

MARCH 2, 2017



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By **Sharon McCloskey** - 11/26/2013 - in Law and the Courts  Print This Article



It’s a storyline straight out of a John Grisham novel.

For 15 years and running, two Pittsburgh lawyers fight to bring justice to a small coal mine owner driven into bankruptcy by Don Blankenship, the most powerful coal baron in American history. The courtroom battle starts in a small courtroom in West Virginia, reaches the U.S. Supreme Court and then lands in neighboring Virginia courts, where it continues today.

Along the way the small mine owner, Hugh Caperton, wins a \$50 million verdict but never sees a dime as Blankenship pulls out all stops to avoid payment — including contributing millions to support the election of a state supreme court justice who’ll likely vote to overturn that verdict when the case hits the West Virginia Supreme Court.

In “The Price of Justice,” Washington writer Laurence Leamer tells the true back story of Caperton’s quest for justice in a system where the politics seem stacked against him and Blankenship’s ruthless pursuit of profits at any cost.

Policy Watch recently spoke to Leamer about what he learned while researching and writing the book and what that portends for judicial elections and court systems across the country. Excerpts are below.

NCPW: How did you become interested in the story?

Leamer: I’d worked in a coal mine in West Virginia 40 years ago, and had real strong feelings about the region. And two or three years ago I read a story in the New York Times about the *Caperton* case, and how John Grisham had written this number one best-seller novel called “The Appeal,” in which somebody spends all this money electing a justice who votes in his favor. So I called Hugh Caperton. I love trains so I took a long train ride down from Washington D.C. to West Virginia and met with him. Then I went to Pittsburgh and met with the two lawyers, and that sold the book.

A lot of publishers weren’t interested because they said nobody cares about this part of the world. People aren’t going to read about it. That was really morally offensive to me.

NCPW: How’s the book doing, in terms of sales?

Leamer: It’s doing well and came very close to the best seller list. It’s acknowledged as an important book. I’m doing all these speeches. And it’s had an impact in West Virginia – that’s for sure.

NCPW: What’s the status of the *Caperton* case now?

Leamer: In this magnificent decision, the Virginia Supreme Court — which by the way is an appointed court, and I think that has something to do with it – unanimously ruled that the case could go to trial now. So if they don’t settle it’ll go to trial next April in a small courtroom in southern Virginia.

The two law firms are over ten million dollars in the hole on this. Very few law firms would have done this (kept handling the case). I think it’s because it’s a Pittsburgh law firm, and I say it’s a place where people give you their word and you keep your word. That’s what these people are like – they never thought about backing off this thing. It’s their case and they are going to keep it.

NCPW: You have some great inside information in the book – former West Virginia Supreme Court Justice Larry Starcher’s diary, for example.

Leamer: I interviewed him many times, and I couldn’t believe he gave me the diary. I was absolutely stunned. And that’s the crucial thing – because, for example, we can tell how the court decided the Caperton appeal. In one minute they decided it. It’s just appalling.

NCPW: How extensive was the diary?

Leamer: He kept this diary of what was going on in the court for several years. Most of it was really mundane stuff.

NCPW: We also learn in the book that there was someone akin to a mole at the West Virginia Supreme Court who passed along

internal information about how the justices were handling the case. How did you find out about that?

Leamer: Caperton told me; it was someone who was sending him emails. And even today we don't know who it is.

NCPW: What would you say to voters about what they should ask and learn from their justices about how they vote and how they rule?

Leamer: Well we have to have better judges. We also have to have better citizens who pay attention. And journalists. One of the tragedies about the decline of American journalism is that journalists are no longer doing their job the way they used to do it. I don't know how it is in North Carolina, but I know how it is in West Virginia – nobody's watching this stuff. Until human nature changes, you've got to watch people. That's what happens with corruption. People think, “Oh, I'm never going to get caught, so I'm going to do these things.” And that's what happened in West Virginia, where the corruption is top to bottom. The U.S. Attorney now cannot believe the depth of corruption in that state. To some of these people it's not even corruption anymore – it's just what they do. And the citizens just get discouraged and kind of give up. It's just a horrible situation. And it's hard to believe that that happens in the United States.

NCPW: When you were researching and putting the story together, were you surprised by what you learned was happening on the West Virginia Supreme Court?

Leamer: I couldn't believe how bad it was. I couldn't believe that this was our country. We view supreme courts as some sort of sacred places. But those black robes hide an awful lot sometimes. We see justices sitting up there and we think that they're honorable and fair, but we don't know what's really going on there.

NCPW: What's happening with Don Blankenship and the ongoing mine investigations, particularly the investigation into the deaths at his Upper Big Branch mine?

Leamer: I think there will be an indictment.

[Blankenship recently cast blame elsewhere for that disaster and other Massey Coal incidents, as related in [this article](#).]

NCPW: After researching and writing the book, what if anything needs to change with how we select judges?

Leamer: I've been traveling around the country and talking to a lot of groups, and I find that the solution's very complicated. Originally I thought we should have appointed judges. When we go to the polling booths, we really don't know anything about who these judges are. So what do you do – you vote your party. So basically the judges are appointed by the political party.

But, there are different kinds of corruption. And a lot of judges feel – say they started as a public defender, or they didn't go to a fancy law school – they feel that they wouldn't have a shot. And every woman judge I've talked to across the county is opposed to appointments because they say that the “old boy network” still exists and they wouldn't get appointed. So I don't know – it's complicated. Maybe nonpartisan elections. Justice Sandra Day O'Connor thinks we should have a panel that appoints these people and then after a while, when you see how they're doing, have them run for election.

But it's part of the reform we have to have with our judicial system. And these reforms always start with a few people. In 1668, a group of Quakers in Germantown, Pa. called for an end to slavery. And we know how long that took. In 1848 the Seneca Falls

Convention about allowing women the right to vote – that happened almost 90 years later. In the early 70’s gay activists talked about same sex marriage. It took a while, and it takes people.

NCPW: When you go across the country, are you hearing other stories about similar things happening at other state supreme courts?

Leamer: Well, yes, and not just the supreme court but the court system in general. I mean everybody has a horror story.

NCPW: Why should people care about your book and the lessons it teaches about what might be happening in the courts?

Leamer: It affects everybody, Even if you never end up in a courtroom. If you don’t have justice you don’t have liberty; you don’t have democracy. And that’s what happened in West Virginia. So we have to be vigilant. We have to have a justice system that truly is a justice system.

NCPW: What should judges do to help improve the system?

Leamer: I’ve always been sort of deferential towards judges, treated them differently. But they should be more open. They should talk more, because they’re allowed to do that. And in elections, we should see more of that.

NCPW: Were you surprised about what you learned about how the West Virginia justices were deciding cases – the horse-trading that went on?

Leamer: Yes, and that’s appalling. That’s corruption as far as I’m concerned.

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