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Transcript of the Testimony of Terrance Adkins

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STATEMENT UNDER OATH
OF
TERRANCE ADKINS

taken pursuant to Notice by Danielle Ohm, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Thursday, August 5, 2010, beginning at 9:00 a.m.

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P R O C E E D I N G S

1
2 -----
3 ATTORNEY BABINGTON:

4 My name is Matt Babington. Today is
5 August 5th, 2010. I'm with the Office of the
6 Solicitor, U.S. Department of Labor. With me is Erik
7 Sherer, an accident investigator with the Mine Safety
8 and Health Administration, MSHA, an agency of the U.S.
9 Department of Labor. Also present are several people
10 from the State of West Virginia. I ask that they
11 state their appearance for the record.

12 MR. FARLEY:

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

15 MR. O'BRIEN:

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

18 MS. SPENCE:

19 Beth Spence with the Governor's
20 Independent Investigation.

21 ATTORNEY BABINGTON:

22 There are also members of the
23 investigation team also present in the room today.
24 Erik Sherer will be conducting initial questioning.
25 All members of the Mine Safety and Health

1 Accident Investigation Team and all members of the
2 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 Miners' 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 another

4 personal representative if MSHA has permitted it, and

5 you may consult with your attorney or representative

6 at any time. Your statement is completely voluntary.

7 You may refuse to answer any question and you may

8 terminate your interview at any time or request a

9 break at any time. We also have water available,

10 bottles of water, if you'd like that.

11 Since this is not an adversarial

12 proceeding, formal Cross Examination will not be

13 permitted. However, your personal legal

14 representative may ask clarifying questions as

15 appropriate.

16 Your identity and the content of this

17 conversation will be made public at the conclusion of

18 the interview process and may be included in the

19 public report of the accident unless you request that

20 your identity remain confidential or your information

21 would otherwise jeopardize a potential criminal

22 investigation. If you request us to keep your

23 identity confidential, we will do so to the extent

24 permitted by law.

25 That means that if a judge orders us to

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

8 MR. ADKINS:

9 Yeah.

10 ATTORNEY BABINGTON:

11 Do you have any questions?

12 MR. ADKINS:

13 No.

14 ATTORNEY BABINGTON:

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

25 A court reporter will record your

1 interview. Please speak loudly and clearly. If you
2 do not understand a question asked, please ask the
3 interviewer to rephrase it. Please answer each
4 question as fully as you can, including any
5 information you've learned from someone else.

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

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

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

1 of the Act. Terry?

2 MR. FARLEY:

3 Mr. Adkins, on behalf of the Office of
4 Miners' Health, Safety and Training, I'd like to
5 advise you that the West Virginia Coal Mine Health and
6 Safety Regulations also protect miners against
7 potential discrimination for participating in these
8 type interviews. Now, I'd like to pass along to you
9 some contact information for the West Virginia Board
10 of Appeals. It's a body which hears complaints from
11 miners concerning discrimination, should you have any
12 problem.

13 Also, included on the memo are phone
14 numbers for Mr. Bill Tucker and myself. We're the
15 lead investigators for the State of West Virginia.
16 Should you have any problems, you can give either of
17 us a call and we'll try to help you out. I would
18 caution you that should you need to file a complaint,
19 you would need to do so within 30 days of the event.
20 Thanks.

21 -----
22 TERRANCE ADKINS, HAVING FIRST BEEN DULY SWORN,
23 TESTIFIED AS FOLLOWS:

24 -----
25 ATTORNEY BABINGTON:

1 Mr. Adkins, please state your full name
2 and spell your last name.

3 A. Terrance Mitchell Lee Adkins, A-D-K-I-N-S.

4 ATTORNEY BABINGTON:

5 All right. And could you state your
6 address and phone number for the record, please?

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

8 ATTORNEY BABINGTON:

9 Do you have a personal legal
10 representative with you today?

11 A. Do what?

12 ATTORNEY BABINGTON:

13 Do you have a personal legal
14 representative with you today?

15 A. Yes.

16 ATTORNEY BABINGTON:

17 All right. Will he please identify
18 himself for the record?

19 ATTORNEY MCCUSKEY:

20 Yes, John McCuskey with the law firm of
21 Shuman, McCuskey & Slicer in Charleston, West
22 Virginia.

23 ATTORNEY BABINGTON:

24 Are you legally representing the witness
25 in this matter?

1 ATTORNEY MCCUSKEY:

2 I am.

3 ATTORNEY BABINGTON:

4 Do you understand that you may not

5 communicate with Massey Energy, its affiliates or its

6 officers or directors or attorneys concerning the

7 substance of this representation?

8 ATTORNEY MCCUSKEY:

9 Matt, it's my opinion that that question

10 is an improper attempt to invade the attorney/client

11 privilege and perhaps in itself a violation of the

12 West Virginia Rules of Professional Responsibility,

13 which I would understand, if you're a lawyer, that you

14 are also governed by. And for that reason, my only

15 answer to that will be that I will be abiding by all

16 rules of the West Virginia Rules of Professional

17 Responsibility which govern my conduct.

18 ATTORNEY BABINGTON:

19 Are you being paid for by a third party

20 to provide the representation for Mr. Adkins?

21 ATTORNEY MCCUSKEY:

22 I am.

23 ATTORNEY BABINGTON:

24 Would you identify that third party,

25 please?

1 ATTORNEY MCCUSKEY:

2 I will not, and I think your question is

3 an inappropriate invasion of the attorney/client

4 privilege and itself a violation of the West Virginia

5 Rules of Professional Responsibility which govern you

6 if you are practicing law in the State of West

7 Virginia, which it would appear you are by asking that

8 question. And I know you have a series of questions.

9 That will be my answer to all of them if you want to

10 just put that on the record, as that will be my answer

11 to your questions that I believe are improper attempts

12 to invade the attorney/client privilege under the West

13 Virginia Rules of Professional Responsibility.

14 That'll be my answer.

15 ATTORNEY BABINGTON:

16 I understand your perspective. I don't

17 have any more questions for you. Mr. Adkins, did you

18 voluntarily choose to have this individual as your

19 personal legal representative?

20 A. Yes.

21 ATTORNEY BABINGTON:

22 I understand a third party is paying for

23 the representation. Do you know who that third party

24 is?

25 A. Yes.

1 ATTORNEY BABINGTON:

2 Who is that third party?

3 A. Well, the third party who's paying, I would assume
4 it'd be Massey.

5 ATTORNEY BABINGTON:

6 Okay. How did you choose this individual
7 as your representative?

8 A. How did I choose?

9 ATTORNEY BABINGTON:

10 Uh-huh (yes).

11 A. Do I have to answer that?

12 ATTORNEY MCCUSKEY:

13 Uh-huh (yes), yeah. Well, you don't have
14 to, but I don't see any reason why you shouldn't.

15 A. I just talked to the upper management about
16 lawyers and asked if I could get one.

17 ATTORNEY BABINGTON:

18 And when did you choose this individual
19 as your representative?

20 A. Yesterday.

21 ATTORNEY BABINGTON:

22 Do you consent now to having this
23 individual as your representative?

24 A. Yes.

25 ATTORNEY BABINGTON:

1 Okay.

2 EXAMINATION

3 BY MR. SHERER:

4 Q. Okay. First of all, I want to thank you for
5 coming down, Mr. Adkins. This is very important. I'm
6 sure you've read the press, the numerous press
7 releases about what's going on, and to be quite honest
8 with you, there's still a lot of questions.

9 We want to get at the root cause of this explosion
10 and the events that led up to it for two reasons.
11 First one is the families, the friends, the coworkers
12 of the individuals that perished in this explosion,
13 they deserve some closure. The second reason is we
14 want to try to prevent this in the future, and only
15 through understanding what contributed to this
16 explosion can we do that, so your input is extremely
17 important to us.

18 Roughly how many years of mining experience do you
19 have, Mr. Adkins?

20 A. Four and a half.

21 Q. Okay. Did you start with the Massey Organization?

22 A. Yes.

23 Q. Okay. When did you start at the Upper Big Branch
24 Mine, roughly?

25 A. July ---.

1 Q. July of 2009?

2 A. Yeah.

3 Q. Okay. Where have you worked previously?

4 A. Independence.

5 Q. Okay. So you came to Upper Big Branch just a few
6 months before the longwall started up?

7 A. Correct. Yeah.

8 Q. Were you involved in the setup of the longwall?

9 A. Yeah.

10 Q. Okay. What did you do, specifically?

11 A. I mostly hauled parts up there ---

12 Q. Okay.

13 A. --- on the motor.

14 Q. Okay. How did the setup go? Was it about normal,
15 based on your experience?

16 A. Yeah.

17 Q. Okay. Was there any particular problems with the
18 setup of the wall?

19 A. Not that I'm aware of, no.

20 Q. Okay. And what specifically do you do, or did you
21 do at Upper Big Branch?

22 A. I was a shearer operator.

23 Q. The headgate or tailgate shear?

24 A. Tailgate.

25 Q. What shift did you work?

1 A. Day and evening, just rotate.

2 Q. Okay. You're swing shift?

3 A. Yeah.

4 Q. What was the shift you worked prior to the
5 explosion, the last one prior?

6 A. I was on the dayshift on Saturday.

7 Q. Okay. Were you scheduled to work evening shift on
8 Monday or were you off?

9 A. That was my first day off.

10 Q. Okay.

11 A. Sunday would've been my last shift.

12 Q. So but the mine was shut down on Sunday?

13 A. Correct. Yeah.

14 Q. And that was Easter Sunday. Okay. The shift you
15 worked on Saturday, about what time did you arrive in
16 the mine that morning?

17 A. About 5:20.

18 Q. About what time did you get into the longwall?

19 A. On the section?

20 Q. Uh-huh (yes).

21 A. 6:40.

22 Q. Okay. Now, about how many breaks outby the face
23 did you get off the mantrip? Do you recall?

24 A. I'm going to say six, seven.

25 Q. Okay. About the end of the mule train?

1 A. Uh-huh (yes).

2 Q. Did you notice two new doors that had been
3 installed a week or two prior to the explosion?

4 A. Yes. On the longwall panel itself?

5 Q. Uh-huh (yes).

6 A. Yes.

7 Q. Did you notice if it ---? We've gotten various
8 testimony that there was some sort of regulator built
9 into the side of those doors, just a missing --- I
10 think the upper part of the blocks were left out.

11 A. I'm not sure about that.

12 Q. Okay. You didn't notice?

13 A. Didn't really pay attention, no.

14 Q. Okay. Do you sleep on the mantrip?

15 A. No.

16 Q. Okay. A lot of folks do. Okay. So you got up,
17 you got off the mantrip. Did you notice anything when
18 you got off the mantrip? Was everything about normal
19 or did anything stand out?

20 A. Normal.

21 Q. Now, did you do anything before going onto the
22 wall?

23 A. No.

24 Q. Okay. So you just went up. What's the first thing
25 you did when you got up to the wall?

1 A. Have a safety talk.

2 Q. Okay. Where was that at?

3 A. We'd generally have them right there at the
4 mantrip.

5 Q. Oh, okay. And after the safety talk, what's the
6 next thing you did?

7 A. Walked into the cars, actually stopped the mule
8 train, get our pack man, set our stuff off the tool
9 cars and get to the face.

10 Q. Okay. Now, when you were going up to the face,
11 did you notice the curtains there in the headgate?

12 A. Yeah, all the curtains was in place.

13 Q. And I'm sure they're in place. What were they
14 doing? Were they tight?

15 A. Excuse me?

16 Q. Were they bowed out tight away from going inby
17 or ---?

18 A. Yeah, they was going inby.

19 Q. Were they tight?

20 A. Uh-huh (yes).

21 Q. Okay. Were they flapping?

22 A. Not that I recall.

23 Q. Okay. Any time during the day did you see those
24 curtains flapping?

25 A. Not that I recall. I'm on the face most of the

1 day, sir.

2 Q. Okay, sure. So you go down on the face. Do you
3 recall where the shearer was at?

4 A. No.

5 Q. Okay. Who's the headgate shearer operator?

6 A. Roger Scarbro.

7 Q. Okay. How many passes did you make that day
8 about?

9 A. I'm guess --- three. I can't really remember.

10 Q. Okay. So pretty hard cutting on that face?

11 A. Just on the tail.

12 Q. Okay. Is the coal getting thin down there?

13 A. Is it getting what?

14 Q. Coal getting thin down on the tail?

15 A. On the tail, yes.

16 Q. Okay. Are you taking bottom or top?

17 A. Both.

18 Q. Okay. About how much rock do you think you're
19 cutting out on the tail?

20 A. We only probably had about 20 inches of coal, and
21 I could stand up on the tail, so a lot of rock.

22 Q. Lot of rock. Oh, jeez. How long does it take you
23 to snake it up or do the shuffle, as some people call
24 it.

25 A. I would say that's probably taking about 45

1 minutes to do the shuffle, because all the rock. I
2 had to chase a lot of bits.

3 Q. Oh, okay. How many passes do you normally get out
4 of a set of bits?

5 A. Well, right at that particular time, not even a
6 full pass. I had to change the bits before I cut out
7 the first time.

8 Q. Oh, jeez. That's a lot of bits.

9 A. Yeah.

10 Q. How long does it take you to ---- do you do all of
11 the bits or just part of ---?

12 A. I had to ---.

13 ATTORNEY MCCUSKEY:

14 Make sure you let him finish before you
15 answer. I mean, I know you want to get out of here
16 and I do, too, but ---.

17 A. Okay.

18 BY MR. SHERER:

19 Q. Yeah, just bear with us, please.

20 ATTORNEY BABINGTON:

21 Sorry. Erik, could you repeat your
22 question?

23 MR. SHERER:

24 Yeah, sure.

25 ATTORNEY BABINGTON:

1 Sorry about that.

2 BY MR. SHERER:

3 Q. Yeah. Do you have to change all the bits or just
4 part of the bits, please?

5 A. All the bits.

6 Q. Okay. On both the drums?

7 A. Just tail drum.

8 Q. Just tail drum. So you get to do all the hard
9 work?

10 A. Yeah.

11 Q. Have you ever had to shoot the rock down on the
12 tail to make it easier to cut out?

13 A. No.

14 Q. Okay. When's the last time anyone used explosives
15 on the face that you're aware of?

16 A. I don't remember ever using them, not on my crew.

17 Q. Okay. You never had to shoot a shield loose or
18 anything like that?

19 A. Not that I remember on my particular crew.

20 Q. Okay. Were you aware that there were holes
21 drilled on the tailgate side?

22 A. Yes.

23 Q. Okay. Did you know what those holes were?

24 A. I'm not certain what the holes were there for.

25 Q. When you were cutting the rock on the tailgate,

1 did any of it come out like it'd already been shot and
2 loosened up?

3 A. No.

4 Q. Now, we understand that the block had gotten wide
5 down near the end there. I think somebody mentioned
6 it was about nine foot wider than it should've been.
7 Were you guys doing anything because of that?

8 A. Other than just taking extra cuts off the head,
9 no. I mean, we wasn't shooting any rock or anything
10 like that.

11 Q. Okay. So you were just trying to walk it ---

12 A. Yeah.

13 Q. --- walk it back up? Okay. Now, on Saturday, do
14 you remember anything that was just even the least bit
15 unusual?

16 A. No.

17 Q. Okay. Did you have any problems Saturday? Were
18 there any breakdowns?

19 A. No, not that I remember.

20 Q. Okay. Just normal cutting?

21 A. Yeah, maybe a cutter shaft or something of that
22 nature, but ---.

23 Q. Sure. That's kind of normal stuff.

24 A. Yeah.

25 Q. Had you had any problems on the shift you worked

1 prior to the explosion with the britby or the high
2 voltage cable?

3 A. We changed out the britby.

4 Q. Do you recall about when you did that?

5 A. That was several times. The britby kept getting
6 hung up. I don't remember exactly when it was.

7 Q. Roughly, was it a week before, two weeks before?

8 A. I'd say maybe three weeks.

9 Q. Okay. So you changed the britby about three weeks
10 --- do you know if they changed the high voltage cable
11 about the same time?

12 A. I know they was going to change it. I don't know
13 if it was at that time or before, because we worked on
14 the britby several times.

15 Q. Okay. Were you having problems with rocks coming
16 off the face or ---?

17 A. No, not at that time.

18 Q. Okay. What was tearing up the britby?

19 A. Just the pan line was kind of bent in certain
20 spots ---

21 Q. Okay.

22 A. --- and the britby was catching on it.

23 Q. Oh, okay. Some of the --- what do they call them,
24 sandwich boards?

25 A. Backboards, sir.

1 Q. Backboards; okay. So the backboards were bent up.
2 Did anybody work on those?

3 A. Yeah.

4 Q. Think they were having any luck getting them
5 straightened out?

6 A. There was, but towards the tail there was gob and
7 the jacksetter was inexperienced.

8 Q. Okay. What about the pan line? You ever notice
9 ay sparks on the pan line?

10 A. No.

11 Q. Okay. What condition was the chain in?

12 A. The chain was in good condition.

13 Q. Okay. How about the ACT? About where was that
14 at? Do you know?

15 A. What shield number was it at?

16 Q. It was on the tail drive.

17 A. Tail, yeah. 175 --- or not 175, 172?

18 Q. Yeah.

19 A. I can't remember.

20 Q. Now, what I'm asking is, did you notice, where
21 that automatic chain tensioner was, was it about the
22 middle of its range or over near the headgate side or
23 the tailgate side?

24 A. I don't really ---.

25 Q. You don't check?

1 A. No.

2 Q. Okay. Some folks do, some folks don't. Okay.
3 What about the shearer itself? Had you had any
4 maintenance problems with the shearer that you're
5 aware of?

6 A. No, not really. Had a problem with it tramping a
7 little bit, but other than that, ---.

8 Q. Okay. We understand that the hinge pin had failed
9 on Monday.

10 A. Uh-huh (yes).

11 Q. And they were down most of the day messing with
12 that. In fact they were scheduled to replace it on
13 the hoot owl after the explosion. Had you had any
14 problems with that hinge pin?

15 A. Which side was it on, tail or head?

16 Q. I think it was on the head side, but I'm not ---.

17 A. I believe we had problems maybe two weeks ago
18 before that.

19 Q. Okay, okay.

20 A. But we'd fixed it.

21 Q. Okay. Have you talked to anybody about the
22 condition of the wall after the explosion?

23 A. Very little.

24 Q. Okay. Well, let me tell you what we done, and I'm
25 going to ask your opinion, because you're obviously

1 very familiar with the operation of this particular
2 face. We know that the shearer was getting real close
3 to being cut out, and from the photographs and such,
4 it had actually cut out of the block, but it was
5 roughly four feet from the --- its maximum extension
6 at that point in time, we think. We know that there
7 wasn't any coal on the pan line, wasn't any coal on
8 the stage, so it had been run off.

9 We know that the wall had been down most of the
10 day. We know that the headgate operator called out
11 somewhere around 2:30 that they were back in
12 production. We know that the wall most of the day had
13 been --- or the shearer had been up near the headgate,
14 where they were working on that hinge pin, and that
15 they actually cut down to the tail. We know that they
16 had cut out and pushed up.

17 We know that the visual disconnect was pulled for
18 the high voltage on the shearer. We know that the
19 water was turned off on the headgate. We know that
20 several of the victims were about mid-face and the
21 rest of the victims were up toward the headgate. One
22 of the victims near the mid-face was one of the
23 electricians. The other electrician was up near the
24 headgate. We know that the shearer had --- both the
25 cutting drums had been extended up to where they

1 would've been when they were cutting. What do you
2 think was going on on that face?

3 A. I have no clue at that time. What time was the
4 shearer shut off at?

5 Q. The shearer was shut off probably a few minutes
6 before the explosion.

7 A. And you say it was on the tail?

8 Q. It was on the tail. It was all the way down
9 there.

10 A. The only guess I would have --- I mean, could be
11 possible a piece of metal from the bit may have went
12 out in the tail entry. Maybe they seen something and
13 shut everything off and tried to back away.

14 Q. So why would they have done that?

15 A. Knock the power on everything.

16 Q. Well, they could've knocked --- and here's what
17 confuses us and the reason I'm asking you. They
18 could've knocked the power and, you know, just hit the
19 E-stops and then called up to knock the power on the
20 headgate. If there was an ignition around the shearer
21 itself, why would they have cut the water off?

22 A. I don't know.

23 Q. Okay.

24 A. I've tried to figure that out.

25 Q. Okay. Now, you said a piece of metal out in the

1 tailgate. You mean, like, a piece of hot metal?

2 A. Well, it may be something from the bit. I don't
3 know if they drilled this.

4 Q. Okay.

5 A. Possibility.

6 Q. Okay. Have you ever seen anything like that
7 happen?

8 A. Well, I've never actually seen a piece of metal in
9 the tail entry smoldering or anything, but I'm sure
10 that hot metal flies out there, but ---.

11 Q. Sure. Basically every time you see a spark ---

12 A. Uh-huh (yes).

13 Q. --- there's hot metal.

14 A. Yeah.

15 Q. Why would a piece of hot metal in the tailgate be
16 a problem?

17 A. Well, if you had a hot piece of metal and methane
18 ---. I've heard that the mine floor was cracked.
19 Maybe if the piece of metal went to where the crack
20 was ---. I don't know exactly where the crack was
21 located at.

22 Q. There was a crack right at the tailgate. We
23 understand it was roughly 8 to 10, maybe even 12 feet
24 long. It was about five or six inches deep. It
25 looked like the sandstone ---. You know, this floor

1 seems to be kind of a hard sandy shell on top of a
2 softer shell. It looks like it had been buckled up as
3 a ---

4 A. Uh-huh (yes).

5 Q. --- tail corner had pushed down into the strap.
6 We don't think that was the force of methane.

7 A. Oh, okay. Then I really don't --- I don't have no
8 idea what.

9 Q. Okay. Well, if you got any opinion or any
10 information, we'd certainly appreciate it. Okay.

11 Q. I don't know why they'd turn the water off, if
12 they said so.

13 Q. Yeah, yeah. Now, we've also had several opinions
14 that it may've been a problem with the high voltage
15 cable or the britby, and that's certainly something
16 that we're looking into right now. Does that seem
17 reasonable?

18 A. Yeah.

19 Q. When you're working the dayshift, about when would
20 you guys leave the face if you were down on the tail
21 like that?

22 A. We normally left the face, I want to say ---.

23 Q. Okay. Now, we know that that hadn't happened,
24 now, on the day of the explosion.

25 A. No.

1 Q. Any other reason you'd leave the face like that?

2 A. The only reason you would leave the face, like, is
3 maybe to go get parts. Maybe that's why they had the
4 water off, but I don't know why everybody would leave.

5 Q. Yeah.

6 A. So I don't know why the all would've been leaving
7 the face.

8 Q. Okay. Let me ask you this. This is just an
9 opinion, so we're not going to hold you to this in any
10 way. If you're down on the tail and something
11 happened along the face, which way would you try and
12 get out? I mean, what would be your first instinct?

13 A. I would want to go to the head.

14 Q. Okay. Now, why would you want to go to the head?

15 A. It's where my ride is.

16 Q. Okay. That's a good reason. What if you ---
17 again, if something was happening on the face itself,
18 would you consider going out the tailgate?

19 A. If I couldn't get to the head, yes.

20 Q. Okay. When is the last time you guys did a
21 evacuation drill?

22 A. It wasn't very long before that. I'm thinking ---
23 are you asking walking the escapeway?

24 Q. Sure, uh-huh (yes). Yeah, the quarterly
25 evacuation drill.

1 A. I don't remember what the date was. I mean, I
2 remember doing it.

3 Q. Just roughly.

4 A. Maybe before a month, month and a half, two
5 months, around that general area.

6 Q. Okay. Did you go out the headgate or tailgate?

7 A. Head.

8 Q. Have you gone out the tailgate on any of the
9 quarterly drills?

10 A. I don't remember going out the tailgate on the
11 drill, but we had to travel the tailgate.

12 Q. Okay. Now, when you traveled out of the headgate,
13 I assume you rode.

14 A. We rode down to wherever --- I don't remember what
15 break it was. We could ride so far, then had to get
16 off and walk the intake.

17 Q. Yeah. Okay. Now, when you were going out the
18 tailgate, you had to walk all the way, didn't you?

19 A. Yeah, we had a mantrip down on the track
20 somewhere.

21 Q. Oh, okay. So it wasn't that big a difference, was
22 it?

23 A. No.

24 Q. Okay. Did you feel as comfortable walking out the
25 tailgate?

1 A. Yeah.

2 Q. Okay. What were the conditions like down there?

3 A. Conditions was --- I mean they weren't bad. There
4 was a couple low spots, but I mean it wasn't bad
5 conditions.

6 Q. Okay. The ribs weren't rolling or ---

7 A. No.

8 Q. --- anything like that? Okay. Now, back up on
9 the headgate we understand there was a contractor in
10 there doing some gluing of the roof, I think. Do you
11 recall seeing those folks in there?

12 A. Yes.

13 Q. Do you know if they'd finished up?

14 A. I don't know if they were finished, no.

15 Q. Okay. Let me ask that a slightly different way.
16 Do you know if they had gotten their chemicals out
17 prior to the explosion, their drums and tanks and
18 stuff?

19 A. I don't know if they did or not, to be honest.

20 Q. Okay. When you were working on that shift, last
21 shift Saturday, did you smell anything unusual on the
22 face?

23 A. No.

24 Q. Couldn't smell any kerosene-like odor or anything?

25 A. No.

1 Q. Okay. Now, when you were working up on the face,
2 did you ever notice that the air would slow down or
3 something like that?

4 A. No. We had plenty of air.

5 Q. Okay. Do you think it was fairly consistent
6 throughout the day?

7 A. Yeah.

8 Q. Okay. Now, we know when you pushed the shields up
9 and the shearer gets in the right place, sometimes
10 that'll cut the velocity somewhat. Who was the boss
11 on that last shift you worked?

12 A. Mikey Webb.

13 Q. Mike Webb. Now, he's been a boss, what, about a
14 month or six weeks?

15 A. Before the explosion?

16 Q. Uh-huh (yes).

17 A. Maybe a month.

18 Q. Okay. What do you think about Mike? Was he a
19 good boss?

20 A. Yeah, he was a good boss.

21 Q. Okay.

22 A. He was a little nervous, but he was a good boss.

23 Q. I can understand that.

24 A. Yeah.

25 Q. That's a lot of responsibility. What about the

1 other folks on the crew? Who was on that crew that
2 last Saturday?

3 A. Mikey Webb, me, Pacer Petry, Roger Scarbro, Travis
4 Nelson, Luke Ford, Randy Glin and I think Timmy Davis.

5 Q. Now, Mr. Davis was one of the victims, wasn't he?

6 A. Correct; yes.

7 Q. We understand he had just moved up in the chain of
8 command. That's what we understand. Was there some
9 particular reason he was there on Saturday or was he
10 just filling in for somebody? Do you know?

11 A. I think it was just this Saturday to work, you
12 know?

13 Q. Oh, okay. I can understand that, too. I know
14 your crew swung shifts from days to evenings. Were
15 there some other people that kind of moved in and out
16 of the crew as you did that?

17 A. Yeah.

18 Q. Why did they do that?

19 A. They were just kind of just outby guys. They were
20 just --- they pretty much stayed on dayshift.

21 Q. Oh, okay.

22 A. So when we done dayshift, they was there, and when
23 we were on evening shift, they wasn't.

24 Q. Oh, okay. And I guess when you were on the
25 evening shift, there may've been some other people

1 that filled in for them?

2 A. No.

3 Q. Okay. So you didn't have outby people on that?

4 A. Just your utility men.

5 Q. Oh, okay. So during the dayshift they tried to do
6 most of the outby work?

7 A. Yeah.

8 Q. Okay. Sounds reasonable. Now, did you ever get a
9 chance to go up away from the actual wall itself up
10 toward this connecting set of entries that go --- that
11 went up to the 22 Headgate?

12 A. I never went in there.

13 Q. Okay. How many remote controls were on the wall?
14 Do you know?

15 A. Remote controls?

16 Q. The remote controls for the shearer.

17 A. Maybe six.

18 Q. Okay. So three sets, basically?

19 A. Yes.

20 Q. Where'd you guys charge those at?

21 A. On the mule train.

22 Q. Okay. Any particular place?

23 A. It was your last power center towards the face.

24 Q. Okay. So they were up pretty close to the face?

25 A. Yeah.

1 Q. Then the stage loader?

2 A. The what, now?

3 Q. Were they past the stage loader?

4 A. Yeah, they was outby the stage loader.

5 Q. Okay. Now, you said that nobody had ever shot
6 anything on your shift. Had you ever seen the
7 detonator anywhere along the --- any of the toolboxes
8 or any of the tool cars?

9 A. No.

10 Q. Would you know where to go get powder if you had
11 to shoot something?

12 A. I wouldn't, no.

13 Q. Okay. Who would generally do that?

14 A. I would assume the longwall coordinator.

15 Q. Okay. And who was that, please?

16 A. Jack Roles.

17 Q. Okay. Did he show up on that Saturday shift?

18 A. I don't think he was there then.

19 Q. Okay. About how often would he come up on the
20 face when you were working?

21 A. Just --- now, he didn't come every day, but ---.

22 Q. Every now and then?

23 A. Maybe four times a week, five. I mean ---

24 Q. Okay.

25 A. --- just ---. You never knew when he was coming.

1 Q. Sure. That was probably by design.

2 A. Yeah.

3 Q. What would he do when he came up on the face?

4 A. He'd just go around checking curtains, just ---

5 Q. Okay.

6 A. --- pretty much checking on everything to see how
7 everything's running.

8 Q. Okay. Did you ever talk to him much?

9 A. Yeah, I talked to him.

10 Q. Did he seem like a reasonable fellow?

11 A. Yeah.

12 Q. Did he adjust the stoppings and such, the
13 regulators in the tailgate area?

14 A. Not that I know of. They done work in the
15 tailgate area, but I was off, so ---.

16 Q. Okay. When did they do that work?

17 A. Whenever MSHA made them change the air on the tail
18 or whatever it was.

19 Q. Oh, okay. That was, I think March the 9th. Do
20 you know if anybody had been doing that sort of work
21 since March the 9th?

22 A. I think --- I'm not for sure on this, but I think
23 the foremans was supposed to get out on the tail entry
24 and knock a hole in the stopping. I'm not sure about
25 that. I think that's what they said.

1 Q. Okay.

2 A. And I didn't concern myself with it.

3 Q. Sure. Yeah. Yeah, if you don't have to do it,
4 why worry about it? Do you know about when that was
5 supposed to have happened?

6 A. From what I heard was whenever your face gets even
7 with the block, they're going to knock a hole in it.

8 Q. Oh, okay.

9 A. Maybe it's the next one outby. I'm not sure.

10 Q. Okay. So it's just something you did as the wall
11 progressed?

12 A. Uh-huh (yes).

13 Q. Okay. Did you ever see anybody doing that?

14 A. No. I mean not really. I know that I've seen my
15 boss in the tail entry ---

16 Q. Sure, uh-huh (yes).

17 A. --- but I don't know for sure what he was doing.

18 Q. Okay. Was there a sledgehammer on the tail drive?

19 A. There was so much stuff on that tail drive, I'm
20 not sure what all was down there.

21 Q. Okay. I can understand that, too. What about the
22 conditions in the headgate? Were the ribs and roof
23 and such in good shape?

24 A. Yeah, decent shape. Yeah, I'd say.

25 Q. Okay. What about floor heave? Was there any

1 floor heave in the headgate?

2 A. Not in the head that I can remember.

3 Q. We know there was some right there, that corner in
4 the tailgate. Did you ever notice any other floor
5 heave in the tailgate?

6 A. No, just the only place I ever noticed any having
7 was in the low area, pretty much where we was cutting
8 at the time where you had all the sandstone.

9 Q. Uh-huh (yes).

10 A. That's the only place I've ever really seen,
11 noticed it.

12 Q. Okay.

13 A. Of course, I didn't go in the tail entry very
14 much.

15 Q. Sure, sure. I understand that. Would it heave
16 when you were cutting it or did it heave by the time
17 you got back down there or was it just ---?

18 A. No, I don't think it did while we was cutting it.

19 Q. Okay.

20 A. Just over a period of time.

21 Q. Okay. Do you guys have a curtain in the tailgate?

22 A. Not that I'm aware of.

23 Q. Okay.

24 A. And again, I didn't go to the tailgate very often.

25 Q. Sure. Yeah, some walls do; some don't. But you

1 would've probably noticed it if you were down there
2 when the shearer cut out, if you had one. And again,
3 you know, like I say, some walls do, some don't. When
4 you were cutting out on the tail, was there any
5 problem with dust?

6 A. No. Actually it was --- the dust, best I've ever
7 seen it, I mean as far as staying clear. I could
8 actually see what I was doing on the tail.

9 Q. That's good. So and when you were cutting out on
10 the tail was the air moving further inby, blowing the
11 dust back toward the gob or do you recall how that was
12 moving?

13 A. I don't recall how that, the dust was moving. I
14 just pretty much focused on what I was cutting.

15 Q. Okay, sure. Okay. Did you ever get any
16 notification that inspectors, MSHA or state, were on
17 the property? Did they ever say anything?

18 A. We knew, but I mean it wasn't ---.

19 Q. Wasn't that big a deal?

20 A. No.

21 Q. Okay. What did you think of the ventilation in
22 the mine in general? Do you think it was adequate?

23 A. Far as ventilation going down the face, yes, but I
24 did not like the air coming up what should be your
25 intake.

1 Q. Explain that to me. What do you mean by that?

2 A. Okay. Let's see. Where's it at? This entry
3 here, what's generally your intake turned. I didn't
4 like that idea. Other than that, I pretty much liked
5 the ventilation.

6 Q. Okay. Now, this map ---. You're pointing to the
7 center entry on the headgate.

8 A. The one next to your track entry?

9 Q. Yeah, yeah. This is your belt. This is the
10 track.

11 A. Yeah.

12 Q. The center entry's just an open --- and it's shown
13 as an intake.

14 A. I mean, they may've changed it to an intake, but
15 it was a return, then an intake, then a return.

16 Q. Okay. Do you recall when that had been a return?
17 When was the last time you noticed that as a return?

18 A. I thought it was a return when we started up.

19 Q. Okay. Of course, when you started up there were
20 just three entries?

21 A. Yeah.

22 Q. Okay. Oh, okay. I see what it is. There was a
23 stopping line?

24 A. Uh-huh (yes).

25 Q. Okay. And it looks like that may've ceased when

1 they --- see, they had a stopping line back here, ---

2 A. Yeah.

3 Q. --- but once you got to this connector, you went
4 from three to five entries, so they actually had two
5 returns over here?

6 A. Uh-huh (yes).

7 Q. Okay. Why'd that bother you?

8 A. I just didn't ---. You know, the guys over there
9 doing the roof support, you know, doing props, cribs,
10 that's --- I didn't like the idea of it.

11 Q. Did the stoppings crush out?

12 A. They may have back this way. I don't know, but
13 from what I seen going to work every day, I never seen
14 any crushed out.

15 Q. Okay. Did you have problems with water on this
16 face anywhere?

17 A. We did. It might've been back in this area where
18 we had a lot of water.

19 Q. Okay. Do you recall about when that was?

20 A. I don't remember the exact date of it, no.

21 Q. Was it before Christmas or after Christmas?

22 A. I think it was after Christmas.

23 Q. Okay. How high --- did you get up on the
24 backboards?

25 A. Uh-huh (yes).

1 Q. Did you have to set pumps along the face?

2 A. Yeah, they set pumps.

3 Q. Okay. Did you have to wade in the stuff?

4 A. We didn't have to, but I did.

5 Q. About high did it get on you?

6 A. It was probably waist deep, but they gave me chest
7 waders.

8 Q. Okay. Do you like waders?

9 A. No.

10 Q. I don't know anybody that does.

11 MR. SHERER:

12 Okay. That's about all the questions

13 I've got for right now. John?

14 OFF RECORD DISCUSSION

15 EXAMINATION

16 BY MR. FARLEY:

17 Q. Mr. Adkins, a few things here to clarify. On
18 Saturday, April the 3rd, your last shift at UBB, at
19 the end of your shift do you recall where the shearer
20 was?

21 A. At the end?

22 Q. At the end.

23 A. I really don't have a clue, no.

24 Q. Okay. Since you worked on this longwall panel at
25 UBB, which would've been since about last September,

1 did you ever experience any air coming out of the
2 shields from the gob?

3 A. No.

4 Q. Okay. Has the longwall --- through the time since
5 last September at UBB, has it ever gassed off?

6 A. No.

7 Q. Okay. As of the end of your shift on Saturday,
8 April the 3rd, were the methane monitors on the UBB
9 longwall fully operational?

10 A. Yeah.

11 Q. And were they fully operational throughout your
12 last shift on April 3rd?

13 A. Yes.

14 Q. Okay. Any recent malfunctions with either methane
15 monitor on the UBB mouth longwall before April 5th?

16 A. No.

17 Q. Okay. You were talking about the map here
18 earlier. My first question about the map is, now,
19 based on your memory of what you saw on April 3rd of
20 the established ventilation for the longwall face in
21 the headgate entries adjacent to the longwall panel,
22 is this map accurate? Does it accurately reflect what
23 you remember?

24 A. Yeah.

25 Q. Okay. It shows intakes, the belt, two returns

1 coming off the two miner sections. Does that
2 accurately reflect what you remember?

3 A. Past this point here, ---

4 Q. Uh-huh (yes).

5 A. --- I don't know much about this area over here.

6 Q. Okay.

7 A. I just came up and went to the face.

8 Q. All right. The map shows a couple of doors over
9 here between the Number Four and Number ---

10 A. Yeah.

11 Q. --- Five entry. Did you ever see those doors?

12 A. Yeah, I remember seeing them.

13 Q. Okay. Do you recall the last time you saw them?

14 A. Probably before we past that --- that was the last
15 time I was over there.

16 Q. Okay. Based on my reading of the pre-shift/on-
17 shift report book for UBB longwall during the month of
18 March, the entries in the book reflect that the
19 quantity of air coming across the longwall face
20 reduced from roughly 115,000 to --- in the early part
21 of March to --- 55,000 or 60,000 toward the end of
22 March. Do you recall experiencing that change?

23 A. No, when I took air readings I had probably about
24 70,000.

25 Q. Okay. When's the last air reading you recall?

1 A. It was before, before Mikey Webb started bossing,
2 because I bossed for Timmy a couple days.

3 Q. Okay. Now, in the week preceding the explosion
4 ---. In the week preceding the explosion, was the
5 velocity of air coming across the longwall face
6 consistent?

7 A. Yeah.

8 Q. Okay. Earlier Erik asked if you were familiar
9 with some holes drilled into the panel, the longwall
10 panel on the tailgate side of the ---. And you said
11 yes, but I think that's --- you were aware of them,
12 but do you know who drilled them and when?

13 A. No, I never actually seen the holes. I was told
14 that the miner section drilled them when they were
15 driving the panel because it was wide there or
16 something of that nature. I mean I never really ---

17 Q. Okay.

18 A. --- pursued to find out what it was about.

19 Q. Okay. You indicated that Timmy Davis was present
20 on Saturday, April 3rd during your shift. You said
21 you thought it might've been his weekend to work.
22 What was he doing that day?

23 A. If he was there, sir. I can't remember if it was
24 Saturday or Friday. I remember seeing him, but I
25 think he was just outby, just cleaning up, getting

1 things ready for pullout.

2 Q. Okay.

3 A. He may've even had the roof bolter going. I'm not
4 certain.

5 Q. Okay. Now, had he recently been promoted to a
6 higher level position?

7 A. He said that he was, but I mean the --- what he
8 was doing, it really to me wasn't higher position.

9 Q. Okay, all right. Do you have a mine foreman/fire
10 boss certification?

11 A. Yeah.

12 Q. Okay. How long have you had that?

13 A. I think I got it in January.

14 Q. Okay.

15 EXAMINATION

16 BY MS. SPENCE:

17 Q. How'd you hear about the explosion?

18 A. Somebody called my wife while we was out in town.

19 Q. You were out?

20 A. Uh-huh (yes).

21 Q. Were you surprised?

22 A. Yeah. I was really surprised.

23 Q. Didn't think it could happen there?

24 A. Not there, anyway. I never would've expected it
25 to happen there.

1 Q. How come?

2 A. Never picked any gas up at all. From what I knew,
3 it was a pretty safe mine.

4 MS. SPENCE:

5 That's all. Thank you.

6 RE-EXAMINATION

7 BY MR. SHERER:

8 Q. Okay. I got a few follow-ups. Now, you worked
9 swing shifts. Did you have some sort of schedule,
10 like six on, three off?

11 A. Yeah, six on, three off.

12 Q. Okay. How long was your shift, hour-wise?

13 A. Ten hours.

14 Q. Ten hours. Did you ever get fatigued?

15 A. I mean, I get tired, yes, but not to where I can't
16 do my job.

17 Q. Well, I understand that, but I mean, like, after
18 you been there five or six days, those last few hours
19 of that last shift, is that tough?

20 A. NO, not really.

21 Q. Okay. You're young, buddy.

22 A. Yeah.

23 Q. Enjoy it. Okay. The shuffle, how did you guys do
24 the shuffle?

25 A. How did we do the shuffle?

1 Q. Uh-huh (yes).

2 A. Well, I guess I have to explain the whole thing?

3 I mean ---.

4 Q. Yeah, just give us an overview of it. Everybody
5 does it a little different.

6 A. Of course you would cut out. Your deck setter
7 would pull the shields probably --- say, if it was on
8 the head, he'd probably stop it, start stacking them
9 off at 20 shield.

10 Q. Uh-huh (yes).

11 A. You know, push the line.

12 Q. Sure.

13 A. We'd come back through it. He'd pull them in from
14 the head to 20, push it out when we cut out again.

15 Q. Okay. What about at the tail? How'd you do it at
16 the tail?

17 A. The same.

18 Q. Okay. Just a reverse?

19 A. Uh-huh (yes).

20 Q. Okay. How is the ventilation while you're doing
21 that shuffle?

22 A. It's still great. Well, I wore a coat the whole
23 time, so ---.

24 Q. Okay. Now, you were off on Monday, I think you
25 said.

1 A. Yeah.

2 Q. Okay. Now, you mentioned that you hadn't seen
3 anybody using explosives on your shift. Were you
4 aware of anybody shooting on any of the other shifts?

5 A. I think they may have shot, maybe at the beginning
6 of the panel, something like that. Maybe they had a
7 rock or something they shot. I can't recall too much.

8 Q. Okay. Rock in ---?

9 A. In the face chain.

10 Q. Okay. Do you know if they had drilled the rock or
11 if they had used one of those W chargers?

12 A. I don't know. I would say they drilled it.

13 Q. Okay. Did you have a drill anywhere around the
14 wall that you'd use for that? What'd they have?

15 A. I never seen it. I mean, I don't ---.

16 Q. Okay.

17 A. We didn't have too many problems with rock.

18 Q. Okay. Did you have any problems with the stage
19 loader trying to go back over against the rib opposite
20 the longwall block?

21 A. No, I don't remember them saying had any trouble
22 with it.

23 Q. Okay.

24 A. I'm sure it steered both ways, but ---.

25 Q. Sure. How would you try to keep that sage loader

1 tied against the block you're cutting?

2 A. Well, other than taking cuts off the head and
3 whatever you need to do, you got jacks on the
4 tailpiece.

5 Q. Would you try to keep the tail of the wall a
6 little advanced, compared to the head? Some people
7 call that lead; some people call it ---.

8 A. No. I mean no, not really. I just --- whatever,
9 you know, the face needs.

10 Q. Okay. How often would you have to adjust for
11 stuff like that?

12 A. We normally adjusted two or three times a week,
13 but that was mainly just to get extra coal.

14 Q. Okay. That'll work, too. Now, you guys had to
15 call out all your footages and stuff like that, didn't
16 you?

17 A. Uh-huh (yes).

18 Q. Let's talk a bit about methane monitors. Was
19 there any problem with the monitor on the tailgate,
20 particularly the cable going to it?

21 A. No, ---

22 Q. Do you recall anything?

23 A. --- not that I recall any problems with it.

24 Q. Okay. During this panel, had you ever had to shut
25 down due to some problem with the methane monitor?

1 A. Not on my shift, no.

2 Q. Okay. Now, we understand that there was a methane
3 monitor on the shearer and one on the tail drive.

4 Does that sound about right?

5 A. Yeah.

6 Q. Okay. The monitor on the shearer, was that up
7 near the head drum or the tail drum?

8 A. Tail drum.

9 Q. Tail drum. So you'd watch that ---

10 A. Uh-huh (yes).

11 Q. --- monitor? What's the greatest amount of
12 methane you ever seen on that?

13 A. Most the time on the shearer it said zero.

14 Q. Okay.

15 A. And on my spotter I had maybe a .01, occasionally,
16 which is nothing.

17 Q. Sure. During the shift you worked on during this
18 particular panel, had you ever had to replace any of
19 the methane monitor components, the sniffers or
20 anything like that?

21 A. I don't recall us doing it on our shift, but I'm
22 sure at some point in time another crew ---

23 Q. Sure.

24 A. --- exchanged parts out.

25 Q. Okay. Now, we understand that the hoot owl shift

1 was primarily a maintenance shift.

2 A. Uh-huh (yes).

3 Q. Would anybody --- did anyone ever bridge out the
4 monitor so they could fix it on the hoot owl shift?

5 A. No.

6 Q. Okay. Did you ever see a cover off on any of the
7 monitors?

8 A. No.

9 Q. Okay. You ever seen a monitor displaying a fault
10 code?

11 A. No.

12 Q. Okay. Do you know what the monitor would display
13 if it wasn't working?

14 A. Not really. I mean, most the time I've ever seen
15 it, it was working, so ---.

16 MR. SHERER:

17 Okay. That's all the questions I've got.

18 EXAMINATION

19 BY ATTORNEY BABINGTON:

20 Q. I just have a couple. We talked a little bit
21 about, you know, fatigue that you have at, you know,
22 by the end of the six days. In the, you know, three
23 to six months leading up to the explosion did you ---
24 were you experiencing any kind of fatigue even when
25 you weren't at work, having less energy than you had,

1 say, the year prior?

2 A. Uh-uh (no).

3 Q. Was that a no?

4 A. That's a no.

5 Q. You said the ventilation was pretty good during
6 the shuffle. Was there a lot of dust?

7 A. No.

8 Q. And you said that your shift never shut down the
9 longwall for reading methane. Do you know of any
10 other longwall shifts that shut down for reading
11 methane?

12 A. No.

13 ATTORNEY BABINGTON:

14 Okay. Terry, anything else?

15 MR. FARLEY:

16 No, sir. Thank you.

17 ATTORNEY BABINGTON:

18 Beth?

19 MS. SPENCE:

20 Nothing else.

21 ATTORNEY BABINGTON:

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

1 investigation as we work to determine the cause of the
2 accident. We request that you not discuss your
3 testimony with any person aside from a personal
4 representative. After questioning other witnesses we
5 may call you through your representative if we have
6 any follow-up questions. If at any time you have
7 additional information regarding the accident that
8 you'd like to provide to us, please contact any of us
9 at the contact information previously provided. If
10 you wish, you may now go back over any answer you've
11 given during this interview. You may also make any
12 statement that you'd like to make at this time.

13 A. I have nothing.

14 ATTORNEY BABINGTON:

15 Again, I want to thank you for your
16 cooperation in this matter.

17 ATTORNEY MCCUSKEY:

18 Before we go off record, I'd like to make
19 a request that my client would like to read and sign
20 the deposition testimony so he can review it for
21 accuracy, and I'd request that it be provided to him
22 by the court reporter as soon as --- ASAP, we'll say.

23 ATTORNEY BABINGTON:

24 Well, our protocol with that is that
25 we'll --- we can have him come in and sit down, and

1 you can come, as well, and sit down and read through
2 it. But for FOIA purposes and other law enforcement
3 purposes, we won't be releasing copies of the
4 transcripts until a time in the future.

5 But we can --- I think we have agreed
6 that once we determine that date that we're going to
7 do, release the transcripts, we can provide a copy in
8 advance at that point. Terry, is that your
9 understanding of how we've been down these?

10 MR. FARLEY:

11 Would you repeat what you said?

12 ATTORNEY BABINGTON:

13 Sorry. Terry, I was saying that how
14 we've done this so far is we have people --- we've
15 agreed to allow people to come in and read a copy of
16 it ---

17 MR. FARLEY:

18 That's fine.

19 ATTORNEY BABINGTON:

20 --- but not providing a physical copy at
21 that time.

22 MR. FARLEY:

23 Right; that's my understanding.

24 ATTORNEY MCCUSKEY:

25 But that's actually news to me. That's

1 the first time I've heard that. Maybe you've told
2 that to other people on the record. So if you would
3 explain that procedure and when it's going to happen
4 so that I'll know.

5 ATTORNEY BABINGTON:

6 Okay.

7 ATTORNEY MCCUSKEY:

8 That's news to me.

9 ATTORNEY BABINGTON:

10 I don't think we've --- we haven't set up
11 any of these yet, so we don't have the date for when
12 we would do it, but at some point prior to the public
13 release of the records, of the transcripts, we're
14 going to provide an opportunity upon request if you
15 would like to come in and read the transcript, you
16 know, make a memorandum of any errata if you see them.
17 But we're not ---. And then I think the plan is to
18 provide a copy of the transcript to the individual
19 just before public release, but not at the time when
20 you come in and review the transcript.

21 ATTORNEY MCCUSKEY:

22 I got you. So when will you be making
23 that opportunity for us to review and for accuracy the
24 transcript?

25 ATTORNEY BABINGTON:

1 Well, we have not at this point

2 determined a date.

3 ATTORNEY MCCUSKEY:

4 Okay.

5 ATTORNEY BABINGTON:

6 I would anticipate in --- maybe in

7 several months, but as soon as we determine that time,

8 you know, we will let you know.

9 ATTORNEY MCCUSKEY:

10 Can I ask why we have to wait several

11 months? And I'll tell you why. My concern is --- my

12 concern is that according to the United States

13 Department of Justice Officials to whom I have spoken,

14 you all are releasing these transcripts for use by the

15 U.S. Attorneys' Office before criminal grand juries

16 and are --- the clients are not being permitted to

17 review it for accuracy before you're releasing it to

18 the United States Department of Justice.

19 And that's why I'd like to find out when

20 that's going to happen, or I'd like your assurance

21 that you're not going to review --- you're not going

22 to release transcripts that have not been reviewed for

23 accuracy by the witness to anybody until they've had a

24 chance to review it, even if it's under the

25 circumstances that you've just now set out, which

1 sound reasonable, but it hadn't happened. And so let
2 me note my objection to the record if you're going to
3 wait months to do that, or I'd like your assurance
4 that you're not going to release those to the United
5 States Department of Justice until they've been
6 reviewed.

7 ATTORNEY BABINGTON:

8 At this point I wouldn't be able to make
9 that assurance to you, but I can certainly follow up
10 and perhaps we can, you know, meet about this within
11 the next week, you know, to determine whether there's
12 a time that we can begin to start setting up for your
13 client and for other individuals to come in.

14 ATTORNEY MCCUSKEY:

15 I'd appreciate that.

16 ATTORNEY BABINGTON:

17 Okay. Thank you. Anything else?

18 * * * * *

19 STATEMENT UNDER OATH CONCLUDED AT 10:30 A.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

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



Danielle Ohm