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Transcript of the Testimony of Jack Martin

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STATEMENT UNDER OATH
OF
JACK MARTIN

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, July 20, 2010, beginning at 3:40 pm.

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By Attorney Hampton

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P R O C E E D I N G S

1
2 -----
3 ATTORNEY HAMPTON:

4 My name is Polly Hampton. Today is July
5 20th, 2010. I am with the Office of the Solicitor,
6 U.S. Department of Labor. We are here at the
7 interview of Jack Martin. With me is Erik Sherer, an
8 accident investigator with the Mine Safety and Health
9 Administration, MSHA, an agency of the United States
10 Department of Labor. Also present are several people
11 from the State of West Virginia, and I ask that they
12 state their appearance for the record now.

13 MR. FARLEY:

14 I'm Terry Farley with the West Virginia
15 Office of Miners' Health, Safety and Training.

16 MR. O'BRIEN:

17 John O'Brien with the West Virginia
18 Office of Miners' Health, Safety and Training.

19 MR. MCGINLEY:

20 Patrick McGinley with the Governor's
21 Independent Investigation Team.

22 ATTORNEY HAMPTON:

23 And Mr. Sherer will be doing the initial
24 part of the questioning today. All members of the
25 Mine Safety and Health Accident Investigation Team and

1 all members of the State of West Virginia Accident
2 Investigation Team participating in the investigation
3 of the Upper Big Branch Mine explosion shall keep
4 confidential all information that is gathered from
5 each witness who voluntarily provides a statement
6 until the witness statements are officially released.
7 MSHA and the State of West Virginia shall keep this
8 information confidential so that other ongoing
9 enforcement activities are not prejudiced or
10 jeopardized by a premature release of information.
11 This confidentiality requirement shall not preclude
12 investigation team members from sharing information
13 with each other or with law enforcement officials.
14 Your participation in this interview constitutes your
15 agreement to keep this information confidential.

16 Government investigators and specialists

17 have been assigned to investigate the conditions,
18 events and circumstances surrounding the fatalities
19 that occurred at the Upper Big Branch Mine-South on
20 April 5th, 2010. The investigation is being conducted
21 by MSHA under Section 103(a) of the Federal Mine
22 Safety and Health Act and the West Virginia Office of
23 Miners' Health, Safety and Training. We appreciate
24 your assistance in coming here today.

25 You may have a personal attorney present

1 during the taking of this statement or a personal
2 representative if MSHA has permitted it. Your
3 statement is completely voluntary. You may refuse to
4 answer any question and you may terminate your
5 interview at any time or request a break at any time.
6 Since this is not an adversarial
7 proceeding, formal Cross Examination, however, will
8 not be permitted. Just so the record is clear, do you
9 have a personal representative with you here today?

10 MR. MARTIN:

11 Excuse me. No, ma'am.

12 ATTORNEY HAMPTON:

13 Your identity and the content of this
14 conversation will be made public at the conclusion of
15 the interview process and may be included in the
16 public report of the accident unless you request that
17 your identity remain confidential or your information
18 would otherwise jeopardize a potential criminal
19 investigation. If you request us to keep your
20 identity confidential, we will do so to the extent
21 permitted by the law. This means that if a judge
22 orders us to reveal your name or if another law
23 requires us to reveal your name or if we need to
24 reveal your name for other law enforcement purposes,
25 we may do so.

1 Also, there may be a need to use the
2 information you provide to us or other information we
3 may ask you to provide in the future in other
4 investigations into and hearings about the explosion.
5 Do you understand?

6 MR. MARTIN:

7 Yes.

8 ATTORNEY HAMPTON:

9 Do you have any questions?

10 MR. MARTIN:

11 No, ma'am.

12 ATTORNEY HAMPTON:

13 After the investigation is complete, MSHA
14 will issue a public report detailing the nature and
15 causes of the fatalities in the hope that greater
16 awareness about the causes of accidents can reduce
17 their occurrence in the future. Information obtained
18 through witness interviews is frequently included in
19 these reports. Since we will be interviewing other
20 individuals, we do request that you not discuss your
21 testimony with any other person aside from an
22 attorney.

23 The court reporter will record your
24 interview, so please speak loudly and clearly. If you
25 do not understand a question, please ask the person to

1 rephrase it. Please answer each question as fully as
2 you can, including giving us any information you may
3 have learned from someone else.

4 I would like to thank you in advance for
5 your appearance here. We appreciate your assistance
6 in this investigation. Your cooperation is critical
7 in making the nation's mines safer.

8 After we have finished asking questions,
9 you will have an opportunity to make a statement then
10 and provide us with any information that you believe
11 is important. If at any time after the interview you
12 recall additional information that you believe might
13 be useful, please contact Norman Page in the contact
14 information provided to you in the letter that I gave
15 you earlier.

16 Any statements given by miner witnesses
17 to MSHA are considered to be an exercise of statutory
18 rights and protected activity under Section 105(c) of
19 the Mine Act. If you believe any discharge,
20 discrimination or any other adverse action is taken
21 against you as a result of your cooperation with this
22 investigation, you are encouraged to immediately
23 contact MSHA and file a complaint under Section 105(c)
24 of the Act. Terry?

25 MR. FARLEY:

1 Mr. Martin, on behalf of the Office of
2 Miners' Health, Safety and Training, I want to advise
3 you that the West Virginia Mine Health and Safety
4 Regulations also offer protection for miners against
5 any potential discrimination that might result for
6 participating in these types of interviews. Now, I
7 want to pass along some contact information for the
8 West Virginia Board of Appeals, which hears
9 discrimination complaints, should they occur, along
10 with my business card and the phone number for Bill
11 Tucker, our lead underground investigator, also. And
12 should you have any problems, I would encourage you to
13 give us a call. We'd caution you that should you have
14 a problem, that you would need to file a complaint
15 within 30 days of the event; all right?

16 MR. MARTIN:

17 Yes.

18 ATTORNEY HAMPTON:

19 Okay. Do you have any questions before
20 we begin?

21 MR. MARTIN:

22 No, ma'am.

23 ATTORNEY HAMPTON:

24 Okay. Could you swear in the witness,
25 please?

1 -----

2 JACK MARTIN, HAVING FIRST BEEN DULY SWORN, TESTIFIED
3 AS FOLLOWS:

4 -----

5 EXAMINATION

6 BY MR. SHERER:

7 Q. Would you please state your full name and spell
8 your last name?

9 A. Full name is Jack Donald Martin, M-A-R-T-I-N, my
10 last name.

11 Q. What's your address and telephone number, please?

12 A. (b) (7)(C) .

13 Q. Are you appearing here today voluntarily?

14 A. Yes.

15 Q. Has anyone from the company or an attorney from
16 the company interviewed you regarding the accident?

17 A. No, no one from the company. No.

18 Q. Okay. Has anyone else interviewed you regarding
19 the accident?

20 A. Yes.

21 Q. Who was that, please?

22 A. Don't recall the names. It was two Federal
23 investigators. I cannot recall the names at all.

24 Q. Okay. How many years of mining experience do you
25 have?

1 A. Approximately 20.

2 Q. Okay. Have you been employed by Massey that
3 entire time?

4 A. No, sir.

5 Q. Where'd you start out at?

6 A. I started with Meban Energy.

7 Q. Okay. How many years did you work for them?

8 A. Approximately five.

9 Q. Where did you move to after Meban?

10 A. I went to work for Massey.

11 Q. Okay. So 15 or 20 years?

12 A. Something like that, 15.

13 Q. What'd you do when you first hired in with Massey?

14 A. I worked on the belt crew, the move crew.

15 Q. Okay. When did you get your foreman's papers?

16 A. Approximately seven years ago.

17 Q. Okay. Seven years.

18 A. In '03, yes.

19 Q. Okay. When did you start working at UBB?

20 A. I'd say approximately three years ago.

21 Q. Okay. Have you been a section boss the entire
22 time you've been at UBB?

23 A. Yes.

24 Q. Okay. Do you ever work as a fire boss or anything
25 else?

1 A. No.

2 Q. Okay. Just running coal?

3 A. Yeah.

4 Q. Okay. What different areas did you work at at
5 UBB? We've got a bigger map of the mine up on the
6 wall if you need that one.

7 A. This is the area. I worked right here on the
8 tailgate side.

9 Q. Tailgate of the current longwall panel?

10 A. Yes.

11 Q. Okay. Did you drive the whole thing?

12 A. No, sir. Started around 75 Break ---

13 Q. Okay.

14 A. --- and drove inby.

15 Q. Okay. And once you got --- did you help drive the
16 setup runs or the diagonal?

17 A. Yes.

18 Q. Okay.

19 A. Drove the longwall face and then the diagonal.

20 Q. Okay. Once you got those driven up, where'd you
21 go?

22 A. We joined in with the headgate panel, the One
23 section, and continued driving from just a few breaks
24 inby the angle.

25 Q. Okay. Did you physically add more miners to that

1 section or did you just, like, work seven days a week?

2 A. Seven days a week, yeah.

3 Q. So you rotated, probably?

4 A. Yes.

5 Q. Okay. Did you drive that headgate all the way up
6 to the Bandytown fan?

7 A. Yes, sir. Sure did.

8 Q. Let me ask you a couple questions about that.

9 What was the conditions like when you were driving
10 both the tailgate and once you got --- you wound up at
11 the headgate? What was the roof and ribs like in
12 those areas?

13 A. We encountered some, you know, bad top along this
14 way. It wasn't real --- not the whole way of it, just
15 in certain areas.

16 Q. And you're pointing to the tailgate of the seam?

17 A. Yes, on the tailgate side on the longwall.

18 Q. Just spotty bad roof?

19 A. Yeah, spotty. It wasn't what you could call the
20 whole length of it, no.

21 Q. Okay. What about the ribs?

22 A. The ribs, the best of my knowledge, they wasn't
23 that bad because the height wasn't --- it wasn't that
24 high.

25 Q. Okay. Roughly how high were you driving that

1 through there? Do you recall?

2 A. It ranged from five to six foot, ---

3 Q. Okay.

4 A. --- you know.

5 Q. Okay. What about the floor? Was there any floor
6 heaving?

7 A. Not that I can recall, no.

8 Q. Okay.

9 A. Not on the area that I worked at on the tailgate
10 side.

11 Q. Okay, sure. What about the water? Is any water
12 coming in through there?

13 A. We had slight water problems on this side, not
14 nothing great ---

15 Q. Okay.

16 A. --- on the tailgate side.

17 MR. MCGINLEY:

18 I'm sorry. For the record, can you
19 clarify on what side? You said on this side.

20 A. Oh, on the tailgate side.

21 MR. MCGINLEY:

22 Okay.

23 BY MR. SHERER:

24 Q. Okay. Now, let's move on. Once you joined up
25 with the headgate, what were conditions like over

1 there?

2 A. There was more wet, more ---.

3 Q. More water?

4 A. Yeah. As far as the top conditions and the
5 bottom, you know, it's pretty much the same. You
6 know, it wasn't much difference.

7 Q. What about the height up through there? Was it
8 about the same?

9 A. Yeah. More or less, yeah.

10 Q. Okay. Any floor heaving over there?

11 A. Not that I can recall. The best that I can recall
12 is when we was doing the watering, digging the hole up
13 there, that it was real solid bottom ---

14 Q. Okay.

15 A. --- on up at the Bandytown fan area.

16 Q. Okay. Now, did you have to come back and grade
17 any of the bottom once you got it drilled up there, or
18 were you involved in anything?

19 A. I wasn't involved any in grading any bottom.

20 Q. Okay.

21 A. Because after we had graded or --- you know, drove
22 up for the Bandytown fan ---

23 Q. Uh-huh (yes).

24 A. --- and we cut our watering hole out, dewatering
25 hole, ---

1 Q. Uh-huh (yes).

2 A. --- then I was moved out.

3 Q. Okay. So you weren't aware of when they were
4 actually drilling the shaft up for the Bandytown ---?

5 A. Yes. Yeah, I was for that, because when they was
6 drilling for the air shaft itself, we was cutting on
7 the watering hole.

8 Q. Oh, okay.

9 A. It's called a dewatering hole.

10 Q. You're involved in taking the cuttings out of the
11 bottom of that fan shaft?

12 A. Yeah, on a couple occasions we did. Yeah.

13 Q. Okay. What can you tell me about that? Where'd
14 you take those cuttings?

15 A. We put them on the feeder, dumped them on the
16 feeder and the belt line carried them out.

17 Q. And carried them out of the mine?

18 A. Uh-huh (yes).

19 Q. Okay. Now, you were pulled off the headgate
20 section. Where'd you go?

21 A. Down to --- towards the mouth of the tailgate
22 section in this area right here. I don't know.

23 Q. Okay. You're pointing immediately outby ---.

24 A. Around 30 Break.

25 Q. Yeah, 30 Break, ---

1 A. Uh-huh (yes).

2 Q. --- immediately outby the current longwall panel.
3 What'd you do back there?

4 A. We drove the panel across from the tailgate to the
5 headgate side.

6 Q. How many entries did you drive? Do you recall?

7 A. Drove four.

8 Q. Four?

9 A. Uh-huh (yes).

10 Q. Okay. Did you mine the rooms out to the east of
11 that set of headings?

12 A. I started --- we drove the first open line of
13 breaks to the right, and I was transferred from there
14 to another mine.

15 Q. Oh, okay. Where'd you go?

16 A. I went to Parker Peerless.

17 Q. Okay. How long were you there?

18 A. A few months, the best I can recall. I don't
19 remember dates that well, ---

20 Q. Okay.

21 A. --- times. Several, you know, three --- three to
22 four months maybe.

23 Q. Okay. About when did you come back to UBB,
24 roughly?

25 A. I'm thinking it was around December.

1 Q. Okay. About the 1st of 2010?

2 A. Yeah.

3 Q. Okay. Were you working at UBB over Christmas?

4 A. No.

5 Q. Okay. So end of December?

6 A. I don't think so. I can't recall. I'm thinking
7 so.

8 Q. Okay, okay.

9 A. Just can't recall it right off.

10 Q. That's okay. I'm just trying to get a flavor.

11 A. Yeah.

12 Q. Where did you go when you came back to UBB?

13 A. We come back to UBB from Parker to the barrier
14 section.

15 Q. Okay. And that's down near the UBB Portal?

16 A. Yeah, on the south side.

17 Q. Okay. Were you involved --- when did you start at
18 the barrier section? Had they already faced up and
19 started driving those rooms?

20 A. No, we had to rehab it. We had to get it ready.

21 Q. Okay. Did it take much work to get it rehabbed?

22 A. Yeah, it took quite a bit of work. Yeah.

23 Q. What all did you have to do?

24 A. Well, a lot of gob to clean up to get to the face
25 area, you know.

1 Q. Okay. Now, just for the record, I know what gob
2 is and you know what gob is.

3 A. Oh.

4 Q. Could you explain --- explain what gob is.

5 A. Why would you explain what gob is? Just ---.

6 Q. I guess it's just waste rock and such?

7 A. Yeah, more or less, stock piles of rock that had
8 been stock piled in the area that --- from something
9 else.

10 Q. Okay. So you had to clean that out?

11 A. Yeah, I had a lot of cleaning up to do there and
12 had to cut out a belt head channel for the belt head
13 and the belt line.

14 Q. Where, across the track?

15 A. Yes. Yeah, it went from across the track
16 approximately 100 foot over to the other belt line.

17 Q. Okay.

18 A. And we had to cut out --- cut the top out for I
19 think three --- three or four overcasts, four.

20 Q. Okay.

21 A. Four overcasts.

22 Q. About how far up did you have to cut that channel?

23 A. I'm thinking it was about 10 to 11 feet high.

24 Q. Okay. So that's a total height.

25 A. Sir?

1 Q. That was the total height to the top of the
2 channel?

3 A. Yeah, from the bottom to the top. Yeah.

4 Q. Now, roughly how high was that mine in there?

5 A. The coal seam itself?

6 Q. Yeah.

7 A. Around five and a half to six foot high.

8 Q. So you cut another five, six foot?

9 A. Something like that, anywhere from four to five
10 feet, you know, higher.

11 Q. Okay. About the same for the overcasts?

12 A. No, the overcasts was only, like, about nine
13 foot ---

14 Q. Okay.

15 A. --- high. And it was a little bit higher in
16 places for the overcast area, ---

17 Q. Sure.

18 A. --- you know.

19 Q. Did you guys cut a taper on either side of the
20 overcast?

21 A. Yes.

22 Q. Okay. And you cut the overcast; you didn't shoot
23 any of that?

24 A. No, sir, just cut them out.

25 Q. Okay. What was the top like through there?

1 A. It was pretty solid. The top was pretty solid.

2 Q. Was it sandstone or ---?

3 A. Yes, sandstone top.

4 Q. Were you getting any sparks when you were cutting
5 that?

6 A. There wasn't nothing ordinarily --- you know, out
7 of the ordinary. It had, you know, plenty of
8 water, ---

9 Q. Okay.

10 A. --- you know, still. It was pretty decent.

11 Q. Okay. So you got the belt channel. You got
12 overcast cut out, and then you started turning your
13 section off?

14 A. Uh-huh (yes).

15 Q. About how many breaks had you driven that section
16 in at the time of the explosion? Do you recall?

17 A. Approximately six --- six to eight breaks maybe.

18 Q. Okay. So you really just got going there?

19 A. More or less got started, yeah.

20 Q. Yeah. Okay.

21 A. Let me think for a second. It was approximately
22 anywhere from six to eight breaks.

23 Q. Okay. That'll do. That's good enough. What were
24 the conditions like in there? Was there any problems
25 that you're aware of, roof, rib, floor?

1 A. Well, like I said, we had a little bit of water
2 problems there from the area that we was in because
3 there was pumps setting inby the barrier section that
4 they would pump to a sump pump that was just outby our
5 section, the barrier section.

6 Q. Sure.

7 A. And sometimes it would overflow or whatever
8 because the pump couldn't keep up, you know, for
9 whatever reason.

10 Q. Sure.

11 A. And we'd get some water, not on the section
12 itself, but it would come, you know, gather outby the
13 section.

14 Q. Sure. It seemed to be a pretty wet mine.

15 A. Yeah, it was more, you know ---. Most areas was,
16 you know, wet.

17 Q. Sure. Now, did it stay wet all through the winter
18 months or was it just a summer thing?

19 A. It was more or less, you know, year-round, you
20 know, the water problem that they had in, you know,
21 areas.

22 Q. Okay.

23 A. But as far as our section, the barrier section
24 that we was driving, it wasn't, you know, wet. And as
25 far as water coming out of the top or the bottom, it

1 was, you know --- some of it was man-made water, you
2 know, just ---

3 Q. Sure.

4 A. --- leaking waterlines or whatever.

5 Q. Sure. Now, that was next to some old gobs, wasn't
6 it?

7 A. The barrier section?

8 Q. Yeah.

9 A. Yeah, I think it was, what, between Headgate 17
10 and another headgate.

11 Q. Okay.

12 A. And we was going up and I guess they called it the
13 barrier for that reason.

14 Q. Sure. Was the ribs taking a lot of weight?

15 A. Yeah, on a certain side --- on the right-hand side
16 of the section they was.

17 Q. Okay.

18 A. And the left side was a different section. You
19 know what I mean?

20 Q. Sure.

21 A. It was totally different.

22 Q. Do you have to bolt the ribs?

23 A. No, did not bolt the ribs any, you know, as far as
24 ---. We set timbers as, you know, as needed and put
25 straps up ---

1 Q. Okay.

2 A. --- for the top if it was cracked or whatever
3 reason.

4 Q. Okay. What about the ventilation on that barrier
5 section? Did you have plenty of air?

6 A. Yes, sir.

7 Q. Okay. Did you ever detect much methane on that
8 section?

9 A. Had no methane at all on that ---.

10 Q. Never saw any, even a tenth of a percent?

11 A. No, zero.

12 Q. Okay.

13 A. On that particular section, yes.

14 Q. What about when the miner was operating? Did you
15 ever see any on the methane monitor?

16 A. See any methane buildup on the ---?

17 Q. Yeah.

18 A. No.

19 Q. Okay. And which shift did you normally work?

20 A. As we was rehabbing the barrier section, getting
21 it ready, we had went there --- I had went on the
22 evening shift.

23 Q. Okay.

24 A. And we swung every two weeks, but they changed
25 this. We just stayed on the shift we was at until we

1 got ready ---

2 Q. Okay.

3 A. --- to run coal.

4 Q. Okay.

5 A. So I was on evening shift the whole time we was
6 rehabbing.

7 Q. Okay. And then where were you at once you started
8 running the coal?

9 A. I swung back to dayshift after, you know, our time
10 was up.

11 Q. Oh, okay. What sort of mining certificates do you
12 have?

13 A. I have my shot fires card, ---

14 Q. Uh-huh (yes).

15 A. --- my mine foreman, dust sampling, you know.

16 Q. Okay.

17 A. That's about it. I had an EMT as far as last year
18 and it expired on me. I didn't get to renew it.

19 Q. Sure. Did you study to become a mine foreman
20 under --- was that a Massey program?

21 A. Yes.

22 Q. How many people did you have on your crew?

23 A. Ten.

24 Q. Ten. Okay.

25 A. Are you meaning the day of the explosion?

1 Q. Just in general.

2 A. Yeah, just the regular crew, you know, the ---

3 Q. Okay.

4 A. --- three bolt men and, you know, two motor men,
5 five, ---

6 Q. Okay. So you ---

7 A. --- ten.

8 Q. --- had a setup where you had two miners, probably
9 two bolters.

10 A. Uh-huh (yes). Yes.

11 Q. What, three shuttle cars?

12 A. Three, yes.

13 Q. One or two scoops?

14 A. One scoop.

15 Q. Okay. Did you run split or sweep ventilation?

16 A. There at the end we was on the sweep ventilation.

17 Q. Okay.

18 A. For the last part of the barrier we was on sweep.

19 Q. Okay. Do you recall when that changed on you?

20 A. Not particularly. From the day to the explosion
21 it may've been two to three weeks before that, maybe
22 longer.

23 Q. Okay. Why'd you change from split back to sweep?

24 Do you know?

25 A. I don't remember the --- that the right ---.

1 Well, one reason, that the right return wasn't pulling
2 as good as it should, you know. It was pulling enough
3 air to run, but they required 20,000 cfm in your last
4 open break, and you couldn't hardly get it.

5 Q. Okay. Now, who required the 20,000?

6 A. That's a Massey policy.

7 Q. That's a Massey policy.

8 A. Uh-huh (yes).

9 Q. Okay. And if you couldn't get it, you didn't run?

10 A. Right.

11 Q. Okay. Are you aware of people running on less
12 than 20,000 in the last open break?

13 A. Yes.

14 Q. Have you ever run when it's less than 20,000?

15 A. Yes, sir.

16 Q. How much less?

17 A. Oh, nothing under the normal --- the law standard,
18 the 9,000.

19 Q. Okay.

20 A. We never run with less than that, no matter, you
21 know, Massey policy or not.

22 Q. Okay. Now, what's the minimum that MSHA requires
23 on the barrier section? Do you recall?

24 A. The best of my knowledge it was 9,000 in the last
25 open ---

1 Q. Okay.

2 A. --- break.

3 Q. Are you familiar with the ventilation plan for the
4 barrier section?

5 A. Yeah. The best of my knowledge, yeah.

6 Q. Okay.

7 A. That I can remember.

8 Q. Okay. What about the minimum quantity at the roof
9 bolter? What was that?

10 A. The best I can recall it was 3,000.

11 Q. 3,000? Did you have a minimum for the outer
12 faces?

13 A. I think it was 3,000 also.

14 Q. Okay. And how much did you need to run the miner?

15 A. 6,000.

16 Q. 6,000. Okay. Since you've been on that barrier
17 section, did you or did MSHA run any dust pumps up
18 there, do a dust survey?

19 A. Yes.

20 Q. Was it a company survey or an MSHA survey?

21 A. No, MSHA.

22 Q. Was there any company survey in addition to the
23 MSHA survey?

24 A. I can't recall any, but I'm sure they did, but the
25 best I can say right now, I can't really say for 100

1 percent sure.

2 Q. Okay.

3 A. I'm sure they did.

4 Q. When you did your on-shift exams, did you do pre-
5 shift exams for the next crew that was coming in?

6 A. Yes, sir.

7 Q. Okay. When you did your pre-shift exams, would
8 you take them out of the mine or would you call them
9 out?

10 A. I would call them out.

11 Q. Okay. Who generally took those pre-shift exams?

12 A. The oncoming boss, Brandon Davis.

13 Q. Okay.

14 A. Or no, I'm thinking of the other --- it was either
15 Brandon Davis, the other production foreman, ---

16 Q. Okay.

17 A. --- or it was the hoot owl boss, which would've
18 been Joe Coon.

19 Q. Okay. The hoot owl shift mainly did maintenance?

20 A. Yes.

21 Q. Okay. And how long did your --- when did you
22 start your shift?

23 A. The time as far as the evening shift, we went
24 underground at four o'clock.

25 Q. Okay. When would you show up at the mine prior to

1 four o'clock?

2 A. An hour prior to that, at least by 3:00.

3 Q. Okay. And you'd catch up on your paperwork, I
4 imagine.

5 A. Yeah.

6 Q. And did you catch the pre-shift that --- who was
7 it, Brandon Davis would call out?

8 A. Uh-huh (yes).

9 Q. Okay. Now, when you got out of the mine after
10 your shift, would you review the pre-shift that you
11 had called out a few hours earlier?

12 A. Would I review my pre-shift that I ---?

13 Q. Yeah.

14 A. Yeah, I'd look it over to make sure that they
15 wrote down, you know, what I had called out.

16 Q. Okay. And you'd sign at that point in time?

17 A. Yes.

18 Q. Okay. Do you recall any hazardous conditions that
19 you called out on that pre-shift during the two or
20 three months that you were working on that barrier
21 section?

22 A. The hazardous conditions that was called out
23 would've been maybe the rib conditions. The area
24 may've been wide and needed timbers. And as far as
25 that, that's the only thing that I can recall that has

1 been called out, ---

2 Q. Okay.

3 A. --- would've been, you know, wide entries need
4 timbered or spot bolted or something of the nature.

5 Q. Okay. Did you ever get up on the section and not
6 have enough air to run?

7 A. On the barrier section, no.

8 Q. Okay. Now, you said that you were having some
9 problems with the right side before you went to the
10 sweep type ventilation.

11 A. Uh-huh (yes).

12 Q. Were you always able to run?

13 A. Yes. Now, excuse me, not always there at the end
14 when we changed it to the sweep air. There was, like,
15 a day that we didn't --- couldn't run the right side.

16 Q. Okay. Now, did Mr. Davis call that out in the
17 pre-shift?

18 A. Yes.

19 Q. Okay.

20 A. Either he or I called it out to him, whichever
21 was, you know, coming or going.

22 Q. Okay.

23 A. You know, he just called out, you know, low air or
24 whatever reason.

25 Q. Okay. And about when was that? Do you recall?

1 A. Like I say, we was on sweep air probably three to
2 four weeks to a month before the explosion, so it was
3 just maybe a little time prior to that.

4 Q. Somewhere roughly around 1st of March?

5 A. Yeah.

6 Q. Okay.

7 A. Maybe a little bit before, you know, in that area.

8 Q. Okay. What about did you ever walk your section
9 belt off the barrier section?

10 A. Yes.

11 Q. What condition was that generally in?

12 A. The bottom and --- it wasn't the best condition as
13 far as that, but there was some water from --- like I
14 explained, the pump or the sump was running over. It
15 would generally run over to the belt line.

16 Q. Okay.

17 A. And it was wet.

18 Q. Okay. What about the rock dust?

19 A. Well, they generally kept it up pretty good, you
20 know. It was a short belt, you know. They done
21 pretty good with it.

22 Q. Was there a trickle duster on there anywhere?

23 A. No, not on the belt line.

24 Q. Okay. What about float dust? Did you ever go
25 down through there and find any float dust on the

1 structure or anyplace?

2 A. Not that I can recall of, no.

3 Q. Okay.

4 A. Because it was more or less wet and damp, you
5 know, in that area ---

6 Q. Okay. Sure.

7 A. --- because of the water.

8 Q. Okay. What about the roof? Was there any mesh on
9 the roof down through there on that belt line?

10 A. Not as far as being on the barrier section itself,
11 but on the track there was.

12 Q. Okay. Did you ever notice the condition of the
13 dust up on that mesh?

14 A. Yes, there was plenty of rock dust in that area.

15 Q. Okay. Good and white?

16 A. Yes.

17 Q. Okay. I assume the mine foreman would come back
18 and countersign your pre-shifts and on-shifts.

19 A. Yes.

20 Q. Did they ever talk to you about anything you put
21 in the pre-shift or on-shift book?

22 A. No.

23 Q. Any question about it?

24 A. No, not that I can recall, he didn't.

25 Q. Okay. Are you aware of any fluctuations of air on

1 the section while you were in there? Did you ever
2 start out with a lot of air and at some point in time
3 it seemed like you had less?

4 A. Yeah, yeah.

5 Q. When was that?

6 A. We're talking a range of anywhere from 35,000 cfm
7 to drop down to 28,000 or something. You're not
8 talking low air.

9 Q. Oh, okay.

10 A. You know, you're talking still had a high velocity
11 of air, but not as great as it was, and then, you
12 know ---.

13 Q. Okay. Just a bit less?

14 A. Yeah.

15 Q. Why do you think that happened?

16 A. I don't have a clue.

17 Q. Okay.

18 A. I don't know, because I wasn't familiar with the
19 ventilation as far as off the section, you know.

20 Q. Okay. You think somebody was making changes to
21 the system outby the section?

22 A. Not that I was aware of, they didn't, ---

23 Q. Okay.

24 A. --- but, you know ---.

25 Q. What about doors? We've heard about a lot of

1 equipment door or track doors ---

2 A. Uh-huh (yes).

3 Q. --- at this mine. Would that affect the
4 ventilation on the sections?

5 A. Yes, possibly could, the pressure of it. Yeah.

6 Q. Okay. Did you ever come up to any of those doors
7 and find them open?

8 A. Yeah, occasionally.

9 Q. Okay.

10 A. As far as you had two of the airlock doors, you
11 know, had two sets.

12 Q. Uh-huh (yes).

13 A. Never seen them both open, you know. Maybe seen
14 one set open, which, you know, you go open the other
15 set, you'd lose your airlock.

16 Q. Uh-huh (yes). Why do you think one of those sets
17 of doors was open?

18 A. I don't know.

19 Q. Okay. Do you think somebody just forgot to close
20 it or ---?

21 A. Yeah, it was either that --- you know, there was
22 electric doors, ---

23 Q. Uh-huh (yes).

24 A. --- but there for a while they was not hooked up
25 as being used for electric doors. You had to get out

1 and manually open them, ---

2 Q. Oh, okay.

3 A. --- so ---. And it wasn't until probably the last
4 month that we worked there that they was fixed and you
5 could use the electric part of it.

6 Q. Oh, okay. What about the general condition of
7 those doors? Did they ever get beat up?

8 A. Oh, yeah. Yeah, they was constantly --- well, not
9 constantly, but they had been hit by a supply crew
10 coming in or mantrips as far as bumping them, trying
11 to push them open or whatever, that they had repaired
12 them there, probably within the last month, maybe, ---

13 Q. Oh, okay.

14 A. --- you know, when they hooked the electric up to
15 them, electricity.

16 Q. They just fixed them all up?

17 A. Yeah.

18 Q. Okay. When those doors were closed, could you
19 hear air whistling around ---

20 A. Yes.

21 Q. --- them or through them?

22 A. Yes.

23 Q. Okay. When you were cutting on the section, did
24 your miner always cut away from the air with the air
25 on his back or did you ever cut into the air?

1 A. No, we never did cut into our air on that because
2 we always --- we had a cut cycle. Well, I did. I had
3 a cut cycle set up to where --- that you could avoid
4 that.

5 Q. Okay. Was there any floor hooving on that panel?
6 I may have asked you that already.

7 A. Yeah, I think you did, and there was none.

8 Q. Okay.

9 A. No.

10 Q. Okay. What about the mine in general? Did you
11 ever hear of problems with ventilation?

12 A. Yeah, I had heard them talk about it before.

13 Q. What about the week of so before the explosion?
14 Do you recall anything during that period of time?

15 A. No, I don't recall having any problems prior to
16 that, but you know ---.

17 Q. Okay. Now, we understand that the mine was shut
18 down because of the Easter weekend or ---.

19 A. Yes.

20 Q. It was a long weekend for some of the folks. What
21 was the last shift you worked prior to the explosion?
22 Do you recall?

23 A. It was on a Friday.

24 Q. Okay.

25 A. You're not talking about the day of the explosion?

1 Q. Exactly.

2 A. Yeah. No, I worked the day --- I was there the
3 day of the explosion. See, I was on the dayshift.

4 Q. Okay.

5 A. And Friday was my next ---.

6 Q. Okay. So you worked Friday. You had ---?

7 A. Or no, I was off Friday. I'm sorry. We had the
8 three-day weekend.

9 Q. Oh, okay.

10 A. It was Friday, Saturday and Sunday, I think, is
11 what was off. It was three days.

12 Q. Okay. So you got a three-day weekend?

13 A. Uh-huh (yes).

14 Q. You worked Thursday and then you came back Monday?

15 A. Thursday, yes.

16 Q. Okay.

17 A. Yes.

18 Q. Do you recall anything going on anywhere in the
19 mine, even stuff you noticed out in the office or the
20 bathhouse that was any different prior to the
21 explosion? Does anything stand out?

22 A. Nothing stands out as far as that, but I need to
23 go back to what you was talking about. And I was
24 aware of the longwall being down for that --- a
25 certain time ---

1 Q. Uh-huh (yes).

2 A. --- for the air change, that MSHA had shut them
3 down because of the air, whatever reason. I wasn't
4 even aware of what went on or whatever, so I was aware
5 of that, but ---.

6 Q. Okay. Now, we shut them down several times, as I
7 understand.

8 A. Yeah.

9 Q. Was there an incident like that in the week or so
10 prior to the explosion? Or when did that shutdown
11 take place? Do you recall?

12 A. It was just right before that. I mean, it may've
13 been a little time before that, but it wasn't very
14 long. I can't ---

15 Q. Okay.

16 A. --- put a time limit on it, but it wasn't a very
17 long time.

18 Q. Okay. Now, did it just affect the longwall or did
19 the entire mine have to shut down?

20 A. I think --- I think the whole mines had to shut
21 down.

22 Q. Okay. Did you get some time off or did you have
23 to go into work since you're salary?

24 A. No, I had to go to work. Yeah, I was there,
25 whatever, but I can't remember the exact time of that.

1 I was trying to put a time on it, but I can't.

2 Q. Okay. Now, what about methane? We've talked
3 about --- you never noticed any on the barrier
4 section.

5 A. No, sir.

6 Q. Did you ever hear of anybody talking about methane
7 in any other --- methane problems anywhere else in the
8 mine?

9 A. Yeah, they had had methane problems, I don't know
10 what you call a problem, on the upper area on the old
11 One section on the headgate side. And as far as
12 having problems down there, I don't know of any
13 problems they had as far as, you know, detecting some
14 methane as far as three tenths of a percent would be a
15 real high amount that I heard about.

16 Q. Okay. Did you ever hear of any as high as one
17 percent?

18 A. In which area?

19 Q. Anywhere.

20 A. Yeah, on the headgate side of the --- up towards
21 the Bandytown fan, yes.

22 Q. Okay. Did the miner ever gas off up through there
23 that you know of?

24 A. The miner did not gas off any as far as I'm aware
25 while I was there. We did detect gas in one certain

1 area up towards the Bandytown fan area.

2 Q. Okay. Do you recall approximately where that was
3 at?

4 A. I can't recall the area that it was in. I'm
5 thinking it was just, say, between Break Number 105 to
6 120.

7 Q. Okay.

8 A. Just maybe, you know, just ---

9 Q. Okay.

10 A. --- something like that, that I detected gas
11 myself. That's firsthand, I know.

12 Q. Okay. Was anything different about that area?
13 Was the roof about the same or ---?

14 A. Yes.

15 Q. What about the floor? Was there any floor heaving
16 up through there?

17 A. You asked me that before, but not that I can
18 recall of any, ---

19 Q. Okay.

20 A. --- you know, but we did have to grade the bottom
21 for the waterhole. That's the only bottom grading
22 that I did ---

23 Q. Okay.

24 A. --- that I was involved in, and I can't remember.

25 Q. Now, there was probably puddles around on this

1 working section at a point in time. Do you remember
2 if there was a lot of bubbles coming up through those
3 puddles?

4 A. No, there wasn't. Didn't see any of those. I
5 know what you're talking about, but I didn't see any
6 or wouldn't see anything like that.

7 Q. Okay. Thank you. You were on the barrier section
8 when the explosion occurred. What was your first
9 indication that there was a problem? Did you feel the
10 wind or ---?

11 A. Yes, I felt the pressure from it.

12 Q. Okay.

13 A. Because I was in the --- I was making my fire
14 boss, you know, run my pre-shift for the next oncoming
15 shift. And I had walked across my faces and walked
16 down my intake to my rescue chamber, you know, to my
17 fresh air base. And just as I got there and dated up
18 with it for the pre-shift, I felt a gust of air come
19 through.

20 Q. Okay. Did your ears feel funny? Did you feel the
21 pressure in your ears?

22 A. I can't really remember my ears feeling funny, but
23 I did feel a lot of pressure, you know, almost to stop
24 you from walking, you know, as far as push you back or
25 whatever, yes.

1 Q. Oh, okay. Just a lot of wind?

2 A. Yeah, a lot of dust, no smoke, you know, no smell
3 of anything, nothing, just pressure.

4 Q. Were there any debris in the wind? Did you feel
5 any little rocks or anything?

6 A. Yeah, dust particles, yeah, you know, that I had
7 to put my safety glasses on, which I wasn't wearing at
8 the time. Had to put them on.

9 Q. I was going to get onto you about not wearing your
10 safety glasses.

11 A. Yeah. But as far as that, after it happened, that
12 ---. My first thought was that my regulator ---
13 because I was close to the main intake, ---

14 Q. Uh-huh (yes).

15 A. --- that my regulator had blew down and I got a
16 big, you know ---.

17 Q. Yeah.

18 A. And I run to it and it was there, so ---.

19 Q. Okay. Now, what type regulator did you have? Did
20 you have a sliding regulator?

21 A. No, just a stopping type regulator.

22 Q. A Kennedy stopping?

23 A. No, blocks.

24 Q. Okay.

25 A. Solid block.

1 Q. So you had an indication that the wind was from
2 --- coming from off your section. Did you know at
3 that point in time that it was an explosion?

4 A. No.

5 Q. Okay. What'd you do next?

6 A. I turned --- I knew something wasn't right. I
7 went and left there and walked up the intake and went
8 through a stopping on the belt line, you know, man
9 door ---

10 Q. Sure.

11 A. --- and walked up the belt line to the section
12 phone to call out, because I'd seen we lost power and
13 nothing was running.

14 Q. Sure.

15 A. And I called dispatcher and he said something's
16 went on inby you. He said, can't get ahold of the
17 longwall. He said the other section was on their way
18 up and they called from 78 Break, ---

19 Q. Uh-huh (yes).

20 A. --- he said, like 15 minutes ago. Couldn't talk
21 to anybody, so I called on my mine phone to inby and
22 still couldn't reach anyone. And he told me that
23 something has happened. It's either been a big fall.
24 Didn't know what had happened. He said COs went sky
25 high and then they just blacked out.

1 Q. Okay.

2 A. And he told me to gather my crew together and, you
3 know, come out, so that's what I did. We got out. As
4 we got out to the main line track to come outside, it
5 was still real dusty, you know. You couldn't see as
6 far as, you know, very far in front of you.

7 Q. Did you use a lifeline?

8 A. Didn't have to, no.

9 Q. Okay. Didn't have to. Did anybody don their
10 SCSR?

11 A. No, sir, not on my crew.

12 Q. Okay.

13 A. Because at the time --- where we was at, at the
14 location we was at, all we felt was ---. All I felt
15 was the air pressure. The guys on the section didn't
16 know anything about it.

17 Q. Okay.

18 A. And just dusty. You know, as far as being out on
19 the track to go out, it was just dust, not a smell of
20 anything.

21 Q. Okay. Do you recall if your --- well, first of
22 all, what sort of handheld detector did you have?

23 A. I had a multigas detector.

24 Q. Okay. Did it have a CO sensor on it?

25 A. Yes.

1 Q. Okay. Did it show any CO?

2 A. No, it didn't show any sign of it, you know.

3 There was no alarm or anything to off or whatever, you
4 know, nothing.

5 Q. So you got your crew together. You got out of the
6 mine. Did that go smoothly? Did you have any
7 problems with that?

8 A. Yeah, no problems. Yeah.

9 Q. When's the last time you guys did an evacuation
10 drill prior to the explosion?

11 A. It wasn't long before that that happened. We done
12 the evacuation of the secondary lifeline.

13 Q. Okay.

14 A. It was not the primary. It was secondary on the
15 track.

16 Q. Okay. And by going out the track, you went out
17 your primary or ---?

18 A. Or no, secondary.

19 Q. Okay.

20 A. That's what I say. We went the secondary. We
21 didn't do the primary.

22 Q. Okay. The primary would've been your intake?

23 A. Right.

24 Q. Okay. And you evacuated this time out your
25 secondary?

1 A. Yes.

2 Q. Okay. Any particular reason you went that way
3 rather than getting in the intake?

4 A. No, we was ---. Like, we wasn't aware of anything
5 that was going wrong that ---. Just come out and seen
6 the dust that was on the track. And visibility was
7 --- you know, you could still see somewhat.

8 Q. Okay.

9 A. And we wasn't aware of an explosion or anything at
10 the time.

11 Q. So you took the mantrip back out the track?

12 A. As normal, yeah.

13 Q. Oh, okay. Okay. Didn't try to walk out or
14 anything?

15 A. No, didn't have to. No. Didn't see a need to.

16 Q. Okay. And you say the power had bumped while you
17 were --- when you first noticed the event. Was the
18 power restored on the track? Oh, you got a battery.
19 I'm sorry.

20 A. Yeah.

21 Q. I'm sorry, buddy. I'm of the age where you had
22 trolley line.

23 A. Oh, okay. A few years --- a while back.

24 Q. Yeah.

25 A. But I was there, too, though.

1 Q. Okay. Let me ask you some general questions. Did
2 you ever hear of any pop-offs anywhere in the mine?

3 A. No, never heard of any.

4 Q. Okay. Did you ever hear of any methane outbursts
5 or inundations?

6 A. No.

7 Q. Okay. What about water problems? Was there any
8 place that had enough water to affect the ventilation
9 that you're aware of?

10 A. Not that I'm aware of. I know on the headgate
11 side, going towards the Bandytown fan, that they had
12 little water problems going up through there, but as
13 far as pumps being set in the area, they was pumping
14 it out.

15 Q. Okay.

16 A. And it didn't affect the ventilation that I'm
17 aware of.

18 Q. Okay. You ever hear of it roofing out through
19 there?

20 A. No.

21 Q. Okay. Anybody ever call in the mine and say that
22 MSHA or state inspectors were on the property?

23 A. Yes.

24 Q. How often did that occur?

25 A. At the UBB mines?

1 Q. Uh-huh (yes).

2 A. It was pretty regular, pretty much a daily thing.

3 Q. Okay. Do you think almost all inspectors were
4 announced?

5 A. At the time, yes.

6 Q. Okay.

7 A. As far as right now --- as far as a month ago,
8 they don't do it now.

9 Q. Okay. Are you still working up at UBB?

10 A. No, sir.

11 Q. Okay. Do you think the mine ventilation was
12 adequate at all times?

13 A. At the UBB mines, ---

14 Q. Yeah.

15 A. --- yes.

16 Q. Do you think --- do you know if ventilation
17 changes were made while miners were underground?

18 A. No, sir.

19 Q. Okay. You ever hear of mining taking place
20 without ventilation curtains in place?

21 A. No.

22 Q. Okay. Do you ever hear about methane monitors
23 being bridged out, covered up or otherwise interfered
24 with?

25 A. No, not as far as while we was working. No. I've

1 heard a lot of people talking about it after this,
2 after the fact, that they've been questioned about it,
3 but as far as me doing it or hearing anything about
4 it, no.

5 Q. Okay. Have you seen that article that appeared in
6 the papers?

7 A. Didn't see it. That's why I heard about it.

8 Q. Oh, okay. And then you don't know anything about
9 that?

10 A. No.

11 Q. Okay.

12 A. Just what I hear --- just hearsay and hear talk
13 about it.

14 Q. Okay. You ever been injured in this mine?

15 A. No.

16 Q. Okay. Did you ever have anybody on your crew that
17 was injured?

18 A. No, sir, not that I can --- if I'm looking ---
19 overlooking some little something, maybe, but as far
20 as that, no.

21 Q. Okay. Well, I'm mainly concerned about ---.

22 A. Like a smashed finger or a smashed hand, you know.

23 Q. Yeah. No, we're looking ---

24 A. Or something simple, no.

25 Q. --- something fairly major so that a person had to

1 take some time off of work.

2 A. No.

3 Q. Okay.

4 A. Not that I can recall right now.

5 Q. Did you ever hear of anybody being subject to
6 retaliation or threats for reporting safety issues or
7 concerns at UBB?

8 A. No, sir.

9 MR. SHERER:

10 Okay. That's all the questions I've got
11 for right now.

12 EXAMINATION

13 BY MR. FARLEY:

14 Q. Mr. Martin, let me back up on a couple things to
15 clarify. At the time of the explosion you indicated
16 that you were finishing your pre-shift exam; ---

17 A. Yes.

18 Q. --- am I right? Did I understand you were saying
19 you were at your section shelter chamber, rescue
20 chamber?

21 A. Yes. Yes, sir.

22 Q. Is that where you routinely ended your pre-shift
23 exam?

24 A. Not generally, no. Sometimes I'm a little ahead
25 of myself, you know, before that time. I like to get

1 it done before time so I can call it out around the
2 three o'clock time.

3 Q. Okay. Did you routinely check the shelter
4 chamber?

5 A. Yes. There was some --- a few days we didn't get
6 --- it wasn't checked, yes.

7 Q. Okay. Did you usually record that in the book
8 when you checked that?

9 A. Yes.

10 Q. Okay.

11 A. It was called out on the pre-shift, yes.

12 Q. Okay. Now, if we got it correctly, when you came
13 back to UBB late December or 1st of the year, ---

14 A. Sometime in that area.

15 Q. --- you had to do a lot of rehabilitation work on
16 the barrier section.

17 A. Yes.

18 Q. When did you --- when exactly did you start
19 producing coal on the barrier section?

20 A. I cannot remember.

21 Q. Would it have been mid February, 1st of March?
22 What's your best guess?

23 A. Could've been around more closer to February.

24 Q. Okay. Meaning ---?

25 A. Because the explosion happened in April.

1 Q. April 5th.

2 A. And there was no way that we could've drove the
3 eight --- six to eight breaks in that time that we
4 did. Maybe, maybe not. It was around February
5 to ---.

6 Q. Okay.

7 A. Sometime in that area.

8 Q. Because if I understood you correctly, you had to
9 cut an overcast and a belt channels ---

10 A. Yeah.

11 Q. --- and stuff like that before you could start
12 producing coal?

13 A. Uh-huh (yes).

14 Q. So you had to do those before you started
15 producing coal?

16 A. Yeah.

17 Q. Okay.

18 A. Yeah, we had to do the cutting and the
19 building ---

20 Q. Okay.

21 A. --- of the overcast.

22 Q. Now, when you first came back to UBB in the year,
23 had there been another crew working in that area
24 before you? Were they transferred elsewhere? Was
25 there an original barrier section crew that was sent

1 to some other part of the mine?

2 A. No, we was the only crew that had worked on the
3 barrier section. There was no work done prior to what
4 we had done.

5 Q. Okay.

6 A. Now, there was an old ---. The other crew that
7 they called the old Number Four section, ---

8 Q. Okay.

9 A. --- now, they was supposed to go to the barrier
10 section.

11 Q. Okay.

12 A. But that was the crew that was sent up to Headgate
13 21 or whatever it was.

14 Q. Would that have been the new ---?

15 A. Twenty-two (22), rather, I'm sorry.

16 Q. Okay. Headgate 22 --- would that have been the
17 Dean Jones crew?

18 A. No. That was the Steve Harrah crew.

19 Q. Okay, all right.

20 A. Because the Dean Jones crew, they had worked the
21 headgate side on the active longwall now.

22 Q. Okay. All right. Now, either before or after
23 your shifts, did you routinely talk to Dean Jones or
24 Steve Harrah?

25 A. No, I didn't communicate with them, not many of

1 them, because I was on the --- we portalled different
2 sides.

3 Q. Were both of them on --- over at Ellis?

4 A. Now, the Steve Harrah, he portalled with us on the
5 UBB side.

6 Q. Okay.

7 A. For what reason, I don't --- I think the bathhouse
8 accommodations, but as far as talking and
9 communicating with Dino about their conditions and
10 whatever, I didn't communicate with them ---

11 Q. All right. Okay.

12 A. --- because I was more or less in a total
13 different world from them, away from them.

14 Q. I think Erik asked you a question about methane
15 monitors.

16 A. Yes.

17 Q. Did the continuous miner on your section have one
18 of those over --- methane monitor override devices on
19 the remote control?

20 A. I don't know if --- I don't think that that one
21 there was equipped with it ---

22 Q. Okay.

23 A. --- because I never seen anybody use it or never
24 heard of anybody using it to override it with the box,
25 the remote box.

1 Q. I think that type of override allows you to ---
2 allows you to tram it, doesn't it?

3 A. Yes, it allows you to override your methane
4 monitor and to move it --- to move the miner, but as
5 far as the cutting ripper heads ---

6 Q. Correct.

7 A. --- that cuts the coal, they did not work ---

8 Q. Okay.

9 A. --- as far as --- because you have to hold the
10 buttons in to move it and you let up, that's it.

11 Q. Okay.

12 A. It stops.

13 MR. FARLEY:

14 Okay.

15 EXAMINATION

16 BY MR. MCGINLEY:

17 Q. Mr. Martin, when Mr. Sherer started asking you
18 questions, he asked if you talked to anyone about your
19 work at UBB, and you said you talked to some Federal
20 investigators; is that right?

21 A. Yes.

22 Q. You said you didn't talk to anyone from Massey?

23 A. As far as being a Massey official, no.

24 Q. You talked to Massey lawyers, though, didn't you?

25 A. Yes.

1 Q. When did you talk to them?

2 A. Just a few days after the explosion.

3 Q. Have you talked to them since?

4 A. No.

5 Q. Have you talked to anybody from Massey ---?

6 A. No.

7 Q. Let me finish my question.

8 A. Oh, I thought you was.

9 Q. No. That's okay. So you talked to Massey miners
10 a few --- lawyers a few days after the explosion. And
11 when did you talk to the Federal investigators, before
12 or after you'd talked to the Massey lawyers?

13 A. After.

14 Q. And what did the Massey lawyers ask you?

15 A. Asked me where I was at at the time of the
16 explosion, what I could tell had happened, more or
17 less what I told him, that I checked my rescue
18 chamber, I felt the air. And, you know, as far as
19 going into details, you know, no. It was like a quick
20 ten-minute talk interview.

21 Q. Only ten minutes?

22 A. Sir?

23 Q. Only ten minutes?

24 A. It was quick, yeah, because it was more or less me
25 telling them where I was at when it happened or, you

1 know, what I witness or, you know, what I felt, you
2 know, just that. Wasn't a long interview at all.

3 Q. Where did that interview take place?

4 A. At the Performance building.

5 Q. The office?

6 A. Yes, at the mouth of the road there where
7 Performance mines is.

8 Q. So you said there was more water up on that ---
9 the Tailgate 22 section after you joined up with the
10 headgate; is that right?

11 A. On the headgate side, yes, sir.

12 Q. It was on the headgate side, but not on the
13 tailgate side?

14 A. No.

15 Q. At least ---

16 A. Yeah.

17 Q. --- when you were there?

18 A. Yes. All the --- most of the water problems was
19 on the headgate side of the active longwall now.

20 Q. Did you learn later that there were water problems
21 on the tailgate side?

22 A. Yes.

23 Q. They're pretty serious problems; isn't that right?

24 A. As far as I'm aware of, yes, that they have pumps
25 pumping, you know, pretty regular around the clock.

1 Q. They're having trouble keeping up with the water
2 on the tailgate side; right?

3 A. The last I heard, they had the compressor pumps
4 pumping and, you know, that they was keeping the water
5 down. It hadn't roofed out or had no problems with
6 it, but as far as that, I haven't heard anything
7 since.

8 Q. Didn't you hear that at some point after you left
9 there that water had roofed out on the tailgate side?

10 A. Had not heard that the water had roofed out, no.

11 Q. You're aware that excessive water had caused the
12 longwall to shut down?

13 A. Yes, I do.

14 Q. And that happened a number of times; is that
15 correct?

16 A. Yeah, but I wasn't at the mines at the time. I
17 had been transferred to the Parker Peerless mines.

18 Q. Okay. And approximately that was --- you were
19 there at Parker Peerless for about three months, did
20 you say?

21 A. Approximately.

22 Q. And when was that, that you were at Parker
23 Peerless?

24 A. I was there two different times. I can't recall
25 the first.

1 Q. The time when the --- we're talking about the ---
2 they had the water problems at the longwall. When
3 would that have been?

4 A. At my first time that I had left Performance ---

5 Q. Okay.

6 A. --- at UBB.

7 Q. And that would've been approximately when, not
8 days, but ---?

9 A. If I knew a date ---.

10 Q. What year? Let's start with that.

11 A. It was the last part of '09.

12 Q. Okay. And then you came back around Christmas
13 sometime in December to UBB; is that what you said?

14 A. Yes. Yeah, approximately sometime.

15 Q. Now, when you were driving that tailgate up toward
16 the Bandytown fan, you said you encountered a little
17 bit of methane.

18 A. Yeah, it was quite a bit of methane there at that
19 one location I spoke of between the ---

20 Q. 105 and 120.

21 A. --- 105 and 120 Break, in the area. It may've
22 been a little further inby. It may've been in that
23 area, yes.

24 Q. And you said quite a bit. How do you define that?

25 A. It was five percent.

1 Q. Five percent.

2 A. Yes.

3 Q. That happened a number of times over those, what,
4 three or four months you were up there?

5 A. No, it did not. It only happened at the one
6 occasion that I can --- that I know of.

7 Q. Did you write that down anywhere?

8 A. The best that I can remember, yes, it was called
9 out, but we had a Federal inspector on the section
10 that day and he was with me. Well, I had found it
11 before and ventilation had been done to get the
12 problem took care of.

13 Q. What was the problem?

14 A. Just the buildup of gas in the area.

15 Q. Just a ---?

16 A. Yeah.

17 Q. So you wrote it down? It's documented?

18 A. Yeah. And the inspector was there and he wrote
19 the violation on it, you know.

20 Q. On what?

21 A. On the high amount of methane in the area and the
22 area needed cleaned.

23 Q. And whose responsibility was it to keep the area
24 cleaned?

25 A. Mine.

1 Q. Did management talk to you about those violations?

2 A. Yes.

3 Q. Who talked to you?

4 A. The best I can remember, it was Gary May.

5 Q. And what did he say, if you know?

6 A. I can't really remember the ---

7 Q. Well ---?

8 A. --- conversation that we had, but it wasn't nice,
9 you know, what he talked ---

10 Q. Sure.

11 A. --- to me about, you know.

12 Q. Sure. Well, we're just trying to figure out ---.

13 A. I understand. I understand.

14 Q. You know, Massey's got this S1, P2 ---

15 A. Yes.

16 Q. --- and we're trying to figure that --- you
17 know, ---

18 A. Yeah.

19 Q. --- how does that work in reality as opposed to,
20 you know, what you see on the website, for example.

21 A. Yeah. Now, they do talk their S1, you know, P2,
22 the M3. They do talk it and they do enforce it, you
23 know, as far as if I go in and --- you know, I enforce
24 it myself. As being a foreman of the place, they're
25 behind you, you know. If you don't do it because it's

1 not right, if you don't work because it's not right
2 according to their standards, it's okay.

3 Q. Well, so were there any consequences for you
4 personally when you got those citations for methane
5 and not having the area cleaned?

6 A. The one --- the one violation in particular, no,
7 but it was between this violation and another
8 violation that had occurred down here, yes, it
9 resulted in me getting suspended and almost fired.

10 Q. How long were you suspended for?

11 A. Five days.

12 Q. What was the other violation you're talking about?
13 Down here is somewhere ---?

14 A. On the crosscut between the headgate and the
15 tailgate side around approximately 30 Break.

16 Q. And what was that violation?

17 A. I drove the first line of open breaks off of the
18 panel between the headgate and tailgate. Had lots of
19 air, plenty of air. My curtain got blowed up against
20 the rib due to too much air and wasn't allowing enough
21 air to go up and around the line curtain.

22 Q. And the inspector just happened to come by at that
23 point?

24 A. Yeah, inspector come by and checked it at the ---
25 maybe somebody come through the curtain and it blew

1 against the rib. It was something silly happened to
2 cause that, because it was right and I run it right.
3 And that right there, just due to that little mishap,
4 whatever you want to call it, got me suspended, due to
5 this one and this one together. That's enough.

6 Q. This and this, you mean the two citations you got
7 on the Tailgate 22 up by the Bandytown fan?

8 A. Yes.

9 Q. The methane and the problems with the ---?

10 A. Yeah, on the ---

11 Q. Yeah.

12 A. --- cleaning.

13 Q. And then the other one was the one you got down
14 here on the --- how'd you describe that?

15 A. It was a crosscut.

16 Q. Between the headgate and tailgate ---

17 A. Yeah.

18 Q. --- of 22 at the ---? Okay. But you explained to
19 your --- whoever was your supervisor the circumstances
20 of the ---

21 A. Uh-huh (yes).

22 Q. --- second violation with the curtain; is that
23 right?

24 A. Yes.

25 Q. Who talked to you about that?

1 A. Everett Hager was my supervisor at that time then.

2 Q. Was he the only one that talked about --- to you
3 about those violations?

4 A. Say that again?

5 Q. Is he the only one that talked to you about the
6 two sets of violations, the one on the Tailgate 22 and
7 then the crossover ---?

8 A. No, he wasn't the one. He enforced --- not really
9 enforced the suspension, but he was the one that wrote
10 me up for the suspension, and I had to talk to Chris
11 Blanchard as far as president and Jamie Ferguson as
12 vice-president.

13 Q. What did Ferguson and Blanchard say to you? We're
14 really just interested in what management's attitude
15 was and how they treated the people who ---

16 A. Oh, their attitude was ---.

17 Q. --- worked for them.

18 A. Mr. Blanchard was to fire me, to get me away,
19 because, you know, I done had two --- they was (d)
20 orders. And his was to fire me and get rid of me over
21 the simple mistake of this happening, which, you know,
22 I was suspended, and then I had to come back to a ---
23 back to work conference with Jamie and the human
24 resource director.

25 Q. And who's the human resource director?

1 A. Jason Bussey.

2 Q. And did somebody take your side of this
3 controversy about, you know, whether you should be
4 fired or not?

5 A. Yes, Jamie Ferguson did.

6 Q. That five percent methane you got up there at the
7 Headgate --- or Tailgate 22, that was before the
8 Bandytown fan went in?

9 A. Yes. Yes, quite a ways prior to that, quite a
10 while. I say quite a while, meaning several months.

11 Q. Was it before you cut through over to the headgate
12 side?

13 A. No, it was after the fact of that. After we had
14 cut the longwall face and the angle to the headgate
15 side, yes, it was after that, because, you know, it
16 was up in inby this area.

17 Q. When you say inby this area, just for the
18 record, ---

19 A. Oh, I'm sorry.

20 Q. --- can you describe it? No, that's all right.

21 A. Inby the area of the longwall face and the angle,
22 approximately one --- Break 105 to 120.

23 Q. Before you made that breakthrough, was it pretty
24 hot up there in the Tailgate 22 temperature-wise?

25 A. I mean, the --- no, it don't seem to be anything

1 out of the ordinary, you know, as far as so hot you
2 couldn't work or whatever.

3 Q. Well, I didn't mean that.

4 A. But, no. I mean it wasn't ---.

5 Q. It wasn't cold?

6 A. No.

7 Q. It was warmer than other parts of the mine?

8 A. Can't really recall that. Can't answer it and say
9 yes or no.

10 Q. Sure. It's been quite a while.

11 A. Been a while, yeah. And some things you remember,
12 some things you don't.

13 Q. You mentioned Massey's requirements of 20,000 at
14 the last open break.

15 A. Yes.

16 Q. What's that mean? What's with Massey having
17 requirements that are over and above MSHA's
18 requirements? Can you explain that?

19 A. My explanation of that is to --- most State and
20 Federal --- or most dust control plans require a
21 minimum of 9,000 cfm in your last open break. Several
22 people as far as sections have been caught with lower
23 air than that, so they come up with a thing, the plan
24 that you have to have 20,000 in your last open break
25 or you don't run.

1 Q. When did they come up with that plan? I mean just
2 a ballpark.

3 A. Approximately a year ago.

4 Q. A year ago?

5 A. Or maybe a little further than a year.

6 Q. Were there any other requirements other than the
7 20,000?

8 A. Not on that particular plan, no, that I can
9 recall, no.

10 Q. Are there any other Massey requirements over and
11 above State or Federal requirements regarding
12 ventilation or dust that you can recall?

13 A. Not as far as the ventilation. That was the only
14 one above the law in ventilation. But as far as the
15 dusting, yes. They was more about dusting than what
16 the law required.

17 Q. And what are those requirements that are above?

18 A. It was like a --- you can help me if I'm wrong.
19 Maybe like a 60 percent dust survey in that area and,
20 you know, Massey had more. I can't recall the
21 percentage, but it was more. They was up to dusting
22 more than what you --- you know, what you was required
23 to really get by with.

24 Q. Did you ever see a track duster?

25 A. Track duster?

1 Q. Yeah.

2 A. Yes.

3 Q. How often?

4 A. As far as, you know, me being on a section, I
5 didn't see it very often, no. But you know ---.

6 Q. It's a big mine.

7 A. Yeah.

8 Q. Do you know how many people they have working on
9 dusting? Do they have more than one track duster? Do
10 you know?

11 A. No, don't know. Can't answer. I do know that
12 they had different guys that worked on the outby,
13 like, did work on the track and different things that
14 was wrong. Yeah, I think they had, like, four
15 different guys on --- you know, maybe four on dayshift
16 and two or three on evening shift.

17 Q. And what were they --- well, was this recently in
18 the last year?

19 A. Yeah.

20 Q. Were they just working on dust or ---?

21 A. Not just on dust, no. They was like a supply
22 crew, and if the timbers need set, you know, they just
23 done, you know, what needed done.

24 Q. Is this a result of the fairly high number of (d)
25 orders that the mine was getting in 2009?

1 A. It could've been.

2 Q. Did Massey bring some people from the outside in,
3 a couple of men to sort of troubleshoot and try to get
4 the number of violations down?

5 A. Yes.

6 Q. And who were those people?

7 A. The one man was Jim Walker and the safety director
8 was Berman Cornett, and he was there pretty regular.

9 Q. Cornett wasn't a Performance --- he didn't work
10 for Performance. He came from the main office of
11 Massey or ---?

12 A. Uh-huh (yes). Yes. I think he did work more or
13 less, more for Performance than he did --- because I
14 can --- I remember his name on the time sheets, is the
15 only reason I say that.

16 Q. I see. So he'd just show up ---

17 A. It was a daily ---.

18 Q. --- in the last year?

19 A. Yeah.

20 Q. In the last year or so?

21 A. Yeah.

22 Q. And so Walker and Cornett, would they go out in
23 the mines and look for problems and then write up a
24 list to give those crews to fix?

25 A. Yes.

1 Q. Did they ever come to your section?

2 A. Yes.

3 Q. What kind of --- what kind of problems did they
4 identify in your section?

5 A. You know, maybe a piece of equipment needed a
6 slate bar or, you know, highline may've needed
7 guarding more or just something simple that ---. He
8 never really did ---. And track signs needed to be
9 numbered up. You know, just small things to --- you
10 know, ---

11 Q. Right.

12 A. --- that I can recall. He never did really get us
13 --- say anything big on our section.

14 Q. Did those two work with the maintenance and the
15 electrical foremen at all?

16 A. I don't know of that.

17 Q. Could have?

18 A. Yeah, could have. Yeah. Very well could have,
19 but ---.

20 Q. Did you have regular safety meetings?

21 A. Yes.

22 Q. And where did they occur?

23 A. On Monday mornings, you know, after the weekend or
24 whatever, we had them outside, mostly outside in the
25 office, you know, where everyone could gather.

1 Q. Who would run those?

2 A. Gary May or myself or, you know, whoever was
3 available at the time.

4 Q. Who all would be present? The section foremen?

5 A. Yes, section foremen and your crew. You know, you
6 might have your crew upstairs with --- in one room
7 because there was, like, three different crews or
8 four. And then, you know, your foremen would take
9 care of the crew.

10 Q. Did you ever have meetings --- safety meetings
11 just with the section foremen and supervisors?

12 A. No. As far as safety meetings, no.

13 Q. What kind of meetings do you have otherwise, other
14 than safety meetings with them? Did you have
15 production meetings?

16 A. Yeah, it'd be production meetings.

17 Q. How often did you have those with your
18 supervisors?

19 A. As far as my immediate supervisor at the mines, we
20 really didn't have those pretty regular, but we had
21 them with the upper management, like, once every ---

22 Q. Blanchard?

23 A. --- two weeks. Yes.

24 Q. Blanchard? Whitehead?

25 A. Uh-huh (yes). Yes.

1 Q. What would they talk about in these production
2 meetings?

3 A. We would go over, like, citations and, you know,
4 whatever you'd got in between the two weeks, maybe,
5 before. Or, you know, what can we do to pick your
6 production up? You know, what do you need, you know,
7 this or that?

8 Q. The focus was primarily on production and not on
9 safety; is that correct?

10 A. More or less, yeah. It was a production meeting,
11 yeah.

12 Q. Okay.

13 A. That's the way I looked at it, you know. Like,
14 one --- I can recall one meeting that we had, Jonah
15 Bowles was the safety director over Marfork.

16 OFF RECORD DISCUSSION

17 A. Bowles, B-O-W-L-E-S. And he went over all the
18 ventilation --- or not ventilation, but the violations
19 and the citations that we'd got and, you know, just
20 what they had wrote up and what we needed to do to
21 prevent that. You know, every now and then they would
22 throw one in like that, I mean, and it was more or
23 less production.

24 BY MR. MCGINLEY:

25 Q. Did they talk to you about how the getting

1 violations and getting (d) orders impacted production?

2 A. Yes.

3 Q. Did they talk to you about how much that was
4 costing?

5 A. Exactly.

6 Q. What would they say? Do you recall how much it
7 was costing them?

8 A. The meeting that Jonah had with us, that he was
9 talking, that Massey was paying like \$1 million a
10 month in violations and orders and things.

11 Q. And what about --- if they're paying \$1 million in
12 violations, they're also losing money on reduced
13 production; is that correct?

14 A. Yes.

15 Q. And how much production were they saying ---
16 telling you they were losing?

17 A. Didn't really say anything, but you know, we had a
18 set production goal that was more or less a goal that
19 we was trying to meet. I don't know how to explain
20 myself, but you know, you had to run a certain amount
21 of footage to cover the cost of everything.

22 Q. Right, we've heard that from a lot of folks.

23 A. Yeah.

24 Q. And did you ever --- were you ever able to meet
25 those goals?

1 A. Yes.

2 Q. Were you?

3 A. Yeah, occasionally.

4 Q. We haven't heard that very often.

5 A. Occasionally.

6 Q. Were there any bonuses for meeting those goals?

7 A. Not lately, no. Before, yes, there was, but not
8 here lately.

9 Q. Before Mr. Blanchard came or when? Before what?

10 A. Well, the production bonus, you know, required
11 that you run this more or less daily. And it was more
12 --- it was hard to do daily.

13 Q. Right.

14 A. And you didn't meet it every day, you didn't get
15 it.

16 Q. When's the last time you got a production bonus?

17 A. I can't remember.

18 Q. Couple years?

19 A. Yeah.

20 Q. Were there stickers handed out to put on helmets
21 that said, you know, so much lost a day, 600, --- 6
22 whatever, anything about lost production that --- any
23 kind of stickers that sort of focused on production or
24 lack of production?

25 A. I can't say that I seen any of those. The only

1 really stickers that if you seen any was --- would be,
2 like, a no lost time accident, you know, whatever for
3 that.

4 Q. Uh-huh (yes).

5 A. And giving you --- like, the longwall would
6 produce so many tons in this many months or whatever,
7 they'd have a sticker out of that, yes.

8 Q. Uh-huh (yes).

9 A. But as far as, you know, that, I didn't recall
10 that.

11 Q. You remembered one time when you were on the
12 barrier section that Mr. Davis or somebody called out
13 low air or you did?

14 A. Uh-huh (yes).

15 Q. Okay. That was in 2010?

16 A. Yes. Best I can remember, yes.

17 Q. And what happened? Did you find --- you take an
18 air reading and find low air?

19 A. Uh-huh (yes). Yes, I did. I can remember the day
20 that I found it.

21 Q. How much was that? How much air did you have, if
22 you recall?

23 A. I can't really remember. It was ---

24 Q. Just a ballpark.

25 A. --- under 9,000. I'm going to say, just a

1 ballpark, 6,000, 5,000 to 6,000.

2 Q. This was taken from --- where'd you take the
3 reading?

4 A. In the last open ---

5 Q. Okay.

6 A. --- break.

7 Q. Right. And did it take a while to fix that?

8 A. Yeah, we really didn't fix that problem. That's
9 when we went to the sweep air.

10 Q. I see. So would someone have written that down in
11 a pre-shift or production report?

12 A. Yes, yes. I can remember writing it down myself,
13 as far as sweeping air, you know, from left to right,
14 you know. The right side and low air, no production,
15 or something of the sort.

16 Q. Let me go back just for a second. We're talking
17 about ventilation back to the Tailgate 22 and the ---
18 when you found the five percent ---

19 A. Okay.

20 Q. --- methane. Are you sure there was only one
21 time?

22 A. Positive, yes. At the one time finding that
23 amount, yes.

24 Q. No, I don't mean one time when you were cited, but
25 there was only one time ever.

1 A. Finding that amount, yes.

2 Q. Did you ever find less than five percent, between
3 two and five percent?

4 A. No.

5 Q. Are you sure about that?

6 A. Positive. The five percent was the only time that
7 I ever remember --- or I mean, know that I found that
8 much, because that's something that you remember.

9 Q. Sure.

10 A. And as far as finding one percent, yeah. One and
11 a half percent, yes. But as far as the two and a
12 half, no.

13 Q. Okay. One, one and a half percent was up in that
14 same area up at ---

15 A. Yes.

16 Q. --- the Tailgate 22 that we've been talking about?

17 A. Well, this area here, is that the one you're
18 referring to?

19 Q. Yeah.

20 A. That would be the headgate, yeah.

21 Q. Oh, okay. That's where the --- found the gas?

22 A. Yes.

23 Q. Would you write that down, the 1 or 1.5 percent?

24 A. Yes, if we recorded it. Yeah. And we'd call it
25 out or --- in your pre-shift. As far as your next

1 crew coming in, yes, you'd call it out, what you found
2 and what we had.

3 Q. Did you hear from people on other shifts that they
4 were finding methane at more than one percent up in
5 that area?

6 A. Nothing more than what I would find, no.

7 Q. Did anybody find five percent --- you know, two to
8 five percent that you recall?

9 A. To the best of my knowledge, no, that I was the
10 only one at that time that had found that much in that
11 one area. And that is the only time that we ---. You
12 know, like I said, we didn't find that much.

13 Q. Sure.

14 A. And we did encounter gas the whole way just about,
15 you know, in there, but not that significant amount.
16 And I say five percent because the multigas detector
17 that we had went to five percent and that's it,
18 so ---.

19 Q. Okay. Did that cause you some concern when that
20 happened?

21 A. Absolutely, yes.

22 Q. We've heard from a lot of people that they saw
23 bubbles coming out of the water. You said you didn't
24 recall that?

25 A. I didn't recall anything like that, no.

1 Q. Nowhere?

2 A. No, no. If you're referring to the headgate area,
3 no.

4 Q. No, anywhere. Anywhere in the mine did you see
5 water --- bubbles coming up out of the water?

6 A. Not to the best of my knowledge, no, that I can
7 say yeah, I've seen some in this area. I can't say
8 that, no.

9 Q. Okay. Now, you said that the longwall was shut
10 down not very long before the explosion for a
11 period ---

12 A. Yes.

13 Q. --- of time? And it would be real helpful to us
14 if you could, you know, sort of squeeze your brain and
15 try to remember.

16 A. Oh, man.

17 Q. I understand it's tough, but are we talking about
18 a week before? When did you work? You worked until
19 Thursday and then you had a three-day weekend, the
20 Easter weekend off?

21 A. Yes.

22 Q. Would it have been that week, that short week that
23 you worked before the explosion that the longwall was
24 shut down?

25 A. I think it may've been a little further than a

1 week maybe, the best I can recall, but they was down
2 for not just a short time. It was like a few days.

3 Q. Was that because of ventilation?

4 A. Yes, that MSHA had come in and found ---

5 Q. Okay.

6 A. --- the problem --- or found a problem and had
7 shut them down over, I guess a (d) order and could not
8 run until he came back to release it and see that
9 everything was cool and, you know, that he released it
10 and everything was back to normal, I guess.

11 Q. Do you know, even from somebody else talking, what
12 changes were made there that allowed the inspector to
13 abate that order? I assume it was a big deal if the
14 longwall ---

15 A. Yeah, it was.

16 Q. --- wasn't running.

17 A. It was a big deal, yes. And the only thing that I
18 can recall that --- hearing people talk about, you
19 know, the air change, that too much air was coming ---
20 going on the outby side of the tailgate. That's the
21 only thing I can recall that they talked about, and
22 they had to build stoppings across this way to stop it
23 and to get air to go inby.

24 Q. When you say this way, where ---?

25 A. Inby towards the Bandytown fan area.

1 Q. And you were pointing to an area. Can you
2 describe that so that when we read the transcript ---?

3 A. Well, I was talking at the face of the longwall,
4 but ---

5 Q. Oh, okay. All right.

6 A. --- it could've been down this way some more, you
7 know, where they built stoppings across the tailgate
8 side to prevent air from going in the outby direction
9 on the tail side, to force it inby, you know, into the
10 gob area ---

11 Q. Okay.

12 A. --- of the longwall.

13 Q. And that would've been more than a week, maybe two
14 weeks --- whenever the (d) order was issued.

15 A. Yes.

16 Q. Okay.

17 A. The best I can remember, that they was down for
18 like two to three days maybe, two days, three days. I
19 can't recall.

20 Q. A lot of lost production.

21 A. Yes.

22 Q. You know, back to the issue of water bubbling up
23 through --- or I'm sorry, bubbles coming up through
24 the water, you said you didn't see any of that, but I
25 wrote down in my notes your response of, I know what

1 you're talking about. So you know, where have you
2 seen that before or heard about ---?

3 A. Oh, no, I have. I've seen it before, but I can't
4 really remember seeing it in this mine or in this
5 area.

6 Q. Okay.

7 A. I've been around for, you know, ---

8 Q. No, I understand.

9 A. --- 20 years. I've seen it. Yeah.

10 Q. I understand. I'm just trying to clarify.

11 A. And it may've been in this mine that I've seen it,
12 but I can't put my finger and say yes, I did. I can't
13 do that and I'm not going to say I did when I didn't.

14 Q. I understand. When Mr. Farley was asking you
15 about the override on the continuous miner, the
16 methane detector so you could tram the miner out, get
17 it away, you know, to repair it, ---

18 A. Yes.

19 Q. --- I think you mentioned remote box.

20 A. Yes.

21 Q. Well, what does that refer to for --- clarify it
22 for the record.

23 A. The remote box is the --- it's the remote control
24 box that operates the mining machine.

25 Q. Okay. I just want to make ---

1 A. Yeah.

2 Q. --- sure the record reflected that. Did you have
3 a roof bolter on the barrier section that had a
4 monitor on it, methane detector?

5 A. You mean one that was built ---

6 Q. Yes.

7 A. --- into ---? No, no.

8 Q. Did you have one upon a roof bolter?

9 A. Yeah, you have one that was handheld that you
10 carried in as you used it, ---

11 Q. Okay.

12 A. --- you know, during your shift, yes.

13 Q. Okay. Did any of the management there talk to you
14 and the other foremen about using whiteout in
15 pre-shift reports?

16 A. I can't really remember them saying anything about
17 using it, but I knew that you wasn't allowed to use
18 whiteout in the pre-shifts or mark as far as crossing
19 anything out, yeah. You didn't use whiteout.

20 Q. So there was never, say, in the last year or so,
21 any instructions, absolute, don't use whiteout, that
22 somebody had done that?

23 A. No, I can't --- what you're saying, it sounds
24 familiar, but you know, I kind of knew that you didn't
25 do that and I never have done it myself or know of

1 anybody to do it, but ---.

2 MR. MCGINLEY:

3 All right. That's all the questions I

4 have. Thank you.

5 A. Yes, sir.

6 RE-EXAMINATION

7 BY MR. FARLEY:

8 Q. You indicated that you started section bossing in
9 these tailgate entries on the longwall, ---

10 A. Yes.

11 Q. --- which would've been, I don't know, early 2009
12 or maybe 2008; is that right?

13 MR. MCGINLEY:

14 I think the record shows that he said

15 from January --- maybe January or February up to April
16 or May.

17 A. Yeah.

18 BY MR. FARLEY:

19 Q. Of 2009?

20 MR. MCGINLEY:

21 2009.

22 BY MR. FARLEY:

23 Q. Okay. You said you started about 75.

24 A. Somewhere --- yeah, somewhere in this area. Yeah.

25 Q. Okay. That's where your face was at the time?

1 A. Seventy-five (75). Yeah, yeah.

2 Q. Okay. Now, at that time you --- if you started at
3 75 you would've been driving, it looks like, about
4 five entries. Was your main intake coming up your
5 track at that time?

6 A. No.

7 Q. Okay. How many intake airways did you have coming
8 to your section in those entries?

9 A. We just --- we just had the one intake.

10 Q. Okay. Now, your track, were your track and belt
11 in the same air split or in the same ---?

12 A. In the same entry, yes.

13 Q. Were they neutral?

14 A. Yes. Well, as far as back here where I started on
15 the ---. Around the --- between 75 Break it made a
16 curve that the track and the belt was together up to
17 this point.

18 Q. Uh-huh (yes).

19 A. And then it split. The belt kept in another entry
20 and the track split and went up another entry.

21 Q. Okay. So the air --- if you're riding in in a
22 mantrip going towards your section, the air passing
23 over your mantrip would be going to the section, is
24 that correct, at that time?

25 A. I can't really say that that would be true, no,

1 because the track and the belt was not isolated, you
2 know, apart. You know, your belt air had to be going
3 outby you, so no, I don't think that was true.

4 Q. Okay. Well, if somebody were coming, entering ---
5 coming towards the section at that time ---

6 A. Yes.

7 Q. --- in the track entry in a vehicle and you were
8 inby in the faces producing coal, ---

9 A. Uh-huh (yes).

10 Q. --- you would be inby that mantrip in the same
11 split of air; is that correct?

12 A. I'm not getting your point or your question as far
13 as, you know, the intake. I can't remember the intake
14 being on the --- in the track entry.

15 Q. Well, you had --- my point is if someone is
16 transporting mining equipment to that section ---

17 A. Uh-huh (yes).

18 Q. --- on the track entry while you're working
19 inby, ---

20 A. Yes.

21 Q. --- you would be inby in the same split of air; is
22 that correct?

23 A. Yes.

24 MR. FARLEY:

25 Okay. That's it.

1 MR. SHERER:

2 I've got a few follow ups.

3 A. Still got me puzzled on your question. I may be
4 over-thinking your question or maybe ---

5 MR. FARLEY:

6 No.

7 A. --- thinking ---.

8 MR. FARLEY:

9 No, not at all.

10 A. I'm thinking something ---.

11 MR. FARLEY:

12 Not at all.

13 RE-EXAMINATION

14 BY MR. SHERER:

15 Q. Okay. I've got just a few follow ups. You
16 mentioned that some gentleman talked to you guys about
17 the high cost of the violations, and ---

18 A. Yes.

19 Q. --- it was \$1 million a month. How many tons did
20 they produce at UBB last year? Do you know?

21 A. Do not know.

22 Q. Okay. Do you know how many tons the entire
23 corporation produced last year?

24 A. No.

25 Q. How about per month? They ever say we produced

1 like two million tons this month?

2 A. They would post it, you know. As far as knowing,
3 I really wouldn't, you know, know how much this mine
4 here would produce, you know. What number, you know,
5 UBB was at on the production level, ---

6 Q. Uh-huh (yes).

7 A. --- you know, or as far as that, lost time
8 accidents or anything like that.

9 Q. Okay. How about the revenue of the company? How
10 much money did they make selling the coal? Did you
11 ever get a number like that?

12 A. No. It was available to you if you needed --- if
13 you wanted to know, it was online or whatever, but I
14 never did know.

15 Q. Okay. Would several hundred million dollars per
16 year seem about right?

17 A. Yeah, I would think so.

18 Q. And \$1 million in violations, that was a big deal?

19 A. They would act like it was, yes.

20 Q. Sure. Now, when you had the incident where you
21 got suspended for five days, have you ever gotten any
22 violations prior to that, MSHA violations issued to
23 you?

24 A. Prior to my suspension down here on the ---?

25 Q. Yeah.

1 A. Yes. I had violations in this area, yes.

2 MR. MCGINLEY:

3 In this area, you mean the ---?

4 A. Oh, I mean inby the longwall face on the headgate
5 side.

6 BY MR. SHERER:

7 Q. How about the entire time you've been bossing with
8 Massey? Were those the first violations you've
9 gotten?

10 A. No, I'm sure it's not. No.

11 Q. Okay.

12 A. Because I'm sure that if those was the only two
13 violations I got, the boss, you know, for a while like
14 that, I wouldn't --- they wouldn't suspend me over
15 something like that, you know.

16 Q. Sure.

17 A. I wasn't known to get, you know, violations like
18 that.

19 Q. So you didn't get many violations, but you'd been
20 written up. If you had to just make a wild guess, how
21 many MSHA violations would you think you'd gotten?

22 A. Oh, I wouldn't even have a clue, wouldn't even
23 guess.

24 Q. Okay. Has it been more than ten?

25 A. I would say yes.

1 Q. More than 50?

2 A. I wouldn't go that far.

3 Q. Okay.

4 A. Let's just say between 10 and 50, yes, ---

5 Q. Okay.

6 A. --- if we have to pick a number.

7 Q. Sure. Okay. What was different about these
8 violations? Why do you think you got the suspension?

9 A. It was the (d) orders.

10 Q. (d) orders. Now, what's the matter with (d)
11 orders?

12 A. The only thing that I can really say that the fact
13 that this was a (d) order and this was a (d) order is
14 the cost of the violation ---

15 Q. Okay.

16 A. --- to me. To them it may've been something more,
17 but to me that it was, you know, the cost of the ---
18 any violation that I received while I was --- that was
19 wrote to me, yeah, it's hard to take, you know. I
20 didn't like it.

21 Q. Sure. Uh-huh (yes).

22 A. But as far as that, yeah, that was hard as well.

23 Q. When they were talking to you, did they mention
24 the cost of those particular (d) orders?

25 A. Did not mention the cost of them, but you know, I

1 had heard the cost of them before this.

2 Q. How much does a (d) order cost?

3 A. I had heard anywhere from \$40,000 to \$50,000 at
4 that mine.

5 Q. Okay. That's pretty high.

6 A. Yeah, because any violation --- any ventilation
7 violation that this mine had got was under a (d)
8 order.

9 Q. Okay.

10 A. For what reason, I don't know, but that's the way
11 they explained it to me ---

12 Q. Okay.

13 A. --- that I had heard about.

14 Q. You know, I've looked at an awful lot of
15 violations that were issued up here, and they weren't
16 (d)s for ventilation. They issued a lot of (a)s for
17 ventilation violations. Do you know what a (d) order
18 is?

19 A. Not particularly the definition of it, no.

20 Q. Okay.

21 A. Just a higher type ---.

22 OFF RECORD DISCUSSION

23 BY MR. SHERER:

24 Q. Okay. A (d) order is what we call a willful or
25 knowing violation ---

1 A. Yeah.

2 Q. --- where you should've known something was wrong.
3 It's above ordinary negligence.

4 A. Well, then the (d) order that was got from me on
5 the cut-through between the head and the tailgate side
6 that they issued me a (d) order on, that should not
7 have happened then because that was not high
8 negligence on my part of ignoring it and willfully
9 knowing that, you know, hey, this is wrong and I'm not
10 correcting it. That's not the fact, but I still got
11 the (d) order that the two MSHA's inspectors that was
12 there wrote it knowing that it was not willingly. So
13 that was not right to do that then if that's what a
14 (d) order is.

15 Q. Okay. When you get a violation at this mine, did
16 they serve the paper to you or did it go to like the
17 safety person or the mine foreman or somebody like
18 that?

19 A. To the mine foreman and the superintendent.

20 Q. Okay.

21 A. And then they went to the safety director, you
22 know. He got his papers from that. You know, they
23 just ---.

24 Q. Okay.

25 A. But I always did see a copy of them, too, and I

1 had to write a rebuttal on the, you know, citation or,
2 you know, whatever, violation.

3 Q. Okay. So you did get a copy of it?

4 A. Yes.

5 Q. Okay. Do you know one of the main reasons we
6 issue any violation is to try to teach people?

7 A. Uh-huh (yes).

8 Q. It's not because we just like to issue paper.

9 We're trying to prevent conditions that we know cause
10 safety problems.

11 A. Yes.

12 Q. When you found the low air on the right side of
13 the barrier section, what did you do to fix that?

14 A. I didn't do anything to fix it as far as to keep
15 splitting our air to have split ventilation. We had
16 made it a sweep air section.

17 Q. Okay. So that's how you fixed it?

18 A. Yes. Yeah, that was our, you know, quick solution
19 to a, you know, problem.

20 Q. Okay. That's an interesting statement, a quick
21 solution to a problem.

22 A. Uh-huh (yes).

23 Q. You guys were pretty good at quick solutions,
24 weren't you?

25 A. I wouldn't say that, no.

1 MR. SHERER:

2 Okay, okay. Thank you. That's all I
3 got.

4 RE-EXAMINATION

5 BY MR. MCGINLEY:

6 Q. I've got a couple more. Are you familiar with the
7 terms S1, P2, M3?

8 A. Yes.

9 Q. What does M3 mean?

10 A. Measurement three. Measurement is third.

11 Q. And what does measurement mean?

12 A. Meaning more or less, what I can understand, is
13 measure what you cut, you know, as far as more or less
14 production. It should've fell under production as far
15 as measuring, you know, keeping your measurements
16 right and everything stays good as far as your mines.

17 Q. What about P2? What does that mean?

18 A. Production second.

19 Q. And S1?

20 A. That would be safety first.

21 Q. So other than production second, what else does
22 production --- or P2 mean, if you know?

23 A. Don't know of anything other than just production
24 second, whatever it takes to do the production second,
25 you know. That's the only thing I can tell you

1 different about it.

2 Q. Is there a P2 manual?

3 A. Yes.

4 Q. Have you ever seen it?

5 A. Yes, I have one.

6 Q. And is that something that you look at very often?

7 A. No, I don't. It's something that, you know, you
8 look over it and, you know, you just --- as far as
9 working for a place for so many years, you know, you
10 learn to do things by the way they want you to do it.

11 Q. Sure. So you know, after a while you just know
12 what's in that manual; ---

13 A. Yeah, more or less. Yeah.

14 Q. --- is that right?

15 A. Yes.

16 Q. Is it an S1 manual?

17 A. Yeah, it's more or less a book together. It's S1,
18 P2 manual together. It's a ---

19 Q. Okay.

20 A. --- pretty thick book.

21 Q. Okay. What does S1 mean other than safety first?

22 A. That's self-explanatory. Just safety first,
23 above, you know, your P2, you know. The M3, as far as
24 I'm concerned, is in with the production, you know,
25 because it's part of it.

1 Q. Do you know the P2 better than the S1 part of the
2 manual?

3 A. No. It's more or less, you know --- you know,
4 it's hard to explain. You know, I don't go look at
5 and read it like I would a Bible or something, you
6 know, as far as studying it, but you know, as far as,
7 you know, what to do above, you know, production. And
8 if you don't do it, shame on you. See, I can go ---
9 leave here and go to work today and ignore every S1
10 thing that they have wrote up in the book to run coal,
11 you know, production.

12 Q. Right.

13 A. If I get caught, you know, shame on me. And if I
14 get someone hurt, you know, it's my fault or their
15 fault for doing it above that, so you just stick with
16 your S1.

17 Q. Is it ever, you know, the management's fault
18 rather than the shift foreman or the miners when there
19 are violations over accidents?

20 A. Explain that again.

21 Q. You know, you got a superintendent.

22 A. Yes.

23 Q. You've got a president. You've got a vice-
24 president. They're involved in running the mine;
25 right?

1 A. Yes.

2 Q. They're actively involved.

3 A. Right.

4 Q. They ever at fault when there are violations in
5 the mine or people hurt? I mean, do they ever bear
6 responsibility? You ever hear them say, we made a
7 mistake?

8 A. No, I don't think you hear them say that they ---
9 it was my fault. You know, I should've done this
10 different or I should've done that different, you
11 know.

12 Q. But do they make mistakes in your experience?

13 A. Oh, yeah, everybody makes mistakes, you know.
14 We're human, but as far as getting to what I think
15 your point is on that, ---

16 Q. Uh-huh (yes).

17 A. --- if I would leave here and go to work tonight
18 and I go in and do something against the S1, knowing
19 --- just not say S1 --- knowing that it's not right or
20 it's not safe and I'm going to get myself or my buddy
21 hurt, you know, and I do it anyway, you know, it's my
22 fault.

23 Q. So the fact that there were over 40 (d) orders
24 issued in 2009 and going into 2010, management doesn't
25 bear any responsibility for that? It's all the

1 people, actually, you know, working every day in the
2 mine?

3 A. As far as saying what you say, yes, I would say
4 they would --- it depends on what the (d) order was
5 wrote on. Now, this one here was my fault. That's
6 the way they look at it. It was something simple, the
7 one I got on the --- you know, the cut-through between
8 the head and the tailgate side.

9 Q. Okay.

10 A. That was my fault. That was my (d) order. It
11 doesn't have nothing to do with Gary May or Chris
12 Blanchard or any of them. It was me.

13 Q. Okay. When you got --- strike that.

14 Is it the policy at UBB that whenever a citation
15 is issued that the shift foreman has to write a
16 rebuttal?

17 A. Yes.

18 Q. Not just (d) orders, any citation?

19 A. Yes, any citation, violation.

20 Q. And is there a form for that or how do you do
21 that?

22 A. There is a form for it, yes.

23 Q. And how detailed do they want you to be?

24 A. Very detailed. It gives you a list of --- you got
25 to put the violation number and all the codes and all

1 down, what happened, you know, why it happened or, you
2 know, just more or less explain in detail, you know,
3 everything.

4 Q. So every one of the violations that were received
5 at UBB in 2009 and up until the time of the explosion,
6 there should be these rebuttal statements written by
7 whoever was responsible for the area?

8 A. Yes, sir.

9 Q. Let me ask you just one more question, or maybe
10 two. When the (d) order was issued when you had the
11 five percent methane, who found that five percent
12 first? Was it the inspector or you?

13 A. I can't really ---. I think it was myself that
14 found --- but he was there on the section with me that
15 morning.

16 Q. So why were you taking the --- how did you find
17 the --- what was the circumstances?

18 A. If I could --- the best I can recall was it was
19 start of shift. That's why I say I took the blame for
20 the --- you know, being dirty as far as needing
21 cleaned. I got wrote up for that. You know, I took
22 it on myself. I think I was running --- going across
23 the faces before we started up for the shift. It was
24 more or less like a pre-shift as --- or an on-shift.

25 Q. So you were just doing your job?

1 A. Yes.

2 Q. Taking the pre-shift?

3 A. Yes.

4 Q. So why'd you get a citation?

5 A. Don't know, but he was there and he found --- was
6 either with me or come --- he was with me, because you
7 know, we checked it together.

8 MR. MCGINLEY:

9 All right. I don't have any other
10 questions. Thank you.

11 A. Yes.

12 RE-EXAMINATION

13 BY MR. FARLEY:

14 Q. Did you write a rebuttal to all violations, both
15 State and Federal?

16 A. No, just one --- or whoever --- if you wrote the
17 violation for the State, yes. If the rebuttal was
18 wrote to you, yes, the best I know of, yeah.

19 Q. Okay. Did you write rebuttals regardless of the
20 monetary amounts on the violations?

21 A. Yes.

22 Q. Okay. Who did you give this rebuttal to?

23 A. To the safety director, because he ---.

24 Q. Do you know what he did with it?

25 A. No.

1 Q. Have you ever testified at a hearing on a
2 violation at either the State or Federal level?

3 A. No.

4 MR. FARLEY:

5 Okay.

6 RE-EXAMINATION

7 BY MR. SHERER:

8 Q. I have a couple questions. When you got the five
9 percent methane up on the headgate, you say you found
10 that on your pre-shift run.

11 A. The best I can recall, yes.

12 Q. Okay. Do you recall what the air quantity was up
13 on the section at that point in time?

14 A. I do not recall the quantity of air, no.

15 Q. Do you recall if it was high or low or ---?

16 A. It was okay I guess because --- I can't give you
17 an answer because I can't really recall that ---

18 Q. Okay.

19 A. --- at the time.

20 Q. Would it surprise you to say that we have heard
21 testimony from other individuals that they found up to
22 nine percent of methane up in that same general area?

23 A. Would it surprise me?

24 Q. Uh-huh (yes).

25 A. Yes, it would surprise me, but at the time --- I

1 remember telling him --- my multigas detector only
2 went to five percent.

3 Q. Uh-huh (yes).

4 A. And I stated that, for that reason, it could've
5 been higher. It could've been, you know, five percent
6 even. I don't know.

7 Q. I think the nine percent actually came from a
8 bottle sample, but just in general, when you were
9 driving up through here, was there a problem?

10 A. Was what?

11 Q. Was getting enough air up on the last open --- up
12 in the faces, was that a problem?

13 A. Yeah, sometimes it was. Yes.

14 Q. Okay.

15 MR. MCGINLEY:

16 Well, let's make the record clear where
17 that ---.

18 MR. SHERER:

19 Yeah.

20 BY MR. SHERER:

21 Q. I'm talking about the headgate of the current
22 longwall inby roughly Break 90 or so.

23 A. Yes.

24 Q. Okay. Do you control the amount of air that's
25 going up to a section?

1 A. The section boss does not control the amount of
2 air, no.

3 Q. Who controls the amount of air?

4 A. That would be the mine foreman. The block
5 superintendent would be more or less the mine foreman,
6 or the superintendent, you know, whoever.

7 Q. Okay. So if you don't have enough air to dilute
8 the methane, whose fault is it?

9 A. Well, I can't dilute the methane, couldn't sweep
10 it out of the face if I didn't have the air, so I
11 can't go outby and get the air.

12 Q. Okay.

13 A. You know, so it wouldn't be my fault. It would be
14 someone else's, you know, mine foreman, super.

15 MR. SHERER:

16 Thank you.

17 RE-EXAMINATION

18 BY MR. FARLEY:

19 Q. At the location when you encountered the five
20 percent methane as you were driving towards the
21 Bandytown fan, ---

22 A. Uh-huh (yes).

23 Q. --- when you actually encountered the five
24 percent, did you danger off the area? Did you shut
25 down? What exactly did you do?

1 A. Yes, we went through the steps as far as the
2 knocking the power on the equipment. The equipment
3 was not even in the face, but we did knock the power
4 in the area --- or on the section, rather, I'm sorry.

5 Q. Okay. But did you danger off the area, like put a
6 visible sign, don't enter or something like that?

7 A. No, did not.

8 MR. FARLEY:

9 Okay.

10 ATTORNEY HAMPTON:

11 Okay. All right. On behalf of MSHA and
12 the Office of Miner's Health, Safety and Training,
13 we'd like to thank you for coming here and answering
14 questions today. Your cooperation is very important
15 to the investigation as we work to determine the cause
16 of the accident. We do request that you not discuss
17 your testimony with any individual other than an
18 attorney, if you were to retain one.

19 After questioning other witnesses, we may
20 call you for follow-up questions if we determine that
21 there's something else we need to ask you. In the
22 meantime, if you have any additional information
23 regarding the accident that you would like to provide
24 to us after you leave here today, please feel free to
25 contact us at the contact information given to you in

1 the letter for Norm Page. So now, at this point, if
2 there is anything else that you would like to say or
3 if you would like to clarify either the answers that
4 you've given or if there's any additional information
5 that you'd like to give us ---?

6 A. No, that's it for me I guess.

7 ATTORNEY HAMPTON:

8 Yeah.

9 A. I've told everything to the best of my knowledge
10 that I can remember and ---

11 ATTORNEY HAMPTON:

12 Okay.

13 A. --- nothing else. No further.

14 ATTORNEY HAMPTON:

15 Okay. We do want you to know that it is
16 possible that we might call you in for another
17 interview depending ---

18 A. Yes.

19 ATTORNEY HAMPTON:

20 --- on other information that comes up.

21 A. Okay. That's fine.

22 ATTORNEY HAMPTON:

23 Okay? Thank you very much.

24 A. Yes, ma'am.

25 * * * STATEMENT UNDER OATH CONLUDED AT 5:30 P.M. * * *

1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Alison Salyards, a Notary Public in and
for the State of West Virginia, do hereby certify:

That the witness whose testimony appears in
the foregoing deposition, was duly sworn by me on said
date and that the transcribed deposition of said
witness is a true record of the testimony given by
said witness;

That the proceeding is herein recorded fully
and accurately;

That I am neither attorney nor counsel for,
nor related to any of the parties to the action in
which these depositions were taken, and further that I
am not a relative of any attorney or counsel employed
by the parties hereto, or financially interested in
this action.



Alison Salyards