 79.<sup>58</sup>

Having passed the bill, the House submitted it to the Senate Committee for further deliberation. During six days of public hearings, in December 1971, the Senate Subcommittee on Labor deliberated several different bills, including S. 26875, introduced by Jennings Randolph, S. 2289, introduced by Senator Hartke, and a compromise version of H.R. 9212. The latter included many of the original measures from the House version, as well as several amendments. As in the House version, it provided black lung benefits for double orphans, prohibited the denial of compensation claims on the basis of a negative X-ray, included a 'presumptive clause,' and mandated the extension of benefits to all coal miners. The bill only extended federal management of the black lung benefits program for one year, in contrast to the two-year extension in the House bill. While it stipulated that federal black lung benefits should not be classified as workmen's compensation, it limited the benefits miners could receive to 100 percent of their total earned income.<sup>59</sup>

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<sup>58</sup> Ibid., 40444-40458.

<sup>59</sup> U.S. Senate, *Legislative History*, 1946.

Lorin E. Kerr, the Safety Director of the United Mine Workers, made a statement before the Senate Labor Subcommittee on December 1, 1971 that reflected the distance between the UMW and the Black Lung Association. He stated, “We have been impressed with Congressional wisdom in assigning the administrative responsibilities for title IV to the Social Security Administration... The concern manifested for people by the Social Security Administration has been a refreshing contrast to the usual adversary attitude encountered in most state workmen’s compensation agencies.”<sup>60</sup> Kerr announced the union’s support for bill S. 2675. He further announced that the union favored a ten-year presumptive clause for miners with serious pulmonary impairment.<sup>61</sup> While he indicated that the union supported the prompt implementation of state compensation programs, he also urged Senator Williams to establish Title IV “as a permanent federal program.”<sup>62</sup> With regard to the management of the compensation program, the union was, at least, on the same page as the BLA activists. Kerr stated, “Seventy years of experience has clearly indicated that with rare exception the employers’ costs of compensation, as with all other production costs, are ultimately paid by the consumer. This is not new or startling, but it was initially envisioned that increased compensation costs would hasten the elimination

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<sup>60</sup> “Statement by Lorin E. Kerr, M.D., M.P.H. on S.2675, S.2289 and H.R. 9212 to the Subcommittee on Labor, Senate Committee on Labor and Public Welfare, December 1, 1971,” pp. 4-5, Folder entitled “Doctor Lorin E. Kerr General Correspondence,” Box 35 of 52 (8/R35C), A&M 2769, UMWA Health and Retirement Funds, Series III Executive Medical Officer Subject Files, Special Collections Library, West Virginia University, Morgantown WV.

<sup>61</sup> *Ibid.*, 5-9.

<sup>62</sup> *Ibid.*, 10.

of all occupational health and safety hazards.”<sup>63</sup> Kerr also proposed the incorporation of the strip miners’ provision in H.R. 9212 to the Senate bill.

Black lung activists continued the momentum of their campaign by testifying at the hearing. BLA President Arnold Miller used his appearance before the subcommittee to repeat many of his grievances with the SSA. He condemned its lack of medical testing facilities in the coalfields and denial of claims based on X-ray evidence. He urged, “We must solve this problem among our coal miners in the near future or we won’t have any coal miners to mine coal that is vital to the economy of this country.”<sup>64</sup> Representatives from the Association of Disabled Mines and Widows, Inc., also gave testimony at the hearing. Claims advocate Willa Omechinski, whose husband was disabled by pneumoconiosis, explained how the Social Security Administration’s medical evaluations did not match coal miners’ physical experience of black lung disease:

The men that I work with, and the widows of the deceased miners, are not the best educated people in the world, because they had to go to work in the mines early, and this is the only work they have ever known, and now when they go for their X-rays, when they go for their medical examinations, they are denied their black lung disabilities... We only ask for what we feel this man is entitled. With his breathing gone, he cannot work, but he still has to live. I feel this man has done the hardest work there is, and he should be able to live as a person as he is.<sup>65</sup>

Omechinski’s testimony cemented support for the black lung amendments and, in the formal setting of Congress, gave credence to the black lung activists’ campaign.

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<sup>63</sup> Ibid.

<sup>64</sup> U.S. Senate Committee on Labor and Public Welfare, Subcommittee on Labor, *Black Lung Legislation, 1971-72: Hearings Before the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate, 92nd Cong., 1st and 2nd sessions, 1971-72* (Washington, D.C.: U.S. Government Printing Office, 1972), 73.

<sup>65</sup> Ibid., 88.



In late February 1972, the Senate Committee on Labor and Public Welfare, after making further amendments, passed the bill unanimously and sent it to the Senate floor. In a report published in April 1972, the Senate stressed the importance of amending the original provisions of Title IV of the Federal Mine Act of 1969. According to the report, 356,857 claims had been filed for benefits between December 30, 1969 and March 1972, and only 166,593 of those claims had been approved. Of that number, 91,784 claimants were disabled miners and 74,809 were widows. The Senate deduced from the statistics that problem of pneumoconiosis was much wider than Congress initially believed and that the black lung compensation program was not as broad as originally intended under Title IV.

The Senate approved H.R. 9212 by voice vote on May 4 and sent it to the House of Representatives for further approval and final passage. The House and Senate reached a compromise by extending federal control of the black lung program for 18 months. The bill obligated the Social Security Administration to continue paying compensation until June 30, 1973, at which point the Department of Labor would temporarily assume responsibility for claims. The states and coal operators would assume control of the program on January 1, 1974. In addition, the final version of the bill mandated black lung benefits for double orphans and stipulated that miners with fifteen years of experience and a ‘totally disabling respiratory or pulmonary impairment’ had pneumoconiosis.<sup>66</sup> Both the Senate and the House argued for the importance of the president signing the new bill, even though President Nixon vehemently opposed extending federal coverage of black lung compensation. His administration estimated that the new black lung bill would

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<sup>66</sup> See *Black Lung Benefits Act of 1972. U.S. Statutes At Large* 86 (1973): 150-157.

cost the government an additional \$4 billion per year, and coal operators \$2 billion per year.<sup>67</sup>

On May 10, the House passed the legislation by 275 to 122. Opponents immediately announced their opposition, arguing that compensation for disabled miners and their dependents should be the responsibility of state governments and operators. They also argued that the legislation would provide the foundation for broad compensation measures for other industries. There was speculation among the media that President Nixon would veto the bill. The Black Lung Association sought the immediate enforcement of the bill, so when President Nixon delayed signing the bill it took immediate action. On May 19, it shut down two large coal mines in Mingo County, West Virginia, and established picket lines.<sup>68</sup>

Nixon signed the Black Lung Benefits Act into the law the following day, May 20, despite his objection to it. In justifying his signing of the bill, Nixon claimed that pneumoconiosis was too large a problem for him to ignore, particularly given that so many miners and their families were in need of financial support.<sup>69</sup> It was also a presidential election year. By refusing to sign the Black Lung Benefits Act, Nixon risked losing a sizeable portion of blue-collar support. The president advised all states to ensure their worker compensation programs covered pneumoconiosis before they assumed

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<sup>67</sup> *Washington Post*, May 5, 1972, A4.

<sup>68</sup> *Washington Post*, May 11, 1972, A7; *Washington Post*, May 20, 1972, C13; Daniel M. Fox and Judith F. Stone, "Black Lung: Militancy and Medical Uncertainty, 1968-1972," *Sickness and Health in America: Readings in the History of Medicine and Public Health*, 3rd edition, edited by Judith Walzer Leavitt and Ronald L. Numbers (Madison: The University of Wisconsin Press, 1997), 39.

<sup>69</sup> *Washington Post*, May 21, 1972, A3; *Wall Street Journal*, June 21, 1972, 16.

control of black lung compensation in January 1974. Nixon explained that he had misgivings about the bill not because it provided support for miners and widows, but because it placed the onus for compensation on the federal government. He commented, “This legislation departs from the U.S. tradition that compensation for work-related accidents and diseases should be provided by State workmen’s compensation laws, financed by the industries containing the hazards. Responsibility for black lung compensation clearly should lie with the owners and operators of the mines.”<sup>70</sup> Despite Nixon’s conviction that the federal government should not be responsible for federal black lung benefits, his signing of the bill marked a significant victory for the Black Lung Association. The association’s long campaign for the improvement of the black lung compensation program had succeeded.

The amendments to the Title IV of the Federal Mine Act did not occur in isolation. Rather, they were part of a broad expansion of the social security program. In 1972, Congress implemented the largest increase in benefits in the program’s history.<sup>71</sup> In “The Politics of Social Security Expansion,” Edward Berkowitz and Daniel Fox argue that there was a consensus in Congress in the 1960s and 70s over the need to expand social security disability benefits across the board. Subsequently, Congress began to focus its energies on constituents who were previously denied benefits, including

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<sup>70</sup> Richard Nixon, “Statement About Signing the Black Lung Benefits Act of 1972,” May 20, 1972, *Public Papers of the Presidents of the United States: Richard Nixon, Containing the Public Messages, Speeches, and Statements of the President, 1972*. (Washington D.C.: United States Government Printing Office, 1974), 608-609.

<sup>71</sup> Edward Berkowitz and Daniel M. Fox, “The Politics of Social Security Expansion: Social Security Disability Insurance, 1935-1986,” *Journal of Policy History*, 1 (1989), 248.

dependents and young workers.<sup>72</sup> Congress, therefore, enacted a broad legislative program in 1972 to provide benefits to injured and disabled workers. In doing so, it sought to improve the lives of people who were suffering from occupational injury and disease.

The positive impact of the black lung benefits program was evident by late 1972. By December 1972, 88,100 retired miners and 169,100 widows and dependents were receiving benefits, a significant increase from the previous year.<sup>73</sup> Ed Jewell, a retired coal miner, commented, “Before black lung (benefits) we just couldn’t make it without help from the children. Now we can really enjoy our family. I had four sons and I never told them what to do with their lives, but I’m glad none of them went into the mines.”<sup>74</sup> Activist Helen Powell witnessed directly how the Black Lung Amendments Act improved the lives of coal miners and their families. She remembered, “It was kind of a horrendous time, but in the end, it all paid off, and that made you feel good. When I could go into a store or walk down the street and somebody said, “Oh, Ms. Powell, thank you for helping us to get benefits, I was able to buy this, that and the other, and we plan to buy us a little house.”<sup>75</sup> Powell felt her efforts on behalf of the Black Lung Association had been worthwhile, as compensation had a positive impact on the lives of black lung victims and widows. She further commented, “Just small thank yous, for me that was just

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<sup>72</sup> Ibid., 256.

<sup>73</sup> *Washington Post*, December 6, 1972, C1.

<sup>74</sup> Ibid.

<sup>75</sup> Helen Powell, telephone interview with author, August 10, 2009.

like saying, “Here’s a million dollars for you,” because it helped you feel that you had done something good for somebody else.”<sup>76</sup>

Congress continued to search for ways of improving the federal black lung compensation program. In July 1973, the House General Labor Subcommittee convened to discuss four separate bills designed to amend further Title IV of the Federal Mine Act of 1969. Bill H.R. 3476 mandated the continuation of federal responsibility for black lung benefits for an additional two years, effectively delaying the transferal of the compensation program to state governments and the coal operators from its scheduled date of January 1974. The rationale behind this bill was that most states still did not have effective apparatus in place to distribute black lung compensation. Operators, determined to avoid responsibility for black lung compensation, testified in favor of this measure. Bill H.R. 8834 was designed to prevent the duplication of black lung benefits to individual widows. The two other legislative bills, H.R. 8835 and H.R. 8838, respectively eliminated and restricted the fees that lawyers were eligible to collect for assisting black lung claimants. Legal fees were a burgeoning problem in the coalfields, with attorneys collecting sizeable government payments as reimbursement for their work with black lung victims.<sup>77</sup>

The hearing revealed further weaknesses in the black lung benefits program. It showed the subcommittee was convinced that the state legislatures were unprepared to administer compensation for pneumoconiosis victims, and that a large proportion of

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<sup>76</sup> Ibid.

<sup>77</sup> See U.S. House Committee on Education and Labor, Subcommittee on Labor, *Black Lung Amendments of 1973: Hearings Before the General Subcommittee on Labor of the Education and Labor, House of Representatives*, 93rd Cong., 1st and 2nd sessions, 1973-74 (Washington, D.C.: U.S. Government Printing Office, 1973).

lawyers had clearly exploiting the program for their personal financial gain. Bills 8834, 8835, and 8838 did not advance beyond the subcommittee. Bill 3476, however, became the foundation for the extension of the federal government's management of the black lung benefits program.

Despite the ongoing weaknesses in the federal compensation program, the Black Lung Benefits Act of 1972 significantly improved the ability of coal miners and widows to obtain federal compensation for pneumoconiosis. The Act passed as a result of a sustained campaign by the Black Lung Association, which engaged in protests and lobbying to convince Congress of the importance of stronger legislation. As with the passage of the West Virginia black lung law and the Federal Mine Act of 1969, grassroots, community-based protest played a significant role in legislative change. There were still obstacles, however, to effective health and safety enforcement in the coalfields, not least UMW President Tony Boyle. Miners for Democracy (MFD) actively campaigned for control of the union, not only to reform its approach to health and safety, but also to reinstate democratic practices and procedures.

### **Miners for Democracy: Challenging the Union, Reforming Health and Safety**

With regard to health and safety issues, the UMW rank and file challenged the union hierarchy in a number of ways. First, they contested the union's management of the Welfare and Retirement Fund through a major legal case. The UMW Welfare and Retirement Fund had been denying health benefits and pensions to a significant proportion of its members, even if they had actively been paying union dues. In response, over 5,000 miners formed an "organization of living dead men trying to help each

other.”<sup>78</sup> In 1969, the Disabled Miners and Widows Association, Inc. (DMWA) brought a suit against the UMW known as the Blakenship case, after retired miner Willie Ray Blakenship. The DMWA planned to use the case to obtain benefits for those the WRF had deemed ‘ineligible.’ Under the direction of lawyer Harry Huge, the DMWA argued that the Fund’s regulations were “unjust,” and prevented 70,000 miners, widows, and dependents from claiming benefits to which they were entitled. The association filed for breach of trust in the U.S. District Court for the District of Columbia before Judge Gerhard Gessel.<sup>79</sup>

Blakenship, who had worked for more than 20 years in the coal industry, applied for a pension. He was denied. The union argued he had been a self-employed partner at several mining operations, which meant not all of his working time could be accepted. Similarly, 60-year old Robert White of Gordon, West Virginia, failed to receive his pension from the WRF because he had not paid his dues for 90 days after he retired. Despite the fact he had worked in the mines for 23 years and had to quit because of black lung disease, he was still subject to inflexible rules.<sup>80</sup> Originally, miners had one year to pay the extra dues after leaving, and White claimed he was not aware of the switch to the new deadline of 90 days. The *Blakenship vs. Boyle* law suit charged that the Fund, jointly administered by the coal industry and the UMW, had been improperly administered. P.

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<sup>78</sup> *Chicago Tribune*, March 26, 1971, 2.

<sup>79</sup> Richard P. Mulcahy, *A Social Contract for the Coalfields: The Rise and Fall of the United Mine Workers of America Welfare and Retirement Fund* (Knoxville: The University of Tennessee Press, 2000), 157.

<sup>80</sup> *Chicago Tribune*, March 26, 1971, 2.

W. Hendricks of the Disabled Miners and Widows Association claimed the union had denied pensions to around 70,000 retired miners.<sup>81</sup>

Attorney Harry Huge wanted to determine if the WRF trustees had managed the fund in the best interests of the beneficiaries. He found that, in many cases, they had not. For instance, the trustees had placed funds in non-interest bearing accounts, had failed to pursue delinquent royalty payments by operators, and had implemented President Boyle's unauthorized pension increase in 1969. After gaining access to the files of the Welfare and Retirement Fund, Huge made the Fund's "liquidity" the central issue in the case.<sup>82</sup> At the legal hearing for *Blakeship vs. Boyle*, Josephine Roche, one of the Fund's managers, admitted that the Fund's income was significantly higher than its expenditure. Judge Gerhard Gessel, presiding over the hearing in the U.S. Court of Appeals, concluded that a breach of trust had taken place. He argued that the UMW had mismanaged the Fund by using it to limit the union's tax payments.<sup>83</sup> Money added to the Welfare and Retirement Fund was not classified as taxable income. While Judge Gessel argued there was no evidence of a conspiracy, he believed that the practices introduced and maintained by former UMW President John L. Lewis had been detrimental to the miners' best interests. Gessel ordered a change in the Fund's administration.<sup>84</sup>

The outcome of the *Blakeship vs Boyle* legal case further undermined Tony Boyle's leadership of the UMW and offered hope to sick and disabled miners who had

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<sup>81</sup> Mulcahy, *A Social Contract for the Coalfields*, 157.

<sup>82</sup> *Ibid.*, 158.

<sup>83</sup> *Ibid.*, 159.

<sup>84</sup> *Ibid.*, 159-160.



been denied benefits by the Welfare and Retirement Fund. The victory was indicative of the activism occurring in the Appalachian coalfields. Like the Black Lung Association, which employed the services of legal advocates to challenge the Social Security Administration's compensation policies, the Association of Disabled Miners and Widows engaged in legal action to challenge the union's management of its health and pension benefits for members. In the early 1970s, legal action, more than strikes and spontaneous demonstrations, was the key to improving compensation and benefits for miners and widows.

Boyle's leadership of the UMW was beginning to unravel. On March 31, 1972, a federal jury convicted Boyle on thirteen charges of conspiracy and making illegal political contributions with union funds. Specifically, he was convicted of one conspiracy charge, eleven charges of violating the Corrupt Practices Act, and a further charge of violating the Landrum Griffin Act by converting union funds into political campaign contributions. Boyle faced thirty-two years in prison and \$120,000 in fines. Under the terms of the Landrum Griffin Act, he risked losing his position as union president and the right to hold office for five years. A union associate said that the union would launch an appeal once Boyle was sentenced. Boyle was freed on personal bond until the sentence was issued. One of his colleagues told reporters, "We're all shocked they threw the book at him."<sup>85</sup>

Boyle's convictions were a direct result of the investigation the Department of Labor had started in January 1970, shortly after the Yablonski murders. They also

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<sup>85</sup> *New York Times*, April 1, 1972, 1; *Washington Post*, April 1, 1972, A1; *New York Times*, April 2, 1972, E2.

followed the order the previous year by the U.S. District Court for Boyle to stand down from his position as the head of the union's Welfare and Retirement Fund. In contrast, the jury acquitted John Owens, the union's secretary-treasurer, and James Kmetz, its chief lobbyist.<sup>86</sup> Just weeks later, on May 1 1972, the Department of Labor overturned the results of the December 1969 election of the United Mine Workers. Stating that there had been massive irregularities in the voting procedures, the Department scheduled a new election with full government supervision for December of that year.<sup>87</sup>

Miners for Democracy immediately began preparing for the new election. On May 27, 1972, the organization held a nomination convention at Wheeling Jesuit University in West Virginia. J. Davitt McAteer, a former student of the university, had gained permission from the priest in charge of the university to use the campus for the convention. He later recalled, "We couldn't get anybody to host the convention because they were afraid that the union and coal companies would be displeased because they hosted a dissident union movement convention."<sup>88</sup> Five hundred people attended the convention to vote for a candidate to oppose Boyle in the forthcoming election. There were delegates from Illinois, Pennsylvania, West Virginia, Virginia, and Alabama. Mike Trbovich, the leader of the Miners for Democracy and a close friend of the late Jock Yablonski, entered the convention as favorite for the presidential nomination. However, the delegates voted for Arnold Miller as presidential candidate, with Trbovich as vice-

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<sup>86</sup> Ibid.

<sup>87</sup> Paul F. Clark, *The Miners' Fight for Democracy: Arnold Miller and the Reform of the United Mine Workers* (Ithaca, New York: New York State School of Industrial and Labor Relations), 26.

<sup>88</sup> J. Davitt McAteer, telephone interview with author, May 11, 2009.

presidential candidate and Harry Patrick as the nominee for Secretary-Treasurer. McAteer, who attended the convention, witnessed how the delegates made the decision regarding the slate:

Mike Trbovich obviously held the mantle because he had been very close to Yablonski. But Mike was of Polish descent and it was feared that the name alone and the ethnic background would not fly in places like Kentucky, Alabama, and southern West Virginia. And so we were in a kind of deadlock, and Harry Patrick was there, but he was considered too young. It came down to the day of the vote and Miller's name was put up as the compromise candidate, someone who was not objectionable. Since he had not much of a track record he had not made enemies.<sup>89</sup>

As McAteer explains, the MFD delegates chose Miller not because he was more qualified than Trbovich, but to ensure the widest possible support for their candidate in the forthcoming election. In *The Miners' Fight For Democracy*, Paul Clark explains that Miller's position as head of the Black Lung Association facilitated his nomination, as he was able to use the BLA as a political base. Furthermore, prior to the convention Miller had enhanced his reputation in Miners For Democracy and among the rank and file by campaigning on behalf of the MFD cause.<sup>90</sup>

Having nominated its election slate, Miners for Democracy ran on a reform platform. The organization proposed district autonomy, including the right of districts to elect their own officials and representatives. It also advocated the overhaul of the union's administration, including the reduction of leaders' salaries and the end of nepotism, as practiced by Boyle and other high-level officials. More importantly, however, MFD emphasized the importance of dealing with membership priorities such as organizing and

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<sup>89</sup> Ibid.

<sup>90</sup> Clark, *The Miners' Fight for Democracy*, 27.

health and safety. According to Paul Clark, the Miners for Democracy had three advantages over the previous insurgent campaign led by Yablonski. First, the election was to be organized and monitored by the Department of Labor. In the December election, voting was to take place over an eight-day period, to allow the Department to monitor voting at every local union. The Department ordered the UMW to publish MFD campaign material in the *United Mine Workers Journal*, and instructed candidates to file reports of their expenditure.<sup>91</sup> Second, among the rank and file there was much stronger support for reform than in mid-1969. Paul John Nyden estimates that the MFD campaign gained the support of an additional 37,214 young, reform-orientated miners over the Yablonski campaign. Third, the increasing litigation against Boyle, including the April 1971 ruling by the U.S. District Court that he was guilty of embezzling union funds, and the Department of Labor's voiding of the 1969 election, gave the MFD an advantage over their opponents.<sup>92</sup>

Boyle's legal troubles and the intervention of the Department of Labor gave renewed confidence to the rank and file who desired a change in the union's leadership. At a campaign meeting in late July 1972, retired miner Casimir Shuck told reporters, "We're not afraid now. We used to have to whisper it to friends. But now we talk up. Boyle didn't run the union right."<sup>93</sup> Shuck's comments emphasized that much of Boyle's support was attributable to his use of intimidation. With Boyle now under scrutiny from

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<sup>91</sup> Ibid., 27-38.

<sup>92</sup> Ibid., 36-38.

<sup>93</sup> *New York Times*, July 31, 1972, 11.

the Department of Labor, the rank and file members of the UMW were increasingly speaking out against him.

The MFD candidates started the election with a slight lead over Boyle. The ballots opened on December 1, and voting extended over the following eight days. On December 15, the Department of Labor announced that Arnold Miller had won the election, obtaining 56 percent of the ballot to the 44 percent obtained by Boyle. In his victory speech, Miller reaffirmed his campaign pledges to move the union headquarters back to the coalfields and to attend to key issues such as health and safety.<sup>94</sup> The victory of Miners for Democracy was a significant development, particularly for the rank and file miners in the coalfields. It showed that democracy had returned to the coalfields, after several years of corruption under President Boyle. The victory was the direct result of the Department of Labor's monitoring of the election, which prevented Boyle from rigging the ballot and, more importantly, enabled miners to vote freely. In addition, it meant the UMW would now be more attentive to miners' working conditions and issues such as compensation. Miller's victory promised to improve health and safety in the Appalachian coalfields.

The victory of the Miners of Democracy, however, did not bring immediate changes to working conditions in the coalfields. After the MFD election victory, the Department of Labor was responsible for orchestrating the transfer of power within the United Mine Workers headquarters. According to McAteer, the process of installing the new leadership was "very acrimonious, there was a great deal of weeping and gnashing of teeth and anger and mean-spiritedness on both sides. There was a very contentious and

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<sup>94</sup> *New York Times*, November 27, 1972, 40; *Washington Post*, December 16, 1972, A1.

cantankerous transfer of power that meant the other side was left out, angered, mean, and unhappy.”<sup>95</sup> Once the MFD had assumed control of the union, it encountered several other problems.

First, Arnold Miller lacked the experience for his position and faced an enormous workload. His only previous leadership roles were head of UMW local 2093 and president of the Black Lung Association. He did not possess the administrative skills necessary to manage the national leadership of a major union. Second, the new union leadership dismantled Miners for Democracy as an insurgent organization. Miller and his colleagues believed that MFD had become the institutional union and that it was unnecessary to maintain it as a separate organization. The new union leaders were worried that, if allowed to continue, Miners for Democracy might pose a threat to the stability of the United Mine Workers by creating a power struggle. To keep the MFD alive would have required a concerted effort, as it had always been a small network of committed activists. In addition, most of the original activists from the Miners for Democracy were now too preoccupied with running for office in the UMW districts to keep the organization alive. By abandoning the framework that had enabled them to take over the UMW, however, the new leaders created a significant problem. They effectively removed the mechanism by which the rank and file could have held their leaders accountable for their policies and decisions.<sup>96</sup>

Another problem was that Miners for Democracy had to divert its attention from its platform issues such as health and safety to tackle the deeply entrenched corruption in

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<sup>95</sup> J. Davitt McAteer, telephone interview with author, May 11, 2009.

<sup>96</sup> Smith, *Digging Our Own Graves*, 186.

the union. Thus, the new leaders could not immediately focus on the real issues that affected the rank and file miners. Because corruption and mismanagement were so endemic in the United Mine Workers, the leadership had to reconstruct the entire union from the ground up. Miller even acknowledged that the entire union apparatus had stopped working. Furthermore, the new leaders were divided over how to tackle this problem. They could not agree if they should redefine the union's relationship with the coal operators, rewrite the union constitution, or remove all traces of Boyle's leadership.<sup>97</sup>

Once Miller and his colleagues had taken measures to address the institutional problems in the United Mine Workers, they started to implement the key measures in their reform platform. Health and safety was a key priority, but the union's stringent approach to this matter caused concern for operators. In a letter to Arnold Miller, Guy Farmer, the President of the Bituminous Coal Operators' Association, said many coal operators were concerned about the union's health and safety policies as reported in the local and national press. He wrote, "They are especially apprehensive and somewhat alarmed at some of the published reports which seem to imply a unilateral program of enforcement [by the union] which goes so far as to preempt the government agencies and the mine operators' responsibility for health and safety."<sup>98</sup> Farmer's letter reiterated the close relationship that had existed between the coal operators and Tony Boyle. With a new president leading the UMW, the operators feared the union's tougher stance on

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<sup>97</sup> Ibid., 175-177.

<sup>98</sup> Letter from Guy Farmer to Arnold Miller, November 30, 1973, Folder 17, Box 1, UMW Safety Division Office Files, Special Collections Library, Pennsylvania State University.

health and safety. Farmer's letter further implied that some operators were spreading propaganda about the union's new health and safety policies. It was completely untrue, not to mention unrealistic, for the union to supersede the federal government in health and safety enforcement.

### **The Mine Safety and Enforcement Administration (MESA)**

In May 1973, the Nixon administration tackled the poor enforcement record of the Bureau of Mines by creating a new agency, the Mine Safety and Health Administration (MESA). Located in the Department of the Interior, MESA was solely responsible for enforcing health and safety in all coal, metal, and non-metal coal mines. Unlike the Bureau of Mines, it did not conduct research on mineral production or promote the interests of mining industries. Although the coal mine fatality rate had improved in the past two years, the Nixon administration acknowledged that the Bureau was ineffective at enforcing health and safety.

James Day, a 42-year old Korean War veteran, became head of the Mine Enforcement and Safety Administration. Day graduated from Piedmont College in the early 1950s with a degree in Business Administration and Accounting, and he was a former employee of the C.I.A. He had a law degree and had spent time in private practice as a specialist in international law. Since March 1970, he had been director of the Interior Department's Office of Hearings and Appeals, which had been created specifically to oversee the management of the Federal Coal Mine Health and Safety Act of 1969. On accepting that position, he later commented, "I took the job because it sounded highly challenging. The office had just been created to meet the requirements of the 1969 Act,



and the job called for organizing the office, assembling different groups that had been in other Interior Department offices, such as in the Bureau of Land Management and the Solicitor's Office, and setting up procedures and standards.”<sup>99</sup> Day planned to improve health and safety enforcement by giving more support to federal mine inspectors and encouraging them to make swift decisions about penalties for violations. Under the Bureau of Mines, inspectors were over-worked and frequently under-qualified. Furthermore, their decisions about penalties were often over-ruled by Bureau managers. Day, therefore, planned to enhance inspectors' ability to enforce the Federal Mine Act. Yet, coal mine inspectors' work was complicated by the fact that they were now responsible for inspecting both coal and non-coal mines. In fact, Day sought to introduce similar inspection standards for all types of mine.

The creation of MESA was accompanied by the reorganization of the federal inspection system. Under the Bureau of Mines, there were nine inspection districts for coal mines and six inspection districts for metal and non-metal mines. The new system in the Mine Safety and Health Administration contained six autonomous regions that were each responsible for all types of mining. Each region had its own administrator who was responsible for reporting to the MESA associate administrator in Washington, D.C. The reorganization of the federal inspection system was accompanied by a significant increase in the mine inspection force.<sup>100</sup> Although the Mine Enforcement and Safety Administration was not responsible for mining research or upholding corporate interests,

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<sup>99</sup> Nicholas P. Chironis, “Jim Day's MESA... A dynamic organization expanding its functions in health and safety,” *Coal Age*, November 1974, 75.

<sup>100</sup> Chironis, “Jim Day's MESA,” *Coal Age*, November 1974, 75; Daniel Curran, *Dead Laws for Dead Men: The Politics of Federal Coal Mine Health and Safety Legislation* (Pittsburgh: University of Pittsburgh Press, 1993), 121.

from the outset its structure limited its ability to enforce health and safety in the coal industry. Like the Bureau of Mines, it was located in the Department of the Interior, which did not convey a strong commitment to mine health and safety. Moreover, the agency's responsibility for mines in all mineral industries prevented it from focusing on hazards specific to the coal industry.

During 1973, the Mine Enforcement and Safety Administration levied 76,000 violation notices against coal operators. The operators argued that the law was applied too stringently and complained that inspectors did not make assessments based on the circumstances of individual operations. By the end of 1973, operators across the country had already lodged 15,000 appeals before the courts. Day contended that MESA would not be able to enforce health and safety if operators kept filing appeals. Although Day was employing several attorneys to pursue unpaid fines, lawyers for the National Association of Coal Operators advised operators not to pay and to file legal complaints instead. The effectiveness of MESA as an enforcement agency only stretched so far. In 1974, the number of mine closures was fifty percent higher than the previous year. Moreover, there was a fifteen percent increase in the number of citations issued by the federal government, while the number of extensions granted to operators for the payment of fines declined by approximately thirty percent. Yet, the overall number of inspections conducted by the federal government actually declined. There were fewer inspections in 1974 than there were in 1973.<sup>101</sup>

In late 1974, James Day proposed a number of amendments to the Federal Mine Act. The United Mine Workers especially objected to his proposal of modifying the

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<sup>101</sup> Chironis, "Jim Day's MESA," *Coal Age*, November 1974, 74-75; Curran, *Dead Laws for Dead Men*, 121.

system of mandatory fines. Day argued that operators who committed only minor violations should be issued a warning ticket, and then fined substantially if they did not permanently rectify the violation. He further proposed that operators should have the right to appeal only through the U.S. Court of Appeals, and not district courts. In retaliation, the UMW argued that MESA was ineffective at collecting fines. The union alleged that the agency settled for thirty-five to forty percent of the original amount assessed for violations. Day replied that this measure only applied to old violations issued prior to May 1973. He claimed that, for new citations, MESA typically collected eighty to ninety percent of the assessed amount. Moreover, he claimed that operators' lawyers typically used delaying tactics to prevent collection of the fine.<sup>102</sup> Despite his claims, Day pursued a weak enforcement strategy.

The union's frustration with the policies of the Mine Enforcement and Safety Administration prompted it to adopt its own health and safety measures, with the goal of reducing mine casualties and fatalities. The UMW gave additional support to local safety committees by providing safety seminars and affirming the right of these committees to remove workers from hazardous conditions. The safety division also began to take more decisive action over the issue of dust control. After the passage of the Mine Act in 1969, a federal organization called the Interim Compliance Panel had issued permits to some coal companies that temporarily exempted them from fulfilling the minimum dust requirements. The companies who held permits now sought an extension. The safety division, along with the union's legal department, made their objections about an extension known before the Interim Compliance Panel. The safety division pursued other

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<sup>102</sup> Ibid., 76-77.

measures, such as providing all its members with a safety manual and monitoring the performance of the Bureau of Mines and MESA.<sup>103</sup>

The action taken by the United Mine Workers underscored the limits of the federal government's health and safety enforcement efforts. Despite the Nixon administration's creation of the Mine Enforcement and Safety Administration, the UMW leadership was convinced that it was continuing to evade strong enforcement measures,. While the decline in coal mine fatalities from 1973 to 1975 suggests otherwise, the federal government's enforcement policies were still flawed. MESA frequently did not order closure notices for particularly dangerous mines and failed to enforce the strict regulations for dust control.

It was not only the UMW leadership that protested the federal government's approach to mine health and safety in the mid-1970s. Only three years after the passage of the Black Lung Benefits Act, rank and file miners were questioning the federal government's management of the black lung compensation program. The transfer of the program from the federal government to the states had not taken place in 1974 as originally planned, because the Nixon administration realized that too many state legislatures were unprepared to administer black lung benefits. Despite the liberal terms of the Black Lung Benefits Act, many coal miners still were not receiving compensation. On September 16, 1975, around three hundred miners demonstrated in McPherson Square in Washington, D.C.<sup>104</sup> The following day, nearly 1,500 miners protested on

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<sup>103</sup> *United Mine Workers Journal*, March 1976, 3. Located in the Herling Collection, Box 12 Folder 3, Reuther Archives.

<sup>104</sup> *Chicago Tribune*, September 17, 1975, C12; *Washington Post*, September 17, 1975, C6.

Capitol Hill, adamant that the benefits distribution system was unfair. They demanded the passage of an amended black lung benefits act, written by Representative Carl Perkins (D-KY). Perkins' bill automatically awarded benefits to miners with at least fifteen years experience. Otho Sisk, aged sixty-three, was among the demonstrators. Sisk's father had worked as a miner and died of lung disease in 1953. Now Sisk himself was suffering from pneumoconiosis, having labored as a miner since the age of sixteen. Despite the fact that four doctors had verified his illness, he had not been granted compensation.<sup>105</sup>

Developments in the House of Representatives in 1976 demonstrated that the miners' goal of more equitable black lung compensation was still far from a reality. While the House was not averse to Perkins' proposal of automatic compensation, it abandoned Perkins' original bill in favor of a more restrictive bill. The bill stipulated that only coal miners with thirty years underground experience should automatically qualify for some benefits. A number of Congressmen argued that the bill should be modified to include only miners who had worked for this amount of time before the 1969 legislation came into force. The bill did not advance through the House.<sup>106</sup>

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<sup>105</sup> *United Mine Workers Journal*, March 1976, 3, Folder 3, Box 12, Herling Collection, Walter Reuther Archives; *Chicago Tribune*, September 17, 1975, C12; *New York Times*, September 18, 1975, C6; *Washington Post*, September 17, 1975, C6.

<sup>106</sup> *United Mine Workers Journal*, March 1976, 6-7, Folder 3, Box 12, Herling Collection, Walter Reuther Archives 6-7.

## **Conclusion**

From early 1971 to May 1972, the Black Lung Association demonstrated the power of collective protest and community-based activism to generate legislative change. Although the BLA had expanded into a national organization, it continued to operate at the grassroots level: local chapters, composed of lay advocates, disabled miners, and widows were crucial to its activism. In contrast to its spontaneous campaign in West Virginia in early 1969, the Black Lung Association's lobbying campaign against the federal government in 1972 was planned and organized in advance. The efforts of the BLA directly contributed to the Nixon administration's passage of the landmark Black Lung Benefits Act of 1972.

The significance of collective activism in the coalfields was further exemplified by the victory of Miners for Democracy in the 1972 United Mine Workers election. The candidates on the MFD election ticket – Arnold Miller, Mike Trbovich, and Harry Patrick – orchestrated an effective campaign across the coalfields, aided considerably by Tony Boyle's conviction of fraud under the Landrum Griffin Act. A large number of coal miners, no longer intimidated by the national leadership of the UMW, supported the MFD in the election. The Association of Disabled Miners and Widows' successful lawsuit against the UMW Welfare and Retirement Fund further demonstrated the growing momentum of reform elements in the coalfields. Yet, the flaws of coalfield activism were also evident. The Miners for Democracy developed a platform on health safety that, once in power, they were unable to implement because of the endemic corruption at every level of the UMW national leadership. In addition, the Black Lung

Benefits Act did not fulfill its original promises. By 1975, the federal government was still denying benefits to many black lung victims and widows.

During this period, the Nixon administration, as well as passing the Black Lung Benefits Act, created the Mine Enforcement and Safety Administration for the enforcement of mine health and safety. The creation of MESA emphasized the poor enforcement record of the U.S. Bureau of Mines. As a result of its dual responsibility for enforcing health and safety and promoting corporate interests, the Bureau had failed to uphold the terms of the Federal Coal Mine Health and Safety Act of 1969. Although MESA adopted a tougher approach to enforcement than the Bureau, there were still flaws in its policies. For instance, typically it failed to collect the entire amount of fines assessed for health and safety violations. The new leadership of the United Mine Workers was particularly critical of the Mine Enforcement and Safety Administration's policies.

From 1971 to 1975, there were significant developments in coal mine health and safety in the United States. Responding to activism by the Black Lung Association, the federal government passed major legislation in the form of the Black Lung Benefits Act. Further, it created the Mine Enforcement and Safety Administration as a result of the failures of the Bureau of Mines. Miners for Democracy gained control of the United Mine Workers and, with their ascension to power, reformed the union's approach to the working conditions of the rank and file. Yet, as shown in this chapter, such developments did not solve the health and safety crisis for rank and file coal miners. They still labored in dangerous conditions, and many who were afflicted by pneumoconiosis were unable to obtain black lung benefits.

## Chapter Seven

### **Progress and Decline:**

#### **The Energy Crisis, Legislative Reform, and Deregulation**

##### **Introduction**

Early on the morning of February 26, 1972, after several days of heavy snow and rain, a coal slag dam high above Buffalo Creek in the Appalachian region collapsed, sending millions of gallons of thick, black sludge crashing through the valley. Owned by the Pittston Coal Company, the 200-foot long dam was designed to hold waste products removed from coal after its extraction. Bituminous coal companies removed impurities from coal to turn it into a commercially viable product. The collapse of the dam was triggered by twenty inches of snow and three inches of rain. The torrent of coal sludge carried away cars and houses with its force. Within a few hours, 37 people had officially died, either drowned or buried by landslides. There was some confusion, however, over the exact death toll. The time of the disaster, combined with the lack of warning about the oncoming water, meant residents had little time to escape. Lieutenant Ellis of the Beckley police said the presumed death toll was 90 people, a figure that Governor Archer Moore described as “a catastrophic loss of life.” In light of these events, Moore declared Buffalo Creek a disaster area.<sup>1</sup>

As the water surged through the valley, over 400 people had fled their homes. Lorado, a small community closest to the disaster site, was wiped out. The black, sludge-

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<sup>1</sup> *Raleigh Register* (Beckley, WV), February 27, 1972, 1 and 2; *Sunday Gazette-Mail* (Charleston, WV), February 27, 1972, 1A and 10A; *Herald-Dispatch* (Huntington, WV), February 27, 1972, 1.



filled water, which some eyewitnesses claimed was twenty feet high, destroyed roads and demolished bridges in its path. As refugees fled to emergency shelters further down the valley, high winds and heavy rain thwarted rescuers' efforts to gain access to Lorado. Three private helicopters eventually brought the most seriously injured people out of the settlement.<sup>2</sup> One survivor at Lorado, Henry Kilgore, reported that he and his family fled to the hills when they saw the water rushing past the house. When they turned back, "the house was floating down through the coal camp." Other survivors fleeing from the water told a state trooper they had counted 52 bodies in the hollow. The water cut a seventeen-mile path through the valley, causing devastation to several other communities. State officials evacuated people living near the Guyandotte River when its level became dangerously high. The water lost much of its force when it reached Accoville, a settlement twelve miles from the slag dam where the valley widened.<sup>3</sup>

By the following day, February 27, at least 60 people were confirmed dead, and more than 4,000 of the 7,000 people living in the Buffalo Creek area were homeless. After touring the area, Governor Moore announced that 80 percent of the homes in a dozen mining communities had been destroyed. He announced his intention to ask the state legislature for \$1 million in relief. Later, after meeting with representatives from the Department of Housing and Urban Development, the governor announced the state would transport mobile homes for the victims. Over 400 people were still missing, but it was unclear if they were dead or had gone in search of family members and relatives. South

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<sup>2</sup> Ibid.

<sup>3</sup> *Raleigh Register* (Beckley, WV), February 27, 1972, 1 and 2; *Sunday Gazette-Mail* (Charleston, WV), February 27, 1972, 1A and 10A; *Herald-Dispatch* (Huntington, WV), February 27, 1972, 1; *Post-Herald* (Beckley, WV), February 28, 1972, 6.

Man Elementary School had become a temporary morgue, although only ten bodies had been positively identified. Amid the confusion, it became apparent that the people living along the Creek had been given virtually no warning about the impending disaster. Otto Mutters, the Logan County Deputy Sheriff, said an official of the Pittston Coal Company had assured him at 6:30 a.m. that “everything was okay” with the dam.<sup>4</sup>

The lack of stable roads and bridges hindered efforts to rescue survivors and recover bodies. Members of the National Guard used bulldozers and earth-moving equipment to hunt for bodies buried in the wreckage, while the homeless sought refuge in schools and churches. A group of more than hundred survivors arrived in Wharton, Boone County, after walking over the hills to safety. Volunteers and relief organizations, including the Red Cross and the Salvation Army, helped to provide relief and to administer vaccines and medical treatment.<sup>5</sup>

There was conflict over the exact cause of the disaster. Some people claimed that the earthen dam collapsed from the pressure of heavy snows and rain, while others said that Elk Lick, a Buffalo Creek tributary, broke through the slag dam, causing it to break. Ben Tudor, the general superintendent of the Buffalo Mining Company, a subsidiary of the Pittston Coal Company, claimed that the West Virginia government had contributed to the disaster. He argued that it had prohibited the company from dumping excess coal

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<sup>4</sup> *Charleston Gazette*, February 28, 1972, 1A and 2A; *Post-Herald*, February 28, 1972, 1 and 6.

<sup>5</sup> *Charleston Gazette*, February 28, 1972, 1A; *Herald-Dispatch*, February 28, 1972, 1.

sludge in the valley, resulting in increased pressure on the dam. Tudor did not mention, however, that the Pittston Company had failed to maintain the dam properly.<sup>6</sup>

Several weeks passed before the full scale of the devastation became apparent. Of the 5,000 people living in the valley, 125 were killed, 1,121 were injured, and 4,000 were left homeless.<sup>7</sup> The Buffalo Creek disaster was significant for several reasons. First, it showed that the coal industry threatened the welfare of entire mining communities, not just the miners who labored underground. Throughout Appalachia, similar impoundment dams jeopardized the property, safety, and lives of people living in mining camps. Second, the disaster emphasized that the coal industry posed a threat to the natural environment. The collapse of the Pittston dam not only caused significant loss of life and widespread homelessness, it also damaged the landscape by polluting water supplies, destroying trees and vegetation, and contaminating valley streams. Third, the events at Buffalo Creek highlighted the failure of the federal government to regulate the environmental hazards of the coal industry. Despite the fact that the U.S. Geological Survey had compiled substantial evidence that coal dams were a significant human and

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<sup>6</sup> *Charleston Daily Mail*, February 28, 1972, 1 and 2; *Charleston Gazette*, February 28, 1972, 1A and 2A; *Post-Herald*, February 28, 1972, 6.

<sup>7</sup> For full details of the disaster, see various reports in the Historical Collection at the National Mine Safety Academy, Mine Safety and Health Administration, Beckley, West Virginia: *The Buffalo Creek Flood and Disaster: Official Report from the Governor's Ad Hoc Commission of Inquiry* (Charleston: State of West Virginia, 1973); *Disaster on Buffalo Creek: A Citizen's Report on Criminal Negligence in a West Virginia Mining Community* (Charleston: Citizen's Commission, 1972); U.S. Department of the Interior, Bureau of Mines, *Interim Report of Retaining Dam Failure* (Mount Hope, West Virginia: Bureau of Mines District 4, 1972). These reports presented starkly different conclusions. The reports by the West Virginia Governor's Commission and the Bureau of Mines were conservative in their findings, depicting the events at Buffalo Creek as a natural disaster. The report by the Citizen's Commission attributed the disaster to failures by the state and federal governments and the coal industry.

environmental hazard, the influence of the coal industry in state politics was an obstacle to legislative action.<sup>8</sup>

The Buffalo Creek disaster reflected the broader human and environmental hazards of coal mining in the early 1970s. Mining communities and the environment were under threat from the widespread practice of surface mining. This form of mining, which involved extracting coal directly from the ground with machinery, threatened the health and safety of miners and their families and caused widespread pollution and devastation to the natural landscape. Surface mining was by no means new. As Chad Montrie shows in his book *To Save the Land and People*, the practice of surface mining in Appalachia pre-dated World War I.<sup>9</sup> In the early 1970s, however, the practice became more widespread not just in Appalachia, but in western states.

The expansion of surface mining in the United States was driven primarily by the energy crisis. As domestic oil reserves began to decline and the price of imported oil continued to rise, the country renewed its emphasis on coal as a source of electrical power. The federal government, scientists, and the United Mine Workers stressed the versatility of coal, not just as an energy source in its own right, but also as a substance that was easily converted into oil, petroleum, and other fuels. Coal operators increasingly turned to surface mining to extract the coal as cheaply and efficiently as possible.

This chapter will examine the complex relationship between the energy crisis, miners' health and safety, and the environment in the coal industry during the 1970s. It

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<sup>8</sup> *Charleston Daily Mail*, February 28, 1972, 2A.

<sup>9</sup> For further information, see Chad Montrie, *To Save The Land And People: A History of Opposition to Surface Coal Mining in Appalachia* (Chapel Hill: University of North Carolina Press, 2003), particularly chapter two.

will argue that the federal government and the coal companies focused on increased coal production as an immediate solution to the energy crisis, while giving little regard to its long-term effects on coal miners, their communities, and the natural environment. In addition, the chapter will focus on coal mine health and safety during the Jimmy Carter and Ronald Reagan administrations, from 1977 to 1988. It will show that President Carter addressed many of the environmental and health and safety hazards of the coal industry by signing the Federal Mine Safety and Health Act of 1977 and the Surface Mining Control and Reclamation Act of 1977. The chapter will further demonstrate, however, that his legislative achievements were undermined by the Reagan administration's policies of deregulation.

From 1972 to 1988, there were notable advances in coal mine health and safety. The fatality rate declined in this period, while President Carter strengthened legislative measures designed to protect coal miners and the environment. Yet, other factors undermined the improvements in coal miners' working conditions. The energy crisis prompted operators to prioritize coal production ahead of health and safety, while President Reagan's deregulatory philosophy led him to make significant cuts in federal enforcement and the black lung benefits program. The sixteen-year period from 1972 to 1988, therefore, was marked by both progress and decline.

### **Coal Mining and the Energy Crisis**

As early as the summer of 1971, President Richard Nixon warned the United States that an energy crisis was imminent. In an address to Congress, he explained that the country was experiencing energy shortages because of a sharp increase in demand

over the previous four years. He announced that the nation could avert the crisis by limiting the importation of foreign oil, developing nuclear power, and increasing coal production. He emphasized the importance of excavating coal located under federal lands. Nixon believed that coal would not only fuel the nation's power plants, but that it would provide an important source of home heating and could be converted into natural gas.<sup>10</sup> In the early 1970s, coal accounted for a growing share of the electrical energy market, while the place of oil in the market declined. In 1969, coal generated 706 billion Kilowatt-hours of electricity, while petroleum accounted for 138 billion Kilowatt-hours. In 1973, coal generated 848 billion Kilowatt-hours, while petroleum accounted for 314 billion Kilowatt-hours. To compensate for the decline in imports of oil, the United States turned to coal as a viable alternative.<sup>11</sup>

The administration's plan for increased coal production was dependent on the growing sector of surface mining. Many of the country's new surface mines were located in western states such as Colorado, South Dakota, Wyoming, and Montana. In the early 1970s, surface mining became more widespread in the United States than traditional underground mining. In 1968, underground coal mining accounted for 346.6 million short tons of coal production, while surface mining accounted for 210.1 million short tons.<sup>12</sup> Just four years later, in 1973, surface mining represented almost half of the nation's coal

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<sup>10</sup> *New York Times*, July 7, 1971, pg. 1; "Special Message to Congress on Energy Resources, June 4, 1971," *Public Papers of the Presidents of the United States: Richard Nixon, Containing the Public Messages, Speeches and Statements of the President, 1971*. (Washington: United States Government Printing Office, 1972), 704-714.

<sup>11</sup> Franklin Tugwell, *The Energy Crisis and the American Political Economy: Politics and Markets in the Management of Natural Resources* (Palo Alto: Stanford University Press, 1988), 82.

<sup>12</sup> In units of weight measurement, a short ton is equivalent to a standard ton.

production. That year, underground mining accounted for 300.1 million short tons of production, while production at surface mines amounted to 298.5 million short tons.<sup>13</sup> Surface mining was more cost effective and required less manpower than underground mining. Supporters also emphasized that surface mining was twice as productive per man as underground mining and much safer.<sup>14</sup> Statistically, surface mining resulted in fewer injuries and fatalities than underground mining, but that was largely because it required a much smaller workforce. In the Eastern and Appalachian coalfields, 200 men were typically required to produce one million tons of coal per year. In the surface mining industry, the same amount of coal could be produced with just ten miners.<sup>15</sup>

The growth of surface mining was partly attributable to the stringent terms of the Federal Coal Mine Health and Safety Act of 1969. According to Daniel Curran, from 1969 to 1974, the Federal Mine Act caused a twenty-two percent decrease in the number of underground mines in the United States and an eighteen percent increase in the number of surface mines. Small underground mine operators could not afford the cost of installing new equipment and of paying penalties for health and safety violations. During this period, 588 underground mines closed, 70.7 percent of which were located in Kentucky and West Virginia. The majority of the underground coal mines in those states were small marginal mines, which, prior to the passage of the 1969 act, were typically

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<sup>13</sup> U.S. Energy Information Administration, *Coal Production in the United States: An Historical Overview* (Washington, D.C.: U.S. Government Printing Office, 2006), 3.

<sup>14</sup> *New York Times*, July 17, 1971, pg. 24; “The Price of Strip Mining,” *Time*, March 22, 1971, 47.

<sup>15</sup> *New York Times*, August 22, 1971, 1 and 49; Miller, “The Energy Crisis As A Coal Miner Sees It,” *Center Magazine* 6 (November / December 1973), 42.

classified as ‘non-gassy.’<sup>16</sup> James Day, the head of the Mine Enforcement and Safety Administration, claimed that more than half of the remaining mines formerly defined as “non-gassy” were still not in compliance with the legislation regarding methane levels and, therefore, faced the risk of closure.<sup>17</sup>

The accessibility of western coal enabled large energy conglomerates to lease enormous reserves. Peabody Coal had leased more than 8.7 billion tons of coal, while Continental Oil had leased 8.1 billion tons, and Union Pacific had leased more than 10 billion tons. UMW President Arnold Miller predicted that this represented only a tiny fraction of future coal production if the energy cartel was allowed to continue leasing coal without regulatory controls. The industry, claimed Miller, was waiting until oil supplies were exhausted before selling its coal. He wrote, “The biggest oil-coal combines are sitting on vast reserves of readily recoverable coal. But that coal will come out of the ground only when the men who own it can be sure of the price they will get for it.”<sup>18</sup> With demand for coal at a premium, as a result of the country’s increasing energy requirements, there was little incentive for the major corporations to focus on health and safety.

Like underground mining, surface mining presented a number of health and safety hazards to the labor force. In particular, miners risked being crushed, maimed, or

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<sup>16</sup> Daniel Curran, *Dead Laws for Dead Men: The Politics of Federal Coal Mine Health and Safety Legislation* (Pittsburgh: University of Pittsburgh Press, 1993), 120.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid., 39.



electrocuted by machinery.<sup>19</sup> Despite the open-air environment of surface mines, miners also risked developing black lung disease. The large mechanical shovels and draglines used to excavate the coal from the ground created a permanent cloud of coal dust over surface mine operations. Congress included surface miners in the Black Lung Benefits Act of 1972, recognizing that the disease had a significant impact on them. Organized labor, however, did little to address the health and safety hazards of surface mining. In fact, the growth of surface mining undermined the position of labor unions in the coalfields.<sup>20</sup>

Historically, the Western Federation of Miners (WFM) was the main organizing force in the western coalfields. Founded in 1893 by miners from several states in the Rocky Mountain region, the WFM achieved significant gains in wages and hours, particularly in Colorado after the Cripple Creek strike of 1894. The union's affiliation with the American Federation of Labor (AFL) in 1911 further augmented its bargaining power, and enabled it to establish a strong presence in the Lake Superior copper region, which it had previously struggled to organize. In 1918, the WFM changed its name to the International Union of Mine, Mill and Smelter Workers. Its declining power in the ensuing decades prompted it to merge with the United Steel Workers in 1967. By the

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<sup>19</sup> For individual reports on accidents at strip mines, see Mining Enforcement and Safety Administration (MESA) and Homes Safety Association, "Abstract From Fatal Accident, August 1973," Folder 19, Box 1, United Mine Workers Safety Division Office Files, Special Collections Library, Pennsylvania State University, State College, Pennsylvania; Mining Enforcement and Safety Administration (MESA) and Homes Safety Association, "Abstract from Fatal Accident, May 1974," Folder 21, Box 1, UMW Safety Division Office Files, PSU Special Collections.

<sup>20</sup> John Laslett, "A Model of Industrial Solidarity." In *The United Mine Workers of America: A Model of Industrial Solidarity?*, edited by John Laslett (University Park: The Pennsylvania State University, 1996), 2.

zenith of surface mining in the early 1970s, the union lacked the political and economic capital to organize western miners on a substantial level.<sup>21</sup>

The United Mine Workers scarcely had more success in organizing western surface mines. Although originally founded in Montana, much of the union's power was located in Appalachia and its headquarters in Washington D.C., far from the western coalfields. Geography was not the only factor that limited its organizing efforts in surface mining operations. By the 1970s, the UMW was averse to expending its resources on such organization. Since World War II, district leaders had pleaded with the national leadership to become more active in strip mines, but to no avail. Part of the union's aversion to organizing surface mines stemmed from John L. Lewis's 1946 agreement with the coal operators not to protest mechanization, in return for their support of the Welfare and Retirement Fund.<sup>22</sup> Because surface mines were dependent on machinery, the union was not in a strong bargaining position. Surface miners, therefore, found little union support in health and safety issues.

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<sup>21</sup> For a detailed history of the Western Federation of Miners, see, Alan Derickson, *Workers' Health, Workers' Democracy: The Western Miners' Struggle, 1891-1925* (Ithaca, New York: Cornell University Press, 1988); Melvyn Dubofsky, *We Shall Be All: A History of the Industrial Workers of the World* (Urbana-Champaign: University of Illinois Press, 2000); Charles K. Hyde, *Copper for America: The United States Copper Industry from Colonial Times to the 1990s* (Tucson: The University of Arizona Press, 1998); Elizabeth Jameson, *All That Glitters: Class, Conflict, and Community in Cripple Creek* (Urbana, Illinois: University of Illinois Press, 1998); Larry Lankton, *Cradle to Grave: Life, Work, and Death at the Lake Superior Copper Mines* (New York: Oxford University Press, 1991); Philip J. Mellinger, *Race and Labor in Western Copper: The Fight for Equality, 1896-1918* (Tucson: University of Arizona Press, 1995); Arthur W. Thurner, *Rebels on the Range: The Michigan Copper Miners' Strike of 1913-1914* (Lake Linden, Michigan: John Forster Press, 1984). See also Daniel Curran, *Dead Laws for Dead Men*, 140-141.

<sup>22</sup> Joseph Finley, *The Corrupt Kingdom: The Rise and Fall of the United Mine Workers* (New York: Simon and Schuster, 1972), 178-204.

President Nixon's emphasis of coal as a solution to the energy crisis also had negative environmental implications. Environmentalists argued that the practice of surface mining was ecologically harmful. Brock Evans of the Sierra Club fumed, "[Nixon] is really calling for massive strip mining for coal, massive destruction of the land, and pollution of the land and water." Similarly, Rod Cameron of the Environmental Defense Fund contended that Nixon's plan allowed for the wanton destruction of the natural landscape.<sup>23</sup> The environmentalists were outraged by the administration's plan to increase coal production. They argued that surface coal mining left deep scars on the sides of mountains and destroyed tens of thousands of acres of streams and forests. The dumping of ground waste from surface operations caused landslides, the silting of streams, and the pollution of domestic water supplies, as well as widespread damage to property. Furthermore, the exposure of waste substances containing sulfur to the air caused acid mine drainage, which contaminated water supplies and streams.<sup>24</sup> A Department of the Interior report published in 1971 revealed that 1.8 million acres of land across the country had been strip-mined. Only 58,000 acres had been "restored" to their approximate original condition. At this time, federal law did not mandate the restoration of strip-mined land to its original condition.<sup>25</sup>

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<sup>23</sup> Peter N. Carroll, *It Seemed Like Nothing Happened: America in the 1970s* (New Brunswick: Rutgers University Press, 1990), 120-22.

<sup>24</sup> Montrie, *To Save the Land and People*, 3.

<sup>25</sup> *New York Times*, July 7, 1971, 1.

Critics of surface mining, led by Ken Hechler, emphasized the damage it caused to the natural environment.<sup>26</sup> Hechler rejected the coal industry's claims that strip mines could be converted into golf course or camping grounds. Writing for the *Los Angeles Times*, he stressed, "such projects become prohibitively expensive when undertaken on a broad scale." To further support his argument, he asserted that "...even on 'reclaimed' sites, shallow grasses are scarcely acceptable replacements for hardwood forests – and acid pollutants will often show up several years later as far away as 30 miles from a stripped area."<sup>27</sup> Hechler also criticized the supporters of strip mining who argued it made good economic sense. He cited the Bureau of Mines' estimation that only 45 billion tons of coal could be recovered economically through strip mining, as opposed to 356 billion tons through underground mining.<sup>28</sup> For local citizens, challenging the coal industry's environmental injustices was difficult, not least because the coal companies were typically from outside the region and colluded with local politicians. One group in Tennessee charged that the state government was failing to levy local taxes on outside companies, causing huge losses in state revenue.<sup>29</sup>

President Nixon's main priority was to avert the impending energy crisis, rather than to address the human and environmental hazards of surface mining. On April 18, 1973, he informed Congress that he planned to give priority to the development of coal as

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<sup>26</sup> Ken Hechler, "The Land's Face is Being Clawed and Chewed and Spit Out," *Los Angeles Times*, April 16, 1973, Section II, 9.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> *The Washington Post*, March 25, 1972, A18.

fuel source. He described coal as “our most abundant and least costly source of energy.” Nixon explained that coal provided less than twenty percent of the country’s energy and that its use was continuing to decline. He stressed the importance of placing coal at the center of the country’s energy strategy to avoid dependence on foreign oil.<sup>30</sup>

President Nixon was aware, however, that recent federal mining regulations and escalating public concern about the environment were obstacles to increased coal production. He stressed that mine operators would have to adhere to strict environmental standards and that it was important to achieve a balance between protecting the environment and fulfilling America’s economic and national security interests. While the president acknowledged that the Clean Air Act of 1970 would limit the burning of coal as a source of energy, he advocated placing less emphasis on the less important standards in the act. In addition, Nixon supported the Environmental Protection Agency’s policy of granting states the right to burn more coal during energy shortages.<sup>31</sup>

Nixon did not mention coal mine health and safety during his address. This omission cast doubt on the sincerity of his commitment to miners’ working conditions. It again suggested that Nixon had supported the Federal Mine Act of 1969 and the Black Lung Benefits Act of 1972 primarily to obtain blue-collar support for the 1972 election and the Democrat’s backing for his defense and foreign policies. Yet, Nixon’s emphasis on coal as an energy source was prescient. In October 1973, an oil embargo by the

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<sup>30</sup> Richard Nixon, ‘Special Message to the Congress on Energy Policy, April 18, 1973,’ *Public Papers of the Presidents of the United States: Richard Nixon, 1973*. (Washington: United States Government Printing Office, 1975), 308; *Chicago Tribune*, April 15, 1973, 45.

<sup>31</sup> *New York Times*, August 22, 1971, 1 and 49; Carroll, *It Seemed Like Nothing Happened*, 308-309.

Organization of Petroleum Exporting Countries' (OPEC) resulted in the energy crisis that he had been trying to avoid.

Secretary of the Interior Rogers C. B. Morton shared Nixon's faith in coal as a viable solution to the energy crisis. In an article entitled "Coal: Our Ace in the Hole to Meet the Energy Crisis," Morton cautioned, "The mighty American economy, strongest in the world, is quite literally running out of gas." He highlighted the country's dependence on oil and natural gas, claiming that those fuels accounted for 77 percent of the national energy supply. In contrast, only eighteen percent of the country's energy came from coal, four percent from hydroelectric power, and one percent from nuclear power. Morton cautioned against continued dependence on foreign oil imports. He argued that that if the United States was unable to import oil in sufficient quantities then "we would, as a nation and a world power, trail off into impotence."<sup>32</sup> Morton was dismissive of alternative energy sources, such as solar energy, geothermal energy and atomic fission. He also believed that, in the short-term, domestic oil was not a viable solution, although he noted that, in the near future, oil would be available through the Trans-Alaska pipeline. For Morton, coal was the key to resolving the energy crisis:

... I believe that our best path to self-sufficiency by 1980 lies underground – in coal. Coal – three *trillion* tons of it, composing 89 percent of all our fossil-fuel resources – is literally our "ace in the hole." In fact, we have enough coal in the ground to supply *all* our energy requirements until well into the second quarter of the 21st century.<sup>33</sup>

Morton recognized that coal was more costly to produce and distribute than oil and natural gas, caused air pollution when burned, devastated the natural environment

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<sup>32</sup> Rogers C. B. Morton, "Coal: 'Our Ace in the Hole' To Meet the Energy Crisis," *Reader's Digest*, March 1974, 87-88.

<sup>33</sup> *Ibid.*, 88.

through the practice of surface mining, and “[remained] one of the most hazardous occupations in the nation.” He explained, however, that coal could be converted into both gas and synthetic oil. Moreover, he claimed that America had enough coal reserves for conversion into four trillion barrels of oil, ten times the world’s total oil supplies.<sup>34</sup> Establishing a program for converting coal into gas and oil, Morton argued, was imperative if the country was to become self-sufficient.<sup>35</sup> He revealed that the Bureau of Mines and the Office of Coal Research both were researching economically feasible conversion processes. Technological advances of this nature, argued Morton, depended on changes in existing labor practices.<sup>36</sup>

Emphasizing the dangerous nature of underground work, Morton argued that, by the year 2000, underground coal mines should be completely automated, with machines doing the most dangerous work. Men’s duties, he cautioned, should be limited to maintenance and control.<sup>37</sup> In the short term, further strip mining was necessary, but it would require tough legislation from Congress to protect the land. On paper, Morton’s proposals accounted for the protection of both workers and the land. They were little more than political rhetoric, however, not a framework for substantial policy. Morton’s past record did not reveal a genuine concern for coal mine health and safety or

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<sup>34</sup> Ibid., 88-89.

<sup>35</sup> Ibid., 89.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid., 90.

environmental conservation. Prior to becoming Secretary of the Interior, his policies typically favored industry and business.<sup>38</sup>

A similar article in the *Saturday Evening Post* promoted the benefits of coal as a long-term solution to the energy crisis. In “Coal: An Answer to the Energy Crisis,” Jep Cadou argued that the United States had enough coal to last for the next 800 years under the current rate of consumption. Like Morton, he stressed that coal was “enormously versatile.” It could provide the basis for many other energy supplies, he argued, including petroleum, natural gas, and electricity. Cadou asserted that the United States could use coal to eliminate its energy shortfall in the next two or three years. In contrast to Morton, who proposed replacing miners with technology, Cadou advocated the rapid expansion of the coal mine labor force, through a program designed to train an additional 100,000 additional miners. According to Cadou, this effort would require a substantial publicity campaign to make mining a more attractive career option to American youth. He argued that the image of a miner hacking coal out of the ground with a pick shovel was outdated. He wrote, “You are likely to find today’s miner pressing buttons or pushing levers to operate expensive equipment which removes the coal from the earth, cleans and sizes it and ships it to the user.”<sup>39</sup> Cadou’s article emphasized the prevalence of surface mining, with its reliance on large mechanical draglines to scoop the coal from the earth.

In his urgency to make coal the foundation of national energy policy, Cadou completely ignored the risks of mining to labor and the environment. He stated, “Mining is still a hazardous occupation, but it is growing safer all the time. The miners say so.

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<sup>38</sup> For further details, see chapter five, pages 229-231, of this dissertation.

<sup>39</sup> Morton, “Coal: Our Ace in the Hole to Meet the Energy Crisis,” 90.



And so do the cold statistics. There were 325 fatal injuries in coal mining in the United States in 1960, according to the Bureau of Mines of the Department of the Interior. There were 260 such deaths in 1970, and 180 in 1971, the last year for which statistics have been reported.”<sup>40</sup> Cadou did not mention that the number of fatalities had increased from 1969 to 1970, nor did he frame the statistics in terms of man-hours worked or the quantity of coal produced. Further, despite highlighting the new dust regulations to prevent black lung disease, Cadou ignored the fact that many employers were still failing to implement them. Finally, he wrongly credited the UMW with the recent major advances in health and safety. He further dismissed the environmental impact of strip mining. He cited the AMAX Coal Company, based in Indiana, as a leader in the restoration of strip-mined land. One of its subsidiaries, Meadowlark, had generated enormous profits from the sale of livestock and crops developed on reclaimed land.<sup>41</sup> Cadou’s assessment ignored millions of acres of land were simply abandoned by mining operators or not properly restored.

Despite the aspirations of the Nixon administration and the media to resolve the energy crisis through coal, the militant attitude of the nation’s coal miners complicated matters. By early March 1974, a wildcat strike was spreading rapidly among the miners of West Virginia. The strike was directly related to the energy crisis, as the miners had walked off the job in response to the gas allocation policies of the federal and state

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<sup>40</sup> Jep Cadou, “Coal: An Answer to the Energy Crisis,” *Saturday Evening Post*, April 1974, 24.

<sup>41</sup> *Ibid.*, 26.

governments.<sup>42</sup> The industrial walkout not only hindered production of 75 percent of the country's metallurgical coal, but also forced steel companies who used such coal in their production to lay off workers. In just a few days, the strike caused the loss of production of 2.5 million tons of coal. The Bituminous Coal Operators' Association and the major steel companies, many of which owned coal mines, accused the United Mine Workers of staging the strike for its own political reasons, a claim the union denied. The federal government and the operators were concerned that UMW President Arnold Miller had made promises to rank and file miners that he could not deliver, including an increase in wages and pensions and significant improvements in mine safety. Miller's promises exceeded what he could reasonably expect to obtain during the bargaining process.<sup>43</sup>

The government and mine owners were particularly concerned about the impending contract negotiations between the UMW and the coal industry. They worried that another strike during the negotiating process would further jeopardize the nation's coal supply. In the hope of limiting coal shortages, Secretary of Labor George Schultz established an intergovernmental group under the control of the Cost of Living Council to develop a national coal policy for the rest of 1974. According to *Business Week*, the federal government advised operators to make a substantial wage offer to the miners to avoid unrest.<sup>44</sup> The Nixon administration also sought to alleviate potential coal shortages through improved productivity among the miners, particularly by reducing absenteeism.<sup>45</sup>

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<sup>42</sup> "Coal: The Second Energy Crisis," *Business Week*, March 16, 1974, 23.

<sup>43</sup> *Ibid.*, 24.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*, 23.

Rank and file coal miners were concerned about the impact of the energy crisis on their economic position and their working conditions. They were less concerned, however, with its impact on the environment. In article entitled, “The Energy Crisis As A Coal Miner Sees It,” published in *Center Magazine*, UMW President Arnold Miller claimed that the several thousand strip miners that belonged to the union did not like to hear him “talking like an environmentalist.” He warned, however, that complacency was fatal, in both health and safety and environmental matters:

...There is a tradition of speaking out in my union, and the westward trend of coal mining creates an issue we all have to confront. In West Virginia and Kentucky, all over Appalachia, we found out, as our fathers found out before us, that when the companies no longer need you or want you, all you have left are the scars and the dust in your lungs. And in our hills, what we have left are the scars and the mud slides and the streams choked with silt where we used to fish.”<sup>46</sup>

Miller recognized the threat that the coal industry posed to both the health and safety of miners and to the fabric of the natural environment. He argued that it was important to be wary about the expansion of surface mining into western states.

Miller also mentioned the Farmington and Buffalo Creek disasters, noting that fifty years earlier, the coal operators had promised to develop Appalachia and had instead left it in ruins through by exploiting its coal for profit. Moreover, Miller contended, it was necessary to find a common ground between western miners who wanted to protect their jobs and the “eagle freaks,” or conservationists, who sought to protect their land and property. For Miller, the expansion of coal mining in the West thus presented a significant dilemma.<sup>47</sup>

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<sup>46</sup> Arnold Miller, “The Energy Crisis As a Coal Miner Sees It,” *The Center Magazine* 6 (November/December 1973), 43.

<sup>47</sup> Ibid.

Supporters of strip mining argued that tough environmental policies would destroy the benefits it created, both in Appalachia and the West. Operators and community organizations, including “Save Our Jobs,” an Appalachian advocacy group, contended that surface mining was a vital source of employment in Appalachian communities.<sup>48</sup> They neglected to mention that surface mining eliminated underground mining jobs and relied on minimal labor. Miller was wary of the argument that environmental protective measures would threaten jobs. He feared that rapid development of western mining would result in the loss of between 25,000 and 40,000 mining jobs in the eastern part of the country. Yet, he also recognized the importance of protecting miners’ jobs in the west. To maintain a balance in employment between the eastern and western mining regions, he advocated a National Energy Policy that cut back the power of the large corporations.<sup>49</sup>

The rapid growth of surface mining in the 1970s was a viable solution to the energy crisis in the United States, providing the country with a cheap and reliable source of fuel. Surface mining had negative consequences, however, for the coal mine labor force and for the environment. Although in decline at this time, underground mining was still a prominent method of coal production. The renewed emphasis on coal production also jeopardized the safety and lives of miners who worked in underground mines, particularly marginal and non-union mines.

The strict measures of the Federal Coal Mine Act meant that underground mines played a less significant role in the energy crisis than surface mines. In 1973, an industry

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<sup>48</sup> Ibid.

<sup>49</sup> Ibid., 44

representative claimed that in some underground mines, production had declined from twenty tons per day to eight tons per day as a result of the legislation, while one government official argued that operators faced the dilemma of increasing production while adhering to health and safety standards. Arnold Miller argued that the federal government should offer the smaller companies short-term loans for implementing safety and training measures, which would enable them to continue operating without significant financial losses. Many small operators were unable to afford the cost of installing the safety equipment mandated by the Federal Mine Act.<sup>50</sup>

Despite the obstacles they faced, small marginal coal mines continued to thrive. Moreover, their operators continued to violate the law, despite the enforcement procedures of the Bureau of Mines. Rising demand for coal placed increased pressure on such mines to increase their production. Moreover, several independent operators with little experience or background in mining saw a chance to profit from the energy crisis. Their lack of knowledge about operating a coal mine had significant implications for the health and safety of miners. J. Davitt McAteer, who carried out extensive research on coal mine health and safety in the 1970s before becoming a safety adviser for the United Mine Workers, explained that many new mine operators were simply concerned with profiting from the immediate demand for coal in the United States and that safety was not a top priority for them.<sup>51</sup> Similarly, large underground mining operations, which were mostly owned by corporations and oil interests, continued to endanger their workers through neglect. UMW Arnold Miller drew a close relationship between the large mining

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<sup>50</sup> Ibid., 38.

<sup>51</sup> J. Davitt McAteer, telephone interview with author, May 11, 2009.

corporations and the federal government. He wrote, “I would not claim that industry and government are one and the same, because my experience with the federal bureaucracy is that it is a world all to itself. But I do believe that industry and government are much closer together and much less distinguishable than they have a right to be.”<sup>52</sup>

The dangers of underground coal mines were exemplified by a massive explosion at the Scotia mine in Kentucky on March 9, 1976. Fifteen miners perished in the disaster. The mine, located near the small community of Oven Fork in Letcher County, Kentucky, was owned by the Scotia Coal Company, a subsidiary of the Blue Diamond Coal Company based in Tennessee. A further eleven men, mostly MESA representatives and rescue workers, lost their lives during a second explosion on March 11, as they searched for possible survivors.<sup>53</sup> The Scotia mine produced high-quality metallurgical coal, which was used in the production of steel and electrical power. According to records maintained by the coal industry, production at the mine had been increasing over the past five years. The rise in production was arguably connected to a decline in health and safety standards at the mine. The Keystone blue book, the formal industry record of production, showed that the mine produced 936,384 tons of coal in 1974. By early 1976, the blue book recorded that production at the mine was roughly 6,000 tons per day, equating to 2.19

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<sup>52</sup> Miller, “The Energy Crisis As A Coal Miner Sees It,” 44.

<sup>53</sup> For full coverage of the disaster, see reports in the local and national press. In particular, see *The Courier Journal* (Louisville, Kentucky), March 10, 1976, A1 and A15; *The Courier Journal*, March 11, 1976, A1 and A14; *The Courier Journal*, March 12, 1976, A1 and A12; *The Courier Journal*, March 13, 1976, A1, A4 and A14; *The Courier Journal*, March 14, 1976, A1 and A24; *The Courier Journal*, March 15, 1976, A1; *The Courier Journal*, March 16, 1976, A1 and A10; *The Courier Journal*, March 17, 1976, A1 and A14; *Lexington Herald*, March 10, 1976, A1, A20, and C1; *Lexington Herald*, March 12, 1976, A1 and A12; *The Saturday Herald and Leader* (Lexington), March 13, 1976, A1 and A8; *Sunday Herald Leader* (Lexington), March 14, 1976, A1 and A22.

million tons annually. The Mine Enforcement and Safety Administration (MESA) gave a more conservative estimate of production, citing daily production at the mine in 1975 as 2,500 tons per day.<sup>54</sup>

From 1974 to 1976, MESA repeatedly cited the mine for violations of health and safety legislation. From the beginning of 1974 until the date of the disaster, MESA inspectors discovered sixty-two violations of the ventilation standards in the Federal Mine Act. The penalties that MESA levied against the Scotia Company, however, consistently declined while the number of violations increased.<sup>55</sup> In its report on the disaster, the federal government concluded that inadequate ventilation caused the explosion. It also cited the secondary cause of faulty electrical equipment sparking the methane gas inside the mine.<sup>56</sup> MESA criticized the mine owners for not conducting pre-shift examinations of equipment and methane levels. The report stated, “MESA investigators conclude that the explosion of March 11, 1976, resulted from a lack of sufficient air to ventilate the area in 2 Southeast Main inby No. 22 crosscut, including the 2 Left Section, and remove from the mine the know methane accumulations. The lack of air prohibited safe and timely completion of the recovery operations.”<sup>57</sup>

The Scotia disaster was a clear example of how underground operators’ quest for increased production conflicted with effective health and safety enforcement. As the

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<sup>54</sup> *The Courier-Journal*, March 10, 1976, D3.

<sup>55</sup> Curran, *Dead Laws for Dead Men*, 125.

<sup>56</sup> U.S. Department of Labor, Mine Safety and Health Administration, *Report of Investigation, Underground Coal Mine Explosions: Scotia Mine, I.D. No. 15-02055, Scotia Coal Company, Ovenfork, Letcher County, Kentucky, March 9 and 11, 1976* (Arlington, Virginia: Mine Safety and Health Administration, 1993), 99.

<sup>57</sup> *Ibid.*

Scotia Company's production steadily increased, safety standards in the mine declined, resulting in the loss of 26 lives. The underground coal mines that managed to survive throughout the 1970s perpetuated unsafe working standards, despite the existence of legislation to protect workers. When President Jimmy Carter entered the White House in January 1977, however, he responded immediately to the labor and environmental injustices of the coal industry. During his single term in office, he signed legislation to strengthen the Federal Mine Act of 1969 and to regulate surface mining.

### **Legislative Solutions: The Policies of President Jimmy Carter**

After winning the 1976 presidential election, President Carter entered the White House with a reform-orientated perspective. According to Charles O. Jones, author of *The Trusteeship Presidency*, Carter viewed his role as that of a trustee, that is, "an official entrusted to represent the public or national interest, [who downplayed] short-term electoral considerations." Carter favored national over local issues, but he adopted a micro-management approach to his presidency, handling key issues in a comprehensive manner.<sup>58</sup> In addition, he appointed staff members who were sympathetic to labor and environmental issues. The environmental movement supported Carter's decision to appoint Cecil D. Andrus, formerly a two-term governor of Idaho, as Secretary of the

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<sup>58</sup> Charles O. Jones, *The Trusteeship Presidency: Jimmy Carter and the United States Congress* (Baton Rouge: Louisiana State University Press, 1988), 81.



Interior. Carter selected 48-year old F. Ray Marshall, a professor of law at the University of Texas, for the position of Secretary of Labor.<sup>59</sup>

Carter's policy goals included the reform of energy, employment, and tax legislation. Several factors jeopardized the acceptance of his legislative agenda by Congress. During his presidential campaign, Carter had criticized both the Republican Party and the Washington political establishment. Therefore, many Congressional representatives, particularly those who were newly elected, felt little obligation toward Carter. Furthermore, many lawmakers were entering political office as a result of professional experience, not political affiliation, which made their loyalty to Carter questionable.<sup>60</sup> Yet, Carter believed his role in setting the legislative agenda was to act independently from Congress. His 'trusteeship' approach excluded Congress from the early stages of policy development. Carter believed that by relying on members of Congress to formulate policy, he would be violating the public trust. He sought to enact his original campaign promises with as little compromise as possible. His detached style caused suspicion in Congress, which relied on personal communication to function effectively.<sup>61</sup>

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<sup>59</sup> Bruce Adams and Kathryn Kavanagh-Brown, *Promise and Performance: Carter Builds A New Administration*. (Lexington, Massachusetts: D.C. Heath and Company, 1979): 39-41.

<sup>60</sup> Burton Kaufman, *The Presidency of James Earl Carter, Jr* (Lawrence: University Press of Kansas, 1993), 20.

<sup>61</sup> Jones, *The Trusteeship Presidency*, 81.

In his first legislative session, President Carter introduced a number of legislative bills to Congress.<sup>62</sup> Notably, he introduced bills to regulate surface mining, strengthen mine health and safety, reform the federal black lung program, and address the energy crisis. There was a strong connection between those issues, even though Carter addressed each issue in a separate bill. He planned to achieve energy independence through coal production, while limiting the human fatalities and environmental devastation caused by the mining of the coal.

Carter's focus on coal production extended the energy policies of his predecessors, Richard Nixon and Gerald Ford. In the previous five years, coal production in the United States had significantly expanded. Production increased from 598.6 million short tons in 1973 to 670.2 million short tons in 1978. Surface mining accounted for almost two thirds of all coal production in 1978. For Carter, developing energy independence was not enough. He also believed that the United States needed to become more energy efficient. In an address to the nation in April 1977, he cautioned, "We simply must balance our demand for energy with our rapidly shrinking resources. By acting now we can control our future instead of letting the future control us."<sup>63</sup> He sought to limit energy consumption, therefore, to ensure adequate coal reserves for the long-term future.<sup>64</sup>

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<sup>62</sup> For more details on Carter's economic and energy policies, see Kaufman, *The Presidency of James Earl Carter, Jr.*, 29-32.

<sup>63</sup> Daniel Horowitz, *Jimmy Carter and the Energy Crisis of the 1970s: The "Crisis of Confidence" Speech of July 15, 1979, A Brief History With Documents* (Boston: Bedford/St. Martin's, 2005), 36.

<sup>64</sup> *Ibid.*, 39-41.

To combat the environmental destruction caused by coal mining, Carter signed the Surface Mining and Reclamation Act on August 3, 1977. The Surface Mine Act depended on the cooperation of state governments and the federal government to prevent the environmental abuses of surface mining, especially the pollution of soil and water and operators' abandonment of the land without adequate restoration. For Carter, the law required balancing environmental protection with the country's energy requirements. The passage of the Surface Mine Act followed many attempts by previous administrations to regulate strip mining.<sup>65</sup>

Most importantly, in 1977, the Carter administration reinvigorated the issue of mine health and safety. Carter sought to strengthen legislation for mines in all mineral industries, including the various metal industries. He particularly wanted to improve the federal government's enforcement of health and safety. The Mine Enforcement and Safety Administration (MESA) had, in the past four years, provided more effective enforcement than the Bureau of Mines, but its location in the Department of the Interior limited its ability to reduce injuries and fatalities. Mine health and safety advocates, particularly Ken Hechler (who was now Secretary of State in West Virginia), had long proposed the transfer of health and safety enforcement to the Department of Labor. The Department of the Interior's original mandate included mineral production, but not the protection of miners and mineral workers. In the summer of 1977, therefore, Congress considered draft legislation to amend the Federal Coal Mine Health and Safety Act of 1969. The focus of the Senate deliberations was bill S. 717, which brought all mines,

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<sup>65</sup> U.S. Department of the Interior, Office of Surface Mining, *20th Anniversary, Surface Mining Control and Reclamation Act: A Report on the Protection and Restoration of the Nation's Land and Water Resources Under the Surface Mining Law*. (Washington D.C.: U.S. Department of the Interior, 1997).

including metal and non-metal mines, under uniform health and safety legislation. It also mandated the transfer of health and safety enforcement from the Department of the Interior to the Department of Labor, a measure that Hechler had advocated during the legislative hearings on the Federal Mine Act of 1969. Further, it strengthened inspection procedures, increased the penalties for violations, and proposed the creation of a Federal Mine Safety and Health Review Commission to oversee adjudicative matters connected to violations of the law.<sup>66</sup>

Senator Orrin Grant Hatch (R-UT) led the opposition to the bill, arguing that coal mines and non-coal mines could not be effectively consolidated under a single law. He introduced a separate amendment to strengthen the health and safety provisions for metal and non-metal mines, embodied in the Federal Metal and Nonmetallic Mine Act of 1966. He commented, “It has for many years been recognized that although coal and non-coal mining have one basic similarity, that is, extraction of minerals from the earth, the similarity just about ends there.”<sup>67</sup> Senator Harrison Williams (D-NJ) strongly criticized Hatch’s amendment because it did not provide equal protection for all miners. He argued that the original version of S. 717 “[corrected] the inadequacies and the injustice currently suffered by our Nation’s hard rock miners, by establishing a single mine safety and health law, with a single structure for enforcement and administration.”<sup>68</sup>

Senator Jesse Helms (R-NC) presented an amendment that permitted state governments to develop their own health and safety standards in conjunction with the

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<sup>66</sup> *Congressional Record*, 95th Cong., 1st sess., 1977, pt: 16: 20000.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

Department of the Interior. The amendment enforced a key provision of the 1966 Mine Act, namely the freedom of the states to set their own laws for metal and non-metal mining. Again, Williams condemned the amendment, complaining that it would result in major discrepancies in federal enforcement.<sup>69</sup> The Senate ultimately rejected both bills along with several others. It did, however, incorporate an additional amendment to bill S. 717, proposed by Senator Hatch, that allowed interested parties to participate in appeals hearings.<sup>70</sup> On June 21, the Senate passed the bill by a clear majority of 78 to 18.<sup>71</sup>

The House of Representatives deliberated a similar bill, H.R. 4287. As with the Senate negotiations, the key point of opposition was the bill's incorporation of all types of mine. Representative Ronald Sarasin (R-CT) was particularly vocal in his criticism, arguing that placing coal mines and non-coal mines under the same legislation was not only illogical, but also unsafe. He said, "All H.R. 4287 really does is to add additional workers to a law that is in rather sorry shape, irrespective of their needs and interests. The real tragedy is that metal and non-metal miners will now be included in a law that has a lower success rate of preventing fatalities and injuries."<sup>72</sup> Referring to the 1966 Act, Sarasin predicted, "They will be losing a law that has resulted in constant improvements for them and that, with improvements, could rapidly enhance their chances to leave their jobs each day safe and healthy." He announced his intention to offer a substitute bill, H.R. 7979, which focused solely on amending the Metal and Non-Metallic Mine Act.

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<sup>69</sup> Ibid., 20009-20010.

<sup>70</sup> Ibid., 20043.

<sup>71</sup> Ibid., 20051.

<sup>72</sup> *Congressional Record*, 95th Cong., 1st sess., pt. 19: 23158

Notably, Sarasin's bill retained enforcement powers in the Department of the Interior, rather in the Department of Labor as specified by the original bill.<sup>73</sup> Representative Vonno Lamar Gudger (D-NC) presented a modified version of Sarasin's bill that transferred responsibility for enforcement to the Department of Labor.<sup>74</sup> Both Sarasin's bill and Gudger's modification of it failed to pass the House. The House, however, approved amendments by John Murtha (D-PA) and Michael Myers (D-PA) to increase the allocation of funding for enforcement of H.R. 4287. It also passed a further amendment by Sarasin, which allowed operators to modify safety standards in accordance with shifting underground conditions. The House passed H.R. 4287 in its amended form by 244 votes to 88.<sup>75</sup>

In the autumn, the joint conference committee studied the discrepancies between S. 717 and H.R. 4287 before producing a single legislative bill. The final draft incorporated the Senate's original proposal of creating a Federal Mine Safety and Health Review Commission to manage adjudicative issues, such as operators' appeals against penalty notices, while rejecting the House's recommendation of retaining this function with the Department of the Interior. The final bill also included many of the Senate's more stringent measures on standards setting, enforcement and inspection procedures, and the review and appeals process. Many of the common elements of S. 717 and H.R. 4287 remained in the final conference bill, including their applicability to all types of

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<sup>73</sup> Ibid: 23175-23177.

<sup>74</sup> Ibid., 23181.

<sup>75</sup> Ibid., 23190.

mine and the transfer of health and safety enforcement from the Department of the Interior to the Department of Labor.

The Senate voted on and approved the conference bill on October 6, 1977, while the House passed it three weeks later, on October 27.<sup>76</sup> On November 9, President Carter signed into law the Federal Mine Safety and Health Act of 1977. Before the waiting members of Congress, he reflected on the importance of the act. Carter said, “I think that every American knows that a major contributing factor to our own economy is the courageous and sometimes dangerous miners who go deep beneath the earth to bring to the surface, for our use, coals and other minerals.” He argued that one of the bill’s most important aspects was its transferal of health and safety enforcement from the Department of the Interior to the Department of Labor.<sup>77</sup> The 1977 Mine Act formally relocated the Mine Enforcement and Safety Administration (MESA) in the Department of Labor, where it was renamed the Mine Safety and Health Administration (MSHA). The Bureau of Mines, which was still located in the Department of the Interior, continued to conduct research on coal production and technology at this time.

Four months later, on March 1, 1978, President Carter signed into law the Black Lung Disability Trust Act. The new legislation was designed to improve significantly the ability of miners and their dependents to obtain benefits and to reduce the processing time

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<sup>76</sup> For full details, see Public Law 95-164, November 9, 1977, United States Statutes at Large, 1977, Volume 91 (Washington: United States Government Printing Office, 1980), pp.1290-1322.

<sup>77</sup> Jimmy Carter, “Federal Mine Safety and Health Amendments Act of 1977 and Air Cargo Deregulation Bill: Remarks on Signing S. 717 and H.R. 6010 Into Law, November 9, 1977,” *Public Papers of the Presidents of the United States: Jimmy Carter, 1977, Book II* (Washington: United States Government Printing Office, 1978), 1987.

for claims. The act mandated a new tax on the coal industry, which would provide an additional \$100 million per year to fund the federal black lung compensation program.<sup>78</sup> Carter's approval of the act revealed that Richard Nixon's original goal of moving responsibility for black lung benefits to the states by 1975 had failed. Most state legislatures, however, still did not have adequate mechanisms in their worker compensation programs to provide black lung compensation. Emphasizing the link between energy production and mine health and safety, Carter commented that the law represented "a comprehensive federal effort to reduce the human and social cost of our growing dependence on coal." Under the terms of the new law, Carter continued, "more miners and their families will receive the benefits they deserve."<sup>79</sup> The president recognized both the significant impact that black lung disease had on coal miners and their families and the failure of state workers' compensation programs to provide benefits. With the Black Lung Disability Trust Act, Carter extended the federal government's responsibility for providing black lung compensation.

The passage of the 1977 Mine Act and the Black Lung Act of 1978 coincided with significant increases in coal production and the coal mine labor force. Coal production in the United States had been steadily increasing over the previous eight years. In 1969, total production was 569 million short tons, increasing to 660 million short tons in 1977. In fact, production in 1977 was at its highest level since 1948, primarily because of the prevailing energy crisis and increased production at surface mines. The high level of production in 1977 occurred despite a prolonged miners' strike

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<sup>78</sup> *Washington Post*, March 2, 1978, A4.

<sup>79</sup> *Ibid.*



that took place in the winter of 1977-78. Similarly, in the same eight-year period, there was a notable increase in the coal mine labor force, from 95,000 miners in 1969 to 140,000 miners in 1977. The additional workers were necessary to meet the surging demand for coal.<sup>80</sup> Although there was a decline in underground production during this eight-year period, 35,000 of the additional miners worked in underground mines. The increased job security for miners led to additional strikes for better pay and working conditions.

The Carter administration focused more on enforcement of federal legislation than the Nixon administration. From 1978 to 1980, the Mine Safety and Health Administration found ongoing support from the Carter administration, which increased its budget by six percent. It also expanded its inspection force from 1,228 inspectors to 1,367 inspectors. During the same period, the number of inspections of all types of mine increased, while the number of violations recorded by inspectors declined. The number of citations issued for recorded violations increased, as did the average penalty. In 1977, the average penalty assessed was \$122, while in 1978 it had risen to \$177. By 1979, the average penalty for violations was \$207.<sup>81</sup>

Despite more rigorous enforcement, there were still weaknesses in the federal mine health and safety program. The 1977 Mine Act did not result in immediate improvements to miners' health and safety. Although MSHA was supposed to enact strong penalties against operators that repeatedly violated the law, it had the freedom and autonomy to interpret each case on its own merits. Consequently, the agency rarely

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<sup>80</sup> Curran, *Dead Laws for Dead Men*, 140-141.

<sup>81</sup> *Ibid.*

instructed operators to withdraw its workforce or cease operations entirely. Moreover, when levying fines against operators, it rarely applied the upper limit of \$10,000.<sup>82</sup> During the tenure of the Carter administration, there was a fluctuation in the mine fatality rate. In 1977, the fatality rate was 0.069 per 200,00 man-hours worked, the equivalent of 0.345 per one million man-hours. The following year, the fatality rate declined slightly to 0.055 per 200,000 man-hours, the equivalent of 0.275 fatalities per million man-hours. In 1979, there was a visible increase in the mine fatality rate, which rose to 0.066 fatalities per 200,000 employee hours, the equivalent of 0.33 fatalities per million-man hours worked. In 1980, the final year of the Carter administration, the fatality rate was 0.064 per 200,000 employees, the equivalent of 0.32 fatalities per million man-hours worked. Overall, there was a slight drop in the fatality rate during the four years Carter was in office. More importantly, there was a general improvement in mine health and safety.<sup>83</sup> Overall in 1979, there were 144 coal mine deaths, a significant increase from the 106 deaths in 1978. While the number of men employed in the coal industry had increased significantly over the previous two years, this hardly justified such a sharp acceleration in the fatality rate.<sup>84</sup>

On July 15, 1979, Carter addressed the American public on the nation's energy crisis, the most significant domestic policy dilemma he had faced during his time in office. As he had done in previous speeches, Carter framed the energy crisis in moral

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<sup>82</sup> Ibid., 142-143.

<sup>83</sup> Ibid., 153.

<sup>84</sup> U.S. Department of Labor, Mine Health and Safety Administration, "Coal Fatalities for 1900 Through 2007," <http://www.msha.gov/stats/centurystats/coalstats.asp> (Accessed on October 3, 2009).

terms. He told his audience, “In a nation that was proud of hard work, strong families, close-knit communities, and our faith in God, too many of us now tend to worship self-indulgence and consumption... We’ve learned that piling up material goods cannot fill the emptiness of lives that have no confidence or purpose.”<sup>85</sup> Carter further developed the theme of morality, in particular emphasizing the country’s unbridled consumption of energy over the past twenty years. “In little more than two decades,” he proclaimed, “we’ve gone from a position of energy independence to one in which almost half the oil we use comes from foreign countries, at prices that are going through the roof. Our excessive dependence on OPEC has already taken a tremendous toll on our economy and our people.”<sup>86</sup> Carter assured citizens that he planned to resolve the energy crisis, by preventing further increases in foreign oil imports and by allocating funds for developing domestic energy sources such as oil shale and coal.<sup>87</sup> Yet the safety of miners who produced the coal, and the protection of the natural environment, did not factor into Carter’s moral analysis in the speech.

For the most part, Carter improved health and safety and environmental conservation in the coal industry. In 1980, however, Ronald Reagan was elected president, marking the beginning of an extensive period of deregulation that would have significant implications for the nation’s miners. The Reagan administration not only significantly weakened federal regulation of health and safety, but also amended the black lung benefits program to make it harder for miners and their dependents to obtain

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<sup>85</sup> Horowitz, *Jimmy Carter and the Energy Crisis*, 113.

<sup>86</sup> *Ibid.*, 115.

<sup>87</sup> *Ibid.*, 115-117.

benefits. In short, the administration eroded many of the gains that miners and their supporters had achieved in the 1970s through sustained protest and grassroots activism.

### **Coal Mine Health and Safety in Decline: Ronald Reagan and Deregulation**

During the 1980s, many of the improvements to coal mine health and safety achieved by the Carter administration were eroded by President Ronald Reagan. In November 1980, Reagan won the presidential election by a landslide majority, defeating Jimmy Carter and independent candidate John Anderson. Reagan's political values were entirely incompatible with maintaining strong federal enforcement of health and safety. He believed that regulation was economically destructive, linking it with reduced productivity and economic decline.<sup>88</sup> In accordance with that belief, his administration brought deregulation into every sphere of government. In many cases, it did not actively pursue legislative means to deregulation, but rather it ordered government agencies to stop enforcing existing regulations. It also filled high-level positions with politicians unlikely to interfere with the private sector.<sup>89</sup> William Kleinknecht argues, "Reagan changed the role of government from that of watchdog to lapdog without even bothering to consult Congress... The Reaganites went after regulatory agencies with relish, starving them of resources and staffing with officials committed to their destruction."<sup>90</sup>

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<sup>88</sup> Curran, *Dead Laws for Dead Men*, 154.

<sup>89</sup> William Kleinknecht, *The Man Who Sold the World: Ronald Reagan and the Betrayal of Main Street America* (New York: Nation Books, 2009), 107; Michael Wallace, "Dying for Coal: The Struggle for Health and Safety Conditions in American Coal Mining, 1930-82," *Social Forces* 66 (1987), 353.

<sup>90</sup> Kleinknecht, *The Man Who Sold the World*, 107. For more information on deregulation, see Thomas F. Walton and James Langenfeld, "Regulatory Reform under

Reagan targeted agencies such as the Mine Safety and Health Administration (MSHA), the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), and the Food and Drug Administration (FDA) for budgetary and staff cuts, with the intention of reducing government oversight of private business.<sup>91</sup> Reagan had targeted OSHA for cutbacks even before entering office, supporting a legislative bill in 1979 that called for the agency's abolition. During his presidency, he did not succeed in abolishing it, but he did significantly reduce its power. He appointed Thorne Auchter, the head of a Florida construction company, as director of OSHA, despite the fact he had received numerous citations from OSHA for unsafe working practices. From 1980 to 1986, there was a thirty percent drop in the number of inspections of manufacturing plants by OSHA, and a drop in fines from \$26 million per year to \$13 million per year.<sup>92</sup>

The Presidential Task Force on Regulatory Relief was responsible for the administration's deregulation program. Although Vice-President George H. W. Bush was head of the agency, James C. Miller III, formerly administrator of regulatory affairs in the Office of Management and Budget, assumed the key leadership role in the program. Richard Williamson, assistant to the president for intergovernmental and regulatory affairs, and C. Boyden Gray, the counsel to the Task Force, also made important

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Reagan – The Right Way and the Wrong Way,” *Regulation and the Reagan Era: Politics, Bureaucracy, and the Public Interest*, edited by Roger E. Meiners and Bruce Yandle (New York: Holmes and Meier, 1989), 41-70; Sean Wilentz, *The Age of Reagan: A History, 1974-2008* (New York: Harper Collins, 2008), 139-140.

<sup>91</sup> Curran, *Dead Laws for Dead Men*, 154; Kleinknecht, *The Man Who Sold the World*, 107.

<sup>92</sup> Curran, *Dead Laws for Dead Men*, 155.

contributions. They encouraged business and civic leaders to inform the task force of their worst reform “horror” stories and even encouraged them to circumvent regulatory agencies by taking complaints straight to the White House. The Task Force also made it easier to enact changes to federal legislation. In some instances, regulations were abolished immediately after meetings between industry officials and representatives from the Office of Management and Budget, but Miller and Gary did not admit this explicitly. The Task Force did not, however, afford the media and Congressional investigators the same freedoms as private business. It carefully guarded information regarding the Reagan administration’s implementation of its deregulatory program.<sup>93</sup>

The Reagan administration’s program of deregulation had significant and far-reaching implications for the nation’s miners. Reagan gave little priority to miners’ working conditions, and consequently the Mine Safety and Health Administration experienced significant reductions in its budget and staffing levels. The administration delayed the appointment of its assistant secretary of labor for mine safety for several months. In October 1981, the administration finally appointed Ford B. Ford to the position. Formerly an occupational health and safety administrator from California, Ford’s previous record further underlined Reagan’s commitment to deregulation.<sup>94</sup>

The following month, as part of its budget strategy for 1982, the Reagan administration halted the power of the Mine Safety and Health Administration to inspect certain types of coal mine. Ford then embarked on a major reorganization of the agency. The MSHA was comprised of ten district offices, which were responsible for conducting

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<sup>93</sup> Kleinknecht, *The Man Who Sold the World*, 109-111.

<sup>94</sup> Curran, *Dead Laws for Dead Men*, 154-156.

inspections, and nine assessment offices, which determined the penalty for each health and safety violation. If a conference between the MSHA and the operator was necessary, then it typically happened at one of the assessment offices. Inspectors rarely participated in these conferences, as they were designed to enable the operators to appeal fines and could result in a conflict of interest.<sup>95</sup> Ford merged the different functions by abolishing the assessment offices and greatly expanding the role of the district offices. On May 30, 1982, the nine assessment offices closed permanently. While Ford argued that this would enhance inspectors' ability to improve miners' lives, in reality inspectors now had to divert time from safety enforcement to managing conferences and providing education and training.<sup>96</sup>

Ford's restructuring of the MSHA increased the risk of confrontation between inspectors and coal operators. Under the previous system, managers at the assessment offices, not the inspectors, were not responsible for determining and issuing fines. In the restructured MSHA, inspectors who were active in the field became responsible for issuing fines. Consequently, Ford's restructuring reduced the chance of prosecutions against serious health and safety violations. There were fewer prosecutions during Reagan's first term than during the Carter administration's tenure; the same applied for Reagan's second term.<sup>97</sup> In accordance with the administration's stance on deregulation, Ford B. Ford also sought to limit confrontation with the coal industry. From 1981 to

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<sup>95</sup> Ibid., 155.

<sup>96</sup> Ibid., 156.

<sup>97</sup> Ibid., 156-157.

1983, there was a decline in the number of citations issued by the MSHA, as well as in the average penalty for violations.

Ford actively sought to limit confrontation between the Reagan administration and the coal industry. In fact, according to Daniel Curran, the administration believed it was important to cooperate with the coal operators. From 1981 to 1983, there was a decline in both the number of citations issued by the Mine Safety and Health Administration and the average fine for each violation. During this period, the number of citations dropped from 129,921 to 112,283, while the average penalty per violation fell from \$136 to \$58.<sup>98</sup> Inspectors had more freedom to act independently and, following orders from Ford, typically ignored minor violations. The Reagan administration's deregulation of health and safety enforcement thus led to an increase in the mine fatality rate. In 1981, there were 155 fatalities in the coal industry, twenty-two more than the previous year and the highest rate since 1975.<sup>99</sup>

The administration made significant reductions in the budget allocated to MSHA. From 1978 to 1980, under President Jimmy Carter, the average annual budget was \$166.3 million, reaching a peak of \$172.8 million in 1979. Throughout Reagan's two terms in office, in contrast, the average annual budget declined sixteen percent, to \$140 million by 1988. More specifically, there was a nine percent decline in the funds allocated directly to coal mine health and safety. Under Carter, these averaged \$73 million per year, whereas the Reagan administration provided an average of \$67.6 million per year. Overall, budget allocations for MSHA in the early 1980s were less than those for MESA in the mid-

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<sup>98</sup> Ibid., 157.

<sup>99</sup> *New York Times*, February 20, 1982, 7; Kleinknecht, *The Man Who Sold the World*, 110-111.



1970s. The workforce at the Mine Safety and Health Administration also was affected by ongoing deregulation, particularly when Reagan ordered massive staff cuts at the agency. In 1978, there were 1,940 employees at MSHA. A decade later this number had fallen to 1,519. Inspectors faced a larger workload, with responsibility for additional paperwork, assessing fines for violations, and inspecting more mines.

At a Congressional hearing on February 19, 1982, Director Ford refuted accusations that cuts in MSHA staffing and funding had contributed to more deaths. Testifying before the Safety Subcommittee in the House of Representatives, he explained that, before the reorganization of MSHA, the central assessment offices and the district inspection offices had failed to communicate. While Ford claimed that operators violating the law would be subject to harsh sanctions, he downplayed the federal government's responsibility for enforcement, stating his belief that health and safety should be the combined effort of industry, labor, and government.<sup>100</sup> The mine inspectors who testified at the hearing spoke of their declining influence in the coalfields. Hugh Smith recounted an incident when a mine superintendent mocked him in front of a group of miners, telling them, "Gentleman, you're looking at a third class citizen – he won't be around much longer." David Coleman revealed that one of his colleagues had been held hostage at gunpoint after issuing an operator with a citation. Representatives from the United Mine Workers, meanwhile, informed the committee that the Reagan administration was reversing years of progress. Safety director Joe Taylor, noting the increase in the fatality

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<sup>100</sup> *New York Times*, February 20, 1982, 7.

rate, commented, “There is no other way of looking at it. There is a relationship between the fatalities and decline in inspections.”<sup>101</sup>

On May 20, 1982, MSHA announced new rules for violation penalties. In addition to introducing a fixed penalty of \$20 for less serious violations, it would give “good faith credit” to operators who rectified violations within the time frame set by the government. The agency also stated that it would impose fines of up to \$10,000 for more serious violations, but its performance under Reagan suggested it was unlikely to levy substantial penalties against operators. The UMW voiced its concern that the new law would enable operators to avoid paying fines, rather than prompting them to correct violations. Two weeks earlier, the union’s new president, Sam Church, had announced the miners would strike if MSHA enacted the new rules. Despite support from the bargaining council, Church abandoned his plan for a walkout.

Assistant Secretary Ford downplayed the significance of the changes, commenting, “Our aim in making these changes is to provide more incentives for mine operators to maintain safe and healthful conditions for their employees. We’re streamlining the assessments process by reducing time and resources associated with processing less serious violations. The rule is focused on the prevention and correction of all hazards to miners and operators will still face serious consequences for non-compliance.” The changes significantly reduced the deterrent value of financial penalties. By the end of 1983, 73 percent of all assessed violations fell into the \$20 category.<sup>102</sup>

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<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

Miners and their families were most angered, however, by President Reagan's plan to reduce funding for the federal black lung program. In a 1981 memorandum, the administration announced its plan to cut \$2 billion from the program over the next five years. The Reagan administration attributed the insolvency of the black lung program to poor management by previous administrations, which, it argued, had led to an "automatic pension" for most coal miners. As the foundation for this contentious claim, the Reagan administration used a study by the General Accounting Office (GAO).<sup>103</sup> According to James Brady, the White House press secretary, the study found "that an incredible 88 percent of all claimants certified as eligible were either not disabled or else could not prove to have black lung disease."<sup>104</sup> The GAO study was based on a report in the *Journal of the American Medical Association*. Bennett Judkins notes that, despite flawed research methods in the original American Medical Association report, the General Accounting Office study provided the administration with justification for making substantial cuts to the black lung program.<sup>105</sup>

The Reagan administration refused to acknowledge that the problems with the black lung program were attributable mostly to the coal companies' failure to make contributions as required by law.<sup>106</sup> Under the 1972 Black Lung Amendments Act, the coal industry had been required to absorb the full cost of the program by 1976. When

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<sup>103</sup> Bennett M. Judkins, "The People's Respirator: Coalition Building and the Black Lung Association," *Fighting Back in Appalachia: Traditions of Resistance and Change* (Philadelphia: Temple University Press, 1993), 235.

<sup>104</sup> *New York Times*, March 8, 1981, 27.

<sup>105</sup> Judkins, "The People's Respirator," 235..

<sup>106</sup> *Ibid.*

they failed to meet this obligation, Congress, under Carter's leadership, imposed a mandatory tax on the coal industry in the Black Lung Disability Trust Act of 1978. Yet, by the early 1980s, the federal government was still providing most of the funding for the program. President Reagan believed the federal government could no longer absorb the high costs of the program. Like Nixon before him, he believed that the federal government should not be responsible for compensating the victims of occupational disease. Reagan's decision to reduce funding for the black lung benefits program highlighted the detrimental impact of federal bureaucracy on recent legislative gains in health and safety.<sup>107</sup>

By the time Reagan entered office in January 1981, 77,500 miners were receiving federal black lung benefits. During the fiscal year that started in 1981, the federal black lung trust fund paid \$824 in benefits, \$549 million more than the \$275 million it had received in contributions from the coal industry. Under federal law, the Department of the Treasury was compensating for the industry shortfall by providing additional money in the form of loans. The Reagan administration feared that, before 1995, the department would pay up to \$9.5 billion that it could never reclaim. The president intended to end what is perceived as the "automatic pension" for miners, by rejecting questionable compensation claims and tightening the eligibility requirements for black lung benefits. Along with the budget cuts, the administration planned to increase taxes on the coal industry.<sup>108</sup>

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<sup>107</sup> *New York Times*, March 8, 1981, 27.

<sup>108</sup> *New York Times*, February 28, 1981, 9; *Wall Street Journal*, March 9, 1981, 25.

In late February 1981, the leadership of the United Mine Workers called on the union's 170,000 members to hold a two-day strike on March 9 and 10 in protest of the Reagan's proposed cuts to the federal black lung compensation program. Although operators and the union were in the process of negotiating a new contract, a walkout was permissible under the miners' existing contract. The union had only used two of its ten "memorial days," essentially days of unpaid leave granted to the miners for the express purpose of strike action. UMW President Church asserted that the Reagan administration had no understanding of black lung disease, accusing it of making statements that bordered on slander. He informed the media that the March strike was directly targeted at the administration, although indicated that it might bring the union more credibility in the ongoing contract negotiations. He commented, "We will call for all coal miners in this nation, union and non-union alike, to lay down their tools and walk away from the country's coal mines if the administration attempts to gut this most humane and necessary program."<sup>109</sup>

The United Mine Workers transported miners by bus from seventeen of the nation's twenty-two mining states for the two-day strike in Washington. According to the Federal Park Police, 5,000 people participated in the strike. On the first day, both active and disabled miners expressed their contempt for Reagan. Winfield Maxwell, disabled by pneumoconiosis, said, "I wish I could give my black lung to Ronald Reagan." His wife commented, "I'll bet Reagan's never seen anyone die of black lung, like I saw my father die. All he'd have to do is see that once or twice, and he'd think different." Thousands of miners listened to anti-Reagan speeches at the United Mine Workers headquarters, before

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<sup>109</sup> *Washington Post*, February 25, 1981, D8.

marching past the White House. Lane Kirkland, the head of the AFL-CIO, was one of the featured speakers. He drew cheers by commenting, “Your brothers of the AFL-CIO are behind you all the way. This is an important one, but there will be other fights. Any man who would take black lung benefits from miners would stop at nothing.”<sup>110</sup>

The following day, March 10, as the strike continued, the Senate Committee on Labor and Human Resources approved an increase of \$149 million for the black lung program in the next fiscal year. The Committee passed this measure largely through the influence of Senator Jennings Randolph (D-WV), who had tried to dilute the Senate’s mine health and safety bill in 1969. The committee made its decision as Reagan signed the budget proposals he was submitting to Congress for approval. The committee also rejected the president’s plans to cut low-income fuel assistance, legal assistance for the poor, and education programs for people with disabilities.<sup>111</sup> The miners’ demonstration did not prevent Reagan from making changes to the black lung program. In December 1981, he signed the Black Lung Benefits Review Act. The new legislation increased the excise tax on coal operators, with the intention of reducing the insolvency in the Black Lung Disability Trust Fund, and provided much stricter regulations and eligibility criteria for applicants. Reagan claimed the bill had been created with the cooperation of the United Mine Workers; but with its stricter eligibility requirements, it did not represent the interests of the rank and file.<sup>112</sup> During the Reagan administration’s time in office, there

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<sup>110</sup> *New York Times*, March 10, 1981, B10.

<sup>111</sup> *Ibid.*

<sup>112</sup> Ronald Reagan, “Statement on Signing Black Lung Program Reform Legislation,” December 29, 1981, *Public Papers of the President: Ronald Reagan, 1981* (Washington D.C.: Government Printing Office), 1205.

was a decline in the number of approvals for black lung compensation for miners and their dependents. Furthermore, although the number of coal mine fatalities declined, there was a significant increase in the number of serious and non-serious injuries.

At first glance, the conservatism of the Reagan era gives the impression of a significant departure from the legislative reform of the 1970s. As historian Jefferson Cowie argues, however, the political landscape of the 1980s did not mark a clear break from the 1970s; rather, it represented a logical transition. In his article, "Portrait of the Working Class in a Convex Mirror," Cowie argues that the 1970s were a bridge between the 1960s and 1980s, marking an economic and cultural shift in American society. The shift not only exposed the limits of the progressive order, but created profound dilemmas for labor.<sup>113</sup> For example, argues Cowie, President Jimmy Carter deviated from the blue-collar policies that the Nixon administration had embraced, abandoning class coalitional politics and aligning himself with the middle class. Carter's omission of the working class from the national political rhetoric occurred as economic inequality was on the rise. Furthermore, economics were becoming less influential in determining people's voting choices and political affiliations, leading to the detachment of class and politics. In the early 1980s, the political Right gained working class support on cultural grounds, as unions became disorganized and business interests grew increasingly aggressive. Based on Cowie's analysis, then, Carter's approval of mine health and safety and black lung legislation was not, like Nixon, based on his goal of obtaining additional blue-collar votes.

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<sup>113</sup> Jefferson Cowie, "Portrait of the Working Class in a Convex Mirror: Toward a History of the Seventies," *Labor: Studies in Working Class History of the Americas* 2 (Fall 2005), 93-94.

Cowie argues that the power of the working class had been declining long before Nixon entered the White House in the late 1960s. He notes that strikebreaking had been a common tactic used by employers since the 1930s. Carter contributed to the decline by abandoning blue-collar workers in his political agenda and presiding over the deregulation of the trucking industry, which led to lower pay and longer hours for truck drivers. When Reagan entered office, then, he was able to capitalize on a process already in motion. His extensive deregulatory policies were not new or a sharp break from those of his predecessors.<sup>114</sup>

## **Conclusion**

During the 1970s and 1980s, coal mine health and safety was marked by both progress and decline. From the early to mid 1970s, operators focused more on increasing production to meet the demands of the energy crisis than adhering to health and safety and environmental legislation. The declining standards were illustrated in the Buffalo Creek disaster, which demonstrated that the hazards of coal mining were spreading beyond the confines of underground mines to local communities and the surrounding environment. The rapid growth of surface mining in the 1970s further jeopardized both miners and the natural environment.

From 1977 to 1978, President Jimmy Carter addressed the problems in the industry by signing several laws, including the Surface Mining Control and Reclamation Act, the Federal Mine Safety and Health Act, and the Black Lung Disability Trust Act. Those laws significantly improved miners' conditions, and addressed many of the failures

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<sup>114</sup> Ibid., 100-102.



of federal regulation earlier in the decade. From early 1981, however, miners' conditions declined sharply, after Ronald Reagan entered the White House. Reagan's extensive program of deregulation had a negative impact on both federal regulation and the distribution of black lung benefits. Regulatory agencies saw significant cuts in their budgets and, by the administration's order, did not fully enforce rules governing health and safety. Despite their efforts to use strike action to defend their benefits, miners and their communities did not, as in the previous two decades, engage in extensive grassroots protest to challenge the decline. By the end of the decades, the injury rate in coal mining industry had increased significantly, while miners found it more difficult to obtain black lung benefits.

## Chapter Eight

### **Conclusion**

#### **Robert C. Byrd and Black Lung Benefits**

In early December 2009, members of the U.S. Senate were engaged in debate over a legislative bill (H.R. 3590) on health care reform. The bill represented the Barack Obama administration's goal of making health insurance compulsory for all American citizens and legal residents. It included proposals to subsidize medical insurance for those unable to afford it and to prevent the health care industry from denying insurance to people with pre-existing medical conditions. The bill was a modified version of a legislative bill on health care reform passed by the House of Representatives in October 2009.

On December 3, 2009, Senator Robert Byrd (D-WV) added an amendment to the Senate bill to reform the federal black lung compensation program. Byrd's amendment stipulated that coal miners with fifteen consecutive years of experience were eligible for benefits if they could provide medical evidence they were suffering from totally disabling lung disease. It also required mine owners to provide stronger evidence to contest compensation payments to individual miners and provided benefits for widows and dependents of miners who died from black lung disease. Byrd's amendment restored to the federal black lung program many of the provisions that had been eradicated by the Ronald Reagan administration in the early 1980s. The terms of the amendment applied retroactively to 2005.<sup>1</sup> On December 24, the Senate passed bill H.R. 3590, entitled the

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<sup>1</sup> U.S. Senator Robert C. Byrd, "Byrd Promotes Black Lung Bill for Coal Miners,"

Patient Protection and Affordable Health Care Act, with Byrd's amendment intact, paving the way for a conference committee debate with the House to establish the final terms of the legislation. The passage of the legislation was by no means assured, as the Republican Party had unanimously opposed both the House and Senate bills.<sup>2</sup>

Byrd's addition of the black lung amendment echoed his actions in the Senate forty years earlier. In 1969, he introduced a separate health bill to the Senate Labor Subcommittee on behalf of the United Mine Workers that provided federal compensation to the victims of black lung disease. At the time, the federal government did not provide such compensation, and few state legislatures included the disease in their worker compensation programs. The majority of black lung victims were unable to obtain financial relief, despite the chronic suffering they endured. While the Senate rejected the bill in favor of S. 2917, which did not include compensation measures, it added black lung compensation to S. 2917 in a separate amendment. In the House version of the coal mine bill, a black lung compensation provision by Representative Phil Burton (D-CA)

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December 3, 2009, [http://byrd.senate.gov/mediacenter/view\\_article.cfm?ID=561](http://byrd.senate.gov/mediacenter/view_article.cfm?ID=561) (accessed March 11, 2009); George Hohmann, "Black Lung Amendment Called a Job Killer," *AARP Bulletin*, January 18, 2010, [http://bulletin.aarp.org/states/wv/2010/3/articles/black\\_lung\\_amendment\\_called\\_job\\_killer.html](http://bulletin.aarp.org/states/wv/2010/3/articles/black_lung_amendment_called_job_killer.html) (accessed March 9, 2010). Article originally appeared in the *Charleston Daily Mail* on January 17, 2010. For more information on the Reagan administration's cuts to the federal black lung program see chapter seven.

<sup>2</sup> Shailagh Murray and Lori Montgomery, "Senate passes health care bill, now must reconcile it with House," *Washington Post*, December 25, 2009, <http://www.washingtonpost.com/wpdyn/content/article/2009/12/24/AR2009122400662.html> (accessed March 12, 2010). For the full text of legislative bill H.R. 3590, see U.S. Senate, *An Act, Entitled the Patient Protection and Affordable Health Care Act*, H.R. 3590, 111th Cong., 2nd sess., 2010, <http://democrats.senate.gov/reform/patient-protection-affordable-care-act-as-passed.pdf> (accessed April 7, 2010). Byrd's black lung amendment is included in Section 1556 of the act, entitled "Equity for Certain Eligible Survivors."

ensured that when Nixon signed the Federal Coal Mine Health and Safety Act of 1969, it contained strong measures to provide federal compensation for black lung victims.<sup>3</sup>

Byrd's amendment to the 2009 Senate health care reform bill emphasized the failure of the federal black lung compensation program. Furthermore, in an official press release to publicize his amendment, Byrd implied that the weak enforcement policies of the Bush administration had contributed to a recent increase in the prevalence of black lung. He recognized, however, that the disease was in long-term decline, largely as a result of the efforts of the Mine Safety and Health Administration during the Clinton administration. Senator Byrd commented:

Equitable access to benefits is absolutely necessary -- but prevention must remain paramount. The incidence of black lung finally reached an all time low during the 1990s, thanks to the longstanding leadership of the Mine Safety and Health Administration, many coal miners, physicians, and other advocates. Although the incidence of black lung disease has rebounded recently, I believe that, together with our continued commitment, we can reverse course. We can, and must, 'end black lung,' and move the vital work of coal mining to a brighter, healthier, future.'<sup>4</sup>

Byrd's main priority, therefore, was not just improving the federal black lung compensation program, but eradicating black lung disease from the coal mining industry.

Despite Byrd's emphasis on preventing black lung and making coal mining a healthier occupation, his amendment faced strong opposition. In mid-January 2010, Steve Roberts, the president of the West Virginia Chamber of Commerce, stated, "It's a job killer. The cost of this could approach \$1 billion." According to Roberts, the bill would

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<sup>3</sup> Brit Hume, *Death in the Mines: Murder and Rebellion in the UMW* (New York: Grossman Publishers, 1971), 216; *Washington Post*, October 3, 1969, A8.

<sup>4</sup> Byrd, "Byrd Promotes Black Lung Bill for Coal Miners," December 3, 2009, [http://byrd.senate.gov/mediacenter/view\\_article.cfm?ID=561](http://byrd.senate.gov/mediacenter/view_article.cfm?ID=561) (accessed on March 11, 2009).

have negative financial implications for insurance companies and the coal industry. Under the terms of the Black Lung Disability Trust Act of 1978, both had a stake in funding the federal black lung program. Roberts argued, “[The amendment] could cost the very coal companies that are struggling to keep miners working multi-hundreds of millions of dollars, all to address a problem that no one has proved exists.”<sup>5</sup> Roberts was referring to his conviction that there was no evidence that the federal government was wrongfully denying compensation to sick coal miners. He continued, “Medical science can determine who actually has black lung, and if a person has black lung we want them to get benefits. What we don’t want is a blanket presumption that if you worked in mining, you are entitled to a benefit for which you may not medically qualify.”<sup>6</sup> Like many of the opponents of Byrd’s amendment, Roberts presented the mistruth that it provided automatic compensation to miners with fifteen years of experience. He neglected to mention that miners were still required to provide evidence of totally disabling lung disease.

Roberts’ comments were reminiscent of the strong opposition to automatic compensation that had plagued the legislative debates on coal mine health and safety in the late 1960s and 1970s. Roberts represented a significant faction of interests, including mine owners, insurance companies, and Republican Party members, who sought to limit the provision of black lung benefits to miners. George Burton, the president of Brick Street Mutual Insurance, commented, “We have the utmost respect for Senator Byrd and

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<sup>5</sup> Hohmann, “Black Lung Amendment Called a Job Killer,” *AARP Bulletin Today*, January 18, 2010, [http://bulletin.aarp.org/states/wv/2010/3/articles/black\\_lung\\_amendment\\_called\\_job\\_killer.html](http://bulletin.aarp.org/states/wv/2010/3/articles/black_lung_amendment_called_job_killer.html) (accessed on March 9, 2010).

<sup>6</sup> Ibid

all he has done for West Virginia but respectfully disagree with the ramifications of the retro piece of the legislation.”<sup>7</sup> Byrd defended his proposals in another press release, in which he stated, “These black lung benefits have been promised to miners who come down with totally disabling black lung disease. But too often the coal companies and the insurers have chosen to elude their responsibility to these ailing miners by out-lawyering and literally out-lasting them.”<sup>8</sup>

There were other obstacles to the implementation of Senator Byrd’s black lung compensation measures. In early January 2010, the House and the Senate were unable to reach an agreement on the final terms of the health care bill. The election of Massachusetts Republican Scott Brown to the Senate on January 19, 2010 further jeopardized the passage of a unified health care bill, by ending the Democrats’ supermajority in the Senate. Brown was strongly opposed to the health care reform.<sup>9</sup>

In an effort to bring the House and the Senate to an agreement, the Barack Obama administration released its own legislative proposals on health care reform.<sup>10</sup> The House of Representatives decided to resolve the dispute, however, by voting on the Senate’s health care bill (H.R. 3590) and devising a separate reconciliation bill that provided amendments to H.R. 3590. On March 21, 2010, the House passed H.R. 3590 by a

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Michael Cooper, “G.O.P. Senate Victory Stuns Democrats,” *New York Times*, January 20, 2010, <http://www.nytimes.com/2010/01/21/us/politics/21elect.html> (accessed April 8, 2010).

<sup>10</sup> For full details of the White House legislative proposals, see The White House, President Barack Obama, “Putting Americans in Control of Their Health Care,” <http://www.whitehouse.gov/health-care-meeting/proposal> (accessed March 12, 2009).

majority of 219 to 212. The same day, it also passed H.R. 4872, known as the Health Care and Education Reconciliation Act of 2010, which modified certain provisions in H.R. 3590 and provided measures to reduce the cost of higher education.<sup>11</sup> The Senate agreed to the amendments embodied in H.R. 4872, passing it by a narrow majority on March 25. President Barack Obama signed H.R. 3590 into law on March 23, 2010, and he signed H.R. 4872 into law on March 30, 2010.<sup>12</sup> Crucially, Byrd's black lung amendment remained intact when the House passed H.R. 3590, and it remained unaffected by the legislative amendments in H.R. 4872. With the passage of the health care legislation, coal miners and their dependents gained a more equitable, less discriminatory federal black lung program. Senator Byrd commented, "This bill is very welcome news for those who have been treated unjustly over the years, and should provide some comfort knowing that their benefits will be forthcoming in the future."<sup>13</sup>

As with the 1969 debate on health and safety, Byrd's addition of the black lung amendment to the health care legislation affirmed the importance of Congressmen and senior legislators in effecting legislative change. More importantly, Byrd's campaign for more equitable black lung benefits emphasized that, to some extent, miners were still

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<sup>11</sup> *New York Times*, March 22, 2010, 1. For the House of Representatives' amendments to H.R. 3590, as embodied in bill H.R. 4872, see U.S. House, *An act to provide for reconciliation pursuant to section 202 of the concurrent resolution on the budget for fiscal year 2010*, H.R. 4872, 111th Cong., 2nd sess., 2010, [http://docs.house.gov/rules/hr4872/111\\_hr4872\\_reported.pdf](http://docs.house.gov/rules/hr4872/111_hr4872_reported.pdf) (accessed March 23, 2010).

<sup>12</sup> *New York Times*, March 24, 2010, 1; *New York Times*, March 31, 2010, 1; William Branigin, "Obama signs higher-education measure into law," *Washington Post*, March 30, 2010, <http://voices.washingtonpost.com/44/2010/03/obama-signs-higher-education-m.html> (accessed April 9, 2010).

<sup>13</sup> U.S. Senator Robert C. Byrd, "Byrd Applauds Inclusion of Provisions to Help Victims of Black Lung in Health Care Bill," March 22, 2010, [http://byrd.senate.gov//mediacenter/view\\_article.cfm?ID=615](http://byrd.senate.gov//mediacenter/view_article.cfm?ID=615)

experiencing the same health and safety issues as they had in the late 1960s, despite significant legislative advances. A series of coal mine disasters in 2006 and 2007 further emphasized that federal regulation had not eradicated the hazards of coal mine labor. In early January 2006, an explosion at the Sago mine in West Virginia resulted in the deaths of twelve miners. The miners died after inhaling toxic fumes released by the explosion.<sup>14</sup>

The disaster prompted the George W. Bush administration to sign the Mine Improvement and New Emergency Response (MINER) Act in May 2006. The act was designed mostly to improve accident preparedness and the emergency response to coal mine disasters. It also contained a new penalty schedule for health and safety violations, and gave the Mine Safety and Health Administration the power to request an injunction against operators who refused to pay fines.<sup>15</sup> The Bush administration's implementation of the MINER Act reiterated one of the key trends in the evolution of coal mine health and safety laws. Typically, changes to legislation only occurred in the aftermath of major disasters. The same month as the Bush administration passed the MINER Act, five miners died in an explosion at the Darby mine in Kentucky. Investigators later

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<sup>14</sup> For a full account of the Sago mine disaster, see "How US Mine Tragedy Unfolded," *BBC News*, May 9, 2007, <http://news.bbc.co.uk/2/hi/americas/6640469.stm> (accessed on March 9, 2010); *New York Times*, January 3, 2006, A1 and A14; *New York Times*, January 4, 2006, A1 and A13; *New York Times*, January 5, 2006, A1 and A20; *New York Times*, January 6, 2006, A1 and A19.

<sup>15</sup> For the full text of the MINER Act, see U.S Congress, *Mine Improvement and New Emergency Response Act (MINER ACT)*, S. 2802 (Public Law 109-236), 109th Cong., 2nd sess., 2006, <http://www.msha.gov/mineract/mineractsinglesource.asp> (accessed March 12, 2009). For a detailed account of mine health and safety during the Bush administration, see Christopher W. Shaw, *Undermining Safety: A Report on Coal Mine Safety* (Washington, D.C.: Center for Study of Responsive Law, 2008).



determined that an accumulation of methane gas in the mine caused the explosion.<sup>16</sup> The futility of the MINER Act in preventing coal miner disasters was emphasized by a coal mine disaster in August 2007. Six miners died when a roof collapsed at the Crandall Canyon mine in Utah. During the rescue operation, three rescue workers were killed when another section of the roof collapsed.<sup>17</sup>

In the past forty years, health and safety in the United States coal industry has improved. Recent disasters, however, combined with the ongoing problem of black lung disease and the recent decline in the federal black lung compensation program, demonstrate that today's coal miners face the same health and safety problems that their predecessors fought so hard to eradicate. While coal miners and their supporters achieved significant legislative change through community activism in the late 1960s and 1970s, an inefficient and industry-orientated federal bureaucracy undermined their achievements by failing to provide adequate enforcement of the legislation. The same federal bureaucracy is responsible for many of the problems in the coal industry at present. Recent events, therefore, provide a foundation for summarizing the key issues of this dissertation.

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<sup>16</sup> "Mine blast kills five in Kentucky," *BBC News*, May 20, 2006, <http://news.bbc.co.uk/hi/americas/5000984.stm> (accessed March 15, 2010).

<sup>17</sup> For the complete story on the Crandall Canyon mine disaster, see "Six Trapped After Collapse in a Utah Coal Mine," *New York Times*, August 7, 2007, [http://www.nytimes.com/2007/08/07/us/07mine.html?\\_r=1](http://www.nytimes.com/2007/08/07/us/07mine.html?_r=1) (accessed March 12, 2010); "3 Killed and 6 Injured in Rescue Effort at Mine," *New York Times*, August 17, 2007, <http://www.nytimes.com/2007/08/17/us/17mine.html> (accessed March 12, 2010); "Utah Disaster Was Preventable, Report Says," *New York Times*, May 9, 2008, <http://www.nytimes.com/2008/05/09/us/08cnd-mine.html> (accessed March 12, 2010).

### **Grassroots Activism and State and Federal Legislative Reform**

The disaster at the Farmington mine in West Virginia in November 1968 was the turning point for coal mine health and safety in the United States. It sparked the outbreak of grassroots protest in the coalfields, as miners and their supporters engaged in community-based activism to campaign for stronger health and safety legislation and compensation for the victims of black lung disease. The disaster also prompted the U.S. Congress to conduct hearings on the reform of coal mine health and safety legislation, and convinced President Richard Nixon of the need to strengthen coal mine legislation, although Nixon's eventual approval of the Federal Coal Mine Health and Safety Act was more about his own political ambitions than it was about protecting and compensating coal miners. Coal miners continued to engage in grassroots protest even after Nixon signed the Federal Mine Act. The U.S. Bureau of Mines and the Social Security Administration (SSA) were encumbered by red tape and upheld the interests of the coal industry over those of the miners. Although community-based protest led to further legislative change, most notably the Black Lung Benefits Act of 1972, the federal bureaucracy continued to limit the improvement of health and safety. There was a particularly noticeable decline in federal enforcement of health and safety legislation during the Ronald Reagan administration. In particular, miners and their dependents found it increasingly difficult to obtain black lung benefits.

In the aftermath of the Farmington disaster, community activism was crucial for promoting and achieving legislative change. This was particularly true in the state of West Virginia. While the explosions at the Farmington mine highlighted the immediate safety risks that coal miners faced while laboring underground, Dr. Isidore Buff, Dr.

Donald Rasmussen, and Dr. Hawey Wells capitalized on the disaster to publicize the long-term health risks of coal mining. Buff exploited the presence of the national media at the Farmington mine to convey the impact of black lung disease on miners, particularly the acute suffering and shortness of breath. He highlighted the West Virginia legislature's failure to provide workers' compensation to the victims of the disease. In early January 1969, the three doctors, who had become known collectively as the Committee of Physicians on Miners' Safety, and a small group of rank and file miners formed the West Virginia Black Lung Association (BLA). The BLA led a campaign of intensive grassroots protest in pursuit of state compensation for black lung victims. The rapid growth of the organization was reflected by the black lung rally in Charleston in January 26, Congressman Ken Hechler, the Committee of Physicians, and thousands of coal miners. The rally emphasized the Black Lung Association's ability to mobilize coal miners' frustration over the lack of an adequate compensation program. Furthermore, it emphasized miners' rejection of the national leadership of the United Mine Workers, which they believed was unconcerned with the issue of health and safety.

In the weeks that followed, the black lung movement intensified its campaign for workers' compensation for black lung victims. In mid-February, it instigated a strike in the West Virginia coalfields, which quickly expanded to become the largest strike in response to a health and safety issue in American history. By the beginning of March, over 40,000 miners across that state had walked off the job to protest the governor's failure to add pneumoconiosis to the state's list of compensable occupational diseases. During the strike, on February 26, hundreds of miners, joined by their families, miners' widows, and activists, marched along Kanawha Boulevard to the state capitol building in

Charleston. The strike, which virtually halted coal production in West Virginia, compelled the state House of Delegates and Senate to pass legislation that granted benefits to black lung victims. Governor Arch J. Moore signed the legislation in mid-March, less than three months after the formation of the Black Lung Association. The events in West Virginia in early 1969 provide clear evidence that community activism was instrumental in effecting legislative change in coal mine health and safety.

In early 1969, the United States Congress opened hearings on the reform of coal mine health and safety laws. The hearings confirmed that the federal government only made significant changes to legislation in the aftermath of major disasters, not in response to the many individual deaths that resulted from roof falls, minor explosions, and equipment failures. More importantly, however, the hearings emphasized the role of community activism in the improvement of the country's coal mine health and safety laws. In the House of Representatives, Ken Hechler (D-WV) exerted influence on the Labor Subcommittee and the Committee on Education and Labor to produce a strong legislative health and safety bill that included a dust standard of three milligrams and many stringent safety provisions, such as the prohibition of smoking underground. Hechler's representation of a coal mining district in West Virginia, combined with his key role in the Black Lung Association, meant he was well placed to represent the interests of coal miners and their families. The final draft of the Federal Coal Mine Health and Safety Act of 1969 was, to a large extent, Hechler's work. Representative Phil Burton (D-CA) also made a significant contribution to the act by devising its federal compensation program for black lung victims. The evolution of the Federal Mine Act was attributable to a few committed Senators and Congressmen who sought to improve both

coal miners' working conditions and the federal government's response to occupational disease in the coal industry.

The passage of the Federal Coal Mine Health and Safety Act was dependent on the support of the Nixon administration. President Nixon's support of the act, however, was by no means assured, especially given its inclusion of an extensive compensation program for black lung disease. Nixon believed that compensation for workplace injuries and occupational disease was the responsibility of the states, not the federal government. Moreover, in accordance with his political philosophy, he supported the interests of business and private enterprise over those of labor and the environment. When Nixon signed the act on December 30, 1969, it was not through an altruistic desire to provide sick miners with benefits, but rather as a result of his own political ambitions and objectives. First, with only four dissenting votes across the House and Senate, he risked alienating Congress by rejecting the act. Nixon could not afford to do this, as he needed to obtain the support of the Democrats for his foreign policy and defense programs. Earlier in the year, he had delayed firing Bureau of Mines director John F. O'Leary to obtain Democratic backing for his Anti-Ballistic Missile program.

Second, Nixon sought to increase his blue-collar support for the next presidential election in 1972. Yet, by signing the Federal Mine Act (and the subsequent Black Lung Benefits Act of 1972), he went beyond the measures he planned to adopt in the pursuit of working class support. As historian Jefferson Cowie shows, Nixon centered his plan to obtain blue-collar votes by focusing on workers' moral and political ideals, rather than providing funding for social and welfare programs. In fact, Nixon originally hoped to increase his working class support without additional federal programs. His goal was not

to improve the economic conditions of the working class, but to rely on this group to solve major issues such as crime, drugs, and defense. Nixon believed that blue-collar voters were the key to solving the nation's moral crisis. He was convinced that, if workers felt respected, they would be more likely to support his administration.<sup>18</sup> His reluctant support of the Federal Mine Act, then, went beyond his original policy aspirations with regard to the working class, especially given the compensation program's projected annual cost of \$140 million.<sup>19</sup>

To a lesser extent, community activism also influenced Nixon's decision to sign the bill. In late December, Ken Hechler paid for several widows of the Farmington disaster to travel to Washington D.C. Although Nixon did not meet with them directly, their presence reminded him of the importance of signing more effective health and safety legislation into law. For Nixon, the immense human suffering and physical discomfort caused by black lung, not to mention the loss of earning capacity that miners experienced when they were too sick to work, was not a major factor in his signing of the legislation. He signed the Federal Mine Act for political reasons, rather than moral ones. Yet, he signed into law the most comprehensive and stringent coal mine health and safety law to date.

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<sup>18</sup> Jefferson Cowie, "Nixon's Class Struggle: Romancing the New Right Worker, 1969-1973," *Labor History* 43 (2002), 257-261.

<sup>19</sup> For full details of Nixon's blue-collar strategy and its effectiveness, see Cowie, "Nixon's Class Struggle," 257-283; Jefferson Cowie, "Vigorously Left, Right, and Center: The Crosscurrents of Working-Class America in the 1970s," *America in the Seventies*, edited by Beth Bailey and David Farber (Lawrence: University of Kansas Press, 2004), 75-106.

### **Coal Miners and the Problems of Federal Enforcement**

As the story of Robert Byrd's black lung compensation reform plans shows, an inefficient and industry-orientated federal bureaucracy undermined the legislative advances in the Federal Coal Mine Act of 1969. In the months after the passage of the legislation, at least half of the nation's black lung victims were unable to obtain compensation, while there was an increase in coal mine fatalities. Miners and their supporters approached this problem by extending their campaign of community-based activism. Throughout 1970, rank and file miners, with the support of their families, widows, and retired and disabled miners, conducted demonstrations and work stoppages to protest the federal government's weak enforcement of the Federal Mine Act. They were, to a large extent, also protesting against the United Mine Workers, which they believed was not doing enough to promote safe working conditions in the mines or to provide hospital care and pensions to retired or disabled miners. Coal miners and local and district union leaders expanded the grassroots campaign in the coalfields by writing letters to their Congressmen about the inefficiency of the Bureau of Mines, particularly its failure to inspect non-union coal mines. By late 1971, the Bureau's enforcement of health and safety in the coal industry had started to improve.

From 1971, the Black Lung Association expanded into several other states and protested against the central office of the Social Security Administration, with the intention of improving its management of the black lung compensation program. The BLA also engaged in an extensive lobbying campaign in Washington D.C., in an effort to persuade legislators to strengthen the legislation governing the benefits program. Again, the BLA demonstrated the effectiveness of community activism in generating significant

legislative change. In May 1972, Congress passed the Black Lung Benefits Act, which Nixon signed into law the same month. Despite the liberal provisions of the act, which included less stringent eligibility criteria for miners and the provision of benefits to double orphans, thousands of claimants still failed to obtain compensation. By 1977, when President Jimmy Carter entered the White House, the federal government's failure to provide an adequate compensation program for black lung disease was evident.

The Carter administration provided further confirmation that the federal government typically reformed health and safety legislation in response to major mining disasters, not the persistent hazards, such as roof collapses, that killed miners on a daily basis. In 1977, the administration used a major disaster at the Scotia mine in Kentucky in March 1976, which killed 26 miners, as the basis for strengthening the Federal Coal Mine Act. Congress passed the Federal Mine Safety and Health Act, which provided comprehensive health and safety measures for all types of mine, including those in the metal and non-metal industries, in October 1977. Carter signed the act into law shortly afterwards. On this occasion, however, President Carter was not responding solely to the Scotia disaster. By signing the legislation, he was also acknowledging the declining health and safety standards in the nation's mines during the energy crisis. In 1978, Carter also signed legislation that created the Black Lung Disability Trust Fund.

Although designed to improve significantly conditions in the nation's coal mines, the Federal Mine Act of 1977 did not fulfill its potential. When Ronald Reagan became president in 1981, he began an extensive program of deregulation. His massive staff and budgetary cuts to the Mine Safety and Health Administration, responsible for enforcement under the 1977 Act, led to an increase in black lung disease and injuries.



Furthermore, his administration's overhaul of the black lung compensation program meant that miners and their dependents again struggled to obtain benefits. Reagan's eight years in office provided clear evidence that federal bureaucracy restricted the scope of legislative change in coal mine health and safety.

From 1968 to 1988, coal miners and their supporters engaged in community activism to obtain significant advances in coal mine health and safety legislation. Through grassroots protest, they pushed legislators to pass laws at the state and federal levels that improved working conditions and provided compensation for the victims of black lung. At the national level, they were assisted by President Nixon's support of their cause, although Nixon was motivated more by his own political goals than the welfare of the country's miners. Weak federal enforcement of the new legislation, however, undermined the achievements of the grassroots protest movement. Initially, miners and their supporters addressed the failures in the federal bureaucracy by extending their community activism. Ultimately, however, federal management of health and safety enforcement and the black lung compensation program went into decline.

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**ABSTRACT****Fighting for Survival: Coal Miners and the Struggle Over Health and Safety in the United States, 1968-1988.**

by

**RICHARD FRY****MAY 2010****Advisor:** Dr. Elizabeth Faue**Major:** History**Degree:** Doctor of Philosophy

My dissertation focuses on coal mining and occupational health and safety in the United States from 1968 to 1985. In the late 1960s, coal miners faced the constant risk of injury, occupational disease, and death. The dangerous conditions in the coal industry resulted in a massive explosion at the Farmington mine in West Virginia in 1968, which killed 78 miners. The Farmington disaster spurred miners to campaign for the reform of state and federal coal mine health and safety laws in the United States. They rejected the national leadership of their union, the United Mine Workers (UMW), which they perceived as corrupt and inattentive to their concerns. Instead, they engaged in activism at the local level, with the support of their families, activists, liberal politicians, and progressive physicians. They sought improved preventative legislation and compensation for the victims of pneumoconiosis, or 'black lung,' a debilitating, work-related respiratory disease.

My study emphasizes the importance of community in the miners' campaign for the political reform of coal mine health and safety laws. I argue that sustained community activism enabled miners to achieve legislative change, including improved protective

laws and compensation programs, in the late 1960s and early 1970s. Coal miners and their communities played a significant role in the passage of a black lung compensation law in West Virginia in March 1969 and in the passage of the Federal Coal Mine Health and Safety Act of 1969. They continued to engage in grassroots protest when they realized that the agencies responsible for upholding the new federal legislation, the U.S. Bureau of Mines and the Social Security Administration (SSA), were not fulfilling their responsibilities. The Bureau of Mines failed to enforce the health and safety measures in the Federal Mine Act, while the SSA denied federal black lung benefits to tens of thousands of miners. The campaign of sustained activism by miners and their supporters led to the passage of the Black Lung Benefits Act in 1972. Furthermore, it enabled a reform organization called Miners for Democracy to win democratic control of the United Mine Workers in 1972. In the early 1970s, coal miners demonstrated that they were not passive actors, but rather determined, conscious protestors. Ultimately, however, an inefficient and industry-orientated federal bureaucracy undermined the activists' achievements and led to a decline in coal mine health and safety.

**AUTOBIOGRAPHICAL STATEMENT**

I was born in Scotland in 1980. I attended the University of Strathclyde in Glasgow, earning a Bachelor of Arts (upper second class Honors) in history and sociology in 2002. Through an exchange program at Strathclyde, I attended Central Michigan University, where I graduated with a Master of Arts in History in 2003. I entered the doctoral program at Wayne State University in September 2004 under the direction of Dr. Elizabeth Faue, and in 2009 was the recipient of a competitive Rumble Fellowship from the College of Liberal Arts and Sciences.