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BLACK LUNG BENEFITS REFORM ACT OF 1975

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR STANDARDS

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 7, H.R. 8, and H.R. 3333

BILLS TO REVISE THE BLACK LUNG BENEFITS PROGRAM TO
TRANSFER THE RESIDUAL LIABILITY FOR THE PAYMENT OF
BENEFITS UNDER SUCH PROGRAM FROM THE FEDERAL
GOVERNMENT TO THE COAL INDUSTRY, AND FOR OTHER
PURPOSES

HEARINGS HELD IN WASHINGTON, D.C., FEBRUARY 25, 26, 27;
MARCH 6, 12, AND 13, 1975

Printed for the use of the Committee on Education and Labor

CARL D. PERKINS, *Chairman*

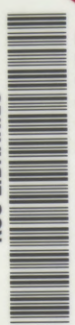


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BLACK LUNG BENEFITS REFORM ACT OF 1975

TUESDAY, FEBRUARY 25, 1975

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

The subcommittee met at 11:30 a.m., pursuant to notice, in room 2257, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Members present: Representatives Dent, Perkins, Cornell, Simon, Benitez, Ashbrook, and Erlenborn.

Staff members present: Robert E. Vagley, director; and Edith C. Baum, minority counsel for labor.

Mr. DENT. The committee will come to order.

This morning's hearing begins brief, but intensive consideration of legislation to amend the black lung benefits provisions of the Federal Coal Mine Health and Safety Act.

In 1972 we amended the law to bring equity to benefit entitlements and to ease the transition of payment responsibility from the Federal Government to the coal industry. Our expectations have been thwarted by administrative reliance on restrictive regulations, and increasing inability to identify the last responsible operator.

We are attempting to take the Federal Government out of the black lung compensation business since the States have refused to pass any abling legislation for residual responsibility, and it has become increasingly difficult to identify the last responsible operator. All cases that are now pending and new applications that have been made will therefore fall rather squarely upon the shoulders of the taxpayers.

We have three major bills under consideration. H.R. 7 and H.R. 8, are identical: the former introduced by Chairman Perkins, the latter by myself and several cosponsors. H.R. 3333, introduced by Chairman Perkins, has objectives similar to H.R. 7 and H.R. 8, but proposes more liberal means by which to achieve those objectives. The primary purpose of this legislation is to establish by statute certain standards which will afford every fair advantage to miners and dependents to qualify for benefits, and to create an industry-funded insurance pool for benefit payments thereby releasing the Federal Government from liability for all claims filed after December 31, 1973.

Other provisions correct existing inequities relating to attorney's fees, benefit offsets, and claim denials.

During the last Congress, through legislative and oversight hearings, we produced a voluminous hearing record documenting claim

denials and administrative inequities in eligibility determinations. Our bills seek to redress these injustices, and to extricate the Federal Government from future responsibilities.

The hearing record we seek to produce at this set of hearings is one centered on the specific provisions of the proposals, and not a reiteration of past and present program abuses.

Without objection, the text of the bills will be inserted into the record at this point.

[Text of H.R. 8 follows:]

[H.R. 8, 94th Cong., 1st sess.]

A BILL to revise the black lung benefits program to transfer the residual liability for the payment of benefits under such program from the Federal government to the coal industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1975".

COAL DUST ENVIRONMENTS

SEC. 2. Section 402 of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following:

"(h) Employment in a coke oven area in which the level of coal dust in the atmosphere is substantially equivalent to the level of coal dust prevailing in the atmosphere of underground coal mines in the United States at the time of the employment shall be deemed, for purposes of this title and entitlement to benefits under this title, to be employment of a miner in an underground coal mine."

PRESUMPTIONS

SEC. 3. (a) Section 411(c) of the Federal Coal Mine Health and Safety Act of 1969 is amended (1) by striking out the next to the last sentence of paragraph (4), (2) by striking out "and" at the end of paragraph (3), and by striking out the period at the end of paragraph (4) and inserting "; and (3) by adding at the end thereof the following:

"(5) if a miner was employed for twenty-five years or more in one or more underground coal mines there shall be a rebuttable presumption that he is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis, and such presumption may be rebutted only by the negative result of a blood-gas study; and

"(6) if a miner was employed for thirty-five years or more in one or more underground coal mines there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis.

The Secretary shall not apply all or a portion of any requirement in this subsection that a miner work in an underground mine where he determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine."

(b) Section 421(b) (2) (c) of such Act is amended by inserting before the semicolon at the end thereof the following: ", except that such law need not contain presumptions substantially equivalent to those provided under paragraphs (5) and (6) of section 411(c)".

(c) Section 430 of such Act is amended by inserting ", (5), and (6)" after "section 411 (c) (4)", and by striking out "whether a miner was employed at least fifteen years or more" and inserting in lieu thereof the following: "the period during which the miner was employed".

ATTORNEYS' FEES

SEC. 4. (a) Section 412(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking out "(b) Notwithstanding subsection (a)" and inserting in lieu thereof "(b) (1) Notwithstanding subsection (a) and subject to paragraph (2)."

(b) Section 412(b) of such Act is further amended by adding at the end thereof the following:

"(2) In determining the amount by which benefit payments shall be reduced under the first sentence of paragraph (1), the portion of any attorney's fees paid for services rendered in respect of a claim under any of such State laws for the same disability or death which exceeds the attorney's fees, which could be allowed under the limitation imposed under section 413(b) if such claim were made under this part, shall be considered a part of the payments received by the miner or his widow, child, parent, brother, or sister under such State laws."

OFF-SET AGAINST WORKMEN'S COMPENSATION BENEFITS

SEC. 5. Section 412(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended by inserting after "disability of the miner" the following: "due to pneumoconiosis".

CURRENT EMPLOYMENT AS A BAR TO BENEFITS

SEC. 6. Section 413(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended by inserting before the period at the end of the first sentence the following: "or solely on the basis of employment as a miner".

APPEALS

SEC. 7. Section 413(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended by inserting before the period at the end thereof the following: "except that a decision by an administrative law judge in favor of a claimant shall not be appealed or reviewed, except upon motion of the claimant".

INDIVIDUAL NOTIFICATIONS

SEC. 8. Part B of Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following new section:

"SEC. 416. For the purposes of assuring that all individuals who are eligible for benefits under this part are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary is directed to undertake a program to locate individuals who it is likely are eligible for such benefits and have not filed a claim therefor. In particular he shall endeavor, in cooperation with operators and the Department of the Interior, to ascertain the names and current addresses of individuals having long periods of employment in underground coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by Department personnel, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this part) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed. Notwithstanding any other provision of this part, a claim for benefits under part B, in the case of a person who has been informed by the Secretary under the preceding sentence of the possibility of their eligibility for benefits, shall, if filed within six months of the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973."

CLAIMS FILED AFTER DECEMBER 31, 1973

SEC. 9. (a) Part C of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking out sections 422, 423, and 424, and inserting in lieu thereof the following:

"SEC. 422. (a) During any period after December 31, 1973, in which a State workmen's compensation law is not included on the list published by the

Secretary, the Secretary shall, in accordance with this part, and the regulations promulgated by him under this part, make payments of benefits from the Black Lung Disability Insurance Fund established by section 423 in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis or who at the time of his death was totally disabled by pneumoconiosis.

"(b) During the period referred to in subsection (a), benefits shall be paid under this section to the categories of persons entitled to benefits under section 412(a) of this title in accordance with the regulations of the Secretary and the Secretary of Health, Education, and Welfare applicable under this section, and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 412(a) of this title: *Provided*, That the Secretary may modify any such regulation of the Secretary of Health, Education, and Welfare. Such benefits shall be paid on a monthly basis.

"(c) No payment of benefits shall be made under this section—

"(1) except pursuant to a claim filed therefor in such manner in such form, and containing such information, as the Secretary shall by regulation prescribe;

"(2) for any period prior to January 1, 1974; or

"(3) for any period after twelve years after the date of enactment of the Black Lung Benefits Act of 1972.

"(d) (1) Any claim for benefits under this section shall be filed within three years of the discovery of total disability due to pneumoconiosis or, in the case of death due to pneumoconiosis, the date of such death.

"(2) A claim for benefits under this section in the case of a living miner filed on the basis of eligibility under paragraph (4), (5), or (6) of section 411(c) of this title, shall be filed within three years from the date of last exposed employment in a coal mine or, in the case of death for which benefits would be payable under any such paragraphs, shall be filed within fifteen years from the date of last exposed employment in a coal mine.

"(e) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis.

"Sec. 423. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund (hereinafter referred to as the 'fund'). The fund shall consist of such sums as may be appropriated to the fund, the premiums paid into the fund as required by section 424 (a) and (b), and any penalties recovered under section 424(d).

"(b) It shall be the duty of the Secretary of Treasury to hold the fund, and (after consultation with the Secretary) to report to the Congress not later than the 1st day of March of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

"(c) It shall be the duty of the Secretary of the Treasury to invest such portion of the fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the fund. Such special obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield during the month preceding the date of such issue, on marketable-interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest. Advances to the fund pursuant to section 424(c) shall not be invested.

"(d) Any obligation acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

"(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund.

"(f) Amounts in the fund shall be available, as provided by appropriation Acts, for making expenditures to meet obligations of the United States which are incurred under this part, including the expenses of providing medical benefits as required by section 432.

"(g) Advances made pursuant to section 424(c) shall be repaid with interest to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the fund for such purposes. Interest shall be at rates computed in the same manner as provided in section 423(c) for special obligations and compounded semi-annually.

"SEC. 424(a) (1) Coal mine operators shall pay premiums into the fund to insure the payment of benefits under this part. The premiums to be paid by each coal mine operator shall be established by the Secretary on January 1 of each year at a rate which will in the judgment of the Secretary provide, in the aggregate, funds sufficient to pay all benefits to which claimants are entitled under this part for that calendar year, taking into account deficits or surpluses in premium payments in prior years.

"(2) The premium rate established under subsection (a) shall be based on the number of tons of coal mined and shall be uniform for all mines and mine operators. For the purpose of this subsection (A) 'coal' means any material composed predominantly of hydrocarbons in a solid state, (B) the amount of coal mined shall be determined at the first point at which the coal is weighed, and (C) 'ton' means a short ton of two thousand pounds.

"(b) Employers of a substantial number of individuals to whom section 402(h) applies shall also pay premiums into the fund to insure the payment of benefits under this title. The Secretary shall, by regulation, specify the employers who are liable for the payment of premiums under this subsection and the amount of such premiums. The amount of such premiums shall be commensurate with the obligations placed on the fund by individuals to whom section 402(h) applies.

"(c) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with its initial capital, and such additional sums as may be required (over and above any premiums paid into the fund under subsection (a)) to pay benefits under this part. These sums are to be repayable advances unless otherwise provided.

"(d) (1) Where an operator fails or refuses to pay any premium required by this part, the Secretary of the Treasury may bring a civil action in the appropriate United States district court to require the payment of such premiums. In such an action, the court may issue an order requiring the payment of such premiums in the future, as well as past due premium payments.

"(2) An operator who fails or refuses to pay any premium required by this part may be assessed a civil penalty by the Secretary of the Treasury in such amount as he may prescribe, but not in excess of an amount equal to the premium he failed or refused to pay. Such penalty shall be in addition to the operator's liability under paragraph (1). Penalties assessed under this paragraph may be recovered in a civil action brought by the Secretary of the Treasury. Penalties so recovered shall be deposited in the fund."

(b) The Secretary of Labor may enter into an agreement with any self-insurer or an insurance carrier who has incurred an obligation with respect to a claim under part C of the Black Lung Benefits Act prior to the effective date of this Act, under which the fund will assume the obligations of such self-insurer or insurance carrier in return for a payment or payments to the fund in such amounts, and on such terms and conditions, as will fully protect the financial interests of the United States.

MEDICAL CARE

SEC. 10. (a) Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following:

"SEC. 432. The provisions of section 7 of the Longshoremen's and Harbor Workers' Compensation Act, other than subsections (e), (f), and (i) thereof, shall be applicable to persons entitled to benefits under this part on account

of total disability, except that references in such section to the employer shall be deemed to refer to the Secretary."

(b) The Secretary of Health, Education, and Labor shall notify to each miner receiving benefits under part B of the Black Lung Benefits Act on account of his total disability who the Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his possible eligibility for such benefits. Where the Secretary so notifies a miner, the period during which he may file a claim for medical services and supplies under this part shall not terminate before six months after such notification was made.

TRANSITIONAL PROVISIONS

SEC. 11. The Secretaries of Health, Education, and Welfare, and of Labor shall generally disseminate to interested persons and groups the changes in the Black Lung Benefits Act made by this Act, and in addition they shall undertake a program to give individual notice to individuals who they believe are likely to have become eligible for benefits by reason of such changes. Each claim which has been denied, and each claim which is pending, under part B of the Black Lung Benefits Act shall be reviewed in light of the amendments made by this Act. New claims under such part B based on changes in such part made by this Act may be filed during the period ending two years after the date of enactment of this Act, unless otherwise provided, and shall be considered on the same basis as if filed on June 30, 1973.

SHORT TITLE FOR THE ACT

SEC. 12. (a) Section 401 of the Federal Coal Mine Health and Safety Act of 1969 is amended by inserting "(a)" after "Sec. 401." and by adding at the end thereof the following:

"(b) This title may be cited as the 'Black Lung Benefits Act.'"

SEC. 13. This Act shall become effective on the date of its enactment, except that—

(1) the amendments made by sections 3, 6, and 7 shall be effective as of December 30, 1969, and

(2) the amendments made by section 9 shall become effective July 1, 1975.

[Text of H.R. 3333 follows:]

H.R. 3333, 94th Cong., 1st Sess.

A BILL To amend the Federal Coal Mine Health and Safety Act of 1969.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Act of 1975".

COAL MINE HEALTH RESEARCH BOARD

SEC. 2. (a) Subsection (b) of section 102 of the Federal Coal Mine Health and Safety Act of 1969 is amended (1) by striking out "an advisory" in the first sentence and inserting in lieu thereof "a supervisory", (2) by striking out "mine health research" in clause (D) of paragraph (1) of said subsection and inserting in lieu thereof "mining", (3) by striking out "advisory" in paragraph (2) of said subsection and inserting in lieu thereof "supervisory", (4) by striking out the second sentence of paragraph (2) of said subsection and inserting in lieu thereof the following: "The committee shall make recommendations to the Secretary of Health, Education, and Welfare on matters involving or relating to coal mine health research. The Secretary of Health, Education, and Welfare shall not conduct any research or make any grant or enter or renew any contract for research on the occupational health of coal miners which has not been recommended by the committee.", and (5) by amending paragraph (3) of said subsection to read as follows:

"(3) The chairman of the committee and a majority of the persons appointed by the Secretary of Health, Education, and Welfare pursuant to paragraph (1) (D) of this subsection shall be miners, retired miners, disabled miners, widows

or widows of miners, spouses of miners, and officers or employees of labor organizations which represent miners."

(b) Subsection (d) of section 102 of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking out "Advisory committee" and inserting in lieu thereof "Committee".

DEFINITIONS

SEC. 3. Section 402 of the Federal Coal Mine Health and Safety Act of 1969 is amended (1) by inserting "or around" immediately after the word "in" where it appears in subsections (b) and (d) of said section, (2) by adding at the end of paragraph (2) of subsection (a) of said section the following: "The provisions of sections 216(b), 216(c), and 216(d) of the Social Security Act shall apply equally to husbands and wives of miners.", (3) by striking out "coal mine." in subsection (d) of said section and inserting in lieu thereof: "coal mine and involved in the extraction, processing, or transportation of coal. The term 'miner' also means a construction worker for those periods of time when he was employed underground in the construction of a coal mine.", (4) by amending subsection (f) of said section to read as follows:

"(f) The term 'total disability' has the meaning given it by regulation of the Secretary of Labor, except that—

"(1) in the case of a living miner, such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time;

"(2) in the case of a deceased miner, such regulations shall provide that the fact that a miner was employed by a mine at the time of his death shall not be used as evidence that the miner was not totally disabled; and

"(3) such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act. The standards for determining whether a miner who filed a claim after July 1, 1973, is totally disabled due to pneumoconiosis shall not be more restrictive than the standards prescribed by the Secretary for evaluating claims filed prior to July 1, 1973.", and (5) by adding at the end of said section:

"(h) The word 'wife' means the spouse of the miner. If the miner is or was a woman, 'wife' or 'wife's' refer to a man.

"(i) The word 'widow', includes widowers. If the miner was a woman, 'widow' or 'widow's' refers to a man.

"(j) The terms 'his', or 'he' may refer to a woman or a man. The term 'her' may refer to a woman or man."

SEC. 4. Section 411 of the Federal Coal Mine Health and Safety Act of 1969 is amended (1) by amending paragraph (4) of subsection (c) to read as follows:

"(4) If a miner was employed for fifteen years or more in or by one or more coal mines, there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that at the time of his death he was totally disabled by pneumoconiosis."

(2) by adding at the end of said section the following:

"(e) For the purpose of determining the applicability of the presumptions of subsection (c) of this section, a miner will be deemed to have been employed in or around a coal mine for any year in which—

"(1) he has four quarters of coverage as defined in section 213 of the Social Security Act; or

"(2) he was continuously on the payroll of a coal company; or

"(3) The Secretary determines on the basis of other evidence that he was employed in or around a coal mine.

In determining the number of years of a miner's coal mine employment, the Secretary shall give the miner credit for the appropriate portion of any year in which he worked only part of a year.", and (3) by inserting after "him" in subsection (a) of said section "and the Secretary of Labor", and by inserting "of Labor" after "Secretary" in subsection (b) of said section.

OFFSETS

SEC. 5. Section 412 of the Federal Coal Mine Health and Safety Act of 1969 is amended (1) by striking out in subsection (b) "an amount equal to any payment received by such miner or his widow, child, parent, brother, or sister,

under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner, and", and (2) by amending paragraph (5) of subsection (a) of said section to read as follows:

"(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or of a miner who is receiving benefits under this part at the time of his death, or of a miner who is not survived at the time of his death by a widow or a child, or in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of his death by a widow, child, or parent, benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner). In determining for purposes of this paragraph whether a claimant bears the relationship as the miner's parent, brother, or sister, the Secretary shall apply legal standards consistent with those applicable to relationship determination under title II of the Social Security Act. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior months. As used in this paragraph, 'dependent' means that during the one year period prior to and ending with such miner's death, such parent, brother, or sister was living in the miner's household, and was, during such period, totally dependent on the miner for support. Proof of such support shall be filed by such claimant within two years after the month in which this amendment is enacted, or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes 'living in the miner's household', 'totally dependent upon the miner for support', and 'good cause', shall for purposes of this paragraph be made in accordance with regulations of the Secretary. Benefit payments under this paragraph to a parent, brother, or sister, shall be reduced by the amount by which such payments would be reduced on account of excess earnings of such parent, brother, or sister, respectively, under section 203 (b) through (l) of the Social Security Act, as if the benefit under this paragraph were a benefit under section 202 of such Act."

EVIDENCE REQUIRED TO ESTABLISH CLAIM

Sec. 6. Section 413 of the Federal Coal Mine Health and Safety Act of 1969 is amended (1) by inserting after the second sentence in subsection (b) the following: "Where there is no relevant medical evidence in the case of a deceased miner, such affidavits may be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.", (2) by striking "results of a chest roentgenogram." in subsection (b) of said section and substituting in lieu thereof: "results of a chest roentgenogram or solely on the basis that the miner is presently, or, at the time of his death, was employed as a miner.", (3) by inserting immediately before the period in the last sentence of subsection (b) of said section: "except that a decision by an administrative law judge in favor of a claimant shall not be appealed or reviewed, except upon motion of the claimant", (4) by amending subsection (c) of said section to read as follows:

"(c) The claimant shall have the right to select the physician or physicians of his choice to perform diagnostic examinations for determining eligibility for benefits. No physician shall examine a claimant for such diagnostic purposes unless the physician is licensed to practice medicine in the jurisdiction where the examination takes place.", and (5) by adding at the end of said section:

"(d) The Secretary shall not routinely submit X-rays taken and interpreted by the physician of the miner's choice to another physician. Except where the Secretary has good reason to believe that the X-ray is not of sufficient quality to demonstrate the presence or absence of pneumoconiosis, the opinion of the physician selected by the claimant as to the presence or absence of pneumoconi-

osis and the stage of advancement of pneumoconiosis demonstrated by X-ray shall be accepted by the Secretary.

"(e) If the Secretary has reason to believe that a physician who has performed diagnostic evaluations for eligibility to benefits under this title is not qualified to perform such examinations, or has fraudulently misrepresented the condition of a miner, or has disregarded scientific and medical techniques applicable to the diagnosis of pneumoconiosis, the Secretary shall report these matters to the agency responsible for licensing physicians in the jurisdiction where the physician is licensed to practice."

PERMANENT FEDERAL PROGRAM

SEC. 7. Sections 421, 442, 423, and 424 of the Federal Coal Mine Health and Safety Act of 1969 are amended to read as follows:

"Sec. 421. (a) The Secretary shall, in accordance with this part, and the regulations promulgated by him under this part, make payments of benefits from the Black Lung Disability Insurance Fund established by section 422 in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis or who at the time of his death was totally disabled by pneumoconiosis.

"(b) Benefits shall be paid under this section to the categories of persons entitled to benefits under section 412(a) of this title. Such benefits shall be paid on a monthly basis.

"(c) No payment of benefits shall be made under this section—

"(1) except pursuant to a claim filed thereof in such form and containing such information, as the Secretary shall by regulation prescribe;

"(2) for any period prior to January 1, 1974.

"(d) Any claim for benefits under this section shall be filed within three years of the discovery of total disability due to pneumoconiosis, within three years of the date of last coal mine employment of such miner, or, in the case of death due to pneumoconiosis, the date of such death, whichever date is later.

"Sec. 422. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund (hereinafter referred to as the 'fund'). The fund shall consist of such sums as may be appropriated to the fund, the premiums paid into the fund as required by section 423 (a) and (b), and any penalties recovered under section 423(d).

"(b) It shall be the duty of the Secretary of the Treasury to hold the fund, and (after consultation with the Secretary) to report to the Congress not later than the 1st day of March of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

"(c) It shall be the duty of the Secretary of the Treasury to invest such portion of the fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the fund. Such special obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield during the month preceding the date of such issue, on marketable-interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest. Advances to the fund pursuant to section 423(c) shall not be invested.

"(d) Any obligations acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

"(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund.

"(f) Amounts in the fund shall be available, as provided by appropriation Acts, for making expenditures to meet obligations of the United States which are incurred under this part.

"(g) Advances made pursuant to section 423(c) shall be repaid with interest to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the fund for such purposes. Interest shall be at rates computed in the same manner as provided in section 422(c) for special obligations and compounded semiannually.

"Sec. 423. (a) (1) Coal mine operators shall pay premiums into the fund to insure the payment of benefits under this part. The premiums to be paid by each coal mine operator shall be established by the Secretary on January 1 of each year at a rate which will, in the judgment of the Secretary, provide in the aggregate, funds sufficient to pay all benefits to which claimants are entitled under this part for that calendar year, taking into account deficits or surpluses in premium payments in prior years.

"(2) The premium rate established under subsection (a) shall be based on the number of tons of coal mined and shall be uniform for all mines and mine operators.

"(b) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with its initial capital, and such additional sums as may be required (over and above any premiums paid under subsection (a) into the fund) to pay benefits under this part. These sums are to be repayable advances unless otherwise provided.

"(c) (1) Where an operator fails or refuses to pay any premium required by this part, the Secretary of the Treasury may bring a civil action in the appropriate United States district court to require the payment of such premiums. In such an action, the court may issue an order requiring the payment of such premiums in the future, as well as past due premium payments.

"(2) An operator who fails or refuses to pay any premium required by this part may be assessed a civil penalty by the Secretary of the Treasury in such amount as he may prescribe, but not in excess of any amount equal to the premium he failed or refused to pay. Such penalty shall be in addition to the operator's liability under paragraph (1). Penalties assessed under this paragraph may be recovered in a civil action brought by the Secretary of the Treasury. Penalties so recovered shall be deposited in the fund.

"CLAIMS PROCEDURES AND TIME LIMITS

"Sec. 424. (a) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims. Such regulations shall include provisions for the following:

"(1) The Secretary shall take action awarding or denying a claim within sixty days after receiving the claimant's completed application.

"(2) If the Secretary fails to take action within the time limits established by this section, the amount of the award will be increased. The amount of the increase shall be equal to 20 per centum of the monthly benefits due to the employee at the time of the award multiplied by the number of months (or fraction thereof) of delay.

"(b) The Secretary shall promulgate regulations providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by a decision of the Secretary. Such regulations shall include provisions for the following:

"(1) A hearing shall be held within forty-five days from the date the claimant requests the hearing. The hearing may be postponed at the request of the claimant for good cause.

"(2) The hearing shall be held at a time and a place convenient to the claimant.

"(3) The hearing shall be of record and shall be subject to sections 554, 555, 556, and 557 of title V of the United States Code.

"(4) Each hearing examiner presiding under this section shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title V of the United States Code.

"(c) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced within ninety days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action

shall be brought in a district court of the United States in the state where the claimant resides. As part of his answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive. The court shall, on motion of the Secretary made before he files his answers, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office."

SEC. 8. (a) The Federal Coal Mine Health and Safety Act of 1969 is amended by inserting after section 425 the following new section:

"SEC. 426. (a) The fund shall furnish miners entitled to benefits under part C on account of total disability with medical services, nursing, hospital and home health services, medicine, therapy, and equipment necessary for treatment of conditions caused by their lung disease.

"(b) The Secretary of Health, Education, and Welfare shall furnish miners entitled to benefits under part B on account of total disability with medical services, nursing, hospital and home health services, medicine, therapy, and equipment necessary for treatment of conditions caused by their lung disease."

(b) Sections 426, 427, 428, 429, 430, and 431 of the Federal Coal Mine Health and Safety Act of 1969 are redesignated as sections 427, 428, 429, 430, 431, and 432.

SEC. 9. Section 431 as redesignated by subsections 8(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:

"SEC. 431. The amendments made by the Black Lung Benefits Act of 1972 and by the Black Lung Benefits Act of 1975 to part B of this title shall, to the extent appropriate, also apply to part C of this title."

SEC. 10. Section 432 of the Federal Coal Mine Health and Safety Act of 1969 as redesignated by subsection 8(b) is amended by inserting "(a)" immediately after "SEC. 432." and by adding at the end thereof the following:

"(b) The Secretary of Labor shall review all claims which were filed with the Secretary of Health, Education, and Welfare under this title, and which were denied or were pending at the time of the enactment of the Black Lung Benefits Act of 1975. The Secretary of Health, Education, and Welfare shall pay benefits in accordance with the provisions of part B of this title to all such claimants who are eligible for benefits as a result of the Black Lung Benefits Act of 1975. The amount of benefits paid as a result of the Black Lung Benefits Act of 1975 shall be computed as if the amendments made by such Act had been in effect on the date of the claimant's application.

"(c) All claims which were filed with the Secretary of Labor under part B or part C of this title, and which were denied or were pending at the time of the enactment of the Black Lung Benefits Act of 1975, shall be reviewed by the Secretary of Labor in light of the changes made by the Black Lung Benefits Act of 1975. All benefits paid as a result of the Black Lung Benefits Act of 1975 shall be paid by the fund.

"(d) An initial decision to award or deny the claim shall be made on all claims reviewed in accordance with subsections (b) and (c) within six months of the date of enactment of the Black Lung Benefits Act of 1975.

"(e) The Secretary of Labor and any insurance carriers or self-insured employers who incurred liability for payment of benefits prior to the effective date of this Act with respect to a claim under part C shall continue to pay benefits in the amounts specified in section 412(a) of this title for a period of six months after the effective date of this Act. Thereafter, the fund shall assume liability for

all such claims as if such claims had been awarded under part C following the effective date of the Act. The Secretary of Labor, and any insurance carriers or self-insured employers who made payments as required by this section, shall be reimbursed by the fund for any payments made after the effective date of this Act."

SEC. 11. Section 415 of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:

"SEC. 415. (a) Any miner's claim filed during the period from July 1, 1973, to December 31, 1973, which was denied or is pending shall be decided in accordance with section 431(b).

"(b) Payment of any miner's claim filed during the period from July 1, 1973, to December 31, 1973, for which a self-insured employer or insurance carrier or the Secretary of Labor has been found liable shall be made in accordance with the provisions of section 432(e)."

SEC. 12. The first sentence of subsection (c) of section 428 of the Federal Coal Mine Health and Safety Act of 1969 as redesignated by section 8(b) is amended by striking out the words "for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in their place the word "annually".

SEC. 13. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following:

"SEC. 433. The Secretary of Labor shall generally disseminate to interested persons and groups the changes in the Federal Coal Mine Health and Safety Act made by this Act, and in addition shall undertake a program to give individual notice to persons previously unaware of their eligibility for benefits under the Act and persons likely to have become eligible for benefits by reason of such changes. Claims based on these changes and claims of persons not previously aware of their eligibility for benefits may be filed within the two year period after enactment of this Act and shall be considered on the same basis as if filed on June 30, 1973."

MR. DENT. Before we hear our first witness, I would ask Chairman Perkins if he has any comments.

CHAIRMAN PERKINS. Not at this time. I just wish to commend you for the speediness with which you are beginning hearings on this legislation.

MR. DENT. Mr. Erlenborn.

MR. ERLNBORN. Thank you. I have nothing at this time.

MR. DENT. All right. Our first witness is Andrew Kalmykow, assistant general counsel, American Insurance Association.

MR. KALMYKOW, you may proceed, either by reading your testimony or summarizing, whichever you believe will give the committee the most benefit from your testimony.

STATEMENT OF ANDREW KALMYKOW, ASSISTANT GENERAL COUNSEL, AMERICAN INSURANCE ASSOCIATION

MR. KALMYKOW. I appreciate this opportunity to be here.

My name is Andrew Kalmykow. I am assistant general counsel of the American Insurance Association, an organization of 138 casualty and property insurance companies, most of which write workers' compensation insurance throughout the United States. They are vitally interested in the satisfactory operation of workers' compensation laws. They firmly believe that full protection and adequate benefits must be provided under these laws. They also believe that they perform an essential function in the operation of the system in assuring prompt payment of these benefits and the reduction of work injuries through their safety and merit rating programs.

Insurance companies have been a major factor, in cooperation with many others, in the great advances that have been made with respect

to benefits and coverage under workers' compensation laws in recent years.

I personally had the privilege of serving on the National Commission on State Workmen's Compensation Laws created pursuant to Act of the Congress. Its report issued in July 1972 has had a major impact in stimulating further improvements in these laws throughout the country. For example, all States now provide occupational disease coverage and in nearly all of them it is broad in form. Charts of benefits and coverage are appended to my statement.

The Black Lung Benefits Act is of particular significance because it is the first Federal enactment that provides what are in effect standards for enactment by the States in the field of workers' compensation. Its provisions constitute an important precedent with farreaching effects. We are therefore deeply concerned that H.R. 7 or H.R. 8, if enacted in their present form, would have serious adverse effects on workers' compensation generally and our industry specifically.

In the first place we cannot view with equanimity the fact that this legislation would in effect deprive us from writing insurance under that law. This, despite the fact that we have fully cooperated in implementing this program, although many practical problems were presented. A recent report of the staff of the Committee on Ways and Means on the Social Security Disability Insurance Program—Committee Staff Report on the Disability Insurance Program, July 18, 1974, page 418) states:

The insurance industry has responded to the need for insurance coverage for the black lung liability. We have received verification from thirty-seven (37) private insurance carriers and three (3) State funds reflecting coverage written in each of the thirty (30) coal mining States on one thousand nine hundred ninety-five (1995) coal operators.

We believe that our industry is providing superior service and protection in this as well as other fields of workers' compensation. Employers and their employees should not be deprived of these services and that protection.

While the deprivation of our right to provide insurance is conditioned on a State not being included in the list published by the Secretary of Labor as complying with Federal requirements, compliance with this condition is outside our control. Actually no State has to date been found in compliance. States initially attempted to meet Federal requirements, but still did not qualify when additional presumptions were specified in 1972, even though some have enacted the exact provisions that were recommended by the Department of Labor to accomplish that fact. Yet they have still been held not to have qualified because some changes were subsequently made.

Since then difficulties under the operation of the Federal act have discouraged further efforts at State compliance. Some of the requirements of the Federal laws have recently been declared unconstitutional by a Federal court.¹ This is also discouraging States from complying with these Federal provisions.

More importantly, however, we are concerned over the adverse effects which we believe this legislation would have on the whole

¹ *Turner Elkhorn Mining Co. v. Brennan*, U.S. District Court, E. D. Ky. November 19, 1974, 385 Fed. Supp. 424.

workers' compensation system and the operation of the Black Lung Benefits Act itself. We recognize that serious administrative and financial problems have arisen under this legislation and that current proposals are intended to provide remedies. We share the concern that has been expressed. We respectfully submit and firmly believe that instead of solving these problems this legislation will merely serve to aggravate them.

The Black Lung Benefits Act when originally enacted was intended to be temporary and designed to provide payments to disabled miners and their widows regardless of the time of their employment and exposure or the date of death. It was intended to provide benefits for coal workers' pneumoconiosis contracted possibly many years ago before the hazards of the disease were known. Probably because of the largely retroactive nature of the program, claims during the first 3 years, later extended to 4 years, were to be made against the Social Security Administration and paid out of public funds. The obligation to pay benefits for claims made after June 30, 1973, has, since January 1, 1974, been that of coal mine operators and their insurers under the administration of the Department of Labor. Claims are filed with the Department rather than the employer. This has caused some delays in the processing of claims. The Department is liable for payment of claims if any responsible operator cannot be found.

The Social Security Administration has experienced severe administrative difficulties under this program. The recent report of the staff of the Committee on Ways and Means, referred to above, has indicated that these difficulties have seriously undermined the operation of the whole Social Security disability benefits program. It states:

The black lung program has drained off key staff away from social security duties, and is now virtually monopolizing the services of the Social Security Administrative Law Judges. (Page 1.)

The committee staff believes firmly that the black lung program has had a major impact on the Social Security program in diverting essential administrative and program staff from their duties with regard to the Social Security disability insurance program and the implementation of the SSI program. (Page 8.)

At the present time, the black lung crisis has moved to the hearing stage where Social Security disability cases are being literally shunted aside so that the flood of black lung cases can be dealt with. The courts and the Social Security litigation staff, who are already hard pressed, will soon be similarly adversely affected and their ability to carry out their Social Security disability duties will be impaired. Social Security responsibility will continue for black lung beneficiaries who applied prior to July 1, 1973, and the Social Security District Offices will continue to take applications for the Labor Department-administered black lung program until that program expires 1981.

As this report indicates, the Social Security Administration has continuing responsibility under this program, especially for the payment and processing of claims already made. Since the program was instituted 547,218 applications were filed through June 30, 1973. The number of such claims is significant in view of the fact that as of November 1974, there were 153,000 coal miners and that in 1939 there were 454,056 coal miners.¹

¹ Historical Statistics of the United States Colonial Times to 1957. U.S. Bureau of the Census, Washington, D.C.; P. 349, table series M 1-12 Summary of Mineral Operations: 1840 to 1954; Employment and Earnings, vol. 21, No. 7, January 1975. Bureau of Labor Statistics, U.S. Department of Labor. Washington, D.C., p. 65, table B-2, Employees on nonagricultural payrolls, by industry.

It is further to be noted that the Public Health Service of the U.S. Department of Health, Education, and Welfare in a detailed study² of the coal mining industry—the Appalachian coal mines specifically—found that:

Among the working miners, 6.8 percent showed evidence of simple pneumoconiosis and 3 percent showed evidence of complicated diseases. The percentage for the nonworking miners were 9.2 and 9.0 respectively.

It may be noted simple pneumoconiosis is not intended to be compensated under the law, it is complicated pneumoconiosis that is intended to be covered.

When the Black Lung Benefits Act was amended in 1972 creating new presumptions and amending the definition of disability, 194,000 of these cases required reprocessing. In addition, 183,000 new claims were filed because of the broadened provisions of the bill.

This may be contrasted to 6,651 deaths and permanent total disabilities countrywide from all insured compensable work injuries and diseases for 1973. It is quite a contrast.

H.R. 7 and H.R. 8 both greatly extend the application of the presumptions in the black lung law. It would be provided that after employment of 25 years or more in underground coal mines there would be a rebuttable presumption that the employee is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis and that the time of his death he was totally disabled by pneumoconiosis, and such presumption may be rebutted only by the negative result of a blood-gas study. Blood-gas studies naturally could not be conducted after death.

In any event, blood-gas deficiencies may be caused by a variety of conditions, many unrelated to the employment. This presumption would be made irrebuttable after 35 years. The bill also contains further provisions which would greatly loosen eligibility requirements.

Thus, it is likely that a great number of additional claims would be reopened by the Social Security Administration and be reprocessed since these provisions are made retroactive to December 30, 1969. The Staff Ways and Means Committee Report, *supra*, on page 8, expressed concern that:

Any further enlargement of Social Security responsibilities may be "the straw that breaks the camel's back."

The current law, even in its present form has imposed a very heavy financial burden on the Federal Government. The Department of Health, Education, and Welfare has estimated that by the end of fiscal year 1974 it will have paid out of public funds \$2.7 billion in benefits plus over \$80 million in administrative costs. This is for one disease alone. This does not count the many billions that will have to be paid in the future under the provisions of this act. There is, no doubt, that if H.R. 7 and H.R. 8 are enacted, this financial burden will be vastly increased.

We believe that the difficulties which have arisen under the Black Lung Benefits Act are due to the retroactive application of the law and these broad presumptions under which claims are made for con-

² Pneumoconiosis in Appalachian Bituminous Coal Miners by W. S. Lanhart et al., Public Health Service Publication No. 2000, 1969, U.S. Department of Health, Education, and Welfare, Superintendent of Documents, Washington, D.C., p. 115.)

ditions which may not be disabling under the usual understanding of that term and for disabilities which are not related to the employment. Financial and administrative problems are bound to arise under such a system.

Under the presumptions of H.R. 8 the distinction between work and disability and death would be abolished. The program would in effect constitute a retirement and survivor-benefit program regardless of causal relationship with employment. While these presumptions would not be mandated upon the States—and I think it is significant, it was felt that these particular presumptions should not be imposed on the States—we have concern over the precedent they would constitute with respect to workers' compensation generally. The problems which this law has caused would be magnified manifold if it were made applicable to other industries. There is legislation already pending to that effect.

The retroactive features of the 1972 amendments for 1 fiscal year alone were estimated at \$954 million by the Comptroller General in his report to the Congress, September 5, 1972. The retroactive features of the new bill would vastly increase this total. There would be a flood of reopened cases and probably new ones would be filed. These under the bill would be deemed to have been filed as of June 30, 1973, and this be the responsibility of the Social Security Administration. This bill would do nothing to relieve the Federal Government of that financial burden.

The current bill in creating a new Federal fund financed by a tax on tons of coal produced would have largely prospective application. New financing to set it in operation would be required. It would newly create yet another mechanism to pay compensation benefits. In view of the current administrative difficulties of the Social Security Administration, the creation of this new fund cannot but be viewed with concern. Additional delays and additional cost to the detriment of the employee and his employer are bound to occur.

The current bill and other previous proposals before your committee point to the desirability of defining the responsibility of the Federal Government and the coal industry and its insurers. We believe a reasonable dividing line would be the date when safe dust exposure levels were made effective under the Federal Coal Mine Health and Safety Act, namely June 30, 1971.

Disability or death occurring after June 1, 1974, involving exposures which continued beyond June 30, 1971, could be made the responsibility of industry. Cases involving only exposure prior to that time could be a Federal Government responsibility. There should be no difficulty in determining the last responsible operator with respect to exposure after that date. There would appear to be no sound reason why coal mine operators and their insurers should not continue to be liable for compensation benefits to miners currently employed and their dependents in case of death. This would relieve the Federal Government from substantial administrative and financial burdens.

Thank you very much Mr. Chairman.

[Attachments to Mr. Kalmykow's written statement follow:]

WORKMEN'S COMPENSATION LAWS

Accidents.—All states provide compensation for injuries which constitute "accidents." In many states very broad interpretation has been given to the term "accident."

Broad Occupational Disease Coverage.—50 jurisdictions provide broad occupational disease coverage.

Alabama
Alaska
Arizona
Arkansas*
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri

Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee**
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Longshoremen's & Harborworker's Act

*In Arkansas there is a schedule which includes radiation injuries and to which the Industrial Commission is permitted to add diseases to be compensated. A court decision apparently indicates compensation is not limited to scheduled diseases. (*Solid Steel Scissors Co. vs Kennedy* (1943) 171 S.W. 2nd 929).

**In Tennessee broad coverage may be elected.

Scheduled Occupational Disease Coverage.—3 jurisdictions provide compensation for occupational disease by listing them in schedules varying in scope: Louisiana, Oklahoma, Wyoming.

AMERICAN INSURANCE ASSOCIATION, NEW YORK, N.Y.
WORKMEN'S COMPENSATION—BENEFITS—TOTAL DISABILITY

State	Maximum percent		Maximum weekly		Maximum period		Maximum total		Comments*
	Temporary	Permanent	Temporary	Permanent	Temporary	Permanent	Temporary	Permanent	
Alabama	66½	65	\$75	\$75	300 weeks	650 weeks		\$37,500	*Plus a \$10.00/month allowance for dependent(s).
Alaska	65	65	\$175	\$175	During disability	Life	30,000	No limit	
Arizona	66½	66½	\$153.84*	\$153.84	do	do	No limit	do	
Arkansas	65	65	\$66.50	\$66.50	450 weeks	Life	\$29,000	do	*66½ SAWW. **If committed, \$20,266.75.
California	66½	66½	\$119	\$119	240 weeks	Life	No limit	do	*66½ percent of average industrial wage, plus \$5 per each dependent but not to exceed 60 percent of benefit, nor 75 percent of employees average wages.
Colorado ¹	66½	66½	\$109.20*	\$109.20*	Disability	Disability	do	do	*Effective July 1, 1975—66½ SAWW.
Connecticut ¹	66½	66½	\$168*	\$168*	do	do	do	No limit	*Maximum 175 percent of National average weekly wage. 200 percent effective Oct. 1, 1975.
Delaware	66½	66½	\$75*	\$75*	do	do	do	do	*66½ percent SAWW, adjusted to nearest multiple of \$7. Effective Jan. 1, 1975.
District of Columbia	66½	66½	\$261*	\$261*	do	do	do	do	
Florida ¹	*60	*60	\$80*†	\$80*	350 weeks	do	\$23,000	do	†\$400 maximum/week for 6 months for training in use of artificial members or appliances for specified serious disabilities.
Georgia	66½	66½	\$80	\$80	400 weeks	400 weeks	No limit	No limit	*100 percent SAWW. Plus \$5,000 maximum for rehabilitation.
Hawaii ¹	66½	66½	\$168.75*	\$168.75*	Disability	Disability	No limit	No limit	
Idaho ¹	90	90	\$117	\$117	do	do	do	do	*60 percent plus 7 percent per each child, maximum 90 percent of State average weekly wage.
Illinois	80	80	\$124.30†	\$96.90†	do	do	\$34,485	\$34,485*	*Thereafter pension 15 percent of benefits paid. Based upon number of dependents.
Indiana	66½	66½	\$37*	\$37*	500 weeks	500 weeks	\$45,000	\$45,000	*Additional payments from 2d injury fund.
Iowa ¹	(2)	(2)			No limit	No limit	No limit	No limit	*66½ SAWW. As of July 1, 1975—100 percent of State average weekly wage.
Kansas ¹	66½	66½	\$95.20*	\$95.20*	Disability	Disability	do	do	*66½ SAWW.
Kentucky ¹	62½	62½	\$88	\$88	do	do	do	do	*Includes 2½ percent per each dependent.
Louisiana	65	65	\$65	\$65	300 weeks	500 weeks	\$19,500	\$32,500	60 percent SAWW basis.

Maine 1.....	66%	66% \$131.29*	\$131.29*	No limit.....	No limit.....	*100 percent SAWW. *Added benefits during rehabilitation \$35 weekly.
Maryland 1.....	66%	66% \$102.30	\$102.30	Disability.....	do.....	100 percent of State average weekly wage as of July 1, 1975.
Massachusetts.....	66%	66% \$95	\$95	Disability.....	do.....	
Michigan 1.....	66%	66% \$123*	\$123*	800 weeks†	do.....	*106 plus \$5 for 1st dependent, \$6 for each additional dependent, up to 5, maximum benefits based upon average State wage. †May be extended. For each year after 65th birthday, all payments are reduced by 5 percent of the weekly compensation each year, until benefits equal 50 percent of the level of benefits paid at 65, unless the person is not eligible for social security. *Additional allowance during rehabilitation for 104 weeks. *Whichever one is lesser, plus \$10 weekly, rehabilitation 52 weeks.
Minnesota.....	66%	66% \$100	\$100	350 weeks*	Disability.....	\$35,000
Mississippi.....	66%	66% \$63	\$63	450 weeks*	450 weeks*	\$21,000*
Missouri.....	66%	66% \$95	\$95	400 weeks	Life.....	No limit
Montana 1.....	66%	66% \$136*	\$136*	Disability.....	Disability.....	do.....
Nebraska.....	66%	*66% \$89	\$89	Life.....	Life*	do.....
Nevada 1.....	(?)	(?) \$484.84*	\$484.84*	100 months.....	Disability.....	do.....
New Hampshire.....	66%	66% \$115*	\$115*	Disability.....	do.....	do.....
New Jersey 1.....	66%	66% \$112†	\$112†	300 weeks.....	450 weeks*	do.....
New Mexico.....	66%	66% \$75	\$75	500 weeks.....	500 weeks.....	\$37,500
New York.....	66%	66% \$125	\$35	Disability.....	Life.....	No limit.....
North Carolina.....	66%	66% \$80 (100 percent SAWW, effective Nov. 1, 1975).	\$80 (100 percent SAWW, effective Nov. 1, 1975).	400 weeks (disability, effective July 1, 1975).	400 weeks* (disability, effective July 1, 1975).	\$32,500 (no limit, effective July 1, 1975).
North Dakota 1.....	60#	60# \$94.76 (estimated).*	\$94.76 (estimated).*	Disability.....	Disability.....	No limit.....
Ohio 1.....	(?)	(?) \$112*	\$112*	do.....	Life.....	Disability.....

#60 percent of state average weekly wage plus \$5 each child; maximum not to exceed net wage after taxes.
*Plus \$25 weekly for 72 weeks rehabilitation.
*Plus \$40.25 for 52 weeks of scheduled injury rehabilitation, maximum 66% percent of SAWW.

AMERICAN INSURANCE ASSOCIATION, NEW YORK, N.Y.—Continued
WORKMEN'S COMPENSATION—BENEFITS—TOTAL DISABILITY—Continued

State	Maximum percent		Maximum weekly		Maximum period		Maximum total		Comments*
	Temporary	Permanent	Temporary	Permanent	Temporary	Permanent	Temporary	Permanent	
Oklahoma	66 2/3	66 2/3	\$60	\$50	300 weeks	500 weeks	\$18,000	\$25,000	*Added benefits during rehabilitation.
Oregon 1	66 2/3	66 2/3	\$133.07*	\$110.90*†	Disability	Disability	No limit	No limit	†Based upon 66 2/3 percent SAWW plus \$5 each dependent, 5 maximum.
Pennsylvania 1	66 2/3	66 2/3	\$114*	\$114*	Disability	Disability	No limit	No limit	*% of state average wage.
Puerto Rico	66 2/3	66 2/3	\$45	\$28.85	312 weeks	do	do	do	*Not to exceed 66 2/3 percent of average State wage, plus \$6 for each dependent, not to exceed 80 percent of employee's AWW, 100 percent effective Sept. 1, 1975.
Rhode Island 1	66 2/3	66 2/3	\$97	\$97	Disability	do	\$32,500	\$32,500	*66 2/3 percent of SAWW.
South Carolina 1	66 2/3	66 2/3	\$87.62*	\$87.62*	500 weeks	500 weeks	\$40,000	\$40,000	*66 2/3 percent of SAWW.
South Dakota 1	66 2/3	66 2/3	\$67.24*	\$67.24*	Disability	Life	No limit	No limit	*80 percent SAWW, 66 2/3 SAWW, July 1, 1975.
Tennessee	66 2/3	66 2/3	\$70	\$70	50 weeks*	50 weeks*	\$28,000	\$28,000	*Reduced to \$15 after 400 weeks.
Texas 1	66 2/3	66 2/3	\$70	\$70	401 weeks	401 weeks	No limit	No limit	*Adjusted annually.
Utah 1	66 2/3	66 2/3	\$95*	\$95*	312 weeks	Life	\$29,640	No limit (#)	*66 2/3 percent of employee's AWW, plus \$5 for each dependent child, maximum of 4; not to exceed 66 2/3 SAWW.
Vermont 1	66 2/3	66 2/3	\$86*	\$86*	330 weeks	300 weeks	No limit	No limit	#After 312 weeks, from special fund, plus \$1,000 during rehabilitation.
Virginia	66 2/3	66 2/3	\$91	\$91	500 weeks	Disability	\$45,500	do	*60 percent SAWW, plus \$3 for each dependent child, Rehabilitation expenses for 1 year.
Washington 1	60-75	60-75	\$560 per month	\$560 per month	Disability	do	No limit	do	*Based upon number of dependents. Maximum not to exceed 75 percent of State average monthly wage.
West Virginia 1	66 2/3	66 2/3	\$128.80*	\$128.80*	208 weeks	Life	do	do	*Maximum not to exceed 80 percent of State average weekly wage, plus \$2,000 during rehabilitation.
Wisconsin 1	66 2/3	66 2/3	\$108 #	\$108#	Disability	Disability *	No limit	do	*Plus expenses during 40 weeks rehabilitation # 66 2/3 percent.
Wyoming	66 2/3	66 2/3	\$344 monthly	\$269 monthly	do	do	do	\$17,500*	SAWW, January 1, 1975.
Longshoremen's Act 1	66 2/3	66 2/3	\$261*	\$261*	do	Disability	do	No limit	*Plus \$30 monthly for each child. Maximum \$10,000.
									*Plus expenses during 40 weeks rehabilitation. Maximum 175 percent of National average weekly wage. 200 percent effective October 1, 1975.

1 These 29 jurisdictions will adjust their benefit levels automatically annually based on a percentage of the state average weekly wage.

* 80 percent of spendable weekly wages.

3 Lesser of 66 2/3 percent of State average, or actual monthly wage.

4 66 2/3 percent gross weekly wages.

COMMITTEE STAFF REPORT ON THE DISABILITY INSURANCE PROGRAM

PART I. SUMMARY FINDINGS AND RECOMMENDATIONS

A. Introduction

Chronic actuarial deficiencies have developed in the Disability Insurance system over the last ten years. At present, social security disability awards are substantially greater than estimated and there is some reason to believe that elements in the new Supplemental Security Income (SSI) program may accelerate this trend. The State Agency-Federal disability determination system seems extremely hard-pressed due in large part to the Social Security Administration's added responsibilities under SSI. The Black Lung program has drained key staff away from social security duties, and is now virtually monopolizing the services of the Social Security Administrative Law Judges.

The multileveled appeals procedure is time-consuming and the high reversal rates suggest to applicants whose claims have been denied the wisdom of continued appeal. Recently, the Social Security Administration has cited the reversal rate as one of the probable reasons for the current adverse cost experience. Each level in the appeals process is experiencing a workload crisis or will experience one in the near future. The effort to achieve uniform application of the standards which determine disability is thwarted by a complex arrangement of relatively separate administrative entities. This tendency may be accelerated by recent efforts to "regionalize" administration of the disability program.

The central office of the Social Security Administration has now reduced what used to be a 100-percent check of State Agency decisions to a national 5-percent sample and a 7-percent sample of SSI cases will be reviewed in regional offices after they are effectuated. An independent Administrative Law Judge, upon a request for a hearing, makes the final administrative determination subject to review by an Appeals Council. Reversal of State agency decisions at the hearing level are above 50 percent and studies indicate that the individual reversal rates of Administrative Law Judges vary markedly.

Final administrative denials are reviewed by the Courts under the substantial evidence rule which states that "the findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive * * *." Despite this, the experience under the program is that many courts continue to review the facts *de novo*. Some have argued that the Courts have played a more substantive role in the development of the definition of disability than the Congress or the Social Security Administration. Others have maintained that the definition in the law is so subjective that it invites a variety of administrative interpretations and judicial intervention.

These are a few of the issues dealt with in this volume.

Robert G. Dixon, Jr., summarized his study of the Social Security Disability Insurance program in the following manner:

All studies of the administrative process tend to emphasize trouble spots and thus to give a somewhat distorted impression of the program's efficacy in discharging its frequently confused statutory mission. This study is no exception. At the same time, the data gathered here on the SSA disability standards and procedures does seem to suggest that the government, and the American people have a tiger by the tail and that it is easier to identify difficulties than to prescribe solutions. This should come as no surprise. As one high former HEW official remarked in reference to this study, disability is historically the most difficult kind of welfare or "social insurance"; standards are elusive and individual equity is difficult to accomplish.

The Committee staff's review of the Disability Insurance program also is no exception. It, too, emphasizes trouble spots and thus may tend to give a distorted impression of the program's efficacy. The staff does not conclude, however, that the Disability Insurance program faces imminent catastrophe. The information compiled in this report indicates clearly that a number of serious problems exist in connection with the operation of the program. Some of these problems, it is hoped, are temporary, particularly those resulting from the strains that the Social Security system has undergone in connection with the implementation of the Supplemental Security Income program and the carrying out of the Social Security Administration's responsibilities under

the Black Lung Program. Other problems arise out of the manner in which the program is being administered and out of the law itself. These problems, however, are not beyond the capabilities of the Social Security Administration or the Congress and they can be corrected or at least held within reasonable bounds by assuring that this admittedly complex program is administered efficiently at every level.

7. IMPACT OF BLACK LUNG PROGRAM

The Committee staff believes firmly that the Black Lung program has had a major impact on the Social Security program in diverting essential administrative and program staff from their duties with regard to the Social Security Disability Insurance program and the implementation of the SSI program. This had been particularly true of the policy and review staff of the Bureau of Disability Insurance, who overnight had to develop regulations and operating procedures for a broadly and loosely phrased piece of legislation and to immediately start processing and deciding cases. The agency was faced with an instant caseload when about 100,000 claims were filed within 1 month of enactment.

The Black Lung program came out of 1969 legislation in which neither the House nor Senate versions contained a provision for the Social Security Administration to administer the program. The decision to give the Social Security Administration responsibility for administering the initial phase of the program was made by the conference committee in December 1969. Prelegislation planning for the implementation of Black Lung programs was nonexistent and its impact on the social security disability program was completely unassessed. It is unfortunate that the Committee on Ways and Means was not consulted or even informed at the time action was taken by the conference committee in December 1969.

At the present time, the Black Lung crisis has moved to the hearing stage where Social Security disability cases are being literally shunted aside so that the flood of Black Lung cases can be dealt with. The courts and the Social Security litigation staffs, who are already hard pressed, will soon be similarly adversely affected and their ability to carry out their Social Security disability duties will be further impaired. (Social Security responsibility will continue for Black Lung beneficiaries who applied prior to July 1, 1973, and the Social Security District Offices will continue to take applications for the Labor Department-administered Black Lung program until that program expires in 1981.)

The staff is concerned that any further enlargement of Social Security responsibilities may be "the straw that breaks the camel's back." To avoid repetition of the establishment of programs through other Committee's which drastically affect the operation of the Social Security program, the Department of Health, Education, and Welfare should keep the Committee better informed of such possible developments and alternative courses of action. The staff notes that the House Committee on Education and Labor has recently conducted hearings on legislation for the extension of the Social Security Black Lung program for two additional years.

The staff also notes that the Special Committee on Committees overlooked the black lung legislation in making its recent recommendations for joint referral of legislation to more than one committee.

8. EARNINGS LIMIT FOR DISABILITY BENEFITS

An example of a policy issue that has not been dealt with because of the discretionary effect of the Black Lung program and other workload crises is the amount of earnings an individual can have and still retain disability benefits. Initially, this had been linked to the "retirement test"—the limit on earnings after which social security old-age and survivor's benefits will be reduced. Although Congress in recent years has changed the retirement test exempt amount from \$140 a month to \$166 a month, and, finally, to the current \$200 a month, the earnings limit on disability has remained at the level established in 1968—\$140 a month. (There is also a 9 month trial work period during which all earnings above this figure are disregarded in order to stimulate work effort.) The current figure would appear to constitute a major inhibiting factor to work and rehabilitation. Moreover, this work disincentive feature has been intensi-

fied by the major social security benefit increases in recent years. In 1968 allowable earnings of \$140 a month were not too far out of line with the average benefits of about \$180 a month for a disabled worker with a wife and one child. Today that same family would be receiving benefits of about \$300 a month and the cutting off of those substantial benefits when the \$140 a month earning level is attained can hardly be encouraging to work efforts. Under SSI a similar situation can occur whereby an individual can be getting a substantial income disregard under an approved plan for self-support, but once he goes over the \$140 a month limit his benefits will be totally eliminated. The staff understands that various alternatives have been presented to the Secretary of HEW for raising the \$140 limit, but no final action has been taken to change the regulations concerning this matter.

Mr. DENT. Thank you for your testimony.

I only want to raise one question. I just want to note that when you compare the number of workmen's compensation cases against the number of black lung cases, there seems to be a great difference in the total numbers.

Mr. KALMYKOW. Yes, there is.

Mr. DENT. The black lung program includes miners and dependents who were never compensated for this disease—miners and dependents of very advanced age whose disability was finally recognized in the aggregate when the 1969 Act was implemented. That made a very sizable number of persons affected.

What do you think the number would be if we had not passed any Workmen's Compensation Act before 1972 and then we made all injuries sustained in and out of industry compensable, from 1939 up to 1972? Do you think it would be a large load?

Mr. KALMYKOW. Yes, I think it would be extremely large.

Mr. DENT. That is what we are dealing with here. We are dealing with a disease that is not treatable and was never treated. In one State they were not allowed to recognize black lung as a cause of death, therefore, there had never been any compensation except in the State of Pennsylvania that amounted to anything.

Mr. KALMYKOW. Kentucky has compensated since 1962.

Mr. DENT. It amounted to not less than one-half of 1 percent where compensable cases were ever paid any benefits.

In Pennsylvania the caseload got very heavy. The only reason we are proposing this legislation to establish a fund is because we believe the cost has to be spread over the entire industry. If you don't do that, there is no such thing as charging it to the last responsible employer.

Certainly a lot of the coal miners have been put to work in the last year or 2 years, but most of these miners have worked for three or four or five employers during their lifetimes. This is not an injury that comes upon you all of a sudden. It is a disease that is gradual and takes many years to produce disability. The process of working in and around coals mines creates the disease. Therefore, the cost of compensating the debilitating effects of the disease has to be spread on a proportionate basis to all employers, and there is no person that could ever divide the compensation properly among all the employers in numbers we are talking of here.

There has been no opposition on the part of employers except on the part of the so-called captive mine operators. All recognize sooner or later they will have to pay compensation.

I think your real complaint is it would not be available for the many insurance casualty carriers, carriers of workmen's compensation to get into the act of selling insurance to the companies.

Mr. KALMYKOW. That was not exactly the purpose of my remarks. I expressed some concern about the principle of going back and picking up liabilities. That is the very question you have raised. All of these millions of people—if you apply the principle generally, to go back and apply it to all those cases in one fell swoop, creates tremendous problems. The problem should probably be handled with some Federal responsibility, as you have indicated.

But prospectively there is absolutely no reason—and that is the point I want to make—why industry and insurance should not pay people for suffering work injuries and financing the project from now on. That is the point I am trying to make.

You indicated the responsibility for what occurred in the past is a vast one and one which must be met in one way or another. But it is the prospective application of this bill, which does nothing to relieve the Federal Government of any responsibility which causes us some concern. It is a responsibility which is ours under the present law and not that of the Federal Government.

Mr. DENT. I can't quite follow your logic; however, I will accept it as your opinion.

Mr. KALMYKOW. Mr. Chairman, this bill would say that from now on—

Mr. DENT. I want to read from your statement.

Mr. KALMYKOW. Yes, certainly.

Mr. DENT. "We cannot view with equanimity the fact that this legislation would in effect deprive us from writing insurance under that law."

Mr. KALMYKOW. That is in the future. We are writing it right now.

Mr. DENT. In some states.

Mr. KALMYKOW. In every coal-mining state. It's a quote from the House Ways and Means Committee.

Mr. DENT. They didn't talk to this committee about that.

Mr. KALMYKOW. We are providing insurance right now.

Mr. DENT. We are not taking workmen's compensation from the states, nor are we taking insurance responsibility from you. We are proposing a fund to pay benefits for one disease for which the responsibility can't be put on any one employer.

Mr. KALMYKOW. We are being deprived of it now.

Mr. DENT. How?

Mr. KALMYKOW. By removing it from the responsibility of the employer, the employer won't have any liability to whoever gets the disease.

Mr. DENT. What percentage of employees are being paid by private employers?

Mr. KALMYKOW. There are 53,000 claims, I think, that have been made since July 1, 1973. Most of those claims have not been processed, and I am not sure just who will be held liable. It was expected that roughly about 80 percent initially—but it hasn't worked out

that way—would be paid by a financially responsible operator and his insurance carrier. I think in time we will pay all of them.

Mr. DENT. You said somewhere that you expected about \$900 million backlog would have to be made up.

Mr. KALMYKOW. That applied to social security under the 1972 amendment. That had nothing to do with us, we were out of the act. We were paying under State laws but not the Federal act.

Mr. DENT. The only payments I know that we are making are those under the act that are a Federal responsibility.

Mr. KALMYKOW. Not under the new provision part C of the law.

Mr. DENT. Federal responsibility has not been removed. If we can't find the operator with the responsibility—

Mr. KALMYKOW. This would refer back to the old cases. I heard of one case where a claim was made for a man who died in 1915. Who in the world knows what he died from and who he worked for, and so forth? It would be hard to identify.

Mr. DENT. That is where we have responsibility.

Mr. KALMYKOW. And properly so. But now when you know where you are working, why shouldn't you go to the employer and have him pay?

If you break a leg, you don't go to another agency and wait 6 months before getting paid.

Mr. DENT. If you own a coal mine—I think we have 46 new mines that plan to go into operation in the next year or year and a half in one area alone, and they will go out and get coal miners.

Now, the new miners they get, the younger fellows coming back into the mines because of this act, and many of the older miners will be going back into the mines. If you were opening one of those mines, you would accept full responsibility for pneumoconiosis for every employee?

Mr. KALMYKOW. We do now.

Mr. DENT. That isn't what the operators tell us. They tell us they can't afford to take the responsibility for a disease that takes at least 15 years to progress to the disabling stage, and the miner has only worked for them 2 or 3 years.

Mr. KALMYKOW. It depends on how far you go back. It's a question of price and responsibility as to cost. Somebody has to pay for it if you provide those benefits.

If you are going to pay for conditions which are not related to the employment—I cited some of the incidence of the disease as found by the Public Health Service—if you are going to pay for conditions not due to pneumoconiosis, then your bill will cost you quite a bit of money. It can't be helped if that is the ground rule.

Mr. DENT. If the majority of the coal operators are willing to assume this cost—

Mr. KALMYKOW. Fine.

Mr. DENT [continuing]. Then you would have no objection to the bill passing?

Mr. KALMYKOW. No, of course not.

Mr. DENT. That is what we are working on.

Mr. Erlenborn.

Mr. ERLENBORN. Thank you, Mr. Chairman.

Thank you for your statement. You made some interesting and valuable observations that should be taken into consideration by the committee.

One of the observations you made I would like to call to your attention as being slightly inaccurate. You said it was the intention of the act not to compensate uncomplicated pneumoconiosis. I agree that all the medical evidence would indicate only complicated pneumoconiosis is disabling to any extent. Simple pneumoconiosis is not.

It is also true the House and Senate bills limited compensation to complicated pneumoconiosis. However, in the conference that was removed and pneumoconiosis was made compensable.

Mr. KALMYKOW. The only reason I made that statement was the definition in the law which referred to opacities of one centimeter, and so forth. That is the medical definition of complicated pneumoconiosis.

Mr. ERLENBORN. That raises another interesting point. You are referring to definition based on X-rays. Of course, the first amendment to the act eliminated the X-ray as a means for disallowing claims.

Mr. KALMYKOW. Still that definition is in the statute.

Mr. ERLENBORN. That was the first step toward making this into a retirement fund called black lung compensation by removing the ability to disallow claims that were based on emphysema or other respirator difficulties, would you agree?

Mr. KALMYKOW. Yes, that is right.

Mr. ERLENBORN. As you suggest, the irrebutable presumptions clearly make this a compensation based on years of employment because someone with 35 years of employment in the mines does not even have to have symptoms to recover. He can be perfectly healthy, have no breathing difficulties, have clear X-rays and have a negative lung gas test and still, if this bill were enacted, he would be entitled to compensation, as would his widow, merely because of the length of service in the coal mines.

I think it is a move toward making this coal miners' retirement fund financed by the taxpayers.

Mr. KALMYKOW. That is logical, but recognize it as such.

Mr. ERLENBORN. We should be honest and call it that.

There are many other questions I could ask, but the committee started late, and my colleagues also want to ask questions. I want to thank you for what I know has been a valuable contribution to the subcommittee.

Mr. KALMYKOW. Thank you.

Mr. DENT. Chairman Perkins.

Chairman PERKINS. It has been the practice of the representatives of the American Insurance Association to oppose improvements at the State level in workmen's compensation legislation. Am I correct?

Mr. KALMYKOW. I am afraid you are not.

Chairman PERKINS. You are fearful that you will be adversely affected by the passage of this legislation, I take it from your statement?

Mr. KALMYKOW. No, sir. What I am concerned about, very frankly, is that if you start compensating conditions which are not related to the employment, you will not be able to pay adequate benefits for people who are hurt as a result of their work, and that, frankly, is the reason for my concern.

Chairman PERKINS. You referred to the 1962 act of the Kentucky General Assembly. From 1962 up until the time that we enacted the black lung statute in 1969 and in 1970 when it really went into operation, how many cases were approved in Kentucky of silicosis, or pneumoconiosis as we call it today?

Mr. KALMYKOW. It was payable out of a special workmen's compensation fund, and the benefits paid were about \$2,400 a year. The last figure I have, which was recent, was around \$3,600.

Chairman PERKINS. You are talking about in recent years. They have recognized pneumoconiosis but only since we enacted this statute?

Mr. KALMYKOW. In 1962 in Kentucky.

Chairman PERKINS. From 1962 up until we enacted the Federal statute there were only a handful of cases adjudicated favorably down there annually; am I correct?

Mr. KALMYKOW. There were not as many as later, true.

Chairman PERKINS. You recognize we have a special situation with one time 800,000 people in the coal mines in this country, and you realize no State was going back and pick up under their State workmen's compensation statutes and pay these people who were disabled? You recognize that fact, don't you?

Mr. KALMYKOW. The disease was not recognized until 1961 as being a compensable disease. That is what caused the trouble. The medical profession didn't recognize it.

Chairman PERKINS. Since it has been recognized and since about 80 percent of these people have received just compensation, don't you think we should take steps from the standpoint of equity to make sure that the remaining 20 or 25 percent who are equally disabled from pneumoconiosis should be compensated without fooling around with the States, which will never do this job?

Mr. KALMYKOW. I agree everybody who has pneumoconiosis should be compensated and compensated well.

Chairman PERKINS. The only way to do it is from the Federal level, correct?

Mr. KALMYKOW. That I don't necessarily concede, but it should be compensated whether Federally or not.

Chairman PERKINS. I am just afraid that you cannot see the forest for the trees. Nothing is going to spill over and destroy the workmen's compensation laws, or set a pattern where the liberal provisions in this act will spill over to workmen's compensation laws, but we have a group of people here we must take care of.

Mr. KALMYKOW. That is true.

Chairman PERKINS. The Social Security Administration has treated them mean, they have refused to look into some of the most needy cases in the country. They have treated them just as mean as they could possibly treat them.

Mr. KALMYKOW. The insurance industry would have treated them better.

Chairman PERKINS. I think it's time this country did something about it.

Representing the insurance carriers of the country who are mainly concerned with the workmen's compensation laws in the State and the insurance carriers are paying out money, from my knowledge, when I was practicing law and represented a lot of coal miners' compensation cases, I never saw an insurance carrier, they were the ones that made sure the applicant did not recover.

It wasn't the coal companies; they relied on the insurance carriers, and I can see your point of view. You naturally do not want to hurt your insurance carriers insofar as State workmen's compensation laws are concerned.

We are not proposing to do that in this instance.

Mr. KALMYKOW. This is not my purpose. I would like to see a good system for work injuries. I have given my life to that purpose, to have a good, sound system of compensation for the injured man.

Chairman PERKINS. We don't go far enough to do this job, to take care of these old people injured back in 1915 and 1916. There are ways they should be compensated.

Mr. KALMYKOW. I agree, but that is in the past.

Chairman PERKINS. That is the purpose of this act, to take care of those in the past.

Mr. DENT. Many of us have had fathers that worked in the coal mines and ended up pretty much in the condition we are talking about.

We have to go for a quorum call.

I don't want to leave an impression that this has turned into a retirement benefit program. When the Federal responsibility moved to the Department of Labor, of the first 6,791 claims, 80 percent were rejected. We think this reflects a glaring inequity in the program.

Let me pose a hypothetical situation. Suppose there were 37 applicants all of whom had worked more than 25 years in coal mines. Of those 37, the 22 who are still living are suffering from pneumoconiosis. You would suggest that the miners that died, died from pneumoconiosis, would you not?

Mr. KALMYKOW. Probably.

Mr. DENT. Mr. Ashbrook.

Mr. ASHBROOK. I have two questions.

One, do you know of any other area in your experience as an insurance carrier in the workmen's compensation field where there is an automatic presumption of disability in the field?

Mr. KALMYKOW. I don't recall any. There is sometimes a presumption that an occupational disease was contracted from the employment if there is exposure to the disease in the employment, but not a presumption of disability.

Mr. ASHBROOK. What about foundries? There is a high presumption of lung-connected disease there, isn't there?

Mr. KALMYKOW. There are some operations in foundries where there is sand and so forth.

Mr. ASHBROOK. Your testimony is you know of no area where there is the presumption called for in H.R. 7 and H.R. 8?

Mr. KALMYKOW. Not to the extent provided in the bill, I would be willing to say no State and no other jurisdiction of Federal law has as broad a presumption as that included in this bill.

Mr. DENT. We are concerned with a lung impairment which came originally from employment in the coal mines where an employee may have worked 15 or 16 years and the disease had progressed. Then the employee may have entered other employment where dust of another character was present. And after a few more years of work he is finally incapacitated, but the incapacitation is directly attributable to the black lung disease which has progressed. I know of no other way to compensate these men or their widows than by a presumption. In too many instances postmortem autopsies are not possible. Yet the historical pattern of black lung incidence in that particular work has to be recognized.

For instance, take the case of the Farmington mine. The percentage of living miners who worked in that mine and have black lung is very high. Yet we are not allowed to presume these miners had pneumoconiosis because they were killed in an explosion.

If you were paying the bill, you probably wouldn't want to expand that.

Mr. KALMYKOW. We pay what the law provides.

Mr. DENT. The law doesn't provide for the payment of these persons. We are going to try to see to it, on the basis of the pattern of the operation of the mines and years of employment. You can only do that with presumptions.

Mr. KALMYKOW. It depends on the kind of presumptions. You can go overboard on that, too.

Mr. DENT. I would rather go overboard for the person who could be fatally disabled. I think now the industry has had enough relief from a very burdensome financial obligation paid by the taxpayers of the country. The industry recognizes—at least the responsible leaders—that sooner or later they have to carry the burden.

Mr. KALMYKOW. That is true.

Mr. DENT. In some States where there are no laws, too many of them still come back to the Federal Government.

Mr. KALMYKOW. I think it should be a responsibility of industry.

Mr. DENT. But not the individual?

Mr. KALMYKOW. And the insurance industry to make sure there is money enough to pay for these claims in the future.

Mr. DENT. I am sure no burden we place on this particular industry will be greater than the burdens on other industries carrying workmen's compensation.

Mr. Benitez?

Mr. BENITEZ. No questions.

Mr. DENT. Thank you very much.

We have one further witness. Can you stay while I answer the quorum call, Mr. Benitez?

Mr. BENITEZ. Yes, sir, I will do that.

Mr. DENT. Our next witness is Andre Maisonpierre, vice president, American Mutual Insurance Alliance.

Welcome to the committee.

Mr. BENITEZ [presiding]. You may proceed, Mr. Maisonpierre. You may read your statement, or it will be placed in the record, and you can summarize.

**STATEMENT OF ANDRE MAISONPIERRE, VICE PRESIDENT,
AMERICAN MUTUAL INSURANCE ALLIANCE**

Mr. MAISONPIERRE. With your permission, I will summarize my statement because of the time element.

We testified before this subcommittee on a number of occasions in the past, the last time being April 1974. At that time we had certain recommendations, and some of those deal specifically with two specific sections of H.R. 7 and H.R. 8, and I would like to address myself at this time to these sections.

First, section 9. In our April 1974 testimony we endorsed what is called the Kentucky plan for financing black lung benefits. The Kentucky plan states, briefly, that the Federal Government should assume the full responsibility for compensation of victims of pneumoconiosis and that this compensation cost be fully underwritten by a national severance tax imposed on all coal operators.

However, we went on to say that all coal mine operators should assume and accept responsibility for valid pneumoconiosis claims filed under the law by all miners with employment on or after June 30, 1971.

Section 9 of H.R. 7 and H.R. 8 contemplates the establishment of a Federal Black Lung Insurance Fund supported by a severance tax assessed on coal operators, and we endorse this concept of a fund, but we would suggest that it be limited to providing benefits to miners whose employment predated June 30, 1971.

We suggest benefits to be paid under the act to miners who began employment in coal mines after June 30, 1971, be the individual responsibility of the coal operator. If this program is followed, we believe there would be monetary incentives to maintain a dust level in mines at a safe level, and we believe that the black lung program would be strengthened thereby.

We believe by following this system, all the administrative nightmares we are witnessing today—the problems, et cetera—would be completely eliminated.

The other section we would like to comment on is section 3. Again referring to our testimony of April 1974, we stated that standards involving the medical relationship of a disease to employment should be determined not by laymen or legislative bodies, but by experts from the medical profession. We strongly urge that both the presumptions of the act and the criteria for determining coal miners' pneumoconiosis be removed from the Federal law and be replaced by a requirement that appropriate standards and medical criteria be determined by the Secretary of HEW.

Section 3 of H.R. 7 and H.R. 8 would extend the existing statutory presumptions and would provide—if a miner is employed 25 years or more in one or more coal mines underground—that he be compensated for pneumoconiosis. If a miner is employed 35 years or more

in an underground mine, that an irrebuttable presumption of total disability exists.

Mr. BENITEZ. You are supporting those items?

Mr. MAISONPIERRE. No, we are suggesting these provisions should not be in the law and all of the presumptions and criteria contained in the law should be removed and replaced by a requirement that the Secretary of HEW establish presumptions and criteria along medical bases.

Soon after we testified in April 1974, the Coal Mine Health Research Advisory Council, an advisory council to HEW, made specific recommendations for criteria for pneumoconiosis disabilities, and we have attached a copy of those recommendations to our statement.

We understand you will be receiving testimony from doctors in the course of these hearings, and we urge, sir, that these doctors' testimony be carefully assessed so that an evaluation can be made as to whether the present criteria and present presumptions in the law have not, indeed, gone beyond the point of providing fair and valid recovery to coal miners.

We also suggest that the subcommittee be aware of the potential constitutional problems raised by the establishment of "irrebuttable presumptions."

As you have been made aware, a Federal District Court has held the existing irrebuttable presumptions to be unconstitutional and we urge that they be carefully considered by the subcommittee.

The Federal Government currently is spending about \$1 billion annually on black lung claims. This is a great deal more than anticipated, and the overrun is due in large measure to the unscientific presumptions and criteria established in the original law for the determination of this disability.

No one opposes the payment of benefits to those miners with a legitimate claim. We believe the funding mechanism which we are suggesting and the application of medically sound criteria for the determination of disability will bring the program back into balance, without the loss of benefits to those miners who were meant to be compensated at the time the law was initially enacted, and, at an affordable price to the Government and the coal mining industry.

Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF ANDRE MAISONPIERRE, VICE PRESIDENT,
AMERICAN MUTUAL INSURANCE ALLIANCE

My name is Andre Maisonpierre and I am a vice president of the American Mutual Insurance Alliance. We are the major association of mutual property and casualty insurance companies. Our member companies underwrite about 30% of the workmen's compensation coverages provided by insurance companies in the United States. Our association has a particular interest in the workmen's compensation system, since many of our member companies specialize in this line of insurance and some were, in fact, incorporated originally to provide a market for workmen's compensation insurance when the laws were first enacted.

We appreciate the opportunity to appear before this Subcommittee to present our views on H.R. 8.

On April 10, 1974, we testified before the Subcommittee on proposed amendments to the Federal Coal Mine Health and Safety Act and, at that time, suggested that any remedial action to correct the problems and difficulties

which had arisen in the implementation of the Act had to involve both a workable funding mechanism and statutory changes designed to return the Black Lung program to its stated objective—that of compensating miners who are genuinely disabled from coal workers' pneumoconiosis.

We suggested that as regards a method for funding the liabilities already created by Title IV that the Federal Government assume the full, permanent responsibilities for such liabilities and that its costs for these liabilities be fully underwritten by a national severance tax imposed on all coal mine operations, based on tonnage removed, without regard to the operators' previous history of valid pneumoconiosis claims. However, we urged that individual coal mine operators be required to assume and accept responsibility for valid pneumoconiosis claims filed under the law by all miners whose employment began on or after June 30, 1971.

This recommendation was based on a proposal previously submitted to this Subcommittee by Mr. James R. Yocum, Commissioner of Labor for the State of Kentucky.

Termination of the federal liability to miners whose employment began on or after June 30, 1971, is timed to coincide with the date established in the initial Federal Coal Mine Health and Safety Act requiring coal mine operators to maintain respirable coal dust levels not greater than 2 milligrams per cubic meters of air. Medical experts agree that a respirable coal dust level of 2 milligrams per cubic feet of air would likely result in the elimination of pneumoconiosis. Accordingly, it is submitted that a strong incentive to control dust levels in each coal mine would exist if the liability for providing benefits to disabled miners (whose employment began after June 30, 1971) is placed on the individual mine operator.

As far as the disabled miners are concerned, we believe that the program which we outlined in April 1974 would be a great benefit to them. They would receive the benefits under the Act. In addition, sufficient incentives would be created to bring about the strict enforcement of dust levels. This, in turn, would eventually make coal miners' pneumoconiosis a vanishing disease.

Section 422, 423 and 424 of H.R. 8 contemplate the establishment of a Federal Black Lung insurance fund supported by a severance tax assessed on coal operators. We endorse this concept of a fund but suggest that it be limited to providing benefit to miners whose employment predated June 30, 1971. If this is done, we believe that monetary incentives to maintain the dust levels in mines at a safe level would be established and that the Black Lung benefits program will be strengthened.

Section 3 of H.R. 8 would extend the existing statutory presumptions and provide that if a miner is employed for 25 years or more in one or more underground coal mines, that there be a rebuttable presumption that he is totally disabled due to pneumoconiosis; and further, that if a miner was employed for thirty-five years or more in one or more underground mines, that there be an irrebuttable presumption that he is totally disabled due to pneumoconiosis.

In our April 1974 testimony, we expressed great concern at the existing presumptions as well as with the criteria which had been established in the law for the determination of disability. Soon after we testified, on June 3, 1974, the Coal Mine Health Research Advisory Council, an advisory council to the Department of Health, Education and Welfare recommended that criteria for pneumoconiosis disability be established on a medical basis. We have attached to this statement a copy of the report. Much of the Council's recommendations and observations were reiterated at a Workshop on Coal Workers' Pneumoconiosis sponsored by the Committee on Mineral Resources and the Environment, Commission on Natural Resources of the National Research Council of the National Academy of Sciences. We hope that the Subcommittee has the opportunity to invite members of the medical profession to discuss the type and nature of criteria which should best be applicable to pneumoconiosis.

The Subcommittee should be aware of the potential constitutional problems raised by the establishment of "irrebuttable presumptions." Already, a Federal District Court has held the existing irrebuttable presumption to be unconstitutional. We urge, therefore, that an extension of such a provision be carefully considered by the Subcommittee.

The Federal Government currently expends almost \$1-billion annually on Black Lung claims. This amount is considerably in excess of what the original costs estimates had been. The overrun is due, in large measure, to the

unscientific presumptions and criteria established in the original law for the determination of disability. No one opposes the payment of benefits to those miners who have a valid claim. We believe that the funding mechanism which we are suggesting and the application of medically sound criteria for the determination of disability, will bring the program back into balance, without the loss of benefits to those miners who were meant to be compensated at the time the law was initially enacted, and, at an affordable price to the government and the coal mining industry.

REPORT TO THE COAL MINE HEALTH RESEARCH ADVISORY COUNCIL FOR CRITERIA FOR THE DIAGNOSIS OF DISABILITY AND DEATH FROM COAL WORKERS' PNEUMOCONIOSIS, THE COAL MINE HEALTH RESEARCH ADVISORY COUNCIL, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, PUBLIC HEALTH SERVICE CENTER FOR DISEASE CONTROL OF THE NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

RECOMMENDATIONS

Disability from CWP

1. The committee feels that the *etiologic* basis for loss of capacity to work due to respiratory disease cannot be defined by pulmonary function tests and miners may have more than one etiologic factor producing respiratory impairment. The Committee further believes that when the chest x-ray is negative or shows only simple CWP and when ventilation is normal or near normal, a significant impairment due to pulmonary disease is most unlikely. The Committee therefore recommends that NIOSH consider appropriate administrative changes or statutory changes to deal with these facts.

2. Disability testing should be confined to those with x-ray evidence of CWP (requiring statutory change) and should consist in (1) screening ventilatory tests, (2) a determination of oxygen uptake ability commensurate with the job of coal mining, i.e., 1.75 L O/min., and a careful evaluation for the presence of heart and other lung diseases.

Death from CWP

3. In order to be sure that death can have been caused by CWP, the lung must contain the typical lesions of CWP, there must be premortem evidence of pulmonary hypertension and arterial hypoxemia and/or postmortem evidence of *cor pulmonale* and there must be no evidence of some other obvious and overriding cause of death. Postmortem assessment of right ventricular hypertrophy is reliably done by the method of Bove et al., *Circulation* 33:558, 1966.

Research in CWP

4. Research on the effects of inhalation of coal dust and the diagnosis and treatment of CWP can be carried out most effectively as a coordinated part of a research program on the health effects of all types of occupational exposure to dusts, fumes, and vapors. For this reason, and for economy, it is recommended that research on CWP be merged, within NIOSH with research on all other occupational inhalants.

5. Areas in need of *more research* include:

a. Long term longitudinal studies of the natural history of coal workers versus control populations.

b. The only satisfactory end point for epidemiologic studies is currently death. Another useful end point would be respiratory disability if it could be precisely defined.

c. The total (outside the mine) *environment* in which miners and their families live needs careful delineation.

d. The energy demands (i.e., oxygen costs) of various coal mining tasks.

e. Continuing studies of the oxygen transport assessment of disability.

f. Lungs obtained at postmortems on coal workers should have electronmicroscopic and x-ray diffraction studies designed to determine the *exact location* and nature of any *minerals* present.

g. Correlation of postmortem lung findings with x-ray and physiologic changes during life.

General

6. It should be made possible for any working coal miner to continue his usual work, if he so desires, regardless of the presence or degree of abnormal findings on his chest *x-ray*.

7. In addition to improving the safety of the environment in which coal miners work, other efforts at *prevention* are needed. Recognizing that much of the respiratory impairment and disability in coal miners cannot be attributed to CWP but rather to smoking and respiratory infections, especially smoking, the committee recommends expanded preventive and educational efforts in this direction.

DR. E. CUYLER HAMMOND,

DR. JOHN D. STOECKLE

DR. ROGER S. MITCHELL,

Chairman, Coal Mine Health Research Advisory Council Work Group.

Mr. BENITEZ. I have a couple of questions.

No. 1, then I understand that your position is that you are not opposed to presumptions except possibly irrebuttable or absolute presumptions, but you are opposed to the presumptions being established in the bill, and you want whatever rules and presumptions to be made by the Secretary?

Mr. MAISONPIERRE. We believe that if presumptions have a valid medical basis, they should be established by the Secretary. But we believe in order for presumptions to be established, whether in the law or by the Secretary, they should be supported by medical evidence and, if medical evidence is felt to be sufficient to establish presumption, then they should be established by the Secretary.

We do not believe in the establishment of the presumptions in the present law, we don't believe they have an adequate medical basis to it. We suggest the doctors who will be testifying address those specific questions.

Mr. BENITEZ. Concerning that precise issue, you do not object to the establishment of presumptions in general and in the rules if there were to be medical testimony to the effect that such type of presumptions are legitimate?

Mr. MAISONPIERRE. That is correct, sir. If these presumptions are based on some medical facts, yes, it would make some sense.

Mr. BENITEZ. But the distinction I wish to make and which sometimes your answers don't seem to me to cover, is that the presumption is a general presumption, perhaps, and not one to be developed from the facts of one specific case.

This is, assuming your judgment, if doctors were to agree it was satisfactory, then after 25 years of service in the mines or some other period, 20 or 30 years, an irrebuttable presumption could be stated from the claim that such a person contracted this particular lung disease?

Mr. MAISONPIERRE. I agree if sound medical testimony were to state so—

Mr. BENITEZ. And before this committee?

Mr. MAISONPIERRE. Or before this committee, but I would much prefer seeing the whole area of presumptions and criteria established by HEW. I think there is more flexibility in an agency being able to change presumptions and criteria as the medical science acquires new understanding of the disease. I don't think that it is a function for Congress, for this committee, which has so many other matters to deal with, to continue to review the medical literature to see whether there has been any change in the medical understanding of the disease.

Mr. BENITEZ. My last question is: Is it your position there are no such things in law as nonrebuttable presumptions?

Mr. MAISONPIERRE. I am just remarking that the Federal district court has held that the existing rebuttable presumption of the black lung law is unconstitutional. I am sure this is a matter that is likely to be addressed by the Supreme Court.

My statement is specifically to this particular point.

Mr. BENITEZ. Are you a lawyer?

Mr. MAISONPIERRE. No.

Mr. BENITEZ. The only thing I would like to point out is that in law there are very many nonrebuttable presumptions such as after x period of time property belongs to such and such a person if he has lived there, irrespective, he acquires title, and there are many other forms known in law as irrebuttable presumption.

But this issue is debatable. I just wanted to indicate the law has ample precedents for this type of presumptions in other fields.

Mr. MAISONPIERRE. Yes, sir; I am sure this is the case, but again in this particular instance the district court raised a constitutional question in this area.

Mr. BENITEZ. Mr. Perkins, would you like to Chair?

Chairman PERKINS. No, I don't want to Chair; you continue to Chair. I will just ask a few questions.

Your insurance carrier along with the American Insurance Association of carriers represent most of the corporations that carry insurance before the workmen's compensation boards of the various States, am I correct?

Mr. MAISONPIERRE. That is correct. Our companies write about 30 percent of the workmen's compensation premiums.

Chairman PERKINS. You referred to the *Turner-Elkhorn* case, even though the district court did hold the pneumoconiosis was disabling to the extent the individual miner should be compensated, you are aware that case has been appealed?

Mr. MAISONPIERRE. Yes, sir.

Chairman PERKINS. I personally feel there is basis for that presumption. We have presumptions all through the law, for instance 15 years adverse possession opened a notorious claim in property and occupying. That presumption has been upheld by the courts and by the Supreme Court of the United States.

Numerous other presumptions have been upheld by the Supreme Court of the United States, and I personally believe in the *Turner-Elkhorn* case the lower court was in error and the case will be reversed. But, be that as it may, we have a group of people here that have been ostracized and will never be covered by State statutes, and the only way that they will be compensated is for the Federal Government to take action.

I know it's an extraordinary situation with some hundred thousand people that have been left out in the cold. We have got to take action, and I don't think we go far enough to mandate to the Social Security Administration or the Department of Labor to take care of these elderly people who have given their lives working in coal mines. The country benefitted throughout the years, and no coal tax at the local level or nothing paid into the State to take care of these

people, and it falls upon the Congress as the only way to see that they are justly compensated.

If we do not write more liberal provisions in this bill—and I would like to see more liberal presumptions for 15-year irrebuttable presumptions for people working in the mines, unless it is arbitrary or capriciously written into the law for that purpose, I think the courts would uphold a presumption of that type, the higher courts.

I think the Congress has to move in that direction in view of the way the act has been administered both by HEW, Social Security, and the Department of Labor.

They have acted arbitrarily in thousands of cases, and we have got to do something about it and correct that situation.

I am hopeful that this Congress will not be derelict—and I don't share your fear that we are going to have a spillover and your insurance carrier rates are going to go sky high at the State level and other areas simply because we have a situation that the States will never take care of, never have done anything in the area to amount to anything, and we are trying to remedy this situation.

I can well understand your concern, but I think it is completely unfounded.

Mr. MAISONPIERRE. Mr. Chairman, if I may make a couple of comments. As to the ultimate decision by the Supreme Court, I don't want to presume what they will find. I am convinced the matter will be before the Supreme Court and a decision will be made by the Court.

As far as presumptions, we feel the presumptions have to be based on sound medical understanding of pneumoconiosis. If presumptions are not based on sound medical presumptions, then the law becomes a pension program for miners. Now, if this is what the law should be, it should be called such. But if there are presumptions made for the payment of these benefits, we think these should be based on sound medical knowledge and this is all that we are saying. If there is sound medical appreciation for the payment of benefits, we believe the benefits should be paid to everybody entitled to them. This is our position.

Chairman PERKINS. You are not taking into consideration the dust. Your argument may be sound, after we enacted the last mine safety act in 1969, prior thereto, these men that worked in dust for 15 years, these laymen are entitled to their views as to what constitutes a valid presumption just as well as the medical adviser, because you can't work in dust for 15 or 16 years without it affecting your lungs even though the X-ray doesn't show it.

Mr. BENITEZ. The basic jurisdictional situation is that, if this type of occupation is one which if performed over the years may or has often turned into a black lung disease and its prolongation may tend to increase that, as a likelihood or as a possibility, in this type of situation, the Congress in its wisdom may preclude the further juridical examination of the precise facts of the case and establish a presumption which is not subject to implementation by somebody as it is in so many cases where the number of years create a termination of the possible debate.

Mr. MAISONPIERRE. Yes, but there is considerable medical evidence, competent medical evidence that the length of exposure has little or no relationship with the disease itself.

Mr. BENITEZ. This will be adjudicated by the courts.

We are happy to see you back.

Mr. DENT [presiding]. Thank you for taking on the duties of the chair.

Congressman Cornell?

Mr. CORNELL. I am a bit of a neophyte in this, but I would like to know what you would consider a scientific presumption?

Mr. MAISONPIERRE. Congressman Cornell, a scientific presumption would be a presumption based on medical science, medical knowledge. You will be receiving, as I see from the witness list, considerable testimony from doctors in the days to come.

I am sure there will be some evidence presented that the presumptions as to the length of exposure to the disease have no place in the determination of disability, saying exposure per se does not create pneumoconiosis.

If this is the weight of the competent evidence, then there would be no scientific presumptions that I could see. Whether there would be other testimony presented to the committee on the other side would be something else. It may be for the committee or HEW to determine the so-called scientific presumption was based on medical testimony.

Mr. CORNELL. Do I understand you correctly that there is another bill that has been introduced in the House that would place a period of time of 15 years, and you wouldn't be opposed to that as an irrebuttable presumption if it is based on what you call scientific presumption?

Mr. MAISONPIERRE. There are two things, one is presumption, and the other irrebuttable presumption. I would refer back to the pending Federal case and the latest court decision has been an unconstitutional act of irrebuttable presumption.

As far as rebuttable presumption, again it is my understanding of the disease that 15 years per se, 15 years' exposure per se does not cause pneumoconiosis, and hence I would not feel it would be proper to establish even a rebuttable presumption, but then I am not a doctor.

Mr. CORNELL. One last thing. In your statement I notice you said that the overrun, the Federal Government is spending about \$1 billion annually on black lung claims and that this is considerably in excess of the original program cost estimates and is due largely to the unscientific presumptions and criteria established in the original law for the determination of disability.

Would you care to enlarge upon that, the basis for this statement?

Mr. MAISONPIERRE. Many of the claims that are being paid today are paid on the basis of the criteria and presumptions. All of the claims are paid on the specific criteria and presumptions which are in today's law.

At the time that Congress enacted the law in 1969 and when amended in 1972, there were specific cost projections made as to the expectations of the cost programs and the liabilities that the program would establish. These liabilities were assumed to be based on the studies that had been made in coal mine geographical areas indicating the number of coal miners that had and would be treated for black lung. But many of the benefits being paid today, many of the miners being paid benefits today are being paid benefits for conditions for

which they are really not receiving any treatment and for which the doctors did not look upon this as being black lung or pneumoconiosis.

The law, itself, the presumptions and criteria in the law, made and enlarged upon the medical understanding of pneumoconiosis, had the benefits been paid only to those miners who had what was then considered to be medically pneumoconiosis, we do not believe that there would have been the overrun there is today.

Mr. CORNELL. Thank you.

Thank you, Mr. Chairman.

Mr. DENT. Thank you, Mr. Cornell.
Congressman Simon.

Mr. SIMON. Thank you, Mr. Chairman.

First of all, I like the sound of your name. You ought to be a composer or artist, or something like that.

I agree with some of the things you have to say; I think under the original benefits some people got it who were not eligible. It seems we have gone from one extreme to another. What we have to do is to find a sensible middle ground.

I agree with your objective here on page 2 of your testimony in moving toward reducing coal dust. I doubt that having the burden of paying for pneumoconiosis on the coal mine operator is a sufficiently swift enough penalty to move us toward reducing coal dust. I think there have to be penalties imposed quickly in order to achieve that.

Mr. MAISONPIERRE. Excuse me. If I may say, I agree with you a hundred percent on this; in fact, the law does provide some enforcement so that there would be no more than 2 milligrams per cubic meter exposure, but this would be an additional incentive to the penalties imposed in the law for failure of the operator to obey the dust requirement.

Mr. SIMON. You are correct in saying the law does provide for enforcement, but unfortunately administration doesn't always provide for enforcement. That is one of the problems.

The earlier witness responded he didn't know how many of the 53,000 claims made since 1973 have been turned down. Do you know?

Mr. MAISONPIERRE. I don't but I will attempt to find out.

Mr. SIMON. I would be interested in that. I think you will find it is an overwhelming number. The chairman, I think, referred to 80 percent turndowns in the first 6,700 cases. My impression now is that it is running 90 to 95 percent. It is a rare thing to get a claim that is approved. Have you ever talked to the coal miners?

Mr. MAISONPIERRE. Yes, sir.

Mr. SIMON. Have you talked to those who suffered with this problem?

Mr. MAISONPIERRE. Yes.

Mr. SIMON. I can see from my good friend John Erlenborn—and I don't mean to talk behind his back; I would say it if he were here; I served in the Illinois Assembly with him—it is difficult for people not living in coal mining territories—as Mr. Erlenborn does not—to understand the problems coal miners face.

I think the reality is that, after so many years in a mine—and I think one of the things we have to determine here is how many years

that is—under conditions that have existed in most mines even up to now, you know any miner that has been there 15, 20, 25 years has black lung problems. There is just no question about it.

Right now under the program that your companies are insuring and the previous company representatives were insuring, people come to me that have worked 40 or 45 years in the mines, they are coughing and barely able to walk into my office and hand me the sheet showing they have been turned down. I can't believe it.

I think part of the answer is that, under the present system—I don't mean this disrespectfully to your company—your company makes money turning them down. We have to change that process so the coal miner, the man working in the second most dangerous occupation today who is producing and will be asked to produce more energy for the Nation, gets a little more security than he gets now.

Mr. MAISONPIERRE. I disagree in only one area; we are not turning people down. People are being turned down by Social Security and the Labor Department. The degree of compensability is a Government determination and they are the ones finding whether there is disability.

Now, I have had the opportunity of looking at some of the figures of the length of time it takes for the Labor Department and Social Security to determine the validity of claims; and, on the average, it takes 6 months from the date of filing for a claim to be determined for or against the miner.

Mr. SIMON. That is the initial determination?

Mr. MAISONPIERRE. Yes. Now, I think this is a terrible situation. Our companies insure workmen's compensation claims countrywide. In most jurisdictions, if we fail to make workman's compensation benefit payments within 18 days following date of notice of either the employer or the insurance carrier, we are penalized 18 days.

It takes the Government 6 months to determine whether a claim should be paid or not—the initial determination. There is no reason for it.

We are not the ones turning the claims down; the Government is the one turning the claims down.

Mr. SIMON. You are correct in that, sir, but I don't sense any great pressures on the part of the insurance company to liberalize the provisions of the present administration of the act.

If, for some reason, this bill or a similar bill is turned down, I think it would be wise for those companies, even if it doesn't seem to be immediately in their interest—the danger is that the pendulum can swing from way over here to way over here in the other direction, and I think the insurance companies should seek a moderate course in those benefits.

Mr. MAISONPIERRE. This is why we have suggested these criteria be determined by HEW and continuously be reviewed by HEW so they are up to date. With the determination of the requirements by HEW, we believe there can be a program that will facilitate the benefits.

Mr. SIMON. Thank you.

Mr. DENT. I was very interested in your proposal that we carry Federal responsibility to all claimants prior to 1971 and in 1971 any new intrants into the coal mining industry would be the responsibility of the employers.

Are you talking about a new worker coming into the field for the first time or are you talking about older workers beginning new employment?

Mr. MAISONPIERRE. I am talking about new employment altogether for one reason; Because of the concern we have with the problem you are interested in—that is, the difficulties of a coal miner who has been employed for some time coming back into the employment, the difficulties he would have getting a job.

Mr. DENT. That means there would be no responsibility on the part of the employer at all?

Mr. MAISONPIERRE. For years to come.

Mr. DENT. There wouldn't be any because the program ends in 1981. It is a well-known fact that it requires many years for the disease to progress to the complicated pneumoconiosis stage. Our dust standards began in 1971 to lower the level of respirable dust. Some companies—among the largest probably in the United States—have brought the dust levels in 85 percent of their operations to under 2 milligrams; and all mine dust levels are under 4 milligrams.

It is also a medical observation that we received in England, where they have the greatest history of black lung that is documented, that maintaining dust levels at 4 milligrams or under will prevent contracting pneumoconiosis, if you work 50 years in the coal mines.

So what you are saying to this committee: All the responsibility for almost 100 percent of those who are eligible or who may be eligible is going to be left in the hands of the Federal Government and that the coal industry will be responsible for nothing at all. Because, if we are right at all in what we have done, we have made it practically impossible for a coal miner to get pneumoconiosis. You said the incentive to get under the 2 milligram dust-level would be based on pressure on the coal operators of having to take on the payment of pneumoconiosis benefits.

They know, even if we extend the act beyond 1981 to 1983, there are still thousands of coal miners who have not taken pneumoconiosis benefits who are in second and third stages and who have refused to go to a safe working place in fear of jeopardizing their employment. We have many coal miners who have applied but were told their claims could not be processed unless they quit their jobs. Many couldn't afford to quit their jobs because, with the percentage of benefit rejections increasingly higher every day, they might be rejected and be out of a job altogether and never get their jobs back.

So there are many cases that will have to be paid for by the coal operators that you would put back on the Federal Government. The Federal Government has paid its share. They have a \$800 million responsibility from now through 1981 according to their own figures under part C.

Now, if we fail to put some of the responsibility onto the operators—and, in the main, they understand it is their responsibility—we will be abrogating our responsibility to the taxpayers. The majority of the coal operators accept this responsibility. They don't argue about a man getting killed in a roof fall or an injured back or other visible injuries; they carry that load. In fact, the highest compensation rate in Pennsylvania for too many years was borne by the coal industry

because the Manufacturers Association got together and separated the funds and the common pool funds extended to all organizations in Pennsylvania except coal mining. The coal operators paid as much as 50 cents on the payroll dollar and survived.

Today it is a question of intense competition and we must spread the cost to all operators. There are operators in areas with the greatest number of pneumoconiosis cases and the most expensive operations who are competing with operations where coal just below the surface can be scooped out with a good-sized spoon, so to speak.

We have to keep in mind coal is sold on the basis of btu value and, if we make it impossible for the eastern deep mines to operate in the face of the new western coal operations and even eastern stripping operations, we are going to drive another 110,000, 115,000 men out of employment.

It has to be a common pool. No one complains about the Longshoremen's Act; insurance companies are not complaining about the Longshoremen's Act, are they?

You say you carry 30 percent of the workmen's compensation coverage. How much did you lose during the years and how did it affect your companies' operations during all the years of total Federal obligation to pay these payments?

Mr. MAISONPIERRE. You mean the longshoremen's claims?

Mr. DENT. No; pneumoconiosis claims?

Mr. MAISONPIERRE. I have no idea.

Mr. DENT. You weren't writing any because we were paying all the claims. So if you survived, how, then, can you say this is going to be an injury to you?

Mr. MAISONPIERRE. I think there is a slight misunderstanding. We are supporting—we stated this in our statement that part of section 9 which establishes an insurance fund, supported by a severance tax assessed on coal operators—we are supporting that concept.

Mr. DENT. But you want the individual operator to be responsible or the pool concept?

Mr. MAISONPIERRE. Pool concept.

Mr. DENT. How do you expect that to be administered?

Mr. MAISONPIERRE. Through the Federal Government.

Mr. DENT. I am sorry I missed your testimony. I will read it. I would rather be excused if I asked something that is contrary to what you are saying.

Mr. MAISONPIERRE. We would amend the present section 9 by limiting the obligations of the fund to all of the liabilities that were incurred by all the miners employed prior to June 30, 1971.

Now, you say that there is likely to be very little, if any, black lung claims made by miners whose employment began after June 30, 1971. We agree with you, sir. But we think there may well be some claims and we also suspect the Federal law will be extended as time goes on. We think we should begin to plan now for the proper administration of the claims of miners who have entered into the coal mining employment after June 30, 1971, miners who are protected by the two-milligram dust exposure.

We think there will be some claims made but we think that the Federal Government should get out of the administration of these

few claims. It won't pay the Federal Government to do this. There will be a big administrative agency for a dwindling number of claims and there are other, more effective mechanisms to administer the few claims that will come out with the miners employed after June 30, 1971.

Mr. DENT. Of course, we discussed at length the possibility of making the act create a wholly independent agency or commission. The prevailing side seemed to be that there had to be some Federal responsibility in the matter for fairness and evenhandedness of the administration.

Mr. MAISONPIERRE. We agree.

Mr. DENT. We are trying to make it as little as possible, of course. I will read your testimony thoroughly.

It is now my pleasure to welcome my Colleague, Congressman Joseph V. Vigorito from my home State of Pennsylvania. Like myself, Mr. Vigorito is acutely aware of the frustrations experienced by miners and dependents in attempting to substantiate black lung benefits claims. Joe, please proceed in any manner you wish.

[Prepared statement of Joseph P. Vigorito follows:]

PREPARED STATEMENT OF HON. JOSEPH P. VIGORITO, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman: I would like to express my support today for the proposed Black Lung Benefits Reform Act of 1975. As a Representative from Pennsylvania, a major coal-producing state and one which accounts for approximately one-third of the black lung claims filed to date with the Department of Labor, I am especially interested in this piece of legislation.

Although the Federal Coal Mine Health and Safety Act of 1969 went a long way in extending black lung compensation to coal miners and their dependents, the bill we are considering today builds upon the experience gained since the Federal Government assumed the cost of the Black Lung Benefits Program in January 1970. The main objectives of the Black Lung Benefits Reform Act of 1975 will, in improving the administration of the entire Black Lung Program and in transferring the residual liability for black lung benefits payments from the Federal Government to the coal industry, make the distribution of miners' compensation more systematic and equitable.

As the representative of Pennsylvania's 24th District, my office has worked with many miners in the filing of their black lung claims. Mr. Chairman, I would like to address myself to those portions of the Reform Act which would correct the inequities most frequently cited by claimants under the existing law:

(1) In presuming total disability from Pneumoconiosis for those miners who were employed for 35 years or more in underground coal mines, we are lifting the burden from those persons who most deserve black lung payments and who, paradoxically, have had the most difficult time in proving their eligibility. As you can imagine, it is nearly impossible for a former miner to provide the needed evidence when the employing mine has long been closed, medical records (if ever kept) have been lost or destroyed, and one's co-workers and supervisors are all deceased. The legislation under consideration today will remove that unfair burden from those miners and their families who have given most to our coal industry.

(2) In limiting the attorney's fees in a state workman's compensation black lung claim to the same allowable amount set by the Social Security Act, we are guaranteeing the observance of fair and uniform legal rates in the processing of all black lung claims.

(3) And finally, the major feature of transferring financial responsibility for the payment of black lung benefits from the Federal Government to the coal industry at large, will eliminate the difficult task of assessing individual coal operators, and more importantly, will save the U.S. Treasury an estimated \$280 million.

In view of both the humane and practical strength of this bill, I wish to give my whole-hearted support to the Black Lung Benefits Reform Act of 1975.

Mr. DENT. Thank you very much for your support of our efforts. I look forward to calling upon you when the bill is considered by the House. I have no question. Do any members have any questions? [No response.]

We have another hearing tomorrow, and we will try to expedite the hearings since this is a matter that is almost predetermined in the minds of our witnesses and almost everybody you talk to as to whether it is good or bad. We will try to get this legislation moving so it is in the debating stage on the floor as soon as possible.

Thank you very much.

The committee stands in recess until 10 a.m. tomorrow in this room.

[Whereupon, at 1:10 p.m. the subcommittee recessed, to reconvene at 10 a.m. Wednesday, February 26, 1975.]

1. The first thing I noticed when I stepped out of the boat was the smell of the sea. It was a fresh, salty scent that I had never experienced before. The air was cool and crisp, and the sun was shining brightly on the water. I felt a sense of freedom and adventure as I looked out over the vast expanse of the ocean. The waves were breaking gently against the shore, and the sound of the surf was soothing to my ears. I took a deep breath and felt the salt on my lips. It was a moment of pure bliss, and I knew that this was the start of something special.

2. As I walked along the beach, I noticed a small, white boat pulled up onto the sand. It was a simple, wooden boat with a single mast and a small sail. The boat was empty, and I wondered who it belonged to. I walked closer and noticed a small note pinned to the door. It was a piece of paper with some writing on it, but I couldn't read it. I picked it up and looked at it for a moment. It was a note from someone named John, and it said that the boat was for sale. I was intrigued by the note and decided to take a closer look at the boat. It was a beautiful piece of craftsmanship, and I could see that it had been built with care and attention. I was sure that it would be a great addition to my collection.

3. I walked back to the boat and looked at the note again. It was a note from John, and it said that the boat was for sale. I was intrigued by the note and decided to take a closer look at the boat. It was a beautiful piece of craftsmanship, and I could see that it had been built with care and attention. I was sure that it would be a great addition to my collection.

BLACK LUNG BENEFITS REFORM ACT OF 1975

WEDNESDAY, FEBRUARY 26, 1975

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

The subcommittee met at 10 a.m., pursuant to recess, in room 2257, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Perkins, Dent, Cornell, Simon, Zeferetti, Miller, Hall, Ashbrook, Bell, Erlenborn, Goodling.

Mr. DENT. The committee will come to order.

Good morning, Mr. Chairman and colleagues.

It is a pleasure to welcome our friend, Mr. Arnold Miller, an eminent leader in the coal industry. As you all know, the coal industry is becoming more and more to look like the guardian angel of the energy resources of this Nation of ours.

If there is one thing that has made it possible, in my humble opinion, for the coal operators in this country to recruit the necessary manpower needed in this time of emergency and for the foreseeable future in increasing numbers, it is the fact that the Congress of the United States finally recognized its obligation to many generations of miners who had been ignored, pushed out onto the dump heap because they could no longer perform their duties because of lung incapacitation caused by coal dust inhalation; and the establishment of dust level standards to prevent future incidences of the dread disease, pneumoconiosis.

I think this legislation before us, which is a reenactment, with certain refinements, of the black lung legislation, will do more, I believe, to give confidence to the younger men and women who want to go into the coal industry.

Right at this moment I know of training programs in my own district, in Ohio, and I believe, in West Virginia that have come about because of the work of Mr. Miller in insisting that the Government do something to train many young men out of work in this country for safe mining jobs. I am almost overwhelmed when I go out and take a look at some of the new recruits that have gone into the mines and find that many of them have college degrees.

So we have overcome the barrier that was built up by the history of mining in this country and the neglect of miners almost universally throughout the country. Except for our State of Pennsylvania, I don't believe any other State had a compensation program that was

halfway decent toward these poor individuals, some in our own families.

So I am proud today to have a very forward-looking democratic leader in labor present the views of his people, who are at this moment on the threshold of putting this Nation on an independent status with respect to fuel and energy. Our Nation will no longer, in the not too distant future, be dependent on other nations for the necessary energy we require.

I, therefore, present at this time my good friend and eminent leader of the United Mine Workers of America, Arnold Miller.

STATEMENT OF ARNOLD MILLER, PRESIDENT, UNITED MINE WORKERS OF AMERICA, ACCOMPANIED BY GAIL FALK, STAFF ATTORNEY; AND LORIN E. KERR, M.D., DIRECTOR, DEPARTMENT OF OCCUPATIONAL HEALTH

Mr. MILLER. Thank you, Mr. Chairman and distinguished members of the committee and Congressman Perkins. I want to say, as I have said to this committee before, I am grateful for the Congress recognizing in 1969 there were serious problems in mining and enacting the 1969 act with special provisions to cover a very debilitating lung disease which has been killing thousands of our miners for many years.

I have a statement to submit and will highlight some of the items of the statement and, perhaps, some of the other representatives of the Black Lung Association, who are here today, would like to testify on behalf of this legislation. I was a long-time member of the Black Lung Association before I rose to the present position as president of the United Mine Workers.

I will highlight some of the provisions. I will not be able to stay throughout the entire hearing because I have a serious problem in one of the mines in West Virginia; we have a fire. The men were able to get out before there were any serious injuries to any of the men there. It is a gaseous mine and we are fortunate not to have any ignition.

It has been pointed out many times, coal dust is the cause of the debilitating disease we commonly refer to as black lung; it is referred to by people in the medical profession as pneumoconiosis. It has been my experience in dealing with this problem—since we learned what it was all about in 1968—that as short a period as 5 years can bring on a sufficient amount of damage from coal dust to cause the last stages of this disabling disease to a coal miner.

Because of the way the act has been administered by some of the agencies and the medical criteria set forth, it has been very difficult for some of the miners with a considerable amount of time, up to as much as 45 or 50 years, to process a claim.

It is a painful examination that they have to go through. I have been through the examination myself and suffer from the disease myself so I am not speaking theoretically; I am speaking of the experience of myself.

The 15-year rule that is in this tentative legislation I think is appropriate. I think if a man who works in the mines as much as 10

years, he will suffer from lung disease from coal dust but it may take a while to get him down flat on his back.

We should—and I stressed this all along—we should examine all the miners working today after as much as 5 years, certainly 10 years. We should try to get these miners out of the mines before they realize they are totally disabled.

My experience with this disease has been that when you begin to find you are slipping, it is too late. You then have a 5-year or 10-year period of regression and you become bedfast. My stepfather died from this disease. It took him 5 years to go through the long final throes. For 5 years he couldn't rest in a bed; the rest he got was in a reclining chair.

I was in a mine last week on an inspection tour—I now have unlimited access to get into mines—and the conditions I found there were not sufficient to meet the standards of the safety committee I was traveling with and did not meet the standards the Congress of the United States intended in the 1969 act.

I found dust accumulation along the roadway as high as 2 feet. The company said they would take two men off their face crews because they didn't need them. I think I may move into the area and stay with them until they do a little better.

I said previously when I was here before the committee that the cost of the disease of black lung should be borne by the company. I think it is time now to have a fund established and financed by the coal industry itself to bring this problem under control. Failure to do so will not induce the industry to comply with the law or do anything to bring lung disease under control.

I am also of the opinion now, based on the inspections I have made since I became president of the United Mine Workers, that a permanent national fund is essential. I had hoped the 1969 act would bring this disease under control. I find no evidence to indicate this is a possibility at this time.

I wholly support a fund financed by the operators themselves. It has been my experience that, unless they pay for some of the problems they create, they will never face up to the responsibility.

There is another serious problem with the administration of the act itself insofar as examining those miners today who I know are in the final stages of disability, they are on the verge of expiring, but they are still working. Some are very sick. They are not notified, the way the claims are being processed, of their eligibility unless they quit.

I think this is a gross error in the way the rules and regulations were set up. I believe these miners suffering today to that extent should be notified while they are still working that they are eligible so they can get out of the mines as soon as possible to help them relieve the suffering of the disease they have.

I think the Farmington disaster itself pointed up another serious problem in the way the program is being run and may require some legislation to remedy that situation. A number of the widows in the Farmington disaster have had a lot of difficulty processing claims simply because the agency administering the program said their husbands were working when the disaster occurred and therefore didn't

suffer from the disease. Yet there is evidence they did suffer, some of them.

The ignition in that mine, when that occurred—the problem of pneumoconiosis was not recognized in my home State at that time in the compensation laws.

I am also concerned about the appeals council review. It is difficult for a claimant to process a claim. I have not found anyway to accept why an appeals council will sometimes go back and reverse an appeal.

It is difficult to process a claim. You have to have a quantity of evidence to process a claim; then you have an appeals council that will make a reversal and force the claim to go back through and often deny the benefits. I can't understand why that was allowed in the beginning, and I am hoping this legislation will eliminate the gross inequity of that kind of a process with the burden being placed on the coal miners themselves.

I have with me today, on my right, an attorney that works in the field office, Miss Gail Falk, and on my left, Dr. Kerr, who heads up our health department.

I would ask permission to excuse myself from the committee now and go back to the office to prepare to go to the coalfield to try to prevent—another disaster. I am grateful that for the 2 years and 7 months I have been in office we have not had another disaster and I hope we don't have another as long as I live.

I want to again thank the chairman and the committee for the privilege of coming before the committee and allowing me to express my views. Without the help of some of the people here in the black lung organization, the organization which we and the miners put together and which I once headed, we wouldn't be here today.

Mr. DENT. Thank you for your views, and before you leave I would like to call on the chairman of the full committee, Mr. Perkins.

Chairman PERKINS. Thank you, Mr. Chairman. I want to compliment you, Mr. Miller. Undoubtedly it is the welfare of not only the mining industry and coal miners, but the country that you seek to promote. But I think you will agree with me we have our work cut out for us if we are going to see that perhaps 50,000 to 100,000 coal miners who have been unjustly denied black lung benefits are served.

We will be calling upon you and your assistants because this is a tremendously important piece of legislation. I do not think we have more important legislation involving justice to people who gave their health and their lives and have been denied benefits.

We will all work together to see if we cannot accomplish this at the earliest possible date and I believe, with the determination of the subcommittee chairman, Mr. Dent, that we can move this legislation at a rapid pace. I thank you very much.

Mr. DENT. Thank you, Mr. Perkins.

Mr. Miller, if you are not in too big a hurry, I would like to have these gentlemen here have an opportunity, if they have one or two questions—if you could stay another 8 or 10 minutes.

Mr. MILLER. Yes, sir, I can.

Mr. DENT. Mr. Simon.

Mr. SIMON. I won't impose on you with any questions other than to say I hope you and your staff take a hard look at what we are doing

and make sure the end product is a good, solid one. And I add one other word of commendation to your leadership. I think the United Mine Workers is fortunate to have your leadership and I hope it is appreciated. I hope your next election will show that appreciation is there.

Mr. DENT. Mr. Goodling.

Mr. GOODLING. Just one question. You recently completed your negotiations and I wondered whether you secured any concessions from management for early retirement for those people affected by this disease.

Mr. MILLER. We did as much as we could in the negotiations to provide some relief. Prior to the current agreements, if one of our members suffered from lung disease and had to leave mining before he was eligible for retirement, he would lose his hospitalization, and it was difficult to take a man out of the mines with no hospitalization when he was a very sick man.

We also provided some relief to those working on the face conditions and gave them authority to bid away from the face and get out of their dust and change their employment.

As recently as Sunday night in one of the mines I formerly worked in, I found that the company there had already done—with the help of the membership there, that local—something that we dealt with in the bargaining. They were providing alternative employment in areas that were not dusty.

I hope this continues to progress in the industry, that they recognize this problem and do not turn these people out. I wish I could say here today with all honesty that all industry is doing it but they are not. But I think, with the help and the awareness we created from '69 on, some are showing concern now.

I said to the president of the local union: "I am ready to change jobs with you." He said: "No; I don't want your headaches." But it was gratifying to see there are changes. We made progressive changes in the current agreements to establish a dialog for solving the problems we have, which is also essential in other areas of mining itself, and we have stronger regulations in the contract to provide safety.

I hope to spend the greater part of the next 3 years down in the mines and, wherever I can get any cooperation, we will be working on this problem. I will work with anyone that wants to help solve this problem.

Mr. DENT. Mr. Zeferetti.

Mr. ZEFERETTI. I would like to extend my apologies for not being able to hear your testimony. But I will study your testimony and perhaps submit some questions to you in writing.

Mr. MILLER. I understand your scheduling problems; I have a lot of those myself.

Mr. DENT. Mr. Bell.

Mr. BELL. I want to also add my words. I am sorry I was not here to hear your testimony but will read it with great interest and perhaps later on have some questions.

Mr. DENT. I want to again thank you. I want you to leave with this thought because, throughout the hearings and markups, we will

be discussing the cost of this legislation. This committee has warned the coal industry that the Federal Government was taxing every citizen in the United States to pay this enormous bill and that there had to be a cutoff day, that when we got to go where we could measure pretty well the responsibility, it would be put back where it belongs now—in the laps of the coal operators.

I want to say that the responsible coal operators that have come in to see us and talked to my staff and myself are ready and will take their share of the burden and are willing to support the legislation so long as we can get together with you on the needs of the miners and the requirements necessary on the part of the industry to fund this legislation. And with that kind of cooperation, I am very hopeful that this committee can come forward with some legislation in the very near future.

I want you to go forward knowing that is the attitude right now of those who are going to have to pay the bill.

Mr. MILLER. I have been rather blunt in informing the industry people that if they didn't have a program, they wouldn't have any cost at all.

Mr. DENT. That will happen in time.

Is it a serious fire?

Mr. MILLER. It is a fire that may result in ignition. I don't think any men will be lost but it is a serious fire. I don't think they will be able to put the fire out. It is a mine in southern West Virginia. It was an old operation that had been somewhat mismanaged. We are fortunate indeed no one was in there after the fire really got going. I am hoping they can get it under control.

Mr. DENT. I hope so, too, sir.

Mr. MILLER. Thank you.

Mr. DENT. We will continue with the witnesses here. First I would like to present a man who I think is one of the most knowledgeable in the country about coal workers' pulmonary and respiratory problems, so it is with pleasure I introduce Dr. Kerr.

Dr. KERR. It is always a pleasure for me to be here to testify before this committee because I remember the magnificent role you played in the passage of the Federal Coal Mine Health and Safety Act of 1969. I have long contended that in the health field this is probably one of the most important documents that has been passed by Congress at any time.

It is the first time, as you know, the Congress reached into a major industry in the country and said that the disease that is characteristic of that industry must be stopped and that you set up the standards that were to apply in efforts to eradicate this disease. Unfortunately we find that some of those standards are not being met as well as we would like.

Also it was the first time you provided funds for partial reimbursement for the victims of this particular disease. It is with that that we are particularly concerned this morning, and we are asking for further amendments in addition to those passed in 1972.

Other than questions that you might care to ask later on, I would like to now ask Miss Falk to read a prepared statement that she has in the name of the union.

Mr. DENT. That will be fine, but before you do I would like to ask one or two questions on what is apparently a very serious situation in some areas, and that is: What, in your opinion, is the percentage of noncompliance with our dust standards at this point?

Dr. KERR. I wish I could give you an honest answer to that. We are being told by MESA that 92 or 93 percent of the sections are down to 2 milligrams or less. When you go out and talk to the men, you get the same reaction regardless of the portion of the country you are meeting in; all of the men stoutly maintain that the mines are not at that level.

This was the basis in fact, as you know, of the union's asking Senator Williams last spring to initiate a GAO investigation. It is my understanding that GAO report is about ready to be released. I don't know what the contents of it are but I would seriously question that it would go much above 70 percent of the mines, 70 to 75 percent of the operating sections, that would be at 2 milligrams.

Mr. DENT. Of course, when this legislation—I say “when” very hopefully that it won't be too long—becomes law and we have a sort of semipublic agency doling out the compensation checks, you are going to find that they will be able, under their charter, to set in motion certain types of penalties which would obtain in those areas where there isn't what they can determine to be an honest effort to reach the 2-milligram level.

Dr. KERR. I think another point to be kept in mind is, as you remember, the 1969 legislation said the 2-milligram level would prevail until 1975. The clear inference, particularly when you go back and read the legislative history, is that if at that time it seemed as though it might be a good idea to reduce the level to 1 milligram, due consideration might be given to that.

Frankly, I am afraid of all dust, and what we are seeing coming out of those men exposed to asbestos with the development of asbestosis as well as the development of cancer among them and the many, many other exposures coming to light, it leads me to think, technically and professionally, I would feel more comfortable if we could get those levels down to 1 milligram. I think due consideration will have to be given to that in the very near future.

Mr. DENT. We will have conferences on that within a short period of time.

Is it true that in many instances where there has been a claim rejection, it was on the basis that, while there were complications, it was not due to the coal dust formations in the lungs? But is it not true that we still do a great deal of stone dusting?

Dr. KERR. Yes; there is a lot of limestone dusting that is required by law. However, there is nothing in the literature, Mr. Chairman, to indicate any danger, as far as the lungs are concerned, with this limestone dusting. I have seen nothing to indicate that there was any question about that. It is the coal mine dust that is the causative factor here that we are concerned with.

Mr. DENT. Thank you. Does anyone have any questions of the Doctor in this matter, any questions on the part of any members?

Mr. ZEFERETTI. Just one.

Mr. DENT. Yes, Mr. Zeferetti.

Mr. ZEFERETTI. Are all the operators of the mines equipped, if this legislation is passed, to properly police or meet the standards below the 2-milligram level? If the legislation is passed, are they prepared to go ahead and meet that criteria that is called for?

Dr. KERR. The amendments, as I understand them, don't touch on this question of reducing to the 1-milligram level. However, I think the earlier statute, the 1969 act, as well as the regulations that were written for the implementation thereof, certainly are adequate to take care of bringing it down to the 1-milligram level.

Mr. ZEFERETTI. Thank you.

Mr. DENT. Mr. Ashbrook.

Mr. ASHBROOK. Yes, Doctor, I am somewhat concerned about the 35- and 25-year presumptions. Are you aware of their inclusions in the proposed H.R. 7 and H.R. 8?

Dr. KERR. Yes, we are, and Miss Falk is addressing herself to that in the testimony she is presenting for the union.

Mr. ASHBROOK. I understand the presumption is valid unless negated by a blood-gas test on the 25-year presumption. Are these tests necessary for all persons in your experience?

Dr. KERR. I will have to plead off a little on that, Congressman Ashbrook, because of the fact I am not a clinician. My capabilities for the last 35-some-odd years have been in the field of administration; however, I understand medically there is some question. I have heard my practicing colleagues voice some concern about the advisability of this, and I think you will find this question will be discussed tomorrow by the physicians who will be here.

Mr. ASHBROOK. From an administrative aspect, if a blood-gas exercise test proves negative, what is the result from an administrative standpoint?

Dr. KERR. I will pass on that and let you address the doctors here tomorrow on that point.

Mr. DENT. I have a complete list of the panel we are having here tomorrow and they are all physicians specializing in internal medicine with emphasis on the treatment of lung disorders.

Mr. ASHBROOK. I will withhold my questions until then.

Mr. DENT. Mr. Bell.

Mr. BELL. I want to ask a couple of questions. This may be out of your area, too. There have been some criticisms of the 15-year rule, as you know, and I would like to know if this would be over-inclusive? Does it create discrimination against the older miners?

Dr. KERR. I don't think I quite follow you, Congressman Bell.

Mr. BELL. You are familiar with the 15-year rule?

Dr. KERR. Yes.

Mr. BELL. Would that create discrimination against, for example, older miners that have this disease?

Dr. KERR. I would refer that question to Miss Falk.

Miss FALK. The testimony I am going to give addresses that question; but on that specific question of discrimination against the older miners, we believe that is one of the major reasons for the funds proposed in H.R. 7 and 8. Of course, if there is a fund where the risks of development of the disease are shared by the entire industry, the individual coal operator is not going to be asking "Am I liable for payments for this miner who has 14 or 14½ years?"

We think the 15-year rule must be paired with a fund or some other procedure for spreading the risk over the industry.

Mr. BELL. Do you think it would remove the incentive to reduce dust levels?

Miss FALK. Sir, what—

Mr. BELL. Do you think this 15-year rule and all its features would remove the incentive to reduce dust levels?

Dr. KERR. I think that is one of the virtues of the Federal Coal Mine Health and Safety Act—that is, the fact that the act itself in title II specifies the dust levels and there is virtually no correlation between the determination of those levels and the achievement of them and the provisions of the compensation aspects under title IV.

You see, the law specifies that these dust levels must be achieved and, because of the fact this is entirely separate and apart from the disability benefits part, I see no correlation at all.

Mr. BELL. Except the incentive aspect of it?

Dr. KERR. Well, the incentive: If he doesn't do it, he will get fined. And the fines have no relationship at all to black lung benefits claims. If he doesn't do it, in the future he will have more claims.

Mr. BELL. Are there any present inequities in the program so far as you can see?

Dr. KERR. I think Miss Falk will show you there are a lot of them.

Mr. BELL. Thank you, Mr. Chairman. I will let her go ahead and read her testimony.

Mr. DENT. Thank you, Doctor, for your testimony.

At this time I would like to present Miss Gail Falk.

Miss FALK. I am a staff attorney with the United Mine Workers, working in the Charleston field office, which is an office that works entirely with the problems of disabled and retired miners. The office was set up just about 2 years ago by President Miller, who realized the disabled miners and retired miners were in the coalfields and there had to be a coalfield office to be an on-the-line kind of office to talk to coal miners about black lung disease.

It is from the perspective of talking to miners and miners' widows on a daily basis who are up against the black lung program that I speak.

When it was enacted in 1969, the black lung benefits program was a major step forward in terms of this Nation's recognition and response to the victims of a devastating occupationally caused disease. As you know, the Federal Coal Mine Health and Safety Act became the model as well as the inspiration for both Federal and State legislation to protect workers in other industries. At the same time, we began to be aware and you began to be aware of serious problems in the administration of the black lung program.

You initially took action to correct some of the problems in the program by passing the Black Lung Benefits Act of 1972. This legislation contained needed improvements which permitted thousands of additional deserving miners and widows to qualify for benefits.

But those amendments were never implemented in the spirit and concern for the coal miner with which you enacted them. In its administration of the program, social security has abused the discretion which the legislation now gives them and has ignored the intent of Congress in creating this program. Particularly in the way it has

treated the applications of mine disaster widows and miners who are sick but still working, social security has turned its back on the very people this legislation was intended to help.

Many if not most of the existing problems with the black lung program could have been prevented by an equitable administration. Lacking that, however, the responsibility falls back to you to put the program back on the right track. There are many indications of the need for these changes:

THE APPEALS

More than 40,000 black lung appeals are still pending within social security—more than a year and a half after most of social security's responsibility for deciding claims ended.

The floods of letters and cards and visits you get and we get from miners and widows who feel they have been denied benefits unjustly. We still get about 1,000 black lung letters a month at the International, and our districts handle an additional 2,000 appeals and complaints per month. A program that is operating as it should simply does not generate this kind of massive and continuing expression of grievances.

I might also mention there was a petition that was sent out asking people if they supported the black lung law. We have stacks of those petitions; we have card boxes full of petitions that represent approximately 50,000 signatures to support the present efforts to amend the black law.

Now I turn to statistics. Undoubtedly every person in this room has received complaints about someone receiving black lung benefits who "never worked a day in the mines." Yet, on the other end of the scale, social security's own figures show that nearly 5,000 claims of miners or widows of miners who worked more than 35 years in the mines have been denied.

I turn now to the specifics of the legislation that is before you. Three major packages of black lung amendments have been introduced in this session of Congress:

1. H.R. 7 and 8, identical bills, introduced by Congressmen Dent and Perkins;

2. H.R. 1340, introduced by Congressman Murtha; and

3. H.R. 3333, recently introduced by Congressman Perkins.

H.R. 3333 contains all the amendments included in H.R. 1340 and contains additional changes which the UMWA, after a series of meetings during the last 3 months in different sections of the coal-fields with our members and with the Black Lung Associations, believes are necessary and appropriate changes for Congress to enact.

H.R. 3333 reflects the UMWA's position as to the priority areas for congressional action at this time. Some of the provisions of H.R. 3333 are identical to provisions of H.R. 7 and 8, and naturally we support these parts of H.R. 7 and 8.

On the other hand, there are certain provisions in H.R. 7 and 8 to which we strongly object as well as gaps which we feel would serve to undercut the beneficial changes which these bills propose. For this reason our remarks are addressed necessarily both to H.R. 7 and 8 and to H.R. 3333.

First of all the National Black Lung Fund which we have been talking about:

The primary feature which H.R. 7 and 8 and H.R. 3333 have in common is the proposal for a national black lung fund supported by a tax on every ton of coal mined. We are 100 percent behind this proposal. We recognize, as do you, that it is not fair for the U.S. taxpayer to continue to bear the costs of the black lung program by payments out of general treasury monies.

On the other hand, the adversary procedure created by the present part C Labor Department program is simply not a viable mechanism for delivering a just compensation program to the victims of black lung disease. Of awards made so far by the Department of Labor, the Government has been able to locate a responsible operator in only about 50 percent of claims. I am not sure our figure of 50 percent is precise. You can get that from the Labor Department. Of these, coal operators have contested an astonishing 97 percent.

Another way of saying this is that the coal operators are willingly paying only 3 percent of the claims for which the Department of Labor, with its very strict standards and procedures, has found a coal operator responsible. In this response alone, the coal operators have demonstrated their determination to protest even the most obviously worthy claims when they are found individually responsible for payments.

A battle against the coal operator, represented by highly paid legal counsel, is simply not one that the individual disabled miner or widow is prepared to undertake. The proposed black lung fund puts the financial burden where it belongs—on the coal industry. At the same time, by eliminating individual operator responsibility, it eliminates the need for the present cutthroat adversary system.

Mr. DENT. At that point may I interrupt a minute for a very specific observation. These figures on the percent of claims being contested are very significant. The present legislation was designed to facilitate the follow-through on the programs, after the Federal Government was relieved of its responsibility, to the States, and the operators. When the Department of Labor says that they can locate only about 50 percent of the responsible operators, and the coal operators at the moment are paying about 3 percent of the cost of part C claims, that increases the program cost to the Federal Government in part C alone to about \$800 million through 1981.

That cost absolutely must not be put on the taxpayers of the country. This shows how important it is to get some kind of common pool legislation. The States can't afford it and, if they can't find more than 50 percent with the social security files, then I think the common pool proposal should receive serious consideration.

Miss FALK. Yes, sir, and, as I say, we have been astonished and very much concerned by the coal operator protest rate, which, to us, simply belies any claim they are making that they intend to see deserving or worthy claims paid.

House bills 7 and 8 and 3333 propose a uniform tax on every ton of coal mined. We have heard suggestions that the royalty should vary according to the rank of the coal and the method of mining.

We favor a uniform tax because of its simplicity and administrability. We would not necessarily oppose a rating system based on a recognition that certain grades of coal are more likely to produce lung disease than other grades. On the other hand, we would oppose

any rate differential that would unfairly penalize one sector of the industry as opposed to another.

Mr. DENT. Have you given any consideration to some type of graduated charges under the so-called merit rating system, basing the compensation cost to the operator on how much he has done or is doing in the area of reducing the dust levels in the mine?

Miss FALK. Yes, sir; that is in the next paragraph.

Mr. DENT. I am sorry; go ahead.

Miss FALK. Let me read the remarks rather than responding directly to you because I think it is a thought-out answer.

We have heard it said that the fund will discourage coal companies from precautions to control the dust and prevent the disease. We speak from the grim knowledge that no compensation system has yet been devised in this country which will make the mines safe. Despite workmen's compensation programs, coal mining continues to be this country's most hazardous industry.

It has turned out to be a bitter fact of coal company economics that it is cheaper for a coal company to hire lawyers and doctors to fight the injured and deceased miners who seek compensation and to pay those claims that they can't win than to prevent the injury or disease in the first place.

The answer to dust control is a firmly enforced union-administered program of dust prevention. A just black lung benefits program must be molded to the needs of the miners who have already become disabled.

Mr. ASHBROOK. At that point are you suggesting that the unions manage the mines?

Miss FALK. No, sir; I am speaking again——

Mr. ASHBROOK. It sounded like it.

Miss FALK. I am not someone who works under the ground, but in the process of preparing our position on legislation we had a series of meetings throughout the coalfields with rank and file miners and the main thing I learned from that is that at meeting after meeting in West Virginia, Pennsylvania, everywhere, it was an almost uniform feeling among the coal miners that the dust control program was not being operated properly, that they feel their mines are dusty. Unfortunately, the present program is entirely in the hands of the company and then some government office in some far-off city, and we do feel that if the dust is actually being controlled, in order for our miners to believe it they will have to have some access into the program.

Mr. ASHBROOK. You said the answer to dust control is a firmly enforced union-administered program. That is rather clear in the English language.

Miss FALK. We feel the miners and miners' representatives have to be more involved in the administration of this program.

Mr. ASHBROOK. You are advocating "totally involved," not just "more involved."

Mr. ERLBORN. Would the gentleman yield? Let me ask: Since the unions generally and, I am sure, the United Mine Workers share the feeling, that collective bargaining is an important tool of the

unions—I firmly believe this and have been told this—have you engaged in collective bargaining on this topic?

Dr. KERR. I think probably what is more properly understood and is the underlying motive of that particular statement is an untested feeling, I am sure even on your part, that the men themselves, the men who are on the job, must play an active role in the dust suppression campaign that is required by the law and is required by the law of the management or the coal operators, that when the men understand what is required, when the men understand all about dust sampling, when they understand the ventilation and how it must be done with the brattices at the proper position and the amount of water that is used, then they are in the position not to enforce but to monitor, to act as a continental day-to-day group of people concerned with the surveillance of what is being done to bring down the dust counts and keep them down, not just have them down when an inspector is there but keep them down on a day-to-day basis.

Mr. ERLNBORN. Then you are talking about a program to be adopted by the United Mine Workers themselves to educate your membership to something different. That is different from what the words here seem to indicate.

Dr. KERR. This was the intent, I am sure, of these words.

Mr. ERLNBORN. That is rather encouraging. I hope you would carry it further. When we were considering the Coal Mine Safety and Health Act, some of us thought there ought to be an evenhanded approach saying the man who violated safety regulations, the individual man, ought to be subject to some fine as well as the management of the company be subject to fine for his actions because the man who jeopardizes the lives and safety of his coworkers should be brought to task.

The United Mine Workers disagreed wholly with that thought. It seemed as though large and often applied fines on the management was the only way to achieve safety. Now I am glad to see there is some recognition now that the individual worker has an obligation to see that there be dust control and the application of the regulations of safety, and I think this is encouraging if you really mean it.

Dr. KERR. Not an obligation; he has a responsibility to himself and his coworkers but not for enforcement, Congressman Erlenborn. That is the responsibility of the Federal Government and it is also stipulated in the law a responsibility of management, and I don't think it would be wise at any time for that responsibility to be shifted onto the shoulders of the workers.

Mr. DENT. I am at a loss. Why is there any restriction? The United Mine Workers through their safety committees presently monitor the dust levels and the safety measures in the mines.

Dr. KERR. This is part of the ongoing program that is being worked out with the health and safety committees all over the coal workers.

Mr. DENT. You will tie that in and they will have that responsibility?

Dr. KERR. Yes; this was part of the meeting held at the University of Louisville yesterday.

Mr. DENT. The committee has not gotten to one of the serious parts of this question. That is, where we will finally reside the administration of this act. We think the Labor Department is better equipped to enforce safety and health standards than is the Department of Interior.

I am encouraged that we are getting a good response from the people in Labor. I think before it is over it will be the key that unlocks a lot of problems we seem to have because of the way the law had been administered up to this point. We don't know but will have to pursue that, and I want you to know we are going to do it.

You may proceed.

Miss FALK. The next paragraph is getting to the question you asked me, Congressman Dent.

Some people have suggested that the tax should be adjusted to give credits or bonuses to the operators of mines where miners do not develop pneumoconiosis. We do not see any way to do this without plunging the black lung program back into the adversary system, and, for that reason alone, we oppose the concept of an experience-based adjustment of rates. If the incentives were linked solely to proof of dust control, rather than to the number of miners awarded compensation, a carefully designed credit or rebate program might provide an effective deterrent to high dust levels.

The rest of that page remarks on the permanent program and the dust problem we have been dealing with, so I will skip to the following page, which is the issue of program administration.

The present situation of a split Federal administration of the black lung program—between Social Security and the Department of Labor—is the worst of all possible worlds. The dual system promotes confusion, overlap, inconsistency, and buckpassing. We have a situation now, for example, where the Department of Labor is administering eligibility standards for which they claim no responsibility. The two agencies have different rules and very different operating procedures—leaving miners in an ongoing state of confusion.

We urge that any changes which this committee recommends contain provisions for a unified administration of the Federal black lung program. The UMWA favors either creation of an independent agency to administer the black lung benefits program or unification of the program under the supervision of the Labor Department's Division of Coal Mine Worker's Compensation. We support the idea of unification of the program in the Labor Department because of the historic relationship between the Labor Department and the American labor movement.

We appreciate the flexibility and willingness to discuss the program which has been exhibited by the present administration of the Labor Department's Division of Coal Mine Worker's Compensation, and we are encouraged by the fact that the department has exhibited a willingness to shoulder the major administration burdens involved in continued administration of the program.

In supporting the Labor Department for this role, however, we wish to express to you our very serious reservations about the present Labor Department program. The Labor Department has the potential to run a good black lung program for coal miners, but this can happen only if certain changes are made.

First of all, the staffing of the department must be increased substantially.

Those of you on this committee are probably aware that the backlog in the Labor Department black lung program has reached staggering proportions. Routine letters are not answered for months. I speak as a claimants' attorney on that. Claimants typically wait a year—and often longer—for any word on their case. As far as we can tell, this backlog is not the result of inefficiency on the part of the administration of the Division of Coal Mine Worker's Compensation. Rather, it is the result of severe understaffing resulting from arbitrary budget restrictions.

Two: There must be local contact points with the agency.

At the present time a miner or widow can communicate with the Labor Department black lung program only by mail or by long distance phone call to Washington, D.C. There are dozens of reasons why miners need to be able to make personal contact with a representative of the black lung program—for information, to change or arrange medical appointments, to understand the reason for a denial, for assistance in obtaining additional evidence. The extreme invisibility and inaccessibility of the Labor Department black lung program has contributed substantially to the distrust of the program that now prevails in the coalfields. Furthermore, an agency so geographically isolated and insulated from the people it is supposed to serve cannot possibly have the adaptability and responsiveness to the needs and feelings of people that are essential for a successful program.

If the Labor Department is to administer the program, it must be authorized to establish local contact points throughout the coalfields and throughout the country. Where they would be, we are not prepared to answer, whether in Wage and Hour offices, Veterans Administration offices, State government offices, or independent offices. These local contact offices must be able to provide more than empty gestures—a smile, a pamphlet, and a putoff. They must be able to provide and to receive meaningful information about the status of an individual's claim.

Three: The Labor Department must be given authority to write regulations about eligibility and must be given clear instructions about such regulations.

At present, Social Security has full authority to write the regulations describing the medical standards of eligibility for benefits for the Labor Department black lung program. The Labor Department has repeatedly said that it is aware of the inadequacies of the present standards, which, in most respects, go back to the 1970 regulations—the regulations which were expressly rejected by the Black Lung Benefits Act of 1972. But it is powerless to change the regulations.

In giving authority to the Labor Department to issue regulations, however, you must not forget the lesson taught by the past years of administration of this program. Administrative discretion in the black lung program has been abused time and again. Whatever authority you give to the Labor Department must be accompanied by clear instructions about the kinds of eligibility standards you intend.

Now let me turn to the matter of eligibility rules.

A substantial portion of our testimony during last summer's hearing was devoted to our support for the 15-year rule—a rule which would make a miner eligible for black lung benefits if he had worked 15 years in or around the mines. H.R. 7 and 8 contain a similar provision, but it is a 35-year rule.

Our reasons for advocating this position are the same now as they were then: The 15-year rule would be simple to administer. It could not be twisted by a hostile administration. It would not waste scarce coalfield medical resources. It would cut down tremendously on the legal administrative, and adjudicatory costs. It would be easily understood by miners trying to decide whether or not to leave the mines would know where he stood. It would be perceived as fair because it would treat people the same with regard to an objective standard. It would encourage the goal of prevention by encouraging miners to leave the mines before their lung condition reaches devastating proportions. It would be extremely beneficial to the medical care of coal miners and to the future of coal mine health research because the diagnosis of total disability due to pneumoconiosis could be freed from the burden of being of crucial economic importance to the miner and this family.

It would take away much of the inequity in the treatment of widows' claims under the present law. Both the widow without medical evidence and the widow whose husband was killed in the mines would be able to qualify if they could demonstrate that the miner worked at least 15 years in the mines.

If the 15-year rules were enacted, then the other provisions of H.R. 7 and H.R. 3333 regarding eligibility would become far less significant. Therefore, I shall give only brief mention to these other eligibility provisions.

H.R. 3333 provides that the medical criteria for evaluating claims filed after July 1, 1973, should be no more restrictive than the criteria for evaluating claims filed before July 1, 1973. Social Security's present set of regulations create the unfair situation that a miner who retired at the end of June 1973 is judged by one set of standards, but a miner who retired a couple of weeks later, in July 1973, is judged by a different, far stricter set of medical standards. Despite repeated requests from a variety of sources, including members of this committee, Social Security has steadfastly refused to correct this unfair situation, and it looks as if it is going to require legislative action to rectify the situation.

In advocating a provision which says that the after-July 1973 medical criteria can be no stricter than the before-July 1973 criteria, we do not mean to endorse the before-July 1973 criteria—known as the Interim Standards. In particular, we feel that the blood gas values in those criteria are far too strict, and that the spirometry values should be consistent with the International Labor Organization standards for testing industrial workers.

Even more important, we feel that the present practice of submitting the X-rays of certain coalfield doctors who generally interpret X-rays generously for pneumoconiosis for re-reading must be stopped.

What Social Security, and now the Labor Department are doing is to send routinely the X-rays of certain doctors to a panel of "ex-

perts" they have selected. As you would expect, in a high proportion of cases the "experts" find no evidence of pneumoconiosis. The rereading of X-rays has contributed greatly to the distrust of miners now feel for the black lung program. They see the process as one in which Social Security is fishing for evidence to defeat their claim. Social Security, on the other hand, contends that the rereading of X-rays is necessary because there are many coalfield doctors who give fraudulent interpretations. If there are doctors who are giving fraudulent interpretations, coal miners should be informed of this so that they will not continue to waste their money on these doctors.

H.R. 3333 contains a provision barring the routine rereading of X-rays. At the same time it instructs the administering agency to report cases of incompetence and willful misrepresentation to the state licensing agency.

H.R. 7 and 8 and H.R. 3333 have in common a section which says that employment as a miner shall not, in and of itself, bar a miner or his widow from eligibility for benefits. The problems of the many widows who have been denied benefits because their husbands were working at the time of their deaths have been fully covered at the previous two hearings, and we will not repeat what you have already heard. Suffice it to say that these widows are doubly aggrieved—first they lost their husbands to a premature death, and now they are denied benefits because their husbands did not live long enough to retire in dignity.

The other pressing problem which would be corrected by this provision of the bills is the dilemma of the working miner who realizes that he has a worsening lung condition but who does not know whether he is sick enough to meet the eligibility criteria. If he decides to retire, he and his family must expect to wait at least a year before a decision is made on his claim, and, even then, the decision may be unfavorable. By this time, he probably won't be able to get his job back.

The only realistic alternative for most miners in that situation is to keep on working until they work themselves to death or until their health totally deteriorates. H.R. 7 and 8 and H.R. 3333 would permit a miner to be notified of his eligibility for benefits while still working. This amendment is crucial to carrying out the important preventive goal of the black lung legislation.

Mr. ERLNBORN. May I ask, you have made reference to the 35-year rule in H.R. 7 and 8 and said it should be a 15-year rule. My understanding of the 35-year rule is it is an irrebuttable presumption. A miner doesn't need have the least symptom of the disease, he just needs to show he worked a certain number of years.

You are suggesting now that that be 15. So, if a miner works 15 years, there is an irrebuttable presumption, no symptoms need be present, but he collects his benefits.

Miss FALK. That is correct.

Mr. ASHBROOK. You are recommending they get benefits for pneumoconiosis when they don't have it?

Miss FALK. As I say, we presented a good deal of testimony on this issue before, and I didn't want to repeat testimony given before.

Mr. ASHBROOK. I asked a simple question. Are you going to recommend they get payments and benefits when they do not have the disease?

Miss FALK. When you say "have the disease," it would be our position that virtually all miners who have worked 15 years in the mines do have the disease.

Mr. ASHBROOK. But you are recommending that they get it whether they have it or not.

Miss FALK. We won't know unless they die and we perform an autopsy whether or not they have the disease.

We are talking about eligibility and how it will work in practice. The amount of money paid by these benefits is not enough for anybody to live on at more than the lowest poverty level. No miner will leave the mines solely for eligibility for black lung benefits; it simply doesn't pay. We are talking about a system of benefits for a miner who is disabled so he can leave the mines.

Mr. ASHBROOK. That is not what you said. You are saying if they were there 15 years they get it.

Miss FALK. I am saying a miner would have no financial incentive to leave the mines.

Mr. ASHBROOK. We are talking about whether there was a disabling disease. Your initial premise was after 15 years, whether or not they have the disease, they get the benefits.

Miss FALK. You have to keep clearly in mind there is an earnings offset. No working miner will get any benefits at all, so it's only a miner who has left the mines. Our position is based on the fact that we simply in our experience have not found any objective medical way of determining for the great number of miners who are unable to work in the mines, but are not bedfast—

Mr. ERLBORN. You are begging the question. It's the question of when they leave, they get the benefit. This is a retirement program. There have been members of the Congress toying with the idea of having the Federal Government mandate a system of benefits. This is what this would be. Anybody working in the coal mines for 15 years would have a vested right for a retirement benefit and we would force the companies to make the payments into a fund to pay for whatever level of benefits the Congress thought would be proper, because he might work 15 years in the mine, be 35 years old, then go out and establish a second career, but when he retires, when he ceases to be employed, he automatically gets these benefits. We are not talking about forcing him out of the mines. We are saying when he retires he gets the benefits. It's a pension plan.

Mr. SIMON. I mean no disrespect to Mr. Erleborn when I say there are no coal mines in the area he represents. I think anybody who has been in the coal mines 15 years has the disease, and I don't think you can find a coal miner, my good friend from DuPage County, or anyone knowing anything about coal mining who won't say there are serious impairments to your health if you have spent 15 years underground.

Mr. ERLBORN. This committee, back when we were considering the adoption of this act, studied this subject at great length, had a great deal of testimony, we traveled to England where they had done a good deal of research that should have been done in this country long before, but they did have the facts there. I cannot recall any medical evidence that any particular length of time, 10 years, 15

years, or 25 years was a medical certainty the miner had the disease in the first place or, secondly, would be disabled by it.

There are three stages of pneumoconiosis, and it is only the third stage that is completely disabling. The first stage there is dust in the lungs, but it is not disabling.

Dr. KERR. May I interrupt?

Mr. ERLBORN. It is never progressive.

Dr. KERR. One of the rules you learn early in your training, and it comes through loud and clear, in medicine, you never say something never occurs.

I can show you men in category one who are desperately ill.

Mr. ERLBORN. They may be. A lot of people smoking cigarettes have emphysema and are disabled.

Dr. KERR. They can only have pneumoconiosis if they have dust opacities, and I defy you to show a cigarette that causes dust opacities.

Mr. ERLBORN. You are getting away from the question. Is there any medical evidence that shows after 15 years anybody working in the coal mines is disabled by pneumoconiosis? That is what this law would be adopting, a standard that after 15 years you are disabled. Otherwise, let's call this what it would be. That is a retirement program.

Mr. SIMON. Let me respond to the gentleman's question, if it was that. It's true I was not a member of this subcommittee when it went to England, but I have talked to coal miners in West Franklin, and many other places, and I know any miner who has been down there 15 years has an impairment. How substantial, I don't know; but for some it is very serious.

What Miss Falk is suggesting is those with a serious impairment, since this Nation is asking these people to go into the bowels of the earth and dig that coal for this Nation, when they have that serious impairment, if they want to retire at that point, they may; but if they want to continue mining and earn three or four times as much money, they can continue mining.

There is no question, and I can't believe anyone can produce medical evidence to suggest, that anyone who has been down in the mines for 15 years doesn't have some impairment.

Mr. DENT. May I inject a little thought in this? I don't think when we drafted any of this legislation that we ever drafted it as a final solution. I have my own goals and ideas as to how we should amend the law. The present law establishes a 15-year presumption. And the statistics support the use of such a presumption. In cases of miners with between 10 and 14 years of service, 29,000 were rejected for pneumoconiosis. In the universe of miners with 15 to 19 years, only approximately 7,752 were denied.

In Britain they pay a certain amount of compensation for a miner who has developed the first stage and wants to stay in the mine, and a little more money at the second stage and, then, at the third stage, he is paid the full compensation.

The most important thing we are trying to correct here is the disparagement between widows being paid for the disability of their husbands who worked in the same mine for approximately the same length of time with other miners whose widows are being denied. We

think something should be done to correct this inequity but it is hard to arrive at a formula.

We have tried to devise a formula which we could present to the Congress which is logical and equitable in all respects.

No matter how we personally feel about it, there are 435 Members of the House and some rather stubborn Members of the Senate we have to convince. Whether we can do the final job in 2 months or 2 years depends on the reasonable, logical statistics with which we can prove our case.

I have advised against an attempt to have a 15-year irrebuttable presumption which establishes eligibility for black lung benefits. Under that formula a man can leave the mine and have a full career for 20 or 25 more years in another industry.

When my town closed down, every man there had 15 or more years in that mine, but then my dad went into the city and made a full career in a rubber plant. Some went into a glass plant and had a full career with pensions coming at the time of their retirement.

We have to prove our case that these men are permanently injured and their work has done it and caused them not to be able to live and work in a normal occupation. But, as you well know, I never dodge any issue, if I can help it, and I meet it face on. But I don't believe I have been gifted with enough ability in any shape or form to sell to the House of Representatives a 15-year irrebuttable presumption in this act.

Whether 25, 35 or something else works out, we will see as we work with it, but let's not give any encouragement to 15 years, much as it might be a desirable goal.

I don't believe we can sell it to the industry. What we do in this legislation is going to be the pattern for legislation to provide disability benefits for all the other occupational diseases. Because some day or other the Congress will have to address itself to all these hidden injuries that do cripple and destroy a man's ability to perform.

I want to make sure the Black Lung Benefits Act is a sound, workable, and just piece of legislation. I would ask you not to put too much emphasis on that kind of feature in the act. I have little or no complaint about your other recommendations.

Dr. KERR. I think I must speak up on this one because of the motivation that is back of this request for the 15-year presumption.

Mr. DENT. You are saying a presumption, but you are allowing it to be rebutted, aren't you?

Dr. KERR. I have forgotten the exact verbiage, but whatever it is, my support is for it because the reason for this is a very considerable disagreement that exists in medicine between the various tests that are utilized for the determination of disability. We are finding out even with our considerable experience of X-rays that there are numerous questions that are beginning to appear on the matter of X-rays and their use.

For instance, I remember, very clearly, a postgraduate course that was conducted by the American College of Radiology to train physicians, radiologists, in the reading of these films, which had been

developed by the National Labor Office, in conjunction with the work done by the Public Health Service. In fact, the man, who I feel is the dean of radiologists, in this field is George Jacobson—and along towards the end of the day on the second day of this meeting we had, he said, “The only one way to eradicate coal dust injury is to take lousy X-rays.”

When you talk to these miners, you have a feeling this is happening. The films leave a great deal to be desired. As you become closely allied to this problem, you find the reading is very subjective.

One radiologist will tell you they can read 300 films a day. You talk to another physician, and he says, “After reading the first 30 films, I find myself being very confused about what I am seeing.”

We are talking of a program of reading 100,000 films, and the same difference, the same confusion, the same problems also exist in the physiology and the determination of what do you mean by a disability? How do you define it in sufficient terms that nobody is going to argue with it?

I think you will hear statements tomorrow that there are honest differences of opinion between physicians and competent individuals in this field, and it is because of this experience that the miners have encountered, time after time, that they are saying, “For heaven’s sake, relieve us of this horrible burden we have to bear of being tested time after time after time, of going from one doctor to another and still not having an answer.”

And the only thing we can come up with is to say, we feel, after we have been working in the mines for 15 years or longer, that we have inhaled enough coal dust to give us an awful lot of trouble, and this is the reason that is back of that.

Mr. DENT. I understand.

Mr. ERLNBORN. Mr. Chairman, would you yield for a moment?

I recall the eloquence with which you sold the Coal Mine Health and Safety Act and with what I thought was the stringent requirement of 2 milligrams of coal dust concentration. The eloquence you used in those days convinced many people we were going to eradicate coal workers pneumoconiosis by making the mines a healthy workplace. I remember the Chairman saying, “If we get that coal dust down to that, then there will be no more pneumoconiosis.”

Now, somebody said we could eradicate it by faulty misreading of X-rays. I think you are making pneumoconiosis universal. Even starting there today and never exposed to coal dust, after 15 years, they will have pneumoconiosis. You are making it a universal disease and a disease for all time to come.

Dr. KERR. I think it can be eradicated if we can get the dust down, and this can only be done with water supplies. I am dedicated to this.

This 15-year presumption that we are talking about is particularly important to those people, the thousands of individuals out there at the present time, who have not been able, for one reason or another, to meet the rigid requirements and in order to get benefits for those individuals, because of the confusion existing in medical circles, we are saying, the only way we can figure out to help those people, who

are in such dire straits, and whose X-rays, whose physiology tests are unclear—we are saying, the only way we can figure it out is this 15-year rule.

Mr. DENT. Will you answer one question?

This is what disturbs me. As I understand it now, we have about 180,000 active miners in the field.

Dr. KERR. I wouldn't argue with you; I think it is 140,000 or so.

Mr. DENT. Whatever the figure is, how many of that group would you say have 15 years or more in the mines?

Dr. KERR. I would have to say that I really don't know, not because I am trying to duck your question. But I have no way of knowing. I know the older men are getting out of the industry at the present time, and we are finding a much larger percentage of young men in the mines than ever before.

Mr. DENT. I understand that because they have the feeling we are doing something to make the mines safe. You couldn't have gotten me to go in after I was old enough to know what I was doing, even with a buggy whip.

What I am disturbed about—and my district is a microcosm—is that the greater percentage of the miners have worked in the mines there more than 15 years. If you can tell me everybody in the mining industry is entitled to compensation after 15 years in the mines, I will fight for you. But I don't know. I would be unfair to you if I allowed you to leave this room with an idea that I think I can pass a 15-year irrebuttable assumption.

Maybe my figures are wrong. The testimony of the medical people will help us resolve this problem.

If there are other things, let's get away from that subject.

Miss FALK. Let me finish quickly. I will skip to page 14 of the testimony and briefly summarize.

One of the major causes of dissatisfaction with the Social Security and Labor Department programs is the seemingly unending delay in processing claims. At present, the claimant has no practical remedy for delay. In response to this problem, H.R. 3333 contains time limits: an initial decision to award or deny a claim must be made within 60 days of the application; a hearing must be held within 45 days from the date it is requested. If the agency fails to act within these time limits, it must pay interest just as we all must do for late payments in our daily lives.

Another problem in the present administration of the program is the appeals council's practice of reversing favorable decisions. In deciding to review favorable hearing decisions on its own motion, the appeals council gets itself into the untenable position of acting as both judge and prosecutor. H.R. 7 and 8 and H.R. 3333 both contain the salutary provision that the appeals council may not reverse a favorable decision by an administrative law judge.

Offsets: Both H.R. 7 and 8 and H.R. 3333 deal with the issue of offsets, but in a different way. H.R. 7 and 8 provide that worker compensation benefits paid for an injury other than pneumoconiosis should not be subtracted from benefits paid under the part B (social security) program. This is an improvement over the present situation, where

any compensation benefits—whether paid for a back or neck or leg injury—are subtracted from black lung benefits. However, the change is not made retroactive, creating an extremely unfair situation for miners who have already lost thousands of dollars' worth of benefits due to the offset. Furthermore, the amendment fails to deal with the problem of deciding what portion of a total disability award is paid on account of pneumoconiosis where the miner suffers from multiple impairments.

We prefer the solution of H.R. 3333 which eliminates the worker compensation offset altogether and makes the change retroactive.

Mr. DENT. May I interrupt there?

In checking the bill we have before us, I see it does not agree with the rough draft that we had worked on. We put the retroactive feature in our original draft. I am glad you called it to our attention.

Miss FALK [continuing].

Total elimination of the worker compensation offset is necessary to get rid of the problem of the "double offset"—the subtracting of State compensation benefits from both black lung benefits and social security benefits. The "double offset" can lead to the contrary result that some miners are actually worse off in terms of monthly income because of receiving a worker compensation award than they would be if they had received no State compensation benefits at all.

H.R. 3333 also removes the offset of part C (Labor Department) benefits from social security disability benefits. In 1972, you amended the law to provide that Federal black lung benefits paid under part B should not be subtracted from social security benefits. Those same reasons which led you to amend the law in 1972 apply as certainly today. In this area, you should finish what you started in the 1972 amendments by eliminating the offset of part C black lung benefits from social security disability benefits as well.

I will close with a brief mention of two other sections of H.R. 3333 which do not appear in H.R. 7 and 8. One is the extension of the authorization for black lung treatment clinics. The present authorization for black lung clinic money runs out June 30, 1975. Because of the long, sad story of delays in getting even a small portion of the authorized money appropriated and then released and then spent, the black lung clinic program is only just getting underway. The UMWA feels that the black lung clinic program holds out great hope and promise for black lung victims, and, because of this hope, we presently have several staff members working toward the development of black lung clinics throughout the coalfields. This is not time to withdraw all support—just as the program is trying its first wings. We urge that you extend the authorization for black lung clinics.

Finally, we propose a new mandate and new membership for the Coal Mine Health Research Advisory Board. This board reviews Federal grants for research in the realm of coal mine health. Among coalminers there is deep distrust of the present research in the field. And with good reason. Time and again, Federal research money has simply provided revenue and legitimacy for projects to provide a statistical basis for industry's position. Of all people coalminers have the greatest interest in making sure that Federal research money is spent to make

practical progress toward the goal of coal mine health. Rather than being excluded from the board, as they are now, working and disabled miners and miners' widows should constitute a majority of the board.

I think it would be easy for members of a committee such as this one to become discouraged with a program like the black lung program that was conceived out of a humanitarian concern but now is riddled with such problems. But we must all remember that the fact that there were problems was, in a way, only natural. The Black Lung Benefits program was as unprecedented as it was historic and important to workers. Our knowledge of work-related lung diseases was, and continues to be, extremely incomplete.

I think it must also be very discouraging to hear the contradictory opinions about the diagnosis of coal workers' lung disease which you have heard and which you will hear further tomorrow. If Congress had waited to act until all the information was in about black lung disease, thousands and thousands more victims of the disease would have died uncompensated, in poverty, and we would still be waiting. You were right to go ahead and act, and you must act again to protect what has already been done, for the essential facts were as clear then as they are now. In the midst of all the disagreement about the fine points of diagnosing black lung, remember that the basic facts are not in dispute:

Coal mine work produces dust.

Exposure to coal dust over time causes pneumoconiosis.

Pneumoconiosis disables and kills human beings.

[A "Summary of House Bill 3333" follows:]

SUMMARY OF HOUSE BILL 3333

(Introduced by Representative Carl Perkins)

UNITED MINE WORKERS/BLACK LUNG ASSOCIATION SPONSORED—1975 BLACK LUNG AMENDMENTS

15-Year Rule.—A miner who worked in or around the mines should qualify for benefits without having to establish disability by medical evidence. A widow should be eligible if her husband worked 15 years as a miner in or around the mines.

Medical Standards for Miners with less than 15 Years.—Miners who do not qualify by the 15-year rule should qualify as miners do now—by medical proof, but the medical standards for deciding whether a miner is disabled by black lung should not be any stricter than the Interim Standards used by Social Security to judge the claims of miners who applied before July 1, 1973.

No Re-reading of X-rays.—If a qualified physician interprets an x-ray as showing pneumoconiosis, Social Security and the Labor Department should not have the x-ray reinterpreted.

National Black Lung Fund.—Black lung benefits should be financed from a national fund supported by a tax on coal operators.

A Permanent Program.—At present the Department of Labor black lung program will end in 1981. H.R. 3333 removes any ending date from the black lung law.

Current Employment No Bar to Eligibility.—A miner should be able to find out while he is still working whether he will be able to qualify for benefits if he stops working.

Mine Disaster Widows.—Widows of mine disaster victims and other miners killed while working in the mines should not be excluded from benefits solely because the miner was working.

Lay Evidence in Widows Cases.—The law should be strengthened to say that affidavits from the miner's family and co-workers are enough by themselves to prove a widow's claim for benefits.

Workmen's Compensation Offset.—No state workmen's compensation payments should be subtracted from federal black lung benefits.

Social Security Offset.—No federal black lung payments should be subtracted from Social Security disability benefits.

Equal Treatment for Men and Women.—Husbands and widowers of female coal miners should qualify for the same benefits as the wives and widows of male miners.

Appeals Council Review.—Social Security's Appeals Council should not be able to reverse a favorable decision by an administrative law judge.

Time Limits.—The Department of Labor should decide a case within 60 days after the person completes an application, and should pay interest in cases of delay. Hearings should be scheduled within 45 days after the person requests a hearing.

Public Information Program.—The Department of Labor should notify all individuals who might be eligible for black lung benefits about how to apply.

Review of Claims.—All claims which have been denied by Social Security or the Labor Department should be reviewed automatically within six months from passage of the Act. Back benefits should be paid as if the Act had been in effect when the person applied.

Medical Benefits.—The black lung program should pay for any medical treatment required as a result of a disabled miner's pneumoconiosis.

Black Lung Clinics.—Congress should authorize an appropriation of \$10 million annually for black lung clinics. The present authorization for black lung clinics is scheduled to end June 30, 1975.

Research Advisory Council.—More than half the members of the Coal Mine Health Research Advisory Council, which decides how to spend federal money for research on black lung, should be working miners, disabled and retired miners, or widows.

MR. DENT. Thank you for your statement.

You know, suggestions and recommendations to this committee have always been accepted with gratitude on the part of the committee because we are the first to admit our fallibility. When we started working on this particular problem some 6 years ago, I can honestly say there was only one person in the whole Congress that just kept prodding and booting me along when we got off the track.

If you don't know what it is to be pushed and booted around, you better never work with Mr. Perkins. But I am glad he did, because there were many times along the road when it seemed we were up against a wall. No one would ever understand it and we couldn't explain it that much because we had only facts and figures from our knowledge and whatever you folks could give us from your organization, and they were very meager statistics, as you all know.

We found, upon examination, that the only nation in the world that had any real black lung documentation was Great Britain. So we went over to Britain, Wales, and Scotland and found out a great deal that gave us a little more encouragement. Now, we are moving to the second step. It is impossible initially to tie everything in landmark legislation that has to be in it. Congress knows I am coming back because I told them I was coming back, because I didn't think we had made a final product.

I said the same thing on the pension reform bill; we will go back into that as soon as we finish this one. I want everyone to understand that I want a bill, because whatever we do together that takes care of more worthy people is just that much more we get done, and I don't think as long as any of us live that we will finally get the full answer to this or many other problems. But I guarantee you we will continue going after the answers as long as they allow us to. I appreciate the testimony and the frankness with which it was given.

and the position of the mineworkers. If I was out there, I would be promoting the same thing you are.

Thank you very kindly for your testimony.

Dr. KERR. Mr. Chairman, we had some representatives of the Black Lung Association that had some things they wanted to say about the legislation.

Mr. DENT. I will stay until the first bells ring.

Are you talking of Don Bryant?

Dr. KERR. Yes.

Mr. DENT. Would you come up?

I know you have testimony, but we won't have time to go through all of it. You can leave it there, and we will make it part of the record at this point.

We are happy to give you time for your views on this matter.

STATEMENT OF DONALD BRYANT, PRESIDENT, WEST VIRGINIA BLACK LUNG ASSOCIATION

Mr. BRYANT. I would like to say thank you, Mr. Chairman and members of this committee, for giving me these few minutes.

I am president of the West Virginia Black Lung Association and also on the Disabled Miners local in West Virginia.

We have a written statement prepared, a document that I have here that we will turn over to you that shows the problems that exist in this program. We are involved directly with the coal miners, and we have over 400-some claims within our office, and there are great problems existing within this program with the way that Social Security is handling this issue.

I heard some comments on the 15-year presumption here today, and I would like to say something about that under 1972 amendments.

We have a 15-year presumption, and Social Security has struck this presumption down by these people unless they qualify on X-ray showing, one, two, and three simple. You could take five radiologists from different parts of the country and send this one coal miner to these different radiologists, and they would come up showing this man had simple pneumoconiosis one, two, or three. Then they have contractors who are hired by Social Security re-reading these X-rays. And these people rereading their X-rays, one of their radiologists will read all five X-rays down to negative.

It is the contractors that Social Security has employed that are the law on this program right now because they have the last say in a client's case.

No other evidence may be introduced into the claimant's file that has any bearing on the case.

They have Leonard Bristol Associates, director of radiologists, Benjamin Felson, George Jacobson, and Russell Morgan, and many more of these people that are reading these X-rays on the coal miners.

We have coal miners with 15 years, we have coal miners with 45 years. All these people have been given the same treatment by the Social Security Administration, and therefore I would like to say to this committee today that, if we could get a new bill passed so that we could see that Social Security didn't supersede the law with their

guidelines—this is what has killed the program, the guidelines Social Security has come up with, like rereading the X-rays.

There is no law that says Social Security should reread the X-rays, but in their guidelines they have come up and say they can reread the X-rays.

So we have many cases in our office that people would qualify on their breathing scores, but still it seems as though the Social Security Administration does not give a man's breathing scores where he takes the breathing tests any weight at all in the case.

The law says you can't turn a man down on the sole reason of an X-ray, but this is what they are doing.

We have people, as I see it, with anywhere from 15 to 45 years, and we have people with 2 years, in the coal mines that have been paid benefits for having black lung.

There is no uniform system to this. We have widows, we get over into the administrative law judges, and we have widows, we have presented autopsies showing this man had the coal dust in his lungs, and the administrative law judges give the widow a favorable decision.

They turn around and send the appeal to the Appeals Council, and the favorable decision is reversed on this widow.

And we also had a widow having an autopsy on her husband, and the autopsy showed her husband had pneumoconiosis, and we took the evidence to the law judge. He denied the widow, and we took it to the Appeals Council, and the Appeals Council reversed the decision.

So there is no uniformity with this law.

Mr. DENT. We tried to write into the law that there would be uniformity in the reading of X-ray results exactly as it is done in Great Britain. Apparently they have more success in Great Britain because we allow more latitude to the individual radiologist to read what he sees rather than the direct measurements Britain has.

I don't think the SSA has followed my suggestion to emulate the British, but there is nothing we can do to force a department to administer the law as we have written it. There are procedures issued and, if that follows the legislation, it is accidental.

If you will take a look at the facts and figures, these latest denials just make it suspicious that they are just not giving much consideration to the individuals' cases because they are rejecting as many as 80 percent of the claims. It just doesn't seem plausible to me that there is such a large disallowance of claims of miners with 25 to 30 years in the mines.

Not too long ago I had for the first time a little reason to go to the dentist. While he was working on me, he said that he and his family were very grateful because his mother had gotten black lung payments. I said to him, "If I remember, your Dad was superintendent down there." He said, "Yes, he was superintendent; he never worked in the mines; he was superintendent from the time he got the job with the coal company."

In the same town I have a dozen or so widows whose husbands worked in those mines 35 and 40 years, and they have been rejected completely. I know what you are talking about that some-

where along the line there has been—apparently of late rather than the earlier days—an attitude that many of the persons applying are fakers.

There are some, of course, who want benefits just because other people have gotten them. I have a fellow that is in my office each week that can't understand why he doesn't have black lung because he lived in the same town with all the others. This is something you have to put up with.

What you are saying is very serious, and that is one of the reasons we are trying to do something about it.

We are more concerned about the administration of this act and tightening up the guidelines than we are about some of the other features, very frankly, because I think that alone will alleviate a lot of the problems and suffering out in the coal fields.

I agree that you have a reason to be suspicious of some of the incidents that have taken place.

Mr. BRYANT. I have one more document here I would like to talk about. That is on offsets, the last page.

The Black Lung Association of Logan County would like the offsets to be part of the new Black Lung bill. We feel that they are unjust to our people who have total disabilities paid by compensation. This report will illustrate plainly how they work.

Many of our people receive total disabilities because they have been injured in mine accidents such as slate falls, loss of eyes, loss of legs, and back injuries, and so forth. These people receive Black Lung benefits that are offset dollar for dollar.

When the miner went to work for the coal companies, compensation was paid for each miner to the Compensation Department. This money paid was supposed to take care of these injuries.

When the Mine Health Act was passed in 1969, every miner had the opportunity to file for Black Lung benefits, which is a lung disease. Each man had X-rays and breathing tests to determine if he was eligible for benefits. In these examinations, no other part of the body was taken in consideration except the lungs.

If the man was found to be totally disabled in his lungs, he was granted black lung benefits. No other injuries were considered. Social Security, upon the award, will then go and take all the awards that these men have received that are not on their lungs and offset dollar for dollar.

We feel that this is unfair. We hope that you will consider the offsets and remove them. They are depriving many of our people benefits that could be used for better living conditions.

We ask that this committee take a long look at the offsets. They are unfair and deprive men of better standards of living.

[The prepared statement of Mr. Bryant follows:]

PREPARED STATEMENT OF DONALD BRYANT, PRESIDENT,
WEST VIRGINIA BLACK LUNG ASSOCIATION

INTRODUCTION

As representatives involved in the counseling, processing, and the representation of claimants trying to secure their benefits under the Black Lung Benefits Act of 1972, we would like to bring to the attention of this body the broad

abuses of the fundamental rights of claimants in pursuing their benefits by the Social Security Administration.

In 1969, when Congress of the United States passed the Federal Coal Mine, Health, and Safety Act, this was the most meaningful piece of legislation ever passed for the benefit of thousands of coal miners suffering from mine related respiratory diseases. Today, as in the past, more than 800 miners expire a year and thousands suffer the crippling effect of the most dreaded killer in this industry. The Act was a humane effort by the Congress to give aid and comfort to the miners who were totally disabled by this disease and also their beneficiaries.

In this documentary we will attempt to cite these broad abuses with claim histories taken from claim folders. These claims raise common issues of law and interpretation presented in oral argument before administrative law judges, written appeals, and oral argument before U.S. District Court judges.

"Delay, Deceive, and Deny" has been the tactic of the Social Security Administration. The claimant in pursuit of his benefits has encountered only delay and frustration. Many of our claimants have waited as much as 40 months for a hearing before an administrative law judge. After the initial determination has been issued and a denial stated, and if the claimant has a case with merit, the case is put on the shelf and it will be years before it is heard. Thousands of miners die, waiting in frustration, for a hearing. Many are living on the fringes of poverty.

The will of Congress in passing this Act has been aborted. The many road-blocks put in the path of the claimants cause them to lose all hope. The local Black Lung Associations are the only ones rendering help. Even the lawyers who once grew rich on the profits of the Black Lung benefits, are now handing claimants back their folders. They won't attempt to take Black Lung cases because they see no future in it.

We will cite these illegal violations and again ask that these fair-minded Congressmen weigh their validity.

1. Re-reading of x-rays.
2. Delay.
3. Reversing favorable decisions.
4. Ignoring lay-statements.
5. Unfairly evaluating medical evidence.

Each abuse is discussed separately in this documentary. Please consider the facts and realize how Social Security is doing. Something must be done.

I. RE-READING OF X-RAYS

Never before in the legislative history of this country has any Congressional Act been so flagrantly aborted, or the will of Congress so viciously denied.

One of the most flagrant practices of the Social Security Administration is the re-reading of x-rays, which contradicts the judgement of the original reader, a certified radiologist. This practice is not authorized by the law or the regulations.

The cost of re-reading x-rays by the four leading contract re-readers plus other private re-readers has run into millions of dollars. As a result of this unfair practice, (during the years of 1973-74) over 95% of the Black Lung claimants have been denied.

The honesty and experience of the radiologists who serve the small coal mining towns and cities are being challenged by H.E.W. in its decisions toward the claimant. The claimant is helpless in the wrathful vengeance of H.E.W., prior to enactment of the 1972 Amendments.

Congress heard a great deal of testimony about the perils of relying on an x-ray to prove that a miner does or does not have black lung. Congress was well aware that experts disagreed in their evaluation of the same x-ray film. This was one reason why an amendment was added to the Act providing that no claim could be denied solely on the results of a negative x-ray. However, Congress did *not* provide, nor did it anticipate that differences among experts should be settled by majority vote. It also did not anticipate that difference should be resolved by a referee doctor chosen and handsomely rewarded by Social Security. On the contrary, the Act and regulations were written with a broad view toward giving the claimant the maximum opportunity to choose his own physician.

It is and has been the practice of Social Security to weigh heavily against the claimant any decision where one x-ray was in favor of the claimant and one against. Social Security totally ignores any contributing evidence, no matter how well documented, in favor of claimant.

The language of Section 410.490 confirms that x-rays should not be reread. The introductory paragraph to Section 410.490 says the interim criteria are adopted because "claims must be handled under present circumstances in light of *limited medical resources*" and because Congress wanted *prompt* and vigorous processing of claims. (Emphasis added.)

No procedure has been more wasteful of valuable medical resources, and no procedure has created greater delays in processing than the Secretary's practice of re-reading x-rays.

The re-reading of x-rays already interpreted as positive by a certified radiologist violates the express language of the Federal Coal Mine, Health, & Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972. Section 402(f) of the Act provides that the regulations defining total disability "shall not provide more restrictive criteria than those applicable under Section 223(D) of the Social Security Act."

Social Security does not reread the negative x-ray reports of physicians chosen by claimants applying for benefits under 223(d). Therefore, in instituting the procedure of re-reading x-rays, Social Security is adopting more restrictive criteria, in violation of the express mandate of Congress. This is a clear violation of the statutory language.

Therefore, we are asking that this practice of re-reading x-rays be henceforth eliminated and reparations for any past decisions related to this practice be reconsidered.

Contract radiologists hired by Social Security

1. Leonard J. Bristol and Associates, Leonard J. Bristol, M.D., Director of Radiology Trudeau Institute, Saranac Lake, NY.
2. Benjamin Felson M.D., and Associates, Benjamin Felson, M.D., Professor and Director, Department of Radiology, University of Cincinnati College of Medicine, Cincinnati, Ohio.
3. Professional Staff Association of USC/LAC Medical Center, George Jacobson, M.D., Professor and Chairman, Department of Radiology, University of Southern California, Los Angeles, CA.
4. Russell H. Morgan, M.D., and Associates, Russell H. Morgan, M.D., Professor and Chairman, Department of Radiological Services, John Hopkins School of Public Health, & Hygiene, Professor Emeritus and former Chairman, Department of Radiology, John Hopkins University School of Medicine, Baltimore, Maryland.

II. DENIAL BY DELAY

Since the implementation of the Federal Coal Mine, Health, & Safety Act of 1969 and the 1972 Amendments, the "snails pace" approach of Social Security in processing cases of claimants has robbed thousands of claimants of their rightful benefits.

The greatest occupational disease among workers in this country is lung related diseases of coal miners. Social Security uses the delay tactic to keep the BL cases lingering on. This is just their way of proving the 1972 Act ineffective. The devious schemes being daily implemented are nothing more than an illegal act by which the claimant cannot defend himself against. Regardless of how soon he presents qualifying criteria to the Social Security Administration, he must wait years for a hearing before a law judge. Once granted a hearing, he must go through the time consuming process of having his x-rays reread by contract re-readers who are paid millions of dollars yearly.

Section 410.490 says Congress wanted interim criteria that would permit *prompt* and vigorous processing of claims. Social Security has proven this to be false. They get slower in processing claims each year.

It is not enough to say that only the strictest interpretation of the law is practiced, but illegal doings are the order of the day. Our files show cases where law judges walk out of hearings before their duly appointed time for no other reason than they have something else they want to do. They leave the claimants waiting, and then render unfavorable decisions without even

granting the claimant a legal hearing. (Sanson vs. H.E.W.) Each delaying tactic adds months and years to the claimants waiting time.

It is not uncommon for Social Security to wait three or four years until all of a claimants witnesses have died, then fail to give full weight to lay-statements made by them before their death. The denial rate for 1974 was 90%.

Justice delayed is justice denied. We ask that claimants be given fair treatment in their cases, and that Social Security obey the speedy process of law.

III. REVERSING FAVORABLE DECISIONS

This is a common, but harsh technique of Social Security. Many miners and widows who have proven total disability before an Administrative Law Judge receive their Black Lung benefits award letter with a smile. They get their hopes built up to no extent, because they have finally received their letter saying they were entitled to black lung benefits.

This is well and good until the claimant receives a reversed decision from the Appeals Council. Why are we letting Social Security do this? If a strict law judge finds the claimant totally disabled and entitled to benefits, why should there be any question left concerning the claimants case?

The Appeals Council gives no reason as to why they are reversing your decision. They just use their authority to rob claimants of their deserving benefits. We illustrate this in Patrick Bryant's case.

This unfair treatment should be considered and stopped. We ask that this committee stop this procedure and reconsider the past reversed decisions.

IV. IGNORING LAY-STATEMENTS

Many miners and widows cannot get all the essential information they need for their claims such as work records, doctors reports, etc. This causes much confusion and grief. They, therefore, must rely upon written statements from people who worked with them or knew their condition.

When Black Lung first started, Social Security gave lay-statements much weight. They gave the claimant favor which he was entitled. But, over the years Social Security has gradually fallen away from accepting any sort of lay-statement which could benefit the claimant if accepted.

We feel this is unfair because there are many poor and sickly miners and widows who deserve Black Lung benefits but cannot produce the essential medical and work evidence to prove their total disability.

Lay-statements should be given more weight. This is just another trick Social Security plays on deserving miners and widows.

We have cases in our Black Lung offices that have been denied because they lacked essential medical evidence. Widows cannot get the essential medical reports because their husbands didn't believe in going to the doctor. Miner's cannot get necessary work records because of fire which destroyed all the work records years ago. These are just a few examples.

We ask that this committee put a stop to this unfair treatment and give more weight to lay-statements.

V. UNFAIR EVALUATION OF MEDICAL EVIDENCE

Quoting from the Committee on Labor and Public Welfare Senate Report No. 92-743, on H.R. 921, 92nd Session, April 10, 1972, whose amendments concerning total disability were those accepted in conference. It is clear that if there exist contradictory medical reports, greater weight should be given to the reports which favor the miners claim. The Report states:

"The Black Lung Benefits Act of 1972 is intended to be a remedial law—to improve upon the 1969 provisions so that the cases which should be compensated, will be compensated. In the absence of definitive medical conclusions, there is a clear need to resolve *doubts* in favor of the disabled miner or his survivors."

M. Popick, Director Bureau of Disability, SSA, stated in his speech of June 6, 1974, before the House Subcommittee on Labor, that when there is a discrepancy in medical evidence, it is the Administration's policy to resolve doubt in favor of the claimant.

Judge Haynsworth (referring to the Federal Coal Mine, Health, and Safety Act of 1969, in *Rowe v. Finch* 427f2n, 417,419a, 4th circuit case arising out

of WV) ruled that "the statute, of course, should be liberally construed to effectuate the congressional intention to provide disability payments to all qualifying persons . . ." Such ruling demands that when a statute or regulation is open to two possible interpretations, the interpretation which favors the claimant should be followed.

The SSA is best at discrediting creditable evidence and testimony. In case history after case history, this flagrant abuse of power runs its rampant course. Positive x-rays are re-read to be negative, where there is absolutely no contradiction between the original readers. In many cases where the totality of all the evidence submitted leads only to a positive conclusion of total disability, the most formidable parts of the claimants testimony is deleted from the official record, and often not even mentioned in the Hearing Decision following a hearing before an Administrative Law Judge. Social Security denies claimants with a breathing test that is 1/10 of a point too high, although every other piece of evidence is qualifying.

Example: 2.3 ----- qualify	2.4 ----- disqualify (FEVL)
94 ----- qualify	96 ----- disqualify (MVV)

We ask this committee to realize how Black Lung Claimants are being treated. Medical evidence should be judged fairly in favor of the claimant.

UNFAIR TREATMENT OF WIDOWS

The widow, whose husband died before enactment of the 1969 Federal Health and Safety Act and the 1972 Amendments, has had every imaginable road-block thrown in her path. The framers of this piece of legislature did not foresee, nor did they anticipate Social Security's manipulation of the law and regulations.

It is a gross miscarriage of justice that the widows of men, whose bodies still lie in Farmington No. 9 Mine, are still being denied black lung benefits. Their husbands entombed bodies cannot be brought up for an autopsy study.

The unrealistic approach that this Administration has taken toward these widows is symbolic of the motive in general that they have toward the widow's case. Benefit of assumption should be given these widows who have suffered such a great loss.

We have examples of aged couples, widows, etc. who have little education. Social Security did not counsel them on how to obtain their husbands benefits. In many cases the miner had 50 years service in the mine. Social Security never tries to explain the procedures in establishing a black lung case to the illiterate widows.

PERSONAL LETTER SUBMITTED FROM A BLACK LUNG VICTIM

Name: Clarence McCoy, Jr.

Age: 49

Years in mines: over 31 (all underground)

SS No. xxxxxxxxx

Employer: W & P COAL CO.; Omar, WV.

Classification: Roof Bolter—last 15 years

First years on continuous miner's section

DEAR SIR: My name is Clarence McCoy, Jr. I worked over 31 years underground. Many doctors have told me that I have black lung. I have been under the treatment of doctors for my lung ailment since 1962.

After considerable treatment of medication, I was told by my doctor that I have coal dust in my lungs to the point that it has affected my nervous system. I also have a report from one of my doctors stating that the only job suitable for me, due to my health, would be one performed in a sitting position without any exertion whatsoever. This disability was set at 75% of my work ability is gone.

Although all evidence points to total disability, Social Security says I am not entitled to Black Lung Benefits.

I was told by Mr. McKenzie of Social Security these words about a year ago, . . . "We don't care how many times you file for black lung benefits, you will be turned down every time you apply!" This was stated to me because I was then considered an active miner.

I am not the only miner who has been treated unfairly. This is going on all over the coal industry and must be stopped to insure the rights of coal miners, as well as citizens of our country.

I never intended to continue coal mining if I could get the benefits due me. Social Security turned me down to the point that I felt that they were bigger than me and I had no chance. I finally had to return to the mines even though I was physically unable to work. This was the only type of work I could do.

I wish that this committee could visit the coal fields and hospitals where coal miners are lying on their backs, almost dead with this drastic disease of the lungs, and understand fully what this documentary is trying to say. I know then you would think twice on about passing a 15 year rule for any disabled miner or widow.

For the sake of humanity, I beg this committee to help these miners NOW! Not after they are gone.

Sincerely,

CLARENCE MCCOY, JR.

OFFSETS

The Black Lung Association of Logan County would like the offsets to be part of the Murtha Bill. We feel that they are unjust to our people who have total disabilities in compensation. This report will illustrate plainly how they work.

Many of our people receive total disabilities because they have been injured in mine accidents such as slate falls, loss of eyes, loss of legs, and back injuries, etc. These people receive Black Lung benefits that are offset dollar for dollar.

When the miner went to work for the coal companies, compensation was paid for each miner to the Compensation Department. This money paid was supposed to take care of these injuries.

When the Mine Health Act was passed in 1969, every miner, had the opportunity to file for Black Lung Benefits, which is a lung disease. Each man had x-rays and breathing tests to determine if he was eligible for benefits. In these examinations, no other part of the body was taken in consideration except the lungs.

If the man was found to be totally disabled in his lungs, he was granted Black Lung Benefits. No other injuries were considered. Social Security, upon the award, will then go and take all the awards that these men have received that are not on their lungs and offset dollar for dollar.

We feel that this is unfair. We hope that you will consider the offsets and remove them. They are depriving many of our people benefits that could be used for better living conditions.

We ask that this committee take a long look at the offsets. They are unfair and deprive men of better standards of living.

Mr. DENT. Most of these problems you are talking about are being taken care of in all of the proposals, I believe, before us.

In other words, this question of offsets, it has been a slow, hard road. When we first passed the bill, even to mention disallowing offsets, we wouldn't have had a bill.

After a couple of years, we amended the act and eliminated the right to offset social security disability benefits.

Now we are reaching into the third step and hope there will be little fight against it.

What you are saying is absolutely right. The payments for the loss of an arm or leg should not have anything to do with the payments for another type of injury under another set of legislative enactments. I don't think we will have too much trouble with that particular phase.

Is there any other of your associates from the association here? I would like to see them stand and be recognized.

Mr. BRYANT. Yes, we do have some. I will ask them to stand up.

Mr. DENT. We are always happy to see you and are sorry it's under these conditions. But we know the problems and we are trying to alleviate them.

Again I thank all of you.

The Chairman wants to know if there is anyone here from Kentucky.

We thank all of you.

The committee stands in recess until we meet tomorrow morning at 10 o'clock, in room 2257.

[Whereupon, at 12:15 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, February 27, 1975.]

BLACK LUNG BENEFITS REFORM ACT OF 1975

THURSDAY, FEBRUARY 27, 1975

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

The subcommittee met at 10 a.m., pursuant to recess, in room 2257, Rayburn House Office Building, Hon. John H. Dent, chairman of the subcommittee, presiding.

Present: Representatives Perkins, Dent, Cornell, Simon, Ashbrook, Erlenborn, and Goodling.

Mr. DENT. The subcommittee will come to order.

I want to apologize for being late. My telephone just wouldn't stay on the hook as it should.

This morning we are very privileged to have five witnesses who are all going to, I believe, give us the benefit of some medical counsel and advice in this matter, which of course is tied directly to health problems. These witnesses have come here upon invitation of the Chair and at the suggestion of my ranking Member, Mr. Erlenborn.

I, therefore, call at this time Dr. Keith Morgan from the West Virginia Medical Center.

Dr. Morgan, we are glad to have you with us.

Dr. MORGAN. Thank you, Mr. Chairman.

Mr. DENT. You may proceed in any fashion you wish.

STATEMENT OF DR. KEITH MORGAN, WEST VIRGINIA MEDICAL CENTER

Dr. MORGAN. Mr. Chairman, members of the committee, ladies and gentlemen.

I regard it as a signal honor to be asked to present testimony before you today.

For the 7 or so years prior to March 1974, as an employee of the U.S. Public Health Service, I was responsible for the Governmental research program that was and is directed towards solving some of the respiratory problems that afflict United States coal miners.

Much of the work that was carried out during the time that I was director of the Appalachian Laboratory for Occupational Respiratory Disease, ALFORD, has recently been published and has a direct bearing on the bill, H.R. 8, which you are considering today.

Because of your overfilled schedules, I am sure you have not had the time to read and digest the medical and scientific literature on this subject. You will perhaps bear with me while I summarize some

of the more important and relevant findings that have come out of the Public Health Service program.

First, my colleagues Drs. Lapp, Seaton, Kibelstis, and several others have used the latest scientific methods to investigate the range of pulmonary function abnormalities that may occur in coal miners and they have included in their studies both working and retired subjects. If one considers ventilatory capacity first—this is the ability to get air in and out of the lungs—and it is this criterion on which Social Security and the Department of Labor mainly base their disability awards, it is apparent that when the ventilatory capacity of miners in certain regions of the country is compared to the predicted value a minimal reduction is sometimes present.

Nonetheless, in other parts of the United States, namely, Utah and Colorado, coal miners have a ventilatory capacity that is better than expected. While complicated pneumoconiosis often leads to a significant reduction in ventilatory capacity, this aspect of lung function is normal in miners with clear X-rays and in miners with simple pneumoconiosis unless they happen coincidentally to be suffering from chronic bronchitis and emphysema; conditions that frequently occur in the general population.

The United States Public Health Service studies indicate that cigarette smoking is between 5 and 10 times as important as dust exposure in producing impairment of ventilatory capacity. If miners with complicated pneumoconiosis are excluded, the figure is even higher.

Since simple coal workers' pneumoconiosis is related to the amount of respirable dust to which a miner is exposed, and since the longer and the more severe the dust exposure the greater is the likelihood of a man developing X-ray abnormalities, it might be expected that the ventilatory capacity of a miner with simple pneumoconiosis would be reduced below that of his co-workers with a normal chest X-ray.

As I have already indicated, this is not the case. Indeed, miners with categories 2 and 3 simple pneumoconiosis, most of whom have had 35 or more years of exposure, have normal ventilatory studies.

But coal workers' pneumoconiosis, and when I use this term I am referring to the condition that can be recognized from the chest X-ray, is not the whole story. It has been shown that chronic bronchitis is more common in coal miners than in the general population. In this connection we are using the term bronchitis to denote a condition that is recognized by the presence of cough and phlegm.

Other studies have shown that these symptoms, namely, cough and phlegm production, occur as frequently in other dusty occupations. Moreover, these symptoms are of little significance by themselves unless accompanied by a decline in lung function and such a reduction is extraordinarily difficult to demonstrate.

Dr. Kibelstis and his colleagues at ALFORD were, however, able to show that when nonsmoking miners who were employed on the surface were compared to nonsmoking face workers there was a minimal difference in certain tests of ventilatory capacity. Thus, face workers had a forced expiratory volume in 1 second (FEV_1) which was 98.1 percent of the predicted figure in contrast to surface workers who had an FEV_1 of 102.4 percent of the predicted figure.

This, as you will realize, is a minimal difference and is only significant statistically because of the large number of subjects included in the investigation. This is the national coal study in which something over 9,000 working miners were included.

In short, this study shows that industrial bronchitis by itself will never produce sufficient impairment to qualify a man for black lung benefits.

The Social Security Administration and the Department of Labor have been criticized for relying mainly on tests of ventilatory capacity. It has been suggested that miners have impairment of gas transfer—diffusing capacity—and that such impairment is related to dust exposure. To test the validity of this assertion, my colleagues Dr. Seaton and Dr. Kibelstis have measured the diffusing capacity in two groups of miners.

The results of these studies show a few miners with categories 2 and 3 simple coal workers pneumoconiosis—this is the P type—may show a slight reduction of the diffusing capacity, however, in no instance was the decrease of sufficient severity to be associated with disability, and indeed was less than seen in most cigarette smokers.

Dr. Kibelstis, in his study of over 130 miners, attempted to relate the decrement in diffusing capacity to years spent working underground. He was unable to show that years underground in any way affected this index of pulmonary function.

If one studies arterial bloods at rest and on exercise or if one carries out other tests of gas distribution, again the findings are similar, namely, miners with categories 2 and 3 simple pneumoconiosis sometimes have slight abnormalities which in themselves are never sufficient to meet the Social Security or Department of Labor criteria for disability. Miners with normal X-rays and miners with category 1—that is to say the vast majority of both the working and retired population—have normal blood gases and a normal diffusing capacity unless they coincidentally have emphysema or another non-occupationally related disease.

Other studies carried out by Dr. Ortmeyer at ALFORD concern themselves with the life expectancy of Pennsylvania and Appalachian coal miners. Dr. Ortmeyer and his colleagues have shown that Pennsylvania miners who have been awarded compensation have a normal life expectancy unless they had either complicated pneumoconiosis or chronic bronchitis and emphysema. Men with simple pneumoconiosis, despite the fact that they had been awarded compensation, had a normal life expectancy.

In addition, when he and his colleagues followed up the miners who were examined in the 1962-63 U.S. Public Health Service prevalence survey, they were able to show that the life expectancy of this group of miners was the same as that of the general population of the United States.

Miners with clear X-rays and miners with simple pneumoconiosis live just as long as does the general population; only those men with complicated pneumoconiosis dying prematurely. Moreover, the effects of complicated pneumoconiosis on life expectancy are balanced by the decreased incidence of lung cancer and heart disease so that the overall death rate for coal miners is the same or even slightly less than the general U.S. male population.

Similar findings have been reported from England and I gather also from Germany, and indicate that respiratory disease is not a major cause of death in the United States coal miners.

These facts have a bearing on the presumptions contained in H.R. 8. There is no medical evidence to support the presumption that when respiratory impairment develops in a miner who has worked for 25 years underground, such impairment can reasonably be attributed to his occupation unless that miner had radiologic evidence of the complicated form of the disease. Furthermore, the reliance placed on the blood gas analysis to exclude disability is unwise. Many men with fairly severe impairment—not necessarily related to their occupation—will maintain their arterial blood gases at a relatively normal level fairly late in the course of their disease, and indeed, this is the rule rather than the exception in emphysema.

Similarly, an overweight but otherwise normal person will often have abnormal blood gases, especially if the sample is taken with the patient lying down.

The same criticisms can be leveled at the irrebuttable presumption that a miner who has worked for 35 years shall be presumed disabled. However, this presumption sets an even more dangerous precedent, namely, that a man is to be assumed disabled in the absence of evidence of respiratory impairment.

Such a concept has to be weighed against the evidence that is available from the studies conducted by the U.S. Public Health Service, and those of the National Coal Board from Britain and other countries. These have shown that unless a miner has complicated pneumoconiosis—about 2 percent of the working population—he is no more likely to meet the disability requirements of the Social Security Administration or the Department of Labor than is the average U.S. worker.

Were this presumption extended to all U.S. workers, the economic impact would indeed be profound. The acceptance of this presumption, namely that disability is unavoidable if a miner works for more than 35 years in a coal mine, is a doctrine of defeat. One of the main purposes, and a most laudable one at that, of the Federal Coal Mine Health and Safety Act of 1969 was to limit dust exposure. Dust standards were set, the purpose of which was to reduce the incidence and prevalence of pneumoconiosis.

All of the evidence available suggests that if the standard of 2 mg. per cubic meter is adhered to the likelihood of a miner who starts working at the present time reaching category 2 or above with 35 years of underground work is less than 3 percent. Still fewer would develop complicated pneumoconiosis.

Implicit in the presumption that a miner is disabled after 35 years in a coal mine, is the concept that no matter how effective the dust control program proves to be, disability is inevitable. With all due deference, I would suggest that in the long run such a philosophy would compromise not only the dust control program, but also the health of U.S. coal miners.

Mr. Chairman, inherent in any civilized society is the tenet that such a society should provide its disabled members with sufficient

financial support for the necessities of life. Ethically and morally it matters little whether the disability is industrially acquired or not. If this doctrine is accepted, the same impairment and the same disability should receive the same compensation. This ideal, unfortunately, does not prevail at the present time since the disabled coal miner is significantly better compensated than the disabled cotton worker.

There would seem ample justification for extending the benefits contained in the 1969 act, and this present bill to many other occupations, especially to those industries in which men are exposed to hazards such as asbestos and cotton.

Mr. Chairman, I would be the first to agree that coal mining is an unpleasant and hazardous occupation, but its dangers are mainly related to accidents.

In this regard, the accident rate in the United States is between 3 and 5 times that of most European countries. While respiratory disease in the form of complicated pneumoconiosis is still a risk, it affects relatively few miners and should affect even less as the dust control measures introduced as a result of the 1969 act begin to take effect.

If you feel that 35 years in a coal mine is sufficient for any man, and I can sympathize to some extent with this viewpoint, premature retirement at 60 or 62 may be in order; a situation which I believe prevails in certain other industries.

But such a decision must be justified on social and economic and not medical grounds. I would submit that there is no medical evidence available at the present time which can support the concept of disability automatically being present in a coal miner who has worked for 35 years in this occupation.

Thank you for your indulgence.

Mr. DENT. Thank you, Doctor.

I am not going to question you at this time because I am going to hear all of the evidence from all five doctors.

I would say to you that you have given us some food for thought. If I understand your testimony correctly, then I should have a guilty conscience. Your statement implies that I have wasted billions of taxpayers' dollars on healthy men. I have been guilty of taking billions of dollars out of the pockets of American people to give to these coal miners that don't have any incapacitation.

As I read your testimony, I must admit I am a little confused.

Dr. MORGAN. If I may elaborate, I must say many men have been compensated for obstructive air way diseases and the point I would bring up is they are incapacitated from chronic bronchitis and emphysema and not coal dust.

Mr. DENT. Would you say for the record that these miners, all that have been compensated, if they had not worked in the coal mines, they would have some normal illness not related to dust diseases?

Dr. MORGAN. I would say 2 percent of the working population. Many of these men are no longer working. Many of these persons have retired. If one looks at the prevalence of pneumoconiosis in the retired population it is somewhere around 10 percent.

Mr. DENT. Two percent of the working population. Do you think it is worth the millions of dollars that we are putting into the dust program for 2 percent of the working population in the coal mines or would it be better to take that 2 percent and give them a pension?

Dr. MORGAN. No, sir, I think it is worth it because it is more than 2 percent over the long run. This is a preventable condition. I yield to none in my admiration for the dust standards which were set and I think if they are adhered to and the Mining Enforcement and Safety Administration can manage to keep the level to the prescribed limit, then there is going to be virtually no coal worker's pneumoconiosis that is disabling over the next 20 years.

Mr. DENT. I am sure Mr. Erlenborn and myself share that belief very strongly. We believe the dust standards are the secret to the future of our country in the coal mining industry and the health of our workers.

In the meantime, this great population you admit has long ago gone out of the working population because they had ailments that were not visible and when we got around to the point of doing something about it, we believe it was because of these conditions of these workers that we were able to get the dust standards moved down because we had to have something to show why the dust standards had to go down and we had to point to these crippled miners.

So, if we have done nothing else, whatever it cost us, if we have made the country, the coal mine operators, and the medical profession aware of the possibility of eliminating this dread disease for alltime in this country, then every cent we have spent on some few miners we have paid compensation to was money well spent.

Dr. MORGAN. I entirely agree. I think any man disabled, society has a duty to support.

Mr. DENT. My staff points out something to me. You made this statement in the panel discussion, "The immaculate deception is coal dust will reduce——"

Dr. MORGAN. If I may be allowed to phrase what I said——

Mr. DENT. I would like to read it first. I don't think anyone will know what we are talking about unless they hear it. "It appears that other factors are probably more important than coal dust in producing ventilatory capacity in coal miners——"

Mr. ERLBORN. You didn't finish the first sentence.

Mr. DENT. "The immaculate deception is that coal dust control will reduce the coal worker's pneumoconiosis under present conditions."

You say it will not, you say it is a deception to believe coal dust control will reduce compensation payments. Here you say that if we limit coal dust to a certain count in the air that it will reduce——

Dr. MORGAN. May I elaborate? What I said was, the coal dust control program will eliminate complicated pneumoconiosis, since 90 percent of the persons who have been awarded black lung benefits have been awarded this on the basis of obstructive airway diseases which is not related to the inhalation of coal dust but to cigarette smoking.

Then to expect that over the years coal dust programs will lessen the incidence and prevalence of obstructive airway diseases on which black lung benefits are now currently awarded is a deception and it is not going to prove so.

Mr. DENT. I spent a great deal of time in an institution in Great Britain, where they had—I think it was listed at that time—35,000 X-rays, and their whole basis of payment for first, second, third, and fourth stage pneumoconiosis was based on the X-rays.

Now, do they have a technique that we don't have? They led me to believe in testimony that they were paying compensation payments on the basis of black lung detected by the X-ray method. They didn't say anything about smoking cigarettes or chewing cigars or anything else.

Dr. MORGAN. That is absolutely correct. They were paying 10 percent extra and men with category 2, 3, and 4 are continuing to work even though they are paying them disability insurance, they are continuing to work.

Mr. DENT. Did you ever wonder why?

Dr. MORGAN. Because if one goes back in the history, it was assumed, when the medical board set up the research, that the increasing dust was likely to increase the damage to the ventilatory capacity. This was subsequently passed. There was a select committee last year which recommended it should be removed but the Minister of Social Security in Britain decided it would not be expedient at that time because of the strike of the miners to remove it.

Mr. DENT. I was told, not on the record, that the reason they established this unique compensation procedure was to entice miners to continue working in the mines. The only way they could get enough miners into those mines over there was giving a bonus to the ones staying in the mines until they got the final stages of the disease. This is what they told me. It was a matter of strict economics and manpower.

It wasn't done for any other reason. They said to me that pneumoconiosis does not incapacitate the miner until the complicated stage. Until that stage his lungs supply enough air and he gets enough transfer of oxygen to continue the type of work he was doing in the coal mines.

I will yield to Chairman Perkins.

Chairman PERKINS. I read a statement this gentleman made at the University of Michigan, I think, sometime ago on which I placed very little credence. And I personally place very little credence in your testimony today. Have you ever been in a coal mine?

Dr. MORGAN. Yes, on many occasions.

Chairman PERKINS. Have you seen coal shot from a solid?

Dr. MORGAN. Yes.

Chairman PERKINS. Have you seen it cut with the cutting machines?

Dr. MORGAN. Yes.

Chairman PERKINS. Where did you see that?

Dr. MORGAN. When I first went into a coal mine, it was about 1951 or 1952 and it was in Great Britain and the seam was about 2 feet high. We had to crawl in there.

I have been down in Pennsylvania, I think Osage No. 15.

Chairman PERKINS. How long did you stay down on each tour?

Dr. MORGAN. Two or three hours.

Chairman PERKINS. The reason I don't place any credence in your testimony, there perhaps were 60,000 or 80,000 coal miners in Eastern and Southern Kentucky when I was a kid. Half of that number never smoked. I saw a coal miner several years ago walk up the hill with me that never smoked, to my knowledge, a cigarette in his life. He had been in the coal mines 25 or 35 years. The next day he went in the coal mines and fell dead. There are thousands of those people. That is why I say your testimony here doesn't amount to a tinker's damn, the survey you made and as far as getting down to the real problem involved here.

How does coal mine dust affect you? How long could you stay in that dust in a mine that is real dusty without taking a headache from breathing it? Could you do it? Cigarette smoke wouldn't affect you like that, would it?

Dr. MORGAN. Yes, cigarette smoking is much more dangerous.

Mr. Perkins, you have every right to say you don't believe my testimony.

Chairman PERKINS. It just doesn't bear out. You mention three or four isolated experiments here or there.

Dr. MORGAN. These were not isolated.

Chairman PERKINS. They are isolated to my judgment, really isolated.

Dr. MORGAN. Possibly but they have been duplicated in Britain, Germany, and South Africa.

Chairman PERKINS. What I am talking about is where these people worked in coal dust day in and day out for years and years before you had the 1969 Mine and Health Safety Act enacted into law. They laid under those hills, worked in it 10 and 12 hours a day and sometimes during the depression years 14 and 15 hours and to come in here and put up a flimsy argument that those people, perhaps a few of them that smoked, they are affected more by smoking than by laying in that coal dust doesn't make sense. A man in your position couldn't lay in that coal dust 30 minutes without having to be carried out the way the miners used to have to work in the mines.

Not being accustomed to it, you couldn't breath it.

Dr. MORGAN. That is a possibility, but I have done it and succeeded.

Chairman PERKINS. Did you breath it while you were in the mines?

Dr. MORGAN. Yes and coughed it out for the next several days.

Chairman PERKINS. A cigarette doesn't affect you like that, does it?

Dr. MORGAN. Yes, much more. I would have to be exposed to about 10 times the concentration of dust in a coal mine.

Chairman PERKINS. How much dust is in the coal mines?

Dr. MORGAN. Sixty percent.

Chairman PERKINS. That is not true in my area.

Dr. MORGAN. No, but it is true in most of the country.

Chairman PERKINS. I would say it is less than 25 percent. That would show—if it is only 25 percent—you are wrong, wouldn't it?

Dr. MORGAN. I would say our study involved almost every State, Kentucky included. Both eastern and western Kentucky were no different. I am not a witness for the insurance carriers, the coal companies or the UMWAA I am a witness for scientific fact. You have every right to disagree but, on the other hand, these are the facts and have been shown elsewhere.

Chairman PERKINS. I just don't put any credence in your testimony.

Mr. DENT. We each, of course, have a right to our opinions.

I would just like to say when you get back to your University, would you draft a bill that you believe would do justice to your testimony so that I would see to what extent we could pass legislation on a scientific basis? What would it do? I don't know because I can't write it.

Dr. MORGAN. I don't know that I can. I profess to be a physician who looks after patients and does a little clinical research. I did give a talk at the School of Public Health in Michigan on workmens' compensation.

Chairman PERKINS. I remember that.

Dr. MORGAN. Mr. Perkins referred to this. I firmly believe any man who is disabled should be compensated and I am not going to point the finger and say "because he smokes." I won't adopt a holier than thou position. If he is disabled, he should be compensated. This is the only form of legislation I could recommend and I would not know how to put it into effect.

Chairman PERKINS. Do you still work for the Department of Health?

Dr. MORGAN. No, sir, I don't, I work for the University of West Virginia.

Mr. ERLNBORN [chairing]. Dr. Morgan, thank you for your testimony. I suppose I should apologize to you since you are here at my request and you came in for a little personal attack.

Chairman PERKINS. Will the gentlemen yield? I don't mean to attack, I just disagree with his comments. Maybe I stated it too strongly.

Mr. ERLNBORN. I think Chairman Dent stated accurately, you have a right to disagree.

Doctor, if it makes you feel any better, in other societies, it was the practice that the bearer of bad news was assassinated. You at least are not subject to the maximum penalty here, only to a certain amount of attack.

I think, Doctor, your philosophy as expressed here is that those who are disabled, workers who are disabled ought to be adequately compensated and that the compensation should be equal, regardless of what the occupation of the disabled worker may have been. That is what I get from your testimony.

Dr. MORGAN. That is exactly true, equal disability, equal compensation.

Mr. ERLNBORN. So those that would put the interpretation on your testimony that you are a heartless person who would like to

deny compensation to disabled workers, I think you are being at least—to put it kindly—inaccurate, would you agree?

Dr. MORGAN. I would.

Chairman PERKINS. If the gentleman will yield to me, the more I look at the doctor, the more I think he really believes what he is saying.

Dr. MORGAN. I often do.

Mr. ERLBORN. You see you can even make converts.

The fact is, Doctor, I obviously agree with you. Workers who are disabled should be compensated, and the compensation ought to be related to their disability rather than to their prior occupation.

There is another aspect of this bill that you have not turned your attention to—I think rightfully so because you are here to testify as a medical expert—but the philosophy you and I express, I think, is again violated in another aspect of this bill. The bill also provides that those receiving coal workers pneumoconiosis compensation could, without any offset, receive workmen's compensation disability payments. In combination, then, they would collect more than other workers totally disabled due to other reasons. I object to that because I believe workers who are totally disabled should receive just compensation based on their disability rather than their prior occupation. I think you agree there.

Dr. MORGAN. I couldn't agree more, equal justice for all, or equal compensation.

Mr. ERLBORN. Doctor, you have turned your attention in your testimony to H.R. 7 and 8, which has a 35-year irrebuttable presumption and you have made your point a little more succinctly and in a little better fashion than I did yesterday.

If this presumption is applied in the future, we would be saying that the effects of the reduction of the dust concentration in the coal mines to 2 million grams is going to be a failure. We are assuming by law that anyone who works in the mines for any specified period of time per force becomes completely disabled and entitled to compensation, regardless of dust concentration.

Dr. MORGAN. Right, and I think that is a doctrine of total defeat.

Mr. ERLBORN. I would agree that is a doctrine of defeat. It is saying it is worthless for us to try to reduce the dust level because, regardless of what we do, after some specified time every coal miner will be completely disabled.

As a matter of fact, the United Mine Workers yesterday said the period should be 15, rather than 35 years. So, regardless of any evidence of the symptoms of the disease, every coal miner after 15 years would be eligible for complete disability payments.

I think you would agree with me that this is even a worse doctrine or criteria than the 35 years.

Dr. MORGAN. I would indeed.

Mr. ERLBORN. Doctor, in your experience, what is the incidence of massive fibrosis or pneumoconiosis after working underground in the mines?

Dr. MORGAN. If we believe their dust figures are correct, there will be zero compensation of pneumoconiosis in 15 years. Those stopping work now, and assuming the dust levels that have been prescribed by Congress are being adhered to, there will be no complicated pneumoconiosis in 15 years.

Chairman PERKINS. We accept that because we have stated there will be no pneumoconiosis compensation after 15 years. We feel that will be the case in 15 years.

Mr. ERLBORN. If you know, what was the incidence of complicated pneumoconiosis after 15 years in the mines?

Dr. MORGAN. This is extraordinarily difficult. There is a variation throughout the country. For example, in the first round of the national coal study, I think the incidence among working miners was about 2.9 percent. If one looked at retired miners, it was around 10 or 12 percent.

I would also add that for example in the anthracite area of Pennsylvania 14 percent of working coal miners had complicated pneumoconiosis. In Utah and Colorado it was around 0.1 percent, so there is a tremendous variation and, unfortunately, there are no data available for the whole country.

There have been isolated studies done in different parts, mostly in Pennsylvania, but prior to this there were no data available.

Mr. ERLBORN. If you look beyond the experience in the United States and go to other countries, there are also variable factors, as I understand it. For instance, when we were both in England with Chairman Dent, they pointed out their coal mining methods were different than those in the United States and that could affect the incidence.

Dr. MORGAN. Even in Britain there is a tremendous range in the geographical prevalence. It is high in South Wales and low in the middle.

Chairman PERKINS. It might have something to do with the heat.

Dr. MORGAN. Yes, it is 2,000 feet down.

Mr. ERLBORN. In your experience, do you know of any medical evidence that would sustain a presumption of the presence of the disabling pneumoconiosis based on any length of time of exposure in the mines?

Dr. MORGAN. No, sir; I don't.

Mr. ERLBORN. This is a diagnostic problem, is it not?

Dr. MORGAN. Yes.

Mr. ERLBORN. What is the best diagnostic tool?

Dr. MORGAN. The only way of assessing dust exposure in life is with the X-ray and the X-ray has many imperfections. I would point out that the X-ray does not—except in complicated pneumoconiosis—give any indications of pulmonary functions. A man can have impairment of pulmonary function and of course it cannot be detected on the X-ray. But it is an excellent indication of dust exposure.

Mr. ERLBORN. Doctor, are you aware that, as a result of the 1972 amendments to this law, a claim may not be disapproved solely on the evidence of an X-ray?

Dr. MORGAN. That is true, yes.

Mr. ERLBORN. Is it necessary, in your opinion, to have evidence beyond the X-ray to make the diagnosis?

Dr. MORGAN. If you are relating it to occupation, no. If you are looking for disability occurring in the man, one needs to do pulmonary function tests. But pulmonary function tests detect impairment which is caused by a multitude of other conditions, including emphysema, chronic bronchitis, and a multitude of other conditions.

Mr. ERLNBORN. Thank you.

Mr. DENT. Thank you, Doctor.

Congressman Cornell?

Mr. CORNELL. I would like one point of clarification, if I may. I would gather then you would never accept the presumption of disability automatically being present in a coal miner?

Dr. MORGAN. No, I would not, nor in anybody else.

Mr. CORNELL. Then as far as a diagnostic tool—

Dr. MORGAN. May I add something? If a man has category B or C complicated pneumoconiosis on X-ray, that I think would be enough for me to say that he is automatically disabled, yes.

But there would have to be some criteria or I would not accept it without medical examination and evidence of impairment.

Mr. ERLNBORN. You say category C and B, that is a question of disability. Would you say he is totally disabled with category B or C?

Dr. MORGAN. He may be, but I cannot tell solely from the X-ray. It is likely. I think there is reasonably certain evidence and I would not quarrel in those circumstances.

Mr. CORNELL. Thank you.

Mr. DENT. Mr. Simon?

Mr. SIMON. As I understand it, you teach now at the University of West Virginia?

Dr. MORGAN. I do, sir.

Mr. SIMON. Do you do any consulting work or do you have other means of compensation?

Dr. MORGAN. I do consulting work but I am paid a salary and nothing I might receive on consulting comes to me personally.

Mr. SIMON. I am not suggesting there is anything wrong with that. Are you being compensated for your testimony today?

Dr. MORGAN. No, but I shall probably put in a voucher for my travel when I go back to the university. Whether they will pay it or not, I don't know.

Mr. DENT. Let me know and I will use my influence.

Dr. MORGAN. Mr. Chairman, that is a noble promise, thank you.

Mr. CORNELL. To some extent we seem to be talking across from each other. What you are suggesting, for example, in response to Chairman Perkins, is that from here on with the the new dust standards it would be more harmful to smoke cigarettes. You are not suggesting that 10 or 15 years ago smoking a cigarette would be more harmful than the coal dust?

Dr. MORGAN. Sir, I am suggesting it for 10 years back, yes. If I may point out Dr. Ortmeier's paper on coal miners, he looked at the men included in the 1962-63 study. We didn't know what we were going to find, but the Health Department carried this study out to look at the conditions in 1962-63.

He followed something like 3,000 men up to the present day to find out how many men did and he was able to get the death certificate of most of those who died. He looked at the death rate according to whether they had simple pneumoconiosis, according to whether the FEV-1 had decreased and according to whether they were cigarette smokers.

What became evident from this study was, if you had complicated pneumoconiosis and were a nonsmoker, you were 1½ times

more likely to die prematurely than the general population, about 11½, I forget the exact figure.

If, on the other hand, you had complicated pneumoconiosis and were a cigarette smoker as well, you were 21½ times as likely to die prematurely.

If, on the other hand, you were a cigarette smoker alone, with a normal X-ray, you were still at an added risk, I think almost twice as likely to die prematurely than if you were a nonsmoker.

Mr. CORNELL. One and a half is a pretty significant kind of relationship, I would think, even then. Where did we get terms like "miner's asthma," or the one that I understand is medically accepted now, "coalworker's pneumoconiosis" if there is no such thing?

Dr. MORGAN. There is such a thing as coal worker's pneumoconiosis, complicated pneumoconiosis. Miner's asthma was a term used in the 19th century in Britain where they worked in appalling conditions. There was no ventilation and men died rapidly from silicosis fibrosis and pneumoconiosis. Since there was no X-ray available, they had to rely entirely on physical examination and that would not differentiate between pneumoconiosis and silicosis fibrosis.

In the 1900's, silicosis fibrosis started to decline. In the 1930's this went up and again there was a huge incidence of complicated pneumoconiosis in those days in Great Britain and there was until recently in the anthracite mines of Pennsylvania.

I have already mentioned that 14 percent of the working population who were examined in the first round of the National Coal Study had complicated pneumoconiosis and were likely to die before their time.

Mr. ERLNBORN. One aspect you did not discuss was the term coalworker's pneumoconiosis. During our trip to England we were told they used that term to differentiate from coal miner's pneumoconiosis because those who worked elsewhere than the mine with the coal where coal dust is present could contract the disease, loading barges and that sort of thing, so they used the term coal worker's pneumoconiosis to make sure you covered the entire population and did not limit it to only those working under the ground.

Dr. MORGAN. The differentiation between the coalworkers came about because of coalworkers on ships, those loading the coal, but the disease was identical to that of the men working in the coal mines.

The coal had been washed and, therefore, the inference was drawn—and I think correctly—that it did not require silica to be present.

Mr. SIMON. I think my point is we are talking of a substantial hazard that has been present. As I read your written testimony, I don't sense that that concern is present.

You have, I am sure, talked to coal miners and you know coal miners. If in Virginia, Pennsylvania, or Kentucky, you walked down and talked to 100 coal miners, or by comparison you were here talking to 100 people working here in the Capitol building, would one group show more evidence of coughing and breathing difficulty than the other group?

Dr. MORGAN. Yes, but not if I talked to 100 steelworkers, or not if I talked to 100 asbestosworkers working in the mines near Sher-

brook in Canada. It is not coal dust per se, it is dust per se which is responsible and you will find equally as much industrial bronchitis in steelworkers who have dusty occupations, asbestosworkers and cotton millworkers.

Mr. SIMON. Asbestos I don't know anything about. In the area of steel, I would disagree vigorously. I have represented a steel area. I mean no disrespect to the steelworkers when I suggest there is no comparison of the kind of breathing difficulties the average steelworker has with the difficulty the average mineworker has.

On page 3 you quoted Dr. Kibelstis. I gather you approved when he said that no matter how many years underground it would not affect this index of pulmonary function. You agree with that statement?

Dr. MORGAN. Yes.

Mr. SIMON. I have here a coal miner's article in "U.S. Coal Miner's Environmental Health 1973," where five distinguished physicians, one is William Keith Morgan—

Dr. MORGAN. I think that was I, it still is.

Mr. SIMON. Here you say that from area to area the relationship between mean years spent underground, roentgenograph—

Dr. MORGAN. That just means X-ray. That is a pompous term used by the editor, not me.

Mr. SIMON. In other words, in your article you are saying that obviously there is an increasing complication with the years.

Dr. MORGAN. We are talking of two different trends. Dr. Kibelstis was measuring the gas transfer and this is barely affected by increase in category. That article refers to X-ray prevalence, to the finding of X-ray small opacities and large opacities and they are certainly related to years underground.

Mr. SIMON. So the more years you would have underground, the more damage—

Dr. MORGAN. The more opacities you would have.

Mr. SIMON. And the more damage?

Dr. MORGAN. I didn't say damage, I said the more opacities. In some incidents it would be opacities.

Mr. SIMON. Opacities don't do your lungs any good.

Dr. MORGAN. Sometimes they don't do any harm. I can show you men with stannosis who have been exposed to tin who have horrible opacities but their longevity and working capacity are unharmed.

I can show you men exposed to barium and they are completely unaffected. This is why the labor organization changed the definition of pneumoconiosis from a dialation from the inhalation of dust to the accumulation of the dust presence.

There needs to be a pathological change before one can say that this is really having a bad effect. Sometimes dust will accumulate in the lungs and not produce any effects.

Mr. SIMON. What percentage of the cases would it produce no harm?

Dr. MORGAN. How do you assess harm? I have already stated in this that there are minimal impairments, minimal abnormalities of pulmonary function found in pneumoconiosis but they will not affect a man's ability to work. One can find appreciably greater impairment in persons smoking cigarettes.

Mr. SIMON. You recognize that cigarette smoking is a hazard?

Dr. MORGAN. The Public Health Service said so and I agree with the Surgeon General.

Mr. DENT. It is not dust.

Dr. MORGAN. It is in dust form, particulate matter.

Mr. SIMON. And I think we have to recognize this is another hazard, what we are gradually approaching here.

All right, one other point and that will be the end of my questions.

On page 4, you say there is no medical evidence to support the presumption that when respiratory impairment develops in a miner working 25 years underground such impairment could reasonably be attributed to his occupation unless that miner has radiographic evidence of the complicated form of the disease.

One of the other articles that you coauthored with two other gentlemen—I assume they were maybe physicians, too, in the American Review of Respiratory Diseases. I have been reading your works.

Dr. MORGAN. Thank you, I am flattered.

Mr. SIMON. It is what you call the subjectivity of the interpretation of X-rays and you point out that one person can look at X-rays and say here is a real problem, and another person can look at the same X-ray and say, there isn't a problem.

Now, my concern is, is the thrust of your testimony a subjective interpretation that moves in the direction of saying, you know, there really isn't a problem?

Dr. MORGAN. I don't think that is the right inference to draw. I will be the first person to say that the interpretation of X-rays is subjective. I think some of the problems the Public Health Service have had with the interpretation of X-rays can, with the appropriate measures, be greatly reduced.

Dr. Morgan of Johns Hopkins devised a test whereby readers had to qualify. Many of these persons had never seen X-rays of coal-workers with pneumoconiosis, even though they were excellent in their own field. But this problem can be looked after.

Now, on the other hand, I would say if you train your readers properly in the way that the National Coal Board trains their readers, one can get agreement 90 percent of the time as far as categories is concerned. I don't know which article that is.

Is that the one about Anglo-American disharmony?

Mr. SIMON. Anglo-American disharmony on the diagnosis of coal-workers disease. You point out a variation.

Dr. MORGAN. That is true. We did something to try to make the readings more accurate and, if you look at the end, you will see I make a plea that it be in-house reading and the persons interpreting the X-rays get together and use standard films.

The International Labor Organization has standard films whereby any unknown film should be compared to it and unless this is done, you are bound to get spurious readings.

And if this is adhered to and recommended in the Federal regulations, then I have no doubt the standards and consistency of the standards of X-ray reading for pneumoconiosis will improve.

Mr. DENT. Mr. Ashbrook?

Mr. ASHBROOK. You mentioned your 1962 study in earlier testimony. Did the study indicate the life expectancy of the coal miner as compared to the rest of the population?

Dr. MORGAN. Yes.

Mr. ASHBROOK. What was it?

Dr. MORGAN. Exactly the same or—his standard mortality ratio, his life expectancy was minimally longer but not significantly so.

Mr. ASHBROOK. Longer?

Dr. MORGAN. Slightly but nothing you could say that doesn't occur by random or chance.

Mr. ASHBROOK. A tougher breed of people?

Dr. MORGAN. Yes, tougher and more uncomplaining and they smoked less.

Mr. ASHBROOK. That hasn't been my experience with coal miners. It doesn't add credibility to H. R. 7 and 8, I guess.

Mr. SIMON. How would the life expectancy compare to the general nonurban population?

Dr. MORGAN. This was one of the things we considered. The editor said, "Perhaps you should consider it to the county in which the man lives rather than the whole of the population." So we looked at individual counties. They also suggested we should look at the State in which they live. It really made no difference. You really can't compare it.

In certain counties in southwest Virginia and eastern Kentucky, 75 to 80 percent of the men have worked at some time in the coal mines. It is irrelevant there in comparing it to the 15 percent.

I think it is an invalid comparison to compare it to the few counties in Western Virginia around Rice and Norton—where the predominant industry is coal mining—to the rest of Virginia which is rural and, of course, in Norfolk it is shipping and around Washington, it is dormant. You might as well compare it to the whole of the United States and as you point out, life is infinitely longer than in New York or other large cities, not infinitely, but appreciably.

Mr. SIMON. Is it tied to the life or the profile of the coal miners who spent 10 or 15 years in the mines?

Dr. MORGAN. No, men with simple pneumoconiosis have spent a long time in the mines and their life expectancy is the same.

Obviously men don't develop pneumoconiosis in a short time, it is usually 25 to 30 years.

Mr. SIMON. You are comparing all coal miners, and not breaking them down to whether simple or complicated?

Dr. MORGAN. Oh yes, we did that, too. We broke it down to bronchitis, their smoking habit, simple, complicated and no changes at all.

Mr. SIMON. I am not automatically proficient but it would seem the same answer you gave would apply to complicated as well as simple in life expectancy.

Dr. MORGAN. No, common pneumoconiosis is a potent cause of premature disability.

Mr. SIMON. The overall coal miners, according to class, have an overall better life expectancy?

Dr. MORGAN. Yes.

Mr. DENT. Since 1972 we have taken into consideration that the inhalation of dust aggravates other dust pulmonary diseases. It is

analogous to losing an arm, your life expectancy may not change whether you lose one arm or two, but you are disabled. I don't believe life expectancy has anything to do with it.

Dr. MORGAN. That is perfectly true.

Mr. DENT. I don't use that as criteria.

Dr. MORGAN. But if you lose an arm, it would depend on your job.

Mr. DENT. That is right, a one-handed stenographer could do almost as much work as one with two arms, but if he or she is eligible, we will pay disability payments for life.

Dr. MORGAN. That is correct.

Chairman PERKINS. To what extent do we find disabling pneumoconiosis without it showing up on an X-ray?

Dr. MORGAN. In my opinion there is no such thing as pneumoconiosis showing up in life without X-ray. It depends on what you want to call pneumoconiosis.

I think there is much to be said for the International Labor organization which defined using X-rays. People can define it any way they want, but I think that impedes further scientific progress.

Chairman PERKINS. I don't want to lengthen this because we do have other witnesses, but I want to say to you, the Chairman of the Board of Chancellors of Marion University of Radiologists gave us this language "to take into consideration any and all clinical findings which would be provided by the miner or his physician in developing"—including the X-ray factors—"but at no time would he use them exclusively."

These are the radiologists, because we have proof of eight separate readings with eight separate findings.

Dr. MORGAN. I agree.

Chairman PERKINS. We gave them instructions to standardize their reading procedures when the bill first passed.

Dr. MORGAN. They are starting to do it.

Chairman PERKINS. It is a little late.

Dr. MORGAN. I agree. I was not responsible. That bit of advice is excellent for showing disability and impairment but not showing cause and effect.

Chairman PERKINS. I don't know about the cause and effect, but I have been sitting here during your testimony and there is a gentleman in this room with black lung disease and he has been sitting in this room with his mouth about three-quarters open since he has been here, not because he wants to, but because he has to.

I don't have to know about cause and effect. That man and I live in the same house. Nobody will convince me that hacking coughs at 2 in the morning doesn't come from coal mines and he never smoked.

Dr. MORGAN. I could show you men that have never been in a coal mine doing the same thing.

Chairman PERKINS. But it is not from black lung.

Mr. ERLNBORN. Yesterday it was suggested that I was not qualified to legislate in this area because I don't represent an area that has coal miners. I think it was suggested in some of the questioning here this morning that a physician cannot diagnose pneumoconiosis unless he has worked for an appreciable length of time underground in the coal mines.

Doctor, isn't there a question in your mind as to whether we are using proper medical criteria. If the Congress should decide that all disabled workers should get very generous compensation you would be pleased, I am sure, but the question that you have and you raise here I think is whether we are using proper medical criteria or misusing medical criteria to see that certain workers get compensation.

Dr. MORGAN. Yes, basically I feel, as I mentioned earlier, that equal disability should receive equal compensation.

Mr. ERLNBORN. The medical decision as to whether someone is disabled or whether that disability is due to pneumoconiosis does not depend on coal dust exposure by the physician, does it?

Dr. MORGAN. No. I fail to see how one could really work all one's time in the coal mines and still be in medical practice.

Mr. DENT. No one suggested you had to work in a coal mine. In fact, if I had my way, at least years ago, I wouldn't have worked in them either.

Dr. MORGAN. I am not saying I would either, Mr. Chairman.

Mr. ERLNBORN. I wouldn't today. I have claustrophobia. I hate to get into a place like that.

Mr. DENT. You are a lawyer, but I will tell you that a significant percentage of the new miners hired in the mining operations had degrees as lawyers and they are down-in-the-mine workers. There are too many lawyers and not enough coal miners.

Mr. ERLNBORN. From the day I got my law degree I thought there were too many lawyers.

Mr. DENT. Doctor, your testimony may help me convince my wife to have a lung examination. She is a heavy smoker.

Dr. MORGAN. If you send her down in the mines a little, you will be on better ground.

Mr. DENT. She has been down in the mines.

Chairman PERKINS. After listening to this testimony, I didn't mean to cast any remarks to reflect on this gentleman's testimony. I don't agree with his testimony but I feel he is as serious as he can be about his beliefs and honest about his beliefs. That is the type of witness we want to appear before the committee on all occasions.

Dr. MORGAN. Thank you, Mr. Perkins.

Mr. DENT. I think Dr. Morgan knows that very well, and he knows we value his testimony. We have talked to him before and we know his views are sincere.

Mr. ERLNBORN. It is the first time I have ever seen the doctor. The more I have listened, the more I am impressed with his testimony.

[Statement of Mr. Weeks follows:]

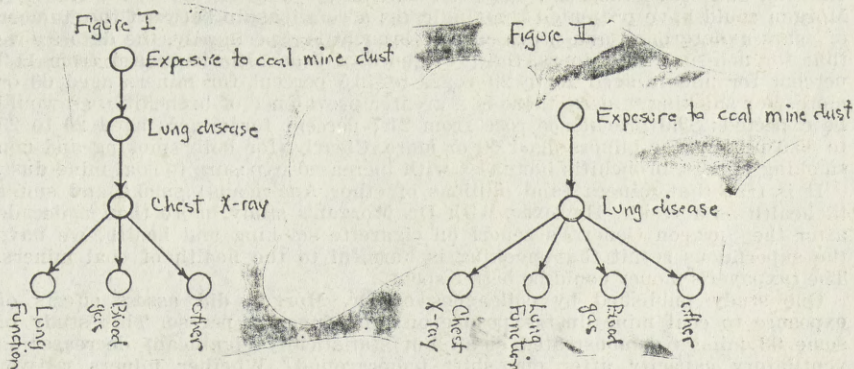
STATEMENT OF JAMES L. WEEKS, DEPARTMENT OF PHYSIOLOGY,
HARVARD UNIVERSITY SCHOOL OF PUBLIC HEALTH

(Comments on the Testimony of Dr. W.K.C. Morgan before the House Subcommittee on Labor Standards)

There is little disagreement among doctors that respiratory disease is more common among coal miners than among the general population. These diseases fall roughly into four major categories: (1) coal workers pneumoconiosis (CWP), (2) emphysema, (3) chronic bronchitis, and (4) chronic obstructive

lung disease. Of these, Dr. Morgan contends that only complicated CWP is disabling and of occupational origin. CWP is defined as retention of coal mine dust in the lungs and is measured either by x-ray, lung biopsy (major surgery), or autopsy. Thus when Dr. Morgan is referring to CWP, he is almost always referring to chest x-ray evidence of coal dust retention. Miners may indeed have diseases other than CWP, Dr. Morgan admits, and they may even be disabling but, he contends, they are not of occupational origin. While simple CWP clearly is of occupational origin, it is not disabling since, according to his studies, there is no relationship between ventilatory function and x-ray category of simple CWP. Dr. Morgan stated that miners with simple CWP have been compensated under the black lung program but, in his view, they were being compensated for disabilities that were not occupationally caused.

Dr. Morgan's position is questionable because of its inherent logical weaknesses and because of the methods that he has employed. First, many of Dr. Morgan's conclusions follow from his definition of disabling occupational lung diseases rather than from scientific evidence. Dr. Morgan consistently uses other measurements of lung impairment (such as lung function and blood gas studies) as possible consequences of CWP or as complications of CWP but not as consequences of coal mine dust. Alternatively, he treats other diseases or measurements of impairment as consequences of non-occupational exposure such as cigarette smoking. To illustrate his logic, figure I diagrams the type of logic he uses while figure II outlines an alternative approach. Dr. Morgan consistently uses the logic of figure I and only on rare occasions has he or his ex-colleagues at the Appalachian Laboratory for Occupational Respiratory Diseases (ALFORD) looked at the relationship between exposure to coal mine dust and lung impairment measured in several ways.



An example of this logic and its weaknesses is his study of ventilatory capacity and lung volumes.¹ In this study, his measurements of lung capacity are consistently related to x-ray category of CWP, not to dust levels or even to years underground. His view is that if CWP is disabling, then decreased lung function should follow. His data shows no consistent decreasing lung function with increasing category of x-ray when the x-ray shows complicated CWP. He thus concludes that only complicated CWP is disabling. Yet this same pattern could arise if either (1) the x-ray is not a sensitive measure of lung disease except when there are massive lumps of scar tissue as there is with complicated CWP or (2) the x-ray is not consistently read. That chest x-rays are not a reliable measure of miners lung diseases was debated extensively before Congress and settled with the 1972 amendments to the black lung program. (Dr. Morgan's study was published in 1974.) That chest x-rays consistently read is supported by some of Dr. Morgan's own research (see below).

This same study, moreover, shows a picture of miners that all have decreased lung function. For example, he shows that the FEV-1/FVC ratio is about 74 percent for miners with simple CWP (categories 1, 2, and 3) and about 70 percent for miners with complicated CWP. 70 percent or lower is customarily taken as an indicator of lung impairment for individuals. If a group shows 70 percent on the average, it suggests that among them, there are some severely disabled individuals. If a group average is 74 percent, it

also suggests that there are some individuals among them with severe disability, though not as many as would be for the 70 percent group. But more importantly, the consistent value of 74 percent is on the borderline between normal and impaired. A group average of a sample of persons taken at random from the society should show a ratio of between 75 percent and 80 percent. Thus this ratio of 74 percent should not be taken as a sign that miners with simple CWP are in good health.

But Dr. Morgan's approach is weak not only because of its inherent logical weaknesses and not only because x-rays do not measure enough. It is weak because it places far too much reliance on x-ray readers. Dr. Morgan's own studies of the accuracy and reliability of x-ray readers have demonstrated that there is as much as 40 percent disagreement among these readers, the same people that are regularly used in the determination of black lung benefits.² Further studies have shown that these same readers disagree not only among themselves, but also give different readings of the same films when they read them at a different time and in a different sequence.³

Dr. Morgan also presented a misleading summary of his own work. For example, he drew heavily from his study of bronchitis.⁴ His testimony on this study and the study itself are subject to a number of criticisms. First, while he reports in the study that the effect of cigarette smoking is five times that of dust exposure (not five to ten times as he said in his testimony), he reaches this conclusion from comparing smoking with non smoking miners, a comparison that measures the effects of coal mine dust alone with the effect of coal mine dust combined with the effects of smoking. He does not compare miners with non miners, a comparison which would evaluate the effects of coal mine dust and a comparison that could accurately compare the effects of smoking and coal mine dust. Yet even so, there is data in this study that Dr. Morgan could have presented that indicates a relationship between the number of years underground and prevalence of bronchitis. Specifically, the data shows that for non-smoking miners, the prevalence of bronchitis increased from 11.9 percent for miners aged 20 to 29 years to 46.5 percent for miners aged 60 or more. For smoking miners, there is a greater prevalence of bronchitis, as would be expected: The prevalence rose from 21.7 percent for miners aged 20 to 29 to 65.0 percent for miners aged 60 or more. Clearly, for both smoking and non smoking miners, bronchitis increases with increased exposure to coal mine dust.

It is true that miners (and millions of other Americans) smoke and suffer ill health as a result. However, with Dr. Morgan's study, more than a decade after the Surgeon General's report on cigarette smoking and health, we have the superfluous result that smoking is harmful to the health of coal miners. The taxpayer's money could be better spent.

One study published by colleagues of Dr. Morgan did assess effects of exposure to coal mine dust exposure on lung function per se. This study of some 93 miners demonstrated small but statistically significant decreases in ventilatory capacity after one shift underground.⁵ Whether miners recover from this decrease or whether repeated exposure leads to permanent damage is not known at this time. Not only have those studies not been done, they are not being planned.

Other statistical methods of his are questionable as well. Dr. Morgan claimed that the life expectancy of miners in the U.S. is "the same as that of the general population in the U.S." This sounds good but is misleading. Miners are among the working population of the U.S., a selected part of the general population and not representative of the whole. As such, the working population excludes the very old, the very young, and the very ill. Consequently, workers in general show a better than average life expectancy primarily because of the process of selection. If miners are only about average, this could in fact mean that their life expectancy has been reduced from what it would have been if they had not been exposed to coal mine dust.

Finally, Dr. Morgan stated that the reduced dust levels in the mines would mean that there will be no more CWP. Yet while the scientists conducting the National Study have access to dust data collected by the Mine Enforcement and Safety Administration (MESA), they have analyzed none of it. Moreover, the current standard for dust concentration in coal mines is based primarily on the British experience and British data. None of MESA's data has been analyzed in relation to the prevalence of lung diseases among American miners. Furthermore, this data is being pressed to serve the needs of scientific research, something it was not intended to be used for. MESA's data is collected for

the purposes of enforcing the dust standards of the 1969 Coal Mine Health and Safety Act. As such, its value for scientific research is questionable.

What little evidence there is suggests that there will be a continuing problem with CWP. Specifically, preliminary data from the second round of chest x-rays taken under the National Coal Study indicate that 13 percent of the miners showed a progression from x-ray category 0 to category 1 in the two years between x-rays. If the dust levels were so low as to prevent further cases of CWP, then this progression would not have occurred.

Consequently, Dr. Morgan's contention that there will be no more CWP (and thus no further need for a black lung program) is on shaky grounds.

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Mr. DENT. At this time we will hear from our next witness, Dr. Rasmussen from the Appalachian Regional Hospital.

STATEMENT OF DR. DONALD RASMUSSEN, APPALACHIAN REGIONAL HOSPITAL

Dr. RASMUSSEN. Mr. Chairman, I have been involved in coal miners lung disease problems for about 13 years. I first began in Beckley, West Virginia, in 1962. Shortly after I arrived there I began to encounter individuals, a number of miners who complained of shortness of breath. I had the opportunity to observe some of these men walking up stairs, having difficulty with their breathing, but an ordinary physical examination seldom revealed any particular findings.

A chest X-ray might show simple pneumoconiosis or some other abnormality, but not necessarily complicated pneumoconiosis. Doing the simple breathing tests these men had values which were normal. Many of these miners were being seen by the psychiatrists because they felt that the internists who evaluated them felt there was no organic basis for their complaints of shortness of breath.

What we did was approach these patients in the same standard fashion as we would have done in evaluating the patient with some type of unknown lung disease in Texas or Colorado. We did simple ventilatory studies and continued to make assessments of their ability to properly oxygenate the arterial blood.

We very quickly found abnormalities in our miners that were quite significant and we have continued to find this main type of abnormality to this date.

Now I can't give you any statistics as to what the prevalence of this type of abnormality is in coal miners in general because we have had no opportunity to do a properly selected sample. All I can tell you is that it is a fairly common occurrence.

In the review that we did last year, something like 8 percent of a group of 900 some miners that we evaluated showed some abnor-

malities in gas transfer that would have been adequate for them to be compensated under the current rigid standards for disability employed by the Social Security Administration and the Department of Labor.

About 35 percent of the total group would qualify under somewhat more lenient standards for disability.

At any rate this still remains a significant problem. How it relates to dust and dust diseases, I really don't know. I could say that we see very little relationship between anything that you see in the X-ray and impairment in functions.

In fact, in the last couple of weeks we evaluated—and I might say for about the third time each—two individuals with category B complicated pneumoconiosis who are in perfectly good health. We find miners who have little or no abnormality in the X-ray and yet they may have definite impairment in functions. We find many coal miners with clear X-rays and yet with some abnormalities.

We have had experience with about 11,000 or more coal miners that we have evaluated.

That will conclude my remarks.

[Prepared statement of Dr. Rasmussen follows:]

PREPARED STATEMENT OF DR. DONALD L. RASMUSSEN, APPALACHIAN REGIONAL,
HOSPITAL

Many needy coal miners and widows have benefitted from the compensation provisions of the 1969 Coal Mine Health and Safety Act. The amendments to these provisions in 1972 further improved the law, primarily by defining total disability under the Act, by decreasing the importance of the chest x-ray in diagnosis, and by realistically including other chronic respiratory diseases under its coverage.

Regulations subsequently promulgated by the Social Security Administration, which I have previously criticized before this Subcommittee, only partially reflected the 1972 changes. Those regulations did liberalize the requirements for ventilatory standards (the simple breathing study), but failed to alter standards for blood gas values. The latter, are in fact, the same as for disability social security without an occupational offset. In other words, they are the same standards used for determining disability in an individual in a sedentary occupation. Under the 1972 regulations by the SSA, a coal miner could qualify for benefits if he sustained minimal to moderate loss of his breathing ability, yet he could not qualify on the basis of blood gases unless he exhibited very marked loss of his ability to oxygenate his blood. For this reason, there are significant numbers of coal miners who are sufficiently impaired to prevent their continued employment in coal mines, who have nonetheless been denied federal black lung benefits.

Standards for disability under the federal black lung program administered by the Department of Labor are now identical to the original standards employed by the SSA in 1970. The standards for ventilatory studies are the same as for disability social security with an occupational offset. Blood gas standards remain even more rigid. These standards ignore the definition of disability outlined in the 1972 black lung amendments.

Both the SSA and the Labor Department continue to deny benefits to coal miners after only a chest x-ray and a simple breathing study. Neither regularly provide blood gas studies to applicants.

I would suggest that a) the SSA modify its standards for blood gas values to place these in keeping with the interim standards for ventilatory studies (i.e., FEV₁ and MBC values). On the average, the 1972 ventilatory standards allow an award when a miner's FEV₁ is reduced to approximately 67% of the predicted normal value. Standards for blood gases should be liberalized to reflect essentially the same loss of capacity.

b) The Labor Department should use the above modified standards for coal miners who have or will apply for black lung benefits after July 1, 1973.

c) No applicant should be denied until he has had a complete pulmonary evaluation, including blood gas and exercise studies.

Making these changes in the administration of the black lung benefits program would aid considerably in some of the inequities of the program and provide relief for many truly needed miners with lung disease.

Mr. DENT. You disagree then that the X-ray is the only test that is valid in determining whether or not a coal miner has complicated pneumoconiosis?

Dr. RASMUSSEN. By definition of pneumoconiosis which is by and large an X-ray diagnosis, you can't make a diagnosis without a chest X-ray. Having made the diagnosis, however, does not tell whether there is any loss of functions.

Mr. DENT. What would you say would be a determining examination we do not now have in the law?

Dr. RASMUSSEN. I don't know that I have a recommendation for any additional diagnostic tests than those already in the law.

Mr. DENT. Do you think the blood gas test would be helpful?

Dr. RASMUSSEN. I think before one could assume that you had an individual without disability that he should have some type of test which would assess his ability to transfer oxygen.

Now in our hands the blood gas test is the most reliable. There are other tests that I simply don't know whether they would be as reliable or not so we continue to use our blood gas test as such.

Mr. DENT. Do you believe—would you testify as to whether or not the number of years that a miner is exposed has any relationship to the condition?

Dr. RASMUSSEN. We see quite a wide variation, Congressman Dent. We would show you some miners with, let's say, fewer than 15 years who exhibit impairment in functions. We could show you miners with 50 or more years and no impairment. I can't really relate it to years of employment.

Mr. DENT. Do you think it is a bad or good recommendation to have a nonrebuttable presumption at some given point because of the difficulties of really determining the extent of the damage?

Dr. RASMUSSEN. I don't think there is that much difficulty in determining the presence of loss of functions. I can't tell you whether someone who has been working for 15 years in the mine is going to deteriorate at a faster rate than someone with less time in the mines. It wouldn't be difficult to decide whether someone had normal functions or not.

Mr. DENT. Thank you, Doctor.

Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Dent.

Doctor, as I understand it, impairment and the degree of disability can be determined by the volume of air that can be taken in and expelled by the lungs, by the blood-gas test and so forth. I think what you are telling us is that all of these are necessary tests to determine whether or not a person is partially or totally impaired by reason of some respiratory impairment, is that correct?

Dr. RASMUSSEN. Yes, correct.

Mr. ERLENBORN. Now, what test is there available medically to determine, or to diagnose, the cause of the respiratory impairment?

Dr. RASMUSSEN. There is no test that would assign a cause to the loss of functions. In other words, you could damage the lung by a host of diseases and do various types of testing and you would come out with, you know, just a given number of patterns, but you wouldn't be able to distinguish the causes.

Mr. ERLNBORN. Is it generally accepted medically and as I understand it, by the entire international labor organization, that you define and categorize pneumoconiosis based on the X-ray and the number and size of the opacities in the X-ray?

Dr. RASMUSSEN. Yes, so far as the diagnosis of pneumoconiosis is concerned.

Mr. ERLNBORN. So the way you could tell whether someone is partially or totally impaired on the basis of other tests is on the basis of the X-ray, is that correct?

Dr. RASMUSSEN. I am not sure by examining the X-ray you could necessarily assign a cause of the relationship. I don't believe the pneumoconiosis one sees on the X-ray produces any real impairment.

What I think really happens is there is destruction of lung tissue, from whatever cause, that is the cause of loss of functions. It is not the nodular density you see.

Mr. ERLNBORN. I think you are absolutely right and I am happy to have you make that point. The opacities tell you only one thing, there is coal dust in the lungs. If there is impairment, it is possible the coal dust caused it but it could be caused by emphysema or other reasons.

Dr. RASMUSSEN. That is correct. You could appreciate that if you had the opportunity to look at the full-lung sections, which you may have done, because in those full-lung sections you can see many lungs with many multiple, discrete nodular densities which would cast a shadow by X-ray.

If you look at the lung tissue between these nodules you may see well preserved lung tissue. You can have all combinations of destroyed lung tissue and more or less nodules so what you would expect to see on the X-ray has no reflection on what one would expect to find functionally.

Mr. ERLNBORN. I think you have already told us in your testimony the answer to this question, but maybe I could phrase it another way and have you answer it again.

Is there any medical evidence that a person who has worked any particular number of years in the mine, whether it is 15 years or 35 years, is thereby totally incapacitated due to pneumoconiosis?

Dr. RASMUSSEN. I am not aware of any actual medical evidence to support that.

Mr. ERLNBORN. Thank you very much.

Mr. DENT. Mr. Cornell?

Mr. CORNELL. I gather from what you said, Doctor, that in answer to the previous question that pulmonary function, if I can call it that, could be determined but not the cause of the impairment in functions?

Dr. RASMUSSEN. That is right.

Mr. CORNELL. How, in view of the nature of the work, mining, couldn't there be, medically speaking, a presumption of the cause?

Dr. RASMUSSEN. I would personally be willing to say if you show me a coal miner with impaired functions, I would first of all say that his impairment in function is the result of his total exposure, both in the mine and out.

If you showed me one—for example, we have many of whom never smoked a cigarette—I would have to assume either he has some unusual unknown lung disease or got his loss or impairment as a result of his occupation.

Mr. CORNELL. The nature of the occupation would not necessarily mean black lung disease, the occupation could give him other lung impairment problems?

Dr. RASMUSSEN. I am not sure I understand that. Unless you are going to define or at least if you are going to look at what is actually causing the loss of impairment, in other words, he might have emphysema, but you have no right to assume he didn't get that emphysema other than the consequences of his occupation. This may well have been related to his occupation.

Mr. CORNELL. Would you agree that the Social Security Administration and Department of Labor should accept the decision of a reliable doctor in regard to say black lung rather than require further checks?

Dr. RASMUSSEN. I think if the doctor sat down and did a good clinical history and physical examination that he could come up with a fairly accurate diagnosis as to the extent of the impairment in function. I don't believe that the question form and history form and physical form that they are using is reliable enough to get the information.

I have some experience with this personally and frankly I don't think I can tell much by using the method they are using now.

Mr. CORNELL. What are you referring to today?

Dr. RASMUSSEN. I am referring to the Department of Labor.

Mr. CORNELL. In the proposed legislation a provision is included, as I understand it, that the Social Security Administration and Department of Labor would have to accept a reliable document. I know in the statement you submitted you say that no applicant should be denied until he has a complete pulmonary evaluation. Would you apply this to the opposite way that no grant should be made by the Social Security Administration and the Department of Labor until there had been a complete pulmonary evaluation?

Dr. RASMUSSEN. I would feel in order to document loss of function that you should have a complete examination on each applicant.

Mr. CORNELL. We have had instances on a relatively recent date, although it is no reflection on the medical profession, but we have requested further examination of individuals, for instances whether they are able to testify before a court or such.

They didn't accept the physician of the individual involved. Do you think that same principle should be applicable here?

Dr. RASMUSSEN. I believe that a qualified physician could make some judgment about the likelihood of loss of function but I don't believe that you could document the loss of function without something more. In other words, if you showed me a man who had such severe obstructive lung disease that it was perfectly obvious from the

physical examination, then I would say you would not need to have additional testing for making the decision as to whether the man is disabled.

But what happens in large numbers of coal miners, there is no sign of obstructive lung disease. Many of the ones that I examine, I simply write "undetermined" because I can't come to a decision just as a matter of guess, so I would feel much more confident in going ahead and doing a battery of lung function tests than simply making clinical assessments.

I testified, I think, to this point before and at that time felt if you were a physician and you had been regularly treating an individual for years and years and you knew the man had severe lung disease that this is the type of medical information that I thought should be considered very positive in a case like that.

Mr. CORNELL. Thank you.

Mr. DENT. Congressman Simon?

Mr. SIMON. Dr. Rasmussen, one of the points you make that I concur in heartily, that is our excessive reliance on the X-ray. I see people who are turned down who obviously have major breathing problems and yet it has not shown up on the X-ray.

Now, when you talk about lung function tests, what are you talking about there?

Dr. RASMUSSEN. Well, I talk about first of all the test of ventilatory function, simple breathing tests.

If this test demonstrates significant loss of ability to breath air in and out, this is sufficient evidence to say this man is disabled.

If it does not show abnormalities in the breathing test, then that is when I think additional tests should be done and primarily tests of evaluation of gas transfer during exercise.

I stress during exercise.

Mr. SIMON. There is this problem, for example, I had a fellow come in and say my doctor won't let me take the test because of my heart condition. What do we do in that kind of situation?

Dr. RASMUSSEN. I could only tell you what our practice is. Our practice of course is to be very conservative about heart disease in the subject we evaluate. The first thing we do is obtain an electrocardiogram and get a history on heart diseases. If we have an abnormal electrocardiogram, if it looks like nonspecific abnormalities, we will say we will defer testing you until we get another electrocardiogram in about 6 weeks. We continue to do that until we know we have a stable electrocardiogram.

We will then do the test with constant monitoring of the electrocardiogram. We do that not at all rarely in this particular age group. There are some cardiac groups where I wouldn't exercise that judgment. In these cases it is more difficult to arrive at an assessment of their lung impairment.

Mr. SIMON. You say some may work 50 years and not have an impairment, but generally if you test someone in a coal mine for 1 year, he is less likely to have impairment than someone in there 10, 15, or 20 years. Generally there is more damage with the longer period of time in breathing coal dust?

Dr. RASMUSSEN. Generally I would say that up to a point.

Mr. SIMON. Do you find more breathing impairment among coal miners who are your patients than in the general population patients percentage-wise?

Dr. RASMUSSEN. I am not so sure about the relationship between obstructive airway disease and the general population. We find more impairment in oxygen transfer among coal miners than among noncoal miners.

Mr. SIMON. Have you seen people turned down for black lung benefits who you feel deserved those benefits?

Dr. RASMUSSEN. Yes, I have seen miners who have been turned down who do have significant impairment in function. They may not meet the criteria for blood gas values that the Social Security Administration has set up but they should, by the definition of the law in 1972, they should qualify for benefits.

Mr. SIMON. Thank you very much.

Mr. CORNELL. May I, Mr. Chairman?

Mr. DENT. Yes, sir.

Mr. CORNELL. On the basis of what you just said, I would like to get back to the question I stated before about the Social Security Administration and Labor. Do you think it wise to put a provision like that in law that they would have to accept the decision of a qualified physician rather than taking the test?

Dr. RASMUSSEN. If this was a man's regular physician he has been seeing week in and week out, I would say his assessment of the man should be adequate because he, by and large, knows the difficulty the man had going to work and so forth.

But I don't think you could use a clinical assessment alone without some kind of function studies as a means of determining the presence of impairment. I think if we were able to do that adequately we wouldn't need all our function equipment.

Mr. CORNELL. It would be difficult then to write something like that into law.

Dr. RASMUSSEN. I would think so, yes.

Mr. CORNELL. I gather, too, from your testimony that as far as diagnostic tools, there is no real diagnostic tool for determining black lung?

Dr. RASMUSSEN. No.

Mr. CORNELL. Thank you, Mr. Chairman.

Mr. DENT. Thank you.

I would like to ask just one question. If you had the final say and you had a patient before you and his X-rays did not show impairment, but his appearance did—breathing and so forth—would you say that that person should be turned down for compensation without a blood gas test?

Dr. RASMUSSEN. No, I don't think he should be turned down without a blood gas test.

Mr. DENT. Then if a blood gas test shows impairment, would you recommend the award of compensation on that blood gas test?

Dr. RASMUSSEN. Yes.

Mr. DENT. Thank you very kindly.

Our next witness is Dr. Leroy Lapp, from the West Virginia Medical Center.

STATEMENT OF DR. LEROY LAPP, WEST VIRGINIA
MEDICAL CENTER

Dr. LAPP. Mr. Chairman, members of the committee, ladies and gentlemen, I am honored to be asked to present testimony before you today. With your permission, I will apologize for any duplication I may have of Dr. Morgan's study since we worked together on these epidemiological studies and I will try to skip over those parts that are repetitious.

For the 8½ years prior to January 1975, I was employed by the U.S. Public Health Service in the medical research program investigating respiratory diseases among U.S. coal miners. The work that my colleagues and I have done during that time has been extensively analyzed and published in the scientific literature both in this country and abroad.

Insofar as possible the results obtained in our studies have been compared and contrasted with those obtained by medical researchers in Europe and Britain. These comparisons have revealed that the patterns of response are generally similar throughout the world where coal mining is undertaken.

Our approach in this study has been a combination of (1) epidemiological studies conducted among working miners; (2) where possible, followup studies of cohorts of former miners to see what their mortality experience has been; and (3) detailed and sophisticated testing in the clinical laboratory of both randomly selected working miners and symptomatic volunteer miners and former miners.

The reasons for choosing this particular approach may be summarized as follows: The nature and extent of respiratory function changes among a given population depend to a large extent on the subject selection. When symptomatic volunteers are studied, the abnormalities of function are more likely to be the consequence of nonoccupational rather than occupational factors.

On the other hand, even random samples of workers represent a survival population, particularly in industries involving physical exertion where there may be a tendency for those with impaired function to leave the industry prematurely.

Thus, in the case of coal mining, it is necessary to study randomly selected groups of working miners in order to get at least a minimal estimate of the effect of coal mining on lung function.

However, it is also necessary to study well-selected groups of former miners and where possible to follow their course on to death to best estimate what may be considered the maximal effects of coal mining on lung function.

Dr. Morgan has already summarized the results of these studies and I will not repeat this.

I will start on page 3 of my text at the bottom.

It should be recalled that the functional changes that I have discussed were for the most part found in working miners; thus, by definition, these men were performing their stated jobs. I have already alluded to the fact that there may be some migration out of the industry of workers with more severely impaired function.

Our colleague, Dr. Ortmeier, has followed up two groups of former miners in an attempt to look at life expectancy of these groups in relation to occupational and other factors.

He and his colleagues have shown that in a group of Pennsylvania miners, who had been awarded compensation, simple pneumoconiosis was not associated with a reduced life expectancy, whereas, complicated pneumoconiosis as well as coexisting chronic bronchitis and emphysema were.

In the other study, Dr. Ortmeier and his colleagues followed up miners who were examined by the U.S. Public Health Service in a 1962-63 prevalence survey. They were able to show in the group of men that miners with clear X-rays and miners with simple pneumoconiosis, had the same or slightly better life expectancy as found in the general population of U.S. males. Only those men with complicated pneumoconiosis had a reduced life expectancy.

In another study, Dr. Higgins and his associates were able to compare miners and former miners from five communities in northern West Virginia with nonminers of the same ages living in these communities. They used the forced expiratory volumes in 1 second to assess the functional status of these subjects. They found that there were no differences between the miners and exminers and the nonminers from the same community for those miners who had less than 30 years of underground exposure.

Thus, the preponderance of medical evidence does not support the presumption that because a man has worked for 25 years or more in an underground coal mine that he should be necessarily totally disabled due to pneumoconiosis or that his death should have occurred as a result of such pneumoconiosis unless the individual has radiographic evidence of the complicated form of the disease.

In fact, even after men have worked for more than 35 years underground, it is only possible by the use of large scale epidemiological studies and sophisticated measurements to show that minimal impairments of lung function occur which can be attributed to the underground exposure.

Furthermore, the changes in pulmonary function that can be documented among miners with negative chest radiographs and those with simple pneumoconiosis who have worked for 35 years or more underground are generally slight and not of such a magnitude as to be totally disabling to the individual.

The assumption that the employment for 35 years or more in an underground mine necessarily results in total disability due to pneumoconiosis is not supported by the medical evidence to date.

Finally, the reliance upon a negative result of a blood gas study to exclude disability, which is what I understand the language of the bill is, is unwise. This would tend to exclude the man who has moderately severe obstructive impairment of his ventilatory capacity but who maintains relatively normal arterial blood gases; such a situation occurs rather frequently in emphysema.

On the other hand, heavy cigarette smokers with chronic bronchitis and, particularly if they are obese as well, will often demon-

strate abnormal arterial blood gases at rest particularly if the subject is lying down at the time the sample is obtained.

Thank you for your attention.

Mr. DENT. You have done some work in the anthracite area, too, is that right?

Dr. LAPP. Yes.

Mr. DENT. Is there a heavier incidence in the anthracite miners than in the bituminous miners of pneumoconiosis?

Dr. LAPP. Yes, there is a higher prevalence of abnormal respiratory function in anthracite miners than bituminous miners.

Mr. DENT. What would cause that?

Dr. LAPP. We are not certain. A number of factors could be related to this. It could be something different about anthracite dust.

Mr. DENT. They are different in character. But doesn't it come back to this, that dust is the cause?

Dr. LAPP. In anthracite mining?

Mr. DENT. Or in bituminous?

Dr. LAPP. Yes, sir.

Mr. DENT. We have found that we have to establish a presumption in order to get back to the cases that are old and prior to the 1971 dust standards.

Dr. LAPP. I am sympathetic to your problem.

Mr. DENT. You see what has happened to us. We have in some States a recognition of anthracosis disease in the anthracite area, and what we call miner's asthma in the bituminous area. It is a funny thing but they have two different definitions. The differentiation was recognized in Pennsylvania in 1947. But in the State of West Virginia the physicians were not permitted to sign a death certificate relating the cause of death to employment. The State would not recognize black lung, as it was called in West Virginia, incidentally, as being a fatal type of disease and therefore no death certificate ever showed it.

So, here is what we are up against in the matter of equity—in Pennsylvania widows of deceased miners are qualified. In West Virginia, where they have no records to show their deceased husbands ever had black lung because they refused to recognize it in the State of West Virginia, those widows are being denied.

We therefore have to establish some figure within reason and I think 35 years is a long time to be exposed.

Do we not have to set something within reason to give these widows some equity in the distribution of compensation funds for a disease we know is not isolated to Pennsylvania and Ohio alone? I don't think we have chosen an outrageous figure.

As you know, the United Mine Workers make a fairly good case for 15 years.

Dr. LAPP. Mr. Chairman, I think each country that has had mining has struggled with this problem and perhaps each has dealt differently with it. My knowledge of some of the European countries dealing with this may be of interest to you. I understand in Yugoslavia, for example, it is considered that coal mining is equal to 1½ years of other occupations for retirement purposes and miners may be retired after approximately 35 years of mining without any

consideration of whether they are impaired or disabled from a medical point of view. This is the judgment of this country in dealing with this imponderable with which you are faced.

Other countries have awarded partial disability and have tried to relate it to an X-ray or pulmonary function evaluation.

I am not here as an expert to tell you which is the best way to solve this problem. I suggest that it can be solved in a number of different ways. I would submit, though, that the presumption that a person is totally disabled has medical implications for us who will do the evaluation in the laboratories and this sort of thing. It is going to present problems to us.

Here is a presumption which goes in the face of all the other evidence we have. We use impairment of function in all other areas of our work to determine disability or qualification for disability and I would rather not talk about disability because I am not an expert in disability.

I can tell you impairment of function but impairment of function is not equal to disability in the medical sense.

Mr. DENT. Do you know how long they have had a law in Yugoslavia and Great Britain and I believe in Australia, that makes it mandatory that all miners working in dust areas must wear masks?

Dr. LAPP. No, sir, I am not familiar with that.

Mr. DENT. Well, they do. They are not allowed in the mine unless they have a mask and their equipment is the best in the whole world. The British, I understand, have adopted the same type of respiratory aid. We have never yet made it mandatory.

I believe their incidence of black lung would be lower than ours and yet they are paying on a percentage basis more compensation than we are paying in the United States. Yet they have had safeguards against it for many years.

There is one sure thing that those of us who have lived all our lives in coal communities, we could close our eyes and walk into a room and we could tap the man who has worked in a coal mine on the shoulder without seeing him. We could go over and recognize him because of his breathing. It never fails. You can walk into a room of 10 or 12 miners, and four or five examiners, stand beside a man with 15 or 20 years in the mines and hear his labored breathing. It is not scientific but it is practical.

Maybe with your scientific instruments you can't say positively it came from coal dust, but you can walk in and pick them out. It is there. They know they have it, their families know it. They can't understand why Joe Smith who worked with their husband or father is getting compensation for black lung, but their husband or father isn't getting it. They just can't understand it.

We who are responsible for writing equitable law have to try to find some kind of answer that doesn't prove to these people in their thinking that we have passed legislation that is discriminatory. I know of no other way than to have at least some point of reference to the longevity of employment where we can assume that a man has disability from working in the coal mine.

We established 35 years for an irrebutable presumption. We are talking about a compensation act that only affects those that have been in the mines prior to 1971, about 2,000 persons.

The miners from 1971 on, will not be able to claim compensation if our dust standards are enforced. We believe there won't be any such disease. We are talking about 2,000—I don't know how many widows have been denied. One thing I can't understand is why four or five widows living in a town in Pennsylvania, all apply, their husbands are all dead. Three are qualified for compensation and they have no better proof than the others and the other two aren't qualified. You can't explain it to the others.

It may cost a few dollars but if industry is ready to take on the burden, I don't know why Congress should not pass the enabling legislation.

I don't believe all of the testimony goes into the human situation, the individuals that have lived and worked in the mines. I am unalterably convinced that if we hadn't passed this act in 1969 and liberalized it in 1972 that we would not be mining 600 million tons of coal today. With all the machinery in the world, we will have to have miners and we would not be hiring them today without this law.

We are going to need 1 billion tons of coal within the next 3 years and I think this kind of legislation will give them more confidence. We have to get the young people and they won't be immigrants, they will almost all have high school education and they understand a lot more than their parents or grandparents understood.

I don't know of a miner that went into the mines to work for any other reason than to earn a living. He never went in there because of choice. It was the only thing he could do.

In fact, to tell you the truth, when they brought miners from New York, after they landed and were cleared from Ellis Island, they put them on flatcars and rode them into the coal mining camps and unloaded them and some of these miners lived all their lives in that coal mining camp. Some never got more than walking distance away from them. It was not by choice.

Now we have a means of saving these lives. I am saying this philosophically, we still have an obligation to those still living and the widows of those who died in the mines. That is the whole intent of this legislation as well as assuring that there will never be, if we could help it, any new cases.

As I understand it there is no sure type of medical examination that you doctors have come up with that will positively say this man is entitled or not entitled to it, there is no way we can prove it in any way. You are saying it is coming from cigarette smoking and a number of other things. Do you think this kind of legislation should be repealed?

Dr. LAPP. No, sir, I think the problem is the association factor. I think this puts the presumption that it is an occupational association.

Mr. DENT. That is what it is there for. You know and I know that the question of the fatality tables, how long a man lives has nothing to do with awarding the compensation in any case. When you have a physical, visible injury in any occupation, including coal mining, they don't take and use as an argument that this man is totally disabled from an injury, but his life span isn't injured. It isn't that way. It is for his inability to perform his duties either on a partial

or total basis. All we are asking for is compensation for total disability. The first, second, and third stages are not disabling stages of pneumoconiosis. I don't know whether some miners agree, but we had to take the advice of the medical community.

I think the most important testimony is coming this morning to this committee on questions we will have to answer on the floor.

Mr. CORNELL, do you have any questions?

Mr. CORNELL. Just a couple.

Unlike the Chairman, I am rather innocent of mining as an occupation although I should qualify that by saying I wrote a book on the history of anthracite mining. It shows what you could do in theory with out being in an operating mine. Have you ever been in an operating mine?

Dr. LAPP. Yes.

Mr. CORNELL. Would you agree that we should never accept the presumption of disability without being present in a coal mine?

Dr. LAPP. No, I shouldn't say you should never accept the presumption of disability.

Mr. CORNELL. You do agree, as the Chairman mentioned, that malfunctioning can be determined?

Dr. LAPP. I agree you can determine in a man the degree of impairment of his function but to assess the relationship between various factors you need to do these kinds of tests in order to get clues as to what the association is.

Mr. CORNELL. Could you ever really determine by those tests—it appears from what I heard that you can't—that this was actually caused by a particular occupation? Can you ever really determine that?

For instance the X-ray, what diagnostic tool could you use?

Dr. LAPP. There is no single diagnostic tool that will determine whether an individual is impaired according to his occupation. There are clues, one is the history of having worked in a mine, two is the X-ray which shows whether dust has or has not been deposited and, third, is their impairment of function present.

All are, it seems to me, important in trying to make an assessment of whether a man is impaired because of a particular occupation and the epidemiological approach simply shows association between the environmental factors and what you see in the individual.

Mr. CORNELL. I gather then what you meant is that you wouldn't agree that you never accept presumption, the mere fact you worked in the coal mine.

Dr. LAPP. It is not necessarily the impairment you see in an individual or if in the absence of impairment, which you can measure by function, the mere fact the patient has occupational exposure should not necessarily indicate this man is disabled or impaired.

Mr. CORNELL. One of the questions I asked before that I am interested in particularly is one of the provisions of the bill. Do you believe the Social Security Administration and the Department of Labor should accept the decision of a qualified doctor?

Dr. LAPP. I have difficulty with that question. You say a qualified doctor. I am in the teaching aspect of medical education and educating physicians in the area of occupational disease is a very difficult and an important task and not everyone has the same degree of

skill and experience, particularly if he practices in a community where he doesn't see much occupational disease.

I don't know if the answer should be "yes" or "no" to that question. I think probably that there ought to be a review of a physician's examination and that some other person ought to review the case as well.

Mr. CORNELL. Thank you, Doctor.

Thank you, Mr. Chairman.

Mr. DENT. I would like to declare a recess until 1 p.m. We will reconvene at 1 p.m. That gives you an opportunity to stretch your legs and get a cup of coffee.

[Dr. Lapp's prepared statement follows:]

PREPARED STATEMENT BY DR. N. L. LAPP, WEST VIRGINIA MEDICAL CENTER

Mister Chairman, members of the Committee, Ladies, and Gentlemen. I am honored to be asked to present testimony before you today.

For the eight and one-half years prior to January, 1975, I was employed by the U. S. Public Health Service in the Medical Research Program investigating respiratory diseases among U.S. coal miners. The work that my colleagues and I have done during that time has been extensively analyzed and published in the scientific literature both in this country and abroad. Insofar as possible, the results obtained in our studies have been compared and contrasted with those obtained by medical researchers in Europe and Britain. These comparisons have revealed that the patterns of response are generally similar throughout the world where coal mining is undertaken.

Our approach in this study has been a combination of: 1. epidemiological studies conducted among working miners; 2. where possible, follow-up studies of cohorts of former miners to see what their mortality experience has been; and 3. detailed and sophisticated testing in the clinical laboratory of both randomly selected working miners and symptomatic volunteer miners and former miners. The reasons for choosing this particular approach may be summarized as follows: the nature and extent of respiratory function changes among a given population depend to a large extent on the subject selection. When symptomatic volunteers are studied, the abnormalities of function are more likely to be the consequence of non-occupational rather than occupational factors. On the other hand, even random samples of workers represent a survival population, particularly in industries involving physical exertion where there may be a tendency for those with impaired function to leave the industry prematurely. Thus, in the case of coal mining, it is necessary to study randomly selected groups of working miners in order to get at least a minimal estimate of the effect of coal mining on lung function. However, it is also necessary to study well-selected groups of former miners and where possible to follow their course on to death to best estimate what may be considered the maximal effects of coal mining on lung function.

I should now like to briefly summarize the results of our findings and their implications with regard to the bill which you are now considering. We measured lung volumes and ventilatory capacity (the ability to move air rapidly out of the lung) in 9,000 working coal miners representing an approximate 10% sample of the population of coal miners at risk in this country. Using these tests of ventilatory function, we found that there were regional differences in ventilatory capacity among coal miners, anthracite miners having slightly lower than predicted values for age and height and miners in Colorado and Utah having slightly better values than predicted based on age and height. The miners in the Appalachian area and mid-western regions lay in between. However, when the ventilatory function data were analyzed in relation to increasing category of pneumoconiosis as detected by the chest radiograph, a clear pattern emerged in every geographic region. Ventilatory capacity was significantly lower among miners who had the complicated form of pneumoconiosis; whereas, miners with category 0 (negative) or simple categories of 1, 2, and 3 pneumoconiosis, in general showed no significant reductions in their ventilatory capacities, except for the anthracite miners.

It has been suggested that because of their exposure to coal dust in underground mining, coal miners may have higher prevalences of bronchitis as diagnosed by persistent cough and phlegm. My colleagues and I examined the prevalence of bronchitis in 8,500 working bituminous coal miners in an attempt to answer this question. We did find a higher prevalence of these symptoms in miners who were principally face workers as compared to those who had principally worked at surface jobs. We also found that the prevalences of bronchitis in each job category were higher than those reported in non-dust exposed trades. However, when we looked at the ventilatory function of these miners in relation to their predicted values based on age and height, we found relatively little impairment of ventilatory capacity. The overall mean value for forced expiratory volume in one second for non-smoking face workers was 98.1% of predicted as compared to a mean value of 102.4% of predicted for surface workers who were non-smokers. Among smoking miners who worked at the face, the mean value was 92.1% of predicted as compared to a value of 91.8% of predicted for surface workers who were smokers. Thus, while symptoms of persistent cough and phlegm may be more prevalent among coal miners, they are not associated with an appreciable alteration in ventilatory capacity.

We studied several aspects of gas exchange in both working and non-working coal miners with regard to impairment of gas transfer as measured by an abnormal diffusing capacity. We were unable to find significant alterations from normal in this index in miners with category 2 and 3 simple pneumoconiosis who were non-smokers and had on the average 30 to 35 years underground exposure. Likewise, our colleague, Dr. Kibelstis, was unable to find a meaningful relationship between years spent underground and diffusing capacities both at rest and during exercise among working miners who were both smokers and non-smokers. In another group of working miners with long history of underground exposure, we examined the arterial blood gases at rest and exercise. We found that miners with simple categories of pneumoconiosis or negative chest radiographs may have slightly lowered arterial oxygen tension at rest but they rose into the normal range with exercise. On the other hand, miners with complicated pneumoconiosis categories B and C who had slightly low arterial oxygen tensions at rest showed further reductions on exercise.

It should be recalled that the functional changes that I have discussed were for the most part found in working miners; thus, by definition, these men were performing their stated jobs. I have already alluded to the fact that there may be some migration out of the industry of workers with more severely impaired function. Our colleague, Dr. Ortmeier, has followed-up two groups of former miners in an attempt to look at life expectancy of these groups in relation to occupational and other factors. He and his colleagues have shown that in a group of Pennsylvania miners, who had been awarded compensation, simple pneumoconiosis was not associated with a reduced life expectancy; whereas, complicated pneumoconiosis as well as coexisting chronic bronchitis and emphysema were. In the other study, Dr. Ortmeier and his colleagues followed-up miners who were examined by the U.S. Public Health Service in a 1962-63 prevalence survey. They were able to show in this group of men that miners with clear x-rays and miners with simple pneumoconiosis, had the same or slightly better life expectancy as found in the general population of U.S. males. Only those men with complicated pneumoconiosis had a reduced life expectancy.

In another study, Dr. Higgins and his associates were able to compare miners and former miners from five communities in northern West Virginia with non-miners of the same ages living in these communities. They used the forced expiratory volumes in one-second to assess the functional status of these subjects. They found that there were no differences between the miners and ex-miners and the non-miners from the same community for those miners who had less than 30 years of underground exposure.

Thus, the preponderance of medical evidence does not support the presumption that because a man has worked for twenty-five years or more in an underground coal mine that he should necessarily be totally disabled due to pneumoconiosis or that his death should have occurred as a result of such pneumoconiosis unless the individual has radiographic evidence of the complicated form of the disease. In fact, even after men have worked for more than

thirty-five years underground, it is only possible by the use of large scale epidemiological studies and sophisticated measurements to show that minimal impairments of lung function occur which can be attributed to the underground exposure. Furthermore, the changes in pulmonary function that can be documented among miners with negative chest radiographs and those with simple pneumoconiosis who have worked for thirty-five years or more underground are generally slight and not of such a magnitude as to be totally disabling to the individual. The assumption that the employment for thirty-five years or more in an underground mine necessarily results in total disability due to pneumoconiosis is not supported by the medical evidence to date.

Finally, the reliance upon a negative result of a blood gas study to exclude disability is unwise. This would tend to exclude the man who has moderately severe obstructive impairment of his ventilatory capacity but who maintains relatively normal arterial blood gases; such a situation occurs rather frequently in emphysema. On the other hand heavy cigarette smokers with chronic bronchitis and, particularly if they are obese as well, will often demonstrate abnormal arterial blood gases at rest particularly if the subject is lying down at the time the sample is obtained.

Thank you for your attention.

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[Whereupon, at 12:15 the subcommittee recessed to reconvene at 1 p.m.]

AFTERNOON SESSION

Mr. DENT. The subcommittee will come to order.

It appears we may be voting very shortly but we will proceed as long as we can. We will hear the witness listed.

At this time I will call Dr. Robert Mitchell of the Veterans Administration Hospital in Denver.

Dr. Mitchell is not here. All right, we will call Dr. Dan Fine of the New Kensington Miners Clinic.

STATEMENT OF DR. DAN FINE, NEW KENSINGTON MINERS CLINIC

Dr. FINE. Mr. Chairman, members of the committee, I would like to thank you for the opportunity of testifying here today.

I would like to read my statement and take the liberty of a few interpolations as we proceed.

The following resume is presented primarily to define the outlook which underlies the testimony which I shall present, an outlook molded by scientific education interwoven with years of experience providing primary care to coal miners.

I received an M.D. degree from the Yale University School of Medicine and post-graduate training in internal medicine at teaching hospitals of Harvard Medical School and New York Down State Medical School. I was certified as a specialist in internal medicine by the American Board of Internal Medicine in 1957 and recertified in 1974. From 1957 until the present time, I have been practicing internal medicine in the Allegheny-Kiski Valley, a bituminous coal mining area.

The sum of my training and experience has imbued me with an abiding commitment to the application of the scientific method to medical practice, while at the same time it has convinced me that precise scientific concepts and measurements cannot be yet fully employed to evaluate such things as the ability of the individual to function as a whole person over a period of time.

In the course of practice caring for coal miners for almost two decades, I have become familiar with the dust conditions in our local coal mines and I have followed the health status and occupational career of many miners over extended periods of time.

I have seen miners without pneumoconiosis and have examined the X-rays and lung function tests of hundreds of miners who developed evidence of pneumoconiosis and disability. These experiences indicate that coal mining remains a difficult and dangerous occupation and that there are few easy or safe jobs in the coal mine.

Dust levels remain high with increased mechanization, even with the application of ventilation and water at the site of dust production. We continue to see pneumoconiosis developing in young miners in a relatively short span of time.

I would like to comment there although I understand the legislation has been implemented over the last 4 or 5 years, we have seen people who have worked in the mines only the past 4 or 5 years who have X-ray evidence of pneumoconiosis in that short span of time.

I think, as was mentioned by the chairman before and by others, the crucial question is really more to what extent is the person disturbed or disabled by their difficulty, not how long they lived.

An honest determination of disability from coal worker's pneumoconiosis, as with any disabling determination, remains a most difficult task for an examining physician. Pulmonary function is a process of great complexity and its interaction with the other processes of the human body is also complicated.

The physical and psychological reactions to injury in this vital organ system are highly variable and depend upon a large number of factors, so that the individual's response in terms of the capacity to work in a given job becomes even more difficult to assess.

The basic physical condition of the patient, the threshold of pain and suffering, the presence of other physical or psychological problems, attitudes toward work and towards oneself, attitudes towards illness, feelings about coal mining and cultural factors, to list only

a few examples, all determine whether a given miner with a given degree of coal worker's pneumoconiosis will or will not be able to continue working in the mine. At best, a single test or diagnostic procedure can do no more than to quantitate the particular parameter of lung function which it is designed to measure.

To affirm that any single test, or even combination of tests can by themselves accurately define the relationship between a given lung disorder and the ability of a miner to work suggests a gross misconception of the process of disability, a mesmerization by numbers and technology, and finally a delusional acceptance of pseudo-science, rather than true science.

If I understand Dr. Lapp correctly, I would agree completely there is a wide and a poorly understood or not understood relationship between functions as measured by a given test and disability.

Of central relevance to the disability phenomenon is the ubiquitous presence of coal and other mineral dust in the environment and in the body of coal miners. Health professionals are aware of its presence through examination of chest X-rays and of lung tissue obtained post mortem.

Let me say what I think is common knowledge, although I didn't hear it referred to this morning, that there certainly are situations where the X-ray is read as being negative for pneumoconiosis where examination of the tissue at post mortem shows evidence of pneumoconiosis. It may make perfectly good sense, X-ray, yes; pneumoconiosis, yes, but the presence of pneumoconiosis on the X-ray means the opinion there is not any dust deposit in the tissue is an erroneous conclusion and it does not bear out the facts.

Mr. DENT. The Surgeon General of the United States agrees with you.

Dr. FINE. But of greater importance to the disability question is the fact that coal miners know that they are covered by dust and that they inhale dust daily in the coal mines. Sophisticated miners of the 1970's know that large quantities of these foreign substances become a permanent inhabitant of their lungs.

Miners know, as no test need confirm, the fatigue, shortness of breath, aching in the chest, and chronic cough, and other symptoms which are so often associated with labor in the coal mine.

There is no language in the lexicon of pulmonary physiology that can convince miners that this life-long infiltration of their lungs with such a foreign material is not a permanent burden and is not the cause, in part at least, of the symptoms which make them unable to continue to work in the mine.

Unless we are totally insulated by the walls of our academic and professional institutions or by the corridors of Congress, those of us who provide medical care to coal miners on a day to day basis and those who address themselves to the occupational problems of coal miners—such as you gentlemen—cannot fail to recognize and understand that this presence of pneumoconiosis itself, perceived as a foreign invader, is for the miners a permanent burden which does contribute to disability.

While there is no doubt that coal dust deposition does produce disease, so little is known of the exact manner by which this produces

the symptoms of disease in the miner, that it would be supreme arrogance for policymakers in Congress, for pulmonary physiologists or for practicing physicians to blandly assume that coal dust and silica dust in the lungs of miners are really just innocent bystanders or to presume that there is a test available which can measure the relationship between inhalation of these foreign substances and symptoms or between such symptoms and disability.

I think everybody knows in our areas, in medical circles until 20 or 30 years ago it was an accepted fact that coal dust is harmless and miners don't have problems with that. There was a study sponsored by U.S. Steel that proved that point. The histories of the putative harmlessness of coal dust of the assumed benignity of vinyl chloride and of the unprotected exposure to asbestos are too recent to let us forget. The body of the patient or victim has often been wiser than the doctor.

The present assumption that specific quantitative tests can be used to measure disability produced by dust deposition places the conscientious medical examiner in an impossible dilemma. Not infrequently patients with coal worker's pneumoconiosis associated with a profusion of nodules throughout both lung fields, with marked weakness and shortness of breath with exertion, but with pulmonary function tests which exceed the numbers prescribed by law, are told they have "no real problem." Since their numbers are too high and they are in fact not disabled by the legal definition.

Such situations may not disturb the respiratory physiologist or the lawmaker, but they are unnerving, at the very least, to the examining physician who knows from examinations over an extended period of time that the miner can no longer continue in his occupation because of occupational lung disease. We see many such miners in our practice who are disabled by pneumoconiosis, but who cannot be qualified as such under the present law.

Two recommendations emerge from these observations. Firstly, if the law is to require that disability determination and benefits be based upon a person-by-person evaluation, such disability determination should be developed from a total evaluation, including not only the determination of certain parameters of pulmonary function, but also, and of greater importance, a full assessment of the ability of the individual miner to continue to function in the occupational role of miner, conducted by physicians who are familiar with the patient over a period of time.

Secondly, bearing in mind the unlikelihood of establishing a meaningful objective quantifiable test of disability, recognizing the progressive and almost inevitable exposure of coal miners to dust inhalation over a period of years, and maybe I am less optimistic than others in this respect, and accepting the reasonable presumption that deposition of coal and silica and other minerals in the lungs is a deleterious body burden, it would seem eminently fair and humane to recognize as a matter of law that the passage of a given number of years as a coal miner is, in and of itself, reasonable evidence of a substantial burden of lung damage from coal mining and to compensate the miner accordingly.

Such a law would be simple to administrate, would save Government funds and the efforts of administrators, medical examiners, and miners. I have no idea what the feelings are but it is obvious a lot of people are spending a lot of time and an awful lot of money is being spent now trying to make a pontifical judgment on a number of miners. It is a very difficult task. I want to emphasize that the present law was a tremendous advance but there is a huge effort which would be saved by some kind of a statutory definition of presumption of time spent in the mine.

Most importantly, it would recognize that coal mining practiced under present conditions produces continued exposure to dust inhalation and deposition which is cumulative, permanent and potentially injurious to the miner and by compensating for this exposure would guess you could walk into a room and very easily pick out the hazard. Such legislation would declare that we place at least as much value on human lives as we place on profit and a continuing source of cheap fuel.

Thank you, Mr. Chairman.

Mr. DENT. Thank you, Dr. Fine. I am a little more heartened now in our efforts to continue to advocate what we think is a very important piece of legislation with equity, fairness, and humaneness.

There is no question the doctors I have talked to—you of course know many of them personally—in our area have a different view of pneumoconiosis and black lung than doctors who are not in almost constant association with miners and their families, their working conditions, the areas they live in and everything else.

I think you were here when I said if I were to make a guess I would guess you could walk into a room and very easily pick out the black lung victims.

The situation is exactly as you have put it. The other doctors almost convinced me this morning there is no way they can test and come up with an absolute answer at any given age or any given stage that this is a completely crippling disease. Then if that is true, then they can't prove it isn't a crippling disease. They can't prove it is and they can't prove it isn't.

So we have to take the view as you have expressed it in your testimony, in your summation and I believe that has been probably the determining factor in the Congress in most of the minds of the Members of Congress that voted for the original bill.

As you know, when we started to develop this legislation—I guess now its about a period of 10 years—there was no book of knowledge, no set of any kind of statistics one way or the other. I asked the Social Security Administration and the Public Health Service if they could give me any estimate—of course we asked the Bureau of Mines, too, because they were in daily contact—I asked for an estimate of the number of persons to be affected by this legislation, and an estimate of total cost.

Congressman Daniels also requested the same information from the same sources. I received the first answer and it was \$40 million. A couple of weeks later Congressman Daniels received an estimate of \$60 million.

When we went over to Great Britain and Wales and started looking at the records of the British who have kept absolute records for many years—X-rays from different periods, different conditions, different mines, etcetera—I came back pretty well convinced it was going to be a lot more money. But I could not, in answer to a question on the floor, give them anything except the figures I got from the agencies.

It reached a billion dollars very quickly and I have been condemned ever since because they say: "You fooled Congress by setting your estimate way below the actual figures." They knew where I got my figures. I told them then I was sorry. But if they had considered the legislation solely on what it was going to cost and we would have had the truth and it would have been a billion or more dollars a year, then they would have voted against the legislation.

I said that wasn't the purpose of the legislation at all, whatever the cost. I said in time we would place the burden of carrying this legislation on the shoulders of those we could trace to be the responsible employer. The only reason the taxpayer is paying for it is there was no way to nail down the responsible employers.

Now the coal industry as such, outside of a few organizations, has conferred with us. They recognize their responsibility and feel by making it a common pool we could cover the whole industry. They, I believe, are ready to accept the responsibility for this and any other determination we may make, whether it is more strict or more lenient with respect to qualifying records and qualifying examinations.

I believe that your type of testimony, based upon practically a lifetime association in our area with the problem, certainly ought to be considered seriously by every member of this committee and the Congress of the United States.

I want to thank you very much for coming down this morning and for your very frank testimony.

Congressman Cornell?

Mr. CORNELL. Very hurriedly, would you care to indicate as you mentioned that you think a certain number of years could be a presumption of the disability automatically. Would you care to indicate how many years?

Dr. FINE. I really could not give any kind of a precise recommendation in that respect. I would only suggest that it would seem to me as a matter of public policy and from simple logic—I have no expertise in the matter, I talk as a citizen—that it would be better to err on the side of a short span of years than on the side of a long span of years.

It seems to me that if our optimism, which has been expressed today, that there is no dust in the mines any more is true, then the legislation could be repealed. On the other hand, I don't believe that that assumption that the mines are clean today is true because I hear too many—I don't know particle size, I haven't heard dust study figures made on the face of the mines that my patients work in—but I hear too many stories of production requirements, the

question of whether a particular piece of equipment in the roof bolting setup is vacuuming out the dust or not.

There are too many breakdowns in this area for me to be convinced the mines are clean today. I think setting the span of time on the short side rather than the long side ought to produce a tremendous incentive to everybody to really implement the dust requirements that are in the law.

Without that, frankly, the history has been a dismal one in the industry generally in implementing a lot of occupational disease and protection laws. There has been good legislation but it often has not been implemented.

As I said, I am skeptical it is being implemented across the board and I think a piece of legislation like this one, like H.R. 7 and 8, is excellent. It is in the right direction and I would urge that you make the period short and we will be sure the mines are cleaned up.

Mr. CORNELL. Thank you.

Mr. DENT. I appreciate your testimony. We have a vote and will have to go.

Thank you very kindly. Since the other witnesses did not get here we will adjourn the meeting and meet again next Thursday.

[Whereupon, at 1:32 p.m. the subcommittee recessed to reconvene as stated above.]

BLACK LUNG BENEFITS REFORM ACT OF 1975

THURSDAY, MARCH 6, 1975

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

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 2261, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Members present: Representatives Dent, Perkins, Simon, Miller, Erlenborn and Goodling.

Mr. DENT. The committee will come to order.

I have been anticipating and looking forward to this testimony for some time now, but I believe events have occurred during the past several weeks which will make it less than meaningful.

This subcommittee was in a position to report remedial black lung legislation late last year. We deliberately allowed that opportunity to pass unfulfilled after a series of conversations with Labor Department officials led us to believe our concept of a coal industry insurance pool was both viable and laudatory. We were asked to forego that consideration in order that the Department might assist us in drafting the trust fund provision and advise us with respect to refining it. We agreed to a public hearing immediately after the 94th Congress convened to provide the Department the proper forum for urging its refinements and fundamental support.

That hearing was finally set for last week.

We were then asked by the Labor Department for more time, and I confess I should have become suspicious at that point. But we cooperated, and scheduled that hearing for today. We were assured, all along the way, that the trust fund concept was to be unequivocally endorsed.

Last week, we were advised that one of those "meetings before the meeting" had occurred, and that there was considerable pressure on those responsible for writing the statement to neutralize support for the fund. An appropriate rewriting took place, and the testimony assumed a posture of neutrality instead of outright endorsement.

On Tuesday of this week, we got another tip—a tip we have since verified. And it now appears that external pressures prevailed upon the Department to alter its testimony even further. And apparently, the trust fund concept, which you studied and rationalized and agreed with, has obviously tramped on some very sensitive toes, and is to be discarded by you—not because you disagree with

it, but because someone in higher authority has dictated that policy to you.

I regret our Government remains subject to this kind of behavior, where answers are not provided on the basis of compelling honesty, but rather to conform to a predetermined policy. I also regret and resent that this subcommittee's patience and cooperation have been abused. We have to work together because of our coordinate responsibility to the American trust, and this episode does not leave us with a very pleasant taste.

Thank you, gentlemen, for being here this morning.

The first witness this morning is Bernard DeLury, the Assistant Secretary of Labor. He is here to testify, I believe, on behalf of the Department to place its position before this committee on the new black lung amendments that we have in this legislation.

It is good to have you here, Bernard. You may proceed in any fashion you wish.

STATEMENT OF BERNARD E. DeLURY, ASSISTANT SECRETARY OF LABOR, ACCOMPANIED BY WILLIAM J. KILBERG, SOLICITOR OF LABOR; MS. NANCY SNYDER, ASSOCIATE DIRECTOR FOR COAL MINE WORKERS' COMPENSATION; AND MARK SOLOMONS, ASSISTANT COUNSEL

Mr. DeLury. Yes, sir. I have a statement I would like to read.

Mr. Chairman and members of the subcommittee: We appreciate this opportunity to present the views of the Department of Labor on H.R. 8, the Black Lung Benefits Reform Act of 1975. Accompanying me today are Mr. William J. Kilberg, Solicitor of Labor; Ms. Nancy Snyder, Associate Director for Coal Mine Workers' Compensation; and Mr. Mark Solomons, Assistant Counsel.

The black lung benefits program commenced in 1969, with the enactment of title IV of the Federal Coal Mine Health and Safety Act. The 1969 act, as amended in 1972, represents a significant Federal initiative into the area of compensation for work-related disability, and as you may recall, the administration opposed enactment of the legislation on the grounds that it was a significant intrusion into the traditional role of the States in workers' compensation. H.R. 8, and related bills, would make further substantial changes in the present program.

The most significant feature of H.R. 8 is the provision establishing a trust fund, financed largely by yearly assessment upon coal mine operators, which will provide payment of benefits to the victims of black lung.

In addition, the bill would extend black lung benefits coverage to employment in coke oven areas where the level of coal dust is substantially similar to that prevailing in the atmosphere of underground coal mines.

The bill also establishes two new presumptions: One, a presumption of total disability or death from pneumoconiosis for certain miners employed 25 years, with the presumption being rebuttable only by the negative result of a blood-gas study.

Mr. ERLBORN. Could I interrupt at that point?

You say "certain miners". The bill, as a matter of fact, applies to all miners with 25 years. Is that not true? Just for a matter of accuracy, I think that the presumption is for all miners.

I wonder if you want to make that correction for accuracy.

Mr. DELURY. Thank you, Mr. Congressman.

Mr. ERLNBORN. Thank you.

Mr. DELURY. And number two, an irrebuttable presumption of disability or death from pneumoconiosis for miners employed 35 years.

Further, technical amendments in the bill would: One, limit the present Federal obligation to subsidize attorney's fees in black lung cases; two, prohibit the denial of claims under part B solely on the basis of current employment as a miner; three, restrict appeal or review of decisions favorable to claimants under part B of title IV; four, add a provision requiring HEW to actively seek and notify potential part B claimants who did not previously file timely claims, and for those claimants allowing the filing of claims within six months of such notification by HEW; five, add medical benefits provisions to be funded out of the trust fund; and six, limit offsets under Part B to those State benefits paid "due to pneumoconiosis."

Before evaluating particular features of the bill, we would like to share with you some general observations about our black lung program. This will establish a common frame of reference, from which we can proceed to discuss the proposals of this bill.

We have furnished an outline of the basic claims process required by statute and regulation, as an attachment to this testimony.

With respect to operations under this procedure, as of February 14, 1975, the Social Security Administration which accepts and develops initial claims for the Department of Labor had notified us of 59,300 filings. Of these, 54,350 had been forwarded to the Department of Labor. We were able to make the initial determination in 33.9 percent of these filings. Of claims on which initial determinations have been made medical evidence sustained approval of 21.9 percent and required denial of 78.1 percent.

We are currently unable to make a determination in 57.3 percent of these filings pending completion of medical procedures and submission of medical evidence; 3.4 percent were awaiting nonmedical evidence such as proof of coal mine employment; 5.4 percent were pending final adjudication by the Social Security Administration—these are claims filed with both agencies.

The problems contributing to delay are obvious. The array of medical tests, administered to provide the miner with all relevant evidence for entitlement to benefits, are time consuming. Physicians, hospitals, clinics, and mobile units take months in compiling and forwarding the essential medical evidence.

As necessary as these medical tests are to establish entitlement to benefits, it must be recognized that they also contribute to delay. No amount of administrative urging can suddenly supply more diagnostic facilities or provide them with the staff support they need to speed evidence to us. However, the substantially declining number of new claims should considerably alleviate this problem.

We believe, however, that we are administering this legislation in an efficient and humane manner. And, we continue to seek to improve our performance. In efforts to streamline procedures, cut time and improve quality control, the Department of Labor, has for example:

- (1) relieved the Social Security Administration of the responsibility for scheduling medical diagnostic appointments;
- (2) utilized additional form letters to increase typing productivity;
- (3) hired temporary clerical staff and utilized overtime;
- (4) analyzed a sample of 750 denials to determine the validity of decisions;
- (5) withheld payment to medical providers who have submitted poor quality X-rays;
- (6) refined our automated data processing system; and
- (7) simplified self-insurance procedures.

In addition, we have disseminated information about the program and operating procedures to miners and industry alike through visits, briefings, public information—our film has been seen by close to 40,000 persons in the key coal mine areas, Mr. Chairman, and we have that film with us today if any members of the committee would want to view it.

I have stated that of those claims reaching initial determination status, over one-fifth have been approved. However, of those approved involving an operator 97 percent are being contested by coal mine operators. This is another significant source of delay. In order to avoid undue and continuing hardship on claimants in cases which have been approved, we have also initiated payments on claims which are being contested by coal operators.

We expect that the volume of litigation will diminish in a reasonable period of time. A major source of litigation has been the coal industry's resolve to fully test the constitutionality of each major provision of the act. In almost every contested claim processed thus far, either the constitutionality of one or more provisions of the act or the Secretary's exercise of regulatory authority in implementing the act, has been brought into question.

In the *National Independent Coal Operators Association v. Brennan* case, a number of the most important provisions of the act have been declared constitutional. However, a three-judge court in Kentucky, in the case of *Turner Elkhorn Mining Co. v. Brennan, et al.*, declared unconstitutional the irrebutable presumption of total disability available in cases of complicated pneumoconiosis contained in section 411(c)(3) of the act, and the so-called limitation on the presentation of evidence contained in section 411(c)(4) of the act.

The decision of the *Turner Elkhorn* court case has been appealed to the Supreme Court and we are hopeful that a final decision on these matters will be forthcoming during this term. It is our belief that once these major constitutional issues are resolved, there will be a sizeable decrease in claims litigation.

Another major reason for the volume of litigation we are experiencing is the simple fact that the program is new and in certain respects unique. Although there is some precedent for the "last

employer" concept regarding occupational disease compensation, it has not been generally applied in cases involving employment long since terminated.

The definition of total disability contained in the act and the enabling regulations focuses on the ability of a claimant to perform work comparable to his previous coal mining work, rather than on his ability to find any gainful employment. The volume of litigation is also affected by some provisions in the act which are not common to State workers' compensation laws, such as assessment of costs and attorney's fees. In addition, there is controversy arising in connection with the law's requirement that responsible operators pay for all medical benefits related to the disease.

Each of these features were put into the act to end many of the problems faced by black lung claimants under State compensation laws, but are a source of concern to the coal industry and, as expected, generate litigation. Nevertheless, the problems which arise in these areas are essentially legal problems and we hope will be resolved in the foreseeable future.

Many cases do involve factual issues of claimant eligibility. But, it is apparent that a major source of many of the factual disputes which have arisen is the uncertainty which the coal industry feels concerning the legal principles and the application of those principles to the facts of any given case. Once these principles are firmly established by the courts, it is less likely that the industry will continue to incur the costs of the litigation of claims that they cannot hope to win—especially in view of the fact that operators will have to bear the full cost of each successful claimant's litigation expense, in addition to their own litigation expenses.

The Department has been sympathetic to the difficulties faced by claimants during this period of court tests. We have taken a number of steps to minimize the impact of program litigation on individual claimants, and are currently pursuing additional avenues to achieve this end.

For example, no claimant who is administratively determined eligible for benefits is deprived of those benefits pending a coal operator's formal litigation of his or her claim. The Department provides these benefits including medical benefits during the period of formal litigation and then seeks reimbursement from the operator if he is found liable.

Secondly, the Office of the Solicitor is providing assistance to claimants and claimant's attorneys in the preparation and presentation of the claimant's cases in formal proceedings. In order to further minimize the personal involvement of individual miners in litigation, we do not involve claimants in our disputes over the identification and liability of any particular operator.

To diminish any economic incentive the coal industry may have to contest claims, the Department is requesting back benefits with a realistic rate of interest.

When viewed in perspective, these efforts on the part of the Department, coupled with the anticipated decrease in litigation, will result in an efficient claims adjudication process which should operate to the satisfaction of claimants and the coal industry alike.

Turning to the legislation before you, the central feature of H.R. 8 and H.R. 3333 is the establishment of a trust fund. However, a trust fund, by itself, may not resolve the difficulties I have previously noted.

Clearly, the existence of a trust fund will not encourage physicians to expedite the handling of a claimant's medical evidence. Furthermore, a trust fund may not necessarily decrease litigation.

H.R. 8 is silent on adjudication procedures. In addition, H.R. 3333, while it provides procedures for the adjudication of claims, does not directly address the issue of the extent to which an individual coal mine operator, or the coal mine industry, may participate in the claim adjudication process. Under the present proposed legislation, the coal industry's liability will be determined each year, on the basis of claims experience, and there is no way we can predict the level of litigation which would result from an indirect, as opposed to the present direct, assessment of liability.

However, we can predict that any new system which levies costs will be challenged in court, and delays may result.

Furthermore, the method of financing the fund in H.R. 8 is a flat per-ton assessment. A tonnage assessment bears little or no relation to the employers' risk or incidence of employee disability arising out of his business. It distributes costs unevenly between mechanized production and labor-intensive production of coal without regard to the possibility of efforts of labor-intensive procedures to protect the health and safety of their workers.

We believe that additional study of its effects on employer incentives to provide safe and healthful working conditions is warranted before moving further away from basic principles of workers' compensation.

We do not view the trust fund as an easy solution to the problems of the black lung program as we see them. The extent to which a trust fund approach may be useful in dealing generally with the problem of occupational disease is a matter which should be given further consideration. In this regard, we would note that the Workers' Compensation Task Force is studying the whole area of occupational disease and various means for dealing with it.

We believe that we should consider the trust fund approach in perspective. Adherence to the standards set forth in the Coal Mine Health and Safety Act should lead to a decline in the incidence of black lung; the number of black lung claims is likewise projected to substantially diminish.

Black lung is only one of many occupational diseases. As I noted a moment ago, there is a task force working on the larger problem of reform of workers' compensation. Concentrated efforts are being made to encourage the States to improve their compensation systems; among the goals which the administration proposes for the States to meet is the complete coverage of occupational disease. The detection, prevention, and compensation of occupational disease is one of the most complex problems facing our society.

As we have indicated, the approach taken in H.R. 8 and H.R. 3333 presents many difficulties. Any legislation in this area could serve as a precedent for dealing with the entire area of occupational dis-

eases. We believe that further consideration is necessary in arriving at viable approaches to the problems of compensation for occupational disease.

Accordingly, we feel that the piecemeal approach taken in these bills is not useful and that these problems should be considered systematically and comprehensively.

In addition to the trust fund, we would like to address other features of H.R. 8 and H.R. 3333.

First, the extension to coke oven area employees made by H.R. 8. It is our understanding that the main problem in coke oven areas is gaseous emissions, rather than coal dust. We are sympathetic to the general problem of health conditions in coke oven areas. However, we do not believe that it is appropriate to establish, piecemeal, an extension to another category of workers, especially when it is by no means certain that there is an exposure to harmful coal dust levels among those workers.

Second, the proposed new presumptions created by H.R. 8 and H.R. 3333. Under H.R. 3333, if a miner was employed for 15 years or more in coal mines, there shall be an irrebuttable presumption that he is totally disabled due to black lung, or was, at the time of his death, totally disabled by that disease.

Under H.R. 8, if a miner was employed for 25 years in the mines, there shall be a presumption of disability from black lung, rebuttable only by a blood-gas test; also under H.R. 8, if a miner was employed for 35 years, there shall be an irrebuttable presumption of disability from black lung.

On the basis of medical information available to us, we are unable to conclude that impairment of pulmonary function, of sufficient levels to substantiate total disability, can always be related to 15 or more years of coal mine employment. Similarly, it is questionable whether the proposed 25- and 35-year presumptions reflect a medically supportable premise.

In light of projections of a substantially declining number of claims in the next few years—from 32,000 in fiscal 1975, to half again in 1976 and yet half again in 1977, and then leveling to approximately 5,000 in 1981—and given the questionable medical validity of these proposed presumptions, we think it is unwise to enact such provisions.

Third, H.R. 3333 provisions relating to a permanent black lung program in the Department of Labor. We believe that these provisions may be premature, in view of ongoing study of the larger problems of workers' compensation and occupational disease, and the larger solutions which may be developing in the foreseeable future.

Fourth, H.R. 3333 provides that the Department must reach a determination on any given case within 60 days from the date on which the claimant's application for benefits is completed. As we have already indicated, delays in administrative determinations are generally the result of inadequate and overloaded medical facilities. While we recognize the need for the speedy adjudication of claims and have given claimants and employers alike the right to an expedited hearing in current regulations, it does not appear that the

60-day mandate contained in the proposed bill will adequately serve to remedy the basic causes of delay.

In conclusion, Mr. Chairman, let me stress that the Department of Labor shares your concern for the many issues and questions which give rise to the presently proposed legislation. However, for the reasons already discussed, we regret that we oppose the enactment of these bills.

I appreciate the opportunity to appear before you today and to work with you in the future, sir, and we would be happy at this time to answer any questions that you may have.

Mr. DENT. Mr. DeLury, you are speaking for the Department and these are the Department's views?

Mr. DeLury. Yes, sir.

Mr. DENT. This committee has been under a lot of pressure, very heavy pressure, from Members of the Congress who have the victims of black lung in their area, extremely heavy pressure from the United Mine Workers of America, and while we have been able to maintain a working relationship with them thus far, I don't know how we will continue that relationship if the present position of the Department now prevails.

We started serious work on this legislation in 1973. We had a bill ready for House consideration in October of last year and it was only because of a very close and trusting relationship between the Department of Labor and ourselves, that we withstood the pressures from Members of Congress, families of miners, miners, and the organization that represents them in the coal field, to report 2 bills from the committee last year.

Basically, I am at a loss at this point to understand why, if this committee, in cooperation with the industry association, miners, and the Labor Department, has worked out a reasonable agreement where the industry will accept the responsibility, we now are confronted with a reversed position by the Department of Labor. Everyone involved with this program is patently aware of how much the general public has paid into this fund because of the inaccuracy of records and in some places the absence of records needed to identify the last responsible operator.

After a great deal of work on the part of the staff searching for some kind of a vehicle that would expedite the remaining cases looking toward 1981 as a termination of all claims, we asked the various departments to give us estimates of what they believed the liability would be by 1981.

The last figures and the ones we had to use came from a witness speaking for the Department. I will just read two lines: We estimate, they said at that time, the total amount of Department of Labor benefits payable through 1981 will be approximately \$500 million. While initial projections at forecasting were 80 percent responsible operator identification, recent trends are significantly below this figure. From the last figures we received there is about a 50 percent success rate in identifying responsible operators.

Now the other 50 percent are out in limbo. The Department can't find a responsible operator to pick up the claim so the benefits have been paid by the Federal Government.

Our estimate with as many figures as we have to work with would be about \$800 million of the total responsibility. This information

has been given in as fair a manner as we can to those who would assume the responsibility. We all know the 50 States will not assume responsibility because of the 50 States there are only about 7 that can be classified as coal mining States.

I don't conceive that such States as Arizona, or Florida, will pass legislation to accept the responsibility for black lung claims of miners within their jurisdictions. So we had to search for an alternative method for paying these residual claims and the only answer we could come up with was a common fund. That is what we are doing in pension legislation. If we hadn't done that in the pension reform legislation, hundreds of thousands of the men and women would have arrived at their pension entitlement dates and not received a cent as has been the past history of the private pension system.

Now, because of State abrogation and the paucity of last responsible operators the Government will have to pick up these claims. We felt that the Government as such representing the public had paid enough, and it is over \$3 billion already. It is well past the time for the industry, as a whole, to accept responsibility for new claims. We believe that the safeguards in the law on respirable dust levels, have given us a fair amount of confidence that there isn't going to be too much of an increase in the number of claims.

I see no reason in the world for the Department objecting to transferring this \$800 million cost to the coal operators who, in the main, are willing to accept it. We know those few operators who don't support the fund concept.

The independent miners, one of the groups which has traditionally opposed coal mine health and safety legislation, have come in and said, "We will be glad to participate in a common pool and we want you now to get the departments to pay these coal miners that have claims in, and we want you above all to pay the widows."

As far as the larger mines, the so-called high-production mines, I have their agreement to a fund. We find the new operating companies who have no past history in the coal industry, are the ones that are fighting this proposal.

I do not believe that is fair to continue burdening the taxpayers, and I think we have been generous enough to the coal industry over the years that they would be very short-sighted not to accept this small portion of the terrible cost of this disease.

Your arguments about the various tests and so on are arguments that we can discuss across the table as we always have in conference. We are willing to operate on the basis of getting a common front because I am very much desirous of taking care of some people. But study will only cause more funerals before the date of final adjudication of their cases.

Does anyone in the Department have any idea how many have died while awaiting final adjudication of their claims? They are a diminishing claim on the Government and they are, I believe, dying faster than new ones are coming in.

We had one particular example of this that may be illustrative of what I am talking about. We have the anthracite coal mine pension plan which has been bankrupt for a lot of years because they have 15,000-plus pensioners receiving the magnificent sum of \$30 a month, and we only have about 300,000 workers in the anthracite field. But

the other workers in America joined hands and accepted the responsibility, and the employers did too, of putting that particular pension fund in a special category to try to save it.

The facts are that claimants are dying at a rate of 125 a month.

Chairman PERKINS. Let me say to the gentleman I am very confident your figures are way low.

Mr. DENT. I am only talking about the anthracite miners. I am not talking about the general field of employment in the mines.

The question just resolves itself down to this: Do we pay the money out of the taxpayers' pockets? Do we pay it out of the operators' pockets? Or do we just say to the rest of these miners and their widows that if you weren't lucky enough to have been processed before now, you are just not going to get paid because delay, as I said, is just another funeral?

Now, I don't know what caused the change in the Department's position, and I have the evidence of the reversal before me. I don't want to read it into the record and didn't intend to put it in the record, but if I have to, I will. I don't know whose toes were stepped on; I don't know who knocked the door down, but this is not what we were led to believe to be the position of the Department.

In fact, in all our discussions with Departmental officials, the only argument that we received was a question as to whether to assess the payments on a per tonnage basis or on a payroll basis. So far as the fund concept was concerned, the Department never once questioned the efficacy of the proposal. I am disappointed. But I assure you that we will still try to cooperate if there is anything that the Department feels it can add to this legislative attempt. I only had this brought to my attention within the last 24 hours.

I don't, of course, blame the spokesman for the Department. If I was in his position, I would probably put before the committee any statement the Department had approved.

I appreciate your coming here and I fully understand why the Department has made another decision. I hope it is not their final decision.

Mr. Erlenborn.

Mr. ERLNBORN. Thank you, Mr. Chairman.

In following the spirit the chairman has set here, I guess I will make a little speech instead of asking questions.

First of all, I long ago became concerned about the burden on the Federal Treasury of these black lung claims, the burden put on the Federal Treasury for only one class of workers' compensation, all other workers' compensation being treated differently. I seriously considered for a period of time about the idea of using some sort of tax to put the burden on the industry, rather than the Federal Treasury. In my many contacts with the Department of Labor and others in the administration over the past year or year and a half, I have found consistent opposition to the idea of using some sort of a tax or severance tax or tax on payroll.

So the impression the chairman has received in his contacts with the Department is a different impression than that which I have received.

I think it is also important to note that those who are sponsors of the proposal before us and who are attacking the present law, are the architects who fashioned and the craftsmen who put together that law.

So those who are attacking the present system are the ones who fashioned it back in 1969.

We had a unique situation, with old claims of occupational disease that occurred through long exposure and we couldn't identify the responsible operator. Therefore, there was going to be a one-shot deal. We were going to pick up these claims, make them the responsibility of taxpayers generally, and then see that the States took over their responsibility under workers' compensation.

It seems as though that idea has now been abandoned and what was predictable and predicted by many in 1969 is now happening, that is, the attempt to divorce this one class of workers' occupational disease or workers' compensation from the whole of the system and to make it a continuing separate responsibility under a separate law. I think that you have made a valid point in your testimony that this should be considered as part of the overall problem of workers' compensation and compensation for industrial disease.

If we don't do that then I believe there is a real question as to equity.

The point was made by one of the medical witnesses the other day that equity demands equal compensation for equal disability. That would seem to be obvious on its face. If someone is totally disabled as a result of having his back broken in an industrial accident he ought to receive an equal amount of pay as someone who is totally disabled because of having incurred pneumoconiosis.

If we continue this as a separate program there will not be the simple equity of equal compensation for equal disability. Besides that, in my opinion it will set a bad precedent for the direction that workers' compensation and compensation for industrial disease may take in these other areas.

Now, as to the estimates of the Department of Labor, I will tell you very frankly I put very little confidence in your estimates or those of Social Security. I don't say that critically, but I remember estimates were made of the possible cost of medicare. Those that came up with the most horrendous estimates proved to be way under the actual cost. The track record in pneumoconiosis is no better. When this committee, back in 1969, was considering the possible cost of pneumoconiosis compensation the Department of Health, Education, and Welfare and the Social Security Administration made some fantastic estimates that it might cost \$250 million or \$300 million, maybe even \$400 million a year. They were laughed at by members of this committee.

On the floor it was stated that if we gave compensation to every possible claimant and a fur coat to the widow of every deceased coal miner, it couldn't cost more than \$40 million or \$50 million a year. As we know now, it now costs almost \$1 billion a year. So, I put very little faith in your estimates, not because you haven't tried, but your track record is bad.

One last observation. I think it was interesting that the chairman mentioned the anthracite miners' pension fund in the context that the employers, other employers outside of the coal industry, willingly took on this burden of saving that fund. That is not my understanding, having worked on that bill.

There were no hearings on that question; there was no testimony before the committees in the House or the Senate as to whether the employers would be willing to take on this burden. As a matter of fact, the employers are generally opposed to the concept of pension insurance basically.

Mr. DENT. That is right.

Mr. ERLNBORN. Neither the House or Senate bill had any special provisions for the anthracite coal miners, but this was another time—it is not unusual—but another time when the special interest was written in in the Conference Committee. Of course, then the House and Senate were faced with the proposition of accepting the whole complicated bill, including this, or rejecting the whole. I really don't think that this is a good example of how employers have agreed to take on a burden of seeing that coal miners are compensated.

There is so far before this subcommittee—it may come yet—no testimony that the coal industry operators generally look with favor on a special occupational disease compensation paid for solely by the coal mine operators.

Now, as I say, the chairman may have worked that out with a majority of the coal mine operators, but I wait to hear this testimony. Anyway, I want to thank you for your testimony. I would in a critical way—I now admit that this is critical—say that you have told us why you oppose these bills and I pretty generally agree with you, but you have not come up today with some positive suggestions as to what we can do. Maybe you are not yet prepared, but I hope you soon will be.

You have said what you intend to do from an administrative standpoint to see that the claims are handled more expeditiously. That is fine. I hope this works out. But I would hope you have some positive suggestions. It might be to just continue the program as is. If so, I hope that you would say that, but I think the committee deserves from the Department some positive recommendations, even though I concur wholeheartedly with your negative recommendations.

Thank you, Mr. Chairman.

Mr. DENT. Thank you, John.

Mr. Miller.

Mr. MILLER. No questions, Mr. Chairman.

Mr. DENT. Mr. Simon.

Mr. SIMON. Thank you, Mr. Chairman.

I am in another subcommittee meeting and I am going to have to get back, but can you tell me—Tom Jones is a coal miner. He applies. Tell me how you process this now?

Mr. DeLURY. This is Nancy Snyder who heads up our division of coal mine mine workers compensation.

Ms. SNYDER. The process is described in the last 2 pages of the testimony, but briefly, under an agreement with the Social Security Administration to use its approximately 1,200 district offices through-

out the United States, they graciously take and accept and develop claims for us. They gather certain evidence, certain bulk evidence and transmit the evidence and the application to—

Mr. SIMON. If I may interrupt, this is accumulated in the Baltimore office of Social Security?

Ms. SNYDER. No, sir, in the district offices throughout the United States.

Mr. SIMON. OK.

Ms. SNYDER. This comes into us in Washington, D.C., and we begin, when all of the evidence is in, to make determinations. Now we have more recently relieved the Social Security Administration of the rather arduous task of making medical appointments for the diagnostic tests. We do that ourselves when we are alerted by Social Security's computer that a claim has been filed somewhere in the United States.

Mr. SIMON. When you say "we," you are talking about—

Ms. SNYDER. The Department of Labor.

Mr. SIMON. But what office, and located where?

Ms. SNYDER. The Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Program, Washington, D.C.

Mr. SIMON. Where is that located?

Ms. SNYDER. 111 20th St. NW.

Mr. SIMON. How many employees do you have there?

Ms. SNYDER. We have 41.

Mr. SIMON. And is this an adequate number—what I am really trying to get to is the delay that I experience and coal miners experience in getting returns.

Mr. DeLury. We have an adequate number right now. We have been making some major improvements and have authorized some temporary help and authorized overtime monies to cut back on some of our correspondence backlog.

In addition to that, the Department has turned over to the Employment Administration the ADP process.

Mr. SIMON. All right. In the last 6 months, let's say, or the last year, what percentage of the coal miners who have applied are turned down?

Ms. SNYDER. As of February 14, 78, 1 or approximately 80 percent of those initial determinations have not been found initially eligible for benefits.

Mr. SIMON. You mean 20 percent are found initially eligible?

Ms. SNYDER. That is right, sir.

Mr. SIMON. When you say initially eligible, you mean they have the 10 years?

Ms. SNYDER. No. Of course, when the responsible coal mine operator can be identified, then, of course, we have to notify that operator and he has the right to either contest or pay benefits and as we indicated in our testimony, in 97 percent of those cases that we have identified and notified the putative responsible operator are being contested by the industry.

Mr. SIMON. And of those that are contested, what percent end up being approved?

Ms. SNYDER. That is hard to say because they are all in the litigation process right now.

Mr. DeLury. Could the solicitor answer that?

Mr. Simon. Sure.

Mr. Kilberg. We do begin to pay benefits out of the Federal Treasury at such point as we make an initial determination that the coal miner is eligible for benefits so that the litigation process, the challenges that we are facing, do not delay the payment of benefits. If we are successful in proving a claim against a coal mine operator, we would then receive the amount so expended back from the operator. That is, the operator will be required to pay back to us that which we expended from the Federal Treasury with a reasonable rate of interest.

Mr. Simon. But what you are saying is that roughly 20 percent of those who apply are determined to be eligible?

Mr. Kilberg. That is correct.

Mr. Simon. I have to say—and Congressman Perkins is in a similar district—I have yet to meet that 20 percent that manages to make it.

Chairman Perkins. If you will question them a little further, you will find out that that is not a true figure. You just go ahead and question them.

Mr. Simon. Well, my concern, frankly, is not only that 20-percent figure, and I don't mean to be going over material that you have already gone over, but not only that, but the process which forces, for example, a coal miner or coal miner's widow comes to me today and if it is a coal miner he is coughing badly, he is obviously in bad shape, and yet he has been turned down and he says, "Do you think I ought to appeal?" and I say, "Absolutely."

Ms. Snyder. Absolutely.

Mr. Simon. Then he says to me, "Should I hire an attorney?" And under the conditions today I have to tell him, "I am afraid you had better get an attorney," and really, something is wrong.

Mr. Dent. The attorney winds up with 30 percent of the award.

Mr. Simon. That is exactly right, and something is wrong when this coal miner who really needs that gets turned down.

Mr. Dent. Would you yield at that point?

Mr. Simon. Yes, Mr. Chairman.

Mr. Dent. One of the reasons we include a provision in this legislation limiting attorney fees is that we know personally, we know from records, that the greatest beneficiaries under this act—in many cases—are the attorneys. You know, it is not an unusual situation to find one attorney making over a half a million dollars in 1 year.

Mr. Kilberg. I know there are a number of instances of that, particularly in this area.

Mr. Dent. I know they come under the State.

Mr. Kilberg. But under part C of the law as it now stands, attorneys' fees, when we are successful, must be paid by the coal operators.

Mr. Dent. Why did you do that? Why did you change it that the operator only pays under part C the attorney's fee?

That is what we are proposing in this legislation to guarantee that someone is paid by the operators for his or her services as an attorney, and that is all we are doing. More importantly, this legislation is designed to assure that the disabled individual is com-

pensated by the operator. If you can legally charge the operator for the attorneys' fees, we can certainly put the cost of the compensation on the operators. At least that is my logic.

Mr. SIMON. Somehow our logic always sounds good to each one of us.

One other question. I glanced through your statement very briefly. You say:

On the basis of medical information available to us, we are unable to conclude that impairment of pulmonary function, of sufficient levels to substantiate total disability, can always be related to 15 or more years of coal mine employment."

Now, obviously, I am putting the emphasis on "always" here. I would agree with you that it cannot always be related, but do you, sir, come into contact directly with the coal miners? Do you?

Mr. DELURY. I don't, myself. Ms. Snyder does.

Ms. SNYDER. Well, not direct contact. We don't actually examine them ourselves. They are examined by either the physician of their own choice or a physician or facility with whom we have an agreement.

Mr. SIMON. But do you talk to the coal miners?

Ms. SNYDER. Oh, yes. In fact, I like to believe that I have a very close working relationship with the Black Lung Association and with the United Mine Workers. I have attended many briefings in the coalfield, meetings and so on.

Mr. DENT. Would you yield so I can verify that statement? You also have a very close relationship with us. I hope I don't get you fired.

Mr. SIMON. Then you have had the experience, ma'am, of talking to people who have been turned down and you can see they obviously are suffering real physical damage?

Ms. SNYDER. Yes, sir. But there are other upper respiratory conditions other than coal workers' pneumoconiosis that have very similar symptoms. Emphysema, for instance, is one. And it causes death, too.

We have noted, if I may bring this into our discussion, many conditions of lung cancer and we write back to the claimant that we have discovered on his X-ray or in his medical file a condition that he should go at once to his personal physician and have checked, and we send another copy to his personal physician when we can say, "We have discovered lung cancer."

So there are many other conditions that do have similar symptoms.

The interesting thing is we have often found two men working side-by-side in the same mine under the same conditions and one may have coal workers' pneumoconiosis and the other may be robust and healthy. That is why we say it cannot always be equated.

Mr. SIMON. I agree with you. The problem is that the witnesses come up and, as I gather from your testimony or the testimony of the group here, you point out that if we give benefits to someone we may be giving benefits to someone who really doesn't deserve it.

Ms. SNYDER. That may be.

Mr. SIMON. And I acknowledge that.

The problem with the present act and the administration of the present act is that we are denying a great many people the benefit

who really do deserve it, and anyone who is in a coal mine area really has to acknowledge that.

Ms. SNYDER. But not as the act is presently written.

Mr. SIMON. OK.

Then the answer is we have to rewrite the act somehow.

Mr. KILBERG. What you really need is broader legislation to deal with workers' compensation occupational disease. The question is to whether that ought to be done from the Federal or State level, and what the proper role of the Federal Government ought to be. That is why we suggest that since there is an administration-supported task force which will be making a report to the President in January 1976 on the broader questions of workers' compensation, including questions of workers' compensation for occupational disease, that that is the context in which these larger questions ought to be addressed.

Mr. SIMON. Well, it is a matter of judgment at that point, but you agree that there is an injustice in the present system?

Mr. KILBERG. There is an injustice in the sense that there are people I think, as Congressman Erlenborn pointed out, people who have other work-related diseases or injuries that are not receiving compensation. That is a statute which singles out one occupational disease and the question—

Mr. DENT. That is not a true statement, because we also pay compensation in Pennsylvania for silicosis under the same act. Any measurable disability is compensated in Pennsylvania. But the Federal Government doesn't pay where the State pays.

Mr. SIMON. He is saying under this law.

Mr. DENT. This law is similar to the Longshoremen and Harbor Workers' Compensation Act in that the Federal Government assumes liability because a responsible employer cannot be identified. In the early years the Government paid a sizable Compensation bill because they couldn't trace the responsible employer.

Mr. SIMON. Well, I think there are other hazardous occupations. Asbestos mining is an example. I do think particularly in view of the fact we are going to be demanding more of coal and its contributions to the Nation, that we have to recognize there is a special problem here and my own feeling as far as turning it over to States, State governments, generally—I say this as one who has been involved in State government—is the happy hunting ground of the special interest, and you put the mine workers up against the coal operators, and the coal operators are going to win 9 out of 10 of those battles.

I just think we have to recognize that and recognize the need for some legislation at the national level.

Thank you, Mr. Chairman.

Mr. DENT. An assertion in one of the statements prepared for presentation to this committee belies the statement you made here today. In that previous statement it was recognized that problems associated with the incidence of black lung among the mining work force are in many respects unique to workers in the coal mining industry.

Certainly title IV constitutes a legislative determination that a unique Federal interest exists in this area and there are several factors which justify special focus upon this segment of the larger problem of occupational disease. That admission was in the original testimony, but it is not in the testimony given today.

Now, everything we are saying here has been discussed with the Department over the many months and nothing that appears in this legislation before you today hasn't been accepted in advance—in whole or in part—by the spokesmen for the Department.

I want it clearly understood. We are not picking a quarrel. We are just trying to resolve a problem that should never have happened. That is all.

I am now presenting for the record at this time, a letter from William C. Wampler, Member of the Congress of United States from Virginia, who is politically on the opposite side of me. He completely endorses this legislation and asks that his statement be put into the record.

[The document referred to follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 5, 1975.

HON. JOHN H. DENT,
*Chairman, Subcommittee on Labor Standards,
Committee on Education and Labor,
House of Representatives,
Washington, D.C.*

DEAR JOHN: This is to request that you include my attached statement supporting HR 8, the Black Lung Benefits Reform Act of 1975 and HR 4258, a companion bill which I introduced March 4, 1975.

I regret that other scheduled business will preclude my attending and presenting my statement before the Subcommittee during your hearings on March 6, 1975.

Sincerely,

WILLIAM C. WAMPLER,
Member of Congress.

STATEMENT OF HON. WILLIAM C. WAMPLER, HOUSE OF REPRESENTATIVES

Mr. Chairman, the need for revision of the Federal Coal Mine Health and Safety Act of 1969 has been, I believe, apparent to all Members of Congress who represent the coal mining areas of America.

As you know, Mr. Chairman, I was one of the original supporters in the Congress of legislation that led to the final enactment of the Black Lung law, the Federal Coal Mine Health and Safety Act of 1969. I also vigorously supported and voted for the 1972 Amendments to the Act, as well as subsequent Black Lung legislation. To me and the miners, their widows and dependents, in my Congressional District, this is important legislation.

My Congressional District, Southwestern Virginia, continues to be a major coal producing area. Many of my constituents, their families and the widows of former miners, fortunately, have benefitted from the passage of this act and today are receiving Black Lung Benefits.

Unfortunately, Mr. Chairman, altogether too many of our eligible miners and widows do not receive benefit payments envisioned by the Congress in the passage of this law. The Subcommittee's hearings during the past two years and the appeals of our constituent miners and their families attest to the urgent need for reform to correct inequities in claim determinations for the widows of former miners and the miners themselves. We have seen the efforts that have been necessary to reconstruct work records or medical records of past or present conditions to prove technical eligibility requirements to obtain these benefits. We know of cases where widows have had to exhumate the bodies of their deceased husbands, who spent a lifetime in the mines, to prove their eligibility to a widows pension. In our own Congressional offices we have seen our case work grow and grow, until it has become our biggest single effort. The law as now written has frustrated many of the most deserving of our citizens.

Since the inception of Black Lung benefits in 1970, through June 30, 1974, a total of 29,200 Virginia residents made claims for benefits. This total represented the claims of 20,800 miners and 8,400 dependents, such as widows and orphans, according to the Social Security Administration. As of June 30, 1974, a total of 16,200 had been approved for benefits. The Social Security Administration also informs me that Virginia claimants have received a total of \$87.5 million in Black Lung benefits since 1970 (for a state-wide monthly average in payments of \$3,495,000).

It is the inequities in the approximately 12,000 claims that have been denied, including the 900 claims still pending, plus the untold number of claims that have not been applied for in my state, as well as like amounts in other coal mining states, that these bills before the Committee seek to correct.

Mr. Chairman, the bill before this Committee, HR 8, and my companion bill HR 4258, are reform bills. These proposals will ease the burden of claimants in establishing valid claims; afford claimants more expeditious claim determinations; reduce the costs to the government by establishing an insurance pool funded by contributions from all coal operators from which all benefits under Part C of the Black Lung Program are now funded; preclude the dollar offset from Black Lung benefits because the miner may be receiving payments under a State Workmen's Compensation Program for an unrelated impairment; preclude the denial of a claim simply by reason of a miner's employment status at the time of filing a claim and allow him to establish his benefit entitlement for future benefit payments; prevent the Social Security Administration from appealing an adverse claim determination; and finally require the government to affirmatively notify potentially eligible claimants of their right to apply for Black Lung benefits.

Mr. Chairman and Members of this Subcommittee, I urge you to favorably consider this legislation.

Mr. DENT. He makes a very clear point that in his State there have been 29,200 claims for the benefits. Out of that total, only 16,200 have been approved. Most of these have been the early applicants.

Now the idea that we have taken every coal miner—which has been the position of some of my colleagues since the very beginning—and made a special class is simply not true. Since the beginning of the coal mining industry, there have probably been over 3 million men working in a coal mine, and yet, the total of black lung claims is insignificant against that worker universe.

But, let's go back to your discussion of the presumptions. If you will go over your records of those you have paid and take the age limits and the years they worked in the mines, we believe you will find our presumptions are based on sound mathematical equations and the fact that your payments have been given in proportion to what we are setting down as the irrebuttal presumption of 35 years in the coal mines.

Most of these men who have worked 25 years or more in the coal mine are in their 60's or older. They don't have the financial means to fight and approve their own case before the Government.

We want this program completely in the Department of Labor because the 1972 amendments were only necessary because the act was being maladministered by HEW. They were antagonistic against it from the very beginning and have never changed their mind. You cannot have decent respectable administration of an act when the Department is opposed to its passage in the first place. I offer no apologies that I was one of the main architects of this legislation, and changes had to be made.

Do you know if you sit in Congress for 40 years, every year you are remedying something you did previously. It is the way leg-

islation comes about. I would like for the Department to analyze their own figures and tell me if anybody can write a piece of legislation which and guarantee the identification of a last responsible employer for the miners who now live in the 50 states of the United States.

We can do it easily in Pennsylvania because most of our old miners and their widows have stayed in the State. Our records are good. We have had Black Lung legislation in Pennsylvania years before they ever had a Federal law. But we got tired of paying it for every miner that came in from any other State. We were paying for any miner that came in and stayed there a year. It was unfair to the people of Pennsylvania. We spent many millions of dollars.

At this point in time there is only one place we can fix this cost. I feel very responsible for having taken so much money out of the pockets of taxpayers to pay those claimants under in part B, but I believe sincerely that part C belongs to the employers and they should assume the cost, and the responsible employers have agreed to do so.

I still cannot understand why any department of Government wants to resist saving \$800 million. I have stopped making estimates, but I honestly believe we are on the right track.

Mr. Perkins.

Chairman PERKINS. First, Mr. Chairman, let me again compliment you on your perseverance in following through. I know that the subcommittee, before we finally report out a bill, will give the Department of Labor another opportunity to respond, even if it is just sitting with us in your office before we mark up the legislation. It is really difficult for me to understand how you can run away from the provisions that would save the Federal Government some \$650 million, \$800 million or a billion, and change your mind in that connection.

Now, it appears to be your intention not to construe the law as Congress intended. There is nothing we can do except try to conduct oversight and write legislation that will compell the departments to take a closer look and construe the law as we hoped it would be construed.

I am disappointed. People have been turned down by HEW and HEW will say to them in their own offices, "You can go make application to the Department of Labor, we will furnish you the blanks right here in our own office, and see what you can do there." And a month or 2 months will go by and these miners that have worked maybe 40 or 50 years in the coal mines, suffering from pneumoconiosis, will go back to your people in the employment offices and find that a report has come through from Social Security where they have been turned down. You just follow through and likewise turn down the application.

Now, I want to ask the Department of Labor, have you instituted new regulations and thrown aside those old HEW 1969 regulations insofar as processing claims?

I wonder if anybody could answer that question?

Ms. SNYDER. Well, we have been in constant communication when we discussed this, Mr. Perkins, in testimony, with the Social Security Administration. In fact, with others in the whole Department of

Health, Education, and Welfare and I believe we are seeing light at the end of the tunnel. Both agencies are in general agreement with the concept of equity and we are beginning now—well, actually we have drafted regulations and we will be sending these over to OMB and we will be hoping that we will have some final action on this in the very near future.

Chairman PERKINS. When did OMB sit down with the Department of Labor?

Ms. SNYDER. Oh, we haven't yet, sir. You mean about the interim standards?

Chairman PERKINS. Yes.

Ms. SNYDER. No, sir, we haven't.

Mr. DENT. Excuse me. Has the OMB been in touch with you about this proposal?

Mr. KILBERG. It is Administration policy—

Mr. DENT. What is their position?

Mr. KILBERG. The creation of —

Mr. DENT. I know all about that. I am asking you: What is their position?

Mr. KILBERG. That all agencies clear testimony through the Office of Management and Budget. They cleared our position as you have it, and their position is the same as ours.

Mr. DENT. Did they approve your previous testimony?

Mr. KILBERG. The testimony which you have now is, in fact the testimony which was submitted to OMB. The earlier testimony which apparently you have copies of were all internal Department of Labor documents.

Mr. DENT. This is legitimate evidence, if we want to put it that way, because it is marked for March 6, 1975, presentation to our committee.

Chairman PERKINS. There is no question but OMB has changed its mind.

Mr. DENT. I didn't steal them. They came through the mail for perusal.

Chairman PERKINS. There is no question but OMB has changed its mind in connection with this testimony.

Mr. DENT. Yes. They didn't change their minds without somebody pricking them a little bit.

Chairman PERKINS. Let me be more specific to the Department of Labor. How many applicants that have been turned down by Social Security—how many of those applications do you presently have in your shop that were made prior to June 30, 1973?

Ms. SNYDER. Of those applicants—

Chairman PERKINS. Prior to June 30, 1973.

Ms. SNYDER. That I don't have. I can tell you the total, Mr. Perkins, of 5,283 applicants that we have in our shop who were formally denied by Social Security Administration; I didn't have the exact dates for those, or date periods.

Chairman PERKINS. Don't you have the other 15,000 or 20,000 or 40,000 applications, the number of them that HEW told to make application to the Department of Labor?

Ms. SNYDER. No; I believe they are waiting until their final adjudication is over. They are in the adjudicatory process of Social Security—

Chairman PERKINS. I am sure they are and they are pending in your shop likewise, but can't you give me that figure?

Ms. SNYDER. Less than 5,000 are pending in our shop.

Chairman PERKINS. Well, that doesn't help me one particle, because they are sending them by the hundreds after they have been denied two or three times—people who are really suffering from pneumoconiosis for 30 and 40 years—to your shop.

Ms. SNYDER. Well, perhaps Social Security might be able to answer this when they—

Chairman PERKINS. We will ask Social Security how many applications have really been approved, to the extent that they are presently drawing pneumoconiosis benefits, by the Department of Labor.

Mr. DENT. I will give it to you. If you don't have it, I have it. As of June 30, when Federal responsibility—

Chairman PERKINS. We don't want any potential approvals; we want to know the ones that are receiving the actual cash—the number.

Mr. DENT. May I give it to you, Mr. Chairman?

Chairman PERKINS. Let them answer if they can. If not, you can give it to us. I think we have it, too.

Ms. SNYDER. 879.

Chairman PERKINS. Are receiving actual cash throughout the whole country?

Mr. DENT. 879 what?

Chairman PERKINS. Applicants.

Ms. SNYDER. Persons.

Mr. DENT. Wait a minute. Did I understand you to ask how many under the Federal responsibility?

Chairman PERKINS. Of the Department of labor in toto.

Mr. DENT. There were 547,200 applications up to June 30, 1973, which is a Federal responsibility under part B, is that correct?

Chairman PERKINS. She doesn't have that figure to give.

Ms. SNYDER. No; that is Social Security.

Mr. DENT. All right. Of that figure, 340,000 have been approved, 207,000 have not been approved. And that is in the entire country.

In your State, if you are interested, Mr. Chairman, of 57,631 that applied, 31,405 have been approved—

Chairman PERKINS. Now you are talking about Social Security.

Mr. DENT. But that is the only one because they are the ones that are approved.

Chairman PERKINS. That is correct. There have been less than 100 in the State of Kentucky that are actually drawing the cash today. Am I correct in that, Ms. Snyder?

Ms. SNYDER. I will check my Kentucky figures, sir. I think you are right.

That is right. We have a little over 100.

Chairman PERKINS. A little over 100. The figure has gone up since I last checked with the Department.

Ms. SNYDER. I think we gave you our last statistic, sir, on December 19.

Chairman PERKINS. Well, let me ask you: What change of policy do you contemplate, if any, or do you intend to continue with this present policy of approval of claims if the Congress takes no further

action? What would be your policy—to continue with your present policy of approvals?

Ms. SNYDER. We are very concerned about our denial rate. We have been from the very beginning. We do institute quality control. We have already reviewed 750 denials on a sample basis—geographically distributed—to check the quality of our determinations to see if indeed they were meeting the mandate of the law, the letter and the spirit of the law, to see if indeed the medical evidence was of proper quality to make a determination that would affect a person's life.

Chairman PERKINS. Why do you rely so heavily on the denial applications of HEW for disapproval presently?

Ms. SNYDER. We don't. Actually we have felt that we have to start de novo, we really feel, and this may be difficult for the miner but it is administrative policy that we have initiated that we cannot accept the evidence that Social Security has given us because (1) the disease is progressive, the X-ray or the ventilatory study that SSA did several years ago may no longer—

Chairman PERKINS. Now do you have before you the figures from Kentucky where you have received Social Security reports of denial and, within the period of 10 days thereafter, issued your own denials?

Ms. SNYDER. It could be that the evidence was in order but, as a general operating procedure—

Chairman PERKINS. You will agree, if that is the case and if that is the truth, that your method of making determinations is unsound. Am I correct?

Ms. SNYDER. No, sir; I do not believe it is unsound. I believe that the disease is progressive. I believe that we cannot use old evidence; I believe that we will have to put the miner through an additional battery of tests although it is stressful, and we will develop new evidence in the review of the case.

Chairman PERKINS. Well, if you are that liberal-minded, why would you object to some legislation that will enable you to go forward with more liberal tests, more progressive tests, and help solve these problems and compensate the thousands and thousands of people who are really suffering from pneumoconiosis contracted prior to June 30, 1973?

Ms. SNYDER. Mr. Perkins, I believe that we cannot support the the medical presumptions—the presumptions—because scientifically there is not enough validity to these medical presumptions proposed in the bill. While we are liberal in our interpretation of all evidence before us, we still cannot go beyond a certain point that is not valid scientifically.

Chairman PERKINS. Would you take a favorable position and suggest to this committee that all of these applicants that have been denied prior to June 30, 1973 that have worked in the coal mines, in dust, more than 15 years, that your Department would suggest to this committee that we enact legislation directing that all those applications be reprocessed again?

Ms. SNYDER. I am afraid that the Social Security Administration would have to speak to its own denial group. I know I can speak fully on the ones that we have denied.

Chairman PERKINS. Well, if you assume that responsibility and it was made part of this law, then would you suggest to this committee that you would be willing to do that—your department?

Ms. SNYDER. No, sir; I feel that social security has to speak to whatever number—I think it is 200,000 denials that would have to be reviewed—they would have to speak to the need, not to the administrative question.

Chairman PERKINS. You have paid so many of these applicants that are deserving and we have a third of the applicants just as deserving that have not been compensated, and how are you going to suggest to this committee that we compensate that one-third that should be treated equitably, Ms. Snyder? How do you suggest that we treat them equitably?

Do you have any answer to that question? We are looking for answers here, even assuming that we give these people preferential treatment as the Congress intended because we felt it was the worst case in the whole country.

They were suffering more and they caused this country to endure and survive during periods of war and nothing was taken out in their home State to compensate them. They worked for the welfare of all the people. So give us some suggestions if you can on how to compensate this other one-third.

Mr. KILBERG. Mr. Perkins, you are assuming that this other one-third, in fact, are totally disabled due to pneumoconiosis—

Chairman PERKINS. Assuming that it is shown medically—

Mr. KILBERG. If it is shown medically—

Chairman PERKINS [continuing]. What is your answer?

Mr. KILBERG. If it is shown medically, then they should be getting benefits. Under the law as it reads now, if it is not shown, you cannot create by law a presumption that is not upheld by the medical evidence. I think it is that simple.

Chairman PERKINS. You are taking the position that you should not compensate people just because we have selected a group of people that you feel that we should have never selected is the only way I can analyze your testimony; and I can assure you, my friend, that the chairman of this subcommittee is going forward with some legislation and I think he will be able to get it all the way through the Congress, and we have got to do something for these people that have been discriminated against by the Social Security Administration and, if you don't have any answers, we are going to find some answers.

I have one more question. Let me ask this gentleman here. We have an individual indisputably suffering from a respiratory disease after he has worked some 20 years in the mines to the extent that he is disabled. What is the nature of the medical evidence you use to rebut the presumption at that point? Give us your idea, the gentleman with the glasses on over there. It seems to be a determined policy at the Department of Labor along this line—

Mr. KILBERG. My name is Mr. William Kilberg. I am Solicitor of the Department of Labor. I believe the statute in section 413(b) sets forth the kind of evidence that are necessary, and the statute says: "In determining the validity of claims under this part, all

relevant evidence shall be considered, including, where relevant," and then lists the various kinds of medical tests, including lay evidence in terms of widow's affidavit in the case of a deceased miner and other appropriate affidavits. I think that is the kind of evidence that is being used.

Chairman PERKINS. Yes, and I agree with this and, if you had followed that, we would have been okay, but you do not follow that statute. An applicant's X-ray films may go to the west coast to be read by somebody who has never interpreted pneumoconiosis and knows nothing about coal mining and, if that X-ray is relied upon solely, you would agree that that is not the type of medical evidence that should be considered?

Mr. KILBERG. My client, Ms. Snyder, can talk to the issue of precisely how the processes work. I don't think, from what she has told me, that that is a fair description of what they, in fact, do.

Ms. SNYDER. You have admonished us in the 1972 amendments to provide the full array of medical tests.

Chairman PERKINS. Correct. If the 1972 amendments had been carried out, you wouldn't be here today.

Ms. SNYDER. In fact, that is why we have the tremendous backlog in medical procedures and evidence.

Chairman PERKINS. We have recited all of the provisions because you were solely using X-ray to make a determination and we were hopeful that the Department would be flexible to the extent that you would use all of these other names, and you do not use those.

Ms. SNYDER. Mr. Perkins, we give, No. 1—and this is not in order of quality—

Chairman PERKINS. Let me tell you what we will do, Ms. Snyder. We will take you down in the mining districts somewhere and march several hundred people before you that are having difficulty breathing, difficulty breathing that you don't need any medical physicians to know that they are suffering from pneumoconiosis but where we can show you that not only your department but the Social Security Administration has just acted arbitrarily in turning these people down and where a referee in hundreds of cases—in hundreds of cases the Social Security Administration administrative law judge had rendered a favorable decision and on their own initiative the appeals council never sees these people and reverses the decision—arbitrary administration from top to bottom, which the Congress never intended. You have completely thwarted the section of the law, I will tell the solicitor, that he read there a few moments ago. You don't touch it in any way. You just ignore it completely. That is all I have Mr. Chairman.

Ms. SNYDER. Mr. Perkins, just let me enumerate the tests that the miners are asked to undergo in the Department of Labor and not in order of either their weight or evidence but just in the order as they come to mind.

Chairman PERKINS. Well, we are going to have some doctors up here to tell just exactly what—

Ms. SNYDER. No. 1, an X-ray; No. 2, the so-called breathing test, ventilatory study; No. 3, a clinical examination by a physician of the claimant's choice, usually his family physician; and, where not medically contraindicated, exercise tolerance, blood-gas study, and

any old records that he may have from the past prior to our array of tests.

Chairman PERKINS. Well, that sounds wonderfully well, Ms. Snyder, if it was being construed by your department like that, but it is just not being done.

Ms. SNYDER. We are paying for these tests.

Mr. DENT. Mr. Goodling.

Mr. GOODLING. I am one of those freshmen Congressmen that does not have all the answers and does not know it all, and, in this particular case, I am here to hear what they have to say and what my older colleagues have to say who are much more experienced than I; and, when I become very knowledgeable, then I will become more vocal, as I am upstairs in the school lunch programs and things of that nature.

I want to say that you people certainly conduct yourselves far better than I would if I were sitting in your seat. I must admit I would not sit there and take some of what you have been taking and I would give it back very strongly, and I am sure you are trying to do the——

Chairman PERKINS. Will the gentleman yield to me one second?

Mr. GOODLING. I have to. You are the boss.

Chairman PERKINS. I am going to ask the son of a miner here to come up and make just a brief statement about his father.

Dr. PARKER. My name is Dr. Robert Parker and I am a psychologist from West Virginia but I was born in the State of Kentucky. My father worked in the coal mines 40 years. He has been denied benefits three times by the Social Security Administration even though he has evidence signed by a physician that he does have a lung impairment.

I would also like to add for the record something that sometimes is not said, that psychologically speaking, there is a lot of frustration that goes on within these coal mining communities that, as you said, you have to become familiar with the coal miners. This does take place and has taken place in my own home. If my father was to die now, my mother would have no income.

So the frustration comes about in the community. People see their neighbors getting benefits after they have worked in the mines 40 or 50 years and it entails——

Mr. GOODLING. May I just finish my sentence?

I wanted to finish my sentence by merely saying that I have a feeling that you are doing what you feel the law is asking you to do, and I must admit sometimes our laws are pretty fuzzy, and I think this is what this chairman is trying to do—trying to make your job easier by making it more clearly understandable. And perhaps it would make your job very easy if they say 15 years and you don't have to do anything; all you have to do is sign the card.

So I do appreciate your testimony because, as I said, I am here to learn and I want to do the best I can for everybody.

I might also add that I am probably in an enviable position where there are no pressure groups bearing down on me. Maybe 2 years from now it will be different but not at the present time.

Mr. ERLNBORN. Will you yield?

Chairman PERKINS. Would the gentleman yield to me?

Mr. ERLNBORN. Thank you very much for yielding Mr. Goodling. Let me make the observation that I want to join with my colleagues in saying that you have been most patient. I want you to understand you shouldn't take any of this personally.

Mr. DeLURY. We know that, Mr. Erlenborn.

Mr. ERLNBORN. You must remember there are two audiences often involved in this sort of thing. One audience is that which is here. There is another audience, the constituency. I think a lot of the remarks made here today were aimed at constituencies.

Mr. DENT. I resent that, because I make them directly to my people; they don't have to get anything secondhand; they know how I feel about everything.

Mr. ERLNBORN. I didn't have reference to you, Mr. Chairman.

Mr. DENT. Thank you. I served with your father many years. If you think I am tough, you should have been on the panel with your father.

Mr. GOODLING. I didn't think you were tough.

Mr. DENT. I was a weakling compared to your father.

Mr. GOODLING. I didn't think you were tough. I am merely saying we have a responsibility, when we ask witnesses a question, to give them an opportunity to respond.

Chairman PERKINS. It was the intent of the Congress with the section that the solicitor started to read from, giving the Social Security Administration the various options to make determinations on the application that, in many instances, X-rays, medical evidence, may not disclose pneumoconiosis at all and, in the final analysis, maybe only an autopsy or an operation on the lung, if the man wanted to go that far, would disclose pneumoconiosis and the medical evidence could be completely erroneous, which has been the case in thousands and thousands of pneumoconiosis cases, silicosis cases, workmen's compensation cases throughout the history of this country, and the individual himself is in a better position to give the true facts along with other laymen and connecting evidence that bears out the fact that he is suffering from disabling pneumoconiosis than medical evidence in some cases.

I have seen dozens of cases that X-rays—of course, you have got better machines now—that would show nothing where there was a bone injury years and years ago and the people were completely disabled and the compensation boards would finally arrive at that conclusion and all the medical evidence would be against it—all the medical evidence would be against it.

So we have got something here to consider, and again I repeat: You are ignoring the interpretation of the liberal provision of all these options that we have put into law in discriminating against about one-third of these people that have been denied, and it is the responsibility of this Congress to take some action, Mr. Chairman.

Mr. DENT. I would like to ask: Has there ever been—and I don't know whether this is for the Labor Department; maybe this question should be asked of HEW—when a case comes in, is there ever a detailed case history of the work life of the applicant? All miners work at some mine and, in order to prove they worked in the mine, they give you their work history. They might have worked one mine for 12 years and at another mine for 13 years. Do you get that?

Ms. SNYDER. Yes, sir.

Mr. DENT. Then how do you account for a mine which had 87 workers—it no longer is in existence at this time—and the living miners in that mine who applied all received compensation without any rejection of any kind. Yet out of the 29 widows of the miners who were killed in that mine, 11 received compensation but the other 18 didn't. Now someone has to give me an answer as to why every living miner received benefits, but a certain number of their colleagues' widows received it and a certain number didn't.

I have no answer for these widows, and that is why the present presumption of 35 years is in the legislation. That is all.

Now there is another way we could do it. We could say to the Labor Department, we want you to go back over the case histories and if a certain percentage of the miners who worked in the same mines for a certain number of years and received compensation, then we could place that as an alternative presumption. It is necessary because in all of the testimony we have received from those who had the greatest experience and best records—particularly Great Britain—have determined unequivocally that there is no such thing as a medical record being the absolute determinant as to whether or not a person has black lung.

There is no other way to give justice when you consider the case I just mentioned and hundreds of others I can cite.

We have to look at many things that you don't. You are involved with administering the law and writing the criteria. When I was very new in this game many years ago, I learned that any similarity between the criteria written by the administrators and the law passed by Congress, its purely coincidental.

Chairman PERKINS. Will the gentleman yield to me?

Mr. DENT. Yes.

Chairman PERKINS. All right. Let me state I wholeheartedly disagree with the theory of the solicitor on presumptions. I don't think the presumption that was thrown out in the *Turner Elcorn* case at Pikeville, Ky.

Mr. KILBERG. Let me hasten to—

Mr. DeLURY. I want to strike that—

Mr. KILBERG. I want to agree with you on that presumption. I agree with you.

Chairman PERKINS. Yes. So somewhere along the line that decision will be set aside in my judgment, but the Congress has the right to say that if a coal miner has worked for 20 years, we have got a right to compensate that coal miner; 25 years we have got a right to compensate that coal miner, or 30 years we have got a right to compensate that coal miner.

And that is the reason the court that wrote that, handled that case, gave very little thought to the act as we intended in my judgment. And I think these presumptions will all be upheld by the courts and I think it is the only way to proceed, Mr. Chairman.

Mr. DENT. Mr. Chairman, I am going to say what has been my experience. Throughout my 43 years as a legislator I have always worked on the basis that I was a legislator and charged with the responsibility of trying to write law, and everything that passes

this committee is constitutional until it gets to the Supreme Court. That is their job. I am doing mine.

So all the arguments you made about what may or may not be constitutional fall on deaf ears. I know that whether we agree with you that its constitutional or not constitutional, there is a higher authority that has the decision over us so let us pass the law on the merits, the justice, the economics, and then leave it up to the various courts to say whether we are correct. I have always accepted the courts decision, even when I don't like it.

Are there any other questions of the gentleman?

Mr. SIMON. If I may make one final suggestion, and I don't mean to be picking on you here, sir, when I do this. I always think of the Labor Department as being for labor.

Mr. DELURY. Yes, sir.

Mr. SIMON. And that you are an advocate of that coal miner and the people there, and I have to confess, after review of the decisions that are handed down to people I talk to, I didn't get that impression. Now let me make this suggestion to you, and again I don't do this disrespectfully, but spend one day in Kentucky or southern Illinois or Pennsylvania, just going around talking to older coal miners—

Mr. DELURY. Mr. Congressman, I welcome that opportunity. I have asked for several invitations from the UMW and one of these days I will get one. But in all due respect to this committee, I spent 11 years working in construction and we have occupational diseases, too, working in tunnels, working at tops of buildings, and unfortunately we are not covered either by presumptions of crippling arthritis, and I have spent my time there. Rubber workers, chemical workers and many other workers are not covered.

I don't have to see somebody with black lung to know its bad, no more than I have to have cancer to know that that is bad, and I would like to state also, Mr. Chairman, and members of this committee, sometimes experience is a fine thing to have, but I think many more times, especially in the Department of Labor, I think human compassion is a more important ingredient than experience. Experience will come with years.

Mr. SIMON. I agree with you.

Mr. DELURY. This Solicitor of Labor and his staff and Ms. Nancy Snyder and our people have been working diligently for the coal miners under this act as we have for all workers under all of the statutes our Department administers and I would match our people up with any other—

Mr. SIMON. Let me just say, if you don't get an invitation within the next 2 weeks from the United Mine Workers, you are going to get one from me, all right?

Mr. DELURY. Thank you sir.

Mr. DENT. If there are no other questions, I would like to thank all of you for delivering your message to the committee and I appreciate your position. I would like to say that I agree with Mr. Simon fully and I want you to know in our legislation that we believe so much that the Labor Department is oriented to workers that we are trying to put the full responsibility into the Labor Department.

It won't be confused and the issue is will the Labor Department now accept it. That is the point.

Mr. DeLury. We would be happy to look at anything you pass on, Mr. Chairman.

Mr. Dent. The House is going into session. I would like to ask if the Department of HEW witnesses will talk to Mr. Vagley and set up another date in the very near future for their testimony. We accommodate, as we always try to do when there has been a delay.

Mr. Kurzman. Mr. Chairman, we will be happy to discuss it with you.

Mr. Dent. All right. We will set up a convenient time for you.

[Whereupon, at 12 p.m. the committee was recessed subject to the call of the Chair.]

BLACK LUNG BENEFITS REFORM ACT OF 1975

WEDNESDAY, MARCH 12, 1975

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

The subcommittee met at 1 p.m., pursuant to recess, in room 2175, Rayburn House Office Building, Hon. John Dent, (chairman of the subcommittee) presiding.

Present: Representatives Perkins, Dent, Daniels, Brademas, O'Hara, Hawkins, Meeds, Andrews, Lehman, Benitez, Blouin, Cornell, Risenhoover, Simon, Beard, Zeferetti, Miller, Mottl, Hall, Quie, Ashbrook, Bell, Erlenborn, Peyser, Sarasin, Buchanan, Pressler, Goodling, and Smith.

Staff Present: Robert E. Vagley, director; and Edith C. Baum, minority counsel for labor.

Chairman PERKINS. In the absence of Chairman Dent, I will call the hearing to order. I anticipate that he will be here in a few moments. A quorum is present at this time.

We will continue the hearings on H.R. 7 and H.R. 8, The Black Lung Benefits Reform Act of 1975. Our first witness today is Dr. Lowell B. Martin of Martin, Kentucky.

Come around, Dr. Martin, and talk into the microphone. I am delighted you came. We just want your observations concerning the examinations that you have been making concerning the applicants who applied for benefits prior to June 30, 1973. What happens when you examine new claimants, or any individual who wants to go in the mines?

We need the story, and at this time I am delighted to welcome you here. You may proceed. Go ahead, Dr. Martin.

STATEMENT OF LOWELL B. MARTIN, M.D., MARTIN, KY.

Dr. MARTIN. It is a pleasure to be here.

These are just a few observations that I have made as a family physician. I feel very small appearing before this committee without any definite conclusions, other than to be faced with the same problems that we all have.

As a treating physician, or for those of you who would like to classify me as a family physician, I am faced with more difficulties than some of the people who are concerned with this problem that we are faced with.

If I were just a radiologist, I would only be concerned with reading a film, which we have proved and shown in a lot of cases of black

lung that the film could be normal, or there can be disagreements with the people who are supposed to be the professional people, who have the know-how about the film.

This is no blame to a person. A doctor can only tell you what a film shows. We have this classification that we go by, and it is a good classification. Supposedly, we are supposed to be speaking the same language when we read films of black lung, or pneumoconiosis, but there is still great disagreement with all the topnotch people in the field.

That is one problem in the X-ray reading.

Another problem is that the treating physician, when a man comes to your office to get a job to work in the mines, bearing in mind that you must have an X-ray, if you read this X-ray with any classification whatsoever for pneumoconiosis, whether this patient is at any stage of pneumoconiosis, this person is tagged with a problem.

No. 1, this man may not have any pulmonary disability that you can detect on all of the examinations that the doctor may do. As well as all the laboratory tests that are available.

The other problem is that when he goes to the employer to get a job, he may be turned down. This is true in my area. He is turned down 98 percent of the time, when he does have any stage, 0/1 to 1/1, according to the adopted pneumoconiosis classification. The UICC or Cincinnati classification.

There is no problem yet, but the next day he is back in my office wondering why he was not hired. As a treating physician, it is my responsibility to give him the information that was turned in against him. I have made the statement that this man is a poor candidate for underground coal mining.

In some instances, however, I make the statement that this man has no detectable pulmonary impairment with the tests that I do, mainly on physical examination. The most important thing to determine pulmonary impairment is the physical examination.

Now, the next day, for example, this guy has no job. He understands now that there is this stage of pneumoconiosis that he has, where he is totally disabled and he is unable to work in the mines.

He goes to a lawyer's office, and the lawyer has to process his claim, and get enough evidence to state whether or not he is able to work. Regardless of whether or not this man is disabled and receives any benefits he is tagged with this stage that he is not able to work. Therefore, by definition, a man should be disabled, if he does not have a job available.

Mining is the main job in the area, and with limited education, this man may not have any trained skills. As a treating physician, how do you manage a situation like this.

Then, he is involved with lawyers. He is involved with boards that are responsible for determining whether or not he is disabled.

All of us, even though we may be considered experts, don't have a good answer. Now, this is the younger person who is considered in the working stage.

Now, the older person in my experience, in our area we are having more difficulty with any way of processing disability claims. There is a good answer to that. As a physician, we can only tell you that a man is disabled. Now, we cannot say that this is 100 percent due to his exposure, to his occupational exposure.

This presumption that we are all being concerned with, in my experience, is a good screening mechanism and a good practical way of getting rid of a lot of paperwork, a good way of getting rid of a lot of claims that have no reason to be processed through the usual manners in which we are processing them.

I feel safe in saying that if a person has exposure of 20 years or more, coal, sand, and rockdust, 80 percent of these people will have some detectable pulmonary impairment. Now, we get concerned with problems of how can we say, after he has worked in the coal mine for 20 years, he just quits work, and the first thing you know, we are going to have a disaster in the area of nobody working in the coal mines.

The feeling is that we have to come to some kind of practical answer to work out a problem. It is not as complicated as the way we are interpreting this thing. Let us say that we have a presumption, then we have a mechanism that will get rid of 80 percent of the paperwork, then we could work on all these other cases that are questionable to all of us at the board we have set up, and without the mechanism.

Until such time that we have a test that will give us an answer that is 100 percent, or even 90 percent sure, we are going to be stuck with a lot of paperwork of people's impressions. I am talking about professional people's impressions and still disagree.

Chairman PERKINS. Let me ask you this, Doctor. The old applicants, the ones that I am primarily asking you about, that made application prior to June 30, 1973, and are not presently working, who are disabled from going about their occupation of earning their living in the neighborhood mines, and who have pneumoconiosis determined from an X-ray examination, and then from another X-ray examination. What happens to those cases?

Would you make a statement along that line. I think you told us prior to the hearing that you make examinations for coal companies.

Dr. MARTIN. It is different, sir.

Chairman PERKINS. I know it is different, but what happens in those cases that are handled by the Social Security Administration, where you make a finding that the individual is disabled.

Dr. MARTIN. The problem is that they keep returning. They want additional evidence, but it seems a little assinine to me to send a person back to the physician who has already made a statement that this patient is totally and permanently disabled as a result of pulmonary impairment, as a result of the X-ray and the history and the physical exam.

Why do we need another report? I have already made a statement that the patient is permanently and totally disabled. You get bogged down with a lot of claims like this, of matters returning for additional evidence. I don't see why they want additional evidence, if the person is already totally disabled.

This is out of my realm of jurisdiction. I can give you my best opinion about what I think, and feel in my evaluation and that is as far as I can go. I see no reason for the patient returning and returning.

Chairman PERKINS. Now you grew up near the coal mines, and your grandfather was a doctor in the coal territory. Tell this committee whether there is a tendency after you detect from a clinical

examination that the individual is suffering from pneumoconiosis—that is prior to June 1973—for the Social Security to refer these patients and their X-rays to other people around the country?

Dr. MARTIN. I don't know the details of how they do this, but there is a board that reads his X-ray. As I have stated before, it is very hard to anybody to have 100-percent agreement on this, even if you have all five of the experts, or class C readers that you have for preemployment matters, radiologists only, and so forth, these are all experts, and very reputable physicians, who spend a lot of time in coming to a kind of language that we all use.

But all of those five men, if you let them read the same X-ray of the same patient, there is a great percentage of disagreement which makes us all come to the conclusion that certainly the X-ray is very much overemphasized in a good deal of these cases.

Now the other thing is, and I as a physician who is very much interested personally in doing what is right, and trying to come to what is a definite conclusion that will fit all of our problems, it is very hard for me to advice a patient as to what he should do.

He loses faith in his family physician. He says: "Good Gosh, I have pneumoconiosis, and this doctor up there says that I don't have anything." That does not mean that we are different, or that we are trying to fake anything, it just means that there is a difference of opinion in this thing. The doctor is entitled to feel the way he feels about this thing according to his training. There is a great deal of difference of opinion even among the experts.

I certainly do not like to be faced with this kind of problem, but I don't know the answer.

Chairman PERKINS. How would you weigh the relative importance of clinical examination as opposed to X-ray, or other testing in making a proper determination of disabling black lung. Did you get the question?

Dr. MARTIN. Yes, sir.

I feel that there is no good, 100-percent answer to enable me to give you this answer. However, in my experience from a practical standpoint, the most important factor, or one of the most important criteria in establishing a diagnosis of a person who has pneumoconiosis, is a shortness of breath.

Now, this is a very practical thing that even lay people can detect in the miner. Now, we can say that the man has breathlessness, and that is one of the great criteria, I think, and also if we can get a documented history of his exposure, which is very obvious most of the time when he comes in. I think there should be a documented amount of exposure that we have access to, because that would prevent people from saying: "Well, I have worked 50 years."

Then, you have to consider the X-ray. This is one of the very important criteria for making the diagnosis. However, it is very much overemphasized, if a person only looks at the X-ray. You have to look at all the factors that we have to consider in these cases.

The three criteria that are important, I think, are the amount of time of exposure; the X-ray, whether or not it shows things consistent with the classification, or if it shows nothing which is normal, you have to consider this a part of the examination; but the most important thing is the physical examination that demonstrates the shortness of breath.

I don't think that we have to do a lot of fancy tests to demonstrate this. We ought to strive toward some kind of test that we will all do, and can all come to the same conclusion.

Chairman PERKINS. Now, because of the fact that the Social Security Administration, to a great degree, are disregarding the clinical examination such as you have described, as opposed to X-ray, do you discover that numerous people in your section of Kentucky are being denied the benefits, where you think that the application should be approved?

Dr. MARTIN. Yes, sir, but I think that it is all due to the fact that it is a matter of interpreting our information that we have. It is also a matter of reading the X-ray. I can see how a person who is not a physician, who has not examined a patient, if he looks at the reports that are submitted to the Social Security, if he has a normal chest X-ray, and you say that he has shortness of breath, it is very hard to say that a person at that age is permanently disabled due to pneumoconiosis.

We get involved with the statement: How can you say that a patient who is 50 or 60 years old is short of breath due to pneumoconiosis. I cannot say that 100 percent of the time, but I can say this: If he was exposed with a significant amount, let us say 20 years, you can say that this is in part due to pneumoconiosis.

I think that the big problem is that the man is disabled, and part of his disability is certainly due to his occupational exposure. I cannot go any further than that.

Chairman PERKINS. Now, I gather from your testimony that you do feel, based on your experience, that you can draw a relationship between years of mining employment and disability. Would you discuss this more fully?

Dr. MARTIN. Yes, sir. I certainly am convinced myself that the amount of exposure, certainly is correlated with the disability of breathlessness in miners, whether they work in or outside.

There is dust that they are exposed to that can cause permanent damage to the lungs. Now, there used to be a great amount of disagreement with the experts. For years we used to feel that coal dust itself was an inert particle that did not cause any damage to the lungs.

It has been definitely proved by experts, and I am not saying that I am the expert who proved this, but I don't have to be the expert who proved this, I can simply say that it has been proven. Pathologically, it has been proven that the coal dust itself does cause damage to the lungs that is permanent, that cannot be demonstrated on X-ray maybe for several years, and maybe not at all.

The coal dust itself causes a pathological condition that can be seen on an autopsy specimen from the lung. I have talked to experts about this, how can we diagnose this by X-ray, and they say that there is no way that you can diagnose this. This is a microscopic diagnosis.

In my experience, I have proved to myself in some cases that you can make a diagnosis of this condition on X-ray as a result of pneumoconiosis. I have some cases, I don't have them with me, but I have some cases that I have followed that have a stage two pneumoconiosis, and I have ruled out all other causes with X-ray, etcetera, and in numerous ways.

How can we prove this. I think if you piece together emphysema superimposed on itself will create increased air in the X-ray. There is a big disagreement with all of the people in the field that emphysema definitely can be caused from coal sand and rockdust exposure.

Now, this may be why the X-ray becomes normal. If the patient has a lot of emphysema, the trapped air in the lungs, which is what emphysema is, hides the permanent particles that is a part of the lung.

This is what I have satisfied myself is part of the answer of why the person's X-ray reverts.

Now, I want to make one statement also. The thing that we are getting bogged down with in our area is that bronchitis, emphysema and asthma are all conditions that can result from several things.

One of them that must be considered is pneumoconiosis. A lot of people feel that emphysema is not a result of pneumoconiosis, and I am certainly convinced that this is wrong. Emphysema is definitely in part due to pneumoconiosis.

Again, we get into the age group that we are concerned with, the older age, naturally, they say that emphysema occurs in the general population. Yes, it does. But emphysema occurs more frequently in the coal miner.

Certainly you can correlate this with documented evidence that before the age of 50, then you can rule out the aging process, definitely it has been proven that emphysema is more prevalent in coal miners. Therefore, emphysema is a condition arising from pneumoconiosis.

A lot of lay people can read this report, and send this man out as stage E—(emphysema). All you have to do is read the X-ray, and that is what it does show, emphysema.

Some people, whoever they are, who have to decide what this man is disabled from, will decide that he has emphysema, and there is nothing wrong with him. I think that this is a misconception that we must be aware of.

I am beating around on your question, but I think it is important for us to explain this. These are some of the problems that we are having.

Chairman PERKINS. Let me say to the members of the committee that the committee first invited Dr. Martin up here at my suggestion, and he said he could not come. He felt that he was too busy. I personally got on the phone yesterday, and requested that he come, because he grew up in a community, Garrett, Ky., that was surrounded by thousands of coal miners.

I presume that within a radius of 25 miles there were 30,000 miners working in his section 25 years ago, at the time I came to Congress. But, it dates back farther than that. His grandfather was an outstanding doctor. His great-uncle, his grandfather's brother, was an outstanding doctor. I used to take care of his daddy's horses years ago when I was a kid, and I kept his wagon in our barn shed.

I have all the confidence in the world in Dr. Lowell Martin. I want to ask you what type of paperwork is presently required by the Social Security Administration, where it interferes with your regular practice, and about how many coal miners are ex-coal miners, people who

were in the mines prior to June 30, 1973, do you see on an annual basis?

Dr. MARTIN. Since this problem has come on the front, in an average day you will see 10 to 12, or maybe 20 of these people. As a physician who is interested in the practice of medicine primarily, I will have to say that for 6 years I refused to get involved in this thing because it is a complicated matter, making all these reports, especially when you have to keep making them to the disability agencies, to the attorneys, and to the same patient who will return, when he has waited long enough, and he thinks there has been ample time for his disability to be processed, and he is back in your office with additional evidence, which I think is a problem.

The paperwork has grown to a point where I hope that we will get a paper shortage, and come to some practical answer to this thing as a practicing physician. It has destroyed, timewise, your schedule.

I think the family physician has to be involved in this thing, if he is going to practice in the area, where we are practicing and dealing with miners. I don't think that we can depend on a physician from another area. I think that the answer should be as much as possible in the area that we are dealing with.

Now, I don't represent any particular side of this problem, except by being a victim of circumstances from the standpoint of trying to be a family physician, who has to do preemployment examinations for mining companies, big mining companies, who want a report that says that they are able to work, and they will be able to work, and they will have the freedom to work, if the physician says that he is able to work.

I have to be able to, on the other hand, supply numerous reports to agencies that are responsible for processing disabilities. On one examination, they require me to make 10 to 12 different reports to different areas, because the patient is involved in a confused mechanism that we have.

For example, let me give you the story of one person who comes to me for a preemployment physical examination. I may never have seen him before in my life, but merely by the fact that I have been appointed as a preemployment examiner for this particular mine, the man is sent to me for 20 or 30 minutes of examination.

He has a chest X-ray, which I interpret myself, and I make a statement like this. He has stage 1-1-Q pneumoconiosis. I do also add, "do I think that this man is able to work." I give my personal opinion, evaluated as well as I can from the information that I have in examination. "This man has no detectable pulmonary impairment. He has stage 1-1-Q pneumoconiosis." This is confidential to the patient.

Then he goes to get that job, and he will be turned down, because they are afraid that he is going to sue for pneumoconiosis. The next day he is back in my office, as I said before, because I am responsible partially for him being rejected from mining.

I may have made the statement that he has no pulmonary disability, but he has this stage. The next week I have to give a report to the attorney that the man has contacted to process his claim for disability payment.

The man, merely by the fact that I have given this report, is scared to death that he has pneumoconiosis. Some say I have it, and some say I don't have it. I can't get a job.

The next week he is going to the Social Security Office, and I have to supply another report. We all are confused. They say: This guy is an expert, he should know what he is talking about. This guy is my family physician, and he should be able to tell me better whether I am sick or not sick. He says that I can work, and the employer says that I cannot work with any stage and no physical detectable disability.

So, finally, after all of the circumstances are put together, you have to be your own guide or God after a while. There is no good practical answer we have yet. This is not only in 5 or 10 percent of the people, this is in, sometimes, 40 percent of the claims that come before you.

I would like personally to request that we come to some kind of practical conclusion on this thing, some good little simple thing that we all could use. The examination shows that he has normal pulmonary function tests, but the patient cannot get a job. His family physician disagrees with the experts, and even the experts disagree among themselves, so we don't know where to go.

Chairman PERKINS. One final question. We have had a gentleman before this committee by the name of Keith Morgan who testified and emphasized the importance of smoking as contributing to evidence of black lung.

Do you believe that miners being awarded black lung benefits, are awarded such benefits as a result of their smoking habits instead of their occupational impairment.

Dr. MARTIN. I don't follow your question.

Chairman PERKINS. In other words, we had a doctor appearing before this committee, and in substance he stated that we were awarding benefits to black lung applicants because of a long impairment resulting from smoking instead of occupational impairment.

Do you believe that this is from occupational impairment, or from smoking?

Dr. MARTIN. I don't think that there is any way anybody could give you the answer to that problem, other than to state this: I am thoroughly convinced that smoking does cause pulmonary impairment. It does cause emphysema. It does cause chronic bronchitis.

I am also convinced, even in the miners that smoke, the emphysema, chronic bronchitis and asthma are more prevalent in the miners than in those smokers who do not mine. I cannot prove this, but this is my impression.

Chairman PERKINS. Then, the probability is that black lung does give rise to these other diseases?

Dr. MARTIN. Certainly.

Mr. DENT. May I ask a question at this time. Do you know of any cases on record, or off-record, where individuals who have never worked in the mines have been awarded black lung payments, because of pneumoconiosis, who were smokers all their lives?

Dr. MARTIN. Personally, no.

Mr. DENT. Mr. Erlenborn.

Mr. ERLBORN. Thank you, Mr. Chairman.

I guess both physicians are available for questioning at this point.

Dr. Hunter, have you testified yet?

Dr. HUNTER. I have not testified yet.

Mr. ERLNBORN. Let me ask both of you, and you can each respond. You may agree or disagree, and you will probably agree.

We have evidence, medical evidence, before this committee that approximately 10 to 12 percent of coal miners become afflicted with the second or third stage of pneumoconiosis. Would you say that this is accurate, or would have any other studies that you could refer us to?

Dr. HUNTER. I cannot answer the question, Mr. Erlenborn, because I don't know what you mean by the second or third stage.

Mr. ERLNBORN. I am talking about the international—

Dr. HUNTER. You mean the complicated pneumoconiosis, which in our jargon is not the third stage. It is complicated pneumoconiosis.

Mr. ERLNBORN. It is second or third stage pneumoconiosis on the ILO standards.

Dr. HUNTER. There is simple pneumoconiosis, and then complicated pneumoconiosis. I don't know any figures for stages two or three. There is some dispute, and it depends on the cohort one studies at the stage of the complicated pneumoconiosis.

This increases greatly with age rate, and the age that we are talking about, the fifties, it is considerably higher than this. But, I cannot answer the question as to categories two and three. It varies in different surveys and it varies in different areas of the country.

Mr. ERLNBORN. If this figure is accurate, or if it would go up to 15 or 20 percent, or 25 percent, would you say, then, that it would be consonant with the level of claims that are being allowed under the present law, which I think run up to 80 percent or 85 percent of the claims filed and approved?

Dr. HUNTER. Within the overall grouping of simple pneumoconiosis, categories one, two, and three, there are really few distinctions that can be made, perhaps until one gets to category three, as to the disability. So, I really don't think that this gives you a handle on the problem, to know what percentage of a given group of pneumoconiosis is category one, two or three.

Mr. ERLNBORN. It was my understanding from my research in England, and from medical testimony before the committee, that simple pneumoconiosis is not disabling, whereas complicated pneumoconiosis can be.

Dr. HUNTER. I would prefer to reserve that question for my testimony, if you don't mind.

Dr. MARTIN. I would like to add, Mr. Erlenborn, that this is a problem to a lay person, when you are speaking in terms of the language that we have to go by.

For example, the International Labor Classification and the Cincinnati UICC classification. The UICC classification in my interpretation does not state one way or the other where a man is disabled or what, but in everybody's language, I believe, category A was supposed to be. In other words, one, two, three and then category A, it is the biggest opacity, and this is complicated pneumoconiosis.

Now, this gets us involved in a difference of opinion of who has category A. How do we determine he has category A. I think that it

is very much underemphasized from the standpoint of X-ray readings alone, what category A means.

For example, when we first started this program, and I entered a program given in Knoxville given by the American College of Radiology, they were teaching us how to read these films, and we were supposed to be speaking the same language. This is the difference of opinion that we had with the experts of who has category A for purposes of the social security bill.

The members there said that we would agree that if a man gets category A, this is complicated pneumoconiosis. He does have advanced lung disease. But the problem is, regardless of whether he has complicated pneumoconiosis, and if a man wants to work, I think that there should be some means by which he could work. He should be protected medically, but I think it is a free country. I think what we are doing, if we stage a man, whether we are right or wrong, the guy has to decide and the employer has to decide can the man work?

One good answer would be to give these men their claim after a certain period of time, or then let them work. Let the physician decide when he is disabled to the point where he should be taken out of the mine and put into another occupation.

Mr. DENT. Could we have order. We cannot hear the witness.

We would ask the indulgence of the witnesses to recess for a few moments, until the full committee, which has now arrived takes care of some business which has to be finished today. We will recess now, and we will come back immediately afterward.

[Whereupon, a short recess was taken.]

Mr. DENT. The subcommittee will come to order.

Mr. Erlenborn has the floor.

Mr. ERLBORN. I think that we might take a moment or two for order to be established.

Mr. DENT. Those people who are leaving are asked to do so quickly so we may have some order in the room and the witnesses may be heard.

Mr. ERLBORN. Dr. Martin, you have testified, and I think Dr. Hunter will, that you believe it would be totally proper to have some irrebuttable presumption that someone who has worked in the coal mine for some specified number of years, is thereby totally disabled, and qualified for black lung benefits. Is that correct?

Dr. MARTIN. Yes, sir.

Mr. ERLBORN. Dr. Hunter, you support that also?

Dr. HUNTER. I prefer to wait for my testimony.

Mr. ERLBORN. What period of years, in your experience, do you believe justifies on a medical basis the presumption that a person working in the coal mines for that period of years, is now totally disabled by virtue of complicated pneumoconiosis?

Dr. MARTIN. It is hard to answer, except that I have satisfied myself presently that 20 years is very good evidence that there is some pulmonary impairment. However, I feel that there must be some mechanism by which we can eradicate 60 percent of the paperwork. There also must be an incentive for miners to work since the experts presently cannot give an adequate answer without a presumption.

Let us presume that a miner has 20 years exposure in or around the mines with some kind of understanding, "You will be paid your disability. We are all going to die of heart attacks one of these days, but we have to work, because of family and so forth."

I think if we classify somebody, as disabled, and then not let him work, if he has a desire to work in areas in which we are dealing with, the person has no other means of any support. He may work, and he may have the desire to work. We need a rehabilitative program for adequate job replacement.

I think that 20 years is a good presumptive figure. Then, we can eradicate 50 or 60 percent of the paperwork. Then, the others, if there is still some question, we have the experts who work on some kind of criteria for this, which we don't have yet.

Mr. ERLBORN. In your concept, would this be applicable to the people who are just now coming into the mines, as well as those in the past?

Dr. MARTIN. Eventually, I hope. We don't have it presently. We should have some kind of dust control mechanism whereby we would not have to worry about the 20 years exposure. I think presently we are going to have to come to some kind of practical exposure, then if we get better medical evidence, some reliable test that we can do (to determine disability, with what evidence we have) or if we have another mechanism that can tell us more, that the dust control is going to be in the future. Then, the 20 years would be a problem to us.

We have to have some kind of leeway. If we get new medical evidence, or dust control measures. All these people want to work, but they are tagged presently.

Mr. ERLBORN. Do you know of any precedent under workmen's compensation that would allow somebody to be considered as totally disabled without evidence of disability, entitled to workmen's compensation or industrial disease compensation without medical proof of disability?

Dr. MARTIN. No sir. I don't.

Mr. ERLBORN. So this would be altogether new, a new concept?

Dr. HUNTER. I don't know what the law is, I don't know how this varies from a pension. I have no comment.

Mr. ERLBORN. If you use 20 years as the criteria, wouldn't this in effect be a pension based on 20 years of employment?

Dr. MARTIN. We are faced with a problem of a law that is in being, that we have to deal with a lot of individuals as a result of a situation we are placed in. For example, I have to give you, to the best of my ability, what I think a patient is able to do, for example.

Presently, this is against my personal feeling, because I have to go by what the law says. I have to go by what the classification says. I cannot make the employer employ him again. If he gives him the job, he may sue him for these benefits. That is the problem.

The medical evidence that we can offer you to the best of any medical ability that I have, is that I cannot, beyond the shadow of a doubt, give you 100 percent answer to this question. I don't think there is any answer.

I can give you this answer. With 20 years of exposure, presumptive exposure, you will eradicate a lot of headaches to the attorneys, the

boards that are responsible for evaluating disability, and lot of the paper work for the physician by making medical reports, and statements that have no bearing on the medical practice, and no bearing on anybody.

You have to reach out there and come to some figure, presently, that will keep us all in the right mind. Then we can work on these other problems that we cannot work out presently.

Mr. ERLNBORN. Are you aware that at the present time miners can draw black lung compensation and social security disability compensation at the same time. It is proposed by some of the legislation before us that we eliminate the offset between pneumoconiosis compensation and the State workman's compensation. Then coal miners could draw straight workmen's compensation and social security disability and pneumoconiosis compensation all at the same time.

Do you think that this is fair to the other industrial workers in the Nation who do not have this ability.

Dr. MARTIN. My personal answer is no, it is not fair, but this is not an answer for me to give you. All I can say is that presently we have to deal with what is in existence. I think that since we have this law, we have to try to interpret the thing for the well-being of the patients, and the well-being of the employer.

Personally, I don't think that it is fair, but I think that we should strive toward what will protect all concerned. I don't feel that there should be different facets of a disability. We all should be speaking the same language. Communication-wise, we are not. We are not speaking the same language.

I think that it is a matter of us interpreting the disability board, then interpreting the doctors, and interpretation of what we should be doing, and the employer's interpretation.

Sixty percent of these claims should all be completed, or leave the office with some simple answer that we could come to in view of our present knowledge.

Mr. ASHBROOK. Will the gentleman yield? In this whole area, I understand your difficulty over the difference between medical, and what the law and the social should be. I don't think that we can rightfully expect you to answer the social questions, or the legal questions.

But one thing that you do talk about in interpretation, in listening to you as a very earnest witness, as far as communication is concerned, you seem to mention some disability in the same context as total disability.

Now, if we are going to define terms, don't you think that there is a difference between what you refer to as some disability after 20 years, as against total disability?

Dr. MARTIN. I have no further comment, other than to say that this is a heck of a problem.

Mr. ASHBROOK. Thank you, Mr. Chairman.

Mr. ZEFERETTI. I have an observation. Using precedent as a means of clarification, in the New York area ourselves, we find ourselves with presumptive evidence in the case of the uniformed forces in the city of New York in the case of heart disease.

If a man is struck down with a heart attack, it is presumed that that heart attack is a direct result of his employment, which, in fact,

brings forth the disability allowance for the rest of his natural life, if, in fact, the medical evidence says that he cannot return to work.

So, I think that there is a problem there, and there is a precedent along those lines. I don't know exactly how you could write it in for this particular problem. I would like to bring that forth as a bit of information.

Mr. DENT. Mr. Sarasin.

Mr. GOODLING. I wondered if I could just restate the question that was asked a moment ago.

Mr. SARASIN. I will yield to the gentleman, and then I will ask a question.

Mr. GOODLING. I think that Congressman Erlenborn's question was regarding the number of years for total disability. I would like to ask that question again.

You said 20 years, but you said that in 20 years there would automatically be some impairment. Would you elaborate?

Dr. MARTIN. There is no way that I can elaborate. My personal opinion is that if we could adopt some figure, 20 years or 25 years, as total disability for some impairment.

Mr. GOODLING. Assuming total disability. I wanted to clear that, because I thought that you had said in answer to Congressman Erlenborn's question, some impairment rather than total disability. His question dealt with total disability.

Dr. MARTIN. It is only an assumption, but I think personally that the employee should be given the ability to work, if he wants to go on working. This is the problem.

Mr. GOODLING. You mean if he is totally disabled? You are assuming that this is total disability?

Dr. MARTIN. If we assume that he is totally disabled. In other words, if you are going to have, as Mr. Erlenborn stated a while ago, if you are going to keep this law, we have to decide when a person is disabled or when he is not.

A simple way to me would be to assume that after 20 years this patient is totally disabled. The fund pays him up, just like agents do with insurance, and let there be some mechanism whereby the employer can go ahead and let him work.

Mr. SARASIN. Doctor, I am confused. Certainly if there is confusion in the law, and there is, we have the ability to try and rectify that, and we hope that we can pick your brains to help us.

I am confused by the statements, as I understand you are making them. You are saying that we should assume an individual is totally disabled after 20 years employment as a coal miner. Did I understand you to say that this would be an irrebuttable presumption?

Dr. MARTIN. Yes, sir.

Mr. SARASIN. It is not rebuttable?

Dr. MARTIN. It is rebuttable, but I don't know the answer to get the rebuttable.

Mr. SARASIN. You are saying that automatically after 20 years, the fund should start to pay him. At the same time, you are saying he is totally disabled, because simply 20 years have gone by. Then, at the same time, you are saying that he should be allowed to work.

Dr. MARTIN. This is simply for clarification of our current knowledge of the problem.

Mr. SARASIN. Isn't there a contradiction in terms to say that this individual is totally disabled, but he should be allowed to go to work?

Dr. MARTIN. Certainly.

Mr. SARASIN. How do we resolve that dilemma?

Dr. MARTIN. I don't know the answer to that either.

Mr. DENT. Hopefully a rehabilitative program could help with the answer. This certainly would help with the older claims prior to June 30, 1973. Mr. Simon.

Mr. SIMON. First of all, I appreciate your testimony. I think that it has been very significant testimony.

Do you run into people who are denied the black lung benefits at the present time that you believe ought to be getting those benefits?

Dr. MARTIN. Certainly.

Mr. SIMON. Are there many of them?

Dr. MARTIN. Many.

Mr. SIMON. Would you want to venture a percentage of those who you see, who are okayed as of the last 6 months of your experience?

Dr. MARTIN. I see a lot of miners who have nothing wrong with them. I don't only see people who have disabilities.

Mr. SIMON. Among those that you know that have applied for black lung benefits, that you think deserve to get it, what percentage in the last 6 months have you seen actually getting the black lung benefits?

Dr. MARTIN. The older people, I think, are the ones that everybody is having trouble with. The younger people the board is more than liberal in their evaluation of these conditions.

I think that the problem arises with older people who have applied for the black lung benefits. Your medical evidence is weak from the standpoint of saying that this man has pulmonary impairment due to pneumoconiosis, because this is something—in other words, you have to be God to answer it.

There is no good medical evidence that will say that the shortness of breath is 100 percent due to this, but you can say in part, in a major part, that it is due to this.

Mr. SIMON. Dr. Martin, in your practice, when you talk to someone who has been in the mines, and he has that shortness of breath, you know in your own mind what the cause is.

Dr. MARTIN. Yes, to my satisfaction.

Mr. SIMON. Then, one response to the question that has been asked by Mr. Erlenborn and some of the others, is what we are talking about. Mr. Dent, and Mr. Perkins, I may be incorrect in my interpretation here, but what we are talking about is a presumption where we would use your 20-year figure, a presumption of eligibility at the end of 20 years, because most miners I know at the end of 20 years, after they have worked for that period, have serious problems.

However, if they want to work, they can, because they would be drawing their full salary rather than one-fourth of their salary. So, the financial incentive will continue to be there for them to continue to work.

Those, who have serious problems, then, can be eligible. I am going to toss that question at the chairman, or one of the chairmen here.

Mr. DENT. If they were working, they would receive their wages, which, of course, would deny them benefits. But, they should have an option.

One of the things that we have to clarify in the act is that an individual who is working should be able to file his claim. If he is awarded the compensation, he should be allowed at that time to make a decision as to whether he would continue working, or take his compensation.

I think that answers your question. The miner should have an option. Presently many miners are automatically denied a review of their claim because they are still working. They must be out of a job, off-work, and therefore presumed disabled before their claim will be considered. Many of the workers did not get in under the umbrella, because they continued to work, not wanting to give up their job because they could not get their job back if they were denied.

Mr. SIMON. Under H.R. 7 and H.R. 8, the provisions of your proposal—

Chairman PERKINS. In 15 years, someone who did not want to apply and did not want to draw the benefits could continue to work, and instead of drawing 2 percent of his salary, he could continue to work.

Mr. DENT. Absolutely. We do not set up any kind of a partial disability payment. Therefore, your interpretation is in keeping with mine.

Mr. SIMON. The incentive would continue to be there for the man to continue to work. I think maybe the assumption has been made by some that the incentive is there to stop working. I think that the incentive is just in the other direction.

Mr. DENT. One of the peculiarities of this particular ailment is that you can have first, second and third stages, and still not be disabled to a point of not being able to continue your job.

However, we are amending the law to give the miner the option of staying on the job, unless he has complicated pneumoconiosis, which is in the fatal stage as we have determined. If he has simple pneumoconiosis, he has a choice permitted, and the employer is obliged to find him a job in a less dusty area.

Of course, unless the worker continues working in a dust area, the disease does not progress. The disease itself, or the affliction does not progress unless you are in a dust area.

Mr. SIMON. One final question, Doctor, and then I will not bother you anymore.

You mention the problem of the older miners, and I agree completely. What percentage of those older miners you talk to, are getting turned down, would you guess right now?

Dr. MARTIN. I would say that it is as high as 20 percent or more, I would guess. These are the ones who are returning wanting more information, more X-rays. They don't understand where to go from here.

Mr. SIMON. You believe that 20 percent are being turned down, or are you saying that 20 percent are being okayed?

Dr. MARTIN. Twenty percent are being turned down.

Chairman PERKINS. Which you feel should be approved?

Mr. SARASIN. Would the gentleman yield.

I would like to follow that up. Would you explain, and perhaps

you have and I did not catch it, why you feel these people are entitled, and yet they are not able to collect the benefits.

As I understand the question originally propounded to you, how many people do you feel are entitled, but for one reason or another, they are not able to collect the benefits. My question is why?

Dr. MARTIN. For several reasons. My experience is that with the amount of exposure that each one of these patients has had over 20 or more years, with the X-ray findings that I find, and with the history that we determine of the shortness of breath. You certainly can correlate this, over and above any underlying conditions, that this is causative factor of this person's condition or disability, to the point that it is a significant amount of disability.

However, I have no way of proving that. I don't have any tests that can tell us how much of a percentage, etcetera.

Mr. SARASIN. If that is the information that you provide, why wouldn't that be enough to give the individual a claim to disability?

Dr. MARTIN. The answer to that is just a personal feeling.

Mr. SARASIN. Thank you.

Dr. MARTIN. I would like to add that pneumoconiosis is a progressive disease even without further exposure. Even without further exposure, the disease will progress, but not as rapidly as with further exposure.

Mr. DENT. We only have the statistics in the record given to us by the British, who have the longest history, the longest recorded history of the disease. They tell us that if you remove a first degree, or second degree, or third degree miner out of the dust area, the disease does not progress.

Now, this enters into a new phase when you tell us that there is progression without further exposure. You are convinced, and we would like to have whatever you can add to the record after you leave, in the way of data collected on it, or medical information and history.

If you say that this now has been demonstrated by some kind of a historical record, the committee would be appreciative of receiving it from you.

Mr. DENT. Mr. Miller.

Mr. MILLER. Doctor, as I understand your testimony today, what you are saying is that after an individual works in the mines for a period of time, and along the lines of what Mr. Dent in his bill has suggested, and Mr. Perkins, the option would be given to that individual to get out of the mines under full disability, let us say after 20 years, I think that the legislation says 25, and one says 15, on the presumption that he has been disabled by his work in the industry.

However, if that individual desires to continue to work, that option ought to also be made available to him. Is that correct?

Dr. MARTIN. Yes, sir.

Mr. MILLER. I am reacting a little bit to some of the questions from the other side of the aisle. How could an individual be disabled, and still work? I think that Mr. Zeferetti pointed out the question of the heart attack, and the heart attack, if you work in this kind of industry, will kill you right away if you go back into manual labor.

What we are really talking about is internalizing the full social cost of getting coal out of the ground. We have passed a strip min-

ing bill in which we said that we are going to internalize the cost, the environmental cost of getting coal out of the ground. We are going to demand that they restore the environment, the streams, the watershed, the forest where they have turned it up.

I think that what Mr. Perkins and Mr. Dent are addressing themselves to in this legislation is that we are going to ask the industry to compensate for the time an individual has spent in that industry, which evidence seems to show diminishes his health.

This is a social obligation, and it is one of the costs of carrying on this type of work. We are starting to see the same types of claims and suspicions being raised in other industries, such as the chemical industry. I really don't find that to be a terribly foreign concept.

When we have asked an individual to give up 15 years of his life to make this economy run, somehow we cannot walk away from him, and somehow we cannot force him to go unemployed, or to go on inadequate disability as opposed to a chance to keep working, if he can make a conscious decision.

Mr. Dent suggested that he work in another area of the mine. I think that this option has to be made available, and that is part of the cost of working in a hazardous industry. I certainly support fully the concept that we have here, and I think that it is a concept that is going to spread. Again, as I said, evidence is coming to the foreground that perhaps other employers have been subjecting members of the work force to this type of hazard.

We have left a lot of widows and orphans as a result of this kind of activity. So, I want to support again what Mr. Zeferetti said.

A carpenter, or a steel worker may decide that he can work for Wackenhut or Burns Detective Agency, guarding an oil refinery, and he goes on working. In this industry, and after 35 years, given the economy of the area, there is very little choice.

I think that this is the cost of getting coal out of the ground.

MR. DENT. Thank you very kindly. I think that you have probably placed in the record a full affirmation of the original concept of this legislation. It is sort of a national obligation because of the nature of the industry, and the benefits that have flowed from the work of these individuals in the mines over the years.

I think that it is very good that you did reiterate for the record, so that we remember that the original concept of the legislation was based not entirely upon the injury or the compensable disease, as much as it was upon the moral issue of the obligation of the people themselves in this country for this particular disability.

I think, just speaking to Mr. Sarasin here, at the right time, and when I have fully tabulated information, I am going to show that the payments made for black lung recipients coupled with the assistance they get from the UMW funds and social security payments, have taken all of these families or individuals off of the public welfare and food stamps.

Our figures are beginning to show, while it is costly, running around \$1.5 billion a year, we are probably saving between \$250 to \$500 million a year by not having them on public welfare and food stamps.

So, it is just a question here of whether the obligation is paid directly to these miners under a specific piece of legislation aimed

at their particular dilemma, or whether it is paid from the public treasury on a public welfare basis.

It has not only gone beyond the context of what is good for the miner, but what it has done is give a new character to the standing among the public of these individuals.

Seriously, I think we are going to find out that it is not as much a giveaway as people said it would be. I think that this legislation is going to end up being supported by many who now oppose it. We are going to show, I believe, logically and economically that this is a very much needed piece of legislation.

Your testimony, along with much of the testimony that has been given, shows that since the Federal Government was relieved of the responsibility, starting particularly in January 1, 1974, that the number, the percentage of those being denied in many areas has gone to 80 percent of the applicants.

We have to do something. It is very difficult to pass an absolute presumption, I know that. However, it is also the only way that I believe we are going to be able to, in good conscience, meet the obligations.

I am sure that some of my colleagues share with me the desire that this particular type of compensation be put on a basis that is compatible with all the other compensation in the country. It is easy if a man loses an arm, or a leg, because it is visible. The one thing that we have to keep in mind, no matter how many medical improvements are made for detection there is no one who really knows for sure, except the man who has pneumoconiosis, as to what his damage is. Therefore, we have to have a presumption.

Mr. CORNELL. One point of clarification.

Where would you put the period of presumption, 15, 20, or 25 years? I believe from your testimony that you believe there is no type of test presently known that would rebut that sort of thing.

For instance, some of the doctors that have testified here talked about the blood gas test.

Dr. MARTIN. Mr. Chairman, I did not make a prepared statement. Dr. Hunter who is beside me has a prepared statement that may help answer some of these questions that are being asked. If I might yield to Dr. Hunter, and if it is all right with the chairman, he might present his statement that has been prepared. It might clear up some of the situation.

Mr. CORNELL. One further question. It was testified here a while back that about 50,000 claims, and the chairman mentioned something about 80 percent of them were rejected, claims that were rejected.

I don't know how practical this is, but what would you think of a proposal that two reputable doctors, I don't know whether there are any other types, independently would certify disabling black lung, and that decision would not be subject to review by a board?

Dr. MARTIN. We should strive toward that. Some of these people go to 8 or 10 physicians, because there is such a variation of opinion as to what we can prove or disprove. For example, we have stereotyped even further by requiring physicians to be certified by the American College of Radiology.

The Cincinnati classification, in order to read the film, and give a stage in a situation. This is what were were talking about a while

ago, stage A reader, stage B reader, this is a person who has taken a course in the Cincinnati classification, and a B reader is a person who will go and take further studies, but his concept may be the same as when he is an A reader. When you get to be a C reader, you read what you see on the X-ray. There presently are 5 C readers and I don't have that much confidence they, with present knowledge, can adequately give you a confident answer with only an X-ray reading. There is too much disagreement with even the experts.

It is not the amount of training, I don't think, to speak the same language in this thing, but it is a difference of opinion in reading the film itself.

Mr. CORNELL. There is unanimity on the part of the doctors who have appeared here as far as the unreliability of the X-ray is concerned for determination.

I was thinking in terms of two doctors, serving in relatively the same area, who would have more familiarity with the people who are making the claims that they would certify.

Dr. MARTIN. I think that two doctors should be enough, who have been trained in pneumoconiosis matters.

Mr. CORNELL. Thank you.

Mr. DENT. Mr. Goodling, my apology. I forgot to call you at your proper turn.

Mr. GOODLING. My question probably should be directed to you, Mr. Chairman, rather than the doctor for clarification for my ownself.

First of all, am I correct in assuming that in H.R. 8 there is nothing that says: "You will receive total disability pay, if you are going to continue to work." Am I correct in that?

Mr. DENT. Absolutely right.

Mr. GOODLING. Second, am I also correct in stating that in H.R. 8 we don't say that there will be a 15-year irrebuttable presumption of lung impairment?

Mr. DENT. That is correct.

Mr. GOODLING. I have heard some emotional things in days past as to why people are not receiving their just compensation in the estimation of doctors.

In your estimation, why are they not? Is it the language of the present law that is causing the problems primarily?

Mr. DENT. If you will look at the percentage of applications, and the denials prior to June 30, 1973, and then look at that 6-month period and see the dropoff, or the increase in denials.

From January 1, 1974, to the present date, you can see an increase in the denials. The committee staff, after much study, has come up with advice to me that it was simply because of adherence to HEW's restrictive regulations and interpretation of the act.

Very seriously, if you wish and if you can, I wish you would sit down with our staff, both the minority counsel and majority counsel. I think you will get the answer to your question as to why we believe with some conviction that this was because of maladministration of the act by HEW.

Mr. GOODLING. I am also told that some widows received claims, and some others did not.

Mr. DENT. With the same historical background, this is the part that you cannot explain to a widow. You cannot explain to her that Mrs. Smith whose husband worked with her husband down in the mines for 30 or 35 years was awarded widow's benefits, and she is not awarded, although both husbands have been dead since prior to the passage of this act. This is something that you cannot explain.

Mr. GOODLING. I have no further questions.

Mr. DENT. Mr. Risenhoover, before you start, we have been notified that there is going to be a series of three votes on the floor at about 3:30, so I would like to have Dr. Hunter make his presentation and then you will be able to ask questions of both witnesses.

**STATEMENT OF MURRAY B. HUNTER, M.D., MEDICAL DIRECTOR
FAIRMONT CLINIC, FAIRMONT, W. VA.**

Dr. HUNTER. I am once again delighted to appear before this body to render whatever help I can in arriving at a reasonable and equitable solution to the problems that face you.

Mr. DENT. I want to welcome you back.

Dr. HUNTER. I will not restate my credentials in detail, save to say that I have devoted my entire professional career to the care of coal miners and their families, with particular interest in the area of respiratory diseases of coal miners.

It must be very confusing for you to listen to expert testimony. Experts seem to disagree as often as they agree and there seems to be no consensus of informed medical opinion. When there are 6 or 9 or 12 answers to a question, it usually means that there are no good answers to that question. In respect to the issues that concern you today, this state of affairs may be said to exist, but only in part.

I shall try to clarify those areas of agreement, those areas that are unsettled and those areas that properly belong to social policy rather than best medical evidence.

In attempting to clarify these issues, I will cite only the most recent testimony before you which should be freshest in your consciousness. I will attempt to do this by employing a question and answer format.

1. Do coal miners have an increased prevalence of potentially disabling respiratory disease as compared to the general population?

The answer here is unequivocally yes. The issue is one of the magnitudes of difference. This difference is highest for anthracite miners, least for miners in the Western States. The excess pulmonary morbidity in coal miners is characterized by some authorities as of small magnitude.

Some believe it to be exclusively to that percentage, roughly 5 percent, of miners who have developed the complicated form of the disease, and for which irrebuttable presumptions already exist in statute.

However, statistics from the Social Security Administration, indicate a four-fold increase in awards under Social Security Disability, OASDI, to coal miners on account of chronic pulmonary disease as compared to the population at large.

Even those who claim no increased disability from simple CWP alone are careful to point out that this may not apply when account is taken of associated bronchitis and airway obstruction in coal miners.

2. To what extent is the chronic respiratory disease of coal workers the result of occupation?

There is no evidence that the excess morbidity and chest symptomatology are due to hereditary factors. If the excess were due to cigarette smoking, then a comparable coincidence of increased lung cancer should be seen in coal miners since the etiologic relationship between smoking and lung cancer is established.

Such a coincidence does not in fact prevail. The suggestion was even made in Dr. Morgan's testimony before you that lung cancer may be less prevalent in coal miners than in the population at large which might be a reflection of lower lifetime levels of tobacco inhalation.

A third alternative is that coal miners live in a more polluted atmosphere. I think the chronic effects of environmental pollution upon chest diseases are not established. Contrary to popular belief, most miners live in fairly bucolic settings, in which the ambient air is probably of more satisfactory quality than that of Washington, Baltimore, New York, and certainly Los Angeles.

Furthermore, if dust exposure were irrelevant to the chronic respiratory disease in coal workers, then there would be little difference in its incidence between different job categories in the mine.

In fact, where this has been studied, it is not the case. Jobs with high dust, rock, and sand exposure are associated with increasing evidence of chronic respiratory disease. It seems difficult to contest the fact that what increased frequency of chronic chest disease does occur in coal miners is a product of the working environment and of little else.

3. Do the facts as known now justify an irrebuttable presumption that after 35 years in coal mining, the miner may be presumed disabled from occupationally related lung disease?

According to Webster, a presumption in law is the acceptance of one fact from the existence of other facts. Logically, it is an inference in accordance with the common experience of mankind.

I believe that in respect to this aspect of the legislation, the testimony of the lay witnesses, particularly that of Mr. Arnold Miller, perhaps is more to the point than those of the various medical professional witnesses.

It is exposure over time that produces coalworkers pneumoconiosis, and the enactment of a reasonable presumption that thus and so many years of exposure to coal mine dust, be it 25, 30, or 35, is enough, represents sound social policy. I am completely in accordance with that view.

It will take both the doctors and the lawyers out of the black lung business, a development devoutly to be wished. A miner, wishing to establish disability, whose exposure comes to less than the stipulated number of years, would have to establish his disability by medical evidence.

Presumptions as to disability are not really new as matters of social policy. We had the example from New York, with respect to heart disease. An individual who has made a career out of military service and has developed a psychosis while in the military, is presumed to have developed that psychosis as a result of his military service, irrespective of the fact that psychosis also exists in the general population.

The presumption is that the military life is somehow or other psychologically noxious. I think the sense of H.R. 8 and 3333, by analogy, presumes that 35 years of dust exposure is noxious to the respiratory system.

Soldiers and sailors do survive a lifetime of service without emotional disease, and there are many coal miners who work for 35 years without pulmonary deficits. These facts in no way gainsay the social desirability of a statutory mechanism for the presumption of disability after a critical exposure has been reached.

4. Can a negative blood gas test rebut such a presumption? I believe this was alluded to before.

No. All of the medical testimony on this point is in agreement. Enactment into law of such a rebuttal would occasion countless haggling and retesting to no valid end. Substantial disability can exist without a positive blood gas test.

5. Is the proposal unfair to cotton workers?

Reference has been made in testimony before this committee that because asbestos and cotton workers, who are indeed exposed to hazards of occupational lung disease, perhaps equally to coal miners, are not covered by comparable existing Federal legislation, that this legislation ought not to be passed because it affects coal miners alone.

I think the assumption is that this violates simple fairness. I submit that the best way to help those other industrial workers, not yet covered, is to enact the most protective and comprehensive legislation on behalf of the coal miners, whose claims on our attention are now in the forefront. Hopefully, then, a model might be established for the claims of similarly afflicted workers in other trades.

There are some other aspects of the legislation upon which I should like to comment briefly.

I would agree with Dr. Mitchell who appeared before you, that there is little evidence that surface workers have analogous exposure to noxious dust as do underground coal miners and I do not believe the evidence exists to justify their inclusion as beneficiaries of the proposed presumptions. I would hasten to say that this does not apply to tipple workers.

I would hope that the Congress would amend those regulations that prohibit filing of claims solely on the basis of employment as a miner at the time of filing or at the time of death.

I am personally aware of countless cases of individuals who, had they filed under any set of regulations, howsoever stringent, while at work, would have qualified for a benefit.

Had we had a more humane policy in which a miner contemplating retirement on account of perceived ill health, could have a decision made in advance of such retirement as to his eligibility for benefits, more rational life planning would ensue.

As matters now stand, the miner who perceives ill health or difficulty doing his job because of shortness of breath at work, has no way of knowing, in advance of retirement, what his economic future might be in the event that he quits, because he must quit first before he files his claim.

The same criticism applies to the entire social security disability determination apparatus, in which the individual foreseeing himself disabled must quit his job first before going through the determination process.

As a physician who treats coal miners every day, I believe that the black lung program should be permanently federally administered. This would encourage uniformity of procedure, keep the issues in it out of coal State politics, and serve to lessen adversary practices in disability determination.

In those circumstances in which medical evidence must be secured as proof of disability, under existing legislation, and for those who might file with less exposure than is protected by the presumption, I would not be in favor of those provisions in this legislation that bar routine rereading of X-ray film, and I would equally not be in favor of disability decision residing in the hands of the physician of the miner's choice.

These are positions I have come to reluctantly, because I know they are contrary to the subjective feelings of most coal miners. However, I have seen the devastating and confusing effects of grossly fraudulent as well as inexperienced X-ray readings.

This often results in injudicious and unwise advice to coal miners as to their personal life choices. In some cases assignments of these functions to local medical personnel results in simple exploitation of the issue for personal profit.

The realities of the everyday practice of medicine are such that when confronted with a coal miner with a pulmonary complaint, with or without pulmonary impairment, the physician is cast into dual and sometimes conflicting roles of care and of advocacy.

If this law requires a test, it should require the test to be as objective as man can devise it. There is nothing intrinsically wrong with a panel of experts, provided that such panelists are oriented as to the social policy objectives and human requirements that the Congress intends.

Now, you will note that in my statement I did not specify a number of years to exposure, which is a question that several people have asked. I will address myself to that now.

I think that I am going to ask you to consider a twofold approach to this problem, if I may. For those miners exposed prior to May 1972, I would suggest the lower number of years consonant with sound practice. I would submit that the figure 15 is not unreasonable, because it was in 1972 that dust control began in American coal mining.

We have no way of predicting what the effect of dust control will be over the course of the next 20 or 25 years. The experience of Australia perhaps can be extrapolated to American conditions, and it may be very beneficial.

Australia claims to have eliminated the black lung problem with dust control.

I would say that a 15-year presumption should apply to those miners exposed before 1972. Acting under the assumption that dust control will be effective, 35-year presumption should apply to those miners exposed after 1972. This assumes that dust control will be effectively enforced, and that it will have the salutary benefits that are claimed for it, and that we can reasonably expect from it.

Finally, I would like to register with you an appeal for some easily achievable research in this field. Statements have been made by other witnesses before this committee as to the real impact of this problem of occupational hazard to the health of a coal miner.

It is now 4 years or more since disability awards under black lung have been forthcoming to coal miners. It is time that we began to develop statistics, and those statistics, I think, are easily obtainable from the Social Security Administration.

We ought to find out what, in fact, is the mortality experience of those coal miners who were granted black lung awards, and compare it to the experience of people the same age in the general population at large.

I think that we ought to compare the experience of the individuals who received awards, and the individuals who were denied awards, as a test of whether the awards mechanism was a reasonably discriminatory one, separating out, in fact, those disabled from those not disabled.

My suspicion is that the statistics are gathered already, even after the short duration of the program, and they would show that the black lung program as originally conceived was a just program. It was a correct program, and reflected the realities of the health situation among coal miners today.

Thank you.

Mr. DENT. Thank you, Dr. Hunter, for your very excellent statement before this committee.

I will not question you, even though I do have a few questions if time allows, but Mr. Risenhoover has not had an opportunity to question either one of you, and it is his privilege at this point.

Mr. RISENHOOVER. I have no questions, Mr. Chairman, I am ready to vote.

Dr. HUNTER. I am not in favor of two doctors deciding this issue. I can find you two doctors in my county who will decide anything.

Mr. CORNELL. When you refer to a panel in your statement, do you intend that it should be a Social Security Administration panel, or are you talking about a panel that might be—

Dr. HUNTER. I am in favor of the presumption.

Mr. CORNELL. Beyond the presumption. In those cases where the presumption does not operate, where the miner becomes disabled in a lesser number of years than stipulated?

Dr. HUNTER. I am in favor of the development of standards for disability determination that encompass the clinical examination, the X-ray, the pulmonary function test, the blood gas test, all evidence available, and to be interpreted by such a panel as is selected in consultation with the kind of medical advisory board that has input from the coal workers themselves.

Mr. DENT. Thank you.

Mr. SIMON. I simply want to say that this was an excellent statement, and I appreciate it.

Two things for the record. One, if you could give us a 1 minute description of your background, I think that this would be helpful.

Dr. HUNTER. I am a board certified internist. I practiced internal medicine in the coalfields in Ohio and West Virginia, and I have for 16 years. I have done research, and have written in the area of black lung.

I am actively engaged in the practice of internal medicine in Fairmont, West Virginia, at the present time.

Mr. SIMON. Then, my question would be; assuming that we make, whatever the year level may be, the kind of test that you are describing, you feel that it would not be a difficult thing to devise?

Dr. HUNTER. When you subject the person to a test of disability, there are inherent difficulties, because disability has subjective as well as objective characteristics. You don't have a piece of tissue in your hand, such as you have in cancer, and say this is cancer.

Disability is not a medically definable concept. Impairment is a medically definable concept. This person has thus and such impairment. Disability is a very complex affair, and I think it requires very sophisticated interpretations. I don't think that the individual physician has the ability to determine that on his own for his patients.

Mr. SIMON. But you do not also believe—

Dr. HUNTER. I don't believe that it is an unsolvable problem.

Mr. SIMON. It is not being solved by the present testing procedures.

Dr. HUNTER. It certainly is not being solved by the present procedures.

Mr. DENT. Mr. Sarasin?

Mr. SARASIN. Thank you, Mr. Chairman.

I, too, would like to thank you very much for your presentation.

Do I understand that in this period, assuming we accepted the numbers as you have provided them to us, that after 1972 a 35-year presumption would be reasonable?

Dr. HUNTER. Yes, I think that it would be, because in my experience the age at which people become disabled corresponds pretty roughly to the mid-fifties, the period in which most coal miners I see are ready to consider that they are no longer able to work in the coal mines, because of pulmonary symptomatology.

Mr. SARASIN. Those that have yet to fulfill the 35-year requirement?

Dr. HUNTER. I think a test of disability has to be made.

Mr. SARASIN. If that test can prove to be valid, why couldn't that same test apply to all claimants for black lung?

Dr. HUNTER. There is another reason for that, Mr. Sarasin. When you begin to approach a certain exposure that occurs over time, you begin to get into issues: are we dealing with aging, or are we dealing with exposure.

I think that what we have seen is that exposure over time produces pneumoconiosis, changes in the chest X-ray, changes in the pulmonary physiology. Where it is carefully studied, you can separate that from aging.

What we are accomplishing here is also a social objective as well as a medical objective that we have reached a point where sufficient numbers of people are exposed, that we should begin to think in terms of presumption of differential age of retirement.

We commonly think of 65 as retirement age for the work force, but think that as far as coal miners are concerned, even with the technology that we are projecting for the future, 35 years may well prove to be a time in which we ought to be able to say thus and such and no more. It is obviously arbitrary.

It is an arbitrary thing, but I think it testifies to the fact that at that point in time in a person's life, he is dealing with the natural effects of aging with the deficits imposed by his occupation with exposure superimposed on that.

Most coal miners go in the mine at age 20. They used to go at 14 or 15.

Mr. SARASIN. A new comment. Talking about precedents for a presumption, you mentioned the hypertension situation.

Dr. HUNTER. I mentioned the psychosis in the military, and I mentioned many others.

Mr. SARASIN. In these things, where there is an irrebuttable presumption of cause, someone must say, yes, the man has got it.

What you are saying here is that there will not only be an irrebuttable presumption of cause, but there will be an irrebuttable presumption of the fact that the person is disabled.

Dr. HUNTER. The reason that I made the analogy is that I wanted to point out that there is something noxious to the respiratory system with coal mining, even with the new technology. It is the kind of noxious effect that exerts its effect over time.

We ought to have the social wisdom to put a limit on the amount of time that we are going to permit, unless the worker opts otherwise.

Mr. SARASIN. There may be another way in which to set a time for an employee to work in a coal mine. We could say, no individual could work underground for more than 20 years.

Dr. HUNTER. I am sure that there is a constitutional requirement that this violates.

Mr. SARASIN. If we are talking about disability payment shouldn't there be some indication that, in fact, the disability exists.

Dr. HUNTER. You are back to a test, and you have not improved the state of affairs, which has produced enormous amounts of inequity in my opinion. I would share my colleague's impressions about that.

Mr. SARASIN. I will not argue with the the inequity part of it. I would not argue with the fact that this would relieve the doctors of a lot of advocacy work that they are doing. But we are talking about payment for a disease, and it seems to me that someone ought to say that the individual has a disease, and not just an assumption that is irrebuttable.

Dr. HUNTER. I think, in terms of your social policy objectives, you can call anything what you will. If it is offensive to our intellect to say that we are going to call something disability without a test of disability. You call it anything else, but I think that the principle should remain.

Mr. SARASIN. All right, if we are going to talk about the principle, but isn't it a corruption to say that an individual will be paid for something that he may not even have?

Dr. HUNTER. That is the effect of any presumption.

Mr. SARASIN. I will not argue the social presumption of saying, if an individual has developed pneumoconiosis and he has been in the coal mines. Fine, that in itself should be the cause, and he ought to be qualified here. But I am saying that we will pay people, under the legislation, for pneumoconiosis when they may not have it.

Dr. HUNTER. That is an effect of the presumption that could occur in an astonishingly small number of cases of people working underground. There is no question about that, but it does not bother me. It bothers me in an intellectual sense, but in terms of what our objectives are, it does not bother me.

Mr. SARASIN. Let us call it something else.

Dr. HUNTER. Call it something else, then.

Chairman PERKINS. If the gentleman would yield.

Dr. Hunter, you mentioned a small percentage of coal miners who have worked underground for 15 or 20 years. What percentage would you guess have no serious impairment?

Dr. HUNTER. Fifteen or 20 years have a substantial percentage of significant impairment? It depends again, as I have indicated in my statement, on the job that was done in the mine. When you get up to 35 years that percentage becomes quite small, and I do not have the statistics.

Mr. SARASIN. Would the gentleman yield?

May I ask you, Doctor, you mentioned the Australian experience.

Dr. HUNTER. That is right, I believe they claim that they have eliminated black lung.

Mr. SARASIN. Can you elaborate on that a little bit?

Dr. HUNTER. In Australia, those of us who attended the New York Academy of Sciences meeting some 2 or 3 years ago, were astonished by what had taken place in Australia. But the Australian coal industry is small. It is federally operated as most coal industries are outside the United States.

I think that from the geologic standpoint there are certain superior characteristics. It is rigidly controlled. There is rotation of shift. There is withdrawal of workers at very early stages of development of X-ray change, even without impairment.

There has been an enormous amount of work put into it. I am not a coal technologist. I am simply giving you a second-hand report. What was striking to us was the decrement with dust control in the incidence of pneumoconiosis that occurred in that industry as a result of very, very stringent dust control.

This is the reason why I said that this gives us optimism as far as the future is concerned. I don't believe, however, that I am a qualified witness for the next obvious question: Can we translate the Australian question to the United States. I beg not to answer that.

Mr. SARASIN. It was not my intention, but I wanted to hear a little more about it.

I think, Mr. Chairman, that we should investigate that a little further.

Mr. DENT. If they have some way that they have been able to keep the dust standards below what we have been told is feasible and they are able to control the incidence of the disease in the miners by dust control, certainly if some of you younger fellows want to investigate it, I will be glad to send you out.

Mr. SARASIN. The problem that I have still remains with me. We may appreciate your comment about the social desirability of taking care of people who put their entire working life in the coal mines.

When something like this is provided, especially from the Federal Government, it never seems to go away. If the Australian experience can actually be translated here, and black lung is no longer a problem, we, then, are providing an earlier retirement plan for the coal mining industry.

Dr. HUNTER. That is not unprecedented. My understanding is that in Yugoslavia, the coal miner draws his social security 10 years before a school teacher or a congressman. This is a way of removing him from his exposure over time.

Mr. SARASIN. I will not argue with that as much as calling a man diseased, when he may not have a disease.

Dr. HUNTER. However one does it, the objectives of the regulation are desirable and consistent with the present needs of the coal miner.

Mr. SARASIN. Thank you, Mr. Chairman.

Mr. DENT. Mr. Miller.

Mr. MILLER. Just one question, Doctor.

The number of people who might not have the disease after 35 years, in terms of percentage you said that it would be very small. How does that compare to the percentage of people under the current testing procedures, which would be denied compensation after 35 years? Do you think that it would be an even trade-off?

Dr. HUNTER. You have given me a statistic. I think that it is different. There is a substantial difference.

Mr. MILLER. In terms of your current practice, and what you see in operation, is there a significant number who are denied compensation at 30 or 35 years?

Dr. HUNTER. Certainly there are.

Mr. MILLER. Who, in your opinion, should be given compensation?

Dr. HUNTER. Yes. I would not begin to give you any kind of number to that, because I think it would be reflective of only one person's experience.

Mr. DENT. Dr. Martin, do you have information on that, the question that was just asked?

Dr. MARTIN. I wanted to add for the record that I have never met Dr. Hunter, or had any dealings with him, or even read his report until I came to this meeting. But, we are practicing physicians, and it is a little bit unusual for us to draw the same conclusions, the same philosophy about a problem that we are all concerned with.

I feel much better about giving you what I have reflected here today, and telling you that there is a significant impairment, definitely, in this presumption. In 94 to 100 percent of the time, if a person works 35 years in the coal mine, he is going to have some detectable disability as a result of his mining that will prevent him from working further. That is why you have to say that he is totally disabled at that time.

The philosophy that we are talking about, I have nothing to add, except that we should further pursue this thing, and beef up what we have presently, in view of the known circumstances that we have.

Mr. MILLER. The reason for my asking the question, and then I will stop because I know that we have to go over and vote, is what may be the concern that somehow an individual is going to slip through the system, and get compensation, when, in fact, he has clean lungs. Maybe the greater injustice is that at 35 years, we are going to deny the compensation to an awful lot of individuals.

Dr. HUNTER. We are trying to create a system in which the admitted errors of human knowledge are working in favor of the miner, instead of against.

Mr. MILLER. Thank you.

Mr. DENT. Thank you, Mr. Miller.

Mr. Cornell?

Mr. CORNELL. No questions.

Mr. DENT. Mr. Risenhoover?

Mr. RISENHOOVER. No question.

Mr. DENT. In closing, I am going to say that you gave me something to think about. I am going to instruct the staff to see if they can get statistics, based upon the estimated 540 million to 550 million tonnage in 1972. In that tonnage, we would have been working around 160,000 and 165,000 miners. This is just a rough guess off the top of my head.

I believe that before we can even start to determine the presumptive yield base, we ought to answer the question posed by Dr. Hunter. That is, let us take the miners working prior to 1972, and set up in categories, based upon age plus the number of years worked in the mine. Then, we might come up with a more scientific age at which to set our presumptions.

It may be full-proof to the extent that we will know exactly what the liability would be.

If we do that, then we can do justice to the philosophy that you are expounding, Mr. Miller, and also Mr. Sarasin's view.

I understand your reasoning that there ought to be something to base it on beyond just an assumption, without any background of knowledge.

So, I will instruct the staff to see whether or not the Social Security Administration can come up with whatever assistance you can gather from the United Mine Workers, and the Independent Miners, to see if we can find out in the next 2 weeks or so, some statistics that we can work on, to come before the Congress with a better basic argument that we have.

I think that all of us want to do what is right. I mean that sincerely. Thank you for coming.

We will adjourn until 10 o'clock tomorrow morning, when Mr. Bagge of the National Coal Association will be the witness.

[Whereupon, at 3:25 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Thursday, March 13, 1975.]

BLACK LUNG BENEFITS REFORM ACT OF 1975

THURSDAY, MARCH 13, 1975

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

The subcommittee met at 10 a.m., pursuant to recess, in room 2175, Rayburn House Office Building, Hon. John Dent, (chairman of the subcommittee) presiding.

Present: Representatives Perkins, Dent, Cornell, Simon, Miller and Erlenborn.

Staff Present: Robert Vagley, counsel; Edith Baum, minority counsel for labor.

Mr. DENT. The hearing will come to order.

The first witness will be Mr. Bagge. Carl, will you take your place?

STATEMENT BY CARL E. BAGGE, PRESIDENT, NATIONAL COAL ASSOCIATION

Mr. BAGGE. Mr. Chairman, and members of the subcommittee: My name is Carl Bagge. I am President of the National Coal Association, a trade association representing the major producers and sellers of coal in the United States.

I am accompanied this morning by Mr. Joseph Brennan, vice president of Economic Affairs.

On behalf of the membership of the National Coal Association, I wish to express our profound appreciation for the opportunity to appear here today, and discuss the pending legislation which relates to the black lung benefits program in the United States.

Let me first, Mr. Chairman, if I may, describe to you the NCA position, which is a position recently arrived at, as recently as a week ago, after many, many weeks and many, many hours of deliberations. We appear here today with what we believe, on behalf of the American Coal Industry, is a positive program.

That program was not easily arrived at, and represents substantial concessions by many large members of the National Coal Association. Concessions, I might add between the large and small operators, the Western operators, the Eastern operators, the surface operators, and the deep-mine coal operations in the Nation, many of whom, I might add, against their corporate self-interest in order to provide a truly responsible industry position on this matter.

Its specific features are predicated upon four overriding principles which we feel are essential if the Federal coal workers' pneumoconiosis program is to be workable for the long term.

These principles are:

1. Any black lung program should be a workman's compensation program, and not a miner's pension system.
2. The industry must know for whom they are responsible and be as free as possible from retroactivity.
3. The program should be based upon an industry financed and industry administered system.
4. The compensation program should contribute to the major and overriding concern of industry in the area of coal workers pneumoconiosis, the elimination of the disease. I underscore the elimination of the disease.

Based upon these principles, we have evolved a specific set of recommendations for your consideration. In total, however, we believe that our recommendations will help to establish a program on coal workers pneumoconiosis which will be workable over the long term and which at the same time will provide justice to the true victims of disease and equity to the industry.

We recommend that legislation be enacted to establish an industry financed, industry administered trust fund to pay for claims arising under part C, title IV of the Coal Mine Health and Safety Act of 1969.

We recommend that part B of title IV be extended for a period of time to bring under the Federal program all possible claimants with retroactive liability. We further recommend that after this period, a statutory limitation be imposed on all claimants not employed in the coal industry as of December 31, 1971.

We recommend that diagnosis of disease be based upon the preponderance of medical evidence, and that for part C claimants the applicability of presumptions be tied to causality with proven disability.

We recommend that there be a statutory limitation on the applicability of medical benefits for part B beneficiaries under part C of the act.

We recommend the continued research to help refine diagnostic techniques relating to coal workers pneumoconiosis, as well as to assist all persons concerned with reducing the incidence of the disease.

We recommend that careful study be made of the Federal/State relationship in this area and that any final program be so structured that it can be rolled into any study of national workmen's compensation program.

These specific recommendations form the basis of the National Coal Association's position. They coincide with parts of the pending legislation and differ significantly in some respects from the bills before you.

Taken together, we believe that they form the basis of a long-term solution to the current dilemma in black lung, providing justice for the victims of the disease and at the same time equity for the industry.

I would like to discuss second, Mr. Chairman, the coal industry's objectives.

We are most of all committed to the elimination of black lung disease. The most fundamental part of that commitment is the reduction of dust concentration in the Nation's coal mines.

As you well know, mandated dust levels are now 2 milligrams of dust per cubic meter, a level which we are told will prevent any new incidence of coal workers pneumoconiosis in new employees.

This is extremely important. We are now seeing a rush of new men into the industry. To the extent that we can maintain individual dust exposure to the 2 milligram level, these individuals can look forward to 30 or 40 years of active service in the coal in the coal industry without the fear of crippling disease.

Apart from the obvious moral obligation that we, as an industry, owe to the miners, is our own basic self-interest, an interest served when we can make such a commitment to the new young force in the coal industry, to which we are looking for doubling and trebling coal production in this country in the next decade.

On the other hand, Mr. Chairman, the coal labor force also contains large numbers of older men, 45 years or more. Most of these people have a long work history in the mines, and therefore we can expect a large volume of black lung claims as they retire.

Since most of their service has been prior to the Coal Mine Health and Safety Act of 1969, little, if any provision, has been made to provide compensation for this disease prior to 1969, and thus we face a major short-term problem.

We recognize our obligation to meet current mandatory standards. Moreover, current research and development programs aim at the need to move men from dusty areas and at the same time improve safety conditions. Various configurations of both ventilation and water sprays aimed at dust reduction have been tried and we believe that progress is being made.

Hopefully, over the longer term, the achievement of success in our first objective, that is, no further coal workers pneumoconiosis, will obviate the need for our second objective. That objective is to fashion a truly responsive black lung compensation program.

Such program, Mr. Chairman, has two parts.

It assures the black lung sufferers some degree of financial security when he is no longer able to work, and thus provides for their and their family's financial needs.

It also does not place such a burden on the industry that it hinders the normal expansion of that industry or even its long-term stability.

Consider several facts which suggest that the current black lung program does not meet these criteria.

Current potential industry liability extends to between 55,000 and 60,000 claims on file with the Department of Labor. To those must be added a large percentage of the miners now over age 45, and an unknown number of men not now in the industry, but who once worked in the mines.

History suggests that any estimate which we make will be far too conservative. For example, the testimony of Steven Kurzman of the Department of Health, Education, and Welfare for this hearing states:

We all remember the early estimates of the cost of the original black lung program. In December 1969, the cost of the benefits payments for the first 20 years was estimated to be \$3 billion. Mr. Chairman, as of December 31, 1974, after 5 years, this sum has already reached \$3.2 billion; and the Social Security Administration is continuing to pay black lung benefits at an annual rate of close to \$1 billion.

Based on Mr. Kurzman's testimony, the cost of the program originally estimated at \$3 billion over 20 years, will, in fact, be almost \$20 billion, an increase which no one anticipated or no one planned for.

Several major coal companies have made detailed actuarial studies of potential black lung liabilities. While we have not examined these in detail because of the proprietary interests involved, there is a general agreement that each black lung award represents a potential liability of \$60,000 to \$90,000 and \$12,000 to \$20,000 for medical expenses under part C program.

We believe that the latter figure is conservative, but even so, the potential liability for both parts B and C beneficiaries in the medical area could be staggering.

The clear conclusion is that the black lung compensation program is expensive. To the extent that the program becomes a pension program, it will become a major expense, diverting billions of dollars of needed capital from the expansion of the coal industry to the payment of unanticipated miner's pensions.

At issue is the application of the cost of past liability to present and future production. The industry is faced with paying the cost of insuring past employees, many of whom worked for companies not now in existence, and starting a program for present and future workers.

We do not believe that the Congress intended for this to happen. Indeed, our research on congressional intent, suggested that the Congress wanted the end of the Government program to coincide with the end of the huge backlog of retroactive cases; 60,000 pending applications at the Department of Labor suggest that anticipation and fact differ sharply.

We are prepared to move forward to carry out our responsibilities for our current and our future work force. To do this, you must help us by, at long last wiping out the huge number of past claims, and once this is done, we can go forward with a true workman's compensation program for black lung.

We would now briefly like to discuss the major elements of what we think that program should be, and the basic element, Mr. Chairman, is a black lung trust fund.

Our support of an industry trust fund for black lung victims was not easily arrived at. Many of our companies have made provisions for their individual responsibilities, for their own employees, and others feel that they will have little, if any, future liability. Many of them have no exposure at all, particularly as the coal industry is developing in the West.

But on balance, we believe to its credit, Mr. Chairman, and I take some measure of personal pride in saying, to the credit of the American Coal Industry, the board of directors of the National Coal Association a week ago, after our deliberations at our annual meeting, saw the need for a truly industry response to an industry problem.

Our approach to an industry trust fund is different in several important aspects from the fund suggested in H.R. 7 and H.R. 8.

Our fund would be set up and administered by the industry. It would be mandatory for all coal operators and act in their behalf on all matters affecting Federal black lung claims.

The fund would be financed through a payroll basis rather than a tonnage tax, as suggested in H.R. 7 and H.R. 8. Some provisions would be made to base payments on an actuarial determination of potential liability so that such liability would be imposed as it is accrued.

In this way, a worker would be assured of payments, even if his employer left the industry, and future operators would not be charged with the total cost incurred by companies no longer in existence.

The fund would be a mechanism to ensure workmen's compensation and not a pension fund. Liability would somehow tie to occupational disease and disability, and not extend to the entire labor force in terms of a guaranteed pension.

In fact, it is our fervent hope that dust suppression efforts will ultimately eliminate forever the need for a fund of this type.

Finally, the fund would represent the industry position on all matters affecting black lung. As an organization, it would have the specific authority to represent the coal industry in the establishment of regulations governing liability determination and to act, where need be, as an adversary to protect the industry's vital interests.

Finally, I would like to discuss briefly disease determinations.

One of the fundamental flaws in the current black lung program is the lack in the United States of a consensus of medical opinion in the diagnosis of coal workers pneumoconiosis. Faced with this in the past, the Congress has consistently turned toward a legislative determination largely in the form of certain presumptions.

The net effect of such presumptions has been to move the black lung program further and further away from a workmen's compensation program and closer and closer to a pension program.

We do not pretend to be medical experts. However, testimony before this committee by medical experts illustrates the problem. Dr. W. K. C. Morgan stated with respect to the 35 years presumptions made in H.R. 7 and H.R. 8 and I quote him briefly:

The same criticism can be leveled at the irrebuttable presumption that a miner who has worked for 35 years shall be presumed disabled. However, this presumption sets an even more dangerous precedent, namely, that a man is to be assumed disabled in the absence of respiratory impairment.

Dr. N. L. Lapp in a similar vein stated:

Thus the preponderance of medical evidence does not support the presumption that because a man has worked for 25 years or more in an underground coal mine that he should be totally disabled because of pneumoconiosis, or that his death should have occurred as a result of such pneumoconiosis unless the individual has a radiographic evidence of the complicated form of the disease.

We do not wish to, at this juncture, Mr. Chairman, quarrel with the use of these presumptions in part B. There are, it would seem to us, valid reasons for the inclusion of some type of presumptions where we are dealing with old cases, and where the lack of medical expertise and records in the past would preclude the use of more sophisticated techniques to determine disease.

We, however, must suggest that a good compensation program from this point on, should contain a clearly defined cause and effect relationship between disability and occupation.

We recognize that there is a lack of definitive knowledge about coal dust related disability. But we also suggest that this lack of knowledge should lead to three courses of action with respect to Part C determinations.

First, applicants should be judged by the preponderance of all available medical evidence of disability with the benefit of a doubt going to the claimant.

Second, there should be established a clearly understood measure of both disability and disease. The standards used by the Social Security Administration to determine disability might suffice, while either the current Department of Labor standards or those used by the international labor organization might be adequate for disease diagnosis.

On this point, we recognize that there may be instances where definitive determinations of the disease cannot be made. In those instances where there is proven total disability and where a miner has long exposure, we are prepared to acknowledge that the exposure either could have caused or aggravated the disability.

Third, any presumptions which equate solely to years of service with disease in part C cases should not be allowed. We are particularly concerned with the standards established in the Murtha bill, which equates 15 years service with total disability.

Our concern in this regard is heightened by the testimony of President Arnold Miller of the United Mine Workers of America before this committee several weeks ago. That testimony points in only one direction, toward a miner's pension.

We have no objection to a pension program for miners, but we do not believe that it should be obtained under the subterfuge of workmen's compensation. Instead, we believe that legislation should be enacted which would make black lung a compensation program, and turn it forever away from its current drift toward a pension.

At the same time, we would very strongly suggest the need for additional research and development to refine diagnostic techniques. Much work has been done on this subject in England and on the continent.

We can learn much from this activity, and at the same time, we should move forward with vigor to carry out the research programs needed to truly relate occupation with disease. We also must engage in research work to determine whether there are factors other than simple exposure to dust which lead to coal workers pneumoconiosis in individual workers.

This activity is very much in its infancy, but it must be pursued so that we can move toward, not the payment of compensation for the disease, but rather its prevention and ultimate elimination from the coal mining industry. Under the now mandated dust levels, we have moved clearly in that direction.

Let me discuss briefly, if I may, Mr. Chairman, the problem of retroactive liability.

Currently, there are more than 300,000 miners and dependents receiving part B claims. Approximately 60,000 more have applied to the Department of Labor under part C claims.

Clearly the burden of these claims will be heavy upon the industry, particularly for claims by men who left the industry prior to the

enactment of the Coal Mine Health and Safety Act of 1969, or the establishment of the 2 milligram dust level in December 1971.

One of the major problem areas for the coal industry in the black lung program has been the lack of a clearly defined beneficiary universe. We believe that the time has come to establish such parameters so that the industry can take the necessary steps to provide for future black lung liability.

Given a clearly defined population, the industry can establish pricing and cost strategies which will permit it to include the cost of covering potential black lung liability. In this way, future victims of black lung disease will be properly compensated without impacting adversely upon future coal production or the financial viability of the coal industry at that time.

The problem, of course, is not only a delineation of the population. Involved also are tax liability, and to earn interest on those funds again, without incurring additional taxes.

We, in the industry, have been unable, since the beginning of this program, to establish a truly effective funding mechanism because we have not known what our potential liability would be and, therefore, we could not take the necessary, rational steps to cover such liability. We continue with this problem to this day, Mr. Chairman.

For this reason, we strongly suggest that after the period of time for the inclusion of additional part B beneficiaries is closed, there should be a statutory limitation on retroactive claims coming into the part C part of the program. Such a limitation should coincide with the attainment of the 2 milligram dust level.

We believe that there has been ample time for all former coal miners and widows to come forth and make application for black lung benefits, and for such applications to be reviewed under the most liberal possible standards.

We believe that the additional time suggested in H.R. 7 and H.R. 8 does provide a period of grace for the last remnants of the black lung legacy to be brought into the fold.

With this extension, and with the elimination of past liability, the coal industry will at long last have the opportunity to fashion a program which will remove any future liability from the shoulders of the government. Then, the industry can take the necessary steps, the necessary and rational steps to build a more normal workmen's compensation program, and to pay for it in the normal manner.

The question of retroactive liability also extends to the provision of medical care benefits.

As this committee well knows, beneficiaries under the part B program of title IV of the Coal Mine Health and Safety Act are entitled to apply for medical benefits if, in fact, they can meet part C standards. Thus, we are faced with not only the 60,000 plus cases currently pending at the Department of Labor, but also the 75,000 miners receiving black lung payments under part B.

We recognize the responsibility for medical benefits for black lung claimants under part C. However, we also recognize that many miners and widows under part B are currently receiving medical benefits either under the medicare portion of the Social Security Act and/or under the provisions of the United Mine Workers of America Welfare and Retirement Fund. If the industry is to provide

additional medical care, the cost burden on the industry will be truly enormous.

We, therefore, suggest careful attention be given to some type of statutory limitation so that the medical care provisions of part C remain in part C, and do not extend back to part B. So we can intelligently define the parameters of our scope of problem.

Retroactivity has been one of the major sticking points of the entire legislation. There are considerations which suggest that equity rests on both sides of the issue. Certainly disabled miners with long mining experience must be provided for. They must be provided for. On the other hand, the industry can rightly suggest that the present operator should not have to pay for liability which has been caused by operators in the past.

The Congress, in its wisdom, has provided for a mechanism for taking care of this by establishing part B. We think that part B liability should be extended for a short period of time.

But then, since justice will have been served, the government portion of the program should be closed and the industry's work force as of the date of the attainment of the 2 milligram dust level should form the cut-off for all future part C claims.

Let me describe briefly, Mr. Chairman, if I can, the commitment to research and development in this area.

We have alluded briefly to need for research on the question of black lung. We will touch upon it here not to suggest a definitive long-range program, but only to point to areas where we feel research work will help not only in the workmen's compensation program, but also in the overall approach to the eventual elimination of the disease.

There is an obvious need for greater refinement of diagnostic tools relating to the determination of black lung. Research work has been started in this country, but not nearly as much as has been carried out over the years in England and on the continent.

We strongly suggest that this is a fruitful effort for governmental activity, and we urge that the programs currently underway in the Department of Health, Education, and Welfare be accelerated.

May I add parenthetically that we, as an industry, two years ago forged an international alliance with the coal industries of the free world. We are working together with them. I am leaving, as a matter of fact, tomorrow night for Munich, where we meet again to set up a program, which I hope the American delegation from the Department of the Interior and ourselves will address the issue of black lung by the coal industries of the free world, as we are now addressing the issues of mine health and safety in the mines. This is not only by the United States, but by the coal industries of the world.

In addition, there is an emerging school of thought which suggests that individual characteristics may well contribute greatly to the incidence of black lung. We are not particularly qualified to speak to the details of this subject, except to suggest that if we can isolate those individual factors which help to cause black lung, we can work with more success toward preventive measures.

This is a highly complicated problem, and not easy to solve. However, the terrible effect of black lung disease upon individual coal

miners suggests a favorable cost-benefit ratio for research work in this area.

We must carry out an expanded mining research program which in part will help us to reduce the exposure of men to dust. This program will involve the suppression of dust at the point of generation. It will look to programs which will remove men from dusty areas.

For example, if we can somehow automate continuous mining machines, we can contribute greatly to the productivity of underground mining. But more importantly, in so doing we will remove men from both a health and a safety hazard and thus bring about a safer and healthier industry. This to me seems essential, in view of the fact that the government has imposed on the industry to at least double our production by 1985.

Coal mining in the United States is entering into a new era insofar as its development is concerned. That era will bring greater sophistication in technical areas and the need to develop technical expertise relating to health and safety standards consistent with the requirements of a truly modern industry.

We are hopeful that the Congress and the executive branch will continue to fund health and safety research programs. When combined with programs aimed at increasing productivity, these programs will help America to reach its goal of doubling coal production by 1985, and at the same time reduce fatalities, injuries and disease to an irreducible minimum.

There is one final point which we would like to make. Under part B, there are certain offsets which apply to black lung benefit payments. These offsets are not applicable to part C claims and we would suggest that a careful study should be made to determine if, in fact, such offsets should be applied to part C.

Briefly, our conclusion, Mr. Chairman, our testimony here today was difficult to prepare for. We have, as you know, a fragmented industry of 4,000 economic entities, but this is an issue, I am proud to say, that we forged a responsible industry position on, only a week ago. We are presenting it here to you this morning.

There does not seem to be an easy answer to the problems caused by the current black lung program. Today, in our testimony, we have accepted a mechanism for an industry payment for black lung benefits.

By the same token, we have also suggested that any future black lung program whose cost is to be borne by industry must conform to valid workmen's compensation principles.

We believe that such a program for part C, title IV of the Coal Mine Health and Safety Act of 1969 can be developed and implemented. We recognize the problems involved, problems caused by the history of the program itself as well as the very real complexities involved with a shift in the direction of that program from that of a pension toward that of a workmen's compensation.

On the other hand, we must recognize that black lung is, in fact, a precedent for other industries. On that basis alone, we must take action to ensure that it is a viable option which can be pursued.

More importantly, a viable black lung program is vital to the future of the coal industry in the United States. If we have such a

program, we can cover the cost and at the same time permit the coal industry to expand to the degree that is necessary if we are to achieve even the option for self sufficiency.

On the other hand, a continuation of the present course can only detract from the coal industry's ability to expand by imposing a large burden upon a substantial sector of the industry by turning capital away from investment in production facilities, and by imposing upon potential entrants on our industry, costs which are simply unacceptable to them.

By the same token, if the black lung program moves more toward a pension program especially if the program is geared to irrebuttable presumptions such as suggested by the Murtha bill, there can be no doubt that the industry's ability to attract and most importantly to retain employees will be severely if not fatally damaged.

Therefore, we believe that there is a need to fashion a truly viable black lung program for the future. We hope that our testimony here today has been a contribution toward the evolution of this program, and we stand ready to assist this committee in any possible way to that end.

In conclusion, I might point out that if we can in fact move ahead on this question, there can be no doubt that in the end a workman's compensation program in the coal industry will move back where it must be. That is to say with industry and away from where it is now trending, toward government.

In the final analysis, therefore, the interests of government, the industry, and the miners demand that the program that we have outlined here this morning is a valid starting point for the evolution of a truly workable long-term black lung program.

Thank you for your time, and permitting me to read our statement in full, Mr. Chairman.

Mr. DENT. Thank you very much, Mr. Bagge.

I think you will have to admit that I will have to have a little time to absorb the startling development in our consideration of this very grave area of legislation.

I need not go into the many questions you pose as to how we can reach agreement, but this much I assure you, I personally, and I am sure my committee will make every effort to establish a common ground where those miners entitled to benefits will get them. The fact that the coal industry is coming forth to accept the responsibility for some kind of a measurable liability, is a major step forward in legislative history. It is commendable that an industry on its own volition comes before a committee, and submits a proposal to assume a responsibility. I would never have believed that we would have had this type of testimony before us, when we started out about nine years ago on this quest, for some kind of benefit payment program for black lung.

I assure you that our staff will be available for consultations, discussions with whomever you, and your organization suggests will be the liaison between your organization and this committee.

Of course, that offer has been made, and will be continued with the workers who have a prime interest in this matter, and also for all others who have an input that might help us out. This may slow us up for a little while longer, because you, yourself, admit there

is quite a bit of difference between our proposal and what you have recommended.

In the end, I think that we are aiming at the very same goals. None of us want to pay anybody under a compensation act that is not truly deserving, with an understanding that because of the history in this industry, and the history of this disease we will have to resolve many cases on behalf of the applicants, perhaps, where we don't have all of the preponderance of evidence of injury, as you suggest.

We all know that something happens to anybody who is in the mines for any long period of time, whether it is a coal mine, a lead mine, or anything else. I know I have at least two former superintendents that I have known practically all my life, who have passed the qualifications for black lung. As you know, they did not spend their 8 hours, 9 or 10 hours at the working face. They were in and out of the mine, and had a lot more opportunity to breathe fresh air for a greater portion of the day. Yet, they have qualified strictly on medical evidence. I am not wedded to any position. But I agree we must devise a method to measure the liability.

I know that we have at least a half-dozen sets of figures on what the liability will be, first year, second year, fifth year, tenth year, and on. We do know this, that we did not have the devices, or criteria prior to the passage of the 1969 act to set a benchmark that we could measure from, on what could be the anticipated incidence of black lung disease.

I am sure the committee welcomes your testimony, just as I do. I think that it gives us a hope that we will be able to write legislation that will be accepted by both the black lung potential recipients, the representatives of the miners, the independent operators who are another large body, and do produce a sizable tonnage.

I might say that in many cases the independent operators' mines are not as well equipped as those of the larger, major producers.

The committee and the Congress, of course, will have to be satisfied, and the President will have to be satisfied. If we can get that all done, it will probably be a good day's work for us.

I am not going to question you at this time, because I do think that we have to study your testimony, and determine the differences between your proposal and ours. Then, we will talk on the matter.

Mr. BAGGE. I thank you for your comments, Mr. Chairman.

Mr. DENT. Mr. Perkins.

Chairman PERKINS. I am glad that the president of the National Coal Association appeared here this morning, and made a statement on behalf of the legislation pending before the subcommittee.

I feel as you feel that there must be a cut-off period somewhere along the line between the old miner and the new miner, and the point where your responsibility begins, because I know that it is unfair to saddle the coal industry with this burden, and it is a great big burden, of perhaps some 50,000 or 60,000 miners presently not compensated. To my way of thinking they have been wrongfully deprived by the Social Security Administration.

It is this group of miners that are suffering from pneumoconiosis that concern me. They have seen their neighbors drawing compensation benefits while working in the same mines. They have seen, in many

cases, their cases favorably determined by a referee, then, the appeals council of the Social Security Administration, just to save a few dollars, appealed their case, and denied their claims.

They have been treated, in many instances, worse than slaves. We can document this. I hate to say this before the Social Security Administration, but something must be done for these miners. I know that in many instances their claims have been denied three and four times. The X-rays taken by doctors who reside in the communities show that many have the disease, they often send these X-rays somewhere else, to someone who knows nothing about the effects of mining, and they deny the evidence of the disease.

For all intent and purposes, the Social Security Administration has thrown into the waste basket this older group of claimants in recent months, with the clinical findings that have tried to base everything on X-rays.

Now this is the group of people that we have got to take care of. This is the area of disagreement that I see, and we have to work out something where their applications can be approved.

They gave their lives to the industry, and for the welfare of the country. Unfortunately, the local communities and the States neglected to set up a fund to compensate these people. Unfortunately, we did not have any severance tax. Profits went out, and nothing came back into these communities, which in many instances have deteriorated. There are no longer any coal operators in existence to pay these applicants.

They sometimes refer these applicants to the Department of Labor to file an application against some company, where they may have only worked 30 days, and later could not work. They worked just because they had to put some bread on the table, when it was well known that the disease was not contracted while working for that employer for 30 days, or 60 days, but was contracted while working in these dusty mines that have closed down years and years ago, during the 1950's and early 1960's.

In eastern Kentucky, we have several thousands of these people. I know, as you appear here this morning, you feel as I do that we should compensate those applicants. Furthermore, after we passed the 1969 Coal Mine and Health Safety Act, requiring these dust standards to be lowered, we are presently, even in eastern Kentucky, seeing youngsters go into the mines by the hundreds.

I compliment you on the progressive stand you take for the coal miner of the present and future, but the disabled person who has been neglected, since his mine went out of existence in the 1960's, or the 1950's, has contracted pneumoconiosis, and the Social Security Administration has told him to go to the devil. This is the group of people that I am concerned about. We have to do something about these people.

Mr. DENT. Thank you, Mr. Perkins.

Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

Mr. Bagge, welcome to the committee. I appreciate your testimony this morning, but I am not certain yet how to react to the suggestion of the establishment of a fund to be financed with a payroll tax. Let us examine this a bit.

Chairman Dent congratulated you on behalf of the industry for accepting this responsibility. Just for the sake of accuracy, don't you already have a responsibility under part C for these payments that are now financed by the purchase of workmen's compensation insurance, which is quite expensive.

Mr. BAGGE. Yes, but our problem is there is no way that we can define the parameters of that responsibility.

Mr. ERLNBORN. That is true.

Mr. BAGGE. It is an unsolvable problem. The way out of this, as we see it, is to establish a trust fund, and have the Department of Labor administer the program. This would be something paralleling the workmen's compensation, but the fund would only serve as the insurance, or the trust fund carrier, once we quantify these risks, so that we can deal with them in a rational manner.

Today, there is no way that we can do that.

Mr. ERLNBORN. I appreciate that. My point is that you are not voluntarily accepting the responsibility that was legally on you already. You now have that liability.

Mr. BAGGE. One of the problems we have with many of the older miners, and a problem that we have with many of the claimants, is to find the people responsible. This is a problem to which the industry had to address itself, and it extends beyond the normal parameters for the normal people of buying insurance, so that if the guy is unfortunately disabled, he gets an award. We do have this back and forth movement of operators.

Our industry would be taking on the responsibility of the problem posed by the last responsible operator under our proposal.

Mr. ERLNBORN. That is one advantage of your plan.

Let me ask you about financing this responsibility. Presently it is done on the basis of premium established by a private insurance for each individual operator. There is testimony before this committee that in some instances the premium runs as high as 60, 70, or 80 percent of payroll. Is that correct?

Mr. BAGGE. That is correct.

Mr. ERLNBORN. What do you anticipate will be the cost, based on a payroll tax, of maintaining the fund that you recommend?

Mr. BAGGE. Mandated throughout the entire industry?

Mr. ERLNBORN. Have you made an estimate as what the percentage of payroll would be?

Mr. BRENNAN. We have not done that for two reasons. We do not have the clearly defined universe on which we can base actuarial studies. Secondly, the payment mechanism for an industry fund like this is very complicated, and there simply has not been sufficient time to get into that.

But, the basic problem, even assuming the legislation becomes law, is to clearly define our universe, and then the actuaries have to go to work. I might point out that this has been one of the problems that the insurance industry has had, because nobody knows what liability would be.

I remember in 1969 and 1970, the 1969 act, and the 1972 extension, we were talking about a few thousand cases going to industry. I don't know what the final bill is going to be, but there are 60,000

potential ones sitting over there at the Department of Labor, and that is a lot more than a few.

Mr. ERLNBORN. In legislation before the Congress last year, and this year, if enacted, you might as well define the universe as anyone who worked in a coal mine.

Mr. BRENNAN. Yes, sir, or anyone near one.

Mr. ERLNBORN. You have chosen this method of a payroll tax for funding as opposed to a severance or tonnage tax. Obviously, this means that there is some difference in its application to individual operators.

Mr. BAGGE. That is right. The fact is that the tonnage tax would impose a disproportionate burden under our concept of a fund. If it were put in the tonnage tax, it would impose a disproportionate burden on the Western operators, who mine the sub-bituminous coal plus BTU, who have 10 times, or 12 times the coal per day that comes from the midwest or the Appalachian areas.

I must say that it took some statesmanship, if I may be presumptuous enough to use that term to apply to my own people, on the part of many of the producers in the East who would have benefited from that concept, to agree that in the interest of getting a viable program, and in the interest of getting a unified industry position before this committee today, and in the interest of getting a fund established, that this was compromised into, to more equitably distribute the impact of this.

Although it is clearly to the advantage of many of the Western operators, and as the industry emerges increasingly in the West, this would obviously have put a burden upon them that would have been disproportionate.

I might say that I am very proud of the fact that after many hours of deliberations, and weeks of discussion, that we arrived at this, as a way to make go.

Mr. BRENNAN. I might supplement something Mr. Bagge has said. Our estimates of 1985 coal production center around 1.2 billion tons a year. If, in fact, we achieve that target by 1985, 70 percent of the production in that year will come from mines that do not exist today.

That means that you are adding a very heavy burden on those new people coming in.

Mr. BAGGE. I might add, too, if I may, these are new economic entities who have had no contact with the coal industry in the past. We see the all configuration of our industry changing.

Mr. ERLNBORN. The tonnage tax would have the effect of not giving an economic advantage to one type of operation over the other. It would be the same amount of tax on every ton. The payroll tax will, in a way, give an economic advantage to the surface coal mine operations, would it not? Because they are more mechanized, they are not as highly labor intensive.

So, it might tend to lower the cost per ton for the surface coal miners, and give them some economic advantage in the market place?

Mr. BAGGE. That is true, but the tonnage tax would hit far harder on the people who do not have the incidence of the disease.

Mr. ERLNBORN. That is the other aspect that I was going to raise. You have less exposure to dust, less incidence of the disease, in the

surface coal mine operation. This might, then, justify putting the heavier economic burden on the underground mine, where the incidence of the disease is higher.

It would happen to have an element of fairness there, would it not?

Mr. BAGGE. I think it was the unanimous opinion of my board of directors that this was the most equitable mechanism available to handle the problem.

Mr. ERLBORN. Now, we have talked about the burden imposed on the larger operators. What about the smaller operator versus the larger operator? The small underground operator tends to be more highly mechanized, and less labor intensive. Will that not give the larger operator an advantage over the small operator, the "mom-and-pop" coal mine, the mine with only a few men working? They don't have a large tonnage per man. Therefore, the cost based on the payroll tax will be a higher percentage of their production.

Mr. BAGGE. I would ask our economist to answer that question. I don't think that there is that wide a range, as wide a distinction in the coal industry as it has evolved. Remember we have lost, with the enactment of the Mine Health and Safety Act, literally hundreds of coal producers.

If the strip mine bill is finally enacted, we are going to have a loss of the small economic entities, who are having a very hard time of complying with the environmental restrictions that our society has imposed on them.

Our industry is changing, but I would refer that question to our economist.

Mr. BRENNAN. The answer to that is—no matter what you do, there are trade-offs, but I would like to make three points.

1. The problem does not seem to be so much the larger operator versus the smaller operator, but rather the new operator versus the older operator. A company, for example, operating in southern Illinois, opening a new deep mine today, will in all probability in 1985, or 1990, or 1995, have incurred zero black lung.

That operator, under existing law, will pay little or nothing toward black lung payments.

2. Most of the smaller operators, or many of the smaller operators, have the in-and-out variety. As the market goes up, they come in. As the market goes down, they go out. I think that there is some economic justice in having them pay at least as much as possible toward the disease they are causing.

3. This point is a very vital one. To the extent that you can, you should internalize the cost of any problem you are causing, whether or not that problem is reclamation of surface mining, or whether it is health and safety in underground mining.

To that extent that you add a cause-burden to an underground coal operator, who is causing black lung disease, there is some economic justice.

I might make one final point. In looking at the trust fund, and in talking to our members, it is very clearly obvious that, if the thing works as it is supposed to, the smaller coal operator and the small coal operator is going to pay less in toto than he is now paying.

So, while there are competitive problems, these are always true in

anything you do, but in fact the net effect would be beneficial for the industry.

Mr. ERLBORN. You anticipate, I am sure, that the payroll tax will be substantially less than the 60 or 70 percent which is the insurance premium for many today?

Mr. BRENNAN. We sure do.

Mr. ERLBORN. How does that vary from one operator to the other? Do you know the range of insurance premium?

Mr. BRENNAN. We can supply some of that data for the record, but it will vary all over the place. For example, in Kentucky, from 25 to 30 dollars, up to 50 or 60 dollars.

Mr. ERLBORN. Is there a percentage?

Mr. BRENNAN. The percentage of payroll, in Pennsylvania it is lower, and in West Virginia it is lower. It depends on a host of factors.

Mr. BAGGE. In the West it is non-existent.

Mr. ERLBORN. The impact now is very uneven, and your proposal, you think, would spread those costs out, and be less burdensome.

Mr. BAGGE. To every economic entity in the coal industry.

Mr. ERLBORN. I note on page 8, "We do not at this juncture quarrel with the provisions in part B." You were saying earlier that they should not be applicable to part C. It seems to me that you are more liberal in your application of presumptions for that part financed from the Federal Treasury, then you would be for that part which you would finance from the industry.

Mr. BAGGE. We think that we have a different problem, as Congressman Perkins alluded to, in dealing with the problems of the past. I think that it is a matter of social policy. The Congress could apply a presumption in that area, but we think if we are going to head in the direction of a true workmen's compensation act, and not a miners' pension, as we look to the future, this is a problem of an entirely different dimension.

Mr. ERLBORN. Do you think that it is equitable at all to engage in presumptions which would mean that a substantial number of coal miners, or ex-coal miners, who are not afflicted with the disease and are not disabled would, however, receive benefits, financed from the Federal Treasury. Is that equitable?

Mr. BAGGE. I tried to express the basis of our statement here. With the kind of uncertainty that exists in the medical area, this is at least a device. Whether this is at all rational is something, I think, that only the wisdom of the Congress can determine.

Mr. ERLBORN. One of the medical experts who testified the other day pointed out that if someone in the military service contracted a psychosis—he was crazy, in other words—it would be assumed that his being in the service either caused or contributed to that.

Now, if you had 10 percent of those in the service who contracted a psychosis after 15 years, do you think it would be proper to determine legislatively that everybody who stays in the service for 15 years is crazy?

I understand that the best medical evidence is that somewhere between 10 to 12 percent of coal miners in the whole universe of

coal miners ever contract complicated pneumoconiosis that could be considered as disabling.

More than that percentage have qualified for benefits. Now, how can we engage in a presumption that everybody who has been in the coal mines for 15 years, or 25 years, or whatever, that thereby is disabled, even if he has no symptoms. You don't want that under part C.

Mr. BAGGE. Clearly no.

Mr. ERLNBORN. Thank you.

Mr. DENT. That estimate of 10 or 12 percent was made before there was any black lung legislation. So, they really never knew, they were just guessing, the same as we were when we were first started. Let us be honest about it, there was not much we had to work with.

We think now, if the Social Security Administration, and HEW have done their homework, they will be able to tell us today how many in the 35-year group, what percentage in that particular group of applicants were found to have pneumoconiosis in a compensable form; or how many with 25 years of working in the coal mines were approved for compensation payment.

If they have not done that, they will have to take whatever presumptions we think are reasonable legislatively. There is no other way. They probably can give us today those figures down to a very fine point. For example, out of 20,000 who worked in the coal mines for 25 years, 2,000 applied for benefits, and of those 2,000 applicants, *x* number were approved.

This is the only way that we are going to get any answers, and then we will have a body of knowledge.

I don't think that your organization has these facts, because you had nothing to do with receiving the applications, or passing on the applications. I think that it would be interesting, after we are through with your testimony here today, to take a look at their figures.

At this time, I would like to call on Congressman Cornell.

Mr. CORNELL. In line with the last questioning about the disease determination, certainly if there is one area where there has been anything near unanimity in the witnesses who have appeared before this committee, was the fact that there was no diagnostic test that can determine black lung definitely.

We certainly have minimized the value of the X-ray as well as the blood-gas test, and I note that you stated on page 9 that you recognize that there may be instances where effective determination of the disease cannot be made.

It seems clearly to me an understatement.

Now, my question is this. With regard to part C determinations, if there is not a refining of the diagnostic techniques that would make this possible for definite determination, what would you use as a basis?

Mr. BAGGE. The preponderance of medical evidence, as we tried to articulate it here, we stipulate the causality if there is a debilitating situation related to it. We stipulate the causality, but always saying that the preponderance of medical evidence with the benefit of the doubt going to the miner.

Mr. BRENNAN. If I could supplement that, Congressman Cornell. Where you have a man who is disabled, and who had long dust exposure, and where you have disability with dust exposure, there is no question that the benefit of the doubt will go to the claimant. I don't think that there is anyone in the industry that can seriously argue with that.

The problem, though, and I think that it is a problem, that this committee must address is that when you go the other route, and say simply because a man who worked in the mines for x number of years, he is, in fact, disabled.

What you are going to do is provide a miner's pension. We have had internal experience with that. My father worked in the mines for enough years to qualify, or so that my mother and I would qualify under the black lung program. My father was not simply disabled because of a chest disease, and there was no way that he could qualify, even with the most minimal medical standards.

I guess what I am saying is, when you have a disabled former coal miner, and he has worked 30 or 40 years, and he, in fact, is disabled, that is one set of circumstance. But simply because that man worked in the coal mines for that number of years should not be sufficient for the justification to provide him with the workman's compensation award. If it is a pension, then it is another problem.

Mr. CORNELL. A number of the doctors—

Chairman PERKINS. Will the gentleman yield.

I have been in the coal mines just as an observer, and I know something about the background of a coal miner, and everybody who goes in that mine, the nature of his work, etcetera.

You made a statement that your father was a foreman—

Mr. BRENNAN. He was a miner. He worked in the mines.

Chairman PERKINS. As you stated, a foreman is entirely different from the true, down-to-earth coal miner, because he spends about three-fourths of his time out of the mine, and delegates his other duties to three or four other people.

Mr. BRENNAN. My father was a contract miner in the anthracite, and he used to do some breast work on 50, 60, and 70 slopes, and blast the whole bit. He worked as an actual miner.

Chairman PERKINS. It appears to me that any miner who has been in that dust, and if you stay in it for any length of time, you have to inhale it. You have to breathe that dust, you can only hold your breath so long. That is even applicable to a strip operation today.

Before, we used black powder, and very little mine safety in the mines—it is another generation today, and we have moved from that—but we are talking about an older generation of people, not the present mining generation that we have in the coal mines today. There is no escape from that dust.

A man could contract a disabling pneumoconiosis in a period of five or 6 years, depending upon the amount of water that could be spread on top of the dust. Some mines were equipped to do that, and some mines were not.

The mines down my way were nongassy mines, and unless you had a dust explosion, and were irresponsible in some manner, there were no explosions. That dust was just piled up every which way, and they just breathed that dust day in and day out.

I have seen people go to the grave not knowing that the cause was pneumoconiosis. Within a period of 10 years, living in, breathing that dust for a period of 5 and 6 days a week, and in the depression years 6 days, pneumoconiosis is almost inevitable to the miner.

So, it is altogether a different situation from what the ordinary person visualizes today. The miners that worked under conditions that existed in eastern Kentucky in the 1920's, the 1930's, or even in the 1940's—they began to get somewhat better in the 1940's, as they began to talk about mine safety—even up to the mid-1950's, are the group that demands our immediate attention.

In some way, we should not lose sight of this fellow, who gave his life in the mines, and only has a few more years to live. They are dying out by the day, and somebody has to raise a voice and help that group of people out. That is my real concern about this legislation.

Mr. CORNELL. When you gave the basis for determination, you mentioned practically the same thing that we have had from several doctors who have appeared here before the subcommittee. Yet, they have testified to the fact that after they have made such determinations, the claim has been rejected, overruled.

Now, let me put a question like this. Suppose that you have a miner who has been working in the mines, let's say for 15 years, and the medical evidence indicates pulmonary disability. Would you say that such an individual should fall under this compensation program?

Mr. BAGGE. This would depend on each individual case. I don't see how a 15 year presumption can apply. If anything comes out of our testimony at all, we oppose the Murtha concept of an absolute 15 years presumption. The answer to that is clearly no.

Mr. CORNELL. In this case, the medical evidence does demonstrate pulmonary disability.

Mr. BRENNAN. There are two problems here. The first is the definition of disability, and the second is the definition of disease. It is very difficult to respond to a hypothetical case, when you don't have the facts.

However, I think we say on page 9 that where we have true disability, proven disability and long exposure, the claimant would be in a strong position. There are two terms, though, "proven disability" and "exposure."

You will have to ask the doctors what proven disability is. "Exposure" is easier.

Mr. CORNELL. That is the problem. We have such contradictory statements from various doctors on what constitutes proven disability.

That is why I say, in the absence of being able to make such a determination, I was wondering what you would use as your basis.

Mr. BRENNAN. When we talk about years of experience, we are talking about simple years of experience. The fact that the man has 25 years of experience, or 35 years of experience, or what-have-you, he may not be disabled at all.

Now, if you get into a question where you have a man disabled, then you are moving in a different area. In fact, just the fact that he was there does not demonstrate any disability.

Congressman Perkins' point, I think, is certainly valid, these older workers, etcetera, but we first have to see disability. Then you talk about exposure. But first disability.

Mr. CORNELL. It troubles me, though, that doctors have talked about malfunctioning of the lungs, etcetera, and they apparently felt that the individual certainly qualified, and the claim was disallowed.

Mr. BRENNER. You know, Congressman Cornell, if you go out on the streets of Washington, or any city, or in any occupation, you will find men who are disabled, and there are decisions made on disability.

Disability determinations are not peculiar to the coal mining industry. What is peculiar is an attempt to try to tie the disability to the cause. What we are saying is: give us proven disability, and we then relate back to the cause. If in fact you have long exposure, and proven disability, you have a black lung case, but a specific case would be very difficult to answer.

Mr. CORNELL. Thank you.

Mr. BAGGE. Thank you very much, Congressmen.

Mr. DENT. Thank you both kindly.

Now, our next witness is Stephen Kurzman, Assistant Secretary for Legislation, Department of HEW. At the outset, let me state that the Department of Health, Education, and Welfare is presenting testimony today at the specific request of my colleague, the ranking minority member of the subcommittee, Mr. Erlenborn.

The Department testified at hearings held during the last Congress—on July 17, 1973, and again on June 6, 1974. At that time, we called several disturbing matters to the attention of HEW; instances where the Social Security Administration was clearly not administering the program consistent with its authority. The following are examples:

1. In many documented instances the SSA has denied a claim solely on the basis of a miner's being employed in a mine. In a colloquy between myself and the former Director of the Bureau of Disability Insurance, the determination was defended on grounds the Conference Report required a finding of nondisability if an individual is actually engaging in coal mine employment.

I read into the record the precise language of the Conference Report which decisively requires that the denial must be based on the fact *an individual is engaging in substantial work involving skills and abilities closely comparable to those of any mining employment in which he previously engaged with some regularity and over a substantial period of time.* Despite this legislative mandate, claims continue to be denied solely on the basis that the miner is working in a mine with no consideration as to the type of work being performed.

2. The former Director was asked if several X-ray readings produced varied and conflicting diagnoses, which reading would be considered. He stated that the X-ray reading would be resolved in favor of the claimant. Subsequent documented denials belie that contention.

3. For some disturbing reason the Appeals Council has chosen on its own motion to review and reverse favorable ALJ decisions. The agency's own statistics indicate that as of June 22, 1974, the Appeals Council has received 2,303 favorable ALJ decisions. On its own mo-

tion, the council issued 64 decisions, 57 of which reversed favorable decisions of the ALJ's.

4. We were informed that the SSA culled its files and furnished names to a few coal companies for purposes of facilitating the company's notification to miners to file under Part B of the program. When asked why the procedure had not been extended to all identifiable companies to assure more universal notification, we were told that the possibility of many incorrect addresses would defeat the effort. Yet one company was able to locate and advise 5,984 out of 6,000 miners to file claims.

The response to those inquiries was largely unsatisfactory, and I was reminded that the 1972 amendments arose in large part out of similar instances of maladministration on the part of HEW. Since then, another vital aspect of the black lung benefits program has been abused by HEW, and I again call it to attention by way of continuing example. It concerns the rigid so-called permanent medical standards that HEW has literally saddled the Department of Labor with for purposes of administering part C of the program.

The HEW responsibility was carried out since the 1972 amendments under the less restrictive so-called interim medical standards. HEW points to "substantial legal and other reasons" for applying restrictive medical standards to a claim filed on and after July 1, 1973, and less restrictive criteria to a claim filed before July 1, 1973.

That allegedly "substantial legal" support apparently arises out of language contained in the Senate report accompanying the 1972 amendments. In actual fact, HEW completely misplaced the emphasis of the Senate report. The Senate directive with regard to the so-called interim standards clearly spoke to standards that would obtain until "the establishment of new facilities or the development of new medical procedures."

That was the clear and explicit condition underscoring the need for and the duration of interim medical standards. Under HEW interpretation, these developments somehow magically occurred at the onset of part C of the program. The Congress did not intend, as HEW so unequivocally asserts, that this interim approach would conclude at the termination date for new part B filings. I doubt that HEW would now be so bold as to assert that the new facilities or new medical procedures referred to so specifically in the Senate report have, in fact, become reality.

The legislation in consideration would correct this as well as other HEW abuses. I also understand that litigation is pending on the question of the medical criteria, and I am confident the Federal courts will be able to read and understand the intent of the Congress and redress HEW's attempt at creative imagination in this matter.

Notwithstanding a national approval rate in excess of 62 percent—as of December 31, 1973—the evidence remains that HEW and the Social Security Administration have not, since 1969, administered the program in accordance with the intent of the Congress. Indeed, an approval rate of 99 percent would be unsatisfactory if, in fact, all claims filed would justify approval. So we are not impressed with the fact that most claimants are afforded benefits.

Finally, my objective in these remarks is to put your testimony in perspective:

1. You have testified on two previous occasions during these on-going hearings, and I believe this testimony will be redundant to the question of claim determination—considered fully during the last Congress—and unnecessary to the essential focus of this round of hearings—the creation of a coal industry insurance pool.

2. You were invited at the specific request of the ranking minority member, pursuant to prerogatives under the committee rules; and

3. Many of us feel this effort toward enacting 1975 amendments would be unnecessary had you exercised your authority under the program in accordance with our intent and expectations.

You may now proceed with your testimony.

**STATEMENT BY STEPHEN KURZMAN, ASSISTANT SECRETARY FOR
LEGISLATION, DEPARTMENT OF HEALTH, EDUCATION, AND
WELFARE**

Mr. KURZMAN. I would like to introduce my colleagues. We have an extensive number of representatives of HEW here today, because a number of elements of the Department are very deeply concerned in this.

To my immediate left is Mr. James B. Cardwell, Commissioner, Social Security Administration. To my immediate right is Mr. John Rhinelander, General Counsel of the Department. To Mr. Cardwell's left is Mr. Samuel Crouch, who is Acting Director of the Bureau of Disability Insurance of the Social Security Administration. Behind us, I will introduce just two others, although we have quite a number of other people here, too, Mr. Robert Trachtenberg, Director of the Bureau of Hearings and Appeals at SSA, and from the health side of our Department, Dr. Barry Make, who is on the far left here, chief of the clinical section of the medical research branch, The Appalachian Laboratory for Occupational Respiratory Diseases, a unit of the National Institute of Occupational Safety and Health of HEW.

Mr. Chairman, we very much appreciate this opportunity to be here. We, of course, will be directing our testimony today to the specific provisions of H.R. 8.

Let me mention first the two overriding concerns that we have. Of course, we are not talking about the changes in part C; we will defer to the Labor Department on those. We are talking about the changes in part B, the HEW-Social Security Administration responsibility under the act. First, in our view these changes would place extreme administrative burdens on an already over-taxed Social Security Administration, about which Commissioner Cardwell will be speaking in a separate statement. Secondly, it is inappropriate, in our view, to extend still further the Federal responsibility for paying benefits to victims of pneumoconiosis, which we think should be an industry responsibility.

As you know from previous testimony before you on several occasions, HEW strongly believes that there is a responsibility for all occupational hazards which the industries themselves have permitted to exist, and which the industries themselves should undertake.

Generally, of course, work-related accidents and diseases are covered under State workmen's compensation laws. It was only because few such laws in 1969 included coverage—and none had adequate

coverage—for coal workers' pneumoconiosis that the black lung benefits program was enacted. But it was designed only, and it is specifically so stated in many of the statements made at the time, as an emergency program to assist miners, mining States and the coal mining industry until adequate State programs could be enacted.

Federal responsibility was, therefore, limited to a transitional period, during which the States were to amend their workmen's compensation laws so as to provide adequate coverage for pneumoconiosis. At the end of a 3-year period, the States and the coal industry were to assume the major responsibility for compensating miners and their families for disability or death due to black lung.

In 1972, Federal responsibility was extended and expanded even further. The original black lung benefits program had provided benefits only for underground coal miners, their wives or widows, and their children. The 1972 amendments extended the program to surface coal miners, and to miners' orphans, parents, brothers, sisters.

While it is certainly true that during this transitional period no States have provided adequate coverage for pneumoconiosis, we believe that any responsibility the Federal Government had in this area has been fulfilled. Part C was designed to help the industry pick that responsibility up. As Congressman Erlenborn has pointed out, they have that responsibility now. We believe that any further extension of Federal responsibility would only encourage further delays on the part of both the industry and the States.

I must point out, with all due respect, that we were very much under the impression, both originally and when the 1972 amendments were enacted, that the Congress agreed that there should be no further extensions of Federal responsibility in this area. I will call your attention to one of the statements made at the time of the 1972 amendments. According to one of the sponsors of H.R. 8, Congressman Flood, who made a statement which is on page 3 of my printed testimony, "This will not be extended." He even went so far as stating that it was never meant to be, and it was not going to be extended beyond that extension.

Mr. DENT. How many thousands of persons eligible under the law have not been notified of their rights under the law? It is our understanding, based on estimates, there is still a large group of people who have not filed because they were unaware of the law's existence. Presumably, the Social Security Administration's notification program was less than effective.

A few companies, somehow, were able to obtain a list of every miner who ever worked for them, showing their last known address, and they notified thousands of miners scattered in communities such as Tampa, Florida, Hot Springs, Arkansas, Honolulu, and Alaska, who never knew that the law was passed.

All we are trying to do now, is to give the responsibility to the operators, but we cannot give it to them when there is a backlog of responsibility still covered under the original act.

Now, if you drag your feet another 2 years, or 3, and turn down 80 to 90 percent, as it has been in some cases, and in some areas, all you have to do is to refuse them long enough, and you will not have any liability at all, because they will be dead.

In the meantime, there is still a liability. They have the same right under the law to receive Federal money, if they have never

been examined yet, and if they have pneumoconiosis. I don't think that the operators or the States can possibly find the last responsible operator, if you cannot find him.

Mr. KURZMAN. All I can say in response to that is three things. First of all, compared to the initial estimates of how many miners would apply for benefits, the cost of the program indicates that vastly larger numbers have actually applied for it and were approved than were ever anticipated.

We have received, as of the end of the last calendar year, 556,200 claims, of which 65 percent to 70 percent have been approved. I am talking of initial approval running at the rate of about 65 percent.

The second point is, as far as the expectations of the Congress when the program was first enacted, or when it was extended, it has succeeded in identifying miners with black lung in larger numbers than anybody had any reason to believe.

Third, we have a major effort to find and notify those who might apply. The very large number who applied testifies to that.

I would like to turn to Mr. Cardwell to give you the details on exactly what was done to find miners, who might apply under this program.

Mr. DENT. Did you catalog those applications according to years of service, and the areas that they worked in?

Mr. CARDWELL. We do have some information about the number of applications in which there was, as a part of the application, a contention that the miner had worked for 35 years or more. As of June 1974, the number was about 31,000 in toto.

Mr. DENT. Would you give us the number again?

Mr. CARDWELL. About 31,000 applicants contended as part of the application that the miner involved in the case had worked in coal mine employment for 35 years or more. About 1,600 of those whose claims were denied, I believe were then and there actually employed in the mines or had been at the time of their death, and claimed to have worked for over 35 years. Of the total number of applicants contending 35 years or more coal mine work, about 4,500 were denied, about 15 percent, and the remainder were approved.

Mr. DENT. The last figures you gave, we will be able to get? We are trying to get our figures up to date. The last figure that we had was about 91 percent of the applicants with 35 years of mining service, working in the mine, out of a total of 25,927, you approved 23,807, and 2,120 were denied.

Based on that kind of information we arrived at the 35-year presumption.

Mr. CARDWELL. Our figures come out at 14 or 15 percent.

Mr. DENT. It is pretty reasonable to start to get some assumptions in here so that we can clean up this backlog. It has been the intent of this committee from the very first day, that at the first opportunity where we could do it within reason, and on an equitable basis, to turn it over to the industry. Recognizing, of course, even at that point that the next 10 years after the passage of that act was going to see the coal industry revived, and probably 70 or 80 percent of the operators would be brand new in the industry, and having nothing at all to do with the black lung cases.

Mr. ERLNBORN. Mr. Chairman, would you yield?

Mr. DENT. I was hoping that we could get some understanding from you folks.

Mr. ERLBORN. In view of the fact that the witnesses did wait one day to testify and they have come back here today, I wonder whether we could have the witness shorten his presentation, but give them an opportunity to present their testimony to the committee before we begin interrogation, so that we can have them complete it this morning. I think that it is only fair to them.

Mr. DENT. I am not so anxious to give them every opportunity. I have spent many hundreds of hours on this problem, and these are the folks who have to spend some time with us too. Your salary goes on just as well while you are here, as does mine, I hope. I believe that your testimony will be important, but very important only if we can question you. If you wish to read that testimony all the way through, and then answer questions, that is all right with me. That does not exclude the possibility of your coming back up.

Chairman PERKINS. If the distinguished subcommittee chairman would yield to me.

If the Social Security Administration had done their duty and fulfilled their responsibility under this subject, there would not have been any necessity for them to come back again. But, when you were derelict, and people were dying from pneumoconiosis, you were denying their applications.

People come before your referees, and they can hardly get their breath. You say that they are not afflicted with the disease, simply because, as you want to argue here today, it would cost too much money for compensation.

The coal miners provide the fuel for this country, and they did so during two world wars. Nothing was left at home to protect them. No funds were set up. It is the U.S. Government that has the obligation to these miners and we are going to do our darnedest to see that the obligation is carried out.

You may be here 2 or 3 years from now, for a further continuation of Federal responsibility, if you renege, and arbitrarily and facetiously deny just applications, as you have been doing in the past.

Mr. KURZMAN. I must respectfully answer that we have enforced this program to the hilt. The enormous amount that has been paid out, and will be paid out for the lives of the beneficiaries under this program, the infinitesimal rate of reversal in the U.S. courts of our decisions of denials, both testify overwhelmingly, in my judgment, to the fact that this law has been carried out faithfully and fully, as we will carry out any amendments that are enacted.

Chairman PERKINS. I fail to visualize that at one time we had 880,000 coal miners in this country, and you have never been able to calculate the size of this problem. For that reason you are now, in my judgment, arbitrarily denying claims wrongfully, because you have exceeded your expectations.

Mr. KURZMAN. Mr. Chairman, if that were the case, the courts would have reversed us. They have not.

Chairman PERKINS. The courts are governed by any evidence that the administrative officer finds. If there is evidence to sustain it, the courts are bound by the administrative procedures rule, just like in the workmen's compensation cases. A case is denied, and appealed

to the courts. The council, or the appeals is sustained, because there is enough evidence to justify it.

I am talking about the overwhelming evidence that shows that this man has pneumoconiosis, you will throw all that evidence aside, and take the X-rays reading and forward them off to Baltimore, or California, or somewhere, where no one was ever around the coal mines and knows nothing about them, and deny all clinical evidence.

Mr. KURZMAN. Mr. Chairman, I must respectfully disagree. I would be very happy to have our general counsel explain how the courts look at these cases. They would not permit us to deny claims arbitrarily, or without substantial evidence on the record.

If the claimant could produce the kind of evidence that you are talking about, then the cases would be reversed. The fact of the matter is that they are not.

Chairman PERKINS. If you have an arbitrary and capricious rule, the courts have no way of getting behind that decision of yours, when you have doctors stating that this man does not have pneumoconiosis, and he actually does have it.

Mr. RHINELANDER. I would have one comment. The statute provides that all relevant evidence shall be considered. The substantial evidence test, which is the judicial test for reviewing administrative decisions here, is the same that we have in the social security program generally, particularly the disability program, where a great many of the other court cases in social security arise.

Mr. DENT. Mr. Kurzman.

Mr. KURZMAN. If I may make one point. It is relevant to note that the rate of reversal in the black lung cases is lower than it is in the social security disability cases generally. Only a tiny number of cases have been reversed; there have been only three so far.

Mr. DENT. Mr. Kurzman, I am not going to interrupt you again, but I would like at this time to send this request down to you for specific information on the estimated costs for black lung benefits payments if the proposals we are considering were enacted because I would rather have our data up to date before we start making any kind of resolution based on the data that we need.

Mr. KURZMAN. We will be very happy to comply.

[Information referred to above follows:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 28, 1975.

HON. JOHN H. DENT,
Chairman, General Subcommittee on Labor,
House of Representatives
Washington, D.C.

DEAR MR. DENT: This is in response to your request of March 13, 1975, for an explanation of the difference between two sets of estimates of additional black lung benefit payments in fiscal year 1976 that would result from enactment of proposed changes in part B of title IV of the Federal Coal Mine Health and Safety Act of 1969. Both sets of estimates were prepared in the Office of the Actuary of the Social Security Administration.

The first set of estimates was prepared in September 1974, and represented the additional costs of black lung benefits under part B that would result from 3 proposals then under discussion. These estimates were provided to members of your staff in a memorandum dated October 1, 1974. The estimates for the

3 proposals were subject to the assumptions and limitations described in the October 1 memorandum. As shown in the memorandum, total additional benefit payments in fiscal year 1976 were estimated to be \$85 million.

The current estimate of total additional black lung benefit payments under part B in fiscal year 1976 that would result from enactment of selected provisions in H.R. 8 is \$477 million.

The reasons for the difference between the estimate for the proposals under discussion in September 1974 and the estimate for H.R. 8 are enumerated below:

1. The estimates prepared in September 1974 represented additional benefit payments that would result from only 3 proposals, as shown in the October 1, 1974 memorandum. These proposals, and the estimated additional benefit costs in fiscal year 1976 for each of them (in millions), are as follows:

(a) In the case of miners employed for 35 or more years in underground coal mines, provide for an irrebuttable presumption of total disability, or death, due to pneumoconiosis -----	\$74
(b) For miners employed for 25-34 years in underground coal mines, provide that no claim for miner's benefits can be denied until the miner has had a negative exercise blood-gas study, unless either such study is medically contraindicated or the miner refuses to undergo such study. If an exercise blood-gas study is medically contraindicated, the blood-gas study would be given at rest. If the result of the blood-gas study is positive, the claim would be allowed. No claims from survivors of deceased miners would be allowed under this provision -----	6
(c) Provide that no claim, from either a miner or the survivor of a deceased miner, can be denied solely on the basis of employment as a miner if such employment had recently been changed to a less dusty part of the mine, to less rigorous work, or to a position of substantially less pay -----	5
Total -----	\$85

The current estimates represent additional benefit payments that would result from enactment of 6 proposals in H.R. 8. Three of the 6 proposals are similar to, but broader in scope of coverage (and hence, greater in cost) than, the 3 enumerated above and discussed in the October 1 memorandum. The other 3 proposals are: (i) the elimination of offset against black lung benefit payments due to payments under State programs, unless such State payments are due to pneumoconiosis (section 5 of H.R. 8); (ii) the requirement that the Department of Health, Education, and Welfare must notify individuals who may be eligible for black lung benefits, but did not file a claim for such benefits under part B, and that any claim resulting from such notification shall, if filed within 6 months after the date of notification, be considered on the same basis as if it had been filed on June 30, 1973, (section 8); and (iii) the extension of black lung benefits to workers in coke-oven areas and to their survivors (section 2).

2. H.R. 8 provides that no claim, from either a miner or the survivor of a deceased miner, can be denied solely on the basis of employment as a miner (section 6). This provision is more liberal than the proposal described in September 1974. As shown in the October 1, 1974, memorandum, the proposal under discussion then was: "No claim, from either a miner or the survivor of a deceased miner, can be denied solely on the basis of employment as a miner *if such employment had recently been changed to a less dusty part of the mine, to less rigorous work, or to a position of substantially less pay*" (italic supplied). The limitation on eligibility, represented by the underlined portion of the September 1974 proposal, does not appear in H.R. 8. Thus, the estimated cost for the provision in H.R. 8 is higher than the estimate for the more limited proposal under discussion in September 1974.

3. H.R. 8 provides that if a miner was employed for 25 years or more in underground coal mining, there shall be a rebuttable presumption that he is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis, and such presumption may be rebutted only by the negative result of a blood-gas study. Thus, any claim from the survivor of a deceased miner with 25 or more years of coal-mine employment would be allowed unless a blood-gas study showing a negative result had been performed immediately before the miner's death. The proposal under discussion in September 1974 was more limited in

that it would have applied only to claims from living miners. As stated in the October 1 memorandum, claims from survivors of deceased miners were excluded in the October cost estimates for this proposal.

4. The current estimates for H.R. 8 take into account allowances resulting from all new claims that would be filed under part B. This includes new claims under the 3 proposals that also affect denied claims previously filed under part B (i.e., the 35-year irrebuttable presumption, the 25-year rebuttable presumption, and the bar against denial solely on the basis of employment as a miner), as well as new claims resulting from (i) the extension of black lung benefits under part B to coke-oven workers and their survivors and (ii) the requirement that individuals who may be eligible for black lung benefits, but did not file a claim for such benefits under part B, must be notified. Claims from persons made newly eligible for benefits under the bill may be filed under part B within a 2-year period after the date of enactment of the bill. Claims from persons who are contacted under the notification requirement must be filed under part B within 6 months of the date of notification. Since H.R. 8 requires that "new claims shall be considered on the same basis as if filed on June 30, 1973," a new claimant must establish eligibility as of June 1973. Therefore, any new claim could result in the payment of benefits retroactively as far back as June 1973. On the other hand, the estimates presented in the October 1 memorandum were limited to benefits only from claims that had been filed under part B prior to July 1, 1973, for miners, and prior to January 1, 1974, for survivors.

5. As a result of further analysis of data on claims that have been denied under part B, the current estimates reflect the effect of a reduction from the October estimates in the estimated number of miners, represented in denied claims, with 35 or more years of coalmine employment, and the estimated number with 25-34 years of such employment.

6. Finally, the October 1974 estimates reflected assumed benefit increases effective for October 1974 and October 1975 of 5.5 percent each. The current estimates reflect the actual increase of 5.52 percent that became effective for October 1974 and an assumed increase of 9.0 percent to become effective for October 1975.

7. Our estimates of the additional benefit payments under part B in fiscal year 1976 that would result from enactment of the selected provisions in H.R. 8 are shown below (in millions):

(a) Eliminate offset against black lung benefits due to reasons other than pneumoconiosis	\$ 11
(b) Irrebuttable presumption for miners employed for 35 or more years in underground coal mines	69
(c) Rebuttable presumption for miners employed for 25-34 years in underground coal mines	72
(d) Preclude denial solely on the basis of the employment status of the miner	79
(e) Additional awards representing transfers from part C and new claims filed under the individual notification provision	228
(f) Extend coverage to coke-oven workers and to their survivors ---	18
Total	477

Sincerely yours,

STEPHEN KURZMAN,
Assistant Secretary for Legislation.

Mr. KURZMAN. Let me point out the cost impact of this act, and the size of the subsidy that the Federal Government has so far provided to this industry.

The early estimates of the cost—

Mr. DENT. I do not want the record to contain that statement. It is not a subsidy to the industry. The industry did not get a nickel out of this. I am not one to defend the industry very strongly, but this is not a subsidy to the industry paid by the Government. It is compensation to the workers under the law passed by the Congress.

It was directly to the workers, and not to the industry.

Mr. ERLBORN. Mr. Chairman, if the industry had covered pneumoconiosis in the State workmen's compensation laws, it would have

been financed over the years by the industry. So they can draw a legitimate conclusion that the industry was—

Mr. DENT. If they had done that, we would not have had to pass the law.

Mr. ERLBORN. Right, and the industry would have paid the bill.

Mr. KURZMAN. As under part C they will, unless you change it.

Mr. DENT. In the mining States, such as Pennsylvania, the burden got too heavy for the State to bear, that is all.

Please proceed, Mr. Kurzman.

Mr. KURZMAN. In December 1969, Mr. Chairman, the cost of the program for the first 20 years was estimated to be a total of \$3 billion.

Chairman PERKINS. May I interrupt for one observation.

The substance of your testimony clearly documents what I have stated here today. It just reflects that you are against the whole thing—the subsidy, how much money you have paid out, and all these things.

I would not be surprised, if you continue the way you have in the last 2 or 3 years, that you may be back 2 or 3 years from now for a further continuation of the Federal responsibility.

Mr. ERLBORN. May I ask for regular order. The witness has not been given an opportunity to present his statement. Could we hear it?

Mr. KURZMAN. As of December 31, 1974, after 5 years, the sum we have already spent under part B from the Social Security Administration and HEW has reached \$3.2 billion, more than the total estimated cost for 20 years. We now are paying black lung benefits from the Social Security Administration at an annual rate of almost \$1 billion. On the basis of preliminary estimates, enactment of the bill before you would result in additional benefit payments of \$500 million, including retroactive benefit payments in the first full year, assumed to be fiscal year 1976, and a total of \$1.9 billion through the end of the act as now constituted.

Mr. DENT. I hate to interrupt. I asked for information. I have to use that information as being reliable. That information is not reliable, nor is the information that you are giving me now.

In October I asked you for estimates, and in October you told me that in the year 1976 the cost would be \$83 million. Now it is \$500 million.

Mr. KURZMAN. Let me explain that. The bill changed in the interim.

Mr. DENT. The bill has not changed.

Mr. KURZMAN. You asked us to cost out only 3 of the provisions that are in the bill before you, which has about 10 provisions.

Mr. DENT. These provisions have nothing to do with these three particular assumptions. These are the three that I asked you about, and I gave you three presumptions that I have now.

Mr. KURZMAN. The actuary based it on what was given in October, and based on what he is given now for this bill, there is a higher estimate. Apparently, the bill is being liberalized.

Mr. DENT. Proceed.

Mr. KURZMAN. I will be happy to put on record both the assumptions made by the actuary, in his October estimate, and the assumptions he made in presenting us with these figures.

Because of the budgetary restraints that are dictated by the present economic situation, we strongly believe it would be most ill-advised to take on such a substantial additional expenditure, particularly in an area which traditionally has been reserved for the States, and, as I have said, for industry.

As you know, in his state of the Union message earlier this year, President Ford stressed the need for fiscal restraint and cautioned us:

If we don't act to slow down the rate of increase in Federal spending, the United States Treasury will be legally obligated to spend more than \$360 billion in fiscal year 1976, even if no new programs are enacted. These are not matters of conjecture or prediction, but, again, a matter of simple arithmetic. The size of these numbers and their implications for our everyday life and the health of our economic system are shocking.

I should also point out here that the great majority of the present black lung beneficiaries are also entitled to social security benefits, under other titles of the Social Security Act, either disability, survivors or old-age benefits. Some of them are also entitled to pensions based on group policies provided by their employers and to pensions from their unions. Many of the people who would become eligible for black lung benefits by the liberalizations this bill would provide can also be expected to qualify for these other benefits.

Let me briefly hit on the major provisions of H.R. 8. First, the coverage of workers employed in coke-oven areas, provided their work environment was as dusty as an underground coal mine. Mr. Chairman, I am confident that expansion of the black lung program to workers other than coal miners and their families will undoubtedly result in increased pressures for similar benefits for other categories of workers. Already, several bills have been introduced in this Congress which would provide benefits, similar to black lung benefits, for iron miners and asbestos workers. In the last Congress, bills were introduced to provide such benefits for textile workers, glassworkers, paintworkers, and a host of other groups of workers. I strongly believe that now is the time to stop the trend of shifting responsibility for occupational hazards from the industries, where we all agree it belongs, to the Federal Government. Moreover, as I stated earlier, further extensions of Federal responsibility into the State workman's compensation area will only continue to discourage the States from improving their workman's compensation laws.

Secondly, the presumption of disability or death based on length of mine employment. The bill, of course, would provide a presumption of disability or death due to black lung, rebuttable only by a negative blood-gas study, after 25 years in the coal mine work; and an irrebuttable presumption of such disability or death after 35 years of such work. Under the first presumption, workers with 25 years of mine employment could qualify for black lung benefits even though they did not have black lung. This is because the 25-year presumption can be rebutted only by the negative results of a blood-gas study.

However, a positive blood-gas study by itself is not a positive indication of black lung. A positive blood-gas study can reflect one

or more of a variety of impairments such as heart disease, disorders of the blood-forming organs, or lung conditions other than black lung.

Aside from the questionable probative value of the blood-gas studies, use of them as the exclusive means of rebuttal would present difficulties. To be at all meaningful, a blood-gas study would have to be an exercise study. And in many cases, particularly those of patients with a heart condition, an exercise study is medically contraindicated.

Not only could miners get black lung benefits under the first presumption without having black lung, survivors of miners who worked in a mine 25 years could also get black lung benefits even if the worker never had black lung. This latter serious inconsistency could arise merely because a blood-gas study was never taken on the miner before he died or the results of any such study that was done were no longer available. The effect would be that practically all survivors of long-term miners who died some years ago would get benefits, since until fairly recently blood gas studies done on miners were relatively rare.

The 35-year irrebuttable presumption, in effect, would provide a Federal pension for long-term service in the mines, regardless of whether the miner was actually disabled from black lung. Some miners do work a lifetime in a mine without contracting disabling pneumoconiosis. The information given you by Mr. Brennan certainly would indicate that. This irrebuttable presumption fails to differentiate between them and those miners who do contract that disease.

There are many factors other than length of service in a mine which have an influence upon whether a miner contracts pneumoconiosis and, if he does, the rate of progression of the disease. For example, such factors as the type, size, and concentration of the dust particles to which the miner is exposed are impotrant. Also, the reaction to any type of dust retained by the lungs depends on the individual miner's resistance to coal dust.

In summary, these proposed presumptions are not reasonable ones upon which to base a finding that a miner developed pneumoconiosis, since length of service in a mine, taken alone, is not prima-facie evidence of disabling pneumoconiosis. We have no medical evidence to support these proposed presumptions.

Mr. ERLNBORN. If I may interrupt.

Would you say that in the 35-year irrebuttable presumption, a pension would be given to those who were not necessarily disabled from black lung. As a matter of fact, they would not have to be disabled at all. Isn't that a fact.

Mr. KURZMAN. That is correct.

Mr. ERLNBORN. Thank you.

Mr. KURZMAN. The third factor is the inclusion of excess attorney's fees in the workmen's compensation offset. Under the present law, the Social Security Administration is required to offset any black lung benefit payable under part B to a miner or his dependents or survivors dollar-for-dollar against any State workmens' compensation, unemployment, or State disability insurance payment which the beneficiary receives on account of the miner's disability. Medical

or legal expenses are not considered to be part of the beneficiary's compensation, even if he is reimbursed for them by the State.

The bill would provide that the Social Security Administration reduce black lung benefits by an amount equal to any attorney's fee for services rendered in pursuit of a claim for State workmen's compensation, or certain other State benefits, to the extent that such fee was in excess of the amount which could be allowed if the claim were a part of part B black lung claim.

If the objective of the proposed provision is to create pressure to reduce excessive attorney's fees in State compensation claims, we believe that penalizing the beneficiary is not a good way to accomplish it. Attorney's fees, even those for which the claimant may be reimbursed by the State, do not constitute, in our judgment, compensation to the claimant for his impairment and should not, in our judgment, therefore, be taken into account for purposes of the offset provision.

There may be an urgent need to prevent abuse with respect to the fees charged for services rendered in connection with State workmen's compensation claims and claims for similar State benefits. The way to do this, in our opinion, is not by using a back-door approach through Federal law, but by regulation. Regulation of attorney's fees in State workmen's compensation cases should be done by the States rather than by the Federal Government.

The fourth factor is the application of offset only against State benefits based solely on black lung. The bill would remove the current offset provision whereby present black lung benefits are reduced by the amount of certain State benefits where the State benefits are not based on pneumoconiosis.

Where State workmen's compensation or other State payments based on disability to us are payable concurrently with black lung benefits, it seems reasonable that black lung benefits should be offset regardless of whether the State payments are also based on black lung. All such payments are designed to replace, as far as we can see, in part, earnings from work which are lost when the worker loses his ability to work. It is immaterial whether this ability is lost because of one severe impairment or because of a combination of impairments which gives rise to several payments from different sources. Limiting the offset of black lung benefits to State payments based only on black lung, as this provision would do, could result in situations where a beneficiary would be paid black lung benefits and one or more State benefits, the total of which could considerably exceed the amount of his earnings before he became disabled.

I would like to discuss a fifth provision of H.R. 8, concerning the denial of claims solely because of current employment as a miner. The bill would prohibit the denial of a claim solely because the miner is currently, or was at the time of his death, employed as a miner.

If a miner has complicated pneumoconiosis, present law provides that there is an irrebuttable presumption of eligibility for black lung benefits, even if the miner is currently working in a mine. If a miner has simple pneumoconiosis, he is denied benefits if he is currently working in a mine. Under the bill's provision, a miner who

had simple pneumoconiosis, and who was still working as a miner could be eligible for black lung benefits.

Concerning review of favorable decisions of administrative law judges, the bill would provide that a decision by an administrative law judge in favor of a claimant would not be subject to appeal or review except on the claimant's motion.

A decision by an administrative law judge in a black lung benefits claim is, under present law, subject to the appeals process and is ultimately subject to the jurisdiction of the Federal courts, as we have discussed earlier. Review by the appeals council, as the Secretary's delegated body, is consistent with the Administrative Procedure Act. To provide for finality of the administrative law judge's decisions in favorable cases would be a modification of the adjudicatory principles of the Administrative Procedure Act. As the Secretary's delegate, the Appeals Council of the Bureau of Hearings and Appeals of the Social Security Administration is responsible for insuring that the law is fairly and uniformly applied at the appellate level. Curtailment of such review, as the bill would provide, could result in applications of the law contrary to the intent of Congress. It would also result in a different appeals process being applied to black lung benefits claims than is applied to all social security benefits claims.

We believe that decisions of administrative law judges should remain fully subject to the appeals process.

Also, since this provision would be retroactive to the beginning of the black lung program, an undetermined number of claims which had initially been favorable to the claimant but denied on appeal would have to be allowed, even though, presumably, the basis for denial on appeal was that payment was not warranted by the law and the facts of the case. Moreover, such payments would have to be made retroactively to the time each claim was initially filed.

With respect to locating potential claimants the bill would direct the Secretary of Health, Education, and Welfare to locate individuals who had long periods of underground coal mine employment, or their survivors, and who have not filed black lung claims under the part B provisions, to notify them of their possible eligibility, and to offer them assistance in filing claims. Any such claims would be deemed to be part B claims if they were filed within 6 months of notification.

Here I should point out that the Social Security Administration would be required to review upward of 200,000 claims. As you will see from Commissioner Cardwell's statement, that would be a very serious matter for the other social security beneficiaries, indeed.

Ever since the beginning of the black lung program, the Department of HEW has conducted a large scale public information program to notify and inform all potential beneficiaries of the importance of applying for black lung benefits, if there is a possibility of eligibility. In addition, the Department has made intensive efforts to cooperate with miners' unions and black lung associations to make information on the black lung program available as widely as possible. Further intensive efforts would be costly and, in our

view, generally unproductive. It could be expected that the number of potentially eligible coal miners or their survivors who would be reached by these efforts would be minimal.

The establishment of separate fund for part C beneficiaries and medical care for part C miner beneficiaries: As I have indicated, these provisions of the legislation would be administered by the Department of Labor, and accordingly we defer to that Department upon these provisions of the bill.

Review of pending and denied claims: The current bill would provide for a review of every denied or pending part B black lung claim in light of the changes in the program made by the bill.

Since, as I have indicated, the Department is opposed to the substantive provisions of the bill, it also opposes this provision.

I should point out that this provision would require the Social Security Administration to review over 200,000 claims.

Treatment of new claims as part B claims if filed within specified time: The bill would provide several time limits within which a filed claim would be considered on the same basis as if it were filed on June 30, 1973, so that such claims would, if allowed, be part B claims.

Under these provisions, not only coke-oven workers, but their dependents, and survivors, and other claimants qualifying under the eligibility changes made by the bill, but also some beneficiaries who are now being paid under the provisions of part C could become entitled to benefits under part B, which would mean that they would be paid lifetime benefits out of Federal revenues. The bill would thus provide another substantial extension of the Federal responsibility in the black lung area and would do so under greatly liberalized eligibility requirements, resulting in significant additional Federal expenditures.

I would now like to ask Commissioner Cardwell to address the members of the subcommittee concerning the impact of this proposed legislation on the operations of the Social Security Administration. After his statement, we would be happy to respond to any questions that you may have.

[Mr. Kurzman's prepared statement follows:]

PREPARED STATEMENT OF STEPHEN KURZMAN, ASSISTANT SECRETARY FOR
LEGISLATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

INTRODUCTION

Mr. Chairman and distinguished members of the Committee, I welcome this opportunity to appear before you and to comment on H.R. 8, a bill "To revise the black lung benefits program to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes." With me are Mr. James B. Cardwell, Commissioner of Social Security, and Mr. Samuel E. Crouch, Acting Director of the Bureau of Disability Insurance of the Social Security Administration.

I will address in my testimony today the specific provisions of H.R. 8. Let me first mention that I have two overriding concerns with this bill—the extreme administrative burdens that it would place on the already overtaxed Social Security Administration, about which Commissioner Cardwell will be speaking; and the inappropriateness of extending yet further the Federal responsibility for paying benefits to victims of pneumoconiosis.

Responsibility for Black Lung Compensation

Mr. Chairman, as you know from previous testimony before you, the Department of Health, Education, and Welfare strongly believes that the responsi-

bility for occupational hazards belongs with the industries where these hazards are permitted to exist. Generally, work-related accidents and diseases are covered under State workmen's compensation laws. It was only because few such laws in 1969 included coverage—and none had adequate coverage—for coal workers' pneumoconiosis that the black lung benefits program was enacted. But it was designed only as an emergency program to assist miners, mining States and the coal-mining industry until adequate State programs could be enacted.

Federal responsibility was therefore limited to a transitional period, during which the States were to amend their workmen's compensation laws so as to provide adequate coverage for pneumoconiosis. At the end of a 3-year period the States and the coal industry were to assume the major responsibility for compensating miners and their families for disability or death due to black lung. In 1972, Federal responsibility was extended and expanded even further. The original black lung benefits program had provided benefits only for underground coal miners, their wives or widows, and their children. The 1972 amendments extended the program to surface coal miners, and to miners' orphans, parents, brothers, and sisters. While it is certainly true that during this transitional period no States have provided adequate coverage for pneumoconiosis, we believe that any responsibility the Federal Government had in this area has been fulfilled and that any further extension of Federal responsibility would only encourage further delays on the part of the States.

Mr. Chairman, we were also under the impression that the Congress was agreed that there should be no further extensions of Federal responsibility in this area.

I call your attention to the colloquy that took place during the floor debate on the Black Lung Benefits Act of 1972. Representative Flood, one of the sponsors of H.R. 8, stated:

"The gentleman from Illinois (Mr. Michel) * * * is the ranking Republican on the Appropriations Subcommittee that handles this bill, and I am the chairman. If the gentleman from Kentucky (Mr. Perkins) and the gentleman from Pennsylvania (Mr. Dent) * * * come back to Michel and Flood * * * 2 years from now, and they think they are going to get any more extension of time to file under the Federal funds section at the end of that period, they are out of their individual and collective heads, I am telling the Members that now. So scratch that. This will not be extended. It was never intended to be, and it is not going to be."

Cost Impact of H.R. 8

I would like to comment now on the substantial financial burden that enactment of H.R. 8 would add to the already staggering costs of the program.

We all remember the early estimates of the cost of the original black lung program. In December 1969, the cost of benefit payments for the first 20 years was estimated to be \$3 billion. Mr. Chairman, as of December 31, 1974—after five years—this sum had already reached \$3.2 billion; and the Social Security Administration is continuing to pay black lung benefits at an annual rate of close to \$1 billion.

On the basis of preliminary estimates, enactment of this bill would result in additional benefit payments of \$0.5 billion (including retroactive benefit payments) in the first full year, assumed to be fiscal year 1976, and about \$1.9 billion through fiscal year 1980. Because of the budgetary restraints that are dictated by the present economic situation, we strongly believe it would be most ill-advised for the Federal Government to take on such a substantial additional expenditure, particularly in an area that traditionally has been reserved for the States.

As you know, in his State of the Union message earlier this year, President Ford stressed the need for fiscal restraint and cautioned us:

"If we don't act to slow down the rate of increase in Federal spending, the United States Treasury will be legally obligated to spend more than \$360 billion in fiscal year 1976, even if no new programs are enacted. These are not matters of conjecture or prediction, but, again, a matter of simple arithmetic. The size of these numbers and their implications for our everyday life and the health of our economic system are shocking."

I should also point out here that the great majority of the present black lung beneficiaries are also entitled to social security benefits—either disability, survivors, or old-age benefits—and some of them are also entitled to pensions based on group policies provided by their employers and to pensions from their unions. Many of the people who would become eligible for black lung benefits

by the liberalizations this bill would provide can also be expected to qualify for these other benefits.

Major Provisions of H.R. 8

I would now like to comment specifically on the major provisions of the bill.

1. *Coverage of Workers Employed in Coke-Oven Areas.* The bill would provide black lung benefits for workers employed in coke-oven areas (and for their dependents and survivors), provided their work environment was as dusty as an underground coal mine.

Mr. Chairman, I am confident that expansion of the black lung program to workers other than coal miners and their families will undoubtedly result in increased pressures for similar benefits for other categories of workers. Already, several bills have been introduced in this Congress which would provide benefits, similar to black lung benefits, for iron miners and asbestos workers. In the previous Congress, bills were introduced to provide such benefits for textile workers, glass workers, paint workers, and a host of other groups of workers. I strongly believe that now is the time to stop the trend of shifting the responsibility for occupational hazards from the industries, where we all agree that it belongs, to the Federal Government. Moreover, as I stated earlier, further extensions of Federal responsibility into the State workmen's compensation area will only continue to discourage the States from improving their workmen's compensation laws.

2. *Presumption of Disability or Death Based on Length of Mine Employment.*—The bill would provide a presumption of disability or death due to black lung, rebuttable only by a negative blood-gas study, after 25 years of coal mine (or coke-oven) work; and an irrebuttable presumption of such disability or death after 35 years of such work.

Under the first presumption, workers with 25 years of mine employment could qualify for black lung benefits even though they did not have black lung. This is because the 25-year presumption can be rebutted only by the negative results of a blood-gas study. However, a positive blood-gas study by itself is not a positive indication of black lung. A positive blood-gas study can reflect one or more of a variety of impairments such as heart disease, disorders of the blood-forming organs, or lung conditions other than black lung.

Aside from the questionable probative value of blood-gas studies, use of them as the exclusive means of rebuttal would present difficulties. To be at all meaningful, a blood-gas study would have to be an exercise study. And in many cases, particularly those of patients with a heart condition, an exercise study is medically contraindicated.

Not only could miners get black lung benefits under the first presumption without having black lung, survivors of miners who worked in a mine 25 years could also get black lung benefits even if the worker never had black lung. This latter serious inconsistency could arise merely because a blood-gas study was never taken on the miner before he died or the results of any such study that was done were no longer available. The effect would be that practically all survivors of long-term miners who died some years ago would get benefits, since until fairly recently blood-gas studies done on miners were relatively rare.

The 35-year irrebuttable presumption would, in effect, provide a Federal pension for long-term service in the mines regardless of whether the miner was actually disabled from black lung. Some miners do work a lifetime in a mine without contracting disabling pneumoconiosis. This irrebuttable presumption fails to differentiate between them and those miners who do contract that disease.

There are many factors other than length of service in a mine which have an influence upon whether a miner contracts pneumoconiosis and, if he does, the rate of progression of the disease. For example, such factors as the type, size, and concentration of the dust particles to which the miner is exposed are important. Also, the reaction to any type of dust retained by the lungs depends on the individual miner's resistance to coal dust.

In summary, these proposed presumptions are not reasonable ones upon which to base a finding that a miner has developed pneumoconiosis, since length of service in a mine, taken alone, is not prima-facie evidence of disabling pneumoconiosis. We have no medical evidence to support these proposed presumptions.

3. *Inclusion of Excess Attorneys' Fees in the Workmen's Compensation Offset.*—Under present law, the Social Security Administration is required to

offset any black lung benefit payable under part B to a miner or his dependents or survivors dollar-for-dollar against any State workmen's compensation, unemployment, or State disability insurance payment which the beneficiary receives on account of the miner's disability. Medical or legal expenses are not considered to be part of the beneficiary's compensation, even if he is reimbursed for them by the State.

The bill would provide that the Social Security Administration reduce black lung benefits by an amount equal to any attorney's fee for services rendered in pursuit of a claim for State workmen's compensation, or certain other State benefits, to the extent that such fee was in excess of the amount which could be allowed if the claim were a Part B black lung claim.

If the objective of the proposed provision is to create pressure to reduce excessive attorneys' fees in State compensation claims, we believe that penalizing the beneficiary is not a good way to accomplish it. Attorneys' fees, even those for which the claimant may be reimbursed by the State, do not constitute, in our judgment, compensation to the claimant for his impairment and should not, in our judgment, therefore, be taken into account for purposes of the offset provisions.

There may be an urgent need to prevent abuse with respect to the fees charged for services rendered in connection with State workmen's compensation claims and claims for similar State benefits. The way to do this, in our opinion, is not by using a back-door approach thru Federal law but by regulation. And regulation of attorneys' fees in State workmen's compensation cases should be done by the States rather than by the Federal Government.

4. Application of Offset Only Against State Benefits Based Solely On Black Lung.—The bill would remove the current offset provision whereby present black lung benefits are reduced by the amount of certain State benefits where the State benefits are not based on pneumoconiosis.

Where State workmen's compensation or other State payments based on disability are payable concurrently with black lung benefits, it seems reasonable that black lung benefits should be offset regardless of whether the State payments are also based on black lung. All such payments are designed to, as far as we can see, replace, in part, earnings from work which are lost when the worker loses his ability to work. It is immaterial whether this ability is lost because of one severe impairment or because of a combination of impairments which gives rise to several payments from different sources. Limiting the offset of black lung benefits to State payments based only on black lung, as this provision would do, could result in situations where a beneficiary would be paid black lung benefits and one or more State benefits, the total of which could considerably exceed the amount of his earnings before he became disabled.

5. Denial of Claims Solely Because of Current Employment as a Miner.—The bill would prohibit the denial of a claim solely because the miner is currently (or was at the time of his death) employed as a miner.

If a miner has complicated pneumoconiosis, present law provides that there is an irrebuttable presumption of eligibility for black lung benefits even if the miner is currently working in a mine. If a miner has simple pneumoconiosis, he is denied benefits if he is currently working in a mine. Under the bill's provision, a miner who had simple pneumoconiosis and who was still working as a miner could be eligible for black lung benefits.

6. No Review of Favorable Decisions of Administrative Law Judges.—The bill would provide that a decision by an administrative law judge in favor of a claimant would not be subject to appeal or review except on the claimant's motion.

A decision by an administrative law judge in a black lung benefits claim is, under present law, subject to the appeals process and is ultimately subject to the jurisdiction of the Federal courts as we discussed earlier. Review by the Appeals Council, as the Secretary's delegated body, is consistent with the Administrative Procedure Act. To provide for finality of the administrative law judges' decisions in favorable cases would be a modification of the adjudicatory principles of the Administrative Procedure Act. As the Secretary's delegate, the Appeals Council of the Bureau of Hearings and Appeals of the Social Security Administration is responsible for ensuring that the law is fairly and uniformly applied at the appellate level. Curtailment of such review, as the bill would provide, could result in applications of the law contrary to the intent of Congress. It would also result in a different appeals process being applied to black lung benefits claims than is applied to all social security benefits claims.

We believe that decisions of administrative law judges should remain fully subject to the appeals process.

Also, since this provision would be retroactive to the beginning of the black lung program, an undetermined number of claims which had initially been favorable to the claimant but denied on appeal would have to be allowed, even though, presumably, the basis for denial on appeal was that payment was not warranted by the law and facts of the case. Moreover, such payments would have to be made retroactively to the time each claim was initially filed.

7. Locating Potential Claimants.—The bill would direct the Secretary of Health, Education, and Welfare to locate individuals who had long periods of underground coal mine employment (or their survivors) and who have not filed black lung claims under the part B provisions, notify them of their possible eligibility, and to offer them assistance in filing claims; any such claims would be deemed to be part B claims if they were filed within 6 months of notification.

As I have indicated before ever since the beginning of the black lung program the Department of Health, Education, and Welfare has conducted a large-scale public information program to notify and inform all potential beneficiaries of the importance of applying for black lung benefits if there is a possibility of eligibility. In addition, the Department has made intensive efforts to cooperate with miners' unions and black lung associations to make information on the black lung program available as widely as possible. Further intensive efforts would be costly and in our view generally unproductive. It could be expected that the number of potentially eligible coal miners or their survivors who would be reached by these efforts would be minimal.

8. Establishment of Separate Fund for Part C Beneficiaries and Medical Care for Part C Miner Beneficiaries.—As I have indicated, these provisions of the legislation would be administered by the Department of Labor and accordingly we defer to that Department upon these provisions of the bill.

9. Review of Pending and Denied Claims.—The current bill would provide for a review of every denied or pending part B black lung claim in light of the changes in the program made by the bill.

Since, as I have indicated, the Department is opposed to the substantive provisions of the bill, it also opposes this provision.*

I should point out here that this provision would require the Social Security Administration to review over 200,000 claims.

10. Treatment of New Claims as Part B Claims if Filed Within Specified Time.—The bill would provide several time limits within which a filed claim would be considered on the same basis as if it were filed on June 30, 1973, so that such claims would, if allowed, be part B claims.

Under these provisions, not only coke-oven workers, but their dependents, and survivors, and other claimants qualifying under the eligibility changes made by the bill, but also some beneficiaries who are now being paid under the provisions of part C could become entitled to benefits under part B, which would mean that they would be paid lifetime benefits out of Federal revenues. The bill would thus provide another substantial extension of the Federal responsibility in the black lung area and would do so under greatly liberalized eligibility requirements, resulting in significant additional Federal expenditures.

I would now like to ask Commissioner Cardwell to address the members of this Subcommittee concerning the impact of this proposed legislation on the operations of the Social Security Administration. After his statement, we would be happy to respond to any questions that you may have.

Mr. CARDWELL. If the committee wishes, I would be happy to summarize very quickly my statement, and request that it be filed for the record, and on those grounds I will proceed.

Mr. DENT. Your statement will be made part of the record.

[Mr. Cardwell's prepared statement follows:]

PREPARED STATEMENT OF JAMES B. CARDWELL, COMMISSIONER, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman and distinguished members of the committee, I appreciate the opportunity to address you and answer questions for you concerning H.R. 8.

ADMINISTRATIVE CONCERNS

Mr. Chairman, I am concerned about the adverse effects that enactment of this legislation would have on the programs administered by the Social Security Administration and therefore on the welfare of a very large proportion of the people of this country. Every month almost 35 million people, one out of every six Americans, depend on a check from the Social Security Administration. These are the old, the blind, the disabled, and the widows and orphans. And for many of them that monthly check means the difference between eating and going hungry. Appropriately then, one of the overriding concerns of the Social Security Administration is to get these checks out to every one of these people on time. The entire apparatus of the Social Security Administration is geared to do this and also to pay for Medicare; about 80,000 people throughout the Nation, most of whom work in six program centers and in 1,280 local offices, are employed in this endeavor. The job is not an easy one. In fiscal year 1974, for example, the Social Security Administration posted 383 million earnings items, issued 19 million social security cards, audited and paid over 70 million hospital and medical bills, processed over 7 million initial claims for cash benefits, and authorized the issuance of almost 400 million cash benefit checks.

The capability of the Social Security Administration at the present time is stretched to its very limit in order to meet its present commitments. A report on the social security disability insurance program prepared by the staff of the House Committee on Ways and Means and published last July, stated that "any further enlargement of the social security responsibilities 'may be the straw that broke the camel's back'." I would be the last one to concede that the SSA is about to cave in. Yet, I believe your own observations would confirm that our capacity is severely strained.

I want to review with you in some detail the developments over the past few years that have increased the workload of the Social Security Administration so substantially as to place our operations in a precarious state. I feel that these developments make it dangerous to place any additional administrative burdens on the agency at this time.

In recent years, a number of important and extensive programs have been added to the responsibilities of the Social Security Administration. In 1965 came the Medicare program, and then, in rapid succession, the original black lung program in 1969, the amendments to it in 1972, and the supplemental security income program for the aged, disabled, and blind in 1974. In the same period, of course, the social security cash benefits program was growing and there were important amendments to that program. One indication of the growth in the social security cash benefits program is that in 1965 there were less than 21 million beneficiaries, while today there are 31 million beneficiaries. And while, as you know, on July 1, 1973, the general responsibility for processing new black lung miners' claims passed to the Department of Labor, the Social Security Administration retains the responsibility for over 500,000 beneficiaries for whom black lung benefits claims had been filed prior to that date and for certain survivors' claims. Frankly, even with all of its technical and organizational experience, the Social Security Administration has just not been able to maintain its service to the public at the standard we would like.

The very high workloads stemming from just the black lung program alone have had a heavy impact on operations of the Social Security Administration's headquarters and its local offices. These heavy workloads have also impacted upon State agencies and medical sources and facilities involved in the administration of social security disability insurance claims in States where most of the Nation's coal mining is done.

Since enactment of the black lung benefits program in December 1969 and through December 31, 1974, over 550,000 claims by miners and survivors had been filed with the Social Security Administration. In addition, as a result of the 1972 black lung amendments, over 200,000 denied and pending claims had to be reviewed. Benefits totalling, as already noted, over \$3 billion have already been paid to over 500,000 beneficiaries. You will recall, Mr. Chairman, that when the original black lung program became law, the initial estimate of the number of potential claimants was 54,400. Actually, the number of applications received, prior to the 1972 amendments, from Pennsyl-

vanian alone was more than twice that many. The national total was 364,400, almost seven times the estimate. The attached chart, prepared by the Bureau of Disability Insurance of the Social Security Administration, gives the number of estimated and actual applications for benefits under the black lung program, before and after the black lung benefits amendments of 1972, in the major coal-producing States.

Mr. Chairman, I should like to point out here that the time needed to process the new workloads that stem from the enactment of the bill, including the claims of many people who, as Assistant Secretary Kurzman stated earlier, are not even disabled—would only serve to further delay the payment of benefits to those who do have the black lung and are deserving of prompt payment.

Despite arrangements made to reassign trained disability examiners and other claims personnel to work exclusively on black lung claims (and in the process work a record number of overtime hours), delays and backlogs have occurred in both black lung and social security insurance claims. For example, the median time to process a social security disability claim from the date of application to the award notice climbed from a low of 61 calendar days before the 1972 black lung amendments to a high of 82 calendar days. Although we have managed to bring the processing time for a disability claim back to about 64 days, the dramatic increase in processing time following the 1972 black lung amendments is an indication of the adverse effects that major expansion of one program can have on the administration of an on-going program.

While over a year and a half has passed since primary responsibility for new miner claims shifted from DHEW to the Department of Labor, the Social Security Administration, through its local offices, has continued to assist the Department of Labor by taking claims for these benefits and transmitting them to the Department of Labor for their review and determination.

The same local offices, as well as other offices, are of course heavily involved in claims for disability, retirement and survivors benefits and Medicare under the social security program, and since January 1, 1974 as I pointed out earlier, supplemental security income benefits. For example, during fiscal year 1974, in addition to claims for black lung benefits, the Social Security Administration received about 1.5 million applications for social security retirement benefits, more than 1.7 million applications for social security disability benefits, and more than 1.8 million applications for benefits under the supplemental security income program. And while virtually all black lung claims filed with the Social Security Administration have now been processed to an initial decision, the Bureau of Hearings and Appeals of the Social Security Administration has pending at the present time the highest number of hearings requests ever—nearly one-third of which involve appeals by black lung claimants. At the beginning of fiscal year 1975, the Bureau of Hearings and Appeals had 75,000 cases pending and expected to receive, during fiscal year 1975, over 80,000 social security disability cases, over 15,000 black lung cases, and almost 63,000 supplemental security income cases. By straining all of its resources, the Bureau is expected to process during this fiscal year almost 116,000 of these cases. This will mean though that at the end of the year over 117,000 cases will still be pending, 42,000 more than were pending at the beginning of the fiscal year. Despite intensive recruitment efforts, the Bureau is still considerably short of the number of administrative law judges necessary to handle the large backlog of cases.

Other backlogs and delays have occurred at nearly all work stations. For example, during the initial phase of the supplemental security income program, despite the fact that social security personnel were temporarily shifted from all over the Nation to the most heavily impacted areas, and despite the fact that social security offices stayed open long after regular hours and on Saturdays and Sundays, long line of applicants formed day after day at many offices. In fact, in some places arrangements had to be made for heated buses to serve as makeshift waiting rooms for overflow crowds.

Administrative costs and manpower that would be required in taking, reviewing and developing applications resulting from this bill would be substantial. As with the 1969 and 1972 black lung legislation, massive efforts would be needed to train, reassign and reallocate personnel and resources, which are already overtaxed in trying to keep abreast of the claims workload pending or anticipated under the present programs.

Final estimates of manpower requirements have not yet been formulated, but it would appear that more than 2,000 man-years would be required by the Social Security Administration to administer this legislation.

Mr. Chairman, this is no time to extend further responsibilities of the Social Security Administration in the black lung area and to increase the severe strain on its capacity to serve the public.

In my judgment, to do so would be at the risk of seriously impairing the agency's ability to administer the major programs for which it already has on-going responsibility under law.

STATEMENT BY JAMES B. CARDWELL, COMMISSIONER, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. CARDWELL. I will start out by emphasizing that the Social Security Administration is an agency with 40 years of history and experience in carrying out the law; if there is one thing we feel and believe to be important and vital in our role within the executive branch, it is the task and responsibility of carrying out the law, and not making our own law, not exercising our own judgment, not exercising our whim, or will.

I think that we are quite fortunate to have been given an assignment through the years of helping people obtain their rights. It has been fundamental in the performance of our agency for almost 40 years.

I am going to talk for a few minutes, if you will permit me, about our capacity of the moment. Not our willingness, not our own view of the public policies that underline any law that might come out of these hearings.

In fact, we give you assurance that we will carry out any law that comes out of these hearings, objectively and to the best of our capacity.

I must say to you, and I think that you should consider it in arriving at your own public policy conclusions: we see our present capacity as being seriously strained. Let us examine for a moment, if you will, what our job consists of today.

Almost 35 million people depend each month on a check to be delivered to them from the Social Security Administration on time, and in the right amount.

In the last fiscal year of our operations, we processed over 7 million claims for cash benefits, new people to receive new checks.

We audited and paid over 70 million hospital and medical bills. We held 75,000 hearings. We have 19 million social security numbers that were issued last year, and 21 million post-entitlement actions, going back through an individual's record, recomputation and reconsideration of his benefits.

Beginning in 1965, and carrying on to the present, our agency has been given additional assignments, medicare, black lung, and the new SSI program which is barely 1 year old and which we are now struggling to implement.

Disability claims received by our agency have doubled in 3 years. The state of the economy suggests that they will rise even further in the future.

In 1965, we had fewer than 35,000 employees. Today we have 80,000, and there are signs that this may not be enough. In the area

of black lung alone, the original estimate of potential claims, as has been discussed already in this hearing, was, I am told, about 54,000. Prior to the 1972 amendments, almost 365,000 had been received, and as of the end of this last calendar year, over 550,000 claims had been received.

The 1972 amendments required that we go back and review 200,000 claims that had, by that time, been denied. New claims jumped from about 66,000 a year in 1972, to 108,000 in the year immediately following these amendments.

Black lung hearings are backlogged. This committee knows that all too well. We have 33,000 cases still on our books. Our total hearing caseload exceeds 110,000. If we now took not one single additional case of any kind for the next 12 months, we would still have some left at the end of the year.

Now this bill, as has been pointed out by Mr. Kurzman and others, would require us to go back and reexamine those 200,000 cases. It would require us to take on new groups of workers, such as coke-oven and coal workers who should be the responsibility of workmen's compensation programs. We estimate that this job alone would require another 2,000 people.

What I ask you to do in your deliberations is to take an account of our capacity, but also our goodwill. It seems to me that so far in the two times that I have visited these hearings, I have heard the public policy issues debated and discussed. I have talked about our capacity.

I have also heard a great deal while sitting in the audience about the integrity of the Social Security Administration. If I care about one thing, as a member of the executive branch, it is my respect for the law, and I care next about our reputation for recognizing that as our duty.

I would hope that my comments and exchanges of questions, and answers that we might have following them, will be taken in that spirit. Thank you.

Mr. DENT. I am sure that it was not a question of personal integrity. We might have disagreed on what they thought was their duty, and what we thought was their duty from their own statements in the records of the Congress.

Mr. CARDWELL. I think that it is healthy, Mr. Chairman, but there are words in this record that are terribly strong, concerning our willingness, our integrity, our capriciousness, arbitrary, and inept actions. Those words are in this record, and I must speak to them, sir.

Mr. DENT. There is a question in the mind of some of the members. You have read the record where many persons have been turned down, clearly denied even the benefit of having their application reviewed because they were still working in the mines.

The law states if an individual is engaged in substantial work involving skills and abilities closely comparable to those of any mining employment in which he previously engaged with some regularity and over a substantial period of time he is not determined to be totally disabled. Despite this, that is the legislative mandate, the man was working in the mine, but he was not working at the face

of the mine. He had taken a job where there was no dust. He was not doing anything in the production of coal.

However, because he was in the mine when his application was filed, the application was summarily rejected. I said that this was arbitrarily wrong. You arbitrarily denied not one, but many persons.

Now, if this is a criticism, and you think that it is a charge against your integrity, I beg you not to be so thin skinned about it. We are fighting for men who have no one to fight for them.

Mr. CARDWELL. I don't mean to appear to be thin skinned. I would not deny you the use of the word "arbitrary." What you are talking about is a good thing, a proper thing to talk about. It is an interpretation of what the law really said, what is really intended.

What you are saying, as I interpret it, is that you believe the law intended something quite different.

Mr. DENT. We wrote it into the law. You can see it. He could be doing skills similar to what he was doing in the mine, and still be called a miner, but he was working at something entirely different than mining, but for the same company. But he was turned down, because he still happened to be working for the coal company.

Mr. CARDWELL. I think that we are still talking about interpretation of the law. If you would like, our general counsel would be glad to give you his comments.

We abide, we believe, to the best of our ability to what we think the law really intended be done.

Mr. DENT. Of course, you know, there has always been a running battle between legislators and administrators, and I have been in it for 43 years. I have never yet gotten to the point where I can say that I honestly believe that they were trying to do something wrong. It was just that they did not read the words as we wrote them.

Mr. CARDWELL. I accept that spirit. I think that it is quite properly stated on your part. It would seem to me, as a long-time observer of our process, that you as the chairman, and Mr. Perkins as an individual member, and other individual members may have had their own individual ideas of what they wanted the law to achieve.

But the Congress at large, speaking with many voices as it often does, might have created quite a different legislative intent. Our job is to obtain the legislative intent, and carry it out with as much integrity as we have available to us. I hope that it is a great deal.

Mr. DENT. I think that is right, but I don't know whether you have read, or counsel read in the conference report, the report that accompanied the bill—

Mr. CARDWELL. He would do that in advising us.

Mr. DENT. It was voted by the House and the Senate. You appear to be saying, and correct me if I am wrong, that you have too much work to do. That the burden is very heavy. You had 5,000 employees in 1935, and now you have 81,000.

What was the population of the United States in 1935?

Mr. CARDWELL. My remarks were that in 1965 we had 35,000, and today we have a budget of about 80,000.

Mr. DENT. What was the population of the United States in 1965?

Mr. CARDWELL. It was 170 million people.

MR. DENT. I think the census for 1965 was 188, or something like that. But, isn't it true that you have been handed programs that have increased your workload.

MR. CARDWELL. There have been two factors that have increased our workload. The additional program responsibility, of which black lung was one, medicare was one, and SSI was one.

The growth in the beneficiary caseload and the aging process, people growing older and becoming eligible for retirement. Then, finally, I would have to suggest that economic conditions also influence the workload. There are some correlations between downtrends in the economy, for example, and disability claims. Disability claims go up when unemployment goes up.

Those have combined to put our system, which has always been a very efficient one, long before I arrived there, under considerable strain. I am not trying to make excuses, I am trying to tell you where it is, and what the problem is.

We are, at this moment, just holding our own. I would say the same about a number of public policy considerations that are now before the Congress, concerning our potential involvement, involvement by the Social Security Administration. The national health insurance program being one, for example.

I would say the same thing to the Congress about that, as I am saying to you today about black lung.

MR. DENT. Mr. Commissioner, then you would not object to the part of the bill, where we are taking all of this responsibility and all this heavy work off of your shoulders, and putting it in the Labor Department.

MR. CARDWELL. I would be pleased.

MR. DENT. I will quit there, while I am ahead.

MR. ERLBORN. Thank you, Mr. Chairman. I don't have any questions. I want to thank the witnesses.

MR. SIMON. I will be brief. I don't think there is any intent on my part, or anyone else to question the work that you are doing, or the good intent of you, sir, the Assistant Secretary, or anyone else.

There is a problem, and I think that you have to view it particularly from an aspect of Mr. Perkins and myself, who come here and we hear that 90 percent are approved. The Department of Labor says that 90 percent are approved.

We walk down the street in southern Illinois, and Kentucky, and we run into the people who say that it is 90 percent not approved.

When Carl Perkins has a hearing on black lung for people who cannot get it, he packs a gymnasium.

MR. CARDWELL. Mr. Simon, could we get some statistics a little closer. I doubt that we have said, although I stand to be corrected, that 90 percent of the black lung claims have been approved. I think we said today that there is 60 to 65 percent of them approved initially.

Additional claims go into the payments by reason of individual appeals, and about 20 percent of those are approved. The one category where the approval rate would seem to be higher is those miners with long-term work histories, at least as indicated in their applications. The miner who has worked 35 years or more, we don't have precise data on that, but just from the record of those who, by

their own claim, state they have worked that long in the mines, it would appear that up to 90 percent are approved. Here you get closer to 85 to 90 percent.

I understand perfectly what you are talking about, because the same thing happens to us, on the part of people who have strong concern for public accountability. Accountability in the use of public funds.

They will say to us: You have approved that man for black lung benefits, and we know that he never worked in the mine a day in his life. The facts may be quite different than what they appear on the surface. They may not have known the man, all his life. He may have worked in the mine at one time earlier, etcetera.

We get it from both sides, as a matter of fact. We receive criticism. This is our job.

Mr. SIMON. It just appears to me that we went from one extreme where some people got it, who were not eligible, and then we swung over. What I hope we end up with is something a little more down the middle.

The one point that you mentioned, was the one point I have observed. It seems to me that you need more personnel in the Social Security Administration.

Mr. CARDWELL. We have a request pending before Congress for 11,500 additional positions to be added immediately. It is in the form of supplemental, but it is before the House Committee on Appropriations, and it is soon to be voted on, we believe.

Mr. DENT. I will try to use my influence with Mr. Flood.

Mr. KURZMAN. If I could make one point. That request for 11,500 positions is based on the assumption that you are going to leave the black lung act alone.

Mr. SIMON. Here again, I agree, if we ask you to review 200,000 claims, and I would like to see them reviewed, frankly, we have to give you the personnel. That is, we have to follow through here. I could not agree more.

On page 11 of your testimony, Mr. Kurzman, you mentioned locating potential claimants. I can see the problem here. There is the other problem of miners who work for gopher holes, the small mines, and their records are inadequate. The chance to learn about the program, because frequently those miners do not belong to any union.

All of a sudden, about 5 years later, they learn about benefits. It seems to me that maybe we ought to mandate the Secretary to keep on publicizing, but we ought to keep open the option for people who just have not heard about the benefits, until all of a sudden they hear a radio program, or read something in the newspaper, or something.

Mr. KURZMAN. I want to point out in this regard, first of all, we feel that in the States where coal mines are common that the program has become extremely well known. There is no question about it.

As we have indicated, the Department has gone to great lengths to make sure that it is the case.

Mr. SIMON. If I may interrupt. I had a case recently where a widow came to me. Her husband was a coal miner, and he died of presumably black lung, complications from black lung.

She moved to where the relatives were living in Minnesota. All of a sudden, she comes back down to visit her relatives and finds out about the black lung program. Those things do come along.

Mr. KURZMAN. Let me point this out, Congressman Simon. The law as it now stands, without any amendments, permits that woman to file a claim, and get benefits, just as if she had filed earlier. She gets them under part C.

The only difference is that the claim will be adjudicated through the Labor Department, and if the last known employer of her husband can be found, that employer will pay the ultimate benefits. If not, then the Federal Government will pick it up through the Labor Department.

So, it is not a question of the law. If the law were left exactly as it is now, there is no question that that woman, all the way through 1981, will be able to file a claim and get her benefits under the act. The only question here is whether it will reopen part B, and put 100 percent of the responsibility for that claim on the Federal Government through the Social Security Administration.

That seems to be the only issue in the case that you are presenting to us.

Mr. CARDWELL. You are raising a different question.

Mr. DENT. Thank you Mr. Simon. And, thank you, gentleman, for your testimony, and your frank and helpful answers. I appreciate your cooperation with the subcommittee.

It is now my privilege to present one of our colleagues who has been very active in the efforts to enact black lung reform legislation, and who has sponsored one of the bills now under consideration, Congressman John P. Murtha of Pennsylvania.

John, I'm glad you could take time out from your busy schedule to give us the benefit of your views. Please proceed in whatever manner you feel will be most beneficial.

STATEMENT OF HON. JOHN P. MURTHA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. MURTHA. Chairman Dent, committee members, I appreciate the opportunity to present testimony before this distinguished group on the subject of black lung legislation.

Black lung is a subject of great concern in the area I represent. There are approximately 9,000 active miners in the coal fields in the 12th Congressional District of Pennsylvania. There are another 7,000 to 8,000 retired coal miners. Some of this latter group have reached retirement age, but many more have been forced to retire early, because of the debilitating affects of pneumoconiosis, or because of a disabling injury suffered in the mines.

I know considerable evidence has been presented to this committee on the medical aspects of black lung. I don't think there is a more difficult disease to diagnose. In our area we have some of the most expert medical personnel in the entire United States for dealing with this disease. Yet, even these men and women have a difficult time in diagnosing or differentiating between pneumoconiosis and other lung disabilities such as emphysema.

I am not a medical expert and I don't pretend to be. But like you gentlemen I spend much of my time meeting with constituents. What

I do know firsthand is the suffering miners I have seen. My district office in Johnstown, Pa., is located on the second floor of a building. I have had men come to my office and when they walk up to the second floor, they have to wait several minutes before they can talk because their lungs are so congested. One black lung case stands out in mind above many others. I visited the home of a man who worked 30 years in the coal mines. He had to have oxygen with him at all times. He slept with his head inclined. Unfortunately, he also developed cancer. The doctors agreed he was disabled, but said it was from cancer, not black lung. I helped him to appeal the ruling and more medical evidence was presented at the hearing to show he was disabled from black lung. When I found out the ruling had been changed, and that the family would receive black lung benefits, I personally called to tell him. His wife told me her husband had just died.

These men and their families deserve better treatment than they have received. There are entirely too many widows collecting black lung benefits because their husbands have died. There are even more widows not collecting anything, although their husbands couldn't breathe after working for as many as 30 years in the mines. And there are simply too many hard-working men who have died because of the shortness of breath that is an occupational hazard.

To this panel I would like to recommend the following changes in the black lung law. This list does not include all the changes I believe are needed, but represents the major items I would like to stress for the committee.

1. *15-year rule.*—I urge the subcommittee to consider seriously the adoption of the 15-year rule so that widows, in particular, will be treated fairly.

It is only through such a flat, clearly stated rule that a miner will know he will be eligible for benefits. Currently, it is a guessing game. A constant problem I encounter is the fellow working in the mines who is advised by his doctor to stop work. He is not yet totally disabled. Maybe the doctor has diagnosed the condition as a lung disability but will not certify that it is pneumoconiosis. But the miner has to keep working because he is unsure he will receive any benefits. The result is that he aggravates his medical condition, and total disability and death are hastened.

With a 15-year rule the individual would know he would receive the benefits. He would have the opportunity to leave the mines at an earlier age, protect his health, and take a lower-paying job to supplement his benefits.

You can collect all the medical evidence you want, and certainly I know there are doctors and medical evidence that agree that after 15 years in the closed quarters of the mines a person cannot avoid a lung problem, but I will rely on the men I have seen coughing and gasping for air for my proof that 15 years in the mines produces considerable disability.

2. *Lay evidence in widows claims.*—The individuals the current law has hurt most are the widows. We all know that medical records weren't kept and medical care wasn't even available for many of our older miners. I do not believe it was the intent of Congress in forming this law that medical evidence be a prerequisite to approving a claim. I believe an amendment should be added that lay evidence can be sufficient proof in as case, at the discretion of the proper offi-

cials. But we must end the situation where a lack of medical evidence by itself is a bar to obtaining benefits.

3. *Permanent program.*—The black lung program must be made permanent beyond its 1981 cutoff date. It would be disastrous to terminate this program.

4. *Burden of proof.*—I think the situation should be reversed so the Government or company should have to prove that the individual does not have a sufficient amount of time under standards. Rather than the individual having to prove he worked 4 or 5 days a week in the mines, the burden should be on the other side to prove that he did not work the required amount of days per week. The vast resources of the Federal Government should be used to obtain the information, rather than the poor widow who has no access to large company records. There should also be a time limit to cases can't be delayed indefinitely while proof is sought. This burden of proof should also apply to any work standards developed in connection with a 15-year rule.

5. *Current employment.*—In no case should current employment be a bar to receiving benefits. Often the miner is forced to take other work—possibly custodial work around a mine—pending the outcome of his claim. Employment as a bar to benefits is unfair.

6. *Time limit on claims.*—In other Government programs, Congress has mandated requirements for prompt governmental decisions. I believe the same rules should be extended to the black lung law. Deadlines should be set for deciding claims. We cannot continue to hold the economic fate of miners and their families in Government hands for months and even years awaiting redtape to be processed.

Those are the major items which I would like to stress to the committee. I would like to cover one more point in this testimony. Some citizens outside the mining community ask me why we need these changes.

The first answer is that more fairness and equity is needed in the law. Beyond that, I believe the second answer involves the question of production of coal and the difficulty of getting young people to go into the mines. Last year coal production showed no increase over 1973. Early reports from 1975 show no great upswing. Yet, in this year we want to increase the production of coal to 663 million tons, and by 1990 we want to be producing 1,247 million tons. To meet this coal production we will have to open 445 new underground mines of 1-million-ton capacity and 190 new mines of 3-million-ton capacity a year to meet that goal. New surface mines would have to number 195 with a capacity of 1 million tons, 80 with a capacity of 3 million tons, and 219 with a capacity of 5 million tons. In 1973 an average of 120,000 men worked at underground mines and 38,000 at surface and auger mines. Even with better extraction methods we will need more men over the next 15 years if we are to meet our production goals.

We will have to attract people to the coalfields whose fathers were not involved in mining. But what is their incentive? Pay cannot be the only stimulus. These men will need assurance of greater mine safety and of guaranteed benefits to help them and their families once the individual leaves mining.

We have heard many figures about mining being the most hazardous profession in the country. Yet I recently asked the Bureau of Mines if black lung was included in those figures. They replied that they were

not. So the hazard of mine duty is even more than the figures for many years have indicated.

I believe these changes are extremely important as an element in our long-range goal of energy independence. Because we cannot mine sufficient amounts of coal without a sufficient number of miners. Even more important, these changes will help those men and their families who have already helped provide the Nation's energy.

Mr. Chairman, I come as an advocate of black lung reform before a group of gentlemen who I know are extremely concerned about the problem. I want to compliment Chairman Dent for his continuing work on this problem, and the other members of the committee who I know have put in a great deal of work on this legislation. The miners and families in the 12th congressional district are very appreciative of your efforts.

I hope this testimony is helpful in the task you face of finalizing the legislation. I know the prayers of many citizens in our area are with you because their future is directly tied to the decisions you will make. I thank you again and wish you well in your deliberations.

Mr. DENT. Thank you very much, John. I have no questions. Do any members wish to question our colleague? [No response.] If not, we will now recess, subject to the call of the Chair.

[Whereupon, at 12:20 p.m., the subcommittee adjourned to reconvene at the call of the Chair.]

APPENDIX

AMERICAN COLLEGE OF RADIOLOGY
WASHINGTON OFFICE,
Chevy Chase, Md., March 10, 1975.

HON. JOHN H. DENT,
*Chairman, General Subcommittee on Labor,
House Committee on Education and Labor,
Rayburn House Office Building,
Washington, D.C.*

DEAR MR. CHAIRMAN: The following comments are offered on behalf of the members of the American College of Radiology for the benefit of your committee in its consideration of actions proposed in HR 7 and HR 8. We would respectfully request that this letter be made part of the record.

From the beginning of the federal black lung program, we have recognized that the major issue has been one of social policy in defining the extent of government or industry responsibility for the compensation of coal miners who have incurred occupationally related respiratory disability, presumably through the development of coal workers' pneumoconiosis.

Our concern as physicians has been with the legislative and regulatory provisions which have specified the ways in which medical evidence would be utilized by reviewing agencies in determining the presence and extent of coal workers' pneumoconiosis in the lungs of a miner/claimant as a basis for accepting or rejecting his claim. In particular, we have been concerned about the role assigned to the chest x-ray examination as a primary and initially sole determinant of a miner's situation.

We commented on this in a letter dated June 30, 1971 from Dr. Seymour F. Ochsner, then president of the College(in regard to your consideration of what was HR 9212. I quote four paragraphs from that letter which spell out the kinds of problems which we encounter.

"It is axiomatic in good medical practice that x-ray examinations are requested and performed as part of a clinical process which leads to a diagnosis and possible treatment of a patient's health problem. For some conditions, the x-ray finding is the definitive evidence for the physician managing the case. In others it is contributory to his conclusion and in still others it provides little or no helpful information. In perhaps a majority of all x-ray examinations, a negative finding (i.e., the part examined appears to be normal) can be vital in ruling out a myriad of possible causes of a patient's complaint.

"In the instance of coal workers' pneumoconiosis, the patterns of dust retention in the lung make extremely difficult a positive diagnosis of the disease in its early stages. In the later stages, the accumulation of foreign matter usually becomes more evident on well executed x-ray examinations. However, not all persons exposed to concentrations of coal dust respond in the same way. It has been demonstrated that miners with x-ray evidence of advanced pneumoconiosis are still functional and seemingly have unimpaired lung function. Conversely, other miners with no x-ray evidence of pneumoconiosis are by any clinical standards disabled. There is a further problem in that miners with emphysema, bronchitis, lung tumors and other respiratory ailments will suffer more from an accumulation of coal dust in their lungs than will their colleagues who do not have these basis problems.

"In addition to x-ray examinations, physicians attempting a medical diagnosis of pneumoconiosis would ordinarily rely upon a patient history, a physical examination and, where available, a pulmonary function study. Unfortunately, facilities for pulmonary function studies and physicians skilled in making them are not available to the extent that these can be utilized as a routine procedure in most mining communities. In most cases, reliable efforts to determine the cause of the respiratory disability demonstrated by the miner is still dependent upon the findings of the chest x-ray examination.

"There is a further problem in that the production of a roentgenogram which can demonstrate pneumoconiotic lesions requires a level of skill which

was not always found in the persons performing such duties in mining communities. Likewise, physicians not specially trained in radiology or chest disease may fail to appreciate the subtle markings which distinguish pneumoconiosis from other lung conditions. Thus, while the x-ray examination is an essential part of the diagnosis of pneumoconiosis, its contribution and reliability could be enhanced by greater attention to the inherent problems in the procedure."

Our point, as in 1971, is to urge upon you an awareness of the extent and limitations of x-ray findings in this instance and to emphasize the need to avoid prejudicing their use in other circumstances where such studies can be more explicit in defining health problems. We would doubt that radiology will become a statistically exact science. But we do know that in the current state of medical practice and technology, our examinations often provide the only objective information which can be obtained without harm to the patient.

Sincerely,

EDGAR L. DESSEN, M.D.,
Chairman, Task Force on Pneumoconiosis.

AMERICAN LUNG ASSOCIATION,
New York, N.Y., April 7, 1975.

HON. JOHN C. DENT,
*Chairman,
House Subcommittee on Labor Standards,
U.S. House of Representatives,
Washington, D.C.*

DEAR CONGRESSMAN DENT: We note that your committee has responsibility for considering legislation which includes provisions to extend eligibility for disability benefits under the Black Lung Program. The fact that the legislation does this without consideration of the original intent of the Coal Mine Health & Safety Act compels us to comment on these provisions.

Through our medical section, the American Thoracic Society, this organization represents an important segment of the scientific community with special interests in pulmonary diseases. As such, it has an obligation to point out practices which are counter to the advancement of medical and scientific standards in pulmonary medicine.

In the opinion of the American Lung Association, the legislation under review reinforces a regrettable trend to ignore medical criteria and differential diagnosis in establishment of a diagnosis of coal workers' pneumoconiosis. The result will be to compensate many persons for disability which is not related to their working environment. In effect, social and economic considerations will take precedence over medical evidence.

Coal workers' pneumoconiosis is a condition that has been shown to develop in certain miners as a consequence of their occupation, diagnosis of which depends on the chest X-ray. Disability is not necessarily a corollary of the condition. There is little evidence that other pulmonary disability in miners is occupational in origin, nor is there evidence to prove that pulmonary impairment occurs in direct relationship to the number of years spent in the coal mine.

Tying eligibility for benefits to length of time employed in coal mining sets a precedent which must inevitably come to the attention of long-time workers in equally hazardous working environments. Congress must then ask itself whether it is prepared to award *occupational* compensation to workers on the basis of length of time spent in various working environments, to the exclusion of other factors which may cause or contribute to the development of disability.

We realize that many injustices have existed in coal mining, and indeed in many American industries. We are closely involved with and sympathetic to the needs of disabled persons. However, as an agency dedicated to promoting high medical standards, we can not support an approach to compensation for occupational disease which is based on medically-unsound premises.

We hope that the Committee will call on us if it desires further information on pulmonary diseases of occupational origin.

Yours truly,

GERALD R. RISO, *Managing Director.*

THE LIFE OF THE AMERICAN MINER

To whom it may concern:

I am an experienced coal miner and have been since 1921. I am sorry that I must disagree with the testimony that was testified at the last Black Lung Committee hearing; that a miner can be considered totally disabled, and be compensated without a medical report after 35 years of work in the coal industry. I am not a medical doctor and I do not intend to argue with one. But, under conditions which are about to develop, I can only say: a miner can have Black Lung within 35 months.

(1) (1923) For a short time, I worked in a coal mine known as "Pine Run Coal and Coke" of the Leechburg Mining Company. Although it is hard to believe, every working day, not later than 11 o'clock a.m., some of the men, including myself, had to go home with shortness of breath, dry coughs, headaches, running noses and eyes full of tears,—as though we all had double pneumonia.

Taking the entire situation into consideration that the men all day long inhaled dust and artificial, contaminated air, anyone can understand that under those existing conditions, which never can be purified,—a miner can be sick from it, long before 35 years.

(2) (1945) After lengthy physical complaints, my doctor sent me to Bedford State Clinic, known as the "Tuberculosis Hospital" where, at that time some doctors were researching if miners sickness was contagious. Thank heavens, it wasn't.

Furthermore, after being examined by a chest doctor, I found (from the examining doctor's truthful report to me) that I had three (3) sicknesses, all caused by the years I had worked in the coal mine.

A. Plenty of coal dust in my lungs.

B. Chronic Bronchitis from the dampness of the mine.

C. Some poison in my blood stream from the powder we used to blast the coal.

At this point, however, he (the doctor) advised me, not to go back in the mine again, that in time I could be feeling better (I did) and that the blood would purify itself. But, the other two (2) sicknesses could never be cured. He further recommended, if there was some concerned person who wanted to read his findings, he would be most welcome to view them at anytime.

(3) (1946) However, in the early part of the month of May, the United Mine Workers of America, District 5, held a district convention in Pittsburgh, Pa., where these findings were fully discussed and all the delegates agreed to establish a Medical Clinic, (which we did) where doctors could now begin their studies of the miners' health and try to find the medicine which could be of help to them.

I further think that it is important to take into consideration my young age (30 years ago) when the doctor ordered me out of the mine. With five children, all of school age to support and no pay-day, wouldn't a man become sicker than he physically is? I would say yes. For the present and future miners' benefits, I hope that the party involved soon comes to the satisfaction of a final conclusion which will please the miners to say: "I'll take a chance and if things go wrong physically, at least my family will be taken care of."

I repeat, I am not a medical doctor, but in addition to the whole question, I add, that some of us still remember when miners' physical complaints were called Miners' TB and Miners' Asthma. With one or the other or both, it is understood that within 5-10 or 15 years, miners gradually lose their strength and the pleasure of life. It does not matter how long the miner stays alive; life for he and his family is surely miserable.

In conclusion, we know now that over the years doctors knew that mines were and still are hazardous to the men's health (besides the dangers of daily accidents).

With 50 years of experience in and around the coal mines, I sign

Sincerely,

SAM MENDICINO.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., April 25, 1975.

Hon. JOHN DENT,
Chairman,
Labor Standard Subcommittee,
House Committee on Education and Labor,
Washington, D.C.

DEAR MR. CHAIRMAN: I would like to express my support for your legislation to authorize the reconsideration of Part B claims under the Federal Coal Mine Health and Safety Act of 1969.

With the weight of evidence which has accumulated regarding the health hazards of underground coal mining operations, particularly prior to the implementation of any type of clean air standards, it seems only equitable to me that a presumption of pneumoconiosis be made for those miners whose exact conditions were not diagnosed before their deaths. Survivors should not now be deprived of benefits to which they are legitimately entitled due to the absence of conclusive medical evidence.

I also support a reopening of the time period for the filing of Part B claims. In spite of all efforts to publicize the enactment of black lung benefits, there are many sections of the country where it is unclear that the media ever made use of releases instructing survivors how and where to file a claim. One such case came to the attention of Congressman John Blatnik a year ago and he has turned the case over to me. In this instance, the widow (now 83 years of age) of a miner who died in 1939 of "miner's sickness" had never heard of black lung benefits and members of her family only learned of the legislation by accident early last year, too late for the Department of Labor to accept a Part B claim.

Mr. Chairman, I appreciate your holding hearings on this important matter and I hope that legislation will be sent to the floor for a vote in the near future.

Sincerely,

JAMES L. OBERSTAR,
Member of Congress.

PHILADELPHIA, PA., April 15, 1975.

Hon. JOHN H. DENT,
House of Representatives,
Chairman, Committee on Education and Labor,
Rayburn House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE DENT: Many thanks for your letter of April 9, 1975.

Your comments about the "Opposition" are interesting but not unexpected. It seems that the mine owners are using physicians with more academic background and less clinical experience to protect their financial interests.

Having treated pulmonary diseases since 1938, both in private practice and as Chief of Pulmonary Diseases at the Rush Hospital and Philadelphia General Hospital, and Consultant in Pulmonary Diseases at a number of hospitals, I have examined and treated thousands of patients, including coal miners. I am also Consultant to Region III SSA/BDI and to the Pennsylvania Workmen's Compensation Board.

During this period of thirty seven years, having examined thousands and thousands of patients and reviewed as many chest x-rays, I have learned a "little" about pulmonary disease. First, medicine is not an exact science, and the more we have learned the less we know about many aspects of disease. For example, there are patients with relatively little x-ray change who are very short of breath, while others with extensive x-ray changes have relatively few symptoms. Why? We do not really know! There are many theories, individual resistance, genetic changes, etc., etc., etc., but none have been proven.

However, I can say definitely, that no one can work in the coal mines for an extended period, certainly thirty-five years, without having coal dust in their lungs and suffer abnormal clinical consequences. Some individuals have greater or lesser limits of tolerance before they complain, which may account for the differences in reporting their disability.

If there is any further information you desire or if I can be of further service in assisting in the passage of this important legislation, please let me know.

With best wishes,
Sincerely yours,

HARRY SHUBIN, M.D., F.C.C.P.

UNITED STATES STEEL CORPORATION,
Pittsburgh, Pa., March 5, 1975.

H.R. 8

HON. JOHN H. DENT,
U.S. House of Representatives,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. DENT: A review of the above-captioned legislation and attendance at the recent Subcommittee hearings lead the United States Steel Corporation to oppose major sections of the bill. However, we do have some suggestions to amend the bill to allow Congress to accomplish the goals this legislation was apparently designed to accomplish—provide an opportunity for long-retired coal miners to qualify for benefits and remove the Federal Government from financial liability for the payment of claims.

Section Two of the bill would include coke oven workers as coal miners. Besides the fact that it would seem inappropriate to broaden the Federal Coal Mine Health and Safety Act of 1969 to include workers other than coal miners, the inclusion would present a number of difficult practical problems. Our research indicates that there are no good data on the level of coal dust in underground mines until sometime after World War II. In addition, except for certain areas of the coking industry, there are still very little data on the level of coal dust in the atmosphere. Furthermore, the standard for respirable dust in a coke oven area comes under the jurisdiction of OSHA, and is 2.4 milligrams per cubic meter, whereas MESA, which has jurisdiction for coal mines, sets the level at 2.0 milligrams per cubic meter. This factor, coupled with the absence of necessary data, would indicate that this provision should be eliminated from the bill.

There do not appear to be any legitimate grounds to establish either the 25 or 35 year presumptions of total disability proposed. Both Dr. Morgan and Dr. Rasmussen testified on February 27, 1975, before the Subcommittee that there is no relationship between the number of years exposure to a coal mine atmosphere and pulmonary impairment or disability. In addition, the U.S. District Court for the Eastern District of Kentucky in the recent case of *Turner-Elkhorn Mining Company v. Brennan*, 385 Fed. Sup. 424 (1974), held such presumptions unconstitutional.

The elimination of the off-set against workmen's compensation benefits except such benefits received for pneumoconiosis and the elimination of the right of appeal from a ruling in favor of a miner unnecessarily set former coal miners apart as a special class and discriminate against disabled workers from other industries.

We favor the notification program proposed in Section 8 of the bill to encourage old claims under Part B which is similar to a program engaged in by United States Steel and other operators to encourage claims prior to July 1, 1973, when the program shifted from the Social Security Administration to the Department of Labor. We understand that the payments under this Section would continue to be from U.S. Government funds as it merely extends eligibility for Part B benefits.

The United States Steel Corporation strongly objects to the establishment of a fund to pay benefits after an administrative determination of eligibility for claims filed after December 31, 1973. Claims filed after that date are presently the responsibility of the individual coal operators who have either

purchased insurance to pay benefits or have qualified as self-insurers. There is an established procedure to adjudicate claims administratively with a right of hearing and appeal by either aggrieved party. This is patterned after the Longshoremen and Harbor Workers' Compensation Act and a departure from such a program would again set the coal miner apart as a select part of industry entitled to special benefits other workers cannot have. The United States Steel Corporation has been willing to be responsible for the claims of its former and present coal mine employees and is currently paying a number of claimants under the Act.

If a fund is inevitable it is hoped that the financing of such a fund would be on the basis of past case experience and not on a uniform tonnage basis. It is unfair to charge an operator for the cases incurred by another operator.

There are several suggestions which would accomplish the goals previously set forth. Since all current operators are either insured or self-insured they should remain responsible for claims filed by their former employees as currently provided in Part C of Title IV.

Miners who left the mines prior to the effective date of dust standards, June 30, 1971, could file claims, have them administratively determined, and then be paid by an industry-financed fund. That fund should, however, be financed on some experience basis so each operator pays his own fair share.

The United States Steel Corporation will be happy to answer questions you or the members of the Subcommittee have concerning our position on H.R. 8.

Very truly yours,

R. HEATH LARRY.

ARMCO STEEL CORPORATION,
Middletown, Ohio, February 25, 1975.

HON. JOHN DENT,
House of Representatives,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN DENT: Dick McCormick was kind enough to give us a rundown on the status and content of H.R. 8, and in response, we would like to present the following comments.

The coke oven section, page 2, lines 1-7, would extend black lung benefits to coke oven workers where it can be proved the level of coal dust is substantially equivalent to coal dust in underground coal mines. We are unaware of any statistics showing that coke oven operators are subject to black lung disease. Generally, coke oven workers are only infrequently exposed to coal dust.

Furthermore, OSHA is currently reviewing coke oven standards and if this provision stands, there well could be a conflict in jurisdiction between the agencies involved. For these reasons, we feel the coke oven section should be deleted from the bill.

Regarding the rest of the bill, we have problems with portions of section 3, presumptions, section 7, appeals and section 8, individual notifications. Let us say we are sympathetic with the overall objectives of the bill but feel that those sections unfairly load the deck. For example, the burden of proof in section 3 is on the defendant. This is entirely contrary to centuries of Anglo-Saxon law which places burden of proof on the plaintiff. As in any other personal injury type action, claimants should be required to prove their case.

Then, in section 7, the defendant's right to appeal is denied, whereas the plaintiff would presumably be granted such relief.

Thus, the defendant first must prove he's not to blame, then, if the decision goes against him, he has no appeal rights. We believe the company should also be entitled to appeal.

Finally, section 8 directs the Secretary of Labor to actively search for potential claimants to initiate claims. This is like requiring a lawyer to actively seek clients, a procedure totally alien to our legal traditions. The Secretary should not be required to undertake such activity.

We appreciate the opportunity of offering comments and would like them to be considered part of the record.

Regards,

BRADFORD C. OELMAN,
Public Affairs Manager.

FEBRUARY 20, 1975.

Mr. BRADFORD C. OELMAN,
Public Affairs Manager,
ARMCO Steel Corporation,
Middletown, Ohio

DEAR MR. OELMAN: This is in response to your letter of February 19, 1975, regarding H.R. 8.

With respect to coke oven workers, I would initially disagree with your suggestion that there could be a jurisdictional conflict between OSHA and the agency ultimately designated to handle black lung claims. One would establish and monitor coke oven standards; the other would accommodate claimants. This division of responsibility is not unlike that of the Department of the Interior to enforce coal mine health and safety standards and the Department of HEW (or Labor) to administer the black lung benefits program.

Moreover, your statement regarding the "lack of statistics showing that coke operators (sir) are subject to black lung disease" implies the absence of any health hazard associated with the employment. Though pneumoconiosis itself has not to date been identified as arising out of coke oven employment, that probability has not been medically excluded. More significantly, you may not be aware that coke oven workers have an incidence of lung cancer more than seven times the national average; and this has been directly related to the emissions resulting from the carbonization process. I commend to your attention a presentation entitled, "Long-Term Mortality Study of Steelworkers" by Drs. J. William Lloyd, Antonio Ciocco, C. K. Redmond, and H. W. Rush, which appeared in the October 1969 issue of the *Journal of Occupational Medicine*.

I would also refute your contention with respect to the burden of proof in Anglo-Saxon law: first of all, because you are in error (burden of proof is a shifting process dependent upon the relative evidence put forward); and secondly, because statutes have extensively modified common law "burden" in a vast array of instances—especially with respect to actions in the area of occupational injury and disease. More importantly, it is neither arbitrary nor unreasonable for the adverse party to the claim to disprove the validity of a claim by (in this case) the negative result of a blood-gas study where the medical community is virtually unanimous in recognizing that the test is the most effective and reliable measure of a miner's impairment. Put another way, the burden is on the miner to establish the validity of his claim by a positive blood-gas showing.

As for the "defendant's" right to appeal being denied in section 7 of the bill, you apparently failed to notice that this provision relates only to Part B of the program; that is, the part prescribing Federal payment of benefits, and not to Part C, which prescribes coal operator liability. This section is specifically directed to the all-too-frequent practices of the Social Security administration to selectively appeal decisions of certain administrative law judges which decisions are favorable to claimants. The explanations offered for this practice have been neither persuasive nor to the point, and our reasonable inference is that it constitutes conscious discrimination.

Finally, your objection to section 8 (notification to claimants) rests more on a parallel to a lawyer seeking clients than to the merits. I fail to see the relationship. Also, I am unable to understand how a procedure which simply requires affirmative notification to potential claimants of their rights can be considered offensive to anyone. I would think you personally would appreciate being notified of your right to exercise an option within a limited time period, if you otherwise had no knowledge of its availability and would stand to forfeit it. I believe opposition to this provision rests on a fundamental misunderstanding of the black lung program. It is not a gratuity or a welfare program. It is directed to those (and their dependents) who suffer from the ravages of a terrible occupational disease. And the miserly compensation they may be afforded by being notified that a program exists for their benefit, is hardly a sufficient response to their suffering.

In any event, I will be pleased to see that your letter is included in the record of our upcoming hearings. This response will follow it.

With every kind regard, I am

Sincerely yours,

JOHN H. DENT, *Chairman.*

ARMCO STEEL CORPORATION,
Middletown, Ohio, March 10, 1975.

HON. JOHN DENT,
House of Representatives,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN DENT: We exchanged correspondence with you previously about various provisions of H.R. 7 and 8, amendments to the Black Lung Act.

We would like to comment further on the Black Lung Disability Insurance Fund; established in Sections 422, 423 and 424 of H.R. 7 and 8. Section 424 (a) (2) sets the basis for the premium rate as the number of tons of coal mined. We regard this provision as inequitable, since it spreads the liability for part C payments to all operators, regardless of incidence of pneumoconiosis within individual mines. We feel operator liability should be based solely on that operator's experience with black lung claims within his own area of responsibility. This appears to us the fairest method of distributing future black lung claim liability. It would also act as an additional incentive for individual mine operators to maintain conditions as dust free as the current law provides.

Accordingly, we are opposed specifically to Section 424 as it now stands and would support amendment thereof in the manner suggested above, i.e., experience rather than tons mined.

We appreciate the opportunity of adding additional comments to those of February 19.

Sincerely,

BRADFORD C. OELMAN,
Public Affairs Manager.

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