

AN AMERICAN POLITICAL PRISONER DON BLANKENSHIP

*"At the establishment of our constitutions,
the judiciary bodies were supposed to be
the most helpless and harmless members of the
government. Experience, however, soon showed
in what way they were to become the
most dangerous."*

THOMAS JEFFERSON



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Preface



Over the past thirty years I have been threatened with death several times: had urine thrown on me: had eleven bullet holes shot into my office: had two cars smashed with ball bats and clubs while I was in them: been continually lied about: been the subject of several false books: been branded with multiple derogatory names: been sued numerous times: been slandered on national television many times: been subjected to continued ridicule by newspapers: been falsely accused of causing the Upper Big Branch (UBB) tragedy: been falsely arrested: endured a trial where I faced thirty years in prison for made up charges, and been put in federal prison for a misdemeanor.

This booklet is the right thing to do. It is the right thing to do because all Americans deserve a fair trial, and not one like I had. It is right to do this booklet because coal miner safety is more important than political correctness.

Lies about accidents and improper prosecutions are serious matters, as they prevent worker safety improvements and deprive people of their basic human rights.

This booklet is about freedom of speech and the right to a fair trial.

Background

My name is Don Blankenship. I prepared and distributed this booklet in order to reveal that our justice system is broken and how our government has not told the truth about a West Virginia coal mine explosion that it may have caused. The story is a little complex, and telling it from prison without a computer and without much documentation has not been easy. But it is a story that Americans need to know. The story is unique in that it involves a government cover up, a false prosecution, politics, a mine explosion, and that it results in an American Political Prisoner serving time in a federal prison for a misdemeanor conviction. The case has the potential to cause a major increase in the criminal liability associated with normal American executive decision making.

On April 5, 2010 there was a massive explosion at a coal mine by the name of Upper Big Branch (UBB). The mine was located in the town of Naomi in southern West Virginia. The coal mine's parent company was Massey Energy (Massey). At the time I was Chairman and Chief Executive Officer of Massey. Twenty-nine miners died in the explosion and another was seriously injured.

I was indicted on November 12, 2014 and charged with conspiring to willfully violate mine safety laws, falsifying Securities and Exchange Commission filings and issuing a false press release. The charges carried a maximum sentence of 30 years in prison.

Under the conspiracy charge, the jury was also asked to decide whether there was an intent to defraud the United States. If the jury

believed there was such an intent, it would be a felony conviction and subject to five years in prison. But if the jury concluded there was not an intent to defraud the United States, the charge would be a misdemeanor, carrying a maximum sentence of one year in prison and a \$250,000 fine.

My trial began October 6, 2015 and lasted 27 days. The Jury then deliberated for two weeks before reaching a verdict. I was found not guilty of all felonies, and guilty of the misdemeanor. The government argued that none of the charges were related to the explosion, so the defense was not allowed to present any evidence as to the cause of the explosion. The trial Judge, Irene Berger, sentenced me to the full maximum: one year in prison, a \$250,000 fine and one-year probation.

I am now in the Taft Federal Correctional Institution in Taft, California.

This booklet will illuminate three truths:

- The real cause of the explosion
- The facts about my indictment and prosecution
- My long history of working to advance the safety of coal miners

The explosion was triggered by natural gas, and not “propagated” by coal dust, as was cited by the federal government’s Mine Safety and Health Administration (MSHA). The truth that the cause was natural gas is exposed by common sense, an expert opinion, and a prosecution witness. MSHA blamed coal dust in order to shift the blame from themselves to the coal miners, and the prosecution then essentially attempted to shift the blame from the coal miners to me. The truth is that the only thing that might have prevented the explosion was more airflow, and as you will learn from this booklet, MSHA themselves forced the miners to reduce their airflow just days before the explosion.

In this booklet, I also share the truth regarding my prosecution. The prosecutors violated numerous federal policies and ethics codes. They did everything they could to ensure my conviction, despite knowing I was innocent of the charges against me. They displayed no regard for the Constitution, ethics, or fairness. Nepotism, bias, politics, and a desire for personal gain drove their actions. Ca-

reer politicians assisted the prosecutors as best they could by publicly declaring me guilty before any investigation, and then again before trial.

This booklet also illuminates the truth about my focus and approach to mine safety. While the government claimed at trial that I did not care about miner safety, the truth is that I was the most prolific innovator of coal mine safety advancements in the industry for over 25 years. You will learn this from statements near the back of the booklet, from people that know me and know coal mining. MSHA now touts my innovations on their website and requires them throughout the industry. MSHA shows a picture on their website of the proximity device I first conceived, and tout how it will save lives. Jim Brock, who worked for me for years, is in the picture.



MSHA website photo of Jim Brock and Proximity Device



MSHA head Joe Main wearing reflective clothing in a mine.

You can see Jim's comments about me in the section titled "Coal People Who Know Don Comment on His Safety Focus." MSHA even produced a safety training video in 2005 on the reflective clothing and other apparel I first brought to the industry. My latest innovation, an improved and safer coal mine helmet, is just now beginning to be used in the mining industry.

The contrast between the truth and the Government's false claims and false investigation report is breathtaking. The "drama media" has simply propagated the lies the government has told without the discomfort of any independent thought.

I never conspired to violate mine safety laws and no one at my trial testified that I did. Yet today I am in prison for a first time misdemeanor. I am the only person here serving time for a misdemeanor, according to prison staff.

Poster Child Case

The US Government's indictment of me is the "Poster Child" case of what is wrong with the American judicial system. The case was riddled with judicial misconduct.

The charges against me were a by-product of MSHA lying about what caused a coal mine explosion in West Virginia on April 5, 2010. But that lie was only the beginning.

There was misconduct by prosecutors, judges, law clerks, and the FBI, as well as President Obama, Senator Joe Manchin, and the head of the Mine Safety and Health Administration.

My case was overseen by a US Attorney who wanted to be Governor of West Virginia and planned to use my conviction to aid his campaign. The assistant prosecutor had a propensity for lying. And the trial judge was so determined to help the prosecution prevail that she allowed newspaper articles to be included as criminal evidence.

The indictment included charges that a member of the prosecution said on television, were brought for "tactical" reasons -- and not because they were crimes they believed I had committed.

The lead Prosecuting Attorney's father is one of the five judges who sits on the bench in the federal district where the case was tried. This is a clear conflict of interest, and grossly violates the

separation between the Executive Branch and the Judicial Branch of our government. It's bad enough that prosecutors and judges work in the same courthouse, but its far worse when they are father and son. And there are more clear conflicts of interest. Years before my trial, one of the trial judge's law clerks had published an article saying that I was guilty and should be imprisoned.

One of the indictment charges was "conspiring to willfully commit mine safety violations," but the mine never had received a "willful" mine safety violation. All the violations were "non-willful."

MSHA refused to comply with a Federal subpoena ordering them to turn over emails regarding the UBB mine during the indictment period. No emails were provided for the timeframe before the explosion, and only a few for after the explosion. It is not believable that there are only a few emails. A former MSHA employee testified, at trial, that he and all MSHA inspectors routinely used email.

That same key prosecution witness testified that the secretary of the MSHA district ventilation specialist told him that the specialist may have destroyed documents related to the exploded mine shortly after the explosion. The FBI testified at trial that they knew of this claim but chose not to investigate it. The prosecution witness also testified that MSHA forced the mine to reduce its air-flow shortly before the explosion, despite his begging them not to.

The prosecutor argued for harsher treatment of me because I used my free speech rights, and he said that "troubles" the United States. The judge agreed, and imposed unconstitutional restrictions on my freedoms pending trial. Restrictions which were justified, based on my exercise of my First Amendment rights.

Finally, despite all of this, I was acquitted of all three felony charges but convicted of a single misdemeanor charge. What happened then? I was ordered to report to prison before my appeal

could be heard. The prosecutors then went on national television and said I ran a "criminal enterprise" and was like a "drug kingpin."

The misdemeanor conviction is that I caused the violations because I did not budget enough miners to work at the mine. There is no such law.

The charge I was convicted of does not even allege that I conspired to commit any specific mine safety violations. The prosecution says that I basically committed "any violation that would increase profits." Again, the prosecution assertion was simply that if I had budgeted more miners there would have been fewer "non-willful" violations. They say the failure to budget enough miners means that these were actually "willful" and criminal violations. No one has said how many more miners were needed, nor how many violations would have been avoided, or which specific violations would have been prevented.

I am not only innocent of the claim I conspired to commit willful violations; the government is guilty of conspiring to make up a law in order to imprison an innocent American. I am an American Political Prisoner.

next:

A SHORT OVERVIEW WITH MORE DETAILS

Overview

You may know me as “The Dark Lord of Coal Country” if you read Rolling Stone magazine, or a man who “has blood on his hands” if you follow what West Virginia Senator Joe Manchin has said. When “60 Minutes” profiled me, after I was found not guilty of all three felony charges, they quoted Assistant U.S. Attorney Steve Ruby saying that I headed a “criminal enterprise.” The former U.S. Attorney Booth Goodwin then described me as a “drug kingpin.”

Hillary Clinton has said I “got off easy.” President Barack Obama was likely referring to me when he said about the UBB mine tragedy before any investigation, “The tragedy was triggered by a failure at the Upper Big Branch Mine – a failure first and foremost of management.” Kevin Stricklin, the Administrator of the Mine Safety and Health Administration (MSHA), was likely thinking of me when he said in an email to all MSHA District 4 employees “I want all of you to know that the mine operator blew up the mine, MSHA didn’t.”

Have you ever seen a United States President declare who was at fault for a tragedy before an investigation? Or the head of a government regulatory agency proclaims who caused an accident and who did not, even before beginning an investigation?

Keep in mind as you review this material that the quotes from my critics, and my supporters, are verbatim. I have not altered their language in any way. You may want to pay particular note to who is making some of the statements. A key prosecution witness and a MSHA manager, coal miners, company presidents, and a former United States Ambassador, a doctor of mining engineering and others.

The description of the explosion comes from a person the company paid to investigate the accident. He voluntarily wrote what you will read here because, he said “I want the truth about UBB to be known.” You will want to read his credentials, as well as his explanation of the explosion.

The descriptions of how far the government has gone to prosecute me was written by my defense attorneys – but it is not mere opinion—it’s drawn almost entirely from court records and public statements by others.

next:

AN EXPLANATION OF WHY DON IS TODAY AN AMERICAN POLITICAL PRISONER

“American Political Prisoner?” Explained

How, you might ask, does my being in prison for allegedly conspiring to willfully commit mine safety violations following a coal mine explosion translate into my being a “political prisoner”?

To answer that question requires going back to 1985. That’s when I was managing a group of coal mines in a little West Virginia town called Rawl, which is just three miles from a town called Matewan. The Matewan area is famous for being the site of the Hatfield - McCoy Feud.

Matewan is also famous for an event called the Matewan Massacre of 1920. The massacre occurred when a company tried to evict striking miners from company owned homes. There was a shootout between company security guards, the local sheriff, and supporters of the coal miners. In short, Matewan and Rawl have strong and deep United Mine Worker union roots.

In 1985 the United Mine Workers of America (UMWA) went on strike at the Rawl coal mines I was managing. A Fluor Corporation/Shell Partnership which owned the Rawl mines were intending to shut them down (which was the fate of many mines where there were UMWA strikes.)

A shutdown of the Rawl mines would have meant hundreds of job losses in the Matewan area. Therefore we, as local managers, decided that we should attempt to run the mines with salaried and

replacement workers instead of going out of business. We convinced the “Partnership” to allow us to do so.

The strike at Rawl quickly became violent. The UMWA posted signs that said “kill ‘em all and let God sort them out.” Ninety-one non-union workers were injured by the striking miners; many were hospitalized. Three truck drivers were shot in the back, but survived. Non-union miners’ homes were shot into; one miner’s wife was shot. One non-union driver trucking for another coal company in the area was shot 27 times by union members. He did not survive. The President and the Vice President of the UMWA, Richard Trumka and Cecil Roberts, respectively, held rallies in the area which inflamed the violence.

The company fully prevailed after a bitter 15-month strike, and the coal mines emerged free of union control. The coal industry’s attitude toward labor was completely changed. With the defeat of the UMWA, new non-union mines opened up throughout the area. The local economy prospered for the next twenty-plus years. The UBB miners voted twice to reject UMWA representation during this time despite 67% of them having previously been UMWA members.

The parent company named me Chief Operating Officer at Massey in 1990 – four years after the “Rawl Strike.” Later I was named Chairman of the Board of Directors. Massey Coal went public and was listed on the New York Stock Exchange in 2000. The disdain for me by the UMWA had been set in stone by the 1985 strike. The union’s total defeat marked the start of the UMWA’s demise, and today it is a shadow of what it once was. Richard Trumka was no doubt embarrassed that in order to settle the Rawl strike and salvage what he could, he had agreed to the firing of nearly 100 UMWA members. The first such firing since the Matewan Massacre more than sixty years before.

Richard Trumka was President of the UMWA in 1985. He is now President of the AFL-CIO, and he likes to brag that he is the most frequent visitor to the Obama White House (see “AFL-CIO

Trumka in WH 2-3 times a week” on YouTube). He has also been one of President Obama’s biggest campaign fund raisers. After having worked most of his life for the UMWA, Joe Main now heads MSHA.



President Obama looks at UBB map in the Oval Office on April 15, 2010 with, from left, MSHA Administrator Kevin Stricklin, Assistant Secretary of Labor for Mine Safety and Health Joe Main and others.

It is no surprise that President Obama, after meeting with MSHA Chief Joe Main (lifetime UMWA employee) would declare that the “tragedy was first and foremost a failure of management.” It is also no surprise that MSHA and the UMWA’s investigations conducted over the next several months “after” the President’s statement would confirm the President’s declaration.

As Massey Energy grew, it became a bigger and bigger target of not only the UMWA, but also of the environmental groups, the liberal media, personal injury lawyers, and career politicians. The continual slanderous attacks on the company, which were relentless and reckless, were increasingly focused on me. Politicians began to frequently express their dislike for, or disassociation from, me in their television political ads.

As the largest coal mining company in the region between the late 1990’s and 2010, and the only one that was growing, Massey Energy was rightfully concerned about a number of issues: the litigious nature of West Virginia, the consistently negative media, the TV ads politicians ran against me personally, and environmental groups focusing on Massey’s surface mine operations. As a lifetime resident of the area and West Virginia, I was concerned as well.

In 2004 I began using my own money on efforts to improve the political and economic landscape. West Virginia ranked last in most state business environment rankings, and the climate around litigation earned it a perennial top spot on the Judicial Hellholes

list. West Virginia Supreme Court Justice Warren McGraw was my first target because he was an activist anti-business Judge. There was a movie made about his first campaign for State Senate called “If Elected,” and Forbes magazine had put him on their cover with the accompanying story headlined, “Buying Justice.” McGraw came from a prominent political family—his brother Darryl had previously been on the State Supreme Court before becoming Attorney General—and he (Warren) was considered politically unbeatable. The first survey I had taken showed Warren leading his opponent, Brent Benjamin, by 50 percentage points (63-13) with the rest undecided.

It shocked the West Virginia political establishment that the campaign I funded to defeat McGraw was successful. It was the first time a Republican was elected to the State Supreme Court in over 80 years. McGraw’s defeat delivered a big benefit to West Virginians. Automobile and other insurance rates declined as insurance companies re-entered the West Virginia market. As a result, West Virginia citizens have saved hundreds of millions of dollars.

Immediately after the win in the State Supreme Court election, I opposed a proposal by then-Governor Joe Manchin to levy a new additional tax on coal produced in West Virginia. But the tax became law—with support by the West Virginia Coal Association—and it has cost West Virginia coal companies nearly \$1 billion. Many of those coal companies are now bankrupt.

Later in 2005, I was also involved in two other significant political battles, and a lawsuit. First, I campaigned against a state plan to issue \$5.5 billion in state bonds to fund the West Virginia state pension funds. A public vote was required to indebt the state. In my view, defeating the bond was critical to forcing the politicians to be frugal. The bond measure was defeated, despite then-Governor Joe Manchin making every effort to pass it and even running ads directly against me and my effort. The state has since been able to keep the pension fund solvent without the bond.

I also funded a campaign to repeal the sales tax on food, since the state had a large budget surplus. This effort started the pressure on

the politicians, and they gradually reduced the tax. By 2013, it had been eliminated.

The company also filed a lawsuit against Governor Joe Manchin for rescinding a mine permit for a mine where construction work had already begun. This is the same Joe Manchin who was angry about my campaign to defeat his bond issue. The same Joe Manchin that acknowledged, on video, four years after the UBB explosion, that he had not heard that natural gas was present at the time of the explosion – a fact that is even in the government’s investigation report, though somewhat hidden. The same Joe Manchin who now says I have “blood on my hands.”

The company also sued the State of West Virginia in about 1992 to repeal a law that legalized trespassing on private property during a labor strike. The UMWA used this law to legally come on to company property during violent strikes. The lawsuit was successful, and the state had to repeal the law and pay the company several hundred thousand dollars in retribution. This, of course, infuriated Richard Trumka and Cecil Roberts.

I also involved myself in other state elections. In 2006 I led an effort to put a Republican on every ticket in the West Virginia House of Delegate races. Previously, many Democrats ran unopposed. Despite 2006 being a poor year nationally for Republicans, the party’s candidates for the state’s House of Delegates received an all-time high number of votes for an off-year election. At the time, Democrats held 68 house seats out of 100, and 21 Senate seats out of 34. Today, Republicans have majority positions in both houses.

My political involvement didn’t stop there. On Labor Day of 2009, I organized the *Friends of America* rally which brought almost 100,000 people to a mountaintop mine site in southern West Virginia to protest President Obama’s “war on coal.” The crowd is said to have been the largest single gathering at a one-day event in West Virginia history. Attendance dwarfed that of a Democratic rally at another site in West Virginia featuring John Kerry that same day.

In the fall of 2014, I produced a documentary called “Regcession,” which explained how the jobs of American workers (and America itself) were being destroyed by its own government and by the nonsensical regulations that it spews out. I also paid to have “Regcession” aired on statewide television in West Virginia several times.

The above actions and others labeled me, as Assistant Prosecutor Steve Ruby put it, as someone who has a history of spending money in unorthodox ways to sway public opinion, and it “troubles the United States.” The statement is actually in court records.

My efforts to take the chains off of West Virginia’s economy were so successful that a bill passed the West Virginia legislature to change the state election laws. The bill was referred to by career politicians and the media as the “**Don Blankenship bill.**” It was essentially a bill designed to reduce my ability to use my freedom of speech rights to influence West Virginia elections.

The media and the politicians like to make me out to be a bad guy. You will be able to compare what the politicians say about me with what people who have known me most of my life say about me. It’s quite a contrast.

You can be sure I am fully innocent. In fact, more than 100% innocent. I spent my life improving coal miner safety and exercising my right to free speech. I was not involved in any conspiracy to commit mine safety violations. But I have been involved in trying to bring opportunity to West Virginians. The real conspiracies were the government’s cover-up of the UBB truth and my prosecution.

It’s noteworthy that the lead prosecutor, Booth Goodwin, is the son of one of the five Federal District Judges, Judge Joe Bob Goodwin. Judge Goodwin is also a former Chairman of the West Virginia Democratic Party.

next:

WHAT CAREER POLITICIANS SAY ABOUT THE AMERICAN POLITICAL PRISONER

What Government Officials Say

*You can see the comments on video and on documents
at www.DonBlankenship.com*

President Barack Obama, April 15, 2010, before investigation began:

- “But we do know that this tragedy was triggered by a failure at the Upper Big Branch mine – a failure first and foremost of management.”

Senator Joe Manchin, April 2, 2014

- “I believe this permeated from the top down – from Don Blankenship down. I believe that Don has blood on his hands.”

MSHA Administrator Kevin Stricklin, April 13, 2010, before investigation began:

- Email to all MSHA District 4 Employees: “I want all of you to know that the mine operator blew up the mine, MSHA didn’t”

US Attorney Booth Goodwin, 60 Minutes Interview March 6, 2016; after Don was found not guilty of all felony charges:

- Don Blankenship is comparable to a “kingpin of a drug ring”

Assistant Attorney Steve Ruby, 60 Minutes Interview March 6, 2016; after Don was found not guilty of all felony charges:

- Former CEO Don Blankenship and Massey Energy “ran a criminal enterprise”

Assistant US Attorney Steve Ruby:

- Don Blankenship has a history of spending money in unorthodox ways to sway public opinion and it troubles the United States. (As justification for pre-trial release terms.)

Presidential Candidate Hillary Clinton, May 3, 2016 as she travels coal county with Senator Manchin:

- Don Blankenship got off easy . . . “Blankenship received only one year in jail, however, because violations of the act are only misdemeanor charges.”

Refer to “Coal People Who Know Don Comment on his Safety Focus” near the back of this booklet. See the contrast of opinions between these career politicians and people who know Don Blankenship.

next:

HOW DON WAS RAILROADED BY THE PROSECUTION

“The Railroading Prosecution of Don Blankenship”

As told by my Attorneys

The government’s investigation into the explosion at UBB was never a search for the truth.

- Just days after the UBB explosion, and before any investigator had even gone underground, Kevin Stricklin, MSHA’s coal mine safety and health administrator, sent an e-mail to all MSHA employees in coal District 4 declaring: “I want all of you to know that the mine operator blew this mine up, MSHA didn’t.”
- A couple days later, still before any real investigation had begun, President Obama publicly declared from the Rose Garden that the tragedy was “triggered” by “a failure first and foremost of management,” and that the “[o]wners responsible for conditions in the Upper Big Branch mine should be held accountable for decisions they made and preventative measures they failed to take.”
- Shortly thereafter, MSHA—in a departure from standard practice—advised Massey that the company was going to be excluded from participating in the agency’s investigation into the cause of the explosion.

The prosecutions that arose out of the government’s criminal investigation reveal the lengths taken by former U.S. Attorney Booth Goodwin and Assistant U.S. Attorney Steve Ruby to try to manufacture a case against Mr. Blankenship.

- For example, former Massey resource group president David Hughart pleaded guilty to purported mine safety offenses at another Massey mine after Massey itself provided the U.S. Attorney's Office with information that he had solicited kickbacks from a Massey contractor, that he had sold Massey equipment and pocketed the proceeds, that he had sold Massey coal and pocketed the proceeds, and that he had otherwise stolen from the company. He admitted to prosecutors that he had committed those four schemes against Massey, that he had lied to FBI and IRS agents about it, and that he had filed false income tax returns. In addition, the day before Mr. Hughart met with prosecutors to discuss his plea, he was arrested for purchasing 120 Opana pills, a prescription narcotic pain reliever, that he admitted he intended to distribute. Instead of prosecuting Mr. Hughart for the stealing schemes, the false statements, the tax evasion, and the drug offenses to which he admitted, and which carried a combined maximum sentence of more than 30 years, Booth Goodwin and Steve Ruby offered him a deal to plead guilty to purported mine safety offenses that carried a maximum sentence of six years and to cooperate in the government's on-going investigation. Mr. Hughart testified as a government witness at Mr. Blankenship's trial.
- The only individual, other than Mr. Blankenship, prosecuted for alleged mine safety offenses at UBB was Gary May, a former mine foreman and superintendent there. Mr. May agreed to plead guilty to one count of conspiracy to defraud the United States by impeding the functions of MSHA at UBB—a charge for which Mr. Blankenship was acquitted—after prosecutors threatened to prosecute his wife on unrelated charges but agreed not to prosecute her if Mr. May pleaded guilty. That bargain is actually written into Mr. May's plea agreement. After pleading guilty, Mr. May vigorously asserted his innocence in court filings. Needless to say, the government did not call Mr. May as a witness at Mr. Blankenship's trial.
- Despite coercing plea deals and cooperation agreements from a number of individuals, by early 2014, the government's crim-

inal investigation had stalled. There was simply no evidence linking Mr. Blankenship to any criminal activity. Records reveal that the government interviewed only one individual during the six-month period that spanned the last quarter of 2013 and the first quarter of 2014.

Booth Goodwin and Steve Ruby renewed their efforts to manufacture a case against Mr. Blankenship—as a matter of sheer political opportunism—after Mr. Blankenship exercised his First Amendment rights by releasing a documentary about UBB.

- On March 31, 2014, Mr. Blankenship sponsored and released a documentary film entitled “Upper Big Branch—Never Again.” The documentary incensed MSHA, the federal government, and the West Virginia Democratic political establishment.
- Days after the documentary was put out, UMWA President Cecil Roberts released a statement saying “This self-serving video is no more than a feeble effort by one millionaire to stay out of jail, and is an affront to the families of the victims. I again urge the U.S. Attorney’s Office to expeditiously follow the trail of its investigation all the way up the corporate chain of command....”
- Senator Manchin declared on national television: “I believe that Don has blood on his hands. And I believe that justice will be done.” Senator Manchin also wrote to Mr. Blankenship that he would be communicating with the U.S. Attorney’s Office. In the course of the government’s prosecution, the defense made a request for discovery of all communications between Senator Manchin and the U.S. Attorney’s Office relating to Mr. Blankenship. Judge Berger denied the request, but not before the government advised her that it would not produce such communications even if it were ordered to do so.
- In the months following the documentary the government re-opened its dormant investigation. A week after the November 2014 elections, the government empaneled a new grand jury on November 12, 2014.
- Transcripts of the proceedings indicate that the grand jury heard

testimony for approximately two hours and 40 minutes on November 12, 2014, and for approximately three hours and 20 minutes on November 13, 2014, before returning a 42-page indictment against Mr. Blankenship that afternoon. One may wonder how the grand jury even had time to read its 42 pages of allegations.

The government failed to give Mr. Blankenship's attorneys notice of his pending indictment.

- On at least three separate occasions prior to Don's indictment (the last occurring before the documentary was released), Steve Ruby represented to Don's lawyers that Don was not a target of the investigation and that the government would notify Don's lawyers if his status ever changed. The government never notified Don's lawyers that his status had changed before it indicted him. In addition to violating applicable ethics standards, this conduct also disregarded longstanding DOJ policy, which expressly encourages prosecutors to provide notice to investigative targets a reasonable time before seeking an indictment.

The charges against Mr. Blankenship were novel, unprecedented and admittedly tactical.

- Don was charged with a misdemeanor conspiracy to willfully violate mine safety standards at UBB. The government, however, refused to identify any of his alleged co-conspirators and refused to identify which safety standards he allegedly conspired to violate. Although the charge was conspiracy, Don was the only one prosecuted.
- Not a single citation issued at UBB during the alleged conspiracy was issued for willful conduct. Indeed, MSHA has standard procedures for assessing whether conduct giving rise to a violation is possibly knowing or willful. In real time during the alleged conspiracy, MSHA officials reviewed dozens of citations issued at UBB for possible knowing or willful conduct and determined that none warranted any investigation.

- Don also was charged with three felonies. He was acquitted on all of them. Two of the felonies—which carried a combined maximum sentence of 25 years in prison—were allegations that Don committed securities fraud and violated the federal false statements statute based on a Massey press release that he did not write or sign. The charges were frivolous. Quite remarkably, a former member of the prosecution team (Mike Hissam) appeared on the State Journal's Decision Makers television program during Don's trial and admitted that the securities fraud and false statements charges were “novel,” “creative” and “aggressive;” he admitted that “I don't think anybody contemplated [that the press release] could constitute two federal felonies;” and he posited that his former colleagues brought those charges as a “tactical move[]” to drive up the statutory maximum penalties in the indictment and to provide the government with a pretext to “get in front of the jury” evidence about “Don Blankenship's personal wealth.”

At the prosecutors' request, the court imposed onerous bond conditions aimed at silencing Don, punishing him before trial, and hindering his defense.

- Armed with an indictment that charged trumped up felonies for “tactical” purposes, the government was able to convince the magistrate judge to severely restrain Don's liberty pending trial. He had to post a \$5 million cash bond, and he was not permitted to reside in his home outside the state or to travel outside of Southern West Virginia.
- At the government's insistence, Don also was prohibited from having any contact whatsoever with anyone who had worked at Massey or provided services to the company. This unprecedented and patently unconstitutional restriction prevented Don from having any contact with thousands upon thousands of people, including his closest personal friends and even some family members. It also infringed on his ability to assist his lawyers in their preparation for trial. The government argued,

and the court agreed, that Don was a danger to the community—thus warranting this no-contact restriction—because he is a wealthy individual who had spent his own money to help elect a Republican candidate to the West Virginia Supreme Court and to finance a documentary critical of the federal government's actions regarding mine safety. In other words, the prosecution argued, and the federal judiciary agreed, that the federal government had the authority to severely restrain Don's liberty pending trial because he is a rich man who loudly exercises his First Amendment rights.

Would reasonable observers from outside the judicial system question the impartiality of presiding Judge Irene Berger?

- Judge Berger is one of only five district court judges in the Southern District of West Virginia. One of her colleagues is Judge Joe Bob Goodwin, the father of U.S. Attorney Booth Goodwin. Judge Goodwin's official portrait, which sits in the courthouse in Charleston, prominently features his son's picture sitting on Judge Goodwin's desk. In unprecedented fashion, Booth Goodwin—as the sitting U.S. Attorney—actually tried the case against Don. It was by far the biggest case of his career. Thus, Judge Berger presided over an historic criminal case being tried by her colleague's son, and in the course of doing so, was called to address allegations that he had committed serious prosecutorial misconduct. At the time, it was reported in the press (accurately) that Booth Goodwin was hoping to parlay his prosecution of Don into a run for governor.
- Judge Berger had two law clerks while Don's case was pending before her. One was a former employee of MSHA and the UMWA who had actually published a law review article calling for Don's criminal prosecution because of the UBB tragedy. News reports also appear to show that the same law clerk's



Prosecutor Booth's Picture on His Dad Judge Joe Goodwin's Desk in Federal Courthouse

mother was arrested in 2009 for trespassing at a Massey surface mine (Bee Tree) just up the road from UBB while protesting against Massey's mountain-top removal operations.

- The government was allowed to introduce newspaper articles at trial as “evidence” that Mr. Blankenship had committed crimes.
- The government was allowed to introduce MSHA citations issued at UBB as “evidence” of crimes, even though not a single one alleged any criminal conduct and the government refused to call to the witness stand the MSHA inspectors who actually wrote the citations. Don't judges usually throw out traffic tickets when the cop fails to show for the hearing?

The U.S. Attorney's Office flouted its discovery obligations and disregarded its own policies

- In discovery, the government produced millions upon millions of pages of documents it had collected during its 4 ½ year investigation. Disregarding its own internal policies, which expressly encourage prosecutors to disclose documents they intend to use at trial, the U.S. Attorney's Office refused to identify the documents it planned to use against Mr. Blankenship, thus forcing his lawyers to waste valuable time and resources searching for needles in the haystack. This refusal also deviated from the Office's conduct in cases it was prosecuting simultaneously. For example, in the prosecution of executives of Freedom Industries, the defense was provided with the documents the prosecution intended to use at trial. Why, one might ask, was Mr. Blankenship singled out for disparate treatment by Booth Goodwin and Steve Ruby?
- While the government dumped millions upon millions of pages of documents on Mr. Blankenship's lawyers, glaringly absent were e-mails sent to or from the MSHA inspectors who inspected UBB. Even after a subpoena was issued directing MSHA to produce e-mails, the agency still did not turn over any inspector e-mails. One of the government's key witnesses at Mr. Blankenship's trial—Bill Ross, a former MSHA ventilation specialist

who began working at Massey in 2008—testified that, during his time at MSHA, it was the regular practice of MSHA inspectors to use e-mail. In interviews, other former MSHA inspectors have stated that they regularly used e-mail while conducting their inspection activities at the agency. Where are the inspectors' e-mails and why did the government not produce them? Although the government's case was premised on citations issued at UBB, the prosecution did not call a single MSHA inspector at trial. Was that because calling MSHA inspectors would have exposed the government's discovery violations?

The U.S. Attorney's Office failed to investigate destruction of MSHA documents concerning UBB

- Bill Ross also testified that, in the summer of 2010, his former secretary at MSHA told him that his successor at MSHA may have illegally destroyed MSHA records concerning UBB shortly after the explosion. While the government has been aware of Ross's allegations for years, the government's lead case agent testified that the Justice Department never investigated Ross's document destruction allegations.

The U.S. Attorney's Office engaged in a widespread practice of suppressing exculpatory evidence, known as Brady material.

- Exculpatory evidence is evidence of innocence – called Brady evidence
- The government's formal position in the case with respect to its Brady obligations was that "the United States does not know of any evidence" that was required to be turned over to the defense because, in its view, "all of the evidence of which it is aware" supported guilt. Remarkable statements to make in a prosecution that resulted in Mr. Blankenship's acquittal on all felony charges. Judge Berger never challenged this patently indefensible position taken by Booth Goodwin and Steve Ruby.
- While the government interviewed hundreds of witnesses, the prosecution never turned over the raw notes from any interview.
- The government interviewed multiple individuals who provid-

ed information that was obviously favorable to Mr. Blankenship's defense but was never disclosed. One such individual was Chris Blanchard, a key government witness at Mr. Blankenship's trial who was granted immunity by the government in exchange for his cooperation. During cross-examination, Mr. Blanchard revealed that he and/or his attorneys *had told the government that he had not* committed any crimes, that he had not participated in any conspiracy, and that he had no agreement with Mr. Blankenship to violate mine safety regulations. This shockingly exculpatory information was never disclosed.

- The prosecution even elicited testimony at trial that was directly contradicted by undisputed, undisclosed and highly exculpatory evidence provided by one such individual and misrepresented the facts to the court in order to pursue the misleading line of examination. In other words, the government knew that they were leading the Judge and the jury to believe things they knew not to be true.

The government grossly abused its immunity power.

- The government selectively granted immunity to over 20 former Massey employees whose testimony it preferred, while making thinly veiled threats to prosecute defense witnesses if they provided exculpatory testimony at trial.
- Dispelling any doubt that the prosecutors acted with purpose to distort the fact-finding process and to deprive Mr. Blankenship of a fair trial, the facts reveal that the government's threats were not genuine. Despite every opportunity over the past five-and-a-half years, the government has not charged a single one of these critical defense witnesses with any crimes. And it never will. As the prosecution's lead case agent testified under oath at trial, the government's investigation ended with Mr. Blankenship's prosecution and is now closed.

Within a matter of weeks after Mr. Blankenship's trial, Booth Goodwin, as expected, announced his run for governor.

After Mr. Blankenship's conviction on a single misdemeanor, the government tried to convince the court to bankrupt Mr. Blankenship.

- The government asked the court to order Mr. Blankenship to pay tens of millions of dollars in restitution to Alpha Natural Resources, Inc., even though Alpha voluntarily purchased Massey well over a year after the alleged conspiracy ended. Moreover, because Alpha was in bankruptcy at the time, any such payments would have ultimately gone to Alpha's creditors—mostly big banks. The court rejected the government's preposterous claims.
- The government also sponsored claims that Mr. Blankenship should be ordered to personally pay enormous sums of money to victims of the UBB explosion, even though Mr. Blankenship was not charged with causing the explosion and the government successfully precluded Mr. Blankenship from submitting evidence at trial regarding the explosion's true cause. The court rejected these baseless claims as well.

Although convicted of a misdemeanor only, and sentenced to one year in prison, Mr. Blankenship was ordered to report directly to prison while his appeal is pending.

- Even though Mr. Blankenship objectively meets the requirements of a federal statute that mandates that he be released pending his appeal, Judge Berger denied his release motion without explanation.
- The Fourth Circuit in Richmond, Virginia likewise denied Mr. Blankenship's request for release pending appeal without explanation.
- This means that even if the appellate courts ultimately determine that Don was wrongly convicted, he nevertheless will be forced to serve most, if not all, of his sentence.

next:

**WHAT A MSHA MANAGER, A DOCTOR OF MINING ENGINEERING
AND A SAFETY DIRECTOR SAID ABOUT UBB**

What a MSHA Manager, a Doctor of Mining Engineering and a Safety Director Said About UBB

Stan Suboleski Doctor of Mining Engineering – Former Chairman of Mining & Engineering at Penn State, and former Head of Mining & Minerals Department at Virginia Tech:

- Stan Says: “A week or two before the explosion MSHA completed its AAA (mine-wide, quarterly) inspection of Upper Big Branch and reported that the mine was in good condition. Numerous rock-dust samples were taken during this inspection and this... indicates that the mine was well rock dusted. While the press has presented the mine as something akin to a hell hole, my experience is that the mines were well kept, had better and newer equipment than most, and had safety standards that went beyond MSHA requirements.”

James Walker UBB Safety Director:

- “I have 44 years’ experience underground... Coming to Massey was like day and night with S1 (safety) policies Massey had in place.”
- “UBB was a well-managed operation. The ventilation changes required by MSHA created problems on the UBB longwall, I took many air readings in the longwall and ventilation went from well over 100,000 to 40,000.”

Bob Hardman MSHA District 4 Manager:

- “The condition of this mine (UBB) is very good. They are doing a good job.”

AN EXCERPT OF THE BILL ROSS TRIAL TESTIMONY.

MSHA would not re-approve the ventilation plans that UBB had used for many years. Bill Ross, a government lead prosecution witness, had worked at MSHA for decades and was formerly a MSHA ventilation specialist.

Key Prosecution Witness Bill Ross's Testimony Excerpt

Attorney: “(Blankenship) never suggested that he wanted Massey to violate the law, did he?”

Ross: No – “He did not”

Attorney: The vent plan (Massey) proposed would have put 100,000 CFM of air on the longwall wouldn't it?

Ross: It would have yes, and it did.

Attorney: Would you agree that (MSHA's Plan) it was substantially lower (CFM)?

Ross: Yes

Attorney: About Half?

Ross: Yes

Attorney: Mr. Mackowiak (MSHA Ventilation Specialist) told Mr. Blanchard that they (MSHA) were going to make UBB have a plan that took . . . air off the longwall?

Ross: As a matter of fact, he told me that too.

Note: Witness Ross is shown a memo from MSHA ventilation specialist Joe Mackowiak to other MSHA and Department of Labor personnel where he says he (Joe) has picked a fight with Massey by denying UBB's ventilation plan.

Attorney: Did you know that Mr. Mackowiak would think it necessary to pick a fight with Massey?

Ross: I know that Mr. Mackowiak used to work for Massey. Mr.

Mackowiak and myself, we never got along very well. Mackowiak had taken the job I had vacated when I retired. He was making boasts that no mines in his district would be allowed to use belt air. He (Mackowiak) said to me no mines in his district would be allowed to use belt air. I turned to the MSHA District Manager and I said "I'm begging you. We've got to have belt air at UBB."

Ross: (later): Longwall systems are designed to have a bleeder system (UBB did) in the back (of the mine and UBB did) the belt air should go to the face (where the men are working) controlling methane and coal dust. It also adds pressure to the gob (mined out area). It keeps pressure onto the gob. (This keeps gas from building up in the gob area.)

Attorney: Mr. Ross you testified that you met with Mr. Mackowiak (MSHA ventilation specialist and Mr. Hardman MSHA District 4 Manager) on the UBB ventilation plan in the fall of 2009 – right?

Ross: Yes

Attorney: And in the meeting did you attempt to persuade them that they should continue to approve the (UBB) belt air plan?

Ross: In all of my efforts, even out of desperation, I begged him to allow us to use belt air.

Attorney: And they declined to permit the mine to use belt air?

Ross: Joe (Mackowiak) was adamant about not allowing belt air.

Attorney: (A few questions later) And why do you say he (Joe Mackowiak) was determined to stop the longwall (from using belt air).

Ross: Just by his demeanor. The words he used the authority that he had control of what that longwall was going to do... But just the (mines) methane liberation alone and us meeting the criteria to upgrade the water line was enough justification to use belt air We would do everything and anything they would request ...providing they didn't take the air off the longwall.

Attorney: The mine operated safely from August to December did it not, using belt air?

Ross: I don't recall any incidents that occurred.

Attorney: (shows Ross a letter) And this is the letter from Mr. Hardman to Mr. Blanchard (UBB Division President) denying the continued use of belt air, right?

Ross: Yes

Attorney: Can you read out loud . . . ?

Ross: (Reading from the letter) " Please be reminded that this mine is on a (103i) inspection schedule due to its methane liberation explosion and ignition hazard."

Attorney: MSHA insisted that the mine remove air (from the long-wall) and make other changes? (despite MSHA's knowledge that it was a gassy mine and was an ignition hazard)?

Ross: Yes

Steve Ruby, Assistant Prosecutor, Objection: Your honor he is testifying about the excluded document.

Judge: (speaking to Ross) I am excluding that exhibit and I'm excluding you from testifying to the substance of that exhibit.

Ross: Okay.

Attorney: And did they say to you that they knew the history you were talking about? (The history being referred to is prior gas ignitions.)

Ross: Yes

Attorney: They were familiar with the event (gas ignitions) you described in the meeting?

Ross: Yes

Note: Mr. Ross' begging was ignored and the air was reduced. The final ventilation changes were made about April 3, 2010. The mine exploded April 5, 2010.

Don's Summary of Ross Testimony:

Former MSHA ventilation specialist Bill Ross testified as a prosecution witness, and yet he made clear with his testimony that MSHA demanded that air be taken off the UBB longwall. Ross and UBB managers begged MSHA not to do it. The ventilation plan changes took several months to make in order to comply with the new ventilation plan. The final changes were made on April 3 and the mine exploded on April 5.

MSHA was careful to use the word "methane" in their public discussions and in the family meetings because this is technically accurate. But it was also very deceptive. Methane makes up the majority composition of both coalbed methane gas and natural gas.

Also, Ross' sworn testimony fully refutes MSHA's continual claim that they do not do ventilation plans. MSHA not only does ventilation plans, they require that their ventilation plans (which operators often disagree with) be used. Even the government's National Institute of Occupational Safety and Health (NIOSH) sometimes disagrees with MSHA ventilation plans. For example, NIOSH has said that MSHA's idling of continuous miner scrubbers is improper, and that scrubbers are a part of a mine's ventilation plan.

NEXT: Ross' Sworn Written Statement: June 9, 2011

I had an opportunity to speak with Mrs. Chambers, my former secretary. During our conversation the topic of the accident at the Upper Big Branch mine came up. I inquired about an MSHA report from 2004 about a floor burst at Upper Big Branch mine that I was familiar with from my time working at MSHA. This inquiry prompted Mrs. Chambers to say that Mr. Mackowiak had destroyed a significant amount of documents within his control at MSHA. Mrs. Chambers specifically recalled Mr. Mackowiak walking out of the Mt. Hope facility carrying trash bags filled with documents.

next:

AN EXPLOSION EXPERT AND FORENSICS TELL US HOW WE KNOW MSHA LIED

Expert Says Natural Gas Fueled Explosion Not Coal Dust as MSHA Claimed

By: Dr. Christopher Schemel

On April 5, 2010 at ~15:00 hrs. an explosion took place at Massey Energy's Upper Big Branch (UBB) coal mine. In the minutes leading up to the explosion a large inundation of natural gas flowed into the mine. The natural gas that inundated the mine was from a source very similar in composition to the natural gas wells that were extracting gas far below the UBB coal seam. The magnitude of this inundation in pressure and volume of gas released, easily overwhelmed the ventilation system. At some point the accumulated gas was ignited. Once ignited, the explosion propagated sporadically throughout most all of the working faces of the mine. This was a result of the large amount of natural gas spreading and mixing with air as the explosion proceeded.

In any wide spread coal mine explosion, the two main fuel sources, flammable gas and coal dust, need to be examined to determine which fuel was responsible for the initial explosion and the propagation of the explosion. At UBB a very detailed scientific analysis was done to determine the extent that either gas or coal dust played in this explosion.

The natural gas inundation pumped at least 3.5 Million Ft³ of natural gas into the UBB coal mine. This inundation was identified directly using two independent sources of data. The first was gas samples taken from the exhaust fan for UBB. Gas samples taken by MSHA shows a large spike in flammable gas containing both

methane and ethane gas in proportions that match the natural gas wells in the area. This gas was not coal bed methane and did not come from inside the mine (coal seam gas). The gases “finger-print” clearly matched natural gas.

MSHA took gas samples at Bandytown starting 5 1/2 hours after the explosion and continuing for several weeks following the explosion, this allowed Massey to determine the rate at which the inundation gas exited the mine in the days following the explosion. In addition, because the ventilation fans continued to operate after the explosion, engineering calculations were able to predict the initial rate of gas inundation to be on the order of 1000's of cubic feet per min. The second data source for natural gas detection was the personal gas detectors that the miners were wearing at the time of the explosion. Detectors in the mine at the time of the explosion showed high level alarms gas. This data helps to show how the gas initially pushed its way through the mine.

The magnitude of the gas inundation allowed natural gas to be pushed up the longwall, counter to the flow of the prevailing ventilation system. This behavior of the gas inundation is supported by computer simulations of the inundation effect in the mine, experiments using detailed flow characteristics and on the physical evidence in place after the explosion. The calculations and experiments clearly show that when the natural gas bursts into the mine at the start of the inundation, the pressure of the inundation source was on the order of 100 psi. Natural gas was pushed throughout the longwall areas with little impact from the ventilation system. Once ignited, the forces generated by the explosion caused a tremendous amount of turbulence in the mine entries, thus pushing natural gas and air throughout the mine, allowing further combustion of the gas.

The extent to which coal dust potentially played a role in this explosion was analyzed in great detail. Several methods were used to look at any potential contribution from coal dust. These methods fell into two groups; one was a detailed examination of the post explosion dust collected in the mine. The second method examined

the physical damage caused by heating and explosion forces. Over 1800 dust samples were collected by MSHA in the affected area of the mine during their investigation. These samples were analyzed to determine the extent of heating or burning the coal dust experienced. This analysis clearly showed that there was no wide spread combustion of coal dust at UBB as a result of the April 5 explosion.

Dust samples collected at UBB were examined using a scanning electron microscope (SEM) and compared with known examples of combusted coal. In addition, several coal dust samples were burned in pure coal dust environments, coal dust and rock dust combinations, and coal dust heated by a gas flame. This allowed a detailed examination of the prepared samples using the SEM to compare to the actual UBB samples. This analysis clearly showed that the types of particles formed during large scale combustion of coal (large agglomerations) were not found in any appreciable amount in the UBB dust samples. Coal dust that had been heated by a gas flame passing over it, was observed.

Another indication that coal dust did not play a role in propagating the UBB explosion was found in the heat damage found on items in the mine. A dust fueled flame is typically 10-100 times thicker than a gas flame. A dust flame from coal also produces far more heat than a gas flame. Therefore, the damage caused by heating from a gas explosion and a dust explosion are typically very different. The materials found at UBB that were damaged by heating showed a lighter degree of damage than expected from a dust flame or dust explosion. This was evident to every explosion investigator on the investigation team. In addition, plastic materials, such as light fixtures, were heated, melted, and re-solidified without being impregnated with dust. If a coal dust fueled flame was responsible for heating this type of material, extensive dust staining of the plastic would be expected. There was no extensive dust staining.

The analysis performed to determine whether natural gas or coal dust fueled this explosion was extensive. The physical evidence found by the analysis of the MSHA dust samples and the

standards developed for comparison clearly show that there was no wide spread dust explosion at UBB. In addition, analysis of other items (lights, paper, equipment) heated during the explosion clearly indicate that the fuel had to be clean burning – like gas, not coal. Therefore, the physical evidence and analysis of that evidence clearly indicate that natural gas was the primary fuel for the propagation of the explosion at UBB.

Dr. Christopher Schemel, biography:

Dr. Schemel is the Founder & President of Delta Q Consultants, Inc., a scientific analysis firm with extensive operations experience focused on providing industrial facilities state of the art fire & explosion safety, hazard identification & hazard analysis, consequence analysis and quantitative risk assessment.

Dr. Schemel has undergraduate and graduate degrees in chemical engineering, in addition to a Ph.D. in fire safety engineering. Dr. Schemel is focused on applying engineering fundamentals to large loss incident investigations, fire safety analysis, protection systems evaluation and dispersion analysis. Major industry areas of experience include; petroleum process (on/off shore), chemical manufacturing, underground mining (coal and metals), separation processes, gas piping & distribution systems, food production, bio-fuels, specialty gases, oxygen systems, wildland fuels, general manufacturing, storage, distribution and shipping of products.

Dr. Schemel specializes in incident analysis extending beyond cause and origin to developing a true scientific understanding and reconstruction of an event by applying combustion science, fluid dynamics, computer aided simulations along with the latest laboratory methods and sound research.

Dr. Schemel is also an Adjunct/Courtesy Professor and Chair of the Industrial Advisory Board for the Chemical & Biomedical Engineering Department at the University of South Florida.

next:

LET'S TALK A LITTLE COMMON SENSE

UBB Explosion “Common Sense” Facts

1. If a coal mine exhausts 3.5 million cubic feet of natural gas after an explosion, you very likely had a natural gas explosion. The UBB explosion was a natural gas explosion. A dust explosion will not create natural gas.
2. A large natural gas explosion will stir up some coal dust in any coal mine, no matter how well the mine is maintained.
3. **The explosion occurred after MSHA insisted the airflow be reduced.** Both key prosecution witnesses, one of which (Bill Ross) worked most of his life for MSHA, testified at trial that Joe Mackowiak of MSHA was “adamant” that the airflow be reduced.
4. The government investigation reports intentionally misled the public and the media. The MSHA investigation report should have focused on airflow and gas. Instead the government focused on water sprays, miner bits, and equipment maintenance. These are items the miners were responsible for versus the airflow changes that MSHA was responsible for. MSHA covered up the true cause of the explosion. All mines have missing water sprays, dull bits, etc. at times. But none routinely emit natural gas.
5. MSHA misled the politicians and the public by focusing attention on the word “methane.” Methane is the dominate portion of both natural gas and coal gas. Coal gas is common in a mine. Natural gas is not.

6. Chemical analysis can be used to determine what type of gas was present. At UBB the gas was analyzed and it was natural gas, not coalbed methane gas.
7. The government knew the mine exploded due to natural gas and MSHA reduced airflow. That is why MSHA administrator Kevin Stricklin, likely in a panic, said in an email to all District 4 employees before any investigation had begun – “The operator blew up the mine – MSHA didn’t.”
8. The government was motivated to lie to cover up their insistence that airflow be reduced, and the UMWA’s and others desire to blame their adversary, Don Blankenship. Blaming Don also protected their MSHA friend, head man Joe Main, a near lifetime UMWA employee.
9. All the violations that were cited by MSHA had been corrected. MSHA had just completed their quarterly inspection, which had been particularly focused on rock dusting (the product used to suppress coal dust) and had determined the mine to be in good condition.
10. The most obvious common sense fact is that MSHA lied.

next:

RECAPPING THE MSHA COVER-UP

Recapping the MSHA Cover-Up

- MSHA ventilation specialist Joe Mackowiak (Mackowiak) bragged in an email to his superiors at MSHA and the Department of Labor that he had picked a fight with the company by denying their ventilation plan.
- Prosecution witness Bill Ross (former MSHA ventilation specialist) begged Mackowiak (his replacement) not to reduce the airflow.
- Mackowiak continued to be adamant that the airflow would have to be reduced by 50%.
- Prosecution witness Chris Blanchard (UBB Group President) also testified that Mackowiak told him the air would have to be reduced.
- Bill Ross and a company engineer swore, in written statements, that Mackowiak's secretary told them that Mackowiak carried UBB related documents out of the MSHA district office a few days after the explosion. An FBI agent testifying about this at my trial said they were aware of the word statements but elected not to investigate the matter. Remarkable, given that Ross was their lead witness.
- It says something that the FBI, which was supposedly following up on President Obama's commitment to find who was responsible for the tragedy, was told by their lead witness that the MSHA ventilation specialist who Ross testified had forced the UBB mine airflow to be reduced (Mackowiak) may have destroyed UBB related documents, but they did not even look into it.
- It also says something that not even one MSHA inspector that had written a single violation at UBB testified at trial. Obviously

they did not want to be asked which violation was due to a lack of coal miners or why if the violations were willful, they did not write them as willful.

- The coal miners completed the airflow changes on April 3, 2010 and the mine exploded on April 5, 2010
- Just eight days later Kevin Striklin, MSHA Administrator, sent an email to all MSHA District 4 employees – before any explosion investigation had begun – that “the operator blew up the mine – MSHA didn’t.”
- Two days later, after Striklin met with President Obama, the President said “the tragedy was first and foremost a failure of management.”
- Incredibly, as part of the cover-up, MSHA has refused to turn over emails related to UBB despite media FOIA requests and a federal subpoena issued by my trial judge. They claim not to have any emails related to UBB before the explosion, and we only obtained a very few from after the explosion.
- Given the continual argument over the ventilation plan, there had to be a lot of interaction within MSHA and between MSHA and NIOSH, and apparently MSHA and the Department of Labor. It’s clear MSHA is hiding something.
- MSHA informed the company (contrary to prior MSHA policy) that company managers would not be allowed to participate in the investigation.
- In the first few days of the investigation, UBB mine management pleaded with MSHA investigators to block off and protect a large mine floor crack (that may have been the source of the gas inundation) to prevent it from being cluttered with coal, etc. but MSHA refused to do so.
- Samples of the gas exiting the mine after the explosion were taken and chemically analyzed. The analysis showed conclusively that the gas was natural gas-not coalbed methane.
- Natural gas in a coal mine is very rare. Coalbed methane is common.

- Rather than MSHA clearly and publicly stating that the gas was natural gas, they told the press and the public that it was methane.
- While it is true that the gas was about 90% methane, this was intentionally deceptive as coalbed methane is well above 90% methane.
- By not disclosing that the gas was natural gas, MSHA was able to claim the gas ignition was small and the explosion was mostly a dust explosion.
- **If MSHA had told the truth about the 3.5 million cubic feet of natural gas exiting the mine after the explosion, the press would likely have challenged their dust explosion story and uncovered the fact MSHA had reduced the airflow by 50%.**
- By not disclosing the gas was natural gas, MSHA was also able to claim the miners caused the explosion by not “rock dusting” the mine to suppress coal dust and by not maintaining their water sprays, etc.
- MSHA having just forced the company to reduce the airflow could not risk having to answer a lot of ventilation questions so they focused the public on dust and coal miner shortcomings.
- The MSHA cover-up was unnecessary as no one can say for sure that the UBB preferred airflow would have prevented the tragedy. The air reduction certainly did not help, but by saying MSHA covered up the truth I am not saying they caused the explosion.
- It is certain the coal miners did not contribute to the explosion at all.
- It is inconceivable that given UBB was to be the first Central Appalachia coal mine required to use this particular MSHA ventilation plan that there are not dozens, if not hundreds, of emails. Two prosecution witnesses with MSHA experience testified that they routinely used email.
- In short, MSHA lied.

next:

DON PUTS IT ALL IN PERSPECTIVE

Don's Simple Summary of Ventilation and the Explosion

MSHA would not reapprove the ventilation plan that UBB had used for many years. The government's lead prosecution witness, Bill Ross, had worked at MSHA for decades, and was an MSHA ventilation specialist. While at MSHA, the plans Bill Ross required kept over 100,000 CFM of airflow on the mines longwall for years. After his retirement from MSHA, Bill Ross had taken a position at Massey and was working for Massey at the time of the explosion.

Bill Ross begged MSHA (Mackowiak and the MSHA District Manager) not to require the ventilation system to be changed to a lower airflow. The mine exploded after the final ventilation changes were made. The mine had experienced gas inundation ignitions in the past and had not exploded using the ventilation plan Ross and the UBB mine managers were begging MSHA to reapprove.

It has been said by some that I should have shut the mine down versus running with less air. However, at the time I was not personally aware the air had been so greatly reduced.

The explosion was obviously a natural gas explosion. Any natural gas in a coal mine is rare, but three-and-a-half million cubic feet of natural gas and an explosion at the same time not being connected is a preposterous position for the Government to take.

Coalbed methane gas is commonly emitted from the coal seam during normal mining activity at a fairly consistent rate. Coal min-

ers are trained to watch for and deal with it. Therefore, a coalbed methane explosion is usually the result of some issue at the mine.

A natural gas explosion in a coal mine is essentially unheard of. The miners' only hope was more airflow. MSHA had denied them that airflow.

It's clear MSHA hid the truth when you watch how Senator Manchin reacted and what he said when he learned the fact that the mine was inundated with natural gas. You can see his reaction in the video of him at donblankenship.com.

Keep in mind that Manchin was heavily involved with MSHA and their investigation, and his West Virginia Department of Mines and his friend Davitt McAteer had both done investigation reports on the explosion for him.

It's obvious that Senator Manchin had not been told it was natural gas, and he appears to not even understand the difference between coalbed methane, natural gas and methane. Yet, he was anxious to see to it that I was indicted, and to proclaim on national television "I believe Don has blood on his hands."

next:

DON'S OVERALL SUMMARY

Don's Overall Summary

I was convicted before I even went to trial. Was there any chance anyone would get a fair hearing, given what was said by Senator Joe Manchin, the head of the Mine Safety and Health Administration, and even the President of the United States?

If the prosecutors say, in their own rules of conduct, that they will provide the defense with the “hot” documents, i.e., documents they will use at trial, they should provide them. In my case, they did not.

If prosecutors say they will notify you in advance of an indictment, they should provide that notice. In my case, they did not.

If the rules say prosecutors will provide information they have discovered during their investigation that might help your defense, they should provide that information, which is known as Brady material. In my case, they did not.

Judges should not imprison American citizens for a first-time misdemeanor prior to an appeal. Most judges apparently do not imprison misdemeanors, as I am the only misdemeanor of 2000 prisoners here at Taft Prison according to prison staff.

The U.S. Senate that approves federal judges and U.S. prosecutors should understand that a federal district prosecutor should not be approved to serve in a federal district where his father is one of the five District judges. But in the Southern District of West Virginia, the lead prosecutor is the son of one of the five district judges. That's nepotism, and it's wrong.

Obviously, prosecutors should not be filing charges against Americans when they know the charges are false and were pur-

sued for tactical reasons. But in my case, the prosecutors went ahead with the charges and even admitted on television that they were tactical. The case against me was obviously filed for political reasons. It's outlandish that after I was found not guilty of all their felony charges, the prosecutors (who should have been apologizing instead) went on national television and essentially said I was a felon.

Prosecutors and judges take an oath to uphold the Constitution, and the Constitution includes the First Amendment right to free speech. But, Prosecutor Steve Ruby actually argued, and the Judge unbelievably agreed, that my terms of release pending trial should be tougher because I had used my free speech to help elect a Republican West Virginia Supreme Court Justice. I was confined to staying in southern West Virginia, denied the right to talk to thousands of people, and placed under a \$5 million bond, because according to the prosecutor my free speech "troubles" the United States.

Judge Berger actually approved a neighboring county's prosecutor for jury duty. Again, ridiculous. Judge Berger also allowed newspaper articles into evidence, a violation of the Constitution. The Constitution guarantees the right to confront witnesses against you, and a newspaper cannot be confronted. A "newspaper article" is not "sworn" in as a witness and cannot be cross examined or confronted.

In my case, despite two dozen immunity agreements, no one agreed they were a conspirator, and no one else was charged with being a conspirator. Essentially, I was alleged to have been a one-man conspiracy to commit safety violations at a mine I never visited during the indictment period, and that never had a willful violation (i.e. criminal violation).

Judges and prosecutors should understand that you cannot charge someone with breaking the law or conspiring to break the law without identifying the specific law that was broken. In my case, I was charged with conspiring to violate mine safety laws, of which there are hundreds. I was not charged with violating any specific mine safety law. The prosecutor said they are not required to identify the specific law because "they broke every law that

helped them achieve their goal of making more money.”

As to the UBB explosion, MSHA officials who had been in a mine nearly every day and had required the airflow to be cut in half, should not be allowed to investigate the accident or explosion. MSHA should not be the agency who determines why a mine blew up if they were the day-to-day regulators of the mine. MSHA was in the mine prior to the explosion on the day of the explosion. I had not been in the mine for 10 years. MSHA basically investigated itself.

MSHA investigators should understand that a coal dust explosion will not stir up three-and-a-half million cubic feet of natural gas. This is enough gas to heat and cool and to fuel the appliances of 17,000 American homes for a full day. **The key fact is that MSHA regulators forced the airflow to be cut in half without my knowledge, and the mine experienced a natural gas explosion two days later.** Nothing will change that truth.

But burying the truth about UBB was not enough for Steve Ruby and Booth Goodwin. They sought to put me in prison for the rest of my life for crimes they knew I did not commit. A former member of the prosecution team said so on television.

“We the people” understand that our government is not ethical or fair. But enough is enough. Lying about the work ethic and quality of work of the deceased UBB miners, and trying to put an innocent man in jail for the rest of his life for political reasons, is beyond reason.

The prosecutors, the President of the United States, Senator Joe Manchin, and the judges have used their positions of influence and decision making to deprive me of my rights as an American citizen. They have trampled on my First Amendment right to free speech, and they simply ignored my Fifth and Sixth Amendment rights, which are intended to ensure a fair trial. They imprisoned me for political reasons. I am in fact an American Political Prisoner.

MSHA’s response to a Federal subpoena of all emails related to UBB was essentially that they did not have any. Who can possibly

believe that a dozen or so MSHA inspectors who inspected UBB during the alleged conspiracy period did not send emails about UBB to each other or their supervisors?

Can there be any doubt that the reason they did not turn over the emails is that they included positive comments about the mine's condition or commentary about MSHA's ventilation changes? Can there be any doubt that they were likely the reason that by "email" Chief MSHA Administrator Kevin Stricklin messaged all District 4 MSHA employees – "The operator blew up the mine – MSHA didn't."? One has to wonder why, if other MSHA employees did not have emails, Mr. Stricklin would send them an "email" – addressed to "all" District 4 employees.

According to the prosecution I am guilty of conspiring to commit willful violations of the Mine Safety Act, even if the alleged conspiracy did not actually cause a single mine violation to be committed, even if no one else knew they were participating in a criminal conspiracy with me, even if I did not know I was participating in a criminal conspiracy myself, and even though I was not at the mine for more than ten years.

All I had to have done, according to the prosecution, was to budget fewer miners to work at the mine than were (in the opinion of the government) needed to prevent violations from occurring. But I did not even do that as I did not attend the budget meetings, nor set the manpower budget, and the prosecution knew that.

It gets even more unbelievable. It doesn't matter that the mine actually had more miners than were in the budget.

Together, we can help shine a light on government wrongdoing and help prevent others from being denied their basic human rights which are guaranteed to Americans by the Bill of Rights. The question to all of us is, do we care enough to do something when the government lies about a mine tragedy and imprisons an innocent man for exercising his freedom of speech?

next:

DON'S PRESS RELEASE

American Political Prisoner Issues Public Statement From Prison

Don Blankenship, former Chief Executive Officer of Massey Energy Company (a coal company that experienced a mine explosion at its Upper Big Branch(UBB) mine in West Virginia on April 5, 2010), who is now serving time as the one and only misdemeanor of 2,000 inmates (according to prison staff) at Taft Correctional Facility at Taft, California issued the following statement.

Over the next few days we will be mailing out 250,000 copies of a booklet. The booklet will shed some truthful light on what really happened to cause the UBB explosion, and how horribly broken our American judicial system has become. The entire booklet is also available on my website at donblankenship.com.

The final appeal motion for reversal of my misdemeanor conviction was filed September 6. Legal motions are always long and complex, but basically the appeals court is being asked to decide whether it is a federal crime to have a few less miners at a coal mine than Assistant United States Attorney Steve Ruby (Ruby) believes the mine should have. The 4th Circuit Court of Appeals in Richmond, Virginia will hold a public hearing regarding my appeal on October 26.

Essentially I am in federal prison because Ruby believes that the UBB mine should have had a few more miners, and that not having those miners caused safety violations to occur. Violations written by the Mine Safety and Health Administration (MSHA) as “non-willful” civil violations, which Ruby says were “willful” criminal viola-

tions because more miners would have prevented many of them. The appeals court will decide whether having less miners (how many less Ruby did not say) than Ruby thinks were needed is a federal crime.

The appeals court is aware that Ruby's belief that more miners will prevent "non-willful" mine safety violations is belied by the facts. The Harris mine which is the most comparable mine to UBB in the United States had approximately 35 more miners and received greater than 250 violations more than UBB.

I want to take this opportunity to re-emphasize that MSHA issued a false investigation report following the UBB mine explosion. They likely did so to cover-up that they had required the miners to reduce the mine's airflow shortly before the explosion. Both of the government's lead prosecution witnesses testified at my trial that MSHA required the airflow to be reduced. The explosion was a highly unusual natural gas explosion and was not propagated by coal dust as MSHA claimed. MSHA also wrongly accused the coal miners of contributing to the cause of the explosion.

Back to the appeal, again the court will decide whether then US Attorney Booth Goodwin (Goodwin) and his Assistant Steve Ruby can convert "non-willful" MSHA violations into "willful" violations six years after they were issued, and do it without a single MSHA inspector who wrote a violation even appearing at trial.

The appeals court will also decide if it was okay for Ruby to introduce 42 new exhibits on re-direct examination of a key witness, and then for the defense to be denied any re-cross of the witness on the new exhibits. They will also decide whether it is okay for federal judges to continue to define reasonable doubt as something other than reasonable doubt.

The appeals court will also decide whether Goodwin and Ruby can charge a person with breaking the law without saying what law was broken. They will decide if Ruby's answer as to which law was broken is acceptable. His answer was that the government does not have to identify which law was broken because "they would break whatever laws needed to be broken to advance their goal of making more money."

The court is aware that US Senator Joe Manchin declared on national television before trial, that he believed I had “blood on my hands.” President Obama proclaimed the mine tragedy was “first and foremost a failure of management” before any investigation of the explosion. Kevin Stricklin, Head Administrator for Coal Mine Safety and Health, wrote “the operator blew up the mine, MSHA didn’t,” again before any investigation of the explosion.

Americans should be concerned by what a former prosecutor who worked on my case said on television. Mike Hissam basically said that Goodwin and Ruby indicted me for two of the felony charges, knowing I did not commit them, but instead for “tactical” reasons. This simply means they were willing to put me in prison for the rest of my life for crimes they knew I did not commit.

Prosecutors Goodwin and Ruby spent five and a half years investigating and trying me in a federal court of law for three felony charges. The justice system and the jury found me “not guilty” of all three felonies. They then went on national television i.e. “60 Minutes” and they said I am like a “drug kingpin” and running a “criminal enterprise.” Saying that Massey was a criminal enterprise slanders not just me, but thousands of hard working men and women in the area. It also slanders thousands more who worked as Massey’s suppliers and vendors.

What other convicted misdemeanor has ever been declared responsible for a mine tragedy by the President of the United States before any investigation; to have “blood on his hands” by a United States Senator before trial; and to have run a “criminal enterprise” by not one, but two, United States Federal Prosecutors after being found not guilty of all three felony charges?

Politicians put me in prison for political and self-serving reasons. I am an American Political Prisoner

next:

WHAT SOME OF THE MEDIA SAID ABOUT THE TRIAL

What Some of the Media Said About the Trial

Most of the media coverage of my indictment and trial was just "drama media" repeating the explosion story and continuing the same old rhetoric. But there were a few newspaper articles that showed an understanding of an important issue--whether an American was getting a fair trial and whether President Obama's Department of Justice was targeting American businessmen for prosecution.

See the two following articles.

Wall Street Journal, December 6th, 2015

The Obama Justice Department has made the prosecution of business executives a priority, without much to show for the effort. Its latest disappointment came Friday when a jury rejected all felony charges in the ballyhooed prosecution of former Massey Energy CEO Don Blankenship.

Many readers may have thought he'd already been convicted given the one-sided news coverage of the case. Mr. Blankenship made many political enemies by spending millions to elect Republicans to the West Virginia Supreme Court and legislature. So when Massey's Upper Big Branch coal mine exploded in 2010, killing 29 workers, Mr. Blankenship became a high-value target.

U.S. Attorney Booth Goodwin took the highly unusual step of prosecuting a CEO of a major corporation over workplace safety after an industrial accident. In the Obama-era fashion, Mr. Goodwin also piled up the charges, with a potential 30-year sentence, to induce a guilty plea or hope the jury would find him guilty of something.

The jury found the 65-year-old Mr. Blankenship not guilty of the most serious securities-related charges and lying to prosecutors. The prosecutors did get their way on a single misdemeanor charge of conspiracy to violate safety laws. Mr. Blankenship could face up to a year in prison on that conviction, though his lawyers say he will appeal. And he might still prevail.

No one else was charged with the conspiracy, including executives who operated between the CEO and the mine and those in charge of day-to-day mine operations. The charge of “willfully” impeding federal mine inspectors rested on a single instance in which Mr. Blankenship—after being told by an employee that he needed to cancel a lunch because inspectors had arrived—asked if “the crews knew they were coming.” It’s common for mines to notify crews if inspectors are present, by the way.

Contrary to Justice policy, Mr. Goodwin did not notify Mr. Blankenship that he was a legal target, a policy designed to give defendants an opportunity to show why they should not be indicted. For nine months the government also denied the existence of certain Mine Safety and Health Administration (MSHA) documents, only to dump 72,000 pages on the defense three weeks before trial.

One document contained a report about the Upper Big Branch mine from a MSHA inspector: “The condition of this mine is very good. Management is trying very hard to improve the condition of the mine; they are doing a good job.” A defense request for a trial delay to digest this new information was denied.

The Obama Administration heralded the misdemeanor conviction as a great triumph and a warning to all other CEOs. It isn’t a legal triumph but it is a warning. It signals that this Justice Department is intent on turning industrial accidents into crimes even based on flimsy evidence.

West Virginia Record, July 19, 2016

Here’s a question honest, fair-minded West Virginians should ask themselves: Would Don Blankenship have received the same “justice” if he were a Democrat?

Would the former Massey Energy CEO have been brought to trial if he were a close friend and supporter of Booth Goodwin and Joe Manchin, the two state Democratic Party big shots suspected of having an unfair role in his prosecution?

Would the conservative businessman have been sentenced to a year in federal prison if he were a liberal politician advocating big government, wealth redistribution, globalism, gun control, abortion, same-sex marriage, and all the rest?

Blankenship was sentenced to a year in prison and assessed a \$250,000 fine on a misdemeanor charge of conspiracy to willfully violate mine safety standards.

The outcome could have been far worse for Blankenship: up to 30 years in prison. To their credit, jurors refused to convict him on three felony charges tenuously tied to the Upper Big Branch mine explosion in 2010, but one has to wonder if they felt compelled to cave on the misdemeanor count just to get the charade over with?

"After a six-week trial, the jury deliberated for ten days and twice announced deadlock, ultimately acquitting on all charges other than the Count One conspiracy to willfully violate mine safety regulations," Blankenship's attorneys emphasize in their motion for appeal.

"That conviction, coming after two deadlock notes and in the other circumstances of this case, merits close appellate scrutiny."

They argue that "the conviction here was unfair and must be reversed because of erroneous legal rulings at trial that conflicted with clear precedent and permitted conviction notwithstanding manifest shortcomings in the government's prosecution theory and in its proof."

Why should the fate of a rich guy like Blankenship concern the average West Virginian?

Because everyone deserves a fair trial. And because, if it were true that a man of his wealth and stature can be prosecuted for political reasons, what chance do the rest of us have?

Coal People Who Know Don

Comment on His Safety Focus

Bill Ross – A Lead Prosecution Witness – Longtime MSHA manager:

- I wanted to tell you (Don) that it has been a pleasure of mine to meet and to have to sit and talked to you. I've been privileged. Your contributions to the mining industry are more than I can ever remember. You made "history." God bless and keep you. If I can ever be of service let me know. – Bill

2010 Massey ALL Employee Survey

- Question: I believe Massey is concerned about preventing MSHA violations
Yes – 93%
No – 5%
No Response – 2%

Charles Bair – Coal Industry Attorney:

- "Massey was the first company to require clear ventilation curtains to be installed underground so that an operator of mobile equipment could see what was on the other side of the curtain before traveling through it."
- "Mr. Blankenship was known throughout the industry for being an innovator when it came to safety."
- "Many of the (safety) innovations implemented by Mr. Blankenship were adapted by MSHA and the rest of the coal industry."

- “The cost of making the changes which improved safety was very substantial, but the cost was not Mr. Blankenship’s concern, safety was.”
- “Mr. Blankenship established an accident evaluation protocol which went well beyond the standard evaluation being used in the industry.”

Michael Blackburn – Mine Section Boss, Land Manager:

- “Massey was the first mining company to install backup cameras on surface mining equipment.”
- “I cannot think of a single safety innovation within the mining industry over the past 25 years that did not come from a Massey Energy initiative, as a result of Mr. Blankenship’s involvement and focus on safety.”

David Blankenship – Surveyor:

- “One of the Massey requirements for employment, even of its contractors, was a clean drug test.”

Raymond Bradbury – Mine Superintendent, President of Coal Company:

- “Massey is credited with the first use of diesel-powered underground mining equipment that eliminated potential electrically powered equipment accidents by removing trailing cables and other electrical hazards.”

Jimmy Brock – Mine Maintenance Manager:

- “Proximity detection will be a requirement on all continuous miners this year. Don started the development of the system so the underground equipment would stop moving when miners got too close to it.”
- “With Mr. Blankenship’s guidance we developed many significant safety improvements. Several have since become industry standards.”

Todd Case – Business Owner, Trucking Company:

- “Massey is the only company in my 32 years of experience to ever physically check the condition of a coal truck and trailer.”
- “Massey also implemented speed zones for coal trucks based on whether it was a school day.”

Mark Clemens – Accountant, Corporate Controller, VP of Operations:

- “Mr. Blankenship led the effort to develop life-saving technology with “submarine kits” on stockpile dozers to prevent cab collapses.”
- “Those who did work with Mr. Blankenship saw first-hand his commitment to safety, company and community.”

David Cook – Business Owner, Trucking Company:

- “Mr. Blankenship made the use of automatic tarps mandatory for his coal truck drivers. This kept drivers from walking on trucks to cover their coal (loads).”

Thomas Copley – Coal Truck Inspector, MSHA Inspector:

- “I inspected coal trucks that hauled for Massey and checked their brakes, tires, testing drivers for sobriety and we went years and never had an accident.”

James Crockett – Race Car Crew Chief, Mechanic:

- “Don never allowed anyone to cut corners or do anything to jeopardize safety.”

Dana/Lisa Crum – Truck Driver / Human Resources:

- “Complying with Massey’s safety standards was even tougher than complying with MSHA.”

Craig/Angela Davis – Coal Miner, Truck Driver:

- “I have worked for Mr. Blankenship since 1987. The man the media has portrayed is not the man I (know). Mr. Blankenship has always enhanced safety on his job sites.”

Dale Dotson – Mine Purchasing Director:

- “I worked for Massey as Purchasing Director and many times I could not believe how much we were spending to improve safety.”

Tom Dougherty – Sales Agent for Mining Industry:

- “Mr. Blankenship created a best practices plan for the company. S1 for safety was placed correctly first in the priorities with P2, best production practices and M3, best management practices, following safety.”
- “Massey was fortunate to have had a person like Mr. Blankenship willing to make the investment of time and money to safety.”

Jack Fannin – Retired Coal Miner:

- “I worked the last 10 years of my (42 years) at Massey. I have to say that Massey was the safest under Don Blankenship’s leadership that I worked for.”

Talbert Farley – Business Owner, Trucking Company & Auto Repair:

- “I could write pages listing his safety accomplishments. (Many) miners say to me “if he starts a mine today I will go to work for him.” They (don’t) fear him they respect him.”

Lawrence Ferguson – Mine Safety Auditor & Underground Mining Instructor:

- “Under Mr. Blankenship, many innovations and programs were put into effect at Massey to both educate and reward those for working safely and for ensuring the safety of fellow miners.”
- “Massey Energy always had strict adherence to employee safety and well-being.”

David Few – Chief Financial

- “Don encouraged each mining operation to fully adopt and apply the Massey doctrine that “A safe mine is a productive mine.””

- “The (budget) meetings were always intense but they always commenced with a review of “Safety Performance”.”

Frank Foster – Mine Safety Expert:

- “We adopted the use of Nascar-type netting on equipment so that operators couldn’t extend their head or limbs outside the operator compartment thereby exposing themselves to injury or death.”
- “I constantly went to Mr. Blankenship with ideas regarding safety ...He never turned me down.”

Cathy Frazier – Director of Health & Safety:

- “Mr. Blankenship was unwavering in his concern for the miners who worked for him. Without Mr. Blankenship I am not sure I would be prepared for the position I now hold. I am truly grateful.”

Jonathan Giesen – Business Owner, Explosive Products & Blasting Services:

- “Mr. Blankenship always strove and supported technological innovation for advancement in mining operations safety improvements and best practices.”

Diann Hannah – Business Owner, County Commissioner:

- “During Mr. Blankenship’s term as CEO of Massey, vendors were required to participate in mine safety training before we could enter mine property.”

Everett Hannah – Business Owner, Timber Industry:

- “To serve as a supplier to Massey, we were required to attend safety classes, have flashing light bars and safety flags on our vehicles and were required to supply and wear safety apparel. These standards and other safety measures, which far exceeded what was required by our company at other coal companies, were initiated by Mr. Blankenship.”

Ben Ha – Mining Engineer, President of Coal Company:

- “No person with credibility that served under Don on Massey’s management team would ever claim that he doesn’t care about mine safety. I have worked for many fine people in the coal industry, but Don established the highest standards of mine safety that I have experienced.”

Dennis Ha – Mine Engineering Manager, former President of Coal Company:

- “The Massey S-1 Safety Program (Safety is Job 1) became a flagship for coal safety innovation. It began as a Safety Focus Committee charged by Mr. Blankenship to investigate all serious mine accidents at Massey and find solutions that would keep our people safe.”

Raymond Horton – Superintendent of a Coal Loading Facility:

- “I have been a supervisor for about 16 years. We have received several safety award certificates and no lost time accident awards from the state and federal (governments). This is the result of Mr. Blankenship allowing me to learn how to process coal safely so that I can pass along this knowledge to the employees.”

Jeremy Howard – Principal of Middle School:

- “Mr. Blankenship ran Massey Energy with the utmost professionalism and regard for safety as much as any CEO of a mining operation could.”

Raymond Joplin – Coal Miner:

- I have worked 34 years in mining, “13 years of that for Massey when Don was CEO and 4 years for Alpha. During (all my years) of working in the coal mines, Massey was the one that stressed safety 1st at all times.”

Gene Kitts - Mine Engineer:

- “Massey, under Mr. Blankenship’s leadership, was in the forefront in adopting better personal protective equipment and in working with manufacturers on new technology

such as proximity detection systems and for improving features such as roof bolter canopies.”

David Kramer – Mine Superintendent & General Manager:

- “Don helped mandate stairs and man lifts on large surface equipment instead of ladders to help reduce falls getting on and off the machinery.”

Vilma Martinez - Retired U.S. Ambassador:

- “Despite the fact that Mr. Blankenship and I reside at opposite ends of the political spectrum, we developed a solid professional relationship of trust and mutual respect.”

Morgan Massey – Retired CEO of Massey Corporation:

- “Don hosted a safety awards event in Charleston where safety performance records were reviewed and winners acknowledged, which is a more cooperative way of achieving safety than a number of petty fines imposed for safety mistakes.”

Mike McKinney – Coal Miner:

- “While I was employed at UBB as a long wall set up crew member, I was never asked to do anything unsafe or anything that would intentionally put myself or co-workers in danger. Mr. Blankenship was always about safety first, production second.”

Thomas Eugene Moore – Mine Supervisor:

- “Mr. Blankenship’s commitment to safety was to provide Massey’s supervisors and the Massey Company with the best professional training out there and he did.”

Rick Nicolau – Mine Chief Electrician:

- “At no time in the 15 years that I worked at UBB did anyone (Don Blankenship or anyone else) ask me to do anything unsafe. Don Blankenship was 100% committed to safety.”

Baxter Phillips – President, Massey Energy:

- “When Mr. Blankenship first took responsibility for all of Massey one of his first, if not the first act was the establishment of a new comprehensive safety program.”

Heather Pope – Administrative Assistant:

- “Mr. Blankenship cared for the safety of all Massey members.”

William Potter – Human Resource Manager:

- “Mr. Blankenship’s instructions were that we had better not take short cuts or break the law.”
- “I have worked as a UMWA member. I was proud to work for Massey.”
- “I was never denied the assets I needed to operate a safe mine.”

Gary Rash – Business Owner, Mining Equipment:

- “The commitment to safety at Massey was unparalleled.”
- “I have known Mr. Blankenship for 20 years and have never met an individual more committed to the safety of others.”
- “It was Massey that implemented safety standards which are now commonly used by most companies in the coal industry.”

James Rollans – Retired Corporate Executive – Fluor Corporation

- “Embedding safety into the culture of a company of the size and complexity of Massey requires not only operational policy changes, training and education of the workforce, but also visible, active and consistent leadership from the CEO and Don provided that leadership.”

Pat Salmons – Executive Assistant:

- “I am certain Mr. Blankenship would never intentionally cause anyone to violate any mine safety laws, nor would he

tolerate anyone willfully violating any mine safety laws.”

- “I have known Mr. Blankenship since 1982. I was his assistant for 20 years. I have never heard him direct anyone to violate a mine safety law.”
- “When a safety violation occurred his focus was on what happened and what changes could be made to make sure the issue was resolved.”

Drexel Short – Production Manager, Superintendent of Operations:

- “During my literally thousands of conversations with Don Blankenship, he did not ever direct me or anyone else to perform an unsafe act or operate a mine in an unsafe manner.”
- “In 26 years of direct reporting to Blankenship, I never witnessed a manager punished for stopping production for what the manager felt was a safety concern.”

Ricky Simpkins - Coal Miner:

- “I worked for Don Blankenship for 30 years, not once did he ever tell me to do anything that was unsafe.” “He was constantly looking for ways to improve safety.”

Jim Slater – Retired President of Coal Company:

- “The Massey safety rules went above those of MSHA.”

John Stepp – Mine Foreman:

- “There was one fact that I truly believed when I worked for Mr. Blankenship that if I made a decision to affect someone’s safety that worked for me in any way, and he found out about it, I would be fired on the spot.”

Linton Stump – Coal Miner:

- “Mr. Blankenship depended on the people to do their jobs without compromising safety. He provided us with supplies and equipment to do the work.”

Stanley Suboleski – Director of Mining Engineering:

- “Don Blankenship demanded top production but was equally demanding when it came to mine safety. He abhorred slogans and gimmicks, and continually pushed for engineered-in safety.”
- “Massey equipped every underground section with special fork lifts, and palletized its bulk supplies to prevent back and finger injuries caused by manual lifting.”
- “I could fill pages with similar examples of (safety) improvements that were developed by Massey.”
- “Massey developed a (stockpile dozer safety cab) that is now required by law.”
- “Mr. Blankenship demanded that Massey find a company with expertise to develop a reliable proximity detection device many years ago.” “MSHA has only recently required that all continuous miners are to be equipped with proximity detection.”
- “In short, I have no doubt that Don would never intimidate to anyone to break a law.”
- “...most of the ventilation violations were caused by MSHA’s repeated mandates” “The net result was that air flow to the longwall was reduced from well over 100,000 CFM (cubic feet per minute) to 57,000 CFM on the day of the explosion.”
- “I have never known Don Blankenship to turn down a request for funding for a safety improvement item.”
- “He (Don) had worked in the mines when he was young and he understood mining and what miners are faced with. He chose to locate his main office among them (in Belfry, KY) rather than at the corporate headquarters in Richmond, VA.”

James Walker – Mine Safety Director:

- “In my opinion UBB was a well-managed operation.”
- “At no time did Massey or Blankenship give the impression that safety was second to production.”
- “Massey Energy (through Blankenship as President) initiated many safety regulations for its companies, some of which have gone on to become the industry standard in safety.”

Samuel Woods- Business Owner, Production

- “Our company has been to every Massey mine in this area and have experienced firsthand the commitment to excellence and effectiveness in mine safety.”

Sidney Young – Production Manager, President of Coal Company:

- “Don Blankenship believed that people would work safer if they knew their unsafe habits would not only affect them, but also their fellow coworkers.”

Anonymous Coal Miner:

- “I would like for you to know from an honest group of hard-working guys Don Blankenship was good to us. The man never asked us to put ourselves in harm’s way. We were never asked to break any laws. This man made sure we were taken care of.”
- “He led the industry in innovations. Had a free clinic for his men and (their) families.”
- “I don’t think the man would put anyone in “Harm’s Way.” That’s not the Don Blankenship the men knew. Massey was the best company that thousands of coal miners in this area had the pleasure to work for.”

Some General Comments

In 2009 Massey became the only coal company ever to win three MSHA/NMA (National Mine Association) Sentinels of Safety awards in the same year.

After being acquired by Alpha, (Alpha bought Massey in 2011), mine safety violations at the Marfork Group mines (which UBB was part of) increased under Alpha's management.

The most comparable mine to UBB in America was the Harris mine which was operated by another company. The Harris Mine was cited for more violations during my indictment period than UBB. Harris was immediately adjacent to UBB, was about the same size, and was regulated by the same MSHA office. It is a UMWA mine.

Thank You

Thank you for reading this booklet. My apologies for the errors in it, as I said in the beginning of the booklet it has been difficult to draft this from prison.

A quick story – in closing I will say “Happy Trails.” “Happy Trails” is a code word in my family. As my kids became 6 or so years old, they were sometimes embarrassed if I told them in front of their friends “I love you – be careful.” We began to use the words “Happy Trails” when saying goodbye, as code for “I love you – be careful.”

To all of you who supported Massey, Happy Trails until we meet again. Happy Trails keep smiling until then.

Thank You,



Happy Trails

DON BLANKENSHIP
PO BOX 1757
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Visit

DonBlankenship.com

to view videos and documents regarding
An American Political Prisoner.



Follow Don on Twitter **@DonBlankenship**

Thank you.