

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

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6 **IN RE:**

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**THE INVESTIGATION OF THE
 APRIL 5, 2010, MINE EXPLOSION
 AT THE UPPER BIG BRANCH MINE**

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 The interview of **DANNY LAVERTY** taken upon oral
 examination, pursuant to notice and pursuant to the
 Federal Rules of Civil Procedure, before **Nichelle
 N. Drake**, Professional Reporter and Notary Public
 in and for the State of West Virginia, Thursday,
 February 24, 2011, at the National Mine Health &
 Safety Academy, 1301 Airport Road, Beaver,
 West Virginia.

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GOVERNOR'S INDEPENDENT INVESTIGATION PANEL
Jim Beck

Also Present:
Leland Hess

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1 MR. TUCKER: My name is Bill Tucker. I'm
2 the administrator with the Office of Miners'
3 Health, Safety & Training. Today is February 24,
4 2011.

5 I would like to ask the other people at
6 the table to identify themselves.

7 MR. SCOTT: I'm John Scott with the
8 Miners' Health, Safety & Training.

9 MR. BABINGTON: Matt Babington. I'm an
10 attorney with the Department of Labor.

11 MR. CRIPPS: I'm Dean Cripps. I'm with
12 MSHA; Benton, Illinois.

13 MR. MAGGARD: I'm Jasey Maggard with
14 MSHA.

15 MR. BECK: Jim Beck with the Governor's
16 Independent Team.

17 THE WITNESS: I'm Danny Laverty with a V,
18 Massey Energy Performance Coal Company.

19 MR. BECK: We have one other person in the
20 room. We'd ask him to identify himself.

21 MR. HESS: Leland Hess with MSHA.

22 MR. TUCKER: And we have a court reporter
23 here with Johnny Jackson & Associates. They'll
24 have your transcript ready in about three business

1 days. If you like, you'll have an opportunity to
2 make an appointment with them to go review your
3 transcript. They'll give you a sheet called an
4 errata sheet. You can make any corrections to that
5 if you choose. It's something that you can do.
6 You don't have to; but if you want, I'll give you
7 one of their business cards. You can call and make
8 an appointment to go in and look at it. You won't
9 be able to take it with you, but you can look at it
10 while you're there.

11 We'll take a break any time you want. If
12 something comes up, you just need a break for
13 whatever reason it might be, just let us know and
14 we'll be glad to take a break.

15 We'd ask that you not discuss your
16 testimony with anyone outside the interview room
17 here today. That's just protecting the integrity
18 of the investigation.

19 Matt Babington with MSHA has a statement
20 here today for you.

21 MR. BABINGTON: Mr. Lavery, thanks for
22 coming in and talking to us. I'm going to provide
23 you a letter from Norman Page, our lead accident
24 investigator. It basically describes the

1 background and protocols of this, for this
2 interview. It's pretty similar to the letter you
3 received when you came in the first time. Would
4 you care to read it over?

5 THE WITNESS: Yeah.

6 MR. BABINGTON: Okay. We'll go off the
7 record while he reads.

8 (Off the record.)

9 MR. BABINGTON: Mr. Lavery, do you have
10 any questions about the letter I gave you?

11 THE WITNESS: No.

12 MR. BABINGTON: Thank you.

13 MR. TUCKER: Okay. I'd ask that you swear
14 in the witness.

15 DANNY LAVERTY, DEPONENT, SWORN

16 MR. TUCKER: Danny, we do appreciate you
17 coming in today. I'd ask that you state your full
18 name and spell your last name.

19 THE WITNESS: Danny Lee Lavery,
20 L-A-V-E-R-T-Y.

21 MR. TUCKER: And can you please state your
22 address and telephone number.

23 THE WITNESS: (b) (7)(C)

24 (b) (7)(C) . The phone number is

1 (b) (7)(C)

2 MR. TUCKER: Okay. Do you have an
3 attorney here or a representative here with you
4 today?

5 THE WITNESS: Yes.

6 MR. TUCKER: Okay.

7 MR. PENCE: And I'll just state for the
8 record that I represent Performance Coal Company.

9 MR. BABINGTON: Chris, I don't think you
10 identified yourself for the record yet.

11 MR. PENCE: For the record, it's Chris
12 Pence with Allen, Guthrie & Thomas.

13 MR. TUCKER: Danny, on April the 5th, what
14 was your job title at UBB?

15 THE WITNESS: Longwall chief electrician.

16 MR. TUCKER: Danny, I'm going to give
17 you -- you probably got one of these the last time
18 you was here, but it's just a memo. It's got some
19 information on it for the board of appeals. Anyone
20 participating in an investigation of this nature
21 has certain rights and protections under state law
22 as far as being discriminated against for being
23 here today, and I'll just give this information to
24 you. If anything were to ever come up on the job

1 that you felt like you were being discriminated
2 against as a result of participating in this
3 investigation, this is the party that you would
4 address concerning those issues. And if that were
5 to occur, you have 30 days from the time that it
6 occurs to notify them if you felt like you was
7 being discriminated against.

8 Also I have a card here for you from
9 Johnny Jackson & Associates, and I'd like to say
10 they've got a three day turnaround on the
11 transcripts; so today would be Friday. Monday,
12 Tuesday about Wednesday, you can give them a call
13 if you want to look over your transcript and
14 schedule an appointment with them to go in and look
15 at it. You won't be able to take a copy with you,
16 but you have an opportunity to look at it.

17 I'll also give you one of my cards. If
18 something were to come up, you think of something
19 after you leave here that you think would be
20 beneficial to us on this investigation, I would
21 encourage you to give myself or Norman Page with
22 MSHA, give us a call if you think of anything that
23 may be beneficial. Like I said, we would
24 appreciate it.

1 I've got a couple of things here I'd like
2 to just enter as exhibits. One is a subpoena that
3 was sent to you as far as appearing here today and
4 the other is an affidavit of service where actually
5 they served that subpoena to you. If you'd just
6 look those over and after you're done, Matt will
7 assign those to stickers there and we'll enter
8 those as exhibits.

9 THE WITNESS: Do I need to say anything?

10 MR. TUCKER: No.

11 Thank you. I guess at this time we'll go
12 ahead and ask John Scott to start off.

13 MR. BABINGTON: Well --

14 MR. TUCKER: I'm sorry.

15 MR. BABINGTON: -- one second. I'm going
16 to go head and mark the subpoena Laverty Exhibit 1
17 and the affidavit of the process server as Laverty
18 Exhibit 2.

19 (Exhibit Nos. 1 and 2 marked for
20 identification.)

21 MR. BABINGTON: I just want to say a
22 couple of things. First, we have a court reporter
23 so there's obviously going to be a transcript of
24 your interview today; so there's a couple of things

1 to keep in mind. One is there's going to be yes or
2 no questions asked of you. As much as possible,
3 try to remember to say yes or no rather than uh-huh
4 or uh-uh, nodding your head, shaking your head.

5 The second part is as much as possible, wait for
6 the interviewer to complete asking his question
7 before you start your answer and I'll remind the
8 interviewers also to wait until the witness has
9 completed his answer before you ask another
10 question. That way we don't have people talking
11 over each other, makes for a cleaner transcript.

12 Also we have maps in front of us. I don't know how
13 much we'll use them; but if we do use the maps, if
14 you point to particular areas, if you could
15 describe the areas you're pointing to. People get
16 in the habit of saying, you know, we were here and
17 then we were here. If you could be descriptive of
18 the location, that will help the transcript.

19 MR. TUCKER: Thank you.

20 MR. BABINGTON: Thank you, Bill.

21 EXAMINATION

22 BY MR. SCOTT:

23 Q. Danny, I appreciate you coming in today.
24 I've got a few questions. There was a lot of

1 discussion about the ranging arm pin and the
2 problems they had the day of the incident and the
3 B-locks on one side and I guess it was a welded
4 plate on the other side and basically the welded
5 plate kept it from coming one way and the B-locks
6 kept the pin from coming out the other way. Did
7 the welded plate ever break off? Was that ever a
8 problem or was it mostly on the B-lock side?

9 A. The B-lock or the welded plate that I know
10 of had never come off. However, it's off now. The
11 B-lock should actually keep it from going to either
12 direction to the outside or the inside, but it had
13 failed to do that properly in the couple of times
14 that pin had tried to work its way out toward the
15 coal face side. That's the reason the plate was
16 welded on there. It hadn't worked its way out to
17 the inside before that. But from my understanding
18 on the day of the explosion, that's the way it did
19 go was towards the inside.

20 Q. Towards the inside where the welded plate
21 would have been?

22 A. Opposite from the direction of the plate.

23 Q. Opposite --

24 A. One was on the outside.

1 Q. Okay. I'm sorry --

2 A. I think that's the first time I knew that
3 the pin had tried to go in the direction it did go
4 that time.

5 Q. As far as the -- You were basically the
6 longwall chief electrician or -- Did you have
7 people working under you as different shift
8 electricians or chiefs on the longwall? And
9 that's, other people had said that they had
10 received maintenance reports or preventive
11 maintenance sheets filled out by you for certain
12 jobs for them to do. Did they turn those back into
13 you like at the end of their shift so you could
14 keep track of what was done or --

15 A. Yes, directly and indirectly. The third
16 shift would -- See, my office was at Ellis portal.
17 The third shift were traveling from the UBB portal
18 so -- and that's the way they came out. They would
19 turn in their PM sheets on that side or their
20 worksheets, whatever, and I would have to at some
21 point try to travel over there and kind of review
22 them or take them and file them away. The other
23 shifts would bring them to my office on the Ellis
24 portal side.

1 Q. You just basically got reports from the
2 electricians or mechanics, you didn't get
3 production reports or --

4 A. No.

5 Q. Just on the maintenance side?

6 A. Just the maintenance.

7 Q. The drums on the shear, had they ever been
8 changed on this panel or is that the drums that
9 were --

10 A. Yes, they had been changed.

11 Q. About halfway on this particular panel
12 that they're on now?

13 A. Correct.

14 Q. Do you know about when they were changed?

15 A. I would say within a month of April 5th.
16 Now, if you ask me if I know the exact date, no, I
17 do not. That's an approximate time frame.

18 Q. Now, were these considered rock drums,
19 coal drums or just you didn't really -- or did you
20 distinguish --

21 A. No. They're not really coal drums.
22 They're kind of -- they're more like a rock drum or
23 something in between a rock and a coal drum.
24 They're not pure coal drum, but they're -- you

1 know, they're not -- We've got other drums if we
2 get into more rock that we can actually use.

3 Q. Were these particular drums put on because
4 you were getting into some harder sandstone or more
5 rock?

6 A. No. No. They were the same drum as what
7 we had on before. That's just what we decided to
8 go with kind of in the middle of the road because
9 we were getting a mixture of the -- coal seam was
10 varying as far as how much rock we were cutting; so
11 we used one to kind of split the difference on the
12 conditions.

13 Q. The shear cable and the water line had
14 been replaced approximately three weeks or so
15 maybe prior to the explosion, maybe a month or
16 whatever. Did you help with any of that?

17 A. Some. Not a lot. In the stages of
18 putting it back together, you -- kind of hooking up
19 the ends and so forth, yeah, I did come up and kind
20 of sew things up and finish up the job.

21 Q. Do you -- do you know exactly -- remember
22 exactly what part you played in that?

23 A. No. It was probably more than anything
24 else going from one end to the other telling them

1 what they needed to do to get finished more so than
2 actually hands-on myself.

3 Q. Just kind of overseeing?

4 A. Yeah.

5 Q. Did -- Was there very many problems with
6 the Control phone system on the line on the face?

7 A. Not generally. In the -- that depended on
8 the condition also, more loose rock and scale you'd
9 kind of like have it coming off the face. Chances
10 are maybe rock's falling between the shield jerking
11 some cables down that might cause you trouble, but
12 generally day-to-day, no, we didn't have that much
13 problem.

14 MR. SCOTT: Dean.

15 EXAMINATION

16 BY MR. CRIPPS:

17 Q. What's the difference between a coal drum
18 and a rock drum?

19 A. The one that they're calling a rock drum
20 they use the six start. They start into the coal
21 with more bits angled toward the coal face.

22 Q. Say that again for me, please.

23 A. The -- You know, we have at times used a
24 six start set of drums, which have six bits, you

1 know, kind of more angled toward the coal face to
2 help cut into the rock more, you know, as they're
3 sumping into the coal or rock, whichever one you
4 want to call it at times; and it just gives -- just
5 gives you a little more bits cutting into the sump
6 more than the four starts do.

7 Q. Is there a difference in the total number
8 of bits on the drum?

9 A. I think there is but it's not very many.
10 Maybe three or four bits.

11 Q. Is there a difference in the web or the
12 width of the drum?

13 A. I don't understand the question.

14 Q. The --

15 A. If you mean the amount it was sumped in --

16 Q. Yes.

17 A. -- then, no. It's the same on both of
18 them.

19 Q. This one is 42 inches; is that correct?

20 A. Correct, that's standard.

21 Q. By this one, you mean the one that's on
22 the shear at the UBB --

23 A. Yes.

24 Q. -- the day of the accident?

1 A. That's correct.

2 Q. So the drums that's on there now, how many
3 start bits do they have?

4 A. The drums on there now are four start.

5 Q. Okay. I wanted to get that cleared up for
6 them.

7 A. The best one -- Can I speak without having
8 a question asked?

9 Q. Certainly.

10 A. C & A that makes the drums can tell you
11 exactly what all the differences are probably
12 better than I can.

13 Q. C & A, that's the company you buy the
14 drums from?

15 A. They make the drums.

16 Q. So you don't use Joy drums?

17 A. No.

18 Q. I understand before this longwall started
19 running on the current panel at UBB it was at
20 Logan's Fork; is that correct?

21 A. That's a trick question.

22 Q. Okay. I don't mean for it to be.

23 A. Well, when you say longwall, I mean, are
24 you speaking of all the equipment, parts of the

1 equipment?

2 Q. Let me ask it better then.

3 A. I mean, the shields are from Logan's Fork,
4 head drive, tail drive, stage loader, crusher,
5 shear, that came in right out of a shop.

6 Q. Okay. Let's talk about the men. Where
7 were you working in 2007?

8 A. Seemed to me like 2007 in August is when
9 we went to Logan's Fork. So 2007 I was probably
10 started out at UBB and then ended up at Logan's
11 Fork.

12 Q. So when you say we went to Logan's Fork,
13 who is we?

14 A. The longwall.

15 Q. The longwall equipment or the longwall
16 crew?

17 A. Part of the equipment and most of the
18 crew.

19 Q. Okay. So if you went there in August of
20 '07, was you there all of 2008? By you I mean you
21 yourself personally?

22 A. If we went there in 2007, I was there and
23 off 2008.

24 Q. Do you recall when you came back to UBB?

1 A. Let me think. That would have been in
2 '09.

3 Q. Do you know about what month of '09?

4 A. In the summertime. August maybe. July or
5 August. I think that question was asked the last
6 time too, and I believe I said the same thing. It
7 was August or July.

8 Q. Okay. I won't ask it again.

9 A. You already did.

10 Q. I don't figure twice is enough.

11 Okay. I want to go back to this B-lock.

12 A. Okay.

13 Q. Describe the -- Let me back up. The tail
14 gate ranging arm on the shear, how many hinge pins
15 attach that arm to the shear?

16 A. Two.

17 Q. Two. Do you identify those hinge pins in
18 any particular way, head or face side, gob side?

19 A. Yeah. That would be pretty much the
20 designation for them. It would be depending on
21 which one you were speaking of. You would
22 designate it as either the head end or the tail end
23 or the face side or the gob side.

24 Q. Okay. As I understand on April the 5th,

1 the day shift crew had had problems with the face
2 side hinge pin on the tail end of the shear.

3 A. Yes.

4 Q. And you said it's your understanding that
5 that pin had worked out to the gob side.

6 A. Yes.

7 Q. Okay. Now -- But the pin itself can work
8 out either side of the arm?

9 A. Yes.

10 Q. So it doesn't have a head on either end?

11 A. No.

12 Q. Okay. So --

13 MR. BABINGTON: Do you mind if I interrupt
14 for one second?

15 MR. CRIPPS: Certainly.

16 MR. BABINGTON: You said in your question
17 that you thought it was the pin was working its way
18 out the gob side?

19 MR. CRIPPS: Uh-huh.

20 MR. BABINGTON: I thought we had said
21 earlier that it was working out the coal face side.

22 MR. CRIPPS: No. He said it was working
23 out to the inside --

24 THE WITNESS: No, that's not what I said.

1 MR. BABINGTON: If we can just clarify
2 that. I just got a little confused there.

3 THE WITNESS: If I said it, I messed up.

4 MR. BABINGTON: I may have just heard it
5 wrong, but if you could -- Dean, I guess you can
6 just pick up from there; but I just want to make
7 sure if you could just kind of slowly walk through
8 this so we know exactly what we're talking about
9 here.

10 BY MR. CRIPPS:

11 Q. When you and John was discussing the pin
12 earlier, I understood you to say the pin had been
13 worked -- had worked its way out to the inside.

14 A. In this particular incident.

15 Q. And the inside would be the gob side?

16 A. Yes.

17 Q. As opposed to the face side?

18 A. Yes.

19 Q. And you said there had been a previous, at
20 least one previous incident where the pin had
21 worked out to the face side?

22 A. Correct.

23 Q. Okay. The -- the plate that was welded on
24 the face side of the pin, was that an original Joy

1 part?

2 A. I'm not for sure. That's not the original
3 place it would have been, but it may have been an
4 original Joy part if you understand what I'm
5 saying.

6 Q. No, not quite.

7 A. Originally there would have been no plate
8 there.

9 Q. Okay.

10 A. But we do have plates that are original
11 Joy parts that somewhat go welded onto that spot.

12 Q. So when the shear is new, it does not come
13 with that plate on there?

14 A. No.

15 Q. Okay. Then why would you put the plate on
16 there, weld it on there?

17 A. Well, as I said before when I was speaking
18 to John, it's because we had had at least one
19 incident that I know of that the pin had tried to
20 work out to the coal face side. So the plate was
21 welded on there to keep that from happening.

22 Q. Was the plate necessary to be on there for
23 the shear to operate?

24 A. No.

1 Q. You said that the pin on April the 5th had
2 worked out to the gob side of the shear. How did
3 you learn that information?

4 A. The head gate operator, Rex Mullins, told
5 me that.

6 Q. Okay. Do you know how Rex knew that
7 information?

8 A. No. The only thing I could do there is to
9 make an assumption. And it would be a guess, but I
10 could tell you what that would be; but that's what
11 it would be is an assumption.

12 Q. That's all right. But Rex is the -- was
13 the head gate operator on the day shift crew?

14 A. Yes. And Rex would primarily be your link
15 of communication with people down the face and the
16 people on the outside.

17 Q. So when -- if the shear was down or the
18 longwall section was down, would there be a lot of
19 communication from the outside to the face?

20 A. Initially, initially finding out what's
21 going on, getting some kind of idea, you know, of
22 the time frame that we're dealing with and then,
23 you know, it's kind of tapered off; but we'd give
24 the people the opportunity to work on it or do the

1 job after that with periodic calls checking on the
2 progress.

3 Q. Okay. You said that you had talked to
4 Jack Roles on April the 5th. Jack had indicated to
5 you that he wanted the pin, that particular ranging
6 arm pin replaced on the third shift?

7 A. Correct.

8 Q. Did Jack tell you exactly where the shear
9 was located when they were working on it?

10 A. No.

11 Q. Have you at any time since learned where
12 it was actually located?

13 MR. PENCE: And I'm just going to
14 interpose here, I mean, to the extent that you've
15 learned anything from counsel for Performance Coal
16 Company that I don't think you should answer that
17 question. If you learned it from somewhere else,
18 you are free to answer the question.

19 Q. Do you want me to rephrase the question?

20 A. You can rephrase it. We'll see if I've
21 got an answer for it, but --

22 Q. Have you learned where they worked on the
23 shear from anyone other than Performance counsel?

24 MR. PENCE: Or anybody in connection with

1 our accident investigation team.

2 A. Well, tell me the question again.

3 Q. I'd like to know where they worked on the
4 B-lock pin, where the location of the shear was.
5 So my question to you is do you know where they
6 actually had the shear positioned on the face when
7 they actually did the work on that ranging arm pin?

8 A. Can I tell you where I thought it was at
9 the time they were doing it?

10 Q. Sure.

11 A. I mean, because if there's some question.
12 I thought that the whole time in the process that
13 they were on the head working on the pin.

14 Q. Okay.

15 A. I don't know what may have come about
16 since then or if somebody said they were somewhere
17 else or not; but during the time of that day when
18 they were down for the pin, I thought they was on
19 the head.

20 Q. Let me show you here. You said in your
21 interview that there's some question about what
22 time the shear actually got running.

23 A. Uh-huh.

24 Q. You seem to think it was around 1:00 or

1 1:30. Do you recall saying that before?

2 A. I believe I do. I believe I do.

3 Q. Is that still your belief or -- I didn't
4 want to put words in your mouth.

5 A. Right. Yes.

6 Q. Okay. Are you familiar with the 30-minute
7 call-out report that the longwall does?

8 A. You mean how it works and so forth?

9 Q. Yes.

10 A. Yeah.

11 Q. Explain that to me if you would.

12 A. Every half hour the head gate operator,
13 the one that is responsible -- in this case would
14 have been Rex Mullins, but as far as in general,
15 the head gate operator would call out every half an
16 hour and give them the information as far as the
17 production, any down time. How many passes they
18 had ran, where the shear was located at, should
19 have been, usually. Sometimes they'd forget to
20 tell them that, and they'd get fussed at about it.
21 That's the information that they were supposed to
22 transfer, where the shear was at, whether it was
23 going to the tail or it was coming to the head.

24 Q. Okay.

1 MR. BABINGTON: Hang on a second. Can we
2 actually have a two minute break? Let's go off the
3 record.

4 (Off the record.)

5 BY MR. CRIPPS:

6 Q. I think before we took a break we were
7 talking about the 30-minute call-out.

8 A. I forget now.

9 Q. I had asked you about the 30-minute
10 call-out, if you knew what it was; and you
11 explained to me what it was.

12 A. Okay.

13 Q. I'm going to ask you to take a look at
14 this sheet right here for me if you would, and what
15 that sheet is is -- was provided to us by
16 Performance. Do you recognize that sheet?

17 A. Do you mean the format?

18 Q. Yes, the format and even what it is.

19 A. Yeah, I've seen this format around. You
20 want an interpretation of what it means?

21 Q. First of all, just the form itself. Are
22 you familiar with it?

23 A. Yeah, I've seen it.

24 Q. What is that form?

1 A. I would just call it your production
2 report call-out.

3 Q. Okay. Is that the 30-minute call-out that
4 we was talking about earlier?

5 A. That's what it looks like, yeah.

6 Q. And so you've seen forms like that in that
7 past?

8 A. Laying around the office and stuff. I
9 didn't get a copy of this.

10 Q. Okay. Do you know who did get a copy of
11 it?

12 A. No.

13 Q. Okay. This particular form, do you see a
14 date on it there anywhere?

15 A. I see it.

16 Q. This is a 30-minute call-out report for
17 the day shift on the 5th. If I may, let me borrow
18 this. This document is actually -- it's labeled
19 here PCC-MSHA 00070290.

20 MR. BABINGTON: That number I think
21 corresponds to the Bates stamp that was provided by
22 Performance.

23 MR. CRIPPS: Okay.

24 BY MR. CRIPPS:

1 Q. I'll ask you if you would, look at that
2 document and tell me just from looking at that
3 document if you can determine to the best of your
4 knowledge what time the shear actually went down on
5 the 5th?

6 A. By looking at this report?

7 Q. Yes.

8 A. 12:00.

9 Q. Okay. Can you tell approximately what
10 time the shear started running?

11 A. Well, somewhere between 1:45 and
12 2:00 p.m. That's what this log has got on it.

13 Q. And that's fine. And you say you're
14 not -- Let me rephrase it. You didn't normally get
15 a copy of this form?

16 A. No.

17 Q. So is it fair to say you're not real
18 familiar with it?

19 A. It's something I didn't look at every day,
20 no.

21 Q. Okay.

22 A. But that's what it looks like to me.

23 Q. Okay. Did you think that -- Let me think
24 of the best way to put this. If the head gate man

1 called out the 30-minute report and said the shear
2 was running, do you think that would in fact be
3 accurate?

4 A. Are you asking me would the head gate
5 operator call out a lie? Is that --

6 Q. I guess that's probably the way it
7 sounded. That wasn't my intent. So forget that
8 question.

9 A. Okay.

10 Q. Let me put it like this. When you look at
11 this report, this 30-minute call-out and if it says
12 the shear is running, what does that mean to you?

13 A. That the shear was running.

14 Q. Would it be producing coal?

15 A. Well, that's a -- that's -- I think if
16 they called out and said it was running, that they
17 would be producing coal; but I don't think that
18 necessarily means they wouldn't be producing coal
19 if that makes any sense to you.

20 Q. Would it mean then that it would be
21 capable of producing coal?

22 A. I think so.

23 Q. Okay.

24 A. And I think that if somebody was to call

1 out and tell me that they were running that that's
2 what they would be doing, it'd be running coal.
3 That's usually what running meant, would be running
4 coal. I guess there could be an interpretation
5 that we got the shear running but we decided we
6 need to do this first and they never said anything
7 about it, that's what I was putting so much thought
8 into that for. But, yes, if they called me and
9 told me the shear was running, then I would assume
10 that they were telling me that they were producing
11 coal.

12 Q. Okay. Very good.

13 A. I'm sorry it took so long to answer.

14 MR. CRIPPS: That's all right. I
15 appreciate your thoughts on this. I'll put that
16 away for now. That's all I've got for right now.
17 I'll pass it along to someone else.

18 EXAMINATION

19 BY MR. BECK:

20 Q. Replacing the drums is a pretty big job.
21 I mean, it's a major component of the shear.

22 A. Yes.

23 Q. Who would have -- who would be -- make the
24 decision whether or not to replace the drums?

1 A. Mainly me.

2 Q. And would you have to get approval on up
3 the ladder to do a major job like that?

4 A. I would prefer to. I would not have to.

5 Q. Okay. Do you recall how much a set of
6 drums cost, ballpark?

7 A. No.

8 Q. So there was -- You didn't have to get an
9 approval to spend X-amount of dollars for a major
10 repair if it was needed. You just said we need
11 drums and drums were ordered; is that --

12 A. I won't say that. I won't say that I
13 would have had to have got one, but I think at some
14 point if I had a -- for instance, I ordered a set
15 of drums. If somebody had seen I ordered a set of
16 drums and said, no, we don't want to do that right
17 now, they could have stopped it. That didn't
18 happen but pretty much if I needed a set of drums I
19 could get the drums.

20 Q. And usually large components on a longwall
21 just like on a miner section, they go into lots of
22 money?

23 A. Yes.

24 Q. And nothing is cheap. Have you ever been

1 in a situation where you thought that a component
2 on the shear needed changed and you ordered that,
3 placed that order and it was shot down or just not
4 approved?

5 A. No. As a matter -- Maybe I shouldn't say
6 anything without being asked. For instance, those
7 drums you referred to, usually if I changed out a
8 set of drums, you got them picked up as quick as
9 you could and rebuilt sent back so I would have
10 them on hand because you never know when conditions
11 are going to dictate when you might need those
12 drums. So you couldn't just wait around, you know,
13 until you thought you would need them to get more.
14 You would try to keep them on hand as much as
15 possible.

16 Q. You do that because the longwall is the
17 big producer at the mine, right?

18 A. Well, yeah. You wouldn't want to be down
19 waiting on somebody to build you a set of drums.

20 EXAMINATION

21 BY MR. SCOTT:

22 Q. A couple quick questions going back to
23 that hinge pin. You said more than likely your
24 thinking was at the time that they were probably at

1 the head changing that ranging arm pin or preparing
2 that during the day.

3 A. Yes.

4 Q. You don't know for sure, but you think it
5 was -- that's what your first thought was --

6 A. That's where I thought they were at was on
7 the head.

8 Q. Would there be any instance where that pin
9 could be out in such a manner that would prevent
10 them from moving the shear back to the head if it
11 was say mid-face or even towards the tail?

12 A. No.

13 Q. They'd always be able to move it back?

14 A. They could move that. You've still got
15 the other pin. They can pull it behind them for
16 that matter. It would still operate to a certain
17 extent especially just lifting the weight of the
18 ranging arm and drum. If you were trying to cut
19 with it, you're going to put a terrible strain on
20 it. Just to get it back, you could do it.

21 Q. That's what I asking, just asking you if
22 it would prevent it from being moved to be worked
23 on but not about to produce coal.

24 A. It would not prevent that, no.

1 Q. Dean was showing you that 30-minute call-
2 out and you said you normally didn't see those.
3 Did you ever get any kind of a weekly or a monthly
4 report on the wall to show we were down five hours
5 this week or we were down ten hours this month or
6 we produced so many hours this month, any type of
7 production that shows down time or --

8 A. No, not in general. At least I didn't.
9 Sometimes they would post sheets like as far as
10 different mine to mine their production for the
11 month, you know, like whatever longwall they had,
12 they would post a chart showing what they had
13 produced and then what maybe this other mine
14 produced, just a list of the productions for like a
15 month throughout Massey and stuff like that. But
16 as far as sending me a sheet of the down time or
17 stuff like that, I didn't get one.

18 Q. How about a sheet of like the maintenance
19 costs or anything on it for a particular half or a
20 month or anything on the wall, any kind of report
21 on that that you recall?

22 A. Not that I recall.

23 Q. Okay.

24 A. I'm sure there's people that got them, but

1 I don't think there was one with my name on it.
2 And I'm sure there was cost sheets generated out.
3 I do recall someone maybe coming to me and asking
4 what this particular X-amount of dollars was for;
5 but as far as a sum of moneys on a regular basis or
6 as a routine sending me cost sheets and stuff I
7 didn't get them.

8 EXAMINATION

9 BY MR. TUCKER:

10 Q. I've got just a couple of questions. To
11 the best of your knowledge on April the 5th, was
12 there any cutting or welding done on the longwall
13 face?

14 A. On April the 5th?

15 Q. Yes.

16 A. I do not know.

17 Q. Okay. Do you recall about what time that
18 you last talked to anyone on the longwall on the
19 5th?

20 A. An approximation would probably have been
21 about one o'clock.

22 Q. Is that -- Do you recall talking to
23 anybody after they started running?

24 A. No.

1 Q. Okay. The last conversation that you had,
2 was there any indication of any problems they were
3 having outside of working on the ranging arm?

4 A. No.

5 Q. Did you overhear any other conversations
6 on the mine phone between somebody outside the
7 longwall?

8 A. No.

9 Q. Okay.

10 A. Not to the longwall.

11 Q. Okay. As far as your office, is your
12 office in -- as far as compared to Jack Roles, do
13 y'all share a office, have different locations up
14 in the mine office?

15 A. A different room.

16 Q. A different room. Okay. And to be
17 specific -- and I know you probably already
18 answered it, but you didn't overhear any
19 conversation that Jack, Mr. Roles, may have had
20 with anybody underground up around three o'clock?

21 A. No.

22 MR. TUCKER: Okay. Thank you. That's
23 all.

24 EXAMINATION

1 BY MR. MAGGARD:

2 Q. I need some clarification here a little
3 bit. I'm thinking on your last interview that you
4 said something about Rex called back and said the
5 wall was running. Do you remember that?

6 A. No.

7 Q. Okay.

8 A. And he may have. I just don't remember.

9 Q. Okay.

10 A. It's been a while now.

11 Q. But you talked to --

12 A. I remember I talked to Rex about one
13 o'clock, and I don't remember if he said he was
14 running or he was about running; but I did talk to
15 him at approximately 1:00.

16 Q. Okay. And then you also talked to Jack
17 Roles after Rex or was that before?

18 A. I think that was probably before I
19 believe.

20 Q. Okay. And if I've got you right, on that
21 conversation it was just to -- he was informing you
22 he wanted the ranging arm pin removed and changed.

23 A. Yeah.

24 Q. Was there anything else that he mentioned?

1 A. No.

2 Q. Okay.

3 A. Other than tonight --

4 Q. Okay.

5 A. -- that night.

6 Q. Okay. As far as that -- the tail side
7 ranging arm pin that's on the face side, it came
8 towards the gob side that's what you recall?

9 A. That's my understanding.

10 Q. Would there be any reason they would need
11 to take the B-lock off on the face side to help
12 reinsert the pin?

13 A. No.

14 Q. Okay.

15 A. With an addition to that that I would know
16 of, I don't see -- I cannot see them having to take
17 anything loose on the other -- the pin on the other
18 end, the -- the gob side.

19 Q. Okay. Now, you said that three or four
20 weeks prior to the event that the drum was
21 changed -- I don't know if I ever had heard a
22 reason why it was changed. Why was it changed?

23 A. Mainly the reason it was changed when it
24 was changed is because we had a ranging arm on the

1 head end of the shear. The gear case had cracked
2 on it. And it was actually leaking water into the
3 gear case, so we was wanting to change the ranging
4 arm off and you have to take the drum off anyway to
5 get it out of the way. So we're here down changing
6 the ranging arm. It's a good time to go ahead and
7 change the drums out anyway while we were down.
8 We've got the rachets and stuff over, the stage
9 loader onto the face. It was an opportune time.

10 Q. How long had the gear case been cracked
11 before you changed to, worked on it and the drums?

12 A. We got in kind of a rush on that. I can
13 give you an approximation of a week.

14 Q. Okay. Sure.

15 A. We kind of hustled up and got on in there
16 quick as we could, got everything set in place. It
17 was probably within a week I would say.

18 Q. And you would be the man that would make
19 the assignment on who would do the work; is that
20 correct, to change the drums and do that work?

21 A. Are you speaking of this particular
22 incident?

23 Q. Right.

24 A. Not necessarily.

1 Q. Okay.

2 A. You know, we have crews on each shift and
3 they all know pretty much, you know, how this is
4 going to go. You have to go point A to Point B to
5 Point C; and the shift that started actually on the
6 job, their boss there would be who designates you
7 do this and I'll do this and you guys do this.
8 That wouldn't be me. I didn't get that to where
9 I'm going to tell every single individual what he
10 does on the job like that.

11 Q. Okay. But do you recall who did do that
12 work, what crew or what individual?

13 A. It wasn't an individual. It was several
14 people. And we also had more than that going on
15 too. It was at the same time, so we actually had
16 other people working on other things. I remember
17 Gregory Skeens being at the shear, working on that
18 part of it. As far as remembering everybody that
19 was around it, I don't because we even had some
20 travel between also changing out the stage loader
21 chains and stuff. We had actually some when they
22 got too busy at this point here or either too
23 crowded there, they would move up to the other,
24 kind of go back and forth on those jobs. It was

1 pretty much every electrician that we had I think,
2 but I don't remember who all they were.

3 Q. Do you remember how long it took them to
4 do it?

5 A. I think -- See, if you ask me if I
6 remember exactly how long it took them to do it,
7 no. I could you give you an approximation.

8 Q. That would be fine.

9 A. To the best of my recollection, we started
10 on the day shift and finished it up I believe just
11 a little bit late into the day shift the following
12 day.

13 Q. Okay. Was that on the weekend or during
14 the week?

15 A. That I don't remember.

16 Q. Okay.

17 A. That was a critical enough thing. We may
18 not have waited until the weekend on it.

19 Q. And after you changed the drum, did you
20 have any instances where water sprays may have
21 clogged more often after the change out of the drum
22 or did it get better?

23 A. Or did it get better?

24 Q. Yeah. I mean, did you have less sprays

1 getting clogged normally during the shift or did
2 you have more?

3 A. Initially when you first put a set of
4 drums on, you have trouble out of them to start
5 with because during the welding process and where
6 they -- everything has been heated, there's rust
7 that develops on the inside of them and we usually
8 have trouble once you start cutting with them.
9 Vibration and so forth will break the rust
10 particles loose and you have to go through kind of
11 a break-in period before it's all worked out of it.

12 Q. And during that break-in period, what
13 would you do to get rid of the rust, slag,
14 whatever's in the drum?

15 A. Take all the sprays off, flush everything,
16 clean the sprays or even change them. I prefer to
17 clean them. Some of them you just thought it was
18 easier to change them and threw the new ones away
19 because it kind of stopped up. It's kind of
20 expensive.

21 Q. Did you ever -- did you ever have to do
22 that on this drum -- these particular drums when
23 you changed them out?

24 A. I think so.

1 Q. Okay.

2 A. I mean, it was pretty much a normal
3 process you went through with any set of drums.

4 Q. And how long would that normally take
5 before it'd start being less of a hassle as far as
6 clogging sprays?

7 A. Progressively got better. I mean, like,
8 you could go longer each time I guess until you got
9 that system out. Probably a couple weeks or so. I
10 think from the time we changed the drum until you
11 were having too much trouble with them.

12 Q. Okay. Now, I know we've worked together a
13 lot on this investigation and I know you've seen
14 the tail drum on the shear and I -- can you tell us
15 how many sprays that you've seen since the
16 investigation that you've seen missing?

17 MR. PENCE: I'm going to object and
18 instruct him not to answer that question.

19 BY MR. MAGGARD:

20 Q. Okay. Let me ask you this question then.
21 What's the most number of sprays that you ever
22 recall being missing at one time during a shift or
23 that you had ever heard of on a drum?

24 MR. PENCE: Prior to April 5th?

1 MR. MAGGARD: Prior to April 5th.

2 A. I never counted or had anybody take a
3 count.

4 Q. You never had anybody tell you?

5 A. No, not come up with a number. No.

6 Q. Okay. Now, let's talk about the water
7 system. Could you tell me the water supply, where
8 it originated from, from the surface to the
9 longwall, what type of water lines you had,
10 anything you can tell me about the water system at
11 UBB?

12 A. Anything I can tell you about the water
13 system?

14 Q. Yes.

15 A. It was pumped out of a river. Now, before
16 I say anything else you're speaking of which
17 water?

18 Q. Well, I'm speaking of emulsion water.

19 A. You're speaking of --

20 Q. -- and shear water.

21 A. Which do you want first?

22 Q. Either one.

23 A. Emulsion water came from a well down at
24 the bottom of the hill where the railroad tracks

1 are a short distance up the left-hand road. And
2 it's pumped up to a tank outside the bath house,
3 kind of behind MSHA's trailer and there's a pump
4 house beside of that that pumped that water to 89
5 break. There's a pump standing still there at 89
6 break. From there, it kicked the pressure up, kept
7 your volume pressured up to 42 break. This is the
8 42 break inby, inby Ellis on the north side there.
9 And from there, it went to the water car at the
10 mule train and into your Seebach filter and from
11 there into your emulsion tanks and stuff and mix.

12 Q. Okay. Let me ask you a question about
13 that. At one point, they started calling that
14 fresh water. What was the change?

15 A. Who did?

16 Q. I've heard a lot of people say that we
17 swapped over to fresh water. Do you know what they
18 meant by that?

19 A. That we swapped over to fresh water?

20 Q. It sounds -- Help me out here.

21 A. The only changeover that I know of that
22 they could be referring to fresh water is is water
23 out of the well as opposed to water out of the
24 river.

1 Q. Okay.

2 A. That was the only change ever made when we
3 first started up until we got all of the two inch
4 line, which that is what size the well water was,
5 coming inside two inch -- until we got all that
6 established. Then we were running on river water.

7 Q. Okay.

8 A. Because that's when you was using all the
9 sock filters and all that. It's not as efficient.

10 Q. And when was that change made? Do you
11 know?

12 A. Not an exact date.

13 Q. Was it wintertime, springtime?

14 A. It was probably late fall.

15 Q. Okay.

16 MR. BABINGTON: Are we talking about late
17 fall 2009?

18 THE WITNESS: Yes.

19 Q. And who was -- who done the work on that
20 change? Who would know when that occurred?

21 A. I worked on it some. Even Bobby Goss
22 helped me with it some. And Delbert Bailey worked
23 on it some. Harold Lilly worked on it some.
24 Eugene Williams worked on it some. As far as

1 stretching out the line and putting the joints
2 together, whichever one of them could tell you the
3 particular date that it was completed, it would
4 probably be me closer than anybody else because I
5 was kind of the one who put the final touches on
6 it, tuning the pumps in and adjusting the pressure
7 and so forth on in.

8 Q. Where was the well pumps located? Where
9 was those pumps set? I assume that supplied the
10 tank, right?

11 A. The actual submersible well pump.

12 Q. Right, not the booster.

13 A. That's the one at the foot of the hill.

14 Right after you cross the railroad tracks, it's
15 where the mine road that lead right up to the Cedar
16 Grove mine with the gate there. I don't know if
17 you've seen it, but it's right at that gate.

18 Q. Okay. I'm going to kind of switch gears
19 for a a little bit. The bits that were used in the
20 shear, has it always been the same type from -- on
21 this panel or previous panels? Have you ever
22 changed to a different type cutting bit on the
23 drums?

24 A. In what kind of time frame? Ever? You

1 mean like forever?

2 Q. Do you remember --

3 A. I remember us trying other bits that
4 didn't work and going right back to what we had.

5 Q. Okay.

6 A. But that's been five or six years ago
7 approximately.

8 Q. And for the record, could you tell us what
9 type of bits those were?

10 A. I can tell you what brand they tried.

11 Q. Okay.

12 A. It was Sandvick as opposed to the
13 Kennametal we used.

14 Q. That's the one you tried.

15 A. Tried and it didn't hold up. I think we
16 didn't go 10 feet and we had to change it. It was
17 an experimental diamond tip, something. We saw
18 immediately it wasn't going to work. It was
19 busting them off.

20 Q. And where did you try those at?

21 A. That was at UBB before we ever went to
22 Logan's Fork.

23 MR. BABINGTON: I'm sorry. Just to
24 clarify, so what was the brand of the bits you were

1 using on April 5th?

2 THE WITNESS: Kennametal.

3 Q. Had you ever discussed or tried to come up
4 with another type of bit? Was that -- Kind of help
5 me out here. Was that just something somebody had
6 showed you that may work or had you -- what made
7 you try the different types of bit?

8 A. I was the third shift maintenance foreman
9 at the time, and they had on my report take all
10 these bits out, put all these in and we want to see
11 how they do; and that's as far as I know about
12 that. I did what they said to do. And I actually
13 ended up staying late taking them back out because
14 we had left before they found out they were no
15 good.

16 Q. Had you had any discussions with anybody
17 about trying different types of bits on this panel?

18 A. No. No.

19 Q. Okay. Have you ever had any discipline
20 issues or anything that you had to do as far as the
21 guys that work for you that you've run into
22 something they've done unsafe and you've had to
23 correct what they were doing or they done something
24 that they shouldn't have done? They didn't correct

1 the hazard and you had to correct it for them or
2 get somebody else to correct it or anything since
3 you've been --

4 A. If you -- Are you asking me if we have
5 ever gotten violations? I mean, that's because --
6 if we got violations, somebody failed to see it or
7 failed to correct it and, yeah, I would have had to
8 have somebody to correct it. Yes, I have had
9 people -- have to have people correct violations.

10 Q. Okay. Let's say that you didn't get a
11 violation in recent months. Had you had any
12 employee issues?

13 A. Repeat that question, please.

14 Q. Have you had any employee issues, had
15 anybody that done anything unsafe that you didn't
16 get a violation for that you were willing to
17 correct and identify the problem, give them
18 additional training or anything like that, anything
19 you can think of?

20 A. I'm trying to think of any particular
21 incident. Not that I can recall.

22 Q. Fair enough. As far as -- Did you wear a
23 tracking tag underground?

24 A. Yeah, once they implemented it. Yeah.

1 Q. Have you received any training on that?

2 A. I think.

3 Q. And were you familiar with the system to
4 go into it and see, okay, I went up to this
5 location today and I want to see where all I
6 traveled? Did you go in there and do that
7 yourself?

8 A. No, I couldn't. If they showed me today,
9 I probably couldn't tomorrow.

10 MR. MAGGARD: Okay. Fair enough. That's
11 all I've got right now.

12 MR. CRIPPS: Did you want to finish up on
13 that?

14 MR. MAGGARD: Okay. I can.

15 Q. We talked about the emulsion water, that
16 there was a swap to this fresh water; and I think
17 you said that they quit using socks after that; is
18 that correct?

19 A. Pretty much, yeah.

20 Q. Okay. Now, let's talk about the shear
21 water. The shear water, how was it routed? And
22 tell me a little bit about it, where it went to as
23 far as on the longwall and what all did it supply?

24 A. The river water that came out at the river

1 pumped up into two big tanks up above the silo on
2 top of the silo of the ridge; and from there it
3 come into the east main, whatever, south portal,
4 whatever you call that, come into a bank of filter
5 baskets, strainer baskets, whatever you want to
6 call it there. And I never really followed it
7 completely through the south side, but it come out
8 of that south side over to the north side and down
9 the belt lines, crossed up there where the Ellis
10 switch is and from there traveled to the north end
11 of the mines. It has an eight inch line and until
12 you got just in by the mother drive and then kind
13 of -- I think it was actually a 45. It went on a
14 45 up the old belt line up our track entry as six
15 inch line until you got to the mule track or to the
16 pump coal, sunflow pump, fresh water pump car. We
17 can't use that fresh because I'll confuse you with
18 the well water.

19 But from there, I think it changed to a
20 four inch flexible hose coming off the six inch
21 line into the back of the -- back of that pump car
22 and through your Rose Dale filters or strainers or
23 whatever, through that, and from there into a
24 pressure manifold and from there down two lines

1 traveling down the monorail until it got to your
2 solenoid stations for your coupling water --
3 coupling stuff at which point one of those lines
4 had a -- it really didn't matter which, because at
5 that point they're both the same -- T-ed off of
6 those going to that water solenoid station. And
7 continuing on from that point, there's two lines to
8 where your valves are where it went into another
9 manifold with two valves turning the water off in
10 and actually probably three valves coming out
11 turning the water off. If you actually turned the
12 water coming in off, it would cut them off,
13 everything off too. But one of them went to your
14 shield water and one of them went to your shear and
15 the other one went to your cooling water through
16 pressure reducer valves and so forth.

17 MR. BABINGTON: I'm going to need you to
18 repeat that by the way.

19 Q. You did good.

20 The filter station at the east mains, who
21 would be the -- who would normally take care of
22 that?

23 A. Fire bosses and probably I think Jim
24 Bolter, probably more than anyone else as a

1 particular individual. I'm sure if he wasn't
2 available there were other fire bosses on that end
3 and how often they check them would depend on the
4 condition of the river. Same way with those
5 filters. If we didn't use -- you know, as far as
6 the well water come into play but if they got a lot
7 of rain and the river got up and muddy, they did
8 revert back to those filters. It wasn't something
9 we just did away with.

10 Q. When you say the filters you --

11 A. The socks.

12 Q. The socks?

13 A. Right. When that water would get muddy or
14 start to get muddy, they would start using the
15 socks.

16 Q. Would they use the socks just on the mule
17 train or would they use them at the east mains as
18 well?

19 A. I don't think they ever used them at the
20 east main. The east mains Area, that was somewhere
21 I was every seldom at, but I don't remember them
22 ever ordering socks and sending that way.

23 Q. When they worked on the filters at the
24 east mains and the mule train without the socks and

1 you just had this metal basket, what did they do to
2 chain -- did they completely replace the basket or
3 did they have to wash them out or what was the
4 process for that?

5 A. The east mains there, they did have
6 several spares there. I don't know if they had
7 enough to chain -- and I think they did. I think I
8 went to there one time and changed those filters
9 and they actually had enough spares to change out
10 each one. And then after we changed them out and
11 got them all changed, I watched the ones that were
12 installed and left them setting there to kind of
13 dry out because after they dry you can peg them
14 against something and knock off what you couldn't
15 wash out. As far as the ones at the mule train,
16 they usually kept a spare or two there in case one
17 happened to be damaged or something where they
18 could change them out; but they would primarily
19 just take it out, wash them good, stick it back
20 in. Not all of -- they didn't cut them all off at
21 the same time. We would do them one at a time.

22 Q. Where would they wash it at? I mean,
23 would they take it outside?

24 A. No, standing right there beside of it.

1 I'm sure you noticed they had hoses, little hoses
2 on the end of those canisters and they would just
3 use the hose next to it that was still pressurized
4 with water.

5 Q. The filters at the east mains, do you
6 recall if they were not using any filters out -- do
7 you remember how many -- how big of a bank that
8 was?

9 A. I don't remember how many they had. All I
10 know is that all of them had had the filters in it,
11 the basket element, however you want to say it, the
12 last time that I fooled with it.

13 MR. MAGGARD: I'm good for now. Thank
14 you.

15 EXAMINATION

16 BY MR. TUCKER:

17 Q. I've got a couple questions.

18 A. Okay.

19 Q. When Jasey was talking to you there
20 earlier, you started to comment about -- when we
21 was talking about a work list. You started to
22 comment about what you were going to do that night
23 as far as maintenance. Do you recall what that
24 was?

1 A. Which particular night?

2 Q. It would have been the sixth.

3 A. Oh --

4 Q. When you were --

5 A. Oh, yeah.

6 Q. I'm talking about talking with Jack.

7 A. Yeah, they were going to replace that pin
8 and that B-lock on the tail end of the ranging arm,
9 face south.

10 Q. Okay. I understand recently, you know, we
11 changed the cable out on the longwall. I think the
12 bretby had a lot of cable problems with it being
13 damaged.

14 A. Uh-huh.

15 Q. Since they changed the cable out, have you
16 had any cable problems?

17 A. Not that I'm aware of. I'm pretty sure we
18 didn't have any unless something was in there that
19 I just didn't -- maybe wasn't made aware of, but I
20 don't think they had any trouble.

21 Q. And we understand we talked about changing
22 the drums out that they had recently changed the
23 drums out and that's common when you do that, that
24 you have problems with sprays being stopped up?

1 A. Uh-huh.

2 Q. But as far as -- Are you aware that when
3 they changed bits sometimes they'll be sprays
4 missing, they'd have to replace missing sprays --

5 A. Uh-huh.

6 Q. -- occasionally.

7 MR. BABINGTON: I'm sorry. Was that a
8 yes?

9 THE WITNESS: Yes. Yes. I'll start doing
10 this from now on.

11 Q. Now, as far as -- if you can remember, as
12 far as the old drum compared to the new drum, did
13 you notice any difference in the amount of sprays
14 that may be missing? Would it be more of a problem
15 with the older drums or is it the same since you
16 changed the drums out? Would you have more sprays
17 missing than usual or do you recall any difference?

18 A. I don't think there's much difference
19 there. I think one of the things that dictates
20 them sprays is just how hard the rock is they're
21 cutting and how much bouncing and shaking there
22 is.

23 MR. TUCKER: That's all I have. Thank
24 you.

1 MR. MAGGARD: I have one more question;

2 THE WITNESS: No, I gave you a chance.

3 MR. BECK: You've only had two hours
4 worth.

5 EXAMINATION

6 BY MR. MAGGARD:

7 Q. On the new drums, Danny, did they already
8 have springs in them?

9 A. They come in three-eighth inch pipe
10 plugs. Those holes are plugged. You actually have
11 to take out all the plugs and put in o-rings and
12 install the sprays; and before we do that, before
13 we install the sprays, we flush them, initially
14 flush them before. That's part of the procedure.

15 EXAMINATION

16 BY MR. BABINGTON:

17 Q. I have two follow-ups. You mentioned that
18 you learned about the problem with the hinge pin on
19 the 5th from Rex Mullins.

20 A. Uh-huh.

21 Q. And about what time did Rex give you the
22 information about the problem with the hinge pin?

23 A. When he called out that the shear was
24 down.

1 Q. So what time about was that?

2 A. I think it was 11:00 or 12:00. I don't
3 remember. It was on that production report that
4 y'all showed me.

5 Q. Also you said that after you spoke with
6 Rex at 1:00 you didn't overhear any other
7 conversations with anyone else on the longwall
8 until three o'clock or let's just say after one
9 o'clock you didn't hear anything?

10 A. Well, no, me overhear him talking to
11 anybody else. No, I won't say I was not out of
12 contact with him that whole time because I spoke
13 probably a couple different times during the day
14 with Rex asking how they were progressing and, you
15 know, he kind of give me like I think they've about
16 got it and seems like or at some point if he would
17 have said, no, we're just like we're getting
18 started, I would have took off underground up there
19 with him because I think two different times
20 initially, well, he's about got it now. Second
21 time, he had some trouble there but he's about got
22 it now and it just kind of drug on to that point
23 but that's pretty much the conversation, he's about
24 got it. And I was trying to find out at that point

1 do I need to go up there and help or what. But the
2 indication was that, no, that he'd about got it.
3 But other than that, me hearing anything, a
4 conversation with anybody else, no.

5 Q. Okay. So you didn't hear -- I think you
6 answered that; but if you could give me a yes or
7 no. So did you overhear any other conversations
8 after one o'clock?

9 A. I'm sorry. I heard Scott Halstead talking
10 to the fire boss, Cuz, the one they call Cuz,
11 telling him that he was going to be up there. That
12 was after one o'clock. He was going to come back
13 and get on a man trip and come and get him.

14 Q. Do you recall around what time that was?

15 A. I think it was not very long before the
16 explosion. I'd say 2:30 or fifteen until 3:00 or
17 something like that.

18 Q. Is that the last thing you heard over the
19 dispatch line before three o'clock?

20 A. Yeah.

21 MR. BABINGTON: Let's take a couple minute
22 break just to make sure we --

23 MR. BECK: I've got a question.

24 MR. BABINGTON: Go ahead.

EXAMINATION

1
2 BY MR. BECK:

3 Q. Just a couple clarifications I've got a
4 question about. As longwall chief electrician, who
5 was your immediate supervisor?

6 A. As an electrician, it would have been
7 Bobby Goss. As pertaining to that mine in
8 particular, somebody would have been, say, more
9 authority than me, Jack Roles probably had more
10 authority than me, Wayne Persinger; but as far as
11 having to do with maintenance, he would be my --
12 probably over me as far as longwall maintenance
13 would be Bobby Goss.

14 Q. Was your job to coordinate the maintenance
15 work that would be done on all three shifts or just
16 midnight?

17 A. No, all three.

18 Q. And was the longwall scheduled to produce
19 coal six days a week or seven days a week?

20 A. Seven.

21 Q. Seven?

22 A. Uh-huh.

23 Q. Were there rock dust crews at Upper Big
24 Branch, crews that were set up to rock dust

1 different parts of the mine, if you know?

2 A. Were there people rock dusting?

3 Q. I mean people assigned to do rock dusting
4 with the --

5 A. As far as a rock dust crew, I don't know.
6 I've seen guys in there rock dusting, but I don't
7 know if they were the rock dust crew or they do
8 this job one day and something else the next.

9 Q. With the longwall scheduled to produce
10 coal seven days a week, then midnight seven days a
11 week was a maintenance shift; is that right?

12 A. Uh-huh.

13 Q. In your coordinating the maintenance
14 program or the electrician -- electrical program,
15 did you ever have any time where rock dusting in
16 the area of the longwall required nobody to be on
17 the face or you have to come off the face because
18 of a rock dusting?

19 A. I didn't coordinate the rock dust part of
20 it, but I have had work that they didn't get to do
21 because they were rock dusting and they had to go
22 outby to dust.

23 Q. Okay.

24 MR. TUCKER: We'll go off the record.

1 (Off the record.)

2 MR. BABINGTON: Bill?

3 EXAMINATION

4 BY MR. TUCKER:

5 Q. One more question. And just based on your
6 experience and, you know, some information that is
7 common knowledge as far as condition of the
8 longwall with the water being off and the shear and
9 the power being off with the victims who normally
10 we would expect by the shear being cutting out on
11 the tail and those guys being in the face, do you
12 have any ideas or scenarios in your mind as to, you
13 know, why those guys would have been at mid-face?

14 MR. PENCE: I'm just going to lodge an
15 objection. I think this gets into the company's
16 investigation after the accident, Bill; and I don't
17 think that he would have any way of knowing that
18 unless he was underground in connection with the
19 company's accident investigation. So I think the
20 question is asking him to speculate, No.1, and No.
21 2 gets into the findings and possibly conclusions
22 or theories of the company's investigation. So I'm
23 going to instruct him not to answer that question;
24 but if you want to try to rephrase it --

1 MR. TUCKER: So what you just explained,
2 that's the basis of your objection?

3 MR. PENCE: The basis of my objection.

4 Q. Basically the question I'm asking I could
5 ask somebody out on the street that had never
6 worked there. You know, I'm just asking based on
7 your experience working on the longwall, knowing
8 what you know about the longwall, that's a big
9 question in everybody's mind with the conditions of
10 the water and the power being off and, you know,
11 right there, not quite at quitting time, but close
12 to quitting time, why those guys would have been in
13 that face. I think that's the question we're all
14 trying to figure out.

15 A. Well, I have the same questions. Just
16 like you or anybody else. I don't know. But I do
17 have to say I would like to know. But just like
18 you say, anybody on the street can be sitting here
19 trying to guess what the answer to that is. And as
20 far as my expertise in there, I don't know. I
21 mean, there's indication that they weren't running.

22 MR. PENCE: And, again, I'm going to ask
23 you not to get into the indications of findings of
24 things you may have learned while underground in

1 connection with the company's investigation.

2 THE WITNESS: That's true.

3 MR. PENCE: All right.

4 THE WITNESS: I understand.

5 MR. BABINGTON: Now, if the question was
6 phrased more as a hypothetical and really getting
7 at his knowledge because MSHA has an interest in
8 the answer to this question as well. Rather than
9 basing it on the knowledge of whatever information
10 or data he's been exposed to since April 5th that
11 he has -- you know, that he has a history of
12 working on the longwall --

13 THE WITNESS: See, I can't answer that
14 question without basing it on what I already know
15 because I didn't know that before.

16 MR. PENCE: Then based on that answer, I'm
17 going to instruct him not to answer the question.

18 MR. TUCKER: Dean.

19 MR. CRIPPS: That's what I was going to
20 ask.

21 MR. PENCE: We can go off the record and
22 talk about it if you want to.

23 MR. CRIPPS: Let me ask one more
24 question.

1 Q. Would you expect them that that shield
2 would remain pulled in --

3 A. No.

4 Q. -- after they finished the job?

5 A. No.

6 Q. What would you expect to happen on that
7 shield?

8 A. Back it up.

9 Q. How would that be accomplished?

10 A. You'd lower it from the top and push your
11 push button and it would shove it back.

12 Q. Would it shove it back to its original
13 position?

14 A. Yes and no. Yes or no, either it would or
15 it wouldn't and apparently it did. And sometime --

16 MR. PENCE: And you can answer his
17 question. I just don't want you to get into things
18 that you learned when you were underground --

19 THE WITNESS: No, this is not.

20 A. This is common practice because I've been
21 up there working on the hoot owl and they have to
22 pull them shields a lot of times. Most of the time
23 you can walk them backwards and sometimes you have
24 to kind of fool with the buttons and let them up

1 and down, up and down, up and down; and they'll
2 just kind of force their way right back to where
3 they were at. You don't just always hit a button
4 and they go right back to where they was. Usually
5 you can fool with them a little bit and get them
6 pulled back all the way.

7 Q. So it's reasonable to expect with the
8 position of the shields near the head gate area
9 right now that they could have pulled the shield
10 in, worked on the shear and then pushed that
11 shear --

12 A. Absolutely.

13 Q. -- that shield back.

14 MR. CRIPPS: Okay. That's what I was
15 getting at. That's all I have.

16 MR. TUCKER: I don't have anything else.

17 MR. BABINGTON: Chris, I just want to
18 return to the two objections that you had before
19 just so we have on the record just kind of the
20 basis of the objection and exactly what's being
21 objected to. Now, one of the questions was how
22 many sprays Mr. Laverty saw missing from the
23 shear.

24 MR. PENCE: And I think that question, the

1 basis for that objection is I understand the
2 question as asking Mr. Lavery to identify the
3 number of sprays that are missing from the shear on
4 February 24th of 2011; and the basis for my
5 objection on that is Mr. Lavery, after April 5th
6 of 2010 was underground in connection with
7 Performance Coal Company's internal accident
8 investigation, which is being directed -- which is
9 being conducted at the direction of counsel. So if
10 Mr. Lavery were to answer that question,
11 arguably he would be imparting information he
12 learned in connection with his participation in
13 Performance Coal Company's accident investigation;
14 and because that's protected by the attorney-client
15 privilege and/or the work product doctrine, I'm
16 instructing him not to answer that question.

17 MR. BABINGTON: Okay. And the other
18 question you objected to was -- and maybe we got
19 back to this and got the answer. I wrote it down
20 as where -- where was the shear located when the
21 B-lock was being repaired on April 5th.

22 MR. PENCE: We can have her read it back.
23 I think the basis of that objection was the same --
24 is the same.

1 MR. BABINGTON: Okay. And that is -- And
2 so I guess this -- and maybe I'm just wondering if
3 there is a different way we can get at that
4 information, you know, not to be getting
5 at privileged information but, again, at being able
6 to incorporate his expertise in that particular
7 longwall.

8 MR. PENCE: And I think there was a series
9 of questions by Mr. Cripps after that objection
10 which spoke more generally about the procedures
11 that one would use when they're changing bits in
12 the face area and I think he provided -- I think he
13 answered those questions based on the typical --
14 the procedures that would have been employed prior
15 to April 5th of 2010.

16 MR. BABINGTON: Is there more on -- I
17 wrote it as a general question. Was there other
18 information from that line of questioning that --

19 MR. CRIPPS: I got the information that I
20 was asking about.

21 MR. BABINGTON: Okay. I just wanted to
22 kind of note that.

23 Do we have anything else?

24 MR. TUCKER: Just -- I guess if everybody

1 is done, nobody else has any questions, Danny, we
2 do appreciate you on behalf of all the parties
3 here. We do appreciate you coming in, and we've
4 asked you a lot of questions and --

5 THE WITNESS: And you'll be laughing about
6 it for a week.

7 MR. TUCKER: No. We appreciate you trying
8 to give us good clear answers, and we'd like to
9 give you an opportunity. If there's anything you
10 would like to add, any statement you would like to
11 make, anything, maybe something we haven't thought
12 to ask, now the floor is yours if you have a
13 statement you would like to make.

14 THE WITNESS: Well, I got a question that
15 I would like to ask, but I don't know if
16 Mr. Attorney here would want me to ask it.

17 MR. TUCKER: We can go off the record and
18 go back on.

19 THE WITNESS: I don't care if it's on or
20 off the record.

21 MR. BABINGTON: You can ask the question
22 and then we can make the determination of whether
23 or not we need to continue on or off the record.

24 THE WITNESS: I would like to ask any one

1 of you guys or for that matter, John, about the
2 condition of the bits on the shear.

3 MR. BABINGTON: I'm of a mind set to talk
4 about that off the record.

5 THE WITNESS: I don't want to talk about
6 it if it's off the record.

7 MR. BABINGTON: That's a hard bargain.
8 Thanks.

9 MR. TUCKER: We're off the record.

10 (Off the record.)

11 MR. BABINGTON: Just to clarify, you
12 remembered after your interview was completed who
13 Cuz was. What was Cuz's actual name?

14 THE WITNESS: Mike Elswick.

15 MR. BABINGTON: Okay. Thank you. Off the
16 record

17 (The interview of DANNY LAVERTY was
18 concluded.)

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24

1 STATE OF WEST VIRGINIA, To-wit:

2 I, Nichelle N. Drake, a Notary Public and
3 Professional Reporter within and for the State
4 aforesaid, duly commissioned and qualified, do
5 hereby certify that the interview of DANNY LAVERTY
6 was duly taken by me and before me at the time and
7 place specified in the caption hereof.

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

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

20 My commission expires the 19th day of July
21 2019.

21 Given under my hand and seal this 25th day of
22 February 2011.

23 _____
24 Nichelle N. Drake
Professional Reporter
Notary Public