NOTICE: On April 3, 2008 the Court granted a petition for rehearing in this matter. This opinion is therefore withdrawn and no longer effective.

No. 33350 *Hugh M. Caperton, Harman Development Corporation, Harman Mining Corporation, Sovereign Coal Sales, Inc. v. A. T. Massey Coal Company, Inc., Elk Run Coal Company, Inc., Independent Coal Company, Inc., Marfork Coal Company, Inc., Performance Coal Company, and Massey Coal Sales Company, Inc.*

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Starcher, J., dissenting:

The majority's opinion is morally and legally wrong.

The majority opinion is morally wrong because it steals more than $60 million dollars from a man who was the victim of a deliberate, illegal scheme to destroy his business. The majority opinion is legally wrong because it uses erroneous legal reasoning to justify an immoral result.

Make no mistake – a West Virginia jury heard from all the witnesses for both sides, and decided that Mr. Don Blankenship directed an illegal scheme to break Mr. Hugh Caperton's business. No one says that the jury was wrongly instructed. No one says they didn't hear all the evidence. In fact, the majority opinion concedes, "the facts of this case demonstrate that Massey's conduct warranted the type of judgment rendered in this case." Yes, that's right, the majority of the members of this Court says that the

Boone County jury's verdict was fully justified! Therefore, in this aspect of the case, our Court's opinion is unanimous.

Let's not forget why the jury's verdict was justified: the jurors looked Mr. Blankenship in the eye and concluded that he was lying, and that Mr. Caperton was telling the truth.

The majority opinion says: "That doesn't matter" – it all should have been handled in Virginia. To which argument, one must respond: "Horse puckey!"

The Virginia case was about a single narrow contract issue. There was nothing in the Virginia case about Mr. Blankenship's grand scheme to crush Mr. Caperton and his business. According to the jury's findings, that scheme was *hatched in* West Virginia and *carried out* in West Virginia. Mr. Caperton had every right to try his case in West Virginia – and he did, and he won.

Now three members of this Court have ruled that even though it is a *fact* that Don Blankenship illegally took over $60 million dollars from Hugh Caperton – he can get away with it scot-free. Talk about crime in the suites!

Finally, I would be remiss if I did not briefly speak to the multiple claims made by the Massey parties that I should remove myself from the consideration of the instant case because I have publicly decried the one-man smear tactics that Mr. Blankenship brought to our most recent Supreme Court election.

As a constitutional officer elected by the people, I have a right and duty to speak out about the administration of our justice system, including the conduct of judicial elections. I can have opinions, and still do my job fairly. I do decry murder and domestic violence and I speak out on it, and I also sit as a judge and hear cases involving people who are charged with those offenses.

I am one judge voting on this case who can say that I owe nothing to Mr. Blankenship one way or another – he did nothing to hurt or hinder my election. He did not fund my campaign, nor am I a social friend of his. It has been amusing for me to see Mr. Blankenship trying with all his might to create the circumstances where I would be forced to step aside and let him have *in toto* the kind of Court he wants – for example, he has said he will be "targeting" me in the next election if I run. Fortunately, the public can see through this kind of transparent foolishness, just as a West Virginia jury saw through his lies in court.

What is sad is that a majority of this Court is telling a West Virginia jury that their work to bring about justice was a complete waste.

Accordingly, I dissent.