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Transcript of the Testimony of Glen Poe

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Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH

OF

GLEN A. POE

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Monday, October 4, 2010, beginning at 1:06 p.m.

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1 A P P E A R A N C E S

2

3 POLLYANNA HAMPTON, ESQUIRE

4 U.S. Department of Labor

5 Office of the Regional Solicitor

6 1100 Wilson Boulevard

7 22nd Floor West

8 Arlington, VA 22209

9

10 KEITH MCELROY

11 TERRY FARLEY

12 West Virginia Office of Miners' Health,

13 Safety and Training

14 1615 Washington Street East

15 Charleston, WV 25311

16

17 SUZANNE WEISE

18 West Virginia Independent Investigation

19 (b) (7)(C)

20 (b) (7)(C)

21 (b) (7)(C)

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P R O C E E D I N G S

1
2 -----
3 ATTORNEY HAMPTON:

4 My name is Polly Hampton. Today is
5 October 4th, 2010. I am with the Office of the
6 Solicitor, U.S. Department of Labor. With me here is
7 Keith McElroy. He is an accident investigator with
8 the Mine Safety and Health Administration, MSHA, an
9 agency of the United States Department of Labor. Also
10 present here are several people from the State of West
11 Virginia, and I ask that they now state their
12 appearance for the record.

13 MR. FARLEY:

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

16 MS. WEISE:

17 Suzanne Weise with the Governor's
18 independent investigation team.

19 ATTORNEY HAMPTON:

20 We also have other members of the teams
21 who are in the audience, observing. All members of
22 the Mine Safety and Health Accident Investigation Team
23 and all members of the State of West Virginia Accident
24 Investigation Team participating in the investigation
25 of the Upper Big Branch Mine explosion shall keep

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

14 Government investigators and specialists

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

23 After the investigation is complete, MSHA

24 will issue a public report detailing the nature and
25 causes of the fatalities in the hope that the greater

1 awareness about the causes of accidents can reduce
2 their occurrence in the future. Information obtained
3 through witness interviews is frequently included in
4 these reports. You should know that if you request
5 confidentiality, this confidentiality can only be
6 granted on a case-by-case basis and your statement may
7 be used in other proceedings.

8 You may have a personal representative
9 present at the taking of this statement and you can
10 consult with this representative at any time. Just so
11 the record is clear, do you have a personal
12 representative with you here today?

13 MR. POE:

14 No.

15 ATTORNEY HAMPTON:

16 Your statement is voluntary. You may
17 refuse to answer any question and you may terminate
18 your interview at any time or request a break at any
19 time. Since this is not an adversarial proceeding,
20 formal Cross Examination will not be permitted.
21 However, a personal representative, if you have one,
22 can ask clarifying questions.

23 As you can see, we have a court reporter
24 here. She's recording the interview, so please speak
25 loudly and clearly so she can follow everything. If

1 you don't understand a question that's asked, please
2 ask the person to rephrase it. Please answer each
3 question as fully as you can, including giving any
4 information you might have learned from somebody else.
5 We'd like to thank you in advance for your appearance
6 here. We appreciate your assistance in the
7 investigation. Your cooperation is critical in making
8 the nation's mines safer.

9 After we finished asking questions, you

10 will then have an opportunity to make a statement and
11 to provide any other information to the team if
12 there's something else that you think is important.

13 And if at any time after you leave here today you have
14 other information you'd like to share with the team,
15 please feel free to contact Norman Page at the
16 telephone number or e-mail address in the letter
17 provided to you before the start of this interview.

18 Do you have any questions?

19 MR. POE:

20 No.

21 ATTORNEY HAMPTON:

22 Okay. Could you please swear in the
23 witness?

24 -----

25 GLEN A. POE, HAVING FIRST BEEN DULY SWORN, TESTIFIED

1 AS FOLLOWS:

2 -----

3 EXAMINATION

4 BY MR. FARLEY:

5 Q. Mr. Poe, would you mind stating your full name and
6 spelling your last name and providing us with your
7 home address and telephone number, please?

8 A. Glen, G-L-E-N, Aaron, A-A-R-O-N, Poe, P-O-E. Home
9 telephone number, (b) (7)(C) . Address, (b) (7)(C)

10 (b) (7)(C)

11 Q. Okay. Mr. Poe, where are you currently employed?

12 A. I'm employed as an instructor at the National Mine
13 Academy.

14 Q. How long have you been with the Academy?

15 A. About 27 months.

16 Q. How long have you been with MSHA?

17 A. I was with MSHA --- I've been with MSHA two
18 different --- on two different terms, two different
19 times. Altogether, around five years.

20 Q. Okay. I understand that you were previously
21 employed by Performance Coal; is that correct?

22 A. That's correct.

23 Q. Was your employment with Performance Coal prior to
24 your time with MSHA or in between?

25 A. It was in between.

1 Q. So you apparently worked with MSHA before your
2 time at Performance Coal?

3 A. That's correct. To clarify, I was ---

4 Q. Please do.

5 A. --- with Massey for somewhere probably five years,
6 five, six years or something, all together. Long
7 story short, I started out with Nicholas Energy, with
8 is in Summersville, West Virginia. I was employed
9 with Marfork Coal for a few years, three or four
10 years. I left Marfork Coal and accepted a position
11 with the Mine Safety and Health Administration, in
12 their metal/non-metal division in Charlottesville,
13 Virginia. I spent about eight-and-a-half or nine
14 months there. And then I left there and returned back
15 to the coal industry in southern West Virginia, where
16 Massey was my employer once again, and that was as
17 safety director at Upper Big Branch at that time. And
18 I was roughly there just almost exactly one year, to
19 the best that I can recall. It seemed like I was
20 there somewhere January '05 until December '05. And
21 then I left there and moved to a different subsidiary,
22 still in Massey Energy, which was Progress Coal, and I
23 stayed there for just a few months, and I was offered
24 a position in District 4 with the Mine Safety and
25 Health Administration. I accepted that position and

1 started work once again for MSHA. That would have
2 been around April of 2006.

3 Q. Okay.

4 A. It was March or April of 2006.

5 Q. So all and all, five or six years at Massey, with
6 about a year at Performance, which you left Massey
7 sometime in early 2006; ---

8 A. That's correct.

9 Q. --- is that about right? Okay. Now, when you
10 worked at Performance, I think you indicated you were
11 the safety director. Can you give me sort of the
12 overview of what your responsibilities were?

13 A. Yes. During my time there, I actually was
14 considered the safety director/representative for
15 Performance Coal subsidiary and also what was known as
16 the Goals, G-O-A-L-S, Complex. And the whole scope of
17 my responsibilities was for the Upper Big Branch Mine.
18 I had responsibilities with the mine in the near
19 vicinity of Upper Big Branch known as River Fork. And
20 I had a load-out facility there on Performance's
21 property and a large area of overland belts, overland
22 conveyors. And then a few miles down, Route 3,
23 traveling back in the direction of Beckley, was the
24 Goals Complex, and there I had responsibilities for a
25 preparation plant, an underground tunnel mine and two

1 other underground deep mines.

2 Q. Okay.

3 A. And roughly, altogether, as far as mechanized
4 mining units, I had four or five there at UBB and then
5 I had six others.

6 Q. So pretty near a dozen ---

7 A. Yes.

8 Q. --- mining plus a couple of load-out and
9 preparation plants?

10 A. Yes.

11 Q. So they're a fairly substantial area of
12 responsibility, I guess; is that correct?

13 A. Yeah. It was --- just, you know, to inform you
14 there a little bit, I mean, it was very demanding as
15 far as that goes. I mean, you're --- long hours, long
16 days. You know, there's a lot to do when you're
17 talking about, you know, the State and Federal end of
18 that type of a position, training, contractor
19 training. You know, dust and noise surveys, they are
20 going around the clock, of course, pretty much,
21 especially the dust sampling, with you know, 10 or 11
22 MMUs. You're talking, you know, one guy there is
23 trying to keep up with 50 or 60 dust samples every
24 bi-monthly. Besides that, the River Fork Mine was a
25 new mine. And then the two deep mines I had at the

1 Goals Complex, one was Shumate Powellton. The other
2 one was Marsh Fork Eagle. The Marsh Fork Eagle was a
3 new mine, so I had staffing for both, trying to get
4 those two new mines staffed. There at the Goals
5 preparation plant, the silo project that, you know,
6 was --- has been somewhat controversial with the
7 school and everything in that area, if you guys know
8 anything about that. But you know, that was the year
9 that happened, so lots of contractor training. And I
10 just say that, you know, to kind of, you know, set the
11 stage for you folks. I mean, you know, I'll try to
12 help out as much as I can here, but I was running solo
13 for quite a while, and it's not something I enjoy
14 having to say but really my exposure to be able to
15 give a lot of attention to the underground mine at
16 upper Big Branch was very limited. And that's just by
17 the nature of all that I had going on and all the
18 other responsibilities I had.

19 I did, a few months into the year there, you know,
20 give or take, I can't recall exactly the course
21 because we're talking five years ago, but I did
22 eventually get a safety technician named Michael
23 Vaught. Michael Vaught, he was my safety technician.
24 He had maybe seven years underground mine experience
25 at that time, but he didn't have a safety background.

1 Q. What's the last name again?

2 A. V-A-U-G-H-T, Vaught.

3 Q. Vaught, okay.

4 A. He didn't have a safety background, so you know,
5 things to be able to, you know, assist in a safety
6 department, a couple certifications it's very
7 important to have is like a dust certification or a
8 trainer --- training certification for Part 48
9 training. And he didn't have those things, so at the
10 same token I had all this load going on and why things
11 were --- I was limited in visitation underground,
12 things of that nature, of course I'm trying to train
13 someone and get them trained and get them
14 certifications to be able to help me so we can expand,
15 you know, visitation and be more structured, more
16 organized and stay on top of things more. But that
17 was just --- that didn't progress well because he was
18 a --- he was a member. He had become a member of a
19 mine rescue team there in the company, so he was gone
20 a lot. You know, he had to travel, of course, with
21 practices, so on and so forth. So you know, just
22 trying to give you a good idea. I mean, it was a very
23 fast-paced job, of course. It was a very hectic year
24 and basically you went 10, 11, 12 hours day in, day
25 out, just you know, putting out fires as best you can,

1 trying to stay afloat, but at the same token it was
2 extreme, so ---.

3 Q. So for all practical purposes you were a staff of
4 one?

5 A. That's exactly right.

6 Q. And I suppose your reason for leaving Performance
7 is obvious?

8 A. Well, again, I was thinking --- you know, I had
9 some desire to get into the HR, human resource, side
10 of things, and there was a position that was looking
11 to come available, hopes of one coming available at
12 the Progress subsidiary. So you know, I had threw my
13 name in the hat, so to speak, for that and spoke up
14 about that throughout the year, as the year was
15 progressing there in 2005. So naturally, that come to
16 play there more towards the end of the year. So when
17 the opportunity came, I took it.

18 Q. Okay. Now, who did you actually report to at
19 Performance while you were there?

20 A. The president of the subsidiary at that time was
21 Bill --- I'm sure his first name was probably William,
22 but I knew him as Bill Potter, P-O-T-T-E-R.

23 Q. Okay. And what --- he was president?

24 A. Yes. He was president of Performance Coal, Pretty
25 much the same area of Performance and Goals.

1 Q. Okay.

2 A. He would have been the ---.

3 Q. Okay. Well, now, the other folks who were part of
4 the management structure for Performance and the UBB
5 Mine, who were they at the time?

6 A. Okay. There was not a VP at that time. The
7 superintendent of that particular mine, his name just
8 went --- his name just left me.

9 Q. Wendell ---?

10 A. That's right, Wendell Wills. He was the
11 superintendent of the mine. The mine foreman was
12 Dempsey Petry. I'm pretty sure I have that correct.
13 And there was another title there. He was referred to
14 as a block superintendent, which would have been for
15 your gate sections and things for your longwall setup,
16 and the gentleman there was Gary Calvert.

17 Q. Calvert?

18 A. I'm pretty sure it was --- that his last name was
19 spelled C-A-L-V-E-R-T.

20 Q. Okay.

21 A. The chief engineer at that time would have been
22 Mikey --- we called him Mikey, would have been Michael
23 Millen. And of course, you had multiple --- that's
24 the main players, so to speak. I guess you had
25 multiple shift foremen, section foremen, outby

1 foremen.

2 Q. Now, if we're correct, there was a --- there was a
3 longwall in operation at UBB at that time; is that
4 correct?

5 A. At that time, yes, throughout 2005. There was a
6 longwall operation there. Just referencing the map
7 here, I might remember ---.

8 Q. Please come on over.

9 A. Just trying to give you an idea here.

10 Q. Where were they mining?

11 A. It should have been in most of this area, which
12 would have been 19, Headgate 19.

13 Q. 2004, 2005?

14 A. Right, most of that area.

15 Q. Most of that area, 2005.

16 A. Then they came to Headgate 20 and mined that. And
17 then that's when we started moving around everywhere.
18 Yes, right here, we came up back to 11 and done some
19 mining there through September to November on Headgate
20 11.

21 ATTORNEY HAMPTON:

22 Just so that we're clear, you're pointing
23 to Headgate 11?

24 A. Yes.

25 ATTORNEY HAMPTON:

1 And we're looking at the map that's the
2 scale 1 to 500 big overview map of Upper Big Branch.

3 MR. FARLEY:

4 He also referred to Headgate 19, Headgate
5 20 and being mined in 2005.

6 A. And we jumped around here three or four places.
7 That's where they finished up. That's where they were
8 when I left.

9 BY MR. FARLEY:

10 Q. December 2005, Headgate 15. Now, what was the
11 reason for the jumping around?

12 A. It just ---.

13 Q. Because it appears, just from looking at the map
14 here, that you spent a very short period of time on
15 Headgate 15 with the longwall at the time. Is there
16 any explanation for that?

17 A. Well, they carried three.

18 Q. I'm sorry.

19 A. Yeah, they carried ---.

20 Q. Three months.

21 A. Yes.

22 Q. They moved there for three months?

23 A. Right. Well, basically, the best I can recall,
24 there were no further panels developed.

25 Q. And here we go and apparently they moved from ---

1 down to from 15 to 16 in 2006.

2 A. Yeah. I mean, I don't know, of course, where they
3 went from there. I could remember we moved like, you
4 know, three longwall moves during the course of that
5 year.

6 Q. Okay. So the longwall was still in place when you
7 left there?

8 A. Yes.

9 Q. Okay.

10 A. And I'll continue there a little bit just to ---
11 the plan was --- so as far as at UBB, yes, they had a
12 longwall and then we had a couple of continuous miner
13 sections that were mining. One was referred to as
14 LBB, Lower Big Branch, and then the other was what was
15 being referred to at that time as the North Mains
16 section. And the North Mains section was primarily
17 driving in the direction and in the area for the ---
18 what was --- what's referred to as the Glory Hole
19 project.

20 Q. Okay.

21 A. Yes. That should be --- yes, that's the --- that
22 should be the area right there. Yes, that's correct.
23 And you know, again, as the year was progressing and
24 especially there on the tail end of the year 2005
25 they're working on getting the Glory Hole project

1 through, which would be --- serve the purpose of
2 connecting for a means of coal transfer between --- it
3 was a mine that --- referred to, I'm pretty sure, as
4 the Logan's Fork Mine, which was located on the Elk
5 Run coal subsidiary's property. And again, the
6 question --- you know, they seemed to be moving
7 around. There was no further development of
8 panels, longwall panels, at the Upper Big Branch Mine,
9 and basically they're moving around, you know, I mean,
10 to buy them time. So I mean, you know, they're trying
11 to mine, mine what they can, of course, not just
12 buying time, but you know, they're trying to complete
13 that Glory Hole project. And so the mine more or less
14 on the latter end of 2005 is entering a transition for
15 the wall to leave UBB and go to the Logan's Fork Mine.
16 That's basically what you had probably the latter half
17 of the year 2005 was taking place.

18 Q. Okay.

19 A. So you know, and then after that --- I'm not for
20 sure how long they kept the wall there after I left at
21 the end of 2005 before they actually moved it to
22 Logan's Fork, but they did move it there. I know
23 that.

24 Q. Now, of course you were at Performance in 2005
25 primarily?

1 A. That's correct.

2 Q. Now, we understand that there were a couple of
3 events, first in July of 2003 and the other in
4 February of 2004, where there was apparently a methane
5 outburst of sorts from the floor on longwall panels.
6 Now, while you were employed there in 2005, did you
7 learn of those events?

8 A. Well, again, not proud to say that, but no, I did
9 not.

10 Q. Never knew about it?

11 A. No one ever informed me in any way about, you
12 know, problems that they had had in the past, any
13 studies or --- it was actually after while being
14 employed here at the Academy and after this explosion
15 occurred that folks explained to me about those
16 occurrences. And I have to say I was unaware that
17 they had occurred. To the best of my knowledge, I
18 don't recall that ever coming up or being brought to
19 my attention during the time I was there.

20 Q. Because I think one of those events would have
21 occurred on Headgate, with the other occurring on the
22 Headgate 17. So you never heard about them while you
23 were there?

24 A. I just don't recall ever being informed of that or
25 ever being any discussions about that, you know, that

1 I can recall. I mean, I just --- I do not remember
2 that.

3 Q. All right. Aside from those two events, did you
4 learn of any other similar events involving methane
5 outbursts or ignitions or fires or ---

6 A. No, I did not.

7 Q. --- anything of that nature?

8 A. No. And again, I mean, you know, I tried to think
9 back about, you know, the --- because I mean, I left
10 there. I didn't keep up with the mine.

11 Q. Sure.

12 A. I had no reason to. But I've tried to think back
13 since this thing has happened about that year that I
14 was there, you know, and that's all I can answer for.

15 Q. And certainly we're not here to imply that you
16 should have kept up with it.

17 A. I understand completely. And I'm not saying that
18 you're asking me that. No, I understand. But I'm
19 just saying, you know, just in the whole thing
20 occurring and stuff and the fact I was there, I think
21 back and try to think about particular problems or
22 what have you, and you know, you have friends or, you
23 know, people around you, coal workers of course that
24 ask you if they --- when they learn that you used to
25 work there or something. But I'm just saying, that

1 particular year, as far as methane goes, I don't know
2 of any violations we received that year regarding
3 methane. I mean, of course the mine was on a spot as
4 far as total liberation. I mean, I know the mine was
5 on a spot throughout the course of that year. But as
6 far as having excessive problems with methane or
7 receiving, you know, lots of violations for methane or
8 anything like that, I don't recall us having that type
9 of problem, you know, in 2005. And again, I don't
10 recall anybody discussing or talking about these
11 outbursts and these problems they had had prior to
12 that.

13 Q. So in 2005, in reference to the two outbursts in
14 '03 and '04, you had never heard of it?

15 A. I don't recall them ever coming up.

16 Q. That's fine.

17 A. Again, anything I say here today, because I
18 absolutely will do the best I can.

19 Q. Yeah.

20 A. If I'm wrong about something, I stand to be
21 corrected.

22 Q. Oh, sure. Again, we're just trying to gather some
23 information here and trying to understand it in the
24 context of what you knew at the time.

25 A. Yes, sir.

1 Q. And obviously you know a lot of things now that
2 you didn't know at the time. As part of your duties
3 as safety director, were you responsible for reporting
4 lost-time injuries?

5 A. Yes.

6 Q. Was that your decision alone when those decisions
7 had to be made or did you have any input from others?
8 Were others involved in that process?

9 A. Well, again, the president or mine management,
10 many people were involved as far as knowing that it
11 was being submitted or being filed a certain way or
12 what have you. But as far as the reporting, the
13 tracking of it, seeing that the regs --- time frames
14 with regulations was being complied with, so on and so
15 forth, that was usually the safety director's --- one
16 of the safety director's primary responsibilities.

17 Q. Okay. Now, obviously, reporting injuries would
18 have a direct impact on the mine's incidents rate.

19 Q. Absolutely.

20 Q. At any time while you were safety director did
21 anyone attempt to influence you in your approach to
22 reporting injuries in the hopes that the company might
23 have a better incidents rate?

24 A. No. That never did occur that I recall, but you
25 know, I would say --- and if you'd ask folks about me

1 or whatever, anyone that's worked with me in the past,
2 it wouldn't have happened anyway.

3 Q. Well, again, that's certainly not ---

4 A. I would have either reported it or I would have
5 left.

6 Q. --- an example to impugn your integrity in any
7 way. But I think during the current investigation we
8 do have some instances of injuries not being reported.

9 A. And sir, I will explain to you that just like
10 throughout the --- it was like up until, you know, the
11 best I can recall here, probably up until like August,
12 until like August of that particular year we had like
13 maybe a couple of LTAs. But then all this, for
14 whatever reason --- like I said, the mine is entering
15 that transition mode. You know, I'm just giving you
16 some background. But we started having just all types
17 of injuries, you know, just material handling, you
18 know, back strains, you know, leg injuries, I mean,
19 sprain/strain type injuries, twisted knees, ankles,
20 you know, maybe laceration-type injuries, what have
21 you. And so August --- you know, I'm just giving you
22 an idea about the accuracy of the reporting. I
23 probably had eight lost times that spiked up in just
24 the month of August, and every one was reported. To
25 the best of my knowledge, there was not one of them

1 that I didn't report.

2 Q. Was it a practice at the time to offer light duty
3 to persons who had been injured?

4 A. Not at that time. At one time in the company ---
5 you know, like I told you there I worked at Nicholas
6 energy, Marfork, a couple different places, the use of
7 light duty or restricted duty was something that the
8 company, again, just like most companies, you know,
9 it's --- not that it's not permitted, it's just you
10 still have to report it. You just report it as
11 restricted duty or whatever instead of lost time. But
12 at that particular time, the company had taken an
13 approach with the company policy that there was not
14 any light duty available.

15 Q. Okay.

16 A. That if a person, you know, had an injury and they
17 could not return to full duty, then they just had to
18 be off and an LTA had to be filed, and then they could
19 return whenever they could --- you know, their doctor
20 released them and they could come back full duty.

21 Q. Okay.

22 A. That was the policy that the company took at that
23 time.

24 Q. Sure. From what we hear, that policy may have
25 changed later on.

1 A. You know, I can say to you, just as far as, you
2 know, us discussing accident reporting, you know, just
3 --- and you know, the State regs, which you're well
4 aware of, I know, go pretty much hand in hand as far
5 as ---

6 Q. Give or take.

7 A. --- reporting definitions. Yeah, give or take for
8 the most part. And you know, MSHA puts out a public
9 document found on msha.gov that's also referred to as
10 Part 50 Yellow Jacket, and it's a question/answer type
11 document that MSHA puts out regarding Part 50 and the
12 regulations and just reporting of accidents, man
13 hours, production, so on and so forth. And you know,
14 at that time, the safety directors within the company,
15 we had that particular handbook or that particular
16 guidance tool. And again, I can only speak for myself
17 that as far as between the State regs, CFR 30 Part 50
18 and then that guidance tool to go along with Part 50,
19 I reported it absolutely as close to the letter as I
20 possibly could. I mean, if I have an error, it's an
21 innocent error, and I communicated to mine management
22 and whoever else that that's simply how it would be.

23 Q. Okay. All right. Now, before I turn it over to
24 Keith, obviously you've been away from Performance
25 Coal and UBB for a long while, five years.

1 A. Yes.

2 Q. In retrospect, is there anything you can look back
3 on that you maybe you didn't catch at the time or
4 something --- was there anything that you can look
5 back on and point a finger to and --- that somehow
6 leads us to where we are now?

7 A. I can't really say at that time as far as this
8 particular coal mine in question. Like I said, and
9 I'm not saying it's to my credit, of course. I'm not
10 saying that at all. Like, I mean, again, my time as
11 far as getting to the mine underground was very
12 limited throughout the entire year I was there. I
13 tried to keep up with it the best I could. But for
14 whatever reasons, okay, the mine that particular year,
15 as far as total violation count, as far as the
16 seriousness of the violations, as far as really
17 serious LTAs, I mean, we had one or two, but I'm just
18 saying for the most part I think that particular year
19 compared to some others, the mine operated pretty ---
20 as far as the health and safety program, it done fair,
21 not that there sure wasn't, you know, room for
22 improvement, but you know, again, under the
23 circumstances, with all that was going on there and
24 --- it was very hectic, again, several longwall moves
25 taking place. And anybody with longwall experience,

1 you know how that is. I mean, those are hectic times.
2 There's a lot going on at a mine when they're trying
3 to move, you know, a shearer and 176 shields and
4 you're trying to set all this --- move this equipment
5 and set it up. I mean, risk level for injuries to
6 happen is extreme under those circumstances, in that
7 situation.

8 Q. Sure.

9 A. And so I can't really say --- I can't really say
10 anything there at all. I mean, for the course of that
11 year, the mine actually was doing fair.

12 Q. Okay.

13 A. Like I said, and like with methane, you know, like
14 major methane problems or anything like that or
15 getting a lot of methane violations, I mean, we
16 didn't. You know, the mine was on a spot, so
17 naturally we were visited quite often. I'm just
18 saying the performance of the mine, you know, the
19 geology, what have you, mine conditions, seemed to be
20 fair throughout the course of that year.

21 Q. Well, thank you. I don't think I have anything
22 else.

23 MR. FARLEY:

24 Keith, do you have anything?

25 EXAMINATION

1 BY MR. MCELROY:

2 Q. Glen, would you have the opportunity to go on a
3 section any during the year you were there? At UBB, I
4 mean.

5 A. Very few times. I mean, I will say that I know I
6 visited the section a time or two. I was probably on
7 the wall maybe a time or two. But when you're talking
8 about the course of a year, that's all I'm trying to
9 communicate, very few times that I got to travel
10 underground there.

11 Q. Did you ever have to address any kind of situation
12 or condition while you was in the mines while you was
13 at UBB?

14 A. No. I mean, not that I recall. Nothing I can
15 recall in particular. I mean, like I say, when it got
16 towards the latter part of summer in that year, I just
17 credit it mostly towards the transition and all that
18 was going on. Too, you've got a mine that's been open
19 since 1994. You got folks that's been employed there
20 since 1994. And this mines is getting ready to
21 undergo this huge transition. You know, the primary
22 focus that this mine has had is to be a high-producing
23 longwall operation, of course. See, that's getting
24 ready to change, so there's a lot of rumor and talk,
25 of course, you know how that is with companies, you

1 know, could be X amount of people maybe laid off or
2 this or that during that transition or people moved
3 around, maybe having to go places, drive further
4 distances away from home. So I can't say there wasn't
5 like some morale stuff is what I'm saying. And that
6 became difficult --- a little difficult. And I kind
7 of credit it to that, to an extent. I'm just saying
8 that's a factor, I think.

9 So I was going out to the mine. I was having
10 safety meetings, you know. And again, we had this ---
11 some of them small, but we just started experiencing
12 several LTAs and was just trying to communicate.
13 You're trying to keep people's morale up, spirits up,
14 and doing the best you can. As far as anything like
15 particular that stuck out about the mine that --- you
16 know, that I felt was causing that or, you know, the
17 result of that, I can't really say. We had a few
18 times that year, can't remember exactly, may have been
19 three, may have been four, but we had a few times that
20 year that we were out of compliance with dust. But
21 again, you know, we're cutting the wall. In most
22 places --- some of those lower panels there and in the
23 miners sections as well, you know, we're probably
24 cutting, you know, two foot of rock.
25 So you know, we had some quartz issues and things

1 like that going on that I tried, you know, to stay on
2 top of somewhat, you know, just to --- the engineering
3 group done all the plans and revisions and all that
4 stuff, of course. I didn't really deal with any of
5 that part of it, but ---. That's just the best answer
6 I can give you. I mean, there's nothing major that I
7 was having to battle.

8 Q. As safety director, if you encountered a safety
9 issue, would you have the authority to address it? Do
10 you feel like you could address it on the spot?

11 A. Yes. Yes, I do. And I'll tell you why. Well,
12 I'll just give you an example. I had an issue once
13 where I went up on --- this is at a totally different
14 mine, okay, so --- I'm just using it as an example.
15 And this did not happen often or anything like that.
16 But as far as me or safety people in the company
17 having authority, I visited a mine one time and just
18 simply where the miner was operating the ventilation
19 was not adequate to that place. And the
20 superintendent of that mine --- I don't know if he was
21 in the outby areas of that mine at the time or if he
22 was outside, but anyway, as far as that goes, I shut
23 the section down right there, just shut it down, made
24 them ventilate the place and made them take care of it
25 until they --- before they moved forward.

1 Q. Was that an isolated incident?

2 A. Yeah. It just --- it was just a, like I said,
3 totally different mine, just a place that I was
4 visiting, just making a few checks and came across the
5 section and there it was and --- but in answering your
6 question there, I would not have hesitated to make
7 that move, or I wouldn't have felt I was endangering
8 my job or anything to make that move. But of course,
9 you know, I can't help but say, you know, it just ---
10 I guess it depends on the type of --- your personal
11 character and the way you are about your everyday
12 life. And all I mean by that is, is if I would have
13 took that position and then been reprimanded or
14 whatever for that, I probably would have left. It's
15 just that simple.

16 Q. When you were in UBB, did you notice anything that
17 didn't look good to you, looked bad, just okay? Do
18 you remember anything about the overall appearance of
19 UBB?

20 A. You know, again, I have to say, for the most part,
21 I mean, things --- the mine management at that time
22 and to my understanding, I don't know when because I
23 haven't kept up with any of these folks or whatever.
24 It's just during the time I was working over in the
25 district I --- you know, you hear about things, of

1 course. And I had heard that all those mine
2 management people had left as well. But --- so I'm
3 saying, speaking back to those folks, you know, like
4 Wendell Wills and Gary Calvert and you know, people
5 like that, rock dusting seemed to stay up pretty good
6 in the mine. You know, the track seemed to stay up
7 with the sections and ballasts and the track and belt
8 entry, you know, rock dusted pretty good for the most
9 part. I mean, I'm not saying it was white as snow all
10 the time, but you know, again, I just --- they seemed
11 to do a pretty good job, okay, for the amount of time
12 I got to visit the mine. I'm just saying when I
13 traveled in there, it seemed to be that things were
14 being maintained in a fair perspective.

15 Q. Have any of those people you worked with at UBB,
16 have they contacted you since the explosion? Have you
17 talked to anybody that you worked with?

18 A. No.

19 Q. Not talked to anyone?

20 A. No. The only contact --- I mean --- no. The only
21 contact I've had is helping out with some of the
22 scribe work with the investigation team members. And
23 to clarify that as well, from the time I left that
24 mine --- or that subsidiary in the end of 2005, I had
25 no contact with that mine, period, until I went to do

1 the scribe work with the investigation team. So even
2 the little over two years I worked out of Mount Hope,
3 I never had an assignment at that mine. No
4 assignments.

5 Q. Do you know the person you replaced at UBB?

6 A. George Nelson.

7 Q. Do you know the reason for his leaving?

8 A. I do not. I know he's with, you know, the
9 Administration. You know, he left and went with the
10 Administration at that time, and I know he's
11 employed --- unless he's moved here recently, he was
12 --- he's been employed at the Mount Carbon MSHA
13 office, but I do not know why he would have left the
14 company at that time. He was already gone, of course.
15 He had already --- so in other words, there was a
16 certain period of time, I don't know, give or take a
17 month, six weeks, but there was a period of time there
18 that they were without a safety person because he had
19 left and went to MSHA. And then it went a little
20 ways, and then I left MSHA and took the position. So
21 as far as me and him crossing paths during that
22 transition, we did not.

23 Q. Just a couple questions. Did any of the miners
24 that worked ever come to you with a concern, come back
25 to your office or say anything to you while you were

1 at the mines?

2 A. Not that I can recall, as far as a major health
3 and safety concern. No, not that I can recall.

4 Q. One final question. Did you leave under good
5 terms with Massey?

6 A. I think so. I mean, yeah, it was the second time
7 I left them to go to the Agency, and you know, I got
8 referred to, I think --- which I took it as a joke. I
9 don't care. I don't get caught up in that. I got
10 referred to as a yo-yo, that I couldn't make my mind
11 up. But other than that, no, I think I left on good
12 terms. I mean, I'll simply say this. I turned in a
13 two-week notice, and they accepted it, and when I left
14 I --- or during that two weeks and up until the day
15 that I left, I had no hostility from anyone.

16 MR. MCELROY:

17 That's all I've got.

18 ATTORNEY HAMPTON:

19 I have just a couple questions.

20 EXAMINATION

21 BY ATTORNEY HAMPTON:

22 Q. In following up what Keith was asking you, do you
23 know who replaced you as safety director when you left
24 Performance?

25 A. Michael Vaught.

1 Q. Okay. So Mike. And he was the one who he had
2 been brought in as a technician to assist you?

3 A. That's right.

4 Q. And so then he moved into your old position?

5 A. That's right. And I just know that because I was
6 still with the company for a few months and, you know,
7 the transition of paperwork, when people get awarded
8 positions, you know, just like we do at MSHA, it gets
9 announced or whatever, this and that, so ---.

10 Q. Okay. You told us that there was a spike in
11 injuries around August of 2005?

12 A. The best I can recall, it was the month of August
13 when, I don't know, it just ---.

14 Q. Would that spoke have been related to one of the
15 longwall moves?

16 A. I can't remember for sure. We can look on that
17 map to see where we were at in August 2005, and that
18 simply tells you if we were at a move or not. I don't
19 think so, but we may have been. August 2005.

20 MR. FARLEY:

21 Here's the longwall.

22 ATTORNEY HAMPTON:

23 It looks like they were finishing up a
24 panel.

25 A. So it may have been in that area in that time

1 frame. I mean, I would have to go back and look at
2 all the individual reports. Of course, there should
3 be language there that I would have stipulated
4 something regarding, you know, on the longwall section
5 or longwall outby crew or, you know, longwall set-up
6 crew, you know, or something, maybe in language that
7 you could tell from the reports, but ---.

8 MR. FARLEY:

9 From the looks of the map, you moved from
10 here to here.

11 A. Right.

12 ATTORNEY HAMPTON:

13 And that's what? What's the number down
14 there?

15 MR. FARLEY:

16 This is Headgate 20 to Headgate 11. That
17 would be a pretty considerable move, wouldn't it?

18 A. Yes, it would.

19 ATTORNEY HAMPTON:

20 That was from August to September in
21 2005?

22 MR. FARLEY:

23 Yes.

24 ATTORNEY HAMPTON:

25 Okay.

1 A. And I can't remember, too --- and like I said and
2 I'll say, you know, again, I mean there's many reasons
3 a lot of times --- you folks are professionals and
4 you've dealt with this stuff, all of you, as far as
5 the years of mining experience you have yourself. I'm
6 just saying, you know, a lot of moving like that, and
7 again, that's a substantial move there, as Mr. Bentley
8 has pointed out there. And then there was a time that
9 --- and I can't remember where the setup was, where we
10 were going, that there was a time where we were making
11 --- ready to make a longwall move and the panel where
12 they wanted to move, something wasn't ready about it.
13 And I just can't remember exactly what that was, but
14 they ended up bringing all of the longwall equipment
15 to the outside. And then it was just in a matter of
16 maybe a couple weeks, if I recall this correctly, and
17 then they had to take it all back to set up. So I
18 mean, if you guys --- you guys are mining people. You
19 know that's a lot of extreme moving. And when you're
20 doing all that type of haulage, track haulage work and
21 moving shields around and all --- your stage loader
22 and everything that encompasses with a longwall, I
23 mean, naturally risk goes up.

24 BY ATTORNEY HAMPTON:

25 Q. How long would it take to move the longwall, if

1 you have any idea?

2 A. Generally, they move that move in somewhere
3 probably around a week.

4 Q. Okay. And obviously, there's a lot of production
5 coming out of the longwall, so they have a lot of
6 incentive to do it quickly?

7 A. Sure. And I think that exists at any longwall
8 operation.

9 Q. Did your duties as safety director change at all
10 when the longwall transition was happening or were you
11 told by anybody you need to implement any changes or
12 was there anything else that was done to ensure the
13 safety of the people moving ---?

14 A. Well, on my part, as the safety manager, I would
15 just try to make sure that we had some safety meetings
16 and things just prior to the move, you know, to try
17 to, you know, just make sure everybody, you know, had
18 clear thoughts, get everybody on the right page, that
19 you know, we wanted to make them --- you know, we had
20 this move to make and, of course, you know, you're ---
21 the management, everybody's working to make it and get
22 it set up to get back into coal as soon as they can.
23 But again, it was to make the move --- do a quality
24 job and to do it as safe as possible. And to be
25 successful, we needed to make the move with zero LTAs.

1 Now, again, that doesn't always work that way, but we
2 were constantly communicating that message constantly
3 through safety meetings and discussions with the
4 miners to try to get everybody on the same page, you
5 know, to stay focused regarding health and safety and
6 especially with track haulage and things, with moving
7 all this equipment. I mean, there was just a lot that
8 can take place there if you have people not on their
9 toes, people not communicating and not coordinating,
10 you know, to the utmost with people. There's just
11 situations there --- there's a lot happening, so
12 naturally the risk is increasing.

13 ATTORNEY HAMPTON:

14 Okay. That's all the questions I have.

15 EXAMINATION

16 BY MS. WEISE:

17 Q. Yes, I've got some questions for you. I want to
18 go back to the beginning. I'd like to know a little
19 bit about your educational background.

20 A. Okay. I was an underground coal miner myself for
21 about three-and-a-half years, to start with, and then
22 I did go to college, started college, working on a
23 Bachelor's degree in environmental health and safety.
24 And during probably about four months through the
25 latter part of spring and through the summer, I would

1 go back to the employer that I had and work
2 underground during those times, and then I would come
3 back to college at the start of the fall semester. So
4 as I went through college, I worked during the spring
5 and summers as an underground miner as well.

6 Q. What college did you attend?

7 A. I attended Mountain State University.

8 Q. And what coal mine were you working for while you
9 were attending Mountain State?

10 A. I was working for a company called Patton,
11 P-A-T-T-O-N, Incorporated. I'm originally from (b) (7)(C)
12 (b) (7)(C) so that's about two hours south
13 of here, and the operations were located there. They
14 were owned by an independent operator named Tracy
15 Hilton that is from the Raleigh County area.

16 Q. Did you complete --- did you earn your B.A.?

17 A. Yes. I earned a B.S. ---

18 Q. Oh, B.S. I'm sorry.

19 A. --- in environmental health and safety. And I'm
20 finishing my last course right now in a Master's of
21 Safety Technology at Marshall University.

22 Q. After you graduated, what was the first job that
23 you took after that?

24 A. It was safety technician at the Nicholas Energy
25 subsidiary, Massey Energy, Summersville area.

1 Q. Now, when you went to work for Performance Coal,
2 what were you told about any safety concerns or safety
3 issues that they had at the mine?

4 A. Not really anything. I mean, I just picked it up
5 and ---.

6 Q. What did they tell you you were going to be doing,
7 just at performance?

8 A. Well, being affiliated with the company, so of
9 course, I would be the safety manager there. I would
10 have responsibilities to communicate the State and
11 Federal regulations, company policies, you know, the
12 company's health and safety program, dust sampling,
13 noise surveys, training, contractor training, being a
14 part of the company's safety audit program, which you
15 know, again, would just be the audit, the internal
16 program of the company.

17 Q. Did they have the S-1 and P-2 program when you
18 were there?

19 A. Yes.

20 Q. And can you tell us about that? What does the S-1
21 stand for?

22 A. It stands for safety first.

23 Q. And P-2?

24 A. Production second.

25 Q. And then there's --- is it M-3?

1 A. M-3, measurement third. That mostly involves your
2 accounting people and your engineering departments and
3 stuff, with the budgeting of the miens, as far as the
4 measurement program.

5 Q. Were miners working at Performance provided with a
6 copy of the S-1 and P-2 manual?

7 A. I don't think so. I mean, I never did. I never
8 provided --- when I did new-hire training, of course,
9 and by our approved training plan and by the company
10 policies, whatever I reviewed and trained them on in
11 that training --- in completing that training program
12 they were provided. But as far as to say that every
13 single employee was provided their own personal copy
14 of the entire S-1 program or entire P-2 program or
15 what have you, I don't recall that.

16 Q. In looking, you know, in your experience, as
17 safety director and also your experience at MSHA, how
18 is Massey's --- or Performance Coal's safety program
19 any different than any other mine you've worked for
20 or ---?

21 A. Well, that's a little different, of course,
22 because just like with the --- as a coal miner,
23 companies I've worked for were very small, independent
24 again type operations and, you know, we had safety
25 meetings and, you know, communicated, you know, in

1 some fashion regarding health and safety. And you
2 know, people just --- miners or coworkers, you know,
3 you train with one another. You communicate with one
4 another. Folks looked out after one another. But
5 there really wasn't, per se, an official company
6 health and safety program, you know, where you knew
7 there was a written policy, you know, a written
8 process for a formalized health and safety program,
9 put it that way. So my time with Massey was really
10 the first company I had been employed with that had
11 such a program.

12 Q. Was it just the fact that they had the program
13 that made it unique or were there certain parts of the
14 program? Did they have different safety requirements
15 than other mines or ---?

16 A. Well, as far as comparing it to the mines I worked
17 with, you know, again, they required many things, you
18 know, in addition to State and Federal regulation.
19 And like I'm saying, the smaller, independent
20 companies I've worked for as a coal miner, as a
21 laborer, where those companies did not, of course. So
22 you know, just like, you know, mandatory requirements
23 for different types of PPE, personal protective
24 equipment, you know, whether it be reflective material
25 or safety glasses or metacarpal gloves, which is a

1 safety-type glove that has padding sewn into the top
2 of it, you know, to try to guard against hand
3 injuries, things like that, you know, again, in a
4 formalized safety program as they have, those types of
5 things, you know, are mandatory company policy
6 wherever you go in the company. And again, with
7 small, independent operators, you know, you don't
8 usually have --- you don't have a formalized program
9 such as that.

10 Q. What would happen if a worker was working in the
11 mine and didn't have one of those pieces of safety
12 equipment on or wasn't following the procedure?

13 A. What would happen?

14 Q. Yes.

15 A. Well, again, the company --- the S-1 program
16 included, a policy for safety infractions. And so
17 again, it just depends. I mean, it depends on the
18 severity of the infraction, of course. What I'm
19 saying is --- and you'll find this in most safety
20 programs. You go to other large coal companies, it's
21 pretty typical that they'll have like a verbal
22 warning, a written warning, then maybe it's, you know,
23 three days off, then maybe it's five days off, and
24 then there's discharge. But again, depending on the
25 severity of the infraction, you know, those levels

1 could be skipped, so ---.

2 Q. Did you ever have an occasion while you were
3 working there to discharge anyone for not following
4 safety procedures?

5 A. No.

6 Q. Did you have to call anybody in and ---? So you
7 never had that problem while you were working?

8 A. No. I mean, there was other places I worked at in
9 the company where people were disciplined for safety
10 infraction. I can't say at Performance, during that
11 year I was there, that I had any problems
12 particularly. I just can't recall right now if I had
13 any particular problems where I issued people any
14 written warnings or time off or what have you. But
15 say like at Marfork Coal, for example, when I was
16 there, there was occasions where people committing
17 safety infractions were disciplined.

18 Q. You mentioned --- when you were questioned about
19 the methane outbursts at UBB in 2003 and 2004 you
20 stated that no one had told you about those outbursts
21 when you went to work there as safety director.

22 A. Right.

23 Q. As safety director, isn't that something that you
24 would want to know?

25 A. It would be very important.

1 Q. Extremely important?

2 A. Extremely important.

3 Q. And that ---?

4 A. To me --- and again, I want to safeguard because
5 I'm just not --- I'm not the type of person that ---
6 you know, I'm not a pointy person, so I want to
7 safeguard. I take credit for what I do. And I want
8 to safeguard to say if someone informed me about that,
9 I stand to be corrected. But when --- after this
10 thing happened and people started talking about that,
11 I felt alarmed in a sense because I can't recall
12 having that knowledge that those things had existed.

13 Q. And that could have had an effect on what you
14 would have talked to the employees about in your
15 safety meetings?

16 A. Sure. I mean, sure, it would have created points
17 for discussion.

18 Q. You also stated that you were basically carrying
19 the entire safety program by yourself and then at some
20 point they did hire someone to work with you. Did you
21 ask for help? Did you ask Massey to hire someone to
22 work with you?

23 A. Yes, I did.

24 Q. And how long did it take for the company to
25 respond to your request?

1 A. I can't say absolutely for sure. I mean, it may
2 have been --- it may have been a few weeks or so or a
3 month, but at that time --- at that particular time,
4 Frank Foster was the corporate director for the
5 company. And he had been the corporate director for
6 some time at that time. And anyway, I just
7 communicated to him. In most operations they would
8 have like a safety director and a safety technician or
9 maybe two safety technicians. So I just communicated
10 to him.

11 And I think maybe in the past, and I can't say 100
12 percent, but I think maybe in the past some of the
13 other safety directors that had had that operation
14 primarily had UBB and Goals preparation plant, and I
15 think that was pretty much it. All right? So again,
16 I think they may have considered it --- you know, a
17 safety director primarily one person, but I still
18 think back, though --- I think those other guys that
19 had been there before me had safety technicians. But
20 I just remember I communicated to Frank Foster, I was
21 like, you know, I have UBB, I have the loadout, I have
22 the plant. Now I got to have these other three deep
23 mines as well, you know. If I --- you know, I either
24 get help or I drown quickly here. I mean, to me that
25 was a no-brainer. And of course, I'm just saying he

1 agreed with that, so he immediately --- I give him
2 credit there. He immediately tried to do what he
3 could to get somebody there as quick as possible.
4 Of course, that safety technician job, you know,
5 it --- you know, a lot of the occupations at the mines
6 paid better than what that safety technician's job
7 would pay. So of course, it's hard to draw somebody,
8 you know, in that regard to that position. Then
9 besides that, they're salary-exempt positions, so you
10 know, I mean, overtime is not a factor. And so, you
11 know, there's not a large pool of people out there in
12 the mining industry or --- I think it's gotten better,
13 but at one time there wasn't a large pool of people to
14 pull from for safety positions for mining companies.
15 As of the last three or four years, I think that's
16 improved a lot.

17 Q. Is Mr. Vaught --- is he still working as safety
18 director at Performance; do you know?

19 A. No. And again, I just know that from going down
20 there and helping out with the scribe work, that he's
21 no longer there at the company.

22 Q. Speaking of the scribe work, could you just
23 clarify for the record what the scribe work means?

24 A. When I'm saying scribe work, MSHA's accident
25 investigation team earlier this summer, summer of

1 2010, just called on some folks --- or the Agency, I
2 guess I should say, called on some folks to assist the
3 Mine Safety and Health accident investigation team in
4 the collecting of the evidence at UBB. And for a few
5 other instructors besides myself here at the Academy,
6 along with a couple of photographs here at the
7 Academy, that just entailed going to the mine,
8 traveling with the investigation team. You were not
9 part --- you're not formally a part of the team or,
10 you know, they're not looking for your input or
11 anything like that. You're just there. The photo
12 people are taking pictures, and the scribe people I'm
13 referring to as the tasks that I performed is just to
14 document what the picture is of. And then at the end
15 of the day your log was turned in to the accident
16 investigation team, and that was it.

17 Q. You were in the mine in 2005 and then had not been
18 back in the mine again until 2010. Obviously, there
19 had been an explosion, but did the mine seem --- the
20 condition of it otherwise seem different to you?

21 A. I can't say --- really in any particular I can't.
22 I mean, naturally the affected areas from the
23 explosion, I mean, that's --- it's obvious, being
24 there, seeing it, what has occurred. Naturally,
25 things are not where they should be at that time, you

1 know. As far as --- I mean, trying to answer your
2 question as best I can there, as far as traveling the
3 track entry, entering the mine, to the --- up to the
4 point it seemed similar to the way it was.

5 Q. What about the doors that they had in the mine,
6 were their doors --- there were several sets of doors.

7 A. Several sets of doors.

8 Q. And did you have that same --- did you have those
9 same types of doors?

10 A. Yeah. As far as I recall, in 2005, when I was
11 there, there was sets of doors involved that you had
12 to travel through on the track entry.

13 Q. As safety director, did you have any concerns
14 about the condition of those doors or the doors being
15 left open or damaged?

16 A. I did not. I mean, I never ran into, or like I
17 said, never had anything reported to me that I can
18 recall where folks were concerned and that it was a
19 problem.

20 Q. Did you have --- do you recall if you had any
21 violations in 2005 for ventilation issues?

22 A. Well, other than just we were out of compliance a
23 few times, which those violations, as far as with
24 MSHA, gets issued regarding dust compliance and you
25 have to make changes, is what I'm getting at. You

1 know, there are violations regarding Part 70 of the
2 CFR, but you know, they involve changes and revisions
3 to the ventilation plan or the methane dust control
4 portion of the vent plan, which comes under the
5 ventilation regulations.

6 Q. What measures did you take to control dust after
7 you received the violations?

8 A. The normal process would just be that usually the
9 engineering group handled the revising of the plan.
10 And that's because those plans involved sketches and
11 illustration documents that they use AutoCAD for. So
12 they were the primary people involved with the
13 revising of the plan. The safety director would
14 usually be involved with just, you know, sometimes
15 discussing with mine management maybe something about
16 the parameters or changes that needed to be made to
17 improve the plan, so on and so forth. But at that
18 time, again, I can't say that I have a whole lot of
19 input that was taking place the few times we were out
20 of compliance throughout the course of that year
21 because I was just in so many other directions, that
22 the engineer there at Performance --- and this
23 engineer I'm referring to is a staff engineer, and to
24 my understanding he's passed on now.

25 Q. Do you recall what engineering group was working

1 and helping to correct those violations in 2005?

2 A. Well, the --- it was --- Massey's engineering
3 group at that time for all of Route 3 were employed
4 there, where the Performance office was located. They
5 used to have an engineering group at Elk Run Coal, at
6 Marfork Coal and at Performance Coal, but then they
7 combined that group and they housed all of those
8 people at the Performance location. And again,
9 Michael Millen was the chief engineer over at Upper
10 Big Branch, and there was like a staff engineer that
11 worked under Michael. His name is George Levo. But
12 to my understanding, a year or two ago he had a heart
13 attack and passed on.

14 Q. Do you want to take a break for just a moment?
15 I'll look through --- I think I might be finished.

16 A. You're fine.

17 Q. I just want to look through my notes real quick.

18 ATTORNEY HAMPTON:

19 Let's go off the record for a minute.

20 OFF RECORD DISCUSSION

21 BY MS. WEISE:

22 Q. Yes, I have a couple more questions.

23 A. Okay.

24 Q. You testified earlier that you had only been
25 underground a few times at this particular mine.

1 Could you --- as far as you recall, could you explain
2 what you did while you were underground and where you
3 were underground?

4 A. I can't specifically recall where all I would have
5 traveled underground, but it would have just been to,
6 you know, just typically make a run through the mine,
7 you know, maybe walk a conveyor. You know, it could
8 have been no specific conveyor, just to hit a conveyor
9 or two, check out the general conditions there as far
10 as spillage or cleanup or what have you, go to a
11 section, you know, make a run across a section, see
12 how the conditions kind of look, see --- you know,
13 kind of step back and make some observations about how
14 the miners were working, communication, equipment,
15 just the functioning of the section, how it's
16 operating, their ventilation as far as their --- you
17 know, their line curtains and so on and so forth and
18 did there seem to be good air movement across the
19 section in the last open crosscut, if we're talking a
20 miner section.

21 So it's just a difference of things that you would
22 be walking there, looking for. You know, you're
23 listening for warning devices to be used, such as from
24 shuttle cars, you know, as they traveled back from the
25 miner to the feeder. And you know, go up to where a

1 bolter is bolting and just step back and observe to
2 see that the guys are keeping their hands off the
3 steel when they're, you know, rotating the steel
4 position, steel as they drill their holes, they
5 install the bolt, checking to see how they positioned
6 their drill station when they advance to a new roll,
7 do they have hearing protection in, you know, are they
8 wearing protective gloves, do they advance their
9 curtain as they install rolls of roof bolts, so just a
10 difference of things there, the miner operator,
11 where's his positioning, you know, is he traveling
12 back and forth through the red zones as he's operating
13 the miner in the place.

14 So just a lot of observations you do as a safety
15 manager just --- and then as you run into things, you
16 know, you stop people and, you know, discuss it with
17 them and, you know, you try to get them to understand
18 where, you know, they're maybe not making the right
19 choice, so on and so forth.

20 Q. Do you recall what type of rock dusting equipment
21 they were using in 2005?

22 A. No, not specifically. I mean, Massey ---. Massey
23 most often used track dusters as far as outby dusting
24 and they used what they called the super bags, where
25 they brought, you know, rock dust in large --- I don't

1 know how many pounds those bags are, but in bulk, in
2 other words. And then they used the dusters as far as
3 to dust the sections that you load into a scoop bucket
4 and you hook up to the hydraulics of the scoop to keep
5 the last open crosscut and all the faces rock dusted.

6 Q. Do you recall during your tenure there in 2005 how
7 many people would be assigned to do that, the rock
8 dusting, per shift?

9 A. Well, a lot --- their policy was they were
10 supposed to rock dust between shifts. So like at
11 shift change, between day and evening or whatever,
12 there would be someone, you know, a scoop operator,
13 that, of course, after the men removed themselves from
14 the faces and at least traveled, you know, so they
15 didn't breathe all the dust, of course, they would
16 travel outby the --- or to the power center, to the
17 dumping point area, somewhere there, and then a scoop
18 operator should have had a rock duster loaded and made
19 a run across the last open crosscut and the faces so
20 they would be dusted for --- maybe say to dust ---
21 when I say faces, I'm talking about areas that would
22 be supported, of course. You know, nothing left
23 unsupported. But all supported areas they would dust
24 in the last open line. And then they would travel
25 outby, and then that way the oncoming crew, you know,

1 the place would have fresh rock dust on the section.

2 Q. In 2005, did they have any issues at the mine, any
3 water issues, maybe entries being blocked with water?

4 A. Not that I know of. Nothing to my knowledge.

5 They had pumps in the mine. I mean, you know,
6 naturally, typical mining is going to involve pumps
7 here or there, no matter. I mean, longwall
8 operations, you know, usually have pumps. So I mean,
9 I know they had pumps. Any particular where, you
10 know, they were really battling some extreme water
11 problem, no, I have no knowledge of that.

12 Q. Would it be a safety concern --- would you
13 consider it, as safety director, a concern to have red
14 hats wading up to their necks in water almost on a
15 daily basis?

16 A. If that was taking place, I would not think that
17 would be the best decision a company could make.

18 Q. Would you be concerned with water blocking
19 entries, as safety director?

20 A. Sure.

21 Q. We've heard a lot of testimony during the last
22 several months about the fact that the miners were
23 given notice of inspectors when they arrived at the
24 mine. Did you ever talk to the miners about that when
25 you were safety director?

1 A. No. It never came up.

2 Q. So you never said that, you know, there's --- you
3 never discussed as to whether or not ---?

4 A. Never discussed it for any reason. I mean, not
5 that someone posed that question to me or not that I
6 communicated it to anyone. It just is something that
7 never came up.

8 Q. Were you aware while you were there that people
9 would --- the gate would call and let them know that
10 inspectors were on their way?

11 A. No.

12 MS. WEISE:

13 That's all they have right now.

14 A. And again, just a little clarification there, I
15 mean, the people at the gate, of course, were
16 security, and there was a security director at every
17 Massey operation as well, so those were considered his
18 people. You know, I mean, again, just out of my
19 knowledge, if they would have been doing something
20 like that, I never had it brought to me from a miner,
21 an inspector thinking that that was happening, you
22 know, that that was going on. I never had a State or
23 Federal inspector come to me and ask me about that
24 that I can recall, where they felt that, you know, our
25 security people were notifying the mine or anything

1 like that. It just never came up that I can recall.

2 RE-EXAMINATION

3 BY MR. FARLEY:

4 Q. Mr. Poe, I have one more.

5 A. Yes, sir.

6 Q. Let me establish this first. The West Virginia
7 State Mine Health and Safety Regulations, specifically
8 the West Virginia Code and the Administrative
9 Regulations, in each body of regulations there is a
10 prohibition against the major movement of mining
11 equipment or the tramping of major pieces of mining
12 equipment in any coal mine with miners working inby in
13 the same split of air, meaning --- and just to
14 encapsulate that, you know, if you want to take a
15 continuous miner from the surface to one of your
16 working sections, you can't just tram it up the track
17 or one of the side entries or load it on a flatcar and
18 take into the mine with people working inby in the
19 same split of air. You know, you just can't do that.
20 Now, those regulations have probably been in effect
21 probably at least 30 years. At the time you were
22 working at Upper --- for Performance Coal in 2005,
23 would the mine management people and the miners have
24 been familiar with those regulations? Would they have
25 understood the meaning of what I just described?

1 A. I think that as far as mine management that they
2 would know, be familiar with those regulations. As
3 far as individual miners being aware, I would doubt
4 that.

5 Q. Okay. But I'm just saying for --- if we're
6 talking about, you know, UBB, at the time I was there,
7 I'm saying that the mine management that was present
8 at the mine at that time I would feel would be very
9 aware of those regulations because they all were
10 highly experienced miners.

11 Q. Okay.

12 A. Each one of the individuals that I named at the
13 beginning of this interview, probably all were 20, 25
14 years experience or greater.

15 Q. All right. Now, would the State regulations
16 regarding the movement of equipment, would you have
17 been familiar with it yourself at the time?

18 A. At that time, yes, I was.

19 Q. Would they have been the subject of any type of
20 safety meeting, any type of annual retraining, any
21 other particularly supervisor training sessions?

22 A. I can't recall that off hand, no.

23 Q. Okay. All right.

24 A. I just can't recall a specific safety meeting or
25 something where that was the primary issue or what

1 have you. But again, I just can't help but think. I
2 mean, I'm aware of what you're saying. I'm familiar
3 with the regulations, you know, tramming a continuous
4 miner, you know, up an intake or something like that,
5 you got a crew up there that's producing on the
6 section, things of that nature, I'm just saying I'm
7 aware that those are absolutely violations. That is
8 not supposed to happen. It's not supposed to work in
9 that way. And I would have to say that the mine
10 management that was present at the mine at the time I
11 was there, I would have no reason to think --- no way
12 I can know 100 percent, of course, but I'm just saying
13 no reason for me to think that they would not be
14 familiar because, again, as you indicated, those
15 regulations have been that way for many years, so ---.
16 And those were veteran coal miners, so I think ---.

17 Q. I asked the question because I get a sense from
18 some of the interviews I've done that folks look at me
19 like I'm from another planet when I bring that up.

20 A. And let me say, too, you know, in that
21 transition --- because I don't know if this helps.
22 You know, I want to help as much as I can here, and
23 I'm just trying to say, I don't know what all has took
24 place there, of course. I don't know what types of
25 manpower issues they've had. You know, here the wall

1 left UBB and it went to Logan's Fork, and it operated
2 there for roughly two years, and then it returned,
3 okay. So it's --- but here's what we're looking at,
4 though. It's returning to a mine when at the time it
5 left the president is no longer there, the
6 superintendent is no longer there, the mine foreman is
7 no longer there, the block superintendent is no longer
8 there, the longwall coordinator, I don't think came
9 back, okay.

10 Safety people --- well, I left. Mike's there,
11 which you know, Mike was there when I was there, so
12 maybe not so much of a change maybe there. But I'm
13 just saying --- and then you --- at the time they made
14 that transition to Logan's Fork a lot of probably key
15 experienced people just in the general workforce may
16 have went to different Massey operations when all of
17 that was split up and busted up as far as the
18 workforce and sent different places. So you know,
19 they bring this wall back here now, and I --- because
20 these are just some thoughts of mine, and now you're
21 dealing with all different management. You know,
22 you're juggling workforce. And I can tell you several
23 of the fatalities involved in this situation were
24 friends of mine that were --- those friendships were
25 established while I was at Marfork, because they were

1 veterans to the Marfork subsidiary, not the
2 Performance Coal subsidiary, not that there should be
3 any difference there, but I'm just saying --- because
4 I was surprised when this thing happened, and I come
5 to know, you know, later on, when they started
6 releasing names and stuff, I was like, you know, that
7 guy was in Marfork, that guy was at Marfork, that
8 guy's was at Marfork, you know. But then, you know, I
9 learned how Chris Blanchard, you know, which was the
10 president of Marfork, you know, how he had also taken
11 the role as president of Performance. So I guess he's
12 using some of the workforce at Marfork to try to get
13 UBB back up and running in the transition with
14 bringing this wall back from Elk Run and things like
15 that. Do you see what I'm saying?

16 And so in all that transition and people not being
17 used to each other, I don't --- I mean, you know,
18 those things weigh in as factors, again, how you get
19 ciphered all out and what all has happened here. I
20 mean, I know you folks have done your best, I have no
21 reason to doubt that, all the investigation teams,
22 everybody involved here. But as far as, you know, ---
23 there's a lot of transitional change that's took place
24 there that naturally when you look at a safety
25 culture, when you look at, you know, people that's

1 used to working around certain people, this or that,
2 those things weigh in as factors. You know, they just
3 do, folks. I mean, you look all back through history,
4 you're going to find they weigh in as factors. And
5 you know, mine management and who is there now as
6 management and their approach --- just like with these
7 outbursts, their knowledge of these outbursts, I don't
8 know maybe what you folks have come across in
9 interviewing some of those folks. But you got mine
10 management people that's maybe there now that wasn't
11 there all those years where maybe, you know, that they
12 had these outbursts, so on and so forth. So what was
13 their knowledge of all that problem? I mean, I think
14 we have to say we definitely --- you know, there's
15 gaps in communication, you know, most likely. You
16 know, where those gaps are, like I said, I have no way
17 for me to know. But I know a major transition like
18 that plays --- can have a large impact on life.
19 That's all I'm trying to say.

20 Q. Thank you.

21 RE-EXAMINATION

22 BY MR. MCELROY:

23 Q. One quick question. With the number of MMUs and
24 the facilities that you have compared to the number of
25 people you had, which was you, did you ever feel that

1 there was --- that it was kind of intentional or did
2 it not keep you away? It definitely restricted you
3 from visiting the mines.

4 A. Right. I understand your question. I just can't
5 --- I can't say --- I can say --- what I can say is
6 that I was never --- I was never --- it was never
7 communicated, just outright communicated is what I'm
8 trying to say. I was never pressured not to go here,
9 not to go there or not to do this or not to do that.
10 It's just simply under that type of workload, you can
11 only do --- you can only be in so many places at one
12 time. That's just the bottom line. Now, do I feel
13 that that was by design, well, I just can't say that.
14 I mean, I have no reason to say that. I just know
15 that that's the way it was.

16 MR. MCELROY:

17 Thanks.

18 MS. WEISE:

19 I'd like to follow up on that, though.

20 RE-EXAMINATION

21 BY MS. WEISE:

22 Q. But at other mines where you've worked, in other
23 mines, you stated earlier, though, that not only was
24 there a safety director but there was at least one
25 technician to assist the safety director; isn't that

1 correct?

2 A. Correct. Most often, that's correct.

3 Q. So mines where safety is important, where safety
4 is first, you would think that they would have more
5 than just one person running the safety program there
6 along with other facilities as well?

7 A. I agree with that. But again, as I stated
8 earlier, I can't say that --- you know, I just --- I
9 know when I communicated it to Frank Foster that I had
10 to have some help here and I explained to him all that
11 was on my agenda, all that was on my, you know, list
12 of things I needed to do and just all the different
13 tasks I was having to deal with, I think that he made
14 an effort to try to get somebody there. It's just
15 that you didn't have a large pool of --- you didn't
16 have --- there was not a large pool of experienced
17 safety people in the area. I mean, that's the best
18 way I can answer that.

19 I can't say that he was just neglecting or
20 anything like that or did not understand my position.
21 I just --- I don't know that, you know, there was that
22 --- you know, a lot of times you see positions --- and
23 I'm just saying across different companies. A lot of
24 times you see safety positions advertised by companies
25 and you see them advertised a few different times.

1 It's not like you just run an ad in the paper for a
2 safety director, and bam, they're jumping out at you
3 everywhere, you know, and they have --- and not, you
4 know, again that they're just jumping out at you, but
5 they are people that, you know, you would consider
6 qualified to be able to handle that type of position.
7 I think that got better in the last few years. I
8 mean, I think there are more people that's getting
9 educations in health and safety-type degrees, and
10 again, experienced mining people that are combining
11 education and difference of things like that and
12 taking on some of these roles, but I don't know that
13 there's an influx of people there that's just waiting.

14 Q. One last question. Were you aware of what the
15 reporting requirements were as far as production was
16 concerned on the longwall in 2005?

17 A. Reporting as?

18 Q. Reporting how much coal was being produced, what
19 was going on on the longwall. We've heard testimony
20 that they were required to report so many times a day,
21 at a certain time of the day, to let them know how
22 production was going on on the longwall.

23 A. I don't know the specifics in those regards. But
24 as far as them being required --- you know, the miner
25 sections, longwalls, any producing unit, surface mine,

1 it doesn't matter, there's, you know, so many ---
2 there's, you know, so many times per day, whatever,
3 that communication is being established regarding, you
4 know, how their day is going, you know, how the
5 performance is.

6 Q. What were the communication systems?

7 A. Well, like I'm saying, I don't know for sure, but
8 I mean, I know there's communication, you know. I
9 think that's basically --- what I'm trying to say is I
10 think that's basically present in about any large
11 mining company, put it that way. We're talking Arch
12 Minerals, Consolidation, Alpha, Peabody, those
13 companies all have systems because they track their
14 numbers --- they progressively track their numbers
15 shift by shift, day by day, you know, month by month.
16 I mean, it's just the way it's done. I mean, they all
17 have means, systems of periodically throughout a shift
18 or day that, you know, downtime or, you know, how well
19 productions are running or what have you are reported
20 from underground, outside, for example, or reported on
21 the surface mine from Pitt or whatever to central
22 office somewhere. And those numbers, of course, you
23 know, are getting --- making their way back to
24 accounting people, engineering people, that ---.

25 Q. The president of the company?

1 A. I'm sure probably the president of the company. I
2 mean, --- but again, I think that would exist ---
3 that's just part of management. If you wouldn't be
4 doing those things, I think you'd have to refer to
5 that as poor management.

6 Q. Do you know Chris Blanchard?

7 A. I've worked around Chris Blanchard some. To just
8 personally know him, no. I mean, other than --- to
9 know him off the job, no. Just to know him as an
10 employee of Massey Energy. I have worked around him
11 some.

12 Q. Did you ---?

13 A. I never worked for him, no. I have worked around
14 him. At the time --- and specifically at the time I
15 was at Nicholas Energy, he was as member of the
16 engineering department there. So the engineering
17 department was right across the hallway from the
18 safety department, so I got to know him a little bit
19 there. Now, I know he --- you know, he went through
20 the ranks in the company, of course. He came out of
21 engineering and went into production, you know. I
22 think he maybe has a degree from Virginia Tech or
23 somewhere, maybe an MBA or something like that, but he
24 worked his way through the ranks in a production
25 setting and then landed as the president. He may have

1 been a VP or somewhere else in the company prior to
2 becoming the president of Marfork Coal. And then I
3 think that was his --- I'm just trying to recall.
4 That was all going on, you know, at the time ---
5 through 2005 there.

6 I think he --- the president of Marfork was Johnny
7 Jones. And Johnny got removed --- transferred from
8 Marfork and moved somewhere else, to a different
9 subsidiary, and then that's when Chris came on the
10 scene as president of Marfork Coal. And then
11 somewhere me leaving the company and them taking the
12 wall to Logan's Fork and then bringing the wall back,
13 prior to this explosion, Chris, somewhere in that two-
14 year period, then took on also the role as president
15 of Performance Coal, along with president of Marfork
16 Coal. That's the best I understand.

17 Q. So you never worked for him?

18 A. No.

19 MS. WEISE:

20 That's all the questions I have.

21 MR. MCELROY:

22 That's all.

23 ATTORNEY HAMPTON:

24 Okay. On behalf of MSHA and the Office

25 of Miners' Health, Safety and Training, we'd like to

1 thank you for answering our questions today. Your
2 cooperation is very important to the investigation as
3 we work to determine the cause of the accident. We do
4 request that you not discuss your testimony today with
5 any person other than if you were to have a personal
6 representative.

7 After questioning other witnesses, we
8 might have some follow-up questions for you, so we'll
9 let you know if at any point we'd like you to come in
10 so we can ask you a few more questions. And also, as
11 I mentioned earlier, if you have anything else that
12 you would like to share with the teams, feel free to
13 contact us and let us know any other things that you
14 can think about that you maybe wished you would have
15 said today. So now, at this point, if there's any
16 other thing that you would like to say or any
17 statement you'd like to make or any answer you've
18 given that you'd like to clarify, you may do so now.
19 A. No, ma'am. I appreciate it. And you folks have
20 been very professional, and I thank each one of you
21 for that. I'm just here to do whatever I can do, my
22 part as an instructor at this Academy, to better the
23 health and safety of miners. That's what we all have
24 to be focused on. I know you guys agree with that.
25 But I can't help but want to say that. We got to keep

1 our main focus there.

2 ATTORNEY HAMPTON:

3 Okay. Thank you very much.

4 * * * * *

5 STATEMENT UNDER OATH CONCLUDED AT 2:44 P.M.

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CERTIFICATE

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



Alison Salyards

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