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Statement Under Oath of Roger Toney

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STATEMENT UNDER OATH

OF

ROGER TONEY

taken pursuant to Notice by Danielle Ohm, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia on Monday, June 7, 2010, beginning at 10:00 a.m.

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ATTORNEY WILSON:

Good morning. My name is Bob Wilson.

I'm with the Office of the Solicitor, United States Department of Labor. Today is June 7, 2010. We are here this morning to conduct an interview of Roger Toney. With me is Dave Steffey. Dave is an accident investigator with the Mine, Safety & Health Administration. Also present are investigation team members from the State of West Virginia. I'll ask that they state their appearance for the record.

MS. MONFORTON:

Celeste Monforton with the Governor of West Virginia special team.

MR. FARLEY:

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

MR. O'BRIEN:

I'm John O'Brien with the West Virginia Office of Miners' Health, Safety & Training.

ATTORNEY WILSON:

We also have several other members of the investigation teams present in the room this morning. All members of the Mine, Safety & Health

1 Administration Accident Investigation Team and all
2 members of the State of West Virginia Accident
3 Investigation Teams shall keep confidential all
4 information that is gathered from each witness who
5 voluntarily provides a statement until all witness
6 statements are officially released. MSHA and the
7 State of West Virginia shall keep this information
8 confidential, so that a premature release of
9 information does not jeopardize or prejudice other
10 enforcement activities. This confidentiality
11 requirement does not preclude investigation team
12 members from sharing information with each other or
13 with other law enforcement officials. Everyone's
14 participation in this interview constitutes their
15 agreement to maintain this confidentiality.

16 Mr. Toney, government investigators and
17 specialists have been assigned to investigate the
18 conditions, the events and circumstances surrounding
19 the fatalities that occurred at the Upper Big Branch
20 Mine on April 5th, 2010. The investigation is being
21 conducted by MSHA pursuant to Section 103(a) of the
22 Federal Mine, Safety & Health Act and by the West
23 Virginia Office of Miners' Health, Safety & Training.
24 We appreciate your assistance in this investigation.
25 You may have a personal attorney or representative

1 present during the taking of this statement. Do you
2 have a representative with you today?

3 MR. TONEY:

4 No.

5 ATTORNEY WILSON:

6 Your statement is completely voluntary.

7 You may refuse to answer any question and you may
8 terminate your interview at any time. If you would
9 like to take a break at any time, please let me know,
10 and we can go off the record. And this is not an
11 adversarial proceeding, formal Cross Examination-type
12 questions are not permitted. However, we will be
13 asking follow-up and clarifying type questions as
14 appropriate.

15 Your identity and the content of this
16 conversation will be made public at the conclusion of
17 the interview process and may be included in a public
18 report of the accident unless you request that your
19 identity remain confidential. If you request us to
20 keep your identity confidential, we will do so to the
21 extent permitted by law. In other words, if a Judge
22 orders us to reveal your name or if another law
23 requires us to reveal your identity, we may need to do
24 so. Also, there may be a need to use the information
25 that you provide to us or other information that you

1 may provide in the future in other investigations or
2 hearings into the explosion. Do you understand or do
3 you have any questions?

4 MR. TONEY:

5 I do understand, yes.

6 ATTORNEY WILSON:

7 Do you have any questions?

8 MR. TONEY:

9 No.

10 ATTORNEY WILSON:

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

20 A court reporter will be recording the
21 interview, so please speak loudly and clearly. If you
22 do not understand a question asked, please ask that
23 the question be rephrased. Please answer every
24 question as fully and completely as you can.

25 Again, I want to thank you in advance for

1 your appearance here today. Your cooperation is
2 critical to making the nation's mines safer.
3 After we have finished asking questions,
4 we will provide you with an opportunity to add
5 anything to the record or to make a statement if you
6 would like. If at any time after the interview is
7 complete, if you think of additional information that
8 you believe would be helpful to the investigation,
9 please contact Norman Page, who is the lead
10 investigator for MSHA at the contact information that
11 was provided in the letter that we provided to you.

12 As a miner, you should know that any
13 statements given by miner witnesses to MSHA are
14 considered to be an exercise of statutory rights and
15 protected activity under Section 105(c) of the Mine
16 Act. If you believe that any discharge,
17 discrimination or any other type of adverse action is
18 taken against you as a result of your cooperation with
19 this investigation, you are encouraged to immediately
20 contact MSHA and file a complaint under Section 105(c)
21 of the Act. Remedies under the Mine Act include
22 immediate temporary reinstatement to your most recent
23 position pending a full investigation of your
24 complaint. Also, back wages are a possible remedy.
25 In order to file a complaint, you would contact the

1 MSHA District Office in Mount Hope, and the contact
2 information for that is also contained in the letter
3 that was provided to you. Additionally, if you want
4 to learn more about your rights as a miner under the
5 Mine Act, you can go to MSHA's website at
6 www.msha.gov. But at this time, I'm going to ask that
7 the court reporter swear you in.

8 -----
9 ROGER TONEY, HAVING FIRST BEEN DULY SWORN, TESTIFIED
10 AS FOLLOWS:
11 -----

12 ATTORNEY WILSON:

13 Thank you, Mr. Toney. At this time, I'll
14 pass it to Terry Farley to begin the questioning.

15 EXAMINATION

16 BY MR. FARLEY:

17 Q. Okay to call you Roger?

18 A. Yeah, that's just fine.

19 Q. Okay. Roger, if you would, please, begin by
20 giving us your full name and if you don't mind, spell
21 your last name?

22 A. My name is Roger Aaron Toney. Last name's spelled
23 T-O-N-E-Y.

24 Q. Uh-huh (yes). Would you also give us your home
25 address and a phone number for us?

1 A. Yes. (b) (7)(C)

2 (b) (7)(C)

3 Q. Okay. What's your total coal mining experience?

4 A. It will be five years October the 28th.

5 Q. Okay.

6 A. So not quite five years.

7 Q. Okay. Now, where are you currently employed?

8 A. Right now I'm employed --- I'm still employed by
9 Performance Coal Company, but I'm working on Marfork
10 Coal Company property at the Marsh Fork Mine.

11 Q. Okay.

12 A. See, there's no work at my mine, ---

13 Q. Right.

14 A. --- so they distributed us through the company.
15 So that's where I'm at right now.

16 Q. Okay. And how long have you been at Marsh Fork?

17 A. Let's see, the explosion happened April 5th. I
18 went back to work two weeks later, which would have
19 made that --- I'm sorry, I don't have an exact date.
20 It was two weeks after the explosion is when I started
21 at Marsh Fork on Monday.

22 Q. That's close enough. Thank you. When did you
23 originally start at the Upper Big Branch Mine?

24 A. That's the mine I --- that's the only mine I've
25 ever worked at. I was a red hat there.

1 Q. Okay.

2 A. So when they moved me to Marsh Fork, that's the
3 first time I worked at a mine other than at
4 Performance.

5 Q. Okay. So about four and a half years there; is
6 that correct?

7 A. Yes, sir. Yeah.

8 Q. Correct?

9 A. Yeah.

10 Q. Which section did you work on in the days and
11 weeks preceding the explosion?

12 A. Well, the day of the explosion, we were on a new
13 longwall setup. We hadn't started running coal yet.
14 We were in the process of moving our equipment from
15 where we were, which was Three section to the new
16 setup. We were in the process of moving the day that
17 this happened.

18 Q. Okay. Now, can you point that out to me on a map,
19 the section where you were working, if you would,
20 please?

21 A. Yeah.

22 Q. And please be as descriptive ---

23 A. Okay.

24 Q. --- as you can, for the benefit of the court
25 reporter.

1 A. If you'll give me just a minute to orient
2 myself ---

3 Q. Okay.

4 A. --- here. Okay.

5 Q. The Upper Big Branch Portal would have been the
6 area here and the Ellis Portal would have been up
7 here.

8 A. Okay. Now, the section we were on was on what's
9 known as the south side. That's where we were moving
10 from.

11 Q. Okay.

12 A. And we were moving to this headgate here. Now, I
13 don't see it named, so I don't know. It doesn't have
14 a number before it.

15 Q. In order to --- the closest portal to this
16 headgate you're referring to would be the Ellis
17 Portal?

18 A. The Ellis Portal, yeah.

19 Q. You would travel in the Ellis Portal approximately
20 20 crosscuts and turn left and ---?

21 A. Well, actually that's not right. We were
22 portalling at Upper Big Branch. And even though it's
23 a long way, they didn't have room for us in this bath
24 house yet. So we were still in the process of
25 portalling from here. So the day of the explosion I

1 went underground here and we went the long way around
2 to there.

3 Q. Okay.

4 A. It is closer for us here, but we were not
5 portalling here.

6 Q. Okay. Was the plan to eventually portal at Ellis?

7 A. Yes, sir.

8 Q. Okay.

9 A. Yeah, some of the guys we work with were already
10 there, but the group of guys I was with, we were
11 portalling from here. See?

12 ATTORNEY WILSON:

13 If you think you need another map --- I
14 mean, we got another map, so ---.

15 BY MR. FARLEY:

16 Q. When did you start working on that particular
17 section?

18 A. Now, I don't have exact dates, but it seemed like
19 we were there for about a week. We were in the
20 process of moving for about a week, I believe, because
21 we had to bring tailpiece and flow through. I don't
22 know exactly how many days, but it felt like about a
23 week we were in the process of moving. So we were
24 back and forth, you know, from one section to the
25 other, moving stuff.

1 Q. Now, did you work on the Headgate 22 section at
2 any time?

3 A. No, sir.

4 Q. Okay. Now, what was your job on the section that
5 --- where you started and then you moved to the other
6 one?

7 A. I was a shuttle car operator.

8 Q. Okay. You were not a roof bolter operator?

9 A. No, sir. I was a center shuttle car operator.

10 Q. Okay. Who was your foreman on that section before
11 you moved?

12 A. Bobby Baker.

13 Q. Bobby Baker?

14 A. Yeah. He was my immediate boss.

15 Q. Okay. Now, when you arrived on this section on a
16 daily basis, what was your normal routine when you
17 first arrived on the section? What did the crew, as a
18 whole, do?

19 A. You mean, like as soon as the mantrip pulled up?

20 Q. Yes. What did you do? Did you gather at any
21 particular place or ---?

22 A. We would gather around the mantrip. This is every
23 day. We would gather around the mantrip and our boss
24 would read from his --- he had something that he would
25 read from every day. We'd have our little safety

1 meeting. It took three to five to seven minutes,
2 depending on how much he had to read. And then after
3 he read his little bit, then we would have a word of
4 prayer, and we would go to the face. Now, on Mondays
5 it was a little bit different. We had our safety
6 meeting, and then I would read scripture and say a few
7 words, and then we'd have prayer and go to the face.
8 But Monday was the only day that we had a scripture
9 reading.

10 Q. Okay. I understand. What did your foreman do
11 after your typical morning meeting? Did he examine
12 the faces?

13 A. Well, I'm really not sure exactly what he did
14 because we all had our own things to do. So when we
15 split up, I usually went to my shuttle car, cleaned it
16 out, sprayed some WD-40 on the hinges, you know, just
17 stuff like that. I honestly don't know what he did.

18 Q. Did you routinely perform a pre-operational check
19 on your shuttle car?

20 A. Yes, sir. It's what I did every morning or
21 evening. Every swing shift, that's the first thing I
22 did, because I'm a real stickler on keeping my buggy
23 cleaned out.

24 Q. Now, at the beginning of each shift, was it
25 necessary to put the equipment breakers in at the

1 power center?

2 A. Yes, it was.

3 Q. Who would routinely do that?

4 A. Most of the time it was me that went through
5 there.

6 Q. Okay.

7 A. Pop them out, in and head on to ---.

8 Q. Now, what was your actual shift you worked?

9 A. The day of the explosion?

10 Q. Yes. Let's start with that.

11 A. I was on dayshift.

12 Q. Okay. Now, let's back up to before you --- to the
13 time before you moved to the new shift.

14 A. Okay.

15 Q. All right?

16 A. I thought you was heading to the map.

17 Q. Okay. You were on the dayshift on the day of the
18 explosion?

19 A. Yes.

20 Q. Now, prior to that --- and you came to that new
21 area about a week before. Is that what you told me?

22 A. Yeah.

23 Q. Okay. Now, on the other section where you
24 worked, ---

25 A. Okay.

1 Q. --- what was your shift?

2 A. Swing shift. Two weeks day, two weeks evening,
3 two weeks day, two weeks evening.

4 Q. Okay. Now, how long had you worked on that
5 particular section?

6 A. We started on that section before Christmas ---
7 close to Christmas. I don't know an exact date. I
8 just remembered it was before Christmas.

9 Q. Okay.

10 A. Around probably the end of November, ---

11 Q. All right.

12 A. --- early December, is when we started on that
13 section.

14 Q. All right. Now, one of my earlier questions was
15 about who put the equipment breakers in. Did you, at
16 any time when you arrived on the section, find that
17 the breakers for the equipment were already energized?

18 A. Yeah. Sometimes when we came to the section they
19 were already set up. You know, most of the time they
20 weren't, but there were times when we come to the
21 section, ---

22 Q. Okay.

23 A. --- that they were in.

24 Q. Okay. Now, as a shuttle car operator, did you
25 typically carry a methane detector?

1 A. No, sir.

2 Q. Okay. What people on the section routinely
3 carried a methane detector?

4 A. Both miner operators and our section boss.

5 Q. Okay. On that particular section, I think you
6 called it Three section, ---

7 A. Yes, sir.

8 Q. --- okay, did anyone ever detect any methane on
9 that section?

10 A. On Three section?

11 Q. Yes. Since December or whenever you started
12 there.

13 A. Well, if we did, I don't remember any significant
14 methane. Most of the time, if we did have methane it
15 was around one-tenth, you know, .1, .2. I don't
16 remember ever really any significant ---.

17 Q. Now, what would you call significant?

18 A. Gassing the miner off is significant to me.

19 Q. Okay. But would you consider one percent
20 significant?

21 A. One percent gets my attention.

22 Q. Okay.

23 A. And then around two percent, it's starting to get
24 significant.

25 Q. Okay. I just wanted to make sure we have the same

1 definitions.

2 A. Right.

3 Q. Did the Three section have a deep cut mining plan?

4 A. I think we were on 20-foot cut plan.

5 Q. Okay.

6 A. I believe that's what we were on, is 20 feet.

7 Q. Okay. How many entries were you mining on the
8 Three section?

9 A. I think it was five or seven entries. I'm sorry.

10 Q. That's all right.

11 A. I don't remember.

12 Q. That's okay.

13 A. I don't remember how many exactly we had.

14 Q. That's all right. Did you operate one continuous
15 mining machine on that second section or was there
16 another?

17 A. No. We had two, two continuous miners.

18 Q. Now, your section ventilation, was it split or
19 sweep?

20 A. You know, I don't remember. I actually don't
21 remember.

22 Q. Was the ventilation set up to operate both
23 continuous mining machines at the same time?

24 A. Honestly, I don't remember.

25 Q. Okay.

1 A. I don't remember if it was or not. Because I've
2 been on sections with sweep and then I've been on
3 sections that were split, and there's another section
4 sweep and split, and ---.

5 Q. Okay.

6 A. There's just been so many that honestly I don't
7 remember.

8 Q. Okay.

9 A. I don't remember what we had.

10 Q. On the Three section, do you recall both
11 continuous mining machines being operated at the same
12 time, simultaneously?

13 A. Again, I'm sorry, but I don't remember.

14 Q. Okay.

15 A. I don't remember.

16 Q. That's fine. You don't have to apologize. That's
17 fine. Do you recall if there were any particular
18 problems with ventilation on the Two section from
19 December until the time you moved to another area of
20 the mine?

21 A. I don't remember us having any significant
22 problem, you know, with ventilation.

23 Q. Okay. All right. And the shuttle car operator,
24 you indicated you did a pre-operational test each day.
25 Did you routinely have any particular problem with

1 your shuttle car?

2 A. No, just it was dirty every morning. I had to
3 clean it out.

4 Q. Whenever you had problems with your shuttle car,
5 did you have any difficulty in getting repairs made?

6 A. No.

7 Q. Okay.

8 A. No.

9 Q. On the Three section, how often would the section
10 foreman take a gas test in the face? Did you notice?

11 A. I don't know.

12 Q. Okay. Do you recall how often the general mine
13 foreman might have visited the Three section?

14 A. I don't remember actually ever seeing him up there
15 myself.

16 Q. Okay.

17 A. But now I know sometimes when you're on evening
18 shift, you know, the foreman is already gone, you
19 know, the general foreman.

20 Q. Other than the section foreman, do you recall
21 seeing other management people on the Three section?

22 A. No.

23 Q. Okay. Do you know who the company president would
24 have been, the Performance company president? Do you
25 know who that was?

1 A. I think that was Chris Blanchard was the
2 president.

3 Q. Okay. Did you ever see him on the Three section?

4 A. No.

5 Q. Were you ever asked to operate your shuttle car in
6 what might have been an unsafe condition?

7 A. No.

8 Q. Okay. Does Massey Energy have some type of safety
9 hotline with a toll free number that you're aware of?

10 A. None that I'm aware of.

11 Q. Okay.

12 A. Now, I'm not saying they don't have one. I'm just
13 saying I'm not aware of one.

14 Q. Are you aware of a Massey policy known as S1?

15 A. Yes, I am.

16 Q. Can you explain what that is?

17 A. The way I understand it is S1 means safety first.
18 And to my understanding, there's a set of rules and
19 regulations that we have in place in addition to laws
20 that are in place, ---

21 Q. Okay.

22 A. --- is my understanding of how that works.

23 Q. Okay. Now, during the time you worked at the
24 Upper Big Branch Mine, do you feel like that policy
25 was adequately enforced and complied with?

1 A. I, myself, think so, yes.

2 Q. Now, on this Three section where you worked, how
3 was the rock dusting? The condition of section rock
4 dusting? Did you feel like it was adequately rock
5 dusted?

6 A. Yes, I do.

7 Q. Okay. In the months preceding the explosion, you
8 continued to work on the Three section from --- it was
9 about December up to a week or so prior to the
10 explosion.

11 A. Yeah.

12 Q. Do you recall being sent home because of any mine
13 ventilation problem?

14 A. No, sir. I don't remember, no.

15 Q. Okay. Are you aware of a Massey safety bonus or
16 safety gift problem?

17 A. Yeah. It's called the Raymond Safety Program.

18 Q. Okay. Can you explain, briefly, how that program
19 works?

20 A. Well, the way I understand it, for each quarter
21 that we go without a lost-time accident we are
22 rewarded with a certain amount of points. You know,
23 general laborers get a certain amount. If you're an
24 EMT, you get the same amount as the general laborers,
25 plus more if you're an EMT. And in the event somebody

1 gets hurt, if they're on your little safety crew, then
2 everybody is penalized. You don't get as many points
3 toward gifts as you do if you don't have any
4 accidents.

5 Q. Okay. Now, prior to this interview today, have
6 you been interviewed by any other investigative
7 organization or have you been interviewed by the
8 company about this accident?

9 A. There was one day --- I'm not a hundred percent
10 sure who these two guys were. They were --- they
11 introduced themselves as lawyers. I do not remember
12 their name. And they said they were representing ---
13 or with Massey Energy. And I don't remember their
14 names, and I don't remember the exact day that it was
15 on, but yeah, I had two men speak to me and they asked
16 me generalized questions about the accident and ---.

17 Q. And can you share with me some of the questions
18 they asked you in particular?

19 A. Well, I'm not exactly sure why they asked me this
20 question, but they asked me to tell them what I had
21 done from day one, when I started as a red hat, all
22 the way up until the day of the accident. And I had
23 done so many things, I really had a hard time
24 remembering in order, you know, what I had done,
25 because I worked track and run a motor and laid track

1 again and dispatched for a little bit. You know what
2 I'm saying?

3 Q. Uh-huh (yes).

4 A. It was hard keeping it all in order. But for some
5 reason they asked me everything I had done from day
6 one as a red hat up to the day of the accident.

7 Q. How long did this interview last?

8 A. A long time. At least an hour-and-a-half.

9 Q. Okay.

10 A. And this was before a shift, and it put me late
11 getting to the mine site, but nobody said anything.

12 But ---

13 Q. Okay.

14 A. --- I was there for a long time, talking to them.

15 Q. Covering five years in an hour-and-a-half. Okay.

16 Now, let's back up a little bit. I know you worked on
17 the Three section, ---

18 A. Yes, sir.

19 Q. --- and then you moved to this new headgate
20 development section close to the Ellis Portal?

21 A. Yes.

22 Q. Now, can you be more precise and tell me when you
23 started working up there?

24 A. You mean ---?

25 Q. At that new location, where you were on the day of

1 the accident.

2 A. The day of the accident? Okay. What I had done
3 that day is me and a fellow co-worker ---.

4 Q. Hold on.

5 A. Oh.

6 Q. When did you start working in that area?

7 A. You mean on the day of the explosion?

8 Q. No, prior to that day.

9 A. If memory serves me right, it was about a week
10 before is when we started actually going over
11 there ---

12 Q. Okay.

13 A. --- to do things. It may have been two weeks. I
14 mean, don't write down one week and say that's set in
15 stone, because it may have been around two weeks. You
16 know what I'm trying to say? It's kind of hard to
17 remember exactly.

18 Q. A week or two; is that fair?

19 A. Yeah, that's --- it may be a week. It may be a
20 little longer, you know. I didn't sit down one day
21 with my calendar and say --- wrote on my calendar
22 started, you know.

23 Q. That's all right. Can you give us an idea of what
24 you were sent there to do? What was your objective
25 there?

1 A. Well, we were moving equipment and getting
2 prepared to start running another headgate. I mean,
3 that's --- that was the whole idea of why we were
4 moving, was all of our stuff needed set up to start
5 running so the longwall will have a place to go
6 whenever they finished where they were at.

7 Q. Okay. Now, on the day of the explosion, I take it
8 you worked that day; is that correct?

9 A. Yes, sir.

10 Q. Okay. Let me ask you to do this. Start from the
11 time you arrived at the mine that morning ---

12 A. Okay.

13 Q. --- and give us a detailed description, as best
14 you can, ---

15 A. Right.

16 Q. --- of what you did, where you went, up to and
17 including the time of the explosion.

18 A. Okay.

19 Q. Will you do that, please?

20 A. Yes, I will. April the 5th seemed like any other
21 day. We had a three-day weekend, got to work Monday
22 morning. I got dressed and I went and I was standing
23 at the mantrip with the group of guys that, you know,
24 we go underground together. And somebody came to me,
25 I can't remember who it was, and they said, Rog, I

1 think you're running a motor this morning to bring
2 some equipment, you know, from outside up to the
3 setup. So I went upstairs and I spoke to Gary May.
4 And I can't remember if he gave me a list of things to
5 do or if he just told me, because some days he would
6 give a list, some days he wouldn't. So I can't
7 remember if he gave me a list or not.

8 But anyway, me and a fellow co-worker, Bill
9 Sullivan, you know, he was going to be my brakeman,
10 you know, watch and keep an eye out for stuff, we was
11 carrying a flow-through on a flatcar behind our motor.
12 And we had some other stuff on there with us, but I
13 can't remember what it was now. We pulled up to the
14 new setup and we unloaded the small stuff that was on
15 our flatcar and we pulled the motor on the track down
16 to where the flow-through was going to go. And the
17 motor sat there about all day because there was so
18 much stuff going on that we didn't get a chance to
19 unload the flow-through. So at the end of the day, we
20 put the motor in a spur, and then we all got on the
21 mantrip. See, we took the motor underground, but we
22 were all together coming out on the mantrip. We left
23 the motor on the section and we were on the mantrip,
24 heading outside whenever the explosion happened.
25 Q. Okay. Can you possibly indicate on the map your

1 location when the explosion occurred?

2 A. Yes.

3 Q. Is that possible?

4 ATTORNEY WILSON:

5 Let's go off the record.

6 OFF RECORD DISCUSSION

7 A. Yes. Our location --- which one is the track
8 entry?

9 MR. STEFFEY:

10 The yellow line.

11 A. The yellow line? I'm pretty sure we were ---
12 let's see. I'm pretty sure that we were in this area
13 right here. I'm not --- can't see --- there are spad
14 numbers, but I don't see break numbers. I'm pretty
15 sure we were in this area right here.

16 BY MR. FARLEY:

17 Q. Why don't you take one of these colored markers
18 and circle the area where you think you were located
19 at the time the explosion occurred.

20 A. Okay. Are you guys familiar with this map? This
21 is the Ellis Switch; right?

22 MR. STEFFEY:

23 Yeah, that's the ---.

24 BY MR. FARLEY:

25 Q. Yes, that's correct.

1 A. Okay. Yeah. So we were --- I'm pretty sure we
2 were --- and I don't know exactly which break, but
3 probably --- I'll circle Three Break area.

4 Q. Well, just draw a line out from that and just note
5 location at the time of explosion.

6 WITNESS COMPLIES

7 BY MR. FARLEY:

8 Q. Having you circle it and locate it on a map is ten
9 times easier than me trying to describe where it is.

10 All right.

11 ATTORNEY WILSON:

12 Marked this as Exhibit Toney One.

13 (Toney Exhibit One marked for
14 identification.)

15 A. Okay.

16 BY MR. FARLEY:

17 Q. Now, why don't you take another marker ---?

18 A. Oh, a different color?

19 Q. Yeah, a different color, and give us an indication
20 of how you traveled into the mine, the work area where
21 you were located throughout the day.

22 A. Most of the day we were --- let me orient myself
23 on the map here. UBB Portal is right here. Okay. So
24 we traveled --- yeah, we traveled up.

25 Q. Why don't you, if you will, just take the marker

1 and just trace your direction of travel on the map.

2 A. Okay.

3 WITNESS COMPLIES

4 A. It's been a while since I looked at this map. We
5 was right here.

6 BY MR. FARLEY:

7 Q. This is UBB Portal.

8 A. Okay. This is the direction we took on the motor.

9 Q. And what time would you have entered the mine that
10 morning?

11 A. We had to load supplies. It was probably an hour
12 or two after shift started before we went underground
13 because we had to have our outside forklift guy, you
14 know, load the flow-through and load all our supplies
15 on it. So it was probably an hour or two after the
16 start of the shift before we went underground.

17 Q. Okay. And your shift started at what time?

18 A. 6:30.

19 Q. Okay. And your quitting time was scheduled for?

20 A. 3:30, I believe.

21 Q. For the record you're indicating on the map a
22 green line from the Upper Big Branch Portal in the
23 direction of travel at the beginning of the shift.

24 A. Let's see. Here's Five Head. I'm trying to
25 visualize in my mind what I'm seeing here. Turned

1 down the hill. Most of the day are motor --- let's
2 see. We unloaded the supplies off of the motor from
3 right here and we had the motor sitting on the
4 track ---

5 Q. Why don't you ---?

6 A. --- with the flow-through right here.

7 Q. Why don't you circle that area and draw a line out
8 there and indicate unloaded supplies here or parked
9 the motor and the specific location. Just write it on
10 the map for us.

11 A. And this area here is where we parked the motor
12 until the flow-through was going to be offloaded. But
13 the way things worked that day, the flow-through was
14 never offloaded. So we ended up at the end of the
15 shift putting it back here.

16 Q. Can you indicate just by writing on the map that
17 you left --- where you left the flow-through
18 approximately, as best you can?

19 A. Okay.

20 Q. Just draw a line out from the location.

21 A. And we had our motor here to be unloaded. And in
22 the process of waiting for the motor to be unloaded,
23 we was doing little piddly jobs around close.

24 Q. Okay.

25 A. Waited on the scoop guy to come up. But things

1 happened in such a way that we never got to unload it.

2 Q. Let me back up, what you said about the job here.

3 You indicated you were working with a group of guys.

4 A. Yeah.

5 Q. Do you recall --- can you name them for me,

6 please?

7 A. Yeah. Boss is Bobby Baker. And the guy that rode
8 with me, he's miner operator, Bill Sullivan. And once
9 we arrived here, then we hooked up with --- Jerry
10 Reed, he's our electrician, he was there.

11 Q. Okay.

12 A. Worked with these guys for years, but my mind is
13 just ---.

14 Q. Take your time.

15 A. Charlie Williams was our scoop guy. Josh Williams
16 was our bolt man. Chuck Smith was the other bolt guy.
17 I'm trying to think if there's anybody else. Me and
18 Charlie, Joe and Bobby, Bill and Jeremy, Josh and
19 Chuck, Chuck Smith.

20 Q. Okay.

21 A. I think that was ---.

22 Q. Now, if I got you correctly, you and Baker and
23 Sullivan came from UBB Main Portal; is that correct?

24 A. I must have spoke wrong. Bobby Baker was here.

25 Me and Sullivan were the only ones ---.

1 Q. Okay. Now, Baker --- when you say Baker is here,
2 can you be more specific?

3 A. Yeah. He was --- this is where everybody was
4 working, was in this area here.

5 Q. All right. So you and Sullivan came from the UBB
6 main portal?

7 A. Right.

8 Q. All right. Now, the flow-through, was it for a
9 five-foot or a six-foot belt?

10 A. I think it was going to be five-foot belt coming
11 from there.

12 Q. Was it higher or wider than the motor that you
13 were using to transport it? What kind of motor were
14 you using to transport it; do you recall?

15 A. I think it was Brookville, I believe. I don't
16 remember it --- well, it couldn't have been higher
17 than the motor because there was one place on the
18 track right --- let's see. There was a place on the
19 track right here where it's real low.

20 Q. Okay. Please circle that location where it was
21 real low and maybe use a red pen there this time and
22 identify this low place.

23 A. Again, I don't know the exact location, but it
24 was ---.

25 Q. Okay.

1 A. Let's see. You go around the curve, straight
2 probably about three breaks. Now, again, this is
3 general area. I'm not exactly sure.

4 Q. That's all right. Just put a circle around the
5 general area.

6 WITNESS COMPLIES

7 A. That's the spot on the track.

8 BY MR. FARLEY:

9 Q. Now, as you were moving the flow-through, did it
10 rub anyplace, top, ribs, anywhere?

11 A. Going around --- there's a sharp curve right here
12 on the map, and you can see what I'm talking about, it
13 rubbed on this corner.

14 Q. Okay. Again, why don't you circle that area.
15 Draw a line up from it to indicate flow-through rubbed
16 here.

17 A. Okay.

18 ATTORNEY WILSON:

19 Circle that in blue just so it's
20 different.

21 A. Blue? Okay.

22 WITNESS COMPLIES

23 A. Let's see. Come down, sharp curve.

24 BY MR. FARLEY:

25 Q. Now, the equipment that you were moving into this

1 area, did you routinely transport it on the locomotive
2 in a car or did you tram any of it? Was there
3 anything, any equipment in that area that you trammed
4 at any time?

5 A. Well, now, the actual equipment itself, other than
6 the scoop, we hadn't moved yet. We were in the
7 process of moving tailpiece and all that stuff. Now,
8 the actual miners and the bolters --- I'm trying to
9 remember here. The actual miners and bolters had not
10 been moved yet. But you know, once we got everything
11 ready, that was going to be the last thing we was
12 going to move, was the equipment, ---

13 Q. Okay.

14 A. --- if memory serves me right.

15 Q. All right. Now, you indicated in the yellow area,
16 near --- not too far from the Ellis Switch your
17 location at that time the event occurred?

18 A. Yes.

19 Q. Now, who was with you in that mantrip at the time?

20 A. All the men I mentioned earlier, we were all
21 together. All of us was together at this time. If
22 you want, I can run through them all again.

23 Q. If you don't mind, please.

24 A. Okay. Sitting beside me was Charlie Williams.
25 Behind me was Joe Farrell, Bobby Baker, Jeremy Reed

1 was driving. On the other end of the mantrip was Bill
2 Sullivan, Chuck Smith and Josh Williams.

3 Q. Okay. What was your direction of travel? Which
4 way were you going? What was your destination at that
5 point?

6 A. We had left here. We were moving this way.

7 Q. Hold on. Hold on. Remember that we're ---.

8 A. Right.

9 Q. I guess you would have been headed toward the
10 Ellis Switch from the location where you had worked
11 throughout the day; is that fair?

12 A. Ellis Switch? Yeah. Yeah. We were heading to
13 Ellis Switch. Once we arrived here, we were going to
14 turn left and go to UBB.

15 Q. Okay. But you were headed in the direction of
16 the ---

17 A. Direction of the Ellis Switch, yes.

18 Q. --- Ellis Switch? And you've already identified
19 the location where you were located ---

20 A. Right.

21 Q. --- at the time the event occurred.

22 A. Yes.

23 Q. All right. Now, as best you can, describe what
24 happened at three o'clock or 3:02 or whatever the time
25 the event occurred?

1 A. Okay.

2 Q. What did you experience there?

3 A. Now, it will take me about a minute to tell you,
4 but it all happened within one or two seconds.

5 Q. Well, you take a minute, you take five, you take
6 an hour.

7 A. Okay. The first thing I noticed was my ears
8 pressured so hard that I thought they were about to
9 bust.

10 Q. Okay.

11 A. And when that happened, you know, I kind of ---
12 and I turned and looked at everybody else because it
13 was like what is going on, and everybody was kind
14 of ---.

15 Q. I think you're indicating that you put your hand
16 to your ears?

17 A. Fingers in the ears, you know, just --- I can't
18 remember exactly what I did, but I remember thinking,
19 ouch. And I turned around and looked and everybody
20 was kind of like, oh, you know, doing the same thing.
21 I guess that was just a normal human response to ---
22 you know, try to protect your ears.

23 Q. You felt pain, pressure pain?

24 A. It wasn't pain. It was just intense pressure,
25 yeah.

1 Q. I'm sorry. Go ahead.

2 A. That's okay. Intense pressure. And instantly,
3 you couldn't see anything. It just --- dust just blew
4 overtop of us. And there was a lot of debris in the
5 dust. And even though I had my safety glasses on,
6 dust just blew all in my eyes and it just --- and it
7 was hard to --- it got hard to breathe I guess because
8 of all the dust. And when it came through there, it
9 was the ears first and then just the dust and unable
10 to breathe at first. And it knocked the power on our
11 mantrip. Our mantrip slid to a stop and everybody
12 kind of ducked down in the seat because there was a
13 lot of debris flying over the mantrip. And you could
14 hear signs --- like in the mines there's signs that
15 say like Plumley Switch this way and rescuer chamber
16 this way. There's signs all through the mines, and it
17 sounded like every one of them came overtop of our
18 mantrip. And we could hear --- I couldn't see
19 anything, but I could hear big stuff hitting the
20 mantrip, like --- it sounded like cinderblocks and
21 crib blocks and rocks and just ---.

22 Q. Was it a covered mantrip you were in?

23 A. Yes, sir.

24 Q. Okay.

25 A. And I can remember --- I ducked own in my seat and

1 I covered my face because the dust was just so bad,
2 and ---.

3 Q. I think you just indicated you covered your face
4 with your shirt?

5 A. Yeah, with my shirt. I was trying to keep the
6 dust out of my face. And some of the guys was
7 yelling, you know, at this time, go back, go back, go
8 back. And the guy driving said, I can't because I
9 lost power on the mantrip. So you know, I had my
10 shirt up and I turned to wiggle the plug, because
11 where I was sitting on the mantrip one of the plugs
12 was right beside of me. So I turned into the wind and
13 I was wiggling the plug and I was yelling to the top
14 of my lungs, you know, check the other plug, because
15 you know, we knew we wanted to go the other way. And
16 I was wiggling the plug, and finally I heard somebody
17 say, we got power, let's go.

18 Q. Now, when you say you wanted to go the other
19 way, ---

20 A. Yeah.

21 Q. --- what do you mean?

22 A. We knew that Ellis Portal was close, so we were
23 headed toward Ellis Switch, and that's the direction
24 that all the stuff came from, so we wanted to go this
25 way to get outside.

1 Q. You wanted to head towards the Ellis Portal; ---

2 A. Towards Ellis, yes, sir.

3 Q. --- is that correct?

4 A. Yes, sir.

5 Q. Okay. Now, about how long did it take before you
6 got your power back? Can you estimate that?

7 A. Thirty (30) seconds to a minute.

8 Q. Do you know what you or someone else might have
9 done to restore the power? Did it have to do with one
10 of the plugs or is there a breaker on the vehicle
11 or ---?

12 A. Well, actually I don't know what restored power.
13 I just know I was wiggling my plug, and I was telling
14 somebody on the other side to wiggle their plug. I
15 don't even know who it was. I was just yelling, check
16 that plug. And then I heard somebody say, we got
17 power, let's go. Now, I don't know --- the guy
18 sitting in there driving may have been flipping a
19 switch and that's what restored it. I don't know, but
20 I just heard somebody say, we got life, let's go.

21 Q. Okay. Now, can you estimate how long the --- did
22 you feel a rush of air?

23 A. Yes.

24 Q. Can you estimate how long that lasted?

25 A. Estimate, probably about 30 seconds. Probably

1 about 30 seconds of an intense air coming through
2 there.

3 Q. Okay. Do you recall if anyone made any attempt to
4 don a self-contained self-rescuer?

5 A. After the mantrip started moving. Now, I'm going
6 to back up just for a second.

7 Q. Go ahead.

8 A. As soon as my ears pressured and you couldn't see,
9 the boss, his detector went off.

10 Q. Okay.

11 A. He was sitting behind me on our end of the
12 mantrip.

13 Q. Okay.

14 A. Now, I don't know about the other end of the
15 mantrip, but our end of the mantrip that I was sitting
16 on, his detector went off. Well, at the --- you know,
17 I don't know what he was doing with it because my back
18 was to his back, but I could hear it at the same time
19 I was wiggling the plug. And when I heard somebody
20 say, we got life, let's go, Bobby --- I could hear him
21 saying, you guys, get your rescuers out and get them
22 ready because we were in high carbon monoxide, but it
23 was coming back down. So have them ready just in
24 case. So I popped mine open and put it on, but I
25 didn't activate it. I held it close to my mouth, and

1 I had my finger on the activation tag in case I needed
2 it. As I was breathing, I kept thinking, if I get to
3 where I can't draw a breath, then I'll pop it and put
4 it in. Now, looking back, I should have popped it and
5 put it in my mouth, but the situation --- you know, we
6 didn't know what had happened. And we knew for a
7 moment that we had high carbon monoxide and low oxygen
8 because that's what the boss said.

9 The way I understand it, when he grabbed his
10 monitor off and looked at it, we had 100 parts per
11 million carbon monoxide and 19 percent oxygen. So
12 when we got moving, the way I understood it, the
13 carbon monoxide had done come back down, I don't know
14 to what. But the oxygen was still 19 percent, so our
15 boss said everybody put your rescuer on in case we
16 need them. So I put mine on and I had it ready to put
17 in my mouth in case I needed it.

18 Q. Okay. Now, continue. What happened then?

19 A. Well, we got the power restored and we began
20 moving toward Ellis Portal. And we were moving pretty
21 slow because you couldn't see. We were afraid of
22 meeting somebody coming the other way. But of course,
23 we wasn't going to stop in the middle of the track and
24 just sit there, so we slowly moved this way.

25 Q. Did you encounter debris on the track?

1 A. I don't remember debris on the track, no.

2 Q. Okay.

3 A. I don't remember debris on the track. We come
4 back --- one thing that sticks out in my mind is at
5 Five head there's a curve there that has two switches,
6 one that comes from the right and one that turns to
7 the left, so we had to go through two switches, one on
8 top of each other.

9 Q. Did you have to get out and throw a switch?

10 A. No. The way the --- the mainline is already
11 throwed. You could come from Ellis Portal and go
12 underground without having to throw a switch. Now,
13 whenever we spurred, we had to throw it to get off the
14 mainline. But anyway, coming down --- when we got to
15 Five Head, we wrecked our mantrip in the switch. And
16 I'm thinking, oh, my gosh, we're not going to get out
17 of here. Well, the guy driving backs up, walks over
18 the frog and gets back on the track. We go through
19 the switch again and he wrecks again. I'm thinking,
20 oh, my gosh. At this time, a couple guys jumped out
21 and walked past the mantrip towards the outside.
22 Well, he backs up over the frog, gets back on the
23 track, and the third time he gets through. And as
24 soon as we come through the switch, those guys dive
25 back in the mantrip, and then we come to the Ellis

1 Portal as far as we could go, because the track didn't
2 go all the way outside. There was a couple mantrips
3 in front of us. We stopped a break or two from the
4 outside, and then we walked from the mantrip outside.
5 I had a rescuer on but not in my mouth.

6 Q. Now, I don't suppose you happened to notice the
7 time you got outside?

8 A. No. No, I didn't --- I don't' know what time it
9 was.

10 Q. But I gather --- I'm assuming it took you a few
11 minutes to get from where you were when the event
12 occurred to get outside?

13 A. Probably 10 to 15 minutes.

14 Q. Aside from the obvious, were any of the people in
15 the mantrip injured?

16 A. No. As far as I know, they wasn't. I mean, we
17 all got outside and we stood around and talked for a
18 while.

19 Q. Okay.

20 A. And then we had to get into the back of a pickup
21 truck and they took us around, you know, by the main
22 road, back to where we were parked at.

23 Q. Now, would you like to take a break or anything?

24 A. No. Actually, I'm fine.

25 Q. Okay.

1 A. I will take a sip of water, though, if that's ---.

2 MR. FARLEY:

3 At this point I'm going to allow Mr.

4 Steffey here to take over.

5 EXAMINATION

6 BY MR. STEFFEY:

7 Q. Let me ask you a couple questions here.

8 A. Okay.

9 Q. Going back to what we were discussing, are you
10 appearing here today voluntarily?

11 A. Yes, sir.

12 Q. And you've mentioned that the company attorneys
13 interviewed you.

14 A. Yes. Yes, they did.

15 Q. Do you remember when that was?

16 A. I don't remember exactly how --- I don't remember
17 the exact day, but it was like two weeks ago. I'm
18 sorry, I don't have an exact day.

19 Q. That's fine. Where did this take place at?

20 A. At the Marfork main office.

21 Q. You mentioned that they wanted to know what all
22 you had done during your time at UBB?

23 A. Yes, sir.

24 Q. Did they give you any instructions related to this
25 interview?

1 A. No, sir.

2 Q. Has anybody made any threats concerning your
3 interview?

4 A. No, sir.

5 Q. Any promises or given you anything?

6 A. No, sir.

7 Q. A few follow-up questions to clarify ---

8 A. Okay.

9 Q. --- what Terry was talking about there. You
10 mentioned you were moving to a new setup over here
11 near the Ellis Portal.

12 A. Yes, sir.

13 Q. Was it to drive the headgate entry for what was
14 called Bandytown?

15 A. Yeah, we were going to drive this headgate --- I'm
16 not sure what it's named, but we were going to be
17 driving the headgate.

18 Q. Okay. Had you started production on that shift?

19 A. No, sir.

20 ATTORNEY WILSON:

21 Why don't --- just so that we're clear on
22 the record, why don't you just highlight where it says
23 headgate, and then you can write in red new section.

24 A. You mean highlight this?

25 ATTORNEY WILSON:

1 Yes. It says headgate, you're
2 highlighting it, and then just write new section just
3 so that we know that's what you were referring to.

4 WITNESS COMPLIES

5 BY MR. STEFFEY:

6 Q. You mentioned that you worked on the section over
7 here on the south end?

8 A. Yes, sir.

9 Q. Did you perform maintenance on the shuttle car
10 prior to starting production?

11 A. Yes, sir.

12 Q. You said your section boss would have a safety
13 meeting every day?

14 A. Yes, sir.

15 Q. What sort of things did he go over?

16 A. They have a big, thick stack of papers that's
17 stapled together and they go through --- and I don't
18 know if they have scheduled things to read or if they
19 just randomly pick something. I don't know. But I'm
20 assuming it was some type of an S1 document that they
21 were reading from.

22 Q. Did they ever go over your approved methane and
23 dust control plan when you were working on the active
24 section?

25 A. Approved methane --- you mean like ventilating the

1 faces?

2 Q. Yeah, the plan that was approved with MSHA.

3 A. I don't know if it was approved or not. I just
4 know what they went over with is --- you know, about
5 hanging curtain and fly pads and ---

6 Q. Did they cover ---?

7 A. --- how much air you're supposed to have behind
8 this curtain and that curtain.

9 Q. Or you're supposed to have in the last open
10 crosscut?

11 A. Yes, sir. Yeah.

12 Q Now, you mentioned that the section boss and the
13 miner men had methane detectors; is that correct?

14 A. Yes, sir.

15 Q. Who took the methane check prior to the roof
16 bolter going into a cut?

17 A. That I don't know. Most of the time, after I run
18 my last buggy, I would go to the dump, dump my buggy.
19 And of course, when you're running you have some
20 spills, and I would clean out my buggy, then I would
21 go to the miner man, help him move to the next place.
22 And then when we got him set up, his cable hung, his
23 cable throwed out of the way, I would go back to the
24 shuttle car and then run to the miner. I mean, that
25 was what I --- that was my job. And I just assumed

1 that the boss was doing his job putting up his line,
2 taking his gas check. I mean, you know, I do my part,
3 and everybody else is supposed to do theirs; right?
4 So I did what I felt was the right thing. And if I
5 tore a fly pad down, I would take a minute and tack it
6 back up, you know. I could only do my part. You
7 know, I honestly don't know who took the methane --- I
8 just assumed that ---

9 Q. That somebody was.

10 A. --- somebody was doing it.

11 Q. Did you ever see a probe on the section? Anybody
12 have a probe?

13 A. Yes, sir. Both bolting machines have probes on
14 them.

15 Q. Okay. Now, you mentioned that you would
16 occasionally see some methane on your section ---

17 A. Yeah.

18 Q. --- and you considered two percent excessive, and
19 one percent would get your attention?

20 A. Right.

21 Q. How often did you see methane that got your
22 attention?

23 A. On the Three section?

24 Q. Uh-huh (yes).

25 A. Never.

1 Q. Never?

2 A. Yeah.

3 Q. Were you ever on the 22 Headgate?

4 A. I was on Headgate 22 one time. About four days
5 before the explosion I took some supplies up there and
6 dropped them off, and we picked something up. I can't
7 remember. We had to pick something up to take back
8 outside, and that was about four days before.

9 Q. So you ran a supply motor up through the ---

10 A. Yes, sir.

11 Q. --- Number Three section?

12 A. See, we were in the process of moving, and I was
13 running a supply motor. Well, this one particular day
14 they needed something took up there. So instead of
15 doing my normal job, I took something to them, dropped
16 it off and then came back and then resumed, you know,
17 working back up here.

18 Q. How many cars did you have on that supply motor?

19 A One.

20 Q. One?

21 A. Yes.

22 Q. Push or pulled?

23 A. I don't remember. I don't remember.

24 Q. Did you go through any equipment doors on the way
25 to Headgate 22?

1 A. There is a set of doors --- yeah, I went
2 through --- yeah, there's a handful of doors. There's
3 the doors at ---

4 Q. Let's get that other map.

5 A. --- Plumley that we have to go through, a set of
6 airlock doors at Plumley. And let me think. There
7 was a set of airlock doors in this area.

8 Q. Near the Ellis Switch?

9 A. Yeah, near Ellis Switch. And then one toward 22.
10 You turned left and ---.

11 Q. We're going to get you another map.

12 ATTORNEY WILSON:

13 Let's go off the record.

14 OFF RECORD DISCUSSION

15 ATTORNEY WILSON:

16 We've marked another map as Toney Exhibit
17 Two.

18 (Toney Exhibit Two marked for
19 identification.)

20 A. Now, what was the question before our break? I
21 can't remember why did we break this map out?

22 BY MR. STEFFEY:

23 Q. The doors.

24 A. That's right.

25 Q. If you would, with a different colored marker, to

1 the best of your recollection, would you mark the
2 locations of the equipment doors that you traveled
3 through ---

4 A. Yeah.

5 Q. --- on the day that you went to the Headgate 22
6 section?

7 A. Okay.

8 ATTORNEY WILSON:

9 It might show up better if you circle it
10 with the marker and then use the pen to write ---.

11 A. If you don't mind, give me just a second to figure
12 out where I'm at here. Well, I actually see doors
13 marked on here about where I was thinking they was
14 going to be.

15 BY MR. STEFFEY:

16 Q. Okay. If you think that's where they are, ---

17 A. Yeah.

18 Q. --- just go ahead and circle them with a
19 highlighter if you don't care.

20 A. I'm sorry. You told me that.

21 WITNESS COMPLIES

22 A. What would I call them, just track doors or ---?

23 ATTORNEY WILSON:

24 Just doors.

25 BY MR. STEFFEY:

1 Q. Just doors will be fine.

2 A. There's two set of doors. There was about --- let
3 me think here. You got to remember, I had only been
4 up here one time for the first time in a long time, so
5 ---. I'm thinking there were doors --- I'm sorry. I
6 can't exactly remember about where they were at,
7 but ---.

8 Q. What about up here at the turnoff to the section,
9 were there any equipment doors up here where you
10 turned off to the gate road that ---?

11 A. Now, there --- I remember a set of doors we had to
12 go through. See, we come past the Glory Hole, turned
13 right and then turned left onto the section. And
14 there was a set of doors on the track going onto the
15 section, and I'm thinking they were right at the mouth
16 of the section. So that would have been ---. It must
17 be these right here, I think. I went through a set of
18 double doors when we took --- whatever it was up there
19 we took. And it seemed to me like there was another
20 set of doors in here, but I honestly don't remember if
21 it was on this end or in the middle or down closer to
22 this end. I don't remember. It seemed to me like
23 there was, but I could be mistaken, too.

24 Q. If you could, the doors at the Ellis Switch and
25 the Plumley Switch, can you mark them also? They're

1 on the map under this.

2 A. Okay. We would be --- okay, there's a set of
3 doors ---.

4 ATTORNEY WILSON:

5 Is that on --- let's go off the record.

6 OFF RECORD DISCUSSION

7 ATTORNEY WILSON:

8 We're back on the record.

9 BY MR. STEFFEY:

10 Q. So you've marked doors now at the Ellis Switch?

11 A. Yeah, the Ellis Switch. Let's see. I'm trying to
12 run the trip in my mind here. Down to UBB. There's
13 doors outby ---.

14 ATTORNEY WILSON:

15 Just for the record, you've marked on

16 Exhibit Toney One two areas where there were doors
17 located.

18 A. Okay.

19 ATTORNEY WILSON:

20 And then also on Toney Exhibit Two also

21 two areas you've indicated there were doors that you
22 went through. And you think there may have been a
23 third area, but you're not sure.

24 A. I'm unsure. Unsure.

25 BY MR. STEFFEY:

1 Q. Okay. And you mentioned you were running a supply
2 motor?

3 A. Yes, sir.

4 Q. How often did you run a supply motor?

5 A. Well, I had been running it on and off from the
6 time we had started moving. See, before that I was a
7 shuttle car regular. But from the time we started
8 moving, then I was running a motor, delivering
9 supplies to our new section setup on the headgate that
10 I pointed out earlier. And on one particular day they
11 were needing some type of supply up on the Headgate
12 22, and that was approximately four days before the
13 explosion I went up there, dropped it off, and it
14 seemed like I had to pick something up and then went
15 back.

16 Q. Okay. Did you ever receive any training on the
17 running of the supply motor?

18 A. Yes, sir.

19 Q. Task training?

20 A. Yes, sir, task training. And one of the first
21 jobs I had in the mines was I was a trackman. After I
22 got my black hat, then they allowed me to drive the
23 motor home, the flatcar that had the rails on it. So
24 I had done it before, and I motored before as well.

25 Q. Okay. These doors that you've indicated on the

1 map, were these doors automatic or did you have to
2 open them by hand, were manually operated?

3 A. These doors, which are close to 78 Break, are
4 automatic. And I think these were manual, you had to
5 open by hand.

6 ATTORNEY WILSON:

7 Referring to the ones at the mouth of
8 Headgate 22?

9 A. Mouth of Headgate 22, yeah.

10 BY MR. STEFFEY:

11 Q. What about the Ellis Switch and the Plumley doors?

12 A. Plumley doors are electric and Ellis doors were
13 manual. You had to jump out and open those.

14 Q. Okay. So on the day that you took supplies up to
15 the Headgate 22 section, ---

16 A. Yes.

17 Q. --- the doors at Break 78 were automatic?

18 A. Yes, sir.

19 Q. Okay. What type of condition were those doors in?

20 A. I guess they were in good condition. We pushed
21 the switch and it worked, so ---.

22 Q. But did they create an airlock when they were
23 closed or was there leakage around those doors?

24 A. Oh, I don't know.

25 Q. Okay.

1 A. I don't know if they created a perfect seal or
2 not. I don't know.

3 Q. Did you fit your supply motor and the car attached
4 between the two doors and the airlock ---?

5 A. Yes, sir.

6 Q. Did you find any of these doors open?

7 A. No, sir.

8 Q. Have you ever found any equipment doors or track
9 doors open in the mine?

10 A. Ever? Yeah, I've found them open.

11 Q. Do you remember any specific instances when,
12 especially in the weeks leading up to the explosion?

13 A. Now, I don't remember like any specific like day
14 or anything, but --- I mean, I don't even know if it
15 was this year, last year, the year before, but I just
16 remember there had been a time that you pulled up and
17 the door had already --- at least one of them or
18 something is open and you pull in and --- I can't
19 remember. I can't say like June the 12th, so and so,
20 you know.

21 Q. Okay.

22 A. But there have been times in the past that I had
23 pulled up and, you know, found a door open. But now
24 that was uncommon, very uncommon, you know, to pull up
25 and find a door open. But yeah, I mean, there have

1 been times, yes, I'd have to say that we had pulled up
2 and you'd find a door open sometimes.

3 Q. Did you ever take anything up to the longwall?

4 A. Well, that day I went to Headgate 22 we were
5 delivering to the Headgate section, yeah.

6 Q. What about the longwall?

7 A. Oh, I see what you're saying. No, I've never ---
8 I had never took anything to the longwall.

9 Q. Okay. On the day that you went up here you'll
10 notice on the map here at break 79 the intake air
11 crosses this overcast and then crosses the track, ---

12 A. Yes, sir.

13 Q. --- and this airlock is designed to protect
14 that ---

15 A. Okay.

16 Q. --- primary escapeway.

17 A. Okay.

18 Q. When you open these doors, could you feel the
19 pressure change or the airflow change in any way? Do
20 you remember noticing an air change?

21 A. I don't remember noticing one, no.

22 Q. Okay. Let's go back down there to the mini panel
23 where you were setting up the new section.

24 A. Okay.

25 Q. Now, did you have the feeder move down there? Had

1 the feeder been moved?

2 A. No. I don't think it had, no.

3 Q. What type of activities were you performing to set
4 this section up?

5 A. Building stoppings. We had to cut out a belt
6 channel because the belt was going to go over the
7 track. So that was one of the jobs we did, was we had
8 to cut a belt channel over the track. We built all
9 kinds of stoppings. I need to back up. I told you
10 all earlier that we hadn't moved any equipment up
11 there, but we had. We cut out a belt channel. We had
12 cut out a belt channel. And I want to apologize
13 because I had forgot about that. We had a miner up
14 there and one buggy, and we had cut a belt channel
15 over the track and they were gobbing --- because I
16 wasn't the one running the shuttle car. There was
17 another guy. I was running the motor all week. And
18 they were gobbing out some of the entry --- or not the
19 entry, but some of the break-throughs up through
20 there. So I have to back up and say that, yeah, we
21 had moved some of the equipment up there. There was
22 one miner at least and one shuttle car, so --- yeah, I
23 have to back up and say I was mistaken earlier. I had
24 forgotten that they cut a belt channel over the track,
25 so ---.

1 Q. Prior to you going to work there, arriving there
2 each day, who pre-shifted that area?

3 A. I'm assuming the guys from hoot owl had
4 pre-shifted it. I mean, I don't know for sure, but I
5 think that's the way it's supposed to work.

6 Q. Anybody ever go over the hazards in the pre-shift
7 book with you and the crew?

8 A. Hazards in the pre-shift book?

9 Q. Were there ever any hazards listed in the
10 pre-shift book?

11 A. I don't remember anything like that, no.

12 Q. Did you ever get up there and find any water, any
13 bad top that had to be scaled, anything like that?

14 A. There was water here. I don't remember any bad
15 top, but there was water that we had to wade through
16 to build some stoppings there.

17 Q. Anybody ever go over that with you prior to
18 getting there? How was the exchange --- how was
19 information exchanged about the conditions in this
20 area with your crew? Did anybody talk to you about it
21 before you went in the mine?

22 A. You mean the conditions of this area?

23 Q. Yeah.

24 A. No. We just found it that way. And then we
25 relayed to everybody that there was water up there,

1 because we had to build stoppings --- and we built
2 stoppings in all the dry entries and saved your wet
3 entries for last. And a couple of them, it was, you
4 know, up to your knees. And it's miserable with wet
5 feet, so I made sure that we shared with everybody,
6 you know, to stay out of this area until they can pump
7 it out.

8 Q. You mentioned you built stoppings in this area.

9 A. Yes, stoppings.

10 Q. Who directed you in the building of these
11 stoppings?

12 A. The stoppings that we had built in this area, we
13 was instructed by Gary May and --- I'm trying to
14 remember his name. I think his name's Wayne
15 Persinger. He's our vice-president at Performance.
16 And we were instructed by them to build these
17 stoppings here.

18 Q. And how did they instruct you on this?

19 A. They gave us --- they gave me a letter that had,
20 you know, go to this and pick up the doors and go here
21 and pick up, you know, the wedges and build the doors.
22 And they gave us a list that had spad numbers on them,
23 so that's where we knew where to build these doors.
24 Because nobody went with us. We just went up there
25 ourselves, found the spad and figured out where they

1 were supposed to be build and built them.

2 Q. Do you remember where you belt the stoppings at?

3 A. Yeah. They were ---.

4 Q. Mark them on the map. Use a blue pen.

5 A. Do you want me to use a different highlighter,
6 too?

7 ATTORNEY WILSON:

8 You can use the blue for that.

9 A. I'm pretty sure they were right here when we built
10 the stoppings.

11 BY MR. STEFFEY:

12 Q. Was there anything else that you built, any
13 stoppings, any ventilation controls?

14 A. No, it was just stoppings.

15 Q. What about controls that you removed? Did you
16 remove any controls?

17 A. We --- now, we knocked --- they told us that after
18 we built these, that there was some that we could
19 knock, but I can't remember --- there was one that we
20 had to knock because we ran out of block. And we took
21 the block from it, and it seemed to me like it was
22 probably --- it may have been this one right here.

23 Q. Okay.

24 A. It may have been that one.

25 Q. Okay.

1 ATTORNEY WILSON:

2 And for the record, can you just read
3 what you wrote there?

4 A. Yes. Knocked stopping to retrieve block. And the
5 other one I circled says built stoppings.

6 ATTORNEY WILSON:

7 Okay.

8 BY MR. STEFFEY:

9 Q. How often did you have to knock a stopping out in
10 this mine in order to build another ventilation
11 control? Is that a common occurrence?

12 A. No.

13 Q. Let's go back to when you were on the section, at
14 your section. Who did your per-shift examination
15 there?

16 A. I am assuming that was the hoot owl guy, because
17 they have to call them out. Because there was a few
18 times, you know, over the course of me working at the
19 mines where we had to wait outside until they called
20 out the report before we could even go underground.
21 So I'm assuming, you know, that it was the hoot owl
22 guy that did that.

23 Q. Did they ever note any hazards in the pre-shift
24 book? Anybody ever go over the pre-shift book with
25 you?

1 A. I don't know. No. I don't know if there was ever
2 any hazards or not.

3 Q. Did anybody ever go over the S1 manual with you
4 and your crew?

5 A. Well, we got read to every morning. Now, I don't
6 know if that's out of the S1 manual or not. I don't
7 know.

8 Q. What did the company tell you about the S1 manual?

9 A. Nothing really. I don't even --- when they read
10 every morning --- when Bobby read to us, I don't --- I
11 guess it was out of the S1 ---

12 Q. Okay.

13 A. --- manual. I just know they read to us out of
14 something. I don't know if it was the S1 manual or
15 not. But now to have somebody sit down with us and
16 say, this is the S1 manual, nobody ever did that.

17 Q. Nobody ever did that with you?

18 A. No.

19 Q. What about the --- do you know what P2 is?

20 A. P2, I think, is production second. S1 is safety
21 first. P2 is production second. And I think M3 means
22 measure third. I think that's what that means.
23 That's my understanding.

24 Q. Anybody ever cover the P2 manual or go over
25 anything concerning P2 with you and your crew?

1 A. No. No.

2 Q. So these are Massey policies?

3 A. Right.

4 Q. But nobody ever actually sat down and said, these
5 are our policies, these are what you need to do?

6 A. Other than reading --- you know, reading every
7 morning, no.

8 Q. When you arrived on the active section, where was
9 your shuttle car?

10 A. My shuttle car was the middle shuttle car, you
11 know, anchored just off the feeder.

12 Q. Okay. What type of anchor did you use?

13 A. It was a roof bolt with a plate. And instead of
14 running the roof bolt all the way up, we would leave
15 about a foot with a plate on it, and then I would take
16 my chain and wrap it around it about three times.

17 Q. What type of an anchor was it, though? Was it the
18 spring-loaded anchor?

19 A. Yeah. Yes, sir.

20 Q. Okay. Anybody ever go over your secondary
21 escapeways with you? Anybody ever talk about
22 escapeways with you and your crew, how you get out of
23 the mine if something happens?

24 A. Yeah. The way it was explained to me, the primary
25 escapeway was the intake. The secondary escapeway was

1 the track. And you know, that was the escapeways you
2 would attempt to use to get out. And if those were
3 unpassable, then you'd try to get out some other way,
4 but ---.

5 Q. Where were your escapeways for the area down at
6 the main panel? Did anybody go over escapeways with
7 you there? Did anybody talk about how you guys need
8 to get out of the mine if something were to ever go
9 wrong?

10 A. Nobody ever went over that with us, but we did
11 find our escapeway. Nobody ever said, you know, your
12 escapeway is here. Just us, as men, we found it so we
13 would know where it was at in case something happened.

14 Q. Was there an escapeway map there with you guys?

15 A. You mean here, on the section?

16 Q. Yeah.

17 A. No, I don't remember one being there.

18 Q. When you were traveling to that section, was there
19 ever any areas where there was water over the track?

20 A. No.

21 Q. Okay. When the blast wave came overtop of you and
22 all the air blew over you, ---

23 A. Yes.

24 Q. --- did you ever feel any heat?

25 A. No heat.

1 Q. You mentioned that your section boss' methane
2 detector went off and you said you were in, at one
3 point, a hundred parts per million CO.

4 A. Yes.

5 Q. Did anybody ever go over the use of your SCSR with
6 you, how to use it, how to don it?

7 A. Yes, sir.

8 Q. How often did they do this?

9 A. Once a year we have annual retraining, and then
10 --- well, I always go with the most recent retraining.
11 We had to put the rescuer on, and they had special
12 goggles that we had to put on that were blacked out
13 and you couldn't see anything. We had to put these
14 goggles on and we put the rescuer on, and with the
15 goggles on, we had to open another rescuer and put it
16 on our head and swap out the hoses, take a deep
17 breath, swap out --- we had to do all that
18 blindfolded. And that was --- it's difficult to do
19 when you can't see. But yeah, we had been instructed
20 in wearing the rescuers. And you'll be surprised how
21 fast you can put that thing on when something happens,
22 because I popped mine open and it felt like three
23 seconds I had it around my neck and my mouthpiece
24 ready to put in my mouth. So I honestly felt that the
25 training did help me.

1 Q. Did anybody ever go over the effects of carbon
2 monoxide and low O2 with you?

3 A. Yeah. During retraining they was telling us that
4 one breath of high carbon monoxide can, you know ---
5 just one breath, if it's high enough, can kill you.
6 So yeah, they had went over the effects of carbon
7 monoxide, low oxygen.

8 Q. Anybody on your crew actually activate their SCSR?

9 A. I don't think so, no.

10 Q. What was the reason for that?

11 A. The boss had told us that the carbon monoxide had
12 come back down. Now, I don't know to what level, but
13 he said, you know, --- I guess what prompted him to
14 tell us to open them was he looked at it, and it said
15 100 parts per million. Now, what prompted him to tell
16 us to put them on and get them ready, I don't know.
17 You know, he did say it's come back down. To what, I
18 don't know. I don't know if it come to normal or to
19 ten or --- you know, I have no way of knowing, so ---.

20 Q. Did you go through any equipment doors on your way
21 out of the mine on the day of the explosion?

22 A. No. No.

23 MR. STEFFEY:

24 For right now I don't have any more
25 follow-up.

1 ATTORNEY WILSON:

2 Celeste?

3 EXAMINATION

4 BY MS. MONFORTON:

5 Q. I have a few follow-up questions for you.

6 A. Okay.

7 Q. When you had your annual refresher training and
8 you practiced donning the SCSR, ---

9 A. Yes.

10 Q. --- what were the instructions they gave you in
11 terms of when you were supposed to don your SCSR?

12 A. When to don it? Well, I don't remember them
13 giving us specific information as to when to don it.
14 I figure just when they tell us to don them is when we
15 were supposed to, you know, pop them open and don, you
16 know.

17 Q. So are you saying that your training was that you
18 would wait for a supervisor or foreman or something to
19 tell you to don it, and that's when you would know
20 when to don it?

21 A. Well, you know, when I was away from the boss, you
22 know, I didn't have a detector to know when to put it
23 on. So yeah, I would have to wait for somebody to
24 say, hey, you might need to put your rescuer on. No,
25 unless something happened and I felt that I was in an

1 atmosphere or situation that I made the decision on my
2 own. But since I didn't carry anything --- really,
3 the only way I --- well, I really wouldn't know except
4 something happened and I thought maybe I should put it
5 on. Do you know what I'm trying to say?

6 Q. That's what I'm trying to figure. I was like how,
7 in your training, were you instructed of --- when
8 would you know to put it on? What did they cover in
9 your training about what happens when you're --- what
10 type of events happen that you should don your SCSR?

11 A. Well, the day that this happened --- I'll use this
12 as an example. If it hadn't had been for the detector
13 that he was wearing. In my mind, I was thinking it
14 was a fall, because if you're working underground and
15 you have a big fall, something sort of like this
16 happens. But what made it different was his monitor
17 went off saying high carbon monoxide. Now, without
18 that, my rescuer would have stayed on my side because
19 we wouldn't have known. Do you ---?

20 Q. Yes. Yes. Thank you.

21 A. I mean, there really is no way of knowing when to
22 put it on, unless you're wearing a monitor of some
23 type. Did that answer your question?

24 Q. Yes, it did. Thank you very much. Thank you.

25 When you started at Massey as a red hat, did they hire

1 you in or were you working as a contractor?

2 A. No. I was hired straight to the company.

3 Q. You indicated that a couple of weeks ago you were
4 interviewed by lawyers that said they were
5 representing Massey and that that interview took place
6 before your shift ---

7 A. Yes, ma'am.

8 Q. --- and that you were late for your shift?

9 A. Yes, ma'am.

10 Q. Were you paid during the time for the interview?

11 A. I don't know because when I get my paycheck I give
12 it to my wife, and I don't even really know kind of
13 what I make. I mean, I know what I make, but I didn't
14 look and see if I got paid for that time.

15 Q. So when you were late for work, you don't know
16 whether that --- you punch a clock. Did you ---?

17 A. No. They fill out a timesheet by hand, so ---. I
18 didn't actually look at that day to see if they paid
19 me for that or not, ---

20 Q. Okay.

21 A. --- because my wife usually gets my check and I
22 get my allowance and go from that, so ---.

23 Q. Thank you. At the time of the explosion --- I'm
24 trying to get a little better sense of the timing of
25 when you started to move out of the mine and then the

1 explosion occurred. Could you walk us through that a
2 little bit, about when you --- I think you said your
3 quitting time was 3:30, so at about what time were you
4 loading up to head out of the mine?

5 A. It took a long time to go out of UBB. I didn't
6 look at my watch exactly when we left, but we were
7 probably --- we had probably been running for about
8 --- probably for about five to ten minutes from where
9 we left to where it happened.

10 Q. And do you have some idea of what time you would
11 have left the section, knowing that it took a while to
12 get back to the other portal?

13 A. You mean to the UBB Portal?

14 Q. Right.

15 A. Yeah, it --- the time that we left, knowing now
16 what time it happened and where we were, we probably
17 would have been close to outside UBB around 3:40.
18 Probably it would have put us about ten minutes later,
19 you know, getting out. Because it's a long trip to go
20 all the way to UBB.

21 Q. So if the explosion hadn't happened and you were
22 planning to get out at about 3:30, what time would you
23 have started to head out of the mine?

24 A. Probably five minutes 'til 3:00, ---

25 Q. Okay.

1 A. --- something like that.

2 Q. And then you traveled maybe five or ten
3 minutes, ---

4 A. Yeah.

5 Q. --- and that's when the event occurred?

6 A. Yeah.

7 Q. Okay. Thank you. For the Raymond point
8 system, ---

9 A. Uh-huh (yes).

10 Q. --- how --- you said you had a team or a crew and
11 the points were assessed based on that.

12 A. Right.

13 Q. Did you know who was on your part of this team
14 that ---?

15 A. Yeah. It's --- the section that I was working on,
16 the guys I worked with every day was like my Raymond's
17 team.

18 Q. Okay. And do you know who kept track of those
19 points?

20 A. No, I don't know.

21 Q. Who monitored the points or ---?

22 A. I don't know. Yeah, I don't know.

23 Q. What type of procedures were in place at the mine
24 for a miner like yourself to raise safety concerns?

25 How would that work?

1 A. You mean, like if I found something unsafe, what
2 would I do?

3 Q. Right.

4 A. Well, if it was something I could fix myself, I
5 would. And if it was something unfixable, then I
6 would tell the boss. And that was normally, you know,
7 what we did.

8 Q. Did you and other members of your crew ever talk
9 about concerns about safety? Was there things in the
10 mine that concerned you?

11 A. You know, I had sat and thought about this, you
12 know, after the explosion, and I really felt safe
13 working here. I never would have dreamed of anything
14 like this. You know, I felt safe working here. I
15 didn't --- you know, something like this was so out of
16 the question, you know. I had always felt --- I
17 didn't know as fact, but I had always felt that our
18 fire bosses did their job. You know, I know I did
19 mine and I felt that my boss did his, so I felt safe.
20 You know what I'm saying?

21 Q. Uh-huh (yes).

22 A. I did feel safe. And I felt like that at least
23 the people that I worked with did the right thing.
24 You know, I can't prove for fact that they did, but I
25 felt in my heart that they did, you know. But

1 that's --- like I said, that's something I can't
2 prove, you know.

3 Q. As part of your safety talks or pre-shift
4 meetings, did management ever go over the citations
5 that had been issued by Federal or State inspectors?

6 A. Sometimes they would go over some of the
7 violations and say, you know, this violation here
8 could have been prevented. You know, if we just would
9 have had that curtain a little bit tighter, that would
10 have been --- you know, I'm just making up general
11 things, but there was some times where they said,
12 well, we got wrote up because that stopping was bad.
13 And if we would have took the time to build it, we
14 wouldn't have got that ---. You know, I'm just in
15 general kind of ---. They went over stuff with us
16 from time to time of how this one could have been
17 avoided and that one could have been avoided and ---.
18 I can't remember any specific thing, but it was, you
19 know, general things like that that they would go over
20 with us and a lot of fuss and ---.

21 Q. What do you mean a lot of fuss?

22 A. Oh, you know, they would say like, you know, this
23 was such a stupid violation we got. All we had to do
24 was whatever, and we didn't do it, and now, look,
25 we've got a --- you know, that type of thing is what I

1 meant by fuss.

2 Q. Did you ever get a sense when you heard about
3 these violations that some of these were safety
4 problems at the mine?

5 A. Yeah, sometimes. You know, if there was a low air
6 violation, of course, that's a safety concern, yeah.
7 Yes.

8 Q. Did you participate in a survey that Massey had
9 earlier this year, an employee survey?

10 A. Yeah, I have took part --- I did take part in a
11 survey. I don't remember if it was this year or not,
12 though. Now, you said was it --- I don't know if it
13 was this year. It may have been last year, but I do
14 remember a survey, filling out ---.

15 Q. And when you've done this type of survey before,
16 when --- does it come in the mail or what's the
17 procedure for filling out this survey?

18 A. No. When you get to the jobsite you had to fill
19 it out and then work your shift. Before you went
20 underground you had to fill it out.

21 Q. Do you remember any of the questions that were on
22 the survey?

23 A. There was one --- I don't know. Some of the
24 questions, I don't know why they asked, but there was
25 one question, do you like Don Blankenship, yes or no.

1 For some reason that one sticks out. And I don't know
2 why they asked that, but I answered it the way I felt.
3 But I can't remember --- for some reason that question
4 does stick out.

5 Q. Do you recall any questions about safety?

6 A. There was probably some on there, but no, I don't
7 recall.

8 Q. Do you recall any questions about Federal MSHA?

9 A. Actually, I do remember a question. They asked a
10 question if I felt that the MSHA was --- how can I put
11 it, purposely making it hard on Massey, did I feel
12 that they were or not. That was one of the questions
13 that was on there. And they asked some political
14 questions. I can't remember specifically. I remember
15 thinking what does that got to do with my morale, you
16 know, how I feel about Campito and Rahall and --- what
17 did that have to do ---? But there was questions like
18 that on there.

19 Q. Did they ever share with you results of that
20 survey?

21 A. No. I've never heard anything about it.

22 Q. In your annual refresher training or maybe your
23 new miner training, what did you learn about miners'
24 rights and what your rights are under Federal or State
25 law?

1 A. I had never heard of --- what you was reading
2 earlier to me, I had never heard of that until you
3 guys mailed me this letter. And when I read the back
4 page, I told the wife, I said, put this in the file
5 and keep it, because on the back it said --- if I
6 remember reading, under Section 105(c) of the Mine
7 Act, I didn't know I had that available. So I've got
8 this exact copy in my file cabinet at home because I
9 didn't know I had any protection at all. I mean, of
10 course it's there, but I didn't know, you know, so I
11 kept this letter.

12 Q. That's good. Who provided your new miner
13 training? That would have been five years ago.

14 A. You mean who'd I took the class from ---

15 Q. Right.

16 A. --- before I came a red hat?

17 Q. However you got your new miner training, who gave
18 it to you?

19 A. Well, the class that I took, I took through Danny
20 Banks. He lives in (b)(7)(C) . And after the class was
21 completed, then I went to a building in Oak Hill and
22 took a test. And once I passed the test, then they
23 gave me my apprentice --- underground apprentice card.
24 You know, I went and bought my hat and then went to
25 work for Massey. So Danny Banks is the one ---. Is

1 that what you was meaning?

2 Q. I'm just wondering who did --- I'm trying to
3 figure out --- you didn't get your new miner training
4 from Massey. You came to Massey and were able to show
5 them something that you had your new miner training?

6 A. Yeah. I mean, that's the way it works. You go
7 --- there's different places that you can go take your
8 classes. And then once you pass your test, then
9 you're an apprentice. And I guess you can go work for
10 anybody as long as you have your apprentice card and
11 they're hiring red hats.

12 Q. When you had that training, did they give you
13 copies of the Federal and the State laws?

14 A. No.

15 Q. So do you have a copy of the Federal or the State
16 law?

17 A. No.

18 Q. No?

19 A. No.

20 Q. What do you know about the electronic tracking
21 system at the UBB?

22 A. Well, this is what I know about it. There's a
23 little tag that we wear, and this is my understanding,
24 if you found yourself in a dangerous situation, there
25 was a button on it that you could push and that sends

1 a signal outside. And they had this big-screen TV on
2 the wall, and my understanding was if I pushed that
3 button, that it would pop up on the screen and sound
4 an alarm, man's in trouble. And I think even my name
5 was supposed to appear. That's the way I think it was
6 supposed to work.

7 Q. When did you have training on that system?

8 A. I remember we did have training, but I can't
9 remember when it was. I can't remember when.

10 Q. Was that training at the mine; do you recall?

11 A. Yes, ma'am.

12 Q. And did you see it work with someone underground,
13 pushing the button, and you could see it up on
14 the ---?

15 A. No. We didn't see an example of it.

16 Q. Okay.

17 A. They just explained how it worked. But as far as
18 somebody showing, here, watch and doing it, he didn't
19 --- no, they didn't do that.

20 Q. Okay.

21 A. They didn't do that.

22 Q. And do you recall when that system was put in
23 place?

24 A. I think it was sometime this year, I think. I
25 think it was this year before it actually got going.

1 Q. Have you ever been checked for smoking materials?

2 A. Yes, ma'am.

3 Q. And who would normally do that?

4 A. The section boss does it, and a few times the mine
5 foreman did it.

6 Q. And have you ever accompanied a State or Federal
7 inspector when they were doing an inspection?

8 A. You mean walk with them?

9 Q. Right.

10 A. No. I've never actually walked with them, but I
11 have been on the section with them, you know. Like
12 I'm running my buggy over here and they're in Number
13 One doing their thing. Now, I've never actually
14 walked with one and followed and did everything ---
15 watched everything he did. No, I've never done that.

16 Q. Okay. Thank you.

17 ATTORNEY WILSON:

18 Dave?

19 RE-EXAMINATION

20 BY MR. STEFFEY:

21 Q. Back to when you were taking that supply car up to
22 Headgate 22, ---

23 A. Okay.

24 Q. --- now, were you on that supply motor by
25 yourself?

1 A. No, sir, I was not.

2 Q. Okay. Who was with you?

3 A. I don't know his last name. His name was Jason.

4 I don't remember his last name. I just knowed him as
5 Jay.

6 Q. Did you have a methane detector when you went up
7 to Headgate 22?

8 A. No, sir.

9 Q. Did Jay have a methane detector?

10 A. No, sir.

11 Q. Who told you to go up --- take the supply car and
12 go up there?

13 A. That would have had to have been either Gary May
14 or Wayne Persinger.

15 Q. What does Jay normally do?

16 A. Jay was --- he was a new guy. He wasn't a red
17 hat, but he was a new guy to us, and he rode with me
18 that night, but ---.

19 Q. Did you wear it when you were working by itself?

20 Is the company supposed to give you a methane
21 detector? You're supposed to have one with you?

22 A. I know the scoop guy is supposed to have one when
23 he goes outby, but I didn't know --- no, I didn't
24 know.

25 Q. Were there any other times where you were working

1 by yourself or with one other person and no one had a
2 methane detector?

3 A. Well, the day that me and Bill brought the
4 flow-through up, we didn't have a detector with us
5 then.

6 Q. Do you know if that was a common occurrence at
7 this mine, people sent to do jobs and not have a
8 methane detector?

9 A. Well, really, I can only speak for myself. I
10 mean, nobody ever said, you know, take this with you
11 because you have to have it. Nobody --- you know, I
12 can't speak for others. I can only speak for myself,
13 and nobody ever --- nobody ever told us.

14 Q. You mentioned you were hired straight in as a red
15 hat.

16 A. Yes, sir.

17 Q. How many other red hats were hired in with you?

18 A. There were other red hats there. But when I was
19 hired, I was the only one at that time.

20 Q. You were the only one hired as company?

21 A. Yes.

22 Q. Okay.

23 A. There were other red hats working for Massey, but
24 they were hired two months before I started.

25 Q. Yeah. But they were hired into the company

1 straight in?

2 A. Yes, sir. I think so, yeah.

3 Q. Okay. You mentioned low air violations. Do you
4 know anything about those, how often they occurred and
5 where?

6 A. Well, there was one time when we were on Two
7 section.

8 Q. Where is Two section?

9 A. This was --- see, where are we at here? Glory
10 Hole. Two section was this section right here.

11 Q. So that was the One --- the Tailgate One North?

12 A. Yeah. This was --- now, this has been a while
13 back.

14 Q. Uh-huh (yes).

15 A. Section Three was the most recent before we was
16 moved into the new setup. This had been previous to
17 that.

18 Q. Okay.

19 A. And we had a low air violation here. I can't
20 remember exactly where, but ---. Let me back up here.
21 One North, picked up Dino, and we backed up. It was
22 here is where the low air violation --- because our
23 boss, he got in trouble over the low air violation and
24 --- they first told us that he was fired, and then we
25 found out later that he stayed home a few days and

1 they called him back and sent him to another mine.
2 But yeah, we did have a low air violation here. I'm
3 pretty sure it was on this little area right here
4 where we were working.

5 Q. So you were on the crew that drove this Tailgate
6 One North?

7 A. Yes, sir.

8 Q. Okay. Did you ever run into any methane driving
9 up through there?

10 A. Yes, sir.

11 Q. How much?

12 A. The highest I had ever seen it personally here, it
13 gassed our miner off at two percent. And I don't know
14 exactly how high it went, but I just remember the
15 miner shut down. And then when the miner shut down,
16 we was looking at each other like what in the world
17 because we've been in methane --- there was always .1,
18 .2, .3, but we hit a spike all of a sudden that was
19 two percent, and it gassed our miner off. And you
20 know, of course that really unnerves you. And I can
21 remember, you know, getting out of there and going
22 down to the ---.

23 Q. Did you ever have to withdraw because of
24 methane ---

25 A. No.

1 Q --- in that area?

2 A. No. No, sir.

3 ATTORNEY WILSON:

4 Let's just make sure the record is clear.

5 When you said you had received a low air violation,
6 you were referring to the ---

7 A. Cut-through.

8 ATTORNEY WILSON:

9 --- section --- the cut-through, which is
10 just outby the longwall panel; correct?

11 A. Yes, sir.

12 ATTORNEY WILSON:

13 And then the area where you were talking
14 about the methane gassing off was on the tailgate side
15 of the longwall?

16 A. Yeah. And I don't remember exactly where it was
17 at, but it was on the tailgate side.

18 BY MR. STEFFEY:

19 Q. Were you on the crew that drove out toward the
20 Bandytown fan?

21 A. Yes, sir. Let me try to explain how that worked.
22 There was two crews driving simultaneously. And let's
23 see. We drove this while they kept going, and then we
24 drove this.

25 Q. You drove the diagonal ---

1 A. Yes.

2 Q. --- you drove the crossover first at the top
3 of ---

4 A. Yes.

5 Q. --- the longwall panel, ---

6 A. Yes.

7 Q. --- and then you drove the diagonal?

8 A. Yes, sir. And we --- they were ahead of us. And
9 when we pushed into them, they took these guys and
10 this crew and moved them there.

11 Q. To the Headgate 22?

12 A. Yes, sir.

13 Q. That was Dino's crew?

14 A. Dean Jones. And then we picked up where they left
15 off and drove to the Bandytown fan.

16 Q. Okay. How was your air going out to the Bandytown
17 fan?

18 A. The farther we went, the less air we had. This is
19 a long ways, a long ways out through here. Now, I
20 never took the little fan and measured it.

21 Q. Anemometer?

22 A. Right. I never took the anemometer and measured
23 myself, but I know the further it went, it seemed
24 like, you know, the more you sweat. The hotter it
25 got.

1 Q. The more you sweat. Did you ever start up the
2 section with less than the required volume?

3 A. Well, I don't --- we started the section every
4 day. I mean, like I said, I'm not the one that
5 measured, so I just assumed that when the boss said,
6 let's go and run, that he did his part, you know.

7 Q. Is you're approved methane and dust control plan
8 --- what was your maximum cut depth in that plan?

9 A. On this one?

10 Q. Yes.

11 A. I don't remember. I don't remember. No, sir, I
12 don't remember.

13 Q. Did you take an extended cut or did you take a
14 20-foot cut?

15 A. I don't remember. Honestly I don't remember.

16 Q. Okay. Could you run your scrubber? Did the plan
17 allow for you to run your scrubber?

18 A. I don't remember.

19 Q. When you ran --- when respirable dust was run by
20 the company, did you run the scrubber then?

21 A. When we run a dust pump?

22 Q. On a miner.

23 A. I don't know.

24 Q. Okay.

25 A. I don't know.

1 Q. What about when the inspector was on the section,
2 did they run the scrubber then?

3 A. See, I don't remember if we were allowed to run
4 the scrubber or not. I mean, ---.

5 Q. Did they ever take a cut with the curtain rolled
6 up or not in place?

7 A. We took cuts with curtain rolled up, yes, sir.

8 Q. Rolled up, going to the miner?

9 A. Yes, sir.

10 Q. Okay. Who told you to do that?

11 A. Well, if you didn't roll the curtain up, I mean,
12 most of the time it got destroyed. And my
13 understanding was --- now, this is the way I
14 understood it, that we had --- I don't know what you'd
15 call it. We had a waiver that said that we could roll
16 it up, what was it, 30 feet, I think, or 20 feet.
17 that was my understanding, that we had a waiver that
18 we were allowed to roll the curtain up so far.

19 Q. Okay. What about when the inspector was coming,
20 did you ever have to stop and roll it back down? Did
21 anybody call and ever tell you guys, an inspector is
22 on his way?

23 A. Yeah. Every time an inspector came they called
24 ahead. Whenever the president was there or vice-
25 president or anybody, they'd call and say, you know,

1 you guys got Chris coming your way or an inspector
2 coming your way.

3 Q. We'll talk about Chris here in a minute.

4 A. Okay.

5 Q. Let's go back to when they called you and told you
6 an inspector was coming. They did that pretty often
7 when an inspector was coming; ---

8 A. Yes, sir.

9 Q. --- would that be an accurate statement?

10 A. They did that every time an inspector was coming.
11 They called and let us know.

12 Q. Okay. What did you do then?

13 A. If there was any loose ends, we would ---.

14 Q. Loose ends, meaning ---?

15 A. Like if one fly pad was missing here, we would
16 take it up.

17 Q. Okay. So what you did was you tried to correct
18 any violations before the inspector gets there?

19 A. Yes, sir.

20 Q. What about when the inspector was on his way to
21 the section, many curtains that were rolled up going
22 to the miner because of this waiver, that you
23 understood that you guys had, did you roll it back
24 down?

25 A. No. I don't remember ever --- you know, if we

1 rolled the curtain up. I mean, we didn't like roll it
2 all the way out. We just rolled it up so far so, you
3 know --- but I don't remember us ever saying, go up
4 there and drop that down because here he comes.

5 Q. Have you ever worked as a dispatcher?

6 A. Yes, sir.

7 Q. When was this?

8 A. I don't remember, like, the exact time I worked as
9 a dispatcher, but yeah, I did work as a dispatcher. I
10 mean, I can't say this year --- this month to this
11 month, but yeah, I did work as a dispatcher first ---

12 Q. Okay.

13 A. --- for a little bit of time.

14 Q. Well, why were you working as a dispatcher?

15 A. Filling in until he got somebody.

16 Q. Filling in until he got somebody?

17 A. Yes, sir.

18 Q. Well, did the previous dispatcher quit?

19 A. Oh, I don't know.

20 Q. What was your duties as a dispatcher? What did
21 you do?

22 A. You had --- my duties were, of course, you had to
23 keep your clipboard with you to keep track of the
24 traffic running in and out of the mine, and you had to
25 make sure all the coal reports were faxed, and you had

1 to make sure the bath house was clean, and you had to
2 make sure the trucks was unloaded, and you had to do
3 purchasing. And it was ---.

4 Q. A lot of multitasking.

5 A. Oh, my goodness. I was so glad to go back
6 underground. See, I worked underground, and they
7 asked me if I would fill in until they got a
8 dispatcher, and I did. And that was a mistake because
9 I wouldn't have wished that on anybody.

10 Q. Tough job, huh?

11 A. Oh, my. Yes, it was.

12 Q. Did you answer the phones outside also?

13 A. Unfortunately, yes.

14 Q. Unfortunately, yes. How often did upper
15 management call the mine?

16 A. Very frequently.

17 Q. Very frequently?

18 A. Yes.

19 Q. And who was this?

20 A. Chris and ---.

21 Q. Chris?

22 A. Blanchard and --- I don't know who all, but I
23 mean, it was --- I mean, I can't remember exactly who
24 called, but I Just remember the phone ringing off the
25 hook, and for some reason, all the wrath was on the

1 guys that was answering the phone even though, you
2 know, I didn't like have any control over what went on
3 underground, but ---.

4 Q. What kind of questions did Mr. Blanchard ask when
5 he called?

6 A. What's the problem, you know. Like just an
7 example. If we were down, he'd say, what's wrong?
8 Well, what they told me was this was wrong --- you
9 know, just an example, this was wrong. Well, why
10 didn't they do this? I don't know. Well, why didn't
11 they do this then? I don't know.

12 Let me tell you about one specific time. He run
13 off about 12 questions, and I'm like, sir, I don't
14 know. Sir, I don't know. Finally, I said, hold on a
15 minute. I said, let me get me a pen and paper and you
16 give me these questions, and I'm going to write them
17 down and I'll get an answer for every one of them,
18 then I'll call you back. Can I do that? He said,
19 yeah, let's do that. And most of the time they was
20 asking me questions I had no answer to, you know, why
21 didn't the section boss do that? Seeing as I'm not on
22 the section, I'm not sure why he didn't do that. I
23 mean, ---.

24 Q. So he called pretty frequently?

25 A. Yes, sir.

1 Q. Was he pretty much aware of the problems inside
2 the mine?

3 A. He had to rely more on what people told him
4 because he did come underground, but it wasn't a
5 frequent event. You know what I'm saying. She had to
6 rely more on what people was telling him.

7 Q. Was he aware of any ventilation problems?

8 A. Well, if there were violations, I know he was
9 aware of them.

10 Q. When the section was down due to low air or any
11 other reason, was he aware of that?

12 A. Every time the section was done, he was aware, for
13 whatever reason, it was, yeah.

14 Q. Now, you mentioned that you worked as a dispatcher
15 and this was going on when you were dispatching.

16 A. Yes, sir.

17 Q. Did you ever call underground and tell them that
18 an inspector is on the way?

19 A. No, I never did that.

20 Q. Who did that?

21 A. Well, with me working evening shift --- you know,
22 I don't know who did during the day, but with me on
23 the evening shift.

24 Q. So you dispatched during the evening?

25 A. Yes, sir.

1 Q. During the dayshift, who called underground? Did
2 you ever answer the phone and somebody tell you
3 there's an inspector coming?

4 A. Yeah. When I worked underground, that did happen.
5 Sometimes it was the foreman. Sometimes it was ---
6 just really anybody could call and say, hey, you got a
7 visitor coming.

8 Q. Did they call from the guard shack outside and
9 tell them that they had a visitor coming?

10 A. When I was dispatching, they would make a call, so
11 and so is on the property from wherever. Yeah, they
12 did do that.

13 Q. So they would call and tell you an inspector was
14 on the property?

15 A. Yes, sir.

16 Q. And then what would you do? Would you relay that
17 underground or would someone else relay that
18 underground?

19 A. Somebody else would relay that, yes, sir.

20 Q. Who instructed the guards to do that?

21 A. I don't know.

22 Q. Who gave you instructions or the other dispatcher
23 or anyone else to call underground and tell them that
24 an inspector was on the property?

25 A. Well, I mean, we wasn't allowed to do anything

1 unless, you know, the foreman or the superintendent or
2 somebody ---.

3 Q. Told you to do something?

4 A. Yes, sir.

5 Q. Okay.

6 ATTORNEY WILSON:

7 Let's just clarify. Did anyone ever
8 specifically tell you or instruct you to call
9 underground and notify people underground that there
10 was an inspector on the property?

11 A. Me, personally, no, sir.

12 BY MR. STEFFEY:

13 Q. Do you know of any situations where they
14 specifically told anyone else if we have company, you
15 call underground and let them know?

16 A. No, sir. I can only speak for myself. They never
17 sat down, looked at me and said, whenever company
18 comes, we want you to holler underground and tell
19 them. They never did that. They never did that. But
20 whenever company came, the call always went
21 underground that somebody was here, nobody who --- you
22 know, even if our president was coming to the section,
23 they'd let us know ahead of time.

24 Q. That call that normally went underground that the
25 company was coming or the inspectors were coming, has

1 that call ever, in any instance, failed, not to make
2 it underground? Did someone fail to call ahead? Do
3 you ever remember that happening? Have the inspectors
4 surprised you?

5 A. A section that I was on, I've never had a
6 situation to where I turned around and said, well,
7 there's an inspector. Where did he come from? No,
8 that never happened.

9 Q. What would have happened had that person outside
10 not called underground and told the company he was on
11 the way?

12 A. I don't know. I don't know.

13 Q. Are you aware that the Mine Act specifically
14 prohibits prior notification that an inspector is en
15 route?

16 A. Did not know that. Did not know that. And what
17 you was talking about a while ago, nobody ever sat
18 down and looked at me and said, if you don't call,
19 you're going to get in big trouble. That never
20 happened.

21 Q. So nobody ever --- everybody just would call in?

22 A. Yeah.

23 Q. Now, let's talk about Mr. Blanchard. You
24 mentioned that you'd get a phone call that he'd be on
25 his way to the section. Now, was this on dayshift or

1 evening shift?

2 A. Dayshift.

3 Q. Dayshift. So he was a dayshift guy?

4 A. Yes, sir.

5 Q. When he came to the section, typically what was
6 going on?

7 A. We'd be running.

8 Q. What would he come up there to do?

9 A. Well, I'm not exactly sure what motivated him to
10 come to the section, but he would come up and look
11 around and do his president thing and then go back
12 outside.

13 Q. Did he ever talk to you or the crew?

14 A. He talked to the crew a couple times, yes, sir.

15 Q. And what were those conversations like?

16 A. One conversation I do remember, we were in the
17 process of running. And I do remember this
18 specifically. We were in the process of running, and
19 he shut the feeder off and he gathered everybody
20 together and he leaned on our boss really hard about
21 making sure the curtain was right, he said, because I
22 came through over there --- I can't remember the
23 specific of where he found it, but he said, I came
24 through over there and one of your fly pads was torn
25 half down. And he leaned on them in front of all of

1 us I guess to make an example that he wanted the
2 curtain and things to be right. Now, he did do that,
3 yes, sir.

4 Q. Any other conversations he ever had with the crew?

5 A. Underground or outside or ---?

6 Q. Underground or outside.

7 A. That was the only conversation I remember him
8 having with the crew as a whole underground. And
9 outside --- I know during annual re-trainings he would
10 sometimes give statements, you know, to the classroom
11 full of guys and --- yeah, from time to time he would
12 give little speeches outside.

13 Q. Did anybody ever express any concerns to him that
14 they were worried about maybe low air or anything?
15 Anybody ever talk about that?

16 A. None that I heard, no, sir. None that I heard,
17 no.

18 Q. Okay. So Mr. Blanchard came to the section and he
19 got on you guys --- got on your boss about making sure
20 curtains were right?

21 A. Yes, sir.

22 Q. Anything else that Mr. Blanchard ever talked to
23 you guys about? Did he ever say anything about
24 vacations being cancelled, anything like that?

25 A. I never heard him say with my own ears speak of

1 vacation. But for some reason, I don't know why,
2 every time vacation rolled around, you didn't know
3 until the last day of the week if you was going to
4 have to work or not. And that gets old after a while.
5 You know what I mean? You make your reservations at
6 Myrtle Beach, and then you don't know until Friday if
7 you're going to get to leave Saturday. Now, that did
8 get kind of old. But I never heard him specifically
9 say you don't get vacation. There was just the bath
10 house rumors. You know how they go around?

11 Q. Coal miners talk.

12 A. The bath house rumors is always we got to work
13 next week. Well, next week is vacation. But you
14 know, it's ---.

15 Q. Did he take his vacation?

16 A. Oh, I don't know. I guess he did. I'm assuming
17 he did, you know.

18 Q. Do you feel like there was a lot of pressure at
19 this mine to run coal?

20 A. Yes, sir, I do.

21 Q. What would make you say that?

22 A. Well, it's kind of hard to put into words. Nobody
23 ever looked at me and said, if you all don't run coal,
24 you're all fired. But there is this underlying
25 pressure that you have that if you don't run coal,

1 somebody else will for you. And nobody ever
2 specifically said, you got to run coal or you're out
3 of here, but yeah, there is this pressure that you
4 have. It's kind of hard to put into words. You just
5 have to experience it, you know. But there is
6 pressure that you have, you know, to do the right
7 thing, but at the same time you've got to run coal as
8 well. Speaking for myself, I felt pressure to do the
9 right thing and to run coal.

10 Q. And to produce.

11 A. Yes, sir. Yes, sir.

12 Q. Where did that pressure come from?

13 A. I felt that that pressure came from above my
14 immediate supervisor.

15 Q. So it came from above your section boss?

16 A. Yes, sir. He felt the pressure. It was conveyed
17 to him, so it was conveyed to us, not so much like ---
18 like I said, he never looked at us and said, guys, if
19 you don't do it ---.

20 Q. Did this pressure ever cause anyone to take a
21 shortcut?

22 A. Yes, sir, I felt that it did. Yes, sir.

23 Q. Now, your continuous miners, they were equipped
24 with the methane sensors; right?

25 A. Yes, sir.

1 Q. You said earlier that it indicated it picked up
2 methane?

3 A. Yes, sir.

4 Q. Do you know of a specific instance or have heard
5 of any instances when a methane sensor inside this
6 mine was bridged out or otherwise disabled?

7 A. Honestly, I can say no, sir. If we ever had a
8 problem with our methane monitor, we stopped and the
9 electrician fixed it. That's the honest truth. I've
10 never ---.

11 Q. Okay.

12 A. Never, sir, have I heard that.

13 Q. Okay.

14 MR. STEFFEY:

15 Okay.

16 RE-EXAMINATION

17 BY MR. FARLEY:

18 Q. A couple real quick. Did the crew driving toward
19 the Bandytown fan continue to run coal when the other
20 crew was driving the diagonal entries through and then
21 cutting through?

22 A. You mean when we were punching actually into them?

23 Q. Yes, sir.

24 A. No. They had to shut down because we were going
25 to be punching into their air.

1 Q. Okay. Now, ---.

2 A. I do remember that.

3 Q. This headgate section where you were trying to get
4 set up to --- for a place on the longwall, was the ---
5 did you have ventilation already set up for that there
6 or do you know?

7 A. Well, I had built --- me and Jay had built
8 stoppings where I showed you earlier. We had built
9 stoppings. We had built stoppings here, and there
10 were stoppings already in place, but --- well, I can't
11 say a hundred percent sure if this was ready or not
12 because there were airlock doors here that we kept
13 closed all the time at the mouth of this.

14 Q. Okay.

15 A. Now, we did go back here and work, but I don't
16 know if ventilation was prepared for running this
17 section or not.

18 Q. Okay. All right.

19 MR. FARLEY:

20 That's it.

21 ATTORNEY WILSON:

22 Okay. I think then we're through with
23 the questioning.

24 A. Okay.

25 ATTORNEY WILSON:

1 Mr. Toney, again, on behalf of MSHA and
2 the Office of Miners' Health, Safety and Training, I
3 want to thank you for appearing today and answering
4 our questions. Your cooperation is very important as
5 we work to determine the causes of the accident.

6 A. Okay.

7 ATTORNEY WILSON:

8 Again, I'll remind you that we ask that
9 you not discuss your testimony with anyone else
10 because we will be interviewing additional witnesses.

11 A. Okay.

12 ATTORNEY WILSON:

13 I also want to let you know that after we
14 finish questioning witnesses, we may have some
15 follow-up questions and we may contact you.

16 A. Okay.

17 ATTORNEY WILSON:

18 And if at any time you think of
19 additional information that you think we should know
20 about, please contact us at the information that was
21 provided to you.

22 A. Okay.

23 ATTORNEY WILSON:

24 Before we go off the record, when we
25 began I told you that I would give you an opportunity

1 if there's anything that you want to say or if there's
2 any additional information that you would like to tell
3 us about, now is your chance to do that.

4 A. Okay. Well, I do want to apologize for my mistake
5 earlier. I told you that there was no equipment up
6 there, but there was equipment there. See, I had been
7 running the motor. And since I didn't move any
8 equipment, I had forgotten that they had run across
9 the track, and I was in error, and I want to apologize
10 and state that there was a miner there and a shuttle
11 car. And there was a roof bolter there, because after
12 they cut across the track, they had bolted it. And I
13 know there was a scoop on this section --- or there
14 was a scoop here, but I'm unsure of the second miner
15 and the second shuttle car and the feeder. I don't
16 believe they were there. But I did want to correct
17 that error that I had because I had been running a
18 motor, and then after I answered and then later on you
19 all asked me another question, then I happened to
20 think they cut a belt channel over the --- yeah, the
21 miner and a buggy was there. And I wanted to correct
22 my error ---

23 ATTORNEY WILSON:

24 All right. Well, we appreciate it.

25 A. --- and let you know that I wanted to make sure

1 everything that I spoke today was right and in order
2 because my eternal soul is not worth this, you know
3 what I'm saying, and I wanted to be right and correct.
4 And I don't have any problem whatsoever coming in
5 and answering questions. And if you guys need me to
6 come back, I'm ore than happy to come back because
7 some of the men that were killed that day, some of
8 them I didn't know, some of them were acquaintances,
9 but some of them were good friends, and I want to know
10 what happened. And if you guys want me to come back,
11 I'll be more than happy to.

12 ATTORNEY WILSON:

13 All right. Well, we appreciate that.

14 Thank you. And we'll go off the record.

15

16 * * * * *

17 STATEMENT UNDER OATH CONCLUDED AT 12:15 P.M.

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CERTIFICATE

I, Danielle Ohm, 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.



Danielle Ohm