

Why miners die

Twenty-nine coal miners lost their lives in last week's massive explosion at Massey Energy's Upper Big Branch mine in West Virginia.

Why?

Part of the answer to that question will have to wait until the federal Mine Safety and Health Administration (MSHA) conducts its investigation of the disaster. Only then will we know precisely where the ignition point was and why methane was allowed to build to the point where it constituted 5 to 15 percent of the mine atmosphere — the range at which the otherwise inert gas becomes lethally explosive.

But no one familiar with the coal mining industry will have to wait to answer the larger question:

Why do coal miners die?

They die because of negligence. They die because the company they work for cares more about running coal than making mines safe. And they die because the federal agency that is charged with protecting them fails in its mission.

About the first instance of negligence there can be no question. The explosion was too violent and too extensive to have been caused by a pocket of methane alone. The initial blast must have ignited coal dust — which is even more explosive than methane — and that couldn't have happened if management had been diligent about cleaning up accumulations of loose coal, particularly along the conveyor belt carrying coal out of the mine. But we know from MSHA's inspection records that maintenance at Upper Big Branch never got top priority. That went to production — regardless of how many times the mine was cited for lax safety practices.

The mine was projected to earn \$145.6 million for Massey this year, and nothing was going to get in the way of meeting that goal. Massey CEO Don Blankenship has dismissed any and all criticism as the work of "the enemies of coal." He's God, in short, and you're not.

Enough said about Massey. But is it fair to accuse MSHA of negligence? After all, it's the mine owner's responsibility to run a safe mine. And, as MSHA deputy director Greg Wagner repeatedly said last week, "We can't be in the mine all the time, in every place in the mine."

That's true — obviously. But it begs the question. MSHA has been and continues to be negligent because it has stubbornly resisted using all of the enforcement tools provided to it under federal law.

Going back to 1969, when the first genuinely tough federal mining law was enacted (after a 1968 explosion killed 78 West Virginia miners), concerned lawmakers have been doing whatever they can to empower MSHA. Most importantly, the agency has the power to close a mine or section of a mine and to withdraw the miners under a variety of circumstances: if an imminent danger exists; if the mine operator fails to abate a violation within the time fixed by a citation; if there are hazards caused by the operator's "unwarrantable failure" to address "significant and substantial" health and safety standards; if an operator who has been issued a withdrawal order commits a repeat violation; and if inspectors find a pattern of violations.

MSHA is also required to impose penalties whenever violations are cited. But penalties, although necessary, have never been MSHA's most effective weapon, in part because they can be and routinely are appealed — a process that can take years. And penalties rarely make much of a dent in a company's bottom line, especially for companies as large and profitable as Massey.

So what *does* get their attention? It's the power to halt production and pull the miners out of the mine until an unsafe condition is corrected. When production stops, profit stops. And it's that power that MSHA has failed to use to the full extent provided by law.

Why? The reasons are complex, but the short answer seems to be that the higher you go up the command chain at MSHA, the more you encounter weak knees. Labor Department lawyers, some of whom seem unduly intimidated by their much higher-paid company counterparts, have a long history of looking for ways to rein in aggressive inspectors and district managers, in part to avoid getting sued. One result is that MSHA has almost never used its pattern-of-violations power to shut down a consistently dangerous mine. What good is a two-by-four if you don't use it to get the mule's attention?

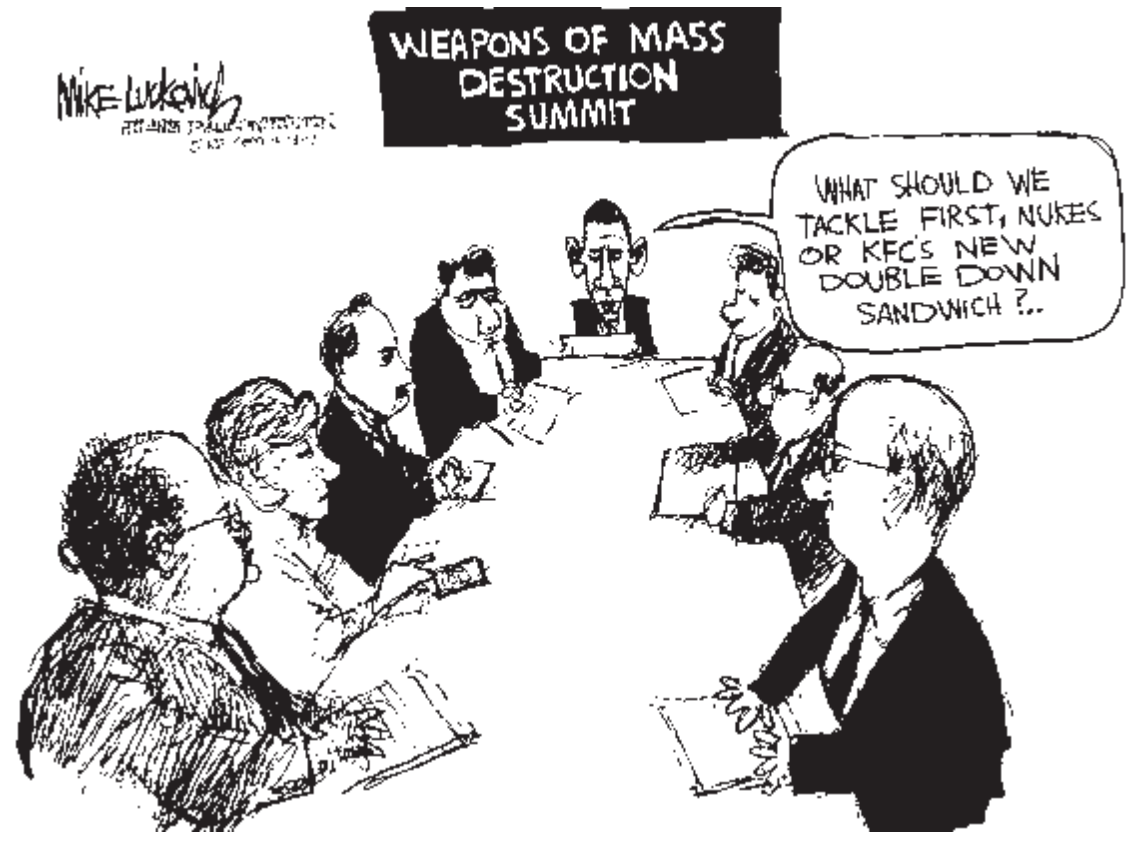
But the pattern-of-violations power isn't MSHA's only tool. Progressive enforcement — ratcheting up citations and the scope of withdrawal orders when a foreman or mine boss fails to shape up after the initial citation — "is a good tool and should be used to the fullest," in the words of one former district manager. "It gets attention better than fooling with the pattern-of-violation guidelines."

And then there's the blitz. When Davitt McAteer headed MSHA during the Clinton administration, he asked his district managers to identify their worst "bad actors." Then, on more than one occasion, he would inform a company CEO, on a Friday, that he was getting ready to augment regular inspections by sending a dozen or more inspectors into a troubled mine on Monday morning. "It was amazing how clean that mine would be by Sunday night," he recalls.

Enforcing mine safety is a bit like warfare. Infantrymen aren't likely to charge ahead if they don't think the sergeant's got their back. Sergeants need to know that lieutenants and captains have got *their* back. And so on, all the way to the top. That was definitely not true at MSHA during the Bush administration, when inspectors were told to focus on "compliance assistance." Whether it will become true during the Obama administration remains to be seen. Meanwhile, miners remain at risk.

Veteran mine safety advocate Tony Oppegard, a former MSHA enforcement lawyer who now represents Kentucky miners, plans to work with the Appalachian Citizens Law Center, headquartered here in Letcher County, to push for any regulatory revisions that may be needed to help MSHA force repeat offenders to shape up or shut down. He doesn't buy the fatalistic argument that allowing some CEO to put your life at risk is a fair trade-off for working in one of Appalachia's few good-paying occupations. "Coal miners shouldn't have to accept safety violations to earn a living," Oppegard says.

If that simple message ever sinks in at MSHA — with or without regulatory changes — we'll be on our way to a new era of responsibility and accountability. Until then, miners will die from negligence.



The ghosts of West Virginia

Now, I used to think my daddy was a black man

With scrip enough to buy the company store.

Oh, but now he goes to town with empty pockets,

And Lord, his face is white as February snow.

— "The L&N Don't Stop Here Anymore," by Jean Ritchie

By **CONNIE SCHULTZ**

There are moments in 60-year-old Frank Ardis Jr.'s life when he suddenly feels like a 10-year-old boy again, the one who prayed hard that his daddy would walk through the door as he always did, dirty but safe.

The memory of how that prayer turned out sneaks up on him like a ghost that can still fill his heart with the chill of bad news. The kind of news that changes everything.

That ghost showed up in 1984, when 27 miners were killed in Orangeville, Utah. Showed up in 2006, too, when 12 miners died in Sago, W.Va.

The ghost found him again on April 5, when he heard that an explosion had killed at least two dozen men, probably more, in the Upper Big Branch Mine in Montcoal, W.Va.

"You hear the words 'methane explosion' and your mind races," he said last week. "You can't help but think, 'No, not that. Not that again.'"

Fifty years later, miners still are dying the same way his father did March 8, 1960, when he and 17 others were killed in an explosion in Holden, W.Va.

"I was sitting in class," Ardis said. "My teacher's husband was a mine supervisor, and he came

in to talk to her. Then she told the class, 'You need to go home now. There's been an accident at the mine.'"



Connie Schultz

On his walk home, Ardis didn't know whether his father was alive or dead. "When I saw all those people in the house with my mother, I knew something was wrong."

The people of Montcoal are Ardis's people, too.

"I know what they're going through," he said.

These days, the majority of miner injuries and deaths happen at nonunion mines. The equation is painfully simple: No union, no voice. No backup documentation of reported problems, no pressure for follow-ups.

Nonunion miners keep their mouths shut, too. When you don't have union protection, you don't question practices or procedures, especially where the coal mine is the only job in town.

Massey Energy Co.'s Upper Big Branch Mine is nonunion and has a long history of trouble. Last year alone, federal inspectors ordered the mine closed for serious violations 29 times, including multiple instances of improper methane ventilation. In January, inspectors cited the mine for two violations that produced two of the heaviest fines in the mine's history.

Those problems reportedly were fixed. But the mine's operator, Massey subsidiary Performance Coal Co., continued to pile up citations right up until the

day of the blast — that time inadequate escape route maps and an improper splice of electrical cable.

A former adviser to the Mine Safety and Health Administration, Tony Oppegard, told The Associated Press that had regulators determined that the mine had a pattern of violations, "maybe 25 lives or more would have been saved."

Frank Ardis hears that and shakes his head. He's a municipal court judge in Mansfield, Ohio, now, but he always will be the youngest son of a coal miner who lost his life only a year before he could retire.

"He was 14 when he came here from Italy to work in the mines," Ardis said. "He was 64 when he was killed. I still remember the way he looked after work. A white person comes home from the mines looking like a black person. He'd take a shower and there was Dad again. It was hard work, but it was the only work he ever knew."

After his father died, Ardis's mother moved with her three sons to join their eldest brother in Mansfield, which was far enough from the coal mines to change the trajectory of their lives.

"If any good came out of my father's death, it was that we all got out," he said. "None of us worked in the mines."

His mother lived for 30 more years. She never remarried. Never again mentioned the mines.

Some things you have to try to forget.

Until the ghost comes calling. *Connie Schultz is a Pulitzer Prize-winning columnist for The Plain Dealer in Cleveland and the author of two books from Random House, "Life Happens" and "... and His Lovely Wife."*

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Five Commandments of Tax Reform

By **FROMA HARROP**

The tax code needs fixing to be fairer and less complex. But let's set some rules for this debate. Here are the Five Commandments of Tax Reform:

Thou shall simplify with care: Rep. Paul Ryan, Republican of Wisconsin, proposes a much simplified income-tax system. Gosh darn, you can do your taxes on a postcard.

His system is simple, all right. Simply put, working people pay all the income taxes, and the idle rich pay little or nothing. Here's how it works:

Couples with taxable income up to \$100,000 (\$50,000 for single filers) would pay a 10 percent tax rate. Those with higher income would pay 25 percent. There would be no more special deductions, exclusions or credits, except a health-care tax credit.

But interest, capital gains and dividends would not be taxed at all. It happens that the higher one's income, the more of that money comes on average from investments rather than the sweat of one's brow. The richest 400 taxpayers in 2007 (average income \$345 million) made less than 7 percent of their total from salaries. Thus, Ryan would exempt 93 percent of their income from taxation -- while subjecting 100 percent of their gardener's. Nice try.

The rich shall pay more: Capital gains and corporate dividends are currently taxed at 15 percent. The wages of police officers, computer programmers and other solidly middle-class workers are taxed at far higher rates.

Democrats want to raise the rate on capital gains and dividends for upper-income Americans to 20 percent. Republicans howl that the higher rate would discourage "saving."

But recall that the sainted Ronald Reagan backed a hike in the capital-gains tax to 28 percent for high earners, up from 20 percent. Reagan reasoned that since the marginal rates were being slashed, there was no real justification for giving a special deal to rich investors. Perhaps he deserves the halo after all.

The middle class shall pay something: You can understand why Democrats would limit new tax increases to upper-income

folk, who enjoyed enormous tax cuts during the George W. Bush era. A correction was in order.



Froma Harrop

But eventually everyone must pitch in. Politicians can't go on telling the middle class that it can enjoy new entitlements, and keep the ones it has, without paying more taxes.

The difficulty of getting this message across makes the VAT (value-added tax) a righteous idea. A kind of national sales tax, the VAT is considered regressive because the poor also pay it. But the social programs these taxes fund are progressive.

Thou shall not lie about the poor: It's not true that the poor don't pay taxes. They don't pay income taxes. But they do pay sales taxes, as well as payroll taxes for Social Security and Medicare. Many states raise revenues

through casinos, lotteries and other gambling activities, which low-income Americans heavily patronize. The poor also smoke and drink. Tobacco and alcohol are steeply taxed.

Thou shall not lie with numbers: Honest numbers can be used for false purposes. The top 1 percent of taxpayers do pay 40 percent of all federal income taxes. That sounds dramatic only until one sees how much dough this elite group rakes in.

The top 1 percent of households earns 23 percent of all adjusted gross income. It owns 35 percent of the national wealth. It received two-thirds of America's total gain in income from 2002 to 2007. Despite its "tax burden," the top 1 percent continues to pull away economically from everyone else.

The income tax remains one of those few progressive parts of the tax code: Those who can most afford it pay more taxes. Where's the problem?

Are the rich getting soaked? Yes, in a bath of champagne. ©2010 The Providence Journal Co.

Obama finds 'sensible center'

President Barack Obama's new policy regarding use of nuclear weapons has been welcomed by some conservatives as well as some liberals because they believe it is in the "sensible center."

Obama indeed deserves credit for one facet of the policy. He made it clear that the U.S. reserves the right to use nuclear weapons in response to aggression by other nuclear powers — including North Korea and Iran.

As Defense Secretary Robert Gates put it, "If you're not going to play by the rules ... then all options are on the table in terms of how we deal with you."

But the new policy also states the United States will not use nuclear weapons against other countries that do not possess the same capability — even those employing biological or chemical armaments.

That is a serious failing in Obama's thinking, in our opinion. It needs to be remembered that the first and only use of nuclear weapons in wartime was in 1945, by the U.S. against Japan. Our foe then did not possess nuclear weapons — but it did have the capability of killing hundreds of thousands of Americans with conventional arms.

Biological and chemical weapons pose fearsome threats. Used effectively, biological warfare can kill more people than a nuclear strike.

We applaud Obama's message to budding nuclear powers such as North Korea and Iraq. But we encourage him to worry more about deterring those who would use biological and chemical armaments, too.

— The Journal, Martinsburg, W.Va.



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