

APPEARANCES

1
2 **OFFICE OF MINERS' HEALTH, SAFETY & TRAINING**
3 **Barry L. Koerber, Assistant Attorney General**
4 **1615 Washington Street, East**
5 **Charleston, WV 25311-2126**
6 **(304) 558-1425**

7 **OFFICE OF MINERS' HEALTH, SAFETY & TRAINING**
8 **Terry Farley, Health & Safety Administrator**
9 **1615 Washington Street, East**
10 **Charleston, WV 25311-2126**
11 **(304) 558-1425**

12 **OFFICE OF MINERS' HEALTH, SAFETY & TRAINING**
13 **John O'Brien**
14 **1615 Washington Street, East**
15 **Charleston, WV 25311-2126**
16 **(304) 558-1425**

17 **U.S. DEPARTMENT OF LABOR**
18 **Office of the Regional Solicitor**
19 **Robert Wilson, Esquire**
20 **1100 Wilson Blvd.**
21 **22nd Floor West**
22 **Arlington, VA 22209-2247**
23 **(202) 693-9389**

24 **WHEELING JESUIT UNIVERSITY**
25 **J. Davitt McAteer, Esquire**
26 **316 Washington Ave.**
27 **Wheeling, WV 26003**
28 **(304) 243-2513**

29 **ALLEN, GUTHRIE, McHUGH & THOMAS, PLLC**
30 **Eric Silkwood, Esquire**
31 **Laidley Towers, Suite 800**
32 **500 Lee Street**
33 **Charleston, WV 25301**
34 **(304) 345-7250**

35 **Also Appearing: Eric Sherer and Patrick**
36 **McGinley**

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1 MR. KOERBER: Let's go on the
2 record.

3 My name is Barry Koerber. I'm
4 the Assistant Attorney General for the
5 State of West Virginia, and I represent
6 the Office of Miners' Health Safety &
7 Training.

8 Today is October 20th, 2010.

9 To my left are two members of the
10 state accident investigation team. I'd
11 ask that they identify themselves at this
12 point in time.

13 MR. FARLEY: I'm Terry Farley
14 with the West Virginia Office of Miners'
15 Health Safety & Training.

16 MR. O'BRIEN: I'm John O'Brien
17 with the West Virginia Office of Miners'
18 Health Safety & Training.

19 MR. KOERBER: Also participating
20 in the interviews today are members of the
21 MSHA Accident Investigation Team, as well
22 as the Governor's Independent Accident
23 Investigation Team, and I would ask that
24 those individuals identify themselves and

1 who they are with.

2 MR. SHERER: I'm Eric Sherer with
3 MSHA.

4 MR. WILSON: Mr. Ferrell, I'm Bob
5 Wilson. I'm with the Office of the
6 Solicitor, United States Department of
7 Labor, and I'm representing MSHA in this
8 matter.

9 MR. MCGINLEY: I'm Patrick
10 McGinley. I'm with the Governor's
11 Independent Investigation Panel.

12 MR. KOERBER: Mr. Ferrell, I'd
13 like for you to state your name for the
14 record, if you would.

15 THE WITNESS: My name is Michael
16 Allen Ferrell.

17 MR. KOERBER: Will you swear in
18 the witness, please. We're going to do
19 this in a little different order.

20 MICHAEL FERRELL, WITNESS, SWORN

21 MR. KOERBER: Mr. Ferrell, when
22 were you last employed at Upper Big Branch
23 Mine?

24 THE WITNESS: I'm going to say it

1 was probably the second week of February.

2 MR. KOERBER: Of what?

3 THE WITNESS: Of this year.

4 MR. KOERBER: Were you employed
5 at Massey -- were you employed by any
6 Massey operation on April 5th, 2010?

7 THE WITNESS: No.

8 MR. KOERBER: What was your job
9 title at Upper Big Branch on the last day
10 you worked there?

11 THE WITNESS: I was a belt
12 construction foreman.

13 MR. KOERBER: For any particular
14 part of the mine?

15 THE WITNESS: For any part of the
16 mine, really.

17 MR. KOERBER: There is another
18 attorney at the table that I would like
19 him to identify himself, his firm, and who
20 he represents.

21 MR. SILKWOOD: Eric Silkwood from
22 Allen Guthrie & Thomas, and I'm here on
23 behalf of Performance Coal Company.

24 MR. KOERBER: Based on prior

1 practices of this panel, individuals who
2 are former employees prior to the date of
3 the explosion have, we have excluded
4 Performance Coal attorneys. If you have
5 any objection --

6 And I'm going to ask you to be
7 excluded from this interview. If you have
8 any objection you would like to make for
9 the record, I would ask that you make it
10 now.

11 MR. SILKWOOD: Yeah. I'll just
12 briefly state the same objection that I
13 stated last time in our letter that we
14 laid out that his position as a foreman at
15 Performance, regardless of the time frame,
16 pursuant to, I guess, state regs and MSHA
17 regs makes his conduct imputable to
18 Performance and gives us the right to sit
19 in on that interview, but those
20 discussions have been had off the record
21 and we've agreed to put our objection on
22 the record and leave, so ...

23 MR. KOERBER: Well, thank you.

24 We'll go off the record for just

1 a second.

2 (Off-the-record discussion.)

3 MR. KOERBER: Mr. Ferrell, would
4 you please state your address and
5 telephone number for the record as
6 well?

7 THE WITNESS: My physical address
8 or my mailing address?

9 MR. KOERBER: Both, if you would,
10 sir.

11 THE WITNESS: My mailing address
12 is (b) (7)(C)

13 (b) (7)(C)

14 And my physical street address is
15 (b) (7)(C)

16 (b) (7)(C) .

17 MR. KOERBER: And we swore him
18 in; correct?

19 Mr. Ferrell, we have a court
20 reporter here that will be transcribing
21 everything that's taken down.

22 With the agreement that the State
23 of West Virginia has with the court
24 reporter agency, there is a three-day

1 turnaround on the transcripts, which means
2 today being Wednesday, come next Tuesday
3 this transcript should be done.

4 There is the ability for anybody
5 who so chooses to contact the court
6 reporter on Tuesday or any day thereafter
7 for a reasonable period of time, if they
8 would like to read and make any
9 corrections that they believe is necessary
10 on an errata sheet to this transcript and
11 attach it to this transcript.

12 That is not something that you
13 are required to do. And the court
14 reporter will certainly do her
15 professional best to take down everything
16 as accurate as possible, but it is
17 something that is offered to the witness,
18 for you to decide at some point in time
19 before, after Tuesday or on Tuesday or
20 after and for a short period thereafter.

21 We also would request that at the
22 end of the interview that you not discuss
23 this interview with anybody other than
24 your personal representative or an

1 attorney.

2 And I see today that you did not
3 come with a personal representative or an
4 attorney. Are you expecting one to appear
5 here with you today?

6 THE WITNESS: No.

7 MR. KOERBER: If at any time
8 during this interview you want to take a
9 break for any reason whatsoever, you just
10 say so and we'll take a break.

11 I would pass it off to
12 Mr. Wilson, if he has any initial comments
13 he'd like to make on behalf of MSHA.

14 MR. WILSON: Yes. Mr. Ferrell, I
15 just want you to know on behalf of MSHA,
16 thank you for appearing here today.

17 I have a letter that I would like
18 to give to you. The letter has contact
19 information. If at any time in the future
20 you think of additional information that
21 you would like to provide to the
22 investigation teams, you can provide us,
23 contact us at that number or the address
24 provided.

1 Also, there is some information
2 there concerning your rights as a miner
3 under the Federal Mine Safety & Health
4 Act.

5 One other thing, Barry, I just
6 want to point out. The court reporter is
7 going to be taking down the information,
8 so it's very important that you articulate
9 your responses rather than just shaking
10 your head so that she can get everything
11 down on the transcript. Okay?

12 THE WITNESS: Yes, sir.

13 MR. KOERBER: And, Mr. Ferrell,
14 I'd just like to inform you and give you
15 some information here. West Virginia Code
16 22A-1-22 is a statute that prohibits any
17 discriminatory action to a miner for
18 participating in an interview such as
19 this.

20 I'm going to give you the address
21 of the Board of Appeals, which is the
22 administrative tribunal that's charged
23 with hearing those matters in the event
24 something would occur.

1 I would like to advise you that
2 in the event something would occur, you
3 need to contact the Board and initiate a
4 vowing (phonetic) of the charge within 30
5 days of the occurrence of the event.

6 I'm also going to give you the
7 card for Mr. Terry Farley, who is the lead
8 interviewer here today, and Mr. Bill
9 Tucker, who's the lead underground
10 accident investigator.

11 If anything comes to mind after
12 you leave here that you would like to get
13 in contact with us to report, please feel
14 free to use these numbers on these cards.
15 Thank you.

16 And I would now pass the
17 interview over to Mr. Farley to begin his
18 questions.

19 MR. FARLEY: Thank you.

20 EXAMINATION

21 BY MR. FARLEY:

22 Q. Mr. Ferrell, thank you for coming. I'll
23 try to proceed in some sense of a logical manner,
24 so just bear with me if I get lost at some point.

1 Where are you currently employed?

2 A. I work for Patriot Coal Company. And it's
3 located in Dawes.

4 Q. How long have you been with Patriot?

5 A. I started with Patriot probably about the
6 1st of April.

7 Q. Now would that have been about the same
8 time you left the UBB mine?

9 A. No, actually, I left the UBB mine the
10 second week of February. I'm pretty sure.

11 Q. Now a little background information. How
12 long have you worked in the coal mining industry?

13 A. I started in the coal mines probably
14 around '97, '98.

15 Q. Has your employment in the coal industry
16 been pretty continuous throughout?

17 A. Yes, I have never been out of work other
18 than the gap between UBB and Patriot.

19 Q. So if my math is correct, about 13 years
20 experience; is that right?

21 A. Yes, sir.

22 Q. How long did you work for Massey?

23 A. Oh, up until I left February, the second
24 week of February.

1 Q. 13 years?

2 A. Yes, sir.

3 Q. Now other than UBB, what Massey companies
4 did you work for, if any?

5 A. I worked at Aracoma, Elk Run, Marfork. I
6 traveled all over Massey just setting heads and
7 doing construction work and stuff.

8 Q. Just a matter of curiosity, when were you
9 at Aracoma?

10 A. Probably about, I'm going to say '99,
11 2000.

12 Q. When did you first start at UBB?

13 A. I started at UBB in, I'm going to say May
14 of 1998. '97, somewhere. I think it was '98.

15 Q. So most all your 13 years pretty much at
16 UBB?

17 A. Yes.

18 Q. Now you indicated you left UBB the second
19 week of February. Is there a particular reason why
20 you left UBB that you can share with us?

21 A. Yes, sir. I was actually asked to leave.

22 We was actually working on the next panel
23 on which they was mining on 22, so we would have
24 been mining, getting ready to set up the new belt

1 head on headgate 23. And we also had another head
2 that was being set down here at 52 break for Ed
3 Foster and them's crew apparently about the same
4 time. And we was working six, seven days a week,
5 12, 13, 14 hours a day trying to get this head at
6 52 break set.

7 Well, as soon as we finished it, they
8 wanted to hurry up and get up there and drive for
9 the new, the new longwall, so we was going to set
10 that head up there, and it was just, it was chaos.

11 Q. When you say "52" --

12 A. Yeah, 52 break. When you first come in
13 the drift mines, when you first round the first
14 curve right there, you're at 52 break.

15 Q. Do you want to mark it for me? Just do
16 that for me, if you would, please.

17 MR. KOERBER: We'll have that map
18 marked as Exhibit B.

19 (Deposition Exhibit B marked for
20 identification.)

21 Q. Mark 52 break.

22 A. That's what I'm trying to find, I'm trying
23 to find the portal.

24 MR. WILSON: Here's the

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(b) (7)(C)

Well, I missed -- we was supposed to work Saturday, but we hardly ever worked a Sunday unless it was something majorly happened. Well, I missed Saturday and Sunday and I come back Monday and we worked, like I say, 12, 13, 14 hours a day and nothing was said.

When I come back in the following Tuesday, they asked me to come upstairs, that they wanted to talk to me. So I traveled from the UBB portal to the Ellis portal. And which Everett Hager, Wayne Persinger was in the office. And they said, Come on in, we need to talk to you. And I said, What's going on? They said, We've got a problem. I said, What's the problem? He said, You missed some work. I said, I don't miss work. I said, I missed Saturday, (b) (7)(C) And he said, Well, you missed Sunday, too. And I said, Well, I didn't know that we was supposed to work Sunday. Nobody called and let me know or identified that we was supposed to work Sunday.

And he persisted to tell me it was my responsibility to find out if we was working Sunday. Which like I say, forever that was a

1 nonscheduled workday.

2 I said, well -- they said, You didn't
3 bring no excuses. And I said, Yes, sir, I did. I
4 said, I brought excuses in. He said, Well, you
5 didn't call any of us. Yes, sir, my wife had
6 called in. And he said, Well, that's not really
7 what we need to talk to you about. And I said,
8 Well, what is it? And he said, Well, you've showed
9 no initiative to get this job done. And I said,
10 Well, how have I not showed any initiative to get
11 this job done? I said, I have been working six,
12 seven days a week, 12, 13, 14 hours a day. I said,
13 I'm doing the best I can. I said, I just got
14 sick. And he said, Well, that's not it either. He
15 said -- I said, Well, what is it then? And he
16 said, Well, the main thing is, he said, you was
17 responsible for this belt head to run. He said, We
18 lost a lot of money. He said, So as of today,
19 you're suspended for five days.

20 Well, I took my five days suspension. And
21 I won't lie, I was kind of bitter and ill, because
22 I have always worked every day that I can, I've
23 worked every vacation they've ever made me work.

24 Well, I was supposed to see Mr. Blanchard

1 the following day, you know, after my five-day
2 suspension. Well, I showed up and they said he
3 couldn't see me.

4 So I went back home the next -- they said
5 come back tomorrow. So I went back down to Marfork
6 the main office to see him the next day and I was
7 supposed to meet with him like at 10:00 or 12:00.
8 And they said, Well, we're sorry, he's not in right
9 now. You'll have to come back this evening.

10 So I went back home again, I come back the
11 last time, and Jennifer Chandler and Wayne
12 Persinger and Mr. Blanchard was all in the office.
13 And we sat down and had a conversation and it come
14 out that it would be better for me and Performance
15 Coal Company to separate ways. That's basically
16 what come out of the meeting.

17 Q. Now if I understand you correctly, they
18 felt that this mother job construction area should
19 be complete by that time?

20 A. Yes.

21 Q. Even though you had worked six or seven
22 days a week for 12 or 13 hours. Okay. All right.
23 Hold that thought and we'll come back to that a
24 little bit later.

1 Now as you stated earlier, your position
2 with UBB was you were a belt construction foreman;
3 correct?

4 A. Yes, sir.

5 Q. Now were you a salaried employee?

6 A. Yes, sir.

7 Q. Now who was your immediate supervisor?
8 Again, prior to the time you left.

9 A. I guess, see, I guess the longwall
10 coordinator, Jack Roles, would have been my actual
11 supervisor.

12 But how that went was when we was setting
13 up for the longwall, Jack Roles would be my
14 supervisor, if that makes sense. Now if I was
15 setting the belt head for the miner section, maybe
16 the superintendent would be my immediate
17 supervisor.

18 Q. Okay.

19 A. You know what I mean?

20 Q. Sure.

21 A. So, I mean, I had a lot of supervisors, if
22 that means anything.

23 If I went to Elk Run, my supervisor
24 changed; if I went to Marfork, my supervisor

1 changed. You know what I mean?

2 Q. If I follow you correctly, it depended on
3 the location that you were in and who had
4 responsibility for that area; is that correct?

5 A. Yes, sir.

6 Q. How many people reported directly to you,
7 if any?

8 A. I guess the three people that I had. I
9 had a guy by the name of John Cox, which was
10 actually like my lead hourly man. I had my
11 electrician, which was Jerry Weeks. And I had a
12 laborer, which was a young boy by the name of Mark
13 Gilbert.

14 Q. Mark Gilbert?

15 A. Gilbert.

16 Q. Until you left UBB, were these three
17 fellows with you regularly for a while?

18 A. Yes, sir.

19 Q. About how long were they with you?

20 A. John had actually been with me for about
21 two years. I guess Jerry, this would have been the
22 first panel that Jerry had ever set up on. They
23 had shut the Clay mine down and we were
24 shorthanded. He filled in the crew. I guess we

1 had him for six, seven months. And Mark was a
2 contractor which had got hired in in that time, and
3 I guess he'd been with us about four to six months.

4 Q. While you worked at UBB, were you aware of
5 safety audits being conducted at any time?

6 A. Yeah, but it wasn't -- I mean, it wasn't
7 something that you heard of like once a month or
8 once every six months. You'd have like, they would
9 tell you that, you know, they was going to have an
10 audit team come in and do an audit, but it may be
11 something like once a year. You know what I mean?
12 We didn't have them very regular.

13 Q. So they told you in advance that an audit
14 was coming?

15 A. Yes, sir.

16 Q. Now did they tell you specifically where
17 the audit would be or just that it was coming?

18 A. It was just coming, you know.

19 Q. Who would routinely do the audits?

20 A. I guess people of the safety team.

21 Q. Any of them you can identify?

22 A. Well, we had so many different -- Massey,
23 at that time, we changed people regularly. I mean,
24 at one time I could tell you the name of every man

1 that worked in that coal mines, what they done or
2 whatever. Within the last two and a half years, we
3 had so many different people come in and out of
4 that organization, I mean, at that time, I couldn't
5 tell you --

6 I mean, we had Berman Cornett I guess was
7 the last one we had. Before him we had Mike
8 Vault. We had another guy, his name was Greg -- I
9 don't know if it was Greg Farley. I can't think.

10 But him and Mike Vault was together.

11 Before him we had, he's actually an
12 inspector now, George Nelson. We had George Nelson
13 for a while.

14 We changed people so much, I mean.

15 And the way I traveled from mine to mine,
16 when you come back, you might see somebody
17 different. I mean, you just couldn't keep track of
18 them.

19 Q. Now let me just follow how frequently you
20 traveled to other mines. You left UBB here early
21 to mid February. What other Massey mines had you
22 worked at during the year 2010?

23 A. Logan's Fork, Elk Run. A shop at
24 Powellton, that would have been an Elk Run Mine.

1 Blue Pennant, transfer belts.

2 Q. Okay.

3 A. I think that was it in 2010.

4 Q. Now can you give me a rough estimate of
5 how much time you spent away from UBB in --

6 A. I was at UBB up until two and a half years
7 that the longwall went from UBB to Elk Run. I'm
8 going to say in April or maybe May is when the
9 longwall come back from Logan's Fork to UBB, when
10 we started setting back up for the panel which they
11 was driving on Headgate 22.

12 Q. So you had gone to Logan's Fork originally
13 with the longwall?

14 A. Yes.

15 Q. Some years back?

16 A. Yes, sir.

17 Basically, my team traveled with the
18 longwall.

19 Q. And you came back April or so of 2009?

20 A. Yes, sir.

21 Q. Were you ever involved in any of the mine
22 planning at UBB?

23 A. Not unless it was belt related, I mean,
24 about a belt head or where it went, but that's

1 about all that I was able to really get in with.

2 Q. So no one consulted with you about
3 ventilation plans or roof control plans or anything
4 like that?

5 A. No, sir. The only thing I had with the
6 roof control plan is if we was setting temporary or
7 primary roof support, you would have to go over the
8 roof control plan with the members of my crew.
9 Other than that, I had nothing, you know, no
10 dealings with ventilation or roof control.

11 Q. Now were you ever involved in any planning
12 meetings pertaining to the longwall at UBB?

13 A. I have sat through when they was talking
14 about hauling shields and stuff like that and
15 planning like the longwall move, per se, but as far
16 as the development, ventilation, or the support and
17 stuff, no, I was not ever a part of that.

18 Q. Do you have any idea when the planning
19 started to return the longwall to UBB?

20 A. It was short notice. When we first left
21 UBB originally, they said there would never be
22 another longwall in UBB.

23 Q. Now who said that?

24 A. That come from the president of the

1 company.

2 Q. Who was that?

3 A. At that time -- it was before Blanchard.

4 Q. Was it Potter?

5 A. Potter.

6 Q. Okay.

7 A. It was Potter.

8 We had sat down in our eight-hour annual
9 refresher class. He'd always hang a map and tell
10 you the production and, you know, the plans for the
11 next two or three years or whatever. And he had
12 told us then that there would be no other plan for
13 longwalling at Performance Coal Company ever, that
14 the longwall was done. And that's when they made
15 plans to take it to Elk Run.

16 Q. Okay.

17 A. And then after Elk Run, they thought about
18 taking it to Indian Creek, which is down around
19 Potoma (phonetic), somewhere around in there.

20 Well, we'd moved to Logan's Fork, and we
21 was actually projected to get another panel.

22 Well, we had started setting up on that
23 panel and the miner section had cut into so much
24 rock, they just up and said we're pulling out of

1 it. It's unprofitable to mine, so we're not going
2 to mine it.

3 At that point is the point where UBB come
4 about. I mean, it was like spur of the moment, you
5 know, the longwall is going back to UBB, we've got
6 to get a panel cut for it, and from the day that
7 that started, it was chaos.

8 Q. Now can you stretch it a little bit and
9 pin that down for me? I know you said you came
10 back to UBB about April of 2009.

11 A. I'm going to say this was maybe just a
12 month before that. I mean, it was real quick from
13 when that happened to the time we went back to
14 UBB. I'm going to say within a month to two
15 months, all that come about that quick. I mean, as
16 soon as we could get all of our tools rounded up
17 and get everything that was set in place for the
18 next panel out, we went to UBB.

19 Q. So it's, you know, even though you can't
20 give us an exact date, it's fair to say it was
21 early 2009?

22 A. Yes, sir.

23 Q. That's the best we can narrow it down.

24 And if I'm following you correctly, there

1 was a sense of urgency about it?

2 A. Yes, sir.

3 Q. Okay.

4 A. When a longwall is down and you don't have
5 a place to go and a longwall makes that kind of
6 money, yes, sir, it was urgent.

7 Q. When Mr. Potter had told you before you
8 went to Logan's Fork that there would be no more
9 longwall at UBB, why did he, any particular reason
10 he gave as to why he would make that kind of
11 statement?

12 A. At that time we had cut into so much rock
13 as you can see right there, I think that's Headgate
14 11, you see that big area right there that was
15 unmineable, right there where the "LED" area is
16 where it says "seal," go up right there. That was
17 our first panel from the Hazy side actually on the
18 UBB side of the portal.

19 And what that was, was solid sandstone,
20 and we'd cut, and up to that point, and the miner
21 section had come up above it and drove an entry to
22 where we could move the wall from right there ahead
23 down here where you see it. We moved from right
24 there up here to where, up here.

1 We skipped that white block, that's what
2 that means on that map, is we skipped that rock
3 patch.

4 So I think at that time, and you can see
5 the next panel we'd cut that rock right there and
6 skipped it as well up above you.

7 Q. Why don't you mark these for me, because
8 you're losing me there.

9 (Off-the-record discussion.)

10 BY MR. FARLEY:

11 Q. Now that we're back on the record, will
12 you please explain why the longwall vacated the UBB
13 mine and originally moved to Logan's Fork?

14 A. It was hard cutting conditions.

15 Q. Would you specify where they were located?

16 A. That would be on Headgate 11, Headgate 12,
17 and Headgate 14.

18 Q. And I think you marked all those locations
19 on the map --

20 A. Yes, sir.

21 Q. -- which will be Exhibit --

22 MR. WILSON: Federal B.

23 MR. FARLEY: B.

24 Q. All right. Now let's back up here. The

1 decision to return the longwall to UBB early 2009.

2 A. Yes, sir.

3 Q. And you indicated that you were not
4 personally involved in any of the planning to
5 return it to UBB.

6 A. No, sir.

7 Q. Who was involved in that planning for
8 that?

9 A. I guess in the planning, that would have
10 been -- Blanchard had since then took the
11 administration president role at UBB.

12 Craig Boggs would have been the acting
13 president at Elk Run. That would have really
14 contributed to the longwall coordinator, which
15 would have been Jack Roles, assistant coordinator,
16 which at that time we didn't have an assistant.

17 The maintenance managers, which would have
18 been Daniel Lafferty and Bobby Goss, probably.

19 I think Wayne Persinger was still, yes, he
20 was still the vice president at Elk Run at that
21 time, and that would have been the actual decision
22 makers.

23 Chris Adkins would have been a part of it,
24 I'm sure; Mr. Blankenship would have been; Bill

1 Downing would have been; and Hogan Williams would
2 have been, because he was the coordinator that was
3 at Revolution Mine.

4 Q. Hogan Williams?

5 A. Hogan Williams. Yes, sir.

6 Q. Was there anybody from the Route 3
7 engineering group that was involved in the longwall
8 planning?

9 A. As far as I know, they get the MMUs, you
10 know what I mean, the actual roof control plan and
11 everything submitted to MSHA, and I guess that was
12 the role that they played in that.

13 I never seen them actually sit down and
14 meet with them, you know what I mean, but I do know
15 that they did, you know what I mean, they did take
16 care of getting the MMUs and the roof control plans
17 and all the aspects of it to make the permits right
18 to get, you know, to get mining.

19 Q. Now this may call for some opinion on your
20 part. Did it appear to you that when such a move
21 was to be made, like moving the longwall, did it
22 appear to you that the mine management people told
23 the engineers how it was going to play out or did
24 it appear that they might have sought some input

1 from the engineers?

2 A. No, it was the mines rolled that mines.
3 Actually, Chris Blanchard is the man that, he
4 operated that coal mines to the fullest.

5 Q. Okay.

6 A. They didn't really -- they told them how
7 they was going to mine.

8 Q. That's fair enough.

9 Did you happen to know who the lead
10 engineer or supervisor was with Route 3 engineering
11 at the time you left UBB?

12 A. If I'd see his name, I could tell you.
13 He's got like a spiked hairdo with glasses.

14 MR. SHERER: Eric Lilly.

15 A. No.

16 Q. McCombs?

17 A. Eric Lilly was one of the, he wasn't the
18 main engineer, though. He took care of most of the
19 longwall part of it, but he wasn't the head
20 engineer at that time.

21 But Eric Lilly was one of our main guys as
22 far as getting our maps. And he kind of worked
23 control to the longwall as far as being the
24 engineer, but he wasn't the head engineer at that

1 time.

2 Q. Paul McCombs, does that ring a bell?

3 A. No.

4 Q. Branard (phonetic)?

5 A. No. I wish I would have brought a book
6 with me.

7 Q. Walker?

8 A. No.

9 Q. All right.

10 A. What I'll do is I'll find it out and I can
11 call you back and let you know.

12 Q. Sure, sure. I think we gave you cards
13 there.

14 A. Yeah, I've got them right here.

15 But if I see his name, I could tell you.

16 Q. You know, whatever you can come up with
17 from your notes, please give us a call back on
18 that.

19 Now do you know, I know the question was
20 who was the supervisor for Route 3 --

21 Do you know what engineer was specifically
22 assigned to UBB, if any?

23 A. Was there a Matt Walker? Matt Walker and
24 Eric Lilly was the ones that worked on our UBB

1 stuff, I'm 90 percent sure.

2 Q. Okay. All right. Now jump around just a
3 little bit here.

4 Is it fair to say that you would have
5 worked on many of the previous longwall panels at
6 UBB?

7 A. Every one.

8 Q. Okay. All right. And you got there about
9 '98, something like that. Okay.

10 We have documented evidence to confirm
11 that there was an inundation or an outburst of
12 methane or natural gas on the headgate 16 longwall
13 panel in July of 2003.

14 A. That's correct.

15 Q. Now as best we can determine from reading
16 the reports from investigators, the gas came from
17 the mine floor. Is that how you recall it?

18 A. Yes, sir.

19 Q. Now do you want to elaborate on that for
20 me, tell me what you know about that event?

21 A. My father worked on that longwall section
22 at that time, and I still worked outby. And the
23 men were sworn to secrecy. It was never let out
24 until now. A lot of people had never heard about

1 that until Mr. Stanley Stewart come out with that.

2 Glen Lilly was actually the face boss,
3 which is now at Patriot Coal. He's the longwall
4 coordinator at Patriot Coal.

5 MR. MCGINLEY: I'm sorry. Who
6 was that?

7 THE WITNESS: Glen Lilly.

8 Q. This is July 2003? Go ahead.

9 A. No, no, I'm sorry. This was a different
10 time. 2003 Glen had done left. My dad died in
11 2002. I got the year wrong.

12 In 2003, I heard about that one, but I
13 couldn't tell you anything about the one in 2003.

14 Q. Now let me get on the same page with you.
15 Now we are aware of an event in 2003 and we're
16 aware of another event, similar event in 2004 in
17 February. Now do I understand you that there was
18 another such event prior to 2003?

19 A. Yes, sir. It would have been early 2000
20 or in the nineties.

21 Q. Were you present when it occurred?

22 A. Yes. I actually worked at that coal mines
23 actually at that time.

24 Q. Can you run through, give me a description

1 of what you experienced at the time?

2 A. I'd heard them holler on the radios that,
3 you know, that they was hollering for mine
4 management, I guess mine foremen and stuff at that
5 time. And they wouldn't really come over the mine
6 phone and tell what had happened, but they wanted
7 them to come to the wall.

8 So, you know, there was a lot of people
9 that actually went up to the wall. And they
10 wouldn't let anybody else in the mines really know
11 what had happened. And the only reason I found it
12 out is when my dad had come home, my mom had asked
13 him what happened to his beard. And he said that
14 he got a flash burn and it burned his facewear
15 off.

16 And my mom continued to ask him questions,
17 you know, about how it happened or whatever. And
18 they had a pop off, an ignition in the face. And
19 him and Mr. Stanley Stewart, like I say, Glen Lilly
20 was the face boss, back then they were swore to
21 secrecy. They were swore to never let it out. And
22 for years it never was let out, until this year
23 when Mr. Stewart, after all this happened, he let
24 it be known they had an ignition back then.

1 Q. So what you're saying is it was not
2 reported to a state or federal agency?

3 A. No, no, sir, it was not.

4 Q. Do you recall which panel it was?

5 A. It wouldn't have -- it would have been
6 earlier before Headgate 11, because you're in 2000
7 on Headgate 11. It would have been on the other
8 side of the mountain. Yeah, it would have been on
9 the Hazy side.

10 Q. It's not even on this map?

11 A. No, it's not on that map.

12 Q. Okay. All right.

13 A. It would have been on the Hazy portal side
14 of the coal mine.

15 Q. Panel, what was the number again?

16 A. Let's see. It would have been probably
17 headgate 8, headgate 9.

18 Q. Okay. All right. And you think it was
19 early 2000 or late 1990s?

20 A. Yes, sir.

21 Q. Now I know your father was present. Were
22 you there, too?

23 A. I was at that mine hired in with that
24 company.

1 Q. But were you present?

2 A. No, I did not work on the working
3 section. I worked outby.

4 Q. Okay. All right. Now when you say that
5 men were sworn to secrecy, who directed that, if
6 you can recall?

7 A. My dad just had told my mom that they were
8 swore to secrecy, that they was not to let it out.
9 He never would tell me, because I was a young man,
10 I'm sure he didn't want to scare me to death at
11 that time. But he didn't ever tell me exactly who
12 told him that, you know -- it's just been known in
13 Massey that if you went against their ways, you
14 didn't work for them no more.

15 Q. Did your father describe the event as in
16 what it sounded like or?

17 A. No, he just said that, you know, it was
18 just like an orange ball come rolling up on the
19 bottom. He said just flash went by him and singed
20 him. And he said they was getting their way out to
21 the headgate to get to the mantrip and I guess they
22 all huddled up there together to make sure
23 everybody was there, and then by that time, I guess
24 Mr. Lilly or them had maybe called out and spoke

1 with the mine foreman and caught them there at the
2 end of the track and had their little meeting or
3 whatever.

4 Q. What was Mr. Lilly's position again at the
5 time?

6 A. He was the longwall coordinator at that
7 time.

8 Q. Now I started out by asking you about an
9 event in July of 2003. Now were you familiar with
10 that one?

11 A. No, sir. If that did happen, I didn't
12 know anything about it.

13 Q. That would have been on, oh, longwall
14 panel 16. Okay.

15 Now the next question was there was a
16 similar event on February 18th, 2004, on the
17 headgate 17 panel. Again, it was determined that
18 the gas, as best we understand it, came from the
19 mine floor. What do you know about that one?

20 A. Just hearsay. I mean, I was not present
21 at any time of those pop offs or ignitions or
22 whatever you want to call it. It was just
23 hearsay.

24 You really didn't know whether to believe

1 it or not, because you'd hear some guy say it
2 happened and you'd hear some guys, like mine
3 managers, say, Oh, no, they're just exaggerating.
4 So you really didn't know what to believe.

5 But at that time it wasn't a big pop off
6 or nothing, because I mean, it wasn't something
7 that we heard outby or anything like that that I
8 could tell you.

9 Q. Now do you know, do you recall if any of
10 those events, 2003, 2004, or the one that you
11 experienced that your father experienced, did those
12 bring about any changes in the longwall ventilation
13 plan or longwall ventilation methods?

14 A. I'm sure it did. See, we never really
15 talked about belt air, I mean, and stuff like that
16 until the one that was on Headgate 22. And I know
17 Patriot has just now went to the belt air, you know
18 what I mean, before.

19 But ventilation at that coal mines, years
20 ago, we, I -- in my opinion, we had trustworthy
21 people that I never felt like my life was in
22 danger, and I really thanked them for making great
23 decisions to keeping us safe.

24 I cannot say that in the last two and a

1 half or whatever -- the last two and a half months,
2 I really felt unsafe and threatened to work there
3 anymore. But up until the time I worked --

4 Even at Elk Run, there was never a day
5 that I thought, you know, this could be the day
6 that we don't make it out of here. I never had
7 those kind of feelings until I left Elk Run and
8 went back to Performance Coal Company.

9 Q. Do you want to elaborate on that and give
10 me some specifics, if you can?

11 A. Yes, sir, I will. I don't think that they
12 had, they had the experience, for one thing.

13 Upper Big Branch Mines, when I first
14 started there, I kind of grew up with that mines,
15 you know. I think I started on, I think it was 5
16 west, you know what I mean. And we mined all the
17 way up to Headgate 22 as far as up-to-date.

18 And even went back in, Headgate 11,
19 Headgate 12, headgate 13, 14 and 15. I mean, them
20 was panels that we cut everything out of and set
21 right back up in on.

22 I kind of watched that mines grow up and
23 develop. And at that time we had people like Homer
24 Wallace and Windell Wills and mine managers that

1 was older, older experienced men, which I felt like
2 was responsible enough to handle that kind of
3 position.

4 When I went back to UBB from Logan's Fork
5 to UBB, you had Jamie Ferguson, which I watched
6 grow up as a miner, he started out as a spaad man,
7 then a buggy operator, then when I come back he's
8 vice president of the coal company. I didn't feel
9 that he had enough experience for that position.
10 Not saying he wasn't a great guy, in my opinion.
11 UBB was a huge mine. He should have started in a
12 smaller, little mines. You know what I mean?

13 Chris Blanchard, he come from Aracoma Coal
14 where he was working on a set of air bags. A crib
15 block flew out and it broke his bones up in his
16 face and then the next thing you know he's
17 president of the company. And he just had the
18 mentality that he was not going to do anything
19 right. He just wanted it done. I mean, and he
20 made it abundantly clear in more ways than one that
21 he wanted it done. He didn't care how you done it,
22 he just wanted it done. And at that point, I had
23 no respect for him.

24 Q. Can you recall specific instances where he

1 might have given you directions to do something
2 that might have been illegal or unsafe?

3 A. He's a smarter man than --

4 Massey speaks code. They will never come
5 out black-and-white until you do something wrong.
6 Not if they willingly know that you're not one of
7 those people. But they speak their sign language
8 to you. And anybody that's worked around the mines
9 knows, you know, what's going on.

10 That's just like we had just finished
11 Headgate 22. The longwall was set up, belt
12 structures in, pulling belts, that was my job. You
13 know what I mean? We set the heads, we put the
14 belt structure in.

15 Q. You're referring to --

16 A. Yes, sir.

17 Q. -- this area here where the longwall
18 started up?

19 A. Yes, sir.

20 Q. Okay. In 2009.

21 A. That was my job when I come back to that
22 company, was to put the head in, the tripper in,
23 the belt structures, the belt, put the monkey faces
24 up, had a bolt crew. You know, we set all the

1 timbers down in the beltline.

2 Well, every day I had to fill out a
3 report. One report went to the superintendent, one
4 report went to the vice president, one report went
5 to the president of that company.

6 And every day you come back, you was
7 wondering if you was going to get a nasty gram.
8 That's what we called them. And what that really
9 meant was you didn't get enough done that day or
10 whatever the case may be, you know, you would take
11 your little smart comments that he would give you
12 or whatever.

13 And more than one instance he'd put on
14 there that it was critical for me to get more stuff
15 done in a day's time. And, you know, a lot of
16 people can define critical in a lot of ways, but I
17 knowed what that meant. That meant if I didn't get
18 this stuff in to suit him, he was going to fire
19 me. But I was not going to break rules or
20 regulations to do it.

21 Just like that when they started that
22 panel up, they didn't plan ahead enough to figure
23 out a way to get their belt structure over in that
24 part of the mines, which would have been intake.

1 So you had to establish double doors to be able to
2 get your structure over there. And there would be
3 days, you know, that I would have to put on that
4 report that I was using men to move doors and
5 plaster stoppings and do this and that to make it
6 right. And he would put on there that he was tired
7 of seeing that, that he wanted to see the structure
8 moving. I mean, but he wasn't going to tell you
9 that you're not supposed to be down there working
10 on them doors. Like I say, they spoke code, and if
11 you worked there long enough, you know what things
12 meant.

13 Q. Now these nasty grams that you called
14 them, was this like a written document?

15 A. Yes, sir.

16 Q. Now did you ever keep any of them?

17 A. Yes, sir.

18 Q. Would you be willing to provide them --

19 A. Yes, sir.

20 Q. -- to this investigative party?

21 A. Yes, sir.

22 Q. They might be of some assistance to us.

23 A. When I kept those documents, I knowed, I
24 could see the future. Don't take that as I'm

1 crazy, because I'm not. I could see what was
2 leading up to the point when I left UBB, because I
3 was not going to be the man that they wanted me to
4 be. I mean, I made it abundantly clear in more
5 than one instance that I was going to do whatever
6 was right, it didn't matter what it cost me or this
7 company.

8 I mean, anybody that investigated that
9 mines, when they first walked that line after it
10 was done, we had, you know, I couldn't tell you
11 really, six or seven inspectors walked that belt,
12 talked about how great it looked, you know, the
13 bolts was up. We had timbered the whole drive. I
14 mean, strung them off with strings. I mean, it
15 looked great.

16 Well, Blanchard had come up there, and
17 after everybody sitting there saying how good it
18 looked and how well it was taken care of and they
19 was proud to see something like that, Blanchard
20 comes up there and says, yeah, you just need to
21 find a way to do it quicker. I said, Well, to do
22 it right and to do it legal, you can't do it any
23 quicker than what we done. We done the best we
24 could. And he said, Well, Mike, he said, I think

1 you use safety as a crutch here. He said, I'm not
2 going to lie to you. You need to find a faster way
3 to do this and get them in. That was the exact
4 quote come out of his mouth, that I use safety as a
5 crutch.

6 Q. Can you -- now that was about the time
7 you --

8 A. That was two days before the startup on
9 that panel right there.

10 Q. Before the longwall started up in
11 September 2009?

12 A. Yes, sir.

13 Q. Did you make any notes of that
14 conversation or did you get any grams?

15 A. No, not on that. It was -- what had
16 happened was him and the previous longwall
17 coordinator that was at UBB, which was Bill
18 Downing, they all come in to look at this before
19 you fired it up. You know, you had Continental
20 Conveyer representatives come in. I mean, you had
21 Joy people there looking at the shields before
22 startup. You had, you know, four or five
23 inspectors that would walk the beltline, make
24 sure -- you know, kind of a thing to where if you

1 come -- I asked them to come in and look at it,
2 they would kind of tell you what you needed to work
3 on or whatever before they'd come in there and just
4 write you, you know, 200, 300 violations. That's
5 what kind of deal.

6 I'd ask some of the inspectors to walk
7 that belt before we'd start it to see if there was
8 anything that they thought that we needed to work
9 on other than what we had done. And they walked
10 the whole beltline and maybe we set one timber. I
11 mean, that was the only thing that any of us seen.
12 We'd rock dusted everything as we put the structure
13 in. It looked really well.

14 Well, when Blanchard had come up there --
15 the only two that was there was me and
16 Mr. Blanchard when we was walking back up.
17 Everybody else -- we was walking to the mantrip for
18 a ride out, and that's when he had stopped me right
19 in the middle of the storage unit and told me that
20 I used safety as a crutch.

21 Q. Again, this may call for some opinion on
22 your part, but do you think Mr. Blanchard's, let's
23 call it his sense of urgency, whatever it was, do
24 you think that that resulted from the fact that the

1 longwall had gone south at Logan's Fork and had to
2 move here in such a rapid fashion?

3 A. I don't know as far as what Blanchard had
4 knowed prior to the time that Elk Run couldn't mine
5 that panel until the time that it was saying here
6 it is, we got to go back to UBB. I don't know
7 how --

8 I'm sure he did, because Mr. Blanchard and
9 Blankenship, they talked every day, every day.
10 They was on the phone every day together, I mean.

11 So I'm sure that -- he was one of
12 Blankenship's boys, and it was known all throughout
13 Massey in the meetings and everything. They put
14 Chris Blanchard on a pedestal. He was the bragging
15 glory boy of every meeting and conversation we ever
16 had. So in my assumption, he did not do anything
17 without Mr. Blankenship knowing.

18 Q. Now the longwall here at UBB starts up in
19 September 2009. Now we understand that the
20 headgate entries began to deteriorate due to ground
21 control problems and buildup of water in those
22 areas, in that area of the longwall headgate
23 entries. Now this seems to have come to a head
24 around November, maybe early December of 2009. Do

1 you recall, am I accurate there in my assessment of
2 that situation?

3 A. I'm pretty sure you're correct, yes, sir.

4 Q. Anything you can add to --

5 A. Well, before we had started up, whenever
6 they was talking about moving this panel, I know
7 that we had the crib through its entirety before
8 startup. And it was a constant battle. I mean,
9 Jack Roles and a bunch of them brought Strata guys
10 and all these guys in, because we had to do that
11 for the duration before we could start up, they
12 knowed it had to be cribbed.

13 Q. This panel?

14 A. To its entirety, yes, sir.

15 Q. This headgate panel for the UBB?

16 A. Yes, it had to be cribbed to its
17 entirety.

18 Well, Mr. Blanchard, everything was a mad
19 rush. It didn't matter. He was not a man to
20 reconcile with. He was not a man to hear excuses.
21 All he wanted to hear and see was things was
22 moving.

23 And at two or three times he even made the
24 statements he didn't care if it was cribbed to its

1 entirety or not, but they was going to fire the
2 wall up whenever the fire-up date was. And I mean,
3 he had made it abundantly clear on more cases than
4 one.

5 Q. If I understand you correctly, the
6 thinking was that the longwall headgate should have
7 been cribbed in its entirety before startup; is
8 that correct?

9 A. Yes. Yes, sir.

10 Q. Now to what extent was it cribbed?

11 A. That I couldn't tell you.

12 See, Jack Roles was our coordinator at
13 Logan's Fork. All right? Jack Roles, he's a great
14 guy.

15 Hogan Williams had come down from
16 Revolution, which Bill Downing was probably one of
17 the best coordinators, in my opinion, that Massey
18 has ever seen.

19 Well, Bill didn't want it, so Hogan was
20 thinking about coming down and taking it. Well, at
21 that time Hogan Williams had come up and had went
22 over the MMU plan and the roof control plan and he
23 was going over with everybody about our safety
24 shelters have to be in place and, you know what I

1 mean, everything that we had to do before a
2 longwall started up.

3 Well, every day it was a clash between
4 Hogan and Chris or me and Chris. I mean, anybody
5 that was trying to do anything and had to deal with
6 him, just got to the point where we didn't want to
7 have to deal with him anymore.

8 So Hogan makes the decision that he wants
9 out. So he moves back to Revolution and just says,
10 Man, I'm done. You ain't going to listen to me,
11 I'm done, I'm going back to Revolution.

12 Well, I had asked for a transfer, which
13 they would not let me have. So I was kind of stuck
14 there. But Hogan had enough pull with Bill Downing
15 that Bill kind of got him back out of the
16 situation.

17 And I knowed it was a mad house, because
18 you could hear it, but as far as after it was done,
19 I never have walked it after it was supposedly done
20 to see if it was done in its entirety or if it had
21 even been done.

22 Q. Now who might best answer the question as
23 to if I were to say to what extent was supplemental
24 support put in that longwall headgate, who could

1 best answer that question?

2 A. Jack Roles.

3 Q. Anybody else? Because he may not talk to
4 us, to be honest.

5 A. Most of them men would be the guys that
6 was killed in the explosion.

7 Timmy Davis was our lead longwall
8 production manager. I mean, he had the senior
9 people. Grover Skeens, Gary Quarles, Joel Price,
10 them was the best of the best Performance Coal
11 Company had had been ever since I started working
12 in that mines, and that was the crew that was
13 killed that day.

14 Q. Now you were at UBB until early February
15 of this year?

16 A. Yes, sir.

17 Q. Would you have been aware of the events of
18 November/December when I think MSHA may have issued
19 an order --

20 A. Yes, sir.

21 Q. -- pertaining to the headgate entries?

22 A. Honestly, we got so many violations and so
23 many orders, you couldn't tell which was which.

24 Q. Now were you aware that the conditions had

1 deteriorated where the stoppings were crushing the
2 top?

3 A. Yes, sir. Yes, sir. I did hear on more
4 than one occasion that the stoppings -- it was
5 taking weight and crushing out and a lot of people
6 had kind of made slurred remarks toward Blanchard
7 that if he'd done it right on the way in that the
8 stoppings wouldn't all be crushing out and we
9 wouldn't have to be carrying block up there and
10 putting people in harms way to build stoppings back
11 and that sort of thing.

12 Q. Was there an attempt to install Kennedy
13 stoppings to keep the return air course traveling
14 in the number three entry separate?

15 A. I'm not sure as far as what entries that
16 they was trying to provide the airflow to go, but I
17 do know they was taking Kennedy panels in by the
18 tractor trailer load. They had, I do know that
19 they was building like one continuous stopping for
20 eight or 10, maybe 12 breaks. I do know that for a
21 fact, because Marvin Purdue actually was my
22 structure crew, and then after the longwall set up,
23 they busted all my crew up into different things,
24 and Marvin was actually the man in charge of

1 getting the water pumped and the Kennedy panels up
2 there and that sort of thing.

3 Q. Now would that have been referred to by
4 some people as The Great Wall?

5 A. Yes, sir.

6 Q. Okay. We've heard references to the --

7 A. Great Wall.

8 Q. -- Great Wall of China or whatever.

9 A. Yes, sir.

10 But to go back to what you had mentioned a
11 minute ago as far as who could tell you, another
12 man, I don't know if he would, if he would talk to
13 you, would be Harold Lilly.

14 Q. Harold Lilly. Okay.

15 A. He was the assistant coordinator at
16 Performance Coal Company.

17 Q. The water that developed in the longwall
18 headgate, did you have any understanding of where
19 it came from, the bottom, top, where?

20 A. All the -- I do -- I couldn't really tell
21 you where that water come from. I know in a lot of
22 panels they had pumped longwall water back in the
23 old works and we had, as we had mined out from
24 Headgate 11 outby, a lot of the water on the wall

1 we had pumped back into like Headgate 11, Headgate
2 12, and that sort of thing. All right.

3 We had an inundation of water from Logan's
4 Fork. I couldn't remember exactly what the date
5 is, but we had actually flooded our mine with water
6 that come, that breezed through the Logan's Fork
7 mine. And a lot of that water would have run that
8 way. You know what I mean? The deeper you went
9 in, that's the way the water would run.

10 In addition, you if -- I'll get it out in
11 a minute. If you got flooded out with water, to
12 get outby, that's the high ground. Everything in
13 that coal mines was developed downhill, so if you
14 had an inundation of water, everything running to
15 the farthest point of that coal mine.

16 Q. Given the apparent haste in setting up the
17 UBB longwall in 2009, did anyone ever mention if an
18 analysis of pillar stability had been conducted?

19 A. I have never even heard that terminology,
20 sir.

21 Q. Actually, it's called the Analysis of
22 Retreat Mining Pillar Stability, commonly called
23 ARMPS by roof control specialists. Any knowledge
24 of anything like that?

1 A. No.

2 Q. It's usually to determine if the pillar
3 sizes --

4 A. Are adequate to support the mine.

5 Q. -- are adequate size to keep it from
6 failing?

7 A. No, I have -- up until the time you said
8 that, I didn't even know a thing like that existed.

9 Q. I know you're very familiar with what
10 transpired with the headgate entry to 2009. Did
11 you participate in any meetings where that problem
12 was discussed?

13 A. Just we had -- well, not all the time. We
14 was supposed to -- every morning we was supposed to
15 have a safety meeting, and very few times did it
16 ever happen. They just wanted to get you
17 underground. It was just something that if an
18 inspector showed up and it was Monday, Hey, we're
19 going to have a safety meeting today. It was just
20 a show story for Massey.

21 But as far as on that up there, we stayed
22 so busy and we wasn't really -- after we moved out
23 of that area, we was forgot about. They used my
24 crew to get the coal coming, and then after that,

1 they just moved us to the next priority. That's
2 kind of how we went. After that, I really couldn't
3 tell you a whole lot about being on the wall.

4 Q. Now based on your description of the
5 original setup of the UBB longwall, if you, based
6 on your description, there was considerable
7 pressure to get it going as soon as possible?

8 A. Yeah.

9 Q. That's, again, based on your description.
10 Now when this headgate longwall, same
11 longwall headgate begins to deteriorate, at that
12 point, it appears to us --

13 A. They was going to drive another set of --

14 Q. -- that that created a situation where
15 they would have to drive --

16 A. Yes, sir.

17 Q. -- an additional gate entry?

18 A. That is correct.

19 Q. And create a situation where the longwall
20 would have no immediate place to go; is that
21 correct?

22 A. That's correct.

23 Q. Now we talked about Mr. Blanchard's sense
24 of urgency and the haste to get things done.

1 Now did those events dial it up even more?

2 A. Oh, absolutely.

3 Q. Can you cite examples of how that played
4 in terms of --

5 A. It was uttermost chaos. I mean, it even
6 got to the point where I heard Everett Hager holler
7 at Dino Jones, which was on that section, and he
8 told him over the mine phone that he had just
9 talked to Blanchard and Blanchard told me to come
10 up there and get every one of you and bring your
11 G.D. asses outside and send you home, because
12 you're not running no coal.

13 And Dino had tried to tell him, you know,
14 that he was trying to make his section right and
15 this and that. And Everett said, Blanchard said
16 exactly what I'm telling you, if you don't start
17 running coal up there, I'm going to bring the whole
18 crew outside and get rid of every one of you.

19 Q. Do you recall about what time? Did you
20 actually hear this conversation?

21 A. Yes, sir.

22 Q. On the phone?

23 A. Yes, sir.

24 Q. Did anyone hear it other than yourself?

1 A. I'm sure.

2 Q. On the mine phone.

3 A. You would have had to have been listening
4 on the phone to hear it, because he didn't have the
5 page button on. You'd had to have been on the
6 phone at that time and hear that conversation to do
7 it, but I'm sure somebody somewhere has heard that
8 conversation.

9 Q. Do you know about approximately when that
10 occurred?

11 A. That would have been -- it was after we
12 was running. I'm going to say a month maybe after
13 that panel had first started up and running.

14 Q. When you say "that panel," you mean
15 Headgate 22?

16 A. Yes, sir.

17 Q. Now that brings me to another question.
18 Did you ever overhear any conversations where
19 Mr. Jones had expressed to Mr. Hager or anyone else
20 that his ventilation was not sufficient on Headgate
21 22?

22 A. Yes, sir. It was common knowledge that we
23 could not ventilate a three-entry miner section.

24 I mean, everybody that worked in that coal

1 mines knowed that our managers was -- I don't
2 know. I wouldn't want to call it ill capable. I
3 mean, I'm not going to say Everett Hager is not a
4 smart man, because he is an older, senior man.

5 UBB was a giant. It was a sleeping
6 giant. If you didn't know how to control the way
7 the mines was set up to run originally, you let
8 that out. And that's exactly what they done when
9 that mines exploded is they let the giant out.

10 Q. Now as best we understand it, when the
11 longwall at UBB started up in September of 2009, at
12 that time we understand that there was a return air
13 course traveling out toward Bandytown through the
14 number three entry in the longwall headgate. Now
15 that return air course, as we understand it, was
16 coming from the 22 Headgate section. Is that how
17 you recall it?

18 A. That's correct.

19 Q. As best we understand it, as the headgate
20 deteriorated and the stoppings crushed out, it
21 became necessary to reroute that return?

22 A. Yes, sir.

23 Q. Do you recall that?

24 A. Yes, sir.

1 Q. Now did the ventilation at that time on
2 Headgate 22 worsen when the return had to be
3 rerouted?

4 A. Yeah, I'm pretty sure that it did. I can
5 remember -- see, it was constant. It was
6 constant. They was doing some kind of ventilation
7 work every day. And then half a day you would hear
8 the section bosses call out that they didn't have
9 no air on the section and Everett or one of them
10 would get back on the phone and say, I know you got
11 air, run the section.

12 But constantly it was known that the
13 longwall didn't have no air, the sections will tell
14 you they didn't have no air. It was like they was
15 trying to separate whatever they had, that nobody
16 had air.

17 Or if an inspector was coming, you'd hear
18 them say we need to get some air up on the
19 section. And really what that meant was wherever
20 the inspector was going, that's where we had to try
21 to get most of our air, because that's where he was
22 going.

23 And I know for a fact that all those miner
24 sections at one time did not have enough air to

1 operate.

2 Q. Now stop right there for a minute.

3 Are you aware in any instances where
4 individuals may have been stationed at doors to
5 regulate air as inspectors from either state or
6 federal agencies traveled from one area of the mine
7 to the other?

8 A. I heard that, but I never witnessed that
9 with my own eyes, but I have heard that, yes, sir.

10 MR. WILSON: Do you recall who
11 you heard that from?

12 THE WITNESS: Just like fire
13 bosses and --

14 People like me, we was foremen,
15 we were salaried employees and we were
16 foremen, but we wasn't what you would call
17 big wheel or, you know what I mean, a big
18 shot or something like that.

19 And really that's where a lot of
20 the information in that mines comes from,
21 is just your local workers. You know what
22 I mean?

23 That's like a lot of the section
24 bosses felt just like we did, you know.

1 We felt like we really wasn't a part of
2 that mines, you know. All the decisions
3 that was made in that was made from
4 Everett Hager, Wayne Persinger, and
5 commonly known everywhere, Blanchard run
6 that mines. I mean ...

7 MR. WILSON: You were just
8 telling Terry about you had heard about
9 people being stationed at doors, but you
10 don't have any first-hand knowledge of
11 that.

12 THE WITNESS: No, no.

13 MR. WILSON: Is there anyone that
14 you can identify that we might check with
15 who might have more knowledge than you
16 about that?

17 THE WITNESS: No. A lot of the
18 stuff you hear, you can't say that it's
19 true or if it's untrue unless you see it
20 with your own eyes. You don't know what
21 to believe. You know what I mean? So
22 things like that, you know, that's like
23 when people say they heard them bridging
24 out miners and all this stuff, methane

1 monitors, if I hadn't seen it with my own
2 eyes, I really don't put it in my mind,
3 because unless I know them for a fact and
4 I really put a lot of trust in them, I
5 don't believe it. You know what I mean?
6 And I kind of just passed that off because
7 I didn't think things like that, we would
8 let it happen. You know what I mean? At
9 that time I didn't think that our upper
10 management would let things like that
11 happen, because I just wasn't used to that
12 kind of thing. As far as the older type
13 of Massey representatives, that never
14 happened.

15 BY MR. FARLEY:

16 Q. We talked about the rerouting and the
17 return off of 22 Headgate there.

18 Now the work at the mother drive
19 construction site, we had testimony from a section
20 boss who worked on that section a couple, he left
21 there a couple of months prior, indicating that the
22 mother drive construction had a negative impact on
23 the 22 Headgate ventilation. Is that possible?
24 How would that have occurred?

1 A. As far as how the ventilation would affect
2 it, I really, I really don't know. I do know that
3 when we first went up there, I had asked Everett
4 Hager -- I always liked to know what something
5 looked like before I went up there. You know what
6 I mean? I wanted some kind of first-hand
7 information from somebody being there what we was
8 looking at, what we was up against. And I asked
9 Mr. Hager what the mother drive was, how far along
10 was they cutting it and this and that. And
11 immediately he got up and shut the door and said,
12 Shhhh. I said, What is it? He said, We're not
13 even supposed to be up there cutting that shit. He
14 said, We don't have a permit to even be in there.
15 We got inspectors out here, and you're wanting to
16 talk about it.

17 Well, me, I don't know that they're doing
18 anything wrong. A lot of things that they done, we
19 couldn't tell you they was doing wrong, we didn't
20 know they was doing wrong. They kept things so
21 secretive, unless you say it in front of somebody,
22 you didn't know if it was right or wrong.

23 Well, when we first got up there, the old
24 glory hole head, which is marked right there, that

1 was an underground silo. And you can imagine over
2 two and a half years running coal from Logan's Fork
3 through UBB what that looked like. We never
4 shoveled our belts unless we was forced to.

5 So all that backfill was gob. I mean,
6 there was literally gob in there four-feet deep.

7 You had to set a transfer station up right
8 there to be able to dump coal coming out of
9 Headgate 22 onto your main line belts outside.

10 I told Mr. Hager and them, I said, We need
11 to take out structure all the way up to the glory
12 hole and scoop all this gob and stuff out of here.
13 And he said, No, we ain't got time for that. And I
14 said, We've got to make time. I mean, this flow
15 through, if we put it in, it's going to be eight
16 foot off the ground because of gob. He said he
17 didn't care, to put it in.

18 So instead of cleaning, taking all the
19 structure out and cleaning all this gob up -- I
20 mean, it's jet black in here and it's nothing but
21 meth (phonetic) and coal that's, you know,
22 throughout two and a half years was built up here.

23 We jacked the flow through, our transfer
24 point, up so high, you could just duck walk and get

1 under it just because we don't want to do the right
2 thing and clean this up.

3 So this starts all this ball rolling in a
4 negative atmosphere.

5 All right. You've got the miner section
6 trying to run coal and us setting right in the
7 middle of it trying to get this belt head in. And
8 it's just a mad rush.

9 I mean, we got S1, P2, and M3, everybody's
10 heard of it, that's our policy. That's a gimmick,
11 because we absolutely followed none of it. I mean,
12 it was said that we put so many flag pins in the
13 bottom, so much concrete, lights around all the
14 belt heads. I mean, we followed this for years to
15 the tee. But on this panel right here, it did not
16 matter anymore. It was absolutely told to us we was
17 to get this in.

18 And actually, the day before I missed
19 work, it even come to the point where they said if
20 this belt head ain't ready to run by 12 o'clock
21 tomorrow, there will be people leaving here, and
22 I'm that man. I'm the man that left there.

23 Q. Anybody else that you know of?

24 A. Well, there was three of us smart enough

1 to get out. That would have been "Smurf," which
2 his name is Rick Hutchinson. And Jim Faunda.

3 Q. Jim who?

4 A. Jim Faunda.

5 Q. Faunda?

6 A. Yeah, he was our special projects --

7 Q. Excuse me. Like F-o-n-d-a?

8 A. F-a-u-n-d-a, Faunda.

9 Q. Okay.

10 A. He was our special projects longwall
11 manager. He would have been, the coordinators kind
12 of -- he worked directly for Chris Adkins as far as
13 Route 3 longwall. That was Jim Faunda's title.

14 Q. Okay.

15 A. And us three was really smart enough to
16 get out.

17 And actually, the day before the
18 explosion, I didn't know "Smurf" had went to the
19 same mines I went to. You know, I left Massey and
20 went to Patriot.

21 I come underground and I seen him, I
22 didn't even know that he left. And "Smurf" said,
23 Why did you leave? And I said, Why do you think I
24 left? It was kind of a joke between me and

1 "Smurf." And he said, Well, why did you leave,
2 seriously? And I said, Well, one of two things was
3 going to happen. I said, Within two years, that
4 mines, it will be so messed up, it won't be
5 operational, or they'll blow that place off the
6 map. And the next day is when UBB exploded and
7 that happened.

8 Q. Now you and Mr. Hutchins are both at --

9 A. Patriot Coal Company.

10 Q. Speed Mining?

11 A. Speed Mining, yes, sir.

12 And that's actually who Mr. Faunda is
13 employed by.

14 Q. Mr. Faunda is there now, too?

15 A. Yes. He's not at Speed anymore. He's at
16 Federal. But that's a Patriot mine. He started at
17 Speed with us, and they promoted him up to Federal
18 Mine.

19 Q. Do you know when Mr. Faunda went to
20 Patriot?

21 A. He probably was gone four months before
22 myself.

23 Q. Now back to Headgate 22. I know my
24 question was did the mother job construction have a

1 negative affect on the ventilation.

2 Now we've heard a number of people who
3 worked on that section say that the ventilation
4 would be --

5 Well, the best example they used was that
6 they come to the section and they'd look at the
7 high voltage sign at the section power center. Now
8 occasionally it would be blowing and flapping,
9 which would indicate to them that they had, you
10 know, pretty good air, and there would be instances
11 when it would just simply be hanging straight and
12 that was an indication to them that they did not
13 have very good air.

14 Do you recall being on that section and
15 observing the high voltage sign as I have just
16 described it?

17 A. Yes, sir.

18 Q. Is that a fair assessment --

19 A. Yes.

20 Q. -- of how the ventilation was?

21 A. Yes, sir.

22 Q. And it seemed that their description of
23 this was that sometimes this would change from
24 day-to-day.

1 A. Oh, yeah.

2 Q. If not hour to hour.

3 A. Yes, sir.

4 Q. Now what would be your best explanation as
5 to why the changes like that that we just described
6 would happen?

7 A. Because they was constantly messing with
8 ventilation everywhere.

9 We was constantly getting violations
10 everywhere in that coal mine, from different parts
11 of it.

12 Well, you'd have the inspector tell you we
13 need this right here, this is what we want. Well,
14 then they'd send like an evening shift supervisor
15 or evening shift mine foreman or whatever to go up
16 there and work on this air. Well, then when day
17 shift would come back around, Everett would go in
18 there and he would change this air, and then
19 Blanchard would come up and say, no, MSHA is wrong,
20 that's not what we got to do here, we've got to do
21 it like this.

22 You didn't know what to do. Ain't nobody
23 in that coal mines could tell you what to do. They
24 worked on ventilation commonly every day, and it

1 was just another day. I mean, you didn't know what
2 was going on.

3 Q. Is it possible that the water, up and down
4 level of the water in the headgate entries could
5 have had that kind of an affect on the Headgate
6 22 ventilation?

7 A. Yeah. If their pumps wasn't pumping and
8 it was roofed out with water, it would disrupt your
9 ventilation.

10 I mean, there was a lot of things that
11 could disrupt your ventilation in that coal mines,
12 and it started from really inby 78 break right
13 there, you had four doors on the main line track.
14 You had, I think, 10 sets of double doors just to
15 get to the longwall. I think that assessment --
16 you had 8 or 10 sets of doors.

17 Well, anytime anybody in that coal mines
18 went around the curve at 78 break through those
19 doors, they was managed in so poor condition, I
20 mean, you didn't have a positive backup right
21 there. We was losing a lot of air down our track
22 entry.

23 Well, anytime the motor crews or anything
24 went through there, they opened every set of doors

1 and dumped all the air that the doors was trying to
2 catch back into the track entry outby.

3 And the same thing, you had a set of doors
4 right there where they drove that little panel up
5 where you're talking about right there. You had
6 another set of doors that a scoop man would come
7 down and get supplies, go on up over to your left,
8 that little block -- your three entry section
9 driving from 22 to 23.

10 Q. 22 Tailgate?

11 A. You see where it's drove up in three
12 entry?

13 Q. Yes.

14 A. There was a set of doors right there the
15 same way. Anytime -- because the scoop man would
16 go down and get supplies, he'd open up the doors,
17 and he'd dump all his air back in the track.

18 And the reason that the doors was put in
19 there was because we would not take the time to cut
20 the overcast. Blanchard said we don't have time to
21 do it, we'll ventilate it with doors. And that's
22 the reason why --

23 That's the kind of decisions that was made
24 of why UBB had such a hard time trying to

1 ventilate, is we never fixed anything, we Band-
2 Aided everything we done just to hurry up and get
3 it done.

4 Q. Speaking of doors, I know you left in
5 early February.

6 Now as best we can determine, there's a
7 location right here just when you come into the
8 longwall headgate. It's about roughly crosscut
9 number 11.

10 A. Yeah, 8 to 11 break right there.

11 Q. At the number two entry. There's a set of
12 doors there.

13 A. And a track entry.

14 Q. That were installed just inby where the
15 air splits.

16 A. Yes, sir.

17 Q. The air splits and goes to the miner
18 sections and goes to the longwall. And there's a
19 set of doors installed just inby that split.

20 A. There's a track spur there.

21 Q. Yeah. We understand these doors were
22 installed in such a fashion as to where the side
23 panel or a portion of it was left out so it could
24 serve as a regulator. Were those doors there when

1 you left?

2 A. Yes, sir, when I left.

3 Q. Do you know when those doors were
4 installed?

5 A. Right before -- I think. I'm not
6 positive. I think right before they started mining
7 up there is when those doors was put up.

8 Q. When you say "mining up there," up there
9 where?

10 A. Up here.

11 Q. 22 Tailgate?

12 A. Yes.

13 Q. Okay. All right. Do you know what the
14 logic was of putting the doors in?

15 A. No. Like I said, we had so many -- I
16 couldn't tell you --

17 All I could tell you is if something
18 happened, how to get my men outside. I could tell
19 you where the intake was. You know what I mean?

20 But as far as how the air run, if you
21 didn't have a map and you wasn't an engineer or
22 somebody, you could not determine how the air was
23 in that mines.

24 I mean, we had regulators --

1 When I went to the mine academy and was
2 taught to ventilate, they did not ventilate in the
3 same fashion that we was taught when I took my
4 papers, which now it may have changed since I took
5 my papers, but we was taught you didn't double
6 regulate, you know what I mean, things like that.
7 And for a lot of instances, UBB did not ventilate
8 that way.

9 Q. Now these two doors that we've just
10 referred to here in these longwall and headgate
11 entries that served as regulators, do you know if
12 it was common for folks to expand or contract those
13 openings to regulate the air there? You know, did
14 folks use that to manipulate the air frequently?

15 A. I wouldn't be aware of that.

16 Q. Okay. All right. Now one other thing on
17 the mother drive construction site. Now as you
18 say, you began cutting the overcast before there
19 was a permit in hand, according to Mr. Hager. Was
20 it necessary to leave doors open or knock out
21 stoppings --

22 A. To ventilate?

23 Q. -- to direct the dust as these things were
24 cut?

1 A. Absolutely.

2 Q. Now would that have had a negative impact
3 on the ventilation of 22 Headgate?

4 A. Absolutely.

5 When they would start their miner up --
6 like I say, I'm not a section kind of guy. But
7 when they would start that miner up and start
8 cutting, you literally could be standing 25 to 30
9 feet away from the miner and the operator and could
10 not see it.

11 And they would hang curtains up and walk
12 down and find the nearest man door and try to open
13 it and hang curtain and force air to where just the
14 miner man could see enough to cut that right
15 there.

16 And they done the same thing on Headgate
17 22 panel when they first cut that mother drive
18 right there.

19 Q. Do you need to take a break and go to the
20 bathroom or anything? Drink of water or anything?

21 A. I'm good.

22 MR. FARLEY: Do you have any
23 questions?

24 MR. SHERER: Sure.

EXAMINATION

1
2 BY MR. SHERER:

3 Q. Mr. Ferrell, I'm going to jump around a
4 bit. I have got some follow-up questions to some
5 of the things that Terry brought up and a few other
6 questions also.

7 You mentioned chaos, you mentioned nobody
8 knew what was going on as far as ventilation. You
9 also mentioned that many of the victims were very
10 good, experienced miners.

11 A. Yes, sir.

12 Q. I guess my question is, and we've heard
13 this from other people, many of the victims were
14 very good, very experienced miners, and they knew
15 what to do. Why do you think this explosion
16 happened?

17 A. In my opinion, the biggest cause of the
18 explosion at UBB was they could not ventilate.
19 They had no means whatsoever to ventilate that coal
20 mines. They had no management.

21 Because you had two portals. You had the
22 UBB portal and you had the Ellis portal, and one of
23 them didn't know what the other one was doing.
24 They did not communicate.

1 It was one mine, but it was divided.
2 Everybody wanted to get to the Ellis portal to get
3 away from all the headache. All the inspectors
4 first come to the UBB side.

5 But when Ellis first opened, it was kind
6 of quiet over there. You didn't have a phone, you
7 didn't have this, you didn't have that, so you
8 didn't really have a communication with that side
9 other than a mine phone. So you had no
10 communication between one side or the other, and a
11 lot of times you didn't know what you was going to
12 do until you got to work and they either hollered
13 at you on the mine phone or you got up to the
14 section and every one of them would be up there.
15 And everybody was running around, ain't nobody
16 knowed what was going on. I mean, you had five or
17 six jobs going on at the same time. It was
18 uttermost chaos every day.

19 And people like Timmy Davis and Gary
20 Quarles, these guys was experienced men. And
21 Grover Skeens was probably one of the best men on
22 that section as far as being a maintenance guy. If
23 they was anything -- this is my opinion -- anything
24 that was not right on that section, Grover Skeens

1 didn't know about it, because Grover Skeens was not
2 that kind of guy. He was a great guy. If he
3 knowed about it, it was fixed.

4 Now Timmy, I mean, (b)(7)(C)

5 (b)(7)(C) I like Timmy. But Timmy could be

6 (b)(7)(C) And Jack Roles would play whatever
7 role -- if he wanted Timmy to do something that
8 really wasn't right, that really wasn't so bad, I
9 had seen Timmy, you know, go along with things like
10 that. But I don't think Timmy would have put his
11 people in harm's way. I mean, there was an extent,
12 I guess, you know what I mean? He wouldn't cross
13 the line and put his men in danger is what I'm
14 trying to say.

15 But as far as that mines, we just couldn't
16 ventilate it. I mean, half of our violations in
17 that coal mines was inadequate air.

18 We never rock dusted. I mean, very seldom
19 you go in there, anywhere you went --

20 And it was well known. I mean, you ask
21 anybody in that mines, I mean --

22 And really -- and this is what's bad even
23 on my behalf is I growed up in a Massey affiliated
24 mine and I thought it was like that everywhere. I

1 mean, until you can see a difference, you don't
2 have something to compare it to. And then when I
3 went to the Patriot side of things, I can't believe
4 that we got by with what we did. I mean, that's
5 how --

6 And that's the worst part about UBB, was
7 because most of the guys that was at that mines
8 either grew up at that mines or that was the only
9 mines they worked at and they didn't know no better
10 or couldn't compare it to anything. That's all
11 they knowed.

12 Q. Thank you.

13 Now you're talking about not enough air
14 and fluctuations of air on the -- you mentioned
15 there wasn't air on the longwall at times, there
16 wasn't air on the sections at times.

17 Are you aware of a directive that Chris
18 Adkins put out sometime around August of 2009 that
19 nobody run any coal if they didn't have at least
20 20,000 in the last open?

21 A. Yes, sir.

22 Q. Do you think that was complied with at
23 UBB?

24 A. No. And it wouldn't be anywhere.

1 Q. Can you elaborate on that? Why? Why
2 wouldn't it be?

3 A. That falls back into what I was speaking
4 of earlier. Massey spoke code. They would tell
5 you in front of anybody they could that we're going
6 to do the right thing, we've got this S1, P2, M3
7 guideline, we're going to follow this to the tee.
8 But that only applied to them when they wanted it
9 to. It didn't apply to them when they was down or
10 they needed to make money.

11 Q. In other words, it was just PR?

12 A. Yes.

13 Q. Okay. Thank you.

14 Now we understand that there may have been
15 problems with water and ventilation when the
16 longwall got down near the tailgate. Are you aware
17 of the cutting on that tail without any water?

18 A. No, I couldn't. Just, you know, you hear
19 people talk.

20 My best friend actually worked on the
21 longwall. And he was like my brother. His name
22 was Gary Quarles. I knowed him all my life. And I
23 mean, his kids was like my kids.

24 And what little things that I'd ever heard

1 about the longwall is really just me and Gary been
2 out fishing or hunting or playing with the kids or
3 something like that.

4 And the day before that explosion, Gary
5 had come -- he was driving back and forth up the
6 road. And when you're around somebody enough, you
7 kind of know something is wrong, you know. And I
8 was weed eating and I knowed he didn't want to come
9 over there and make me stop, so I just acted like I
10 was going to take a water break, because I knowed
11 what kind of guy he was.

12 Well, he had pulled in and his kids had
13 pulled in behind him. And we started talking
14 about -- Gary at that time (b)(7)(C)

15 (b)(7)(C) and he was talking about his kids and this
16 and that, you know. He asked me, you know, if I
17 was okay, because I left Massey, if I was working
18 or if I needed money or anything like that. And I
19 told him, no, that I was fine, I was working.

20 And he said, Man, he said, I wish I had a
21 good job like you're talking about.

22 I said, Well, Gary, I said, you can. I
23 said, You know Glen will give you a job.

24 And he said, Man, I need to go somewhere.

1 I said, Well, what's the matter, Gary?

2 And he said, Man, I'm just scared to go
3 back to work.

4 I said, What do you mean scared, Gary? I
5 said, What's going on?

6 He said, Man, he said, they got us up
7 there mining and we ain't got no air. He said, You
8 can't see nothing. Every day, he said, I just
9 thank God when I get out of that coal mines that I
10 ain't got to be here no more. He said, I just
11 don't want to go back. He said, When I get up in
12 the mornings, I don't want to put my shoes on. He
13 said, I don't want to make myself go to work,
14 because, he said, I'm just scared to death to go
15 or, he said, something bad is going to happen.

16 And I said, Well, Gary, I said, if you
17 want me to, I'll talk to Glen and see if I can't
18 get you on down here.

19 And he kind of changed the subject and
20 kind of joked a little bit. He said, Yeah, tell
21 Glen, he said, if he brings me down there as
22 assistant coordinator, I'll come down there.

23 And Gary was a shear operator. You know
24 what I mean?

1 So the next morning I'd went in and I
2 asked Glen, I said, Gary is looking for a job.

3 And he said, Absolutely, Gary is a great
4 guy. He said, Tell him when you get back if he's
5 serious and he's interested, he said, tell him to
6 come on in and we'll give him a job.

7 Well, before I could make it home, that's
8 when I passed all the ambulances and fire trucks
9 and all that stuff when the inundation occurred at
10 UBB when they lost their lives.

11 Q. So Mr. Quarles was a shear operator and he
12 said he didn't have enough air on the longwall
13 face, couldn't see what he was doing?

14 A. Yes, sir.

15 Q. Did he mention any pop offs that had
16 occurred?

17 A. No. No, he had never mentioned to me
18 about any ignitions or anything of that sort.

19 Q. Thank you.

20 MR. FARLEY: That was you saw

21 Mr. Quarles the day before?

22 THE WITNESS: Yes, sir.

23 MR. FARLEY: On Easter Sunday?

24 THE WITNESS: Yes, sir.

1 Q. Now I want to jump around just a bit. You
2 were talking to Mr. Farley about the secret event
3 that happened in 2000 or sometime before that, the
4 ignition on the longwall face that burnt your dad.

5 A. Yes, sir.

6 Q. You mentioned that they were walking down
7 the face, so I assume that was the end of the
8 shift?

9 A. No, it wasn't the end of the shift when
10 they come off after that happened. I guess when
11 that happened -- I mean, you could imagine being up
12 there and that happened, it would scare you to
13 death. I guess he was trying to regroup all of his
14 men, make sure they're accounted for, make sure
15 everything was okay. And then I guess they went to
16 the end of the track -- in my opinion, they went to
17 the end of the track, and that's where they was
18 told, hey, we can't tell nobody about this, that
19 kind of deal.

20 Q. And based on what you know, they were
21 probably cutting coal when that pop off occurred?

22 A. Absolutely.

23 Q. Now I'm sure you're aware that the crew on
24 the UBB longwall were closest -- the shear was cut

1 out of the tail?

2 A. Yes, sir.

3 Q. And the nearest victims were about mid
4 face. You think they were not near the shear and
5 the shear wasn't operating when the explosion
6 occurred. Do you have any opinion on that?

7 A. Maintenance, unless you was down, it would
8 not have been something about maintenance. Unless
9 it just would not run, it wouldn't have been down
10 at that point in time.

11 In my opinion, they knowed something was
12 wrong, and they was trying to either evacuate that
13 mine or go find out what was going on.

14 But at that time we had just put in a
15 leaky feeder systems and all this stuff and half of
16 it wasn't operational.

17 Somebody could call the, you know --
18 everywhere you go in a coal mine, somebody is
19 always using torches and cutting and this and
20 that. It had got so laid back at that mines, if CO
21 was going off, they would call the dispatcher or
22 the dispatcher would call such-and-such and say,
23 look, we've got a CO going off, blah, blah, blah,
24 we need to get somebody up there. It wasn't a

1 priority. Somebody got to it when they could get
2 to it.

3 But it kind of got laid back. You know
4 what I mean? And it could have been something
5 like, well, we got a monitor going off, somebody
6 going to go check it, keep doing what you're doing,
7 you know what I mean, that kind of thing. But they
8 didn't take a lot of things serious over there
9 anymore.

10 Q. Now did you have any occasion to go on the
11 tailgate side of the longwall once they got
12 producing coal up there?

13 A. I had been up there, yes.

14 Q. What was the rock dust like back through
15 there?

16 A. Insufficient. I mean, really lack of.

17 I mean, it was low -- it wasn't well
18 traveled, because they didn't cut enough height.

19 They was in such a big hurry to drive that
20 up on advance, they didn't cut enough height, so we
21 really couldn't do nothing with the tail side of
22 the wall. You know what I mean? Really, after we
23 had set up, we had to do everything off the head
24 side, because they went so quick through there,

1 they didn't mine enough height.

2 The track was in horrible condition and
3 the top, you know, you go up through there and all
4 the sand jacks, there would be sand jacks for like
5 four or five breaks and they would be really loaded
6 up where the bottom was hoofing and then it would
7 straighten up for a little bit, so really, the tail
8 side of the wall wasn't a place you really wanted
9 to be.

10 Q. Thank you.

11 Now you're talking about filling out a
12 daily report. Did you ever write any safety-
13 related problems on that report?

14 A. I never would write them on the report. I
15 just kind of took care of them, because you didn't
16 get a pat on the back for doing something. You
17 know what I mean? If it took you more time and
18 they found out it was taking you longer to get
19 something done because you was doing this, they
20 didn't really like to see that. You know what I
21 mean?

22 So that's just like if I seen a timber
23 needed set on my on-shift or preshift, I would put
24 it in my on-shift or preshift that I observed, you

1 know, bad rock or whatever or timber, danger ...
2 whatever we done.

3 But as far as on my report, if it wasn't
4 business related, you didn't talk about it with
5 Mr. Blanchard. If you didn't have your facts in
6 front of you when you went to talk to him, he would
7 try to embarrass and humiliate you. He wanted
8 strictly the facts, what was done. He didn't want
9 to hear the labor pains, just show me the baby.
10 That was the biggest thing that everybody was told,
11 he don't want to hear about the labor pains, just
12 show me the baby.

13 Q. So would it be fair to say that there was
14 no, if there were safety related issues that there
15 were, you were encouraged not to document that?

16 A. Yes.

17 Q. How about on your preshifts and on-shifts,
18 was that the same?

19 A. I would say more so for actual examiners.
20 Say all I had was a small contained work area every
21 day. And I mean, really, for us, I could really
22 fix about anything. You know what I mean?

23 Q. Sure.

24 A. Because you've always got motor crews

1 going one way or another, you jerk something off a
2 car real quick or something, you know, timbers or
3 sand props or whatever you need. But I have heard
4 them tell other fire bosses, you know, Oh, man, we
5 can't put that in the book. We can't put that in
6 the book. We got to fix it. We can't put that in
7 the book. I have heard that.

8 Q. Who did you hear that from?

9 A. I have heard Everett say that. I have
10 heard Wayne Persinger say that.

11 And I mean, it got to be the point where,
12 like I say, it was just chaos.

13 You wasn't supposed to move equipment with
14 people inby, but we done it every day.

15 I mean, and I even went as far as asking
16 Mr. Persinger, I said, Look, I said, we have done
17 been caught at this mines moving equipment three
18 times and got violations for it. I said, You are
19 asking me to come out on a hoot owl and move this
20 equipment, knowingly that we have already been
21 caught.

22 And he said, I'm telling you to move it,
23 just don't get caught.

24 And I said, Well, it don't always work

1 that way.

2 He said, Well, if you do get caught, he
3 said, what's cheaper, being down or paying the
4 fine?

5 That was the attitude that they had there
6 at the end of that mine. And you keep adding all
7 this negative stuff up and big things like that
8 happen.

9 Q. When you were working underground, did you
10 ever hear anybody call in saying you got inspectors
11 coming?

12 A. Oh, yeah, every time.

13 Q. What about the Massey safety auditing
14 people, would they call underground when they were
15 coming in?

16 A. Yes, sir. They would let you know they
17 was coming really about a week before they was
18 coming. And you would try, you know, to look at
19 your work areas and examine them and try to prepare
20 for them to get there. You know what I mean?
21 You'd try to do all the housekeeping that you
22 could. You'd try to make everything picture book.
23 You know what I mean?

24 When the inspectors come in, it was worse,

1 but you just had a short amount of time to do it
2 in, and it was chaos. You know what I mean? They
3 would call up -- the call would come out like that
4 and it would hit all the sections, everybody knowed
5 when they was coming. When they hit the bridge at
6 Mont Coal, the security guard would come up through
7 the repeater, tell the mine manager that they was
8 coming, then the calls went out through the
9 sections to be ready to make sure you were legal,
10 rock dust, whatever. It was every time that
11 anybody was coming to that mines.

12 Q. Would it be fair to say that there was a
13 greater emphasis on not getting caught for a
14 violation than there was for protecting the miners?

15 A. Oh, absolutely.

16 MR. SHERER: Thank you. That's
17 all the questions I have got right now.

18 MR. FARLEY: May I ask one more
19 before you start, please?

20 MR. MCGINLEY: Sure, sure.

21 EXAMINATION

22 BY MR. FARLEY:

23 Q. Concerning the movement of equipment, can
24 you, I think your last episode was a conversation

1 with Mr. Persinger.

2 A. Yes.

3 Q. Now was anybody else involved in that
4 conversation? Did you receive a similar directive
5 from anyone else at any time you can recall?

6 A. See, I'm trying to think back. I mean,
7 that was a huge thing. We done it so much that it
8 was kind of out of control.

9 We had first, we mined out on that panel
10 and took the tripper drive out. Well, we'd come
11 out on the hoot owl to take the tripper out so we
12 wouldn't lose production. You know what I'm
13 saying?

14 Q. When you say you mined out on that panel,
15 what are you referring to?

16 A. I'm talking about on Headgate 22. When
17 you mine down to like 40 break -- see, there was
18 actually two belt heads on that panel. You had the
19 mother drive --

20 Q. Driving towards Bandytown?

21 A. Yes, you know what I mean?

22 So we went on the hoot owl. We removed
23 that head out of service. Well, you have to
24 transport that from underground to the outside.

1 Well, I'm not a motor operator. You know
2 what I mean? So my crew was kind of an independent
3 crew. We kind of had to do everything for
4 ourselves. I mean, if we had to run a bolter that
5 day, we run a bolter that day. You know what I
6 mean? If we had to do this or do that, we kind of
7 had to do it on our own.

8 So we had transported everything outside,
9 we had a power box on the car. Well, it wasn't no
10 wider than the car, but it was about two inches
11 higher than the canopy.

12 Well, when we come outside, the inspector
13 walked over there. And I didn't know if it was
14 higher than the canopy, I thought if it was wider
15 than the car or way higher than the canopy that it
16 was considered a move.

17 Well, that's when he educated ourselves,
18 you know what I mean, as far as if it was wider
19 than a car or higher than a canopy, it was
20 considered a move. Didn't matter if it was a
21 toolbox or whatever it was, if it didn't routinely
22 go to that section, it was considered a move.

23 Well, after that, when you find out
24 something is the law and you're not supposed to do

1 it, if you've got any pride or sense of anything
2 about your people, you're not going to do it
3 anymore.

4 So they had to cut -- they was originally
5 above the head at 52 break, where I spoke with you
6 earlier down here, down here on this one.

7 There was a six-foot head setting where
8 the 48-inch head was going to go, so it had to be
9 transported outside before the other one could be
10 put back in. So the track was wider than the car,
11 higher than the canopy.

12 So I told them, I said, you know, we're
13 going to have to do that on an idle shift. You
14 know, you're going to have to do that on a Sunday
15 or a Saturday when there ain't nobody working. Oh,
16 no, we ain't got time. I said, Well, how are we
17 going to get it outside? Just come out on the hoot
18 owl and haul it. I said, Well, what makes the hoot
19 owl any difference? You still got guys inby.
20 Well, we ain't got no inspectors hardly on the hoot
21 owl.

22 Q. Who was that direction from?

23 A. That was from Mr. Persinger.

24 Q. Can you give me a -- let me stop you for

1 just a minute. Just to be straight here. I have
2 participated in about all these interviews, and my
3 gut feeling with respect to movement of equipment
4 at UBB has been that whenever they want to move
5 something, they just throw it on a flat car and
6 haul ass.

7 A. That's exactly how it happened.

8 Q. But where I need a little help is I need
9 some dates, some times, some locations, and some
10 names.

11 A. As far as dates and times and anything
12 like that, I have went to a member of an inspection
13 team. His name is Jerry Pauley.

14 And I can't remember when or the actual
15 time, but I have went to Mr. Pauley and told him
16 that this was happening and they was forcing us
17 into doing this.

18 And very shortly, I'm talking within four
19 days, is when I was asked to leave Massey. I don't
20 know if it was overheard me talking to Mr. Pauley
21 or if it was just other things contributed and it
22 kind of fanned out that way, but I went to Jerry
23 Pauley before all this had ever took place and
24 talked to him about we were still moving equipment,

1 we wasn't supposed to be, and he said he knowed it
2 and he was trying to catch it. He was going back
3 looking at the move books and times and trying to
4 figure out how to catch them, I guess would be how
5 to put it.

6 And I even told him when we'd done it,
7 what shift we'd done it, so Mr. Pauley would be
8 maybe be more helpful to you as far as dates and
9 times than I would.

10 Q. All right. Now do you feel like
11 Mr. Pauley responded to you properly? Do you feel
12 like he took your issues seriously and tried to
13 help?

14 A. Yeah. I mean, when I first told him that,
15 I mean, I seen the sense of concern, because that
16 was something that he had already caught them doing
17 before. You know what I mean? He knowed it was
18 happening. He was just trying to get all the right
19 information.

20 And really, when it come to moving shields
21 and all these other things, Mr. Pauley was really
22 trying to stop them from doing a lot of things they
23 were still able to do through MSHA.

24 And a lot of times I would even hear

1 Mr. Pauley saying if it would be up to me, I would
2 shut you down, but my boss won't let me shut you
3 down.

4 So I was under the impression that he was
5 going before his supervisor and his supervisor
6 wasn't letting him take control of the mine as he
7 would have done it if he had his own way.

8 Q. Do you recall about when you talked to
9 Pauley?

10 A. It would have been probably three weeks
11 before I left Massey, and I left probably the 15th
12 of February, so it would have been three weeks
13 prior to that.

14 That might be it. I thought I was off
15 longer -- I thought I was off the whole month of
16 March, because when you ain't got a payday coming
17 in, it may have seemed like it was a lot longer,
18 but it could have been anywhere from February to
19 March is when I left, but I started with Patriot in
20 April.

21 Q. All right. Well, they're showing a
22 termination date of March 2nd here; is that
23 possibly correct?

24 A. Yeah, that is possibly correct.

1 Q. All right.

2 EXAMINATION

3 BY MR. MCGINLEY:

4 Q. With regard to that document and showing
5 the last day of work, is that possible did you get
6 paid for a couple of weeks where you didn't work?
7 I mean, basically, you know, sometimes when people
8 are let go on jobs, I'm not talking about Massey,
9 but sometimes they get a couple of weeks pay.

10 A. No.

11 Q. Severance or anything?

12 A. No.

13 Q. So you think that's probably accurate?

14 A. Yes.

15 From my suspension date, I wasn't paid for
16 the length of my suspension. And like I say, I was
17 supposed to return for my return-to-work meeting
18 and he didn't show up for it, so that was the sixth
19 day.

20 The seventh day would have been the day
21 that I met with him and actually was let go from
22 that company.

23 And from that time that I was suspended
24 on, I never, I didn't have no money coming in until

1 I started work with Patriot Coal.

2 Q. So you think the March 2nd was the last
3 day you worked or --

4 A. I think that was --

5 Q. -- or after your suspension?

6 A. That was the day that it was final.

7 Q. Okay.

8 A. That wasn't the day I was suspended. That
9 was the day it was registered in the system that I
10 didn't work for that company anymore.

11 Q. So do you know the exact day when you were
12 suspended?

13 A. It would have been --

14 Q. You probably --

15 A. It would have been seven days before that
16 day.

17 Q. Okay.

18 A. I guess is how to say it. Because like I
19 say, it was the seventh day was the day that I went
20 back to my return-to-work meeting or whatever and
21 was let go. So it would have been seven days
22 before the day that it was, I guess, finalized that
23 I didn't work for that company anymore.

24 Because they told me whenever I left that

1 they had 72 hours that they had to give me my
2 401(k) and all my papers or whatever, so I'm going
3 to say it was seven days prior to that date right
4 there was when I actually was suspended from that
5 company.

6 Q. I have some clarifying questions and a few
7 questions that I don't think you've been asked, if
8 you'll bear with me.

9 You said with regard to safety audits. I
10 assume the question and the answers had to do with
11 internal Massey safety audits. You said they would
12 tell you they were going to have an audit. Who
13 would tell you and --

14 A. The reason they would tell you --

15 See, audits come about from upper
16 management, and that kind of placed you as where
17 you stood in Massey as far as your audits.

18 Whenever they had these big meetings, the
19 ones that had the best audits and had the most
20 production, you were the icons of this company.

21 So when these audits come about, all the
22 superintendents and mine foremen, they wanted their
23 audits to be clean to where it looked like they was
24 operating the greatest coal mines with the safest

1 production and the most production, I guess that's
2 how I want to say it.

3 The superintendents, the mine foremen, and
4 presidents, they would be the ones that wanted that
5 audit to look good and come back that it was good.

6 Q. So everyone that was working in the mine
7 that had management responsibility would know in
8 advance when the auditors would come in?

9 A. Yes, sir.

10 Q. How far in advance would they know that?

11 A. Sometime as much as a couple of weeks.

12 Q. Who were the auditors?

13 A. The auditors really consisted of safety
14 people, you know, like old safety directors or the
15 safety team. Or like Gary Frampton was, I guess --
16 I don't know what his actual title is, but he
17 was say like Route 3's head safety guy. You know
18 what I mean? He come in to work on reducing
19 violations and that kind of thing, it would be one
20 of those guys and probably the safety department
21 that would take care of those audits.

22 Q. Now after the Aracoma Mine fire, I'm sure
23 you're familiar with it, that killed two miners,
24 that there was a shareholder's suit filed against

1 Massey, and that was settled, and Massey agreed to
2 start doing safety audits and have managers in a
3 couple of different levels. And I don't know if
4 you were familiar with that.

5 My question really was did the safety
6 audits start fairly recently or around the time of
7 Aracoma or after that time?

8 A. We had audits way before Aracoma.

9 Q. Okay.

10 A. They just didn't happen very often. You
11 know what I mean? If you had them once a year or
12 once every two years, I mean, it was really
13 surprising.

14 Now after the Sago and Aracoma and all
15 this stuff happened, yes, we probably did have more
16 things happen or more concerns spoken out loud.
17 You know what I mean? I mean, we developed a mine
18 rescue, you know what I mean, team. Things did
19 change for the better. You know what I mean? We
20 had to have different fire suppression systems.

21 Well, my job was pretty important
22 pertaining to what we done as far as like Sago was
23 concerned or Aracoma, because the fire was thought
24 to have happened on the storage unit end of it.

1 You know what I mean? And in Massey, I was
2 considered to be the expert as far as putting belt
3 heads in and that kind of forte, and it was my job
4 to make sure that all the rollers was crowned and
5 we wasn't going to have no belts rubbing and we had
6 the right fire suppression systems, the right
7 sprays, and we complied with everything that we
8 were supposed to comply with.

9 But we was fought tooth and nail to do
10 what Massey wanted us to do from our local
11 management as far as from our president down to our
12 mine foreman. We was fought tooth and nail to do
13 the things and to the standard of what Massey
14 wanted them to be done as far as to hear it.

15 But which like I say, not everything you
16 heard was supposed to be in, you know, really took
17 into consideration as to what you done.

18 Q. So the Massey statements about safety
19 first didn't really get through to the president of
20 the mines of UBB, the superintendent --

21 A. No.

22 Q. -- and down into the mine, is that what
23 you're saying?

24 A. Yeah, you couldn't make any man at that

1 coal mines believe that, that safety come before
2 anything. Production was number one. And 99.9
3 percent of anybody that would tell you that was the
4 number one objective in that coal mines was
5 production.

6 Q. So with regard to the sort of post Sago
7 and Aracoma, were there different people coming in
8 to do these audits? I mean, was it more, you
9 know --

10 A. No.

11 Q. -- anything different at all?

12 A. A lot of it was in-house. I mean, I can't
13 really --

14 Other than a contractor or a vendor coming
15 in like Strata or somebody like that to help with
16 maybe our roof control or things like that and
17 maybe with the exception of Mr. Frampton, which was
18 one of the Massey's, Massey Coal Service's
19 representative. I guess that would be how you
20 define him, because that's what they was considered
21 as.

22 You had Jason Whitehead, which was the
23 Route 3 production manager. You had Gary Frampton,
24 I guess, would have been like the safety man of all

1 Route 3. Those people would come in and that would
2 be as really as far as the audit team would consist
3 of, would be Massey Coal Services and in-house
4 representation would be the ones to do the audit.

5 Q. But the fact that everybody knew they were
6 coming significantly in advance didn't allow the
7 auditors to see --

8 A. The true way that coal mine is run from a
9 day-to-day basis? Absolutely not.

10 Q. How did the word come? I mean, where did
11 the word come from that these audits were going to
12 take place? I mean, for example, where would you
13 hear it from? Would it be from the superintendent,
14 from Blanchard?

15 A. I mean, it varied. I mean, if Blanchard
16 wasn't there today, then you might hear it from the
17 vice president or the superintendent or mine
18 foreman, but it always come from your upper mine
19 management level. You know what I mean? From your
20 mine foreman up is where you'd hear it from.
21 Sometimes even from your safety department. Like
22 we're going to be doing an audit, blah, blah, blah,
23 this is what we're going to be looking for, I
24 mean...

1 Q. And then after the audit, back to cutting
2 corners?

3 A. Oh, yeah, after the audit was done, if it
4 took you six months to complete that audit and make
5 it right, after it was over with, it wasn't worried
6 about until the next audit was coming around.

7 Q. And then what period of time would there
8 be between audits in the last couple of years?

9 A. Sometimes a year, maybe two years before
10 another audit would come around.

11 Q. There was sort of a press conference that
12 Massey had after the explosion at UBB in April at
13 the Civic Center in Charleston. One of the
14 directors, I can't remember which one, said that
15 Massey had brought in a couple of experts, safety
16 experts. Yeah, I think it was in like the fall of
17 2009 and they had, the number of violations had
18 dropped and things had improved. Do you know
19 anything about that?

20 A. The safety experts that they're talking
21 about was Berman Cornett and Jim Walker.

22 Berman Cornett was a mine foreman
23 superintendent that couldn't handle the stress
24 anymore, so they had to find a place to put him.

1 So he was our safety man. He didn't know a whole
2 lot about safety other than working in the mines on
3 a day-to-day basis.

4 And the same way with Jim Walker.

5 I mean, you want to call a man an expert
6 that you're finding a place to put him, then we can
7 call anybody anything we want to call them, but
8 they was by no means no expert.

9 Q. But the director, the Massey director said
10 they were people that were brought in from
11 outside. Were these two brought in from the
12 outside?

13 A. Well, they was brought from another Massey
14 organization from the outside in.

15 Q. When would that have happened? Would that
16 have been like the fall of 2009?

17 A. Yeah, probably around that time.

18 Q. So that's probably who they were talking
19 about.

20 And what did they do?

21 A. Well --

22 Q. I mean, if you know. I mean, anything --

23 A. This was the thing. We had a safety
24 director, which was Berman Cornett. You might see

1 him once every six months or you might see him for
2 a week at a time.

3 He had to take care of like all of Route 3
4 of everything that Performance Coal had. We didn't
5 have like three or four safety directors for all of
6 our mines. We had one guy that was trying to take
7 care of everything. So he might be over here doing
8 dust pumps today, over here. He was really
9 overwhelmed. There was no way he could probably do
10 his job to take full control of what he needed to
11 do, one man couldn't have done it all, in his
12 defense.

13 Q. How many mines did he?

14 A. Well, he had the Goulds (phonetic), he had
15 Ellis Creek, he had Parker Peerless, he had
16 Performance Coal Company. I mean, I would say at
17 least five different operations that he was trying
18 to take care of.

19 Like I say, you might see him once a
20 month, you might see him once every six months.
21 You just didn't see him very often.

22 And then when he would come to the mines
23 and you'd speak to him about the double doors on
24 the main line not being -- how are we getting away

1 with this? How are we absolutely getting away with
2 this? Well, Buddy, I don't know. Well, Berman,
3 why ain't we fixing this? Well, I don't know. I
4 said, Well, you're the safety man. If you don't
5 know, who knows? Buddy, all I can do is what they
6 let me do.

7 So I mean, he was controlled just like
8 everybody else. I mean, it just, it didn't matter
9 how far you wanted to dig, the corruption went as
10 high up as you wanted to find it, and it all
11 started with Blanchard. I mean, that's as far as
12 you can trace it, was back to Chris Blanchard and
13 Whitehead and the Massey Coal Services
14 representatives. I mean, that's as far back as --
15 as far back as you wanted to go to see the root of
16 the problem, it started with Blanchard, Whitehead,
17 Persinger, right on down the line. I mean, that's
18 where it was at.

19 Q. It would seem that a major, obvious major
20 defect in the desire to have safety first in this
21 audit process was giving notice, prior notice to
22 people working in the mine that auditors were
23 coming in, and that's why I asked you where that
24 would come from, and you said Blanchard or the vice

1 president. Where would they learn it? Do you have
2 any sense of that? Somebody outside of Performance
3 would have told them, is that --

4 A. They get -- the only time that Blanchard,
5 the only man that he answered to was Don
6 Blankenship. Under Don Blankenship, you had Chris
7 Adkins.

8 Chris Adkins did not like Mr. Blanchard.
9 Anytime he come around the mines, he made it known
10 to anybody that he talked to that that was
11 Blankenship's boy and that if he had his opinion
12 he'd fire him. So I know there was a conflict
13 between Adkins and Blanchard.

14 And I do know that Blanchard and
15 Blankenship, they called Blanchard Blankenship's
16 son. That's the close connection that them two
17 had. And it was made known that he took his orders
18 directly from Blankenship.

19 Q. At some point when you were discussing the
20 return of the longwall to UBB in early 2009, you
21 talked about the people involved, and I think you
22 indicated that Mr. Blankenship would have been
23 involved in that planning. Is that, was that just
24 a rumor, or do you have any basis for saying that?

1 A. Well, you know, you would just ask -- say
2 like my coordinator, you know, I would always like
3 to get a jump start if I could, because in this
4 company, you don't want to be the last man to get
5 done, because you was made an example out of most
6 times. Whoever was the last man ready to run
7 usually was the last man punished, so you done
8 everything that you could possibly do as far as
9 planning, getting all your stuff trying to get done
10 to meet their deadlines, because if you didn't meet
11 their deadlines, you wasn't going to be working
12 there very long.

13 And you would ask like Jack or Hogan or
14 whatever, Buddy, it's out of my hands. What do you
15 mean it's out of your hands? You're the
16 coordinator, why can't you tell me how much time
17 we're going to have or this or that? Well, that's
18 going to be between Blankenship and Blanchard and
19 Adkins. I mean, everything always went back to
20 Blankenship, Adkins, and Blanchard.

21 I mean, so as far as the planning, that's
22 how I knowed that they was a part of the plan, but
23 as far as proving it, no, I have never seen them
24 actually sit down and been in a conversation where

1 they was actually planning the development of it.

2 Q. But you were talking to people who was in
3 charge, for example, of the longwall?

4 A. Right.

5 Q. And they were saying this is where the
6 decisions are being made?

7 A. Right.

8 Q. Is at the upper level. Even Blanchard and
9 above Blanchard, to Adkins and Blankenship?

10 A. Yes, sir.

11 Q. You were asked about the inundations of
12 gas and you knew about the one that affected your
13 dad and you were at the mine at the time and
14 sometime in 2000 or before that. And you said you
15 hadn't heard about the 2003 and 2004 methane burst,
16 floor burst.

17 One of them, the one that occurred in
18 February of 2004, the whole mine was evacuated for
19 two days.

20 A. Well, I know, I can remember at one time
21 or another -- we was evacuated on just more than
22 like an inundation. You know what I mean?

23 Now as far as an actual ignition, if we
24 did have an ignition, it wasn't told to us that we

1 had an ignition. It was told to us that we had a
2 breach of methane, an inundation of gas, and that's
3 why we was out. It was never told before anybody,
4 I guess, other than directly affected that we did
5 have an ignition.

6 And that's why I say I can never say that
7 we had an ignition, because if we was evacuated it
8 was always in, we didn't have enough air or we had,
9 you know what I mean, an inundation of gas on a
10 longwall.

11 And there was a time that we would have
12 actually been out of work for about a week that
13 they sent us home. I mean, the salary people had
14 to stay, but the hourly people left for about a
15 week, because we had inundation of gas.

16 Q. That's really what I'm talking about. It
17 really wasn't an ignition in 2003 and 2004?

18 A. That is correct.

19 Q. So you do recall those --

20 A. Yes, sir.

21 Q. -- occurrences?

22 A. I do.

23 Q. But you weren't really informed of what
24 was going on?

1 A. No, no. The only salary people, even me,
2 I stayed at the mines because I was salary and they
3 was going to pay me regardless. They wasn't going
4 to let me go home. But I go to the office when
5 they call out the reports and maybe fill out the
6 books, but the more, I guess, knowledgeable people
7 on ventilation and that kind of role went in to
8 take care of disbursing the gas and regulating the
9 problem.

10 But, yes, on two different instances, yes,
11 we did have inundation of the gas and evacuated
12 that coal mine.

13 See, that's what I mean, as a worker, I
14 mean, that's like we wasn't -- they was supposed to
15 only have people in that coal mines that was
16 working on ventilation to take care of that
17 problem. When you get to work, they say, well, you
18 know, you ought to go on about your day.

19 And I have heard like the coordinator say,
20 Can we have guys underground while we're working on
21 this -- Oh, yeah, Blanchard said send them in
22 there.

23 Well, we go up there, our inspectors catch
24 us working, we're not even supposed to be in the

1 mines unless we're working directly on ventilation,
2 so then they send us all back outside again and
3 write them another violation because, you know what
4 I mean, we've got men working in the coal mines
5 that's not working just on ventilation.

6 I mean, that's why I said, it was chaos.
7 Unless you was an upper management official or
8 standing beside an inspector, you didn't know if
9 you was doing wrong or not doing wrong, because it
10 wasn't made clear to you what was going on at that
11 mines at any time. I mean, you didn't know what
12 was going on.

13 Q. You said safety meetings were just a show.

14 A. Yes, sir.

15 Q. Typically, what would go on? I mean, were
16 you ever around when a shift foreman would do a
17 safety meeting at the beginning of a shift?

18 A. Yes, sir.

19 Q. They would sort -- there's a page from S1
20 and they'd read it?

21 A. Well, it could either be a page from their
22 S1 book that they would read or they might read the
23 first page of the roof control plan. I mean ...

24 Q. Do they have any meeting? I mean, were

1 there questions or?

2 A. Most times it was just something that they
3 had to do and you knowed it was something they had
4 to do and you just had to listen until they got
5 through with it.

6 The only things that would really pertain,
7 the safety meetings that would pertain to what was
8 at hand is if you was building cribs or something
9 like that, you went over a copy of the roof control
10 plan or something like that which pertained to roof
11 control.

12 And on the sections, I mean, as far as
13 they might go over the section on the bolter or the
14 water sprays on their miner. It was something to
15 do with that, but I mean, it was just skim through
16 and gone.

17 Q. And then get to work?

18 A. Yes, sir.

19 Q. You said that you knew for a fact that
20 those miner, all those miner sections didn't have
21 adequate air. What did you mean by that?

22 A. Well, I mean, that's like Mr. Dino Jones,
23 he was the section foreman on the section that
24 which lost his life.

1 Q. Was he a credible guy?

2 A. Huh?

3 Q. Was he a credible man?

4 A. Yes, Dino Jones was a great guy, great
5 guy.

6 Q. That's what we've heard from virtually
7 everybody.

8 A. Yes. He had (b) (7)(C)

9 (b) (7)(C)

10 you know. (b) (7)(C) And Dino was

11 (b) (7)(C)

12 (b) (7)(C) And Dino (b) (7)(C)

13 (b) (7)(C)

14 (b) (7)(C)

15 (b) (7)(C)

16 (b) (7)(C)

17 Q. Did you talk to him? Did he talk to you
18 about his work --

19 A. Yes, sir.

20 Q. -- and the problems with the air and so
21 forth?

22 A. I mean, you always ask people, you know,
23 how are you doing, blah, blah, blah, whatever. I'd
24 say, Dino, buddy, how's your section doing? This

1 or that. Buddy, we ain't got no air up there.
2 They're wanting me to do this, wanting me to do
3 that. You know how they are.

4 Everybody knowed how they was, so you
5 really didn't have to ask direct questions whenever
6 they said, well, we ain't got no air up there,
7 man. You know how they are. You know what they
8 expect you to do. They just want the coal. They
9 don't care if you got your stoppings built or if
10 your section's gobbed off or it ain't rock dusted.
11 I mean, it was common knowledge that you knowed
12 what they was talking about.

13 MR. WILSON: Let's go off the
14 record for just a second.

15 (Break.)

16 MR. KOERBER: Let's go back on
17 the record.

18 After a short lunch break, we are
19 back on the record in the interview of
20 Michael Ferrell.

21 Mr. McGinley, you were asking
22 questions. Would you care to continue?

23 MR. MCGINLEY: Yes, thank you.

24 BY MR. MCGINLEY:

1 Q. You testified about a conversation you
2 overheard on the mine phone between --

3 A. Everett Hager.

4 Q. -- and Dean Jones?

5 A. Yes, sir.

6 Q. Do you remember where you were in the
7 mine?

8 A. I was actually outside in my office at the
9 time.

10 Q. I see.

11 A. I could overhear him without the phone
12 being on hollering, so that's what made, my phone
13 was beside my desk and you could call it
14 eavesdropping or whatever, when you hear somebody
15 -- you know something is going on. So that's when
16 I picked the phone up and overheard that
17 conversation.

18 Q. And that wasn't unusual for people to do
19 that?

20 A. No.

21 Q. You could hear these conversations.

22 Could you hear that conversation if you
23 were in the mine?

24 A. Yeah. You would have had to have been on

1 the mine phone or wanting to call out to have been
2 able to heard that conversation.

3 The way the phone works, when you pick the
4 phone up and you want to call, you page and hold
5 the phone button. If you just want to listen, you
6 just hold it to your ear. But to hear or broadcast
7 it out throughout the mines, either somebody would
8 have had to hold the page button or you would have
9 had to have just been going to call outside to be
10 able to hear.

11 Q. Do you know where Mr. Hager was? Was he
12 in the office?

13 A. He was in his office, yes, sir.

14 Q. How far was that from where you were
15 located?

16 A. Let's see. Four offices down.

17 Q. So you could actually hear his side of the
18 conversation without listening on the phone?

19 A. Yes, without listening on the phone.

20 Q. And you think that conversation took place
21 sometime a month after Headgate 22 started to run?

22 A. Yes, sir.

23 Q. Do you have any recollection of, I mean,
24 are we talking 2009, 2010?

1 A. Let's see. I left in -- the wall fired
2 up, I'm going to say September. I'm going to say
3 it would be late September, early October.

4 Q. 2009?

5 A. Yes, sir.

6 Q. You were talking about things that would
7 be said in the mine that would indicate there was
8 some serious lack of concern for safety or
9 violation of the law. But you said unless that
10 came from somebody you trusted, you wouldn't give
11 it weight?

12 A. Right.

13 Q. Is there anything you heard that came from
14 people that you trusted that give weight to that --

15 A. Yes. Like Dino Jones telling me that he,
16 you know what I mean, he's not got enough air on
17 the section, yes, I would have trusted Dino Jones
18 that would be correct. You know what I mean?

19 When I say when I believe something, I
20 would willingly work for them and put my life in
21 their hands kind of position. You know what I'm
22 saying?

23 Dino Jones was one of the men if he told
24 me that they didn't have no air on the section, he

1 didn't have no air on the section.

2 Q. Do you think he was writing down that what
3 he was finding when it wasn't adequate air, would
4 he write that down in the on-shift or preshift
5 reports?

6 A. No, I do not think he would. I think he
7 would have been scared to.

8 Q. And you testified that you'd heard, I
9 think it was Mr. Hager and Persinger basically said
10 don't write those things down, was it those two you
11 actually heard them say --

12 A. Yes.

13 Q. -- don't write --

14 A. You can't put that in the fire boss book.
15 We can't put that in there.

16 Q. And when they said can't put that in, that
17 referred to what type of --

18 A. Well, it was -- what that really was
19 referring to is, you may not -- when I heard him
20 say you can't put that in the fire boss book, I
21 didn't hear the actual thing --

22 Q. Right.

23 A. -- that they couldn't put in the fire boss
24 book.

1 But the reason why they didn't want them
2 to put it in the fire boss book was evident, they
3 didn't want MSHA to know it was like that, or
4 whoever the inspector at large would have been at
5 that time. You know, they was justifiably doing
6 something illegal and they wanted to cover it up or
7 not mentioned it. That's why you wouldn't put
8 something in a book.

9 I mean, I have never met an inspector, if
10 you've got something wrote in a book and you write
11 it today, unless it's a serious infraction, that he
12 wouldn't work with you willingly and let you
13 eliminate this problem. But to just not put it in
14 there altogether, it had to be some kind of serious
15 infraction. You know what I'm saying?

16 I mean, this wasn't something like a
17 timber out of place or something like that. This
18 was some kind of serious infraction that he was
19 telling them not to put in that book.

20 Q. Did you hear anything about shift foremen
21 or a fire boss being told to sort of erase things
22 or change things in the books?

23 A. Yes. My cousin, actually, his dad was one
24 of the guys that was in the explosion, he had

1 actually left Massey, because he was the fire boss
2 and they wouldn't let him document what he had
3 found in his books. His name is Stanley Stewart,
4 II. He was the son of Stanley Stewart that you've
5 seen on Larry King Live. They call him "Goose."

6 But his son actually had left Massey
7 because they wanted him to, he put something in a
8 book and they found it and come to him and asked
9 him, you can't put that in the book, you're going
10 to have to scratch that out and this and that, and
11 that's why he had left Massey and went to Patriot
12 as well.

13 Q. Do you know when that happened?

14 A. No, I couldn't tell you a date.

15 Q. I don't mean a date. I mean year, you
16 know.

17 A. That would have been right before -- that
18 was actually when we was at Elk Run that that took
19 place.

20 Q. So --

21 A. I'm going to say it was the year. It
22 would have been late 2009, early 2010, because that
23 was right before the longwall had moved back to
24 Performance Coal Company.

1 Q. So that would have been actually, the
2 longwall started up in August/September of 2009, so
3 sometime right before that?

4 A. Yeah.

5 Q. Yes? You have to say yes for the --

6 A. Yes.

7 Q. Do you have any other knowledge of --

8 A. No, sir.

9 Q. -- situations where people were told to
10 change what was in the book or not write something
11 in the book?

12 A. No, sir, not that I can recall at this
13 time.

14 Q. The State of West Virginia The Office of
15 Miners' Health Safety & Training issued a notice of
16 violation at the end of December 2009 to
17 Performance for making a ventilation change
18 revision to route the travel of return from the
19 active MMU 029-0 working section in a common entry
20 with the MMU 040-0 working section.

21 It says, This change also makes the number
22 three longwall headgate common with the longwall
23 working section bleeder air. That's MMU 050-0. It
24 says, This revision change also includes several

1 changes, including removed and installed
2 ventilation controls.

3 In addition, this plan allows for belt air
4 for the number one left -- I'm sorry -- the number
5 one section belt to empty into the longwall belt
6 entry, which is intake air for the longwall face.

7 And it says, This is a violation of West
8 Virginia Code. These changes were made without
9 having approved ventilation plan provision from the
10 Office of Miners' Health Safety & Training. And
11 this change affects numerous employees.

12 The office has determined the use of belt
13 air is avoidable and alternative nothing is
14 available. This violates a health or safety
15 provision or safety rule of a serious nature and
16 involves an extraordinarily high degree of
17 negligence or gravity.

18 Do you know about that?

19 A. Yes, sir.

20 Q. It was going on apparently from the time
21 of the citation when the air change was made in ten
22 days. How does something like that happen at UBB?

23 A. Anything that they want to do, they don't
24 feel that they have to ask anybody for permission

1 to do it. And they'll suffer no consequences as
2 long as they don't get caught in their actions.

3 I mean, Blanchard from right on down, like
4 I say, when upper management, when it comes to the
5 point where it's going to cost them coal or
6 production to meet their deadline, nothing is going
7 to stop them, not MSHA, not a worker like myself.
8 They feel that they don't have to answer to
9 anybody, that that's their coal mines, they're
10 going to operate it however they want to and it's
11 cheaper to pay the fine than it is to do it right
12 to start with.

13 Q. Were there times when you could tell from
14 your experience in the mine that ventilation, the
15 air was going in the wrong direction, it was
16 reversed air --

17 A. Yes, sir.

18 Q. -- and there was no citations issued for
19 that?

20 A. Yes, sir, at sometimes, yes.

21 Q. And why wouldn't there be citations
22 issued?

23 A. Well, like say --

24 Q. If you know.

1 A. UBB is a huge mine. You know what I
2 mean? I mean, that is a fraction of the whole mine
3 in itself. And it would be --

4 What's bad is Massey, Massey has been in
5 this business -- as far as rooming and pillaring,
6 they're probably one of the best companies as far
7 as leaders in production, because they'll do it
8 however they need to do it to get it to happen.

9 But after an inspector would examine one
10 part of the mine or whatever, they may fix it until
11 they know that his quarter's up or whatever, they
12 know what inspectors come, what they can get by
13 with or what they can't get by with, and they'll
14 manipulate that mine to do whatever they need to
15 make their production work.

16 Well, after Inspector Mike Purdue up
17 there, well, they say everything is okay, well, if
18 they want to change the air, they'll change the air
19 until, you know, because he's already inspected it
20 this quarter, there won't be nobody come back, so
21 they can manipulate and do whatever they want until
22 --

23 Q. As you were saying, they would shift the
24 air around to wherever people were complaining they

1 didn't have enough?

2 A. Yes, sir.

3 Q. And that would be in the absence of
4 inspectors?

5 A. Yes, sir.

6 Q. You said that Blanchard had stated that we
7 don't have the time to put in overcast, that's why
8 we're putting in doors. Did you actually hear him
9 say that?

10 A. Yes. He actually had made a statement.
11 We had like our retraining and people was talking
12 and somebody had brought up, you know, the reasons
13 why that we didn't have any air and all this stuff
14 was decisions that was made, and he stood up and he
15 said, yeah, I'll be the first to tell you, I did
16 make a mistake. He said, We probably should have
17 put overcast and stuff in, but we went and put
18 double doors in and ventilated that way, and it's
19 bit us in the butt ever since we done it.

20 But, you know, he's the kind of guy that
21 he don't care. I mean, he is get it done, he wants
22 the 'at a boy from Adkins and Blankenship, and it
23 don't matter who's in his path or what he's got to
24 do, he's going to get that. I mean, there ain't

1 nobody thinks -- he's got a God factor. He feels
2 that he's untouchable and that he can do anything
3 that he wants.

4 Q. You said he made the statement of safety
5 retraining?

6 A. Yes.

7 Q. When would that have been? Some ballpark
8 estimate.

9 A. That would have been our retraining for --
10 it would have been for the 2010 year. That would
11 have been our retraining before, you know what I
12 mean, 2010 year.

13 Q. When does that typically occur?

14 A. Usually around March, February or March.
15 Every year is usually when we have our retraining.

16 Q. So that would have been -- would that have
17 been just before you left or are you talking about
18 the year before then?

19 A. When we come back. You know what I mean?

20 They had already started mining and
21 progressing the mines getting ready for the
22 headgate before we got there. And then when we
23 showed up on the scene, you know, you look, you
24 don't have any overcast. Things don't make sense

1 because you're used to seeing --

2 Basically you do the same thing
3 repetitive. The longwalls, you put it together
4 from head to tail. It's usually about the same
5 setup in the same order you put it together.

6 The same way with your belt heads, you
7 know what I mean, your structure, your belt, you're
8 bolting your entries, everything is the same.

9 Well, when you come over there and where
10 you usually have overcast, you don't have, then you
11 start asking questions like, well, where did our
12 air come from, or how are we doing this, or is that
13 legal or whatever.

14 And the doors and stuff, he had already
15 done that to try to get ready for the wall to come
16 behind it. He was cutting every corner that he
17 could cut to try to get production up and get ahead
18 and get that panel up to where we could get the
19 longwall moved from Logan's Fork to UBB.

20 Q. So was this a retraining just for salary
21 employees?

22 A. No.

23 Q. You mean --

24 A. It was for the whole mines.

1 Q. Everybody heard that?

2 A. Yes.

3 Q. Would there be other people that --

4 A. Anybody that was in that retraining that
5 would recall that could tell you the same thing
6 that I did.

7 Q. What do miners know, the non-salary hourly
8 miners know about S1?

9 A. They know as much as the salary man does.
10 I mean, S1 is made knowledgeable to everybody, but
11 even the hourly people will tell you the same thing
12 that we will. It only is -- it's only applied when
13 they want it applied. Any other time it's
14 complacent. It's something that they don't care
15 about.

16 Q. We know there's an S1 manual that some
17 have said located, there's one manual in each mine
18 office?

19 A. Yes, sir.

20 Q. Is there more than one?

21 A. Yes, sir.

22 Q. They give it to salary people?

23 A. Most of the -- well, it's available for
24 just about -- mostly it's -- there's usually one in

1 the superintendent's office, and if you want to go
2 look at it, then you go through there and look at
3 it or whatever and put it back.

4 Now there's other books out there, I mean,
5 for people to look at or get knowledge of it.

6 Q. Well, S1 means what? I mean --

7 A. Safety first.

8 Q. What else does it mean other than safety
9 first?

10 A. Production second, maintenance third.

11 Q. Is there a production, P1 manual?

12 A. No, it's all S1, P2, M3.

13 Q. There's one manual that encompasses all of
14 that?

15 A. Yes.

16 Q. So with regard to safety first, what's the
17 manual say about safety first other than you got to
18 put safety first?

19 A. Well, you put safety before production.

20 If something is wrong, you don't do it, I mean, if
21 you don't have the tools and stuff that you need to
22 make it right, you don't do it. I mean, production
23 is at a standstill if there's anything out or above
24 you that is dangerous or put men's health at risk,

1 in jeopardy, you don't do it before production,
2 safety comes first.

3 Q. That's what it says?

4 A. That's what it says.

5 A lot of it is mine terminology, like, I
6 mean, you are not to do this. You know what I
7 mean? A lot of it is law abiding things that, you
8 know, belt heads has got to be well illuminated.
9 You got to have rock dust. I mean, a lot of it is
10 common law. But the basic of that is supposed to
11 be that safety comes before production, safety,
12 production, maintenance.

13 Q. Is there anything in the safety, this S1
14 manual that's any different than you would expect
15 to be done in any other mine where the goal was
16 protect the miners' health and safety?

17 A. No.

18 Q. It's nothing unique?

19 A. No.

20 Q. Just don't be stupid?

21 A. Yeah. I mean, really what's in that
22 manual would be common knowledge for most people in
23 the coal mines. I mean, it's not a Bible. You
24 know what I mean? It's common knowledge and do's

1 and don't's of coal mining.

2 Q. So reversing air, making ventilation
3 changes with men underground as reflected in this
4 notice of violation from December 31st, 2009, at
5 UBB, that wouldn't be safety first?

6 A. Oh, no.

7 Q. So who would have known that those air
8 changes were being made?

9 A. That was -- this is what I believe. That
10 order was given as a direct order from Chris
11 Blanchard. Right down the line from Chris
12 Blanchard to Wayne Persinger to Everett Hager,
13 right on down the line, but that right there --
14 that was his mentality, that was what he was known
15 for in that coal mines was he give those kind of
16 orders and he would reap the repercussions of it if
17 they was caught.

18 Q. So Mr. Blankenship had stated in sworn
19 testimony before the U.S. Senate and there's other
20 Massey statements about having requirements imposed
21 on Massey mines that are over and above federal and
22 state requirements. One example, and I think you
23 mentioned, is 20,000, 20,000 standard for the air
24 at the last open crosscut.

1 So what other ways do you know that Massey
2 supposedly goes beyond federal and state --

3 A. Well, it's always small. I mean, it's
4 nothing extravagant amongst what the state and
5 federal requires. I mean, like fire suppression, I
6 think state law requires you to carry your fire
7 suppression within 12 inches of the top. Massey
8 will put a standard that it's six inches from the
9 top.

10 Q. Do people follow that?

11 A. It depends on what crew that is. I could
12 not tell you honestly that everybody follows that
13 policy, no. There is a select few people that
14 tries to do the right thing, and it's usually the
15 people that gets kicked in the teeth for it.

16 Q. If you look at the preshift and on shift
17 reports or the weekly reports, you find there was
18 less than 20,000 at the last open crosscut that's
19 documented there, but still according to the
20 reports, it's still within the state and federal
21 air standards. Did you say that that standard was
22 supposed to be complied with and production was
23 supposed to be stopped if Massey standard wasn't
24 achieved?

1 A. That was the basic concept of the S1, P2,
2 M3 policy was to put a policy in place that was
3 higher than state and federal standards that we
4 would abide by to protect our miners and to protect
5 ourself from violations or anything like that. But
6 it was a book that was never messed with from back
7 to cover. I mean, it was not something that was
8 taken seriously.

9 Q. Did you attend a meeting in August of 2009
10 at Scott High School or Chris Adkins --

11 A. That was a spider meeting.

12 Q. Kill the spider?

13 A. Yeah, kill the spiders was talking about
14 killing violations.

15 I was not present. I was supposed to go,
16 but we was actually in between moving from one
17 mines to another, and it wasn't important enough
18 for me at that time to go to that meeting. It was
19 more important for me to get my tools out of this
20 mine to get them over here to where we wouldn't
21 lose production.

22 Like I say, that kind of thing only
23 pertained to Massey when it benefited them. Every
24 man, salary man was required to go to that meeting,

1 but yet, I wasn't able to go because we was moving
2 tools from another part of the mine to a different
3 mine, and if I went to that, we'd been a day behind
4 moving our tools from one mine to another.

5 Q. How did you learn about that meeting?

6 A. Everybody knowed about it. I mean, they
7 come back with ball hats that said "kill the
8 spider" and all this stuff. I mean, it was a big
9 meeting. I mean, it was well known throughout all
10 Massey. It was a joke, really. Between the people
11 that knowed what Massey really stood for and went
12 to that meeting, when they come back, it was like a
13 joke among people that knowed Massey for who they
14 was and knowed it wasn't going to change and knowed
15 it was just lip service, because Massey's image to
16 the public was so bad, they was trying to do
17 something to turn it around.

18 Q. So the 20,000 at the last open crosscut,
19 was that generally maintained? Do you have any
20 sense of that?

21 A. I would say not.

22 Q. It was just a public relations?

23 A. Most of the standards that was in those
24 policies was never abided by. On their S1, P2, and

1 M3 policies, most of them, a lot of times you was
2 barely legal enough to satisfy the state and
3 federal standards, and very seldom did we ever go
4 above the state and federal standards like the S1,
5 P2, M3 manual would state.

6 Q. If somebody shut down a production shift
7 because they didn't have 20,000, what would the --

8 A. They wouldn't work there.

9 Massey is smarter than to just come out
10 and say you're fired for that kind of reason. They
11 would --

12 First, they would probably put you on
13 another shift or try to punish you. I mean,
14 there's a lot of ways to get rid of a man without
15 coming right out and saying you're fired.

16 That's why so many people is scared to out
17 talk about Massey is because if Massey finds out
18 that you out talk them, you're a marked man, you
19 will not work there long.

20 Whether it be they'll put you on the hoot
21 owl, put you in a different coal mines in low coal,
22 they'll do something to make it either submittable
23 that you'll quit or they'll find another reason
24 why --

1 If you get hurt, they'll say, oh, we just
2 don't need you no more, and they'll lay you off or
3 whatever. They'll find a reason. If they want rid
4 of you, you are a marked man, you are history.

5 Q. So you have to keep your head down and be
6 quiet?

7 A. That's absolutely correct.

8 Q. Is that what you did while you worked
9 there?

10 A. Sometimes, yes.

11 Q. You said the leaky feeder didn't work half
12 the time?

13 A. No.

14 Q. Was there a point, do you know whether
15 there was a point in time where they were supposed
16 to have the communication?

17 A. We had -- we was on our third or fourth
18 extension. We had missed our deadline being able
19 to get this leaky feeder system up. We was on our
20 third or fourth extension. And finally, you know,
21 MSHA would come to them and say, Look, if you don't
22 have it by this date, we're going to have to shut
23 the mines down.

24 Q. Did they ever get it?

1 A. To my -- even after I left, it still
2 wasn't operational, and I had even heard from
3 people that worked there, even after the explosion
4 and when the explosion took place, that that system
5 was still not operational to the fullest of its
6 capability.

7 Q. You said rock dust was insufficient?

8 A. Yes, sir.

9 Q. How much of the mine was the rock dust, in
10 your view, insufficient?

11 A. Anyplace that was a harder area to reach
12 was probably the least rock dusted. The track had
13 dust on it. But to meet MSHA's requirements, I
14 think now it's going to be 80 percent, but before
15 that it was what, 60, 65 percent?

16 In my opinion, I don't think very -- if
17 there was 10 percent of that mines it was rock
18 dusted to the 65 percentile, I would be amazed.

19 Q. Did you ever ask for rock dusting?

20 A. Oh, yeah, we rock dusted our section
21 vigorously. I mean, we put ours in -- our whole
22 objective is before we put in a thousand foot of
23 belt we would dust it, we'd come back, we'd lay our
24 structure out, we'd put structure in, we'd pull a

1 thousand foot of belt. We'd dust, you know, the
2 whole way down.

3 And like I say, when all that took about
4 and everybody come into there, that's why everybody
5 made such a big brag about it is because it was
6 unusual for that mines.

7 Q. What time, what period was this?

8 A. That was when we had first set back up.
9 That was prior to August of 2009. That's when we
10 first had set up before we ever started running the
11 wall and we went from Logan's Fork back to UBB.

12 I tried to make a huge difference at that
13 place, and we really got mocked for it because, I
14 mean, we put our timbers up and it was 14, 16-foot
15 high. I mean, it's not an unreachable goal to get
16 timbers in that kind of height, but it's something
17 that's not seriously easy either. And we'd put
18 strings and tied them.

19 If you looked at one, you could see the
20 last one. That was it. You know what I mean?
21 They wasn't staggered. They was real pretty. And
22 people had made slurs about look how much time it
23 took you to do that and this and that. They didn't
24 want to take no pride in their work. There was no

1 pride left at UBB at Performance Coal Company.

2 Q. Let's go to the rock dusting. I mean,
3 what kind of training does, did miners or shift
4 foremen or any management have in determining when
5 the MSHA 60 percent or the 85 percent standards are
6 being met? I mean, how do you know that?

7 A. Well, I mean, you can look and you know as
8 a coal miner, if you've had any experience, when
9 you've got enough rock dust. If you're a section
10 boss to an outby guy, you know as a foreman or even
11 as a worker if a place is dusted sufficiently. I
12 mean, to the full potential of 65 percent you may
13 not know that, but you know you can see the
14 difference between the white rib and a black rib.
15 You know what I mean? You know if it's got dust or
16 not. Section foremen know they're supposed to dust
17 these sections, but they're in so big of a hurry
18 and they're pushed to the extent to where they
19 bypass things just like the upper management does
20 in order to get their production goals up or
21 whatever the case may be.

22 Q. Well, is there any training? I mean,
23 really, that's my question, is just you eyeball it
24 and you think?

1 A. There's no training as far as how much to
2 apply, no.

3 Q. Or is there any training to tell when
4 we've achieved compliance, we don't have to do it
5 anymore?

6 A. Well, I mean, I know MSHA, they do like
7 spot dust collections or whatever and they'll do
8 that on spot, but other than that, probably not.

9 Q. The company could do --

10 A. Oh, yeah, the company could do it, yeah.
11 They could take their own dust samples or whatever
12 they want to.

13 Q. MSHA's made a public statement about the
14 investigation after the mine, and I think the
15 families were informed that the findings of the
16 rock dust sampling, there was a significant
17 majority of the areas that were sampled were out of
18 compliance. Does that surprise you?

19 A. No. No, it does not.

20 Q. We've interviewed a lot of people here.
21 Some have said rock dusting wasn't good; a lot of
22 them has said it was good, it was fine. How do
23 we --

24 A. I'll tell --

1 Q. -- sort that out?

2 A. I'll tell you the biggest misconception.
3 People, like I said earlier, if that's the only
4 mines you've ever worked at in your life or the
5 only company you've ever worked for in your life,
6 one Massey mine to another, there's not a whole lot
7 of difference. They think UBB is the animal of all
8 Massey. It's the same way any other operation that
9 you go to, the same rules apply.

10 Now me, I have been there for that long.
11 Well, I thought in certain places, no, we didn't
12 have any dust; well, in some places it was okay.
13 Well, even the places that was okay, until I went
14 to another company, I didn't realize how bad it
15 was.

16 I mean, I work at a mine now that we walk
17 in about four inches of rock dust. It looks like a
18 blizzard everywhere you go. I mean, we're way
19 above the 85 percentile. And before I ever worked
20 for a company like that, I really didn't know how
21 we was, was really something to raise an eyebrow
22 to. I just thought that's the way coal mining
23 was. And I'd been there for 13 years.

24 And the average coal miner, we've lost

1 generations of coal miners between the decade of
2 which you all stand here before me now and my age.
3 The average coal miner at UBB is in their
4 twenties. I mean, and that's probably, most of
5 them, that's the only place they have ever seen.
6 The people that will look at you and say, hey, this
7 is the greatest place to ever work, they preach
8 safety, they do this, they do that, check how many
9 years they've been underground and how many other
10 places they've worked, and that's got a lot to do
11 with what they're going to tell you. That's all
12 they know. That's all they've been taught.
13 They've been raised up from Massey to believe what
14 Massey wants them to believe and to do what Massey
15 wants them to do.

16 Q. I certainly understand that.

17 Apparently there were areas of the mine
18 that, in your view, clearly were significantly out
19 of compliance with the rock dust standards; is that
20 right?

21 A. Yes, sir.

22 Q. We've heard some testimony that in some
23 entries for a fairly long distance, they were just
24 black?

1 A. Yes, that is correct.

2 Q. Did you see that?

3 A. Yes, sir. About any book that you could
4 go back into on any preshift, on-shift book, from a
5 belt examiner to a section boss riding his belts
6 off of it, about every book that you ever seen was
7 needed spot dusted and cleaned.

8 Q. What did that mean? I have seen that and
9 I have looked through those books. What did it
10 mean spot dusted and cleaned, what are they trying
11 to say?

12 A. It means dusted and the belt needs
13 shoveled, or the rib rolls need cleaned up. I
14 mean, that's what that means.

15 Q. Did they always get cleaned up?

16 A. No. A lot of times if you look far enough
17 back in the book, you'll see it today, tomorrow,
18 and maybe the first day of next week, and then
19 somewhere it's just dropped out of a book. They
20 just either the fire boss, you know, it's not
21 getting taken care of and he's tired of writing it,
22 or it just somehow miraculously drops out of the
23 book. But on 90 percent of the cases probably,
24 they was never corrected unless there was a

1 violation or an order written for it.

2 Q. On a preshift report, if it says "needs
3 spot dusted," "needs cleaned up," who's supposed to
4 do that?

5 A. It will be up to mine management to decide
6 what crews that he's going to use to do that.

7 Q. Is it always supposed to be the next crew
8 coming on shift?

9 A. No, no. You could stop -- I mean, if it's
10 a serious infraction, you could stop production at
11 any time of the day if it's a serious infraction
12 and take care of it either with the people on the
13 coal crew, the track crew, the outby crews. I
14 mean, you can do it at any time at any shift if you
15 wanted to do it and you made it a priority, you
16 could stop anytime you wanted to and take care of
17 anything.

18 Q. So if you saw "needs cleaned," "needs spot
19 dusted" in a particular area and that indication
20 goes on for three or four days, that means it's not
21 been cleaned up over that period?

22 A. That's correct.

23 Q. There were areas of the mine that were
24 black, that were, that didn't have adequate dust,

1 anybody would agree. Why weren't citations
2 issued? Do you have any sense why? Were they hard
3 to get to?

4 A. Well, in some -- it's really hard to
5 understand, and I couldn't tell you an actual --

6 I mean, we had, at that point in time, I
7 mean, we had inspectors every day. And I mean, I'm
8 not talking about one or two. I mean, we'd have
9 five, six, seven inspectors a day.

10 Q. What time are you talking about here?

11 A. I mean, you could go back and look at
12 UBB's violation rate and what days they was given.
13 I couldn't tell you dates.

14 Q. I mean, the last couple of years are you
15 talking about?

16 A. Oh, yeah. I mean, you're talking like we
17 had 340 some violations, and 47 of them was D
18 orders and then they got like 2 K. You can look at
19 all this on MSHA's web site.

20 And what is amazing to us as workers
21 underground is how MSHA could come in here and
22 we've got this many violations, but yet really
23 there was nothing that -- all they done was they
24 was able to Band-Aid it and get back to

1 production. They was never forced to actually
2 clean their act up completely. I mean, they let
3 them Band-Aid it enough to say, okay, we'll let you
4 run. But the problem was never fixed, it was
5 always Band-Aided.

6 Q. So there was a pattern --

7 A. Yeah.

8 Q. -- of violating the requirements that gave
9 rise to the violations, and the violations would
10 cause the company to do some, respond in some way,
11 but those kind of violations would just continue?

12 A. Yes.

13 Q. Did they, for example, the inadequate rock
14 dusting, do you think that they weren't cited
15 because there's just so many things to cite?

16 A. Yeah, probably. I mean, like I say, UBB
17 is different. I mean, and different inspectors.
18 If you had the same inspectors 365 days a year, it
19 would be one thing, but every inspector's got a pet
20 peeve, so to speak.

21 One of them might be more experienced in
22 belts; one might be more experienced in
23 conventional mining; one might be more experienced
24 in longwall. UBB had it all. And I think some,

1 some inspectors was less experienced to take on
2 certain parts of that mines.

3 And I mean, I'm not saying anything bad
4 about MSHA. I mean, they're there to protect us,
5 but I mean, you take a young guy -- like myself, if
6 I wanted to go to MSHA, I mean, I have done one
7 certain thing or maybe two or three things my whole
8 life and then I become an inspector and you've got
9 to make a whole entire mine. That's not possible.
10 It's not possible for the best inspector they've
11 got with the most experience, not a mine as big as
12 UBB.

13 And I think that's a lot to do with it,
14 because once you get to know these inspectors, you
15 know what they're looking for. I mean, some of
16 them might be oxygen acetylene bottles; some of
17 them might be track; some of them might be
18 inadequate rock dusting; some of them might be roof
19 control, I mean. But you get to learn these
20 inspectors and what they're looking for.

21 But I think that's got a lot to do with
22 it. It just depends on which inspector you get and
23 how much experience he's got as to what violations
24 that you receive the quarter that's being

1 inspected.

2 Q. Let me switch gears here and finish up.

3 Did you carry a spotter with you?

4 A. Yes, sir.

5 Q. Multi-gas spotter?

6 A. Yes, sir.

7 Q. Solaris?

8 A. Yes, sir.

9 Q. Is that what virtually everybody used at
10 UBB?

11 A. No. I mean, yeah, a lot of us did have
12 them, but some of the guys on the section --

13 See, the law was passed. It used to be
14 you didn't have to have a multi gas detector. If
15 you just was an equipment operator, all you have to
16 have was a CH₄ detector.

17 And the law had changed to where you had
18 to start carrying a multi gas detector. There was
19 not enough multi gas detectors at that coal mines
20 for everybody, so there was still people just
21 carrying the one dimensional methane spot detector,
22 and there was some people that wasn't carrying them
23 at all, because there was not enough to go around.
24 And you would go to your managers and all this and

1 that and they'd say, Well, Blanchard won't sign off
2 on them, he won't buy them, he won't do this. What
3 are you supposed to do? If there's one in there,
4 get it; if not, I don't know what to tell you.

5 I mean, it was made known if you didn't
6 have a detector, it was up to the individual that
7 didn't have it to try to do what they could to get
8 it. I mean, the management didn't step in and make
9 sure they had it, it was just you fended for
10 yourself.

11 Q. So how long did you have the multi gas
12 detector?

13 A. I had one from really the first day I ever
14 started in Massey.

15 Q. So you used them in the mine; right?

16 A. Yes, sir.

17 Q. How did they work, I mean, with regard to
18 they had oxygen readout?

19 A. Yes.

20 Q. Methane?

21 A. Yes.

22 Q. And CO?

23 A. You got CO, yes, oxygen in your --

24 Q. So did the readings vary?

1 A. Some, well, your methane readings depended
2 on -- like if you was in your return, you know,
3 you've always got a 10 percent or something most of
4 the time, most commonly, at that mine. You'd have
5 one two tenths percent in a return area. Most of
6 the time in a common or your intake, you was always
7 20.82, and your CO really, unless you had a torch
8 or something operating or, you know, maybe a wedge
9 or something smoldering, you really didn't have no
10 CO in that mine.

11 Q. Well, with regard to methane, you know,
12 we've talked to some folks that had been in the
13 mine and they said, well, you know, there's always
14 one tenth, you know, almost always one tenth, but
15 you look in the fire boss books at a lot of entries
16 that say zero.

17 A. I wouldn't say in most cases there's
18 always one tenth. Like I say, it's really -- you
19 could just about guarantee if you went to a
20 section, when you went up to the last open break
21 and you was making the faces, yes, you would
22 probably always find a tenth percent to two tenths,
23 maybe even five tenths percent.

24 Q. It would be rare that you would find zero

1 in those places?

2 A. In some entries it wouldn't be rare, but
3 probably, if you made a whole section, I would say
4 there's no possible way that you wouldn't have at
5 least a tenth percent methane in a working face or
6 a working area.

7 Q. What about the now 20.8 percent, you say
8 that's common, but didn't it vary?

9 A. Sometimes. I mean, well, it could be one
10 of a lot of things. I mean, the instruments you
11 was using, they wasn't great about getting them
12 calibrated and taken care of, so unless you
13 physically calibrated it yourself and checked it in
14 clean air, you could have one that needed
15 calibrated, because --

16 But mine, I would keep mine calibrated
17 myself. I kind of hid mine. You're supposed to
18 turn them in, but I knowed if I turned it in, I
19 probably wouldn't have one. So I mean, I won't
20 lie. I kind of hid mine and took care of my own to
21 where I knowed, by God, they wasn't going to get
22 mine.

23 And we had to -- you know, Solaris, when
24 you get yours detected, you put it in there and it

1 would print you off a statement showing that your
2 detector had been calibrated within, you know, the
3 time frame.

4 But my oxygen level about anywhere I have
5 ever went in that mines, I never really gotten
6 below probably 20.6 to 20.8.

7 Q. But you would get 20.6 or 20.7?

8 A. Yes, yes.

9 Q. In looking at the fire boss books, it's
10 all 20.8. What --

11 A. That falls back into what I was telling
12 you a lot of times they didn't want negative things
13 like that in a book. It drew an eyebrow for
14 investigators to go look. I mean, that's just
15 something Massey didn't want.

16 Q. With regard to the air readings, in
17 looking at those preshift, on-shift reports, really
18 follow what your testimony is, that there's under
19 20,000, but slightly above there would be
20 variations, a couple hundred cubic feet, but not
21 very much variation there.

22 A. I would even go to the point to say a lot
23 of the preshift examiners that made a lot of those
24 didn't even have them add them on.

1 Q. Are you familiar with the practice at UBB
2 of fire boss or foremen writing down numbers and
3 giving them to miners and say go, because of the
4 mine spread out, go and write these numbers on the
5 board for me?

6 A. Yeah, I have heard of things like that
7 happening. I have even heard of guys going up to
8 do a preshift examination of the working face and,
9 you know, you're supposed to give a last open air
10 reading on your return air split and your intake
11 air split and if you ain't got an anemometer, you
12 have done an inaccurate preshift, on-shift
13 examination. And I have heard them go out and tell
14 mine management and they'll say, well, the last
15 time I was up there, I got this, so that's what
16 I'll put in the book. I mean ...

17 Q. Can you give us any specifics on that?

18 A. Well, I mean, I can't tell you who at that
19 time they sent up there, but I do know it was
20 common for people to make preshift, on-shift
21 examinations as a working face and never have an
22 anemometer. There was very few anemometers at that
23 mines. And the only time that I ever laid hands on
24 them personally is if I had to go up there and I

1 asked for one and most of the time they'd have to
2 give me the one off of their belt or you wouldn't
3 even have one.

4 Q. Did you ever take air readings yourself?

5 A. Very, very, very -- if a guy was off and I
6 filled in, I'd have to take an air reading at the
7 return, you know what I mean, just like I said.
8 But I didn't carry an anemometer all the time,
9 because I really didn't do anything with the air.
10 You know what I mean? I didn't have a great
11 knowledge of ventilation, if that makes sense. I
12 mean, I wasn't a ventilation guy. I wasn't an
13 expert by no means. I was just a helper, you know
14 what I mean, as far as ventilation. They left that
15 to more experienced people to do, was the
16 ventilation work was supposed to be your upper
17 management with the most knowledge done your
18 ventilation work.

19 So to answer your question, I didn't fool
20 with it very much, just if I had to fill in and go
21 to a section from here to there, which if I done it
22 once a year would be a lot.

23 Q. You think maybe when you did it, probably
24 the accuracy was questionable --

1 A. Yes, sir.

2 Q. -- because you didn't have experience?

3 A. And I mean, Massey is no, no stranger.

4 They'll throw anybody in any kind of position
5 really, regarding they're experienced or not. I
6 mean, if they need a man and they're shorthanded,
7 they'll put somebody up there.

8 Q. So the fact that you were hearing -- I
9 didn't ask you. I don't think anybody has asked
10 you this. Were you hearing there was no air or
11 inadequate air on tailgate 22?

12 A. Yes.

13 Q. Same time that Dean Jones was talking
14 about and others --

15 A. Yes.

16 Q. -- on Headgate 22, there are others
17 working on -- do you remember anybody on tailgate
18 22 that were talking about inadequate air or no
19 air?

20 A. The only people that we was really
21 pertained to was longwall setup crew and Dean
22 Jones' crew. And you would hear anybody up in that
23 branch of the mines that had anything that they,
24 everybody up in that part of the mine was in low

1 air. I mean, anybody you heard talk about they
2 didn't have no air -- even out at 102 break was
3 where the mother drive was at in the track entry,
4 before we ever started setting up the wall, you had
5 plenty of air. I mean, you could feel a breeze
6 going through there all the time from the whole
7 time we was setting up for that panel, I mean, it
8 was so hot up there you couldn't stand it. I mean,
9 you just didn't have no air.

10 And when they was cutting out per the
11 mother drive and stuff, whenever they happened to
12 go open man doors and all this, I mean, that's why
13 they didn't have no air. I mean, they had to do,
14 just to get the dust out of the track entry, which
15 is the common area, they was having to go down and
16 open man doors up to try to force air down that
17 way.

18 Q. So there wasn't adequate air at the
19 Headgate 22, tailgate 22, sometimes on the
20 longwall, but it doesn't show up in the preshift,
21 on-shift reports?

22 A. No, sir, not to my knowledge. Which the
23 only book -- as soon as I get to work, the only
24 book that really pertains to me was I had to make

1 sure my work area had been preshifted before I got
2 there. You know what I mean? The other books --

3 Q. So why isn't that inadequate air
4 documented? Is that because of the reasons you're
5 testifying to earlier?

6 A. I think people is scared to. It is made
7 known that, I mean, you don't make waves for
8 Massey.

9 Q. Like Dean Jones, he obviously was telling
10 management that there wasn't adequate air on
11 Headgate 22, but it's not in the books. So you
12 think people, they were telling Blanchard and
13 Persinger and Hager, they all knew it, but they
14 just weren't writing it down?

15 A. Yes, sir.

16 Q. To avoid --

17 A. Losing their job.

18 Q. To avoid -- and jobs were threatened to
19 avoid having enforcement action taken, having to
20 stop production?

21 A. That, I think when Dino Jones goes and he
22 tells his supervisor, which is Everett Hager,
23 whatever, I have heard him in more instance than
24 not say, oh, goddamn it, you know you've got enough

1 air. I was just up there yesterday. You've got
2 enough air to run and run. Now you might just
3 barely have enough. Hang your curtains tight,
4 force everything, but you've got enough air.

5 Q. Now he's basically contradicting what he's
6 been told by the person who's working --

7 A. Yes. I mean, I have even heard them to
8 the point where MSHA would be on the scene and
9 they'd be working on ventilation to get it
10 established and I have heard Everett say, well, if
11 you all would leave it alone, I'll come up there
12 and fix it and we'll get it. Like, you know what
13 I mean, MSHA had no idea what they was talking
14 about. If they'd just leave it alone, I'll fix
15 it. Or when they leave, I'll get you some air up
16 there. I mean, that was just a common thing.

17 Like I say, as a common worker, that mines
18 was so messed up, you didn't know what was going
19 on. I mean, you didn't know how to feel. You
20 didn't know who you could trust, who you couldn't
21 trust, I mean, unless you really knowed them, it
22 was just chaos every day.

23 MR. MCGINLEY: I don't have any
24 further questions. Thanks very much.

1 MR. SHERER: I have got two quick
2 questions, if you don't mind.

3 EXAMINATION

4 BY MR. SHERER:

5 Q. Do you recall when you were working on the
6 last mother drive up on 22 Headgate, do you recall
7 a set of double doors separating the main track
8 from the return up there?

9 A. We had four doors on the main line inby 78
10 to 102 break, and then --

11 Q. This would be near the mouth of that
12 section.

13 A. I can recall the doors, but I'm not for
14 sure what they used them for, unless it was to tram
15 equipment up in there or something like that. I
16 can remember the doors you're speaking of, but I
17 don't really know what role they played in that up
18 there.

19 Q. And that was on 22 Headgate?

20 A. Yes.

21 Q. The construction area. Construction
22 area.

23 Was there a forklift charger in there?

24 A. Yes, sir.

1 Q. You ever see both of those doors being
2 open at the same time?

3 A. I have not seen it, but, see, I had left
4 and the crew that worked for me, John Cox and Jerry
5 and all them, I know that they did work over there
6 and I think they was actually even asked about that
7 forklift. But I think that was after the time that
8 I either moved out of there or I took care of the
9 parts and the rebuild shops and all that stuff, so
10 at that time I wasn't underground every day. You
11 know what I'm saying?

12 Q. Sure.

13 A. But I know the doors was there. I know
14 there was a forklift charger up there and a
15 forklift, but as far as what they was doing with it
16 or their intentions, I don't know.

17 Because the only equipment that we had, we
18 had a 255 workhorse scoop, which was a Fairchild,
19 and that was the only construction and our actual
20 group had to maintain or that was the only
21 equipment we had to use to do our job. We had that
22 one.

23 The belt construction crew had the 184
24 scoop, which was a Fairchild, and then the truss

1 bolter, we had a doublehead bolter that he used to
2 put it up.

3 But as far as the forklift, I don't know
4 whose it was or what intentions or what role it
5 played in what they needed to do up there.

6 Q. One last question. Were citations ever
7 discussed with you guys, you know, the nature of
8 the violation, how that affected the miners' health
9 and safety, what you can do to prevent it?

10 A. The thing that we was talked about
11 violations, when we got a violation, really the
12 only thing that we ever heard about is what it cost
13 the company as far as money. It wasn't, you know,
14 they would say, well, we don't need to be getting
15 violations like this, but basic bottom line is this
16 is what kind of money is taken out of our pocket.

17 Q. Do you think that forklift up on 22 was
18 ever taken in the return?

19 A. Yes, sir.

20 Q. Do you think it was operated in the
21 return?

22 A. Yes, sir.

23 Q. One thing that we noticed is the hazardous
24 entries in some of the books, you'd see them shift

1 after shift after shift, like you said, needs
2 dusting, cleaned up. When we've asked about those,
3 we've said, well, they were always addressed, but
4 it was new, new entries, new hazards had developed
5 after?

6 A. Well, still it, if you write something in
7 a book that needed cleaned and shoveled or
8 whatever, when you, in a place in that book for you
9 to write, you would put corrected, the break
10 numbers you corrected that from, and then you'd
11 initial it. I mean, that's the way that the books
12 is designed to work. But if it keeps going through
13 and going through and going through and it ain't
14 there no more and it don't show corrected, that
15 problem never was taken care of.

16 MR. SHERER: Thank you. That's
17 all the questions I have.

18 MR. MCGINLEY: Can I ask a
19 follow-up about that?

20 EXAMINATION

21 BY MR. MCGINLEY:

22 Q. So what you just said, is that the way you
23 were trained?

24 A. Yes, sir.

1 Q. This is the way you fill out these books?

2 A. Yes, sir.

3 Q. So whenever a problem or a hazard that's
4 indicated in a preshift report, say, needs spot
5 dusted, needs cleaned, when it's done, somebody is
6 supposed to write down it's corrected?

7 A. Yes, sir.

8 Q. And what's the reason for that?

9 A. Is to let mine management know that that
10 was corrected.

11 Q. And mine management looks at these books?

12 A. Yes, sir, they countersign every book
13 that's filled out.

14 Q. And how could they tell if there wasn't
15 any indication of the problems, the hazard being
16 corrected, whether they were corrected or not?

17 A. Well, that falls back to your mine
18 foreman.

19 Q. They couldn't tell by looking at the book?

20 A. Not by looking at the book. That's the
21 job of the mine foreman is to make sure he's going
22 behind these crews and making sure these jobs are
23 corrected and it is put in the book and the books
24 is filled out right and then it's countersigned by

1 both the mine foreman and superintendent.

2 MR. MCGINLEY: No further
3 questions.

4 MR. KOERBER: Mr. Ferrell, I
5 neglected to do one task at the beginning
6 of your interview, and that is to have the
7 subpoena admitted into evidence.

8 If you would, please take a quick
9 look at that. And would that be a copy of
10 the subpoena that was served upon you?

11 THE WITNESS: Yes.

12 MR. KOERBER: Telling you to
13 appear here?

14 THE WITNESS: Yes, sir.

15 MR. KOERBER: I note on the
16 subpoena that it says October 19th, and
17 today is October 20th.

18 THE WITNESS: Yes, sir.

19 MR. KOERBER: Did you and I have
20 a telephone conversation on Monday where I
21 asked you to move your interview from
22 yesterday at 10:00 to today at 10:00?

23 THE WITNESS: Yes, sir.

24 MR. KOERBER: And after talking

1 to me, did you agree to do so?

2 THE WITNESS: Yes, sir.

3 MR. KOERBER: We'll have this
4 marked as Exhibit 1, I think, or A, or
5 whatever we're doing.

6 MR. WILSON: A.

7 (Deposition Exhibit A marked for
8 identification.)

9 MR. KOERBER: All the witnesses
10 that are being interviewed are being
11 informed at the close of their interview
12 that after all the interviews are done
13 there may be a need to recall certain
14 people. And you may be one of them, you
15 may not be one of them. I just want to
16 inform you that potential is out there.

17 I'd also like to give you an
18 opportunity at this moment to tell us
19 anything that you believe we ought to know
20 that we did not ask you or to make any
21 statement that you'd like to make or to
22 clarify anything you would like to clarify
23 or to comment on anything that you would
24 like to comment on pertaining to this

1 interview or the mine explosion on April
2 5th.

3 THE WITNESS: I don't have
4 anything.

5 MR. KOERBER: Again, I would like
6 to thank you on behalf of the State of
7 West Virginia, MSHA, and the Governors
8 Independent Team for appearing here today
9 and taking your time to be with us, and
10 thank you.

11 We are off the record now.

12 (The interview of MICHAEL FERRELL
13 concluded at 2:07 p.m.)
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1 STATE OF WEST VIRGINIA, To-wit:

2 I, Lisa Marie Short, a Notary Public and
3 Certified Court Reporter within and for the State
4 aforesaid, duly commissioned and qualified, do
5 hereby certify that the interview of MICHAEL
6 FERRELL was duly taken by me and before me at the
7 time and place specified in the caption hereof.

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

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

20 My commission expires the 8th day of
September 2018.

21 Given under my hand and seal this 25th day
of October 2010.

22 -----
23 Lisa Marie Short
24 CCR
Notary Public