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Transcript of the Testimony of Dennis Sims

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STATEMENT UNDER OATH
OF
DENNIS SIMS

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Thursday, August 19, 2010, beginning at 1:03 p.m.

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By Attorney Babington

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CERTIFICATE

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EXHIBIT PAGE

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NUMBER	DESCRIPTION	IDENTIFIED
One	Subpoena	9*
Two	Return Receipt	9*
Three	Ellis Portal Map	58*

* Exhibit not attached

P R O C E E D I N G S

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ATTORNEY BABINGTON:

My name is Matt Babington. Today is August 19th, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Erik Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the U.S. Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearances for the record.

MR. FARLEY:

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

MR. KOERBER:

I'm Barry Koerber, Assistant Attorney General representing the West Virginia Office of Miners' Health, Safety and Training.

MS. MONFORTON:

Good afternoon. I'm Celeste Monforton with the Governor's independent team.

DENNIS SIMS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
AS FOLLOWS:

1 ATTORNEY BABINGTON:

2 Okay.

3 ATTORNEY KOERBER:

4 Sir, would you please state your full
5 name for the record and spell your last?

6 A. Dennis Calvin Sims, S-I-M-S.

7 ATTORNEY KOERBER:

8 And would you please state your address
9 and your telephone number?

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

11 (b) (7)(C)

12 ATTORNEY KOERBER:

13 And sir, do you have an attorney or other
14 personal representative that you want with you here
15 today?

16 A. No.

17 ATTORNEY KOERBER:

18 Sir, are you appearing here today
19 pursuant to a subpoena?

20 A. Yes.

21 ATTORNEY KOERBER:

22 And is this a copy of that subpoena?

23 A. Yes.

24 ATTORNEY KOERBER:

25 I'd like that to be Exhibit One.

1 (Exhibit D. Sims One marked for
2 identification.)

3 ATTORNEY KOERBER:

4 And this is something you may not have
5 seen, but there was a Theresa ---
6 A. Fekete.

7 ATTORNEY KOERBER:

8 --- Fekete that signed for this return
9 receipt ---

10 A. Yes.

11 ATTORNEY KOERBER:

12 --- evidencing you got it around August
13 5th, 2010?

14 A. Yes.

15 ATTORNEY KOERBER:

16 Okay. I'd like that to be Exhibit Two.

17 (Exhibit D. Sims Two marked for
18 identification.)

19 OFF RECORD DISCUSSION

20 A. F-E-K-E-T-E.

21 ATTORNEY KOERBER:

22 Sir, the statute that gives the Director
23 the authority to issue subpoenas to witnesses such as
24 you also requires the director to provide to each
25 witness that he subpoenas a \$40 a day witness fee plus

1 roundtrip mileage at the rate of 15 cents a mile. In
2 order to get that money I need you to fill out two
3 forms, one of which is an I.R.S. form requesting your
4 taxpayer identification number, i.e. your Social
5 Security number. Would you like the opportunity to
6 fill those documents out at the end of the interview
7 to receive payment, or would you prefer to decline?

8 A. Decline.

9 ATTORNEY KOERBER:

10 Okay. Matt?

11 ATTORNEY BABINGTON:

12 All right. There are several members of
13 the investigation team also present in the room today.
14 Erik Sherer will be conducting initial questioning.
15 All members of the Mine Safety and Health
16 Accident Investigation Team and all members of the
17 State of West Virginia Accident Investigation Team
18 participating in the investigation of the Upper Big
19 Branch Mine explosion shall keep confidential all
20 information that's gathered from each witness who
21 provides a statement until the witness statements are
22 officially released. MSHA and the State of West
23 Virginia shall keep this information confidential so
24 that other ongoing enforcement activities are not
25 prejudiced or jeopardized by a premature release of

1 information. This confidentiality requirement shall
2 not preclude investigation team members from sharing
3 information with each other or with other law
4 enforcement officials. Team members' participation in
5 this interview constitutes their agreement to keep
6 this information confidential.

7 Government investigators and specialists

8 have been assigned to investigate the conditions,
9 events and circumstances surrounding the fatalities
10 that occurred at the Upper Big Branch Mine-South on
11 April 5th, 2010. The investigation is being conducted
12 by MSHA under Section 103(a) of the Federal Mine
13 Safety and Health Act and the West Virginia Office of
14 Miners' Health, Safety and Training. We appreciate
15 your assistance in this investigation. You may have
16 your personal attorney present during the taking of
17 this statement or another personal representative if
18 MSHA has permitted it, and you may consult with your
19 attorney or the representative at any time.

20 Your identity and the content of this

21 conversation will be made public at the conclusion of
22 the interview process and may be included in the
23 public report of the accident, unless you request that
24 your identity remain confidential or your information
25 would otherwise jeopardize a potential criminal

1 investigation. If you request us to keep your
2 identity confidential, we will do so to the extent
3 permitted by law.

4 That means that if a judge orders us to
5 reveal your name or if another law requires us to
6 reveal your name or if we need to reveal your name for
7 other law enforcement purposes, we may do so. Also,
8 there may be a need to use the information you provide
9 to us or other information we may ask you to provide
10 in the future in other investigations into and
11 hearings about the explosion. Do you understand?

12 A. Yeah.

13 ATTORNEY BABINGTON:

14 Do you have any questions?

15 A. No.

16 ATTORNEY BABINGTON:

17 Erik, we're going to be using the Ellis
18 Portal map that was ---.

19 MR. SHERER:

20 Okay, okay.

21 ATTORNEY BABINGTON:

22 Right.

23 MR. SHERER:

24 Okay.

25 ATTORNEY BABINGTON:

1 After the investigation is complete, MSHA
2 will issue a public report detailing the nature and
3 cause of the fatalities in the hope that greater
4 awareness about the cause of accidents can reduce
5 their occurrence in the future. Information obtained
6 through witness interviews is frequently included in
7 these reports. Since we will be interviewing other
8 individuals, we request that you not discuss your
9 testimony with any person aside from a personal
10 representative or counsel.

11 A court reporter will record your
12 interview. Please speak loudly and clearly. If you
13 do not understand a question asked, please ask the
14 interviewer to rephrase it. Please answer each
15 question as fully as you can, including any
16 information you have learned from someone else.

17 I'd like to thank you in advance for your
18 appearance here. We appreciate your assistance in
19 this investigation. Your cooperation is critical in
20 making the nation's mines safer.

21 After we've finished asking questions,
22 you'll have an opportunity to make a statement and
23 provide us with any other information you believe to
24 be important. If at any time after the interview you
25 recall any additional information that you believe

1 might be useful, please contact any of us or Norman
2 Page at the contact information previously provided.
3 Finally, any statements given by miner
4 witness to MSHA are considered to be an exercise of
5 statutory right and protected activity under Section
6 105(c) of the Mine Act. If you believe any discharge,
7 discrimination or other adverse action is taken
8 against you as a result of your cooperation with this
9 investigation, you're encouraged to immediately
10 contact MSHA and file a complaint under Section 105(c)
11 of the Act. Terry?

12 MR. FARLEY:

13 Mr. Sims, on behalf of the West Virginia
14 Office of Miners' Health, Safety and Training I'd like
15 to inform you that the West Virginia Mine Health and
16 Safety regulations also protect miners against
17 potential discrimination which might result from
18 participating in these type interviews. I'd like to
19 pass along some contact information for the West
20 Virginia Board of Appeals.

21 The Board hears complaints from miners
22 concerning discrimination and other matters, and
23 should you experience any such problems, you can feel
24 free to contact anyone on that memo and they'd be
25 happy to help you out. I would caution you that

1 should you have a problem, you need to --- need to
2 file the complaint within 30 days of when that thing
3 happened.

4 EXAMINATION

5 BY MR. SHERER:

6 Q. First of all, I'd like to thank you for coming
7 down here this afternoon, Mr. Sims. We're
8 investigating the accident that occurred on April the
9 5th at Upper Big Branch. We're looking at the
10 conditions and the practices that may've contributed
11 to that, and we're trying to determine what the cause
12 was and what the sequence of events was that led up to
13 that.

14 And we're doing that for two reasons. The first
15 one is the family and the friends and the coworkers of
16 these miners deserve some answers and some closure.
17 Second one is we want to prevent this in the future,
18 and any information you can give us that would help us
19 determine that would be greatly appreciated. Roughly
20 how many years have you been in the coal mines?

21 A. It's been over 30.

22 Q. Okay. When did you start with the Massey
23 organization?

24 A. Back in '92.

25 Q. Okay. When did you first start working up at

1 Upper Big Branch?

2 A. In '95.

3 Q. Okay. Have you worked there continuously since
4 '95?

5 A. Yes.

6 Q. Okay. What was your job at the time of the
7 explosion or prior to the explosion?

8 A. I was working outby.

9 Q. Okay. Were you working with the new section
10 there, setting up near the Ellis Portals?

11 A. Yes.

12 Q. Okay. Did you have a --- just doing general outby
13 work or any --- were you, like, an electrician or ---?

14 A. No, they had me outby doing the --- running the
15 miner and bolt.

16 Q. Okay.

17 A. We was cutting out for the belt head.

18 Q. Okay. Do you have any State or Federal mining
19 certificates?

20 A. No.

21 Q. Okay. And you say you were working near the Ellis
22 Portal. Where'd you work previous to that?

23 A. Headgate 22 section.

24 Q. Okay. When did you shift from Headgate 22 to
25 working out near the Ellis portal?

1 A. I'm not sure the right day.

2 Q. Just roughly.

3 A. I mean about a month and a half.

4 Q. Okay.

5 A. I'm not sure about the date.

6 Q. Okay. So you've been up near the Ellis Portal
7 about five or six weeks prior to the explosion?

8 A. Well, first we cut out for the other Mother Drive
9 before we went there.

10 Q. Okay. Now, where was this other Mother Drive?

11 A. The one that section Headgate 22 is dumping on
12 now.

13 Q. Oh, okay, okay. I was up there a few weeks ago
14 and there was a lot cut out up there.

15 A. Yeah.

16 Q. Okay. Let's talk about the section, the 22
17 Headgate first, and we'll go from there. I assume you
18 were running a miner up there, also?

19 A. Roof bolter.

20 Q. Roof bolter; okay. Right side or left side?

21 A. The right side.

22 Q. Okay.

23 A. Well, depends on how you look. Which way are you
24 looking at it?

25 Q. In toward the face.

1 A. Okay. It would be right side.

2 Q. Just like driving a car.

3 A. Okay.

4 Q. The 22 Headgate, when you were working up there,
5 which shift did you work on?

6 A. Dayshift.

7 Q. Dayshift. Who was your section boss?

8 A. Dino Jones.

9 Q. Dino. When you were bolting up there, did you
10 carry a methane detector?

11 A. No.

12 Q. Okay. Did you have a partner that you were
13 bolting with?

14 A. Yes.

15 Q. Did he have one?

16 A. Yes.

17 Q. Did you ever see that thing go off while you were
18 on 22 Headgate?

19 A. No.

20 Q. Okay. Did you ever hear it alarm?

21 A. Not his.

22 Q. Okay. Did you ever hear anybody's alarm?

23 A. Yes.

24 Q. Whose was that?

25 A. Dino's.

1 Q. Do you know what sort of methane he ran into?

2 A. It was just in the tenths.

3 Q. Okay. What was the air like when you were up on
4 the 22 Headgate?

5 A. Not very good.

6 Q. First of all, what was the minimum quantity you
7 needed to bolt?

8 A. I think it was either 3,000, I think. I heard
9 something like that. I can't remember what it was.

10 Q. Okay. Did you always have that 3,000 cfm?

11 A. No.

12 Q. Did you go ahead and bolt?

13 A. Yes.

14 Q. Were you told to do that?

15 A. Well, no, we weren't told.

16 Q. Do you think you were expected to do that?

17 A. Well, yes.

18 Q. How often did that occur?

19 A. Quite a bit.

20 Q. Was it hot when you were running that bolter?

21 A. Oh, yeah.

22 Q. Where did you try to keep the curtain behind the
23 bolter?

24 A. Next to the last row.

25 Q. Okay. What about the miner on that section? Do

1 you think it had enough air?

2 A. With the scrubber running.

3 Q. Okay. Was anybody having problems with methane in
4 excess of one percent on that section while you were
5 up there?

6 A. No.

7 Q. Okay. What about the other bolter? Were they
8 having similar problems with air or do you know?

9 A. Well, yeah, yeah. With air, yeah.

10 Q. Okay. We understand that Mr. Jones complained
11 about that problem with air quite a bit. Do you
12 recall anything like that?

13 A. Yeah.

14 Q. Do you know who he complained to?

15 A. It was mostly Blanchard and Everett.

16 Q. Okay. Did he ever mention what sort of answers he
17 got?

18 A. No, not really.

19 Q. Okay. Were you worried about that?

20 A. Yes.

21 Q. I understand that, sir. And I'm really, really
22 sorry for the loss of your coworkers up there. Was
23 Dino pretty good about trying to keep the curtains up
24 on everything?

25 A. We always kept the curtains up. Very seldom a

1 curtain was ever down.

2 Q. Okay, good.

3 A. That's one thing about Dino. He run the section
4 to the best of his abilities with what he had to work
5 with.

6 Q. We've heard that from several people.

7 A. He was really good at what he had to work with.

8 Q. Sure, uh-huh (yes). Well, he should've had
9 everything he needed.

10 A. Yes, sir, I agree.

11 Q. Let's move out to where you were working on the
12 Mother Drive. About when did you start working on
13 that?

14 A. I'm not for sure when we did. I know we was down
15 there in February.

16 Q. Okay. Now, it looks like you cut some channels,
17 belt channels.

18 A. Yes.

19 Q. Did you work on those?

20 A. Yes, sir.

21 Q. Okay. Did you mine out some of those pillars, cut
22 through the pillars?

23 A. You're talking about the other --- you're talking
24 about the one the longwall is dumping on right now?

25 Q. Maybe.

1 A. The one they split all the blocks on?

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

3 A. Yeah.

4 Q. Okay. But are you saying you didn't split any
5 blocks up on the ---?

6 A. No, the last one we didn't.

7 Q. Oh, okay.

8 A. Well, yeah, we did one ---

9 Q. Oh, okay.

10 A. --- right there where the Mother Drive was going
11 to be.

12 Q. Okay. I thought I'd seen some up there.

13 A. Yeah, there was one right there where the Mother
14 Drive is setting right now.

15 Q. Okay.

16 ATTORNEY BABINGTON:

17 Sorry. Just to clarify, Erik, are you

18 talking about the new Mother Drive off of Headgate 22?

19 MR. SHERER:

20 Yes, uh-huh (yes).

21 BY MR. SHERER:

22 Q. About how long were you in there working on that?

23 A. Maybe it was over a month.

24 Q. Okay. Did you have any problems with ventilation
25 while you were making those cuts?

1 A. Yeah.

2 Q. A lot of dust?

3 A. Yeah.

4 Q. Now, we understand that there were several
5 stoppings knocked out and rebuilt and doors put in, in
6 that area. Do you recall those?

7 A. Some.

8 Q. Who was doing that? Do you know?

9 A. We done some.

10 Q. Who was directing it? Did anybody have a map or a
11 plan or anything like that that you know of?

12 A. Generally, I always worked with Marvin Perdue. He
13 was outby. He was a crew leader.

14 Q. Was Marvin your boss when you were working down
15 there?

16 A. No, he was just a crew leader.

17 Q. Oh, okay.

18 A. He told us what to do. I guess whoever told him
19 what to do outside.

20 Q. Okay, sure. Was what you were doing there as far
21 as the stoppings and doors and stuff to control the
22 ventilation, did that make sense to you?

23 A. No.

24 Q. Could you elaborate on that a bit for us?

25 A. Well, before we've always cut overcasts for air.

1 Q. Uh-huh (yes).

2 A. Doors you can't depend on ---

3 Q. Sure.

4 A. --- because when you're running a longwall, you
5 need all kinds of air.

6 Q. Sure.

7 A. Doors is not the way to get it.

8 Q. Now, we understand that in the northern part of
9 this mine in particular there were very few overcasts
10 but there was --- they tended to use doors instead of
11 overcasts; is that true?

12 A. Yes.

13 Q. Did you ever come up on any of those doors and
14 find them open?

15 A. Sometimes.

16 Q. Did you ever notice any changes in the ventilation
17 that you thought was caused by those doors?

18 A. Yes.

19 Q. How often was that?

20 A. It was a few times.

21 Q. Did you ever hear of whenever an inspector would
22 be going to a certain section, somebody may've opened
23 some doors and closed some to try to redirect the air?

24 A. Well, I've heard of that.

25 Q. Okay. Who'd you hear that from?

1 A. I mean the air would pick up. Somebody had to be
2 doing something.

3 Q. Sure, uh-huh (yes). Okay. Now, when you say the
4 air would pick up, can you give me any examples that
5 you know of?

6 A. I mean we had more air on the section.

7 Q. Okay. When you were cutting out there at the
8 Mother Drive on the 22 Headgate, I asked you about
9 dust and you said that was a problem.

10 A. Yes.

11 Q. Was it dust that you thought was going to be a
12 problem as far as respirable dust, or was it enough
13 dust that you had trouble seeing what the miner was
14 doing?

15 A. Well, most of the time if it got too bad I'd just
16 shut it off, wait 'til it cleared out. But I always
17 stayed back far enough out of it.

18 Q. Okay. So it was just mainly an operational
19 problem?

20 A. Yes.

21 Q. How often did you have to shut that miner down?

22 A. Well, some days it was more than others.

23 Q. Okay. So some days you had more air than other
24 days?

25 A. Yes.

1 Q. Okay.

2 A. Depends on what we went and opened up.

3 Q. Okay. Now, you say, what we went and opened up.

4 Would you guys open doors or close doors to try to get
5 some air ---

6 A. Yes.

7 Q. --- where you were operating? Do you know if that
8 affected any of the other sections?

9 A. No, I don't know.

10 Q. Okay.

11 A. It was mainly in the return fan doors that they
12 opened.

13 Q. Okay. So you were just trying to direct air
14 around that local area?

15 A. Right.

16 Q. Okay. Who was the --- did you have a boss that
17 was in charge of that operation?

18 A. I guess it was Everett Hager.

19 Q. Okay. Did Everett ever come around while you were
20 working up there?

21 A. Yes.

22 Q. Did he know that you were opening doors and having
23 problems with dust?

24 A. Yes.

25 Q. Did you complain to him about that?

1 A. Yeah.

2 Q. What'd he tell you?

3 A. He went and got the air.

4 Q. Okay. That's pretty effective.

5 A. Well, when you can't see what you're doing, you
6 got to do something.

7 Q. Sure, uh-huh (yes). That's absolutely true. Did
8 you notice any methane while you were working on that
9 Mother Drive?

10 A. No.

11 Q. Okay. Let's move on down to the Ellis Portal now.
12 You say you've been working in there for, I think it
13 was six weeks or so prior to the explosion.

14 A. Yeah, something like that.

15 Q. What all were you doing down there?

16 A. Putting in beltline, knocking stoppings, putting
17 in new stoppings, cutting out for the Mother Drive for
18 the, well, for the belt head, and they were starting
19 to cut out for the overcast.

20 Q. Okay. And that was to put in that little, short
21 panel for the longwall?

22 A. Yes.

23 Q. Who was in charge of that?

24 A. I guess Everett was.

25 Q. Okay. Everett got around a lot.

1 A. Pretty much.

2 Q. When you were working down there near the Ellis
3 Portal did you ever notice you'd be cutting one day
4 and the dust would be going inby, and maybe another
5 day you'd be cutting the same place or near the same
6 place and the dust would be going back outby?

7 A. Yeah.

8 Q. When did you last notice that reversal prior to
9 the explosion?

10 A. Well, it was on the last day. I didn't cut out.
11 I didn't start cutting out for the overcast. The
12 section --- they brought the section crew, the one
13 they shut down.

14 Q. Uh-huh (yes).

15 A. They brought them over there, so I was on the
16 beltline.

17 Q. Oh, okay.

18 A. And that day there, the dust was going inby.

19 Q. Okay.

20 A. Which it had been always going outby.

21 Q. Okay. So that was the day of the explosion?

22 A. Yes.

23 Q. Did you mention that to anybody?

24 A. No, because we put up doors. I thought there was
25 a reason for it.

1 Q. Okay. Give me just a minute here. Okay. Sorry
2 about that. Now, when you were working up on the
3 section, did the air always seem to flow in the right
4 direction?

5 A. No.

6 Q. When did it not flow in the right direction,
7 roughly?

8 A. I'm not sure. I can't give you no date or
9 nothing, but ---.

10 Q. No, but was it ---?

11 A. I know our intake --- one time the air was going
12 the wrong way on it.

13 Q. Okay. So the intake ---?

14 A. That was the day the inspector shut us down.

15 Q. Oh, okay. Now, was that after Christmas?

16 A. Yeah, it probably was. I can't remember for sure.

17 Q. Okay. So basically your intake was acting like a
18 return?

19 A. Yes, but I walked down it to get --- went down to
20 see if I could get Ronald Maynor. He was supposed to
21 bring a scoop back and I noticed the air was wrong.
22 So when I went back to the section I told Dino. Well,
23 by that time the inspector was down there.

24 Q. Sure. When you told Dino, what did he try to do?

25 A. Well, that's when we all went down there. I run

1 into Blanchard up there and Blanchard said it wasn't
2 nothing wrong with it. So I went down and told the
3 inspector that Blanchard said there wasn't nothing
4 wrong with it, and he said, well, there is something
5 wrong with it. That's when they shut it down.

6 Q. Now, what was Mr. Blanchard doing down there?

7 A. He shows up from time to time.

8 Q. Well, let me ask you this. When he shows up from
9 time to time, does the air change?

10 A. Well ---.

11 Q. Did you ever notice any relationship between the
12 two?

13 A. I wasn't paying attention on the section.

14 Q. Okay. What about, did you ever hear anybody
15 calling in over the mine phone or anybody tell you
16 that there were inspectors on the property?

17 A. Oh, yes.

18 Q. How common was that?

19 A. About every time.

20 Q. Okay. You mentioned the air was reversed. You
21 mentioned the air would increase or decrease in
22 quantity. Do you think somebody was making vent
23 changes while miners were underground?

24 A. Had to be.

25 Q. Did you ever see anybody making a vent changes?

1 A. Yeah.

2 Q. Who was that?

3 A. Well, I guess I can say I was one of them.

4 Q. Okay. Why'd you do that?

5 A. Because we were told to do it.

6 Q. Okay. Now, who told you?

7 A. I guess Everett Hager told us to do the one on the
8 longwall.

9 Q. Okay. About when was that?

10 A. It was probably a month or so before the
11 explosion.

12 Q. Yeah.

13 A. We built regulators.

14 Q. Okay. Did you build those doors and regulators on
15 the side of it?

16 A. Yes, sir.

17 Q. Was Everett in charge of that?

18 A. Yes, sir.

19 Q. Did he explain why you guys were doing that?

20 A. Cut out on some of the air at the longwall ---
21 they had too much --- and try to give Dino and them
22 some more air.

23 Q. Okay. That's kind of what we've heard from
24 several people. Now, one thing we're a little unclear
25 on --- I hope you can help us on this --- is we don't

1 have the exact date that those doors were put up. We
2 know it --- some people have said roughly a month
3 prior to the explosion; some people, as little as two
4 weeks prior to the explosion. Do you have any better
5 idea exactly when those went up?

6 A. I couldn't be specific.

7 Q. Okay, sure. But you think it was about a month?

8 A. Probably was.

9 Q. Okay. You're the only person we've talked to that
10 was there when they were being built, so you're the
11 expert.

12 A. I hope not. It may look bad on me.

13 MS. MONFORTON:

14 No.

15 BY MR. SHERER:

16 Q. No, you're the person with firsthand knowledge,
17 sir, and you didn't do anything wrong. You were doing
18 what you were told. And then there may not be
19 anything wrong with those doors. We haven't
20 determined that yet. Did anybody --- while you were
21 at those doors, did anybody take air measurements and
22 maybe try to adjust the size of that opening?

23 A. I thought Everett went up and took one air
24 reading.

25 Q. Okay.

1 A. I ain't for sure, but I thought that he did.

2 Q. Okay. Did he ask anybody to tell anybody to make
3 the opening bigger or smaller, make any adjustment to
4 it?

5 A. No.

6 Q. Just built it and that was it?

7 A. Yeah.

8 Q. He was pretty good.

9 A. Yeah.

10 Q. I always had to fuss around with things like that
11 when I was doing it.

12 A. I guess he done good, then.

13 Q. I guess he did. Now, did you ever work on that
14 longwall?

15 A. No, I'm only just --- I bolted the panel that they
16 are on now, the headgate entry. Me and another boy
17 bolted it.

18 Q. Okay. Who was in charge of the longwall, do you
19 know?

20 A. Jack Roles.

21 Q. What was his title?

22 A. He was a coordinator.

23 Q. Did you ever have any occasion to work with Mr.
24 Roles?

25 A. Yeah, I am right now.

1 Q. Okay. Where are you working at?

2 A. Down at UBB.

3 Q. Oh, okay. Have you been there since the
4 explosion?

5 A. Yes.

6 Q. Okay. What are you doing there now?

7 A. Working outside on the end loader.

8 Q. Oh, okay. I probably saw you up there and just
9 didn't know you.

10 A. Probably. I get all the garbage.

11 Q. Okay. I thought that was my job.

12 A. I've been getting it here lately.

13 Q. Okay. Do you know if anybody was making any sort
14 of vent changes either the day of the explosion or a
15 few days before the explosion?

16 A. No, I don't know.

17 Q. Did you notice any differences in the air?

18 A. Well, I was down ---

19 Q. Oh, okay.

20 A. --- Ellis, so ---

21 Q. That's right.

22 A. --- I wasn't up on that end.

23 Q. That's exactly right. Now, you worked the day of
24 the explosion. What was the last shift you worked
25 prior to the explosion or prior to that day? We know

1 there was a --- that was Easter weekend, so it was a
2 longer weekend for a lot of folks.

3 A. Yeah, everybody was off three days.

4 Q. Okay. Did you work on --- what would it have
5 been, Thursday?

6 A. Yes.

7 Q. Okay. Did you notice anything that seemed unusual
8 on Thursday, that last day you worked prior to the
9 explosion?

10 A. No.

11 Q. Okay. Did you talk to anybody that day or even
12 the day of the explosion that mentioned anything
13 unusual?

14 A. No.

15 Q. Okay. Now, the day of the explosion, did you
16 notice anything unusual prior to the explosion?

17 A. No.

18 Q. Okay. Did you smell anything unusual the day of
19 the explosion?

20 A. No.

21 Q. Have you talked to anybody that said they may have
22 smelled something unusual or maybe even their eyes
23 were burning?

24 A. No.

25 Q. Okay. How long have you known Mr. Roles? Were

1 you friends with him?

2 A. Well, we've been together probably years down
3 there.

4 Q. Okay.

5 A. I know him pretty good, I guess.

6 Q. Okay. How was he taking things prior to the
7 explosion? Did he seem like he was in control or was
8 things getting too much for him?

9 A. Well, he gets a little torqued off from time to
10 time if things don't go right.

11 Q. When was the last time you saw him prior to the
12 explosion?

13 A. That I'm not for sure. I can't tell you.

14 Q. Now, when you were up on Headgate 22 and you
15 didn't have enough air, you said you guys went ahead
16 and bolted, and we've also heard that the miners went
17 ahead and ran at times without enough air. Who told
18 you guys to do that? Was it Dino?

19 A. We just done it.

20 Q. Do you think Dino was getting pressure ---

21 A. Oh, yeah.

22 Q. --- to go ahead and run?

23 A. Oh, yeah.

24 Q. Did you ever him talking to anybody or anybody
25 call in and say, go ahead and run coal?

1 A. Well, I know he always went down and called out
2 when we didn't have enough air.

3 Q. Okay. And when he did that, did he ever say what
4 ---? Did he ever get any answers that you know of?

5 A. Why we didn't have no air?

6 Q. Or both, why you didn't have enough air and
7 whether you should shut down the production and try to
8 fix the air or find the air.

9 A. No, he never said nothing about that. He just
10 said they'd be working on it.

11 Q. They'd be working on it. And then he'd tell you
12 guys to go ahead and run coal?

13 A. No, he didn't have to tell us. We'd just go right
14 ahead.

15 Q. Okay. Do you know who he was talking to when he
16 called outside?

17 A. I guess it would be Everett, I reckon.

18 Q. Okay. Do you think that Mr. Hager told him to go
19 ahead and run coal?

20 A. I couldn't --- I ain't going to answer that.

21 Q. Okay. Just wondering. Did you ever hear anybody
22 at this mine say something like, I don't care what you
23 do, but either put it in the coal or we'll find
24 somebody that will, or something like that?

25 A. I've heard of it.

1 Q. You've heard of it. Where have you heard of it?

2 A. You've heard about Dino.

3 Q. Okay. Did he complain about stuff like that?

4 A. Well, not no whole lot. I guess not to us,
5 anyway.

6 Q. Okay. Do you think it was Mr. Jones just
7 soldiered up and did what he had to do?

8 A. Yes.

9 Q. Do you think that caused him problems? Do you
10 think he was worried about doing stuff like that?

11 A. Oh, yeah. That'd worry anybody.

12 Q. Sure.

13 A. His head's on the line.

14 Q. Let's go back to Mr. Blanchard for a minute. You
15 say you ran into him several times underground. Did
16 he ever --- I'm not sure how to say this. Did he ever
17 pressure you or anybody on the section to do something
18 you thought was not right or belittle you?

19 A. Well, not me.

20 Q. How about anybody else, did you hear?

21 A. No.

22 Q. Okay.

23 A. Not that I know of.

24 MR. SHERER:

25 Okay. I thank you for your candor.

1 That's all the questions I've got for right now. Got
2 some, Terry?

3 MR. FARLEY:

4 Yeah.

5 MR. FARLEY:

6 Mr. Sims, I want to clarify a couple
7 things. At some point I'd like for him to mark the
8 doors on the map that we were discussing, where the
9 regulators were installed. Are they on here?

10 MR. SHERER:

11 Yeah, right here.

12 MR. FARLEY:

13 All right. And maybe he'll do it on this
14 map, Matt. Matt?

15 ATTORNEY BABINGTON:

16 Can you see them on there?

17 A. Yeah.

18 MR. FARLEY:

19 Yeah.

20 ATTORNEY BABINGTON:

21 Okay.

22 EXAMINATION

23 BY MR. FARLEY:

24 Q. The doors that you and Mr. Hager built to reduce
25 the air to ---?

1 A. More than me and just Everett.

2 Q. Okay. Can you remember who helped you with that
3 project?

4 A. Me, Marvin and --- I forget the other boy's name.

5 Q. Okay. But Mr. Hager was directing that; is that
6 correct?

7 A. Yeah, sort of

8 Q. Okay. Will you mark the location of those doors
9 on this map for us, please?

10 A. I'm not for sure. I ain't good at these maps.

11 MR. SHERER:

12 Well, let me help you a bit. Here's the
13 longwall face at the time of the explosion. Here's
14 the beltline. Here's the track and there's four doors
15 shown on the map right here. Each one of these D's is
16 a door.

17 A. I think we built them. These were built outby. I
18 guess it was these two breaks here if I'm not
19 mistaken. I'm not for sure. I know we built two
20 before we got to the doors. Because there's an intake
21 that runs across there.

22 MR. SHERER:

23 Okay. Now, here's the intake, it looks
24 like.

25 MR. FARLEY:

1 The green line would indicate the intake
2 area.

3 MR. SHERER:

4 We think there were two doors here
5 initially and ---.

6 A. There was two up under the overcast you had to go
7 through. There was an overcast right there.

8 MR. SHERER:

9 There was overcast right here?

10 A. Yeah, they was two doors there.

11 MR. SHERER:

12 Okay. So these two were existing doors?

13 A. Yeah, and then we went through there and then
14 there was an intake goes across right there.

15 MR. SHERER:

16 Okay. Through this intake here?

17 A. I guess. And then we put the doors up on the
18 other side of that, going inby.

19 MR. SHERER:

20 And those doors would be these two, these
21 here?

22 A. Uh-huh (yes).

23 MR. SHERER:

24 Okay. Can we get you to circle these?

25 WITNESS COMPLIES

1 MR. SHERER:

2 Okay. Thank you, sir.

3 ATTORNEY BABINGTON:

4 Witness marked the doors with a blue
5 highlighter.

6 BY MR. FARLEY:

7 Q. Now, just to make sure I understood you correctly,
8 the whole purpose of doing those doors with the side
9 portion left out ---

10 A. Yes.

11 Q. --- was to reduce the air flow to the longwall and
12 increase the airflow to 22 Headgate; ---

13 A. Yes.

14 Q. --- is that correct?

15 A. Yes.

16 Q. Okay. Now, do you know if it achieved what you
17 intended for it to do?

18 A. Yes.

19 Q. And we've heard from a couple of people that the
20 ventilation on 22 Headgate improved a little bit, not
21 greatly, but a little bit a week, two, three prior to
22 the explosion. Did you get --- did you hear the same
23 thing at the time?

24 A. Well, I don't know what the date of it was, but
25 Bob Griff got hurt. He was the miner man up there.

1 And I had to go up there that day and run the miner.
2 That's the most air I had seen on their section since
3 I had been up there, because the fly pads were blowing
4 out at the bottom.

5 Q. Okay. Do you remember about when that was when
6 you were up there?

7 A. I don't know the date. I know it was when he got
8 hurt.

9 Q. Okay. But it was after you built the doors?

10 A. Yes.

11 Q. Okay.

12 OFF RECORD DISCUSSION

13 MS. MONFORTON:

14 G-R-I-F-F-I-T-H.

15 BY MR. FARLEY:

16 Q. Okay. Now, you indicated earlier that you were on
17 22 Headgate when a MSHA inspector issued an order
18 because the air was not going in the right direction.

19 A. Right.

20 Q. Do you know why the air was not going in the right
21 direction?

22 A. No, I don't know why. I know why we built a bunch
23 and stuff, to try to reverse it.

24 Q. Okay. And when you say it was not going in the
25 right direction, what direction was it actually going

1 in?

2 A. It was going outby.

3 Q. All of it?

4 A. Yeah.

5 Q. Okay.

6 A. Coming down our escapeway.

7 Q. Okay, all right. So in other words, it would've
8 chased you out if you had ---

9 A. Right.

10 Q. --- had to leave?

11 A. When you were down at the Ellis construction site,
12 do you know if the work down there had a negative
13 effect on the ventilation at 22 Headgate?

14 A. They said it didn't. Now, I don't know.

15 Q. Now, who said it didn't?

16 A. Everett and them.

17 Q. Everett; okay.

18 A. Yeah.

19 Q. Now, also, if I understood you right, you said
20 when you were roof bolting on 22 Headgate sometimes
21 you guys would go outby and open doors to try to
22 improve your ventilation?

23 A. Well, now ---.

24 Q. Is that right?

25 A. Somebody did. Now, we didn't.

1 Q. Oh, you didn't?

2 A. We just kept running coal.

3 Q. Okay, somebody did.

4 A. Somebody did.

5 Q. Okay.

6 A. I don't know who.

7 Q. Do you know which doors they opened?

8 A. I have no idea.

9 Q. Okay.

10 A. I know the air would pick up.

11 Q. Okay. If the air picked up in one place, does
12 that mean it would reduce somewhere else, probably?

13 A. Probably.

14 MR. FARLEY:

15 Okay. That's all I have right now.

16 EXAMINATION

17 BY MS. MONFORTON:

18 Q. Mr. Sims, I want to follow up on something that
19 Mr. Farley was asking. You indicated that Mr.
20 Griffith had an injury and you had to go up and run
21 the miner machine ---

22 A. Yes.

23 Q. --- for that time period. I have an abstract here
24 of an injury report, and I just want you to look at it
25 and see if you think this is it. It shows an injury

1 on March 17th, and it says, occupation continuous
2 minor operator, someone with 16 years of experience.
3 And it says, a piece of rock fell and the employee
4 struck his left hand.

5 A. That's it.

6 Q. And so that would be the injury that you're
7 referring to?

8 A. Yes, ma'am.

9 Q. So that date was around March 17th of when you
10 ---? And so did you run the miner ---

11 A. Yeah.

12 Q. --- the remainder part of that shift and for
13 several shifts after that?

14 A. No, the other miner man wasn't there that day,
15 neither, so I had to go do that.

16 Q. Okay.

17 A. That was just that one day.

18 Q. And so that was the day ---. You hadn't been up
19 on the section in a while, ---

20 A. Right.

21 Q. --- but you were up there and you noticed that the
22 air was much better than it had been in a long time?

23 A. Yes.

24 MS. MONFORTON:

25 Okay, very good. Thank you. That's the

1 only question I had.

2 MR. FARLEY:

3 Yeah.

4 RE-EXAMINATION

5 BY MR. FARLEY:

6 Q. You've indicated on April 5th you were down at the
7 Ellis construction site area?

8 A. Yeah.

9 Q. And dust was moving inby that day?

10 A. Yeah.

11 Q. And previously the air had been going outby?

12 A. Yes.

13 Q. Do you know why?

14 A. No, I don't.

15 Q. Was a door open someplace, closed or what?

16 A. The doors we put up stayed open.

17 Q. Okay. All right. Dust was clearly going inby
18 that day, though?

19 A. Yes.

20 MR. FARLEY:

21 Okay. Thank you.

22 RE-EXAMINATION

23 BY MR. SHERER:

24 Q. I have a few follow-up questions. You were
25 working on the doors up by the longwall, and you had

1 to go back up to the 22 Headgate when Mr. Griffith or
2 Griff got hurt. Was it while you were working on the
3 doors that you went up there or just a few days after
4 it?

5 A. It was after that.

6 Q. Do you know if it was that week or ---?

7 A. I'm not sure when we done them doors.

8 Q. Okay.

9 A. I'm just not for sure.

10 Q. Okay. I was just trying to get a little more
11 information out of you there. You were talking about
12 the one time you were on the section and the air went
13 back down the intake.

14 A. Uh-huh (yes).

15 Q. Any other major changes in ventilation like that,
16 maybe not a complete reversal like that, but do you
17 know of any times that you had either a reversal or
18 had any problem like that besides that one time?

19 A. No.

20 Q. Okay. One more question, and then we're going to
21 take a little, short break. You've indicated that you
22 spoke with Mr. Blanchard and he said that wasn't an
23 air reversal. Do you recall exactly what he said?

24 A. Well, he talked like there wasn't nothing wrong,
25 where the air could be going that way.

1 MR. SHERER:

2 Okay. Appreciate it. Let's take a short
3 break.

4 SHORT BREAK TAKEN

5 BY MR. SHERER:

6 Q. A few questions I'd like to follow up on, Mr.
7 Sims. You mentioned that you'd been at UBB since '94,
8 I think. Do you recall any of the methane outbursts
9 that occurred at this mine?

10 A. Yes.

11 Q. What can you tell me about them? What do you
12 remember?

13 A. One of them we was bolting outby. I think that
14 happened in '04 or something like that. And we was
15 bolting outby that day and one of the electricians
16 come running by us, and he don't move very fast,
17 anyway.

18 Q. Okay.

19 A. We knew something was wrong.

20 Q. I imagine so.

21 A. And then just a few minutes, the rest of them come
22 off the line, running. They said they needed to get
23 air. The bottom was busted real bad and methane was
24 coming out.

25 Q. Okay. Did you hear that particular methane

1 outburst?

2 A. No, we was ---

3 Q. Just somebody ---.

4 A. --- a few breaks outby the face where we was
5 bolting.

6 Q. Okay. So you knocked the power, and I guess, got
7 out of that area?

8 A. Yeah, went outside.

9 Q. Did you ever go back in while that thing was
10 spewing out?

11 A. Yeah.

12 Q. Did you see it?

13 A. No, we went in and ventilated.

14 Q. Okay. Now, as I recall, Wendell Wills was ---

15 A. Yes, sir.

16 Q. --- there at that time? Was he directing that
17 re-ventilation?

18 A. Yes, sir.

19 Q. Did you ever get up there after the thing had
20 settled back down or ---?

21 A. No, I never did.

22 Q. Okay. Excuse me. Do you remember any other
23 methane outburst at this mine?

24 A. We had one other, but I don't remember when it
25 was.

1 Q. We know one that occurred in 2003.

2 A. I think that was on the other side, wasn't it? I
3 remember it happened.

4 Q. Yeah. It was probably another panel or so over.
5 There was also one, we think, in I think 1998 that was
6 probably on that other side that you're talking about.

7 A. That's when they had that pop --- that's when it
8 went off.

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

10 A. Yeah, I remember that one.

11 Q. Okay. Have you ever seen any ignition in the face
12 of this mine?

13 A. No.

14 Q. Have you ever seen any little pop-offs?

15 A. No.

16 Q. Okay. Now, one thing that --- and I'm asking some
17 questions and I kind of --- I'm going to apologize in
18 advance, because they're about Mr. Jones. We
19 understand he was a very conscientious section boss,
20 but what we don't understand is some of the things
21 that happened on that section. So I'd appreciate any
22 information you could help us out with here. Did Mr.
23 Jones ever shut down that section ---

24 A. Yes.

25 Q. --- because of the lack of air?

1 A. Yes.

2 Q. Roughly how many times do you know of that he did
3 that?

4 A. Mainly when the inspector was coming.

5 Q. Okay. Would he keep it down while the inspector
6 was there?

7 A. Yes, he has.

8 Q. Would he start it back up when the inspector left?

9 A. Yes.

10 Q. Did he ever shut it down when there wasn't an
11 inspector coming, that you know of?

12 A. No, not that I know of.

13 Q. Okay. Did you ever hear him complaining about any
14 directions that he got from upper management?

15 A. No.

16 Q. Have you ever talked to anybody above Mr. Jones
17 about the problems on that section?

18 A. We have talked to Blanchard about the lack of air.

19 Q. Who was with you when you did that?

20 A. Well, it would be us on the section, the guy I
21 bolted with.

22 Q. Okay. Who was that, please?

23 A. Boone Payne.

24 Q. What did Mr. Blanchard say?

25 A. Not much of nothing.

1 Q. Was Mr. Payne worried about the situation with the
2 air?

3 A. I guess really we all did.

4 Q. Okay. Did you bolt for a while with Mr. Payne?

5 A. Yes.

6 Q. I'm sorry about Mr. Payne. And you say all of you
7 were worried about the conditions on that section.
8 Did you guys talk about it much?

9 A. We just --- not a whole lot. We all knew we
10 didn't have enough air.

11 Q. And you felt that you just had to go ahead and run
12 coal to keep your job?

13 A. Yeah, because a lot of times Dino would block ---.
14 He would put curtains across the flies and let one
15 buggy run at a time, because the day I went up there
16 and got --- the day that Bob did get hurt, we was
17 running over in Number Two and Three, and he wouldn't
18 let the buggy run out of Number One, because there was
19 too much gas. Couldn't take the curtain off the fly
20 pads.

21 Q. Okay.

22 A. The gas would go up.

23 Q. Oh, jeez. When you were running the miner up
24 there, what's the most methane you ever seen on the
25 methane detector?

1 A. Two or three tenths.

2 Q. Now, you say you talked to Mr. Blanchard about the
3 problems with air. You ever talk to anybody above Mr.
4 Blanchard?

5 A. No.

6 Q. Do you know Chris Adkins?

7 A. Real well.

8 Q. Did you ever mention the problems to Mr. Adkins
9 prior to the explosion?

10 A. No. He was down there one day when we was having
11 air problems on the wall. The wall was down.

12 Q. What did he say about it?

13 A. He just said we was having air problems. He said
14 he straightened them out.

15 Q. Okay. Did he straighten them out?

16 A. I guess he did on the wall that day. I don't
17 know. I think they were down and they started running
18 again.

19 Q. Do you recall about when that was?

20 A. No, I don't, but I was --- well, I was still on
21 the section then when that happened.

22 Q. Okay. So it would've been back around the first
23 of the year at the earliest?

24 A. It was probably something like that.

25 Q. Okay.

1 MR. SHERER:

2 Okay. Any questions?

3 EXAMINATION

4 BY ATTORNEY BABINGTON:

5 Q. I have one. Was that the only time that you saw
6 Chris Adkins underground at UBB?

7 A. No, I didn't see him. He was there, but I didn't
8 see him.

9 Q. But you heard that he said that to other ---?

10 A. Well, I had a previous phone call with him after
11 that about something, and he said we was having
12 trouble with air, and that he got it corrected. That
13 was on the longwall itself.

14 RE-EXAMINATION

15 BY MR. SHERER:

16 Q. The guy you bolted with, Mr. Payne, did he ever
17 talk to any of the people in upper management about
18 these problems?

19 A. Blanchard and Whitehead and Everett.

20 Q. Did he mention when he did that?

21 A. No. I mean, most of the time if they come around,
22 we'd bring it up.

23 Q. Oh, okay. So they came down on the section?

24 A. Because most of the time he'd go upstairs every
25 morning.

1 Q. Okay.

2 A. But I didn't.

3 Q. Okay. Did he ever mention to you that he'd
4 complained about the air when he come back down from
5 upstairs?

6 A. Yeah.

7 Q. Was that fairly often?

8 A. I don't know about fairly often.

9 Q. Okay.

10 A. He was very boisterous with his opinions, anyway.

11 Q. Okay.

12 A. That's the reason they didn't like me and him,
13 neither one of them. Blanchard didn't care too much
14 for us.

15 Q. Oh, jeez. Do you think that Mr. Blanchard and Mr.
16 Whitehead and Mr. Hager were aware of these problems?

17 A. Yes.

18 Q. Do you think they did what they needed to do to
19 fix them?

20 A. No.

21 Q. Okay.

22 A. I don't think they know what to do.

23 Q. Now, when you say you don't know if --- know if
24 you --- if they knew what to do, do you have any
25 specifics? Were they continually trying to --- trying

1 different stuff?

2 A. Yes, continuously trying different stuff. They
3 was too many people knocking too much stuff and
4 building too much stuff back, because we even had
5 Jamie Ferguson. He was in there knocking stuff and
6 building stuff back.

7 Q. Do you think anybody had a clue what was going on
8 with the ventilation?

9 A. No, I don't believe they did.

10 Q. Okay. If I'd asked you prior to the explosion who
11 was in charge of ventilation, who would you have told
12 me? Was there anybody in charge of ventilation?

13 A. Well, I guess when --- it would be Whitehead and
14 Blanchard and Everett.

15 Q. Okay. Now, Mr. Payne, when he talked to the
16 folks, Mr. Blanchard and Whitehead and so on and so
17 forth, and Mr. Hager would come down on the section,
18 and possibly when he went upstairs and talked to them,
19 do you know how they reacted to his complaints?

20 A. No, not really.

21 Q. Did he give any indication that they had even
22 acknowledged them?

23 A. They'd work on it.

24 Q. Okay.

25 MR. SHERER:

1 Okay.

2 MR. FARLEY:

3 I think you got it covered.

4 MR. SHERER:

5 Okay. Thank you.

6 ATTORNEY BABINGTON:

7 Okay. We have the two marked --- we have

8 two documents from the beginning. One was a copy of
9 the subpoena for Mr. Sims. That'll be marked D. Sims
10 One. A copy of the return receipt to the subpoena;
11 that'll be marked D. Sims Two. And then we marked up
12 one map, a copy of the Ellis Portal map. That'll be
13 marked D. Sims Three.

14 (Exhibit D. Sims Three marked for
15 identification.)

16 ATTORNEY BABINGTON:

17 On behalf of MSHA and the Office of
18 Miners' Health, Safety and Training, I want to thank
19 you for appearing and answering questions today. Your
20 cooperation is very important in the investigation as
21 we work to determine the cause of the accident.

22 We request that you not discuss your
23 testimony with any person aside from a personal
24 representative or Counsel. After questioning other
25 witnesses, we may call you if we have any follow-up

1 questions.

2 If at any time you have additional
3 information regarding the accident that you'd like to
4 provide to us, please contact us at the contact
5 information previously provided. If you wish, you may
6 now go back over any answer you've given during this
7 interview, and you may also make any statement that
8 you'd like to make at this time.

9 A. No.

10 ATTORNEY BABINGTON:

11 All right. Thank you, and again I want
12 to thank you for your cooperation in this matter.

13 * * * * *

14 STATEMENT UNDER OATH CONCLUDED AT 2:13 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

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



Alison Salyards