

United States
v.
Donald Blankenship

VENUE OPINION STUDY

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INTRODUCTION AND METHODOLOGY SUMMARY

This study measures the levels of awareness about Don Blankenship, and the levels of admitted predisposition against Don Blankenship, in the Beckley Division of the Southern District of West Virginia, the Martinsburg Division of the Northern District of West Virginia, and the Northern Division of the District of Maryland.

The data described in this report are drawn from telephone interviews with 628 jury-qualified residents of the Beckley Division, 390 jury-qualified residents of the Martinsburg Division, and 288 jury-qualified residents of the Northern Division of the District of Maryland. The interviews were conducted between December 16, 2014 and January 29, 2015.

The respondents involved in this study are residents of their respective venues, eighteen years of age or older, and are registered to vote. Respondents over 74 and those who report being convicted of a felony are excluded from the sample.

The sample of telephone numbers are generated randomly and include both landlines and cell phones. This technique ensures all potential numbers have an equal probability of inclusion in the sample. The sampling error associated with samples of these sizes is equal to or less than plus/minus 3.9% to 5.1%, at a confidence level of 95%. The completion rates for the surveys ranged from 94% to 96%.

We conduct an initial pretest survey of 25 respondents. These 25 pretest surveys are not included in the survey results. No significant changes were made to the survey because of the pretest.

BECKLEY DIVISION

The survey data reveal:

- **Nearly all of the jury-qualified Beckley Division residents know of Don Blankenship and the Upper Big Branch Mine explosion.**

In the first stage of the Beckley Division survey (388 respondents), 81% say they know at least some things about “*Don Blankenship, who was the former CEO of Massey Energy, which owned the Upper Big Branch Mine.*”

In the second stage of the Beckley Division survey (240 respondents), 95% say they know at least some things about “*the Upper Big Branch Mine explosion that occurred in April, 2010 in Raleigh County and killed twenty-nine miners.*”

These levels of awareness are exceptionally high. There is extensive literature linking pretrial publicity to juror prejudice. Some of these studies suggest greater exposure to media coverage produces greater prejudice among jurors and higher levels of media consumption correlate with stronger feelings of defendant guilt (Robertson, 2011).

- **A majority of the Beckley Division residents say they know “quite a bit” or “a lot” about these matters.**

In the first stage of the Beckley Division survey, 47% say they know “quite a bit” or “a lot” about “*Don Blankenship, who was the former CEO of Massey Energy, which owned the Upper Big Branch Mine.*”

In the second stage of the Beckley Division survey, 77% say they know “quite a bit” or “a lot” about “*the Upper Big Branch Mine explosion that occurred in April, 2010 in Raleigh County and killed twenty-nine miners.*”

These levels of more extensive and detailed awareness are also exceptionally high.

Many of the Beckley Division respondents express detailed and highly prejudicial comments, feelings, beliefs, and opinions about Don Blankenship, his role with the Upper Big Branch mine, and the April 2010 explosion.

Exemplar comments from these respondents include:

From the first stage of the Beckley Division survey (388 respondents)

- *I know that he was the boss over the Massey coal mines and he is against the coal miners. I am very much against Don Blankenship. He is all about the money. He does not treat the people like they are human beings.*

- *He was at fault for what happened.*
- *Everything that was in the news. Him ignoring the citations in the mine and everything. What else? He got into a lot of trouble because he didn't take care of the miners and he owned one of the mines.*
- *He's a crook. Anything else? He's not very responsible. Well, I would say a few more things about him, but I better not. I ain't gonna say nothing else about him.*
- *I think he is to blame a lot about the mine disaster. Anything else? He needs to answer for what he has done and the cover up about the disaster.*
- *Well, I know that it's his fault that the miners were killed because of infractions. That he has asked for appeal after appeal and they been denied. That he is facing a lot of time in prison. That is what I know.*
- *He had hid a lot of the files -- I guess reports of the safety problems that were going on at the mine and that's it. He didn't report all of the things that were going on. Basically, he was at fault. Okay, what else? That's about it. That he is to blame for the explosion.*
- *I just think he done wrong and you know it's a shame that miners lost their lives because of them not doing what they should be doing.*
- *I think they should lock him up and just throw the keys away.*
- *Well, I'm just going to answer that. Our survey is over. I think he's guilty. I will tell you that.*
- *I heard he is a crook that ran the mine. He broke the law and deserves to go to jail. He screwed good miners and coal. What else? What else can I say? I think he sucks.*
- *Just what he got those men killed.*
- *I read that he is a miner of hell and an ex-president of a huge ass company and wants to take the money and run.*
- *That he didn't give a crap about the safety regulations. You don't care about safety then you don't care about the people.*
- *He is a slime bucket that doesn't care about his employees. He has frequently ignored MSHA violations.*
- *He was the reason that the gentlemen who worked for him at the mine that blew up that they did not follow the rules because they were afraid of losing their jobs. He gave the orders and they followed them.*

- *Just that how he ran the company. What else? That he is dishonest and corrupt.*
- *I will tell you what I know. He is a piece of crap.*
- *He is responsible for the UBB, the mine explosion. He is responsible for the mine that exploded. He is responsible for the deaths of 29 miners.*
- *That it was his fault the mine blew up.*
- *Mostly negative things. What else? Mostly that he is a crook. That he is the reason that most of the miners died.*
- *There was some shady dealings that was going on and there were some things on the top going on the take. What else? That's about it. Generally people don't make up things about each other unless it's true.*

From the second stage of the Beckley Division survey (240 respondents)

- *Don Blankenship is guilty because he allowed the inspections to go on that didn't follow safety practices.*
- *I've read that the mine officials were aware of the dangerous situation and they continued to operate. What else? I've read where there were some foremen and others who falsified the safety checks.*
- *Everything. It's a joke. It should have never happened. They should have never lost their lives. Anything else? Just that Don Blankenship is going to get what he deserves.*
- *The first thing that pops into my head is that Don Blankenship will finally get his comeuppance. I went to the service in Beckley and it was due to lack of compliance of safety regulations and that's about it. It was the first time I saw the President. The accident itself was due to lack of safety regulations.*
- *I've kept up with it real well. I'm a retired worker from there, so I know how they do business in South West Virginia. I've worked for five coal companies. I know many people there, there were no secrets. The inspectors did not enforce the rules as they did in other mines. What else? That's all I can think of. Massey would treat the men real rough when the economy was bad and the jobs were very scarce.*
- *That man killed them boys. Don Blankenship is the cause of it. I'll tell it to his face if I see him. I know Massey; I worked for them. Production first, safety last. Anything else? That's it. I want to see that man go to prison. He killed 29 of 'em.*

- *It was caused by methane explosion. Too much dust, ignoring safety. It was caused by a methane explosion. There was too much dust in the coal mines. I know Don Blankenship is the one to blame because he was ignoring safety regulations.*
- *We went over it in our safety classes. I'm a miner too. They went over the explosion. I had a cousin over there, that worked there, but was not present at the explosion. What else would you like to add? I've been in the mining business all my life and I've heard quite a bit about it.*
- *When the accident happened, I heard there was some malfeasance. They weren't following mine regulations. The mine operators weren't following regulations. What else? Let me think, it has been a while ago. I remember there was a number of casualties. I believe there was some gas that seeped into the mine. And they weren't following safety regulations. The mine operators not the miners. What else? That there was falsified records from the safety logs.*
- *I've seen a few things like remembering the miners that were killed. Is there anything else? Just stories about John Blankenship.*
- *Oh gosh. I don't want to say, okay.*
- *I believe they were not in compliance with the mine health safety regulations. What else? I believe they were putting profits ahead of the employees' health and safety. I think they may have been falsifying records of air quality and safety policy. The company, Don Blankenship, was not in compliance.*
- *Well, I've read about the whole disaster and I kept up with the trial and how they ignored the warnings and the way they have done all the funerals. Anything else? No, that's about all. I keep up with the trials. It's been a lot of the same things over and over.*
- *That the mining company was negligent. What else? They were negligent. That the man in charge was hiding things.*
- *They need to get that man to trial so that he can get to doing his time.*
- *They were dodging safety regulations. Blankenship was in charge.*
- *Just what everything they've had on the news. Who's at fault. I can't think of how I want to say this. The cutbacks that caused the problem. What else? If you're asking me if I think he's guilty, yes I do.*
- *I heard that it was a UMWA representative that did not do his job correctly and I think that he should have to pay the consequences for his actions. My husband is a disabled miner with the black lung and they don't even pay him his benefits. What*

else? Just that they covered up not doing their jobs right. The safety committee because they were scared of getting fired.

- *His neglect. What else? I think a whole bunch of them is guilty. What else? I have heard bits and pieces here lately about the trial and stuff.*
- *The mines had a lot of fines so they should have been shut down, or the problem should have been fixed. What else? A lot of miners lost their lives.*

Many of the Beckley Division respondents have acquired information about this matter from direct, personal experience, or from word-of-mouth (WOM) communication from trusted family members, friends, co-workers, and neighbors. Exemplar comments include:

From the first stage of the Beckley Division survey (388 respondents)

- *My uncle used to work for him and he did not treat his employees very well.*
- *He's probably guilty for causing the mine explosion that killed several men, one of them being a friend of mine.*
- *A whole lot. I'm a retired miner myself.*
- *I prefer not to say because I used to work for him. What else if anything comes to mind? Well, I know he does dirty dealings and he definitely doesn't put the people first.*
- *A lot. He's in court now. What else? It would take a week to explain it all. I've heard about Don Blankenship since the 70's. I'm a union coal miner.*
- *Where I live in this area, he is not very popular. What else? In Raleigh County is where the majority of the men lived that was in the explosion.*
- *A whole lot. I'm a retired miner myself.*
- *We were related to a couple of people that passed away. We just been following everything on the news and in the paper. And of course we have to listen to family opinion.*
- *One of my best friends was killed in the mining disaster. My father was a disabled miner for Massey. What else? I don't care to elaborate any more.*
- *Well I'll put it this way...three ex-students, one co-worker, and three friends were killed at the Upper Big Branch Mine. What else? I thought that pretty much says it all.*

- *About him being, telling people, employees of the mine, telling foremen that the mine inspectors were there so they could do stuff. I don't know I'm trying to think -- I have a lot of coal mining friends.*
- *He's dirty. I knew a couple of guys that were killed in that explosion, so I don't have very good thoughts of him.*
- *More or less that he was the one behind the explosion that killed all those men, that my son was almost in. What else? That he had told them to cut back on exhaust vents and whatnot to save on power.*
- *Everything. I have worked for him.*
- *I didn't read about it, I seen it. He blatantly refused to follow the safety rules of a coal mine. What else? From what I've seen of him he's a very arrogant person.*
- *He and some of the engineers I guess or miners or whatever they do, they go in and see you know what's broken and I think they have overlooked a lot of things. My husband is a miner. He knows a lot more. What else? Well, there are things going on, that safety hazards, number one, were being violated. I think he paid off some of the inspectors. What else? That's all I care to answer.*
- *I keep up with Don Blankenship because he is the reason my uncle died in the UBB explosion. I blame Don Blankenship solely because he knew what was going on and he's a coward. He don't care. He was more worried about the money in his pocket than the lives that was working for him. What else? What else?, you don't want me to go into full details of what I really think about him because it is not good. I have nothing nice to say about that man.*
- *He's a swindler and is all about money and not the men's' protection in the mine. What else? That's about it, I worked in the mines and know people that know him and that about sums it up, not to be trusted. Anything else? Nah, that's it. I do hope he loses his position and goes to jail. Had three friends die in that accident.*
- *I used to work for him, I know what kind of person he is. What specifically do you know about him? He is not too good to his employees. When I worked for him, he would hide things. He would overlook safety issues when it would interfere with production.*

From the second stage of the Beckley Division survey (240 respondents)

- *We had a nephew that was killed.*
- *One of the men that died lived here in our town. What else? That it was a senseless mine explosion.*

- *It could have been prevented. What else? A young man from our community was one of the fatalities.*
- *I had a dear friend that was killed in that tragedy. What else? That's all I want to say about that.*
- *That a lot of people missed their families that worked at the mine. What else? They can't bring no people back from the coal mine tragedy.*
- *They had a lot of safety violations and it caught up with them and blew up. Heard that it was not the safest mine to work at. What else? That's about the jist of it there. A couple of buddies that worked there, said the company did not care about safety at all, only about production.*
- *Everything that has been on TV. I talked to my son who was actually there. I know that Massey doesn't care about his people. I have got friends that work for him. Don Blankenship don't care. All he cares about is his money. That's what it's always about -- is the money. He only makes 17 million dollars a year. I don't know how he can live like that, do you? What else? Nah, I don't got nothing else to say.*
- *Everything. I knew people in it. I was a coal miner, but I retired. I knew guys that worked there. It just tore me up.*
- *I know they got what's his name up in jail. They are wanting him in prison. One of the guys I work with, his son was killed there. What else? I've not really seen a lot of it on TV. A lot could have been avoided.*
- *Recently they have begun prosecuting Don Blankenship. What else? I work with some of the family. I know just a pretty good lot.*
- *I have seen on TV that Massey did not follow the safety rules and regulations. What else? I also had a best friend whose husband died in the explosion. What else? I believe from the newscasts and my friend's opinion that Massey Energy was at fault for a lot of unnecessary deaths.*
- *I knew people whose family was killed during the explosion. What else? My job, the area I work, serves the area where the mine was at, so I was familiar during that time.*
- *I knew one of the gentlemen on the crew. And knew one of the in-laws of crew members that was killed.*
- *I had a friend in it.*
- *I knew people that got killed in there. What else? Newspapers, television, I went to their wake's and their funerals.*

- *My memory of the miners that were killed. What else do you recall? Let's just go with that.*
 - *I have had a friend who lost a loved one in the explosion. What else? That's about it but we kept pretty close ties on it.*
 - *Some of the people that were killed in the mine explosion were some of my friends and some of my relatives. And then just how it affected the community. What else? That's all. Just by all the people that were killed in it and them shutting down the mine. Not having the right um, the right, I don't know the word for it, the right inspection.*
 - *It's Don Blankenship's fault because he didn't follow protocol. Anything else? It was awful, some friends of mine were in there.*
 - *A lot of news media articles about it, as well as a personal connection to someone who died. So, I guess I know a little more about it.*
- **A majority of those Beckley Division residents who have heard or read about Don Blankenship or the Upper Big Branch Mine explosion, say they already believe Don Blankenship is guilty of at least one of the criminal charges filed against him.**

In the first stage of the Beckley Division survey, 51% of these respondents say they already believe Don Blankenship is “*guilty of violating mine safety laws at the Upper Big Branch Mine,*” and/or “*guilty of interfering with the enforcement of mine safety laws,*” and/or “*guilty of making false public statements about Massey Energy’s safety practices.*”

Some of these respondents say they believe Don Blankenship is not guilty, and some additional respondents refuse to answer. Just 43% of the respondents who have heard some things about this matter are willing to state they would need more information before deciding about Mr. Blankenship’s guilt.

In the second stage of the Beckley Division survey, 57% say they already believe Don Blankenship is “*guilty of violating mine safety laws at the Upper Big Branch Mine,*” and/or “*guilty of interfering with the enforcement of mine safety laws,*” and/or “*guilty of making false public statements about Massey Energy’s safety practices.*”

Some of these respondents say they believe Don Blankenship is not guilty, and some additional respondents refuse to answer. Just 33% of the respondents who have heard some things about this matter are willing to state they would need more information before deciding about Mr. Blankenship’s guilt.

These levels of reported prejudice are not just exceptionally high, they are extraordinarily high.

- **These survey data and the comments made by the Beckley Division residents indicate these 51% and 57% measurements of admitted predisposition significantly under-report the even higher, actual level of predisposition and bias against Don Blankenship in this venue.**

Widely-accepted and published social scientific study has shown that many people are largely unaware of how their pre-set beliefs, opinions, feelings, and attitudes influence their behavior and decision making.

Further, social science has well established that most people believe that the most socially desirable response, when asked if they have formed a verdict opinion about criminal allegations, is to say “I would need more information to decide.” Many studies indicate both that respondents perceive admitting to bias to be socially undesirable, and that many respondents will be influenced to render the socially desirable response, even if they privately harbor a definitive opinion.

For example, in his 1985 study report, Anton Nederhof wrote, “*Social desirability reflects the tendency on behalf of the subjects to deny socially undesirable traits and to claim socially desirable ones, and the tendency to say things which place the speaker in a favorable light. Norms are important determinants of socially desirable behavior, as they determine what constitutes a good impression in a given situation.*”

In addition, he found that, “*Social desirability is one of the most common sources of bias affecting the validity of experimental and survey research findings,*” and “*A large number of studies have shown that social desirability may seriously bias data, both in the laboratory (Edwards, 1953; Crowne and Marlowe, 1964) and in surveys (e.g. Klassen, Hornstra and Anderson 1976; Philips and Clancy, 1970, 1972).*”

In further studies, in 1993, Robert Fisher found that social desirability bias is “*pervasive.*” He reported, “*Social desirability bias has been found to occur in virtually all types of self-report measures and across nearly all social sciences literatures (e.g., Levy 1981; Peltier and Walsh 1990; Robinette 1991; Simon and Simon 1975; Zebre and Paulhus 1987).*”

Social desirability bias has been well studied regarding juries. In their study of juror behavior, Hamilton, Henize, and Phipps found that, “*When judges and attorneys, before and during individual voir dire interviews, emphasize the importance of putting aside biasing information and presuming innocence, prospective jurors tend to conceal their biases.*”

Many handbooks and text books discuss social desirability bias. The Handbook of Social Psychology says, “*Social desirability concerns demonstrably influence jurors’ responses during voir dire. Venirepersons may pick up on verbal and nonverbal cues from judges and attorneys that certain answers to questions about PTP [Pre-Trial Publicity] are more satisfactory than others and could encourage socially desirable responding (LeVan, 1984).*” And, the Handbook of Trial Consulting says, “*The most*

frequently cited example of questions that run the risk of a social desirability response bias are those that aim to identify the community sentiment toward one of the parties in the case.”

This social desirability bias has been reported to lead to under-reporting of adverse juror pre-sentiment by up to 35%. In 2003, in a study of many civil and criminal trials, Vidmar found that potential jurors with more exposure to pretrial publicity were more predisposed to finding guilt in the defendant and that about 35% of jurors who claimed they could be impartial also expressed a presumption of guilt.

In the Beckley Division, the percentage of the respondents who have indicated the absence of prejudgment by saying they would need more information before determining guilt, is significantly overstated because many of these respondents are unaware of the existence or the extent of their bias, and/or because social desirability bias leads them to under-report their negative prejudgments.

This under-reporting of bias is reflected in the comments made about Mr. Blankenship by some of the respondents who said they believed they would “need more information to decide” whether Mr. Blankenship was guilty or not guilty of the criminal charges against him. Some of the comments made by these respondents, who indicated they believed they had no prejudgment about guilt, include:

From the first stage of the Beckley Division survey (388 respondents)

- *That he was most responsible for the Upper Big Branch explosion -- the majority, I guess is what I always heard. The Upper Big Branch mining explosion; he played a major role in that. That's what I heard.*
- *I just think he done wrong and you know it's a shame that miners lost their lives because of them not doing what they should be doing.*
- *I just heard that he was against the miners and getting the mines up to date with the rules.*
- *He's a crook.*
- *Only that he was CEO of Big Branch. That's really my husband that pays attention to that. I don't know much about that. I basically don't know anything about Don Blankenship. My husband has a different opinion. He says he is a jerk.*
- *He did things that detriment people that work at the mine and the equipment and that he was not forthcoming with things that was going on with his position.*
- *I don't know how to explain except he is a little bit crooked and I'm not liking him right now. What else? I've got miners all through family and I don't think he appreciates what they do through in their line of work to be a coal miner exactly.*

I don't really know what else to say. What else? Basically what I said. A lot of people in the state and the county are not appreciating him right now.

- *That they were going to have his trial. What else? They think that he had a lot to do with all those men getting killed, because he wasn't going to do the safety things that he should have done.*
- *One of my best friends was killed in the mining disaster. My father was a disabled miner for Massey. What else? I don't care to elaborate any more.*
- *That he didn't give a crap about the safety regulations. You don't care about safety then you don't care about the people.*
- *Nothing good. What do you remember? Just basically he knew the mine wasn't safe and he still allowed men to work in it.*
- *Multi-millionaire made his money from coal companies. Had more interest in making money than mine safety. Gag order. No media or family members allowed to talk about it. Not allowed to travel for holidays. Had every mine he operated send in production reports and broken down machinery every thirty minutes.*
- *Just that he has done bad things. What else? Just that he had done bad things for the coal mines.*
- *What I have heard about him is not good.*
- *I just heard that he knew Douglas wasn't a good place to work in and he went ahead and let the people work anyway.*
- *He is responsible for the UBB, the mine explosion. He is responsible for the mine that exploded. He is responsible for the deaths of 29 miners.*
- *Just that he seemed to be a pretty dishonest feller is about the only opinion I have of him. What else? It's all about money.*
- *I don't really want to speak with you to be honest with you. Two questions is brief, I seen it on the news. He is a crook.*
- *I could go on and on. I don't want to comment.*

From the second stage of the Beckley Division survey (240 respondents)

- *Safety wasn't taken care of and people lied.*
- *They had the explosion and it was due to greed of the bosses.*

- *I guess just the way the miners lost their lives. They weren't keeping up with inspections.*
- *The explosion should not have happened if they had been going by the rules. I have heard and what I've read it is the fault of the mine owners and supervisors. It was a terrible tragedy. What else? It was a very terrible tragedy.*
- *I believe they were not in compliance with the mine health safety regulations. What else? I believe they were putting profits ahead of the employees' health and safety. I think they may have been falsifying records of air quality and safety policy. The company, Don Blankenship, was not in compliance.*
- *I just heard how he did something illegal and got put in jail.*
- *I know someone whose brother was killed in the accident, so I have their experience when they told what it was like with their children. That's basically it.*
- *Plenty. It is everywhere and when you know people who died in it and the devastation everywhere, that is plenty.*
- *I have had a friend who lost a loved one in the explosion. What else? That's about it but we kept pretty close ties on it.*
- *The overall picture, that the media portrays, is that there was very big major negligence in the management of the safety rules.*
- *I guess I saw it on TV, whatever they had at the time. It seems to me like a gross negligence. What else? I seen it on TV, a lot of people may have let things go and that was the problem. I guess it was a cover up.*

Thus, in the Beckley Division, the percentage of the respondents who have already prejudged Mr. Blankenship's guilt is underreported, and the percentage of the respondents who say they would need more information to decide is over reported, because many of these respondents are unaware of their bias or prejudice, and because social desirability bias influences them to say they have not already pre-judged Mr. Blankenship's guilt.

NORTHERN DIVISION OF THE DISTRICT OF MARYLAND

The survey data reveal:

- **The percentage of the Northern Division of the District of Maryland residents who know of Don Blankenship and the Upper Big Branch Mine explosion is substantially smaller than in the Beckley Division.**

In the Northern District of Maryland survey, 13% say they know “quite a bit” or “a lot” about “*the Upper Big Branch Mine explosion that occurred in April, 2010 in Raleigh County and killed twenty-nine miners.*”

Many of these respondents who say they know “quite a bit” or “a lot” express only vague and highly generalized recollections about the matter and rarely recall Mr. Blankenship by name. Exemplar comments from these respondents who say they know “quite a bit” or “a lot” include:

- *Just the news on it. The news reports. What did you hear? I mean it was on the news. It was reported, that's what I heard. I don't remember the specifics from a couple years ago. It was on the news.*
- *It's been about 5 years ago. Just that it was a lot of miners killed. Some type of gas leak or something. I really couldn't tell you. It's been too long ago.*
- *Just what was on the news. What was that? Reference to how many had died and lived. What else? That was it. It was a lot about what was going on. You hear very little about what is good but a lot about what is bad.*
- *News broadcasts and newspapers. Mainly cable broadcasts. What did you hear? I cannot recall.*
- *Just that miners were killed in the explosion. What else? Nothing.*
- *I heard that the fact that miners were killed and only one survived. I am interested in it because my grandparents live in that area. What else? That was it.*
- *I really don't remember. We heard a lot about the explosion and the miners getting killed. What else? I really don't remember.*
- *Just that they were trapped there for days and they were finally getting people out, but I don't remember all of it. What else? I don't really remember too much.*
- *I just heard about it. Please explain. It was in the paper.*
- *I don't know. Is there anything that you can remember? Not really, no.*

- **A large majority of the Northern Division of the District of Maryland residents who have heard or read about Don Blankenship and/or the Upper Big Branch mine explosion say they would need more information to decide whether or not Don Blankenship is guilty of the criminal charges filed against him.**

In the Northern Division of the District of Maryland survey, 83% of these respondents say they would need more information before deciding whether Don Blankenship was guilty of any of the charges against him.

MARTINSBURG DIVISION

The survey data reveal:

- **The percentage of Martinsburg Division residents who know of Don Blankenship and the Upper Big Branch Mine explosion is somewhat less than in the Beckley Division, but is more than in the Northern Division of the District of Maryland.**

In the Martinsburg Division survey, 30% say they know “quite a bit” or “a lot” about “*the Upper Big Branch Mine explosion that occurred in April, 2010 in Raleigh County and killed twenty-nine miners.*”

Some of these respondents who say they know “quite a bit” or “a lot” express only vague and highly generalized recollections about the matter and rarely recall Mr. Blankenship by name. Exemplar comments from respondents who say they know “quite a bit” or “a lot” include:

- *Stuff on TV. Heard a lot about it, but didn't pay attention.*
- *Just that it happened. I don't remember what all the details were.*
- *Just on the internet, how many people were killed and what happened. It was so long ago that I don't remember it all.*
- *I really don't remember. Was there anything else? No, I don't it was over five years ago.*
- *It's been so long, I don't remember.*
- *I can't recall actually.*
- *Only what I heard on the news.*
- *We just read about the explosion and the number of casualties.*
- *I don't remember, just about what had happened and the people that were hurt.*
- *Well, just that it happened. I don't know why it happened.*
- *Recently not much.*
- *Um, it's been a while. I don't really remember.*
- *I don't particularly remember, it was a couple years ago.*
- *I can't remember right now.*

- **Compared to the Beckley Division, more of the Martinsburg Division residents who have heard or read about Don Blankenship say they would need more information to decide whether or not Don Blankenship is guilty of the criminal charges filed against him.**

In the Martinsburg Division survey, 71% of these respondents say they would need more information before deciding whether Don Blankenship was guilty of any of the charges against him.

BECKLEY DIVISION

Findings

Inability to Select a Fair and Impartial Jury in the Beckley Division

The survey results indicate a significant percentage of jury-qualified Beckley Division residents have formed opinions and prejudgments about Don Blankenship and the criminal charges filed against him. Given the high level of awareness and admitted prejudgment of Mr. Blankenship by jury-qualified residents of the Beckley Division, and the relatively small size of the community, there is a high likelihood the court would not be able to select a fair and impartial jury from a pool comprising Beckley Division residents.

The large number of respondents with knowledge and admitted prejudgment about Mr. Blankenship, his role with the Upper Big Branch Mine, and the April 2010 explosion, indicates that many of these adverse views have permeated throughout the community and have become “common knowledge” in the small Beckley Division community.

Specifically, about 50% of the respondents have admitted prejudgment as to the guilt of Mr. Blankenship, which means that when the underreporting of negative prejudgment is taken into account, more than 50% of the residents of the Beckley Division have prejudged Mr. Blankenship’s guilt.

Conformity Prejudice in the Beckley Division

Even if eligible jury members in the Beckley Division who have prejudgment and bias against Mr. Blankenship could be readily identified and excluded from the jury, a significant risk would still exist that an ostensibly non-predisposed Beckley Division jury will be influenced, whether they know it or not, to find against Mr. Blankenship to comport with what is expected of them by the rest of the Beckley Division community.

Empirical evidence on the subject of jury bias confirms the effect of community influence on jury verdicts. When there is strong community reaction in favor of a particular outcome, jurors feel influenced to reach that result. Defined as “conformity prejudice,” social science studies show that when faced with broad community opinion, jurors are likely to reach a verdict consistent with the perceived community feelings rather than an impartial evaluation of the trial evidence. (Vidmar, 1996).

This community pressure is amplified in a smaller community in which a large majority of the residents have strong feelings and opinions about the subject issue, and in which many of the residents have had direct, personal involvement with the subject issue.

The high level of knowledge and admitted prejudgment about Mr. Blankenship in this small venue will subject any ostensibly non-predisposed prospective jurors from the Beckley Division to significant social influence and interest bias forces which will evoke strong

conformity prejudice. This means that the fact that a large segment of a relatively small community has prejudged guilt will affect the ability of other community members to evaluate evidence and judge guilt.

More specifically:

Social Influence

Decades of social science research have well established the mechanism and power of social influence. Social influence refers to a change in the behavior of others due to the existence of greater power or knowledge by an individual or group. Social influence is the effect that the opinions, beliefs, actions, or mere presence of other people have on another's thoughts, feelings, attitudes, or behavior.

Two Primary Types of Social Influence

Two primary forms of this social influence are normative social influence (arising from the need to be liked), and informational social influence (arising from the need to be right).

As shown in the survey data, prospective jurors will know that many of their friends, family, and community members have detailed knowledge about, and have strong pre-dispositions against, Mr. Blankenship. The pervasive extent and the strong intensity of the widespread knowledge and admitted pre-judgment of Mr. Blankenship within the relatively small Beckley Division will create both strong normative social influence and strong informational social influence on the prospective jurors in the Division.

Normative social influence arises because people need to feel they belong and need to receive social approval. This need motivates people to engage in behaviors and to form opinions that will induce the approval and acceptance of their friends, family, and community. Normative social influence affects juror decision making by increasing feelings of dissonance among those who disagree with the sentiments of their friends, family, and community. People do not want to feel dissonance (and choosing a manner to reduce dissonance is a well-recognized decision making strategy) and will try to eliminate it, whether they know it or not.

This strong level of normative social influence in this venue about Don Blankenship and this trial, further increases the high likelihood the court would not be able to select a fair and impartial jury from a pool comprised of Beckley Division residents, even if persons who admit prejudgment are excluded from the jury.

Informational Social Influence

Informational social influence arises because people need to feel they are correct and feel they correctly understand. This motivates people to engage in behaviors and form opinions that conform to the behaviors and opinions of friends, family, and community.

There is strong informational social influence in the venue because there is a high level of knowledge and prejudice about Mr. Blankenship, so the prospective jurors will know that many of their friends, family, and community members have strong opinions about Mr. Blankenship and the trial, and will know these members of their key social groups also have a lot of information about Mr. Blankenship. The Beckley Division community will have strong informational social influence on prospective jurors because many prospective jurors can conclude that other members of the community have access to, and understanding of, much more information than is available to themselves.

This strong informational social influence is amplified by the large amount of information known in the community from direct, personal knowledge. Prospective jurors can conclude that others in the community, having direct experience with, and first-hand knowledge of, these issues, will have more and better information available to them about these issues. In this way, the informational social influence of the jurors' friends, family, and community will serve as a tacit expert witness endorsement of the prosecution's claims.

This strong level of informational social influence in this venue about Don Blankenship and this trial will have a strong influence on the minds of the prospective jurors and increases the high likelihood the court would not be able to select a fair and impartial jury from a pool comprised of Beckley Division residents, even if persons who admit prejudice are excluded from the jury.

Strength, Immediacy, and Frequency of Social Influence

Three key factors often influence the extent of the social influence exerted on others – 1) strength, 2) immediacy, and 3) frequency.

- With the factor of strength, the more numerous and informed the influencers are perceived to be, the more likely it is that prospective jurors will comply with the social influence. The pervasive extent of knowledge about Don Blankenship and this matter, and the strength and intensity of respondents' feelings and opinions amplify the strength of this social influence.
- With the factor of immediacy, the proximity of the influencers makes it more likely that prospective jurors will conform and comply with the social influence. In the relatively small Beckley Division, prospective jurors will face their friends, families, and community members every day during the trial, and would know this proximity would likely continue for many years to come.
- With the factor of frequency, because of the pervasive extent of knowledge about this matter in the Beckley Division, prospective jurors would have the heightened likelihood of frequent contact with many people in this small community who have a lot of knowledge of, and admitted pre-disposition about, this case. In this sense,

every time the jurors turn around, they will face another member of their close-knit community with knowledge of, and strong feelings about, the trial.

These three factors, strength, immediacy, and frequency, increase the extent that normative and informational social influence will have a strong impact on the minds of the prospective jurors, and they further increase the high likelihood the court would not be able to select a fair and impartial jury from a pool comprised of Beckley Division residents, even if persons who admit prejudgment are excluded from the jury.

Referent Power

Referent power is a specific social power, and it is gained when a person or social group is admired or liked by others. Referent power can be seen in advertising, in the power of celebrity endorsements, in which people are moved to take actions and form opinions because the actions and opinions are endorsed by people they admire.

Here, prospective jurors will face the high likelihood that many of the most popular and influential members of the family, friendship, and community groups to which they belong and/or aspire to belong, will have extensive knowledge about and admitted pre-disposition against Mr. Blankenship.

In addition to the survey data, analysis of the media reports show that some community leaders have expressed strong opinions about Mr. Blankenship and his involvement with the mine and the Aril 2010 explosion. This brings significant strong referent power to bear on the prospective jurors in this case.

This referent power confronts prospective jurors with the social influence pressure of either going with the referent power and finding in favor of verdict decision they know would be shared with the people in the community whom they most like and admire, or going directly against the referent power and making a verdict decision they believe will disappoint the people in the community whom they most like and admire.

This strong referent power further increases the high likelihood the defendant would not be able to select a fair and impartial jury from a pool comprised of Beckley Division residents, even if jurors who admit prejudgment are excluded from the jury.

Interest Bias

In addition, the extent of knowledge and admitted pre-disposition against Mr. Blankenship in this community will influence jurors by evoking interest bias in the prospective jurors, whether they know it or not. The extent of this knowledge and pre-disposition lends the weight of the entire community to the prosecution's case.

Interest bias, sometimes called "manifest" bias, involves bias arising from a juror having an interest in the outcome of the trial. This interest bias can be a community-based interest, for example, an interest to not find against a local employer to preserve jobs and

economic advantage for the community. Interest bias can also be individually-based interest, for example, an interest to find in favor of a business associate or potential customer. In addition, there is both direct interest bias and indirect interest bias.

Direct Interest Bias

The extent of knowledge and admitted pre-disposition against Mr. Blankenship in the relatively small Beckley Division is highly likely to evoke direct interest bias with many potential jurors. Residents of the Division who do, or seek to do, business with this community would be subject to both positive and negative direct interest bias as a juror in this case. These prospective jurors will contemplate specific, positive, financially-related relationships and transaction outcomes arising from making a verdict decision pleasing to the rest of the economic community. These prospective jurors will also contemplate specific, negative, financially-related relationships and transaction outcomes arising from making a verdict decision displeasing to the rest of the economic community. Unlike voting, these prospective jurors would know that their verdict decision would be public knowledge.

This direct interest bias is a significant influence on prospective jurors from the Beckley Division and increases the high likelihood the court would not be able to select a fair and impartial jury from a pool comprised of Beckley Division residents, even if persons who admit prejudgment are excluded from the jury.

Indirect Interest Bias

The extensive knowledge and admitted predisposition against Mr. Blankenship is also likely to evoke indirect interest bias. Prospective jurors could contemplate general positive outcomes arising from making a verdict decision pleasing to the rest of the community. Prospective jurors could also contemplate general negative outcomes arising from making a verdict decision against much of the rest of the community.

This indirect interest bias is a significant influence on the minds of Beckley Division jurors and increases the high likelihood the court would not be able to select a fair and impartial jury from a pool comprised of Beckley Division residents, even if persons who admit prejudgment are excluded from the jury.

Ineffectiveness of Voir Dire for This Matter in the Beckley Division

Given this high level of awareness and admitted prejudgment, despite the best intentioned voir dire efforts, there is a high likelihood that one or more jurors subject to substantial bias will be seated on the jury for this case.

This is because many potential jurors will underappreciate or underreport bias and prejudgment, and because the social influence factors discussed above indicate that jurors who may have not prejudged guilt are, whether they know it or not, subject to strong influences from the rest of their many family, friends, and community members who have

prejudged guilt. In other words, given the prevalence and intensity of bias and prejudice in this small community, questioning jurors cannot eliminate all the people whose view of the evidence will be affected by pre-existing beliefs and opinions.

Concern with Seating an Intentionally Deceptive Juror in the Beckley Division

Further, given the extent of personal and community animosity revealed and expressed against Mr. Blankenship, there is appreciable concern for seating an intentionally deceptive juror – a potential juror who actively hides his or her opinions to be seated on the jury to promote a predetermined agenda.

Ineffectiveness of Judicial Instruction on This Matter in the Beckley Division

In addition, it is our opinion, given this high level of awareness and prejudice in the Beckley Division, judicial instruction to disregard existing predisposition or bias, in themselves or others, would be of limited effectiveness.

This is because many potential jurors underappreciate or underreport bias and prejudice, and because the factors discussed above indicate that jurors who may have not prejudged guilt are, whether they know it or not, subject to influences from the rest of the community that has prejudged guilt.

NORTHERN DIVISION OF THE DISTRICT OF MARYLAND

Findings

Ability to Select a Fair and Impartial Jury in the Northern Division of the District of Maryland

The survey results indicate that only a small percentage of the jury-qualified residents of the Northern Division of the District of Maryland have formed opinions and prejudgments about Don Blankenship and the criminal charges filed against him. Given the low level of awareness and admitted prejudgment of Mr. Blankenship by jury-qualified residents of this venue, it is likely the court would be able to select a fair and impartial jury from a pool comprised of Northern Division of the District of Maryland residents.

If the small number of eligible jury members in the Northern Division of the District of Maryland who have bias against Mr. Blankenship are readily identified and excluded from the jury, little risk would remain that a non-predisposed jury from this venue will feel influenced to find against Mr. Blankenship to comport with what is expected of them by the rest of their surrounding community, because the percentage of people who have made prejudgments in the Northern Division of the District of Maryland is much smaller than in the Beckley Division, and the population of the Northern Division of the Maryland District is much larger than the population of the Beckley Division.

Given the limited level of awareness and admitted prejudgment in this venue, there is a low likelihood that one or more jurors subject to substantial bias jurors will be seated on the jury for this case.

Further, given the much smaller extent of personal and community animosity revealed and expressed against Mr. Blankenship in this venue, there is less concern for seating an intentionally deceptive juror – a potential juror who actively hides his or her opinions to be seated on the jury to promote a predetermined agenda.

In addition, given the much lower level of awareness and prejudgment in the Northern Division of the District of Maryland, and the much larger size of that community, judicial instruction to disregard existing predisposition or bias, in themselves or others, would be more effective.

MARTINSBURG DIVISION

Findings

Ability to Select a Fair and Impartial Jury in the Martinsburg Division

The survey results indicate that (compared to the Beckley Division) a smaller percentage of the jury-qualified residents of the Martinsburg Division have formed opinions and prejudgments about Don Blankenship and the criminal charges filed against him. Given this lower level of awareness and admitted prejudice of Mr. Blankenship (compared to the Beckley Division) by jury-qualified residents of this venue, the court would likely be more able to select a fair and impartial jury from a pool comprised of Martinsburg Division residents, than from a pool comprised of Beckley Division residents.

If the smaller number of eligible jury members (compared to the Beckley Division) in the Martinsburg Division, who have bias against Mr. Blankenship can be readily identified and excluded from the jury, less risk would remain that a non-predisposed jury from this venue will feel pressured to find against Mr. Blankenship to comport with what is expected of them by the rest of their surrounding community.

Given the lower level of awareness and admitted prejudice in this venue (compared to the Beckley Division), there is a lesser likelihood that one or more jurors subject to substantial bias will be seated on the jury for this case.

Further, given the lesser extent of personal and community animosity revealed and expressed against Mr. Blankenship in this venue (compared to the Beckley Division), there is less concern for seating an intentionally deceptive juror – a potential juror who actively hides his or her opinions to be seated on the jury to promote a predetermined agenda

In addition, given the lower level of awareness and prejudice in the Martinsburg Division (compared to the Beckley Division), judicial instruction to disregard existing predisposition or bias in themselves or others, would be more likely to be effective.

Although the Martinsburg Division has a lower level of awareness and prejudice of Mr. Blankenship than the Beckley Division, and although the court would likely be more able to select a fair and impartial jury from a pool comprised of Martinsburg Division residents than from a pool comprised of Beckley Division residents, the Northern Division of the District of Maryland has significantly less awareness and prejudice than the Martinsburg Division and provides a much better alternative for selecting a fair and impartial jury for this case.

DISTRIBUTION OF RESPONSES

The First Stage of the Beckley Division Venue Opinion Survey – 388 Respondents

Gender

44% Male
56% Female

Age

23% 18 to 35
45% 36 to 55
32% 56 to 74

How much, if anything, have you seen, read, or heard about Don Blankenship, who was the former CEO of Massey Energy, which owned the Upper Big Branch Mine?

19% Nothing
34% Some things
26% Quite a bit
21% A lot

[If respondents have heard Some things, Quite a bit, or A lot]: Criminal charges have been filed against Don Blankenship in federal court, in Beckley. Do you believe Don Blankenship:

42% Is guilty of violating mine safety laws at the Upper Big Branch Mine,
3% Is not guilty of violating mine safety laws at the Upper Big Branch Mine,
54% Or, would you need more information to decide?
2% [Refuse to answer]

39% Is guilty of interfering with the enforcement of mine safety laws,
4% Is not guilty of interfering with the enforcement of mine safety laws,
56% Or, would you need more information to decide?
1% [Refuse to answer]

42% Is guilty of making false public statements about Massey Energy’s safety practices,
3% Is not guilty of making false public statements about Massey Energy’s safety practices,
54% Or, would you need more information to decide?
1% [Refuse to answer]

51% Select the “Is guilty” response option at least once for these three questions.

[The “Is guilty” and “Is not guilty” response options are reversed for half the surveys.]

DISTRIBUTION OF RESPONSES

The Second Stage of the Beckley Division Venue Opinion Survey – 240 Respondents

Gender

| | |
|-----|--------|
| 49% | Male |
| 51% | Female |

Age

| | |
|-----|----------|
| 18% | 18 to 35 |
| 45% | 36 to 55 |
| 37% | 56 to 74 |

How much, if anything, have you seen, read, or heard about the Upper Big Branch Mine explosion that occurred in April, 2010 in Raleigh County and killed twenty-nine miners?

| | |
|-----|-------------|
| 5% | Nothing |
| 18% | Some things |
| 34% | Quite a bit |
| 43% | A lot |

[If respondents have heard Some things, Quite a bit, or A lot]: Criminal charges have been filed against Don Blankenship in federal court, in Beckley. Do you believe Don Blankenship:

- | | |
|-----|-----------------------------------------------------------------------------------------|
| 46% | Is guilty of violating mine safety laws at the Upper Big Branch Mine, |
| 6% | Is not guilty of violating mine safety laws at the Upper Big Branch Mine, |
| 44% | Or, would you need more information to decide? |
| 4% | [Refuse to answer] |
| 42% | Is guilty of interfering with the enforcement of mine safety laws, |
| 5% | Is not guilty of interfering with the enforcement of mine safety laws, |
| 49% | Or, would you need more information to decide? |
| 3% | [Refuse to answer] |
| 42% | Is guilty of making false public statements about Massey Energy’s safety practices, |
| 4% | Is not guilty of making false public statements about Massey Energy’s safety practices, |
| 51% | Or, would you need more information to decide? |
| 2% | [Refuse to answer] |
| 57% | Select the “Is guilty” response option at least once for these three questions. |

[The “Is guilty” and “Is not guilty” response options are reversed for half the surveys.]

DISTRIBUTION OF RESPONSES

The Martinsburg Division Venue Opinion Survey – 390 Respondents

Gender

| | |
|-----|--------|
| 48% | Male |
| 52% | Female |

Age

| | |
|-----|----------|
| 23% | 18 to 35 |
| 46% | 36 to 55 |
| 31% | 56 to 74 |

How much, if anything, have you seen, read, or heard about the Upper Big Branch Mine explosion that occurred in April, 2010 in Raleigh County and killed twenty-nine miners?

| | |
|-----|-------------|
| 23% | Nothing |
| 48% | Some things |
| 21% | Quite a bit |
| 8% | A lot |

[If respondents have heard Some things, Quite a bit, or A lot]: Criminal charges have been filed against Don Blankenship in federal court, in Beckley. Do you believe Don Blankenship:

- | | |
|-----|-----------------------------------------------------------------------------------------|
| 19% | Is guilty of violating mine safety laws at the Upper Big Branch Mine, |
| 2% | Is not guilty of violating mine safety laws at the Upper Big Branch Mine, |
| 78% | Or, would you need more information to decide? |
| 1% | [Refuse to answer] |
| 17% | Is guilty of interfering with the enforcement of mine safety laws, |
| 2% | Is not guilty of interfering with the enforcement of mine safety laws, |
| 80% | Or, would you need more information to decide? |
| 1% | [Refuse to answer] |
| 20% | Is guilty of making false public statements about Massey Energy’s safety practices, |
| 1% | Is not guilty of making false public statements about Massey Energy’s safety practices, |
| 78% | Or, would you need more information to decide? |
| 1% | [Refuse to answer] |
| 29% | Select the “Is guilty” response option at least once for these three questions. |

DISTRIBUTION OF RESPONSES

The Northern Division of the District of Maryland Venue Opinion Survey – 288 Respondents

Gender

| | |
|-----|--------|
| 44% | Male |
| 56% | Female |

Age

| | |
|-----|----------|
| 20% | 18 to 35 |
| 42% | 36 to 55 |
| 38% | 56 to 74 |

How much, if anything, have you seen, read, or heard about the Upper Big Branch Mine explosion that occurred in April, 2010 in Raleigh County and killed twenty-nine miners?

| | |
|-----|-------------|
| 46% | Nothing |
| 41% | Some things |
| 10% | Quite a bit |
| 3% | A lot |

[If respondents have heard Some things, Quite a bit, or A lot]: Criminal charges have been filed against Don Blankenship in federal court, in Beckley. Do you believe Don Blankenship:

- | | |
|-----|-----------------------------------------------------------------------------------------|
| 14% | Is guilty of violating mine safety laws at the Upper Big Branch Mine, |
| 1% | Is not guilty of violating mine safety laws at the Upper Big Branch Mine, |
| 83% | Or, would you need more information to decide? |
| 3% | [Refuse to answer] |
| 12% | Is guilty of interfering with the enforcement of mine safety laws, |
| 0% | Is not guilty of interfering with the enforcement of mine safety laws, |
| 87% | Or, would you need more information to decide? |
| 1% | [Refuse to answer] |
| 12% | Is guilty of making false public statements about Massey Energy's safety practices, |
| 0% | Is not guilty of making false public statements about Massey Energy's safety practices, |
| 87% | Or, would you need more information to decide? |
| 1% | [Refuse to answer] |
| 17% | Select the "Is guilty" response option at least once for these three questions. |

[The "Is guilty" and "Is not guilty" response options are reversed for half the surveys.]