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## Busting out the Mattis Memo on Ethics

*page 1*

## Whistleblower 101

*page 5*

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# Ethics, safety, and corporate culture

BY ROBERT CLARK

**A**t 3:02 in the afternoon of 5 April 2010—following a warm and sunny Easter holiday—the teeth of a shearing machine at the Upper Big Branch South Mine in Raleigh County, West Virginia ignited some nearby methane, setting off a chain reaction that resulted in a massive explosion that killed 29 workers. A report<sup>1</sup> by the U.S. Department of Labor’s Mine Safety and Health Administration (MSHA) found that Massey Energy Company, which owned and operated the mine, had created “a pervasive culture that valued production over safety.” No training had been provided on recognizing inadequate ventilation and other hazards. Equipment had been poorly maintained. Examinations were not regularly conducted in certain areas and, in some areas, were not performed at all. When examinations were conducted, they often failed to identify hazardous conditions, and hazards that were discovered went uncorrected.

Senior management knew about these safety lapses and did little or nothing to fix them. According to the prosecution team<sup>2</sup> in the trial of former Massey Energy Company CEO Donald Blankenship, Massey managers would warn miners when regulators were coming to the mine for a “surprise” inspection to allow them to cover up any violations. Massey Energy had been cited hundreds of times by the MSHA, receiving 50 citations just one month before the accident, including citations for poor ventilation of dust and methane and for accumulations of combustible materials.<sup>3</sup> In



December 2015, Blankenship was convicted of conspiring to violate mine safety and health standards, was sentenced to one year in prison, and given a fine of USD \$250,000.<sup>4</sup>

People make mistakes, and sometimes accidents happen, but the tragedy at Upper Big Branch mine could have been prevented.<sup>5</sup> Massey Energy Company's policies and practices, which created a "pervasive culture" that ignored serious breaches of safety regulations, were the root cause of the explosion. One of the lessons of the Upper Big Branch mine explosion is that corporate culture matters. A culture that values integrity, honesty, and fairness is the foundation of an ethically-run company. Creating that foundation requires three specific elements:

- management buy-in,
- emphasizing ethics and integrity as fundamental to the company's identity, and
- accountability for behavior that does not meet company standards.

It is sometimes assumed that CEOs and CFOs place profits above compliance—that for them, compliance is just one factor in a cost-benefit analysis. If employees believe their senior leadership values profits over ethics, they may take the same approach to their own work. And if a company's Compliance and Legal departments are not supported—with



funds as well as with words—employees will conclude that compliance itself is not valued. Members of management should be ethical role models for their employees. They should regularly communicate the value of ethics and compliance and the importance of those standards for the company’s success. Legal and Compliance departments should be well-funded, run independently of the C-suite, and given assistance and cooperation when needed. These actions and words will send a clear message to employees that integrity, honesty, and ethics are valued.

Companies should also emphasize the role of ethics in the company’s identity. Communications from management are one way of doing this, but there are several other ways that companies can underscore the importance of integrity. Policies and procedures can emphasize the values of acting ethically and honestly. Training sessions can include a discussion of ethical issues, even if the training is not on a topic traditionally linked to ethics. The company can communicate its commitment to ethics in reports to shareholders or on the company’s website. It is also critical that the company regularly update its policies, procedures and trainings. The standard of what is considered “ethical” shifts with changes in society, and updating compliance materials demonstrates to employees that the company is committed to staying up-to-date on ethical standards.

Finally, companies must be ready to hold employees accountable for ethical violations. Without accountability, employees will doubt the company’s commitment to integrity. Having an internal reporting system is a

crucial element of accountability, but companies must also work to create an atmosphere in which employees feel comfortable reporting. Where legally permitted, internal reporting systems should allow for confidential and/or anonymous submissions. Employees should also be able to get advice on compliance issues without fearing retaliation. These small measures can help companies create a culture of accountability and strengthen the company’s commitment to integrity.

Corporate culture should not be an afterthought, but should instead be a priority for all companies. The culture you establish will affect your employees’ actions, your company’s reputation, and the ultimate success of the enterprise. While mistakes and accidents are a part of life, a solid ethical foundation can help minimize risks and keep such occurrences from defining your company. ■

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#### ENDNOTES

- 1 Department of Labor: Mine Safety and Health Administration: Upper Big Branch Mine—South Mine ID: 46-08436, Final Accident Report. December 6, 2011. <https://arlweb.msha.gov/Fatals/2010/UBB/UBBSummary.pdf>
- 2 Peter Galuszka: “Safety Last” *Slate*, September 30, 2015. [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2015/09/don\\_blankenship\\_trial\\_boss\\_of\\_massey\\_during\\_upper\\_big\\_branch\\_explosion\\_ignored.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2015/09/don_blankenship_trial_boss_of_massey_during_upper_big_branch_explosion_ignored.html)
- 3 Steven Mufson: “Coal exec jailed after accident killed 29 miners is out and tweeting that it’s not his fault” *Washington Post*, May 12, 2017. [https://www.washingtonpost.com/news/energy-environment/wp/2017/05/12/former-coal-exec-blankenship-is-out-of-jail-and-has-a-lot-to-say-about-the-mining-accident-that-sent-him-there/?utm\\_term=.7004f3ca9200](https://www.washingtonpost.com/news/energy-environment/wp/2017/05/12/former-coal-exec-blankenship-is-out-of-jail-and-has-a-lot-to-say-about-the-mining-accident-that-sent-him-there/?utm_term=.7004f3ca9200)
- 4 Ken Ward, Jr.: 4th Circuit affirms Blankenship conviction. *Charleston Gazette-Mail*, January 19, 2017. <http://www.wvgazette.com/blankenship-trial/20170119/4th-circuit-affirms-blankenship-conviction>
- 5 DoL: Mine Safety and Health Administration: Coal Mine Safety and Health: Report of Investigation. <https://arlweb.msha.gov/Fatals/2010/UBB/FTL10c0331.pdf>