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**Transcript of the Testimony of John Scott**

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STATEMENT UNDER OATH

OF

JOHN SCOTT

taken pursuant to Notice by Alicia R. Brant, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Monday, June 14, 2010, beginning at 10:01 a.m.

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## P R O C E E D I N G S

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ATTORNEY BAXTER:

My name is Derek Baxter. Today is June 14th, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Rich Stoltz, an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the United States Department of Labor. Also present is Terry Farley from the State of West Virginia. All members of the Mine Safety and Health Accident Investigation Team and all members of the State of West Virginia Accident Investigation Team participating in the investigation of the Upper Big Branch Mine explosion shall keep confidential all information that's gathered from each witness who voluntarily provides a statement until the witness statements are officially released. MSHA and the State of West Virginia shall keep this information confidential so that other ongoing enforcement activities are not prejudiced or jeopardized by a premature release of information. This confidentiality requirement shall not preclude investigation team members from sharing information with each other or with other law enforcement officials. Your participation in this interview

1 constitutes your agreement to keep this information  
2 confidential.

3 Government investigators and specialists

4 have been assigned to investigate the conditions,  
5 events and circumstances surrounding the fatalities  
6 that occurred at the Upper Big Branch Mine-South on  
7 April 5th, 2010. The investigation is being conducted  
8 by MSHA under Section 103(a) of the Federal Mine  
9 Safety and Health Act and the West Virginia Office of  
10 Miners' Health, Safety and Training. We appreciate  
11 your assistance in this investigation.

12 You may have a personal representative,  
13 such as a personal attorney or another representative,  
14 if MSHA has permitted it, present during the taking of  
15 this statement and may consult with your attorney or  
16 the representative at any time. Do you have a  
17 personal representative?

18 MR. SCOTT:

19 No.

20 ATTORNEY BAXTER:

21 Your statement is completely voluntary.

22 You may refuse to answer any question and you may  
23 terminate your interview at any time or request a  
24 break at any time. Since this is not an adversarial  
25 proceeding, formal Cross Examination will not be

1 permitted. However, your personal legal  
2 representative may ask clarifying questions as  
3 appropriate. Your identity and the content of this  
4 conversation will be made public at the conclusion of  
5 the interview process and may be included in the  
6 public report of the accident, unless --- strike that.

7 We request that you refrain from  
8 discussing your statement with others who may be  
9 interviewed. Also, there may be a need to use the  
10 information you provide to us or other information we  
11 may ask you to provide in the future in other  
12 investigations into and hearings about the explosion.  
13 Do you understand?

14 MR. SCOTT:

15 Yes.

16 ATTORNEY BAXTER:

17 Do you have any questions?

18 MR. SCOTT:

19 No.

20 ATTORNEY BAXTER:

21 After the investigation is complete, MSHA  
22 will issue a public report detailing the nature and  
23 causes of the fatalities in the hope that greater  
24 awareness about the causes of accidents can reduce  
25 their occurrence in the future. Information obtained

1 through witness interviews is frequently included in  
2 these reports.

3 Since we will be interviewing other  
4 individuals, we request that you not discuss your  
5 testimony with any person aside from your personal  
6 representative or counsel. A court reporter will  
7 record your interview. Please speak loudly and  
8 clearly. If you do not understand a question asked,  
9 please ask me to rephrase it. Please answer each  
10 question as fully as you can, including any  
11 information you've learned from someone else. I'd  
12 like to thank you in advance for your appearance here.  
13 We appreciate your assistance in this investigation.  
14 Your cooperation is critical in making the nation's  
15 mines safer.

16 After we've finished asking questions,  
17 you'll have an opportunity to make a statement and  
18 provide us with any other information you believe to  
19 be important. If at any time after the interview you  
20 recall any additional information that you believe  
21 might be useful, please contact Norman Page at the  
22 telephone number or e-mail address provided to you.  
23 Please swear in the witness.

24 -----

25 JOHN SCOTT, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS

1       FOLLOWS:

2       -----

3       EXAMINATION

4       BY MR. FARLEY:

5       Q. John, would you please begin by providing us with  
6       your full name, home address and telephone number?

7       A. John Scott. I live at (b) (7)(C) ,  
8       (b) (7)(C) Phone number is  
9       (b) (7)(C)

10      Q. Thank you. Are you employed by the West Virginia  
11      Office of Miners' Health, Safety and Training?

12      A. Yes.

13      Q. How long have you been with the agency?

14      A. Approximately 17 years.

15      Q. Okay. Now, prior to your time with the agency,  
16      did you work in the coal mining industry?

17      A. Yes.

18      Q. How long?

19      A. Since 1975.

20      Q. That gets you up to about 35 years of experience  
21      now?

22      A. Yes.

23      Q. What company did you work for before you joined  
24      the agency?

25      A. I worked for United States --- U.S. Steel. I

1 worked for A.T. Massey back in '78, the Wymack  
2 Division. I worked for Virginia Crews Coal Company.  
3 I worked for Mingo Logan ---

4 Q. Okay.

5 A. --- and probably several little small punch mines  
6 in between.

7 Q. Okay. What's your current position with Miners'  
8 Health, Safety and Training?

9 A. Electrical inspector.

10 Q. Okay. Have you always been an electrical  
11 inspector with the agency?

12 A. No. From 1993 until 2000 I was just a district  
13 inspector. And then from 2000 to the present I've  
14 been an electrical inspector.

15 Q. Okay. Do you have a state electrical  
16 certification?

17 A. Yes. I've been a certified electrician with the  
18 state since 1977.

19 Q. Okay. Did you work as an electrician when you  
20 were in the industry?

21 A. Yes.

22 Q. Okay. Who's your immediate supervisor?

23 A. Alan Lander.

24 Q. Okay. Which office of Miners' Health, Safety and  
25 Training regional office is your base?

1 A. Westover office.

2 Q. Okay. Have you had any specialized training other  
3 than your electrical certification that you feel is  
4 important?

5 A. As far as dealing with mining, just various  
6 electrical training or with elevators and hoists or  
7 computers, some CO stuff and --- but nothing as far  
8 as ---.

9 Q. Do you occasionally work on assigned projects  
10 other than your normal duties as an electrical  
11 inspector?

12 A. Yes.

13 Q. Okay. These projects usually had to do with  
14 computer systems?

15 A. Right. I basically take care of the State's  
16 testing computers, where we give our certification  
17 tests on.

18 Q. Okay. Are you also a member of the agency's mine  
19 rescue team?

20 A. Yes. I have been since 2000.

21 Q. Okay. Did you have mine rescue experience when  
22 you worked in the industry?

23 A. No.

24 Q. About ten years' experience with the agency?

25 A. Yes.

1 Q. Okay. Prior to the events at UBB, did you ---  
2 have you participated in any mine rescue --- actual  
3 mine rescue operations as a result of emergencies?

4 A. Yes. I participated in the events at Sago in 2006  
5 and also Aracoma in 2006.

6 Q. Okay. All right. Where were you located on April  
7 5th, 2010 and how did you learn that there was a  
8 problem at the Upper Big Branch Mine?

9 A. We were at mine rescue practice at Southwest  
10 Virginia Community College in Logan. And we just  
11 basically finished practice for that day and had  
12 traveled back to Chief Logan Lodge. That's where we  
13 were staying.

14 Q. Okay.

15 A. And sometime around 4:00, 4:15 that day we got a  
16 call for everybody to get together and assemble, that  
17 there had been --- something had happened at one of  
18 Massey's mines and they called us all together.

19 Q. What did you hear initially that was going on?

20 A. That there was some type of an explosion and that  
21 there were some men missing, unaccounted for. Seemed  
22 like they first initially said something like 30, 31  
23 people unaccounted for or something at that time.

24 Q. Okay. What did you do at that point? Did the  
25 team assemble and gather its equipment and depart for

1 the mine?

2 A. Yes. We took off. And I wasn't exactly sure  
3 where to go, so we basically kind of got in a little  
4 convoy and followed to the mine site.

5 Q. Okay.

6 A. We went to Ellis Portal, is where we went.

7 Q. Okay. Can you estimate when you arrived at the  
8 Ellis Portal?

9 A. Sometime around 5:30 that afternoon.

10 Q. All right. What did you see when you arrived  
11 there? What was your sense of what was going on when  
12 you arrived?

13 A. It was just kind of chaos. It was hard --- Ellis  
14 Portal is a small area, and we had a hard time  
15 basically finding somewhere to park. There was a lot  
16 of fire trucks and ambulances and people running  
17 around everywhere, just --- it was probably typical of  
18 an event that just had happened and ---. First we  
19 were told we were going to enter through Ellis Portal,  
20 and we started getting our machines and everything  
21 ready. And then sometime --- I don't know exactly  
22 what time, they told us that we needed to assemble  
23 over at the Montcoal Portal, Upper Big Branch side,  
24 and go in from there.

25 Q. Was there electrical power available at the Ellis

1 Portal when you arrived?

2 A. I don't think so. It seemed like everything was  
3 --- it was still daylight, but I don't remember seeing  
4 anything --- I went in the office a time or two  
5 upstairs to ask a few questions, and I don't remember  
6 the power being on.

7 Q. Okay. Do you know if the mine phones were  
8 operational at Ellis at that time?

9 A. That I don't know.

10 Q. Okay. Do you recall what Performance Coal or UBB  
11 Mine officials might have been present at that time,  
12 anyone in particular you can remember?

13 A. I saw their attorney. What's her name?  
14 Elizabeth.

15 Q. Elizabeth? Would that be Elizabeth Chamberlin?

16 A. Yes. Yes. That's right. Yes. Because I  
17 remember asking her about the tracking system or  
18 communication system. She said everything was  
19 located --- that information would be over at the  
20 other portal.

21 Q. Okay. Did she offer any other insight as to what  
22 was going on at that time?

23 A. No.

24 Q. Did you happen to note the time you left UBB ---  
25 left Ellis or the UBB main portal?

1 A. No, I didn't.

2 Q. Okay. Do you recall what time you arrived at UBB?

3 A. No, but I think we actually went underground at  
4 8:30 from the UBB side, so it was somewhere prior to  
5 that that we got over to UBB side and had time to get  
6 --- get our machines ready and --- it would have took  
7 a little while to do that.

8 Q. Was it difficult to negotiate your way to the UBB  
9 Portal from Ellis because of traffic?

10 A. Traffic. Yes, it was.

11 Q. Okay. When you went underground at UBB you  
12 indicated it was approximately 8:30.

13 A. Yes.

14 Q. Was there a briefing before you went underground?

15 A. Yeah.

16 Q. Do you recall who conducted the briefing?

17 A. I don't recall who did, no.

18 Q. Did it seem like the briefing was adequate?

19 A. Seemed to be, yes. It was just an average ---  
20 just typical.

21 Q. Okay. Did you accompany a particular team when  
22 you went underground at approximately 8:30 or whatever  
23 the time?

24 A. Well, basically it was a state team.

25 Q. Which state team were you with?

1 A. North.

2 Q. Northern West Virginia?

3 A. Northern West Virginia team, yes.

4 Q. Do you recall who your teammates were?

5 A. Barry Fletcher, Jeff Bennett, Ralph Tanner, Ed  
6 Peddicord and Tom McGuire.

7 Q. Okay. Did you travel by mantrip underground?

8 A. Yes.

9 Q. Okay. Were there any other teams as part of this  
10 mantrip or others that left at the same time?

11 A. Yeah. There was a team from --- I guess they call  
12 it the south team. It was Eugene White and a bunch  
13 out of Daniel.

14 Q. Do you mean Miners' Health, Safety and Training?

15 A. Yes. This is another state team. Another state  
16 team.

17 Q. Okay. Now, you entered the UBB Portal?

18 A. Yes.

19 Q. Okay. Now, where did you travel to from there?

20 A. Basically up to the end of the track at --- well,  
21 as far as we could go around 78 --- it might be around  
22 78 Block.

23 Q. Okay. And this would have been toward north ---  
24 what's called North ---?

25 A. Right. Uh-huh (yes). Right.

1 Q. Why could you not travel beyond 78?

2 A. There was debris on the track.

3 Q. Okay. Now, as part of your group going  
4 underground, were there one, two, three mantrips? Do  
5 you recall how many?

6 A. It seems like there were two. I can't really  
7 remember.

8 Q. Okay. Were any people present at 78 when you  
9 arrived?

10 A. We could see some lights where they had --- I  
11 think they had just started moving the fresh air base  
12 up to the next location.

13 Q. Okay. Let me suggest this. As we progress here  
14 with your interview, why don't you take a marker and  
15 mark the locations as we detail your story. Circle  
16 your arrival point there, and if you would, draw a  
17 line out from it and just identify we arrived here at  
18 whatever time, if you know.

19 ATTORNEY BAXTER:

20 And we'll mark this map as Scott Exhibit

21 One.

22 (Scott Exhibit One marked for  
23 identification.)

24 A. Okay.

25 MR. FARLEY:

1 Marking the map would probably be a  
2 little easier than attempting to detail it verbally.  
3 A. Yeah. Okay. I'm thinking the track around 78, so  
4 --- this is 75.

5 BY MR. FARLEY:

6 Q. This is 85 right here where my --- into my finger,  
7 75 down here.

8 A. Seventy-eight (78) is about right in here.

9 Q. Yeah, general area.

10 A. So right in here, yeah. And then we --- like I  
11 said, when we got here we could basically see lights.  
12 And then we basically just kind of followed the phone  
13 line up this way, up this direction, to ---.

14 Q. Just please mark the map ---

15 A. Next location, okay.

16 Q. --- to your next location, if you can.

17 A. And then we were somewhere around 102 ---  
18 somewhere --- I don't remember the exact location ---

19 Q. Okay.

20 A. --- where the fresh air base was, but it was  
21 somewhere in this area through here.

22 Q. Okay. If you could, just draw a line out there  
23 and indicate what the location was, fresh air base.

24 A. Fresh air base.

25 WITNESS COMPLIES

1 BY MR. FARLEY:

2 Q. Did it appear that the fresh air base was in the  
3 process of being moved when you first arrived to 78?

4 A. Yes. Yes. Because when we left outside, they  
5 told us that the fresh air base was at 78. And by the  
6 time we got to this area, evidently they had already  
7 given permission to advance the fresh air base by the  
8 time we got there. So those guys had already moved  
9 up.

10 Q. Okay. Now, as you said, there was debris at 78 on  
11 the track. I assume it was necessary to travel on  
12 foot from there ---

13 A. That's correct.

14 Q. --- in the mine?

15 A. Yes.

16 Q. Okay. Now, what happened when you got to the next  
17 fresh air base, which is somewhere in the vicinity of  
18 102 to 105, in that general area?

19 A. We kind of split up. One team, the south team,  
20 went over and started going down through this --- I  
21 think this was called the crossover area through here.

22 Q. Now, when you say the crossover, do you mean the  
23 entries which connect the longwall and headgate and  
24 tailgate entries at the mouth of the longwall?

25 A. Yes.

1 Q. Would you maybe mark that area and again specify  
2 the South Team explored here, if, in fact, that's what  
3 they did?

4 A. Yeah. The South Team, I wasn't with them, but  
5 that's basically --- when we were there at this fresh  
6 air base, that's what the south team --- because we  
7 had to position a couple people in a couple areas with  
8 radios so they could communicate around the corner  
9 and ---.

10 Q. Okay.

11 A. So basically --- and I'm not sure, because I  
12 wasn't with them, how far they advanced in this area,  
13 so ---.

14 Q. All right.

15 A. I'm just going to put the State's South Team.

16 Q. Okay. That's fine. What duties did you then  
17 perform other than as you --- as they were exploring  
18 that area?

19 A. Basically we stayed at this area here sort of as  
20 backup. And it wasn't too long until the team that  
21 was inby us reported back. They were up there  
22 somewhere around the --- they were inby the Glory  
23 Hole. In fact, they may have actually been up --- I'm  
24 not sure how far they were up, but they reported back  
25 that they --- their instruments had maxed out at 15

1 percent methane and 999 --- 10,000 parts per million  
2 CO, so ---.

3 Q. Okay.

4 A. That's basically when --- when they relayed that  
5 message back to the command center, that they decided  
6 to withdraw. That was that first night, so ---.

7 Q. Okay. So ---.

8 A. It took a while from the time everybody got back  
9 and we had to --- took some --- it took us a little  
10 while to get everything --- everybody together and  
11 back in place and get the mantrips and get back  
12 outside, but ---.

13 Q. At this --- that would have been --- the location  
14 you marked would have been the farthest in by fresh air  
15 base at --- during the evening of April 5th, 2010, at  
16 that time?

17 A. That I traveled?

18 Q. Yes.

19 A. Yeah. Somewhere --- I'm not sure exactly.

20 Somewhere just around this area that the victim was  
21 --- the single victim that was the fire boss, he was  
22 in this area somewhere. We were maybe a break or  
23 two ---

24 Q. Okay.

25 A. --- probably in by him. But we was in this general

1 vicinity, around 102, 105, somewhere through there.

2 Q. Okay. Now, did you advance inby that point at any  
3 time during that evening ---

4 A. No.

5 Q. --- on April 5th?

6 A. No, I didn't. Some of our team members I think  
7 did, but --- just a ways in, but ---

8 Q. Okay.

9 A. --- we were all out there close.

10 Q. While you remained at the fresh air base as a  
11 backup team, were there other backup teams at the  
12 fresh air base at the time?

13 A. There were backup teams coming to us. I think the  
14 state --- another state team came in a little after  
15 us. The team I think that maybe Bill Tucker and a few  
16 were on from Welch, ---

17 Q. Okay.

18 A. --- they came in a little bit later.

19 Q. Was there a sufficient number of backup teams  
20 available to ---

21 A. Right.

22 Q. --- match up with the number of teams inby?

23 A. Yes. Yeah, we had plenty of people. I can't tell  
24 you the exact headcount, but I'm sure that the command  
25 center probably had record of basically everybody

1 that ---.

2 Q. Do you recall what time you were given the order  
3 to evacuate the mine?

4 A. No, I don't.

5 Q. Okay. When you eventually got outside after you  
6 evacuated the mine, was there a debriefing?

7 A. They probably --- I didn't personally talk to  
8 them, but they probably --- I think there was. I  
9 think they probably talked to the --- couple captains  
10 and a few team members, but no, I didn't personally  
11 talk to them.

12 Q. Would your arrival outside have been after  
13 midnight and into the morning of April 6th?

14 A. I think so, yes.

15 Q. Okay.

16 A. I've got that wrote down somewhere probably, but  
17 I'm sure the command center's got the times. But that  
18 sounds about right, because it's a pretty good trip.

19 Q. What would you estimate the travel time from the  
20 UBB Portal to Crosscut 78?

21 A. I'd say approximately an hour-and-a-half. Between  
22 an hour and 15 minutes to an hour-and-a-half.

23 Q. Okay. Can you recall where you began seeing signs  
24 that some type of explosion had occurred as you  
25 advanced into the mine that evening?

1 A. That was back outby probably --- let's see. That  
2 map just goes back far enough. Somewhere around --- I  
3 think around 45 to 50, somewhere back through here,  
4 that you could look over and see a stopping partially  
5 blown out or something. And also the --- up until  
6 that point, the ribs and the roof was pretty well rock  
7 dusted. And then from that point in you could start  
8 smelling just kind of an odor and everything was  
9 black. You know, your visibility was --- not from  
10 smoke but just from lack of rock dust on the roof and  
11 the ribs and ---

12 Q. So ---.

13 A. --- you could definitely tell something had  
14 happened.

15 Q. So around 45 is when ---?

16 A. Somewhere --- yeah, somewhere approximately that  
17 was ---.

18 Q. Now, the blackening characteristic that you  
19 described, did you also encounter that at 45 or is  
20 that further inby?

21 A. Maybe a little further inby. The further you got  
22 inby, the worse it got, so ---.

23 Q. Okay. Did you experience any type of burning  
24 sensation in your eyes while you were underground that  
25 evening?

1 A. Yes.

2 Q. Okay.

3 A. Just about everybody that --- because basically up  
4 until --- let's see. We were --- didn't go under  
5 apparatus until somewhere up through here we  
6 encountered probably about 60 or 70 parts per million  
7 CO, then we went under apparatus. But up until we  
8 were under apparatus, we had a --- everybody was  
9 complaining about their eyes burning.

10 Q. Any idea as to what caused that?

11 A. We --- I guess at the time we assumed it was  
12 something to do with the explosion, but it was ---  
13 most every --- like I said, about everybody was  
14 complaining that they had --- their eyes were burning.

15 Q. Okay. After you got outside the mine, what  
16 happened then? How long did you hang around?

17 A. It seemed like it was 1:30, 2:30, somewhere like  
18 that. I'm not sure when we left.

19 Q. Okay.

20 A. And we went --- we had a motel --- they got us a  
21 motel in Beckley, and we traveled back to Beckley and  
22 stayed.

23 Q. Did you return to the mine again after April 6th?

24 A. They called us that next day and told us not to  
25 come back to the mines. We went back home. And then

1 basically we --- they called us back on that Friday.

2 Q. Would Friday have been April 9th, you think?

3 A. Yeah.

4 Q. And when you say when they called us, told us to  
5 go back home ---?

6 A. That was the Northern Team.

7 Q. Okay. That would be ---?

8 A. That's the Northern State Team.

9 Q. Okay. You've already given us the members of that  
10 Northern Team?

11 A. Right.

12 Q. Okay. So you returned to the mine on Friday,  
13 April 9th. Do you recall when you might have made it  
14 back, approximately?

15 A. It seems like I got to the mines at approximately  
16 10:30 p.m. that night, that Friday night.

17 Q. Okay. What happened then? Were you given a  
18 particular assignment at that time?

19 A. No. I think with the exception of a couple guys,  
20 most of us, they just told us that we were going to be  
21 backup and try to get a little sleep. We had a little  
22 bunk that trailer they brought down to set up, and we  
23 basically slept in the trailer that night, or tried  
24 to.

25 Q. Okay. Did you actually get any sleep that night?

1 A. Thirty (30) minutes here and 30 minutes there. It  
2 was too --- so much commotion, noise, and just --- you  
3 can't sleep with something like this. It's just hard  
4 to rest.

5 Q. Okay. Did you eventually go underground again?

6 A. Yes, on Saturday.

7 Q. That would have been Saturday, April 10th?

8 A. Yes, Saturday, April 10th.

9 Q. Do you recall when you might have gone  
10 underground?

11 A. I think it was towards the afternoon.

12 Q. Were you given a particular assignment before you  
13 went underground?

14 A. Yes. I traveled with Jeff Bennett, and I can't  
15 think, but there was a couple Federal guys, mine  
16 rescue guys, that we traveled --- we went in and met  
17 up with some Massey employees. These were not mine  
18 rescue people. These were presidents,  
19 vice-presidents. They brought them in from other  
20 operations. And basically what we --- earlier that  
21 day they had been building frames to set up those  
22 temporary seals.

23 Q. Now, what was the location of these temporary  
24 seals?

25 A. The ones that ---.

1 Q. Maybe use a different color this time to show a  
2 different day.

3 A. The ones I dealt with were --- I'm not sure of the  
4 exact spad number, but somewhere in this area. Well,  
5 I'll try a different color.

6 Q. You're identifying the area in the longwall  
7 tailgate entry, ranging from around Number Ten  
8 Crosscut, five to six crosscuts in each direction from  
9 there?

10 A. Yes.

11 Q. Which would be inby the 78 Switch area?

12 A. That's correct. Somewhere through here basically,  
13 I'm not sure exactly, but there's a record of it I'm  
14 sure, and there's another map that shows those seals,  
15 but we built the framework for --- the teams prior to  
16 us had went in and mapped this area because they was  
17 --- if you had to move anything to clear out or the  
18 seals, they took pictures and mapped it out. And  
19 initially they were going to build five, and they had  
20 mapped five areas, Three through Seven entries. And  
21 when we got in there we started building them, and  
22 they called back and they changed their plans and  
23 said, well, those Entries Number One and Two, they  
24 will need to be sealed also. So they asked if we  
25 would map those other two entries and --- which we

1 didn't have to --- those One and Two, didn't have to  
2 disturb anything, it really wasn't --- we just noted  
3 it on the map, and then we constructed the framework  
4 for the seals and nailed the curtain up on top, but we  
5 didn't put it down to seal anything yet. They wanted  
6 to get all of the framework --- I understood them just  
7 that they wanted to get all the framework put in  
8 before --- and then decide --- get everybody out when  
9 they make that final ventilation change to seal those.  
10 And the teams after us I think actually came in and  
11 sealed those.

12 Q. But the work you did here in the tailgate entry  
13 was Saturday afternoon, on April 10?

14 A. That's correct. Yes.

15 Q. Do you recall approximately what time you got in  
16 there?

17 A. I've got that wrote down somewhere, but it was  
18 sometime in the afternoon.

19 Q. Did you work in any other area on Saturday, April  
20 10?

21 A. No. Well, no. We went --- we had to go back and  
22 --- in fact, when they decided to build those other  
23 two frames, we ran out of fly board, so we had to go  
24 back over to the barricade car somewhere down around  
25 78. Somewhere through that there's a little spur

1 track or something down there. We went back and  
2 basically took some fly boards out of it and we've  
3 mapped that on the map, made a note and took those  
4 back up and built those remaining frames for those  
5 seals.

6 ATTORNEY BAXTER:

7 Excuse me, Terry. Davitt McAteer has  
8 just joined us. Davitt, I don't know if you want to  
9 state your appearance as well.

10 ATTORNEY MCATEER:

11 I'm with the Governor's Independent  
12 Review Committee. I apologize for the lateness. I  
13 drove some distance. Thank you.

14 BY MR. FARLEY:

15 Q. John, did you work in any other area then on  
16 Saturday, April 10th?

17 A. No.

18 Q. Do you recall when you might have made it outside  
19 that day?

20 A. It was kind of late. I can't remember the exact  
21 time, no.

22 Q. Are we meaning into the evening, well after dark?

23 A. Right. Yes.

24 Q. Okay. When did you enter the mine again, or did  
25 you?

1 A. The last time --- yeah, the next time I entered  
2 the mine was when we sent basically everybody --- most  
3 of the team members in to spread out to basically  
4 shuttle the bodies off of 22 Headgate section.

5 Q. Would that have been on Monday, April 12th?

6 A. Yes.

7 Q. Do you recall when you might have entered?

8 A. It was late in the afternoon time they got  
9 everybody situated, enough teams and --- but we was  
10 --- I was supposed to go in on Sunday, and that's when  
11 they had the problem with the Consol team, that they  
12 had four or five Consol teams out there and then they  
13 finally decided they wasn't going to come. They were  
14 at Beckley and we were waiting on them to come. And  
15 they finally called and said, well, they're not ---  
16 they're pulling out. They're not going to come. So  
17 there was some --- I'm not sure exactly what I was  
18 going to do Sunday, but I had to end up staying  
19 outside as backup because there wasn't enough --- just  
20 barely enough teams there to take care of what we had,  
21 so ---. And then I went back in --- like I said,  
22 Monday afternoon, one of the teams finally did go in.  
23 There was --- the problem, you just had to get enough  
24 mantrips together and get enough people. We all went  
25 up and stretched out, and I think most --- there were

1       like six-man teams. And we stretched out and covered  
2       about six crosscuts when we ---.

3       Q. Okay. By this time, were there nine bodies left  
4       underground?

5       A. Yes. That was the ones we were going to --- teams  
6       that went in prior to us, I think they went in  
7       with --- they would go up there and put the body bags  
8       on those victims and get them ready for transport to  
9       bring out.

10      Q. Now, prior to your leaving to go underground on  
11      Monday, April the 12th, was there --- are you aware of  
12      any ventilation work that had to be done to restore  
13      ventilation to the 22 Headgate section area before you  
14      went in?

15      A. They were doing some stuff up there, but I'm  
16      not ---.

17      Q. Okay.

18      A. I wasn't in the command center or I didn't really  
19      --- really privy to any information of what was going  
20      on. But I do know that they were concerned. They  
21      wanted to make sure that those guys could go up to  
22      that point in fresh air and be bare-faced to retrieve  
23      those bodies. They didn't want to have to be under  
24      apparatus, ---

25      Q. Okay.

1 A. --- so ---.

2 Q. Did the recovery operation work out as planned  
3 then?

4 A. I think it did. Everything went pretty smooth.

5 Q. Meaning, was it eventually possible to remove ---  
6 to recover and carry the bodies ---

7 A. Yes.

8 Q. --- without utilizing mine rescue apparatus?

9 A. Right. We had our apparatuses, but we didn't have  
10 to go under air to retrieve those bodies, so ---.

11 Q. Okay. Now, as I understand it, you were relaying  
12 the bodies or carrying them some distance and then, in  
13 turn, then handing them to another team?

14 A. Handing to another team, yes.

15 Q. What particular area were you assigned to cover?

16 A. Let me think. I'm not exactly sure because  
17 basically what we did, we would fall in and this team  
18 would stop here and they'd say, okay, you all cover  
19 the next six crosscuts, and then the teams that  
20 were --- you know, somewhere --- I think it was  
21 somewhere in this area through here.

22 Q. Can you indicate the general direction of travel  
23 that was --- can you specify the specific roadway on  
24 the 22 Headgate section that might have been used ---  
25 that was used to carry the bodies?

1 A. We traveled the track the best we could travel,  
2 and then some places you had to go over and go to the  
3 adjacent entry, so ---.

4 Q. We'll find another color.

5 A. Find another color.

6 Q. Toss me that green marker. Try this one. Or  
7 maybe even better the blue. We've already got --- try  
8 the blue marker.

9 A. Okay. Basically we traveled the track. I'm not  
10 sure where we crossed over, but several places there  
11 was a lot of debris on the track, and we'd have to  
12 cross over in this --- like in Number Three entry,  
13 travel it, and we crossed back over, so ---.

14 Q. So is it fair to say that you traveled the track  
15 entry from around Crosscut 100 toward 22 Headgate  
16 section with some --- that you had to ---

17 A. That's correct, yeah.

18 Q. --- detour through the Number Three entry due to  
19 debris?

20 A. Right.

21 Q. Is that fair to say?

22 A. That's fair, yeah. Because when we were --- when  
23 you're carrying those, you know, we try to find the  
24 least obstructed roadway to walk, so ---. But I  
25 couldn't tell you exactly, you know, what ---. Like I

1 said, when we got here and dispersed, you know, they  
2 said, okay, this team is going, and when they stop,  
3 you know, you follow them. So we basically just ---  
4 we had one task and that was to get those boys out.  
5 And we didn't really --- you go --- stop here and then  
6 you go six blocks. That's your area you take care of,  
7 and then --- you know, you didn't really pay that much  
8 attention to what spad you was at. You just know I  
9 got to take care of these six crosscuts and ---

10 Q. Okay.

11 A. --- get those guys out, so ---.

12 Q. All right. Can you give me an idea of when you  
13 eventually got the job done?

14 A. It was somewhere probably --- it was past  
15 midnight. It was probably --- in fact, it seemed like  
16 it was --- it was a long time because we had to wait  
17 on mantrips. We got those guys --- got the bodies  
18 down here and we got --- took those guys out first,  
19 before any of the rescue guys went outside, so ---.  
20 And then they had to come back and it was probably  
21 2:30 or 3:30 in the morning before we got out.

22 Q. And when you say 2:30, three o'clock in the  
23 morning, are we into Tuesday, April 13th?

24 A. That's correct. Yes.

25 Q. Okay. Can you estimate just how long you were

1 underground during this rescue --- recovery operation  
2 from April 12th to April 13th?

3 A. I'd say 12 hours at least.

4 Q. Okay.

5 A. Maybe a little --- give or take an hour or two  
6 maybe. I probably got that wrote down somewhere, but  
7 12 to 14 hours, somewhere.

8 Q. Okay.

9 SHORT BREAK TAKEN

10 EXAMINATION

11 BY MR. STOLTZ:

12 Q. I got a few follow-up questions then, John.

13 A. Okay.

14 Q. The first one was have you ever inspected this  
15 mine? Was this your first time?

16 A. First time there. I've never inspected it.

17 Q. Okay. You mentioned that on April 5th then you  
18 went underground with the Northern Team?

19 A. That's correct.

20 Q. And you stated you thought the briefing was  
21 adequate prior to entering the mine?

22 A. Right.

23 Q. Did your team or did you have any mine maps at  
24 that point in time?

25 A. I didn't personally have a map, but ---

1 Q. Yeah.

2 A. --- the team ---. As far as I know --- well, I  
3 can't --- I honestly can't remember now.

4 Q. Okay.

5 A. It's been a while, so ---.

6 Q. Okay. But you didn't?

7 A. I didn't.

8 Q. Okay. You mentioned about when you were at the  
9 fresh air base, you arrived at 102, 105 at the fresh  
10 air base. The Southern Team headed --- started to  
11 explore. Then you said that there was another team  
12 that, to your knowledge, was already inby because they  
13 worked their way and came back to the fresh air base.

14 A. Right. So at that point, prior to that team  
15 exiting and your Southern Team was exploring, you had  
16 the Northern Team as backup for the Southern. You  
17 mentioned then that there was an adequate number of  
18 people for backup. Was you also referring to the  
19 teams that were coming in from under --- on the man  
20 buses on their way in?

21 A. Right. And there was also some Massey teams ---  
22 there was some Massey team members there, too. I  
23 don't know exactly what team they were from.

24 Q. Okay. So therefore, they would have had what, two  
25 --- at least two teams then prior to you all getting

1       there?

2       A. I'm not sure exactly how many people were up in  
3       here with --- I think it was Mike Hicks and Jerry Cook  
4       I think it may have been, and I think we may have had  
5       a guy or two ---. And I'm not sure exactly how many  
6       people were --- because I know there was a lot of  
7       chaos when we got back down here when everybody was  
8       --- you know, they said, we're going --- you know,  
9       we're going to pull out because we got the high  
10      amounts of CO and CH4, but --- I couldn't give you an  
11      exact number of people, but I know before we went in  
12      we counted up as far as numbers of people to back ---  
13      you know, we had enough at what we were doing, so ---.

14     Q. Okay. You're referring to back your Southern Team  
15     up ---

16     A. Right.

17     Q. --- as they explored? Okay. Also, you mentioned  
18     that when you arrived that day at 78 Break, which was  
19     the old fresh air base, you seen lights and you all  
20     followed the cable up to --- communication cable up to  
21     102?

22     A. Right.

23     Q. You said that ---- maybe I heard you wrong, but  
24     you mentioned that you encountered 60 to 80 parts per  
25     million CO and that you --- you mentioned about

1 donning your apparatus. Did you all don them or ---?

2 A. Yeah. I'm trying to think. Somewhere --- yeah,  
3 when we got to 60 or 70 parts per million. It would  
4 vary. It dropped down to 30 or 40, then you might  
5 check one and it would be 50 or 60, so then --- I'm  
6 not sure of the exact location where we basically put  
7 our apparatuses on, but we may have actually been up  
8 to this point before we --- I'm not really --- it's  
9 been a while, so ---.

10 ATTORNEY BAXTER:

11 And what's this point that you're  
12 indicating?

13 A. This was the fresh air --- this was the fresh air  
14 base around 102, 105, somewhere through there where  
15 the fresh air base was moved up to.

16 BY MR. STOLTZ:

17 Q. Are you not sure if you even tried a little bit  
18 beyond the fresh air base ---?

19 A. Well, a break or two here or there, yeah, but ---.

20 Q. At that point in time maybe ---?

21 A. That may have been when we donned our --- you  
22 know, we all basically started having --- our eyes  
23 started burning somewhere probably from about the end  
24 of the track there at 78 all the way up through there  
25 we had problems with --- and didn't really know what

1 it was. We would check our CO levels, and they  
2 were --- you know, they were anywhere from maybe down  
3 in here it might be ten parts per million or 20, just  
4 different locations. And we were kind of unsure what  
5 was causing the burning sensation.

6 Q. To the eyes?

7 A. To the eyes, uh-huh (yes).

8 Q. But you recall at some point in time you donned  
9 your apparatus for a short period, but you're just not  
10 sure where?

11 A. Right. Right. I could probably remember if it  
12 hadn't been --- it's been, you know, ---.

13 Q. Okay.

14 A. It's been a while, so ---.

15 Q. Okay. I'm going to move on then back to the ---  
16 your next time underground you said was on April 10th,  
17 approximately. You said that you went underground.  
18 You talked about that the people you went underground  
19 with was not mine rescue guys, they were --- mine  
20 rescue teams, they were Massey officials?

21 A. Yeah. These guys were already underground when we  
22 got there. They had been working that day with some  
23 other --- they had team members with them --- well,  
24 state and federal guys team members with them that day  
25 when they were in there, and then there was two State

1 guys and two Federal guys were leading those dayshift  
2 guys out. So they were not in there alone. I mean,  
3 they were accompanied by ---. But those particular  
4 guys were not mine rescue guys, those Massey guys that  
5 were building all those frameworks.

6 Q. Okay.

7 A. But they were accompanied --- on that prior shift,  
8 when we got there, there was --- because when we got  
9 there we relieved out two State guys and two Federal  
10 guys.

11 Q. Okay.

12 A. So I may not have made that clear prior to, but  
13 --- when I said it before, but they wasn't in there  
14 just running around by theirself. I mean, ---.

15 Q. Could those people that --- since you were  
16 relieving --- not relieving state and MSHA people,  
17 could they have been Massey team members but just not  
18 with their apparatus?

19 A. I was told that these guys were vice-presidents,  
20 presidents from other operations, that they were not  
21 mine rescue people is what I was told. Now, I don't  
22 know who told me that, but that's just what I --- you  
23 know, I thought, well, that's kind of strange that  
24 they're in here doing that, but I guess everybody  
25 okayed it. I mean, ---

1 Q. Okay.

2 A. --- I assumed that the command center had --- knew  
3 who they were and had okayed their ---.

4 Q. Okay. I guess further on then you said that the  
5 original assignment was to build five ventilation  
6 frames ---

7 A. That's correct.

8 Q. --- and then the command center notified you all  
9 to build two additional frames?

10 A. That's correct.

11 Q. So all you all did --- once you were in charge  
12 here, your task was to actually put up the frames, not  
13 to install the curtains?

14 A. Well, we installed the curtains on top, had them  
15 cut and ready to --- we just nailed them up so the  
16 next team in, all they would have to do would be to  
17 drop them down and foam them. We carried --- we left  
18 the foam packs and nails and had --- like I said, had  
19 the curtain cut and nailed up on top. All that would,  
20 you know, make it easy for them to --- because I  
21 assume, the way they talked, that when they did these  
22 ventilation changes, they wanted to do them pretty  
23 quick. So we got everything we could ready for tem to  
24 do that task without actually doing it.

25 Q. Okay. And once you all completed the frameworks

1 of all seven entries, then that was --- completed your  
2 task and you left ---

3 A. Right.

4 Q. --- for the shift then?

5 A. Yes.

6 Q. Okay.

7 MR. STOLTZ:

8 That's all I have.

9 ATTORNEY MCATEER:

10 At the risk of asking redundant  
11 questions, because I missed part of the presentation,  
12 if I do ask something that you testified to before,  
13 just say that.

14 EXAMINATION

15 BY ATTORNEY MCATEER:

16 Q. Do you know why the Consol teams left?

17 A. Just rumor that they normally don't do --- when  
18 they found out that the last victims were discovered,  
19 that they normally don't do recovery work. They just  
20 do rescue. That was --- now, I didn't hear that ---  
21 that's third or fourth-hand information, but that's  
22 what I was ---.

23 Q. Told?

24 A. That's what I heard, yeah.

25 Q. Okay. And do you know who the vice-president and

1 president of Massey were that you just testified  
2 about? You said ---.

3 A. No. They probably told me their names at the time  
4 because this one talked about he worked here and that  
5 one worked there. But as far as to name them off to  
6 you, no, I couldn't. And I didn't know any of them  
7 personally or nothing.

8 Q. And the two Massey teams, was one the Sydney Team?

9 A. I couldn't --- I don't know.

10 Q. Okay.

11 ATTORNEY MCATEER:

12 That's all the questions I have.

13 A. It could have been, but I --- they said --- you  
14 know, there was several Massey teams, and they would  
15 just say a Massey team, and I didn't really ---

16 BY ATTORNEY MCATEER:

17 Q. Pay attention?

18 A. --- pay that much attention.

19 ATTORNEY MCATEER:

20 That's all the questions.

21 MR. FARLEY:

22 I don't have any more.

23 ATTORNEY BAXTER:

24 On behalf of MSHA and the Office of

25 Miners' Health, Safety and Training, I want to thank

1 you for appearing and answering questions today. Your  
2 cooperation is very important to the investigation as  
3 we work to determine the cause of the accident. We  
4 require that you not discuss your testimony with any  
5 person aside from your personal representative. After  
6 questioning other witnesses, we may call you if we  
7 have any follow-up questions that we feel we need to  
8 ask you. If at any time you have additional  
9 information regarding the accident that you would like  
10 to provide to us, please contact us at the contact  
11 information that was previously provided to you. If  
12 you wish, you may now go back over any answer you've  
13 given during this interview. You may also make any  
14 statement you'd like to make at this time.

15 A. No.

16 ATTORNEY BAXTER:

17 Again, I want to thank you for your  
18 cooperation in this matter.

19  
20 \* \* \* \* \*

21 STATEMENT UNDER OATH CONCLUDED AT 11:00 A.M.

22 \* \* \* \* \*  
23  
24  
25

1 STATE OF WEST VIRGINIA )

2 )

4 CERTIFICATE

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

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

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

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



22 *Alicia R. Brant*