


January 2012

A Deadly Way of Doing Business: A Case Study of Corporate Crime in the Coal Mining Industry

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A Deadly Way of Doing Business: A Case Study of
Corporate Crime in the Coal Mining Industry

by

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A thesis submitted in partial fulfillment
of the requirements for the degree of
Master of Arts
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Date of Approval:
March 22, 2012

Keywords: Massey Energy, Upper Big Branch Mine Disaster, Maximization,
Contextual Anomie/Strain Theory

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Abstract

To this point, research on corporate crime has been, for the most part, overlooked by mainstream criminology. In particular, corporate violations of safety regulations in the coal mining industry have yet to be studied within the field of criminology. The purpose of this thesis is to examine the crimes of a coal mining corporation, a corporation whose business decisions led to the worst coal mining disaster in forty years, along with the deaths of twenty-nine men. This thesis will utilize a case study format in order to illustrate the crimes committed by this corporation. Previous literature covering the history of coal mining safety in the United States, the political economy of coal, and theoretical explanations of corporate crime will be reviewed. The crimes detailed in this case study will then be explained using Contextual Anomie/Strain Theory. The criminal liability of corporations, potential ways to reduce corporate crime in the coal mining industry, as well as limitations of this study and directions for future research in this area will also be discussed.

Chapter One: Introduction

Historically, criminology has focused on explaining the actions of common street criminals, who also tends to be poor. Criminologists have examined social, economic, genetic, and other theoretical explanations to better understand the differences between street offenders and non-offenders. Following this tradition, contemporary criminology presents an abundance of perspectives and measures that are frequently used to explain the criminality of the poor and powerless. In comparison, very little criminological research has examined the crimes that are being committed by the rich and powerful. The virtual exclusion of white-collar, corporate and environmental crime (the crimes of the powerful) from the mainstream criminological literature is seen as an oversight by many scholars (Lynch et al., 2004; Shichor, 2009; Yeager, 2009).

Why is the study of the crimes of the powerful so important? Most people, including criminologists, don't realize the prevalence and seriousness of these crimes in today's society. In reality, the impact of the crimes of the powerful dramatically exceeds that of common street crimes. Several studies have estimated the detrimental effects caused by these crimes (Moore, 1990; Albanese, 1995; Friedrichs, 1996; Lynch et al., 2000). In contrast to the conventional street crimes that you hear about nearly every time you watch the evening news, the crimes of the powerful remain hidden from the public's view, affecting the public's perceptions of crime. By constantly running stories on street crime and excluding the occurrences of white collar crime, the media has trained the

public to be more interested in hearing about the double homicide by a crazed killer, than the two construction workers who were killed in an “accident” while using faulty equipment. Ratings and sales are offered as reasons for why the media is more likely to run the story about the masked bank robber who got away with \$20,000, instead of the bank’s president who embezzled \$2 million. But no matter the reason, the media has always disproportionately emphasized street crime compared to white collar crime (Graber, 1980). By doing this the media is responsible for influencing the public’s perception of what a “typical” criminal looks like: this persona is often characterized as being psychologically flawed, non-white, and of lower class. The American public has been taught through media exposure to be cautious of people matching this description. However, the hidden truth is that unlike the common street crimes committed by these “typical” criminals, virtually every American has been the victim of some sort of crime committed by the powerful, which mostly consists of individuals who are sane, white, and of the wealthiest class. For example, every tax-paying citizen in the United States was forced to pay higher taxes as a result of the savings and loan scandals (Lynch et al., 2004, p. 391).

In addition, the costs associated with the crimes of the powerful are significantly higher than the costs of conventional street crime. The numbers vary, but researchers have estimated that the annual economic losses due to white collar crime in the U.S. are around \$200 billion at the low end (Albanese, 1995, p.85), and up to \$400 billion per year at the high end (Lynch et al., 2000, p.66). When you consider that fraud in the health care industry alone was responsible for the annual loss of \$100 billion twenty years ago (Thompson, 1992), the actual costs of these crimes are probably closer to the higher end

of this spectrum. No matter the exact cost of white collar and corporate crime, we know that the corresponding cost of street crime is far less. Experts have estimated the annual cost of street crimes at nearly \$10 billion, twenty to forty times less than the cost of white collar and corporate crime.

However, the costs of white collar and corporate crime are not always financially-based; the violent nature of corporate crime is often disguised in the form of “accidents” (Lynch et al., 2004). On average, there are approximately 15,000 homicides in the United States every year. However, Simon (1999, p. 39) estimated that each year, roughly 100,000 U.S. workers were killed by either injuries suffered at the workplace or illnesses contracted from their jobsite. Additional estimates by Reiman (1998) revealed that an average of 16,000 people each year die from unnecessary surgeries, and an additional 20,000 deaths are the result of inadequate medical care. The dark figure of white collar and corporate crime is certainly much larger than that of street crime with countless other deaths resulting from the corporate manufacture of hazardous products, and environmental pollution. All things considered, the prevalence and impact of the crimes of the powerful on our society is much more significant than that of typical street crime (Lynch et al., 2004).

White-collar and corporate crime in general is understudied and research examining workers’ safety in the coal mining industry is almost non-existent. Most of the work done in this area focuses on crimes committed by the coal industry against the environment (e.g. Stretesky & Lynch, 2011). Although several sociologists and political scientists have examined issues regarding the coal mining industry and enforcement of safety regulations (Braithwaite, 1985; Lewis-Beck & Alford, 1980), to this point no one

in the field of criminology has examined the phenomena of corporate crime in the coal mining industry as it relates to workers' safety. This is a significant omission given the significant death and injury rates in that industry. For example, it has been reported that since 1900, more than 103,000 miners have died while working in coal mines in the United States, and another 1,750,000 miners have suffered disabling injuries. This estimate excluded the more than 1,500 former miners that are estimated to die from black lung disease every year (Goodell, 2006, p. 53).

Many times the death of a worker is the result of a true accident or an unpredictable occurrence based solely on chance. However, sometimes the death of a worker is not an accident, but instead is the consequence of a preventable, and at times even a predictable event. In this circumstance, the responsibility for such an occurrence is transformed: whereas no one can be blamed for an accident, specific persons, even in their capacities as representatives of disembodied corporations, can and should be held legally responsible for the consequences of a preventable event.

The purpose of this thesis is to examine the crimes of a corporation, a coal corporation whose business decisions led to a preventable and predictable disaster, along with the deaths of twenty-nine men. The next chapter will provide a case study of the Upper Big Branch Mine disaster, which has yet to be examined in the field of criminology as an instance of corporate crime. Chapter three provides a review of the history of coal mining safety in the United States and a description of the political economy of coal in West Virginia. Chapter four will focus on theoretical explanations of corporate crime, including the scholarly foundations, and current criminological theories related to corporate crime. Chapter five will offer a theoretical explanation for the Upper

Big Branch Mine disaster using Robinson and Murphy's (2009) Contextual Anomie/Strain Theory. Finally, chapter six will conclude with a discussion regarding potential ways to reduce the amount of crime committed by corporations in the coal mining industry, as well as limitations of this study and directions for future research on corporate crime in this area.

Chapter Two: A Case Study

The Upper Big Branch Mine Disaster

At approximately 3:02 p.m. on April 5th, 2010, a series of massive explosions ripped through the Upper Big Branch Mine located in southern West Virginia. A chain of enormous fireballs rocketed through two and half miles of underground workspace killing twenty-nine miners and seriously injuring another. This incident was the worst mining disaster in the United States since 1970.

On April 13th, 2010, then West Virginia Governor Joe Manchin III asked J. Davitt McAteer, former Assistant Secretary of Labor in charge of the federal Mine Safety and Health Administration (MSHA), to conduct a state funded independent investigation into the causes of the disaster. McAteer assembled an investigation team of colleagues with expertise in coal mining, mining law, mining communities, occupational safety and public health. After more than a year long inquiry the investigation report was released on May 19th, 2011, finding mine owner, Massey Energy, and the Mine Safety and Health Administration directly responsible for the catastrophe. The following chapter is based on that report.

The Aftermath of the Explosion

Following the explosion and leading up to the investigation, Massey Energy's officials stood by their assertion that the explosion was caused by a massive and unforeseen inundation of methane or natural gas from a crack in the mine floor.

According to Massey this was an incident that could not be predicted or prevented, and was simply one of the uncontrollable dangers of coal mining that every miner knows about when s/he takes the job. However, every mine explosion leaves behind a footprint that offers clues to investigators about details regarding the origin of the blast and how it spread, and the footprint left behind in the Upper Big Branch Mine tells a different story than the one the officials at Massey reported. It tells the story of an explosion that started with the ignition of a small amount of methane gas which was then fueled by coal dust that had been allowed to build up for miles throughout the mine.

No eyewitnesses survived that could testify as to the exact circumstances of what transpired just before the disaster; however, the evidence left behind from the explosions allowed the investigators to draw the following conclusions. It started with a spark, as the operator of the shearer cut into the sandstone top of the longwall. When machinery cuts into coal, there is usually very little sparking because the coal is soft. However, when shearer bits hit the rocks that sometime surround or are embedded in the coal, sparks will fly. On this occasion the sparks ignited a pocket of methane gas that had likely risen from the floor or had migrated from a previously mined area located behind the longwall. The shearer was equipped with water sprays that are designed to douse flames such as these at the point of ignition. The investigative report, however, noted that tests of this equipment by the investigators determined that the sprays on the shearer were ineffective because many of them had either been removed or were clogged. The crew working the longwall found themselves utterly helpless to stop the flame from transforming into a massive fireball as it ignited the coal dust that had been allowed to build up throughout the mine. As the flame propagated, it formed the shape of a wedge that grew enough to

reach from the roof all the way down to the floor. The explosions spread so quickly that within a matter of seconds, two and a half miles of underground workspace were completely scorched (McAteer et al., 2011, pp. 13-16).

The explosion was reported in the media as a single event; however, what actually took place was a series of blasts that occurred within milliseconds of each other, in such rapid succession that they did in fact sound like a single explosion. The secondary explosions were created by the compressed air of the initial blast forcing the coal dust to become airborne. Therefore, the explosion generated its own fuel with the air/dust mixture behaving like a line of gunpowder carrying the blast onward throughout the mine (McAteer et al., 2011, p. 23).

The investigators concluded that the explosion was the result of three failures by Massey Energy in basic coal mining safety practices that are identified and codified to protect the lives of miners. First, water sprays on the company's equipment were not properly maintained and consequently failed to function in extinguishing the small ignition that led to the massive explosion. Second, the company failed to meet federal and state safety principal standards for the application of rock dust. As a result, the accumulated coal dust provided the fuel that allowed the explosion to propagate throughout the mine. Finally, the company's ventilation system did not adequately ventilate the mine, allowing explosive gases to build up far beyond the legal levels (McAteer et al., 2011).

Working with faulty equipment. It is very apparent that at the Upper Big Branch Mine (UBBM) the maintenance of safety equipment was not a priority. The poor condition of various types of equipment used in the mining operation provides a clear

example of the inattention that was paid to maintaining a safe workplace. A poorly maintained top of the line shearer, broken rock dusters and defective airlock doors, are just a few examples. The lack of maintenance on the shearer (an electrically-driven machine commonly used in coal mining for making vertical cuts in the coal) was a direct cause of the deadly explosion. During the investigation, MSHA testing of the shearer found that water sprays were either clogged or missing. In addition, the MSHA found worn bits on the machine exposing steel shafts, which would have increased the danger of sparking when the bits hit rock. To make matters worse, testing done by the MSHA on December 20, 2010, revealed that the water lines on the longwall were inadequate to supply enough water to the shearer needed to suppress the fire in the first place. The miners had absolutely no way of protecting themselves once that first spark flew (McAteer et al., 2011, p. 23).

The large amount of faulty equipment in use at the UBBM is further evidenced by the numerous post-explosion violations and orders written by the MSHA during their investigation. The MSHA cited that mantrips, the vehicles used to transport workers, were in terrible condition, and that the main track haulage had not been maintained in many areas throughout the mine. Many different pieces of equipment throughout the mine had built in methane detectors, which would alert the miners when they were working in areas that had dangerously high levels of methane gas. However testimony from the miners suggested that many of these detectors had been disabled or “bridged out”, so that there would be no halt in production to make repairs when methane detectors indicated high methane levels. A violation of state and federal law, this practice of

equipment disabling puts workers in constant danger and may have resulted in this lethal explosion (McAteer et al., 2011, p. 99).

Coal dust and rock dust. Rock dust, or crushed limestone, has long been regarded as a vital safety component in underground mines because it is used to dilute the explosive nature of coal dust. However, this relatively large mine had only one two-man crew assigned to spread rock dust, and it wasn't even their fulltime job. The senior member of this crew explained that he was often pulled off his dusting duties to work on other construction projects such as building stoppings, setting timbers and delivering supplies to different sections.

The UBBM used a track mounted pod duster to spread rock dust throughout the working sections and construction sites in the mine. All of the investigators agreed that the efficient use of a track duster in a mine as large as the UBBM would have required drilling a borehole midway in the mine near the working sections. This borehole would have allowed the speedy delivery of bulk rock dust used to refill the pod duster. No such borehole existed at the UBBM likely because of the cost required to create one. As a result, when the rock dust crew would run out of dust they were forced to take the pod duster all the way back outside the mine in order to refill it. The nearly two-hour round trip required to refill the pod duster likely meant that only one tank of dust was being applied in the mine per day. Realizing the dangers created by the lack of rock dusting, miners took it among themselves to spread rock dust throughout the mine. The miners testified that, using 40-pound bags of rock dust that were transported to the sections on flat cars, they spread rock dust by hand on the floors and walls of working sections. However, the major flaw with this method was that the roof was never dusted, as required

by law, because the miners testified that dusting along the roof made it very difficult for them to breathe (McAteer et al., 2011, p. 50-52).

Dusting, which was already a challenging process for the two-man crew because of the large size of the mine was made even more difficult by the fact that the pod duster used at the UBBM didn't work properly much of the time. The senior member of the dusting crew explained to investigators that, "Sometimes it would clog up, so we would have to spend 30 minutes trying to unclog the hoses ... then it would clog up again" (McAteer et al., 2011, p.50). Testimony from the other member of the crew confirmed the state of the duster: "It would break a lot ... you had to twist all the knobs just right" (McAteer et al., 2011, p.50). It was not surprising that the two-man crew had trouble with the pod duster, which was prone to failure because of its age and the fact that it had not been properly maintained. The lack of maintenance on the pod duster was immediately apparent to investigators. After the explosion, Massey employees tried to use the duster to perform dusting required by the MSHA. They could not, however, finish because the motor burned up on their first attempt. Documents obtained from the manufacturer revealed that by 2010, the duster was more than 25 years old and had not been rebuilt for at least seven years (McAteer et al., 2011, pp. 50-52).

In order for the Upper Big Branch Mine to have met the minimum rock dusting standards specified in state and federal regulations, management should have assigned a two-man crew solely to rock dusting on at least two shifts each day, and preferably on all three shifts. Yet at the UBBM a two-man crew was responsible for dusting the entire mine on a part-time basis with no set schedule and with faulty equipment. The age and poor condition of the dusting equipment along with the fact the UBBM did not have an

established rock dusting crew that followed a consistent schedule, indicates that rock dusting was not a priority at the UBBM in the early months of 2010.

Further evidence of inadequate rock dusting is revealed in state and federal citation records. During 2009, mining inspectors with the West Virginia Office of Miners' Health Safety and Training (WVMHST) issued 26 citations at the UBBM for coal dust accumulation and for failure to adequately apply rock dust. In the fifteen months prior to the disaster, the UBBM received citations from federal or state inspectors every month. These violations were observed in every working section of the mine, including the longwall. Of the 40 citations issued by the MSHA for rock dusting violations, nearly half of them were classified as "significant and substantial" (McAteer et al., 2011, p. 54).

Since the disaster, Massey Energy officials have stated that coal dust played no part in the explosion at the UBBM. The general counsel for the company, Shayne Harvey, told the Associated Press that the mine "appears to have been very well rock dusted" (McAteer et al., 2011, p.55). However, the combined evidence from a number of sources strongly suggests otherwise: the many witnesses who testified to the lack of dusting in the mine; the series of citations issued by state and federal officials in the year leading up to the disaster; the absence of a systematic rock dust procedure; the frequent changes in rock dust personnel; the fact that rock dust crews were given other assignments; the physical distance the explosion traveled; and the findings from the rock dust samples taken after the explosion.

Had coal dust not been a factor in the explosion, the damage sustained at the UBBM may have been contained to the longwall area. The victims on Headgate 22 were

located nearly 0.75 miles from the longwall. Other victims on the mantrip were found about 1.15 miles from the longwall face. The fact that the explosion killed men working so far away from the initial blast provides strong evidence that coal dust played a significant role in propagating the blast throughout the mine. It is very apparent that the historic lessons of previous coal mining disasters were either forgotten or just completely ignored by the management of the UBBM (McAteer et al., 2011, p. 55).

The air down there. A mine's ventilation system is designed to continually push fresh air throughout the mine, prevent the buildup of methane and other toxic gases, and reduce the amount of coal dust. The ventilation system used at the UBBM is referred to as a push-pull system; air is pushed into the mine by the "North Portal" fan and is pulled throughout the mine by the "Bandytown" fan. Once the air has traveled its intended path it exits the mine through several return entries and out the main return shaft. However, the push-pull ventilation system at the UBBM suffered from a serious design flaw. The fans were configured to push air in a straight line throughout the mine even though many miners worked in areas away from this horizontal path. As a result, the air had to be diverted from its natural flow pattern into the working sections along the longwall. Adding to this challenge was the fact that the two main working sections, Headgate 22 and Tailgate 22, were located on opposite sides of the mine, which resulted in the construction of multiple ventilation controls that were often in competition with one another. A common phrase among miners was "bring the air with you", because as many workers confirmed, when the Tailgate 22 section was receiving sufficient air the Headgate 22 section had very low airflow, and vice versa: when the air conditions were good at Headgate 22, the opposite was always true at Tailgate 22. This competition for

air at the UBBM led to a dangerous practice of ad hoc modifications to the ventilation system by foremen that were concerned with providing enough air for their crews. These changes included unauthorized adjustments to many “ventilation controls” throughout the mine (McAteer et al., 2011, pp. 60-61).

The fans used at the UBBM did have a sufficient capacity to adequately ventilate the large mine. However, the challenge of ventilating such an expansive mine is that the air must be directed through multiple “ventilation controls” in order sufficiently ventilate all the areas of the mine. Fresh air can be directed throughout a mine using several different types of ventilation controls including stoppings, overcasts, regulators, seals and airlock doors. The location, construction and maintenance of these ventilation controls is critical to the proper functioning of a mine’s ventilation system.

At the UBBM evidence of missing, broken, and poorly constructed controls added additional problems to an already ineffective ventilation system. More importantly however, state, federal, and independent investigators were all in agreement that the UBBM had too many airlock doors. The purpose of airlock doors are to prevent the mine’s intended air flow from being disrupted as people and equipment enter or move into different areas of the mine. However, one of the problems with using air lock doors is that the intended air flow can be disrupted if doors are left open for an extended period of time. Miners testified that in an effort to provide more air to their working areas they frequently forced airlock doors to remain open in addition to altering regulators such as stoppings. The miners’ testimony also indicated that many of the airlock doors were not properly maintained, which also resulted in air leakage (McAteer et al., 2011, pp. 60-61).

Management at the UBBM likely chose to use airlock doors instead of overcasts due to the fact that airlock doors can be installed faster and at less cost to the operator. Management personnel also knew that the overall ventilation plan designed by engineers was not being followed correctly, but continued to push foremen to keep their crews working to produce more coal. In early January 2010 an MSHA inspector noted that the company's senior management officials showed a "reckless disregard" for workers' safety when they told a foreman to ignore a citation the mine had received for faulty ventilation.

Ventilation systems also play an important role in limiting the amount of coal dust that is allowed to build up in the air. Circulation of fresh air prevents the air from stagnating and becoming saturated with coal dust. Evidence from the autopsies of the 29 men revealed just how bad air conditions were at the UBBM. Coal workers' pneumoconiosis (CWP), also called black lung disease, develops from the prolonged inhalation of coal mine dust, which is deposited into the lungs. It is a chronic, fibrotic, and irreversible disease that robs miners of their breath and eventually their life. However, CWP is entirely preventable with the proper use of dust control measures including proper ventilation, water sprays and dust collectors (all three of which were compromised at the UBBM). All twenty-nine men who lost their lives in the explosion underwent lung examinations during their autopsies, which were necessary to determine the presence or absence of CWP. Of the 29 victims, five did not have sufficient lung tissue available to make a determination relating to CWP. Of the remaining 24 victims, seventeen (or 71 percent) of the men had CWP. This compares with the national

prevalence rate of 3.2 percent among active underground miners with CWP, and a rate of 7.6 percent in West Virginia (McAteer et al., 2011, p. 32).

The result of a failing ventilation system and the mine's management being unwilling to fix the problem led to the build-up of methane gas, which provided the fuel for the initial explosion. Methane gas is a natural by-product of decomposing organic matter and is the most hazardous gas found in underground mines. The dangers of methane gas are well known in the mining community, and since 1925 methane gas has contributed to more than 10,000 miner deaths in the United States. However, in today's modern age of mining technology and safety practices, small methane ignitions should not turn into major explosions. These events are rare among mine operators that adhere to basic safety measures, such as maintaining adequate ventilation systems, removing explosive coal dust from mining operations, spreading required amounts of rock dust and ensuring that water sprays on mining equipment are kept in good repair and function properly. Massey's affirmation that this catastrophe was an unpreventable happenstance is completely false; because the aforementioned safety systems failed at the UBBM, a minor flare-up of methane gas led to the nation's worst coal mining disaster in forty years (McAteer et al., 2011, p. 67).

Massey Energy: A History of Danger

At the time of the explosion at the UBBM, Massey Energy was the fourth leading coal producer in the United States and the largest in the Appalachian region, producing nearly 40 million tons of coal each year from underground and surface mines in Virginia, West Virginia and Kentucky. Massey Energy is well known for their environmental violations, causing immeasurable damage to the mountains, streams and air in the

coalfields. They have created health risks for coalfield residents by polluting streams, injecting coal slurry into the ground, and failing to control coal waste dams and dust emissions from processing plants. For example, in 2000, Massey Energy was responsible for what the Environmental Protection Agency has referred to as the largest environmental catastrophe in the history of the southeastern United States. The Martin County slurry spill, which resulted in the release of more than 300 million gallons of sludge into Appalachian streams, covered seventy-five miles of the Big Sandy River with black sludge, killing 1.6 million fish, washing away roads, and contaminating the water supplies of more than 27,000 people. However, Massey has also had a very poor history regarding safety inside their coal mines (McAteer et al., 2011, p. 92).

Following the explosion at the UBBM, American University's School of Communications released a detailed report on Massey Energy's safety record. This report was based on data that had been collected from various public sources including the MSHA's on-line database. Findings from their study revealed that from 2000 to 2010, among all U.S. coal companies, Massey Energy had the worst fatality record. During this time period, a total of fifty-four workers were killed in Massey mines, including the 29 men who lost their lives on April 5th, and another two men whom died at other mines after the UBBM disaster. In response to the report, Massey president Don Blankenship claims that these numbers were average among the larger coal mining companies. "If you look at the number of fatalities, we're a big producer, so absolute numbers when you're producing 40 million tons a year tend to get big, even with your best efforts," said Blankenship (McAteer et al., 2011, p. 93). However, according to the American University investigators, Blankenship's assertion about the other high

producing coal companies is completely false. For example, the nation's largest coal producer, Peabody Energy, had only six fatalities occur during the same ten year time period. In terms of production, Massey Energy averaged 17.5 million tons of coal per fatality, whereas Peabody Energy averaged 296 million tons of coal per fatality.

In addition, American University's investigation of Massey's safety record from 2000 to 2010 revealed that Massey had been cited for 62,923 violations, including 25,612 that were considered significant and substantial. During that 10-year time period, the MSHA proposed \$49.9 million in fines against Massey, which was \$15 million more than any other company (McAteer et al., 2011, p.93).

The disaster at the UBBM is not the first time an incident has occurred at a Massey owned mine which has been suspected of reckless disregard for safety standards. In 2006, federal, state and independent investigators determined that a fire in Massey's Aracoma Alma Mine #1, which killed two miners, was the result of negligent mining practices. The fire was caused by a spark from a misaligned conveyor belt which ignited combustible materials that had been allowed to build up alongside the conveyor belt. Following their investigation, the MSHA determined that the company had failed to adhere to such basic safety regulations such as performing safety inspections, installing a sprinkler system and maintaining a water supply that could have been utilized to combat the fire. However, the most serious safety violations involved the removal of stoppings, and other ventilation controls, which allowed the fire to spread and block the miners' primary escape route.

As a result of the investigations, federal indictments were issued against the Aracoma Coal Company (the company in charge of operating the mine and a subsidiary

of Massey Energy). The company entered guilty pleas to ten criminal violations of mine safety law related to the fatal fire and agreed to the payment of \$2.5 million in criminal fines. In addition, the MSHA issued more than 1,300 citations against the company for the violations of federal mine safety laws and regulations, which ended up costing Massey Energy another \$1.7 million in civil penalties. The \$4.2 million in combined penalties is the largest fine amount imposed on a coal company in the history of federal coal mining safety enforcement (McAteer et al., 2011, pp. 92-93).

To make matters worse for Massey, four years after the Aracoma fire, information surfaced which indicated that Blankenship was aware of the problems occurring at the Aracoma mine prior to the fire. On April 17, 2010, a reporter for *The Charleston (WV) Gazette* by the name of Ken Ward, Jr., revealed evidence that Blankenship had sent one of his own inspectors to examine the condition of the conveyor belt at the Aracoma mine. Ward exposed a memo between Blankenship and his inspector, in which the inspector had informed Blankenship that the conveyor belt's condition was a serious safety hazard. Most importantly, the memo was dated January 13, 2006, just six days before the fire broke out at the Aracoma mine.

Upon the discovery of this new evidence, the issue of a new trial was brought to Logan County Circuit Judge Roger Perry, who ruled that the memo could be used in civil actions against Massey by the miners who had survived the fire. The widows of the two miners who had died in the fire were excluded because they had previously brought a separate civil suit against Massey in 2008, which had been settled for an undisclosed amount. In October of 2010, Massey once again settled with nine of the miners for an undisclosed sum (McAteer et al., 2011, pp. 92-93).

Massey Energy would like to have everyone believe that the disaster which occurred at the UBBM on April 5th, 2010 was a freak incident, and that occurrences such as these are very rare events at Massey-owned mines. However, the company's history shows us that this is not the case. What makes this incident so troublesome is that it appears that Massey had learned nothing from their past safety issues, and that all the miners who had perished before April of 2010, had died in vain. Many of the safety violations that caused the fire at the Aracoma mine reflected the same problems being experienced at the UBBM, and with no effort by management to address these violations, history was soon to repeat itself, this time taking the lives of twenty-nine men.

The Role of the MSHA

Throughout the report Massey Energy is strongly condemned by the investigators for multiple failures to meet basic safety standards outlined in the Mine Safety Act of 1977. However, the investigators claimed that the U.S Department of Labor and its Mine Safety and Health Administration were equally at fault for failing to act decisively after Massey was issued 515 citations for safety violations at the UBBM in 2009. The report criticizes MSHA inspectors for failing to issue a flagrant violation citation which could have fined the company up to \$220,000. The McAteer investigators claimed that this citation was entirely necessary based on Massey's failure to meet basic safety standards and the investigators found it "disturbing" that the violation was not issued. The failure to issue this flagrant violation citation was compounded by the fact that the MSHA also failed to notify the miners and their families that they were working in a mine which had not met minimal safety requirements. The investigators were concerned that the MSHA

neglected to use its regulatory authority to enforce improvements on the mine may have been the result of Massey's political power (McAteer et al., 2011, pp. 76-77).

In the days and months following the disaster at the UBBM, officials with the MSHA repeatedly defended their agency's performance. They were quick to point to the fact that the Mine Safety Act places the duty for providing a safe workplace squarely on the shoulders of the employer, insisting that the operator is ultimately responsible for operating a safe mine. While this is true, once again it is not the whole story.

Anyone who has studied the history of occupational health and safety here in the United States knows that merely having laws on the books has never been enough to ensure workers' safety. As McAteer explains in his report, the government's duty to enforce those laws "is a hard-earned right that has been paid for with the blood of coal miners" (McAteer et al., 2011, p. 76). However, the goals embedded in mine health and safety regulations have the potential to narrow an operator's profit margin, therefore it is not uncommon for some mine owners to sometimes try and evade, ignore or sidestep those regulations. As a result, miners need a strong watchdog to ensure that a company's drive for profit is not allowed to overshadow workers' rights to a safe workplace. For coal miners in the United States, that watchdog at the federal level is the MSHA.

The MSHA receives a substantial annual appropriation from Congress (in fiscal year 2010, the appropriation was \$357.3 million) to issue regulations and ensure that mine operators comply with them. Located in 92 duty stations throughout the country, the agency has 2,300 employees that are responsible for inspecting coal mines and other operations, including stone quarries, metal mines and dredging operations. The MSHA is in charge of monitoring a variety of mandates on mine operators, these include

requirements to submit and receive approval on engineering plans for ventilation, and dust control, as well as for training and emergency response plans. MSHA officials are authorized to enter mine property at will and are required to complete mine inspections four times a year at every underground mine, two times a year at every surface mine, and spot inspections every five days at mines that liberate excessive quantities of methane (McAteer et al., 2011, p. 76).

A mine inspector's job is by no means simple. The best mine inspectors have very keen eyes and ears, they know regulations inside-out, they can quickly grasp the mine's ventilation and other engineering plans, and they thoroughly document their observations. Mine inspectors must also have thick skin because they spend days in the mine with the very company officials they cite for safety violations, in effect indicating that the officials are not doing their job and as a result their company will be fined accordingly. The inspectors are also responsible for returning to the mine to ensure that all safety violations have been addressed and that the mine's management is complying with regulations (McAteer et al., 2011, pp.76-77).

The mine inspector's job proves to be even more difficult when working with companies such as Massey Energy, which never passes up the opportunity to challenge inspectors' enforcement actions by disputing findings and arguing about what the law requires. According to witness testimony, Massey's Vice President for Safety, Elizabeth Chamberlin, took a violation written by an inspector, looked at her colleagues and said, "Don't worry, we'll litigate it away" (McAteer et al., 2011, p. 77).

Realizing that some companies are more likely to press the boundaries of safe practices, Congress gave the MSHA the power to establish a "pattern of violation (POV)"

category to address mine operators who are cited continuously for “significant and substantial (S&S)” violations. The MSHA was also given the authority to determine what constitutes a pattern of violation, and the agency is responsible for notifying mine operators when they fall into this category. Under current law, mines are subject to a POV sanction when they meet ten criteria indicating that the mine is a habitual violator of mine safety laws. According to the MSHA, after the mine has been placed on a POV status, any S&S violation issued by an inspector within 90 days will result in miners being ordered out of the affected area. However, this tool had never been officially used by the MSHA until April of 2011, when two coal mines were placed on the POV status, although no miners were ever pulled out of the mines.

It wasn't until after the Sago Mine disaster in 2006, and the deaths of twelve miners, that attention was brought to the unused POV provisions of the Mine Safety Act. In response to this tragedy the MSHA began notifying operators that had a “potential” pattern of violation. This strategy of notifying mine operators before they reached the POV status proved to be effective. According to the Department of Labor, once a mine is notified that they may be subject to a POV sanction, mines reduced future citations of serious problems by 72 percent. In 2007, twenty mines throughout the country were sent warning letters, four of those mines were owned by Massey Energy, including the Upper Big Branch Mine. However, none of these mines received tougher sanctions because once they reduced their violation rates, they were taken off the “potential pattern of violation” list. After this warning the level of serious violations dropped at the UBBM, however in 2009 offending spiked again reaching an all-time high at the mine (McAteer et al., 2011, pp. 76-78).

By simply examining MSHA statistics it is very obvious that federal officials were kept extremely busy at the UBBM. In 2009 alone, federal inspectors spent 1,854 hours at the mine – the equivalent of 231 eight hour work days, or 46 full time work weeks. These data indicate that the amount of time inspectors spent at the UBBM had doubled since 2007. During 2009, inspectors wrote 515 citations at the UBBM, and 39 percent of these citations were for significant and substantial violations. In addition, inspectors issued another 124 citations during the early months of 2010 prior to the explosion. The MSHA also issued 48 withdrawal orders at the UBBM – a rate that is nearly 19 times the national average - for these repeated violations. The associated monetary penalties proposed for these violations totaled almost \$1.1 million. Nonetheless, all of the investigators agreed that stricter action should have been taken by the MSHA at the UBBM (McAteer et al., 2011, p. 77).

There were several other provisions to the MINER Act passed in the aftermath of the 2006 Sago Mine disaster, which gave the MSHA new enforcement tools with more stringent sanctions to use against mine operators who were considered repeat offenders. Most importantly, the MSHA was now authorized to issue “flagrant” violations, associated with fines of up to \$220,000, against companies which repeatedly failed “to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that ... reasonably could have been expected to cause death or serious bodily injury” (McAteer et al., 2011, p. 77). During the past five years, the MSHA have issued more than 125 flagrant violations, resulting in \$19.5 million in fines. However, even though the UBBM had been cited numerous times in 2009 for violating ventilation plan

requirements and rock dusting standards, the MSHA never issued a flagrant violation against the UBBM.

Investigators found it apparent that the MSHA failed to use all the necessary tools at its disposal to ensure that the company was compliant with federal safety laws. Questions were immediately raised against the MSHA as to why a mine like the UBBM, that had such a blatant history of safety violations in 2009, had not been placed on POV status. The MSHA claimed that the UBBM would have been placed into a potential POV status in October of 2009 had it not been for an error in one of their computer programs. As for why the MSHA failed to issue the UBBM any flagrant violations, an MSHA spokesperson said that it is a matter being examined by the MSHA's "internal review" team. However, it is also a matter being examined by the FBI, which launched an investigation into possible criminal wrongdoing at the mine, including criminal negligence and possible bribery of federal regulators (McAteer et al., 2011, pp. 77-78).

Response to the Upper Big Branch Mine Disaster

The Upper Big Branch Mine disaster elicited a quick response from the federal government. Nine days after the explosion at the Upper Big Branch Mine, U.S. Representative George Miller, chair of the House Education and Labor Committee, released a list of forty-eight mines throughout the United States that had been identified by federal mine safety officials in August of 2009 for increased scrutiny, but had not been targeted due to unresolved appeals filed by mine operators. Of the forty-eight mines on the list, nineteen were underground coal mines located in West Virginia. Six of the nineteen mines were owned by Massey Energy, including the Upper Big Branch mine (Mosk, 2010).

Once a mine is notified by the MSHA that they may be under a pattern of violation, the mine must take immediate actions to reduce future violations or they can face severe sanctions including mine closure. The list released by Chairman Miller contains those forty-eight mines that would have received this notice for a pattern of violation in October of 2009 if it had not been for contested violations. The 515 citations issued to the UBBM in 2009 should have been enough to place the mine in POV status and have the mine shut down, however Massey Energy contested 179 of those violations, and only violations that are fully resolved can be counted against the mine towards a pattern of violation sanction. The contested violations are part of a huge backlog of over 16,000 unresolved cases at the Federal Mine Safety and Health Review Commission. Mining companies have challenged a greater percentage of penalties since the MSHA began increasing their enforcement efforts in response to the 2006 Sago Mine disaster, and the commission has stated that it doesn't have enough staff to handle the increase in appeals. Miller claims that the reason why these mines were never shut down is because the companies running the mines were intentionally appealing citations in order to prolong the review process and bog down the agency. "Mine operators who game the system to avoid tough scrutiny by federal safety officials must be held accountable," said Miller (Ward, 2010).

The mining companies on the other hand, argue that they have a legal right to contest penalties that they think are unfair. Although it is not surprising to discover that most of the citations the coal companies contest as being unfair are the same ones that carry the most expensive fines. For example, the 179 citations contested by Massey at the UBBM is almost 35 percent of the total number of citations for that year. Those

citations account for nearly 68 percent of the monetary penalties imposed against the UBBM.

Even President Barack Obama voiced in on the issue stating that part of the blame for the Upper Big Branch Mine disaster lay with a failure of government oversight, and in response initiated an investigation into the tragedy by members of his own administration. In his declaration, Obama reaffirmed his message, “We owe the people of West Virginia more than our prayers. We owe them action ... They ought to know that behind them there is a company that’s doing what it takes to protect them, and a government that is looking out for their safety.” In the case of the Upper Big Branch Mine, it would appear that neither of these existed (Shear & Mufson, 2010).

The first criminal prosecution of a Massey Energy employee occurred one year after the disaster in April of 2011, when a former miner at the UBBM by the name of Thomas Harrah, pled guilty to forging documents and making false statements to the FBI and MSHA in an attempt to pass himself off as a mine foreman. Both of the charges were felonies, and in September of 2011, Harrah was sentenced to 9 months in jail (Ward, 2011).

The very next month, Massey Energy’s Security Chief at the Upper Big Branch Mine, Hughie Stover, was convicted by a federal jury of making false statements to federal agents and obstructing a federal investigation into the cause of the UBBM disaster. The investigators discovered that Stover had participated in the cover-up of longstanding safety problems at the mine by ordering the destruction of thousands of security documents in reference to the UBBM. Stover also falsely informed the investigators that Massey Energy did not have a policy of alerting mine operators and

foreman when safety inspectors arrived at the mine. Through the testimony of several former security guards at the site and dispatchers in the mine office, investigators exposed the company's sophisticated methods of alerting the underground crews when inspectors made unannounced visits. On many occasions, Stover himself had actually been involved in the use of radios and underground strobe lights to warn miners of the inspectors' presence. Stover remains free on bail as he awaits his sentencing hearing, however Stover faces up to 25 years in prison and U.S. Attorney Booth Goodwin has stated that they will be asking for the maximum sentence (Ward, 2012).

On February 22, 2012, former mine superintendent at the UBBM, Gary May, became the highest ranking Massey Energy official to receive criminal charges thus far. May was charged with conspiracy to defraud the federal government's mine safety enforcement efforts, in an effort to cover up dangerous working conditions in the UBBM prior to the April explosion. In the information filed by U.S. Attorney Booth Goodwin, May is accused of the manipulation of vital safety measures in order to deceive mine inspectors, as well as participating in a scheme to provide mining crews with advanced warning of government inspections. According to the prosecutors, May was responsible for manipulating the mine's ventilation system during an inspection in order to conceal the existence of hazardous working conditions. Prosecutors also contend that May ordered the disabling of a methane monitor on a continuous mining machine at the UBBM less than two months before the explosion. In addition, May is alleged to have ordered another worker at the UBBM to falsify mine examination records by omitting hazardous conditions, which were required by law to be reported. With a conviction, the single felony charge would carry a sentence of up to five years in prison. However,

reports indicate that May is cooperating with prosecutors, in an effort to reach a plea agreement, which may provide the prosecutors with the information they need to go after more of the 18 Massey employees, including Blankenship, who invoked their right against self-incrimination and have refused to cooperate with any of the investigations (Ward, 2012).

In June of 2011, the acquisition of Massey Energy by rival coal giant Alpha Natural Resources was approved by shareholders in a deal worth over \$8.5 billion. The merger between Alpha and Massey has combined the third and fourth largest coal producers in the U.S. into the nation's largest metallurgical coal company, with more than 150 mines and access to 5 billion tons of coal reserves (Ward, 2011). The sale provided a massive windfall for Massey executives including former Massey Energy CEO Don Blankenship whose resignation was reportedly accompanied by a multi-million dollar "golden parachute" to go along with his shares in the company. The fact that the upper management at Massey Energy, including Blankenship, continue to avoid criminal punishment lends credence to the idea that the killing and maiming of miners is simply considered the cost of doing business for these colossal coal companies, and that it is the job of the state and federal agencies to ensure that dangerous coal mines are allowed to continue their operations without disruption.

Chapter Three: Literature Review

This chapter will provide the background necessary for understanding some of the underlying factors related to coal mining safety. It begins with a brief overview of the history of coal mining safety in the United States, followed by a section examining the political economy of coal and its effect on federal regulation of the coal mining industry.

A History of Coal Mining Safety in the United States

One hundred years ago coal mines were like war zones. Coal mining was unlike any other occupation because a miner dealt with the very real risk of death from all four classical elements – earth, air, fire, and water. Many mines had unstable ceilings that could collapse unexpectedly at any moment, crushing miners instantly or even worse burying them alive under mountains of earth. Mines had air that could poison you instantly (carbon monoxide), or air that could explode in your face with the slightest spark (methane). In many instances miners would break through to unknown sources of water causing floods that would quickly trap everyone in the mine, leaving them to drown in the dark depths of the earth. Every miner knew that each time they went underground, there was a very real chance that they may never reach the surface again (Freese, 2003).

The early mines in West Virginia were no exception. In 1907, Monongah, West Virginia was the site of one of the worst coal mining disasters in United States' history. An essayist and activist, Edgar Allen Forbes, described the scene after a methane

explosion killed 361 workers: “Think of hell as a hollow hill and imagine that its power plant has exploded and blown a hole in the hillside. Then imagine a handful of reckless, begrimed men going into the cavern with lanterns, with sulfurous fumes in their faces, and dragging out the charred bodies of men ... that is what Monongah looked like” (Goodell, 2006, pp. 55-56). However, the public outrage that followed the catastrophe at Monongah in 1907, which left 250 widows and more than 1,000 children fatherless, was not enough to force Congress into passing safety laws against the omnipotent coal industry. It would take another dozen serious mine disasters throughout the country, and more than another 1,200 dead miners, before Congress acted, creating the United States Bureau of Mines as part of the Department of the Interior in 1910.

The instructions given to the U.S. Bureau of Mines from Congress was to investigate mining methods and to come up with ways to improve mining conditions. However, the legislation created by Congress gave the U.S. Bureau of Mines absolutely no enforcement power. Inspectors were not even allowed to enter a mine without the owner’s permission, and their findings were never to be publicized. Another three decades would pass – and the lives of many thousands of miners would be lost – before Congress granted the bureau the authority to officially inspect mines and publicize findings. These new duties, however, still left the Bureau of Mines without enforcement powers (Goodell, 2006).

In 1947, a mine explosion in Centralia, Illinois killed 111 miners. The ensuing investigation revealed that for many years the mine’s owner had scornfully ignored warnings from dozens of sources regarding the dangerous conditions in his mine. When called to testify before Congress, John L. Lewis, then the president of the United Mine

Workers of America, provided a memorable speech, “If we must grind up human flesh and bone in the industrial machine we call modern America, then before God I assert that those who consume coal and you and I who benefit from that service because we live in comfort, we owe protection to those men first, and we owe security to their families if they die” (Goodell, 2006, p. 61). In 1952, near the end of his second term, President Harry Truman, unafraid of the all-powerful coal industry, signed the Federal Coal Mine Safety Act, finally giving mine inspectors the power to shut down dangerous mines. However, written into the law by coal industry lobbyists were numerous loopholes that were used by coal companies to avoid sanctions.

Even with the new legislation, the coal miner death toll continued to rise. In 1968, seventy-eight miners were killed by an explosion in a coal mine in Farmington, West Virginia. This mine had a history of accidents and had previously suffered an explosion in 1954 that killed sixteen men. In the two years prior to the 1968 explosion, the mine had been cited by inspectors for countless violations. Lack of action to address these violations by the mine’s management resulted in an explosion and fire that burned for several days before the mine was sealed to smother the flames. The bodies of the miners were never recovered. The public’s outcry for stricter enforcement of regulations against unsafe coal mining companies resulted in Congress passing the Federal Coal Mine Health and Safety Act the following year. Not only did the new legislation considerably increase the enforcement powers of the Bureau of Mines, but it also gave miners the right to request mine inspections, and for the first time, provided benefits to miners disabled by black lung disease. This was certainly a landmark moment for coal

mining safety in the United States; unfortunately it had come too late for the more than 103,000 coal miners who had been killed since 1900 (Goodell, 2006).

The climate of tough regulations and strict enforcement against the coal mining industry would not last very long. When Richard Nixon took office in 1969, he helped stall tougher enforcement against the coal industry by placing individuals in the top positions at the Bureau of Mines who supported a more relaxed approach to regulation enforcement. As a result, the Bureau became increasingly ineffective in its duties of policing the coal mining industry, leading a representative from the General Accounting Office to state that the Interior Department's policies for enforcing health and safety standards had been "extremely lenient, confusing, and inequitable." This led to a changing of the guard in 1977, as Congress transferred the power to inspect mines and enforce safety laws from the Department of the Interior to the Department of Labor. This shift in authority resulted in the creation of a new agency, the Mine Safety and Health Administration (MSHA). This change in jurisdiction, however, did not improve the enforcement of mining regulations.

During the Clinton Administration, the MSHA was lead by J. Davitt McAteer, a lawyer and mine safety expert who in the eyes of the coal mining industry was a fierce opponent. Then, in 2001, President George W. Bush followed the precedent set by Nixon, giving the MSHA's top position to Dave Lauriski, a former executive of Energy West Mining Company. The coal companies were pleased to see Lauriski appointed because he was known for his belief that the coal industry should be allowed to regulate itself. Lauriski had spent years lobbying the MSHA to loosen the rules against dangerous levels of coal dust in underground mines, and once he arrived at MSHA he immediately

started making changes, changing the agency's emphasis from enforcement to education , training, and consulting. Lauriski would not last long at the MSHA, resigning shortly after the 2004 election under a cloud of scandal. The Department of Labor's Inspector General determined that during Lauriski's tenure, the MSHA had fraudulently awarded no-bid contracts totaling more than \$500,000 to two companies that had ties with Lauriski. Interestingly, Lauriski quickly landed a new job as a highly paid coal industry consultant after his resignation (Goodell, 2006).

In the wake of efforts to undermine the regulatory powers of the MSHA, it would not be long before tragedy struck again. In January of 2006, an explosion at the Sago Mine in Upshur County, West Virginia, trapped 13 miners underground for nearly two days; only one miner made it out alive. Questions were once again raised about the MSHA's competency and its willingness to enforce mining laws after an investigation revealed that the Sago Mine had been cited for more than two hundred and fifty federal safety citations *during the year prior to the explosion*. West Virginia Senator Robert Byrd was one the MSHA's biggest critics. During a fiery speech in front of the U.S. Senate, Byrd asked "What is that agency waiting for? Could an automobile driver or a truck driver rack up 276 speeding tickets and still have a license? What if someone had 276 mistakes on a tax return? But here was a coal company with 276 violations and it's still operating" (Goodell, 2006, p. 64).

The tragedy of the Sago Mine disaster placed pressure on the federal government and, in response to the public's protest, Congressman George Miller, head of the committee that oversees the MSHA, called on the Bush administration to significantly increase fines against mining companies that repeatedly violated federal safety

regulations. In a letter to Secretary of Labor Elaine Chao, Miller pointed out that the year before the explosion the MSHA had only fined the owner of the Sago mine \$24,374, which equated to only \$156 per violation. This is much less than a slap on the wrist for a company that mined 507,775 tons of coal and sold it for nearly \$70 per ton. Miller also reported that many of the citations were for repeated violations of the same safety regulations. For example, the mine owner was issued a \$60 citation for the accumulation of combustible material. However, this was the twenty-first citation for the accumulation of combustible material received by the owner in 2005. Miller responded, “When a speeding ticket in West Virginia costs more than the twenty-first citation for accumulation of combustible materials, there is something horribly wrong with mine safety enforcement” (Goodell, 2006, pp. 64-65).

It is hard to imagine anything like the disaster at Monongah happening today. Back then, there were no labor laws, no mine inspectors, no safety helmets, no safety training, no high-tech ventilation systems to reduce the levels of methane and coal dust, no heavy steel roof bolts to keep roofs from collapsing, and definitely no electronic meters to detect high levels of the extremely lethal gases that are often released in coal mines. Actually, instead of the high-tech meters used in today’s coal mines, early coal miners in the United States would bring a caged canary or mouse into the mines because the animals’ greater sensitivity to poisonous gases could provide miners an early warning. Canaries quickly became the indicator of choice because the fall from their perch was much more dramatic than the mouse’s reaction to carbon monoxide (Freese, 2003, p. 49).

However, even one hundred years' worth of innovations in safety and better equipment have not changed the fact that coal mining, especially underground coal mining, is still an extremely dangerous business. Working in a coal mine today may be much safer than working in a coal mine a hundred years ago; however, according to the National Institute for Occupational Safety and Health, coal mining remains one of the most dangerous occupations in the United States. Working in an underground coal mine is even more dangerous, the fatality rate in underground mines is five times higher than it is in surface coal mines. And working in underground coal mines in West Virginia is the most dangerous of all. Coal mines in West Virginia have the highest rates of fatal accidents and injuries in the nation, and mines in southern West Virginia are even more deadly. The MSHA conducted a study in 1996 which revealed that 70 miners were killed in southern West Virginia in 1996, resulting in 28 percent of all U.S. mining fatalities in an area that employs just 13 percent of the nation's miners. In 2001, another report revealed that between 1991 and 2000, 25 percent of the country's 458 coal mining fatalities – 116 deaths – occurred in southern West Virginia (McAteer et al., 2011, p. 18).

After the passage of the Federal Coal Mine Health and Safety Act in 1969, the number of mining fatalities steadily declined. In recent years, however, the numbers have leveled off. Even though many coal companies remain in denial, U.S. health statistics show that black lung disease still kills more than 1,500 miners every year (Goodell, 2006, p. 53). However, the mindset of most coal companies, and even many of their employees, is that coal mining has always been a dangerous business, not for the faint of the heart, and that the possibility of death is something that comes with the territory. Every miner knows all of the dangers that are associated with coal mining

when he takes the job. However, investigations have revealed that many of the coal mining deaths that have occurred in recent years could have, and should have been prevented.

For more than a hundred years, government regulation of the coal mining industry in the United States has followed a systematic pattern. History shows that the government makes an effort to improve safety conditions for miners, only after a disaster has already taken place. During periods when there are few coal mining incidents, the debate over safety conditions between miners and operators is unnoticed by the general public and thus the government. The occurrence of a major mining disaster, and the media coverage that goes along with it, heightens the public's perception of mine safety conditions, and often provides a thrust for the passage of stronger legislation. In 1987, sociologist Michael Wallace, published a study examining several factors which were hypothesized to affect the pattern of fatality and injury rates in the American coal mining industry from 1930 to 1982. He found that major mining disasters had a negative impact on fatality rates the following year, indicating that mines became safer following mining disasters. Wallace claims that mining disasters lead to closer adherence by mine operators to the existing regulations and to stricter legislation (Wallace, 1987).

Throughout United States history, many industries with safety problems have been successfully reformed by government agencies and their regulations. Why is it then that the U.S. Government has not been more vigilant when it comes to the coal mining industry? The political economy of the coal mining industry may help us find this answer.

The Political Economy of Coal

In this section, the *political economy of coal* refers to the interrelation between economic processes and political policies that are fueled by the production of coal. As mentioned earlier, the political economy of coal can help us explain why the federal government has tended to favor a lax regulatory approach in regards to the coal mining industry. Within this political economy context, the creation and enforcement of safety regulations (political policy) is in conflict with the economic interests of the coal mining companies who support less regulation, which allows them to generate larger profits. On the other hand, the miners who work for these companies encourage the creation and enforcement of these safety regulations which are designed to ensure their safety while on the job. However, in the state of West Virginia, these coal mining communities lack the political strength (the absence of an effective union), and the financial strength (due to a flawed economy) necessary to compete against the more powerful coal corporations. Therefore, the argument follows that the financial and political strength of the coal mining industry simply outmatches that of the mining communities, and as a result, the interests of the coal mining industry supersede the creation and enforcement of coal mining regulations. The remainder of this section will explain the role played by the coal mining industry in affecting federal government policies, and the economic problems associated with coal mining communities in West Virginia.

The power of coal. Most Americans have no idea how central coal is to our everyday lives, although the average American consumes about twenty pounds of coal per day. Coal is still the major source of electric power in the United States, with more than half the electricity we consume coming from coal-fired power plants. The electric

power generation industry (one of the largest and most capital-intensive industries in the country, with revenues of more than \$380 billion per year) relies on more than a billion tons of coal per year in order to produce enough electric power to meet the country's demands. It is not surprising that an economic juggernaut as large as the coal industry has also had a very strong influence on the political landscape in the United States.

The 2000 presidential election is a prime example. Being one of the first American politicians to consider global warming a serious concern, Democratic candidate Al Gore, was immediately viewed as a major threat to the coal industry. Every coal industry executive knew that Gore's presidency would certainly be accompanied by strict regulations to limit dangerous emissions. So the coal industry used its money and influence to support George W. Bush's campaign. With the help of the coal industry, Bush was able to gain significant support in key industrial states, such as West Virginia, historically a Democratic stronghold, which prior to the 2000 election had not voted for a Republican presidential candidate in seventy-five years. Many believe that Florida's disputed recount was the deciding factor in the 2000 election, however, it could also be argued that West Virginia's five electoral votes provided the edge that Bush needed to gain his title as Commander-in-chief.

Bush was quick to show his gratitude to the coal industry. Only weeks after his presidency began, Bush had already begun appointing former coal industry executives to high powered positions within the federal regulatory agencies. Bush's Vice President Dick Cheney was also eager to show his appreciation. Cheney was in charge of the National Energy Policy Development Group, which was responsible for creating a new energy policy for the nation. The group's recommendations were noticeably pro-coal.

These recommendations included a proposal for 1,900 coal-powered plants over the next twenty years, and a \$2 billion subsidy for research on “clean coal” technology (Goodell, 2006).

The significant political power controlled by the coal mining industry has also had an apparent impact on the policies of federal regulatory agencies. In order to control the monitoring of their coal mines at the local level, coal corporations use their financial resources to shape policy at the federal level. For example, Stretesky and Lynch (2011) stated that in 2008, the top five US coal mining companies spent \$9.95 million lobbying federal officials in Washington to pass legislation that would be favorable to their industry. This legislation included altering the requirements for mining permits which were considered necessary by regulatory agencies. Instances such as these demonstrate that the coal industry is not timid when it comes to making noteworthy financial investments in order to shape the federal political process to their advantage.

According to the report by McAteer (2011), Massey Energy was not shy about flaunting its political and financial power as well. At the time of the Upper Big Branch Mine disaster, Massey Energy was the largest coal producer in the Appalachian region, and the report claims that Massey used the leverage of the jobs it provided in an attempt to control West Virginia’s political system. Using this power, the company challenged any federal or state oversight agencies that threatened to get in their way, including the MSHA, the Environmental Protection Agency, and the West Virginia Office of Miners’ Health, Safety and Training. The report also cites that many politicians were afraid to speak out against the company because they knew that Massey spent vast amounts of money to influence elections.

Coal in West Virginia: A blessing, or a curse? The role that the coal mining industry has played in the economic development of certain regions has been the subject of much debate and study. In West Virginia, the negative political and economic effects of coal can be seen on a magnified scale. Jeff Goodell (2006) raises a key question on this issue, “How is it that a rock that has been the basis for so much prosperity and progress in America has left behind such a trail of human and environmental wreckage in the regions where it is mined?” (p. 29). The discovery of coal in West Virginia was celebrated as a sign of future prosperity by most West Virginians. The states’ abundance of timber and coal, the two natural resources that were responsible for fueling the industrial revolution, were sure to make this one of the richest states in the Union. However, as we can see today, this was not to be the case.

Almost 150 years later, and after the mining of more than 13 billion tons of coal, the state of West Virginia has not turned out the way that those early settlers had expected. A state with dreams of great riches has been replaced by a state that is characterized by poverty, sickness, environmental devastation, and great despair. West Virginia’s population is currently ranked at or near the bottom of almost every indicator used to determine a state’s economic condition, with some of the lowest rates of educational achievement, employment, and income level in the country (see various reports at, <http://www.wvpolicy.org/releases.html>). And the situation is worse in southern West Virginia, where the state’s richest coal deposits can be found. McDowell County, situated along West Virginia’s southern border, is home to a population that depends on welfare, workers’ compensation, disability, Social Security, and other

retirement benefits for nearly half of its total income. For these individuals coal has certainly been a curse (Goodell, 2006).

How did this happen? Economic theory would tell us that coal mining should provide a financial advantage for these small coal communities in West Virginia (Banks, 1985). Coal mining brings jobs, creates infrastructure, and provides more opportunity for the growth of other industries and small businesses. In addition, coal companies are required to pay state governments severance taxes for mining the land. In 2005 alone, taxes from the coal mining industry in West Virginia accounted for more than \$238 million in state revenue. Why isn't the coal mining industry having the expected positive economical affect on these areas? The economic troubles of places such as these, has prompted many economists to study this relationship between the extraction of natural resources and an area's economic welfare. Most of the research on this issue has looked at the economic troubles of third world countries that have built their economies around natural resource extraction, however many parallels can be drawn to the situation in West Virginia.

In 2001, Harvard economists Jeffrey Sachs and Andrew Warner published a study that revealed a significant negative relationship between natural resource-based export economies and gross domestic product (GDP) growth. Of the ninety-five developing countries that were examined in the study, only two resource-rich countries had achieved at least a 2 percent annual growth rate in GDP between 1970 and 1989 (Sachs & Warner, 2001).

Economists offer many different explanations for why most of these resource-rich countries have struggling economies, however many of these theories focus on three

main factors. First, the income from these resources is typically controlled by only a fortunate few. Second, economies that are primarily based on the extraction of natural resources tend to be highly unstable. Finally, most of these struggling third world countries have extremely low investments in education (Banks, 1985).

In many of these third world countries the control over these natural resources allows a few individuals to gain incredible personal wealth, while also having significant power over the states' economic well-being. Their economic power also provides them with great influence in the political arena as well. The tyrants and warlords of these third world nations take the form of corporate leaders in the United States. Massey Energy's CEO, Don Blankenship, is one of these few individuals who has benefited greatly from coal mining in West Virginia. His \$6 million salary in 2004 made him the highest paid executive in the state and also the entire coal industry.

However, maybe more impressive than Blankenship's wealth, is his political power. Blankenship directly influenced state elections in West Virginia in 2004, by spending \$3.5 million of his own money to fund a campaign that was aimed at defeating state Supreme Court justice Warren McGraw. The campaign group, which named itself *And for the Sake of the Kids*, utilized a series of widely publicized ads which criticized McGraw for signing a state Supreme Court decision to parole a convicted child molester and allow him to work as a janitor in a public high school. The child molester in question, who had pled guilty to first-degree sexual assault when he was only fifteen years old and had been a victim of child abuse himself, was far from the deviant sexual predator that had been portrayed in the media. The inmate was never actually released to work in the high school, however, by simply signing the decision, along with two other

justices, McGraw had given the group the ammunition it needed to create a public image that painted McGraw as an ally for child molesters (Goodell, 2006, pp. 44-45).

Blankenship's real motivation for having McGraw removed from the state Supreme Court was based on financial reasons linked to a particular case before the court. In 2002, a Boone County court convicted the Massey Energy corporation of fraud, and issued a \$50 million judgment against the company, after it had illegally negotiated the buyout of a rival coal operator. Blankenship had made it abundantly clear that he planned to appeal the decision all the way to the state supreme court if necessary. At the time, McGraw was a current Supreme Court justice and had developed a reputation as being an opponent of the coal industry. Instead of taking his chance with an anti-coal judge, Blankenship would hand-pick McGraw's successor. Blankenship's choice to oppose McGraw in the upcoming election was Brent Benjamin, a Republican pro-business lawyer who had spent the majority of his career in private practice protecting the interests of various corporations. It is likely that Blankenship did not see his \$3.5 million investment to unseat McGraw as undermining the judicial system, but instead just a smart business decision that was likely to reap him \$50 million in reward. A local editorial cartoon mocked the whole situation by depicting Benjamin arriving at the Supreme Court in a shipping crate labeled "Courtesy of \$3.5 million from Massey Coal." The plot was so intriguing that author John Grisham borrowed it for one of his best-selling novels (Goodell, 2006, pp. 44-45).

A second reason that resource-rich third world countries have struggling economies is that these economies tend to be based solely on natural resource extraction making them extremely unstable in comparison to economies that are more diversified.

This is in part due to the problem that the development of natural resources tends to crowd out the growth of other, more sustainable industries such as manufacturing. Unlike more balanced economies that utilize multiple industries in order to create revenue, natural-resource based economies are more susceptible to instability because these economies are so dependent on a single source of income. When the price of these natural resources is high, these countries experience times of relative economic prosperity. However, when these prices fall, many of these governments dive into severe economic decline because they do not have other forms of capital to offset the damage of financial losses in this sector.

The economy of West Virginia has followed a similar historic pattern. The severity of the economic issues being caused by West Virginia's coal-based economy did not become apparent until after World War II. Coal powered factories were responsible for producing many of the weapons and supplies used by U.S. armed forces during the war, however once the soldiers returned home the demand for coal began to decline. The Middle East's 1973 oil embargo caused coal prices to spike, however the effect was short-lived, and by 1990 more than half of the coal mines in West Virginia had been shut down. The mines that did remain open were forced to expand, and become more efficient by replacing many of their workers with advanced machinery. In 1980, McDowell County had 7,200 mining jobs, more than any other county in the state. However, by 2003 the mining industry employed fewer than 720 workers in McDowell County, a decrease of 90 percent. According to Goodell (2006), during this 23-year span, the southern coal fields of West Virginia have witnessed the disappearance of more than 26,000 mining jobs, leaving behind what Goodell refers to as "a lot of aging, sick, and

dependent people, many of whom gave the best years of their lives to the mines and now find themselves poor and forgotten” (pp. 34-35). There was another rise in coal prices between 2003 and 2005, but this marginal increase has not affected the state’s overall economic landscape. West Virginia had the largest decrease in economic activity for fiscal year 2009 at negative 13.5 percent; the next closest state was Idaho at negative 6.3 percent.

Most of West Virginia’s coal companies blame federal regulations and environmental extremists for their industry’s decline. However, the recent descent of West Virginia’s coal industry is actually the result of expanded mining in Wyoming’s Powder River Basin. Between 1997 and 2004, coal production had declined by 18 percent in West Virginia, whereas Wyoming’s level of coal production had grown by more than 40 percent during the same time span. There are several reasons why Wyoming has taken over the lead in domestic coal production. First, it is much easier to mine coal out of the massive eighty-foot seams found in the Powder Rivers Basin’s flatlands, than out of the six-foot seams buried in West Virginia’s rugged and mountainous landscape. The difference in productivity rates between the two states is astounding. In West Virginia, four tons of coal are mined per employee hour, whereas in Wyoming, thirty-nine tons of coal are mined per employee hour – nearly ten times the amount. Productivity rates such as these allow mining companies in Wyoming to offer much more competitive prices for their coal. This puts West Virginian coal companies, such as Massey Energy, under extreme pressure to cut costs and find new ways to increase productivity (Goodell, 2006).

Another factor that explains Wyoming's dominance is linked to our country's air pollution laws that are geared towards reducing the amount of sulfur dioxide (SO²) released into the atmosphere by coal-burning power plants. SO² is responsible for acid forming pollution which causes acid rain showers in Los Angeles and the heavy haze that often covers New York City. Many of the pollutants that have been linked to SO² have also caused immeasurable damage to our country's ecosystems. Luckily for Wyoming, it just so happens that coal deposits in the western United States have significantly reduced levels of sulfur in them. Therefore, it is much easier and cheaper for a coal power plant to buy its coal from Wyoming than to implement the expensive new technology necessary to reduce SO² emissions (Freese, 2003). These factors make Wyoming's coal the obvious choice for many power plants across the country.

Finally, economists have found that the numerous third world countries that have struggling extraction economies also make very small investments in education for their population. Once again, this situation is similar to the coal mining communities of West Virginia. As mentioned earlier, these areas have some of the lowest rates of educational achievement throughout the entire country. In fact, these coal mining communities have literacy rates that are comparable to many third world countries. The inadequate investment in education is further illustrated by the lack of secondary education available to the residents in these coal mining communities. The presence of state universities and colleges, community colleges, and even vocational schools is almost non-existent in these counties. This is likely due, in part, to the interests of coal mining corporations, which put a higher emphasis on workers with more brawn than brain. These institutions are seen as opposition by coal mining companies because they threaten to steal their current

and future workforce. With the continued occurrence of incidents like the Upper Big Branch Mine disaster, coal mining is becoming less and less of a glamorous career, and academic institutions such as these provide current and prospective coal miners with an alternative to working in the mines (Goodell, 2006).

When compared to the massive political and financial forces controlled by the coal mining industry, the poor state of economic conditions in these coal mining communities allows us to understand why these groups are ineffective in convincing the government to enforce higher standards of workplace safety. These communities simply do not have the resources available to influence political policy in the same manner as the coal companies they work for. This explains why significant changes to coal mining regulations usually occur only after a major disaster has already taken place.

Unfortunately, these catastrophes are required in order for these marginalized communities to gain the national recognition and support necessary to enforce stricter regulations against the more powerful coal mining industry. In the words of author Jeff Goodell (2006), “If the sorry history of the coal mining industry has proven one thing, it’s that when it comes to enacting and enforcing safety laws against Big Coal [the coal industry], the only good lobbyists are dead miners” (p. 60).

Although the political economy of coal may explain why the U.S. government is not a strong regulator of the coal mining industry, and why regulation agencies are scared to enforce mining safety laws against a powerful company like Massey Energy, this is only a partial explanation for the catastrophe on April 5th, 2010. To fully understand why disasters like the one at the Upper Big Branch Mine occur, we will look to theoretical explanations from the corporate crime literature.

Chapter Four: Theoretical Explanations of Corporate Crime

Scholarly Foundations

One of the earliest statements recognizing the deviant actions of powerful people and the organizations they control was made in 1907, by sociologist Edward Alsworth Ross. Ross referred to this type of individual as “The Criminaloid.” Ross characterized the criminaloid as someone who is not driven by evil impulse, but is instead affected by moral insensibility. According to Ross (1907), “they want nothing more than we all want – money, power, consideration – in a word, success; but they are in a hurry and they are not particular as to the means” (p. 45). From the very beginning, Ross realized that attaining success was the main motivation for these individuals to commit crime. Ross found that the criminaloid preferred to prey on the unassuming members of the public that were less likely to recognize the nature of these crimes. Ross argued that the criminaloid was not antisocial by nature, but instead was unevenly moral, being a very strong adherent to family virtues, but lacking in the realm of commercial and civic ethics. He decided that in order to disguise themselves, criminaloids often participated in a protective mimicry of the good. Criminaloids would present themselves as good citizens by participating in various social activities amongst the community including going to church, local fairs, holiday celebrations, and town hall meetings. Unlike the street criminals hiding amongst the shadows, the criminaloids were no strangers to the community, always in the open and with what appeared to be clean hands. However,

Ross explained how the criminaloid operated within the gray areas of law, exploiting various business opportunities using methods that had yet to be outlawed or had been created to work around current laws. Nevertheless, Ross understood the threat posed by the criminaloid, whom he claimed was

Society's most dangerous foe, more redoubtable by far than the plain criminal, because he sports the livery of virtue and operates on a Titanic scale. Every year that sees him pursue in insolent triumph his nefarious career raises up a host of imitators and hurries society toward moral bankruptcy (Ross, 1907, p. 48).

The work of Ross influenced another sociologist who would later become the first to use the term “white collar” crime to define the crimes of the powerful.

In 1939, Edwin Sutherland delivered a landmark presidential address to the American Sociological Society on what he referred to as “white collar” criminality. In his speech Sutherland rejected the idea that crime was only a problem of the lower class, and opened the eyes of academics to the criminal behavior of the upper classes.

Sutherland (1949) defined white collar crime as, “a crime committed by a person of respectability and high social status in the course of his occupation” (p. 2). In a renowned study, Sutherland revealed the crimes of 70 of the nation's largest corporations. Sutherland's findings revealed that 60 percent of the 70 corporations had been convicted in criminal courts and had an average of approximately four convictions each. According to Sutherland, the amount of crimes committed by these repeat offenders was sufficient to refute the false notion of conventional theories at the time that suggested that crime was due to the personal and social pathologies connected with poverty (Sutherland, 1949).

In order to explain the crimes committed by these large corporations, Sutherland formulated a general sociological theory of crime and delinquency, which he referred to

as Differential Association Theory. Sutherland proposed that his theory was not only an explanation for individual criminal behavior, but was also suited for explaining the differences in group or societal crime rates. The theory assumes that criminal behavior is learned from associations with other persons through a process of symbolic interaction, which usually takes place in intimate groups. *Symbolic interactionism* presumes that social interaction is mainly the exchange of meaning and symbols; according to Ritzer (1992), individuals have the cognitive capacity to imagine themselves in the roles of others and incorporate this into their conception of themselves. Through these associations an individual is able to learn the values, attitudes, techniques, and motives for criminal behavior. According to Sutherland, a person commits criminal acts because he or she has learned definitions favorable to violation of law in excess of definitions unfavorable to violation of law. In addition, this balance of rationalizations is influenced by the priority, frequency, duration, and the intensity of associations that support law-violating definitions versus law-abiding definitions (Sutherland, 1949). The ground breaking work done by Sutherland provided the foundation for future criminological study of the crimes of the powerful.

Current Criminological Theories

As mentioned in chapter one, our society is primarily focused on street crime and as a result most criminological theories are aimed at explaining these types of crime. However, several theories from current criminological literature that are typically used to explain street crime have also been applied to the crimes of the powerful. Among these are self-control theory (Gottfredson & Hirschi, 1990), social learning theory (Akers, 1973), general strain theory (Agnew, 2006), and institutional anomie theory (Messner &

Rosenfeld, 2007). Another theory, referred to as contextual anomie/strain theory (Robinson & Murphy, 2009), was created with a more specific intent of explaining corporate crime. Each of these theories and their significance for understanding the crimes of the powerful are summarized below.

Self-Control Theory. Gottfredson and Hirschi (1990) are well known for their attempt to explain criminal behavior using the construct of self-control. Self-control theory assumes that an individual's lack of self-control is responsible for their increased inclination to commit crime. According to Gottfredson and Hirschi, self-control is learned through the process of socialization, and as a result the primary causal factor associated with low self-control is ineffective child-rearing. The authors also claim that an individual's level of self-control is stable across their lifespan. Therefore, children and adolescents with low self-control will also have low self-control as adults. Gottfredson and Hirschi characterize individuals with low self-control as being impulsive, insensitive, short-sighted, risk-taking, and egocentric, which makes them more likely to engage in deviant and criminal behavior on a frequent basis.

Self-control theory is considered a general theory of crime, meaning that it is intended to explain all types of crime, including deviant behavior that is not considered crime. However, while self-control theory does provide some insight into street level offenses, it offers very little explanatory power for the crimes committed by the powerful (Benson & Moore, 1992; Reed & Yeager, 1996; Simpson & Piquero, 2002). For example, the authors identified several elements of crime committed by individuals with low self-control; these elements included crimes that were immediate, easy, offered simple gratification with few long term benefits, and required little skill or planning

(Gottfredson & Hirschi, 1990, p.89). These elements do not translate well to most of the crimes committed by the powerful, which oftentimes are extremely complex, take place over long periods of time, require large amounts of planning and premeditation, and are committed by individuals with advanced skill sets. It seems very unlikely that the individuals described by Gottfredson and Hirschi as having low self-control would even be able to secure regular employment, let alone achieve the highest positions within a corporation. However, Gottfredson and Hirschi continue to argue that amongst corporate officials there should be significant differences in self-control between those who offend and those who do not, even though empirical research offers little support for these claims. A study by Simpson and Piquero (2002) found that corporate offending propensity and behavioral indicators of low self-control were unrelated.

Social Learning Theory. Another general theory of crime, Akers' (1977) social learning theory, is an expanded version of Sutherland's differential association theory. Akers' social learning theory is based on four central concepts: differential association, definitions, differential reinforcement, and imitation. Akers retained the concepts of differential association and definitions from Sutherland's theory. Social learning theory, however, provides another dimension to explain how these definitions are learned. Whereas Sutherland argued that the learning of ideas about the law are only produced through differential association, social learning theory argues that criminal behaviors can also be directly learned by individuals through the process of operant conditioning. *Operant conditioning* specifies that learning can take place through responses to an individual's behavior.

Based on this idea, Akers incorporated the concept of differential reinforcement into his social learning theory. *Differential reinforcement* refers to the balance of actual or anticipated rewards and punishments that are the consequences of a certain behavior. According to this principle, whether or not individuals will refrain from or commit a crime depends on the actual or anticipated future rewards weighed against the possible punishments for their actions. The probability that an act will occur is increased by rewarding outcomes and reactions (positive reinforcement) and is enhanced when the action allows the individual to avoid aversive consequences (negative reinforcement). Similar to differential association, differential reinforcement is influenced by conditions which include quantity, frequency, and probability (Akers, 1977).

The fourth major concept of social learning theory is imitation. Akers describes *imitation* as the engagement in behavior after the observation of similar behavior by others (Akers, 1977). The likelihood of imitation occurring is affected by the characteristics of the models, the behavior being observed, and the observed consequences of the behavior (Bandura, 1977).

Although social learning theory is a general theory of crime that is supposed to explain all forms of crime and deviance, the empirical research on white collar and corporate crime using this theory, have produced mixed results. A study conducted by Piquero, Tibbetts, and Blankenship (no relation to Massey Energy CEO Don Blankenship) in 2005, revealed that the decision to commit corporate crime was inversely related to the perceptions of peers, failing to support the principle of differential association. However, other studies of white collar crime have found partial support for social learning theory (Higgins, Fell & Wilson, 2006). Based on these results, it is safe to assume that further

research is required in order to determine the exact role of social learning theory in explaining the crimes of the powerful.

General Strain Theory. According to Agnew's (2006) general strain theory, the occurrence of crime is the result of individual reactions to strain. Agnew defines *strains* as circumstances that cause distress, and separates them into two categories. *Objective strains* are those that cause a general suffering amongst the masses, whereas *subjective strains* are distresses experienced by particular individuals. Agnew specifies the three major causes of strain that include (1) the loss of something valuable, (2) negative treatment from others, and (3) failure to achieve goals. Crime is therefore viewed as a means to reduce or escape from the anxieties of strain, achieve revenge against those perceived to be causing the strain, or to alleviate the pressures of negative emotion. Individuals who lack the ability to cope with strain using legal methods, and who perceive the costs of criminality as being low, are more likely to cope with strain by committing crime. There are many factors which influence the individual's reaction to strain, including personality traits, goals, values, and previous experiences. However, the chronic or repeated exposure to strains can create a general disposition for criminal behavior (Agnew, 2006).

According to Agnew not everyone experiencing strain will respond with criminal behavior. Individuals who do engage in crime, however, do so as a means to cope with strain. Some individuals are more likely to respond to strain with crime than others. Agnew explains that a person's reaction to strain depends on the characteristics of the strain one experiences, his/her own traits, and the environment in which he/she finds themselves. Individuals who have poor coping skills, inadequate social support, have

low levels of self control, have favorable attitudes towards crime, associate with others who commit crime, or are in situations in which the benefits of crime outweigh the costs of crime are more likely to commit crime in order to cope with strain (Agnew, 2006).

General strain theory has typically been used in prior research to explain street level crimes, however, the theory can be applied to white collar crimes as well. Strains in the corporate world are often characterized by financial, goal-related, and economic inequalities. These strains coupled with the competitive nature of the corporate environment can be extended as explanations of white collar and corporate crime. This behavior is seen by the individual as alleviating the strains associated with individual and corporate finances, an individual's future position within an organization, and corporate progress in the global market (Agnew, 2006). Langton and Piquero (2007) found that individuals who reported strain were more likely to be financially motivated to commit white collar crimes.

Institutional Anomie Theory. A modern version of strain theory, Messner and Rosenfeld's (2007) institutional anomie theory, uses the interaction of culture and social structure to explain crime. According to Messner and Rosenfeld, certain cultural circumstances interact with existing social structures in a way that encourages crime amongst certain groups of people. The social structure component of institutional anomie theory (IAT) is the imbalance of power between economic and noneconomic institutions, which in turn leads to weak institutional control and inadequate support for noneconomic institutions, such as the family and educational system. The cultural element of IAT is centered around the notion of the "American dream," which causes pressure for individuals to achieve economic success resulting in anomie. The term *anomie*, coined

by sociologist Émile Durkheim, refers to “a weakening of normative order in society” (Messner & Rosenfeld, 2007, p. 11). Messner and Rosenfeld claim that the American dream socializes the masses to seek economic success and believe that, with a little hard work, their chances of achieving this success are all but guaranteed. This mindset facilitates the pursuit of unattainable aspirations and material wealth. Not only does this focus on material success undermine the importance of noneconomic structures, but it also clashes with the reality of the existing social structure of economic inequality (Messner & Rosenfeld, 2007).

According to Messner and Rosenfeld, the four value foundations of the American dream are achievement, individualism, universalism, and materialism. An individual’s self-worth is often evaluated on the basis of *achievement*. The concept of *individualism* is tied to the ideas of individual identity and individuals rights that permeate American society. *Universalism* is described by the authors as the universal acceptance of cultural goals and values, and *materialism* is expressed as a focus on monetary success and material accumulation. Many Americans find themselves unable to achieve these values associated with the American dream using the legitimate means that are available to them. According to anomie theorists, criminality occurs as a function of added priority being placed on the goals associated with the American dream (e.g., wealth) over the legitimate means to achieve those goals (e.g., work). As a result, Messner and Rosenfeld (2007) claim that the pressure to achieve this success “by any means necessary” (p. 21) causes certain individuals to abandon legitimate means such as work in favor of more innovative means such as crime.

Messner and Rosenfeld maintain that this unachievable pursuit of financial success, along with the actuality of economic disparity, contributes to the commission of street crime as well as crimes of the powerful. In the context of a corporation, some executives are motivated to increase profits at any cost necessary in order to achieve the values associated with the American dream. The desire for success and the consequences of failure only become more magnified as individuals advance within their organizations. Messner and Rosenfeld would argue that the cultural prioritization of financial success creates the pressure to maximize individual income and corporate profit, and when legitimate means do not allow corporate executives to reach their goals, they are more likely to turn to criminal pathways.

Contextual Anomie/Strain Theory. Robinson and Murphy's (2009) contextual anomie/strain theory builds upon institutional anomie theory by adding the concept of maximization in order to analyze corporate crime. Similar to Messner and Rosenfeld, Robinson and Murphy argue that the American dream promotes criminality through greed, strain, and anomie. However, contextual anomie/strain theory offers a new mechanism, referred to as maximization, to explain this criminality. *Maximization* is defined by Robinson and Murphy (2009) as "the concomitant utilization of legitimate (i.e., legal) and illegitimate (i.e., illegal) means to achieve the goals associated with the American dream" (p. 3). Therefore, this form of behavior involves certain situations in which individuals are able to obey and violate the law at the same time.

Maximization is the combination of two adaptive modes of strain: conformity and innovation. The concept of *conformity* is described as the acceptance of cultural goals and institutional means, which are consistent with law-abiding behavior. *Innovation* is

defined as the acceptance of cultural goals and the rejection of institutional means, resulting in criminal behavior. Therefore, those who utilize strategies of maximization employ legitimate means, as well as illegitimate means in pursuit of their goals. According to Robinson and Murphy, “maximizers” simultaneously engage in both conformity and innovation, such that the boundaries between law-abiding behaviors and criminal behaviors become distorted or are simply disregarded. The authors explain that this type of behavior is especially likely to occur in corporate settings where the added pressure to achieve financial success oftentimes allows illegitimate means to become routine. Robinson and Murphy (2009) argue that crime and deviance have become normalized activities amongst corporations because maximization is the primary method for corporations to get ahead of their competition.

Robinson and Murphy have applied their theory to several different forms of corporate crime, however, it is yet to be tested by empirical research. This is due to the difficulties involved with measuring strain as well as theoretical concepts such as maximization. The early studies of classic strain measured strain in terms of a goals/means disjuncture, whereas most recent research has considered other measures of strain; including the perception of block opportunities, dissatisfaction with monetary status, and relative deprivation. Having to measure these concepts for a corporation, instead of an individual, makes the process even more difficult. In addition, measuring theoretical concepts such as maximization, which combine multiple principles, can be very problematic. Contextual anomie/strain theory faces several other limitations. The authors suggest that corporations commit crime by utilizing conformity and innovation simultaneously, however, they do not explain why corporations choose these modes of

adaptation in response to strain as opposed to others. Also, it could be argued that in certain situations conformity and innovation may not be occurring together, but instead corporate actors are simply drifting in and out of crime, similar to the juvenile offenders portrayed in David Matza's theory of "delinquency and drift." In addition, Contextual anomie/strain theory may be limited because it focuses solely on economic strain.

Although, economic strain is likely to be the primary motivating factor for most corporate crime, it is entirely possible that there could be other types of strain that cause corporate actors to commit crime.

In the first chapter of Robinson and Murphy's (2009) book Greed is Good: Maximization and Elite Deviance in America, the first example the authors give for maximization is "a board of directors of a corporation (which by definition is involved in legal activity) deciding to ignore workplace safety regulations (an illegal activity) in order to 'maximize' profits" (p. 3). In the following chapter I will argue that maximization is the primary reason why the executives of Massey Energy decided to overlook workplace safety regulations in order to increase their profits, which directly led to the Upper Big Branch Mine disaster, and the deaths of twenty-nine men.

Chapter Five: Application of Theory

Robinson and Murphy's (2009) Contextual Anomie/Strain Theory is centered on the concept of maximization. The following chapter will apply this concept to the crimes committed by Massey Energy prior to the Upper Big Branch Mine Disaster. The main premise of this theory is that the American dream promotes criminality through greed, strain, and anomie.

According to Robinson and Murphy, the cultural goals associated with the American dream have permeated our society, and the notion of monetary success is of the highest importance amongst American citizens. Even President Barack Obama made a reference to this phenomenon in a statement regarding the UBBM disaster, "How can we let anyone in this country put their lives at risk by simply showing up to work; by simply pursuing the American dream?" (White House Press Release, 2010). Statements such as this one, provide support for Robinson and Murphy's claim that the American Dream has become a universally accepted idea amongst United States citizens. Although everyone is subject to the pressures of attaining the American dream, Robinson and Murphy claim this pressure is most pronounced within the context of the American corporation. That is, in American corporations, there are added pressures to engage in innovations while in pursuit of the American dream, so much so that criminality in the context of the work environment is oftentimes expected, and at times even celebrated (Robinson & Murphy,

2009, p. 33). For Massey Energy, this was exactly the case at the Upper Big Branch Mine where maximization emerged as the acceptable way of doing business.

My argument is that the practice of maximization manifested itself at the UBBM because executives of Massey Energy were under extreme pressure to outperform their competition in the coal mining industry. As mentioned earlier, the cheap coal coming out of the state of Wyoming was making it very difficult for mine owners in the east to match these prices and still come away with a profit. Because legitimate means of production were not providing significant enough revenues, illegitimate methods were adopted as the solution for a decreasing profit margin. The mining of coal is a legal activity protected and encouraged by the criminal law. However, if a company intentionally ignores workplace safety regulations (innovation) in the pursuit of mining coal (conformity) this activity becomes illegal – this is maximization. The following two sections will provide evidence that demonstrates how maximization became part of Massey Energy’s corporate subculture, and how the criminal actions of this subculture became normalized at the UBBM.

A Culture of Maximization

Influenced by the elements of maximization, Massey Energy developed a corporate mentality that placed the drive to produce coal above worker safety. According to interviews conducted by McAteer’s investigators, the majority of miners indicated that the pressure to produce coal far outweighed the importance of maintaining a safe work environment. In order to satisfy the greed of Massey’s executives, the concept of maximization became infused within the corporate subculture. Illegitimate means of influencing workers (innovations) were used prominently in conjunction with everyday

working procedures (conformity). Production reports, intimidation of workers, public display of injury reports, institutional secrecy, violations being viewed as part of the business process, “nasty notes”, and enhanced employment agreements are some of the ways in which a culture of maximization manifested itself at the Upper Big Branch Mine.

Production reports. At the UBBM, the amount of coal being produced from the longwall was officially reported every thirty minutes, and was then relayed up the chain of command all the way to Massey Energy headquarters. When work was stopped at the longwall, section bosses were responsible for completing downtime reports to explain why coal was not being produced. However, during instances in which production was halted due to dangerous conditions, the section bosses were instructed to write only “downtime” in explanation of the work stoppage, making sure not to create a record acknowledging a potentially deadly situation. Procedures such as these sent a very clear message to all of the workers as to what management considered to be most important (McAteer et al., 2011, p. 99).

Intimidation of workers. Ample evidence provided through the miners’ testimony revealed that the miners were discouraged from stopping production for safety reasons. The workers stated that those who questioned safety conditions were threatened by management in order to continue production. Miners at the UBBM learned to keep their mouths shut. Taking a stand against management essentially meant putting your career on the line. Without a powerful union for protection, and in an area where hundreds of unemployed men are waiting in line for jobs, a miner who complains about dangerous conditions is likely to find himself out of work. Miners at the UBBM saw firsthand what happened to individuals who stood up against the corporation.

Mine foreman, Brian Collins, stopped his crew from running coal when he reported inadequate ventilation during his pre-shift exam. Collins would not allow any work to be started on his section until the ventilation issues were resolved, which reportedly took about an hour. When Collins arrived at work the next day, he was informed that management had decided to suspend him for three days due to “poor work performance.” Instances such as these made it very apparent that anyone who decided to stand in the way of production would have to suffer the consequences (McAteer et al., 2011, p. 100).

Injury reports. At the UBBM, a safety board outside the bathhouse was used to list all self reported injuries. However, many of the miners did not report their injuries because all injuries posted to this board would include the injured worker’s name. This type of public display created peer pressure amongst the miners, and the threat of retaliation from management caused many injuries to go unreported (McAteer et al., 2011, p. 99).

Institutional secrecy. Testimony from the miners indicated that workers at the UBBM were unaware of the seriousness of conditions in the mine, and that the results of inspections were kept from the miners. Only a privileged few were made aware of the dangerous conditions throughout the mine. Even foremen and section bosses were kept informed on a “need to know” basis, and were unaware of ventilation changes, and other hazardous conditions (McAteer et al., 2011, p. 99).

Violations seen as a part of doing business. Massey Energy officials have made numerous public statements expressing their opinion that violations are simply one of the costs of doing business. Any rumors regarding the dangers of Massey mines were

quickly dispelled by the company's public relations campaign. On several occasions, Massey officials were responsible for making statements claiming that their mines exceeded industry standards for workplace safety. Although statistics have shown that this perception is completely unfounded, it was widely believed amongst the corporation's employees, especially those who had never worked for other mining companies. Many new miners were under the false assumption that they were going to work for a company that put the safety of their miners above all else. Unfortunately this was not to be the case.

The significance of violations was further diminished by the company's legal department, which was responsible for contesting these violations. Information obtained from the MSHA's online data retrieval system provides evidence that Massey Energy was engaged in a consistent practice of contesting violations and backlogging the regulatory process. From 2008 to 2010, the MSHA has proposed \$2,274,691 in penalties for violations at the UBBM. However, to date, the company has paid only \$600,771 or 26.4 percent, of those proposed penalties. By fighting these violations, Massey has been able to avoid paying nearly three-fourths of their fines while continuing to accelerate their profits during this time period. Management's trivialization of violations, created a group mentality amongst the workforce, in which violations were seen as part of doing business, and nothing the miners should be concerned about (McAteer et al., 2011, pp. 93-95).

“Nasty notes”. UBBM foreman, Glenn Ullman, told investigators that if a crew had not completed a job during their previous shift it was not uncommon for them to find what he referred to as “nasty notes” waiting for them before they started their next shift.

Ullman described these as, “some sarcastic note for all my men to see ... making you feel belittled.” Management at the UBBM used these “nasty notes” as a way to motivate the foremen to push their crews harder and produce more coal (McAteer et al., 2011, p. 100).

Enhanced employment agreements. The company also used enhanced employee agreements in order to discourage workers from complaining about safety concerns or hazardous working conditions. Under the terms of these agreements, the company offered pay increases, bonuses and guaranteed employment in exchange for an employees’ agreement to stay on the job for at least three years. However, by accepting the company’s terms, the miners made themselves even more vulnerable to the will of the corporation. If the miners left the company voluntarily or were terminated “for lack of performance, or unacceptable conduct,” the miners were forced to return their “enhanced pay” and all of the bonuses received under the contract. In addition, they were not permitted to work at any competitor’s coal mine within a 90-mile radius of the mine where they had previously been employed. By providing the miners with these enhanced employment agreements, the corporation was protecting itself by giving miners more to lose if they decided to get in the way of corporate interests (McAteer et al., 2011, p. 100).

The Effects of Maximization

Within the corporation, the principles of maximization are passed downwards from the highest levels of management. These principles are learned as employees are socialized by their superiors and individuals begin to associate maximization as the proven method for climbing the corporate ladder. According to Robinson and Murphy (2009), managers are responsible for making decisions and giving orders that are in the best interest of the corporation, even when these decisions are not in line with their own

personal standards and values. Over time, a corporate subculture emerges and the deviant acts that are committed as part of this subculture are “filtered through a sanitizing, ideological prism, which gives them the appearance of not being criminal or deviant” (Robinson & Murphy, 2009, p. 49). Therefore, this process of maximization allows for many criminal actions to become normalized in the workplace.

At the time of the explosion, the organizational culture at Massey Energy was engaged in the process of maximization, and in the push to produce coal, made allowances for the faulty ventilation system, inadequate rock-dusting and poorly maintained equipment. According to McAteer’s report Massey intentionally neglected safety precautions in order to increase profit margins, threatening miners with termination if they stopped work in areas that lacked adequate oxygen levels. These and other unsafe practices including illegal ventilation changes, poor engineering designs, water problems, an ineffective fireboss system, disabled safety mechanisms, and fraudulent fireboss practices suggests that deviant practices had become normalized at the Upper Big Branch Mine in an effort to maximize the production of coal.

Making it hard to breath. Extremely low airflow was a constant problem in the UBBM. It became routine for miners and section bosses to keep airlock doors open in order to provide airflow to their working areas. There are multiple sources of evidence documenting that, in the months leading up to the explosion, the airflow had been reversed on a number occasions, which would indicate a serious problem with the mine’s engineering and ventilation plan. In addition, evidence was uncovered of major ventilation changes being made while miners were working underground, which is once again a violation of law and demonstrates a blatant disregard for worker safety. Although

both state and federal inspectors wrote citations for ventilation violations, no action was ever taken to correct the problems causing these airflow issues, and as a result dealing with dangerously low airflow became part of the standard operating procedure at the UBBM (McAteer et al., 2011, pp. 59-66).

Inadequate rock dusting. The vitally important practice of rock dusting was not a priority at the UBBM. The company's lack of commitment to one of the most basic and important safety procedures is evidenced by the fact that only a two-man crew, working on a part-time basis, was assigned to dust the entire mine, not to mention the fact that the rock dusting equipment assigned to them did not work properly. Rock dusting was seen by the management as unimportant and time consuming process that got in the way of their main goal of producing coal. As a result, the exclusion of this basic mining safety practice became normalized, and the miners were forced to work in hazardous areas that had not been properly rock dusted (McAteer et al., 2011, pp. 50-55).

Faulty equipment and structure. The use of faulty equipment was the norm at the UBBM. A poorly maintained shearer, broken rock dusters, defective airlock doors, inadequate water lines, and disabled safety mechanisms are all direct signs of a company's inattention to equipment and structure. However, to make matters worse, investigators revealed that the UBBM had an unstable engineering design. Rather than having an overall engineering plan to guide the mining, testimony from engineers assigned to the UBBM, suggested that the mine was engineered as operations advanced. The engineers stated that they were frequently not involved, and had not approved many of the ventilation changes that were made by the mine's upper management (McAteer et al., 2011, p. 98).

Water problems. The UBBM had continuous problems with high water throughout working sections of the mine. In addition to compromising the ventilation system, the high water posed serious safety risks for the miners who could not see the surface of the floor beneath the water. Nonetheless, sending miners into chest-deep water was not seen as a hazard at the UBBM, just another routine aspect of an already dangerous job (McAteer et al., 2011, p. 98).

Ineffective fireboss system. A fireboss is a mine employee who is responsible for examining a mine for potential dangers, particularly explosive gases. The fireboss is usually the first person to enter a mine, verifying the mine's safety before working crews are allowed to enter the mine. The duties of the fireboss are usually completed by a foreman or shift manager in mines that don't assign employees to this specific role. Therefore, these individuals are not only responsible for keeping their miners safe, but are also expected to ensure that their miners are efficient in producing coal. Unfortunately, these two roles can sometimes come into conflict with each other, because putting safety first will oftentimes slow the production of coal. This was the case at the UBBM where management had put an emphasis on producing coal over maintaining safety, and as a result the fireboss examination system, aimed at identifying problems and protecting the lives of miners, proved to be absolutely ineffective.

For example, although fireboss records mentioned inadequate ventilation throughout the mine, these records failed to reveal when and where the lack of airflow was occurring. In addition, fireboss requests for additional rock dusting were frequently ignored. In fact, records show that in the ten days leading up to the disaster, only eleven percent of the rock dustings requested were completed. Management's ignorance of

these issues became the norm because the recognition of unsafe working conditions might have meant dedicating precious man hours to correcting these problems (McAteer et al., 2011, pp. 98-99).

Fraudulent fireboss practices. In the weeks preceding the disaster at the UBBM, investigators discovered that one of the foreman's hand-held methane detectors had not been turned on, even though he had filled out examiner records as if he had taken readings using the detector. The foreman in question was responsible for assessing gas levels in the critical entries adjacent to the longwall, where the initial explosion occurred. Additional data downloaded from the methane detectors after the explosion indicated that many of the devices used by other foremen had not been turned on when these foremen were underground with their crews, and were responsible for identifying hazardous conditions. Not only is the failure to take these required readings a violation of state and federal law, these actions demonstrate the attitude of a company fixated on production over safety (McAteer et al., 2011, pp. 98-99).

All the investigators agreed that in order for an explosion of this magnitude to occur, many of the systems that have been created to safeguard the lives of miners had to have failed. The ventilation system had to be faulty; there had to have been a huge buildup of coal dust throughout the mine in order to carry the explosion so far; there had to be inadequate rock dusting to allow the coal dust to become so explosive; there had to be a failure to maintain equipment and structure; and there had to be a breakdown in the fireboss system through which unsafe conditions are supposed to be identified and corrected. Any one of these breakdowns can take place in any mine, however, in order for all of these failures to take place in the same mine, at the same time, requires a

subculture of maximization in which deviant practices have been allowed to become normalized.

Robinson and Murphy's contextual anomie/strain theory provides us with a theoretical framework to explain why and how the Upper Big Branch Mine disaster occurred. Such total and catastrophic system failures can only be explained within the context of maximization. For this corporation, the primary means of coping with the financial strains caused by competition was maximization – using illegitimate means in conjunction with legitimate means. In pursuit of the American dream, Massey executives intentionally ignored workplace safety regulations with the hopes of increasing production levels and in turn their profit margin. In addition, by fostering a corporate subculture that emphasized production, influencing workers using illegitimate methods, and degrading the importance of safety, Massey Energy executives allowed deviant practices to become normalized at the UBBM. All of this culminated in a perfect storm that caused the worst coal mining disaster in forty years, and claimed the lives of twenty-nine men.

Chapter Six: Discussion

In many instances the death of a miner is the result of a legitimate accident. However, in some cases there are circumstances surrounding these deaths that can elevate the incident from an accident to a crime. Officials at Massey argue that the deaths of these twenty-nine men were the result of an unforeseeable accident; however, based on the evidence provided in this paper, I would argue that these men were killed in a preventable accident. In a situation such as this, criminal liability is transformed: whereas no one can be blamed for an unforeseen accident, specific persons, even in their capacities as representatives of disembodied corporations, can and should be held legally responsible for the consequences of a preventable event. The rest of this chapter will provide a discussion on the criminal liability of corporations such as Massey Energy, potential ways to reduce the amount of corporate crime committed in the coal mining industry, as well as limitations of the current study and directions for future research on corporate crime in this area.

When Does a Miner's Death Become a Crime?

As of this writing, none of the former executives at Massey Energy have been held criminally responsible for the deaths of the twenty-nine men who perished at the UBBM. In scenarios such as this, it is not uncommon for corporate executives to avoid criminal liability because the actions committed by these individuals usually do not demonstrate the necessary element of "mens rea" required for most criminal convictions.

Mens rea is Latin for “guilty mind” and refers to the concept of criminal intent. The law generally uses the element of *mens rea* to differentiate between levels of criminal culpability. This is particularly true with laws regarding homicide. Laws are different throughout the world; however, most countries distinguish between murder (having the intent to kill) and manslaughter (lacking a prior intention to kill). So just because these corporate actors did not specifically intend for their actions to cause the deaths of twenty-nine men, does not mean these individuals should be cleared of all criminal culpability.

The idea of culpable homicide originally came from old English and Scottish law. From a legal perspective, *culpability* describes the degree of one’s blameworthiness in the commission of a crime or offense. What is known as culpable homicide in Scotland, or gross negligence manslaughter in England, is referred to as criminally negligent manslaughter here in the United States. Criminally negligent manslaughter occurs when there is a death resulting from serious negligence or recklessness. *Negligence* refers to behaviors that are committed as a result of failure to meet normal recognized expectations. An example of negligence is failing to follow safety regulations that are meant to protect human life, which can result in death or injury. *Recklessness* refers to behaviors that are committed without due caution for human life or property. Forcing employees to work in dangerous conditions or with faulty equipment would be considered an instance of recklessness. Criminally negligent manslaughter also occurs when there is a death resulting from an omission to act when one is required by duty to do so. By law, mining companies are required to follow safety protocols that have been established to protect the lives of their employees, and it is the company’s duty to follow up on safety violations in order to ensure their worker’s safety. A corporation’s failure to

improve working conditions after receiving more than 500 safety violations in the year prior to a major disaster can be seen as an omission to act. Unfortunately, this omission to act cost twenty-nine men their lives.

Even in circumstances where negligence and recklessness are as apparent as in this situation, it is still difficult for prosecutors in the United States to convict corporations for their criminal behavior. Although a corporation is defined by law as being a juristic person that is capable of committing, and being convicted of and sentenced for a criminal offense, American corporations are typically only convicted of manslaughter if a single employee is responsible for committing all the elements of the offense and is of high enough seniority to be seen as embodying the “mind” of the corporation. This makes the criminal prosecution of a corporation extremely rare, with more of a focus being placed on the use of civil action for the purposes of recovering monetary damages. However, in the United Kingdom, the public’s discontent regarding culpable corporations, which were seen as escaping the punishment for serious crimes they had committed, led to Parliament passing the Corporate Manslaughter and Corporate Homicide Act of 2007. The Act created a new offense named corporate manslaughter (corporate homicide in Scotland), which expanded the definition of previous laws to incorporate any illegal activities that are managed or organized by a corporation’s senior management. The Act also introduced the enforcement of more severe penalties against corporations that were convicted, including fines of to 10% of the company’s total revenue. How long before laws such as this one make it on the books here in the United States? Without massive public support the passing of laws such as these is not likely to occur anytime soon in the US. America is the prime example of a capitalist society, and

is the center of the corporate universe. Powerful corporate lobbyists work hard to ensure that new laws will not have an adverse effect on their corporations. Corporate America has such a significant influence on government decisions that passing a law like the Corporate Manslaughter Act is not likely to occur without the same public outcry that accompanied the passing of this law in the UK.

The United States has taken strides to prevent the financial and environmental crimes committed by corporations with the passing of strict liability laws. Laws that stipulate strict liability, make a corporation legally responsible for the damage caused by its acts and omissions, regardless of culpability. Therefore, the element of mens rea is no longer a necessary requirement to establish guilt. If a corporation commits the act without the presence of any due diligence, then it is guilty; the matter of mental state is no longer relevant. Two examples of strict liability laws include the Sarbanes-Oxley Act of 2002, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The Sarbanes-Oxley Act created a new set of standards for all US public company boards, management and public accounting firms, and established the strict liability enforcement of certain financial crimes. The bill was the federal government's reaction to a number of major corporate and accounting scandals (Enron, Tyco International, Adelphia, Peregrine Systems and WorldCom), which cost investors billions of dollars and shook public confidence in the nation's securities markets. The new standards incorporated in the act included additional corporate board responsibilities as well as enhanced criminal penalties. Serious financial crimes can carry up to \$5 million in fines,

and twenty years in prison. The act also provides for the enforcement of criminal penalties if a company participates in any form of retaliation against whistleblowers.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was designed to hold corporations responsible for environmental damages, and is another law based on the principle of strict liability. CERCLA was enacted by Congress in 1980 in response to the threat of hazardous waste sites, such as the Love Canal disaster in New York. Over the first five years, \$1.6 billion was collected and went to a trust fund for cleaning up these abandoned or uncontrolled hazardous waste sites. Under CERCLA's provisions of strict liability, the corporation is responsible for their actions whether or not there was intent to cause the outcome. The only requirement is that the Environmental Protection Agency must establish a connection between the corporation's behavior and the outcome in question. These corporations are then subject to fines which may be partitioned into divisible or uniform shares based on the level of culpability.

With all of that said, more needs to be done here in the United States in order to protect those who are at the mercy of being victimized by powerful corporations. Until the crimes of the powerful are stopped innocent people will continue to suffer. There is no better example than the Upper Big Branch Mine Disaster and the twenty-nine men who died as the result of these crimes. The circumstances surrounding these deaths clearly illustrate a company that was behaving in a negligent and reckless manner, and was knowingly putting their workers at risk. Actions that are committed with intent are generally considered more serious by our society; however, the actions of negligent and reckless corporations can be just as deadly. Workers who are killed by such behaviors

are victims of serious crime, and the corporations responsible for these crimes must be held accountable.

Preventing Corporate Crime in the Coal Mining Industry

How do we reduce the amount of corporate crime which is occurring in the coal mining industry? In a perfect world we would be able to reduce the pressures within corporations to achieve wealth at any cost, reminding executives about the importance of ethics over profit. Our nation's business leaders would emphasize doing the right thing no matter what the scenario, and that putting workers in harm's way is never an acceptable practice no matter how much profit can be achieved. However, changing the mindset of the corporate world would mean changing the way the U.S. does business, and changing American culture itself. The adoption of a new cultural ethos makes this scenario very unlikely. However, history has shown us that the most effective way of controlling crime in the coal mining industry is through enforcement reform. Even though we know that increases in regulatory enforcement usually arrive only after a major disaster has already taken place, studies have shown that these increases in enforcement usually have a positive effect on reducing the level of future violations (Wallace, 1987). Policy reform within the regulatory agencies and the addition of several safety practices at the mine level could go a long way toward preventing disasters such as this from occurring in the future.

Reducing opportunities for deviance in criminogenic situations can only be achieved if a regulatory agency has meaningful oversight powers and is dedicated to recognizing the potential for deviant behavior. In order to accomplish this, the current regulatory enforcement system must be reformed, undergoing three major changes. First

of all, the current agencies must be provided with greater resources in order to compete with their corporate counterparts. Next, a greater effort must be undertaken to isolate these agencies from outside political pressures. Finally, the current system of fines and penalties needs to be restructured in order to have any type of deterrence effect.

The need for greater resources is paramount amongst regulatory agencies in the coal mining industry. Currently, regulatory agencies and prosecutors are hopelessly outmatched by their corporate opponents, who oftentimes command larger and more skilled legal staffs that are backed with much greater financial support. In particular, under staffing at the Federal Mine Safety and Health Review Commission has allowed corporations to prolong the appeals process, and bog down the agency. This is evident by the backlog of more 16,000 unresolved cases that are currently awaiting review by the commission. In addition, a lack of government inspectors allows only a small fraction of health and safety violations to be detected. In order to remedy this situation, regulatory and enforcement agencies should be provided with substantial increases to their budgets. The most pressing needs are for larger research budgets that would allow the agencies to actively search out and neutralize health and safety threats before disaster strikes, as well as increased pay for investigators and prosecutors, along with legal, medical, and scientific personnel who are often lured away to better-paying jobs in the private industry. Increased pay for mine inspectors will also help offset the financial pressures to accept bribes and pay-outs. Greater support is also needed for local agencies that oftentimes bear the responsibility for investigating occupational crimes.

An increase in resources must also be accompanied by a greater effort to isolate enforcement agencies from exterior political pressure. In order to diminish the

opportunities for bribes of regulatory officials, and defuse the threat of punitive budgetary cutbacks for agencies that offend powerful special interests, regulatory agencies must become more self-supportive. This means that regulatory agencies must find a way to finance themselves without having to rely as much on monetary support from the federal government. This could be partially achieved by new legislation that requires convicted offenders to not only pay their penalties in full, but also pay for the cost of the government's investigation and prosecution. This would also likely reduce the number of cases being contested by corporations, providing relief for the currently backlogged appeals process. In addition, special fees could be assessed on corporations that are constantly in violation of health and safety protocols and require higher levels of supervision.

Finally, the current system of fines and penalties is in need of restructuring. Far too often, penalties that are assessed by regulatory agencies do not pose a credible threat to a corporation's bottom line, and as a result do not have any type of deterrent effect. Most importantly, repeat offenses for the same violation should receive increased fines. A mine's hundredth violation for the buildup of explosive materials, should not carry the same fine as its first violation for the buildup of explosive materials. The amount of the fine should increase every time the mine is cited for the same violation. In addition, regulatory agencies need to have enhanced powers to shut down dangerous mines that are in gross violation of health and safety standards. The current "pattern of violation" system is too long of a process to begin with and is further slowed by a corporation's ability to contest violations. By the time it takes the MSHA to order a mine to be closed, it is likely that the mine will have already been completely stripped and abandoned, or

worse a major disaster will have already occurred. In order to prevent these types of catastrophes, mine inspectors should be allowed to close down parts of a mine until all safety issues have been resolved and the inspector decides that work should be permitted to continue. What good is issuing a safety citation, if the company does nothing to correct the problem being cited? Lastly, larger penalties, such as the flagrant violation citation that is currently in use and carries a fine of up to \$220,000, should be issued automatically and should not be based on a mine inspector's discretion. Issuing fines this large puts tremendous pressure on the mine inspector, and opens the door for unethical activity, such as bribes, to occur. Instead companies should automatically be issued these flagrant citations, after reaching a certain amount of violations.

Even with stronger enforcement, there will still be mine operators that continue to break the law in regards to miner safety. In situations such as these, miners need to have the ability to report unsafe working conditions in their mines, which may have been missed or overlooked by mine inspectors. The establishment and promotion of an anonymous hotline would allow miners to report dangerous practices without having to fear retaliation. It is important that miners have the option to report anonymously, because as mentioned in chapter five, the intimidation of workers can cause miners to follow along with deviant practices. In addition, the results of all mine inspections should be made readily available to all the miners working in that mine, and miners should be notified immediately if they are working in a mine that has failed to meet minimal safety requirements (like the UBBM). In order to prevent institutional secrecy, miners must be made aware of all the circumstances surrounding their work environment.

Limitations and Directions for Future Research

Similar to many of the previous studies on corporate crime, this paper utilizes a case study format in order to analyze the crimes of the powerful. Although this method has proven successful in detailing the unfamiliar crimes committed by corporations and their actors, this method is also somewhat flawed in its own right. Because of the sensational nature of many case studies, this technique will frequently only capture the high-profile or unusually harmful crimes committed by corporations. As a result, these extraordinary cases may not share the same characteristics of the more typical types of criminal activity that take place amongst corporations. Future research should look to explain a wider array of issues that may be causing systematic problems within the coal mining industry as a whole. For example, researchers may want to further investigate the effects that contested citations are having on the MSHA's ability to regulate mining companies.

Another limitation of case studies, including this one, is that the theoretical frameworks applied to many case studies are not supported by empirical research. This is a common issue within the field of corporate crime research, because many of the theoretical explanations used for explaining the crimes of the powerful consist of concepts that are difficult to measure. Future researchers should attempt to operationalize theoretical concepts, such as maximization, in order to measure their existence within corporate structures. In addition, data for corporate crime is very sparse and extremely difficult to acquire. Not only do most corporate crimes go unreported, but most of the data that are needed to study these crimes can only be discovered by analyzing a corporation's records, which are typically not made available to the public.

As far as the data on mining is concerned, other than basic statistics on the number of citations and the amount of penalties imposed against mines, there is very little data that exists, almost none of which can be used to measure any of these sophisticated theoretical principles. Hopefully, future researchers will have access to more useful data, and can utilize empirical research to explain the crimes of the powerful that are laid out in narratives such as this.

It is important to continue studying corporate crime within the coal mining industry in order to prevent disasters like the one presented earlier. If it were not for the negligence of an unchecked corporation that put profits ahead of safety, twenty-nine miners would likely still be alive today. I believe that President Obama put it best in his closing remarks to the victims' families of the Upper Big Branch mine disaster:

I think we all understand that underground coal mining is, by its very nature, dangerous. Every miner and every mining family understands this. But we know what can cause mine explosions, and we know how to prevent them. I refuse to accept any number of miner deaths as simply a cost of doing business. We can't eliminate chance completely from mining any more than we can from life itself. But if a tragedy can be prevented, it must be prevented. That's the responsibility of mine operators. That's the responsibility of government. And that is the responsibility that we're all going to have to work together to meet in the future (White House Press Release, 2010).

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