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The Federal Mine Safety and Health Act of 1977: Preserving a Law That Works

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THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977: PRESERVING A LAW THAT WORKS

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I. INTRODUCTION

The blunt wisdom of the past has been that dead miners make the best lobbyists for mine safety laws.[1] Today, this view suggests a troubling question: What happens to mine safety laws when the terrible disasters that produced legislation are rare? We should be grateful that the question is timely. It means that decades of progressively stronger laws have finally made a difference for miners, their families, and their communities. But this hard-won success has had one ironic result: Some people are tempted to believe that a strong statute is no longer necessary. In fact, the Federal Mine Safety and Health Act of 1977 (Mine Act)[2] should be preserved. Mining remains a high-risk industry,

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1. *See* SENATE COMM. ON LABOR & PUBLIC WELFARE, 94th Cong., 1st Sess., LEGISLATIVE HISTORY OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, 353 (1975) (floor remarks of Senator Javits, quoting 1942 Russell Sage Foundation study: "Dead miners have always been the most powerful influence in securing passage of mining legislation.").

2. 30 U.S.C. §§ 801-962 (1988).

and tomorrow's miners, just like today's, need the protection of this well-crafted and effective law.

Recent legislation (H.R. 1834) seemed to view the Mine Act as a relic of the past.[3] It would have repealed the statute, a prospect that should trouble anyone familiar with the statute's success. Testifying before Congress, Robert B. Reich, Secretary of Labor of the United States, observed that "[i]n every respect, the ability of the federal government to protect miners would be seriously weakened" under the proposed legislation.[4]

The reasons are plain. As introduced, the bill would have regulated mining under a scaled-back version of the Occupational Safety and Health Act (OSH Act),[5] and eliminated the Mine Safety and Health Administration (MSHA) as well. A host of important enforcement tools would have vanished in the process, including MSHA's right of entry into mines, certain mandatory inspections, most civil fines, and the use of withdrawal orders except in cases of imminent danger. The bill would have made it far more difficult to issue effective safety and health standards and to preserve existing standards.

Miners and their unions, as well as some industry representatives, rightly raised concerns about the bill.[6] Now is a good time, then, to review what federal mine safety laws have achieved and how they did

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3. On June 14, 1995, Congressman Cass Ballenger of North Carolina introduced H.R. 1834, The Safety and Health Improvement and Regulatory Reform Act of 1995. In March 1996, Congressman Ballenger acknowledged that the bill could not be passed. *Ballenger Says MSHA/OSHA Merger Bill is Dead — At Least for 1996*, 3 MINE SAFETY & HEALTH NEWS 118 (March 8, 1996). On April 15, 1996, the Congressman introduced a substitute, the Small Business OSHA Relief Act of 1996, which did not address the Mine Act. H.R. 3234, 104th Cong., 2d Sess. (1996).

4. *Hearings Before the Subcomm. on Workforce Protections of the House of Representatives Comm. on Economic and Educational Opportunities*, 104th Cong., 1st Sess. 6 (1995) (statement of Robert B. Reich, Secretary of Labor of the United States).

5. 29 U.S.C. §§ 651-678 (1994).

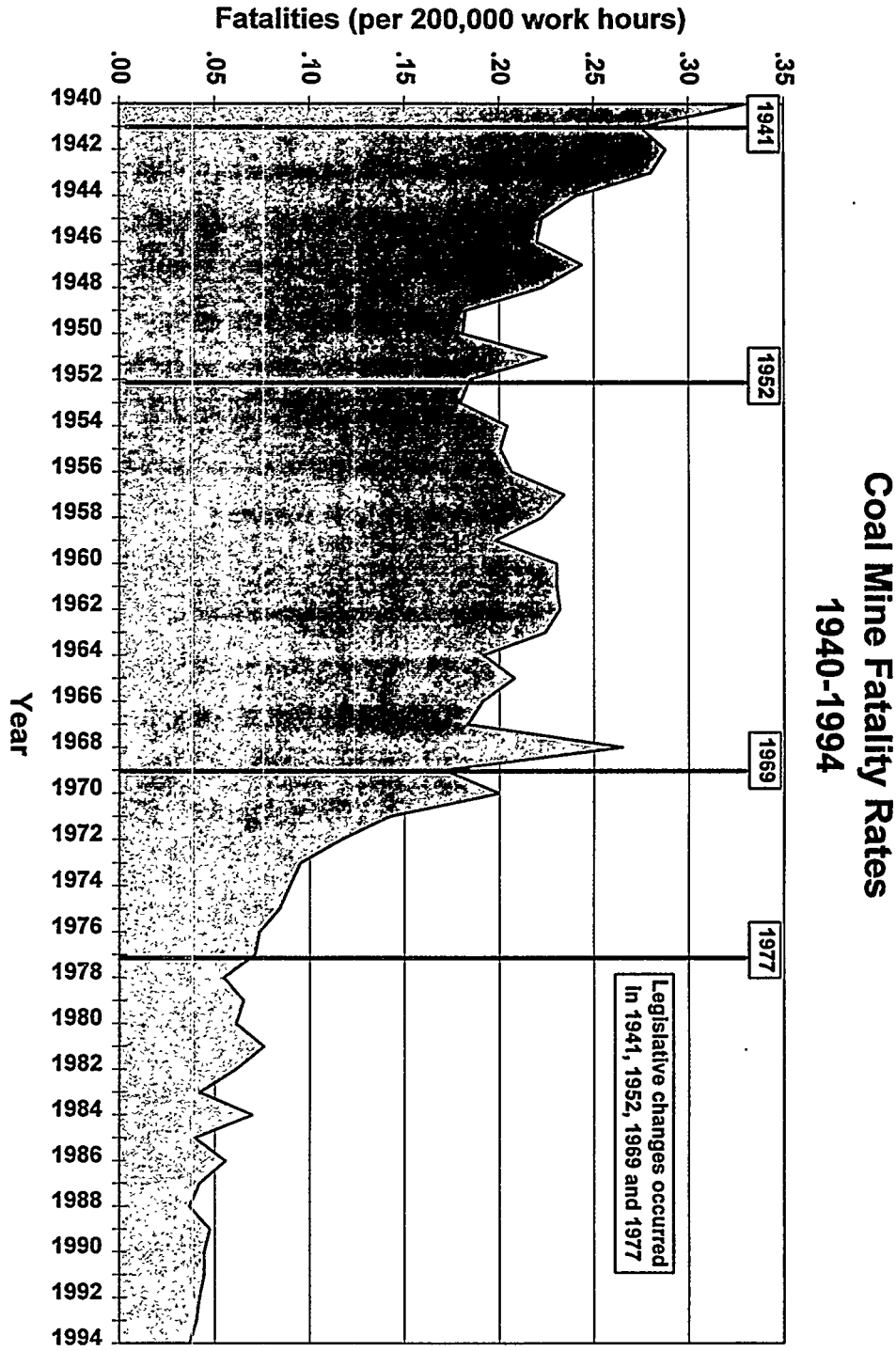
6. *See Safety and Health Improvement and Regulatory Reform Act, 1995 Hearings on H.R. 1834 Before the Subcomm. on Workforce Protections of the House of Representatives Comm. on Economic and Educational Opportunities*, 104th Cong., 1st Sess. (1995) (statements of Richard L. Trumka, United Mine Workers of America; Danny L. Shepherd, United Steelworkers of America; Lavern A. Melton, United Steelworkers of America; and Richard L. Lawson, National Mining Association). *See also* Peter T. Kilborn, *Saving Money or Saving Lives? A Bill to Reduce Mining Regulations Alarms Safety Experts*, N.Y. TIMES, Sept. 19, 1995, at A-14; *Ballenger Unclear on Some of His Own Bill's Regulatory Provisions*, 2 MINE SAFETY & HEALTH NEWS 413 (July 28, 1995) (describing H.R. 1834 hearing testimony); *MSHN Readers Offer Mixed Opinions about Legislation Reducing MSHA's Role*, 2 MINE SAFETY & HEALTH NEWS 390 (July 14, 1995).

it. Working conditions in America's mines are, indeed, better. They are better because of the current law and the legislation that preceded it, as representatives of the mining industry acknowledge.[7] The success of the Mine Act does not make it expendable — just the opposite. History helps us understand why.

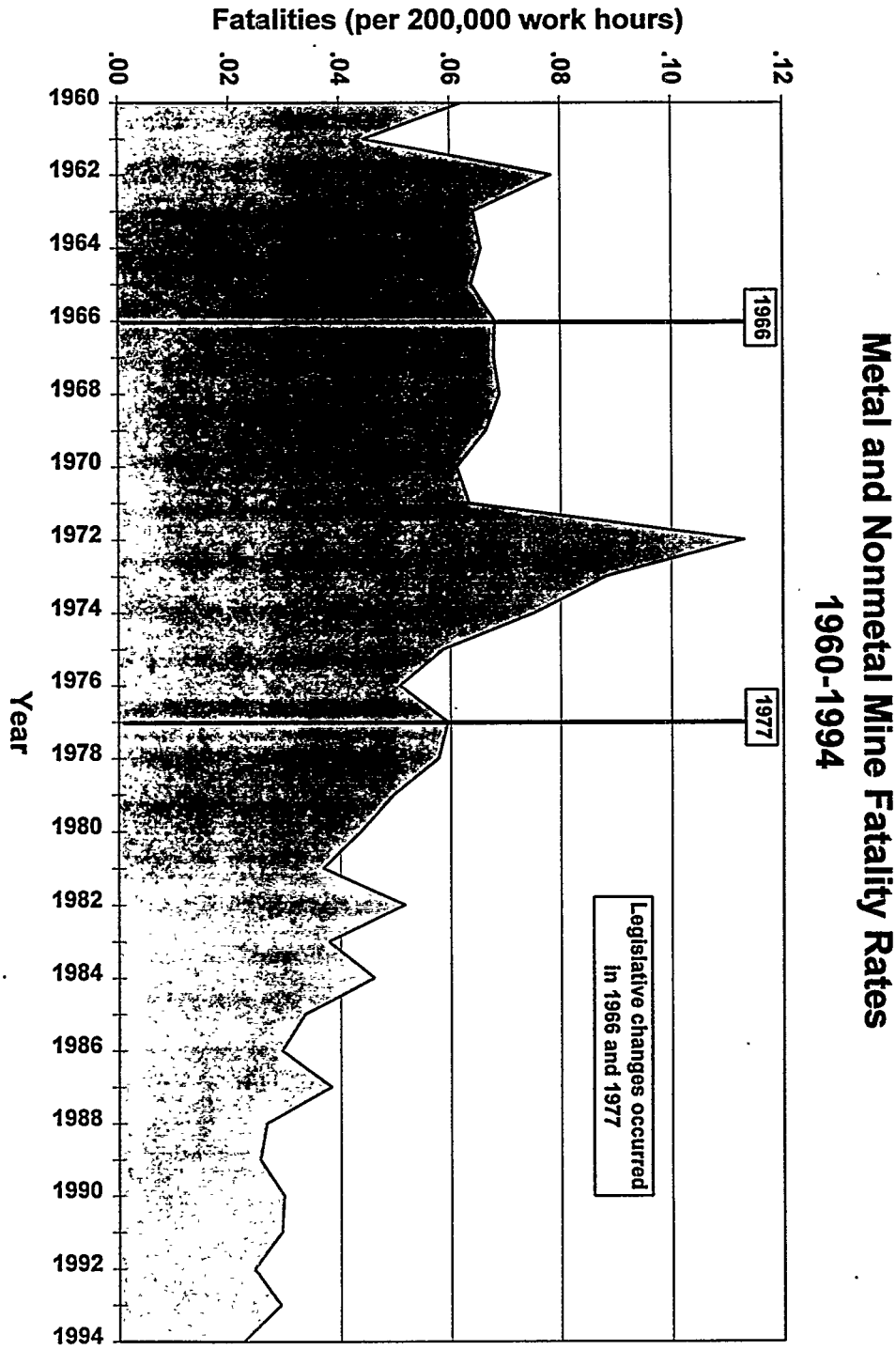
II. WHERE WE ARE TODAY

What is the current state of mine safety and health in the United States, and what difference has federal legislation made over the years? The answer is simple: American miners are less likely to be killed on the job than ever before, thanks in crucial part to mine safety laws. The reduction in fatality rates, for both coal mining and metal and non-metal mining, has been dramatic. This trend tracks the passage of federal legislation, as the following graphs illustrate:

7. *See, e.g., Safety and Health Improvement and Regulatory Reform Act, 1995: Hearings on H.R. 1834 Before the Subcomm. on Workforce Protections of the House of Representatives Comm. on Economic and Educational Opportunities*, 104th Cong., 1st Sess. 2 (1995) (statement of Richard L. Lawson, "we must assure that any reform protects the dramatic gains achieved since passage of the 1969 Coal Mine Health and Safety Act as amended by the 1977 Federal Mine Safety and Health Act.").



Coal Mine Fatality Rates 1940-1994


Fatalities (per 200,000 work hours)
.00
.02
.04
.06
.08
.10
.12
Year
1960
1962
1964
1966
1968
1970
1972
1974
1976
1978
1980
1982
1984
1986
1988
1990
1992
1994
1966
1977
Legislative changes occurred in 1966 and 1977
Metal and Nonmetal Mine Fatality Rates
1960-1994

Progressively stronger coal mine safety legislation was enacted in 1941, 1952, 1969, and 1977. Legislation addressing safety in metal and non-metal mines was enacted in 1966 and 1977. The connection between stronger laws and safer mines has been carefully documented by scholars.[8]

Strong laws have also made a difference in the health of miners. Often-disabling black lung disease (coal workers' pneumoconiosis) was once common.[9] In 1969, the United States became the last major coal-producing country to adopt a standard for exposure to respirable coal mine dust.[10] Since then, despite difficulties in making sure that mine operators' dust samples reflect miners' actual exposure, the prevalence of black lung has declined sharply. A recent analysis by researchers at the National Institute for Occupational Safety and Health (NIOSH) suggests that miners may be six times less likely to develop chronic obstructive lung disease, after a career in the mines, than they were before 1969.[11]

The improvements in the safety and health of miners are undeniable, but progress is also relative. For the foreseeable future, mining will be dangerous. The work environment changes rapidly and unpredictably; as one hazard is corrected, another may appear. Miners still die in explosions, in roof falls, and in blasting accidents. In 1993, mining had the highest death rate of any industry, except agriculture. The death rate was nearly twice that of the construction industry and more than four times the average of all industries.[12] And measured by the median number of days away from work, injuries to miners are far more serious than injuries to workers in any other industry.[13]

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8. *See, e.g.*, JOHN BRAITHWAITE, TO PUNISH OR PERSUADE: ENFORCEMENT OF COAL MINE SAFETY 79-82 (1985) (discussing various studies); Michael S. Lewis-Beck & John R. Alford, *Can Government Regulate Safety?: The Coal Mine Example*, 74 AM. POL. SCI. REV. 745 (1980).

9. *See, e.g.*, H.R. REP. NO. 563, 91st Cong., 1st Sess. 15-20 (1969), *reprinted in* 1969 U.S.C.C.A.N. 2503 (discussing justification for standard limiting exposure to respirable coal mine dust).

10. H.R. REP. NO. 563 at 17. Federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173, 83 Stat. 760 (established the respirable-dust standard now codified at 30 U.S.C. § 842 (1994)).

11. Michael Attfield & Gregory Wagner, Long-Term Projected Effect of 1969 Coal Mine Health and Safety Act in Reducing Occupational Lung Disease and Its Associated Cost in Terms of Black Lung Benefits (May 17, 1995) (unpublished manuscript).

12. U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, NATIONAL CENSUS OF FATAL OCCUPATIONAL INJURIES, 1993 (1994).

13. U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, WORK INJURIES

Protecting the health of miners is also a continuing challenge. Longwall mining systems have greatly increased coal production, for example, but they increase dust levels at the same time. Miners still develop black lung and silicosis,[14] while problems in monitoring and controlling dust levels remain unsolved. (A newly-formed MSHA advisory committee will address these matters.) The growing use of diesel-powered equipment, especially in underground mines, raises health concerns, as does the burning of hazardous waste for fuel at some mine sites. In short, mining is safer, but not as safe as we would wish, and not as safe as it could be.

III. How We Got Here

The Federal Mine Safety and Health Act of 1977 is the end-result of nearly 70 years of legislative development. Congress sought to improve working conditions for American miners long before it acted to protect other workers, and the Mine Act remains notably stronger than the Occupational Safety and Health Act of 1970. At every step of the way, Congressional action was driven by appalling levels of death and disease in the mines. Federal statutes came one after another, just like mine disasters, only at a much slower pace. Major legislation was passed in 1910, in 1941, in 1952, in 1966, in 1969, and in 1977.[15] Each statute, culminating in the Mine Act, attempted to address the shortcomings of prior legislation. Regulatory authority was expanded. Enforcement measures were added. Sanctions were strengthened.

This long process began with the creation, in 1910, of the Bureau of Mines in the Department of the Interior.[16] The Bureau of Mines was established as a research agency and was granted no regulatory power at all. The original statute itself provided that:

AND ILLNESSES BY SELECTED CHARACTERISTICS, 1993 (1995)

14. Based on evidence of continuing risk to coal miners, the National Institute for Occupational Safety and Health [herinafter NIOSH] recently recommended that the current dust standard be cut in half. NIOSH, CRITERIA FOR A RECOMMENDED STANDARD: OCCUPATIONAL EXPOSURE TO RESPIRABLE COAL MINE DUST (1995).

15. For a brief history of American mine-safety legislation, see *Occupational Safety and Health Law*, 1988 A.B.A. SEC. LABOR & EMPLOYMT. LAW 26-32.

16. *See* S. REP. NO. 151, 95th Cong., 1st Sess. 1-5 (1977), *reprinted in* 1977 U.S.C.C.A.N. 3401. For a history of the creation of the Bureau of Mines, see WILLIAM GRAEBNER, COAL-MINING SAFETY IN THE PROGRESSIVE PERIOD (1976).

> nothing in this Act shall be construed as in any way granting to any officer or employee of the Bureau of Mines any right or authority in connection with the inspection or supervision of mines . . . . [17]

There was no right to inspect mines. There were no safety or health standards to enforce.

The picture is different now.[18] Today's Mine Act grants the Secretary of Labor (acting through MSHA) a "right of entry" to every mine in the United States. No search warrant is required to inspect a mine.[19] The Mine Act requires four annual inspections of underground mines and two annual inspections of surface mines,[20] as well as more frequent inspections of mines plagued by high levels of explosive gas.[21] MSHA is authorized to issue new safety and health standards and to enforce them, as well as standards set by Congress itself.[22] Mine operators are strictly liable for violations, and monetary civil penalties are mandatory.[23] MSHA may close down the affected area of a mine not only in cases of imminent danger,[24] but also when an operator has failed to abate a violation,[25] has committed repeated and unwarrantable violations,[26] or has engaged in a pattern of violations.[27]

The Congress which passed the Mine Act, then, was not the Congress that created the Bureau of Mines, but kept it powerless. Between 1910 and 1977, there were dramatic changes in American society and in the role of government. But at least one thing stayed the same: despite a downward trend in fatalities, miners continued to die in ex-

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17. Act of May 16, 1910, ch. 240, Pub. L. No. 61-179, § 5, 36 Stat. 369, 370.

18. The Bureau of Mines ultimately was granted enforcement authority, which then was transferred first to a separate Interior Department agency — the Mining Enforcement and Safety Administration [hereinafter MESA], established in 1973 — and then to MSHA, a Labor Department agency, in 1977. *See* S. REP. NO. 181, 95th Cong., 1st Sess. 5 (1977). The Bureau of Mines has recently been abolished, but some of its safety and health research activities will be transferred to NIOSH.

19. Mine Act § 103(a), 29 U.S.C. § 813(a) (1994).

20. *Id.*

21. Mine Act § 103(i), 30 U.S.C. § 813(i) (1994).

22. Mine Act § 101, 30 U.S.C. § 811 (1994); Mine Act § 104, 30 U.S.C. § 814 (1994).

23. Mine Act § 110(a), 30 U.S.C. § 820(a) (1994).

24. Mine Act § 107(a), 30 U.S.C. § 817(a) (1994).

25. Mine Act § 104(b), 30 U.S.C. § 814(b) (1994).

26. Mine Act § 104(d), 30 U.S.C. § 814(d) (1994).

27. Mine Act § 104(e), 30 U.S.C. § 814(e) (1994).

traordinary numbers, especially in contrast to the death rate in European mines.

In 1940, mine explosions claimed 91 miners at Bartley, West Virginia; 72 miners at St. Clairsville, Ohio; and 63 miners at Portage, Pennsylvania. Coal mine safety legislation was passed the next year.[28] In 1951, 119 miners died in a West Frankfort, Illinois explosion, and 1952 brought a new law.[29] In 1968, 78 coal miners were killed at Farmington, West Virginia. Congress acted in 1969.[30] In 1972, 91 miners were killed at Kellogg, Idaho in a silver mine fire; and in 1976, 26 miners died in back-to-back coal mine explosions in Scotia, Kentucky. The Mine Act was passed in 1977.[31]

The list is incomplete. It fails to mention scores of tragedies, as well as laws passed in 1947[32] and 1966,[33] including the first law to provide enforcement authority over non-coal mines. In retrospect, the disasters and the statutes begin to blur, but the lesson is clear. When it passed the Mine Act, Congress was not legislating on a clean slate. The current statute reflects a long experience grappling with persistent problems in mine safety and health. The Mine Act's remedies were carefully crafted, after other approaches — including leaving primary responsibility to the states — had failed.

Now, nearly twenty years later, a move to revisit the federal role in mine safety and health is underway. Even the most effective laws deserve periodic reexamination, but that exercise must be informed by experience. Ignoring the lessons of history would mean experimenting with the lives of miners.

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28. Act of May 7, 1941, ch. 87, Pub. L. No. 77-49, 55 Stat. 177.

29. Federal Coal Mine Safety Act of 1952, Pub. L. No. 82-552, 66 Stat. 692.

30. Federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173, 83 Stat. 742.

31. Federal Mine Safety and Health Act of 1977, Pub. L. No. 95-164, 91 Stat. 1290.

32. Pub. L. No. 80-328, 61 Stat. 725 (1947). The 1947 law, in effect for one year, directed the Bureau of Mines to determine the extent of compliance with safety standards adopted in 1946, when the federal government had assumed temporary control of coal mines in the United States. Congress continued to leave regulatory responsibility to the States. *See* S. REP. NO. 431, 80th Cong., 1st Sess. (1947), *reprinted in* 1947 U.S.C.C.A.N. 1549.

33. Federal Metal and Nonmetallic Mine Safety Act, Pub. L. No. 89-577, 80 Stat. 772 (1966); Federal Coal Mine Safety Act Amendments of 1965, Pub. L. No. 89-376, 80 Stat. 84.

IV. WHY THE MINE ACT WORKS: FOUR EXAMPLES

Four features of the Mine Act — the right of entry, mandatory inspections, "failure-to-abate" withdrawal orders, and monetary civil penalties — illustrate how the statute was crafted over time and why it works.

A. The Right of Entry

Federal inspectors have had a statutory right to enter coal mines since 1941.[34] Congress has recognized that a warrant requirement could seriously hamper enforcement efforts because "many safety or health hazards may be concealed if advance warning of inspection is obtained."[35] The stakes are high. A leading study of coal mine safety laws and their effectiveness has concluded, quite correctly, that mine inspections save lives.[36]

B. Mandatory Inspections

A certain number of inspections have long been mandated by statute: since 1952 for underground coal mines (then, one per year; now four);[37] since 1966 for underground metal and non-metal mines (then one; now four);[38] and since 1977, for surface mines of all kinds (two per year). The results — declining fatality rates in all types of mining — speak for themselves.[39]

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34. *See* Federal Coal Mine Safety Act of 1941, Pub. L. No. 77-49, §§ 3-4, 55 Stat. 177 (entitling Secretary of Interior to admission to any coal mine, and creating penalties for refusal to admit).

35. *See* S. REP. NO. 151, 95th Cong., 1st Sess. (1977), *reprinted in* 1977 U.S.C.C.A.N. 3401, 3427. H.R. 1834, as introduced, is silent on the right of entry, arguably leaving mine inspections subject to a warrant requirement. *Cf.* Donovan v. Dewey, 452 U.S. 594 (1980) (upholding constitutionality of warrantless inspections under Mine Act); Marshall v. Barlow's, Inc., 436 U.S. 307 (1978) (requiring warrants for inspections under Occupational Safety and Health Act).

36. *See* BRAITHWAITE, *supra* note 8, at 77-82.

37. *See* Coal Mine Safety Act of 1952, Pub. L. No. 82-552, § 202(a), 66 Stat. 692, 693; Federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173, § 103(a), 83 Stat. 742 (1969) (The Federal Coal Mine Health and Safety Act of 1969 increased the required number of inspections to four).

38. Federal Metal and Nonmetallic Mine Safety Act, Pub. L. No. 89-577, § 4, 80 Stat. 772 (1966). The Mine Act increased the requirement to four annual inspections.

39. A 1990 study by the Congressional Research Service of the Library of Congress highlights the difference that mandatory inspections can make. *See* Mary Jane Bolle, Mine

Some argue, as H.R. 1834 provides, that required inspections should be reduced or eliminated. Inspections of safe mines, the argument goes, are unnecessary; inspectors' time is better spent elsewhere. Experience shows, however, that regular inspections are the basis for successful enforcement, not to mention effective technical support, compliance assistance, and standard-setting. All of these activities depend on MSHA's familiarity with actual conditions in the mines, which continually change. Current experience suggests that MSHA can both fulfill its statutory mandate and target resources to address particular problems.

C. *Failure-to-Abate Withdrawal Orders*

Since 1952, federal inspectors have been authorized to close down a mine area temporarily if the mine operator, after prior notice, has failed to correct a safety violation.[40] By 1966, a Senate report on a bill extending the 1952 withdrawal-order provision to small coal mines observed that it was

> well recognized that these . . . closing procedures are among the most frequently used and among the most powerful enforcement measures available to a Federal inspector to insure compliance . . . .[41]

In 1977, a leading industry group itself told Congress that failure-to-abate withdrawal orders were "the most effective type of provision for enforcement of health or safety standards" and endorsed the "vigorous and equitable application" of the provision.[42]

Safety: Recent Trends 5-9 (Apr. 16, 1990) (unpublished manuscript on file with the author). Between passage of the Coal Act in 1969 and passage of the Mine Act in 1977, underground coal mines were required to be inspected four times a year. Only one inspection was required for underground metal and non-metal mines. During this period, underground coal mines generally had lower fatality and disabling injury rates than did underground metal and non-metal mines. Historically, however, coal mining had been more dangerous than metal and non-metal mining. The difference in required inspections seems to plausibly explain the reversal.

40. *See* Federal Coal Mine Safety Act of 1952, Pub. L. No. 82-552, § 203(c)(1), 66 Stat. 692, 695; Mine Act § 104(b), 30 U.S.C. § 814(b) (1994).

41. S. REP. NO. 1055, 89th Cong., 2d Sess. (1966), *reprinted in* 1966 U.S.C.C.A.N. 2078.

42. *Federal Mine Safety and Health Amendments Act of 1977; Hearings on S. 717 Before the Subcomm. on Labor of the Senate Comm. on Human Resources*, 95th Cong., 1st Sess. 193 (1977) (submission by the American Mining Congress).

The importance of failure-to-abate orders is clear, but H.R. 1834 makes no provision for this tried-and-tested enforcement tool. Withdrawal orders create a powerful incentive for operators to comply with the law, when purely economic considerations may dictate otherwise. The ability to halt production — and not just impose a comparatively modest fine — is sometimes necessary to protect miners. Authorizing withdrawal orders in cases of imminent danger is not enough: not every serious danger is "imminent."[43]

D. Monetary Civil Penalties

The history of mine safety demonstrates the importance of an effective system of monetary civil penalties. The Federal Coal Mine Safety Act of 1952 established safety standards, but did not provide for fines if the standards were violated. Only more drastic remedies (withdrawal orders) were available, and only in limited circumstances — despite a Senate committee's conclusion that "the failure and refusal of the coal-mining industry to comply with the safety standards of the Bureau of Mines [was] a national disgrace and an industrial calamity."[44] Seventeen years later, in the Federal Coal Mine Health and Safety Act of 1969, Congress mandated fines for safety and health violations.[45] In metal and non-metal mines, still governed by the Federal Metal and Nonmetallic Mine Safety Act of 1966, civil penalties remained unavailable.

When it passed the Mine Act in 1977, Congress observed that despite fines that were too low and too hard to collect, the civil-penalty system under the Coal Act explained why the substantial decline in coal-mining accident rates had not been matched in metal and non-metal mining.[46] Accordingly, the Mine Act improved the assessment and collection of civil penalties and extended statutory coverage to metal and non-metal mines.[47] Congress understood that improving

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43. *See, e.g.*, Savage Zinc, Inc. v. Secretary of Labor, 17 FMSHRC 107 (1995) (decision of administrative law judge upholding "failure-to-abate" withdrawal order, based on mine operator's failure to provide second escapeway in underground mine).

44. S. REP. NO. 1223, 82d Cong., 2d Sess. (1952), *reprinted in* 1952 U.S.C.C.A.N. 2221.

45. Federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173, § 109, 83 Stat. 742.

46. *See* S. REP. NO. 181, 95th Cong., 1st Sess. 41 (1977), *reprinted in* 1977 U.S.C.C.A.N. 3401.

47. S. REP. NO. 181 at 41-46.

mine safety and health depends on penalties that "make it more economical for an operator to comply with the Act's requirements than it is to pay the penalties assessed and continue to operate while not in compliance."[48]

The need for such penalties is now questioned. Under H.R. 1834, for example, fines could not be imposed if the violation was abated, there was no imminent danger, and no miner had been killed or seriously injured. Even in circumstances permitting a fine, its imposition would be discretionary.[49] The fine itself could be "reduced by the cost to the employer of correcting the violation to which the penalty applies."[50]

These provisions, however, would largely eliminate the deterrent effect of fines. The consequences are predictable: mine operators would have the choice between meeting a standard from the start (and incurring immediate costs) or waiting to see if the violation will be discovered by an inspector (and then likely paying no more than the cost of abatement). Given the time-value of money, some mine operators would decide to run the risk of non-compliance, exposing their miners to greater risks.

Making civil penalties more effective is a worthy goal. But the premise of those penalties — that the threat of punishment encourages safe conduct — is no more debatable than the value of speeding tickets.

V. WHERE WE GO NOW

These four examples (the right of entry, mandatory inspections, failure-to-abate withdrawal orders, and civil penalties) demonstrate the evolution of federal mine safety law. They also suggest they danger of rejecting accumulated wisdom, paid for with many lives. Of course, Congress is always free to change legislative course. But experience, not ideology, should be the driving force behind such a shift.

More than 25 years ago, Congress chastised itself for having long "countenanced the passage of piecemeal measures" that failed to protect miners.[51] The Federal Coal Mine Health and Safety Act of 1969

48. *Id.* at 41. *See also* Coal Employment Project v. Dole, 889 F.2d 1127, 1132 (D.C. Cir. 1989) (analyzing legislative history of the Mine Act penalty provisions).

49. *See* H.R. 1834, § 3, 104th Cong., 1st Sess. (1995).

50. H.R. 1834, § 8(b), 104th Cong., 1st Sess. (1995).

51. H.R. REP. NO. 563, 91st Cong., 1st Sess. (1969), *reprinted in* 1969 U.S.C.C.A.N.

marked the beginning of the end of "piecemeal measures." It provided the framework for the Federal Mine Safety and Health Act of 1977.

Unless it takes history into account, Mine Act "reform" could mean moving backward rather than forward. Progress in mine safety and health does not lie in a return to the past — whether to 1910 or 1941, 1952 or 1966 — when flawed statutes and lax enforcement allowed one disaster after another. Our current achievements rest on the Mine Act and on the laws that came before it. We discard that carefully-built foundation at our own moral risk and at the risk of miners' lives and livelihoods.

The real test of any reform is simple: Will it improve the safety and health of miners? Repealing the Mine Act fails this test, and tinkering with the statute is no more promising. The Mine Act works well because it is well-designed. The statute recognizes the dangers inherent in mining, both physical conditions and human factors. It definitively sorts out the rights and responsibilities of miners and mine operators. And it gives MSHA the legal tools needed to protect miners. As we have seen, hard experience — not good luck — accounts for the successful design of the Mine Act, a strong law, each of its parts reinforcing the others.

Times may have changed, but not enough to justify abandoning that design. It is a mistake to believe that we could not return to an earlier era. Mining remains a highly competitive industry, and the drive for profitability can come at the expense of safety and health. In the United States, the growing deregulation of electric utilities (large consumers, and sometimes producers of coal) means stiffer price competition in the coal industry. And American mining companies now compete around the world, often against mines in countries where miners are killed on a terrible scale. When it comes to mine safety and health, the disastrous American past is, for many unfortunate countries, the present.[52] The last thing miners need is an international "race to the bottom," where standards are effectively set by the least-protective nations.

Making MSHA work better is a matter of administration, not legislation. The best ideas for improving mine safety and health will oper-

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52. *See, e.g.*, INTERNATIONAL LABOR ORGANIZATION, RECENT DEVELOPMENTS IN THE COAL MINING INDUSTRY 42-44, 71-85 (1994) (contrasting coal mine safety and health in various countries).

ate within the framework of the Mine Act. They will emerge from consensus, not controversy. MSHA has already pursued initiatives that build on the Agency's experience and on the insights of the mining community. These initiatives range from redefining the way MSHA conducts mine inspections to large-scale educational programs that address persistent safety hazards, like haulage accidents. The Mine Act is not an obstacle to innovation, where innovation makes sense. We have heard enough from the casualties of American mining, the only "lobbyists" who really count, to do the right thing: preserve a law that works.

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