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Transcript of the Testimony of Scott Barnett

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STATEMENT UNDER OATH
OF
SCOTT BARNETT

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Thursday, June 10, 2010, beginning at 1:00 p.m.

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one

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*exhibit not attached

P R O C E E D I N G S

ATTORNEY BABINGTON:

My name is Matt Babington. Today is June 10th, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Eric Sherer, an accident investigator with the Mine Safety and Health Administration, an agency of the U.S. Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearance for the record.

ATTORNEY MCATEER:

Davitt McAteer. I'm with the Governor's independent investigation.

MR. FARLEY:

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

ATTORNEY BABINGTON:

All right. And there are several members of the investigation team also present in the room today. Eric will be conducting initial questioning. All members of the Mine Safety and Health Accident Investigation Team and all members of the State of West Virginia Accident Investigation Team participating in the investigation of the Upper Big

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

15 Government investigators and specialists

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

24 You may have your personal attorney

25 present during the taking of this statement or another

1 personal representative, if MSHA has permitted it, and
2 you may consult with your attorney or representative
3 at any time. Your statement is completely voluntary.
4 You may refuse to answer any question and you may
5 terminate your interview at any time or request a
6 break at any time. Since this is not an adversarial
7 proceeding, formal Cross Examination will not be
8 permitted. However, you may ask clarifying questions
9 as appropriate. For the record, do you have a
10 personal representative with you today?

11 MR. BARNETT:

12 No.

13 ATTORNEY BABINGTON:

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

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

5 MR. BARNETT:

6 Yes.

7 ATTORNEY BABINGTON:

8 Do you have any questions?

9 MR. BARNETT:

10 No.

11 ATTORNEY BABINGTON:

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

22 A court reporter will record your
23 interview. Please speak loudly and clearly. If you
24 do not understand a question asked, please ask me to
25 rephrase it. Please answer each question as fully as

1 you can, including any information you may have
2 learned from someone else. I'd like to thank you in
3 advance for your appearance here. We appreciate your
4 assistance in this investigation. Your cooperation is
5 critical in making the nation's mines safer.

6 After we finish asking questions, you'll
7 have an opportunity to make a statement and provide us
8 with any other information you believe to be
9 important. If at any time after the interview you
10 recall additional information that you believe might
11 be useful, please contact the team or Norman Page at
12 the contact information previously provided to you.

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

22 -----
23 SCOTT BARNETT, HAVING FIRST BEEN DULY SWORN, TESTIFIED
24 AS FOLLOWS:
25 -----

1 EXAMINATION

2 BY MR. SHERER:

3 Q. Please state your full name and spell your last
4 name.

5 A. Scott Alan Barnett, B-A-R-N-E-T-T.

6 Q. Could you tell us your address and telephone
7 number, please?

8 A. (b) (7)(C)

9 (b) (7)(C) .

10 Q. Are you appearing here voluntarily?

11 A. Yes, sir.

12 Q. Thank you. Has anyone talked to you or
13 interviewed you concerning the accident?

14 A. Yes.

15 Q. Who was that, please?

16 A. Massey's attorneys and the FBI and --- I'm trying
17 to think who he said he was. FBI. There was another
18 guy from West Virginia.

19 Q. Sure. Approximately, when were you interviewed by
20 Massey's attorneys?

21 A. I'd say four weeks ago maybe.

22 Q. Sure. Where did this interview take place?

23 A. Elk Run office.

24 Q. Were you cautioned about what you should say in
25 this interview?

1 A. No.

2 Q. Did they give you any other instructions about
3 this interview?

4 A. Told us to tell the truth if we went on with any
5 other interviews.

6 Q. Okay. Thank you. Did they ask you to report back
7 to them about this interview?

8 A. No.

9 Q. Roughly, how many years of mining experience do
10 you have?

11 A. Roughly, six.

12 Q. Okay. Could you give us a little outline of that
13 history, please?

14 A. I worked about seven months on the strip job and
15 got employed with Massey on October 5th of 2004.

16 Q. And you've been working for Massey since 2004?

17 A. Yeah.

18 Q. Has it all been at Upper Big Branch or have you
19 worked at different mines?

20 A. No. One mine is --- we worked at White Queen for
21 Marfork until they shut it down in March of '09, and
22 then we went to UBB in March of '09.

23 Q. Is that when they transferred the longwall back to
24 UBB?

25 A. No. They brought it back not --- in between that

1 time.

2 Q. So you've been with UBB since March of '09?

3 A. Yeah.

4 Q. What have you done at UBB during that period of
5 time?

6 A. Section electrician and filled in as section boss.

7 Q. Okay. Which section did you work on?

8 A. Number Four section, Number Two section and
9 Tailgate 22.

10 Q. Okay. And which section are you currently on?

11 A. I don't work at UBB now.

12 Q. Oh, excuse me. I'm sorry. Which section were you
13 working on prior to the explosion?

14 A. Tailgate 22.

15 Q. You mentioned the Number Four section. Can you
16 describe where that was at, please?

17 A. Just inside the UBB Portal.

18 Q. Out on the south end?

19 A. Yeah. Where you go in --- right there at the
20 Plumley Switch, you turn left at the Plumley Switch
21 and go up in there about ten breaks. That was Four
22 section.

23 Q. And Two section was the ---?

24 A. Was finishing this right here up.

25 Q. Okay.

1 MR. SHERER:

2 And the witness is describing the rooms

3 at the end of the longwall panel that was active at
4 the time of the explosion, just inby the Six North
5 belt entries.

6 BY MR. SHERER:

7 Q. Okay. Did you work for Performance Coal or were
8 you a contractor?

9 A. No, for Performance.

10 Q. Thank you. You mentioned that you were a section
11 boss and you were an electrician.

12 A. Yeah.

13 Q. Was there any time periods associated with any of
14 those duties?

15 A. No. They moved our section boss to be a mine
16 foreman somewhere, and we didn't have a section boss
17 for a while ---

18 Q. Okay.

19 A. --- so I filled in for two-and-a-half to three
20 months until they got a section boss. But I done both
21 duties. I mean, I was still an electrician.

22 Q. Geez. You get paid twice?

23 A. No, I didn't get paid twice.

24 Q. Roughly, when was that, that you were acting as
25 section boss?

1 A. That was when we were on Four section.

2 Q. And that was right after you came back or came to
3 UBB?

4 A. I had been there a few months. I had been there
5 several months before that.

6 Q. Okay. What training have you received since
7 you've been at UBB?

8 A. Just the normal yearly, you know, annual
9 retraining and electrical retraining and annual
10 miner's retraining. There ain't been no different
11 retraining other than, you know, task training on the
12 equipment.

13 Q. Sure. Do you recall your first day at UBB, what
14 you did?

15 A. Yeah.

16 Q. What did you do?

17 A. I went straight to the section and I started
18 running coal.

19 Q. Okay. You didn't go --- did you travel any
20 escapeways?

21 A. Oh, yeah. Yeah. We walked in the intake to the
22 section and then rode out at the end of the shift on
23 the mantrip.

24 Q. Okay. Did you travel to the longwall?

25 A. No, I never traveled to the longwall. There

1 wasn't no longwall there at that time.

2 Q. Okay. Did you travel to any other sections?

3 A. Uh-uh (no).

4 Q. Okay. You mentioned that you had some retraining
5 and such. How about the SCSR training, have you had
6 that recently?

7 A. I don't think recently, but it's been --- it's
8 pushing about 90 days or more right now. I know we
9 still had it every three months. We done the fire
10 training, stuff like that. They actually had some
11 mine rescue teams --- or guys from the mine rescue
12 team waiting on us on Four section at one time and
13 tried to make it look like there was a fire
14 happening, ---

15 Q. Okay.

16 A. --- you know, had it wrote on the rib, you know.
17 That was a pretty good little training there that we
18 didn't normally receive anywhere else.

19 Q. Did you do any of this training in smoke?

20 A. No, just the annual retraining. They had a smoke
21 trailer there.

22 Q. Okay. And how about the refuge chamber, have you
23 had any training on that?

24 A. Yeah. Yeah, a couple times a year.

25 Q. Okay. You mentioned that you're an electrician.

1 Did you become an electrician while you were working
2 for Massey?

3 A. Yeah.

4 Q. Did they provide the electrical training?

5 A. Yes, sir.

6 Q. Did you have to enter into some sort of contract
7 with them to receive that training?

8 A. Yeah. I think we signed a contract to work three
9 years with them or we had to pay the cost of the class
10 back.

11 Q. Okay.

12 A. But that's well over with now.

13 Q. Sure. That's good. Do you have any Federal or
14 state mining certifications?

15 A. Yeah. I'm a certified mine foreman, a certified
16 welder in the State of West Virginia and a certified
17 EMT in the mine.

18 Q. Do you got an electrical card?

19 A. And electrical. Yeah, a certified electrician.

20 Q. Okay.

21 A. And certified dust.

22 Q. You say that you were working on the 22 Headgate
23 section prior to the explosion?

24 A. Tailgate.

25 Q. Or tailgate. Excuse me. And the tailgate is

1 associated with MMU-040?

2 A. Uh-huh (yes). Yes, sir.

3 Q. Which shift did you normally work?

4 A. We worked straight evenings.

5 Q. Straight evenings, okay. Which portal did you use
6 to get into that section?

7 A. UBB.

8 Q. Okay. So you had to go up the long way?

9 A. Yeah.

10 Q. Did you travel through any equipment doors coming
11 and going from the section?

12 A. Yes.

13 Q. How many doors, roughly?

14 A. Roughly 10 to 12.

15 Q. That's a lot of doors. Did you ever notice if
16 these doors were damaged or had any sort of leakage
17 problems?

18 A. A few of them.

19 Q. Could you explain that or describe it?

20 A. Where people would let the --- not the mechanical
21 doors, the other ones you had to do manually, that
22 wasn't in operation, would be mechanical. You know,
23 the people would let them slam and they would break
24 the block loose on top of the header board, stuff like
25 that. So there was probably some leakage there with a

1 block missing or, you know, needing re-cleaned or
2 re-sealed.

3 Q. Were these doors dented up occasionally?

4 A. Occasionally.

5 Q. Did you ever notice things like rope or chains or
6 hooks or anything to keep them closed when they were
7 damaged?

8 A. Let's see. I've noticed that, but I'm trying to
9 think on the mainline. Maybe a rope hanging here or
10 there, but most of the doors were --- you know, they
11 were --- if they were bent they had wedged together
12 enough where you didn't need nothing, because you got
13 no way of getting to the other side to undo a rope if
14 you got one tied on the other side.

15 Q. Okay. Ever find any of these doors open when you
16 came up to them?

17 A. Not very often. They're pretty good about
18 shutting them.

19 Q. Just occasionally?

20 A. Yeah, just on occasion.

21 Q. Are you aware when you got a shift change or
22 something, you got several mantrips grouped up, have
23 you ever seen these doors opened up so all of the
24 mantrips can get through and then shut?

25 A. Yes, I saw that.

1 Q. Was that frequently or occasionally?

2 A. Mostly occasionally, I mean, if you had a mantrip
3 behind you.

4 Q. Sure. Could you give us a little bit of an idea
5 about the management structure? You said you worked
6 as a section boss. Who did you report to?

7 A. Gary May, the superintendent.

8 Q. So did all of the production sections report to
9 Gary May?

10 A. No.

11 Q. Okay. Could you help us with how that worked?

12 A. When I first got there, Homer Wallace was the
13 superintendent and Gary was, I guess, mine foreman or
14 assistant superintendent or something. Then they went
15 to this other portal, Ellis Portal, and somehow or
16 another they decided that one-half of the mines was
17 Gary's and Rick Foster's, the mine foreman, and the
18 other half of the mines was Homer's and Terry Moore's
19 and mine.

20 Q. Okay.

21 A. So they split the mines up between the four of
22 them.

23 Q. So it was just like a physical split? Be this
24 line ---

25 A. Yeah.

1 Q. --- Homer is the foreman, and above it Gary is the
2 foreman?

3 A. Yeah, pretty much, I think, around Ellis Switch.

4 Q. Okay. So everything north of Ellis Switch was
5 Gary's?

6 A. No. It was Homer's.

7 Q. Okay.

8 A. Gary had the portal end and Three section behind
9 them.

10 Q. Oh, okay.

11 A. He had Three and Four section, that new section.
12 They were trying to set up --- well, the new Four
13 section.

14 Q. Sure.

15 A. That was pretty much theirs. And then the rest of
16 them was Homer Wallace's and Terry Moore.

17 Q. Okay. So you reported to Homer when you were
18 working on the tailgate here?

19 A. Not really. We still talked to Gary because we
20 portalled at UBB.

21 Q. Oh, okay.

22 A. He tried to keep us, you know, down there and
23 that. And there wasn't no room, you know, by the time
24 they sent the longwall over to UBB and sent these
25 other sections over there, so we just kind of hung out

1 at UBB.

2 Q. Okay. Did you find that confusing, because I sure
3 did?

4 A. No, not at all.

5 Q. Okay.

6 A. Because, I mean, sure, they relate back and forth
7 to each other, you know. And if you had a problem, a
8 lot of times Terry Moore, the mine foreman, he would
9 be on the evening shift, you know, and --- or he could
10 be reached if you had something wrong.

11 Q. Sure. Okay. How about the longwall, did it
12 report to the same people?

13 A. I don't know who they reported to. They're
14 independent it seems like ---

15 Q. Okay.

16 A. --- and they bring their men with them when they
17 come.

18 Q. Have you ever --- does that seem like a common
19 practice to you?

20 A. Yeah. From what I hear, it is.

21 Q. Okay. As an electrician, do you also report to
22 somebody like a master electrician?

23 A. Yeah, the chief electrician.

24 Q. Chief electrician. And who is that?

25 A. David Taraczkozy was the dayshift chief and John

1 Henline, the evening shift chief.

2 Q. Okay. Have you ever been injured since you've
3 been working for Massey?

4 A. Yes.

5 Q. Did you have to take any days off because of that
6 injury?

7 A. No.

8 Q. What did you do rather than taking time off? Was
9 it of a nature that you needed to take time off?

10 A. I cut my leg making a splice, cable splice, and
11 got seven stitches in it, ---

12 Q. Oh, geez.

13 A. --- and I worked with the stitches.

14 Q. So you just did your normal duties?

15 A. Yeah, just limped a little bit.

16 Q. Do you recall when you cut yourself, did you have
17 to go to like an emergency room and get those
18 stitches?

19 A. No. I finished the splice, finished making the
20 splice and then went to Raleigh General so they could
21 run it.

22 Q. Were you accompanied to the hospital by anybody
23 from the mine?

24 A. No.

25 Q. You just drove yourself?

1 A. Yeah. And one time I got hit by a rock driving
2 the mantrip in, and I took an ambulance that time to
3 Raleigh General.

4 Q. Did that do any serious damage or ---?

5 A. No. I just wanted to be checked out because it
6 caught me right here and I pushed it with my ribs
7 until I got the mantrips off, and they just wanted to
8 make sure --- you know, do an MRI or whatever they do
9 to look at your stomach, make sure I didn't get my
10 liver or kidneys. But I just was bruised up. I was
11 sore for a day or two.

12 Q. Did you take any time off when that happened?

13 A. No.

14 Q. You're tough. Could you please describe your
15 duties as an electrician on the tailgate?

16 A. I just go over --- I got the right side equipment,
17 being the evening shift electrician, and James Wood
18 had the left side equipment, being the dayshift
19 electrician. And I got my normal PMS on the
20 right-side equipment and any breakdowns on any of the
21 equipment, you know, during the shift.

22 Q. So by PMS, I imagine you're referring to
23 preventative maintenance?

24 A. Yeah. Oils and grease and, you know,
25 permissibility checks on the equipment on the right

1 side, stuff like that, as being an electrician.

2 Q. Do you do anything else besides those duties? Do
3 you fill in for like a miner operator?

4 A. If we're running good, I do, because he ain't
5 getting a break. And if I've got time, I'll run a
6 miner or run a shuttle car, run a bolter.

7 Q. Sure.

8 A. But if we ain't running good, I figure they can
9 handle it.

10 Q. You're probably busy trying to fix what's broken.

11 A. Yeah.

12 Q. Electricians are responsible for the safety of
13 almost everybody that may operate equipment or may
14 touch that equipment. Do you feel proud about your
15 work?

16 A. Yeah. Yeah, I sure do.

17 Q. Do you ever feel pressured to try to just get
18 things done rather than try to get things done safely?

19 A. No, because I won't do it.

20 Q. Okay.

21 A. There's no sense in it.

22 Q. What about the roof, ribs and floors on the
23 tailgate, what condition were they in?

24 A. The floor I think was busting up here and there,
25 and we had a little water when we started. The ribs

1 were decent. And the top, it was --- would carry on
2 here and there, but it was actually pretty decent,
3 which I know we hadn't been in there that far.

4 Q. Roughly, how many breaks was that section advanced
5 at the time of the explosion?

6 A. If this map is up to date, seven. That's about
7 right. We were seven or eight breaks in.

8 Q. Okay. So you're just starting out on it?

9 A. Uh-huh (yes).

10 Q. Do you know why they were driving this tailgate
11 right next to the existing headgate?

12 A. Just from hearsay, I don't know why, but this one
13 was rushing out, and it was going to be their
14 additional escapeway.

15 Q. Okay. You mentioned the floor was busting up, it
16 was hooving?

17 A. Yeah. It was flakey. You know what I mean? You
18 know, just rocks six, eight inches thick, they'd just
19 peel up where they wouldn't --- it would take so much
20 bottom, and then I guess it's just a layer of shale
21 six to eight inches thick.

22 Q. Was it breaking up?

23 A. Yeah. It was just breaking up, big rock. It
24 wasn't nothing --- really hooving or nothing.

25 Q. Did you ever notice methane bubbling in mud

1 puddles, things like that?

2 A. Uh-uh (no). No, sir.

3 Q. Okay. Do you have a lot of air on that section?

4 A. Yeah. It comes and goes.

5 Q. Can you explain comes and goes?

6 A. One day you might have it and one day you don't.

7 Q. Oh, geez.

8 A. Don't know why. Most of the time we had good air.

9 Q. When it went, do you know why it went?

10 A. No. We don't know why it went or where it went
11 to.

12 Q. Oh, geez. What would you do in that case? Would
13 you have to do something to get more air up on the
14 working face?

15 A. Well, we pretty much had our legal amount to run.
16 And we might not have had the 20,000 that Massey
17 wants, but we'd have 18,000 or 19,000, for the most
18 part. We never got down to no air at all.

19 Q. Okay.

20 A. We had the legal amount. Is it 13,500 or whatever
21 in the last open break. But Massey wants 20,000. We
22 might not have 20,000, but at least 13,500.

23 Q. Okay. Did you ever notice either the miners or
24 the air moving and the miners gassing out?

25 A. Not on our section, no.

1 Q. Okay. What about when you were driving this
2 Number Two --- working on Number Two section down
3 there?

4 A. Never hit no methane whatsoever down there.

5 Q. That's good.

6 A. We just ---.

7 Q. Go ahead.

8 A. I just want to say it was --- it was a section
9 that was almost butted off, and they moved us up there
10 just to run just a few breaks ---

11 Q. Oh, okay.

12 A. --- and finish that little panel off.

13 Q. Were you ever on the section or underground when
14 any ventilation changes were made?

15 A. Yeah. Well, they sent everybody home one day, I
16 don't remember what it was, and I stayed, me and the
17 section boss at that time, just to take some air
18 readings on that section.

19 Q. You were asked to stay during the ventilation
20 change?

21 A. Yeah, because we had to get air readings, you
22 know, wherever we were at to find out where all their
23 air was going or coming from and where it needed to
24 get.

25 Q. Do you know where they were working on the

1 ventilation?

2 A. They were between the longwall and One section, so
3 I couldn't tell you where. I mean, I know you had two
4 or three guys that stayed on the longwall, and then
5 two of us stayed on Tailgate 22. And I couldn't tell
6 you how many other guys stayed.

7 Q. Was that a common way to do ventilation changes,
8 do you know?

9 A. I know the people at the mine says you need people
10 here and there. Like if they change air up here, then
11 you --- if you need an air reading over here, instead
12 of that one guy doing the whole mines, I'm sure you'd
13 need two or three people there, four or five people to
14 see if you got air coming through.

15 Q. Do you know if mining ever took place with the
16 ventilation curtains rolled up or no ventilation
17 curtain?

18 A. I'm sure. I mean, just a little bit, I'm sure,
19 yeah. The buggy is always ripping them down, stuff
20 like that.

21 Q. Just until they could get them patched back up?

22 A. Yeah.

23 Q. But never ---?

24 A. Never run the whole shift and hang them at the end
25 of the shift or anything.

1 Q. Have you heard of that happening at any other
2 mine?

3 A. I don't know if I have or not. I ain't going to
4 say yes or no.

5 Q. Okay. Were you ever sent home or told not to come
6 in for work due to the ventilation problems at this
7 mine?

8 A. No. They always kept me because I was certified.

9 Q. Okay. But were the other miners?

10 A. Yeah, they were sent home. Like the one day I was
11 just talking about it, you know, because everybody was
12 sent home, but I stayed around.

13 Q. Do you recall roughly when that happened?

14 A. Not really. It's been this year, though, I think.

15 Q. Was it ---?

16 A. It's been since we went up here. We got up here I
17 want to say February maybe for some reason.

18 Q. So maybe sometime in March?

19 A. Maybe sometime in March.

20 Q. Does March the 9th sound familiar?

21 A. I can't tell you that. You have to look at the
22 time sheets and see everybody had ---

23 Q. Sure.

24 A. --- zero or whatever, you know, except for me and
25 the boss there.

1 Q. Sure. Have you ever heard or do you know of any
2 problems with methane outbursts or methane inundations
3 at this mine?

4 A. No. We had --- the most I've ever seen there is
5 .2 --- .1. Excuse me. We had .1 or .2 on our section
6 when I first got there, but it was coming from One
7 section.

8 Q. Okay.

9 A. Because I went up this return to look for it one
10 night and got to an overcast here, and I was reading
11 .4 there. That was the most I've ever seen.

12 Q. So it was coming back down the return?

13 A. It was coming off from one section's return down
14 toward us.

15 Q. Okay.

16 ATTORNEY BABINGTON:

17 Just for the record, you were pointing to

18 --- is this the Number Five entry on the crossover
19 section between Headgate 22 and Tailgate 22? You're
20 saying that's where the methane seemed to be coming
21 down?

22 A. Yeah, coming from One section down the air return.

23 BY MR. SHERER:

24 Q. Okay. Thank you. Do you normally carry a
25 multi-gas detector?

1 A. Yeah.

2 Q. What type of detector is it?

3 A. The Solaris.

4 Q. Do you carry that home to charge it or charge it
5 at the mine?

6 A. Carry it home to charge it.

7 Q. How about the calibration? How do you do it?

8 A. The calibration, it's done at the mines.

9 Q. How often do you do that?

10 A. Every 30 days, which I have that run 31 days.
11 I've got to do it in 30 days.

12 Q. I can understand that. When the inspectors came
13 on the property, either State inspectors or MSHA
14 inspectors, was there --- did people at the mine
15 receive any notification of that?

16 A. Sometimes someone might call and say we've got an
17 inspector on the property or something like that.

18 Q. And they'd call it underground to let you know?

19 A. Yeah.

20 Q. What did you do different when an inspector was on
21 the property?

22 A. Not really a whole lot, just double check the
23 stuff you're supposed to have been checking anyway.

24 Q. Checking kind of like when company is coming?

25 A. Yeah.

1 Q. Pick up the beer bottles. Do you maintain the
2 methane monitors on the continuous miners?

3 A. No.

4 Q. Do you know who did that?

5 A. The out shift.

6 Q. Have you ever heard of methane monitors being
7 tampered with in some way that they wouldn't read the
8 full amount of methane?

9 A. No, not that I recall. I mean, I've had them down
10 before, but --- you know, in order to move the
11 equipment or to fix the equipment.

12 Q. Okay. Do these miners have a system so that you
13 can bypass the cutting functions and just operate the
14 tram when the methane monitor is over range?

15 A. Yes. You have a methane monitor override on the
16 remote box.

17 Q. And that's --- when do you use that?

18 A. If the miner was gassed off, then you'd use your
19 methane monitor override just to back the miner out of
20 the cut. But like I said, the cutter --- you know,
21 the ripper heads ain't going to come on.

22 Q. Sure. Are you familiar with the S1 and P2 and M3
23 programs?

24 A. I'm familiar with the terminology.

25 Q. Okay. Can you explain what they are, please?

1 A. The S1 program is the safety. The M1 is the
2 measurement, and that's supposed to be the last. I
3 always get S1 and P2 mixed up. Both of them got to do
4 with the section. They're almost the same thing. S1
5 is the practice, I guess, of safety or something like
6 that. One of them is actually doing it.

7 Q. Okay. Have you ever gotten any training or any
8 manuals or anything on those programs?

9 A. No, just the Massey Energy manual when I got hired
10 on in 2004.

11 Q. Did that have those programs in it?

12 A. I think it just talked about them. It didn't
13 really --- we never got no P2 book or nothing like
14 that. I know they've given them out in times past,
15 but I've never received one and I don't know anybody
16 that has in years.

17 Q. Sure.

18 A. Because you don't know what's P2 and what's not.

19 Q. Yeah, I can understand that. When you were acting
20 as a boss, did you have to call out the production?

21 A. Yes.

22 Q. Was that just once during the day or several times
23 during the shift?

24 A. Twice a shift.

25 Q. How about down time, did you have to call that

1 out?

2 A. Yeah. You call that out when you have the ---
3 when you call out the production report.

4 Q. Okay. How about when you first got it in the
5 coal, let's say you've loaded your first shuttle car,
6 do you have to report that?

7 A. Yeah. You got to call out the time you start
8 loading.

9 Q. Okay. Did you ever have to report safety issues
10 on a regular basis?

11 A. Not really. I mean, if it ain't something the
12 section boss can't handle, then, I mean, you shouldn't
13 be calling the dispatcher and telling him about it.

14 Q. Okay. So do you think the S1 got more emphasis or
15 the P2 got more emphasis?

16 A. I don't really know. Like I said, them two's got
17 me confused.

18 Q. Okay.

19 A. I know the S1 is the safety and the P2 is the
20 practice, I think, of the safety, like I think not
21 using a knocker instead a set of crimpers. You know,
22 that's against Massey policy. But like I said, I've
23 always been confused on those issues.

24 Q. Okay. So you think there's a bunch of rules and
25 ways to do things associated with these programs?

1 A. Yeah, that nobody really knows nothing about.

2 Q. Okay. So if I understand you right, this is
3 something like you have a T-shirt that says S1 or P2
4 or whatever, but you don't really know what's behind
5 that?

6 A. Pretty much.

7 Q. Okay. Do you have any knowledge of miners being
8 subjected to retaliation or threats for reporting
9 safety-related issues?

10 A. No.

11 Q. Have you ever filed a safety-related complaint?

12 A. No. I mean, not --- verbally, you know, telling
13 somebody what's wrong or something like that. That's
14 all.

15 Q. Okay. When you told somebody something's wrong,
16 did it get fixed?

17 A. Pretty much.

18 Q. Do you think there was any excessive pressure to
19 run coal or advance the section at UBB?

20 A. No. I don't think anybody there should have been
21 doing nothing that they didn't feel safe doing there,
22 feel confident in themselves in doing.

23 Q. Okay.

24 A. Did you ever get any feedback on how far behind on
25 development they were right before the explosion?

1 A. No, not on us, because --- like we just started,
2 you know, and they knew we weren't going to start out
3 too good.

4 Q. Sure. Do you know where the longwall was going to
5 go when you mined out of there?

6 A. Yeah. It's not on this map.

7 Q. Is it up near the Ellis Portal?

8 A. Uh-huh (yes).

9 COURT REPORTER:

10 Is that yes?

11 A. Yes.

12 BY MR. SHERER:

13 Q. Do you know why they were going to go --- as I
14 understand, that's a relatively short longwall block.
15 Do you know why they were going to go up there?

16 A. Yeah, because they were behind and this panel ---
17 this next panel right here is not ready. That's the
18 only place they could go.

19 Q. Okay. What was the last shift that you worked
20 prior to the April 5th explosion?

21 A. The Friday night before the holiday.

22 Q. Okay. And Friday would be the 2nd?

23 A. Yes. The 5th was a Monday, 4th, 3rd --- yes, 2nd.

24 Q. Okay. And was the mine down over the weekend?

25 A. No, not that I know of. They run the longwall

1 seven days a week, and they run I think One section
2 seven days a week.

3 Q. Okay. You mentioned the holiday. Which holiday
4 was that?

5 A. Easter, I think.

6 Q. Did the mine shut down for Easter, do you know?

7 A. We got Easter Monday off, but I don't know if ---
8 I don't know if these guys was getting any days off.
9 Like, they work six and three. So if their six days
10 falls through six days of Christmas, then they're
11 working through Christmas.

12 Q. Oh, geez. So the rest of the mine may have been
13 shut down for Easter, but you would expect the
14 longwall ---?

15 A. The guys working six on/three off, they do that
16 year-round ---

17 Q. Okay.

18 A. --- because they get three days off, you know,
19 every week or whatever.

20 Q. Have you heard of any problems with ventilation on
21 the Friday or any time right before the explosion?

22 A. No.

23 Q. Okay. Where were you when you first learned of
24 the explosion?

25 A. I was getting dressed.

1 Q. Down at ---?

2 A. UBB bath house.

3 Q. How did you learn about the explosion?

4 A. I heard at first, and I knew something was wrong.

5 And then after I got dressed and went upstairs, that's

6 when everybody was hollering and looking at the COs.

7 Everybody pretty much knew something happened. They

8 just didn't know what.

9 Q. When you say you heard it, what did you hear?

10 A. I heard the rumble of the fan. It just sounded

11 like a freight train. And then I stepped outside and

12 there was debris coming out the fan, where the fan was

13 stalled out, and then, you know, just dust and debris

14 coming out of the portal.

15 Q. Okay. Did you happen to notice what time that

16 was?

17 A. It was 3:02 when the explosion happened. A few

18 minutes after.

19 Q. You mentioned that the fan stalled out. How long

20 did it stall, do you know? A minute, two minutes?

21 A. Less than a minute I would say.

22 Q. Okay. Did anybody have to do anything once the

23 pressure from the explosion came down on the fan? Did

24 anybody have to reset a break or anything like that?

25 A. Started turning back the way it should.

1 Q. You say it started turning back. Did it actually
2 reverse rotation?

3 A. I can't say anything because I wasn't out there
4 looking at it. But normally they say that don't
5 happen. But I do know that stuff --- you know, like I
6 said, the force of it was blowing out the fan.

7 Q. Sure.

8 A. So whether it's --- I mean, whether it stalled
9 out, stopped or turned backwards, I can't say, but it
10 probably stalled out is normally what they do.

11 Q. Sure. And these are --- there's two blowing fans
12 down there, aren't there?

13 A. Yes, there are two blowing fans down there at UBB.

14 Q. Did you notice if it was one or both of them that
15 were stalling out?

16 A. Just the one, as far as I know. The other one
17 wouldn't have really been too much affected by it.

18 Q. It's kind of on the other side of it?

19 A. Yeah.

20 Q. Okay. You mentioned that you went upstairs and
21 people were talking about CO readings and such. What
22 were people saying? Were they talking about a fire or
23 an explosion at that point in time?

24 A. Yeah. Well, they knew something had happened
25 because they were all in the general area. You know,

1 all of them were just off the charts, the COs.

2 Q. Do you know if the dispatcher was trying to call
3 into the section?

4 A. Yes, he was. He tried to call everybody he could
5 call nonstop probably for 45 minutes.

6 Q. Oh, geez. What were you told, if anything,
7 immediately after the explosion?

8 A. Something bad has happened.

9 Q. When did you learn that it was an explosion?

10 A. First thing I learned --- I mean, I don't know if
11 it was an hour later. You know, right then you pretty
12 much know with the fan --- with the forces of the fan,
13 that it was probably an explosion or a rock fall.
14 That magnitude ain't going to do that and set off the
15 COs.

16 Q. Sure.

17 A. So right then you basically know that there was an
18 explosion of some type inside the mines.

19 Q. What did you do? Did somebody tell you to check
20 something out or do something?

21 A. The dispatcher asked me --- he had to go get
22 somebody, so he asked me to call inside just for a few
23 seconds, and then another guy stepped up and done it.
24 And you know, I just basically hung around, waiting on
25 what to do.

1 Q. Okay. How long did you hang around?

2 A. About 4:30, five o'clock that morning.

3 Q. Oh, geez. During the first, I don't know, half
4 hour maybe, hour after the explosion, who was in
5 charge, do you know? Did somebody step up and try to
6 organize rescue efforts or evacuation efforts?

7 A. I know as soon as it happened, on our side Jim
8 Walker, the fire boss, he walked back underground and
9 Gary May walked back underground. And I think he had
10 already coincided with Homer, and I don't know who
11 else on that side to go in that that way.

12 Q. Do you know if similar efforts were going on up at
13 Ellis Portal?

14 A. I don't know. They had lost phone communications
15 at Ellis Portal.

16 Q. Do you know if they also lost power at Ellis
17 Portal?

18 A. I would say, yeah, more than likely they did.

19 Q. And why did you say it was more than likely?

20 A. From --- I mean, from the explosion it brought the
21 line down, you know, and they were taking out of the
22 ground. And I think it --- either the shock or
23 whatever happened inside took air to the south, the
24 substation on UBB's side.

25 Q. So the power to the Ellis Portal was passed

1 through the underground portion of the mine works?

2 A. Yes.

3 Q. And that's what you refer to as the high line?

4 OFF RECORD DISCUSSION

5 BY MR. SHERER:

6 Q. When you first learned of this incident, what ---
7 did anything come to mind? Did you think, oh, my
8 gosh, that could have been ---?

9 A. Not really. I was just hoping everybody would be
10 all right. I didn't think it was going to turn out as
11 bad as it was.

12 Q. Was anybody --- who was the responsible person
13 when this happened, do you remember?

14 A. I'd say the two mine foremans.

15 Q. Was there someplace where the responsible ---?

16 A. I mean, not the two mine foremans. I'm sorry, the
17 two superintendents.

18 Q. Okay. Was there someplace where those names were
19 listed, do you remember?

20 A. I mean, they got a sheet of paper outside that's
21 got the responsible persons on dayshift and evening
22 shift.

23 Q. Like on the bulletin board near the bath house?

24 A. I think it's actually upstairs on the bulletin
25 board.

1 Q. When you say it's upstairs, is that where the
2 miners normally go coming on shift?

3 A. No. It's basically electricians or whoever needs
4 a pair of gloves or something will go up there.

5 Q. Okay.

6 A. I'm not sure if it's upstairs or anything like
7 that ---

8 Q. Okay.

9 A. --- where the miners are or ---.

10 Q. Sure. Were you involved in the mine rescue and
11 recovery efforts?

12 A. Yes.

13 Q. What did you do?

14 A. Took Southern West Virginia Mine Rescue Team
15 underground at 11:30 Monday night.

16 Q. So you're also mine rescue?

17 A. No. I just took them underground.

18 Q. Okay. So you operated the mantrip?

19 A. Uh-huh (yes). I took them and I think three or
20 four Federal men, Federal inspectors.

21 Q. How far did you take them in?

22 A. Inby near 78, where the rest of the mantrips were
23 parked.

24 Q. When you were going in there --- and I assume you
25 were bare-faced, ---

1 A. Uh-huh (yes).

2 Q. --- did you notice anything unusual as far as
3 damage or what did you notice, if anything?

4 A. Around --- I noticed this the second time, but I
5 noticed the debris and stuff on the track where they
6 found our seven guys at 66-and-a-half Break, roughly
7 10, 12 breaks from the other track --- as far as you
8 could get.

9 Q. Did you notice your eyes stinging or burning or
10 anything like that?

11 A. Yeah. It instantly gave you a headache. I mean,
12 it smelled like a dynamite shop.

13 Q. Okay. About when did you hit those conditions?
14 Was it right when you went past Ellis Switch or ---?

15 A. I would say, I'm just guessing, between 40 and 60
16 Break on the Ellis mainline there.

17 Q. Okay. Sure. Is there anything you would
18 recommend that we take a close look at as far as
19 trying to determine what the cause of this explosion
20 was?

21 A. No. I think it's going to be a freak of nature.
22 I mean, it's either going to be gas coming from
23 somewhere so fast that the shearer couldn't get shut
24 down or the shearer hit an unmarked well that ain't on
25 this map.

1 Q. Okay.

2 A. Because whatever happened, it went from zero
3 percent to five-plus percent before the shearer got
4 stopped.

5 Q. Okay. When you say an unmarked well, like an oil
6 or gas well?

7 A. Gas well.

8 Q. Are there many of those in this area?

9 A. There's several I'm looking at now, but there's
10 none on this longwall panel.

11 Q. Okay. Have you mined near or through any of those
12 wells that you know of?

13 A. Not at UBB.

14 MR. SHERER:

15 Okay. That's all I've got.

16 EXAMINATION

17 BY MR. FARLEY:

18 Q. Scott, you just said that you think that maybe the
19 methane went up to five percent before the shearer
20 could shut down. Is that when you think the explosion
21 occurred on the longwall section? You think that's
22 where it started?

23 A. I think that's where it started. That's my
24 opinion.

25 Q. Why do you feel that way?

1 A. From the debris field --- I ain't been up in here
2 or nothing, but the way they found the guys on the
3 longwall, just from hearsay, and this mantrip on One
4 section, wherever, you know, the track was, I know it
5 was all --- from the force of it being, you know,
6 crushed in on the men, and they were the only people
7 running at that time. One section wasn't running
8 because all your men was at the mantrip. And our guys
9 were at 66-and-a-half Break. They wasn't running.
10 There was nothing else running other than the shearer.

11 Q. Okay. Now, have you discussed your thinking about
12 what might have happened with anybody else at UBB?

13 A. Just maybe one or two guys that I work with that
14 worked on the longwall or, you know, and the boss.

15 Q. Okay. I think you said you were interviewed by
16 the Massey attorneys and the FBI. When you talked to
17 the Massey attorneys, did you offer your opinion on
18 how you think it might have happened?

19 A. I don't think so at that time because it was just
20 right then.

21 Q. Okay.

22 A. I think maybe after that --- after the more I
23 thought out it and found out --- because at that time,
24 with Massey's inspectors, they had no clue what
25 happened. But you know, since then, the longwall,

1 like I said, was the only thing running, and I spoke
2 with the guy --- I worked with the guy that just had
3 calibrated the methane monitors on the shearer, you
4 know, the night before.

5 Q. Who was he?

6 A. Tommy Estep.

7 Q. Tommy Estep. He calibrated the methane monitor on
8 the longwall shearer the night before?

9 A. The night before, and he knew they were working.
10 So if it shut the shearer off at one-and-a-half, like
11 it was supposed to or whatever, it's still going to
12 take a few more revolutions in that rock.

13 Q. Is that when it's set to shut off, at one-and-a-
14 half percent?

15 A. Don't quote me on the longwall shearer. I think
16 the miners are set at one-and-a-half. I don't know if
17 the shearer is any different, but I'd say it's
18 probably the same.

19 Q. Okay. When did you talk to Tommy Estep?

20 A. I've been working with him --- they sent us ---
21 after I worked at UBB for a couple weeks, they sent us
22 to Elk Run rebuild shop, me and him, to work down
23 there. And now, since last Tuesday, they moved me.

24 Q. Did Tommy Estep normally work on the longwall?

25 A. Yes, sir. That's what he does. He's an

1 electrician on the longwall.

2 Q. Was he on midnight shift?

3 A. No. They swing. That six and three or whatever.

4 So he had been working evening that day.

5 Q. So you think he was working evening on Sunday,

6 April 4th?

7 A. Yeah.

8 Q. Did you hear anything about the longwall being

9 down on the dayshift, April 5th?

10 A. No. Like I said, when I got there I was getting

11 dressed, and then it happened, so ---.

12 Q. Have you heard anything since then?

13 A. No.

14 Q. Let me back up on a couple things.

15 A. I mean, it goes down constantly, but I've not

16 heard nothing as far as being shut down. It's down

17 once a night over belts and rock or something like

18 that.

19 Q. Sure. All right. As far as your status with the

20 company, are you considered a member?

21 A. Everybody at Massey is considered a member.

22 You're not an employee, you're a member.

23 Q. Okay. Some people are contractors; right?

24 A. Oh, well, yeah.

25 Q. If you're a contractor, would you be a member

1 then, too?

2 A. No, you're a contractor. They just have on here
3 whoever it is.

4 Q. Okay. All right.

5 A. They don't work for Massey.

6 Q. You indicated you filled in as a section boss on
7 the Four section for about two-and-a-half, three
8 months in 2009. Is that the last time you filled in
9 as section boss?

10 A. No. I think I did air once or twice like on
11 Tailgate 22 because the air section boss, I believe,
12 when they were starting a new panel up on Four
13 section, they kept him down there for a day or so or a
14 shift or whatever, and then I'd fill in like that,
15 too.

16 Q. Now, would you have been on 22 Tailgate section
17 from the month of March this year?

18 A. I have no idea. That whole time we've been here,
19 I've been there.

20 Q. Okay. Now, during that 30-day period, about how
21 many times would you have filled in as a section
22 foreman?

23 A. Just maybe once or twice, if any.

24 Q. Who was your section foreman again?

25 A. Brian Collins.

1 Q. Now, what type of air readings in the last open
2 break did Brian usually get?

3 A. 26,000, 28,000.

4 Q. Okay.

5 A. Somewhere in that neighborhood. 23,000.

6 Q. Was it consistent day in and day out?

7 A. Yeah. One time we came in and we had more air
8 coming up the beltline than we had coming up the
9 intake.

10 Q. Really?

11 A. So I told him --- and we called him Hammer. So I
12 told, Hammer, I said, you can't run. He's been
13 bossing but not greatly at the time, and neither have
14 I, but I knew you couldn't run with belt air coming
15 --- it's supposed to be going outby, not inby. And I
16 said, you're not legal to run. So whether you do or
17 not, that's your choice. And he said, what do you
18 think I should do? I said, you need to shut down. So
19 he shut down. We didn't run. We got ahold of the
20 mine foreman and asked him what to do, what we should
21 do in order to be able to run coal that night. And
22 right here, straight across from our beltline, they
23 put in a regulator. We opened it up a little bit and
24 built a makeshift stopping somewhat to block air
25 coming through the --- coming down the beltline. We

1 had 46,000 coming down the beltline and 13,000 in the
2 intake.

3 Q. Coming to the section?

4 A. Coming to the sections.

5 Q. Go ahead.

6 A. We got that slowed down, and I think he ended up
7 --- I walked all the way to One section that night to
8 see what kind of air they had, because we just had
9 started coming in down this direction from One
10 section.

11 Q. When you say One section ---?

12 A. Headgate 22.

13 Q. Headgate 22?

14 A. Yeah. We just had started bringing a mantrip down
15 that way. We were coming up behind a mule train
16 because it was shorter to take. But the mule train
17 had pulled back so far then, it was easier to head up
18 the track and to our belt head.

19 Q. Can you remember when that happened, pretty close
20 time frame?

21 A. About two weeks before the explosion.

22 Q. About two weeks before?

23 A. I would say two weeks.

24 Q. It happened on the evening shift; is that right?

25 A. Well, you should be able to find, because they got

1 a violation on the next day on dayshift.

2 Q. They got a violation on the next day?

3 A. Yeah. Dayshift got a violation, but ---.

4 Q. Okay. That will help.

5 A. So it was the night prior. And you will see, you
6 know, on his report where we were down over, you know,
7 the belt head, ever how he wrote it up.

8 Q. Okay.

9 A. I'm sure it's all documented.

10 Q. Okay.

11 A. So yeah, they got a violation on the air going to
12 the section, not the belt, the very next day.

13 Q. Okay.

14 A. But they had to use a smoke tube to get it, where
15 we didn't have to when we got there. Fire hazard ---.

16 Q. Which way was your return supposed to go at that
17 on the 22 Tailgate?

18 A. Out our left side. We only had three entries,
19 which would be Number One entry.

20 Q. Well, where did it go after it left the mouth of
21 your section, do you recall?

22 A. It used to go over here and hit the longwall's
23 return, and then --- I don't know how it happened and
24 I don't know when it was, but they opened this intake
25 up as a return, behind us right here.

1 Q. Now, when you say this intake, are you looking at
2 the Number Five entry on the One North headgate?

3 A. Yeah. These were intakes coming up through here
4 at one time. And that was how we was getting our air
5 to begin with. And then they changed our air from
6 coming in this direction and down. It was like two
7 days after --- you'll see the date on the violation.
8 It was roughly two days after that that the --- that
9 we got the air coming down through here and we had
10 like 60,000-some, 67,000 on the intake the next day.

11 Q. 60,000-some in the intake the next day?

12 A. Uh-huh (yes).

13 ATTORNEY BABINGTON:

14 Just to clarify real quick for the
15 record, you said that initially you had your intake
16 coming on the Four and Five entries on Headgate One
17 North and this intake led to your section, the
18 Tailgate 22 section; is that correct?

19 A. Yes.

20 ATTORNEY BABINGTON:

21 And then they changed that so that the
22 intake went up one entry alongside, I guess --- not
23 on, but alongside Seven North belt up past the Glory
24 Hole area to the mouth of the Headgate 22 section.
25 But at that point it took the --- that Number Four

1 entry down in the crossover section from Headgate 22
2 down to Tailgate 22, and that became your new intake;
3 is that correct?

4 A. Yes. We had plenty of air. So it might have been
5 four or five days before it happened. It was pretty
6 close.

7 BY MR. FARLEY:

8 Q. It might have been four or five days before ---?

9 A. Yeah. It was within two weeks to a few days
10 before April 5th.

11 Q. Okay.

12 A. Because I was welding Friday night right here on
13 a --- like an emergency mantrip that we pulled if
14 somebody was to get hurt right here in the intake.

15 Q. Can you mark that location on the map, please,
16 with a colored marker?

17 A. Go down there a little bit.

18 Q. Why don't you draw a little circle around it and
19 draw a line out indicating welding and --- you said
20 Friday night before the explosion?

21 A. Yeah.

22 Q. And you welded on the emergency mantrip; is that
23 right?

24 A. Yes.

25 Q. Okay.

1 A. But it's like a pull type. I've never seen
2 nothing like that before in my life.

3 ATTORNEY BABINGTON:

4 For the record, the X in the circle the
5 witness has marked appears to be in Number Four entry
6 on a crossover section between Headgate 22 and
7 Tailgate 22. And specifically, it seems to be the
8 area straight out from the Number Three entry on
9 Tailgate 22. Is that a fair description?

10 A. Yeah. Yes.

11 BY MR. FARLEY:

12 Q. Did you have a detector to use when you were
13 welding?

14 A. Yes. I carried one all the time.

15 Q. Now, on Friday night before April the 5th, that
16 makes it April the 2nd, I think, what was the air on
17 the 22 Tailgate section doing at that time?

18 A. It was fine. That's when I seen we had 60,000-
19 some.

20 Q. You had 60,000-some?

21 A. Yeah.

22 Q. For what period of time did you have that much
23 air?

24 A. Just those couple days from this --- when they
25 changed it. Like I said, there was 47 --- 46,000 to

1 47,000 I think is what they got down the beltline that
2 night, so I guess it would have been that week. Like
3 I said, we just had it for a few days like that coming
4 down.

5 Q. You think the week before the explosion?

6 A. Uh-huh (yes). But where they got it from I don't
7 know.

8 Q. Now, I think you also said you walked up to 22
9 Headgate section to see how they were doing.

10 A. Yes.

11 Q. What was going on there when you had all this belt
12 air coming up?

13 A. Yeah. Because these double doors right here,
14 where the intake was coming --- see, we had an intake
15 coming from them as well the night we had the belt
16 air. I found out where the belt air was coming from.
17 But anyway, I was wondering if I could shut these
18 doors since, you know, we were just --- they had been
19 open, they had been shut. You know, they had been
20 shut because ---

21 Q. When you say ---.

22 A. --- we wasn't up here.

23 Q. When you say these doors, can you circle them on
24 the map and identify them?

25 A. They're at --- I don't know what you want to call

1 it, from One section.

2 ATTORNEY BABINGTON:

3 Like the mouth of ---?

4 A. The start of the crossover to Tailgate 22.

5 BY MR. FARLEY:

6 Q. Just circle them and draw a line out there and
7 indicate what you tried to do that day --- or evening.

8 A. Well, I walked to the boss up here and asked him
9 if I opened these doors, would it take away his air,
10 because we were trying to get more air than what we
11 had to the section at that time. And he said it would
12 probably mess him up. But I shut them on the way up
13 there, and his air reading was basically about the
14 same as he had when he was there.

15 Q. They were open?

16 A. So they didn't really --- didn't really change
17 anything up there.

18 Q. You shut the doors on the way up there?

19 A. Yeah, I shut them on the way up there --- no.
20 Let's see. I opened them on the way up there to get
21 air to our section, and I went up there to see if it
22 took anything away from him. And it didn't really
23 take anything away from him.

24 Q. No impact?

25 A. Huh?

1 Q. Did it have any impact at all on his air?

2 A. Not that he noticed, I mean, because he took
3 another air reading while I was standing there and he
4 had just about what he had to begin with.

5 ATTORNEY MCATEER:

6 What was that? I'm sorry. What amount
7 was that?

8 A. It was like 15,000, 16,000.

9 BY MR. FARLEY:

10 Q. Where was he located when he took 15,000 or
11 16,000?

12 A. In the intake.

13 Q. The intake?

14 A. At the power center.

15 Q. Is that all he had in the intake?

16 A. Yeah. We basically about had the same that night.

17 Q. Okay. Hold on. I'm getting confused. You got
18 --- you're reporting on the 22 Headgate, 15,000 or
19 16,000 in the intake?

20 A. Yes.

21 Q. Now, this is the same night that you had 45,000
22 coming up the belt?

23 A. Beltline, yeah. And it was coming from this new
24 Mother Drive area up this track. They had --- was
25 opening up somehow. I walked all the way to here, and

1 you had more air coming up the track line. And it was
2 actually hitting this overcast and deflecting it down
3 our beltline. His air should have been --- which is
4 his return, it should have been hitting each other
5 basically, but they do what they do up there, and I
6 come on back down and --- you know, we had --- we
7 actually had --- ended up with enough to run and ---
8 because we got rid of this air right here.

9 Q. When you say this air right here, what are you
10 talking about?

11 A. The belt air.

12 Q. Okay.

13 A. You know we done what they told us to do that
14 night and it didn't --- you know, other than --- we
15 didn't use a smoke tube. But you know, we double fly
16 dropped behind the feeders and opened that regulator
17 up. So other than having a smoke tube, we wouldn't
18 know --- you know, it wasn't standing the flop hats
19 out no more.

20 Q. Okay. Now, you said you did what they told you to
21 do. Who's they?

22 A. Terry Moore, the evening shift mine foreman.

23 Q. Terry Moore?

24 A. Yeah. He was on evening shift at that time.

25 Q. Was he underground then?

1 A. I'm thinking he was off that day. I think he was
2 at home because the boss --- Brian Collins had to
3 call, and that's what Terry wanted him to do.

4 Q. Did things stabilize after you did that?

5 A. Yeah, I mean, as far as not going to our --- like
6 if this belt head caught on fire, it wouldn't ---
7 really, it wouldn't come straight to us like it would
8 have.

9 ATTORNEY BABINGTON:

10 Earlier you were pointing to an area
11 around the Glory Hole belt area. You said they were
12 installing a new Mother Drive, is that what you said
13 that they were doing, that caused --- that you --- for
14 you, seemed to be the causation of why the air landed
15 up ---?

16 A. I don't know where the air came from, but I know
17 earlier that day. I don't know who --- they were
18 working on the air to get One section more air. So
19 somehow or another, from our evening shift to this
20 next evening shift, from not having no belt air we had
21 46,000. And like I said, you can walk there and you
22 can feel it coming --- you know, coming up this
23 beltline from --- it was coming up the track, it was
24 coming up this beltline, and it was dumping straight
25 to us.

1 ATTORNEY BABINGTON:

2 And this beltline you're referring to is

3 the Seven North belt head leading up to the switch

4 over to the beltline on Headgate 22?

5 A. Yes.

6 ATTORNEY BABINGTON:

7 And you circled these doors before.

8 Would you mind labeling those? I guess you said you

9 opened the doors?

10 A. Yeah.

11 ATTORNEY BABINGTON:

12 Could you draw a line out to the side

13 and ---?

14 A. I just opened them to go talk to the section boss,

15 is all I done.

16 ATTORNEY BABINGTON:

17 Okay. Yeah, if you could label that open

18 doors.

19 WITNESS COMPLIES

20 ATTORNEY BABINGTON:

21 Thank you.

22 BY MR. FARLEY:

23 Q. Now, forgive me, what was your section foreman's

24 name again here?

25 A. What was his name again?

1 Q. What was his name again?

2 A. Oh, Brian Collins.

3 Q. Brian Collins. Now, was this a condition you guys
4 found when you got to the section or did it --- was it
5 that way when you got to the section?

6 A. Yes, sir, because I found out when we --- we
7 parked the mantrip and you got to walk by that belt
8 head to go to our section.

9 Q. Okay.

10 A. So when we walk by the belt head, you know, you
11 got all this air hitting you on the side of the face.
12 Right then, you know, I knew something --- or I
13 thought something's wrong. I knew something was wrong
14 because you ain't supposed to have that much air
15 coming down the beltline.

16 Q. Did Brian mention this on the way in, that he was
17 expecting to find something?

18 A. No. We had no idea.

19 Q. Had no idea?

20 A. No. Uh-uh (no). I mean, and you'll notice again,
21 the dayshift ran all day like that.

22 Q. Any idea what the entry in the pre-shift
23 examiner's report ---

24 A. I have no idea.

25 Q. --- was prior to that shift?

1 A. No, sir. I have no idea. I didn't --- you know,
2 some days, if I'm not there, I'll countersign the
3 book. I mean, if Hammer is going to be late a few
4 minutes or something like that, then I'll know because
5 I countersigned the book because, you know, going up
6 to the section boss. But on that day, he was there.
7 He was the section boss, so he would have knew what
8 Steve Harrah had called out.

9 Q. So what it amounts to is you arrive on the
10 section, you got 40,000-some cubic feet of air coming
11 up your belt in an inby direction ---

12 A. Yes.

13 Q. --- and you have no idea that that was what you
14 were going to find?

15 A. No.

16 Q. And it was not like that the day before?

17 A. No.

18 Q. You had no air velocity on your belt the day
19 before or ---?

20 A. No, just the wind from the belt.

21 Q. Just a little?

22 A. Yeah. But no, not nothing coming toward us like
23 that.

24 Q. Okay.

25 A. Because all your belt air is supposed to be

1 neutral, going outby anyway, not going towards ---.

2 Q. All right. And you think this was about a week
3 before the explosion?

4 A. Yeah, I'd say it was that same week. Now that I'm
5 thinking about it, we didn't run that much. Like I
6 said, they --- the very next day that was gone, we got
7 the violation, and they opened this intake up right
8 here because these doors were to remain shut, and we
9 got the intake coming up Seven North belt and coming
10 down the crossover to our section, which give us
11 60,000-some in our intake, and it was like that for a
12 few days.

13 Q. Okay. Now, I think you said your last shift was
14 the Friday night before the explosion on that section?

15 A. Yeah. We had a three-day weekend, Saturday,
16 Sunday and --- no, it would have been Thursday night,
17 I'm sorry, because we had Friday, Saturday and Sunday
18 off, ---

19 Q. Okay.

20 A. --- and the explosion that Monday.

21 Q. And then you were okay by that Thursday night or
22 morning?

23 A. Yeah. Thursday night is when I got --- we always
24 work Friday. So that's basically the only Friday,
25 other than Christmas holiday, we got off a year.

1 Q. Now, when you guys were trying to resolve this
2 problem, did you hear from anybody else in the mine
3 other than the 22 Headgate? Did you hear from the
4 longwall?

5 A. No. Like I said, we don't go over and mess with
6 them. They're independent people.

7 Q. Are you aware of any major ventilation changes on
8 the longwall section during the month of March this
9 year? Did their air quantity or velocity change
10 significantly as far as you know?

11 A. I don't know what they had before or what they
12 had. I know the night we sat right here for nine
13 hours basically. They had like 100,000-some coming up
14 through the longwall face.

15 Q. Okay.

16 A. And that's all I know just from talking to the
17 guys. I walked over and looked at the longwall when
18 we were down, and everybody was --- you know, there
19 wasn't nobody there but us, so I walked over and
20 talked to two guys standing on the belt, longwall
21 belt.

22 Q. Now, I think you said you had six years total
23 experience?

24 A. Yes, sir.

25 Q. In your previous six years, have you ever

1 experienced anything like that?

2 A. No. No.

3 Q. Okay.

4 A. I don't know why the day before they were working
5 on that or who. Like I said, I don't know.

6 Q. Okay.

7 A. But I don't think air caused the explosion. It's
8 going to be something in the head. I mean, I know
9 they're supposed to have a permit for every air change
10 and nobody is supposed to be in there anyway. I mean,
11 that's part of the P2 or S1 that you don't know
12 nothing about. You know, they tell you to do
13 something, you don't know whether you've got a permit
14 or whether it's right or wrong. You're doing what
15 you're told as far as trying to get the airway going
16 so we can run coal.

17 Q. Okay. Earlier in your statement you said that the
18 air comes and goes on Headgate 22. Most of the time
19 you had good air, but sometimes it would come and go.
20 Now, would this be one of those --- the situation you
21 just described, is that one of the situations where it
22 kind of comes and goes? Is that what you were
23 referring to or ---?

24 A. Yeah. Basically it went from our intake to our
25 beltline.

1 Q. Okay.

2 A. But like I said, we wasn't up there that long, not
3 long at all, really.

4 Q. Now, in your conversations with the members on the
5 24 Headgate section, did they routinely have
6 ventilation problems ---

7 A. Yes.

8 Q. --- during the month of March?

9 A. Headgate 22?

10 Q. Headgate 24.

11 A. Twenty-four (24).

12 Q. Headgate 24 section. Excuse me. I'm sorry. I'm
13 sorry.

14 A. Yeah, they were --- as far as I know, they had air
15 problems.

16 Q. What do you know about that?

17 A. Just that they didn't have enough.

18 Q. Not enough?

19 A. Yeah.

20 Q. Was that what's usually the case?

21 A. Yeah, not enough.

22 Q. Was that consistent throughout the entire month of
23 March or did it get better, did it get worse? What
24 was your understanding of it, let's say, on the last
25 shift you worked prior to April 4th --- April 5th?

1 Sorry.

2 A. I have no idea what air they had that day.

3 Q. Okay.

4 A. But you know, again, you're trying to get that
5 20,000 Massey mark, not the 13,5000 that the State and
6 Federal wanted in the last open break.

7 Q. I think you've told us earlier that the most
8 methane that you had picked up at the Upper Big Branch
9 Mine was from the range of 0.2 percent to 0.4 percent?

10 A. Yes.

11 Q. And that's every place you visited?

12 A. No. That's only right there.

13 Q. Okay.

14 A. We didn't have no methane here and we didn't have
15 no methane on Four section.

16 Q. Okay. But there was no instance anywhere where
17 you detected a higher quantity of methane; is that
18 correct?

19 A. Yeah. There's no instance nowhere I got higher
20 than .4.

21 Q. Okay.

22 MR. FARLEY:

23 Mr. McAteer?

24 ATTORNEY MCATEER:

25 Thank you, sir.

1 EXAMINATION

2 BY ATTORNEY MCATEER:

3 Q. Scott, thanks for the good answers.

4 A. It was .04. I'm sorry.

5 MR. FARLEY:

6 I got you.

7 BY ATTORNEY MCATEER:

8 Q. I'm trying to figure out the dates of this evening
9 that you had difficulty with air, and I pulled out a
10 calendar, which is marked up, but it's --- if I can
11 show you that, maybe you can ---.

12 A. That's not going to help me, because ---.

13 Q. No? I thought maybe it would give you the dates
14 of the week.

15 A. It will be on his production report and ---

16 Q. Okay.

17 A. --- it will be on the --- I don't know, either
18 State or Federal, the roof violation.

19 Q. Okay. That's all right. I just thought maybe the
20 day of the week could help you.

21 A. No. I forget what yesterday was mostly.

22 Q. I'm with you. You, as a foreman, an acting
23 foreman, assistant foreman, were taking steps to
24 correct the air problem at your section?

25 A. Yeah. Yes. I mean, I told my boss --- you know,

1 it's like I said, I had a spotter and I was --- he was
2 trying to figure out what to do, had been on the
3 phone, you know, calling Terry Moore. So I told him
4 where I was going and what I --- I was going to find
5 out where it's coming from.

6 Q. Right.

7 A. You know, that way he can relay back to him if he
8 had to.

9 Q. Sure. And then you and Collins would make a
10 decision on how to change the ventilation system to
11 try to get air to you?

12 A. No.

13 Q. Okay. How would that happen?

14 A. The mine foreman made the decision ---

15 Q. Mine foreman, okay.

16 A. --- on what to do to get the air off the ---
17 coming to the section.

18 Q. Okay. Now, you said you found out where the
19 46,000 of the air was coming from?

20 A. Yeah, basically. I mean, it was just coming up
21 Six North track and the Glory Hole area it seemed
22 like, but it was all coming up to here and merging in
23 there. I don't know if it was coming up the Number
24 One section's beltline.

25 Q. It sounds like you guys had to make sort of

1 changes in order to keep air up on an ongoing basis.
2 I mean, I understand you would have to clear it with
3 the foreman, but --- the section foreman or mine
4 foreman, but you would have to make changes.

5 A. Well, for the most part we pretty much had --- we
6 had enough air.

7 Q. Okay.

8 A. You know, we ain't --- like I said, we wasn't up
9 there that long, maybe a month or two maybe at the
10 most, and just a few instances. You know, the one
11 night I don't know why they sent everybody home. I
12 don't know whether they was having air at the longwall
13 or whether they had an inspector there or whether they
14 was having air on One section, problems. I have no
15 idea ---

16 Q. Okay.

17 A. --- why they sent everybody home. I just know I
18 stayed and pretty much all the air and all the figures
19 everyplace they went to had it up to what the fan puts
20 out, you know, minus 15,000, 20,000 from leaking in
21 this, you know, in a large area.

22 Q. Sure. Your guesstimate or guess is that the
23 shearer was operating at the 301?

24 A. As far as I know, they were the only ones running,
25 yes. They had fired the shearer back up, I think, you

1 know, just from hearsay, around 2:45, 2:47.

2 Q. Do you know if there's a record of that?

3 A. I'm sure there are. They call outside and tell
4 them when the shearer is running.

5 Q. Even when it starts up again, they would have ---?

6 A. When it stops up, when it shuts down. That's one
7 thing --- I mean, that's one thing they say on top of,
8 why the shearer ain't running.

9 Q. Sure. Now, the air for the shearer --- I'm sorry,
10 the air for the longwall, is that a separate track
11 from the air for the two sections you were working at?

12 A. Yeah, now. That's what I'm saying. We had air
13 there for a little while, then --- that's totally
14 separate now.

15 Q. Okay. By that you mean on April 5th it would have
16 been a totally separate ---?

17 A. Yeah, separate split air.

18 Q. You said he had --- that is up at the end of 22,
19 he had about 15,000 to 16,000 on his intake and you
20 had about that same amount?

21 A. Yeah.

22 Q. Okay. The dayshift foreman on the day the air
23 problem occurred was Steve Hamrick?

24 A. Huh?

25 Q. The foreman on the day that these air problems

1 occurred, was that Steve Hamrick? Is that what you
2 said?

3 A. Steve Harrah?

4 Q. Harrah.

5 A. On the day that we went in and found the belt air.

6 Q. Yeah.

7 A. And he's one of the ones that's deceased.

8 ATTORNEY MCATEER:

9 That's all the questions I have at the
10 moment. Thank you, sir.

11 MR. SHERER:

12 Take a short break?

13 ATTORNEY BABINGTON:

14 Let's take a short break. Off the
15 record.

16 SHORT BREAK TAKEN

17 ATTORNEY BABINGTON:

18 All right. Back on the record.

19 RE-EXAMINATION

20 BY MR. SHERER:

21 Q. Got a few follow-up questions. When you were
22 acting as a boss, you did the pre-shift for the
23 oncoming shift, didn't you?

24 A. Yeah, for midnight shift.

25 Q. If you found any hazards, how would you handle

1 those?

2 A. Call them out like I call the 1.2 or whatever we
3 had in each face.

4 Q. Did you ever call out any hazards? Low air?

5 A. Back then, didn't really have any. Wasn't
6 expecting the top to fall in and there were no cracks
7 or anything like that.

8 Q. Did you countersign the preceding shift's fire
9 boss reports?

10 A. Not countersign. I signed --- yeah, I signed
11 where I was supposed to.

12 Q. So you just took the reports and you signed that
13 you took them?

14 A. No, no, no. I --- are you talking about when I
15 called out? I called out mine on the hoot owl, and
16 then I signed the books when I got outside.

17 Q. Once you got out?

18 A. Yeah. Whoever was outside took the book and took
19 the report and signed it.

20 Q. Okay.

21 A. I would countersign if I was going to be --- like
22 I said, if Brian was going to be somewhere else or
23 whatever, then coming up there later, then we would
24 both be on the books. So I would countersign.

25 Q. Okay. Are you aware of anybody finding hazards

1 and reporting them some other way, just telling the
2 oncoming foreman or anything like that?

3 A. I don't know, sir.

4 Q. Okay. On this section, who took the air readings
5 for the bolters and the miner operators?

6 A. The section boss.

7 Q. Okay. Do you know the --- what the pre-shift
8 intervals were for this mine, what times the
9 pre-shifts had to be done?

10 A. I think this --- Tailgate and Headgate 22 started
11 at three o'clock, so they had to be called out, as far
12 as evening shift is concerned, prior to three o'clock.
13 The longwall started at 11 o'clock that night, so they
14 had to be called out prior to then. And our dayshift
15 started at 6:30, but I don't know about the other
16 guys' dayshift. So they had to be called out between
17 5:00 and 5:30 or 6:00.

18 Q. Who pre-shifted the belt prior to when you found
19 this air coming down the belt, do you know?

20 A. I have no idea.

21 Q. Thank you.

22 MR. SHERER:

23 That's all I've got.

24 A. It would have to have been --- we only had two
25 dayshift, so it would have to be one of the two guys.

1 RE-EXAMINATION

2 BY MR. FARLEY:

3 Q. I need to ask this. Don't take offense. I don't
4 know of any other way to say it except straight up.

5 A. No problem.

6 Q. During any time you made pre-shift or on-shift
7 examinations at UBB Mine, did anybody, particularly
8 somebody in mine management, ever suggest to you or
9 even hint that you should not enter accurate
10 information in pre-shift or on-shift books?

11 A. Inaccurate information?

12 Q. Yes.

13 A. No, sir. They were good about taking care of
14 anything, you know, --- like if you found something
15 that needed changed or was wrong, you just told Gary
16 May or somebody and --- you know, if they were going
17 home that evening, it would be fixed that night or the
18 next afternoon.

19 Q. But you follow me? Did anybody ever tell you not
20 to enter any particular information ---

21 A. No.

22 Q. --- in any of the books?

23 A. No, nobody ever told me not to enter anything.

24 MR. FARLEY:

25 Okay. Thanks.

1 ATTORNEY MCATEER:

2 Just a couple questions.

3 RE-EXAMINATION

4 BY ATTORNEY MCATEER:

5 Q. Did you take a survey concerning management's
6 attitude towards safety in the weeks before the
7 accident?

8 A. Yes.

9 Q. Were you given the results of that survey?

10 A. Not given. They read them out at the annual
11 retraining, just a few of the high notes there that
12 they had scored low on. They had scored obviously low
13 on other --- against management than the other mines.

14 Q. Oh, so was the survey between UBB and other mines
15 as well?

16 A. It was Massey Energy wide.

17 Q. Right. And then the ranking of the management on
18 the very top of the company as well as the management
19 at UBB?

20 A. Yeah. To me they were all --- it was not worded
21 correctly. I didn't feel like so on it.

22 Q. Okay.

23 A. You know, does Joe Manchin care about your job?

24 Joe Manchin don't know who I am. It's not even a
25 question that should have been on it.

1 Q. Sure. What color was the smoke coming out of the
2 fan when you saw it at the time of the explosion?

3 A. I'm not saying it was smoke. I'm saying it was
4 dust.

5 Q. Dust? What color was it?

6 A. Just white, like rock dust.

7 Q. And what was the length of the force coming out of
8 there?

9 A. Just a few seconds. Just a matter of seconds it
10 done what it had done.

11 Q. And then you said debris was coming out?

12 A. Yeah, just Wal-Mart bags, you know, just a lot of
13 paper wrappers and whatnot.

14 Q. So it was not part of the infrastructure of the
15 mine?

16 A. Oh, no, no.

17 ATTORNEY MCATEER:

18 That's all the questions I have. Thank
19 you, sir.

20 ATTORNEY BABINGTON:

21 All right. We're going to place one map
22 into the record. It's labeled Barnett One. It's one
23 of the Bandytown fans and it's marked on with a pink
24 highlighter.

25 (Barnett Exhibit One marked for

1 identification.)

2 ATTORNEY BABINGTON:

3 On behalf of MSHA and the Office of

4 Miners' Health, Safety and Training, I want to thank

5 you for appearing and answering questions today. Your

6 cooperation is very important in the investigation as

7 we work to determine the cause of the accident. We

8 request that you not discuss your testimony with any

9 person aside from a personal representative. After

10 questioning other witnesses, we may call you if we

11 have any follow-up questions. If at any time you have

12 additional information regarding the accident that

13 you'd like to provide to us, please contact us at the

14 contact information previously provided.

15 If you wish, you may now go back over any

16 answer you've given during this interview. You may

17 also make any statement that you'd like to make at

18 this time.

19 A. I don't have anything other than if these guys had

20 made it 600 more feet, they might not have been in the

21 carbon monoxide that was in there.

22 ATTORNEY BABINGTON:

23 Are you talking about the men that were

24 on the mantrip on the Five North belt area?

25 A. They were found at 66-and-a-half Break, and at 60

1 Break there was no trace nothing had ever happened.

2 ATTORNEY BABINGTON:

3 Thank you. And again, I want to thank
4 you for your cooperation in this matter.

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7 STATEMENT UNDER OATH CONCLUDED AT 2:34 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Alison Salyards, a Notary Public in and for the State of West Virginia, do hereby certify: That the witness whose testimony appears in the foregoing deposition, was duly sworn by me on said date and that the transcribed deposition of said witness is a true record of the testimony given by said witness; That the proceeding is herein recorded fully and accurately; That I am neither attorney nor counsel for, nor related to any of the parties to the action in which these depositions were taken, and further that I am not a relative of any attorney or counsel employed by the parties hereto, or financially interested in this action.



Alison Salyards