

**PEAK PERFORMANCE**

A dragline rig extracts coal at Cherry Pond Mountain, in West Virginia. A single mining site can stretch for thousands of acres.

# The Rape of Appalachia

Appalachia's mountains are being blasted at a rate of several ridgetops each week. Parents fear for the health of their children. And those trying to fight the devastation have found that coal baron Don Blankenship, C.E.O. of Massey Energy, is tougher than bedrock

By Michael Shnayerson

**T**he images are still fresh: candlelit faces in the West Virginia night, family snapshots of coal miners trapped below, hopes of a rescue raised and cruelly dashed, the gentle letters written by dying men. The explosion at the Sago mine, in Upshur County, on January 2, 2006, was a national drama because 13 men were buried alive while their families prayed above. But no less haunting was the glimpse it gave of an industry with just as much disregard for its workers as in the days of Dickens. Sago executives sat on the news of the miners' plight for a crucial 69 minutes; the first rescue crews failed to arrive until four hours after the explosion. Sago's billionaire owner, Wilbur Ross, a staple of Manhattan society with his latest wife, Hilary Geary, touted his mines' safety record; the truth was that federal inspectors had is-

sued Sago 208 citations in 2005, up from 68 in 2004, while state inspectors had issued it 144 citations, up from 74 in 2004.

Why had Sago been allowed to operate after all these infractions? Because in West Virginia, coal is king. Inspectors can write all the citations they please. Coal-industry lawyers will just pay them as a cost of doing business. Governors and senators can call for reform, but King Coal underwrites their campaigns. When Sago was followed, in less than a month, by four more mining deaths in the state, West Virginia governor Joe Manchin III stood up to demand, dramatically, that every mine in the state be shut down until deemed safe. How long would that take? A bantam figure beside Manchin named Bill Raney, president of the West Virginia Coal Association—the voice of the industry—supplied the answer. “Two hours, we think,” he



said. "Maybe four." One might have thought he was joking, but no.

With underground mining, the industry's arrogance is usually hidden, like the miners below and the coal they're prying loose from the earth. Not until a tragedy does its flouting of laws and regulations come to the surface. But every day in West Virginia, that arrogance is on display aboveground, in the grimly efficient, devastating practice known as mountaintop removal. Hardly any miners die as a result of it, though one of the four deaths after Sago did occur, freakishly enough, when a bulldozer operator on a mountaintop site hit a gas line that ignited and then set him afire. With mountaintop removal, it's the landscape that suffers: mile after mile of forest-covered range, great swaths of Appalachia, in some places as far as the eye can see, are being blasted and obliterated in one of the greatest acts of physical destruction this country has ever wreaked upon itself.

You can see the results all too clearly from a plane at 35,000 feet. You can see them in satellite pictures too. But you won't see



**"You're getting the clouds of coal," says Kenny Pettry, "plus all the chemicals they're using to clean it with."**

a tree out of place as you drive south from the gold-domed capital city of Charleston into the low-lying mountains they call, incongruously, the coalfields. The coal companies may be brutish, but they aren't stupid. They site their operations well away from the interstates, even a ridge or two away from the county roads. The unsuspecting traveler rolls down I-77 admiring the forested mountains, little imagining that the range he sees is as much an artifice as a Hollywood backdrop.

The first clue that something is amiss comes with the turnoff from I-77 that leads to two-lane Route 3, in Racine. This is the road that snakes down the Coal River Valley, into the heart of the coalfields. The mountains, still intact, move closer in now, the valley so narrow and deep it forms a separate world. Few signs of the region's famous poverty are apparent. The houses, though hum-

ble, are well kept; the locals stopping for gas drive late-model pickups. Suddenly, a 60-ton coal truck hurtles down the curving road, its full load swaying precipitously over the double yellow line, its driver yanking the Jake Brake if the car in front doesn't move fast enough. A second coal truck roars into view from the other direction, and the car in between is rocked by its tailwind as the semi goes by: a little reminder of where power lies in the Coal River Valley.

The towns are small and neat, almost storybook, but something is clearly wrong with Whitesville, once the beating heart of the valley. It looks desolate, its storefronts abandoned, its streets and sidewalks still. Hardly a car is parked here, not a soul to be seen. Up and down the length of its Main Street, only two businesses appear to be thriving. Both are florists. Poor though West Virginians are, they buy a lot of funeral flowers. Whitesville resembles a wartime

town pillaged by an advancing army. In a way, that's what it is.

You have to get up to a ridgetop to see that army's path. The view from Larry Gibson's place will do just fine. Gibson, a leprechaun of a man with a surprisingly deep baritone voice, lives

on the top of Kayford Mountain, just east of Whitesville. His ancestors moved to the valley in the late 1700s and acquired 500 acres of the mountaintop in 1886 through a wedding dowry. Twenty years later, a land-company agent from out of state gulled an illiterate forebear into signing his X on a contract that transferred most of the land for "one dollar and considerations." Almost everyone in the Coal River Valley has a story like that. The Gibsons, unlike most families, managed to keep 50 acres at the top of their mountain. This is where Gibson lives still. He's the only holdout for miles around, his mountaintop a little green island surrounded to the horizon by brown, raw, devastated earth.

This is what lies behind the picturesque landscape of roadside hills in the Coal River Valley: mountains reduced to rubble. The topography you can see from Gibson's mountaintop compound is so much lower that it's hard to imagine the forested ridges that once rose here. It's like a man-made Grand Canyon, except that the Grand Canyon teems with life, and this panorama has none—none except the men who work the distant dozers and huge-wheeled dump trucks, their motors a constant, hornet-like hum.

The coal companies have tried hard to buy Gibson out because, he says, Kayford Mountain has 39 seams of coal, worth \$450 million, directly under his property. Gibson has turned them down. He believes they want him gone, too, because he still bears witness to what they're doing here. That's rare. The coal companies own or lease nearly all the land outside the valley's towns, and for the most part they can fence off their operations, keeping people a ridge or two away from their mountaintop sites. Gibson's property, with its more than a dozen shacks and family cemetery, is a vantage point for journalists who want to see what mountaintop mining is about.

The coal companies hate that, Gibson says, and they find ways to let him know it. They tell their miners that Gibson is out to take their jobs away. In response, Gibson claims, miners have shot up his place when he was there; his trailer has the bullet holes to show for it. They've torched one of his cottages. They've shot one of his dogs and tried to hang another. They've forced his pickup off the road, tipping it into a ditch, and paused long enough to laugh at him as

#### DIRTY WORK

Soot on the hands of "Dustbusters," the women who wipe down the outsides of homes with rags every morning.



he tried to get out. Gibson keeps a growing list of all the acts of violence and vandalism committed against him and his property. Currently, it totals 119. The stress of these threats, and of making his mountain a cause, led his wife to leave him not long ago. "If I stopped fighting for the land maybe we'd have a chance," Gibson says. "But this is my heritage. How can I walk away from that?"

Kayford is astonishing. But it's just one of nearly a dozen mountaintop-mining sites that ring the Coal River Valley. It's one of scores of sites in central-Appalachian coal country. The U.S. Environmental Protection Agency, even while sanctioning the practice, concluded in 2003 that 400,000 acres—all rich and diverse temperate forest—had been destroyed between 1985 and 2001 as a result of mountaintop mining in Appalachia. That figure is probably 100,000 acres out of date by now. In those same 16 years, the E.P.A. estimated, more than 1,200 miles of valley streams had been impacted by mountaintop-mining waste—of those, more than 700 miles had been buried entirely. That figure is old now, too.

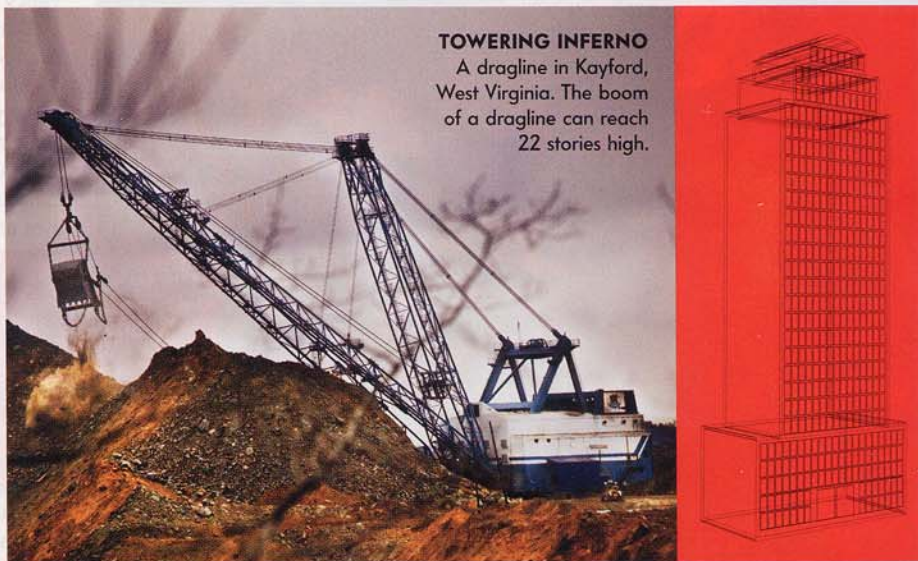
This would never happen in rural Connecticut or anyplace where such destruction would stir universal outcry, and people with money and power would stop it. But Appalachia is a land unto itself, cut off by its mountains from the East and Midwest, its people for the most part too poor and too cowed after a century of brutal treatment by King Coal to think they can stop their world from being blasted away. They're probably right: the E.P.A. sees no reason to think that in the next 10 years its statistics of damage by mountaintop mining won't double.

The story of mountaintop mining—why it happens, and what its consequences are—is still new to most Americans. They have no idea that their country's physical legacy—the purple mountain majesties that are America—is being destroyed at the rate of several ridgetops a week, by three million pounds of explosives every day. They remain oblivious to the fact that, along with the mountains, a mountain culture is being lost: a culture of families who, like Larry Gibson's, go back six, eight, or more generations—a community of deeper historical roots than almost any other in America today.

The reasons so much mountaintop mining is being done now are simply enumerated: money and politics. For decades, coal was the fuel of last choice, visibly dirty and messy, its black smoke an urban blight, its sulfur compounds and nitrous oxide known, even then, to cause acid rain and strongly suspected to be greenhouse gases partly responsible for global warming. Homes and buildings once heated by coal were converted to gas and oil, and scientists predicted that coal would soon be a fuel of the past. But half of the country's electric plants were still powered by coal, and power companies balked at the cost of abandoning it. Now that the cost of oil is so high, and Middle East politics so fraught, coal is back. In fact, it is the centerpiece of President Bush's energy

plan, because America is said to have 250 years of minable coal reserves, much of it in these Appalachian coalfields. More than 100 vast, new coal-fired power plants are being built across the country, and hundreds more in China. The price per ton has soared on the global market, from about \$20 to more than \$50. In the coalfields, these are boom times, and the best, most efficient way in Appalachia to satisfy the insatiable demand is to blow off the mountaintops to get to the seams that lie like layers of icing below.

It would be hard to imagine a more ill-advised course of action than ruining large swaths of land to get coal, and then poisoning the atmosphere with the gases from burning it. Yet the incremental damage from mining and burning a billion tons of coal a year is hard for most Americans to see, so they don't worry about it. The 18,700 people in the U.S. who die each year of coal-dust-related respiratory disease do so singly, and invisibly. The downwind emissions from coal-fired plants dim views and kill aquatic life, but subtly, over time. The mercury produced by burning coal settles in



**TOWERING INFERNO**  
A dragline in Kayford, West Virginia. The boom of a dragline can reach 22 stories high.

The West Virginia Department of Environmental Protection issued 4,268 citations to Massey between 2000 and 2005.

waterways, to be consumed by fish and work its way up the food chain, but this, too, is an invisible process, and so the danger, particularly to pregnant women, is ignored.

Until recently, mountaintop mining went unnoticed as well, even by many Appalachian residents, and certainly by West Virginians north of the coalfields. That's changed. So voracious are the coal companies now, seizing their chance with an administration that does all it can to encourage them, that the mountaintop sites have broadened dramatically, and even local families whose fathers and grandfathers proudly mined underground coal have begun speaking out.

The Coal River Valley is pretty much the geographical dead center of this ruination in Appalachia. And here, as it happens, an archetypal drama is playing out that's both local and global. It pits Don Blankenship, West Virginia's most notorious and unapologetic mountaintop-mining coal baron—arguably its richest and most powerful figure—against a slew of critics. Among those trying to rein



**THE PITS**

Coal-mining damage at Kayford Mountain, photographed on October 28, 2005. The E.P.A. estimates that mountaintop mining will double in the next 10 years.

“This [land] is my heritage,” says Larry Gibson. “How can I walk away from that?”

him in are a young environmental lawyer named Joe Lovett, a coal miner's daughter named Judy Bonds, and Governor Manchin.

Until last year, Blankenship was merely a man who, according to Cecil E. Roberts, president of the United Mine Workers of America (U.M.W.A.), had caused more misery to more people in Appalachia than anyone else. He had grown up poor in the railroad-depot town of Delorme, West Virginia, the son of a single mother who supported four children by working long hours in a gas-station grocery mart. The coal-filled hills around Delorme still seemed to echo with the early battles of miners against bosses and their hired hooligans; Matewan, scene of the epic 1921 showdown

and subject of the eponymous 1987 John Sayles movie, lay just up the road. But as a young Massey Energy manager when the U.M.W.A. struck in 1985, Blankenship had sided with the company and come away from the 18-month standoff profoundly affected. Later, as chairman and C.E.O. of Massey Energy, he made a practice of union busting as he acquired rival mines throughout the 1990s. Once, every mine in the Coal River Valley was a union operation. Now, thanks to Blankenship, hardly a union mine remains. All this growth has made Massey the fourth-largest coal company in the country, with more mountaintop mines than any other—more than two dozen, many of which encompass thousands of acres. Nearly all the sites in the Coal River Valley and its environs are Massey mines.

Other coal companies—Peabody for one, Arch for another, Consolidated for a third—do mountaintop-removal mining, too. But Massey does it with a vigor—displaced residents might say ruthlessness—that leaves its rivals shaking their heads. Typically, the first indication for residents of a hollow that their lives are about to be turned inside out by a

new Massey mountaintop operation is a car driving up and down the winding hollow road, stopping so its driver can take notes about who owns which house. In an air-conditioned office, Massey lawyers will research who owns mineral rights, who owns just land, and who owns nothing at all. The ones who own mineral rights may have to be bought out. The rest can be ignored.

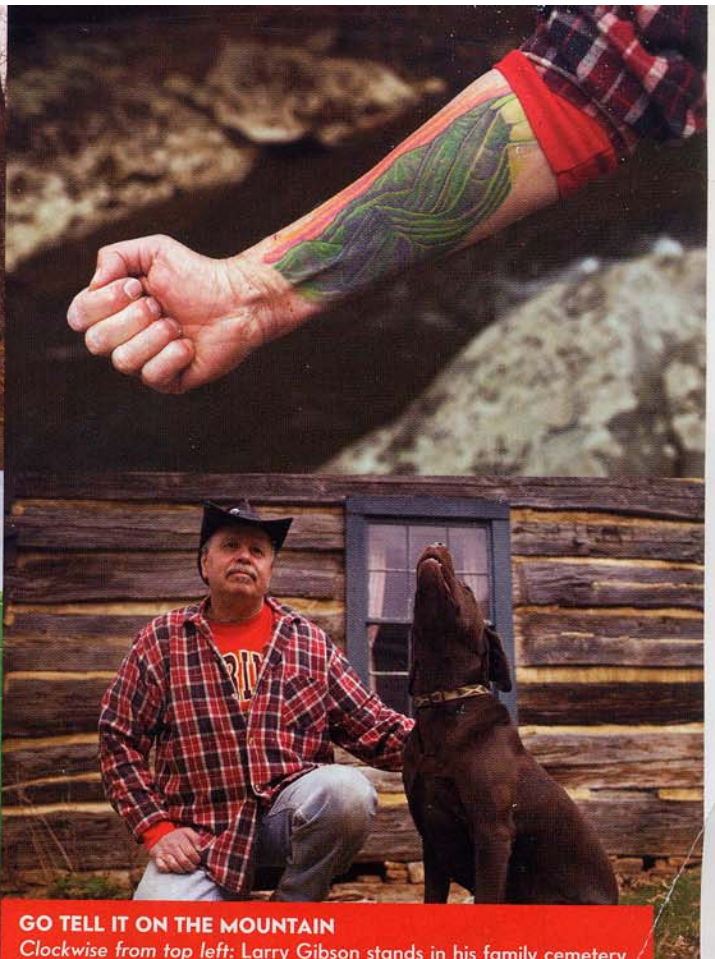
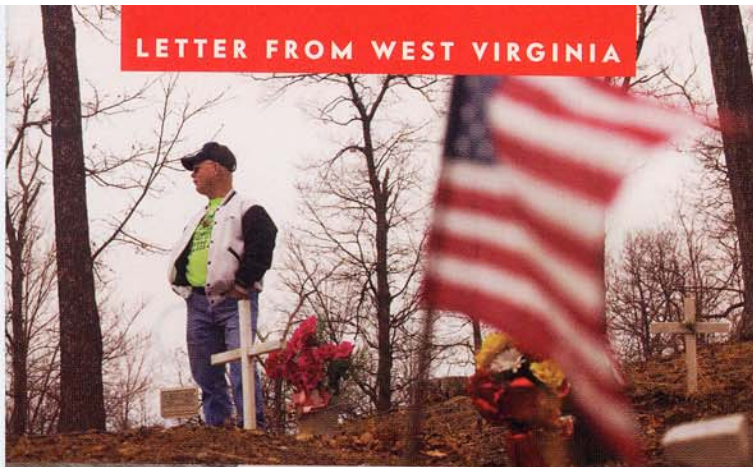
One day soon after that, a timber contractor clear-cuts a ridgetop where families in the hollow hunted and fished and hiked for generations. Then the blasting begins. Daily detonations of ANFO—a mix of ammonium nitrate and fuel oil, the same explosive that Timothy McVeigh used in Oklahoma City—cause reverberations that crack foundations and walls, destroy wells, and rack everyone's nerves. Coal trucks start barreling up and down the narrow hollow road. Coal dust from their open loads coats the houses and cars. At times, toxic chemicals, spilled from the site above, turn the hollow's streams black.

Somnolent as it often seems, the West Virginia Division of Environmental Protection still managed to issue 4,268 citations to Massey operations between January 1, 2000, and December 2, 2005. A violation is anything that looks amiss when an inspector comes by. By comparison, Arch earned 732 violations over that same period, with 355 for Peabody. Far more serious is a pattern of three violations for the same problem. For that, the W.V.D.E.P. may summon the offender to a show-cause hearing—to explain why he shouldn't have his permit revoked. Over that six-year period, Massey had 117 show-causes. Arch had 20. Peabody had none. Jeff McCormick, of the W.V.D.E.P.'s Division of Mining and Reclamation, puts it bluntly: “Numbers don't lie.”

For none of these activities or infractions does Massey reach

J. HENRY FAIR





## GO TELL IT ON THE MOUNTAIN

*Clockwise from top left: Larry Gibson stands in his family cemetery in Kayford; the coal companies are trying to buy his land from him. A tattoo of the Appalachian Mountains on Bo Webb's arm. Webb with his dog Rufus in Whitesville, West Virginia. Judy Bonds, community outreach coordinator for Coal River Mountain Watch, in West Virginia.*

out to the communities it's destroying with an explanatory or apologetic word. The way it communicates is by posting DO NOT ENTER signs on its mines' entry gates, and by fencing off all the mountain land it owns or leases. Families in the Coal River Valley have lived with mining for nearly a century. But until Massey came, no one had kept them from the hills they called home. If they sue for some aspect of the damage done to their homes and land, they end up in court for years at great personal expense. If they try to move away, they find no one to buy their homes—except, sometimes, Massey, which might pay “fair market value” for houses in its direct path. “Fair market” means what the houses are worth now that a mountaintop-removal-mine site is up the hollow.

**B**lankenship is all too well known wherever Massey mines, but until the autumn of 2004 he remained a local figure. That was when he spent \$3.5 million to start a 527 political action committee—the newest loophole for unlimited campaign contributions, ironically produced by the McCain-Feingold Campaign Finance Reform Act of 2002—aimed at toppling one of the five judges sitting on the West Virginia Supreme Court of Appeals. The money was a pittance for him: that fall alone, he cashed in \$17.6 million in Massey stock options—notably more than the \$13.9 million the company earned in profits that year. (Massey Energy is a publicly traded company, but Blankenship has a friendly board, which he dominates.) In West Virginia politics, though, a relatively small amount of money goes a long way. What happened next was an unabashed show of raw power—unprecedented in its openness—that served as an object lesson in why mountains keep getting blown up in the state despite overwhelming public disapproval of the practice.

The target of Blankenship's ire, Warren McGraw, was a proudly liberal justice who tended to side with coal workers in injury cases. A popular figure, he thought he'd skate to another 12-year term, until billboards began appearing around the state with the cryptic message WHO IS BRENT BENJAMIN? McGraw's opponent was indeed unknown, but not after the signs and a statewide media-and-

phone campaign, paid for by Blankenship. The coal baron's 527 PAC, “. . . And for the Sake of the Kids,” beat into voters a message that McGraw let sex offenders free among their children. The campaign was based on the case of a juvenile delinquent named Tony Arbaugh, who after being sexually abused for years by his family had briefly abused a younger brother, done illegal drugs, and broken the terms of his parole. A lower court sentenced him to 35 years; McGraw, voting with the majority, gave Arbaugh one more chance and endorsed a lower-court minority suggestion that Arbaugh be given a janitorial job at a Catholic school. Later, McGraw said the specific suggestion to place Arbaugh at a school had been inserted into the opinion without his knowledge, and pointed out that Arbaugh had not, in any case, worked at the school after all. But the damage was done.

Blankenship's campaign made no mention of Massey Energy, or of the several appeals pending with the state Supreme Court in which Massey has a strong economic interest—including one where Massey is trying to reverse a \$50 million judgment for having driven a small rival into bankruptcy. The campaign was a bullying push, and it worked. McGraw lost, Benjamin won, and Blankenship became a potent political force.

The elections also brought a new governor, and soon Blankenship took him on, too. Joe Manchin III is a Democrat, but party labels mean little in a state ruled by the coal industry. It's more relevant to say he's a former coal operator, though perhaps a well-intentioned one. Just days after taking office, he proposed a bond issue to shore up pension funds for state workers. The plan relied on putting the money raised into the stock market, where, Manchin predicted, it would earn a consistent 4 percent. Blankenship saw that as a dangerous gamble. He may have been right. Having decided he liked politics, he spent hundreds of thousands more of his own money on



a campaign against the bond proposal. When it came to a vote last June, the governor's signature issue went down in flames.

Was the governor, as a result, a bit more receptive than he might have been to angry cries from Coal River Valley residents about a Massey operation that might threaten the students and teachers of a school beside it? Or was he just doing his job to hear them out? Either way, his entry into this local issue has sparked a high-profile feud between the governor and his most powerful constituent. Ultimately, it's a standoff between the state and the coal industry—one the state may not win.

One day last summer as the feud was brewing, two men climbed to the top of a steep ridge to observe, surreptitiously, the action at a new Massey mountaintop site. Bo Webb, 57, is an ex-Marine who served in Vietnam. He has a tattoo that runs the length of one arm, depicting an Appalachian mountain range. Ed Wiley, 47, was a football standout in high school and remains one of the valley's best turkey-hunters. Both are members of Coal River Mountain Watch, a local group that does what it can to stop the spread of mountaintop mining in the valley.

The side of the ridge the men walked up was thick with trees, but at the top they looked down at a big brown bowl of blasted land. Once, this was a valley with trees and houses and people, called Shumate's Branch. Now it's part of a 1,747-acre mountaintop mining site.

The men stayed nearly two hours, hidden amid the ridgetop trees, passing a pair of binoculars back and forth. They were watching tiny figures in the distance on an already flattened hilltop of the vast operation. Through the binoculars, Webb and Wiley could see them tamp ANFO into a grid of holes. Only a few figures were working—one reason mountaintop-removal mining is so efficient. Instead of the hundreds who labor in underground mines, these few set the blasts, then drive the bulldozers that push debris into the valley below. When they reach the seam, these same few men can operate heavy machines that scoop up 100 percent of the coal exposed. It takes just one man to operate the biggest machine of all: a giant steam shovel called a dragline, which can be up to 22 stories high and lift 100 tons of dirt per scoop. If one reason for Whitesville's demise is the environmental onslaught from mountaintop mining, another is the lack of jobs. The industry mines more coal than ever, but with a tiny fraction of the men it once employed.

At last, the figures on the mine site got into tiny trucks and drove to a safe distance. There was an eerie silence, minutes long, and then the blast. It was strangely beautiful, a kind of performance art, sending sprays of dirt hundreds of feet into the air, where for a gravity-defying moment they lingered, before drifting back down to earth.

Coal from this site, Webb and Wiley knew, would be moved by conveyor belt over the next ridge, down to the Massey preparation plant behind the Marsh Fork Elementary School. It would be washed with chemicals at the plant to free it of rock and debris. The cleaned coal would be stored in a silo 110 feet tall. Then it would be loaded onto open train cars bound for market.

All this would happen within 300 feet of the school.

Marsh Fork Elementary is a low-lying bunker of a building on Route 3 in Sundial, about nine miles south of Whitesville. It's set back from the road by a wide front lawn and tucked into a curve of Marsh Fork Creek. Behind the creek, a mere stone's throw away, looms the fenced-off preparation plant of the Goals Coal Company, a Massey subsidiary.

You can see the school from Route 3, and the prep plant and silo behind it. What you can't see is the vast earthen dam, called an impoundment, built into the hillside, where the chemical slurry left over from washing the coal is stored. From a helicopter hovering above the valley, it looks like a huge, open-topped hornet's nest, filled to the brim with black, opaque liquid. Until a few years ago, most parents of Marsh Fork Elementary's 217 students didn't know it existed. They were surprised, the more so to hear that it holds 2.8 billion gallons of highly toxic liquid.

Impoundments are a big part of mountaintop mining, and they're troubling even to some supporters, such as Senator Robert C. Byrd (Democrat, West Virginia), who commissioned a study on their dangers in 2001. The slurry they hold is an environmental disaster in itself. But, also, impoundments can and do rupture. Just over the Kentucky border, a Massey impoundment in Martin County ruptured in October 2000, sending 306 million gallons of sludge into the local waterways. The Environmental Protection Agency called it "the worst environmental disaster in the southeastern United States." In 1972, an impoundment break at Buffalo Creek, West Virginia, released 132 million gallons of sludge that drowned 125 people. In some cases, as in Martin County, impoundments are built over long-abandoned underground mines, and the growing mass of slurry eventually breaks through to the catacombs below and seeps out the mine mouth.

Officially, if a rupture occurred, an alarm would be sounded "personally or by bullhorn," and the children of Marsh Fork Elementary would be driven to schools down the valley. Unofficially, the children would probably be buried. Massey supporters in the area—which is to say teachers, parents, and other locals whose relatives work for the company—say this is a case of Chicken Little, since the impoundment was built in 1985 and no major rupture has occurred. (Small leaks of toxic liquid are considered routine.) Davitt McAteer begs to differ. The assistant secretary in the Department of Labor's Mine Safety and Health Administration under President Clinton, he headed up Senator Byrd's

"They've had as few as four or five kids in a class, the rest out with diarrhea and vomiting," Bob Cole says.

impoundment study and is now directing Governor Manchin's study of the Sago mine collapse. He points out that at the 110 impoundments in West Virginia built since 1972 there have been 33 spills or ruptures—more than half of them Massey operations—releasing, conservatively, 170 million gallons of sludge. "The fact that 17 belong to one company tells you that this company is not dealing with the problems," McAteer says. "My bottom line is you shouldn't have a huge impoundment above a school, even if it's the best impoundment in the world."

In response to this and other points raised by *Vanity Fair*, Don Blankenship sent a brief letter. "The persons involved in producing, processing and shipping coal at Massey are lifetime residents of Appalachia who have no desire to pollute the environment or harm anyone," Blankenship declared. "The sources for your article are exemplified by Davitt McAteer. A man who did nothing for safety while he headed the Mine Safety and Health Administration. A plaintiff attorney ... a man who says



coal miners can be kept track of underground with \$20 devices. Clearly, not a man to be believed.”

For many Marsh Fork parents, a more immediate concern than the impoundment is the quality of air and water in and around the school and prep plant. Aided by Coal River Mountain Watch, several parents began comparing notes last year and claimed that their children share chronic symptoms. Herb Elkins says his seven-year-old granddaughter has a runny nose, a cough, and earaches all through the school year. Two weeks into summer vacation, she's fine. Bob Cole's son Davy has chronic stomachaches that get him sent home routinely, but his parents never get them. “They've had as few as four or five kids in a class, the rest out with diarrhea and vomiting,” Cole says. “In the middle of the day they throw up.” Carolyn Beckner's daughter Brittany has such bad stomachaches that she asks her mother nightly to pray for her stomach to feel better.

Kenny Pettry, a teacher at Marsh Fork, whose own 10-year-old son, Jacob, attends the school and has chronic upper-respiratory symptoms, believes the students grew sicker in 2003, when the silo was built behind the school. “The trains are loaded up right by the silo, so you're getting the clouds of coal, plus all the chemicals they're using to clean it with. What are they using to clean it with? Massey has never told us.”

Just as worrisome as the air is the water. Several children have reported getting sick after drinking from the school water fountain. Pettry feels that blasting has damaged the school's septic system, from which rank odors frequently emanate. Don Price, Marsh Fork's current principal, however, says the air and water at the school are fine and that there have been no specific cases of children becoming ill from either.

As for Marsh Fork Creek, all it takes is one look to see it's fouled. Not long ago, the stream was clear, local residents say. Now it's muddy brown. Down along its bed, a channel of darker brown flows like a slithering snake. Parents say children who swim in Marsh Fork or its tributaries come out sick now with flushed faces, headaches, raspy coughs, sore throats, stomachaches, and diarrhea.

It was in the climate of these rumors and fears that parents reacted with such dismay to the news last year that Massey intended to build a second silo behind the school.

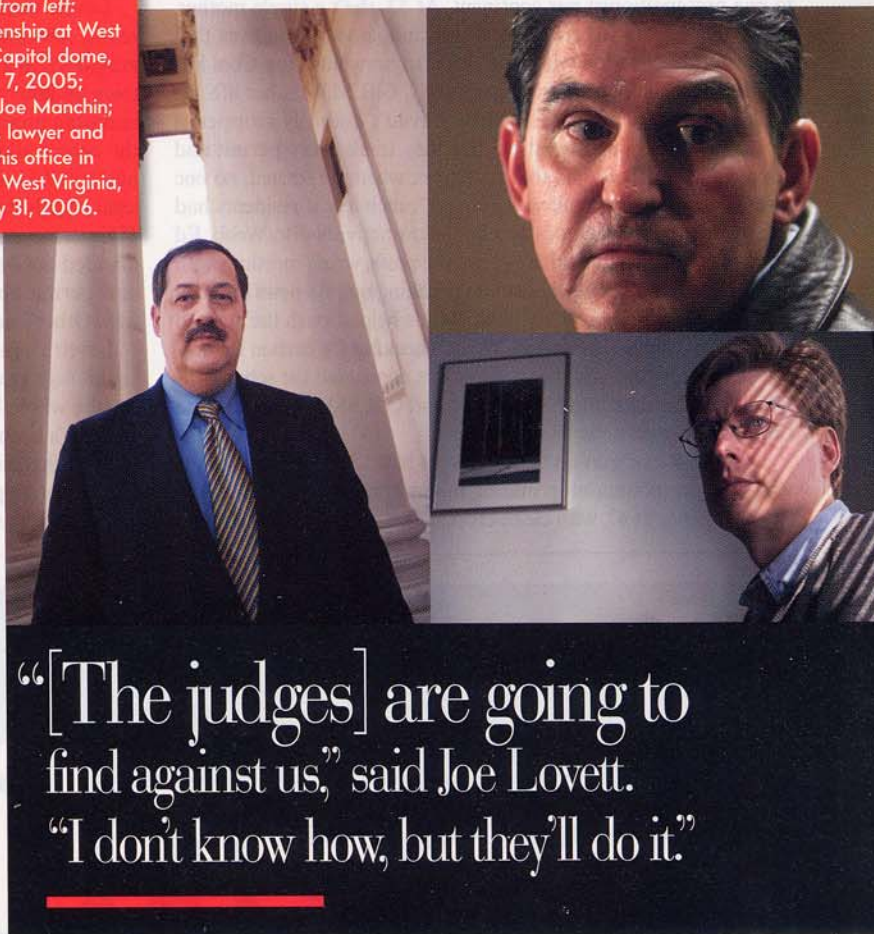
More and more coal was coming down from the mountaintop sites behind the ridge, Massey explained to the W.V.D.E.P. Another silo was needed to store it. The first silo was already less than 300 feet from the school; the new one would be just 260 feet away. The federal surface-mining act of 1977 prohibits coal companies from building within 300 feet of a school, but Massey had an answer for that: its prep plant on Marsh Fork Creek had been operating since 1975, making it exempt from the law. So confident was Massey that it went ahead and built the foundation for the 168-foot silo while the permit was still pending. Generally, what a coal company in West Virginia wants, it gets.

This time, though, a reporter from *The Charleston Gazette* upset Massey's plans. Ken Ward Jr. has covered mountaintop-removal mining for nearly a decade with a grim determination and thor-

oughness that make his stories the ongoing chronicle of this national tragedy. He might have moved on long ago to *The New York Times* or *The Washington Post*, but like Larry Gibson he stays to bear witness. When Massey declared that its silos were exempt from the 1977 law, Ward started studying the site's permit applications over the years. What he found was extraordinary. Neither of the silo sites was entirely within the originally permitted area, but on subsequent Massey survey maps the property lines had *migrated*. They'd moved toward the Marsh Fork Elementary School, just far enough to accommodate the first, and now the second, silo. Ward's revelation started the W.V.D.E.P., which had just granted a permit for the new

#### IN THIS CORNER

Clockwise from left: Don Blankenship at West Virginia's Capitol dome, September 7, 2005; Governor Joe Manchin; Joe Lovett, lawyer and activist, in his office in Lewisburg, West Virginia, on January 31, 2006.



“[The judges] are going to find against us,” said Joe Lovett. “I don't know how, but they'll do it.”

silo on the basis of Massey's own maps. And it galvanized the governor. Now, when the agency looked again, it did something no one could remember it ever having done before: it rescinded the permit.

Blankenship was furious. The governor, he declared, was simply taking revenge for the coal baron's campaign against the bond issue. And so, by this logic, Blankenship sued the governor for violating his right to free speech. It was like two soldiers shooting each other at close range, Blankenship said. “He shut my silo down, and I shot him with this lawsuit.” He waved off the matter of the migrating boundary line as a technicality “much like being a mile over the speed limit. They could apply this to every coal company in West Virginia and probably shut them all down,” Blankenship said. “If all of us are going 56 miles per hour and I'm the only one getting a ticket for speeding, I have to be concerned about that.”

In the Whitesville storefront office of Coal River Mountain Watch (C.R.M.W.), Judy Bonds heard about the W.V.D.E.P.'s reversal on the silo permit with mixed feelings. She felt it averted an immediate threat to the school, but parents were still concerned for their sick children, and the impoundment still loomed behind them. The governor had told her in his office that he would



take action, but so far nothing had happened. Only Ken Ward's story had made the W.V.D.E.P. rescind its permit. Even now, Massey might prevail. This was no time for celebration.

A daughter and granddaughter of coal miners, Bonds came to C.R.M.W. five years ago, when a Massey operation blasted the ridgetops above her hollow, and everyone had to move. She was the last holdout, stubborn and angry, but she was finally forced to go. At C.R.M.W. she found her voice as a public speaker. Now she's a statewide symbol of local resistance to mountaintop mining, and the North American winner of the 2003 Goldman Environmental Prize, a prestigious international award given annually to one preservationist per continent. At 53, she's a single mother, thrice divorced, with curly dark hair and shoe-button eyes that blaze with indignation when she starts in on what King Coal has done to the valley. Aside from her family, C.R.M.W. is her life.

To date, Bonds and C.R.M.W. haven't actually stopped a mountaintop-mining operation. But they track every permit and force public hearings, and that's progress: when she started, no one even knew when a permit was granted, much less if residents had a right to question it. Bonds and her fellow activists—Bo Webb, Ed Wiley, and half a dozen others—prod the press, wring meetings with the governor, and stir neighbors into speaking out. As news broke of Massey's migrating property lines, Bonds helped push the state to inspect the Marsh Fork school. (After checking for carbon monoxide, carbon dioxide, and mold, inspectors concluded the school was safe.) Then she took another step: she had C.R.M.W. sign on to Joe Lovett's suit against the W.V.D.E.P.

Lovett is a lone gun on the legal front here, the one local lawyer who's fought mountaintop mining in any consistent fashion. Boyish and intense at 47, with clean-cropped brown hair, wire-rimmed

glasses, and the blush of youth in his cheeks, Lovett might pass for a student at a New England prep school. His father was a prominent lawyer in Charleston, but Joe seemed to need to rebel: He spent much of his 20s on an organic farm. Environmental law was a kind of rebellion, too. When he graduated from law school, at 36, Lovett found himself listening, on his first day of work at a Charleston nonprofit law firm, to the plight of a coalfields resident whose hollow was about to be destroyed by a mountaintop-mining operation. Lovett had never seen a coal mine. He'd never even driven south of Charleston into the coalfields. That seems a long time ago now.

Lovett works behind a glass-paneled door with lettering that reads, APPALACHIAN CENTER FOR THE ECONOMY AND THE ENVIRONMENT, in a two-room office in Lewisburg, a gentrified colonial town an hour's drive east and a world away from the coalfields. A nonprofit group of his creation, modestly funded by a few donors, the center allows Lovett to sit at a cheap computer, framed by posters of Louis Armstrong and Robert Frost, and bat out crisp legal broadsides. This one went to W.V.D.E.P. secretary Stephanie Timmermeyer, on behalf of Coal River Mountain Watch. He demanded not only that the second silo be prohibited for good—no new permit application—but that the first one be torn down, as well. Otherwise, he promised, he would sue.

Lovett's legal letters are written with cool authority, rarely revealing his rage against mountaintop-removal mining and, for that matter, the whole business of mining and burning coal. In the eight years he's been bringing coal cases, he's had remarkable success. The fact that his cases keep getting reversed on appeal is frustrating, though not surprising to someone as privately pessimistic as he. He knew from the start what he was up against, and yet he's kept going.

# essential<sub>2</sub>sa





**F**or Lovett, the silo case was irresistible, but untypical. He hardly ever takes on a particular case of alleged coal-company malfeasance. Instead, he looks for ways in which the whole industry breaks the law by mountaintop mining, aided and abetted by the state and federal agencies assigned to oversee it. So nettlesome is Lovett that the Bush administration, in trying to please the coal industry, has marshaled the full force of the federal government just to stop him.

At the heart of the administration's loyalty to coal is a simple political fact: West Virginia is a swing state with five electoral votes. In 2000, if it had gone to Al Gore, there might have been no aftermath in Florida, no endgame in the U.S. Supreme Court. Gore would have won the election. Coal delivered West Virginia to Bush by spending far more money than it had ever spent in a presidential race—\$3.6 million, three times more than in 1996. Merely stopping Gore wasn't reward enough for the coal industry's investment. King Coal wanted payback—specifically, that Bush undo the damage caused by Joe Lovett.

In the Clinton years, Lovett had sued the U.S. Army Corps of Engineers for granting mountaintop-mining permits in a lax—and illegal—fashion. The Corps is best known for building bridges and dams, but when the Clean Water Act was passed in 1977, Congress gave the Corps a new job. It ordered the agency to pass judgment on any project that might damage U.S. waters. The Corps agreed, but only grudgingly. Ever since, it's done as little as possible to fulfill that responsibility in regard to mountaintop mining. In Charleston, a conservative federal judge, the late Charles H. Haden II, startled the Corps—and the mining industry—by saying as much, finding in Lovett's favor not just once, but twice. But then Bush took office and

proceeded to name an industry lobbyist to be the government's highest-ranking overseer of mining.

J. Steven Griles, who left as the Department of the Interior's deputy secretary in late 2004 to become a lobbyist again, may not have had a hand in all the rollbacks to rules that govern mountaintop mining, but he certainly emerged as a symbol of them—and of his industry's clout in squashing Lovett's court victories. Lovett and his legal partner, Jim Hecker of the Trial Lawyers for Public Justice, had stopped coal operators from dumping mountaintop waste into valley streams by claiming it was "fill"—a term in the Clean Water Act intended to mean sand and gravel that filled in a wetland for building, not mountaintop waste. Soon after he was confirmed as the number-two man at Interior, Griles touched on the fill issue in a speech to industry executives, saying, "We will fix the federal rules very soon on water and spoil placement." In May 2002, the E.P.A. and the U.S. Army Corps of Engineers re-wrote the definition of "fill" to include virtually everything except household garbage.

Technically, at least, a buffer zone of 100 feet on either side of streams protected them from being buried. Within that buffer zone, no mining activity was allowed unless a coal company determined, among other things, that a stream's aquatic life would survive the activity. The rule was often ignored, but at least it was there. At the Office of Surface Mining (O.S.M.) in Bush's first term, a formal proposal was made to change that rule. Now coal operators would need only show they'd taken measures "to the extent possible" to observe the buffer zone and protect streams. Griles says he "provided no policy direction, and never reviewed or commented on the proposed rule." But as Interior's deputy secretary, he helped oversee all the department's agencies, of which the O.S.M. is

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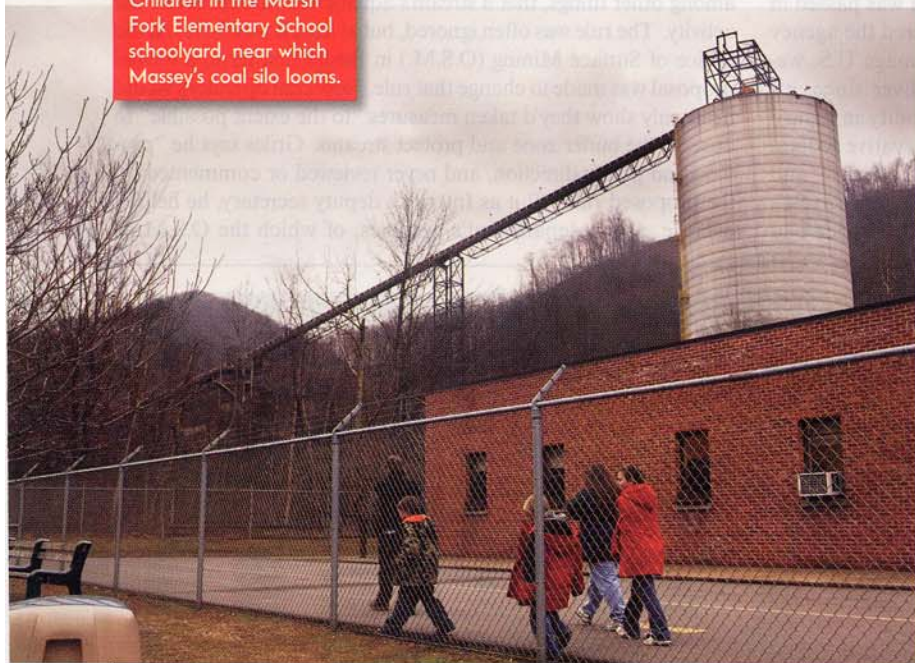
one. Lovett and Hecker sought an injunction against the rule change as soon as it was proposed. The Bush administration fought them in court and won on appeal. The rule is still pending.

The Clinton administration had agreed to do the first serious study of the impacts of mountaintop removal—an Environmental Impact Statement, or E.I.S. This, too, was in response to one of Lovett and Hecker's legal victories. In an inter-office memo of October 2001, Griles emphasized that the E.I.S. should focus on how to streamline the government's permitting process for the practice. When the E.I.S. was done, scientific studies of the environmental impact were pushed down to footnotes or appendices; the thrust of the 5,000-page study was how to make mountaintop mining easier to do, in blithe disregard of the devastation documented in the E.I.S.'s own studies. Griles denies he had anything to do with finalizing the E.I.S., but the agency that ended up leading the effort was, again, the Office of Surface of Mining, under his aegis.

In thwarting Lovett, the industry has gotten at least as much help from the higher courts as from the administration. Three times, after favorable rulings from West Virginia federal judges, Lovett has been batted down by the Fourth Circuit Court of Appeals, in

#### PLAYING SAFE?

Children in the Marsh Fork Elementary School schoolyard, near which Massey's coal silo looms.



**“You shouldn’t have a huge impoundment above a school,” says Davitt McAteer, “even if it’s the best impoundment in the world.”**

Richmond, Virginia—the most conservative court in the land. West Virginia is one of five states whose federal appeals are heard by the Fourth Circuit (the others are Virginia, Maryland, North Carolina, and South Carolina), so any case that Lovett brings in his home state is destined to travel, on appeal, to the block-size granite-and-limestone building where, by southern tradition, justices conclude their sharp and often acerbic questioning by

stepping down to shake hands with the lawyers from both sides.

Last September, when Lovett walked into the appeals-court building in Richmond for the third time, he almost felt optimistic. His case, once again against the U.S. Army Corps of Engineers, seemed his most solid yet. Lovett felt all the justices had to do was read the clear, simple language of the Clean Water Act to see how the Corps was violating its duty—and the law. Inside the building, Lovett's heart sank. There on a bulletin board were the names of the three judges randomly chosen, from the circuit's field of 14, to hear the case. How could this be? Two of the court's most conservative judges, J. Michael Luttig and Paul Niemeyer, were on the panel—again. Both had been on Lovett's first two appeals, too! And both had ruled against him each time. What were the odds against the same two judges being randomly chosen three cases in a row? Lovett and Hecker did their best, but in the hallway outside afterward, Lovett was grim. “They’re going to find against us,” he said. “I don’t know how, but they’ll do it.” He was right: just before Thanksgiving, the Fourth Circuit ruled that the Army Corps could handle its permitting any way it likes.

Almost as a lark, Lovett requested an *en banc* hearing. On rare occasions, a circuit's full field of judges may decide to reconsider a ruling made by one of its three-judge panels. In mid-February, in a 5 to 3 vote, the Fourth Circuit decided not to reconsider. But in issuing that decision the court acknowledged that 5 of its 14 judges had recused themselves from hearing the appeal last fall. The reason: all five had financial interests in mining. That, explained a court clerk, was why two of the other judges had ended up on all three of Lovett's appeals.

So Don Blankenship and the mining industry, activists now feel, have little to fear from any case brought against them in a West Virginia federal court. Even if they lose, the case will go on appeal to the Fourth Circuit, where 5 of the circuit's 14 judges will recuse themselves, and 2 of the remaining ones have declared that mountaintop mining can be permitted as the overseeing agencies see fit. Now that Blankenship's candidate for the West Virginia Supreme Court is presiding, the coal barons can hope for more pro-industry rulings there too. Just to be sure, he's declared he'll finance another 527 to go after the five-member court's other reliably liberal justice, Larry Starcher, if Starcher runs for re-election in 2008.

Blankenship even seems to have neutered the governor. Last fall, his lawyers demanded copies of any and all communications between Governor Manchin and the W.V.D.E.P. in regard to the silo squabble over Goals's prep plant behind the Marsh Fork Elementary School. Blankenship argued that Manchin urged the W.V.D.E.P. to rescind its permit as retaliation for Blankenship's campaign to kill the governor's pension plan. In mid-March, a county judge granted Blankenship's request. “The choice is clear,” the judge ruled, “and it is in favor of open government.”

At the same time, Massey's lawyers went before the state Surface Mine Board, a five-member panel that tries to settle mining disputes out of court, to argue the silo permit was wrongly rescinded. Lovett went up against them and got a Massey engineer to admit he had, in fact, altered the boundary line on Massey's map of the plant beside Marsh Fork Elementary School. But he'd done it, he said, because of changes in the terrain, “not . . . to allow me to put silos



in where people think they ought not to be.” The Surface Mine Board was unimpressed. It ruled that the W.V.D.E.P. had every right to rescind the permit. Now Blankenship will take that ruling to court. If the court-ordered disclosure of Manchin’s communications with the W.V.D.E.P. shows anything embarrassing, he just may win.

Lovett keeps filing lawsuits: he’s got a new one against the Army Corps, in a Kentucky court this time, so that when the case is heard on appeal it will be taken up not by the Fourth Circuit but by the Sixth, which oversees Kentucky, Michigan, Ohio, and Tennessee. In Whitesville, Judy Bonds and the others at C.R.M.W. continue to speak out, angrier than ever. But it’s hard to keep faith in the valley, where even when you win, you lose.

Just three miles north of Whitesville lies the once pristine town of Sylvester, population 195. A few years back, Massey Energy built the Elk Run prep plant at the edge of town, to process coal belted in from various mountaintop sites in the area. The plant and the trucks that began driving by in an endless cavalcade caused a black cape of coal dust to spread across the town, so that Sylvester’s residents had to clean their windows and porches and cars every day, and keep the windows shut. Their town was ruined, and they had nowhere to go: no one would buy their houses now. In desperation, Pauline Canterbury and Mary Miller, two housewives in their 70s, led a town crusade to bring Massey Energy to court.

The “Dustbusters,” as Canterbury and Miller were soon known, saved coal-smear paper towels in dated plastic bags and photographed the bags to prove each date. Represented by Charleston lawyer Brian Glasser, they won \$1 million in damages for the town. Massey was forced to curtail the truck traffic; to put a dome, like an indoor-tennis-court bubble, over the dust-spewing part of its prep plant; and to install monitors around town and keep coal-dust emissions below a certain level.


Two years ago, Massey installed the monitors, but Sylvester is far from dust-free. Every day, as they did before the suit, the Dustbusters wipe down their windows and porches and cars. They talk all the time about going back to court.

That’s the way stories end in the Coal River Valley: with a whimper, followed by a bang of blasting. Perhaps Don Blankenship won’t get his second silo behind the Marsh Fork Elementary School, but most locals think he will. Then perhaps the increased activity of the site will lead the county to close the school, and the 217 children who attend it will have to be bused to a school a half-hour or more from their homes, on winding Route 3. That’s what has happened already to one after another of the Coal River Valley public schools. And then Massey’s subsidiaries will be able to build as many silos as they want.

They’ll likely want quite a few, because all around Whitesville the

#### FUTURE SHOCK

An aerial shot around Cherry Pond Mountain, taken on February 1, 2006. A single mountain can contain coal seams worth hundreds of millions of dollars.



The E.P.A. concluded in 2003 that 400,000 acres—all rich and diverse temperate forest—had been destroyed between 1985 and 2001.

Massey mountaintop sites are metastasizing: more blasting, more coal, more trucks and coal dust. Even now, a dragline is being constructed—at a cost of millions—to broaden the sites that Larry Gibson looks out on from Kayford Mountain. Locals believe the long-range plan is to depopulate the valley: to make life so unlivable in and around Whitesville that everyone leaves, the lucky ones with a Massey buyout check in hand, the rest without. Then Massey will be able to blast without worrying about activists such as Judy Bonds, or lawyers such as Joe Lovett, or even governors, because no one will be there to witness or care, and hardly anyone outside the coalfields will know that a sizable chunk of the American landscape is gone. □