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Giving the Corporate Officials Who Poisoned Libby a Free Ride

Folks in Libby and elsewhere in Western Montana are still shocked and confused by the jury verdict in a federal courtroom in Missoula that found the executives of W. R. Grace & Company, not guilty of all charges that they and their company had conspired to down play the seriousness of the asbestos poisoning caused by their mining activities and delayed the clean up and protection of those exposed to those deadly fibers.

With 200 residents dead and one thousand sickened and facing a slow death, Libby residents expected the company and its leaders to be held accountable for bringing this curse to their town and then systematically trying to hide the dangers in order to protect corporate profits. But legal proceedings to do that faced nearly impossible obstacles from the start in the form of a federal judge who just did not believe that business executives who were, as he repeatedly said, “just doing their job” should be held criminally responsible for the massive suffering and death caused by their actions. In addition, these well-heeled business executives could draw on a deep well of financial resources to mount a massive counter-attack on the government’s accusations while the U.S. government scrimped by on the limited resources made available for this case.

Initially consumer and environmental advocates were optimistic about W. R. Grace being brought to justice because the federal judge assigned to the case, Donald Molloy, had often ruled in favor of environmental organizations in a broad range of cases that sought to avoid environmental damage. When Judge Molloy immediately

began undermining the prosecution's case against W.R. Grace & Company, leading to a string of appeals to the U.S. Ninth Circuit Court of Appeals, which repeatedly reversed Molloy's rulings favoring the Company, many local observers, were puzzled. But that was just the beginning. Once the trial was underway, the Judge became even more overtly hostile to the legal team prosecuting the W.R. Grace executives, chastising and berating the government lawyers, forcing them to reorganize their case and the order of their witnesses, blocking many witnesses from testifying at all and severely limiting what the witnesses could say. The Judge effectively adopted the position taken by W.R. Grace and Company and became an aggressive advocate for that Company.

Once a criminal jury trial has begun, the prosecution is effectively blocked from appealing hostile decisions from the bench since that would lead to an interruption of the trial and a likely mistrial and the case would have to start all over. Prosecution appeals after a jury verdict are not possible because of the constitutional prohibition about trying a person twice for the same crime. As a result, there was no way to hold a judge accountable for biased and prejudicial behavior.

In some ways, Judge Molloy's hostility to the federal government's prosecution of W.R. Grace and Company was not shocking. Most of the federal environmental cases that were brought to him and on which he often sided with environmental organizations, were brought **against** federal agencies whose sloppy and politically influenced decision-making offended him. His past rulings could be seen as anti-government, especially anti-federal government, rather than pro-environment. In that, he may be simply being true to his Montana roots: He is a Butte boy, educated in Montana schools, who, except for his military service, has spent his entire life in the state. Montana, like much of the

rest of the West, has a long tradition of resisting and bad-mouthing federal authority. To get elected and stay elected in statewide offices in Montana, one has to adopt a vocal anti-federal-government pose.

Some of Judge Molloy's purple prose about the weakness of the federal government's case against W.R. Grace & Company, his speculation that government witnesses were lying, and his hints at prosecutorial misconduct violating these corporate executives rights fit comfortably within the usual Western rhetoric that the chief threat to our freedom and prosperity is a rogue federal government out of control.

In our Western love-hate relationship with the federal government, some of the Judge's rants against the federal government are certain to have rung a bell even in the minds of Libby residents. The federal government is screwing up again, as usual! The W.R. Grace defense attorneys played into this theme from the very beginning. The corporate executives on trial were not responsible for the suffering of Libby. It was the federal government that had the legal responsibility to protect the people. The federal government knew that asbestos killed people and knew that it was in the air throughout Libby, not just in the W.R. Grace mine. Yet the federal government did not act to warn the public and take actions to protect them.

In a perverse twist of logic, the corporate attorneys wanted us to ignore the fact that it was W.R. Grace & Company and its colleagues in the asbestos industry who were lobbying the federal government not to act and churning out misleading studies insisting that we did not know enough to shut down or even regulate this asbestos. But the Judge adopted the corporate line: Business executives are supposed to focus exclusively on maximizing profits; that, as Judge Molloy said, is their job. They may do

immoral things in the process, but that is to be expected, and not illegal. Apparently, it is corporate America's job to poison us and the government's job to try to save us even as corporate America uses its wealth and political power to cripple those government efforts. I guess we can thank Judge Molloy and W.R. Grace's attorneys for this soberly honest and realistic civics lesson.