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Federal Encroachment into the Historically State Administered Workmen’s Compensation Program

By Roscoe Lowery*

From its inception in this country, workmen’s compensation has always been administered as a state program. For many years it remained so with no real attempt by the federal government to enter into the field. In recent years, however, because of the lack of uniformity and alleged inadequacies of the various state laws dealing with the subject, there has been a push from many quarters toward some type of federal legislation.

In the following treatment of the subject federal intervention is considered as coming from four major sources: (1) Social Security; (2) proposed legislation dealing primarily with workers exposed to radiation injuries; (3) proposed legislation dealing generally with all or large groups of workers; and (4) extension by judicial tribunals.

Social Security

Congress enacted the Social Security Law in 1935. Twenty-one years later this law was amended to provide for the payment of Social Security disability benefits. During this period Congress was almost continually studying the problem of amending the Social Security Law to provide for the payment of disability benefits. For example, in 1937 the Senate Special Committee on Social Security appointed a twenty-five member Advisory Council on Social Security to study the Social Security system. After a year of study, the Council unanimously favored the paying of

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Social Security benefits to insured persons who became totally and permanently disabled, but the Council was not able to agree as to when such benefits should begin and recommended that the problem be studied further.

In 1947 the Senate Finance Committee appointed an Advisory Council on Social Security to consider initiating a system of Social Security disability payments. The following year Chairman Edward R. Stettinius, Jr. reported to the Committee that fifteen of the seventeen members felt that the time had come to extend social insurance protection to the risk of loss of income from disability. The Council reported that in its opinion a disabled worker would retain his dignity and self-respect if he received Social Security disability benefits for which he had paid, rather than being on the verge of destitution and depending upon public assistance. Further, in the opinion of the Council, such a disabled worker, if receiving Social Security disability benefits rather than public assistance, would have higher morals and be more inclined to accept rehabilitation treatment.

In 1950 the House Ways and Means Committee, after public hearings, reported a bill which would amend the Social Security law to provide benefits for permanently and totally disabled insured individuals. The Senate Finance Committee disapproved the disability benefits while urging further study of the question.

In 1956, the House Ways and Means Committee reported a bill providing for the payment of Social Security disability benefits to insured disabled individuals between the ages of fifty and sixty-five. The bill1 was filed by Representative Jere Cooper (D. Tenn.), Chairman of the House Ways and Means Committee. The Senate Finance Committee, however, reported against providing for the payment of Social Security disability benefits because in the opinion of the Committee:

(a) it would discourage rehabilitation of disabled workers;
(b) there would be practical difficulties in determining whether disability was permanent and total;
(c) forty-two states had public assistance programs for the disabled, thus a Federal system was not needed;

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(d) vocational rehabilitation under federal-state programs had rapidly expanded.

However, the differences raised by the House and Senate Committees were compromised and the Congress in 1956 amended the Social Security Law\(^2\) so as to provide:

(a) for the payment of benefits up to $127 per month to insured persons between the ages of fifty and sixty-five;

(b) a reduction in these Social Security benefits payable to a disabled individual by an amount equal to any periodic benefit payable to the individual "under a workmen's compensation law or plan of the U.S., or of a State on account of a physical or mental impairment of such individual;"

(c) a reduction in these Social Security disability benefits to an individual if that individual refused without good cause to accept rehabilitation services available to him under a state plan approved under the Vocational Rehabilitation Act;

(d) a disability trust fund for the payment of these benefits, with employers and employees each being taxed one quarter of a per cent of the first $4800 of payroll to support the fund.

In 1958 the House Ways and Means Committee reported out a bill which would amend the Social Security Law by eliminating the provisions that disability benefits would be reduced by the amount of any workmen's compensation benefits that might be payable to an individual. This bill,\(^3\) which was filed by Representative Wilbur D. Mills (D. Ark.), Chairman of the House Ways and Means Committee, was enacted\(^4\) effective August 28, 1958. In this statute Congress liberalized the Social Security disability benefits provision of the law not only by eliminating the workmen's compensation offset as described above, but also by providing for payment of benefits to dependents of persons receiving Social Security disability benefits.

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By 1960 a definite pattern had been established of liberalizing the Social Security disability benefits provision of the Social Security law in each election year. Congress decided in 1960 that liberalization of the Social Security disability benefit provision should be in the form of an elimination of the requirement that a recipient be at least fifty years of age, and thus enacted a bill\(^5\) to that effect filed by Mr. Mills.

In 1965 Congress restored the offset of workmen's compensation benefits from Social Security payments. The Medicare Bill enacted by Congress in July 1965 . . . also set a limit on the amount of combined benefits which a covered person is entitled to receive in any one month. In computing the offset, the total of a family's Social Security benefits will be reduced by the amount by which the total Social Security benefits plus the Workmen's Compensation benefits exceeds the highest of three figures:

1. Total Social Security Benefits based on wages or self-employment income or 80% of the worker's 'average current earnings.'
2. The worker's average monthly wage used for computing his Social Security benefits, or
3. The monthly average of his earnings under Social Security for his highest five consecutive years after 1950.\(^6\)

In recent weeks the House of Representatives amended the Social Security bill changing the offset formula from eighty percent to one hundred percent of the worker's "average current earnings." This legislation\(^7\) is now in the Senate Finance Committee. In favorably acting on this bill the House Ways and Means Committee for the first time injected a new theory into the philosophy of workmen's compensation in stating one of its principal reasons to support its action.

[W]orkmen's compensation is not solely a replacement of lost earnings but is, in part, compensation for pain and loss of function for which the disabled worker might otherwise secure

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recompense through legal action against his employer. It should, therefore, not be necessary to limit a worker's combined social security disability benefits and workmen's compensation payments to less than he earned before becoming disabled.

RADIATION INJURIES

The first bill introduced in Congress to establish a complete federal compensation act for employees previously covered exclusively by state laws was authored by Mr. Zelenko and introduced on January 3, 1961. The bill was tied into the Longshoremens and Harbor Workers' Compensation Act and covered only employees exposed to radioactive material in the course of employment. While this proposed legislation was never enacted, it nevertheless foretold future Congressional involvement with phases of workmen's compensation which had been exclusively within the state jurisdictions.

In the spring of 1967 there was filed in Colorado a sizable number of workmen's compensation lung cancer claims growing out of past uranium mine operations underwritten by the Colorado State Fund. On the basis of a report prepared by Woodward and Fondiller for the Mining Industrial Development Board of Colorado, there was some question of the ability of the State Fund's projected available surplus and reserves to pay these anticipated claims. There was also some concern in other uranium mining states such as Arizona, New Mexico, Utah and Wyoming. Shortly thereafter the Subcommittee on Research, Development and Radiation of the Joint Committee on Atomic Energy held hearings covering the entire scope of radiation exposure of uranium miners. A major portion of these hearings dealt with the problem of paying workmen's compensation claims to victims of lung cancer resulting from exposure to radon gas while employed in radium mines. Representatives of the Colorado Industrial Commission and the State Compensation Insurance Fund presented their views before the Committee.

In November of 1967, Senator Allott of Colorado introduced a bill providing for direct payment for all radiation disabilities

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The bill would have provided federal funds and given primary jurisdiction and control over the payment of workmen's compensation benefits to the United States Department of Labor. This bill and its House companion, introduced by Representative O'Hara, authorized the Secretary of Labor to provide supplemental compensation benefits based on the levels provided by the Longshoremen's Act for disability or death due to lung cancer resulting from exposure to ionized radiation while working in uranium mines. Claims were to be funded from the Federal Employees Compensation Fund under the Longshoremen's Act.

Many who opposed Federal encroachment into workmen's compensation felt that since the lung cancer claims arose in mines operating totally on United States Government contracts, the federal government would have some duty in the payment of valid claims and in the future solvency of the Colorado State Compensation Insurance Fund. It was felt, however, that the bills were discriminatory in that they gave greater benefits to those suffering from conditions due to radiation exposure than it afforded other employees injured by traumatic exposure. These people and those reluctantly supporting aid in this case felt that if federal relief was to be given it should be on a one shot direct relief basis to the State Fund involved and payable in benefits according to the compensation laws of the individual state concerned. In his statement before the House Select Subcommittee on Labor on May 1, 1968, Mr. James M. Shaffer, then Chairman of the Industrial Commission of Colorado, stated: "We also suggest that it might be desirable to incorporate provisions in the bill for administering the federal benefits within the framework of State Workmen's Compensation rules and administrative policies." Similar legislation to this effect was introduced by Mr. Perkins of West Virginia. To date no serious action has been taken on this legislation.

The other venture of a federal agency into the workmen's compensation field was by the Atomic Energy Commission. In 1959 the Research and Development Subcommittee of the Joint Committee on Atomic Energy held hearings for purposes includ-

\[\text{References:}\]
\[\text{H.R. 14558, 90th Cong., 1st Sess. (1967).}\]
\[\text{H.R. 7697.}\]
ing considering the application of workmen's compensation laws. As a result of these hearings the Atomic Energy Commission decided that it would pursue a course of attempting to establish a radiation compensation law which it deemed adequate through the improvement of the several states' laws rather than through a federal act.

In 1959 The Council of State Governments included in its publication of suggested state legislation certain proposals covering workmen's compensation for radiation injuries. Similar proposals were presented in 1961, and in 1965 a suggested Model Workmen's Compensation and Rehabilitation Law, prepared by an advisory committee of the Council, was completed and made available for consideration by the states. The Atomic Energy Commission felt that the provisions of this model law dealing with radiation injuries and diseases would correct substantially all of the inadequacies pointed out in the Joint Committee hearings in 1959.

During hearings before the House Labor Committee in 1962 on the Price-Zelenko bill proposing a Federal Radiation Workers' Compensation Act, Secretary of Labor Arthur Goldberg volunteered to develop the administration position on this proposed legislation after consultation with the Chairman of the AEC. This resulted in a joint Department of Labor-Atomic Energy Commission sponsorship of three studies. The first, by Professor David B. Johnson of the University of Wisconsin, was entitled "Federal-State Cooperation in Improvement in Workmen's Compensation Legislation." It recommended that the federal government offer financial assistance to the states for administrative expenses, rehabilitation, second injury funds, and certain medical expenses connected with workmen's compensation injuries. The second, entitled "The Incidence, Nature and Adjudication of Workmen's Compensation Claims Involving Radiation Exposure and Delayed Injury," was by Professor Thomas J. O'Toole of Georgetown University Law Center. It disclosed that more accurate reporting of current experience with respect to alleged radiation injuries would be desirable. The third study, entitled "Report on Ionizing Radiation Record Keeping," by Woodward

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12 Workmen's Compensation and Rehabilitation Law. Reprint from Suggested State Legislation by The Council of State Governments.
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& Fondiller, Inc., New York City consulting actuaries, pointed particularly to the need for exposure records in workmen’s compensation cases.

In January 1965, during the course of a workshop conference on workmen’s compensation sponsored by the AEC and the Department of Labor, a proposal was made that something should be done now to update workmen’s compensation laws for the protection of workers exposed to radiation, and that to induce the states to improve their workmen’s compensation laws some federal financial assistance should be considered. This proposal was subsequently reviewed by the Atomic Energy Commission’s Labor-Management Advisory Committee and in May of 1965 this Committee recommended that the AEC adopt a program that would encourage the states to incorporate some eleven standards into their workmen’s compensation law in providing adequate minimum coverage for the radiation worker. The eleven standards recommended were designed to correct the alleged inadequacies in state workmen’s compensation laws pointed up by the Subcommittee of the Joint Committee on Atomic Energy in 1959, and were consistent with the standards included in the Suggested Model Workmen’s Compensation and Rehabilitation Law.\(^3\)

On October 18, 1965, the Commission approved a program of cooperation in the field of workmen’s compensation for the radiation worker. In announcing the program on December 6, 1965, the AEC stated that as a first step each state would be requested to prepare an analysis of its workmen’s compensation law, as administratively and judicially interpreted, to determine the extent to which, for radiation injury or disability, it met the eleven standards referred to above. All states were invited to participate in this phase of the program. The Commission went on to state that it was prepared to contract with those states, (1) where the workmen’s compensation law covers radiation injury or disease, (2) where there is no numerical exemption, except for household and casual employees, and (3) where the time

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The limit for filing claims alleging radiation injury is adequate for the following information:

(a) Copies of reports filed by employers covering the medical expenses and lost time of employees occasioned by occupational radiation exposure;

(b) A copy of each claim filed by an employee growing out of exposure to radiation in the course of his work; and,

(c) A case analysis of the disposition of each claim filed by an employee growing out of occupational exposure to radiation.

In addition to the above projects, the development of a uniform system for recording and maintaining individual radiation exposure information is considered an integral part of the Commission's cooperative program to assist the states in improving workmen's compensation coverage for radiation workers. A draft of a proposed Employer-State-Federal records and reports system for radiation workers was prepared by the staffs of the AEC, Department of Labor and the Public Health Service. This draft was disseminated to public and private organizations in the various states for review and comment in order that a suitable system, one generally acceptable to all concerned, could be developed. The proposal for record keeping included certain federal financial assistance to the state undertaking to participate in such a record keeping system. However, in order for a state to be eligible for that assistance, its law was required to meet the AEC's eleven standards.

The next step taken by the AEC was the presentation of its proposed program to administrators, legislators, health officials, management, labor and other concerned parties. The groundwork for this presentation was laid during a conference on Workmen's Compensation and Rehabilitation sponsored by The Council of State Governments in Oklahoma City in October, 1965. The first formal presentation of its program was made by the AEC at a conference held in Oak Ridge, Tennessee, in June 1966.

of the following year. The program was evaluated by a panel consisting of representatives from the Department of Labor, the insurance industry, the medical profession, labor, industry, state administrators and The Council of State Governments. The seminar resulted in the drastic revision by the AEC of its draft for record keeping while the remainder of its program was kept intact.

On August 9, 1966, legislation was introduced in Congress authorizing the AEC to implement its recommended program. The Joint Committee on Atomic Energy held exhaustive hearings on the proposal. Opposition to the program was expressed which ranged from the unreliability and inadequacies of radiation detection devices to the requirements that a state's law must meet the eleven proposed standards before being allowed to participate in the record keeping program. The proposed legislation was never enacted.

The AEC has now concentrated its efforts on stimulating the states to enact legislation which would include the standards included in its recommendation. To this end the AEC has published suggested legislation in the form of "An Act Providing for Workmen's Compensation Coverage of Ionizing Radiation Injury." This suggested legislation was taken from those published in the Council of State Government's Suggested State Legislation for 1959 and was consistent with the Workmen's Compensation and Rehabilitation Law which appeared in the 1964 volume of Suggested State Legislation. In 1969 South Carolina became the first state to adopt substantially the legislation recommended by the AEC.

**General Legislation**

In February of 1969, Senator Jacob Javits introduced a bill which provided for the creation of a fifteen-man commission to study and evaluate the state workmen's compensation laws. The Commission would be composed of fifteen members appointed by the President from state workmen's compensation boards, representatives of insurance carriers, business, labor, members of the medical profession having experience in industrial

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medicine or in workmen's compensation cases, educators having special expertise in the field of workmen's compensation, and representatives of the general public. The Secretary of Labor, the Secretary of Commerce, and the Secretary of Health, Education and Welfare would be ex officio members of the Commission.

The Commission would undertake a comprehensive study and evaluation of state workmen's compensation laws in order to determine if such laws were providing for an adequate, prompt, and equitable system of compensation. Such study and evaluation would include, without being limited to, the following subjects: (1) the amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon; (2) the amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician; (3) the extent of coverage of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon; (4) standards for determining which injuries or diseases should be deemed compensable; (5) rehabilitation; (6) coverage under second or subsequent injury funds; (7) time limits on filing claims; (8) waiting periods; (9) compulsory or elective coverage; (10) administration; (11) legal expenses; (12) the feasibility and desirability of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws; (13) the resolution of conflict of laws, extraterritoriality and similar problems arising from claims with multistate aspects; (14) the extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist; (15) the relationship between workmen's compensation on the one hand, and old-age disability, and survivors insurance and other types of insurance, public or private, on the other hand; and (16) methods of implementing the recommendations of the Commission.

The Commission would transmit to the President and to the Congress not later than one year after the first meeting of the Commission a final report containing its statement of findings together with such recommendations as it deemed advisable.

An act which would thrust the federal government into the
states' workmen's compensation programs was introduced by Representative Perkins in February of 1969.18 The act has as its stated purpose: "To encourage the states to improve their workmen's compensation laws to assure adequate coverage and benefits to employees injured in employment." The provisions of each title of this act are briefly discussed below.

**Title I—Grants for Administration**

Over a period of five years the Secretary would be authorized to make grants to the states for the additional costs of improving the administration of their workmen's compensation laws, including coverage and benefits levels, under criteria promulgated by him. Grants would be made for additional costs of administration during the fiscal year immediately preceding enactment and in subsequent years. Thus, to determine the additional costs which would be financed under this title, the Secretary would use as a basis the cost to the state during the second fiscal year prior to enactment of the bill. Before payment of the grant may be made, the state law would also be required to meet certain specified personnel merit, reporting, expenditures and reimbursement requirements.

**Title II—Extension of Longshoremen's and Harbor Workers' Compensation Act to Employees Not Covered by State**

Two years from the end of the calendar year in which the proposal is passed, all employees not expressly exempted whose employers are engaged in activities affecting interstate commerce, if such employees are not otherwise covered by state workmen's compensation laws, would have extended to them the provisions of the Longshoremen's and Harbor Workers' Compensation Act. Certain enumerated workers, such as domestics, farm workers and casual workers, would be exempted for two years after the effective date of this provision. The administration of this title would be under the procedures of the Longshoremen's and Harbor Workers' Compensation Act. It would thus be necessary for employers subject to this title to secure insurance as required by that act.

Title III—Minimum Compensation Benefits for Employees Covered by State Laws

Obligations of Employers to Secure Compensation

Two years from the end of the calendar year in which the bill is passed, employers engaged in activities affecting commerce would be required to secure compensation for their employees covered by state workmen's compensation laws at least equal to the benefits of the Longshoremen's and Harbor Workers' Compensation Act, as amended. The employer would satisfy his obligation either by purchasing insurance or by qualifying as a self-insurer. Certain terms of the insurance policy are specified.

Agreement With States

The Secretary of Labor would be permitted to enter into agreement with the states to process claims subject to his jurisdiction, and to compensate the states for the services performed.

Claims Procedure

In those states where the level of compensation benefits is less than that prescribed by the proposed act and where an agreement has been made with the Secretary, the person claiming benefits under the state law might concurrently file a claim with the state agency for an order to bring total compensation to the level as herein proposed. Where there is no such agreement, the claims would be filed with the Secretary. The state determination would be final except as to benefits. In cases where uninsured employers within the time period specified by the Secretary or his designee failed to pay compensation due, the Secretary would make payments from the Employees' Benefit Fund established under section 305 of the Act. The Secretary would be subrogated to all rights of the person receiving such payment. Appeals from awards in excess of state levels would be processed in accordance with section 21 of the Longshoremen's and Harbor Workers' Compensation Act.

Employees' Benefit Fund

In order to provide a fund out of which the Secretary of Labor might pay compensation to employees of employers who failed to secure payment of compensation at the level of the Long-
shoremen's and Harbor Workers' Compensation Act, as required by Title III, the proposal establishes an Employees' Benefit Fund in the Treasury of the United States. The manner of establishing the Fund and for paying benefits from the Fund is specified in the proposal. The Fund would be primarily financed by amounts recovered by the Secretary from defaulting employers. Other sources of revenue, including appropriations from general revenues, are also authorized in order to give the Fund initial revenues and additional funds when necessary.

Criminal Penalties

Employers failing to secure payment of compensation would be subject to a fine of not more than $1,000 or by imprisonment for not more than one year, or both. Employers who disposed of property with the intent of avoiding payment of compensation to an injured employee would be subject to a similar penalty. Any person who wilfully made false statements for the purpose of obtaining or defeating any benefit would likewise be subject to fine or imprisonment or both.

Title IV—Research, Training, Administrative Provisions, Separability

Rules and Regulations—Subpoena Powers

The Secretary would be authorized to issue necessary rules and regulations to carry out the provisions of the Act. The Secretary is also authorized to issue subpoenas, administer oaths and compel the attendance of witnesses and production of books, and the District Courts of the United States are given jurisdiction to enforce the orders of the Secretary under this section.

Research and Related Activities

The Secretary would be authorized, either directly or through contracts with public or private agencies, to conduct research and studies on state workmen's compensation programs and related matters.

Training for Workmen's Compensation Administration

The Secretary would be authorized to train persons in efficient and up-to-date workmen's compensation administration proce-
dures and techniques, and to provide for training and fellowships through grants to public or other nonprofit institutions.

**Federal Coal Mine Safety Act of 1969**

On December 30, 1969, President Nixon signed into law the "Federal Coal Mine Health and Safety Act of 1969." This act, which was originally a safety bill, became in part a workmen's compensation act when Title IV was added in conference committee and became part of the final passed legislation. Title IV, entitled "Black Lung Benefits," is divided into three parts.

**Part A** sets forth in some detail the intent to provide benefits in cooperation with the various states to coal miners who are totally disabled from pneumoconiosis. Similar benefits are available to dependents of deceased miners. Part A further sets forth the intent that there will be adequate benefits available to these individuals in the future under certain circumstances.

**Part B** relates to claims for benefits which are filed on or before December 31, 1972. Administration of this portion will rest with the Secretary of Health, Education and Welfare, who will set forth the standards for determining whether a miner's total disability or death is due to pneumoconiosis. Two presumptions are included under Part B. There is a rebuttable presumption that the pneumoconiosis arose out of the miner's employment, if his employment record established ten years or more in a coal mine. There is a conclusive presumption, based on positive results of specific diagnostic tests, that the miner is totally disabled or dead due to pneumoconiosis.

Benefits are to be paid at a rate equal to fifty per cent of the minimum monthly payment which a federal employee in grade GS-2 receives under the Federal Employees Compensation Act when totally disabled. In dollars and cents this presently amounts to a minimum of $136.00 and the maximum of $272.00 monthly depending on the numbers of dependents involved.

In carrying out the procedures set forth in Part B, the Secretary of Health, Education and Welfare is to utilize to the maximum extent feasible the personnel and procedures now being employed in determining the benefit payments under section 223 of the

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Social Security Act. It further sets forth that for the purpose of determining total disability, subsections A, B, C, D, and G of section 221 of the Social Security Act will be applicable.

Part C relates to claims filed after December 31, 1972. This part will cover roughly a four year period, ending seven years after the date of enactment of the bill. There will be certain standards which state laws must meet as far as coverage for pneumoconiosis is concerned. In any state where the workmen's compensation law meets these standards, claims will be filed as prescribed by that state law. In those instances where the state does not meet these standards, the state will be placed on a special list compiled by the Secretary. These standards will include certain sections of the Longshoremen's and Harbor Workers' Compensation Act as well as fifty per cent of the GS-2 classification for benefit payments. During a period in which a state law does not meet these federal standards, the mine operator will be liable for and must secure the payment of benefits as called for. This can be done either through self-insurance, the purchase of an insurance policy, or insuring in a state fund where available.

Under the new law, insurance policies are required to contain the following provisions: (1) benefits must be equal to those standards set forth, (2) insolvency or bankruptcy of a mine operator shall not relieve the carriers liability and (3) any other provision as the Secretary by regulation may require. If the mine operator fails to provide for the benefits required, the Secretary of Labor is to make the benefit payments directly to the miner.

Judicial Extension

To fill the gap in workmen's compensation coverage created by the decision in Southern Pacific Company v. Jensen that a state was without power to extend a compensation remedy to a longshoreman injured on a gangplank between a ship and the pier, Congress passed the Longshoremen's and Harbor Worker's Compensation Act of 1927.

There are many who feel that a flood gate for federal extension into the state workmen's compensation field was created by the
decision in *Calbeck v. Travelers Insurance Company*\(^{21}\) construing the Longshoremen’s Act.\(^{22}\) In that case a welder was injured while working on an uncompleted drilling barge afloat in the Sabine River near Orange, Texas. His injury, though compensable under Texas law, was declared within the purview of the Longshoremen’s Act. For those who are so concerned, there is some consolation in the decision in *Nacirema Operation Company, Inc. v. Johnson.*\(^{23}\) The question was whether injuries to longshoremen occurring on piers permanently affixed to shore are compensable under the Longshoremen’s Act. A majority of the Court answered in the negative. Mr. Justice White, in delivering the opinion of the Court, reviewed the legislative and judicial history of the Act. After rejecting the contention that the extension of the Admiralty Jurisdiction Act\(^{24}\) extended the coverage of the Longshoremen’s Act, he stated:

There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship. But even construing the Extension Act to amend the Longshoremen’s Act would not effect this result, since longshoremen injured on a pier by pier-based equipment would still remain outside the Act. And construing the Longshoremen’s Act to coincide with the limits of admiralty jurisdiction—whatever they may be and however they may change—simply replaces one line with another whose uncertain contours can only perpetuate on the landward side of the Jensen line, the same confusion which previously existed on the seaward side. While we have no doubt that Congress had the power to choose either of these paths in defining the coverage of its compensation remedy, the plain fact is that it chose instead the line in Jensen separating water from land at the edge of the pier. The invitation to move that line landward must be addressed to Congress, not to this Court.\(^{25}\)

However, those concerned over federal action by judicial interpretation can seek little solace in the view Justices Douglas,
Black and Brennan expressed in their dissent in adopting the construction and philosophy as expressed by Judge Sobeloff in speaking for the Fourth Circuit Court of Appeals to the extent that the Longshoremen's Act was not restricted to conventional "Admiralty Tort Jurisdiction" but is "status oriented, reaching all injuries sustained by longshoremen in the course of their employment."

CONCLUSION

In treating the history of federal encroachment I have attempted to keep my personal views and objections to a minimum. Here I wish to make random comments and observations on the issue.

There are many on the scene who would like to replace all workmen's compensation programs with the disability provisions of the Social Security Act. An example are the remarks of Dr. Burns in the Journal of the American Public Welfare Association for January, 1962, calling for the abolition of the state workmen's compensation system. Dr. Burns said:

I would like to see us write off this antiquated fossil among social insurance programs. Let us instead work for a universal disability insurance program which would cover not merely permanent disability, as now, but short period disability as well. Specifically this could be achieved by eliminating the six months' waiting period in OASDI.

At the time Dr. Burns was a Professor of Social Work at Columbia University and was highly regarded within the Social Security Administration. She was a member of the Federal Advisory Council on Employment Security and a Consultant to the Social Security Board. She has also been a consultant on social security matters to the Secretary of the Department of Health, Education and Welfare during previous administrations. Her views are representative of many others in high places and positions of influence.

The extent to which the Social Security disability program would be broadened is evidenced by the rash of "Deemer Bills"

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which have been introduced. Most of these bills would declare a
person totally disabled if he were not able to return to his job
performing the exact duties he was able to perform at the time
of his accident or illness.\textsuperscript{27}

Under the state system, the compensation acts have been
responsible for a tremendous job in safety engineering. The
incentives are present for employers and insurance carriers to
sponsor safety programs and encourage rehabilitation. As a result,
industrial injury frequency and severity rates have been drastically
reduced over the past few years. Under the state system, plant
safety and reduced hazards are rewarded by lower insurance
rates. Under Social Security all employers would pay the same
rate. This could discourage the adoption of plant safety machines,
and would certainly undermine the factors which stimulate
accident prevention work.

The current legislation pending in Congress which would raise
the offset formula from eighty percent to one hundred percent
has serious implications. An injured employee who can take home
the same amount of pay whether or not he works, has little
incentive to be rehabilitated so that he may be employed at a
useful occupation. Before the advent of the offset of workmen's
compensation benefits from Social Security payments, those work-
ing in rehabilitation were constantly faced with this lack of
incentive.

In the area of radiation injuries the AEC has finally taken the
road that many state administrators applaud in its attempt to
improve state laws rather than imposing a uniform set of federal
standards. When the AEC program began, no one questioned
their concern with the radiation worker engaged in the atomic
energy field. This is a germane concern of the AEC as stated
in the act creating it. However, under its workmen's compen-
sation program the AEC is showing a concern far above that of
the worker in the atomic energy field and is seeking to bring
other workers not exposed to atomic energy radiation under their
umbrella of concern.

In viewing the Javits Study, one asks whether this is really
necessary. Books are replete with studies in this field, many of

\textsuperscript{27} See Workmen's Compensation Problems—IAIABC Proceedings, 1968, Bul-
letin 261, U. S. Department of Labor, at 216.
which were made under the auspices of the Bureau of Labor Standards of the U. S. Department of Labor. Many who originally opposed this study and thought it unnecessary now feel that it may bring to a focal point all the discussion in this area and result in a consolidation of views in one authoritative report. The bill as written certainly permits the appointment to the commission of persons highly qualified. No one doubts the statement of Senator Javits to the effect that his motives are not to supercede the state laws with a federal program. Senator Javits, in the American Trail Lawyers' Association's publication Trial, said: "I do not mean to imply that any effort should be made to federalize workmen's compensation or even to begin such a process. My present inclination would be to oppose any such effort." However, one wonders who would be on the permanent staff of the proposed commission and what influence they would exert not only on the findings of the committee but to its recommendations. Certainly one would have to look long and hard at the appointment of people like Professor Jerome B. Gordon, whose remarks were introduced into the Congressional Record by Senator Javits himself. There is a wide range of alternatives, short of federalization, which the Commission could consider.

The Perkins Bill constitutes the first direct thrust of the federal government into the workmen's compensation field through the front door. While it would not disturb the state programs as such or replace them per se, it nevertheless creates a workmen's compensation system which could eventually evolve into a complete federal system. What does the future hold for us in this matter? It is my opinion that we have the federal government in the state system for good. The only question is what extent of improvement will be federally promoted in the future. The state administrator and those seeking to preserve the historical state system are heartened by the attitude taken by the Nixon Administration when the Coal Mine Health and Safety Act was in issue. They were particularly heartened when the President almost decided to veto the act simply because the workmen's compensation provision of the act was an invasion into the state workmen's compensation programs.

The pressure will continue for a complete federal act. While the international labor movement will continue to press for improvement of state acts or federal standards governing state acts, it will also continue its main efforts in complete federalization of the workmen's compensation system. This was made perfectly clear by James O'Brien, Assistant Director of the AFL-CIO Department of Social Security, in a recent radio news conference: "AFL-CIO policy favors a federal system of workmen's compensation, as a long range objective."

We have only seen the opening skirmishes.