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Statement Under Oath of **David Shears**

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STATEMENT UNDER OATH

OF

DAVID SHEARS

taken pursuant to Notice by Alicia R. Brant, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Wednesday, May 26, 2010, beginning at 8:02 a.m.

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(b) (7)(C)

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ATTORNEY BABINGTON:

My name is Matt Babington. Today is May 26th, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is John Godsey, an accident investigator of the Mine Safety and Health Administration, an agency of the U.S. Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearance for the record.

MR. BECK:

My name is Jim Beck. I work for Davitt McAteer on the State independent team.

MR. FARLEY:

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

MR. O'BRIEN:

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

ATTORNEY BABINGTON:

There are several members of the investigation team also present in the room today. John Godsey will be conducting the initial questioning. All members of the Mine Safety and

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

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

1 your assistance in this investigation.
2 You may have your personal attorney
3 present during the taking of this statement, or
4 another personal representative, if MSHA has permitted
5 it. And you may consult with your attorney or
6 representative at any time. Your statement is
7 completely voluntary. You may refuse to answer any
8 question. You may terminate your interview at any
9 time, or request a break at any time. Since this is
10 not an adversarial proceeding, formal Cross
11 Examination will not be permitted; however, you may
12 ask clarifying questions as appropriate. For the
13 record, do you have a personal representative with you
14 today?

15 MR. SHEARS:

16 No, sir.

17 ATTORNEY BABINGTON:

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

1 the extent permitted by law. That means that if a
2 Judge orders us to reveal your name or if another law
3 requires us to reveal your name, or if we need to
4 reveal your name for other law enforcement purposes,
5 we may do so. We request that you refrain from
6 discussing your statement with others who may be
7 interviewed. Also there may be need to use the
8 information you provide to us, or other information we
9 may ask you to provide in the future in other
10 investigations into and hearings about the explosion.
11 Do you have any questions?

12 MR. SHEARS:

13 No, sir.

14 ATTORNEY BABINGTON:

15 Okay. After the investigation is
16 complete, MSHA will issue a public report detailing
17 the nature and causes of the fatalities in the hope
18 that greater awareness about the causes of accidents
19 can reduce their occurrence in the future.
20 Information obtained through witness interviews is
21 frequently included in these reports. Since we will
22 be interviewing other individuals, we request that you
23 not discuss your testimony with any person, aside from
24 your personal representative or counsel. The court
25 reporter will record your interview. Please speak

1 loudly and clearly. If you do not understand a
2 question asked, please ask to rephrase it. Please
3 answer each question as fully as you can, including
4 any information you may have learned from someone
5 else. I'd like to thank you in advance for your
6 appearance here. We appreciate your assistance in
7 this investigation. Your cooperation is critical in
8 making the nation's mines safer.

9 After we've finished asking questions,
10 you'll have an opportunity to make a statement,
11 provide us with any other information that you believe
12 to be important. If at any time after the interview
13 you recall any additional information that you believe
14 might be useful, please contact Norman Page at the
15 information --- contact information previously
16 provided to you.

17 Finally, any statements given by miner
18 witnesses to MSHA are considered to be an exercise of
19 statutory rights, protected activity under Section
20 105(c) of the Mine Act. If you believe any discharge,
21 discrimination or other adverse action is taken
22 against you as a result of your cooperation with this
23 investigation, you're encouraged to immediately
24 contact MSHA, and file a complaint under Section
25 105(c) of the Act.

1 MR. FARLEY:

2 David, on behalf of the Office of Miner's

3 Health, Safety and Training, I want to also briefly

4 advise you that West Virginia State Law protects

5 miners from discrimination. I'm going to hand you a

6 memo which will give you the address of the West

7 Virginia Board of Appeals, which hears those types of

8 complaints and also the memo provides a phone number

9 for me, and Bill Tucker, who is also taking the lead

10 on this investigation if you have any such troubles.

11 -----

12 DAVID SHEARS, HAVING FIRST BEEN DULY SWORN, TESTIFIED

13 AS FOLLOWS:

14 -----

15 EXAMINATION

16 BY MR. GODSEY:

17 Q. David, what is your full name?

18 A. David L. ---. Do you want the middle name?

19 Q. Yeah.

20 A. David Leroy Shears.

21 Q. How do you spell your last name?

22 A. S-H-E-A-R-S.

23 Q. What is your address?

24 A. (b) (7)(C)

25 Q. Do you have a physical address?

1 A. (b) (7)(C)

2 Q. And your telephone number?

3 A. (b) (7)(C)

4 Q. Are you appearing here today voluntarily?

5 A. Yes, sir.

6 Q. Has anyone other than a government representative
7 interviewed you since the accident?

8 A. Yes, sir.

9 Q. Who were they?

10 A. They were some lawyers. I don't know who they
11 were. They were just lawyers at the mine.

12 Q. Did they give you directions how to give your
13 testimony today?

14 A. No, sir.

15 Q. How many years of mining experience do you have?

16 A. Almost ten altogether.

17 Q. Just give us a brief description of what you've
18 done in mines.

19 A. From the beginning?

20 Q. Yeah.

21 A. Well, first I was labor in '78. I worked for
22 Carbon Fuel, which become U.S. Steel. Then I went to
23 run shuttle car and then I stayed out of it for a good
24 while, because I could make more money than a coal
25 miner working out of state. So I came back three

1 years ago and started with --- as a subcontractor for
2 Logan's Fork. And they put me --- I was supposed to
3 run the shuttle car, but they put me as a utility man
4 on the longwall, and that's where I've been ever
5 since.

6 Q. Do you have any certifications?

7 A. No, sir.

8 Q. Are you presently employed?

9 A. Yes, sir.

10 Q. Where is that at?

11 A. I'm working at Logan's Fork.

12 Q. And when did you start; approximate date you
13 started at Logan's --- at this present mine you're
14 working?

15 A. They just put me down there two weeks ago.

16 Q. And what is your job? What do you do down ---
17 what's your job?

18 A. We're retrieving belts, pipe line. They're
19 pulling everything out.

20 Q. A dead worker?

21 A. Yes, sir.

22 Q. Okay. From now on any question I ask you from now
23 on, it won't pertain to anything about the Logan's
24 Fork Mine, where you work. It'll be Upper Big Branch.

25 A. Okay.

1 Q. What was your first day of employment at Upper Big
2 Branch?

3 A. I just came there in August.

4 Q. August of '09, 2009?

5 A. Yes, sir.

6 Q. What was your first --- what was the first job
7 assignment they give you?

8 A. Utility man on the longwall.

9 Q. What areas of mines did you visit the first day
10 you were there? Where did they take you?

11 A. They took you through a tour of the mines.

12 Q. What part of the mine did they take you to, the
13 whole part, the escapeway?

14 A. The escapeway. We had to walk the escapeways, you
15 got to do that.

16 Q. Do you remember who accompanied you?

17 A. Not right offhand, I don't.

18 Q. Did you receive any training prior to being
19 assigned to that job at the Upper Big Branch?

20 A. Yes, sir. We had to go through safety training
21 before we go.

22 Q. What type of training was it?

23 A. It was go to your respirator, barricade station
24 and first aid.

25 Q. Do you remember who gave you that training?

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

2 Q. And where'd they give it to you?

3 A. At the office there at Logan's Fork.

4 Q. And did you receive the Massey initial training?

5 A. Yes, sir.

6 Q. Do you know about when you did that?

7 A. I done it about three or four times now, because
8 each mine that you go to, you got to redo it.

9 Q. What was your job title on April 5th, 2010, the
10 day of the accident?

11 A. I was a utility man on the longwall.

12 Q. Are you qualified to conduct methane and oxygen
13 examinations?

14 A. I'm not certified, but I have a spotter with me.

15 Q. Are you qualified? I mean, have you had training
16 to ---?

17 A. Yes, sir.

18 Q. Have you ever ---? Since you've been there, have
19 you ever participated in evacuation drills, like in
20 case of a fire, inundation ---?

21 A. Yes, sir.

22 Q. Do you remember when that was?

23 A. I can't remember quite when, but we had to walk
24 the escapeway, like there was a fire.

25 Q. How many miners are assigned to the longwall on

1 your shift?

2 A. Counting the boss, there's nine of us.

3 Q. And what is your supervisor's name? What is your
4 supervisor's name?

5 A. Kevin Millis.

6 Q. Millen?

7 A. Yes.

8 ATTORNEY BABINGTON:

9 Can you spell that, please? If you don't
10 know, that's fine.

11 BY MR. O'BRIEN:

12 Q. Do any of the foremen --- do you have the same
13 foreman every day or do they bring another foreman in?

14 A. No, sir. I have the same foreman.

15 Q. He stays right with you?

16 A. Yeah.

17 Q. Okay. And you said you worked on the fourth
18 shift?

19 A. It's called C shift, is the way we went --- we
20 float, we work six on, three off.

21 Q. What time did you start?

22 A. I started at three o'clock on the 5th.

23 Q. 3:00 p.m.?

24 A. Uh-huh (yes).

25 Q. Okay. What portal do you all enter at the ---

1 when you all go ---?

2 A. It was the new portal, the Ellis Portal.

3 Q. And prior to going underground, did you have to
4 talk to dispatcher to get permission to travel on the
5 road?

6 A. Yes, sir.

7 Q. And what conditions do you keep the mantrips in?
8 Are they pretty well maintained?

9 A. Yes, sir.

10 Q. Including your sanders and ---?

11 A. Yes, sir. That's our job, to make sure they work,
12 in case somebody gets hurt.

13 Q. Do they have much water on the track?

14 A. Sometimes. Pumps --- you always have a pump to go
15 down.

16 Q. When you all --- when you all go in, you said you
17 go into Ellis Portal; right? You go up to --- there's
18 another switch up there inby, I think, somewhere.

19 What is the condition of the rock dust and the float
20 dust up through there? Have you ever seen any time
21 there's a float dust or loose coal or anything that's
22 on the floor?

23 A. No, sir. We just travel the track. They keep it
24 well dusted.

25 Q. What about the ventilation controls from the

1 portal to the end of the track where you --- at your
2 section? Are they maintained pretty ---?

3 A. Yes, sir.

4 Q. How about the roof, and the ribs and floor. Is
5 there any heaving on the floor?

6 A. Yes, sir.

7 Q. Whereabouts would that be?

8 A. It would be up ---. It would be up on the section
9 inby --- but it was about like --- I'm not sure the
10 exact break. It's pretty close to about 50, I think.
11 We had the roof to come in on us, had got our
12 toolboxes.

13 Q. Do you exactly where that --- I mean, what section
14 was that on?

15 A. That was on the longwall.

16 Q. On the longwall. Okay.

17 A. But it would be inby us. We was down to about 23.

18 Q. Okay. So ---.

19 ATTORNEY BABINGTON:

20 About what time? When did that occur?

21 A. Oh, it happened before Easter. I couldn't tell
22 you the exact time.

23 ATTORNEY BABINGTON:

24 But weeks prior or days prior?

25 A. It might have been a month.

1 ATTORNEY BABINGTON:

2 Okay.

3 BY MR. O'BRIEN:

4 Q. What size was --- what wall was it?

5 A. Just the intersection in 50, just came out. It
6 got our toolboxes, and we had to clean it up before we
7 could run again.

8 Q. It was above the ---?

9 A. Yes, sir.

10 Q. Did you find any methane in that area when it
11 fell?

12 A. If they did, nobody ever said it. I didn't, no.

13 Q. Okay. On the travel in on the track, you come up
14 to the switch, they got some airlock doors.

15 A. Yes.

16 Q. Have you ever found those doors to be open?

17 A. Sometimes.

18 Q. Both doors --- both sets or ---?

19 A. No. One. Like it was left or it come open.

20 Q. So if it was open, and you was coming in the other
21 direction, and you opened it, in other words, you
22 would have a short-circuit. I mean, if the outby one
23 was open and you were coming out of the mine and you
24 opened that, the inby door, it would short-circuit the
25 air?

1 A. Right. It sucked the other one shut.

2 ATTORNEY BABINGTON:

3 Where were these doors located, roughly?

4 A. We had several of 'em. They were --- there were
5 four right on the section. They were like 14 Break.
6 I take that back. They were below 13 Break. They
7 started at 13 Break and then you'd go 14 --- I mean,
8 12, 11 and 10. They had them there and then I was
9 trying to think if it's 78 Break, it would be --- 78
10 Break would be you're coming towards the longwall.
11 And then you have four doors there, so it would be
12 like 80, 82, 84, and 86 ---. I mean, 82, yeah, 84,
13 86. Now, I might not be right on the break numbers.
14 The reason they're so far apart, you got to have
15 clearance to shut one door and get a flatcar and two
16 motors in there.

17 BY MR. O'BRIEN:

18 Q. Can you put all those in there with the doors
19 closed?

20 A. Yes, sir. On two of 'em. On one of 'em, you
21 couldn't.

22 Q. Have you ever seen 'em open both of them and bring
23 all the motors through there and the flatcars and
24 stuff?

25 A. Yes.

1 Q. Does that happen frequently, or ---?

2 A. Just whenever they got two cars with 'em, because
3 you can't leave one, there's no way possible.

4 Q. Do you know exactly why they put those airlock
5 doors there instead of building overcast?

6 A. Well, I never was told, but I always thought it
7 was cheaper, because you got to bring the miner to cut
8 it, you got all the labor. But whenever you put up
9 two doors, two men can do it in a day's time.

10 Q. Do those doors ever concern you, being left open?

11 A. No, sir.

12 Q. How were they maintained? Were they damaged by
13 equipment bumping them or ---?

14 A. Oh, they were hit several times. They would
15 change 'em out.

16 Q. Okay. What kind of skirting do they --- they
17 skirting around 'em?

18 A. Yes, sir. Rubber.

19 Q. Was there ever any --- how tight were they? I
20 mean, were they constructed pretty well, tight, when
21 they ---?

22 A. Yes, sir.

23 Q. What was the --- what's the distance from the
24 longwall to the end of the track from the time you get
25 up there and you get off, stop in the track, what's

1 the distance you would maintain to the longwall face?

2 A. Probably about eight breaks.

3 Q. And it takes you a little while to walk up there?

4 A. Yes, sir.

5 Q. When you all --- when you arrived on the section,

6 what do you all usually do? Do you go to the dinner

7 hole and eat a snack or something, while the

8 foreman ---? What does he do?

9 A. Well, first we have the safety talk before we go.

10 And we got to let the men that are on there know we're

11 there so they can start coming towards us and we can

12 walk past them, but he checks the power and does his

13 methane check. Checks the breaker station, and I'm in

14 front of him. Well, not way in front of him, but I

15 usually check the phone, either one. And I check the

16 curtain, make sure everything --- and they always

17 check the air. I knew if there was something wrong,

18 they would let me know real quick.

19 Q. Has there ever been many times that there's been

20 something wrong with the air?

21 A. We had at one time.

22 Q. When was this?

23 A. It was, oh --- oh, about three weeks before the

24 explosion.

25 Q. What kind of problems did you have?

1 A. It was on the tail. They made us stop. They shut
2 us down, and there were inspectors there. And we had
3 to go back there and build stoppings on the tail side.

4 Q. Was the air ---? Did you have a lot of air while
5 that air was going in the wrong direction? I mean,
6 was it pretty high volume of air?

7 A. Yes, sir. We had plenty of air on the face side.

8 Q. Okay. After they made the change, what happened?

9 A. It cut it down, but they was still running 10,000
10 more than what they needed.

11 Q. You talked about a battery charging station. Do
12 you all have battery charging stations on the
13 longwall?

14 A. Yes, sir.

15 Q. Do you know where --- can you point us on the map
16 about where they kept 'em?

17 A. Well, I don't know. I don't have my glasses. I
18 forgot 'em.

19 Q. I'd let you borrow mine, but I don't think you can
20 see out of ---.

21 A. Well, if you can get me at the longwall, then I
22 can probably tell you.

23 Q. Right.

24 A. Let's see, this is your head. This is where they
25 were; right?

1 Q. Yeah. They were probably down just a little bit
2 further.

3 A. They would be at 24 Break.

4 Q. So it'd be right here (indicating).

5 A. Okay. I wish I had brought my glasses now. I
6 took off and left 'em. I'm sorry.

7 Q. No problem.

8 A. But you want to know where they were?

9 Q. Approximately where you all --- where they kept
10 the battery chargers at.

11 A. Well, the battery charging stations are kept in
12 front of the mule train, which powers the
13 longwall ---.

14 Q. Uh-huh (yes). How many did you have?

15 A. Just have two. At first we had to keep
16 'em between the airlock doors. And whenever the
17 explosion happened, we was at 24 Break.

18 Q. Okay.

19 A. I can tell you that, because I'm the one that
20 moved the air. And so I put my charges probably about
21 20. I wish I'd brought my glasses.

22 Q. You were talking about checking curtains.

23 A. Yes, sir.

24 Q. When you come up to the headgate, I guess you know
25 you've got your check curtains all the way across ---

1 probably across the headgate entries over?

2 A. Well, yeah, from fourth jack over to the rib.

3 Q. Okay.

4 A. And then that would be Number One.

5 Q. Uh-huh (yes).

6 A. And you got Two. And I have it across the
7 intersection there. And then Three, we'd have it
8 across there. And then your air's coming up, you got
9 air coming up Three, Two and One, the beltline.

10 Q. Okay. Those curtains, did you have much pressure
11 on those curtains?

12 A. Yes, sir.

13 Q. Did you ever find any methane in or around in that
14 area?

15 A. No, sir.

16 Q. Were you on that section for that One North
17 Headgate when it was a belt?

18 A. I came there ---. Well, yes, sir. I was there
19 before they started running. They started at 80
20 Break.

21 Q. Okay. Did you --- were you there when they was
22 trying to develop and had some problems with the roof
23 and the water and stuff?

24 A. Yes, sir.

25 Q. What kinds of problems did they have? I know they

1 had the water, but how much was it and what was the
2 extent, what was the roof problem?

3 A. Well, the roof, it was hard to hold is --- where's
4 it shaley and it's hard to hold, so we would start
5 putting up screen.

6 Q. Did you have any rider seams through there?

7 A. Yes, sir.

8 Q. How thick were they?

9 A. It'd vary. Couldn't tell you because it just
10 varied, sometimes it wouldn't be too bad.

11 Q. Did the roof or the floor ever make any noise or
12 anything in there?

13 A. The roof would ripple every once in a while.

14 Q. What about floor heave through there?

15 A. Yes, sir.

16 Q. To what extent did it? How much did it ---?

17 A. It might raised up about six inches or so.

18 Q. Would that be down the middle of the entry, down
19 the rib or ---?

20 A. Well, sometimes it varied. It'd be in the rib, or
21 in the middle.

22 Q. How long did it take you to mine through there,
23 approximately?

24 A. Well, we did go through --- it's rough ---.

25 Q. I mean, how long did it take you to do that, to

1 get through?

2 A. Like usually maybe two days, three.

3 Q. Did mine management come in much when you were
4 doing that?

5 A. Yes, sir.

6 Q. Did they have any --- what was their attitude
7 towards it?

8 A. They wanted us to keep --- I had to bring instead
9 of like I usually --- my line timbers, I had to double
10 it, so the man could walk between them.

11 Q. Okay.

12 A. And we used props, and then we went to Lincoln
13 Logs. And them things are a pain because you could
14 build a trim real quick. A Lincoln Log, there's no
15 space.

16 Q. Do you know if anybody had much --- was ever
17 worried working up there or scared of working up
18 there?

19 A. Yes, sir. One guy.

20 Q. What was his reaction?

21 A. He was scared of the top.

22 Q. Once you all got the headgate built and ready for
23 mining the longwall, did you all have any problems
24 getting started?

25 A. Yes, sir.

1 Q. What problems did you have?

2 A. Well, at first we had the water. And then they
3 got that --- they got the pumps in there, started
4 going. Then we had a problem with methane.

5 Q. How much methane --- how much methane did you read
6 or see?

7 A. Well, I never read none, but I had a boss to tell
8 me not to go. They made us all set there and he went
9 and opened the door. But they corrected that. They
10 put a 20-foot hole in there and put a fan back there.

11 Q. How much methane did you say you had?

12 A. Well, I can't quite remember. He said three
13 percent, maybe higher. I can't quite remember. And
14 then sometimes I didn't know if he was messing with
15 me, whenever he told us to set there ---. He kind of
16 stretched it a little bit every once in a while.

17 OFF RECORD DISCUSSION

18 BY MR. GODSEY:

19 Q. Okay. When did you encounter that methane?

20 A. It was back in August. But I can tell you the
21 boss's name, but he's not here anymore.

22 Q. What was it?

23 A. Timmy Davis.

24 Q. Is he at another Massey mine --- or?

25 A. No. He's deceased.

1 Q. How long?

2 A. He was killed in the explosion.

3 Q. Can you give us exact location where you were when
4 that happened?

5 A. Yeah. We was at 80 Break.

6 Q. Can you show us on that map?

7 A. Yeah. We started back here (indicating). We were
8 on up ---. Is this 80? There's 80 right here. That
9 was the starting of the longwall right there. Let's
10 see, where he found it was on back in here, because
11 they set of fan back here at 120, or not --- past 130.
12 They set a fan back here (indicating) to draw all this
13 off, because once you take off at 80, everything falls
14 back here. I mean, if it does what it's supposed to
15 do.

16 But we headed --- I don't know how far he was back
17 there. He wouldn't let us come past here
18 (indicating). He told us to stay there, and they
19 opened some doors. And we never did go back there.
20 They started plastering stoppings down here. They
21 thought that might have had ---. And then they
22 eventually --- well, we never started until that fan
23 was put in the mine at 80 Break.

24 Q. Did you have a lot of water problems then before
25 it started?

1 A. Yes, sir.

2 Q. And how about crushing stoppings out, just taking
3 weight and ---?

4 A. No. It wasn't so bad they were taking weight.

5 Q. Okay. Did you have any other problems when you
6 started up, like any heavy dust problems or stuff?

7 A. No, sir. They had problems on the tail once, but
8 it was ---. We was doing fine all the way down until
9 we got to 24, and that's when --- that's when we
10 started having problems. But I don't know what
11 changed it, but we started having problem of the air
12 jerking back here and that's whenever ---.

13 Q. When you say jerking, what do you ---?

14 A. Well, say your air is coming across the face, it
15 would come across the face ---. Say we was at 24. I
16 might not be pointing at 24. Your air comes across
17 the face, and it gets over here, see it's supposed to
18 be blowing behind you.

19 Q. Uh-huh (yes).

20 A. Well, they said it was bumping right in here, it
21 wasn't flowing through.

22 Q. Like it was in a stall ---?

23 A. Yes, sir.

24 Q. Okay.

25 A. And now they were Federal guys in there and

1 everything.

2 OFF RECORD DISCUSSION

3 A. And State. I couldn't tell you who they was, but
4 they had us to build stoppings up through here, up to
5 the last --- you know, the last break, so your air
6 channel ---.

7 ATTORNEY BABINGTON:

8 Sorry. To clarify you're pointing to

9 stoppings I guess that are in the crosscuts right off
10 the --- right off the longwall panel on the tailgate?

11 A. Yes, sir. I'm sorry. I should have said that.

12 ATTORNEY BABINGTON:

13 Oh, no. You're fine. You're fine.

14 BY MR. GODSEY:

15 Q. Do you remember what --- when this was?

16 A. Well, it was about three weeks prior to the
17 explosion.

18 Q. Was this around --- maybe around March 9th,
19 somewhere around there? Could it have been?

20 A. It may have been, sir, but I'm not quite sure of
21 the date.

22 Q. You said the air was going like in the wrong
23 direction?

24 A. Right.

25 Q. Okay. How long did it --- how long were you all

1 down correcting that problem, approximately?

2 A. We was down two days, 'cause that was the end of
3 my six shift, and they told me they started running
4 --- but I mean, now this is hearsay, so ---.

5 Q. Okay.

6 A. They said they'd start running the following day.

7 Q. After they made the ventilation change and you
8 went back to work, what was the air --- the
9 ventilation like then?

10 A. Well, it was fine. I mean, on my end, I had so
11 much air it would drag me when I'd take a curtain. It
12 was just like opening up a sail, it would start
13 scooting me if I ---.

14 Q. Okay. Did you talk to anybody on the other ---
15 Tailgate 22 and Headgate 22, what effect that had on
16 them, on their section?

17 A. No, sir.

18 Q. Have you ever heard any complaints on air on
19 Headgate 22, not having enough?

20 A. Yes, sir.

21 Q. What ---?

22 A. They just said they didn't have enough air.
23 That's just all I heard. But then, again, I didn't
24 know if he was messing with me. I'll never know,
25 because he's not here anymore.

1 Q. Okay. Have you ever been on Headgate 22?

2 A. No, sir.

3 Q. Have you ever been on Tailgate 22 section?

4 ATTORNEY BABINGTON:

5 I'm sorry, is that a no?

6 A. Oh. On?

7 ATTORNEY BABINGTON:

8 Tailgate 22?

9 A. On Tailgate 22, no. I've never. Just I've been
10 in entry Three, but I wouldn't be over in there.

11 BY MR. GODSEY:

12 Q. Okay. Did you ever go to the airlock doors
13 between the Headgate and the Tailgate 22 section?

14 A. Yes, sir.

15 Q. What were they mainly used for?

16 A. To bring in supplies to them.

17 Q. Do you know of any time that those were ever left
18 open?

19 A. No, sir. Because we didn't know if it was ---.
20 That would be the first place you would check.

21 Q. But did they ever do that? Did you ever have to
22 go check?

23 A. Yeah.

24 Q. How many times, would you say?

25 A. Two or three times.

1 Q. About when was this?

2 A. Oh, it was months before the explosion.

3 Q. Did you ever ---? When you all were mining the
4 longwall, did you all ever have any time that you had
5 excesses amount of water coming through the roof?

6 A. Yes.

7 Q. Did you have to wear rain suits or anything?

8 A. Some of the guys did.

9 Q. What about pumps? Did they have pumps along the
10 face?

11 A. Yes, sir. Yes, sir. I had to take them.

12 Q. How many were there?

13 A. There were three.

14 Q. What area was it? Can you show us on the map
15 where that was?

16 A. It would be ---. They were here. It would be
17 back up at about 40, I'd say. About 40 Break.

18 Somewhere around in there. Now you can't hold me on
19 that, because I'm not quite sure, 'cause we always had
20 water, it's just sometimes it was less and it didn't
21 bother us.

22 Q. Did you ever have any methane or anything when you
23 were going through that area?

24 A. Not as I know of.

25 Q. What's the most methane that you ever found or saw

1 on a shearer that was on this longwall? The highest
2 amount of methane you all ---?

3 A. It never set it off, so I couldn't really say,
4 because I never was up there with the ---.

5 Q. Did you ever take a gas check up there?

6 A. Not me, ---

7 Q. Okay.

8 A. --- because I'm the outby guy.

9 Q. Okay. What about the floor heaving on the face?

10 A. On the face?

11 Q. Yeah. On the longwall floor. Did you have
12 any ---?

13 A. No, sir. The way they moved --- see each time
14 they're moving seven feet at a time. When they
15 shuffled, it was at that time it would shift.

16 Q. How long did it take you to take a pass on the
17 faces? On an average day.

18 A. On an average day, sometimes I get to it in about
19 40 minutes. Sometimes it would take an hour.

20 Q. How many times --- how many passes would you
21 average on a day ---? How many passes would you ---?

22 A. We was averaging, there for a while, eight passes
23 a day.

24 Q. And did you cut both ways?

25 A. Yes, sir.

1 Q. When you all had problems, you'd need to weld or
2 cut, where did they mostly do that at?

3 A. They'd do it on the head.

4 Q. Would they take any precautions about when they
5 did that?

6 A. Yeah.

7 Q. What would they do?

8 A. You had to have your rock dust, but most of the
9 time, as long as we could keep running, they wouldn't
10 weld, they'd do it on the midnight. We'd just have to
11 make sure that we had the shearer on the head because
12 sometimes it would take a while to weld it and we'd
13 have to just shut down. You couldn't weld it if they
14 was running.

15 Q. Have you all ever had to shut down and you were
16 told by management or something to get back on the
17 coal, and they would do it --- repair it later?

18 A. Yeah.

19 Q. How many times did that happen?

20 A. A few times. I couldn't tell you how many, but it
21 wasn't nothing major.

22 Q. Do you know who told 'em?

23 A. No, sir. It's just somebody on the phone. And
24 you hear a voice, you just don't know who it is when
25 they're paging.

1 Q. So it's that someone that would just tell your
2 supervisor that you all start running again?

3 A. Yes, sir.

4 Q. What about the methane monitors, how many methane
5 monitors are on the machine or placed on the longwall?

6 A. Well, all the guys has got one.

7 Q. What about on the machine?

8 A. I think there's two. And I'm not sure, and then
9 there's one at the headgate, and there's one on the
10 tail.

11 Q. Does the shearer have one?

12 A. Yes, sir.

13 Q. So you're right behind --- you're right where the
14 shearer operator is? Or how close are you stationed
15 near the shearer?

16 A. I don't stay them at all.

17 Q. Okay.

18 A. I just bring 'em material, and I keep the air, the
19 lifeline, the timber set, and the cribs, I don't stay
20 with them very much at all --- float 'em out for
21 lunch.

22 Q. Do you know of any time that they've had ignition
23 on the face?

24 A. No.

25 Q. Do they cut much rock?

1 A. Yes, sir.

2 Q. Do you ever see any fire flying around the heads?

3 A. Oh, yeah. You'll see fire. You'll see sparks, if
4 not a fire.

5 Q. I mean, just like a ring of fire on a weld ---?

6 A. No, sir.

7 Q. What damage --- how much do the bits ---? Do the
8 rocks eat the bits up pretty good?

9 A. Yes, sir. But they can usually get two passes.

10 But it's according --- the coal varies and some of the
11 rock falls out, then you got to cut it. The shearer
12 won't run over it.

13 Q. Did one shift mine more rock than the other?

14 A. Sometimes.

15 Q. What reason would they do that?

16 A. Well, sometimes if they couldn't catch the rocks,
17 he couldn't get up and under it, it would fall, and
18 then you'd have no choice but to cut.

19 Q. Okay. One time did you ever all get out of seam
20 with the longwall? I mean, you mine out of seam?

21 A. Yes, sir. They was talking about it. They got up
22 on top of the coal a little bit.

23 Q. Do you know why they did that?

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

25 Q. Could it have been because of maybe some roof

1 conditions in that area, the roof makeup?

2 A. No. It had to be one of the operators.

3 Q. What was management's attitude toward that?

4 A. Oh, they didn't like that at all.

5 Q. Did you have any visits from upper management
6 because of the ---?

7 A. Oh, yeah. Wanting to know why you were on top
8 instead of mining it.

9 Q. What all did they say to you?

10 A. They didn't say nothing to me.

11 Q. I'm talking about saying to the ---.

12 A. I don't know what all they said. They didn't like
13 it, though.

14 Q. Did they stay on you 'til --- the whole time you
15 were ---?

16 A. No. Because they could of kept up on there ---
17 they stayed on 'em.

18 Q. Do you recall any of the names of the management
19 officials?

20 A. Yes, sir.

21 Q. Who were they?

22 A. Chris Blanchard.

23 Q. Any other ---?

24 A. There was a newer guy that came there. Persinger.
25 He was a good guy.

1 Q. But ---? Go ahead.

2 A. And then there's ---. I can't think of his last
3 name. Everett, but I don't remember his last name.
4 He's just loud.

5 ATTORNEY BABINGTON:

6 Would that be Everett Hager?

7 A. Yeah, it might be.

8 BY MR. GODSEY:

9 Q. He was just what now?

10 A. Loud. He hollered at everybody.

11 Q. Okay.

12 A. But I don't know what caused 'em to get up on top
13 of it.

14 Q. What all problems did it cause when they did that?

15 A. Well, they ain't making no money, one thing,
16 they're cutting rock.

17 Q. What about damage to the machine? Did it do
18 anything to the headgate or anything?

19 A. The bits --- but I don't think it caused any
20 damage to it.

21 Q. Was there anybody --- Chris Blanchard come in to
22 talk to you all?

23 A. Not about --- they may have talked to the other
24 guys, but I don't know.

25 Q. Do you know if any --- if you all ever had any

1 floor gas up there? I may have asked you this
2 previously, but did you ever find any methane around
3 the floor?

4 A. No. If they were found, I didn't know about it.
5 Didn't nobody say nothing to me.

6 Q. Okay. What was your major concerns up there on
7 the longwall, where you were working? Anything worry
8 you up there?

9 A. I worried about them guys down there.

10 Q. In what way did you ---?

11 A. I wanted to keep the air to 'em. And I knew I had
12 plenty because they told me that --- we got to wear
13 our jackets, so you can ease the curtain off a little
14 bit. I said, nope, it's going to stay tight.

15 Q. Okay.

16 A. But they could have been joking ---.

17 Q. Did you ever feel any changes like on ventilation,
18 like sometimes it would kind of, you know, increase,
19 decrease or ---?

20 A. Yes, sir.

21 Q. Do you know --- did you ever try to find out what
22 that was? What caused that?

23 A. Yes, sir, I'd tell the boss and he'd go check.

24 Q. Do you know what the problem was?

25 A. Somebody would be outby us and leave a mandoor or

1 something open.

2 Q. Did this happen very often?

3 A. No, sir. It didn't happen very often.

4 Q. Did any of your fellow workers, did you all ever
5 talk amongst yourself about what would happen if they
6 had a fire on a track and those doors were left open?

7 A. Yes, sir.

8 Q. What did you --- what was your concern?

9 A. Well, if them doors was left open, it'd be like a
10 torch, because the air is whizzing through there.

11 OFF RECORD DISCUSSION

12 BY MR. GODSEY:

13 Q. Most all of the men on the section felt that way?

14 A. Yes, sir.

15 Q. And did you all discuss how you would get off
16 there if that happened?

17 A. Yes, sir. If the guys say they were here at mid-
18 face, which would be like 80 to 92, they would go off
19 the tail. They'd go off the tail. And me and
20 sometimes I had --- we would be on the head, and then
21 we'd have a meeting place at the mouth of the section.
22 And if nobody's there, you don't set and wait on 'em,
23 you go on.

24 Q. That was your all's plan.

25 A. Yes, sir.

1 Q. So I guess it did concern you pretty much?

2 A. Well, some of them guys were pretty good-sized
3 fellows, and it would be closer for them if the fire's
4 coming from my end, from the head side. If it's
5 coming from here (indicating) and they're here, it'd
6 be more sensible for all nine of 'em to go that way.
7 And I told 'em, don't worry about me, 'cause I'll be
8 going this way (indicating). If I can. If not, I'll
9 be behind you.

10 Q. Had you ever discussed that with your supervisor?

11 A. Yes, sir. We all made sure everybody knew what we
12 was going to do in case that happened.

13 Q. Did upper management know about this? Did y'all
14 ever talk to them about it?

15 A. Yes, sir. We told upper management what we was
16 going to do.

17 Q. Well, what did they say about your all concerns
18 about worrying about having a fire on the track?

19 A. They would say that sounded good, but they said
20 the guys on the head side, what would y'all do? And I
21 said the only thing we could is get to the other
22 barricade station, if we can. As long as the fire ---
23 the fire didn't get me, I'm going to go out where they
24 are.

25 Q. Did that give you a good ---?

1 ATTORNEY BABINGTON:

2 Sorry. Just to clarify one second. You

3 talked about sending the crew down here. Just to

4 clarify, you're referring to them going down in the

5 Tailgate One North section, ---

6 A. Right.

7 ATTORNEY BABINGTON:

8 --- while you yourself would stay on the

9 Headgate One North section, where you would try to get

10 to the refuge --- the barricade chamber?

11 A. Well, the refuge station. Barricade station would

12 be real close, but you wouldn't want to stay in it.

13 ATTORNEY BABINGTON:

14 I see.

15 A. 'Cause it's mainly for if it collapses, a cave-in.

16 It's a tent, you pull it out. I don't think I'd want

17 to stay in there. But, yes, sir, when I said they'd

18 go out here --- see, when they go out here, you go

19 down two breaks, and you'd cut across --- say we'll

20 say this is, what, 28? What is it there?

21 ATTORNEY BABINGTON:

22 27 Break on the headgate side.

23 A. 49, I guess, on ---.

24 ATTORNEY BABINGTON:

25 On the tailgate.

1 A. 49. Yeah. So you'd go up 49, you'd go down two
2 breaks, and then cut across. You'd go --- you'd just
3 go across the section. You'd still be at --- you'd
4 get 40 what, seven?

5 BY MR. GODSEY:

6 Q. Uh-huh (yes).

7 A. You'd cut across, and then you'd get --- you
8 should be in the good air again, because it goes on
9 outby you, towards the fan. You're cutting away from
10 the fan. After you get them two breaks, you should
11 hit fresh air.

12 Q. Was that marked?

13 A. Yes, sir.

14 Q. They keep a lifeline or something there?

15 A. Yes, sir. There's a lifeline down through there.
16 Because that's what I do over here in Three. That's
17 our next longwall setup, so it's the tail. The head
18 now would have been the tail. That's why the cribs
19 and the Lincoln Logs and your lifeline all run over
20 there.

21 Q. Back to the tailgate. Do y'all in the process of
22 retrieving that longwall, I mean mining out, did you
23 all ever have any tailgate blockages?

24 A. They had a couple.

25 Q. Was that mainly roof falls?

1 A. Yes.

2 Q. Did you ever have any problem on the water over
3 there, excessive amount of water in the tail?

4 A. That was back behind this. It was like, gosh, a
5 good ways back there, back towards the fan, but they
6 was working on it, had it pumped down.

7 Q. About when was that they had the tail ---? Where
8 was it when they had --- or had those blockages, do
9 you remember?

10 A. It would be when we first started.

11 Q. On the back end, you mean?

12 A. Yes, sir.

13 Q. Okay.

14 A. That was in August or it might have been
15 September.

16 Q. Did you ever have any when you got down to the ---
17 where you had the bad roof and the water and all that
18 when you went through there? Did you have any trouble
19 through there when you was retrieving the longwall ---
20 bringing the longwall out? You know when you drove it
21 up you had problems on the headgate. You said that
22 that you had to install Lincoln Logs and all that.

23 A. Yeah.

24 Q. Did you have any problem when you come back
25 through there, when you brought the longwall through

1 there?

2 A. No. That was as we was bringing the longwall
3 down, when I was doing all this, see. Because that
4 would be inby the longwall. And I had to stay a
5 hundred feet in front of 'em, you know, 50 feet on the
6 --- on the headgate side. That would be along the
7 beltline. You say 50 feet, but I tried to stay a
8 hundred, because I got the headgate man. He's outby
9 the longwall a couple --- at least 20 to 30 feet. So
10 I tried to stay past him for the rib. It may have not
11 stopped it, but it would give him a warning. 'Cause
12 we had --- the ribs were popping a little bit. You
13 had to watch, but you got three foot of coal and then
14 rock on top of that is going to crush it out. And
15 then if it crushes it out, then you're going to have
16 an overhang there and that rock's going to eventually
17 fall.

18 Q. Did any other events happen up there that I
19 haven't asked you about that happened that concerns
20 you?

21 A. No, sir.

22 Q. Did you ever have any methane come out on the
23 shield line?

24 A. As far as I know, they didn't.

25 Q. How did the --- the roof behind the shield --- how

1 did they --- did it fall pretty --- pretty, you know,
2 rough being behind the shield?

3 A. Well, not all the time.

4 Q. Did it ever hang for an extended period of time?

5 A. Yeah. It might hang for ---. One time it hanged
6 --- it hung over where the wire mass was, it hanged
7 for about, oh, 50 feet, maybe a little bit more.

8 Q. When it fell, did it --- what, did it put any
9 methane out on you or anything?

10 A. No. Just a little bit of air.

11 Q. Okay. Did it blow your curtains out or ---?

12 A. Yeah. I had to go fix the curtains.

13 Q. Okay. When was the last time that you all --- or
14 when was the last time that you walked the primary
15 escapeway out?

16 A. It was, oh --- it was about probably two or three
17 months before the explosion. I'm not quite sure what
18 day it was.

19 Q. Did you walk all --- from the section all the way
20 to the surface?

21 A. Yes.

22 Q. Where did you exit the mine at?

23 A. The Ellis pump ---.

24 Q. Did they show you the SCSR storage and stuff on
25 the way?

1 A. Yes, sir.

2 Q. Did you feel you had --- how was the escapeway
3 maintained? What kind of shape was it in?

4 A. Well, it --- it wasn't the cleanest, but it was
5 passable.

6 Q. What do you mean it wasn't the cleanest?

7 A. Well, it was --- where the Ellis --- where you go
8 out to the Ellis is where they had to shoot the
9 mountain off this pad of rock, little shaley rock.
10 You're just stepping over little shaley rock. It
11 wasn't nothing major, but you could make it.

12 Q. So that was near the Ellis Portal?

13 A. Yes.

14 Q. Inby it how far?

15 A. Maybe a half a mile or so.

16 ATTORNEY BABINGTON:

17 This might be a good time to take a quick
18 couple-minute break. Off the record.

19 SHORT BREAK TAKEN

20 ATTORNEY BABINGTON:

21 Back on the record. All right, Terry?

22 MR. FARLEY:

23 I'm going to back up. I have a few
24 things to clarify, so be patient with me.

25 A. Yes, sir.

1 EXAMINATION

2 BY MR. FARLEY:

3 Q. Now, on April the 5th, were you not working that
4 day?

5 A. Yes, sir, I was.

6 Q. What shift were you working that day?

7 A. Evening.

8 Q. Okay. Were you actually in the mine when the
9 explosion occurred?

10 A. Yes, sir.

11 Q. All right. Where were you?

12 A. I was probably anywhere from 300 to 500 feet in.

13 Q. All right. I'll come back to that. Now, prior to
14 April 5th, what was your last shift?

15 A. It was an evening shift on Saturday, because we
16 was off on Easter Sunday.

17 Q. Okay. The longwall in the mine went idle on
18 Easter Sunday; is that correct?

19 A. Yes, sir.

20 Q. It'd be April 4th. Now, is the longwall usually
21 idle --- or was the longwall usually idle on the
22 midnight shift?

23 A. Yes, sir.

24 Q. Okay. And dayshift would go in about what time?

25 A. 6:00.

1 Q. Okay. What time did you guys normally go in,
2 evening shift, when you were working the evening
3 shift?

4 A. We started at 3:00.

5 Q. Okay. And what time would you go in?

6 A. It's according on where the shearer was. And if
7 they had to work on it, we'd --- it'd be anywhere from
8 1:00 to 2:00 in the morning, ---

9 Q. Okay.

10 A. --- sometimes longer.

11 Q. So the idle period would be anywhere from four,
12 five, six hours?

13 A. Well ---.

14 Q. It'd vary?

15 A. On Easter, we came out at 12:30, because we had to
16 take all the rescuers and stuff off the mantrips and
17 they wanted us to lock 'em up in storage.

18 Q. When you say 12:30, you mean afternoon?

19 A. Midnight.

20 Q. Okay.

21 A. That would be Sunday morning. It would have
22 been ---.

23 Q. Monday morning.

24 A. Sunday morning.

25 Q. Sunday night or Monday morning?

1 A. Sunday --- it would be Sunday night. It'd be
2 after 12:01.

3 Q. So that'd be Monday morning; is that right?

4 A. No. I was on Saturday.

5 Q. Saturday. You came and you worked --- what time
6 did you get there Saturday?

7 A. Three o'clock.

8 Q. P.M.?

9 A. Uh-huh (yes).

10 Q. Okay. What time did you leave?

11 A. 12:30. That'd be Sunday morning.

12 Q. Sunday morning. I'm sorry. I got you now. And
13 you came on the evening shift Monday?

14 A. Monday.

15 Q. Okay. All right. You were talking about some
16 pumps behind the longwall face on the headgate side.

17 A. Yes, sir.

18 Q. Were those electric pumps or air pumps?

19 A. Air pumps.

20 Q. Okay. How far behind the --- back in by the
21 faces?

22 A. Well, we was --- at the starting was 80, is where
23 the longwall started was 80 Break. And the pumps were
24 back probably 130, somewhere around in there. I might
25 be off a few breaks.

1 Q. Uh-huh (yes).

2 A. And about 130. Now I'm not quite sure if that was
3 the number. It was around in there.

4 Q. Okay.

5 A. Anywhere from 120 to 130 is where the pumps were.

6 Q. Okay. Now, daily routine on the longwall face,
7 was it normal routine for the section foreman,
8 longwall foreman, to call out production reports at
9 various times throughout the shift?

10 A. The headgate man done it. He called 'em out every
11 30 minutes.

12 Q. Okay. Who did the headgate operator speak to when
13 he called out?

14 A. Usually the dispatcher or Chris Blanchard if he
15 was there, but usually the dispatcher.

16 Q. Okay. Could be on the --- on the dayshift, is it
17 possible he spoke to a guy named Clay outside?

18 A. He could have.

19 Q. Okay. But usually the dispatcher?

20 A. Yeah.

21 Q. Okay. Now, what information would the headgate
22 operator call out?

23 A. He would tell them where the shearer was, how many
24 passes they got, ---

25 Q. Uh-huh (yes).

1 A. --- how much down time, anything broke down.

2 Q. Uh-huh (yes).

3 A. And that's about it. And they would usually ask
4 him, where's the shearer at, and he'd either tell 'em
5 150 coming to the head or going to the tail.

6 Q. Uh-huh (yes).

7 A. It's according ---.

8 Q. Okay. And this was done every 30 minutes?

9 A. Yes, sir.

10 Q. Okay. Now, if you broke down, would the headgate
11 operator call out immediately and notify the people
12 outside ---

13 A. Yes, sir.

14 Q. --- if you were down?

15 A. Yes, sir.

16 Q. Okay. Now, if you were down for two or three
17 hours, would he still continue to call every 30 ---

18 A. Yes, sir.

19 Q. --- minutes and tell 'em you're still down?

20 A. Yeah. It didn't make sense, but yeah.

21 Q. Okay.

22 A. That was one less man who could help us get it
23 running again. He had to sit there on the phone and
24 tell them, well, they're still ---.

25 Q. Okay. Well, we all do what we're told, I guess.

1 A. Well, there's some of 'em like to sit on an
2 oil ---.

3 Q. Now, I would assume, then, that once production's
4 resumed or started back, he would call outside
5 again; ---

6 A. Yes, sir.

7 Q. --- is that correct?

8 A. Yeah. Even if it wasn't the 30 minutes, he had to
9 call and tell him we're starting back.

10 Q. Okay. All right. And would that procedure be the
11 same for the dayshift and the evening shift?

12 A. Yes, sir.

13 Q. Okay. Or if you were working Saturday night or
14 Sunday morning?

15 A. It didn't matter.

16 Q. Okay. All right. Same procedure?

17 A. Uh-huh (yes).

18 Q. We talked about some sandstone on the longwall
19 face. Was the location of the sandstone, particularly
20 in the last week or so before the explosion, was it in
21 any particular location along the face?

22 A. No. It happened along by --- it happened in
23 various places ---

24 Q. Uh-huh (yes).

25 A. --- that they couldn't catch it, because you got a

1 little coal seam, about this big (indicating) up above
2 it. Once you take the coal out from under it, it's
3 going to come down if you can't get the shield under
4 quick enough.

5 Q. Okay. But you don't know if it was on one
6 particular side of the face or the other?

7 A. Well, it was on mostly the tail side. Because the
8 bottom was real hard.

9 Q. Okay.

10 A. And the only reason I know that, they complained
11 because we'd have to carry with --- we'd have to put
12 'em on the shearer to take 'em to the tail.

13 Q. Okay. All right. Now, when you were cutting in
14 this --- in this sandstone, did it create a lot of
15 sparks?

16 A. Well, sir. Now that I can't tell you, 'cause,
17 see, I wasn't with them.

18 Q. Okay.

19 A. I'd hear 'em say it'd spark a little, but ---

20 Q. Right.

21 A. --- I stayed outby ---.

22 Q. Okay. The battery chargers that you referred to
23 in the longwall area, can you tell me again where
24 those are located?

25 A. Well, they were ---.

1 Q. You referred to 'em as my battery charges?

2 A. Yes.

3 Q. Okay. Can you tell me again where they were
4 located?

5 A. Yes, sir. Right in front of the mule train, which
6 would be --- let's say if we was at 24 Break ---. I'm
7 just using it ---

8 Q. Sure.

9 A. --- as an example.

10 Q. Sure.

11 A. It was at 24 Break, then it would be --- oh, I
12 tried to get it as far away from the face as possible.

13 Q. Okay. Now, the air passing over these battery
14 chargers, where did it go?

15 A. It would --- it would go up Three and then across
16 or behind the curtain.

17 Q. Okay.

18 A. It would be going inby the longwall.

19 Q. Okay. Did it go across the longwall face?

20 A. Well it could have. Some of it could.

21 Q. Okay. At some point you said you had air coming
22 up the belt.

23 A. Uh-huh (yes).

24 Q. Do you know how much was coming up the belt? You
25 ever hear of anybody --- see or hear of anyone

1 measuring or taking an air reading?

2 A. Well, sometimes they said it was too much, but I
3 mean, I never thought we could get too much air.

4 Q. Okay. Before you entered the mine on April 5th,
5 did you hear from anyone at the mine that the longwall
6 had been down during the dayshift on that same ---?

7 A. Yes. I did hear 'em say they had been down most
8 of the day.

9 Q. Okay. Now, who did you hear that from?

10 A. Jack Roles.

11 Q. Okay. Did Jack tell you when they went down, how
12 long they were down?

13 A. No. They just told me they went down.

14 Q. And then you said most of the day. Did he say
15 most of the day?

16 A. Uh-huh (yes).

17 Q. Okay.

18 A. Yeah. He didn't give no time frame.

19 Q. Did he tell you when they got started?

20 A. No, sir.

21 Q. Okay. All right. Did you hear anything else
22 about being down on the longwall that day?

23 A. No. I heard that ---. They didn't even say what
24 it was, ---

25 Q. Okay.

1 A. --- they just said they was down.

2 MR. FARLEY:

3 Okay. All right. Jim?

4 EXAMINATION

5 BY MR. BECK:

6 Q. David, in your time at Upper Big Branch, did
7 management ever conduct a check for smoking articles?

8 A. Yes, sir. My boss did.

9 Q. Your boss did. How often would they do that?

10 A. Just about every week.

11 Q. And do you know if they had a rock dusting
12 schedule for the mine?

13 A. Yes, sir. The midnight, I did it whenever I
14 could. Every utility man --- each crew had a utility
15 man. We got ahead a little bit, we'd do it, but most
16 of the time the midnight did it. If we needed a place
17 dusted, I'd ---.

18 Q. Is that with machine dusters on the track and
19 belts or ---?

20 A. Well, yeah. They'd do that on the midnight shift.

21 Q. Do you know the last time the longwall area got
22 rock dusted, let's say 78 inby towards the longwall?

23 A. Not right offhand, sir.

24 Q. Do you know of the shearer ever operating with the
25 methane monitor down?

1 A. No, sir, not that I know of.

2 Q. Now, you said your supervisor's name was Kevin.
3 Miller or Millen?

4 A. Melish.

5 Q. Melish? Okay. Did he ever complain about the
6 ventilation or comment about the ventilation of the
7 mine overall? Were there any problems with it?

8 A. No. Just on the tail.

9 Q. Just on the tail?

10 A. Yeah.

11 Q. What would he say?

12 A. He said that the air wasn't right down there and
13 that's whenever they started checking on it, and then
14 they shut us down.

15 Q. Okay.

16 A. They said something was wrong but we didn't know
17 what.

18 Q. In your job as a longwall utility man, did you
19 ever have to use torches?

20 A. No, sir.

21 OFF RECORD DISCUSSION

22 BY MR. BECK:

23 Q. Around the mine, did you ever hear a joke about
24 the air on headgate 22, that if you went to headgate
25 22, you had to bring your own air?

1 A. No, sir.

2 Q. At the start of your shift, when you would go in,
3 did you ever find the ventilation not right?

4 A. I've had the curtain be down, but a rock could
5 have done it. But to be right --- I'd know if it was
6 wrong. He let me know, as far as I know.

7 Q. Nothing unusual then?

8 A. No.

9 Q. On the longwall, in the normal course of
10 operation, was the tail usually behind the head? You
11 know how they run it? Did you ever hear of the
12 longwall snake?

13 A. Yes.

14 Q. Was the tail usually behind the head?

15 A. Sometimes it was, but I don't know how often.
16 They usually try to keep it even, because if the air
17 is face, they would run it straight backwards and
18 forwards, so I know it was pretty even.

19 Q. And were you ever injured in the course of your
20 work at this mine or any Massey mine?

21 A. Yes, sir.

22 Q. Could you talk a little bit about that?

23 A. Yeah. I broke my leg. I got a --- a jack hit
24 me, and it snapped my leg right here (indicating).

25 Q. Was that here or at Logan's Fork?

1 A. Logan's Fork.

2 Q. And do you know if an accident report was filled
3 out?

4 A. Yes, sir. I was off a couple months.

5 MR. BECK:

6 That's all I have.

7 RE-EXAMINATION

8 BY MR. GODSEY:

9 Q. We was talking earlier about the tailgate, the air
10 on the tailgate. Did you ever know about the gob air
11 coming in on the tailgate side, you know, trying to go
12 out the tail, where it couldn't get air and go back
13 towards the fan? On that left shield, did you ever
14 hear or see any air coming out of the gob trying to go
15 down the tail?

16 A. No.

17 Q. Did y'all ever do any blasting on the --- shooting
18 on the headgate?

19 A. No, not that I knew. Never heard of nobody doing
20 it.

21 Q. On your last shift you worked, did you travel inby
22 the longwall face? The headgate, where you put those
23 curtains, did you ever travel up your --- inby here?
24 You know where you got your curtains across the ---?

25 A. No, sir.

1 Q. You ever travel up in there?

2 A. Uh-uh (no). That's where they go to the bathroom.
3 I ain't going in there, not unless I got to.

4 Q. Did they have much air going back that way, back
5 that ---?

6 A. Yes, sir.

7 Q. Was it a little bit of air?

8 A. Well, the fire boss checked it, and I just won't
9 go back there, so ---. Not unless I was made.

10 OFF RECORD DISCUSSION

11 BY MR. GODSEY:

12 Q. The last shift worked, was the roof hanging ---
13 was it hanging behind the shields, or had it fallen
14 tight against it?

15 A. Well, when I was there, it had fallen. It had
16 fallen tight against it. But I was there on Saturday
17 and I remembered that it was tight against there.

18 Q. And you said, again, on the curtains on the
19 headgate, though, you did have pretty good airflow
20 going back towards the headgate?

21 A. Yes, sir. The guys were wearing their jackets.
22 They said it was cold.

23 Q. I'm talking about on the --- talking about going
24 back in --- back in this direction (indicating)?

25 A. Oh. Yes, sir. They said there'd been plenty.

1 Q. Okay. Did anybody ever go --- do you if anybody
2 traveled back in there?

3 A. Yes.

4 Q. Who fire bossed?

5 A. I don't know his name.

6 Q. Did you ever talk to him?

7 A. Yes.

8 Q. What'd he say it was like back there?

9 A. He said it stunk.

10 Q. Other than that.

11 A. He never talked much about it. I don't think he
12 liked going back there neither.

13 ATTORNEY BABINGTON:

14 Just to clarify, you're talking about the
15 longwall headgate heading inby the face, back towards
16 Bandytown fan?

17 A. Yes, sir.

18 BY MR. GODSEY:

19 Q. On your last shift that you was up there, which
20 way was the belt air going? Was it traveling inby or
21 outby?

22 A. Inby.

23 Q. Have you ever --- or any of your fellow workers,
24 discussed any safety issues ---?

25 A. Yes, sir.

1 Q. What were they?

2 A. Too many hours.

3 Q. Too ---?

4 A. Staying there too many hours.

5 Q. Who'd you talk to?

6 A. Well, this guy was --- the new guy was Persinger.

7 And we was worried about some of the things. You

8 know, we asked him about all the doors. We wondered

9 why there was doors just like there was an overcast.

10 And he said that he was working on it, but he just got

11 there. I mean, he hadn't been there very long. I

12 forget who was in his place.

13 Q. How did he receive it? Did he receive it pretty

14 good, or did he get kind of angry with you all?

15 A. Oh, no, sir.

16 Q. Do you know of anybody else that talked to you ---

17 told you so, we talked to these people about those

18 problems that we had on other sections? Like on the

19 headgate 22 with the air, or ---?

20 A. I just heard, now, that would be hearsay, that one

21 of the bosses had said something.

22 Q. Who was that?

23 A. Well, they called him Head, but ---.

24 Q. You don't know his name?

25 A. No, sir, but he's not here.

1 Q. Okay.

2 A. He was one of the 29.

3 Q. Did anybody ever discuss stuff with you the roof
4 problems or the floor heaving or anything on the
5 Headgate 22 section?

6 A. Yes, sir. We was in safety training and a guy
7 brought it up.

8 Q. What did he say?

9 A. He said it was hard to hold it. They needed to go
10 to a bigger bolt.

11 Q. Did he ever discuss about the roof working or
12 anything while he was up there?

13 A. Yes, sir. I mean, now this is just what he was
14 saying in a safety meeting, you know, we was doing our
15 annual training. We just done it two weeks --- maybe
16 not even two weeks before the explosion.

17 Q. Did you ever hear of anyone up there saying they
18 had to run away from the face outby because of the
19 roof?

20 A. No.

21 Q. What about the floor. We were talking about
22 heaving. Did anyone talk about the floor heaving up
23 there?

24 A. No, sir. He just said something about the bolts.

25 Q. Do you know of anybody that was ever afraid or

1 discussed concern about going --- not going to work
2 that night because of problems on any of the sections?

3 A. No.

4 Q. Have you ever been afraid up there?

5 A. No, sir. But we've had some red hats that were.

6 Q. Have you ever called the Massey 800 number?

7 A. No, sir.

8 Q. Have you ever called the hotline for MSHA or the
9 State?

10 A. No, sir.

11 Q. Has anyone ever told you not to report an
12 accident?

13 A. No, sir.

14 Q. Have you known of anybody that was told that?

15 A. No, sir.

16 Q. How about, you know anybody who's been put on
17 light duty for an accident they've had?

18 A. No, sir. They told me there was no such thing as
19 light duty.

20 Q. Are you aware of any oncoming shifts that had been
21 cancelled due to conditions underground, like methane
22 or air problem?

23 A. Well, they had us to come out early one day. And
24 I think the evening shift --- that was whenever I was
25 telling you they was building stoppings over there.

1 They did meet with the Federal inspectors and the
2 State inspectors cleared it. But other than that ---.

3 Q. Now, do you remember what date that was? I think
4 you told me, but ---.

5 A. It was then. I can't remember quite, but ---.

6 Q. Was it March, maybe?

7 A. Maybe.

8 Q. Of 2010?

9 A. Yeah.

10 Q. Are you aware of any time that the mine had been
11 --- people had been removed from the mine due to
12 safety problem or methane or a ventilation problem?

13 A. Just whenever they had us to go out and I think
14 the evening shift stayed out. And a couple days
15 later, we had to work on them stoppings and
16 plastering, but other than that I ---.

17 Q. Have you ever been on a section and a Federal or
18 State inspector's been there?

19 A. Yes, sir.

20 Q. Were you notified that they were coming?

21 A. No, sir.

22 Q. They just come up and they were there?

23 A. Well, now there's few times I've seen 'em in the
24 parking lot.

25 Q. Okay.

1 A. But I mean, I didn't know what they were going.
2 They didn't talk to you.

3 Q. Were you ever underground and someone called up
4 there to tell you that there was an inspector on the
5 way?

6 A. No. I wouldn't be around no phone.

7 Q. Have you ever been on a section when the section
8 foreman stopped production because there's low air or
9 heard of anybody been on the top --- section and upper
10 management told 'em to continue the mining, even
11 though the problem still existed?

12 A. Not on air.

13 Q. Anybody ever talk to you about that?

14 A. No, sir.

15 OFF RECORD DISCUSSION

16 ATTORNEY BABINGTON:

17 Sorry. Yeah. So you said that you never
18 had that happen in the occasion of low air. Were
19 there any other hazards that existed where you said
20 the foreman wanted to stop and upper management told
21 him to continue production anyway?

22 A. Not as I know of. 'Cause he'd have shut it down.
23 They might be bad for a little while, but they'd get
24 over it. If you'd meet 'em and it's Grouchy or
25 Grumpy, doesn't matter what you told 'em.

1 BY MR. GODSEY:

2 Q. Have you ever visited the area called the Glory
3 Hole?

4 A. No, sir.

5 Q. How do you feel that management's attitude was
6 toward safety versus production? Did they put one
7 ahead of the other?

8 A. Well, they wanted production, but I don't think
9 they wanted to hurt nobody.

10 Q. Okay. Was there any way that they had where they
11 could monitor whether the longwall was running or not?

12 A. Yes, sir.

13 Q. What was that?

14 A. Well, they got the monitors that lets 'em know
15 that there's coal coming on the belt. If that coal
16 stopped, then they know --- if we shut down the coal
17 structure or something, they knew.

18 Q. Do they call wanting to know what was the reason?

19 A. Yeah.

20 Q. How often would they call?

21 A. Any time that it would shut off.

22 Q. Did you ever notice that --- know of an inspector
23 being underground on a section where your air may
24 change a little bit, may decrease? And while they're
25 on those sections ---? Say that the inspector went to

1 Headgate 22, would they decrease any air from your
2 longwall to put up there on the ---?

3 A. Not as I know.

4 Q. Did you ever hear anybody talk about that?

5 A. No, sir.

6 Q. Did you ever know of making any ventilation
7 changes while you all were underground?

8 A. No. Not as I know.

9 Q. And did you have any reservations about talking to
10 an inspector from Federal or State?

11 A. No.

12 Q. Did you ever talk to 'em about any safety issues?

13 A. No.

14 Q. What was the average workforce view towards the
15 management? You said some of 'em they liked, some of
16 'em, they didn't?

17 A. Yes, sir.

18 Q. What made 'em not --- what made 'em dislike the
19 one ---?

20 A. Well, you'd speak to one, you'd know.

21 Q. How do they treat you?

22 A. Well, this one, he just wouldn't talk to you.

23 He'd just say he was the boss, and he'd go on.

24 Q. Would he ever listen to you, if you had a problem?

25 A. I never would go talk to him. I'd always go to

1 --- the only manager you could talk to you was
2 Persinger.

3 Q. Have you ever heard of anybody that when they were
4 eating lunch or anything, that they would kind of
5 avoid or hide from any certain person at the mine, any
6 of the management?

7 A. No.

8 Q. Did you ever have your vacation cancelled?

9 A. Yes, sir.

10 Q. How many times?

11 A. Well, when we went to the six and three on --- we
12 never got our vacations. We got the pay, but we
13 didn't get to take the day. The six and three, we
14 had enough days.

15 Q. Do you know when this was? You remember when this
16 was?

17 A. Yes, sir. It's just when we started this. It was
18 just this year.

19 Q. Okay.

20 A. Well, it would be last year because that was our
21 vacation.

22 Q. Did you all talk to anybody about it?

23 A. We talked to Persinger about it, but he just took
24 over.

25 Q. So you didn't get any --- much results, you had to

1 work?

2 A. Yes, sir.

3 Q. How often are you ---? Maybe an off-the-wall
4 question. How often do you all search for smokers'
5 articles?

6 A. Well, they've searched us every week.

7 Q. And where would this take place?

8 A. He'd wait until we get all the way to the section.

9 As soon as you got off the mantrip, he'd say, open
10 your bucket. He wouldn't get in your bucket, but he'd
11 have you to open it. He'd come up and tap you on
12 the pocket.

13 Q. Did you ever know of anybody ever find any smoking
14 articles underground?

15 A. We've heard from another mine, and they fired the
16 two guys.

17 Q. Oh, at another mine?

18 A. Yes, sir.

19 Q. Is there anything else that I or Terry has not
20 asked you that you would like to give us some
21 information on, which would help us in this
22 investigation?

23 A. Just wish you all would find out what happened.

24 Q. You've been off --- I mean, you've been away from
25 --- since April 5th. Have you had any thoughts on

1 what might have caused this?

2 A. I was thinking maybe a gas well that wasn't
3 marked.

4 Q. Have you all ever had that, encountered anything
5 like that before?

6 A. No. When we was at Logan's Fork, we run through
7 several. They were marked on the ribs, so we'd know.
8 And usually they were pretty close, because I've had
9 to set up or I'd have to put waterlines, rock dust and
10 fire extinguishers there. And then little round prop
11 'til it plugged, but I wasn't going to be the one that
12 pound it in. I told 'em, it ain't enough money. But
13 the inspector had to come. Whenever we run tool,
14 there was an inspector. Now I can't remember if it
15 was State or Federal, but I know it was one of them.
16 So on this one, I thought maybe ---.

17 I mean, it's just me thinking, that a long time
18 ago when they drilled wells, that they broke a bit.
19 They wouldn't pull that bit out. They'd pull the
20 casing, fill it full of concrete, and move on down the
21 road and drill another one. They didn't ---. And
22 then they wouldn't mark it on no map. I thought that,
23 but I don't know if anybody's in there. The shearer
24 had to hit it, so there should be a big hole. Should
25 be one on the top or the bottom, if that was the case.

1 Q. Did you frequently ever look at your 1200 --- the
2 map on the surface, like your escapeway map?

3 A. Yes, sir.

4 Q. Okay. Did they pretty well keep that up to date?

5 A. Yes, sir.

6 Q. Okay. Is there anyone else that you know of that
7 we could talk to that might give us some information?

8 A. Not as I know of. We're all thinking we got ---
9 we got several scenarios of what might have happened.

10 Q. Just what are some of the things that y'all
11 thought? Y'all were there.

12 A. I thought maybe something happened back here
13 (indicating) --- well, it's be back here where the
14 water was. They said there was an earthquake in Man.
15 I mean, I don't know what 2.8 is or nothing like that,
16 but if there was an earthquake back there, what kind
17 of effect it'd have, even if it's a little tremor,
18 could have cracked something back there, could have
19 cracked seals. Could've done something. Even though
20 the fire boss walked through there, it could have
21 happened. It could've been fine when he was there.

22 Q. Have you ever talked to the fire boss that
23 traveled behind there, back towards the Bandytown fan?

24 A. Just every once in a while, because of the
25 barricade station. But, again, this was at Logan's

1 Fork, the other guy. He would go in on the tail side
2 and come around, so I usually didn't see him.

3 Q. Did they ever talk about the water back there?

4 A. Yeah. The one did.

5 Q. How much did say was in there?

6 A. He said it was over his boots.

7 Q. Did this accident surprise you?

8 A. Yes, sir.

9 Q. On your last shift, were there any things that
10 just didn't seem right on the section ---?

11 A. That's what I don't understand, it didn't.

12 Everything seemed fine. We run, had plenty of air.

13 Q. Do you know if anybody ever found any other
14 methane any other places in the airways, or ---?

15 A. If they did, they never said nothing.

16 Q. Has anyone there offered anything or made any
17 promises to you in exchange for appearing here today?

18 A. No, sir.

19 Q. Okay. And you said that you were there --- were
20 you underground when this happened?

21 A. Yes.

22 Q. Where were you?

23 A. I was in the corridor of Ellis about three or four
24 breaks. I was ---.

25 Q. Was you a track entry?

1 A. Yes, sir. We done got the ---. We done got the
2 mantrip off the charge. We decided to go in. It
3 might have been five minutes 'til 3:00. We decided to
4 go in early, that way the miner section would have to
5 shut the doors behind us. I'd beat them to the front
6 and Woody and a bunch of my friends. Timmy Davis' son
7 was with us.

8 Q. Is Woody, Woodrum?

9 A. Uh-huh (yes).

10 Q. The headgate operator?

11 A. Yes, sir. They were up front sitting in the inby
12 side of the mantrip. While I was sitting on the back
13 and Kevin was getting the --- and the lights went out
14 at the battery charger. I said Kevin, they didn't pay
15 the power bill. And the wind came, just a little bit.

16 Q. Did it come back a small ---?

17 A. Just a little bit there at first. And then all of
18 a sudden it came again.

19 Q. How much was it?

20 A. Hard enough to make them get out of the front of
21 the mantrip, because the rocks was covering 'em. And
22 they got behind me. I just stayed in the back, I had
23 the whole mantrip blocking on me. And I hunkered
24 down. And I hear Woody and Josh --- and he's the guy
25 ain't coming back. He said he'd never come

1 underground. He was hanging on to Woody and he said,
2 the mantrip's moving. So it was scooting. And that's
3 a hard wind to scoot that mantrip locked down.

4 And Kevin and them were saying, come in the break.

5 So we all jump in the break and we looked. And we
6 just pointed outside, too close to outside. The wind
7 was blowing hard. I mean, it really came.

8 Q. How long did it --- how long did it come, the
9 wind? I mean, how long did it last?

10 A. It lasted --- I couldn't tell you right off the
11 bat, because it was blowing hard. Maybe seven, eight
12 minutes it took us to get out. And we got Cody with
13 us. And his dad's in there, and his two nephews.

14 Q. Were underground?

15 A. Yes, sir. They're all three deceased.

16 Q. Who was the individual who said they wasn't going
17 back underground?

18 A. Josh. He was scared.

19 Q. What was his last name?

20 A. Stout. He said he'd never go, but he may change
21 his mind, but he was scared that day.

22 Q. Did you all have trouble breathing or anything?

23 A. No, sir. Just the rocks were peppering you.

24 Q. Did you all get your rescue --- SCSRs out?

25 A. I was going to, but I figured by the time I got it

1 on, I could be outside.

2 Q. Did anybody put one on?

3 A. No, but there was a guy behind me that had one on.

4 But they were farther in. They were inby us.

5 Q. Did they have them on, or did they have their

6 mouth ---.

7 A. They had it on.

8 Q. They had it in their mouth and ---?

9 A. Yes, sir.

10 Q. Okay. You all come out --- all y'all come out at
11 once?

12 A. Yes, sir.

13 Q. Was there anyone that come out later? A few
14 minutes later that were inby?

15 A. Yeah. That was the one that had the respirator
16 on.

17 Q. How many came out with him?

18 A. There was maybe two or --- there might have been
19 three or four.

20 Q. They were underground inby --- in there with you,
21 just inby you that came out, approximately how many
22 men?

23 A. Well, there probably would have been a crew. I
24 don't know quite where they were, because we were in
25 the lead mantrip, so they could have been six.

1 Q. Well, what took place on the surface because I
2 know it was chaos when you got out, but did anybody
3 talk to you?

4 A. Yes, sir. They had us sign the papers to make
5 sure that everybody was out. And then we waited
6 around for a few --- because we thought at first,
7 well, maybe it was a rock fall. But the more you
8 thought about it, but --- we're trying to keep this
9 calm because his dad's in there.

10 Q. But what was y'all's instructions? What did they
11 tell y'all to do?

12 A. Go on home.

13 Q. Did everyone go home?

14 A. Not Cody and Josh, they stayed there 'cause his
15 dad.

16 Q. Were they keeping electricians there?

17 A. Yes, sir. They kept a couple electricians.

18 Q. Well, did you see any of the mine management take
19 off and go underground?

20 A. Yes, sir.

21 Q. Who all did you see?

22 A. Persinger, and Roles --- Jack Roles, and
23 Persinger, and Everett, I believe.

24 Q. Did anybody else go inby? Did you see anybody
25 else?

1 A. There was one more guy, but I think he was an
2 electrician. But then he --- I don't know, I walked
3 on towards the bathhouse after that.

4 Q. What did they take with them?

5 A. They had monitors and their radios, and they were
6 trying to get ahold of the men underground to see what
7 happened.

8 Q. Okay. So in other words you just went on out ---
9 on home?

10 A. Yeah.

11 Q. When did you find out what happened?

12 A. Well, it takes me about almost two hours from
13 there to get home, so I heard it on the radio. They
14 said it'd been --- come on over at 4:00 on the radio,
15 so I --- so I didn't know about it until I got on
16 home. I knew before --- way before it came on the
17 radio.

18 Q. So you said it didn't --- that surprised you, ---

19 A. Yes.

20 Q. --- that this happened?

21 A. Yes, sir.

22 Q. Did you talk to anybody after that? I mean, how
23 many people did you talk to that you worked with after
24 that? Did they ---?

25 A. Just the guys that was there. I talked to most of

1 them at the funeral, but we didn't talk about the
2 mine.

3 Q. Did you ever return to Upper Big Branch after
4 this? Have you ever been back up there?

5 A. Yes, sir.

6 Q. Why would you go up there? Did you go to work or
7 did ---?

8 A. No. I had to get my belt and stuff, because we
9 was told to come back. We didn't think it was this
10 major thing. I told him I was going to take a couple
11 days off. He told me to be back there tomorrow. I
12 mean, didn't nobody think it was this major.

13 Q. Did you ever observe the fire boss's weekly exam,
14 conducting their examination?

15 A. I'd see 'em.

16 Q. Do you think they had enough time --- enough
17 people to do the whole mine in the time allotted?

18 A. I would say. They worked 12-hour shifts.

19 Q. Does the longwall have the capability ---? Can
20 you dial on the outside line and talk to anybody other
21 than the people on the surface?

22 A. You used to be able to.

23 Q. When did they stop that?

24 A. They stopped that whenever a guy called his people
25 in North Carolina and said, guess where I'm at. They

1 stopped that --- or they was ordering pizza. That'd
2 been a while. They had to put a stop to that.

3 Q. Have you ever heard of on the Headgate 22 or the
4 tailgate, you heard of anybody operating both miners
5 at the same time?

6 A. Not that I know of.

7 MR. GODSEY:

8 That's about it.

9 ATTORNEY BABINGTON:

10 Let's take a quick break.

11 SHORT BREAK TAKEN

12 RE-EXAMINATION

13 BY MR. FARLEY:

14 Q. Was it normal routine to always cut in both
15 directions?

16 A. Yes.

17 Q. And was there ever any time when you would only
18 cut one way?

19 A. If something was down, they would. Just to get it
20 back to the head.

21 Q. Okay.

22 A. But that would be the only time.

23 Q. All right. Okay.

24 RE-EXAMINATION

25 BY MR. BECK:

1 Q. David, do you know of anyone ever being fired or
2 disciplined at Upper Big Branch for any reason?

3 A. No, sir. Well, I know of one, but it was nothing
4 to do with underground.

5 Q. Nothing to do with underground?

6 A. Yeah.

7 Q. Was there a safety department at Upper Big Branch?

8 A. Uh-huh (yes).

9 Q. Did they come around much?

10 A. Yeah. Well, they come around about once every
11 month.

12 Q. Do you know if they had the authority to shut
13 something down if they'd seen it wasn't right?

14 A. I don't know.

15 Q. Do you know if the safety department ever shut
16 anything down?

17 A. Not there, that I know of.

18 MR. BECK:

19 That's all.

20 RE-EXAMINATION

21 BY MR. GODSEY:

22 Q. Okay. Do you know when --- going back to when you
23 were in the mantrip, and you and Woody had gotten
24 across the ---. Did any of the methane monitors go
25 off that you all had?

1 A. No. Because they all had one on. Even the
2 shearer operators had one. Yet none of them go off.
3 But you got to remember, though, it was a ways away
4 from there.

5 Q. Okay.

6 A. At least six miles. Maybe not quite that far from
7 where we was moving, little bit closer. But it's at
8 least --- it was a good ways.

9 Q. Did you all change bits out on the tailgate? On
10 the shearer, did y'all change bits? Did you ever do
11 it on the tailgate side, on the end of the tailgate?

12 A. Every once in a while they would.

13 Q. Okay. On the last shift up there that you worked,
14 did you look inby on the tailgate, or did you look
15 back inby at any time where the rock is behind the
16 tailgate entry?

17 A. On the tail?

18 Q. On the tail.

19 A. No, sir. I wouldn't have been on that part.

20 Q. And you said it never did hang --- did it ever
21 hang back in there?

22 A. I don't know about down there. I know it would on
23 the head side. But you got your wire mask, and I
24 don't think there was wire mask down that side, but I
25 can't remember for sure.

1 Q. What kind of supports did they put in the
2 tail ---?

3 A. They used props.

4 Q. All the way down?

5 A. Yes.

6 Q. You mentioned earlier about people maybe in a
7 break or something. What was the attitude of the red
8 hats when they came over?

9 A. That was the one that's afraid.

10 Q. Did they ever say what they were afraid of?

11 A. Yeah, he was afraid of the top, it would bump a
12 little bit.

13 Q. Was that one person or ---?

14 A. Just one.

15 ATTORNEY BABINGTON:

16 What was his name?

17 A. He's not here ---.

18 ATTORNEY BABINGTON:

19 Oh, okay.

20 A. But his name was Adam.

21 ATTORNEY BABINGTON:

22 Okay.

23 BY MR. GODSEY:

24 Q. On the longwall, when y'all were advancing, did
25 y'all knock the stoppings out behind you in the

1 intake, the headgate, and the tailgate?

2 A. No, sir.

3 Q. You left 'em in place?

4 A. Well, you see, when we first start, we had to
5 knock 'em. And then they said we could ---. Then
6 they said we can't, so we had to go back and rebuild
7 it. And then, you know, once we got down to 24, there
8 wasn't a stopping there, you had a fourth entry. This
9 would be your return for the miner section, I would
10 say. It would have been the return for the miner
11 section.

12 Q. But on the tailgate, did they ever knock any
13 stoppings out over here (indicating), any one, out in
14 front of the ---?

15 A. Yes. Well, that's the ones we rebuilt.

16 Q. You knock it, and had to rebuild it?

17 A. Well, no. They had 'em knocked before we got
18 there.

19 Q. And so they weren't rebuild ---?

20 A. No, we'd rebuild 'em back.

21 Q. Oh, you would?

22 A. That's whenever the air started going crazy,
23 that's what they made us do, is build them stoppings
24 back.

25 Q. You talked about that this is between the headgate

1 One North, and the Tailgate 22. Was there any ---
2 weight that area, any heaving or any roof problem?

3 A. On back here (indicating)?

4 Q. No. In between?

5 A. Oh. No, sir. Not as I knowed of. And none of
6 the miners never said nothing about it.

7 Q. Okay. Here's a question ---. When coming on the
8 longwall to relieve the first shift crew, was the
9 shearer normally --- was the shearer normally on the
10 headgate or the tailgate? Where did your all change-
11 out occur on the longwall face? Is there any
12 particular place that you all ---?

13 A. No, sir. It's just be wherever they're at. There
14 never was no specific place to change out.

15 Q. Did you ever have any kind of shield loaded up
16 pretty tight?

17 A. If they did, they never did say nothing.

18 Q. Okay. There wasn't nothing at the --- where they
19 had got --- would know how much weight they were
20 taking?

21 A. Not that I know of.

22 MR. GODSEY:

23 I do believe that's about it. That's
24 all.

25 ATTORNEY BABINGTON:

1 Terry?

2 RE-EXAMINATION

3 BY MR. FARLEY:

4 Q. Did you ever see wire mesh spark when it broke?

5 A. No, sir.

6 Q. Okay. Whenever you witnessed any rock fall, did
7 you ever see it make any sparks?

8 A. Yes, sir. It's sand ---. It's going to spark if
9 they hit something.

10 Q. Okay.

11 A. It could hit against itself and spark.

12 Q. Okay.

13 A. You could take a hammer. And when I'd set a
14 timber, if I missed --- it would spark on me.

15 Q. Okay. Can you recall when or where was the last
16 time you witnessed that, on the longwall area?

17 A. Not really, no.

18 Q. Was that pretty common when you were in sandstone?

19 A. Yes, sir. But you never seen it behind the
20 longwall. I didn't stick around the shields there.

21 Q. Okay.

22 A. If it comes, a good one, it can shove at you.

23 MR. FARLEY:

24 All right. Okay. Thank you.

25 ATTORNEY BABINGTON:

1 Let's take one last break real quick.

2 Just two minutes. Off the record.

3 SHORT BREAK TAKEN

4 EXAMINATION

5 BY ATTORNEY BABINGTON:

6 Q. Okay. Clarifying the line of questioning before
7 from John about the stoppings that were blown out at
8 some point, and then you were just stating, rebuilding
9 them. That was on the Tailgate One North section;
10 correct?

11 A. Yes, sir.

12 Q. Do you recall between which break those stoppings
13 were?

14 A. Not right off the bat. I just know it was off the
15 tailside of the --- right here was where they were.
16 That's about what, 30 Break?

17 Q. That looks to be about 49 Break on the tailgate.

18 A. Well, we was on down here. I'd say we were down
19 to about --- about 25 Break.

20 Q. This one's 45 Break. You're talking about ---
21 well, basically in line with the 25 Break on the
22 headgate, which looks to be about the 46 Break on the
23 tailgate.

24 A. Okay. Yes, sir. That'd be the 46 Break.

25 Q. Okay.

1 A. And we build 'em back, I think it was like six of
2 'em. So that would put it at, what, 40?

3 Q. So that's 46 maybe down to the 40 Break?

4 A. Yes, sir.

5 Q. Is that the approximation?

6 A. Yes, sir. Because of the difference of the
7 numbers of the stoppings on the head and the tail,
8 because I was never at the tail that much.

9 Q. I understand. Okay. I just had two quick --- two
10 quick follow-ups. You mentioned that there was a boss
11 named Head?

12 A. Yes, sir.

13 Q. And that he had --- if I understand correctly, he
14 complained to management about something?

15 A. Yeah.

16 Q. Do you recall what he complained about?

17 A. Low air.

18 Q. Low air? And what section was he on?

19 A. He was on the miner section, which was up through
20 here on there --- what would you call that?

21 Q. That looks like the mouth of Tailgate 22 and, you
22 know, on the crossover section between Headgate 22,
23 and Tailgate 22 on the Tailgate 22 side?

24 A. Right.

25 Q. That's about where he worked?

1 A. Yes.

2 Q. Okay.

3 A. That's where he worked.

4 Q. Do you recall when he made those complaints to
5 management?

6 A. It might have been two weeks before the accident.

7 Q. Okay. So about mid-March, 2010?

8 A. Uh-huh (yes).

9 Q. Okay. And the last one. You mentioned that there
10 was a boss that you avoided talking to?

11 A. Yeah. The head man.

12 Q. The head man. And what was his name?

13 A. Blanchard.

14 Q. Blanchard. Okay.

15 RE-EXAMINATION

16 BY MR. BECK:

17 Q. I just want to clarify something. We're talking
18 about crosscut numbers on the head and tail, for
19 example, Crosscut 25 on the head would be 46 Crosscut
20 on the tail?

21 A. Yes.

22 Q. Were there engineer tags on the head and tail that
23 had plus numbers?

24 A. Yes, sir.

25 Q. That's what they actually went by when they were

1 marking where the longwall's at; right?

2 A. Yes.

3 ATTORNEY BABINGTON:

4 Terry, do you have anything else? John?

5 RE-EXAMINATION

6 BY MR. FARLEY:

7 Q. Did you ever know or hear of them making a
8 ventilation change on the Sunday before the accident?

9 A. No. I never heard. Nobody said nothing. I hope
10 they didn't, if the --- but not as I know of, there
11 wasn't nobody supposed to be in there.

12 Q. Who mostly made the ventilation changes? Any
13 certain person or people?

14 A. No. It'd just be --- usually they'd come get
15 whatever shift was there, if it was midnight or day or
16 evening.

17 Q. And they did it with everybody underground?

18 A. Well, it was according on what was going on,
19 because there were several times they made us leave,
20 just the bosses and a few of the electricians would
21 stay.

22 Q. Did they ever make a change with y'all
23 underground?

24 A. Not as I know of.

25 ATTORNEY BABINGTON:

1 Okay. On behalf of MSHA, and the Office
2 of Miner's Health Safety, and Training, I want to
3 thank you for appearing and answering questions today.
4 Your cooperation is very important to the
5 investigation as we work to determine the cause of the
6 accident. We request that you not discuss your
7 testimony with any person aside from your personal
8 representative. After questioning other witnesses, we
9 may call you if we have any follow-up questions. If
10 at any time you have additional information regarding
11 the accident that you would like to provide to us,
12 please contact us Norman Page, at the contact
13 information previously provided.

14 If you wish you may now go back over any
15 answer you've given during this interview, and you may
16 also make any statement you would like to make at this
17 time.

18 A. I just wish y'all would all find out what
19 happened. If somebody done --- if, who done it, but
20 we don't know ---. I'd just like to find out what
21 happened.

22 ATTORNEY BABINGTON:

23 Okay. Again I want to thank you for your
24 cooperation in this matter. Off the record.

25 * * *STATEMENT UNDER OATH CONCLUDED AT 9:52 A.M.* * *

1 STATE OF WEST VIRGINIA)

2)

3

4 CERTIFICATE

5 I, Alicia R. Brant, a Notary Public in and
6 for the State of West Virginia, do hereby certify:

7 That the witness whose testimony appears in
8 the foregoing deposition, was duly sworn by me on said
9 date and that the transcribed deposition of said
10 witness is a true record of the testimony given by
11 said witness;

12 That the proceeding is herein recorded fully
13 and accurately;

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



22 *Alicia R. Brant*

23

24

25