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Transcript of the Testimony of Larry Brown

Date: August 5, 2010

Case:

Printed On: August 23, 2010

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CONFIDENTIAL STATEMENT UNDER OATH
OF
LARRY BROWN

taken pursuant to Notice by Danielle Ohm, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Thursday, August 5, 2010, beginning at 1:00 p.m.

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A P P E A R A N C E S (cont.)

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ATTORNEY BABINGTON:

My name is Matt Babington. Today is August 5th, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Erik Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA, 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.

MR. FARLEY:

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

MR. O'BRIEN:

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

MS. SPENCE:

I'm Beth Spence with the Governor's independent investigation.

ATTORNEY BABINGTON:

There may be several members of the investigation team also present in the room throughout the interview. Erik Sherer will be conducting initial questioning.

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

19 Government investigators and specialists
20 have been assigned to investigate the conditions,
21 events and circumstances surrounding the fatalities
22 that occurred at the Upper Big Branch Mine-South on
23 April 5th, 2010. The investigation is being conducted
24 by MSHA under Section 103(a) of the Federal Mine
25 Safety and Health Act and the West Virginia Office of

1 Miners' Health, Safety and Training. We appreciate
2 your assistance in this investigation.

3 You may have your personal attorney
4 present during the taking of this statement or another
5 personal representative if MSHA has permitted it, and
6 you may consult with your attorney or representative
7 at any time. Your statement is completely voluntary.
8 You may refuse to answer any question and you may
9 terminate your interview at any time or request a
10 break at any time. We also have bottles of water
11 available in the fridge if you'd care to have that.

12 OFF RECORD DISCUSSION

13 ATTORNEY BABINGTON:

14 Since this is not an --- since this is
15 not an adversarial proceeding, formal Cross
16 Examination will not be permitted. However, your
17 personal legal representative may ask clarifying
18 questions as appropriate.

19 Your identity and the content of this
20 conversation will be made public at the conclusion of
21 the interview process and may be included in the
22 public report of the accident unless you request that
23 your identity remain confidential or your information
24 would otherwise jeopardize a potential criminal
25 investigation. If you request us to keep your

1 identity confidential, we will do so to the extent
2 permitted by law.

3 That means that if a judge orders us to
4 reveal your name or if another law requires us to
5 reveal your name or if we need to reveal your name for
6 law enforcement purposes, we may do so. Also, there
7 may be a need to use the information you provide to us
8 or other information we may ask you to provide in the
9 future in other investigations into and hearings about
10 the explosion. Do you understand?

11 MR. BROWN:

12 Yes.

13 ATTORNEY BABINGTON:

14 Do you have any questions?

15 MR. BROWN:

16 No.

17 ATTORNEY BABINGTON:

18 After the investigation is complete, MSHA
19 will issue a public report detailing the nature and
20 causes of the fatalities in the hope that greater
21 awareness about the cause of accidents can reduce
22 their occurrence in the future. Information obtained
23 through witness interviews is frequently included in
24 these reports. Since we will be interviewing other
25 individuals, we request that you not discuss your

1 testimony with any person aside from a personal
2 representative or counsel.

3 A court reporter will record your
4 interview. Please speak loudly and clearly. If you
5 do not understand a question asked, please ask the
6 interviewer to rephrase it. Please answer each
7 question as fully as you can, including any
8 information you've learned from someone else.

9 We'd like to thank you in advance for
10 your appearance here. We appreciate your assistance
11 in this investigation. Your cooperation is critical
12 in making the nation's mines safer.

13 After we've finished asking questions,
14 you'll have an opportunity to make a statement and
15 provide us with any other information that you believe
16 to be important. If at any time after the interview
17 you recall any additional information that you believe
18 might be useful, please contact or have your
19 representative contact any of us or Norman Page at the
20 contact information provided to you.

21 Finally, any statements given by miner
22 witnesses to MSHA are considered to be an exercise of
23 statutory rights and protected activity under Section
24 105(c) of the Mine Act. If you believe any discharge,
25 discrimination or other adverse action is taken

1 against you as a result of your cooperation with this
2 investigation, you're encouraged to immediately
3 contact MSHA and file a complaint under Section 105(c)
4 of the Act. Terry?

5 MR. FARLEY:

6 Mr. Brown, on behalf of the Office of
7 Miners' Health, Safety and Training, we would advise
8 you that the West Virginia Mine Health and Safety
9 Regulations also protect miners against potential
10 discrimination resulting from participation in these
11 type interviews. I want to pass along some contact
12 information for the West Virginia Board of Appeals,
13 which hears complaints about discrimination from coal
14 miners, and also my business card. And there's also a
15 phone number on the memo for Mr. Bill Tucker, who's
16 our lead underground investigator.

17 Now, should you have any problems of that
18 nature, please give either of us a call and you can
19 let me try to help you. I would caution you that if
20 you do have a problem, you need to file a complaint
21 within 30 days of the event.

22 MR. BROWN:

23 Okay.

24 MR. FARLEY:

25 Okay. Thank you.

1 -----

2 LARRY BROWN, HAVING FIRST BEEN DULY SWORN, TESTIFIED
3 AS FOLLOWS:

4 -----

5 ATTORNEY BABINGTON:

6 All right. Mr. Brown, please state your
7 full name and spell your last name for the record.

8 A. Larry Dean Brown, B-R-O-W-N.

9 ATTORNEY BABINGTON:

10 Okay. And please state your address and
11 phone number for the record.

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

13 (b) (7)(C)

14 ATTORNEY BABINGTON:

15 All right. And do you have a personal
16 legal representative here with you today?

17 A. Yes, I do.

18 ATTORNEY BABINGTON:

19 All right. Would your personal legal
20 representative please identify himself for the record?

21 ATTORNEY SEARS:

22 Christopher Sears, law firm of Shuman,
23 McCuskey & Slicer.

24 ATTORNEY BABINGTON:

25 Mr. Sears, are you legally representing

1 this witness in this matter?

2 ATTORNEY SEARS:

3 I am his legal representative.

4 ATTORNEY BABINGTON:

5 Okay. Do you understand that you may not

6 communicate with Massey Energy, its affiliates or its

7 officers or directors or attorneys concerning the

8 substance of this representation?

9 ATTORNEY SEARS:

10 We've been through several of these

11 before. I understand that --- I think I've just been

12 through one with you. I'm not going to answer these

13 questions anymore; okay? You know that I'm his legal

14 representative. He's told you that. Any other

15 question going beyond that either to me or to him is

16 inappropriate, and I'm going to instruct him that he

17 doesn't need to answer those, and I'm not going to

18 answer those, either, from here on out, any other

19 interview that we have.

20 ATTORNEY BABINGTON:

21 Okay. Well, I'm still going to ask the

22 questions, and if you decline to answer, you can say

23 that you decline.

24 ATTORNEY SEARS:

25 It's not necessary to ask me any

1 questions, because I'm not going to answer them. I'm
2 telling you that right now. And there'd be no need or
3 purpose of putting this on the record in front of this
4 witness. I'm telling you, I'm not going answer the
5 questions.

6 ATTORNEY BABINGTON:

7 Okay. Mr. Brown, did you voluntarily
8 choose to have this individual as your personal legal
9 representative?

10 A. Yes, I did.

11 ATTORNEY SEARS:

12 Well, first of all, don't answer. I
13 already told you, I'm going to instruct him not to
14 answer any questions about that. He told you that he
15 is --- I'm his attorney and that's it. That's all you
16 need to know.

17 ATTORNEY BABINGTON:

18 Except that he already answered the
19 question here, and then if he declines to answer them,
20 he has the right to decline them, but I ---.

21 ATTORNEY SEARS:

22 He's here to answer questions about the
23 investigation; okay? Here's my deal with this; all
24 right? We are here today, according to your
25 statement, to find out what happened to these miners,

1 give closure to the families, to find out what caused
2 this accident so it can be avoided in the future.

3 That's it. That's what we're here to do.

4 ATTORNEY BABINGTON:

5 Okay. Well, we're running the interview
6 here ---

7 ATTORNEY SEARS:

8 Okay. He's here voluntarily.

9 ATTORNEY BABINGTON:

10 --- and not you, so ---

11 ATTORNEY SEARS:

12 Okay. But we're here voluntarily.

13 ATTORNEY BABINGTON:

14 --- we can determine the purposes of why
15 we're here today.

16 ATTORNEY SEARS:

17 We're here voluntarily and we can answer
18 whatever questions we want to answer. First of all,
19 I'm not even being the witness. He's the witness, and
20 if I'm ---.

21 ATTORNEY BABINGTON:

22 Well then, why don't you let me ask the
23 witness the questions, then?

24 ATTORNEY SEARS:

25 Well, I'm advising him, and you can tell

1 me, do you want to answer any questions pertaining to
2 our legal representation beyond the fact that I'm here
3 as your legal representative?

4 A. No, other than the fact that he's my
5 representative. I chose him.

6 ATTORNEY SEARS:

7 Okay.

8 ATTORNEY BABINGTON:

9 And you consent to him representing you?

10 ATTORNEY SEARS:

11 He's telling you he's not going to answer
12 any more questions along those lines.

13 ATTORNEY BABINGTON:

14 Well, I think you're telling me he's not
15 going to answer any more questions.

16 ATTORNEY SEARS:

17 Are you going to answer any more
18 questions along those lines?

19 A. No.

20 ATTORNEY SEARS:

21 Okay. So let's move on, then, because he
22 voluntarily chose not to answer any questions.

23 ATTORNEY BABINGTON:

24 Okay. Erik, you can go ahead.

25 EXAMINATION

1 BY MR. SHERER:

2 Q. Okay. Mr. Brown, Mr. Sears has already explained
3 why we're here. We're trying to find out what went on
4 in the mine that led up to the explosion and what the
5 cause of the explosion was. So any information you
6 can give us that will help us in that is greatly
7 appreciated. And I'm sure the friends and the
8 coworkers and the family of the victims will certainly
9 appreciate understanding what happened to their
10 friends and loved ones.

11 So let's do a little background first. Roughly,
12 how many years of mining experience do you have?

13 A. Twenty-nine (29) years.

14 Q. Twenty-nine (29) years. When did you first go to
15 work for the Massey Organization, roughly?

16 A. 1992.

17 Q. 1992. When did you first go to work at Upper Big
18 Branch?

19 A. '95.

20 Q. '95. Have you been at Upper Big Branch since 1995
21 or did you move around any?

22 A. We've been there. I'm wanting to tell you about a
23 two-year period where the wall had progressed ahead of
24 the miner section that we went to Logan's Fork for
25 just a little while.

1 Q. Okay. So you kind of stayed with the wall?

2 A. Yes.

3 Q. Okay. What was your job title at the time of the
4 explosion?

5 A. Longwall foreman.

6 Q. Longwall foreman. Which shift did you normally
7 work?

8 A. Third shift.

9 Q. Third shift. And that's primarily a maintenance
10 shift; isn't it?

11 A. Correct.

12 Q. So you were primarily over the maintenance
13 function, I would guess?

14 A. My job is the foreman. I have a maintenance chief
15 who takes care of the maintenance, and I take care of
16 the outby work, the belt structure, monorail ---

17 Q. Okay.

18 A. --- power moves, tracks, such as that.

19 Q. Okay. Thank you. Were you at the --- what was
20 the last shift you had worked prior to the explosion.

21 A. I worked that night, the midnight shift on the
22 5th.

23 Q. On the 5th; okay. And that would've been ---
24 okay. So you actually had worked Sunday ---?

25 A. Sunday night, yes.

1 Q. Sunday night; okay. So you worked the hoot owl
2 shift immediately prior to this?

3 A. Prior to this, yes.

4 Q. Okay. Good. About what time did you arrive at
5 the mine Sunday night?

6 A. At the mine site outside?

7 Q. Uh-huh (yes).

8 A. Around 10:30.

9 Q. Okay. About what time did you get up on the
10 longwall?

11 A. Would've been 11:30, midnight, somewhere around
12 that time.

13 Q. Do you recall what you --- what was the first
14 thing you did when you got on the section?

15 A. When we got to the end of the track on the
16 section?

17 Q. Uh-huh (yes), sure.

18 A. Best I recall, we'd just discuss what all we were
19 doing that night, and then we'd do our shift.

20 Q. Okay. Now, what did you do that night?

21 A. What did I do that night?

22 Q. Uh-huh (yes).

23 A. It's hard to remember everything. I know we ---.

24 Q. Sure.

25 A. The big thing was they changed the cow on the

1 shearer that night.

2 Q. Okay.

3 A. And part of my job when we had large jobs such as
4 that, we helped the maintenance crew get what they
5 needed to the face, and we helped with that.

6 Q. Okay. Was the shearer up on the headgate when
7 they were doing that?

8 A. Yes, it was.

9 Q. Okay. Was there much cutting and burning
10 associated with that job?

11 A. I wasn't up there when they was actually doing the
12 job, so I don't know.

13 Q. Okay. Did you work on anything else that night?

14 A. Best I recall, we moved our monorail down.

15 Q. Okay. Do you recall how many breaks you moved it?

16 A. We just move by pieces, generally four or five
17 pieces. They're ten foot long.

18 Q. Okay. So about half a break; right?

19 A. Probably.

20 Q. Okay. Anything else you were involved in that you
21 recall?

22 A. Not pre-shifting, no.

23 Q. Okay. Do you recall what the ventilation was like
24 that night?

25 A. Exactly numbers? I can't recall. I mean, but it

1 was good.

2 Q. Okay. Do you recall if it varied much during the
3 night?

4 A. Not at all.

5 Q. Okay. Do you recall if you smelled anything
6 unusual?

7 A. Nothing.

8 Q. Did you ever smell a kerosene-like smell up around
9 the longwall?

10 A. No, sir. No.

11 Q. What about the curtains in the headgate? Do you
12 recall looking at those that night?

13 A. On the headgate here, yes.

14 Q. No, no, on the headgate of the longwall.

15 A. Oh, I'm sorry. I'm looking at the wrong thing.
16 Yes.

17 Q. Do you recall if they were tight or if they were
18 slack?

19 A. They were in tight, yes.

20 Q. Okay. Were they bulging toward the gob or away
21 from the gob?

22 A. Toward the gob.

23 Q. Okay. Thank you. Have you ever seen those
24 curtains bulge back toward the wall itself?

25 A. No, sir.

1 Q. Okay. Now, we understand there was two, two new
2 doors put up, seems like a week or two prior to the
3 explosion. Do you recall looking at those doors?

4 A. Yes, we had to go through those doors.

5 Q. Okay. Did you guys or your crew, did they work on
6 those doors? Did they install them?

7 A. Did who ---?

8 Q. Did you or any of your crew?

9 A. Oh, no. No, sir.

10 Q. Okay. Do you know who installed the doors?

11 A. No, I don't.

12 Q. Okay. Did those doors have --- it sounds like
13 they were part door or they were doors and regulators.
14 Supposedly there was roughly half of the side wall
15 left off of them. We think they were acting as
16 regulators. Does that sound like what you recall?

17 A. The best I can recall, one set of them had an
18 opening in them, not both, though.

19 Q. Okay. When you say one set, was that two doors?

20 A. Two doors, yeah.

21 Q. Two doors. Were those the two newest doors?

22 A. I really can't remember.

23 Q. Okay. We're just trying to figure out what the
24 ventilation was doing. Okay. Did you go down the
25 face that night?

1 A. Yes.

2 Q. What was the air velocity like along there?

3 A. The exact numbers I can't remember. The last open
4 break I can't recall at all, but on the --- we take a
5 velocity reading at 9 and at 160. Those numbers
6 seemed to always been in the 700, 800 there on the
7 head at 9 shield and the 600 was down on the tail.

8 Q. Okay. And then they were about that same
9 range ---?

10 A. They were, yeah.

11 Q. Okay.

12 A. Yes.

13 Q. Did you notice if the --- as you went down the
14 wall, did it seem like air was moving in or out of the
15 gob between the shields?

16 A. Everything seemed normal just down the face.

17 Q. Okay. Did you get out on the tailgate?

18 A. Didn't go out, just stuck out to make sure the air
19 was moving back toward the tail.

20 Q. Okay.

21 A. Back toward the gob.

22 Q. How'd things look down there?

23 A. Good.

24 Q. Did you see any floor heaving?

25 A. No.

1 Q. You ever notice any floor heaving down there?

2 A. In the past?

3 Q. Uh-huh (yes).

4 A. I have in the past.

5 Q. Okay. Had you guys worked on the high voltage
6 cable in the past month or so?

7 A. I'm not involved in that part, so I really don't
8 know.

9 Q. Okay. Sure. Now, you say you worked primarily
10 outby. Exactly what does that encompass?

11 A. That's power moves, make sure the track --- when
12 we advanced the mule train down the track that's left,
13 we have to pull it out.

14 Q. Okay.

15 A. And the monorail, make sure the belt structure's
16 out of the way.

17 Q. Okay, sure. So just mainly moving of the
18 physical ---

19 A. As they move, we move.

20 Q. --- part of the longwall; okay. Now, we
21 understand that there had been a crew in there. We
22 think they were putting glue in the roof, maybe trying
23 to reinforce the roof.

24 A. A month or so prior, yes.

25 Q. Okay. Do you recall if they had removed their

1 drums and chemical tanks?

2 A. It was gone, too.

3 Q. Okay.

4 A. To my knowledge it was all gone.

5 ATTORNEY SEARS:

6 Everything's being taken down. You just

7 over --- talked over top of him. Let him finish, and

8 then you answer. Otherwise it's tough to get down.

9 And he will probably try to wait until you're finished
10 answering before he asks another question.

11 A. Okay.

12 MR. SHERER:

13 Sure. Thank you.

14 ATTORNEY SEARS:

15 Thanks.

16 BY MR. SHERER:

17 Q. Okay. Who all was on your crew?

18 A. People? Name-wise?

19 Q. Yeah, uh-huh (yes). And job descriptions.

20 A. Okay. Had Jerry Martin and Jeff Stanley. They
21 were two outby guys that worked with me. They ran
22 motors, hauled supplies in. And then, like, helped
23 the belt structure power moves, stuff like that,
24 assisted in that. On the face we had Robert Hale,
25 Chad Neil and Mike Medley, Steve Gration and Blake

1 Acord.

2 Q. And they were primarily involved with the
3 maintenance?

4 A. Those fellows were maintenance.

5 Q. Okay. Thank you. That Sunday night, Monday
6 morning, was there anything unusual that you guys did,
7 something that you possibly don't normally do?

8 A. No, nothing out of the ordinary.

9 Q. Okay. What sort of supplies did you guys haul in?

10 A. Usually we hauled cribs or timbers. That
11 particular night I'm not exactly sure what we hauled
12 in.

13 Q. Okay.

14 A. Bits, things such that, and I'm not sure what we
15 hauled in.

16 Q. Okay. Did you get involved with hauling anything
17 into the tailgate side?

18 A. No.

19 Q. Had you guys had to build any cribs in the
20 tailgate?

21 A. We didn't, no.

22 Q. What about the stoppings of the tailgate? Did you
23 guys have to knock those out as the wall progressed?

24 A. We would go one break outby --- and generally it
25 was already done when I'd get there --- and knock a

1 few block out ---

2 Q. Okay.

3 A. --- one break outby the post.

4 Q. Okay. Was there some set number of blocks you'd
5 knock out or just ---?

6 A. No, not particular, just to make a movement
7 through the stopping.

8 Q. Okay. When you did that, how was the air? Would
9 the air go back through that hole?

10 A. Through the hole and inby.

11 Q. Okay. Was it a lot of pressure? Did the air
12 really rush through there or did it just kind of move?

13 A. It moved pretty good.

14 Q. Okay. Had you ever done that and noticed that it
15 didn't move pretty good?

16 A. No, sir.

17 Q. Okay. How was the water on the face that night?
18 Did you guys check that?

19 A. You talking on --- water on the shearer and the
20 shields and stuff?

21 Q. Yeah, uh-huh (yes). Yeah.

22 A. It would've been the maintenance guys that
23 would've checked that. I would've been outby when
24 they did.

25 Q. Okay. Let's talk a little bit about the history

1 of this panel. We understand there was some water
2 that --- quite a bit of water, actually, that came in
3 sometime in late October or maybe November. Do you
4 recall that?

5 A. Yes.

6 Q. Do you recall about when that was? Was it
7 close ---?

8 A. Not the exact month, no.

9 Q. Okay. Were you involved in setting pumps to take
10 care of that water?

11 A. Yes, we would take care of pumps.

12 Q. Okay. Do you recall how many pumps you guys set?

13 A. How many total?

14 Q. Yeah, uh-huh (yes).

15 A. No, sir.

16 Q. Okay. What type of pumps did you set?

17 A. It was ten horsepower, that type of --- is that
18 what you're asking?

19 Q. Sure; uh-huh (yes).

20 A. Yeah.

21 Q. So they're ten horsepower. What size discharge
22 line did you have?

23 A. We had 34-inch discharge.

24 Q. Okay. Where'd you run it to?

25 A. Inby that.

1 Q. Okay. Thank you. Roughly the month prior to the
2 explosion, does anything stand out as being different?

3 A. Nothing which I recall, no.

4 Q. Okay. Now, there's a --- what we're calling the
5 crossover, which is a series of four entries that
6 connect up to the 22 Headgate. As this wall
7 progressed, did you guys have to do anything about the
8 ventilation controls in that area?

9 A. My crew? No, there was a --- somewhere in this
10 area there was a set of supply doors that they built
11 stoppings there and supply doors. Other than that,
12 no.

13 Q. Okay. Do you know who did that?

14 A. Who built the stoppings? No.

15 Q. Okay. But you do recall that somebody did?

16 A. Yes.

17 Q. Okay. Did you have any other involvement with
18 that area?

19 A. No, sir.

20 Q. Okay. So your crews didn't have to build any
21 stoppings or ---

22 A. No.

23 Q. --- knock stoppings out or do anything ---

24 A. No.

25 Q. --- like that? Okay. Did you ever get involved

1 with the usage of explosives on that face?

2 A. This particular face, I can't recall if I did or
3 not. If I did, it was only small, like, rock that
4 would be ---.

5 Q. Popping a rock in the ---

6 A. Right.

7 Q. --- pan or something? When you guys did it, did
8 you use the W charges or did you drill the rocks?

9 A. We would drill.

10 Q. Did you use straight Tovex or what explosive did
11 you use? Do you recall?

12 A. Just --- only one's call the DuPont or ---.

13 Q. Okay. That's Tovex.

14 A. Okay.

15 Q. Okay. When you did that, how far away would you
16 generally be when you shot the rock? How long were
17 your ---?

18 A. I tried to get about a hundred foot anyway.

19 Q. Okay. Where was the shooting line and the
20 detonator stored on the longwall?

21 A. The shooting line?

22 Q. Yeah.

23 A. Like, the shot cable?

24 Q. Yeah, uh-huh (yes).

25 A. We never really stored it. If it was something

1 that we was going to have to do, we would just get it.

2 Q. Okay. Do you know where the detonator was stored?

3 A. Not at this time.

4 Q. Okay. Where was it the last time you recall?

5 A. Gosh, I can't --- it's been a while.

6 Q. Okay. Was it on a tool car?

7 A. No, sir. If we had, it was in a magazine.

8 Q. Okay. Now, I'm talking about the ---.

9 A. Oh, the battery.

10 Q. Okay. Yeah. Everybody calls it different.

11 A. Okay.

12 Q. The initiator.

13 A. Yeah, if we had a battery and kept it on the wall,
14 it wouldn't be on a tool car, no.

15 Q. Okay, okay. And you say you'd use a magazine for
16 the explosive if you were going to be using it. Do
17 you know where that magazine would've been kept
18 generally?

19 A. It's been a long time since we've had one on the
20 wall, but we'd generally keep it outby the mule train
21 several breaks ---

22 Q. Okay.

23 A. --- beyond the track.

24 Q. Okay. Now, do you recall that magazine? I assume
25 it was a box. Was it a two-compartment box, one for

1 the ---?

2 A. Yeah, the ones that we've had. Yeah.

3 Q. Okay. How big was that box?

4 A. Three by two.

5 Q. Okay. Thank you. We actually found a similar box
6 up in this connector ---

7 A. Uh-huh (yes).

8 Q. --- the other day.

9 ATTORNEY SEARS:

10 I'm sorry. I'm a little confused by your
11 response. Are you agreeing with ---?

12 A. I know they had found a box, yeah.

13 ATTORNEY SEARS:

14 Okay. I'm sorry.

15 MR. SHERER:

16 And that was just information.

17 ATTORNEY SEARS:

18 That's fine. I didn't know if he was
19 agreeing with you or just confirming that he heard
20 you.

21 MR. SHERER:

22 Okay. Thank you.

23 BY MR. SHERER:

24 Q. Where are you employed right now, Mr. Brown?

25 A. I'm at UBB.

1 Q. Okay, good. And what are you doing up there now?

2 A. Repad.

3 Q. Okay. I understand there's a lot of work being
4 done up there right now.

5 A. Quite a bit.

6 Q. Okay. Going back to the late Sunday night, what
7 time did you start the pre-shift?

8 A. Sometime after three o'clock.

9 Q. I'm sorry. What?

10 A. After three o'clock. Dayshift starts ---

11 Q. Okay.

12 A. --- three o'clock.

13 Q. Sure. Okay. Got you. Does anything strike you
14 as unusual about that pre-shift?

15 A. There was nothing, no.

16 Q. Okay. Where were you at when you first heard
17 about the explosion?

18 A. At home.

19 Q. What was the first thoughts that you had when you
20 heard about it?

21 A. I ran to the phone to call to see if there was
22 anything I could do. Well, let me rephrase this.
23 When I first heard, we didn't know if it was an
24 explosion or not. We'd heard rock fall, explosion,
25 the whole ---.

1 Q. Sure.

2 A. But my first thought was to call and see if there
3 was any way I could help.

4 Q. Okay, sure. What was your first guess when you
5 heard that it was an explosion? What did you first
6 think about?

7 A. I had no guess.

8 Q. Okay. Now, here it is several months later, and
9 I'm sure you've talked to a lot of people and been up
10 at the mine and you've seen some things. What do you
11 think happened now? And I'm just asking for your
12 opinion, and that's all I'm asking for.

13 A. In my opinion, it had to be something completely
14 out of the ordinary. Here's where I've sat and then
15 I'll sit and then I'd scratch my head and say, I
16 would've never dreamed something like that could've
17 happened.

18 Q. Yeah, we've had a few like that. I hope we find
19 more, though. I hope we find something that we can
20 address in the future. Okay. Have you been up to the
21 longwall since the explosion?

22 A. Yes, sir.

23 Q. Have you seen the shearer on the tailgate?

24 A. I have, yes.

25 Q. Are you aware of the power and the water up on the

1 headgate? Okay. Let me tell you what we know about
2 the condition of the wall. The shearer, of course, is
3 pretty close to being cut out in the tailgate, if not
4 totally cut out. It was real close. The drums are
5 both extended. The visual disconnect for the high
6 voltage to the shearer was pulled on the headgate,
7 manually pulled. The water was turned off on the
8 headgate.

9 The pan was clear of coal. The stage loader was
10 clear of coal, and it looks like it had been run off,
11 not blown off, because there's no coal piled up around
12 the headgate. The victims were --- there was three,
13 four victims near the middle face and the rest of the
14 victims were up near the headgate. What do you think
15 happened in there? What does that suggest to you as
16 far as the status of the various things that I've
17 spoken about and where the victims were? What do you
18 think they were doing?

19 ATTORNEY SEARS:

20 And again, he's asking you to speculate.

21 BY MR. SHERER:

22 Q. Yeah, yeah. Yeah, I'm just asking for your
23 professional opinion.

24 A. If I was just guessing and what you say is all
25 what has been found and determined has been --- I

1 think the shearer's been down with something. Pulled
2 cable or something, and the guys at the shearer had
3 just said, you know, close to three o'clock. It's
4 quitting time. Let's head to the house.

5 Q. Okay.

6 A. And if it's been something with the cable lost
7 power to the shearer, they pulled the disconnect.

8 Q. Sure. Okay. I appreciate that. Have you ever
9 noticed a methane monitor with a problem on that ---

10 A. No, sir.

11 Q. --- on that longwall?

12 A. No.

13 Q. Okay. And have you heard about a methane monitor
14 with a problem?

15 A. No.

16 Q. Okay. Have you ever seen the cover off a methane
17 monitor?

18 A. No.

19 Q. Has there been a problem with the cable going to
20 the methane sensor on the tail drive that you're aware
21 of?

22 A. Not that I know of.

23 Q. On this panel?

24 A. Not that I know of.

25 Q. Okay. Have you ever observed anybody working on

1 that methane monitoring system?

2 A. Not that I recall in this panel.

3 Q. Okay. Have you ever seen anybody carrying a
4 calibration kit up on the face?

5 A. I've never actually watched them do it, but I know
6 that they do their weekly exams the things.

7 Q. Okay. And who would've done that?

8 A. The chief electricians, Robert Hale and them guys,
9 maintenance crew.

10 Q. Okay. Do you know if they tried to catch the
11 shearer when it was up near the headgate to calibrate
12 it or just anywhere along the face?

13 A. I really don't know.

14 Q. Okay. Thank you. Did you ever hear that there
15 were inspectors on the property?

16 A. No.

17 Q. Nobody ever called in and said you got company?

18 A. No, sir.

19 Q. Okay. What do you think about the overall
20 ventilation? Do you think it was adequate?

21 A. I know we had good air on the wall. That's all I
22 can speculate on.

23 Q. Okay. Did you ever hear of any problems anywhere
24 else in the mine?

25 A. No, sir.

1 Q. Did you carry a methane detector?

2 A. Yes, sir.

3 Q. What sort of methane readings were you getting
4 along the wall?

5 A. Most methane I have got, period, was .2, and that
6 months back out from the tail entry. .2 is the
7 most ---

8 Q. Okay.

9 A. --- I ever seen.

10 Q. Okay. Did you ever notice anything bubbling in
11 the little pools of water you'd get along the ---?

12 A. No, sir.

13 Q. Thanks.

14 A. I've seen that in my history, but not on this
15 panel.

16 Q. Okay, sure. What about the roof and ribs? What
17 were they like on the headgate?

18 A. Didn't seem like a normal longwall section.

19 Q. Taking a little weight?

20 A. Some.

21 ATTORNEY SEARS:

22 I didn't hear your last question.

23 MR. SHERER:

24 Taking a little weight?

25 BY MR. SHERER:

1 Q. What about the tail? What'd it look like?

2 A. Pretty much normal. Props taking weight like they
3 should.

4 Q. Now, what type props do you guys have down on the
5 tail?

6 A. They bring the ten inch props.

7 Q. Okay.

8 A. I think we have ten inch.

9 Q. Okay. When's the last time you took your crew out
10 on a quarterly evacuation drill?

11 A. What, fire drill?

12 Q. Yeah, uh-huh (yes).

13 A. Date, exact date I don't know. We done it this
14 quarter. To the best of my knowledge, we traveled the
15 secondary escapeway out.

16 Q. Okay.

17 A. Or not this quarter; the quarter leading up to
18 this.

19 Q. Okay, sure. Did you ever travel the tailgate?

20 A. Travel the tailgate in its entirety? I have in
21 the past, yeah.

22 Q. Have you ever done that as one of your quarterly
23 drills?

24 A. No, sir.

25 Q. Okay. Is that not one of your alternate

1 escapeways?

2 A. It would've been, but we traveled primary and
3 secondary, mainly.

4 Q. Okay. Thank you. Do you know Pete Hendrick?

5 A. Yes.

6 Q. When's the last time you talked to Pete?

7 A. I haven't seen Pete in years.

8 Q. I understand that he may be coming back on this.

9 A. I've heard that, but I have not laid eyes on him.

10 Q. Okay. If you see him, tell him I said, hi.

11 A. I will.

12 MR. SHERER:

13 I appreciate that. That's all the
14 questions I've got for right now.

15 MR. FARLEY:

16 If you don't mind, I'm going to let John
17 ask the first question just ---

18 A. Sure.

19 MR. FARLEY:

20 --- so I don't mess it up.

21 A. Sure.

22 EXAMINATION

23 BY MR. O'BRIEN:

24 Q. I'm curious about the stopping on the tail where
25 you knocked the block out. I assume you did --- well,

1 let me ask. Did you do that as --- each time as the
2 longwall retreated?

3 A. After we'd passed one break, then move to the next
4 one.

5 Q. What was the purpose of knocking those blocks out?

6 A. The way I understand it, just to make sure we had
7 good airflow in those other entries. Then we had a
8 solid stopping line in the tail there.

9 Q. Did the air that went down the face, did it all go
10 into the gob at the tail or periodically down the
11 face?

12 A. My understanding, what we tried to do was try to
13 override and go outby, and that's the reason we opened
14 that one hole up so it would shoot in. That's my
15 thoughts on it.

16 Q. So it'd go down the face. Some would go through
17 the shields, and then the remainder would go in
18 the ---

19 A. In the gob ---.

20 Q. --- gob behind the shields; not outby the tail
21 entry?

22 A. And that's why we opened --- to my understanding,
23 that's why we opened --- to try to keep from
24 overriding in the tail and would go through the
25 stopping right on out toward the panel.

1 Q. Okay. Thank you.

2 EXAMINATION

3 BY MR. FARLEY:

4 Q. When you started your shift, would've been about
5 1:30 p.m. or so, April the 4th?

6 A. Right.

7 Q. When you first arrived on the longwall face, where
8 was the shearer located when you first arrived?

9 A. Best I recall, it was right there on the head.

10 Q. Okay. And that was where the maintenance work was
11 done, to the best of your ---?

12 A. Yes, yeah. Uh-huh (yes).

13 Q. Did anyone operate the shearer or move it at any
14 time during the shift from that location?

15 A. Well, we would've had to. We started it, change
16 the CAU, you got to raise the head and back up
17 and ---.

18 Q. Okay. What distance would it have been moving,
19 then?

20 A. Not very far.

21 Q. All right. So when the dayshift would've arrived
22 on the next morning, it would've been somewhere near
23 the head?

24 A. Yes. Right there near the head.

25 Q. Okay. Now, at that time it was, as far as you

1 know, fully operational?

2 A. Sure, yes.

3 Q. Okay. I know Erik asked about the methane
4 monitors on the longwall face. Was any maintenance,
5 any calibration, any work done during your shift on
6 either of the methane monitors on the longwall?

7 A. On that April 5th shift?

8 Q. Yes, sir.

9 A. None that I recall, no.

10 Q. Okay. As far as you know, were they fully
11 operational at the end of your shift?

12 A. Yes, sir.

13 Q. Okay. Now, based on my reading of the longwall
14 pre-shift/on-shift books for the month of March this
15 year, the entries in the first week or so of March
16 indicate as much as about 115,000 cfm quantity of air
17 on your intake side in the ---

18 A. Last open break.

19 Q. --- last open break. Now, the book also reflects
20 that apparently there was some significant change
21 during the month, because toward the end of the month
22 the daily readings ranged from 55,000 to 60,000. Do
23 you recall specifically what change occurred to reduce
24 the quantity of air on the longwall face during the
25 month of March?

1 A. Specifically, no.

2 Q. Okay. But do you recall noticing the change,
3 physically noticing the change?

4 A. Yes.

5 Q. Okay. On your last shift on the 4th and 5th on
6 the longwall face, did you wear a jacket, coveralls,
7 anything like that?

8 A. Well, when we stopped working, we had to.

9 Q. Okay.

10 A. It was cold.

11 Q. What about the other members of your crew?

12 A. Yeah.

13 Q. We've referred to this map in front of you a
14 couple of times here. Now, as you recall the
15 conditions and the location of the ventilating
16 controls, intake air, belt track, returns coming off
17 these miner sections, does this map accurately reflect
18 what you encountered in the mine during your last
19 shift on April 5th?

20 A. Yes, the best I recall it does.

21 Q. Okay. I think you referred to a set of supply
22 doors here, a short distance inby the longwall face.
23 Here, I'll just indicate this here on the map. It
24 would seem to separate the return airway coming of the
25 miner sections from the headgate entry. Were those

1 doors still there on April 5th?

2 A. Best I recall, these doors here were gone.

3 Q. Okay.

4 A. There had been a stopping built and those doors
5 were moved from that place.

6 Q. Okay. Do you know when the doors were removed and
7 the stopping ---?

8 A. No, sir, I don't.

9 Q. Okay. I think you indicated you started with
10 Massey in 1992?

11 A. Yes, sir.

12 Q. When did you actually start at UBB?

13 A. '95.

14 Q. '95?

15 A. Yes.

16 Q. Okay. Have you always worked on the longwall
17 panels at UBB?

18 A. No. First couple, three years I moved belt on
19 hoot owl there.

20 Q. Okay. Well, when did you begin working on the
21 longwall panel at UBB?

22 A. You know, I've racked my brain on that date. I'm
23 not real sure. I've been there ten years, anyway.

24 Q. Okay. Did you work on previous longwall panels at
25 UBB?

1 A. Yes, even over on the Hazy side.

2 Q. Okay. Are you familiar with an event in 2004 on
3 one of the longwall panels where there was a methane
4 outburst from the mine floor in, I believe February of
5 2004?

6 A. I remember a time when we came in and they had
7 something on the day and the whole mines was gassed
8 off. I think that may be the time you're referring
9 to. Then we were down for a couple days over that.

10 Q. Okay. You were not present when this event
11 occurred?

12 A. Wasn't present, no.

13 Q. Okay. Did you go to the site after it occurred?

14 A. To the mines?

15 Q. No, to the site on the longwall face where this
16 event occurred.

17 A. If we're talking the same time, an eventual time
18 when they allowed the foremen, we would go up and
19 monitor it.

20 Q. Okay.

21 A. We would stay at the mule train, and every little
22 bit, I would say every 30 minutes, maybe, we'd go up
23 and take a gas test and call it out if we're talking
24 the same event.

25 Q. Okay. Now, at that time, were you a longwall

1 production supervisor or were you still working on a
2 maintenance type ---?

3 A. I've always, since '95, always been third shift
4 maintenance, whether it be belt moving or the wall.

5 Q. Okay. So you hadn't been a longwall
6 production ---

7 A. No, sir.

8 Q. --- supervisor at UBB? Okay.

9 EXAMINATION

10 BY MS. SPENCE:

11 Q. Mr. Brown, you seem like a man who knows this mine
12 real well. What do you think happened?

13 A. I honestly don't know. My heart thinks it has to
14 be something unusual, whether it be the crack
15 everyone's looking at or what. It has to be something
16 that extent, but exactly what, I don't know. I think
17 we ran a very safe coal mines, as safe as we could. I
18 don't think it's something that --- man made. Can I
19 say it that way?

20 Q. Uh-huh (yes).

21 A. I think it's something else.

22 Q. There's nothing that you can think of that
23 might've happened to cause this?

24 A. No.

25 Q. Okay. Thank you.

1 RE-EXAMINATION

2 BY MR. SHERER:

3 Q. Two additional questions, Mr. Brown. That Sunday
4 night when you were working around the wall, what'd it
5 sound like?

6 A. What the wall sound like?

7 Q. Yeah.

8 A. Just the normal sound. You'd hear shields
9 cracking and various things, but stuff like that
10 happened continually.

11 Q. Sure. Did it seem to be more bumping and thumping
12 than normal or less?

13 A. Nothing out of the ordinary that I recall.

14 Q. Okay. Do you recall any that were particularly,
15 loud, violent, anything like that?

16 A. No, sir.

17 Q. Okay. Now, back in 2004, that event that Terry
18 was talking about, you mentioned that you've mentioned
19 that you were at the mule train and you'd go up and
20 take a gas reading. Do you remember any unusual
21 smell?

22 A. Oh, yes. Yeah.

23 Q. What'd it smell like?

24 A. The smell I can't really put a finger on, but I'll
25 tell you something that shocked me, because, you know,

1 we knew we were dealing with methane and we're taught
2 in our foreman's class that methane is a tasteless,
3 odorless gas. And so what is this smell?

4 Q. Uh-huh (yes).

5 A. But yes.

6 Q. Did it smell anything like kerosene?

7 A. I really didn't think --- I don't know what I'd
8 call the smell, but a different smell.

9 Q. Okay.

10 ATTORNEY SEARS:

11 Okay. Where are you referring to? I
12 missed that part.

13 MR. SHERER:

14 The 2004 methane outburst.

15 ATTORNEY SEARS:

16 Okay. Thank you.

17 MR. SHERER:

18 Okay. Thank you.

19 RE-EXAMINATION

20 BY MR. FARLEY:

21 Q. One more, maybe. You indicated that you arrived
22 at the mine at approximately 10:30 p.m. on April 4th
23 and started your shift. Did you encounter any upper
24 management people at the mine office upon arrival that
25 you wouldn't ordinarily see, people like the general

1 mine foreman the ---

2 A. No.

3 Q. --- superintendent, president, et cetera?

4 A. No, not that night.

5 Q. Normal crowd, normal people that you would
6 routinely see on the nightshift?

7 A. Yeah.

8 Q. Were you advised at any time the next day that
9 there was any type of ventilation change made during
10 that weekend preceding the explosion?

11 A. No.

12 EXAMINATION

13 BY ATTORNEY BABINGTON:

14 Q. I just had one follow-up, which is in the last ---
15 in the three to six months or so prior to the
16 explosion, did you start to experience any kind of
17 fatigue that was different than what you'd been
18 feeling prior to, you know, the years prior, working
19 at UBB?

20 A. No.

21 ATTORNEY BABINGTON:

22 All right. Well, on behalf of MSHA and
23 the Office of Miners' Health, Safety and Training, I
24 want to thank you for appearing and answering
25 questions today. Your cooperation is very important

1 in the investigation as we work to determine the cause
2 of the accident. We request that you not discuss your
3 testimony with any person aside from a personal
4 representative.

5 After questioning other witnesses we may
6 call you through your representative if we have any
7 follow-up questions. If at any time you have
8 additional information regarding the accident that
9 you'd like to provide to us, please contact us at the
10 --- contact us at the contact information previously
11 provided to you. If you wish, you may now go back
12 over any answer you've given during this interview and
13 you may also make any statement that you'd like to
14 make at this time.

15 A. I'm good.

16 ATTORNEY BABINGTON:

17 Okay. Thanks. And again, I want to
18 thank you for your cooperation in this matter.

19 ATTORNEY SEARS:

20 On the record, he wants to maintain
21 confidentiality to the extent permitted under State
22 law and the Federal law, and also, we'd like the
23 opportunity to read and sign if he has that
24 opportunity.

25 ATTORNEY BABINGTON:

1 We will be providing an opportunity for
2 him to come in and read it prior to its release. And
3 as per confidentiality, we've discussed this on the
4 record before, but we'll mark this confidential, and
5 to the extent permitted by law, we'll do what we can,
6 so ---.

7 ATTORNEY SEARS:

8 Okay. Thank you.

9 ATTORNEY BABINGTON:

10 Okay. Thanks.

11 * * * * *

12 CONFIDENTIAL STATEMENT UNDER OATH

13 CONCLUDED AT 2:00 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

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



Danielle Ohm