

Making Amends: Coal Miners, the Black Lung Association, and Federal Compensation Reform, 1969–1972

Richard Fry

On January 11, 1971, about 50 coal miners in Logan County, West Virginia, marched in protest at the Social Security Administration's (SSA) mismanagement of a new federal compensation program for the victims of pneumoconiosis.¹ Also known as "black lung," pneumoconiosis was a debilitating, work-related respiratory disease caused by the inhalation of coal dust. The compensation program was part of the Federal Coal Mine Health and Safety Act, which was passed by Congress and signed into law by President Richard Nixon in December 1969. In administering the program, the SSA had denied the claims of thousands of disabled miners. Every miner applying for compensation had to undergo rigorous and extensive medical examinations, and the SSA used the results from those examinations to argue that many of the applicants did not have black lung, even when they displayed visible signs of breathlessness or respiratory impairment.



A group of miners at a rally in Charleston, West Virginia, in 1969 for passage of a mine safety act. The horrific mid-November 1968 explosion at the Consolidation Coal Company's No. 9 mine in Farmington, West Virginia, focused the nation's attention on coal mine health and safety.

The protesting miners marched to the Logan County SSA office. They were members of the Logan and Mingo County chapters of the Black Lung Association (BLA), a grassroots advocacy organization founded two years earlier in West Virginia to press the state legislature for the addition of black lung disease to the workers' compensation law. The organization's intensive campaign of lobbying and protests, combined with a massive strike in the West Virginia coalfields, had convinced Governor Arch J.

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¹ Bennett Mallory Judkins, "The Black Lung Association: A Case Study of a Modern Social Movement" (Ph.D. diss., University of Tennessee, 1975), 220.

Moore to sign a compensation bill into law in March 1969. Later that year, the West Virginia black lung movement influenced the national debate on coal mine health and the subsequent creation of the federal black lung benefits program.

On their arrival at the Logan County office, the miners presented the director with a list of demands from their BLA chapters. The director sent the list to the central SSA office in Baltimore, and later that month, SSA officials from Baltimore and Washington, DC, 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.² The same day as the march in Logan County, Dr. Isidore Buff, a physician who had played a pivotal role in the West Virginia black lung movement's campaign for workers' compensation, 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."³ 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.⁴

For the Black Lung Association and its supporters, the Social Security Administration was a significant obstacle to miners' receipt of federal black lung benefits. But larger developments were also crucial. National politics in the early 1970s were becoming increasingly conservative, and the dominant liberal agenda of the 1960s was in sharp decline. The Nixon administration believed that compensation for occupational disease should be the responsibility of the states, not the federal government. Further, the SSA's denial of miners' claims also stemmed from inherent weaknesses in the black lung compensation legislation in the Federal Mine Act of 1969.

This essay focuses on the Black Lung Association's campaign between 1969 and 1972 to amend the federal black lung benefits program. It argues that the

² 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.

³ *Washington Post*, January 12, 1971, C2.

⁴ *Ibid.*

organization's sustained program of community-based, grassroots activism was instrumental in the creation of a more liberal compensation system. By organizing at the local level and lobbying in Washington, DC, the BLA played a pivotal role in the passage of the Federal Black Lung Benefits Act of 1972. Its success was also attributable to its ability to present complex medical evidence to legislators in a way that was understandable and accessible. Many witnesses, including disabled miners and widows, testified on behalf of the BLA at a series of congressional hearings, emphasizing the acute physical suffering caused by black lung. Such testimony convinced legislators of the need for stronger legislation. Further, the support given to the BLA by experienced congressional representatives such as Carl Perkins (D-KY) and Ken Hechler (D-WV) was crucial. They played an important role in creating a strong legislative bill that won support across party lines. At a time when political conservatism was on the rise, the need for a bill that would draw bipartisan support was imperative.

The Black Lung Association's campaign also emphasized the limits of traditional forms of labor protest. Tony Boyle, the national president of the United Mine Workers of America (UMW), was more concerned with protecting the interests of the coal operators than the union's rank-and-file members. The BLA instead drew on the support of local branches of the UMW. Grassroots protest, then, ultimately provided a successful pathway to legislative reform where national union action had failed. The Black Lung Benefits Act enabled many disabled miners who had been disqualified from black lung benefits under the original Federal Coal Mine Act of 1969 to obtain compensation.

The Origins of the Black Lung Association

The Black Lung Association's campaign for the reform of federal compensation in the early 1970s was rooted in its earlier fight for state workers' compensation for black lung victims in West Virginia.⁵ Several complex factors prompted a small group of rank-and-file miners to form the BLA in West Virginia in early January 1969. First, the state legislature, the coal industry, and much of the medical profession refused to recognize black lung as a legitimate disease. That meant that

⁵ It is not possible to provide an in-depth account of the 1969 West Virginia black lung movement within the confines of this essay. There are, however, many sources that examine the movement in detail. See, for example, Alan Derickson, *Black Lung: Anatomy of a Public Health Disaster* (Ithaca, New York: Cornell University Press, 1998); Alan Derickson, "Down Solid: The Origins and Development of the Black Lung Insurgency," *Journal of Public Health Policy* 4 (1983): 25–44; Ken Hechler, *The Fight for Coal Mine Health and Safety: A Documented History* (Missoula, Montana: Pictorial Histories Publishing Company, 2011); Smith, *Digging Our Own Graves*.

afflicted miners, and widows of deceased black lung victims, were unable to claim workers' compensation. Second, miners could not rely on the support of their national union president, Tony Boyle of the United Mine Workers of America (UMWA). Boyle was more supportive of the economic interests of the coal industry than the welfare of the union's members. Third, the deaths of 78 miners in a major explosion at the Farmington mine in West Virginia in November 1968 helped to focus national attention on coal mine health and safety. Black lung activists capitalized on this attention to promote their cause of preventative legislation and compensation for coal miners. Finally, a burgeoning network of community activism, spurred by three prominent physicians, organizations such as Volunteers in Service to America (VISTA), and high-profile political figures, including Representative Ken Hechler (D-WV) and consumer advocate Ralph Nader, convinced the miners that they were entitled to compensation for a crippling disease they had developed as a result of their work.

In the late 1960s, many politicians and medical physicians refused to acknowledge the existence of pneumoconiosis. Under the existing West Virginia workers' compensation law, miners with black lung were not eligible to claim benefits. The law provided benefits for those suffering from silicosis, a lung disease caused by exposure to hard rock dust, but did not recognize black lung as a legitimate disease. This was in large part because of deeply flawed medical evidence. X rays, which could detect silicosis, were not completely effective in showing deposits of coal dust in the lungs, so doctors and medical researchers dismissed the idea that coal miners had a specific lung disease. Further, many physicians, particularly those working on behalf of the coal industry, attributed coal miners' breathing difficulties to cigarette smoking, while some even claimed that inhaling coal dust was conducive to good health. For disabled miners afflicted by black lung, the effects were real enough. Frequently, they could not get up the stairs in their own home or walk 100 yards down the street without losing their breath.⁶ In the absence of workers' compensation, they had to rely on the Welfare and Retirement Fund of the United Mine Workers of America, the country's largest coal mining union, for limited financial support. Miners in Virginia, Alabama, and Pennsylvania fared better, as those states included black lung disease in their workmen's compensation programs.⁷

⁶ For a detailed discussion about the conflict over the definition of black lung disease, see 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.

⁷ Derickson, *Black Lung*, 144.

Three physicians working largely outside the institutional settings of the coal industry and the United States Public Health Service defied the prevailing consensus on black lung. Two of those physicians, Dr. Hawey Wells and Dr. Donald Rasmussen, established clear medical evidence, independently from X-ray examinations, that pneumoconiosis was a distinct disease caused by the inhalation of coal dust. Rasmussen examined miners' arterial blood for evidence of the disease, while Wells conducted autopsies of deceased black lung victims.⁸ In the summer of 1968, Rasmussen, Wells, and Dr. Isidore Buff began touring the West Virginia coalfields to highlight the impact of black lung on miners and their families and to argue for preventative legislation and compensation. Buff had been publicizing black lung for several years throughout the Appalachian region, and had gained a reputation for his flamboyant personality and fiery rhetoric.⁹

In mid-November 1968, a horrific disaster intensified the nation's focus on coal mine health and safety. Shortly after 5 a.m., on November 20, 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 source of the blast, managed to escape through portals and airshafts. In the days that followed, several more explosions hindered the efforts of rescuers to locate the trapped miners. While awaiting news of the trapped miners' fates, journalists and television reports began to investigate more broadly life in the local mining community. Buff capitalized on the media's presence by informing them about black lung and its harmful effects on miners. In doing so, he greatly increased public knowledge of the disease.¹⁰ On November 29, Consolidation President John Corcoran ordered rescue crews to seal the mine to prevent further explosions. Few believed that any of the 78 miners had survived, but Corcoran's decision brought a sense of finality to their deaths.¹¹

The Farmington disaster also facilitated the emergence of the black lung movement by revealing UMW President Tony Boyle's contempt for the rank-and-

⁸ Dr. Donald Rasmussen, interview by author, tape recording, August 21, 2008, Department of Labor, Charleston, West Virginia; Derickson, *Black Lung*, 148; Bennett M. Judkins, *We Offer Ourselves As Evidence: Towards Workers' Control of Occupational Health* (New York: Greenwood Press, 1986), 65.

⁹ For more information on Buff's role as a black lung campaigner, see Philip Trupp, "Dr. Buff Versus The Black Lung," *Reader's Digest*, June 1969, 101–5.

¹⁰ J. Davitt McAteer, telephone interview with author, tape recording, May 11, 2009; Joseph Finley, *The Corrupt Kingdom: The Rise and Fall of the United Mine Workers* (New York: Simon and Schuster, 1972), 226.

¹¹ Smith, *Digging Our Own Graves*, 101–2; *Washington Post*, November 30, 1968, 4.

file. On the first day of the catastrophe, 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.”¹² Boyle’s comments emphasized that miners could not rely on his support for the reform of health and safety legislation, and reiterated his ongoing support of the coal operators. At the UMWA national convention earlier that year, Boyle had rejected several resolutions calling for stronger preventative health and safety legislation and operator-funded compensation for the victims of black lung disease. He argued that any legislative change could only happen at the state level. Most notably, Boyle dismissed a resolution by Dr. Lorin E. Kerr, of the UMW Welfare and Retirement Fund, that the national union leadership should be more involved in health and safety issues.¹³

In the aftermath of the Farmington disaster, other high-profile figures led the fight for safer working conditions in the mines. Representative Ken Hechler (D-WV) had long been an advocate of safer coal mines, but his meeting with several Farmington widows galvanized him into intensifying his campaign for improved health and safety.¹⁴ Consumer advocate Ralph Nader, who in the early 1960s brought the issue of automobile safety to national attention, was another a key participant in the burgeoning black lung movement. He became involved in coal mine and safety after learning of Dr. Isidore Buff’s travels through Appalachia and in February 1968 had published an article on black lung disease entitled “They’re Still Breathing,” in *The New Republic*.¹⁵ Further, Buff, Wells, and Rasmussen intensified their efforts to increase awareness of black lung disease. They continued to tour the West Virginia

¹² *New York Times*, Nov. 22, 1968, 50; *Washington Post*, November 22, 1968, A10.

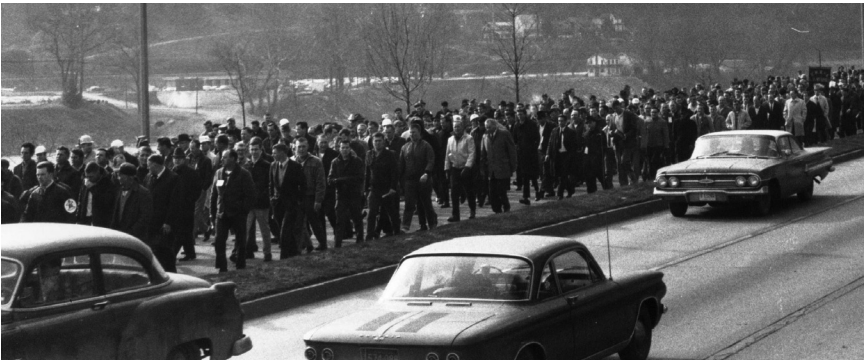
¹³ Brit Hume, *Death and the Mines: Murder and Rebellion in the UMW* (Grossman: New York, 1971), 65–71. Published in 1971, journalist Brit Hume’s book is a contemporary expose on the United Mine Workers of America. For an in-depth account of the 1968 convention, see United Mine Workers of America, *Proceedings of the 45th Constitutional Convention*, 2 vols. (Washington, DC: United Mine Workers of America, 1968). Boyle’s corruption extended beyond his support of the coal operators and disregard for the rank-and-file. In 1974, he was given three consecutive life-sentences for hiring hitmen to kill Joseph “Jock” Yablonski, who ran against Boyle in the 1969 UMW presidential election, and his wife and daughter. For more information, see Trevor Armbrister, *Act of Vengeance: The Yablonski Murders and Their Solution* (New York: Saturday Review Press / E. P. Dutton and Company, Inc., 1975).

¹⁴ Ken Hechler, interview by author, tape recording, August 22, 2008, West Virginia State Archives, Charleston WV.

¹⁵ Ralph Nader, telephone interview with author, tape recording, May 1, 2009; Ralph Nader, “They’re Still Breathing,” *The New Republic*, February 3, 1968: 15.

coalfields, and brought a more formal nature to their partnership by establishing the Committee of Physicians on Mine Health and Safety. 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.¹⁶ 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 compensation from the state. The miners embraced this idea, for they had long recognized that working underground diminished their labor capacity.¹⁷

In January 1969, the Committee of Physicians played an instrumental role in the formation of the West Virginia Black Lung Association. The organization's campaign quickly gained momentum, with meetings, rallies, and protest marches across West Virginia. On January 26, over 3,000 miners attended the BLA's first statewide meeting at the Charleston Civic Center. They listened to speakers such as BLA attorney Paul Kaufman and Ken Hechler, who read a message of support from Ralph Nader. In mid February, a work stoppage at the East Gulf Mine in Raleigh County quickly spread across the state, as thousands of miners went on strike. They demanded the state legislature's swift passage of new black lung compensation legislation. While the BLA did not start the walkout, it supported the miners and viewed the strike as a way to increase its pressure on the legislature for reform.



At a rally in Charleston on February 26, 1969, about 3,000 striking miners and their families, along with Black Lung Association representatives, marched to the West Virginia state Capitol.

¹⁶ 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.

¹⁷ Derickson, *Black Lung*, 150–51; 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.

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By early March, over 40,000 miners were staying away from work, and production had ceased at several coal mining operations in the southern part of West Virginia.¹⁸ The strike, combined with the Black Lung Association's intensive campaign, quickly led to the passage of a black lung compensation bill by the state legislature on March 8. The bill, while not meeting all of the organization's demands, went a long way to redressing the flaws in West Virginia's workers compensation law. It recognized black lung as a distinct, legitimate disease and provided a fixed weekly sum of \$55 for miners who were diagnosed with the disease. Diagnoses were to be made by a newly created occupational medical board through the use of X rays and other medical evidence.¹⁹ Governor Arch More signed the bill into law on March 12, ending the statewide coal strike. The success of the West Virginia Black Lung Association led to the growth of similar movements in Ohio and Kentucky, which also achieved state workers' compensation for black lung victims.

Later that year, Congress passed the Federal Coal Mine Health and Safety Act of 1969. Ken Hechler was responsible for the act's key preventative health and safety measures, while the black lung compensation program, embodied in Title IV of the act, was the result of extensive lobbying and campaigning by Representative Phil Burton (D-CA). The new legislation went into effect on March 30, 1970. Almost immediately, flaws in the federal compensation program became evident.

Bureaucratic Indifference and Revival of the BLA

While the Federal Coal Mine Act of 1969 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 compensation. Miners had to pass a series of rigorous medical tests set by the SSA, including X rays and pulmonary function tests.²⁰ Many applicants were denied compensation on the basis of their test results, even when they

¹⁸ For a full account of the West Virginia miners' strike and the February 26 demonstration in Charleston, see *Charleston Gazette*, February 20, 1969, 1 and 2; *Charleston Gazette*, February 27, 1969, 1; Derickson, *Black Lung*, 160; Hume, *Death and the Mines*, 140–41; *New York Times*, February 27, 1969, 28; Smith, *Digging Our Own Graves*, 115–21.

¹⁹ For information on the final version of the bill, see *Sunday Gazette-Mail*, March 9, 1969, 1A and 16A; Derickson, *Black Lung*, 161–162; Curtis Seltzer, *Fire in the Hole: Mines and Managers in the American Coal Industry* (Lexington: The University Press of Kentucky, 1985), 99.

²⁰ 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, Wayne State University. Hereinafter, Herling Collection, Reuther Archives. See also Smith, *Digging Our Own Graves*, 146–48.

exhibited noticeable breathing problems. Barbara Smith, author of *Digging Our Own Graves*, argues that the institutional definition of coal miners' pneumoconiosis came to exist independently of miners' symptoms. To the miners who were so crippled by black lung disease that they became breathless from moving from the bedroom to the kitchen, the Social Security Administration's denial of their disease ignored and discounted their suffering.²¹

In addition, the understaffing and underfunding of local SSA offices hindered miners' ability to collect benefits. The offices were not prepared to deal with the huge volume of claims—over 100,000 in the first month of the benefits program. 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.²²

The obstacles miners encountered in claiming benefits led to the reemergence of the black lung movement in West Virginia in the summer of 1970. An independent group called Designs for Rural Action (DRA) headed the revival of the movement. 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.²³ By 1970, however, the radical social activism of the 1960s was in sharp decline, and the group shifted its focus to administrative and legal issues. It quickly began to allocate most of the organization's



Testing and treatment of patients in Dr. Donald Rasmussen's clinic in Beckley, West Virginia. Many applicants were denied compensation on the basis of their test results, even when they exhibited noticeable breathing problems.

²¹ Smith, *Digging Our Own Graves*, 147–56.

²² Bennett M. Judkins, *We Offer Ourselves As Evidence*, 78; Smith, *Digging Our Own Graves*, 145–48.

²³ 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; Seltzer, *Fire in the Hole*, 102–3.

resources to the reform of the black lung program, particularly when its leaders became aware of sick miners' failure to obtain compensation.²⁴

Designs for Rural Action established its headquarters in Charleston, West Virginia, and hired Arnold Miller, a former coal miner, to lead the new Black Lung Association. Miller suffered from black lung, and in 1969 had been forced to retire by health complications related to the disease. The same year, he played a key leadership role in the West Virginia miners' strike.²⁵

In its previous incarnation in West Virginia in 1969, the Black Lung Association had been spontaneous and unplanned, but the leaders of the revived BLA emphasized the importance of efficient organization and clear goals. They set up several county chapters of the BLA across southern West Virginia and the wider Appalachian region. The chapters played a key role in the organization by holding meetings and providing advice on claiming benefits to miners and widows.²⁶ Lay advocates, who came into direct contact with the miners and their families, were the most important representatives of the local chapters. They assisted claimants with 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 through extensive training provided by the Appalachian Defense Fund. Their knowledge and skills provided applicants with vital support in their quest for compensation.²⁷

Although the local chapters were intended to facilitate more efficient organization, they often lacked unity and cohesion, as few members were involved on a long-term basis. Between meetings, each chapter typically experienced a membership turnover rate of 40 to 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.²⁸

By early 1971, the Black Lung Association consisted of 14 local chapters across Virginia, Tennessee, Kentucky, and West Virginia. The chapters frequently engaged in protests, which although organized locally, were targeted at high-level officials

²⁴ Bennett Mallory Judkins, "The Black Lung Association," 158.

²⁵ *Los Angeles Times*, July 12, 1985, 2; *Washington Post*, July 13, 1985, B6; Judkins, "The Black Lung Association," 170.

²⁶ Judkins, "The Black Lung Association," 171.

²⁷ Smith, *Digging Our Own Graves*, 164.

²⁸ Judkins, "The Black Lung Association," 187–88.

of the Social Security Administration. The goal was to get the SSA to legitimize applicants' claims for compensation. Such protests, however, seldom yielded tangible results.²⁹ In the realization that the association's local demonstrations were not working, Don Bryant, president of the Logan County chapter, began to plan a march in Washington, DC. He complained, "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."³⁰

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 Richardson, head of the Department of Health, Education, and Welfare, all denied the activists' requests for meetings. Popick eventually agreed to meet with BLA representatives in April, but he failed to attend the meeting. His assistant, Bill Rivers, and a few other delegates attended the meeting in his place. 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.³¹

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. 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 chapters distributed forms to obtain more information on who planned to attend the demonstration, and what they wanted to achieve on the trip.³²

In May 1971, as the BLA was planning its demonstration, 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 introduced a number of Democrat-sponsored bills, which, among other things,

²⁹ Judkins, "The Black Lung Association," 220; Smith, *Digging Our Own Graves*, 168.

³⁰ Judkins, "The Black Lung Association," 221.

³¹ *Ibid.*, 224.

³² Judkins, "The Black Lung Association," 224–28; Smith, *Digging Our Own Graves*, 169.

prohibited the denial of claims solely on the basis of X-ray evidence, prevented the deduction of black lung benefits from other compensation programs, and mandated benefits for double orphans.³³ 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.

The key question that dominated the hearing was the validity of X rays in diagnosing black lung disease. Testifying before the subcommittee, Ken Hechler condemned the Social Security Administration’s reliance on X rays to diagnose pneumoconiosis: “Many doctors examining these X-rays have historically down through the years been individuals who have denied that pneumoconiosis as a disease actually exists. There has been disagreement between doctors and radiologists reading the same X-rays.” In addition, Hechler charged that the Richard Nixon administration had ordered the SSA to adopt a conservative approach in its implementation of the federal compensation program, in order to limit the amount of successful applications.³⁴ Given that President Nixon had almost vetoed the Federal Mine Act for its black lung benefits provision, Hechler’s claim seemed valid.

Bernard Popick, meanwhile, defended the record of the SSA. According to Popick, it was inevitable that many of the applicants for benefits would not meet the strict eligibility criteria. In an effort to deflect criticism of the program, Popick claimed that there had been 290,000 applications for compensation, and 190,000 of those were successful. He acknowledged, however, 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. Moreover, Popick voiced his support for compensation for double orphans.³⁵

Representing the Black Lung Association, Arnold Miller testified at the hearing with a delegation of six witnesses. Miller complained that the SSA was undermining

³³ *New York Times*, May 20, 1971, 33.

³⁴ U.S. House Committee on 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., 1971 (Washington DC: U.S. Government Printing Office, 1971), 29–30.

³⁵ *Ibid.*, 46–47.

the compensation program by defining pneumoconiosis more narrowly than Congress had intended. One witness, 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.”³⁶ Golden 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: “I have a man that told me that he went and was X-rayed and turned down [for benefits]. The doctor told him he had two perfect lungs. He said, ‘Doc, did you see [from] the 18-inch scar on my back that I had one of my lungs removed?’”³⁷ 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 instructions to the SSA 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 cost of pneumoconiosis, as well as applicants’ negative experience with the compensation program. A 52-year-old miner, who had spent 25 years underground, wrote to Miller after being denied benefits. 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. Yet, his application for black lung benefits was denied because the SSA determined that he was not “totally” disabled by the disease. This was despite the administration’s failure to obtain his medical records from Rasmussen. At the time of writing to Miller, the unnamed miner was in the process of making an appeal.³⁸ Rasmussen, for his part, appeared at



Dr. Donald Rasmussen (above) along with Dr. Hawey Wells established clear medical evidence, independently from X-ray examinations, that pneumoconiosis was a distinct disease caused by the inhalation of coal dust.

³⁶ Ibid., 79.

³⁷ Ibid., 80.

³⁸ Ibid., 94–95.

the hearing in person. He argued that X rays alone were insufficient for diagnosing black lung disease. He also dismissed the Social Security Administration's breathing test, previously criticized by Dr. Isidore Buff, as an effective method of determining black lung disease.

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 (D-KY), chairman of the committee, highlighted the disparity between the states, claiming that 72 percent of applicants in his state of Kentucky were denied benefits, compared to 52 percent in West Virginia and 31 percent in Pennsylvania. He identified the X-ray examination as the cause of this injustice.³⁹

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 in Washington, DC. On June 7, 1971, after almost two months of preparation, the Black Lung Association traveled to Washington. Rather than hold a march, as it had originally intended, it undertook an extensive lobbying campaign. About 150 people from across Appalachia, consisting mostly of retired and disabled miners and widows, participated. The group visited several congressmen, emphasizing the impact of occupational lung disease on coal miners and the problems that applicants encountered in their pursuit of benefits.⁴⁰

Christine Warwick of Red Star, West Virginia, led a delegation of 30 people to see Ken Hechler. He told the delegation that their failure to obtain compensation stemmed from President Nixon's dislike of the black lung program.⁴¹ He informed the delegates that Nixon had ordered officials 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."⁴² Another group met with Senator Robert C. Byrd, and emerged confident that he planned to advance the federal compensation laws.

At a news conference late in the day, the delegation threatened to disrupt the provision of America's coal-generated electricity by going on strike unless

³⁹ For an account of the full committee hearing, see *New York Times*, May 20, 1971, 33; *Washington Post*, May 20, 1971, A8.

⁴⁰ *New York Times*, June 8, 1971, 78; *Washington Post*, June 8, 1971, C1.

⁴¹ *Washington Post*, June 8, 1971, C1 and C6.

⁴² *Ibid.*

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.”⁴³ Their threat was rendered more potent by the fact that many cities faced the possibility of “brown-outs” that summer because of energy shortages. Disruption to coal supplies would further jeopardize the provision of electricity. Existing supplies of coal, oil, and natural gas were barely meeting America’s demand for energy.⁴⁴

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, while the campaign might not have brought immediate results, the activists laid an important foundation for future action. They increased the national focus on their cause and consolidated alliances with powerful congressmen. The events of June 7 also showed that criticism of the program was, increasingly, specifically targeted at President Nixon.⁴⁵

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 Title IV of the Federal Coal Mine Act. Specifically, the bill advocated benefits for double orphans and clarified that black lung benefits did not constitute state workmen’s compensation.⁴⁶ The latter provision was important, as the SSA erroneously classified federal black lung benefits as workmen’s compensation. As a result of this error, it reduced its payments to miners eligible for both injury disability payments and black lung compensation.⁴⁷

⁴³ *New York Times*, June 8, 1971, 78; *Washington Post*, June 8, 1971, C6.

⁴⁴ *New York Times*, July 6, 1971, 1 and 24.

⁴⁵ *New York Times*, June 9, 1971, 23.

⁴⁶ 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.: U.S. Government Printing Office, 1975), 1706-1711. Hereinafter referred to as U.S. Senate, *Legislative History*.

⁴⁷ *Ibid.*

Perkins's bill also included a "presumptive" clause, which stipulated that miners with 15 years of underground experience and outward signs of a "totally disabling respiratory disease" automatically had work-related pneumoconiosis, even if X rays did not confirm this diagnosis. Furthermore, the bill expanded the range of acceptable evidence for detecting black lung, including blood gas tests and lay testimony, and called for a review of all previously denied claims for benefits. Finally, the bill extended federal management of the compensation program until January 1975. The Federal Coal Mine Act had originally specified that the states were to establish their own compensation programs, funded by the coal industry, by 1973.⁴⁸

The Black Lung Association viewed Perkins's bill as the key to the liberalization of the federal black lung benefits program and campaigned for its passage. One activist commented that the subsequent campaign to implement Perkins's bill was "the most effective grassroots lobbying he had ever seen."⁴⁹ The activists regularly organized carpools to Washington, DC, where they lobbied congressmen and picketed the offices of the Social Security Administration.⁵⁰ 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, so 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."⁵¹ But, according to Powell, 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, and the churches would take us in and they'd fix meals for us."⁵² Despite the obstacles they faced, the network of local BLA chapters persisted with their lobbying efforts, determined to persuade Congress to pass Perkins's legislative bill.

The lay advocates in the Black Lung Association were vital 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.⁵³ The Appalachian Research

⁴⁸ U.S. Senate, *Legislative History, 1706-1711*; Smith, *Digging Our Own Graves*, 171.

⁴⁹ Smith, *Digging Our Own Graves*, 169.

⁵⁰ Ibid.

⁵¹ Helen Powell, telephone interview with author, tape recording, August 10, 2009.

⁵² Ibid.

⁵³ Smith, *Digging Our Own Graves*, 170.

and Defense Fund provided limited financial support for the advocates, while Designs for Rural Action helped them to coordinate their lobbying efforts.⁵⁴ Even the coal operators, traditionally opposed to health and safety reforms in their industry, supported the activists' campaign for Perkins's bill, because it would absolve them from having to pay toward black lung compensation until at least 1975. In contrast, some politicians opposed the amendments because they would delay the transfer of the black lung program to the coal industry.⁵⁵

The House of Representatives began deliberations on the Perkins bill on October 18, 1971.⁵⁶ 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 a two-thirds majority to pass the House in this manner, or it would be subject to debate under the normal congressional regulations.⁵⁷ Much of the opening debate centered on the amendment that prohibited the denial of claims solely on the basis of X-ray results. Representative John N. Erlenborn (R-IL) led the Republican attack of this amendment, insisting that it would enable miners without black lung to collect benefits. Erlenborn 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.⁵⁸

In contrast, James Kee (D-WV) argued in favor of a more realistic method of diagnosing black lung disease. Kee, referring to his own state of West Virginia, commented, "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."⁵⁹ Kee's statement aligned with the belief of disabled miners—that visible symptoms, not abstract medical evidence, should be used to diagnose black lung.

Perkins's bill did not gain the two-thirds majority necessary to pass.⁶⁰ The House hearings demonstrated a clear line of division in the House, between the largely Republican faction that opposed liberalizing the benefits program and the

⁵⁴ Seltzer, *Fire in the Hole*, 103.

⁵⁵ Smith, *Digging Our Own Graves*, 170.

⁵⁶ *Congressional Record*, 92nd Cong., 1st sess., 1971, pt. 28: 36494.

⁵⁷ *Ibid.*

⁵⁸ U.S. Senate, *Legislative History*, 1766.

⁵⁹ *Ibid.*, 1788-1789.

⁶⁰ *Ibid.*, 1792.

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 there would be an opportunity to propose amendments.

When the House reopened the debate on the bill on November 10, representatives added several amendments. One amendment by Ken Hechler focused on protecting the rights of minor children to collect benefits, while another by John Erlenborn was designed to provide further clarification on benefits for double orphans. More significantly, an amendment by Robert Michel extended the federal black lung compensation to strip miners. The amended bill was passed by a majority of 311 to 79.⁶¹ The House submitted the bill to the Senate, where it was one of several black lung bills under deliberation, including a compromise version of H.R. 9212.⁶²

The compromise bill 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 federal benefits to all coal miners. Further, it stipulated that federal black lung benefits should not be classified as workmen’s compensation, which meant that miners in states with black lung on the workers’ compensation law could claim benefits from two sources. The caveat was that the total amount of compensation miners could receive each year should not exceed the annual income they had made while still working. The bill only extended federal management of the black lung benefits program for one year, however, in contrast to the two-year extension in the House bill.⁶³

In its consideration of the different bills, the Senate Labor Subcommittee opened a hearing in early December. Lorin E. Kerr, the Safety Director of the United Mine Workers, testified before the subcommittee on December 1, 1971. His statement reflected the same disregard for the rank and file displayed by Tony Boyle. Unlike the black lung activists, Kerr believed that the Social Security Administration was empathetic to disabled miners.⁶⁴ In stark contrast, representatives from a grassroots

⁶¹ *Congressional Record*, 92nd Cong., 1st sess., 1971, pt: 31: 40444-40458.

⁶² U.S. Senate, *Legislative History*, 1946.

⁶³ *Ibid.*

⁶⁴ “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.

organization called the Association of Disabled Miners and Widows, Incorporated (ADMW), highlighted the failure of the SSA to grasp the physical and mental anguish that black lung disease caused miners. The ADMW had actively been assisting miners and widows with their black lung benefits claims, and pushing for a more equitable compensation program.

ADMW 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. Omechinski stated, "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." She also stressed that it was imperative to provide benefits to disabled miners: "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."⁶⁵ 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.

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, entitled *Black Lung Benefits Act of 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 the 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.⁶⁶

The Senate sent the bill to the House of Representatives for further approval and final passage. The House and Senate reached a compromise on the issue of federal

⁶⁵ U.S. Senate Committee on Labor and Public Welfare, Subcommittee on Labor, *Black Lung Legislation, 1971-1972: 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), 88.

⁶⁶ U.S. Senate, Committee on Labor and Public Welfare, *Black Lung Benefits Act of 1972*, 92nd Cong., 2nd sess., 1972, S. Rep. 92-743, 2-3; *Washington Post*, May 5, 1972, A4.

control of the program, agreeing to extend it by 18 months. The states and coal operators would assume control of the program on January 1, 1974.⁶⁷ On May 10, the House passed the legislation, officially titled the Black Lung Benefits Act of 1972, by a large majority.

Both the Senate and the House argued for the importance of the President signing the act, even though Nixon vehemently opposed extending federal coverage of black lung compensation because of the substantial cost involved.⁶⁸ There was speculation among the media that President Nixon would veto the act. When he delayed signing it, the Black Lung Association took immediate action. On May 19, it shut down two large coal mines in Mingo County, West Virginia, and established picket lines.⁶⁹

In response, Nixon signed the Black Lung Benefits Act into the law the following day, despite his objection to it. 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.”⁷⁰ 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 grassroots campaign for the improvement of the black lung compensation program had succeeded.

The positive impact of the black lung benefits program was soon evident. By December 1972, 88,100 retired miners and 169,100 widows and dependents were receiving

⁶⁷ See *Black Lung Benefits Act of 1972. U.S. Statutes At Large* 86 (1973): 150–157.

⁶⁸ *Washington Post*, May 5, 1972, A4.

⁶⁹ *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,” in *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.

⁷⁰ 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 DC: United States Government Printing Office, 1974), 608–9.

benefits, a significant increase from the previous year.⁷¹ 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.”⁷² 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.”⁷³ 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 like saying, ‘Here’s a million dollars for you,’ because it helped you feel that you had done something good for somebody else.”⁷⁴



Representative Ken Hechler (D-WV) (front center) joins representatives of miners and their families at the Capitol in 1969. Hechler was responsible for key preventative health and safety measures in both the Federal Coal Mine Health and Safety Act of 1969 and Black Lung Benefits Act of 1972.

Despite the Black Lung Association’s success, the passage of the new compensation legislation actually undermined the unity of the organization. Many miners and widows saw little reason to remain part of the organization once they started receiving their benefits. The apathy of successful claimants undermined the efforts of the BLA to keep fighting on behalf of other applicants. Powell recalls, “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.”⁷⁵ The decline of the Black Lung Association, however, did not detract from its significant legislative victory, and its efforts on behalf of thousands of disabled miners and their families.

⁷¹ *Washington Post*, Dec. 6, 1972, C1.

⁷² *Ibid.*

⁷³ Helen Powell, telephone interview with author, Aug. 10, 2009.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

Conclusion

The Black Lung Association's campaign of protesting and lobbying resulted in significant legislative changes to the federal black lung compensation program. By pressuring Congress, and publicly highlighting the debilitating nature of miners' occupational lung disease, the BLA played a pivotal role in the passage of the Black Lung Benefits Act of 1972. The association's success was especially attributable to its ability to marshal compelling medical evidence and present it to Congress in moving testimony that showed the true impact of black lung disease on coal miners and their families and the physical pain and suffering caused by the disease. Legislators responded favorably to the testimony of miners and widows. The BLA's campaign was further enhanced by the leadership role of several experienced legislators who were able to build bipartisan support for stronger legislation. Support across party lines was a crucial requirement, particularly given the ascendancy of conservatism in national politics and the Nixon administration's insistence that black lung benefits should be the responsibility of the states.

The legislative success in 1972 emerged from the very effective joining of those three elements: the miners' campaign and their poignant stories; doctors' and researchers' development of more conclusive scientific proof of black lung and the inadequacy of current testing methods; and the effectiveness of lawmakers who channeled that testimony and evidence into a convincing case and broad support for clear, specific legal remedies.

Further, the BLA's campaign reflected the demise of traditional forms of union protest. By the early 1970s, the national leadership of the United Mine Workers of America, headed by President Tony Boyle, was completely detached from the concerns of the rank and file. Miners could not rely on the national leadership to fight for improved working conditions or to challenge flaws in health and safety legislation. Instead, they had to mobilize through alternative means.

The Black Lung Association's pivotal role in the passage of the Black Lung Benefits Act of 1972 significantly changed the lives of coal miners in the Appalachian region. Many black lung victims who had been unable to claim compensation as a result of the Social Security Administration's flawed diagnostic procedures were now eligible for benefits. The Black Lung Benefits Act rectified the weaknesses in the Federal Coal Mine Act of 1969 by compensating miners for the physical suffering they endured as a result of their labor.

Photo credits: black lung marchers group and coal miners' march at Charleston, West Virginia, photos by Douglas Yarrow; miners in clinic, 412-DA-14114, National Archives; Dr. Donald Rasmussen, 412-DA-14121, National Archives; Ken Hechler and representatives, courtesy Ken Hechler.