



**SARGENT'S  
COURT  
REPORTING**

**Quality Work. Quality People.**

**Transcript of the Testimony of **Dakota Davis****

**Date:** August 7, 2010

**Case:**

**Printed On:** August 23, 2010

Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: [schedule@sargents.com](mailto:schedule@sargents.com)

Internet: [www.sargents.com](http://www.sargents.com)

STATEMENT UNDER OATH  
OF  
DAKOTA DAVIS

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at the Davis Residence, 23 Creek Side Drive, Cabin Creek, West Virginia, on Saturday, August 7, 2010, beginning at 9:08 a.m.

Any reproduction of this transcript is prohibited without authorization by the certifying agency.

A P P E A R A N C E S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MATTHEW N. BABINGTON, ESQUIRE  
U.S. Department of Labor  
Office of the Regional Solicitor  
1100 Wilson Boulevard  
22nd Floor West  
Arlington, VA 22209-2247

TERRY FARLEY  
West Virginia Office of Miners' Health,  
Safety and Training  
1615 Washington Street East  
Charleston, WV 25311

ERIK SHERER  
Mine Safety and Health Administration  
1100 Wilson Boulevard  
Arlington, VA 22209-3939

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BETH SPENCE

West Virginia Independent Investigation

(b) (7)(C)

(b) (7)(C)

HON. JOHN F. MCCUSKEY, ESQUIRE

Shuman, McCuskey & Slicer, PLLC

1411 Virginia Street East, Suite 200

P.O. Box 3953

Charleston, WV 25339

## I N D E X

1		
2		
3	OPENING STATEMENT	
4	By Attorney Babington	6 - 10
5	STATEMENT	
6	By Mr. Farley	10 - 11
7	STATEMENT	
8	By Ms. Spence	12
9	DISCUSSION AMONG PARTIES	12 - 16
10	WITNESS: DAKOTA DAVIS	
11	EXAMINATION	
12	By Mr. Sherer	16 - 43
13	EXAMINATION	
14	By Mr. Farley	43 - 47
15	EXAMINATION	
16	By Ms. Spence	47 - 48
17	RE-EXAMINATION	
18	By Mr. Farley	48
19	EXAMINATION	
20	By Attorney Babington	49 - 50
21	CLOSING STATEMENT	
22	By Attorney Babington	51
23	DISCUSSION AMONG PARTIES	51 - 57
24	CERTIFICATE	58
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT PAGE

PAGE

NUMBER	DESCRIPTION	IDENTIFIED
One	Subpoena	11*
Two	Return of Service	11*

\* Exhibit not attached

P R O C E E D I N G S

-----  
ATTORNEY BABINGTON:

All right. My name is Matt Babington.

Today is August 7th, 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.

MS. SPENCE:

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

ATTORNEY BABINGTON:

Erik Sherer will be conducting initial questioning today. All members of the Mine Safety and Health Accident Investigation Team and all members of the State of West Virginia Accident Investigation Team participating in the investigation of the Upper Big Branch Mine explosion shall keep confidential all information that is gathered from each witness who

1 voluntarily provides a statement until the witness  
2 statements are officially released. MSHA and the  
3 State of West Virginia shall keep this information  
4 confidential so that other ongoing enforcement  
5 activities are not prejudiced or jeopardized by a  
6 premature release of information.

7 This confidentiality requirement shall  
8 not preclude investigation team members from sharing  
9 information with each other or with other law  
10 enforcement officials. Your participation in this  
11 interview constitutes your agreement to keep this  
12 information confidential.

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

22 You may have your personal attorney  
23 present during the taking of this statement or another  
24 personal representative if MSHA has permitted it, and  
25 you may consult with your attorney or representative



1 at any time. This is a subpoenaed interview; is that  
2 right, Terry?

3 MR. FARLEY:

4 That is correct.

5 ATTORNEY BABINGTON:

6 Okay. Since this is not an adversarial  
7 proceeding, formal Cross Examination will not be  
8 permitted. However, your personal legal  
9 representative may ask clarifying questions as  
10 appropriate.

11 Your identity and the content of this  
12 conversation will be made public at the conclusion of  
13 the interview process and may be included in the  
14 public report of the accident unless you request that  
15 your identity remain confidential or your information  
16 would otherwise jeopardize a potential criminal  
17 investigation. If you request us to keep your  
18 identity confidential, we will do so to the extent  
19 permitted by law.

20 That means that if a judge orders us to  
21 reveal your name or if another law requires us to  
22 reveal your name or if we need to reveal your name for  
23 other law enforcement purposes, we may do so. Also,  
24 there may be a need to use the information you provide  
25 to us or other information we may ask you to provide

1 in the future in other investigations into and  
2 hearings about the explosion. Do you understand?

3 MR. DAVIS:

4 Yes.

5 ATTORNEY BABINGTON:

6 Do you have any questions?

7 MR. DAVIS:

8 No.

9 ATTORNEY BABINGTON:

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

20 A court reporter will record your  
21 interview. Please speak loudly and clearly. If you  
22 do not understand a question asked, please ask the  
23 interviewer to rephrase it. Please answer each  
24 question as fully as you can, including any  
25 information you've learned from someone else.

1 We'd like to thank you in advance for  
2 your appearance here. We appreciate your assistance  
3 in this investigation. Your cooperation is critical  
4 in making the nation's mines safer.

5 After we've finished asking questions,  
6 you'll have an opportunity to make a statement and  
7 provide us with any other information that you believe  
8 to be important. If at any time after the interview  
9 you recall any additional information that you believe  
10 might be useful, please contact any of us or Chief  
11 Accident Investigation --- Chief Investigator Norman  
12 Page at the telephone number or e-mail that was  
13 provided to you.

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

23 MR. FARLEY:

24 Mr. Davis, on behalf of the Office of  
25 Miners' Health, Safety and Training, I want to advise

1 you that the State Mine Health and Safety Regulations  
2 also provide protection against discrimination for  
3 participation in these type interviews, and I want to  
4 pass along to you some contact information here for  
5 you. I'm a little disorganized this morning. I don't  
6 have the formal documents, so what I'm going to give  
7 you is the mailing address and phone number for the  
8 West Virginia Board of Appeals. They hear complaints  
9 concerning discrimination from miners.

10 Also, you have my phone number and a  
11 phone number for Mr. Bill Tucker. He's the lead  
12 underground investigator. Should you have any  
13 problem, feel free to give us a call and we'll try to  
14 help you out. Also, should you have a problem with  
15 any kind of discrimination, you need to file a  
16 complaint within 30 days of when it happens.

17 MR. DAVIS:

18 All right.

19 MR. FARLEY:

20 And for the record I need to enter as  
21 Exhibit One a copy of the subpoena issued and sent to  
22 Mr. Davis, also a copy of Return of Service, Exhibit  
23 Two.  
24 (Davis Exhibits One and Two marked for  
25 identification.)

1 MS. SPENCE:

2 Mr. Davis, I'd just like to say on behalf

3 of the Governor's independent investigation, we

4 understand your tremendous loss in connection with

5 this accident, and we offer our condolences and our

6 promise that why we're doing these interviews is to

7 try to find out what happened so we have answers for

8 your family and other families. Okay.

9 -----

10 DAKOTA DAVIS, HAVING FIRST BEEN DULY SWORN, TESTIFIED

11 AS FOLLOWS:

12 -----

13 ATTORNEY MCCUSKEY:

14 May I ask for a point of clarification?

15 ATTORNEY BABINGTON:

16 Yes.

17 ATTORNEY MCCUSKEY:

18 Is this the appropriate time to do that?

19 ATTORNEY BABINGTON:

20 Sure.

21 ATTORNEY MCCUSKEY:

22 Okay. In your initial script that you

23 read, you --- I would just say that you asked --- you

24 said your participation in this interview constitutes

25 his agreement that he will keep the interview

1 confidential. And then but you never asked him  
2 specifically if he agreed to that. And then secondly,  
3 a little bit later you requested him to keep it  
4 confidential.

5 We've talked about this before, that  
6 those are contradictory statements, and he is here  
7 under subpoena, not because he necessarily wants to  
8 be, so if you would clarify for him that there is no  
9 law --- at least that's my understanding --- that  
10 requires him to keep this confidential, but that you  
11 are requesting that he keep it confidential. I'd  
12 appreciate it.

13 ATTORNEY BABINGTON:

14 Yes, I understand the discussion of  
15 confidentiality, that requirement, applying to the  
16 individuals on the investigation team, that they are  
17 to keep that information confidential as --- and then  
18 separately we request that he not discuss his  
19 testimony with other individuals that we may interview  
20 so that each individual has their own accounts to  
21 provide to the team.

22 ATTORNEY MCCUSKEY:

23 Do you understand that?

24 A. Not really, but ---.

25 ATTORNEY MCCUSKEY:

1 Okay.

2 ATTORNEY BABINGTON:

3 Okay. Well, we're just requesting that  
4 with other individuals that you not discuss the  
5 testimony that you provide here today, but as the  
6 clarifying point that John is making is that there is  
7 no requirement that you not discuss that testimony  
8 with other people.

9 A. All right.

10 ATTORNEY BABINGTON:

11 Okay. Mr. Davis, please state your full  
12 name and spell your last name, please.

13 A. My name is Dakota Anthony Davis, D-A-V-I-S.

14 ATTORNEY BABINGTON:

15 All right. And for the record, please  
16 state your address and phone number.

17 A. (b) (7)(C)

18 ATTORNEY BABINGTON:

19 All right. And do you have a personal  
20 legal representative here with you today?

21 A. John.

22 ATTORNEY BABINGTON:

23 Is that a yes?

24 A. Yes.

25 ATTORNEY BABINGTON:

1 Okay. Will your legal representative  
2 please identify himself?

3 ATTORNEY MCCUSKEY:

4 Yes, John McCuskey with the law firm of  
5 Shuman, McCuskey & Slicer in Charleston, WV.

6 ATTORNEY BABINGTON:

7 And Mr. McCuskey, are you legally  
8 representing the witness in this matter?

9 ATTORNEY MCCUSKEY:

10 I am.

11 ATTORNEY BABINGTON:

12 All right. And are you being paid for by  
13 a third party to provide such representation?

14 ATTORNEY MCCUSKEY:

15 That's correct.

16 BY ATTORNEY BABINGTON:

17 Q. All right. Mr. Davis, do you consent now to  
18 having this individual as your representative?

19 A. Yes.

20 ATTORNEY BABINGTON:

21 All right. I'd just like to note for the  
22 record that we've had several other interviews  
23 involving Mr. McCuskey and his law firm and that some  
24 of those witnesses indicated that Massey is paying for  
25 their representation. For the purposes of this



1 interview, we're going to assume that Massey is paying  
2 for the representation.

3 EXAMINATION

4 BY MR. SHERER:

5 Q. Okay. First of all, I want to thank you for  
6 talking to us this morning, Mr. Davis. As Ms. Spence  
7 indicated, we're trying to provide closure for the  
8 friends and coworkers and families of the victims.

9 Another thing we're trying to do is we're trying  
10 to understand what caused this explosion so hopefully  
11 we can prevent that in the future. So any information  
12 that you can provide to us to help us better  
13 understand what was going on, the circumstances and  
14 conditions leading up to the explosion, is certainly  
15 appreciated. Roughly, how many years of mining  
16 experience do you have, Mr. Davis?

17 A. Probably about two years and eight months.

18 Q. Two years and eight months. Has all that been  
19 with Upper Big Branch?

20 A. No, we started off at Logan's Fort for  
21 Performance.

22 Q. Uh-huh (yes).

23 A. Then we moved to UBB.

24 Q. Okay. And what was your most recent job title?

25 A. Head entry operator.

1 Q. Okay. Are you currently employed?

2 A. No.

3 Q. So you've been working on this current panel at  
4 UBB pretty much from the beginning?

5 A. Yes.

6 Q. Well, did you actually help set the wall up?

7 A. Yes.

8 Q. Okay. When did you transfer from --- I think you  
9 said Logan's Fort?

10 A. Yeah.

11 Q. About when did you come over to UBB, just roughly?

12 A. I think it was August.

13 Q. Okay. August of 2009?

14 A. Yeah.

15 Q. Okay. Was there anything unusual about the setup  
16 that you recall?

17 A. The what?

18 Q. The setup of the wall?

19 A. No.

20 Q. Okay. Now, we understand there was several events  
21 that occurred during the pulling of this panel. Do  
22 you recall a lot of water coming in sometimes in maybe  
23 late October, early November?

24 A. Yes.

25 Q. Could you describe that to us, please?

1 A. Well, they was a dip in the --- I think it was 100  
2 or to whatever. There was a dip and I guess it was  
3 coming out of the top, and it was filling up right  
4 there on that dip and we couldn't hardly run it  
5 because of that.

6 Q. Okay. Do you recall if the wall was shut down for  
7 any period of time because of that water?

8 A. No.

9 Q. Okay. Now, we also understand that there was some  
10 problem with the coal seam and maybe taking the rock  
11 above the coal seam around December of 2009, maybe  
12 even early January. Do you recall something like  
13 that?

14 A. Yes. It was about late November when we was in  
15 that rock.

16 Q. Okay.

17 A. And we just followed that little seam up there and  
18 went for it, I guess, and that's whenever I was on the  
19 shields and that's when they went up in that rock and  
20 that. And we was cutting rock for a while.

21 Q. Okay. Did you have trouble getting back down into  
22 the coal seam?

23 A. Yes.

24 Q. We've heard somebody mention that they had to  
25 chain some of the shields together to do that. Do you

1 recall that?

2 A. No.

3 Q. Okay. Thank you. Now, what was the last  
4 conditions you remember on the wall? Was the cutting  
5 easy?

6 A. Yes.

7 Q. Were you taking much rock?

8 A. No.

9 Q. Okay. What about at the tailgate? How was that?

10 A. It was good. I mean, they had good coal back  
11 there still. I mean, it wasn't good as the rest of  
12 the face, but we was getting better coal back there  
13 every day.

14 Q. Okay. About how far would the shearer cut out  
15 ---? Well, you were on the head drive, weren't you?

16 A. Uh-huh (yes).

17 Q. Okay. Excuse me.

18 MS. SPENCE:

19 Was that a yes?

20 A. Yes.

21 BY MR. SHERER:

22 Q. I was going to ask you how far the shearer cut out  
23 into the tailgate entry, but you probably wouldn't  
24 have seen that much.

25 A. No. It would probably cut out about half a drum,

1 sometimes a full drum.

2 Q. Okay. Thank you. When you were operating the  
3 shearer, what was kind of the average methane reading  
4 that you'd see on the methane monitor?

5 A. We'd get .1, .3. It was maybe sometimes .4.

6 Q. Okay. Any particular place along the face where  
7 it would increase?

8 A. On the heads, like, from Number One Shield to 60  
9 Shield it was fine.

10 Q. Okay.

11 A. And then whenever you got from, like, 115, it'd  
12 hit probably some, and then on the tail it'd hit a  
13 little bit. Coming back off, it never hit anything.

14 Q. Okay. Now, do you recall if you guys were cutting  
15 floor or roof along the face?

16 A. What do you mean?

17 Q. Were you taking floor ---

18 A. Yes.

19 Q. --- at any place?

20 A. We was taking more floor than we was top. But on  
21 the tail we was trying to take a little bit more top.

22 Q. Was that so you could turn your cows around?

23 A. Yes.

24 Q. Okay. About how much floor were you taking, just  
25 a rough figure?

1 A. Probably about --- I really don't know.

2 Q. Okay. Did you observe any sparking when you were  
3 taking the floor?

4 A. It was mostly just coal.

5 Q. Okay. How about when you were taking the roof?  
6 Did you ever see any sparking then?

7 A. Yes.

8 Q. Did you ever see any pop-offs where it'd light up  
9 the drum?

10 A. No.

11 Q. Okay. Did you ever hear anybody talking about  
12 sulfur balls or pyrite or anything like that?

13 A. No.

14 Q. Did you ever smell anything that smelled like  
15 sulfur while you were cutting along the face?

16 A. No.

17 Q. Okay. You ever smell anything that smelled like  
18 kerosene while you were cutting along the face?

19 A. No.

20 Q. Okay. Let's talk about ventilation for a minute  
21 if you would. When you got off the mantrip, did you  
22 ever notice the curtains that were up on the headgate?

23 ATTORNEY BABINGTON:

24 I'm sorry. Is that a yes?

25 ATTORNEY MCCUSKEY:

1 You need to give him a ---.

2 A. Yes.

3 ATTORNEY MCCUSKEY:

4 --- verbal answer.

5 BY MR. SHERER:

6 Q. Thank you. Did you ever notice that those  
7 curtains were kind of loose and flapping?

8 A. Sometimes, but no, not all the time.

9 Q. Okay. But occasionally?

10 A. Yeah.

11 Q. Okay. Did you ever observe those curtains being  
12 blown back toward the face?

13 A. No.

14 Q. Okay. Now, when you were on the wall, was the  
15 airflow fairly constant or did sometimes it seem to  
16 slow down, to get maybe greater?

17 A. It was good.

18 Q. It was good?

19 A. Yeah.

20 Q. But was it fairly constant?

21 A. Yes.

22 Q. Okay. Did you wear a coat?

23 A. Yes.

24 Q. Okay. Had you noticed any shift in that quantity  
25 of air over the past few weeks?

1 A. Yes.

2 Q. What happened?

3 A. Whenever we was running coal and MSHA came in and  
4 shut us down and we had to go in the tail end and make  
5 --- set blockings and --- well, build stoppings and  
6 plaster stoppings.

7 Q. Okay. Were you involved in building those ---

8 A. Yes.

9 Q. --- stoppings? Do you recall about how long that  
10 took?

11 A. I think it took --- well, our shift and half of  
12 the evening shift.

13 Q. Okay. And what happened after you done that? How  
14 did that affect the ventilation?

15 A. It made the air go in, go towards the gob better.

16 Q. Okay. Did that affect the quantity or the quality  
17 of air along the face?

18 A. It reduced it a little bit.

19 Q. Okay. Do you still feel like you had sufficient  
20 air to cut the face?

21 A. What?

22 Q. Were you having any problems with either dust or  
23 methane?

24 A. Not whenever the MSHA came and shut us down, we  
25 didn't. I mean we had good air.



1 Q. Did you have good air before they shut it?

2 A. Yes.

3 Q. Did you have good air after they shut you down?

4 A. We still had a little bit of air, but not as good.

5 Q. Okay. Did you notice any problems after we shut  
6 you down?

7 A. Not really, until a couple days later, about a  
8 week or whatever the air reduced down a lot where we  
9 had to take our jackets off and cut our sleeves off  
10 our shirt and ---.

11 Q. So it started getting hot?

12 A. Yes.

13 Q. Approximately how long prior to the explosion  
14 would you say that was?

15 A. Probably about four or five days.

16 Q. Four or five days. Do you know why the air  
17 changed at that point in time?

18 A. No, I don't.

19 Q. Okay. Have you spoken with anybody and has  
20 anybody offered an explanation why the air changed?

21 A. I haven't spoken to nobody.

22 Q. Okay. Thank you. When you were running the head  
23 drive, could you see what you were cutting fairly  
24 well?

25 A. Going to the tail I couldn't.

1 Q. Okay. Had that changed?

2 A. Yes.

3 Q. Okay. When did it change?

4 A. Whenever they made that ventilation change.

5 Q. The one that MSHA made?

6 A. Yeah.

7 Q. Okay. So and I assume it got worse?

8 A. Yes.

9 Q. Okay. So you were having trouble seeing down near  
10 the tail?

11 A. Yeah.

12 Q. Okay. And I assume it was just the dust?

13 A. Yes.

14 Q. Okay. Thank you. How about the general operation  
15 of the wall in about that last week? Did you notice  
16 anything unusual?

17 A. Just besides the air cutting down. That's it.

18 Q. Okay. How about maintenance related stuff? Had  
19 there been any, anything out of the ordinary in the  
20 week or two prior to the explosion?

21 A. Well, I think a week or two we changed a head end  
22 arm and tail end arm, I think.

23 Q. Okay.

24 A. And the drums.

25 Q. Okay. Had you heard anything about the hinge pin

1 being a problem?

2 A. Yes, it fell out.

3 Q. Okay. About how long prior to the explosion did  
4 that happen?

5 A. I think it happened, like, two weeks before.

6 Q. Okay. Have you heard that they were having  
7 problems with the hinge pin the day of the explosion?

8 A. No.

9 Q. Okay. We understand that the wall was down most  
10 of the day because of that. What about the roof and  
11 ribs, both on the headgate and the tailgate? How  
12 would you describe those?

13 A. On the tail, I really never really went up there,  
14 but as far as I've been, like, when I do go up there  
15 it looks good.

16 Q. Uh-huh (yes).

17 A. Like, on the head and ribs, it wasn't that good,  
18 but the top was.

19 Q. Okay.

20 A. For a little --- you'd have your spots and that on  
21 top.

22 Q. Sure. Now, had they meshed the roof on the head  
23 side?

24 A. Yes.

25 Q. Thank you. That helps. Did you ever see somebody

1 knock a block or two out of the stoppings on the tail  
2 side?

3 A. Yes.

4 Q. Okay. How big an opening did they make in the  
5 stopping? Was it a block or two or three or four?

6 A. Well, probably about four or five blocks.

7 Q. Okay. And we understand that was to better direct  
8 the airflow?

9 A. Yes.

10 Q. Now, let me ask you, were they doing that prior to  
11 when MSHA shut the wall down or was that something  
12 that came after?

13 A. That was prior.

14 Q. Okay. So it was just a common practice?

15 A. Uh-huh (yes).

16 Q. Okay. And there's not a problem with that. I  
17 want to make that clear. Was there a problem --- we  
18 understand that the block had been cut a little wide  
19 down near the take-up point. Was there any problem  
20 getting enough clearance on the tail side?

21 A. No.

22 Q. Okay. Do you know if anybody ever used explosives  
23 along the face or near the longwall?

24 A. Yes.

25 Q. Could you describe that, please?

1 A. When we bust big rocks up and that, we use ---  
2 we'll use explosives.

3 Q. Okay. Down in the pan?

4 A. Uh-huh (yes).

5 Q. Do you know where the explosives were kept?

6 A. I think they took them outside.

7 Q. Okay. Do you know if there was a battery or  
8 initiator kept near the longwall?

9 A. No.

10 Q. Okay. You think they brought that in, also?

11 A. Yes.

12 Q. Okay. When you were out on the face, did you ever  
13 step back in the shield line and notice how the  
14 airflow was going? Was it going back in the gob or  
15 did occasionally some of the dust blow out of the  
16 shield line?

17 A. It was going all the way up to the face whenever I  
18 was on the wall.

19 Q. Okay. How was the grade along the face? Were  
20 there any significant rolls or dips or anything like  
21 that?

22 A. Yes.

23 Q. Could you describe that, please?

24 A. We had more dips than anything. I mean, sometimes  
25 they would go straight down and getting the shearer

1 back on top and that, it was pretty rough.

2 Q. It was hard to control the horizon?

3 A. Yes.

4 Q. Did you notice if it ---- and this is just a  
5 personal observation. It seems like there was kind of  
6 a crust on the floor, and I've seen it broken up up  
7 there at places. Is that about what you recall?

8 A. Yes.

9 Q. So if you got down through that crust, it would go  
10 --- tend to go down?

11 A. Yes.

12 Q. Okay. How about bottom hooving? Did you notice  
13 any problem with bottom heaving or bottom hooving?

14 A. Just the second entry over from the belt line and  
15 behind the curtain right there, there was some bottom  
16 hooving, but I ain't never experienced any anywhere  
17 else.

18 Q. Okay. Thank you. Did you ever get up in this  
19 connector area, these entries that go from the  
20 longwall headgate up to the other ---

21 A. The miner section?

22 Q. --- miner section?

23 A. I've been up there a little piece just looking for  
24 stuff, but that's as far as I ever been.

25 Q. Okay. On this map there's some doors shown in the

1 --- it'd be the Number --- between the Four and Five  
2 entry on the headgate. Do you recall those doors?

3 A. Yes. I thought they was somewhere up through  
4 here.

5 Q. Well, there are some other doors up there, too.

6 A. Is this where the miner section split?

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

8 A. All right.

9 Q. Do you recall those particular doors?

10 A. Yes.

11 Q. Okay. Do you know if those doors had been  
12 replaced with a stopping sometime within a week or so  
13 of the explosion?

14 A. Yes, I do.

15 Q. Okay. Do you know who actually replaced those  
16 doors or even what shift it was done on?

17 A. No. I think it was the miner section. We pulled  
18 their track out and when we passed there, we got close  
19 to them.

20 Q. Okay. Do you recall any particular problems ---  
21 it had probably been within a couple of months as the  
22 mule train pulled up on this crossover. Do you recall  
23 any problems they had making some of the changes that  
24 were made as the wall advanced through there?

25 A. No.

1 Q. Okay.

2 ATTORNEY BABINGTON:

3 Sorry, Erik. Just to clarify for the  
4 record, when you've been referring to the miner  
5 sections, you've been referring to the miner sections  
6 for the new longwall panel?

7 MR. SHERER:

8 Yes, the crossover going up to the  
9 current 22 Tailgate section and the 22 Headgate  
10 section.

11 ATTORNEY BABINGTON:

12 Okay. Thank you.

13 MR. SHERER:

14 Thank you, Matt.

15 ATTORNEY MCCUSKEY:

16 And that's what you were ---?

17 A. Uh-huh (yes).

18 ATTORNEY MCCUSKEY:

19 You understand that, too? Okay.

20 BY MR. SHERER:

21 Q. We also understand that there was a couple of  
22 doors built about probably a week or two prior to the  
23 explosion near the mouth of the headgate.

24 Q. Yes.

25 Q. Do you recall those?



1 A. Yes.

2 Q. Do you recall if there was an opening beside both  
3 those new doors?

4 A. On one of them.

5 Q. On one of them? Which one of them, the most inby  
6 or the most outby?

7 A. I think it was the one inby.

8 Q. Okay. Do you recall, was it half the height of  
9 the doors?

10 A. Yes.

11 Q. Okay. And was the width --- about how wide would  
12 you estimate that to be?

13 A. Probably about three foot.

14 Q. About three foot wide and about how high?

15 A. Probably about three foot, probably.

16 Q. Okay. So about three by three?

17 A. Yeah.

18 Q. Do you know why that opening was left there?

19 A. (Indicates no.)

20 ATTORNEY BABINGTON:

21 Sorry. Is that a no?

22 A. No.

23 MR. SHERER:

24 Okay. Thank you.

25 BY MR. SHERER:

1 Q. And one other question by that same general area.  
2 We understand there was some --- there was a  
3 contractor there putting glue in the roof, we think.

4 A. Yes, there was.

5 Q. Okay. Do you know if that contractor had removed  
6 the, like, the barrels of chemicals or tanks or  
7 whatever they used?

8 A. No, I don't.

9 Q. Okay. What about the methane monitors on the  
10 wall? Are you aware of any problems that they had  
11 with the one on the tail drive with the cable going to  
12 it?

13 A. No.

14 Q. Okay. Have you ever seen those monitors opened up  
15 with the cover taken off of them?

16 A. Not on the tail.

17 Q. Okay. How about the other monitor?

18 A. On the shearer?

19 Q. Uh-huh (yes).

20 A. No, just except when we was at Logan's Fort.

21 Q. Okay.

22 A. That's the only time I ever seen them take them  
23 off.

24 Q. Okay. Did you ever see them work on those  
25 particular monitors?

1 A. No.

2 Q. Okay. Did you ever see anybody calibrate those  
3 monitors?

4 A. No.

5 Q. If you were going to work on the cable, the high  
6 voltage cable, what sort of procedure would you guys  
7 go through to do that?

8 A. Just knock all the power and, I guess make their  
9 splice and whatever.

10 Q. Okay. Where would you knock the power at?

11 A. I guess the mule train. Think they do it up  
12 there.

13 Q. Okay. Would you turn the water off if you were  
14 going to do that?

15 A. Yes.

16 Q. Do you know where the water cutoff was?

17 A. It was on the headgate.

18 Q. Okay. Did you have to call out to have the water  
19 turned off?

20 A. Yes.

21 Q. What else would you turn the water off with?

22 A. Changing bits. That's about it.

23 Q. Okay.

24 MR. FARLEY:

25 I'm sorry. What was his first answer

1 after changing ---- before changing bits?

2 ATTORNEY MCCUSKEY:

3 I think he said --- I think he just said

4 that's about it.

5 A. That's about it.

6 MR. FARLEY:

7 I know, but you said --- before you said

8 changing bits, you said there was one other reason you

9 turned the water off.

10 A. No, the high voltage splice and that.

11 MR. FARLEY:

12 Okay. I'm sorry.

13 MR. SHERER:

14 No problem, Terry. Thank you.

15 BY MR. SHERER:

16 Q. So working on the high voltage cable or changing

17 the bits would be the typical reasons you'd turn the

18 water off?

19 A. Yes, where the belts would go off.

20 Q. Okay. Now, when you cut the high voltage to the

21 shearer, do you know if it would be typical to

22 continue run the pan line?

23 A. No.

24 Q. Okay. Would that cut the pan line?

25 A. Excuse me?

1 Q. When you cut the high voltage to the shearer,  
2 pulling the visual disconnects, would that also cut  
3 off the voltage to the pan line?

4 A. I don't know.

5 Q. Okay. Let me ask that a different way and see if  
6 this helps. Say a cable went bad. Would you normally  
7 try to clear the coal off the pan line before you  
8 worked on the cable?

9 A. No.

10 Q. Okay. You'd just go ahead and shut everything  
11 down and work on the cable?

12 A. Yes.

13 Q. Okay. Was it hard to start up the pan line with a  
14 full load of coal?

15 A. Yes.

16 Q. Okay. About how long would it take to clear the  
17 coal off the pan line if you were down near the tail?

18 A. Three to five minutes.

19 Q. Okay. Do you recall what condition the conveyor  
20 chain was at?

21 A. It was good.

22 Q. Okay. Have you ever noticed any sparks in the pan  
23 line or under the pan line?

24 A. Yes, on top.

25 Q. Okay. Were they big sparks or just an occasional

1 little spark?

2 A. Just an occasional little one.

3 Q. Okay. Do you recall about where those sparks  
4 occurred at?

5 A. On the head.

6 Q. Okay. Never noticed anything down around the  
7 tail?

8 ATTORNEY BABINGTON:

9 I'm sorry. Was that a yes or no?

10 A. No.

11 ATTORNEY BABINGTON:

12 Okay.

13 MR. SHERER:

14 Thank you.

15 BY MR. SHERER:

16 Q. Do you know where the automatic chain take-up was  
17 on the tail drive?

18 A. The tension?

19 A. Yeah, uh-huh (yes).

20 Q. Yes.

21 Q. Were they about middle range or ---?

22 A. There was one on the head and one on the tail.

23 Q. Okay. Do you know if they were ---? You know, as  
24 far as taking up the slack in the chain, had they  
25 taken up all the slack they could or were they about

1 at the middle of their take-up range or were they just  
2 starting out their take-up range?

3 A. I don't know.

4 Q. Okay. Thank you. Did you ever have any reason to  
5 walk the tailgate?

6 A. Just whenever we went out there and plastered  
7 stoppings and that.

8 Q. Okay. What were the conditions like on the  
9 tailgate? Do you recall?

10 A. It was low and a little rocky.

11 Q. Okay. About how many passes would you take before  
12 you had to change the bits on the shearer drums?

13 A. It depends how the condition was.

14 Q. How about immediately prior to the explosion?  
15 About how many passes were you getting in, just on  
16 average?

17 A. Probably about one pass for the tail end bits.

18 Q. Would you get a little more on the head side?

19 A. Yes.

20 Q. Okay. And then why was that?

21 A. You know, the rock was real hard on top on the  
22 tail end.

23 Q. Okay. So you're cutting more rock with the tail  
24 drum?

25 A. Yes.

1 Q. Okay. Where would you guys normally bit up at?

2 Would you try to get back up near the headgate or just  
3 stop at wherever you had to?

4 A. We'd back up to about 140 Shield and bit up  
5 there ---

6 Q. Okay.

7 A. --- so you can just go ahead and go with your  
8 shuffle and everything to cut out again.

9 Q. Okay.

10 A. Head back towards the head.

11 Q. Okay. Did you typically carry a set of bits on  
12 the shearer?

13 A. Yes.

14 Q. Okay. Would you explain how you guys did the  
15 shuffle?

16 A. We'd step them off from 160 back to, like, 154 or  
17 155 and open the line up, and they'll go down the ---  
18 probably about 139 and stop and straighten the shields  
19 all the way up, and I'd push the line back out.

20 Q. About how long would it take to go through that?

21 A. Probably about 15 minutes.

22 Q. Okay. Have you noticed any changes in the  
23 conditions when you were doing that?

24 A. Real sloppy.

25 Q. Real sloppy, okay. And by sloppy, I assume that



1 it was wet and muddy?

2 A. Uh-huh (yes).

3 Q. Okay.

4 A. Yes.

5 Q. Thank you. Now, we understand the mine was down  
6 on Sunday.

7 A. Yes.

8 Q. Now, what was the last shift you worked?

9 A. Saturday --- well, Saturday shift, Sunday morning.

10 Q. Okay. And I assume you were working the hoot owl  
11 shift, then?

12 A. Evening.

13 Q. Evening shift; okay. About when would you start  
14 that shift?

15 A. 3:00.

16 Q. 3:00. About when would you get out?

17 A. We got out probably about 1:30.

18 Q. Okay. When you got --- when you first got off the  
19 mantrip Saturday afternoon, do you recall anything  
20 that was different?

21 A. The air, the ventilation. It was warm.

22 Q. It was warm. So a lower quantity of air. What  
23 was the first few things you did as you got ready to  
24 run coal on that shift?

25 A. We had to set bits and we went ahead and started

1 cutting coal.

2 Q. Okay. Was anything unusual that first 15, 20  
3 minutes?

4 A. Accumulation of dust.

5 Q. Accumulation of dust. Coal dust?

6 A. Yes.

7 Q. Where'd you notice that coal dust at?

8 A. From 115 to the tail.

9 Q. Okay. How about the coal production during that  
10 shift? Anything strike you as unusual?

11 A. No.

12 Q. Good shift?

13 A. Yeah.

14 Q. About how many passes did you get?

15 A. I think we got six, something, seven.

16 Q. That's a real good shift. When you got to the end  
17 of the shift, did you still have that accumulation of  
18 coal?

19 A. No.

20 Q. So you washed the shields down?

21 A. Yeah.

22 Q. What was the general condition of the face ---?

23 ATTORNEY MCCUSKEY:

24 You said accumulation of coal. By that  
25 do you mean dust?

1 MR. SHERER:

2 Coal dust, yes.

3 ATTORNEY MCCUSKEY:

4 Okay.

5 MR. SHERER:

6 Thank you.

7 BY MR. SHERER:

8 Q. What was the general condition of the face as you  
9 recall you left it?

10 A. Hot and wore out and ready to go home.

11 Q. Okay. I understand that. How about riding out of  
12 the mine? Do you recall anything out or the ordinary  
13 as far as that?

14 A. No.

15 Q. Did you see any foggy areas when you were riding  
16 out of the mine?

17 A. No, I didn't.

18 Q. Okay. Do you recall nay unusual smells?

19 A. No.

20 Q. Do you recall if your eyes burned anywhere along  
21 the way?

22 A. No, but I have heard people saying their eyes  
23 burned sometimes.

24 MR. SHERER:

25 That's why we're asking. Okay. That's

1 all the questions I've got.

2 EXAMINATION

3 BY MR. FARLEY:

4 Q. I'll just try to clarify a couple things here. On  
5 your last shift on Saturday, April 3rd, I think you  
6 said when you arrived at the beginning of your shift  
7 that it was warm and you had a lower quantity of air;  
8 is that correct?

9 A. Yes.

10 Q. Now, did your quantity of air improve throughout  
11 the shift?

12 A. No, it didn't.

13 Q. Okay. Do you know if you had --- when you talk  
14 about the quantity of air, do you know if you had  
15 enough to meet the requirements of your ventilation  
16 plan?

17 A. Yes, we did.

18 Q. Okay. Now, based on my reading of the longwall  
19 pre-shift/on-shift report book, reflects that in the  
20 early part of March that the last open break air  
21 reading on the long was --- longwall was about  
22 115,000 ---

23 A. Yeah.

24 Q. --- cubic feet per minute. Now, toward the end of  
25 the month the entries ranged from about 55,000 to

1 60,000 cubic feet per minute, which would reflect a  
2 change of about almost 50 percent. Does that seem  
3 accurate? Does that seem ---?

4 A. Yes.

5 Q. Is that how you ---? Was that your sense of  
6 things?

7 A. Yes.

8 Q. Okay. Do you know if part of that air change  
9 might've been made to get more air to the miner  
10 sections?

11 A. Yes. I heard that, that they stole air from the  
12 miner section.

13 Q. Okay. Can you estimate about what point in March  
14 you began to notice the difference in the air?

15 A. At the end.

16 Q. Okay. Now, you're shearer --- well, were shearer  
17 operator on the head end?

18 A. Uh-huh (yes).

19 Q. Now, when you left after your shift on four ---  
20 April 3rd --- now when you left it's 1:30 in the  
21 morning on April 4th. As far as you know, were the  
22 methane monitors on the headgate with the sniffer on  
23 the tailgate and the one on the shearer, were they  
24 fully operational as far as you know?

25 A. Far as I know.

1 Q. Okay. Did you happen to look at the one on the  
2 headgate during that shift?

3 A. No, I did not.

4 Q. Okay. Did you hear any alarms or anything shut  
5 down or anything like that?

6 A. No.

7 Q. Okay. Since you started this longwall panel at  
8 UBB, which would've been September of 2009, did you  
9 ever experience any gas-offs?

10 A. When we was setting props.

11 Q. When you were setting props?

12 A. Yes.

13 Q. Where were you setting props?

14 A. Back in here towards the Bandytown fan. And we  
15 had a little --- sometimes we had some methane, the  
16 detectors.

17 Q. Okay. Now, is that why you were operating the  
18 longwall?

19 A. No, now, we was setting before the longwall was  
20 in.

21 Q. Okay. Before you set the longwall up?

22 A. Yes.

23 Q. Okay. Now, did you have any gas-offs after the  
24 longwall started producing coal?

25 A. No, not from my visual eye.

1 Q. Okay. Well, it would've been on the other shifts.  
2 Are you aware of anything happening --- like that  
3 happening on the other shifts?

4 A. I heard them talk about, like, pop-offs or  
5 something and coal rings or whatever on the drum. I  
6 heard them say something about pop-offs like that,  
7 but ---.

8 Q. Okay. And do you recall when that might've been?

9 A. No.

10 Q. Okay. Okay.

11 A. But I'll tell you all something else, too.

12 Q. Okay.

13 A. On the miner section, whenever it happened that  
14 day, some boy was talking about they didn't have very  
15 much methane on theirs. He said he had a couple pop-  
16 offs and that, but that's about it, on the miner  
17 section.

18 Q. Okay.

19 A. I heard him say that they had some pop-offs and  
20 that over there.

21 Q. Do you remember when that happened?

22 A. No. He was just telling me whenever that day it  
23 happened.

24 Q. Okay. And when you say --- any particular ---  
25 either ---? Was it anyone in particular? Was it

1 Headgate 22 or ---?

2 A. Yeah, it was Headgate 22.

3 Q. Okay. Do you recall who you heard that from?

4 A. No, I didn't know nobody from the miner section,  
5 except for Boone Pain.

6 Q. Okay. Did you have any conversation with Boone  
7 about it?

8 A. No. He's the one that was roof bolting.

9 Q. Okay, all right. You just picked that up in ---

10 A. Yeah.

11 Q. --- conversation in the bathhouse and stuff?

12 Okay. But you don't know when that was?

13 A. No.

14 Q. Okay. Do you know if --- we know that there was  
15 an air change made to reduce the quantity of air on  
16 the longwall face in the middle of March. Do you know  
17 if the change actually improved anything on the  
18 Headgate 22 section, based on your conversations with  
19 any of those guys?

20 A. Yeah, they said they got better air than what they  
21 did have.

22 MR. FARLEY:

23 All right. Beth?

24 EXAMINATION

25 BY MS. SPENCE:



1 Q. I'll just ask, Cody, what do you think happened?

2 A. Well, I really don't know.

3 Q. Any theories? I know it's just speculation.

4 A. I don't know. Well, I seen that map they had  
5 where the victims in mid-face. And the shearer's on  
6 the tail. They said something about they had the  
7 water cut off and that on the headgate and all that,  
8 so I say they probably seen something on the tail and  
9 they was getting away from the problem and they didn't  
10 make it.

11 RE-EXAMINATION

12 BY MR. FARLEY:

13 Q. One more here. After your shift, after your last  
14 shift of work when you came out of the mine on Sunday  
15 morning on April 4th about 1:30, when you got outside  
16 did you see anybody that you wouldn't normally see?

17 A. Just the hoot owl maintenance and that.

18 Q. Okay. No vice presidents or people like that that  
19 you wouldn't normally see at that time of day?

20 A. Not as I can recall.

21 MR. FARLEY:

22 Okay.

23 MR. SHERER:

24 I don't have anything.

25 ATTORNEY BABINGTON:

1 Do you mind if we take a quick before we  
2 close out?

3 MR. SHERER:

4 Sure.

5 ATTORNEY BABINGTON:

6 All right. So let's go off the record.

7 SHORT BREAK TAKEN

8 EXAMINATION

9 BY ATTORNEY BABINGTON:

10 Q. Mr. Davis, I just had a couple questions just to  
11 clarify some of the air changes in March. If I  
12 understood what you said correctly, there were, you  
13 believe, two different air changes in the month of  
14 March?

15 A. Yes.

16 Q. All right. And as I understood, the first one was  
17 the MSHA change in the first part of the month?

18 A. Yes.

19 Q. And then the second change was one that happened  
20 some four or five days before the explosion?

21 A. They put those doors up. That's about from the  
22 explosion, but I ---. Like, on the ventilation, I  
23 didn't say nothing about another ventilation change.  
24 I just said the air just kept reducing.

25 Q. Okay. So you don't know of any air change that

1 was put in, but you've said that about four or five  
2 days before the explosion that you felt that the  
3 air ---

4 A. Yeah.

5 Q. --- quantity lowered? Okay. And you don't have  
6 any idea why the air lowered?

7 A. No.

8 Q. Okay. But after that air lowering, it became even  
9 hotter on the face?

10 A. Yes.

11 ATTORNEY BABINGTON:

12 Okay. Anything else, Erik?

13 MR. SHERER:

14 I don't have anything.

15 ATTORNEY BABINGTON:

16 Terry?

17 MR. FARLEY:

18 No.

19 ATTORNEY BABINGTON:

20 Beth?

21 MS. SPENCE:

22 No.

23 ATTORNEY BABINGTON:

24 Okay. There will be two exhibits that

25 are part of the, you know, quote, unquote, record of

1       this interview. We just have a copy of the subpoena  
2       that was issued to you, as well as --- and that'll be  
3       D. Davis One, and D. Davis Two will be the Return of  
4       Service on that subpoena.

5       On behalf of MSHA and the Office of  
6       Miners' Health, Safety and Training, I want to thank  
7       you for appearing and answering questions today. Your  
8       cooperation is very important in the investigation as  
9       we work to determine the cause of the accident.

10      Again, though, we request that you not discuss your  
11      testimony with any person aside from a personal  
12      representative.

13      After questioning other witnesses we may  
14      call you through your representative if we have any  
15      follow-up questions. If at any time you have  
16      additional information regarding the accident that  
17      you'd like to provide to us, please contact us at the  
18      contact information previously provided.

19      A. No.

20      ATTORNEY BABINGTON:

21      If you wish, you may now go back over any  
22      answer you've given during this interview, and you may  
23      also make any statement that you'd like to make at  
24      this time.

25      A. No. All right. I was just wondering, after the

1 accident happened and everything and when ---. I  
2 don't know who was in charge of it or whatever. When  
3 you all went inside the mines and that and you all  
4 found everybody and you all just kept walking by them  
5 every day and wouldn't pick nobody up and bring them  
6 out.

7 MR. FARLEY:

8 I'm not a mine rescue expert, but that,  
9 you know, as cold and callus as it may seem, is part  
10 of the mine rescue protocol and procedure, and I think  
11 it's based on the idea that they're still --- they do  
12 that when they're still searching for people who they  
13 believe who could possibly still be alive.

14 A. Yeah.

15 MR. FARLEY:

16 And I think that --- and in this  
17 situation, unfortunately, if you go back to the first  
18 night when all the four people had been accounted for,  
19 it became necessary to evacuate the mine because of  
20 high methane and ---

21 A. Yes.

22 MR. FARLEY:

23 --- CO concentrations. So then, you  
24 know, it took --- they had to evacuate I think at  
25 least a couple of more times during the week. And

1       then finally on Friday night I think they eventually  
2       confirmed that the that the other four people had not  
3       survived, and then at that point, and you still had, I  
4       think, at least one more instance where it became  
5       necessary to evacuate the mine. And the fact that,  
6       you know, that the deceased people were so spread  
7       out ---

8       A. Yeah.

9       MR. FARLEY:

10      --- and all over the place, and you had  
11      no transportation from 78 all the way to the end of 22  
12      Headgate, where it was basically necessary to just  
13      hand-carry the ---

14      A. Yeah.

15      MR. FARLEY:

16      --- bodies on stretchers, you know, that  
17      entire distance. And they actual relayed them, I  
18      think. On the, I think the last day that they were  
19      carrying out, removing people from the mine, there  
20      were --- there might've been 150 mine rescue team  
21      people underground at that point.

22      ATTORNEY BABINGTON:

23      And also, we've heard from several mine  
24      rescue team members who --- it sounded like it was  
25      common practice that if you came across a victim that

1       you lay some kind of curtain or sheet ---

2       A. Yeah.

3       ATTORNEY BABINGTON:

4       --- over their body just, you know, with  
5       the idea that at that point they, you know --- the top  
6       priority was finding survivors. And secondarily was  
7       then, you know, making sure to remove all the victims  
8       from the mine.

9       MR. SHERER:

10      And I think the, you know --- if there's  
11      any praise for the mine rescue and recovery effort, it  
12      gets into the fact that at least on the first night it  
13      was very aggressive.

14      A. Yes.

15      MR. SHERER:

16      You know, there was no hesitation. You  
17      know, there were no --- there was no time lost, spent  
18      contemplating the next move. It was go.

19      Q. Yeah.

20      MR. SHERER:

21      And you know, unfortunately no one  
22      survived to be saved, but had they survived, you know,  
23      there would've been a really good shot that they  
24      would've been brought out of the mine.

25      A. Yeah.

1 MR. SHERER:

2 And there's been some criticism for the  
3 rescue operation being as aggressive as it was.

4 A. What about those --- what is that thing called,  
5 the leaky feeder system?

6 MR. SHERER:

7 Let's go off the record.

8 ATTORNEY BABINGTON:

9 Yeah. Is it okay if we go off the record  
10 to continue discussing some of these issues?

11 ATTORNEY MCCUSKEY:

12 I think if we're going to discuss things  
13 here, we ought to --- it ought to be on the record and  
14 we ought to ---. Yeah, I think in a formal hearing we  
15 ought to keep this on the record if there's going to  
16 be discussion.

17 MR. SHERER:

18 If we're going to discuss this, we'll be  
19 glad to discuss things off the record with you, Mr.  
20 Dakota, but as of right now ---.

21 ATTORNEY MCCUSKEY:

22 Mr. Davis.

23 MR. SHERER:

24 Oh, Mr. Davis, excuse me. I'm sorry.

25 A. That's all right.



1 MR. SHERER:

2 We'd be glad to discuss things off the  
3 record, but we have some problems with the  
4 investigation discussing these on the record.

5 A. It don't matter to me.

6 MR. SHERER:

7 Okay.

8 ATTORNEY BABINGTON:

9 Okay. Well, again, I want to thank you  
10 for your cooperation in this matter. Off the record.

11 OFF RECORD DISCUSSION

12 ATTORNEY MCCUSKEY:

13 My client would like to read and sign the  
14 transcript and check it for accuracy, so I'd request a  
15 copy of the rough draft as soon as possible. And you  
16 have my information. He's going to say no, but I'm  
17 making my request.

18 ATTORNEY BABINGTON:

19 Okay. Well, yeah, your request is noted.

20 The protocol we're going to be setting up is having  
21 you all come in and read it, but we won't be providing  
22 a physical copy of that until a later point, which is  
23 at the public release of those transcripts, but your  
24 request is --- your request is noted.

25 ATTORNEY MCCUSKEY:

1 Are you indicating they're going to get a  
2 chance to read it there before it's publicly released?

3 ATTORNEY BABINGTON:

4 Yes, yes.

5 MR. SHERER:

6 If you choose to.

7 ATTORNEY BABINGTON:

8 Yes, if you're requesting to.

9 ATTORNEY MCCUSKEY:

10 Yeah, well, I'm going to request to do  
11 so, so he does choose to.

12 ATTORNEY BABINGTON:

13 Okay. Anything else?

14 ATTORNEY MCCUSKEY:

15 No, that's all. Thank you.

16 ATTORNEY BABINGTON:

17 Okay. Thank you. Off the record.

18 \* \* \* \* \*

19 STATEMENT UNDER OATH CONCLUDED AT 10:09 A.M.

20 \* \* \* \* \*

21

22

23

24

25

1 STATE OF WEST VIRGINIA )

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

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



*Alison Salyards*