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# Private Litigation and the UMW

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Peter Kalis

On December 21, 1972, Arnold Miller, a retired coal miner from Ohley, West Virginia, was sworn in as President of the United Mine Workers of America (UMW).<sup>1</sup> The brief ceremony conducted by Federal Judge William Bryant climaxed an insurgent effort begun within the UMW three and one-half years before by Joseph A. "Jock" Yablonski. On May 29, 1969, Yablonski had risked his position as a UMW International Executive Board member to announce as a reform-oriented candidate for the union's presidency.<sup>2</sup> No one then knew better than Jock Yablonski that the incumbent president, W. A. "Tony" Boyle, would stop at nothing to succeed in his reelection bid.<sup>3</sup> And no one knew better than Yablonski the magnitude of the task he and his reform-minded followers were undertaking. Yet none of those involved in the early stages of the insurgency could possibly have foreseen the events that would follow.

The UMW insurgency was unusual in many respects, not the least of which was its success. Also remarkable was the use which the reform candidates made of the courts in aid of their cause. In the period from Yablonski's announcement in May through the election in early December, 1969,<sup>4</sup> Yablonski's attorneys, led by Joseph L. Rauh, Jr., went time and again to court attempting to guarantee a fair election.<sup>5</sup> After the election and the subsequent murders of Yablonski and his wife and daughter,<sup>6</sup> the remaining insurgent leadership continued to battle with the UMW and its officers in court. This uncommon inclination to litigate issues fundamental to a fair union election, when viewed in light of the UMW insurgents' ultimate success, invites examination. The questions arising from the UMW experience are many, but this discussion will deal with only one: To what extent did private litigation assist insurgent UMW members in obtaining a fair election?

The first step to answering this question lies in developing a model of the organizational framework within which the litigation occurred. Using this model, we can begin to measure the effects of the insurgents' litigation on the UMW. To this effort we now turn.

● With few exceptions, labor unions in this country possess one-party systems of government. In most unions, according to Seymour Lipset in *Union Democracy*, "one group, . . . controls the administration, usually retains power indefinitely, rarely faces organized opposition, and when faced with such opposition often resorts to undemocratic procedures to eliminate it."<sup>7</sup>

In Lipset's view, three features characteristic of large unions produce this one-party system. First, the size and structure of such organizations give the incumbent officials overwhelming power as compared with that of any opposition. Typically, a bureaucratic structure in the union insulates power at the top. At the same time, a virtually exclusive control of the formal means of internal communication plus a near monopoly of political skills within the union are combined in the hands of the leadership.<sup>8</sup> Second, the incumbent leaders of most unions wish to stay in office and will adopt dictatorial tactics to do so. Third, the members of the union do not participate to any substantial degree in union politics, so control is left exclusively in the hands of the incumbent leadership.<sup>9</sup>

In 1969, the UMW displayed in varying degrees each of these features of oligarchical control.

It had developed over the years a large bureaucratic structure which performed union functions in industry and government.<sup>10</sup> This structure left disproportionate power in the hands of upper level officers surrounding President Boyle. Officials in the lower strata of the UMW bureaucracy in large part served at the pleasure of the Boyle administration in Washington. Trusteeships, an arrangement whereby the national or international officers of a union appoint a representative to assume control over the affairs of a local or district union, were the rule. Of the twenty three UMW districts in the United States, in only four could the members elect their district union officials.<sup>11</sup>

Control of the only formal means of communication within the UMW, the *United Mine Workers Journal*, was in the firm grasp of the Boyle forces in 1969. The *Journal*, a free, semi-monthly publication distributed to all members of the union, is the primary source of union news. As an example of Boyle's iron control, Yablonski's announcement of candidacy, although subject to national attention, was accorded not one word of mention in the *Journal*.<sup>12</sup>

Although it controlled union communications, the leadership did not monopolize political skills within the UMW. In the years immediately preceding the 1969 election, an indigenous group called the "Black Lung Movement" had appeared in the coal fields, seeking through political action to establish higher standards of occupational health and safety. The movement was produced by the leadership's failure to respond to member demands on health and safety issues, and was the main center of rank and file discontent within the union. Significantly, Arnold Miller first became known as a leader of this movement, and at the time of his election to his union's presidency was served as President of the Black Lung Association.<sup>13</sup>

Moreover, people involved in this health and safety association provided the core of support for Yablonski's candidacy. Despite the experience gained by the insurgents in the Black Lung Movement, the incumbent leadership was still more adept at union infighting.

Securely based in positions of overwhelming power within the union, the top UMW officials also possessed a strongly felt desire to remain in office. Trade union officials usually ascend the status hierarchy as they climb to the top of their unions.<sup>14</sup> They procure a comfortable station in life which they wish to retain. Boyle was no exception. Many thought his decision to run in the 1972 supervised election less than prudent. After all, he stood convicted of misusing union funds<sup>15</sup> and the very reason for a second, supervised election was Boyle's rigging of the first.<sup>16</sup> Also, the implications in the Yablonski murders were only too obvious. In spite of all this, running again was the natural thing for Tony Boyle to do.

Finally, there was little rank and file participation in UMW politics until late 1969. Political conflict within the union had been at low ebb for many years: the last serious challenge to incumbent leadership within the UMW was in 1926.<sup>17</sup> Moreover, as is typical in many unions, there was no political party organized to oppose the incumbents.

It is within this institutional framework that union elections take place. But if the three features of one party oligarchy are present—monopoly power in the leadership, intense desire to remain in office, and lack of participation by the rank and file in union politics—one might well question if fair elections, the cornerstone of "union democracy," are even possible.

1 New York Times, December 22, 1972, at 10, col. 5.

2 New York Times, May 30, 1969, at 9, col. 3.

3 Yablonski and his attorney, Joseph Rauh, admitted as early as the first day of the campaign that they might demand impartial supervision by the Department of Labor or by some other outside agency. New York Times, May 30, 1969, at 9, col. 3.

4 The election, won by Boyle, was held on December 9, 1969. Other important dates during the UMW insurgency were: January 5, 1970—the discovery of the Yablonski murders; June 15, 1972—the setting aside of the 1969 election by Judge Bryant; December 1-8, 1972—the supervised election in which Miller defeated Boyle.

5 The individual cases and issues will be treated at a later point.

6 New York Times, January 6, 1970, at 1, col. 2.

7 S. Lipset, M. Trow, J. Coleman, *Union Democracy* 3 (1956) [hereinafter referred to as Lipset]. This book deals primarily with the International Typographical Union, which possesses a two-party system of government. In an early chapter, however, Lipset sets forth the theory of oligarchy utilized here.

8 *Id.* at 9.

9 *Id.* at 9-11.

10 The UMW structure has three tiers: the local, the district, and the international.

11 *Cf.* Hodgson v. UMW, 344 F. Supp. 990, 994 (D.D.C. 1972) for a discussion of how power became centralized in the UMW.

12 *Cf.* Hodgson and Trbovich v. UMW, 344 F. Supp. 17, 22 (D.D.C. 1972) for a description of how Boyle used the *Journal* as a campaign instrument.

13 The Black Lung Association is an organization of coal miners dedicated to eliminating black lung (pneumoconiosis) as a danger inherent in coal mining.

14 Lipset, *supra* n. 7, at 10.

15 See New York Times, April 2, 1972, IV, at 2, col. 1.

16 See Hodgson and Trbovich v. UMW, 344 F. Supp. 17 (D.D.C. 1972).

17 See New York Times, May 2, 1972, at 28, col. 1.

The motion to intervene named as its applicants the Miners For Democracy and its chairman, Mike Trbovich. The DOL opposed the intervention asserting that it adequately represented the insurgents' interests, and the district court agreed.<sup>54</sup> It denied the motion to intervene on several grounds: First, the applicants did not establish that they would be legally bound by the DOL case, so they could not intervene as a matter of right. Second, the court did not perceive a nexus between the applicants' interest and the DOL suit sufficient to justify permissive intervention. Third, the district court held that the legislative history of the LMRDA reflected a decision by Congress making the Secretary of Labor the exclusive enforcer of the Act's election provisions. The court ruled that granting intervention would amount to denying the Secretary his exclusive position. The Court of Appeals affirmed.<sup>55</sup>

In *Trbovich v. UMW*,<sup>56</sup> the Supreme Court reversed the lower courts. It held that nothing in the language of Title IV or the Act's legislative history could be construed as barring intervention by a union member. Also, the Court determined that the intervention was available as a matter of right, since the plaintiff union member could well have a valid complaint regarding the Secretary's performance. The Court did limit the union member's intervention rights to those Title IV grounds already raised by the DOL suit.<sup>57</sup> In the UMW case, these grounds were broad enough to support the insurgents' action.

The DOL Title IV suit, once again at the district court level, now succeeded in voiding the election.<sup>58</sup> The court, finding that the incumbents had utilized union resources to their own advantage, ordered the DOL to supervise new balloting. The insurgents' intervention had an important effect on the handling of the suit. They were able to introduce key evidence, interrogate witnesses, and call witnesses of their own. Beyond this, the insurgents had standing during the second election to raise in court any deficiencies in its administration.<sup>59</sup>

The new election was held over a period of eight days in early December of 1972. DOL supervision left little room for illegal behavior. With "extra-electoral" methods foreclosed by that supervision, the incumbents were defeated by a margin of over 14,000 votes.<sup>60</sup> The *ad hoc*, political party arising from Yablonski's "insiders revolt" had succeeded; the incumbent administration had been overthrown.

The insurgents filed several suits subsequent to the 1969 election. Two of those were primarily concerned with the holding of fair union elections. One suit was directed at a provision of the UMW Constitution that threatened the potential liberties guaranteed union members in Title I of the LMRDA.<sup>61</sup> Article X, Section 10 of the UMW Constitution provides for disciplining any members who resorts to "dishonest or questionable practices to secure the election or defeat of any candidate for union office." The district court enjoined the UMW from using this provision against campaigning miners. The contested wording was found to be broad, ill-defined, and subject to arbitrary use in conflict with the LMRDA. Moreover, the provision had been used to harass the activities of members opposing the reelection of incumbent Boyle sympathizers in a district election. A second action attacked the trusteeship system in the UMW.<sup>62</sup> The DOL had first moved against this problem in a suit filed on December 16, 1964.<sup>63</sup> This action was brought under an LMRDA provision requiring that the

duration of trusteeships be limited to not more than eighteen months unless the union can show special necessity.<sup>64</sup> The DOL suit, pursued with less than total zeal, dragged on through the Johnson and Nixon Administrations (three Secretaries of Labor served as plaintiffs) and was finally decided on May 24, 1972. The court ruled that the seven districts named in the suit should be freed from the trusteeships imposed on them and that the resulting void in leadership be filled by district elections.

A private suit brought by the insurgents effected the same result in another district (District 2).<sup>65</sup> Although filed about seven years subsequent to the similar DOL suit, the insurgents' reached final adjudication two weeks before. In providing for district autonomy, these two suits redistributed power away from the central office of the UMW. District officials will henceforth be obliged to attend to the rank and file, and not solely to the union's president, if they wish to retain their positions. Moreover, autonomous districts represent potential sources of political opposition within the UMW. The possible repercussions of this redistribution of power are profound.

● Drawing conclusions from a single experience is always risky business. Any of a number of variables could well make it impossible to generalize from the UMW experience. In fact, much has been made over the purported uniqueness of the UMW insurgency. One observer had argued that the following features made the UMW case exceptional:

- 1 homogenous membership,
- 2 regional concentration of the membership,
- 3 the philanthropic appeal of the Miners For Democracy after the Yablonski murders,
- 4 the extensive media coverage given the episode,
- 5 the entry of the Department of Labor into the case, and
- 6 the moral outrage caused by the Yablonski murders.<sup>66</sup>

Upon closer examination, one cannot agree with this analysis. The UMW membership was far from homogenous. The separation between active miners and pensioners was one gulf which played into the hands of the incumbents.<sup>67</sup> Bituminous miners and anthracite miners, deep miners and strip miners, young miners and old miners, each belonged to the same union and each had unique needs and desires. It is true that the UMW's membership is concentrated in the Appalachian area. But one who concludes this is an advantage for campaigning purposes understands neither work patterns in the industry (reaching several dozen miners in one bathhouse, at one mine, at a time is considered a fortuitous occasion) nor the difficulty in getting about the region. Nor was Miners For Democracy the benefactor of philanthropic outpourings of overwhelming proportions. Gifts were received, but without the court ordered opportunity to communicate with the miners via the *Journal*, it is doubtful whether enough funds would have been available to overcome the subsequent dearth of publicity. In the 1972 election, the insurgents' funding was adequate, but hardly unlimited.

The Yablonski murders did add to the media coverage of the second election, but the coverage was not all of the insurgents. The typical slot on network news consisted of back-to-back coverage of both sides campaigning. The moral outrage which the media aroused by covering the Yablonski murders was indeed real. But so, unfortunately, was the fear. If it was easy to condemn the murders and all those implicated in them, it was equally easy to hesitate to engage in the same activity as the ones murdered. The ranks of miners have their share of heroes, but even heroes balk at putting the lives of their wives and daughters in jeopardy.

Although the issue is not altogether free from doubt, I would conclude that the features discussed do not set the UMW experience totally apart from that of other unions. Moreover, having found the institutional framework of the UMW to be congruent with a model of other American trade unions,<sup>68</sup> we can draw some conclusions about the role of private litigation in the union insurgency.

In unions with oligarchic structures, the required periodic election provides an opposition group with two kinds of opportunity. First, the election is an opportunity to unseat the incumbents; second, the election provides an occasion for setting up a political organization in opposition to the established leaders. In the latter case, the ongoing election campaign is only a steppingstone to a future balloting.

An opposition group may employ private litigation during a union election to capitalize on either or both of these opportunities. First, through litigation, the insurgents can attempt to guarantee that the election is fairly conducted. If the first election is not fair, the opposition group can sue to correct the election's injustices. More importantly, it can pressure and assist the DOL investigation. Beyond this, it can lobby, litigate, and act generally to keep the election an issue before the public.

Second, private litigation can promote the growth of an *ad hoc*, opposition party which may be organized during an election campaign for future use. Litigation may be used by insurgent leaders to invoke statutory safeguards for the survival of the budding organization. If this is not done, any slight chance of winning the first election disappears and, any hope of having an organization in future elections vanishes too.

At the same time, union members can invoke through litigation statutory guarantees that can counteract undemocratic forces at work in the organization: trusteeships can be ended, and the use of union funds, facilities, and personnel can be denied incumbents. Finally, Senator Griffin, in speaking of the LMRDA, said it "was designed to guarantee democracy and to prevent corruption, violence, and tyranny within unions."<sup>69</sup> This entire discussion has presupposed a group of dissidents within the union who dared to oppose their leadership. They are persons either with a commitment to the goals cited by Sen. Griffin, a belief in their own ability to lead the union, or, as in the case of Jock Yablonski, both. Without this seed group willing to express its dissatisfaction and challenge entrenched leaders, legal action offers no hope. With this group present, private litigation can, and did in the UMW, provide an important weapon in the battle to achieve a more democratic union.

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52 Rauh, *LMRDA—Enforce It or Repeal It*, 5 Ga. L. Rev. 643, 651 (1971).

53 *Id.* at 651-654.

54 Hodgson v. UMW, 51 F.R.D. 270 (D.D.C. 1970).

55 Hodgson v. UMW, 77 L.R.R.M. 2496 (D.C. Cir. 1971).

56 404 U.S. 528 (1972).

57 Justice Douglas, concurring in the result, dissented on grounds that, "the limited intervention granted by the majority serves neither the purpose of the liberalizing amendments to Rule 24 [Feb. R. Civ., P.], nor the twin purposes of Title IV—to preserve unions from a multiplicity of frivolous election challenges, and also to centralize in a single proceeding such litigation as might be warranted with respect to a single election." 404 U.S. at 540.

58 Hodgson and Trbovich v. UMW, 344 F. Supp. 17 (D.D.C. 1972).

59 In the only other instance where a national or international union had an election set aside by a DOL suit, the National Maritime Union election in 1966, the incumbents in part because of loose supervision by the DOL were returned to office.

60 New York Times, December 17, at 32, col. 1.

61 Semanick v. UMW, District 5, *supra* n. 45.

62 Monborne v. UMW, *supra* n. 46.

63 Hodgson v. UMW, 344 F. Supp. 990 (D.D.C. 1972).

64 LMRDA § 304(c), 29 U.S.C. § 464(c) (1970).

65 Monborne v. UMW, *supra*, n. 46.

66 Union Shake-Up, 11 New Republic (December 22 and 30, 1972).

67 Boyle raised pensions 30% during 1969 campaign to lure pensioners support.

68 See part I *supra*.

69 New York Times, July 14, 1971, at 12, col. 4.

We have seen that oligarchic power in the hands of union officials manifests itself in a large bureaucracy increasing and insulating power at its top, in exclusive control by officials of the formal means of communication within the union, and in near monopoly of political skills within the union possessed by its leadership. None of the five cases altered the size of the UMW bureaucracy, nor were they so intended. All in some fashion were designed to curb abuses of the power found at the union's highest levels. The "reinstatement case", for example, denied the incumbents the power of dismissal in dealing with Yablonski. However, the force of the decision was not strongly felt in the union's lower bureaucratic levels or in the coal fields. Many members and local officers feared that a show of support for the insurgents would result in retaliatory measures from powers within the union. This fear dampened recruitment efforts by the insurgents at the local level. Nevertheless, the symbolic value of denying the union's officers unchecked power in dealing with those members who most conspicuously questioned their authority cannot be discounted.

The incumbents' exclusive control over the union's formal means of internal communication was attacked in two cases. One, the "*Journal* case", sought to guarantee equal coverage of Yablonski in the union organ. The other, the "mailing case", sought to circumvent the *Journal's* monopoly of communication within the union. The "*Journal* case" failed to have much effect. Of course, the court agreed to a point with the insurgents and ordered "fair and comparable treatment" of both candidates. It did not accept the insurgents' argument that the space in the *Journal* should be divided equally between the candidates, however. Worried over First Amendment problems, the court sought to preserve editorial discretion in the *Journal*. The result was that the coverage of the candidates was anything but "fair and comparable". After publication of an issue containing several references to Boyle and only one to Yablonski, the insurgents brought suit claiming that the union was in contempt of the court's earlier order.<sup>41</sup> The court ruled otherwise, noting that the references to Boyle were in his official capacity as president. As a consequence, little regarding Yablonski was communicated in the *Journal* during the entire campaign.

The "mailing case" had a greater impact on internal political communication. With control of the *Journal* firmly held by the incumbents, the mail seemed to the insurgents to be the only way of reaching the miners.<sup>42</sup> Once the court made its ruling, a Yablonski mailing was sent to the miners. However, the insurgents' financial woes made impossible additional mailings. While the "mailing case" did not guarantee the insurgents equal access to the miners, it at least rescued Yablonski from virtual anonymity.

Another feature of union oligarchy is the strong desire of incumbents to remain in office. While this urge is not intrinsically evil, it becomes so when it produces illegal behavior, as in the UMW case. All five suits were directed at the excesses spawned by this desire. It can be argued that private litigation played a role in overcoming this desire by assisting in the ultimate insurgent victory in 1972. Viewed solely in the context of the 1969 campaign, however, one cannot say that the undemocratic manifestations of the incumbents desire to remain in office were overcome by private litigation.

Nor did the private litigation effectively combat the tendency toward rank and file passivity in UMW politics. Of course the cases sought to eliminate obstacles to membership participation—fear of reprisals, lack of information on the issues or candidates, and unquestioning faith in the union leadership. Unfortunately, the "reinstatement case" did not protect the membership from reprisals despite its holding: reprisals were still feared. The "*Journal* case" failed because no substantial information on Yablonski passed to the miners as a result of the order. The "mailing case" was more successful only to the extent that one mailing to each miner could provide adequate campaign information. The "Title V case," through the publicity surrounding its allegations, caused some miners to become skeptical of Boyle, but did not make them flock to the insurgent camp. In short, miners had not engaged in significant political conflict with their leadership in nearly half a century. A few lawsuits of little impact did not significantly alter the situation.

On the whole, then, the five suits brought by Yablonski were largely unsuccessful in combatting the oligarchy at work in the UMW during the 1969 campaign. But this does not complete our evaluation of the litigation effort. It remains to be asked whether this litigation assisted the formation of an organized opposition within the union.

Indeed, private litigation did aid in the formation of an insurgent political organization in two ways. First, it helped to insure that the opposition had a candidate around which to organize. A candidate provides a focus: all who wish changes to occur within their union can come together in a common effort to elect a candidate who will bring about those changes. Losing its candidate denies an opposition party not only its direction, but perhaps its very existence.

The "mailing case" was instrumental in allowing Yablonski to receive the fifty local nominations needed to get his name on the ballot. The court recognized that in the absence of "immediate compliance with plaintiff's request for the distribution of his campaign literature . . . [Yablonski would] be irreparably injured."<sup>43</sup> The mailing was ordered and Yablonski received the fifty nominations necessary. Likewise, the "reinstatement case" was crucial to Yablonski's candidacy. Had he been denied reinstatement to his union office, Yablonski might have been labelled an "outsider" or a "dual unionist". Instead, Yablonski was in a position to project an image of the "insider who had seen the light", thus increasing his credibility as a challenger.

Second, litigation provided the insurgents with their sole feasible means of recruiting union members to their cause. The "mailing case" was again critical. Since travelling conditions in Appalachia were quite rugged, and since the membership otherwise reached from eastern Pennsylvania to Montana, the only practical ways to recruit were through the mail or in the *Journal*. Since the *Journal* was unavailable, mailings to miners constituted the only available method for recruitment. Without the mailing, there would have been no coming together of miners with similar concerns. As a result of the litigation, the insurgent leaders could identify sympathetic miners through their responses to the mailing and create in most areas the rudiments of a campaign organization.

● The attempt to secure a fair election in the UMW through private litigation did not end with the 1969 balloting. Instead, the insurgent organization actively pressured the Department of Labor to bring suit to void the 1969 vote. The suit was brought and the insurgents, dissatisfied with the DOL's efforts to procure a new election, intervened in the case making further allegations against the incumbent leadership.<sup>44</sup> In other related actions, insurgent lawyers guarded the political freedom of union dissidents,<sup>45</sup> and cancelled trusteeship arrangements in a number of districts.<sup>46</sup>

The final tally of the 1969 election was 81,056 for Boyle, 45,872 for Yablonski.<sup>47</sup> Shortly after the election, Yablonski, in a letter to Boyle, expressed his intention to seek union relief for what he felt were election irregularities. By doing this, Yablonski sought to fulfill the statutory requirement of exhausting internal remedies before he filed a complaint with the Secretary of Labor.

Yablonski did not live to take further action. His murder, along with those of his wife and daughter, was discovered on January 5, 1970, about a month after the election. Almost immediately, the DOL expressed its willingness to review UMW affairs. In a few days, Secretary Schultz declared his intention to investigate the UMW election from top to bottom.<sup>48</sup>

After Yablonski's murder, the insurgent campaign organization, led by Joseph Rauh (his chief attorney), Mike Trbovich (his campaign manager), and Kenneth and Joseph "Chip" Yablonski (his sons, also attorneys), kept constant pressure on the DOL. At the same time, members of the organization were the key witnesses in the Senate hearings on the election.<sup>49</sup>

The DOL investigation resulted in a decision to file suit against the UMW to set aside the election.<sup>50</sup> The DOL Title IV suit to set aside the election contained the following allegations:

- 1 the union had failed to provide adequate safeguards for a fair election,
- 2 Yablonski observers were denied entrance to some polling places,
- 3 the union violated provisions of its constitution,
- 4 secret balloting was not provided for in all polling places,
- 5 some members were denied an opportunity to vote,
- 6 money from dues was used to promote Boyle's candidacy, and
- 7 the union failed to keep public financial records.<sup>51</sup>

Attorney Rauh stated that this suit was more interesting for what it failed to allege than for what it did allege.<sup>52</sup> Rauh felt the suit omitted: evidence of violence against Yablonski, an allegation that Boyle had increased miners' pensions mid-campaign to aid his reelection bid, charges questioning the legality of some six hundred locals composed almost entirely of pensioners contrary to the union Constitution, and charges concerning paid employees campaigning for Boyle.<sup>53</sup> These omissions brought the insurgents to file a motion to intervene in the DOL suit. Rauh thought he had a strong case for setting aside the election, but did not feel the DOL was adequately presenting it.

41 Yablonski v. UMW, 307 F. Supp. 1226 (D.D.C. 1969).

42 The geographical location of the coal fields precluded reaching miners in large numbers through direct contact. Hundreds of small mines scattered throughout extremely rugged terrain present immense problems to a candidate. In some unions, candidates can reach thousands of the rank and file by standing at one factory gate. The UMW does not afford this luxury.

43 71 L.R.R.M. at 2606.

44 Trbovich v. U.M.W., 404 U.S. 528, *rev'g* Hodgson v. UMW, 77 L.R.R.M. 2496 (D.C. Cir. 1971).

45 Semancik v. UMW, District 5, 324 F. Supp. 1292 (W.D. Pa. 1971), *aff'd* 466 F.2d 133 (3rd Cir. 1972).

46 Monborne v. UMW, 342 F. Supp. 718 (W.D. Pa. 1972).

47 New York Times, December 12, 1969, at 106, col. 1.

48 New York Times, January 9, 1970, at 1, col. 7.

49 See *Hearings on Investigation of Mine Workers' Election Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 91st Cong., 2d Sess. (1970).

50 See New York Times, March 6, 1970 at 1, col. 8. The suit filed by the DOL reached final adjudication as Hodgson and Trbovich v. UMW, 344 F. Supp. 17 (D.D.C. 1972).

51 See New York Times, March 6, 1970 at 1, col. 8.

● Congress attempted to guarantee some of the conditions essential to fairness in union operations with the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).<sup>18</sup> The Act's six titles, respectively, deal with: 1) rights guaranteed union members, 2) reporting obligations of unions, 3) rules governing the imposition of trusteeships, 4) guarantees for fair union elections, 5) fiduciary duties owed the union, and 6) miscellaneous provisions. The provisions of Title IV require in part, that elections be held in national and international unions at least once every five years; that unions mail campaign literature from bona fide candidates to the membership at their expense; that union membership lists be used in a non-discriminatory manner during an election campaign; that any candidate be permitted observers at election polls; and that no union money be used to promote any candidacy for union office. To enforce these provisions after an election, an aggrieved member must first seek a remedy within the union, and if that fails must next complain to the Secretary of Labor. The Secretary is then required to investigate the complaint and, depending on his findings, he has the power to file suit to set aside the election.<sup>19</sup>

Although Title IV is primarily enforceable through the authority granted the Secretary of Labor,<sup>20</sup> much of the Act may also be enforced through civil actions brought by union members. Additionally, candidates may under Title IV bring suit prior to an election to enjoin illegal use of union facilities in the distribution of campaign materials.

The LMRDA is thus a basic resource for those seeking to promote fairness in union elections. Its provisions are meant to be used by a group of "outs" in a systematic campaign in both courts and administrative departments. This utilization presupposes that an organized opposition exists within the union. The fact is, however, that no such opposition exists within most American labor unions and certainly none existed within the UMW at the time of Yablonski's announcement.

Fortunately, the 1969 election campaign itself provided the opportunity for an opposition political organization to arise within the UMW. For one thing, an election is the only accurate way to measure disillusionment within a union. So, it was not until the 1969 election that coal miners found out that at least one of every three in their ranks opposed Tony Boyle as president. Perhaps this showing by a significant minority in the election first made Boyle appear vulnerable to the rank and file.

Beyond this, the 1969 election provided an opportunity for an opposition party, dedicated to removing Boyle, to form within the UMW. It later was to formalize its existence as the Miners For Democracy.<sup>21</sup> For the first time, dissident individuals within the union communicated. Ideas were exchanged and policies formed. There was now a vehicle available to miners who wished to join the drive to oust Boyle. The first election thus served a primary purpose: it turned the Yablonski "insiders' revolt" into a recognizable alternative to the incumbent administration—a functioning opposition party. This opposition group orchestrated the litigation campaign which shall now be discussed.

● Five suits were brought in Yablonski's behalf during the 1969 election campaign. All five named the UMW and its officers as defendants. These cases were designed to accomplish the following:

1. reinstate Yablonski to the union position from which he was dismissed by Boyle shortly after he announced his candidacy;<sup>22</sup>
2. prevent discriminatory use of the pro-Boyle *United Mine Workers Journal*;<sup>23</sup>
3. require the union and its officers to comply with Yablonski's requests to have his campaign literature sent to union members;<sup>24</sup>
4. ensure a fair election through compliance with election rules;<sup>25</sup> and
5. seek return to the union of money allegedly misspent by the incumbent officers.<sup>26</sup>

Assessing the impact of the litigation requires a more detailed account of the actions themselves.

The action brought to have Yablonski reinstated as Acting Director of Labor's Non-Partisan League (the "reinstatement case")<sup>27</sup> ended successfully two months after he was dismissed. About one week following his May 29 announcement, Yablonski had received a letter from Boyle dismissing him from his union post. The only reason given, that Yablonski was not spending enough time on the job, was refuted in court. Judge Corcoran ruled that the union's officers had committed an act of political reprisal in removing Yablonski. This was in violation of an LMRDA provision<sup>28</sup> so a preliminary injunction was issued ordering Yablonski's reinstatement.

The second action (the "Journal case")<sup>29</sup> brought by the insurgents sought relief from the use of the *United Mine Workers Journal* as a campaign instrument for Boyle. It also resulted in a preliminary injunction. In the editions of the *Journal* issued from the date of Yablonski's announcement of candidacy (May 29, 1969) to the date the suit was filed (August 26, 1969), there appear 166 references to Boyle, most in bold-faced type, as well as 26 pictures of Boyle. There were no references to Yablonski except for the report on nominations of candidacy for office. The court sought to remedy this gross disparity and ordered "fair and comparable treatment of both candidates" in the *Journal* from that point forward.

Yablonski's attempt to enforce his right to have the union send his campaign material to the membership at his expense (the "mailing case")<sup>30</sup> was likewise successful. The issue was whether Yablonski was a "bona fide candidate" for union office. If so, he was guaranteed a right to the mailing by the LMRDA.<sup>31</sup> The UMW Constitution defines "bona fide candidate" in terms of one's qualification for a place on the ballot, and requires the endorsement of fifty locals before a candidate so qualifies.<sup>32</sup> The question became whether the definition of the statute's use of "bona fide candidate" was to be provided by the union or by the court. The union argued that since Yablonski was not "bona fide" until he received the local nominations, he need not be afforded the mailing rights until that time.

Yablonski replied that his candidacy was misunderstood in the coal fields, and that he might not receive the fifty local nominations if he could not make the mailing. Denying him access to the miners could end his candidacy altogether.

The court ruled against the union. The statute's use of "bona fide candidate" was held to possess a meaning broader than that of the phrase in the union's constitution. Yablonski was entitled to the rights and privileges in Title IV since he was "actively seeking both nomination and election." "The fact that he [Yablonski] has not yet been nominated by fifty local unions does not . . . prevent his being a 'bona fide candidate'." <sup>33</sup> The court therefore ordered UMW compliance with reasonable requests from Yablonski to mail his campaign literature at his expense.

The fourth suit asked the court to impose upon the union a set of rules for conducting the election. The "fair election case" <sup>34</sup> resulted in a denial of Yablonski's motion for a preliminary injunction. The court, relying in large part on "representations of action to be taken [in conducting the election] made by counsel for the union," <sup>35</sup> hesitated to enter deeply into union affairs. To remedy specific wrongs was one thing; to rule that the union's incumbent officers would not permit a fair election at all was entirely another. Judicial hesitation was increased by the promises made by the UMW counsel. The votes would be cast by secret ballot; permission for Yablonski observers to be stationed at polling places was granted; the use of absentee ballots only when the prospective voter would indeed be absent was guaranteed; and a letter from the central office to all district secretaries describing the proper election procedures to be followed would be sent. <sup>36</sup>

Finally, only days before the election, Yablonski filed a suit seeking return to the union of funds misspent by the incumbent UMW officers (the "Title V suit"). <sup>37</sup> The suit was brought under Title V of the LMRDA which deals with fiduciary duties owed the union. Two of the suit's allegations related to the election. The incumbents were accused of "diverting union funds, property and resources to reduce the strength of their internal opposition and increase their own power within the union" and of "diverting union funds and resources to advance their 1969 re-election efforts." <sup>38</sup> Specific claims included using union funds to hire campaigners, buy off dissidents by adding them to the union payroll, campaign via the *UMW Journal*, disrupt Yablonski rallies, act as loans to sympathetic districts, and discriminate against potentially unsympathetic districts at the union's conventions. <sup>39</sup> Other allegations dealt with the incumbents' use of union funds for personal gain. <sup>40</sup> The UMW in this suit was cast in the role of a defendant. By doing this the insurgents hoped that they could force the union to exert its rights against the old officers. The Miller administration is now contemplating switching the role of the UMW to that of plaintiff and continuing the attempt to have returned to the union funds allegedly misspent by Boyle and members of his administration. Final adjudication of the "Title V suit" has not yet occurred.

● We can assess the impact of these cases from two perspectives: First, we can ask to what extent the litigation counteracted the oligarchical tendencies in the UMW during the 1969 campaign. Then, we can investigate the ways in which the litigation enabled the insurgents to continue their struggle in an organized form after their losing effort.

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- 18 Labor-Management Reporting and Disclosure Act of 1959 § 1-611, 29 U.S.C. § 401-531 (1970) [hereinafter referred to as the Act or the LMRDA]. The LMRDA is also known as the Landrum-Griffin Act.
- 19 In order for the Secretary to file a suit: "it [DOL] must have made a finding that a violation occurred, failed to reach an informal agreement with the union, determined that the violation may have affected the outcome of the election, and decided that the case is suitable for litigation." Note, *Union Elections and the LMRDA: Thirteen Years of Use and Abuse*, 81 Yale L.J. 409, 499 (1972).
- 20 For a brief summary of the enforcement provisions of the LMRDA, see Silberman and Driesen, *The Secretary and the Law: Preballoting Investigations Under the Landrum-Griffin Act*, 7 Ga. L. Rev. 1, 4-6 (1972).
- 21 The creation of the Miners For Democracy was announced in Washington on February 6, 1970. See New York Times, February 7, 1970, at 30, col. 1.
- 22 Yablonski v. UMW, 71 L.R.R.M. 3041 (D.D.C. 1969).
- 23 Yablonski v. UMW, 305 F. Supp. 868 (D.D.C. 1969).
- 24 Yablonski v. UMW, 71 L.R.R.M. 2606 (D.D.C. 1969).
- 25 Yablonski v. UMW, 72 L.R.R.M. 2687 (D.D.C. 1969).
- 26 Yablonski v. UMW, C.A. 3436-69 (D.D.C. Filed on December 4, 1969). See New York Times, December 5, 1969 at 37, col. 1.
- 27 See note 22 *supra*.
- 28 LMRDA § 609, 29 U.S.C. § 529 (1970) provides: "It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of Section 102 [permitting civil suits to be brought by members denied the rights guaranteed in Title I of the Act] shall be applicable in the enforcement of this section."
- 29 See note 2B *supra*. This suit was brought under LMRDA § 401(c), 29 U.S.C. 481(c), which provides in part: "[national or international labor organizations must] . . . refrain from discrimination in favor or against any candidate with respect to the use of lists of membership . . ."
- 30 See note 24 *supra*.
- 31 LMRDA § 401(c), 29 U.S.C. § 481(c) provides, in part, that a union must: "comply with all reasonable requests to any [bona fide] candidate to distribute by mail or otherwise at the candidate's expense campaign literature . . . to all members in good standing . . ."
- 32 United Mine Workers of America Constitution, Article XI, Section 6.
- 33 71 L.R.R.M. at 2606.
- 34 See note 25 *supra*.
- 35 *Id.*
- 36 See New York Times, November 7, 1969, at 17, col. 1.
- 37 See note 26 *supra*.
- 38 115 Cong. Rec. 36915-36918 (1969).
- 39 *Id.* at 36916-36917.
- 40 *Id.* at 36915-36916.