

1     **WEST VIRGINIA MINE SAFETY AND HEALTH ADMINISTRATION**

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5     **IN THE MATTER OF:**

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7     **THE INVESTIGATION OF THE**  
8     **APRIL 5, 2010 MINE EXPLOSION**  
9     **AT UPPER BIG BRANCH MINE.**

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17     The interview of DAVID SHEARS, taken upon oral  
18     examination, before James D. Nielsen, Court  
19     Reporter, and Notary Public in and for the State of  
20     West Virginia, Wednesday, February 23, 2011, at  
21     1:15 p.m., at the Mine Academy, 1301 Airport Road,  
22     Beaver, West Virginia.

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27     **JOHNNY JACKSON & ASSOCIATES, INC.**  
28     **606 Virginia Street, East**  
29     **Charleston, WV 25301**

30

31     **(304) 346-8340**

32

**APPEARANCES**

1  
2 **OFFICE OF MINERS' HEALTH, SAFETY & TRAINING**  
3 **Barry L. Koerber, Assistant Attorney General**  
4 **1615 Washington Street, East**  
5 **Charleston, WV 25311**  
6 **(304) 558-1425**

7  
8 **OFFICE OF MINERS' HEALTH, SAFETY & TRAINING**  
9 **William Tucker**  
10 **1615 Washington Street, East**  
11 **Charleston, WV 25311**  
12 **(304) 558-1425**

13  
14 **OFFICE OF MINERS' HEALTH, SAFETY & TRAINING**  
15 **John Scott**  
16 **1615 Washington Street, East**  
17 **Charleston, WV 25311**  
18 **(304) 558-1425**

19  
20 **U.S. DEPARTMENT OF LABOR**  
21 **Office of the Solicitor**  
22 **Matthew N. Babington, Esquire**  
23 **1100 Wilson Boulevard**  
24 **22nd Floor West**  
**Arlington, VA 22209**  
**(202) 693-9359**

**GOVERNOR'S INDEPENDENT INVESTIGATION PANEL**  
**James Beck**

**Also Present :**

**Dean Cripps, MSHA**  
**Jasey Maggard, MSHA**  
**Leland Hess, MSHA**

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**DAVID SHEARS**

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## PROCEEDING

1  
2 MR. KOERBER: My name is Barry Koerber,  
3 I'm an assistant attorney general and I'm assigned  
4 to represent the Office of Miners' Health Safety  
5 and Training. I'm assigned to the Office of  
6 Miners' Health Safety and Training UBB accident  
7 investigation team. Today is February 23rd, 2011.

8 Beginning at my left and working around  
9 the table I would ask that the other people here  
10 identify themselves and who they're with.

11 MR. SCOTT: John Scott, I'm with Miners'  
12 Health Safety and Training.

13 MR. TUCKER: Bill Tucker, Miners' Health  
14 Safety and Training.

15 MR. BABINGTON: Matt Babington, I'm an  
16 attorney with the Department of Labor.

17 MR. CRIPPS: I'm Dean Cripps with MSHA.

18 MR. BECK: Jim Beck with the Governor's  
19 independent team.

20 MR. BABINGTON: And Jasey Maggard is also  
21 going to join for MSHA.

22 MR. KOERBER: We have one person in the  
23 back, I'd ask that he identify himself and who he's  
24 with.

1 MR. HESS: I'm Leland Hess with MSHA.

2 MR. KOERBER: We also have a court  
3 reporter here today, and the court reporter is from  
4 a court reporting firm known as Johnny Jackson &  
5 Associates, it's located in Charleston, West  
6 Virginia. For purposes of the court reporter I  
7 would ask that you answer yes or no and not uh-huh,  
8 uh-uh, just so it's clear.

9 I would also request that you allow the  
10 interviewer to finish his question before you begin  
11 your answer. And I'm going to ask of the  
12 interviewers also to please allow you to finish  
13 your answer before they ask the next question so we  
14 don't have people talking over each other.

15 Also, if there is a need to identify  
16 things on the map I'm going to ask that you try to  
17 describe in words where you're pointing as opposed  
18 to just pointing and saying I was here and then  
19 went there, because that doesn't show up on the  
20 transcript very well.

21 I also want to mention that Johnny Jackson  
22 & Associates is working under a three day  
23 turnaround on these transcripts, which means three  
24 business days from today the transcript would be

1 available for review.

2           Three business days from now puts us at  
3 the close of business on Monday, so beginning  
4 Tuesday morning of next week if you have any desire  
5 to review your transcript and make any corrections  
6 that you find needed in your transcript, and do so  
7 on an errata sheet, you have the right to do so.  
8 You can call Johnny Jackson & Associates, I'm going  
9 to give you their business card, and they will set  
10 up a time where you would go into their office, and  
11 the office address is on this card as well, and  
12 they'll put you in a conference room in private and  
13 you can read the transcript. You will not be  
14 permitted to take one with you.

15           Now, you do not have to call on Tuesday.  
16 Tuesday would be the first day it's available. But  
17 if you want to call a week or so later and schedule  
18 a time you can. It is not something you're  
19 required to do, it's just something that you have  
20 the option of doing if you so choose. I'll give  
21 you this card here in a moment.

22           I'd also like to mention that if for  
23 whatever reason whatsoever you want to take a  
24 break, just say you want to take a break and we'll

1 be on break, okay. I'd also ask that you not  
2 discuss your testimony in here with anybody outside  
3 this room for purposes of protecting the integrity  
4 of the investigation.

5 I believe Matt Babington would like to  
6 speak for a moment and now would be the perfect  
7 time.

8 MR. BABINGTON: Mr. Shears, I'm just going  
9 to provide you with a letter from MSHA's  
10 investigator Norman Page, it basically describes  
11 some of the background protocols for the interview  
12 today as well as contact information.

13 MR. KOERBER: Would you administer the  
14 oath please.

15 DAVID SHEARS, WITNESS, SWORN

16 EXAMINATION

17 BY MR. KOERBER:

18 Q. Sir, would you please state your full name  
19 for the record and spell your last?

20 A. David LeRoy Shears, S-H-E-A-R-S.

21 Q. Would you please state your address and  
22 telephone number?

23 A. It's (b) (7)(C)

24 (b) (7)(C)

1 Q. Do you have or are you expecting any  
2 attorney or any personal representative or anybody  
3 else to be here with you today?

4 A. No, sir.

5 Q. Are you appearing here today as a result  
6 of receiving a subpoena?

7 A. Yes, sir.

8 Q. This is a copy of the subpoena; would you  
9 agree with that?

10 A. Yes, sir.

11 Q. I'm going to ask that that be made Shears  
12 Exhibit 1. This is a document you have not seen,  
13 this is a document that my process server filled  
14 out showing that he served you on the 19th day of  
15 February at the 124 Foster Avenue address?

16 A. Yes.

17 Q. I would ask that be Exhibit 2.

18 (Exhibits 1 and 2 marked for identification.)

19 Q. I would also like to give you two  
20 additional things, one is a memorandum which  
21 contains the address to the West Virginia Board of  
22 Appeals. The Board of Appeals is the  
23 administrative tribunal that hears cases involving  
24 coal miner discrimination. In the event you find



1 that you have been discriminated against for  
2 participating in this interview this is the agency  
3 that you file your complaint with. And your  
4 complaint does not have to be anything formal, it  
5 can just be a handwritten letter explaining what  
6 happened. I would caution you though, under the  
7 statute you only have 30 days from the day of the  
8 discriminatory event to file your complaint with  
9 the Board of Appeals, okay.

10 I'm also going to give you a business card  
11 for Mr. Bill Tucker, who is the gentleman seated  
12 here beside me. Mr. Tucker is the Office of  
13 miners' Safety and Training lead accident  
14 investigator. In the event something occurs to you  
15 after you leave here today that you think is  
16 important that you forgot to tell us that you would  
17 like to share with us, please give Mr. Tucker a  
18 call.

19 So I'm going to give you Mr. Tucker's  
20 card, the memorandum and Johnny Jackson's business  
21 card. And with that I'm going to ask Bill or Dean  
22 to begin the interview.

23 **EXAMINATION**

24 **BY MR. CRIPPS:**

1 Q. David, thanks again for coming in. I read  
2 your transcript from your first interview so I'm  
3 going to try not to go over a lot of stuff you  
4 already answered, but there is a few things I want  
5 to get clarified first.

6 I understand that you worked in the mines  
7 several years ago, and then a few years ago you  
8 started back in the mines at Logan's Fork; is that  
9 correct?

10 A. Yes, sir.

11 Q. Do you know exactly when you started at  
12 Logan's Fork?

13 A. I started there as a contractor in  
14 January.

15 Q. Of what year?

16 A. 2008.

17 Q. Okay, January of '08. Who was you working  
18 for at the time, which contractor?

19 A. David Stanley Consultants.

20 Q. Do you know when you actually went to work  
21 for Massey?

22 A. April the 24th, 2008, they hired me.

23 Q. And you were still at Logan's Fork then?

24 A. Yes, sir.

1 Q. When did you leave Logan's Fork and go to  
2 UBB?

3 A. It was in August, I guess that would be  
4 2009.

5 Q. August of '09, okay. When you went to UBB  
6 what did you do when you got there?

7 A. We were working on the longwall setting  
8 it up. Well, it was already set up, we were fixing  
9 stoppings and getting ready to start running.

10 Q. So you went underground working to get the  
11 longwall ready to go; is that correct?

12 A. Yes, sir.

13 Q. And then after the explosion occurred you  
14 went back to Logan's Fork; is that correct?

15 A. No, sir. I went to Revolution.

16 Q. To Revolution?

17 A. Yes.

18 Q. When did you go to Revolution?

19 A. Now, that, sir, I'm not quite sure. It  
20 was shortly after -- it was after the explosion, it  
21 was in April. It was a couple days.

22 Q. Are you still at Revolution?

23 A. No, sir.

24 Q. Where are you now?

1           A.    Round Bottom.

2           Q.    Have you been back to UBB since the  
3 accident?

4           A.    No, sir, only to get my clothes and stuff.

5           Q.    So you haven't been underground?

6           A.    Not at UBB, no.  Oh, before then I went  
7 back to -- they sent me to Logan's Fork from  
8 Revolution, then I went from Revolution to Round  
9 Bottom.  I'm sorry.  They was switching me here and  
10 there.  They sent us over to Round Bottom to build  
11 overcast and I've been there ever since.

12          Q.    On overcast build?

13          A.    No, I work on the super section.  I'm a  
14 scoop man on the super section.

15          Q.    I started to say, you probably didn't get  
16 a lot of overcast practice at UBB did you?

17          A.    No, sir.  I can tear down.

18          Q.    I wanted to clear that up.  I didn't quite  
19 understand all that from your first transcript.

20                I understand you worked on -- showed up to  
21 work on April the 5th, the day of the explosion?

22          A.    Yes, sir.

23          Q.    Is that correct?

24          A.    Yes, sir.

1           Q.    Explain to me if you would, prior to going  
2 underground, from the time you arrived at the mine  
3 what do you recall as far as what you did and what  
4 you heard?

5           A.    Well, we was all in there dressing,  
6 goofing off a little bit, you know, before we go.  
7 Then we go outside, start on -- for once we was  
8 going to let the other guys shut the doors, because  
9 my buddy said, We're going to beat the mining  
10 section today, they're going to shut the doors.

11          Q.    What does that mean, let somebody else  
12 shut the doors?

13          A.    Well, when we go in only two can go in,  
14 and you shut the doors behind you. So if we open  
15 them, once they come through they've got to shut  
16 them. And then we go through the sets of doors, it  
17 will only hold two mantrips and usually there was  
18 just two of us going.

19          Q.    So the idea was to get in the front  
20 mantrip?

21          A.    Yes, sir.

22          Q.    And so that's what your crew did that day?

23          A.    Well, there was a couple of us that got  
24 the front mantrip. It was hot outside.

1 Q. So you said you was in the bathhouse and  
2 you-all was joking around, by you-all you mean your  
3 crew or all the crews?

4 A. All the crews. We told them we was going  
5 to beat them that day, you're all shutting the  
6 doors.

7 Q. After you got dressed did go upstairs into  
8 the mining office or the longwall office?

9 A. No, sir.

10 Q. As I understand you worked for Ken  
11 Mittley?

12 A. Yes, sir.

13 Q. Did you hear Kevin talk to the longwall  
14 that day at all?

15 A. No, but I know he did, but I didn't hear  
16 him do it.

17 Q. How do you know that he talked to them?

18 A. He's always got to get the report before  
19 we even move.

20 Q. What report would that be?

21 A. It's a daily report, I never was in to  
22 what they was given. He would tell him the air and  
23 all that, I'd say.

24 Q. Do you know who would call Kevin?

1           A.    That'd of been Rick Layne on that day.

2           Q.    And Rick was the face boss that was  
3 underground at the time?

4           A.    Yes, sir.

5           Q.    So possibly it was the preshift report  
6 that he was calling in?

7           A.    That would be it, that's it.

8           Q.    Do you know if Kevin recorded anything in  
9 the books when he got the call?

10          A.    Oh, he has to.  It should have been there.

11          Q.    But you didn't go upstairs to --

12          A.    No, sir.

13          Q.    -- talk to him?  So do you know if Kevin  
14 got a call from the longwall after he talked to  
15 Rick Layne?

16          A.    No, sir, I don't know.

17          Q.    About what time did you guys head  
18 underground that day?

19          A.    It was a few minutes early, about ten to  
20 three I would say.  I'm not for sure on that.

21          Q.    Was it before three?

22          A.    Yes, sir, it was before three.

23          Q.    And then did most of the crew go with you  
24 when you went, including Kevin?

1           A. Well, Kevin was still in the office, so it  
2 was me and the other guy, we hit the mantrip ahead  
3 of time.

4           Q. So you were saving it huh?

5           A. Yes, this time.

6           Q. But then about how long later was it when  
7 Kevin come down there with you?

8           A. Oh, probably five or six minutes, maybe  
9 ten, I'm not sure.

10          Q. But as I understand reading your first  
11 transcript, after the explosion occurred Kevin was  
12 there with you guys?

13          A. Right, he was on the phone getting  
14 the road. He was getting the road, what I'm  
15 saying, he was calling the dispatcher to let him  
16 know that we was getting ready to pull out to go to  
17 the longwall.

18          Q. Was there a phone close there to the  
19 mantrip then?

20          A. Yes, sir.

21          Q. So Kevin was on the phone calling  
22 dispatcher when --

23          A. When the lights went out.

24          Q. When the lights went out, okay. And



1 that's when I think you said they didn't pay the  
2 power bill or something?

3 A. Yes, sir. I did say that just joking.

4 Q. Well, that's understandable. Your job,  
5 you're classified longwall utility, that was your  
6 job --

7 A. Yes, sir.

8 Q. -- prior to the explosion?

9 If you don't mind, explain to me, when you  
10 arrive on the section on the mantrip just kind of  
11 tell me what you do at the beginning of the shift?

12 A. I go check the air, priority one is check  
13 the air. Then I go and check the lifeline. I  
14 check the intake phone and I check the bits on the  
15 headgate to make sure they got bits, check the oil,  
16 and then see the timbers if I got to set any down  
17 the belt line.

18 Q. So you say you check the air, do you  
19 actually do an air reading?

20 A. Oh, no, sir, I go check the curtains, make  
21 sure they're all good and tight.

22 Q. By curtains, which curtains would those  
23 be?

24 A. They would be in entry one, two and three.

1 Q. Then those curtains would be just inby the  
2 air crosscut?

3 A. Yes, sir.

4 Q. You say you check the bits, do you  
5 physically look at the bits on the shearer?

6 A. Oh, no, sir. I'm checking underneath  
7 where we store the new bits. I got to bring them  
8 if they don't have none.

9 Q. That would be at the headgate drive?

10 A. Right.

11 Q. I seen a bunch of bits under there since  
12 I've been on the longwall, so that's --

13 A. Yes, sir, that's where I put them.

14 Q. And when you say you check the oil?

15 A. We got an oil place there in case they  
16 would need oil and I'm not around, I might be over  
17 setting timbers, and they can't get ahold of me, so  
18 I leave it there and then one of the other guys can  
19 come and get it.

20 Q. So you're basically getting the supplies  
21 up there in case the loading crew needed them?

22 A. Yes.

23 Q. And they're available to them?

24 A. Yes, sir.

1           Q.    What about operating up on the face, do  
2 you operate the shields or the shearer any at all?

3           A.    No, sir.

4           Q.    Have you ever?

5           A.    Yes, sir.

6           Q.    How often do you do that?

7           A.    It's according if one of them has to go  
8 they'll holler at me. It might be once or twice a  
9 week, it might be three or four times a week.

10          Q.    Do you ever spell them out for lunch?

11          A.    No. I'm usually setting bits on the  
12 shearer for lunch. Usually they would put it on  
13 there so the guys wouldn't have to crawl or walk.  
14 You know, you wouldn't want to carry bits all the  
15 way to the tail, so they try to get there where  
16 they'd be close, they'd go eat their lunch and I  
17 can change the bits, me and the electricians.

18          Q.    So they'd stop the shearer at the  
19 headgate?

20          A.    Yes, sir.

21          Q.    And then while the shearer operators ate  
22 lunch you guys would set bits?

23          A.    Yes, sir.

24          Q.    So they normally tried to have the shearer

1 at the headgate around dinnertime?

2 A. Yes. Sometimes it would be early and  
3 sometimes it would be late, it's just according.

4 Q. Well, as far as your utility job then, I'm  
5 assuming when you need to deliver the bits and the  
6 oil and that, did you carry that all by hand from  
7 outby somewhere?

8 A. No, I had a scoop, I'd have to go get it  
9 because it stayed outby.

10 Q. Where would the supplies be located  
11 outby?

12 A. Outby would be past the mule train where  
13 all the power and stuff is.

14 Q. Were there in the track entry?

15 A. No, sir.

16 Q. Where would they be located?

17 A. They would be in No. 3 entry.

18 Q. And then you would take the scoop?

19 A. And go get it.

20 Q. And then deliver it up to the face?

21 A. Yes, sir.

22 Q. What about, did you do any rock dusting?

23 A. Yes, sir.

24 Q. Explain to me what you would do as far as

1 rock dusting?

2 A. Well, I'd rock dust around the headgate  
3 and the entry, and then so would the hoot owl and  
4 the other shift. Everybodys' job was to do rock  
5 dusting.

6 Q. Was that all hand dusting?

7 A. Well, that was on my shift. But on the  
8 production shift now on the hoot owl they use the  
9 duster.

10 Q. So did you ever do any hand dusting on the  
11 belt line?

12 A. Yes, sir.

13 Q. Did you ever do any machine dusting on the  
14 belt line?

15 A. No, sir.

16 Q. That was the hoot owl's responsibility?

17 A. Responsibility, and plus they had a belt  
18 man that done it too, the one that took care of the  
19 belt line, the head.

20 Q. He would also dust?

21 A. Yes, sir.

22 Q. Did you carry a multi-gas protector with  
23 you?

24 A. No, sir.

1 Q. Methane spotter?

2 A. No.

3 Q. Do you know who on your crew -- who all on  
4 your crew carried one?

5 A. The shearer operator and the shield, the  
6 one that moved the shield, and the boss.

7 Q. Do you know if bolt shearer operators  
8 carried one?

9 A. Yes, sir.

10 Q. They did to your knowledge?

11 A. To my knowledge they did.

12 Q. Was you involved in moving the air  
13 crosscut? Do you understand what I say when I say  
14 move the air crosscut?

15 A. Yes, sir.

16 Q. Was that part of your job?

17 A. Yes, sir. Whenever they go past, yes,  
18 sir, I moved the curtain.

19 Q. Explain that to me?

20 A. Well, I didn't take the curtains down that  
21 were already there, I just put new ones across. We  
22 left, they stayed behind, we left them and I put  
23 new ones.

24 Q. So you're talking about the curtains in --

1           A.    One --

2           Q.    -- No. 2 and 3 entry?

3           A.    One, two and three.  Yeah, I had one that  
4 went all the way from the rib to the third shield.  
5 And it stayed.  As they advance I would try to be  
6 up there, but sometimes the boss -- if they moved  
7 up and tore it down, the boss would fix it or the  
8 headgate man would come up and fix it.

9           Q.    No. 1 entry is the Bell entry; is that  
10 correct?

11          A.    Yes, sir.

12          Q.    And that curtain, it attached to the rib  
13 and extended down the No. 3 shield?

14          A.    Yeah, sometimes farther, it was  
15 according.

16          Q.    So that curtain would have to be moved up  
17 every time they advanced the shields, correct?

18          A.    Yes.

19          Q.    Now, the curtains across No. 2 and  
20 No. 3 --

21          A.    They moved up every time we changed --  
22 well, you didn't move them up, you put new ones.  I  
23 had rolls of curtain, I left them back there and  
24 you just done it again.

1 Q. So those curtains stayed each time?

2 A. Yes, sir.

3 Q. And you just installed a new curtain?

4 A. Yes, sir.

5 Q. I assume also that moving air involved  
6 knocking the stopping; is that correct?

7 A. Yes, sir.

8 Q. When would you actually knock that  
9 stopping?

10 A. I would wait until it got all the way to  
11 the outby corner to where you'd almost be behind  
12 the wall. Once it got down to that I could knock  
13 the stopping.

14 Q. Was there a certain mark or something, it  
15 had to be so far into that crosscut before you  
16 could knock the stopping?

17 A. Yes, sir. And they would keep changing  
18 it. Once it was half, and then it started being  
19 you had to go farther, because MSHA would change  
20 it.

21 Q. But when the wall got up to that certain  
22 point, whatever it was on that day, then how would  
23 you knock the stopping?

24 A. I took the scoop and knocked it.



1 Q. Knocked with the scoop, okay.

2 And then after you had it knocked would  
3 you install the curtains across two and three after  
4 you knocked the stopping or prior to?

5 A. It was before. I'd have them already set  
6 up, and then I hit it -- well, no, it wouldn't be,  
7 it would be after. I would have the one, I  
8 couldn't put the one in three but I'd have the one  
9 in one and two, and then I knocked the stopping.  
10 And then you put that curtain up.

11 Q. When you knocked that stopping, probably  
12 three was open, you were still getting some air  
13 through the previous air crosscut?

14 A. Yes, sir.

15 Q. Do you recall when the last time you  
16 pulled shields on this face prior to the accident?

17 A. Not really.

18 Q. Let me ask you this. When you did pull  
19 the shields where on the face were you generally  
20 doing it, was it anywhere?

21 A. It was right up, because I'd have to pull  
22 them to set the bits. I'd pull them over the top  
23 so it would cover them so there wasn't nothing  
24 falling on me while I was out there setting the

1 bits.

2 Q. Did you ever pull shields when the  
3 longwall was actually running coal?

4 A. Oh, they'd let me every once in a while,  
5 and then say, Hey, we need this, and I'd have to  
6 go.

7 Q. So your normal job wasn't to be up on the  
8 face?

9 A. Right, I was outby.

10 Q. Did you know the utility man on the B crew  
11 who was on the wall the day of the accident?

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

13 Q. Any idea why (b) (7)(C) was on the face the day  
14 of the accident?

15 A. They might have been broke down and he was  
16 carrying something to them.

17 Q. I mean, sometimes utility guys, do they  
18 train them to pull shields or something?

19 A. Yes, sir. They want everybody to know how  
20 to run it.

21 Q. Because (b) (7)(C) was -- I mean, the two  
22 shearer operators and the shield man and (b) (7)(C) was  
23 down towards the tail gate end of the wall, was  
24 where they was all located. I thought that was

1 kind of unusual for the utility man to be that far  
2 down the face.

3 A. Well, he could been down there for many  
4 reasons. He might have needed bits or something  
5 and he brought them to them, or -- I wouldn't know  
6 what he was doing, but if it was way down there he  
7 was bringing them something.

8 Q. How often do you get to that end of the  
9 face?

10 A. Well, it would be according to what they  
11 go on that day, sometimes I might not see the tail  
12 for a month, and then they might be hollering at me  
13 all the time. I mean, it just varied.

14 Q. If they needed something packed to the  
15 wall --

16 A. I always took mule.

17 MR. CRIPPS: I'm going to take a break.

18 EXAMINATION

19 BY MR. TUCKER:

20 Q. Dean talked to you about the curtains that  
21 you would hang up, you'd always check on the  
22 ventilation as part of what you do each day, what  
23 kind of shape were they usually in when you came in  
24 to start your shift?

1           A.    They was usually pretty tight.  Every once  
2   in a while -- anybody could have went through or a  
3   rock could have hit it, you know, but usually it  
4   was tight.  That's the first thing I did every day  
5   was check it.  Every utility man checked the  
6   curtain.  Because he done his air reading before  
7   they started, so you had to have so much volume, I  
8   used to know it but I can't remember what you had  
9   to have now.

10          Q.    Are you talking about the face boss would  
11   check his air?

12          A.    Uh-huh.

13          Q.    Which way would those curtains be blowing  
14   normally, the pressure?

15          A.    Inby.

16          Q.    Did you ever find that when pressure was  
17   coming outby on those curtains?

18          A.    No, sir, but one time I did in three, but  
19   I had to go back down, there was a set of doors  
20   open, I knew what was wrong if it was coming back  
21   to me.  Somebody left something opened or something  
22   knocked it open.  I'm not saying that somebody  
23   opened and left it, but anything could have  
24   happened.  I'd go down there and shut it and it

1 would be fine.

2 Q. Is that the air lock doors that was in the  
3 crossover area?

4 A. Yes, sir.

5 Q. How often would that happen?

6 A. It happened a couple times to me, that was  
7 it.

8 Q. So you portaled from the Ellis side?

9 A. Yes.

10 Q. Did you notice the air lock doors that was  
11 installed in by Ellis around the construction site  
12 there on the track?

13 A. On the UBB side?

14 Q. No, on the Ellis side.

15 A. Oh, where you first come in?

16 Q. Right.

17 A. Yes, sir, they were there.

18 Q. Would those usually be open or shut when  
19 you'd all go in?

20 A. Well, when they first put them there they  
21 stayed open, but after a while, I don't know, they  
22 started shutting them. But I don't know, that was  
23 just installing them and they shut them. They was  
24 putting them up, but then they was shut after that.

1 Q. The construction site there, when you all  
2 would go in would they be working there at the  
3 construction site?

4 A. As I recall. I mean, they was at first,  
5 they was putting them up.

6 Q. I mean, on the new construction site up  
7 there where they have the miners cutting the belt  
8 channels, just in by the Ellis portal going in.

9 A. I never did see them, there was doors  
10 there that was shut.

11 Q. Did you ever notice any dust coming from  
12 that area when you was traveling in and out the  
13 mine, like where they would be cutting off?

14 A. No, sir, not that I recall.

15 Q. You say you carried a lot of bits, did you  
16 help set bits?

17 A. Yes, sir.

18 Q. Would you notice the water sprays when you  
19 was helping set the bit?

20 A. Yes, sir, because the electrician always  
21 come to check on them, make sure they was running.

22 Q. Did you normally notice sprays being out?

23 A. No, sir.

24 Q. Missing?

1           A.   No, sir.

2           Q.   Would they typically turn the water on  
3 just to double check them before they start back up  
4 or when they first shutdown?

5           A.   Oh, no.  The headgate man played a little  
6 joke on me in turning them.  They worked.  They  
7 worked real good.

8           Q.   While you were setting bits occasionally  
9 you'd get the water turned on?

10          A.   Yes, sir, you had to squall at him to turn  
11 it off, and he'd just laugh and said, I'm getting  
12 it.

13          Q.   Who would take the power off the shearer  
14 when you were -- or how did that work when they  
15 first start to set the bits, what would they do?

16          A.   They would shut it down to where it  
17 couldn't start, you'd lock out.

18          Q.   Who did that?

19          A.   Usually the electrician, he would lock it  
20 out, just push the box, it ain't going to start,  
21 you can't start it nowhere.

22          Q.   What would he push?

23          A.   The E-Stop, you can't start it if the  
24 E-Stop is pushed.  You can't even override it, it

1 won't start. Because you have to look to see which  
2 shield he pushed.

3 Q. How often would you say you helped set  
4 bits?

5 A. It was according on what I had to do, but  
6 usually it was every day or every other day, if we  
7 could get it in time for them for lunch.

8 Q. Just so I'm clear, I may not have asked it  
9 right, but how often while you were setting bits  
10 would you say that you'd replace missing sprays?

11 A. Oh, I don't know, maybe a couple times  
12 whenever I do it, but the maintenance usually had  
13 it pretty well taken care of.

14 Q. When was last time you was on the longwall  
15 while it was running?

16 A. Oh, gosh, I don't know, it might have been  
17 a week or so before the explosion, maybe a couple  
18 days -- well, as a matter of fact, it was a day  
19 before Easter, we had rock. Whenever rock comes in  
20 the pan line they need me real bad to help shovel.  
21 They push buttons, I'm the shoveler.

22 Q. You have a pretty rough job?

23 A. Yes, sir, because what I say when I'm  
24 setting timbers and stuff, see, you have to



1 remember, the third entry is the tail of your next  
2 one, I'm also setting the escapeway for the next  
3 wall. That will be your take. When they advance  
4 this is the tail I'm setting. Lincoln logs I don't  
5 like, I don't know who designed that. It takes a  
6 bunch to build one. You can't haul enough to build  
7 them.

8 Q. So that would have been Saturday then  
9 before Easter?

10 A. Yes, sir.

11 Q. Was you down next to the tail?

12 A. No, sir, not that day, that I recall. I'd  
13 remember if I was down there, because they said it  
14 was a little low.

15 Q. How far down the face, jack line, did you  
16 go that day, do you recall roughly?

17 A. Well, I was on the headgate and I carried  
18 bits down to I think 15 shield, because you have to  
19 set the bits on both ends. When he pulls it down,  
20 sometimes you have to fix you a spot, you don't  
21 want no rock to get you, because it might be loose  
22 there. So they pick a spot and put them at 15 and  
23 5. And if they had to move them, usually it was me  
24 who had to move them, but that's where i set them

1 up. I set nine buckets at each place. That's what  
2 it took, it took nine buckets if you set a full  
3 zone.

4 Q. Did you notice anything different about  
5 the air on that day?

6 A. No, sir.

7 Q. Smell anything different?

8 A. No, sir, not that I recall.

9 EXAMINATION

10 BY MR. BECK:

11 Q. David, you said that every once in while  
12 you'd find a curtain maybe loose or maybe a rock  
13 hit it or something?

14 A. Yes.

15 Q. Did you ever find a curtain completely  
16 down in one, two or three?

17 A. No, sir.

18 Q. You said that when you changed bits it was  
19 procedure to have the shearer up at the head just  
20 so you'd have to carry bits -- somebody would have  
21 to carry bits all the way to the tail?

22 A. It wouldn't have been somebody.

23 Q. It would have been you?

24 A. Yeah. I was hoping they would make it

1 there.

2 Q. If the shearer is on the tail, it's going  
3 to wait until it gets up to the head to get the  
4 bits changed?

5 A. Oh, no, sir. Whenever they do that I put  
6 some on the shearer itself.

7 Q. On the shearer itself?

8 A. Yeah. And then the hoot owl, I don't know  
9 if you all ever heard of a Z bar, that goes on the  
10 shearer, on the magnet, they can carry pallets of  
11 bits, well, it wouldn't be -- you'd have to hand  
12 load it, it was something that you had that you can  
13 take. And when they was hitting the sand rock I  
14 know there were bits down there because I had to  
15 bring extra.

16 Q. And you said part of your job was to check  
17 the bits where they were stored at to make sure you  
18 had them and whatnot; is that right?

19 A. Yes.

20 Q. Was there ever a time you didn't have any  
21 bits, you ran out, there wasn't any on the section  
22 at that particular time?

23 A. No, sir, because that was major, they  
24 wanted them bits.

1 Q. During your travels in and out of the mine  
2 and you come upon air lock doors, did you ever find  
3 the doors left open?

4 A. Yes, sir. One, it would be bent or  
5 something and you'd have to fix it.

6 Q. So it couldn't close because it was too  
7 bent?

8 A. Well, no, it wasn't that, like something  
9 knocked it a little bit and it would hit, but I  
10 mean, it wasn't fully shut. I don't know if you  
11 get what I'm saying. Not that it's wide open, it  
12 just wasn't fully shut.

13 Q. And you'd portal the Ellis portal, right?

14 A. Yes.

15 Q. And in the bathhouse there would be guys  
16 from the longwall, guys from the miner section,  
17 everybody that worked that shift, right?

18 A. Yes.

19 Q. Did you ever hear anybody complain about  
20 air in their section, not having enough air from  
21 time to time?

22 A. Not as I recall.

23 Q. Where you set the Lincoln logs, you said  
24 that would be a gate entry for the next longwall,

1 right?

2 A. That would be the tail.

3 Q. Tailgate?

4 A. Yeah.

5 Q. On this particular section did you have  
6 any trouble with water, which would have been I  
7 guess originally the headgate side, until they  
8 started driving tailgate 22, right?

9 A. Yes, we had pumps over there.

10 Q. Where were they at?

11 A. Well, most of them was back behind the  
12 wall as we advance, they started being behind the  
13 wall. They had the air pumps sit back there now.  
14 I never went back after we started, but we all  
15 worked on the water putting plastic line in.

16 Q. How deep was that water?

17 A. Some of them was deep.

18 Q. Did that ever roof?

19 A. Well, they had to set a pump, because I  
20 think it did roof out. See, I'm not sure, I'm just  
21 going by what I heard. I wasn't back there.

22 EXAMINATION

23 BY MR. BABINGTON:

24 Q. Mr. Shears, you were talking at the

1 beginning, you were kind of talking a little bit  
2 with the other crews before you went under on the  
3 fifth, you'd make them close the doors, where  
4 approximately was that set of air lock doors that  
5 you were referring to?

6 A. It was up toward the tail of the longwall  
7 at the resident when you turn to the right, there  
8 were four sets of doors.

9 Q. Is that around Break 78?

10 A. Yes, sir, that would be it.

11 Q. Approximately where was the phone that  
12 Kevin called from located on the track on fifth?

13 A. It's right from the charger when you  
14 first -- it's three to five breaks.

15 Q. Three to five breaks from Ellis port?

16 A. Uh-huh.

17 EXAMINATION

18 BY MR. MAGGARD:

19 Q. David, when is the last time that you were  
20 on the tailgate side of the longwall? How long  
21 before the accident?

22 A. A week or two, because they shut us down,  
23 because we had to go build stoppings down, they  
24 told me to stop what I'm doing, everybody, MSHA was

1 there, mining people, I didn't even know some of  
2 them.

3 Q. Had you ever set any props any ports on  
4 the tailgate?

5 A. No, sir. They had a crew that done that.  
6 I was on the headgate side, we set them all the way  
7 up, we all separated before the longwall, we had to  
8 have them set so far before we could start. I  
9 can't remember the numbers, it's been a good while,  
10 but they had a crew that done the tail side.

11 Q. You never had to go over on the tail side  
12 and knock out a brattice over there?

13 A. No, we had to build them.

14 Q. As far as supplies that you kept, be it  
15 some at the conveyer drive; is that right?

16 A. Uh-huh.

17 Q. What other supplies would you bring up to  
18 the face?

19 A. I would bring --

20 Q. I know you mentioned oil. Go ahead.

21 A. The inserts, and water sprays, everything  
22 sat on the head drive where they could find it,  
23 they didn't want to have to go looking for it,  
24 because I would be in trouble if they had to look

1 for it.

2 Q. How many water sprays would you keep?

3 A. It varied, I don't know how many was in  
4 the box. They would give me a box of them and I'd  
5 set them on the head drive, I never counted them or  
6 nothing.

7 Q. And who would give you the box?

8 A. I'd get them from outside.

9 Q. Would you bring them all way in yourself  
10 or would they deliver them?

11 A. Well, sometimes they would bring them in,  
12 and sometimes I would bring them, they'd say, Hey,  
13 take this in with you and put it on the head drive,  
14 then I'd take them.

15 Q. You said most days you'd set bits,  
16 sometimes every other day, if you was setting bits  
17 during the shift would you set them more than once  
18 during that shift?

19 A. Usually not, usually they would do it the  
20 second time or the third time, it was a according  
21 to on how it was cut how many times they would  
22 change them.

23 Q. So if you normally set bits, would that be  
24 near the beginning of the shift or sometimes at the



1 end of the shift or would it vary?

2 A. No, usually, the hoot owl usually had it  
3 set with fresh bits.

4 Q. So would sometimes you set bits before --  
5 say you were working day shift, you'd set bits to  
6 have them ready for the evening shift?

7 A. Yes, sir.

8 Q. When you were setting those bits, tell  
9 us -- you normally done it on the head; is that  
10 right?

11 A. Yes.

12 Q. What kind of conditions would you see the  
13 bits in?

14 A. Well, they still had their tips, but they  
15 wanted them sharp, because one said that we was  
16 wasting the bits because that one shouldn't have  
17 been changed yet, but I was told to do it.

18 Q. On the day before Easter, Saturday, what  
19 shift were you on, day or evening?

20 A. Evening.

21 Q. Could you tell any difference in the way  
22 the bits were wearing that day as compared to other  
23 days?

24 A. No, sir.

1           Q.   As far as sprays, do you recall changing  
2 bits on Saturday and changing any sprays on  
3 Saturday, the evening shift?

4           A.   I changed the bits on Saturday, but that  
5 was around lunch time, I couldn't tell you. We was  
6 on the evening shift. Everybody eats different  
7 when we work the evening shift. Six on and three  
8 off, you change the routine in the evening. But I  
9 remember setting the bits, but I don't remember.

10           Now, they had to do something, but I don't  
11 know what they did. Again, and I say, it was bits,  
12 I don't know about the sprays though.

13           Q.   Who normally helped you when you were  
14 setting bits, you said the electrician, who was  
15 that normally?

16           A.   Tommy Estep.

17           Q.   And when you were setting bits and  
18 looking, I mean, which drum would you normally get,  
19 which one would they normally get?

20           A.   Well, usually I'd get the head side and  
21 he'd get the tail side.

22           Q.   When you were looking at changing the bits  
23 out, I guess, tell me what you looked for on the  
24 sprays and how you all handled that when you'd find

1 something wrong, how do you identify it and what do  
2 you do just with the water and the spray?

3 A. Well, you'd have them to look at them and  
4 see if they needed changed, sometimes they'd just  
5 had muck over them, you know, dirt where they've  
6 been pushing. But other than that it was -- he did  
7 it, and as far as I know everything was working  
8 right when we left.

9 Q. When you normally done that, was the water  
10 kept off or what did you all do to check the  
11 sprays? Did you just visually spot them that there  
12 was one missing or tell me about that. Did you  
13 ever have to unclog any?

14 A. You'd have to sometimes wipe it off, there  
15 might be a rock dumped out on it, but other than  
16 that, he did that most of the time setting the  
17 bits, and as far as I know they were all working.

18 Q. Did you ever have to remove the spray on  
19 the head?

20 A. No, sir.

21 Q. Had you noticed, had you ever worked with  
22 the filter system on the mule train, anything else  
23 to do with the water going to the shearer?

24 A. No, sir. I seen the electrician change

1 the filters though, they called them socks.

2 Q. And when you seen them change the socks,  
3 how would the socks look when they took out one and  
4 changed it?

5 A. Well, some of them didn't look that bad,  
6 but he said it was bad, so... I mean, I just looked  
7 at it. I didn't sit there and examine it real  
8 close, it didn't look bad to me. But he said it  
9 was, so I figured he was right.

10 Q. When you guys were changing bits, let's  
11 say right before a shift change and another crew  
12 was coming on getting ready for them to start  
13 running, what would the electrician, and you, maybe  
14 not you, but would he do any kind of checks on the  
15 machine as far as the water, how it was doing or?

16 A. Yeah, he would check the oil, they'd  
17 grease it, he wanted everything greased. And he  
18 would check other things, but I don't know or  
19 recall what he was checking?

20 Q. Did he use any kind of tools or anything  
21 you noticed he was using up there when he done any  
22 kind of checks?

23 A. No, sir. I wasn't paying attention to  
24 him.

1           Q.    Would he check your end or you pretty much  
2 handled the head end and he handled the tail end,  
3 how did that work?

4           A.    Well, no, he'd come and check the sprays  
5 and stuff like that.  He told me I was just a scoop  
6 man.  That's what he told me.  I said, okay, I'll  
7 remember when you need the oil, I'm just the scoop  
8 man that's sitting out there.

9           Q.    How would he normally -- would he wipe the  
10 spray if he seen one caked up or did you ever see  
11 him remove any or try to unclog some?  How did he  
12 do that?

13          A.    I seen him remove and replace them.  But I  
14 never seen him trying to unclog one.  And then he'd  
15 holler at the headgate man to hit it just a little  
16 bit, but the headgate man was hard of hearing, he'd  
17 leave it on for a little while.

18          Q.    So did you all ever have problems that you  
19 couldn't keep them unclogged or anything, that you  
20 recall?

21          A.    Not as I can recall.

22          Q.    As far as rock dusting, how often would  
23 you have to do some rock dusting, like say on the  
24 belt line?

1           A.    Well, I try to keep the rock dusted like  
2 right where I was everyday.

3           Q.    Where would that normally be?

4           A.    From where the headgate man is to the  
5 shield. I try to the keep rock dusted every day.

6           Q.    Would that area normally look better than  
7 the outby portion towards the mother drive of the  
8 belt, or in comparison how was the rock dust?

9           A.    Well, I never was down at the head drive  
10 too much, but on that, I couldn't say.

11          Q.    You said they would hit an E-Stop for you  
12 to change bits, where was that E-Stop located?

13          A.    It was on the shield, you could hit E-Stop  
14 and it wouldn't let the shield move, nothing  
15 moved. The pan can't come on, the chain can't come  
16 on, can't no pump get going, won't nothing work.

17          Q.    What would the crew have to do as soon as  
18 you get through changing bits about starting back  
19 to run, what did they have to do?

20          A.    Well, we would have to holler at the  
21 headgate man to fire everything back up, and then  
22 he'd holler and say, Well, somebody had to come  
23 unlock it, because he couldn't fire it up. If it  
24 was locked out he couldn't do nothing.

1 Q. Who was the headgate man?

2 A. On our shift?

3 Q. Yes.

4 A. Woody.

5 MR. MAGGARD: I'll take a break.

6 MR. KOERBER: Who is Woody?

7 A. I'm trying to think of his name. Kenneth  
8 Woodrum.

9 EXAMINATION

10 BY MR. SCOTT:

11 Q. You talked about at the start of your  
12 shift on Monday that you all were in there, you and  
13 a couple of guys went in kind of early, you was  
14 going to get the first mantrip to get through the  
15 doors, and the boss was on the phone getting roads  
16 from the dispatcher, and you said the lights went  
17 out and you said that's when they forgot to pay the  
18 power bill or something.

19 A. Yes, sir.

20 Q. Did you feel the force of the explosion  
21 soon after that?

22 A. Well, the wind came.

23 Q. How soon after the lights went out did  
24 you --







1           A.    Yeah, so I can talk to the other ones  
2 behind me.  Yes, it was.

3           Q.    I'm surprised a scoop man thought of  
4 that.

5           A.    Every once in a while we have our days.

6           Q.    I need to clarify something, you talked  
7 about the parts kept over in the No. 3 entry, as I  
8 understand the track entry is No. 2; is that  
9 correct?

10          A.    Yes, sir.

11          Q.    Are the parts delivered to the units on  
12 the track?

13          A.    Yes, sir.

14          Q.    How are they delivered?

15          A.    Flat car.

16          Q.    How do they get from the flat car on the  
17 track over to No. 3 entry?

18          A.    Usually I pull them off with the scoop,  
19 but sometimes they had a forklift.  But it wasn't  
20 allowed past the mule train because it wasn't MSHA  
21 approved.

22          Q.    Say that again?

23          A.    I said it wasn't approved, they couldn't  
24 have it past the mule train.

1           Q.    Couldn't have the forklift past the mule  
2 train?

3           A.    No.

4           Q.    Couldn't have it inby the mule train or  
5 outby?

6           A.    Couldn't have it inby, it could be outby  
7 but it couldn't be inby.

8           Q.    So you could use it to unload supplies off  
9 the flat car?

10          A.    Oh, it never worked when I got down there,  
11 somebody would take the fuses out. They thought I  
12 didn't know, but I knew. But I didn't need it, I  
13 could pick it up with the scoop. It was already  
14 sitting there, I could get it.

15          Q.    So would the supply man that delivered the  
16 parts, would they wait there until you unloaded the  
17 flat car?

18          A.    No, they unloaded it themselves. They do  
19 that on the hoot owl, that would be all hoot owl.

20          Q.    So they'd unload the flat cars?

21          A.    Uh-huh.

22          Q.    And would they leave it beside the track  
23 or would they move it over to No. 3 entry?

24          A.    Yeah, where I had the oil I had for the

1 oil station, with two fire extinguishers and rock  
2 dust, that's where it had to stay. Now, the bits  
3 and stuff, they put them there, the bits ended up  
4 being dumped out and everybody would take the  
5 bucket. They don't now how hard it is to carry a  
6 bucket full of bits down the line.

7 Q. Without the bucket.

8 A. Uh-huh, they did that on hoot owl most of  
9 the time.

10 Q. The forklift you say that you couldn't  
11 use --

12 A. Yes.

13 Q. -- where was it most of the time?

14 A. It stayed outby the mule train.

15 Q. Would it be on charge?

16 A. Yes, sir.

17 Q. So there was a charge station for the  
18 forklift?

19 A. Yes, sir.

20 Q. What about the scoop, was there a charger  
21 up there for the scoop?

22 A. Yes.

23 Q. We also seen a couple of shield movers?

24 A. Yeah.

1 Q. Did you operate them?

2 A. Yes, sir.

3 Q. Was there a charge station for them?

4 A. Yes, sir. There was one for each one.

5 There was one for the shield hauler and one for the  
6 scoop and one charger for the forklift.

7 Q. We seen the charge stations were in the  
8 crosscuts between the track entry of No. 3 to near  
9 the mule train?

10 A. Yes, sir.

11 Q. Is that pretty common where the charge  
12 station would be?

13 A. Yes, sir.

14 Q. We also seen, it appeared to me that the  
15 intake air for the section went up the track and it  
16 also went up No. 3 entry; is that your  
17 recollection?

18 A. Yes, sir.

19 Q. Did that concern you at all?

20 A. No, sir.

21 Q. The air that ventilated near the charge  
22 station ended up going to the face; is that  
23 correct?

24 A. Yes, sir.

1 Q. Do you recall if there was any type of  
2 monitoring of those charge stations, CO sensors?

3 A. CO.

4 Q. Do you know where it was located, the  
5 sensor?

6 A. Yes, right real close to it.

7 Q. To?

8 A. To the chargers.

9 Q. One CO sensor?

10 A. Yes, just one.

11 Q. And it was inby the charge station?

12 A. It was right at the charge station,  
13 because they'd set it off sometimes and you'd have  
14 to go down there and see what was going on.

15 Q. The CO sensor would go into alarm?

16 A. Uh-huh.

17 Q. How would you guys determine it was an  
18 alarm?

19 A. I usually hear it. It'd do it at the  
20 headgate or they'd call from outside and let you  
21 know it was doing it, and then it would beep.

22 Q. When it went into alarm did somebody go  
23 check it?

24 A. Yes, sir.

1 Q. Pretty quickly?

2 A. Yes, sir.

3 Q. Who would check it?

4 A. Usually the electrician would go down  
5 there, because he'd have to reset it.

6 Q. What did he determine set it off,  
7 generally?

8 A. It could be one of the batteries getting  
9 hot, then you got your fire suppression on your  
10 charger, so it didn't set that off. It could be --  
11 I don't know, or it could be the sensor itself just  
12 go off.

13 Q. When you were setting timbers on the belt  
14 what type of timbers were you setting, was it wood?

15 A. Yes.

16 Q. Did you set any sand drop?

17 A. Yes, sir.

18 Q. So the wood timbers, how did you get them  
19 to the belt line?

20 A. Carry them.

21 Q. By yourself?

22 A. Uh-huh.

23 Q. Were they always the correct length?

24 A. No, I cut them with a saw. I usually had

1 help, usually a red hat was with me.

2 Q. So you would have help setting the  
3 timbers?

4 A. Uh-huh.

5 Q. Did you ever see the belt examiner in his  
6 route on the belt line?

7 A. Yeah.

8 Q. Did you ever talk to him while he's  
9 walking the belt?

10 A. Every once in a while.

11 Q. Did he ever mention to you, express any  
12 concern to you about the condition of the rock  
13 dusting on the belt?

14 A. No, sir. But every once in a while he'd  
15 ask me would I push dust for him in certain  
16 places. I said no problem, if I had the time.  
17 Usually I put it there. But if I didn't then I'd  
18 tell one of the hoot owl guys that I couldn't make  
19 it, and get it all that he needed and then they  
20 would finish it.

21 Q. Did you ever see Jack Roles up on the  
22 section?

23 A. Yes, sir.

24 Q. Do you know who Jack is?



1           A.    Yes, sir.

2           Q.    What is his title?

3           A.    He was the coordinator of the longwall.

4           Q.    What did Jack do when you'd see him up  
5 there?

6           A.    He'd go see what they was doing.

7           Q.    Go on the face?

8           A.    Yes, sir.

9           Q.    Did he ever look around outby?

10          A.    Yes, sir, he'd come and see, tell me to  
11 get a move on.

12          Q.    Come checking on you then?

13          A.    Yes, sir.

14          Q.    Did you ever see him over on the belt  
15 line?

16          A.    Yes, sir.

17          Q.    What, was he looking at the monorail or do  
18 you know?

19          A.    He was probably looking to see how much  
20 more we could go down the monorail before you'd  
21 have to move, before the hoot owl would have to  
22 move the monorail.

23          Q.    So as coordinator was that just one of his  
24 functions?

1           A.    Yes, sir, but he was the boss too.

2           Q.    Did he give you instructions?

3           A.    Every day.

4           Q.    What would he tell you?

5           A.    Get them timbers set, make sure they got  
6 bits, and hurry.

7           Q.    Stuff you was already doing anyway?

8           A.    Yes.

9           Q.    Did he ever come up if you was in the  
10 middle of one job and stop you to go do something  
11 else?

12          A.    Yes, sir.

13          Q.    Give me a for instance?

14          A.    The longwall broke down, he told me to go  
15 wait on that part. He said, Stop right now, go  
16 wait on that part and don't leave, don't make me  
17 come looking for you.

18          Q.    Where would you go waiting on the part?

19          A.    At the double doors outby the mule train,  
20 because they'd bring it and I'd get it and take it  
21 to the face. Then I'd holler for help most of the  
22 time because it wasn't a little part.

23          Q.    There's not many of them on the longwall  
24 is there?

1           A.   No, sir.  No, sir, there's not.

2           Q.   Did you ever see Jack, did he ever go in by  
3 the face, in with the crossover area?

4           A.   You mean behind the wall?

5           Q.   Yes.

6           A.   Yeah, they'd go back through there to  
7 check the pumps.

8           Q.   Who else in upper management would you see  
9 up there?

10          A.   Harold Lilly.

11          Q.   Harold?

12          A.   He'd check the pumps, I always said he was  
13 swimming back there.

14          Q.   Would he come out wet?

15          A.   Yeah.

16          Q.   How deep had he been in the water?

17          A.   I don't know, it looked like he fell in  
18 it.  That's why I told him he was swimming.  But  
19 he'd always let me know if he was going back there,  
20 he said in about an hour you come looking for me.  
21 I checked to make sure that he was coming back.

22          Q.   What about Chris Blanchard, did you ever  
23 see him up there?

24          A.   I seen him up there a couple times, but I

1 kind of stayed away from that man. I didn't like  
2 him too much.

3 Q. Why is that?

4 A. He's a smart aleck.

5 Q. Was he a pretty smart coal miner?

6 A. I don't know, I didn't hang around him.

7 Q. Did he ever give you any orders?

8 A. No. If he did, I didn't hear him. I hope  
9 you don't write that down. I stayed away from that  
10 man.

11 MR. CRIPPS: That's all I've got.

12 MR. KOERBER: Let's take a two minute  
13 break just to make sure we've asked all the  
14 questions so we don't have to bring you back and  
15 we'll be done here in a minute.

16 (Break.)

17 MR. KOERBER: Let's go back on the record.

18 EXAMINATION

19 BY MR. CRIPPS:

20 Q. We huddled up there and they come up with  
21 a couple more things to ask you.

22 You mentioned earlier occasionally seeing  
23 one of the curtains across No. 2 and No. 3, have  
24 you ever known of them to go ahead and start

1 production or continue production if them curtains  
2 were down?

3 A. No, they'd be on me. I can't say for the  
4 other shift, but I know Kevin, he wouldn't like me  
5 that day if I wasn't up there checking. But as far  
6 as I know they were all like that, you didn't want  
7 that curtain down.

8 Q. But if there was one down Kevin wouldn't  
9 start loading until --

10 A. No, sir.

11 Q. With them curtains down, would he  
12 generally have his air or would he be low on air?

13 A. Oh, he'd have it, but he would check just  
14 like I did. Because me and him both, we checked  
15 our phones and stuff. I always check to make sure  
16 the intake phone, the escapeway phone, that would  
17 be what I would check. I checked it every day.

18 Now, when I was at Logan Fork when you  
19 checked it you called the security guard and you'd  
20 have to say Two Lima or he wouldn't answer. Don't  
21 ask me why.

22 Q. You had to say what?

23 A. Two Lima, that was his code, or he would  
24 not answer. I was thinking my lights wouldn't

1 work, I was changing batteries in the phone and  
2 everything, I thought the doggone battery is dead.  
3 He said, Two Lima. I'm going to kill you. If I  
4 ever find out where you're at I'm going to kill  
5 you. I hope you didn't put that on there. Strike  
6 that one from the record.

7 I caught myself, I even talked a guy in to  
8 saying it over at -- I forget where I was, I forget  
9 where I was, we had to check it and I said, Say Two  
10 Lima. The guy said, What are you talking about. I  
11 said they won't kill you, we're only loading the  
12 fork. It was funny. Okay.

13 Q. You say Kevin, was he pretty up wanting  
14 his ventilation correct?

15 A. Yeah, sir, he would be dead on me.

16 Q. So if it was low he was looking for you?

17 A. Oh, he'd be squalling, I'd hear him.

18 Q. You think Kevin was a pretty good boss as  
19 far as being concerned about safety and you guys?

20 A. Yes, sir. There was a bunch of them like  
21 that, like the ones that are gone. You lost two  
22 bosses there. You lost Timmy and you lost Rick.  
23 Timmy was, you know, him and his nephew. His son  
24 was with me that day we was in that mantrip, Cody.

1 Q. Are you aware of or did Kevin ever say  
2 anything to you about anybody in management above  
3 him putting pressure on him to operate when he felt  
4 things weren't right?

5 A. No, sir, not that I recall.

6 Q. Do you think he would have operated if  
7 someone had called in and said put in the coal?

8 A. No, I know what he would have told them.  
9 I can't say that here. I know what he would have  
10 told him. They would have kissed something for  
11 him. He wouldn't have done it. And the guys  
12 that's on night shift wouldn't have done it.

13 Q. That's Rick you're talking about?

14 A. Yeah, there was a man there, Grover, sir,  
15 you know him. He was a Christian man. Something  
16 happened, I don't know what, I wish we'd find out  
17 so it don't happen again.

18 Q. We're with you on that one.

19 When you was doing your jobs outby, say  
20 setting timbers, were you aware is there a certain  
21 time frame that you was allowed to do each task?

22 A. No, sir.

23 Q. So did Kevin when you was setting timbers,  
24 did he have to turn in a report every day for the

1 amount of time you was taking to do each task?

2 A. No. I had to stay in front of the  
3 longwall. I didn't want to be inby. We had to  
4 shutdown if I got behind, which they was building  
5 the belt line, I had to stay in front, you can't  
6 set them once you pass, so I had to really stay in  
7 front of them there.

8 But now your escapeways, you had to have  
9 it. It was rough trying to keep up with it.  
10 Because they had to get me help, because we started  
11 out, I got a little bit behind, but then they had a  
12 crew to help me out, and you didn't stay behind  
13 inby.

14 Q. Did you ever in any of your days working  
15 there ever have anybody walk around with a  
16 clipboard and stop watch just watching you and  
17 timing your jobs and your moves, time studying you?

18 A. No, sir. Not on the wall. I have since I  
19 worked on the miner section, but he ain't timing  
20 me, he's timing the guys. He said he don't time  
21 the scoop man. But they time the miner section. I  
22 don't know what all they time, it's been a long  
23 time I seen a time keeper.

24 Q. Apparently Jack Roles most of the time



1 studied you though, huh?

2 A. Oh, yeah.

3 MR. CRIPPS: I think that's all I've got.

4 EXAMINATION

5 BY MR. BECK:

6 Q. David, the longwall probably didn't have a  
7 whole lot of time left to mine, by looking at the  
8 mine permit, it was maybe a month, month and a  
9 half, somewhere in that time frame?

10 A. Maybe not that.

11 Q. And there really wasn't anywhere else to  
12 go ready?

13 A. No, sir.

14 Q. Was that a concern for people at the mine,  
15 that where are we going to go when this longwall  
16 finishes?

17 A. No. We knew they'd stick us at other  
18 mines until the longwall was ready. They could  
19 have given me a couple days off, I wouldn't have  
20 minded.

21 Q. But they didn't tell you, We're going to  
22 move you back to Logan's Fork or anywhere like  
23 that, they just --

24 A. No, they was -- the way I understood it we

1 was going to go Ellis for a little one, I mean it  
2 wasn't going to be like a 500 foot, but I'm not  
3 sure. I'm just going by what I hear them say.

4 MR. BECK: That's all.

5 MR. KOERBER: David, everybody has been  
6 asking you questions, it is now time if you have  
7 anything you would like to add, any statement you  
8 would like to make, anything you would like to  
9 clarify, anything you would like to say, the floor  
10 is yours.

11 THE WITNESS: I would like to ask MSHA  
12 something.

13 On the tail side, the stoppings were  
14 already out, why did they need to put them back if  
15 they were already out?

16 MR. CRIPPS: Can you answer that?

17 MR. MAGGARD: No, other than that's what  
18 the plan had in it.

19 THE WITNESS: They were already out and  
20 then all of a sudden we needed them back. I just  
21 wondered why. I asked the guys, I couldn't tell  
22 you who they was, I don't even remember their face  
23 that was there. I asked them, Why are we doing  
24 this if we didn't need them, in the beginning, it's

1 done run this long, why do we have to build these  
2 stoppings back.

3 MR. MAGGARD: I forgot about how that  
4 worked exactly, but there was a regulator I guess  
5 down there around that crossover route, part of the  
6 outby, that they had to have air sweep and come  
7 toward Bandytown. It had something to do with that  
8 I'm sure.

9 THE WITNESS: I just always wondered. We  
10 run this long, we come from 80 rig to 24, and now  
11 we need these stoppings built. Nobody ever would  
12 answer me. I don't understand why.

13 MR. MAGGARD: You're kind of asking a  
14 couple guys here that's not real ventilation savvy,  
15 we're more electrical. That's a good question.

16 THE WITNESS: I never understood. Did we  
17 build a bomb? I mean, I hope this is off the  
18 record.

19 MR. BABINGTON: If you want to go off the  
20 record then we need to go off the record.

21 THE WITNESS: Yeah, strike that.

22 MR. KOERBER: Let's go off the record.

23 (This interview concluded at 2:45 p.m.)

24

1 STATE OF WEST VIRGINIA, To-wit:

2 I, James D. Nielsen, a Notary Public and Court  
3 Reporter within and for the State aforesaid, duly  
4 commissioned and qualified, do hereby certify that  
5 the interview of DAVID SHEARS, was duly taken by me  
6 and before me at the time and place specified in  
7 the caption hereof.

8 I do further certify that said proceedings  
9 were correctly taken by me in stenotype notes, that  
10 the same were accurately transcribed out in full  
11 and true record of the testimony given by said  
12 witness.

13 I further certify that I am neither attorney  
14 or counsel for, nor related to or employed by, any  
15 of the parties to the action in which these  
16 proceedings were had, and further I am not a  
17 relative or employee of any attorney or counsel  
18 employed by the parties hereto or financially  
19 interested in the action.

20 My commission expires the 15th day of May  
21 2016.

22 Given under my hand and seal this 27th day of  
23 February, 2011.

24 -----  
James D. Nielsen  
Notary Public