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Judgment Day for Reckless Executives

By RENA STEINZOR APRIL 7, 2016



Silver Spring, Md. — ON Wednesday, a Federal District Court judge, Irene C. Berger, [sentenced](#) Donald L. Blankenship, a former chief executive of the [Massey Energy](#) Company once known in Appalachia as the “King of Coal,” to one year in jail, with imprisonment to begin regardless of a pending appeal, and payment of a \$250,000 fine. The judge’s decision sets a remarkable precedent: The first C.E.O. [ever to be convicted](#) of conspiring to violate industrial safety standards will soon take his place in prison.

The sentence is noteworthy, however, not because of the law, but in spite of it. The Mine Safety and Health Act, the statute under which Mr. Blankenship was convicted, [treats](#) the worst criminal violations as mere misdemeanors. The leniency of the available sentence is a failure of the law, not the facts of the case.

The prosecution arose from the [worst coal-mining disaster](#) in the United States in nearly 40 years. In the words of a [report commissioned](#) by the governor of West Virginia, on April 5, 2010, an “enormously powerful blast rocketed through two and one-half miles of underground workings nearly 1,000 feet beneath the surface” of the Upper Big Branch mine. Twenty-nine miners died in an instant.

Four obviously unsafe, illegal and preventable hazards caused the blast: poor ventilation; the buildup of explosive methane gas; the presence of excessive quantities of coal dust, a highly combustible fuel; and hot spots produced by ill-maintained machinery that failed to spray the water needed to suppress ignition. As everyone in the industry has known for decades, operating a coal mine under these conditions is not just negligent, but reckless.

Multiple witnesses testified at the trial that, in the [words of one foreman](#), “We are told to run, run, run until we get caught; when we get caught, then

we will fix it.” Mr. Blankenship was so obsessed with meeting quotas that he [demanded](#) production reports every half-hour at the mine; supervisors were [threatened with firing](#) if the numbers were not what he wanted.

Mr. Blankenship viewed the hundreds of citations that regulators issued at Upper Big Branch as an acceptable cost of doing business, appealing many of them, which resulted in delayed compliance. In the two months before the explosion, portions of the mine [were evacuated](#) three times because of safety violations.



Donald Blankenship was questioned at a hearing on the Upper Big Branch coal mine explosion on Capitol Hill in 2010. Luke Sharrett/The New York Times

Investigations also showed that there had been deep foreboding among experienced miners before the disaster. Mr. Blankenship’s senior managers seemed to share the dread, carefully preserving every nasty [note he wrote](#) demanding that they “run coal” and not allow anything to get in the way of production. Nine months before the explosion, a former mine inspector hired to report on Massey’s safety problems [warned](#), “Sooner or later, we will pay the price, especially if there is a serious injury or a fatality.” The warning went unheeded by Mr. Blankenship.

Juries are not informed what penalties are available before they render judgment. CBS’s “60 Minutes” [interviewed](#) several Blankenship jurors who expressed shock that such a light sentence followed their verdict. Having heard the evidence, they believed Mr. Blankenship would be punished more severely.

The burden successfully shouldered by the prosecutors in this case, R. Booth Goodwin II ([now running](#) for governor in West Virginia) and Steven Ruby, should be a salutary warning to other industrial executives. True, the defendant had a habit, unfortunate for him, of recording the bullying instructions he issued to subordinates, and was [notorious](#) in coal country for his contempt for government and regulators. But he also had the best defense money could buy and he represented an industry that brought precious jobs to a depressed area. Even so, he was found guilty by jurors from a community largely dependent on companies like his.

What happened at Upper Big Branch was no extraordinary one-off, unlikely to recur. Virtually every report written by blue-ribbon private commissions and independent government investigators regarding similar fatal episodes in manufacturing plants, refineries and oil rigs documents the same dread among workers and managers over the risks of reckless cost-cutting, neglect of maintenance, scofflaw attitudes among senior executives and myopic focus on the financial bottom line.

Yet the statute that applies to fatal incidents in other industrial settings is even more lenient than the Mine Safety Act. The Occupational Safety and Health Act [caps](#) the prison term for even a grossly negligent manager at a mere six months, with a maximum fine of \$10,000 — for a violation causing the death of an employee.

Business interests have largely prevailed in their resistance to efforts to modernize these workplace safety and health laws, which date from the 1970s and, over the intervening decades, have grown stale in the face of emerging hazardous technologies. Congress should amend the mine safety and occupational safety acts to rank systematic violations by top executives as felonies and to increase the sentences available to judges for white-collar criminals like Mr. Blankenship.

Without more frequent and stringent criminal enforcement, the precedent of Mr. Blankenship's prison term will have little effect on other rogue managers who gamble with their employees' lives.

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COMMENT

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




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