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Transcript of the Testimony of Charles Athey

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Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH

OF

CHARLES ATHEY

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 & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Saturday, August 14, 2010, beginning at 12:42 p.m.

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1 A P P E A R A N C E S

2

3 ROBERT S. WILSON, ESQUIRE

4 U.S. Department of Labor

5 Office of the Regional Solicitor

6 1100 Wilson Boulevard

7 22nd Floor West

8 Arlington, VA 22209-2247

9

10 TERRY FARLEY

11 West Virginia Office of Miners' Health,

12 Safety and Training

13 1615 Washington Street East

14 Charleston, WV 25311

15

16 DAVID STEFFEY

17 National Mine Safety and Health Academy

18 1301 Airport Road

19 Room C-137

20 Beaver, WV 25813-9426

21

22 BETH SPENCE

23 West Virginia Independent Investigation

24 ██████████

25 ██████████

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ATTORNEY WILSON:

Good afternoon. My name is Bob Wilson.

I'm with the Office of the Solicitor, United States
Department of Labor. With me is Dave Steffey, an
investigator with the Mine Safety and Health
Administration. Today is August 14, 2010. We're here
to conduct the interview of Charles Athey.

First of all, Mr. Athey --- well, Terry,
do you want to identify yourself for the record?

MR. FARLEY:

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

MS. SPENCE:

And I'm Beth Spence with the Governor's
independent investigation.

ATTORNEY WILSON:

Mr. Athey, the first thing we're going to
do is I'm going to ask you to face the court reporter,
and she will swear you in.

CHARLES ATHEY, HAVING FIRST BEEN DULY SWORN, TESTIFIED
AS FOLLOWS:

1 -----

2 ATTORNEY WILSON:

3 Terry is going to go through some
4 preliminary matters pertaining to the subpoena.

5 MR. FARLEY:

6 Mr. Athey, if you would, please, just
7 state your full name and mailing address and phone
8 number for the record.

9 A. Charles Athey, [REDACTED]

10 [REDACTED]

11 MR. FARLEY:

12 Okay. Now, I need to enter as Exhibit
13 One a copy of the subpoena that you received. Does
14 that look like a copy of what you received?

15 A. Yes, sir.

16 MR. FARLEY:

17 Does that also look like your signature
18 on the return receipt?

19 A. Yes, sir.

20 MR. FARLEY:

21 And that is Exhibit One, please.

22 A. Actually, my brother picked that up. He signed it
23 for me.

24 MR. FARLEY:

25 All right. Good enough.

1 ATTORNEY WILSON:

2 Do you want that as Exhibits One and Two?

3 MR. FARLEY:

4 Yes, please.

5 (Athey Exhibits One and Two marked for
6 identification.)

7 MR. FARLEY:

8 Also, in accordance with State law, you

9 are entitled to a \$40 witness fee, if you choose to
10 accept it, and you're entitled to 15 cents a mile for
11 each mile you traveled to this location and home for
12 this interview, along with any of the toll fees. Do
13 you wish to receive those?

14 A. It don't matter. I guess.

15 MR. FARLEY:

16 It's up to you. If you do, after the
17 interview we'll need you to quickly fill out a couple
18 of forms that my attorney will help you with at the
19 conclusion of the interview.

20 A. I ain't worried about no money.

21 MR. FARLEY:

22 It's up to you, sir.

23 A. No. That's fine.

24 MR. FARLEY:

25 I'm just obligated to offer you that.

1 A. All right.

2 ATTORNEY WILSON:

3 For the record, there are other

4 individuals in the room with MSHA and with the State
5 of West Virginia. All members of the Mine Safety and
6 Health Administration Accident Investigation Team and
7 all members of the State Accident Investigation Teams
8 shall keep confidential all information that is
9 gathered during witness interviews. Everyone's
10 participation in this interview constitutes their
11 agreement to maintain this confidentiality.

12 Investigators and specialists have been

13 assigned to investigate the conditions and
14 circumstances surrounding the fatalities that occurred
15 at the Upper Big Branch Mine on April 5th, 2010. The
16 investigation is being conducted by MSHA pursuant to
17 Section 103(a) of the Federal Mine Safety and Health
18 Act and by the West Virginia Office of Miners' Health,
19 Safety and Training. As part of that investigation,
20 we are interviewing witnesses, and we appreciate you
21 coming in and assisting us today.

22 You may have an attorney or a personal

23 representative with you today. Do you have an
24 attorney or a representative?

25 A. No, sir.

1 ATTORNEY WILSON:

2 No?

3 A. No, sir.

4 ATTORNEY WILSON:

5 Your identity and the content of this

6 interview will be made public at the conclusion of the

7 interview process and may be included in a public

8 report of the accident, unless you request that your

9 identity remain confidential. If you request

10 confidentiality, we will keep your identity

11 confidential to the extent permitted by law. In other

12 words, if a judge orders us to reveal your name or

13 some other law, such as the Freedom of Information

14 Act, requires that we reveal your name, we may do so.

15 Also, there may be a need to use any information that

16 you provide to us in other investigations or in

17 hearings concerning the explosion. Do you understand

18 your rights to request confidentiality?

19 A. Yes, sir.

20 ATTORNEY WILSON:

21 Do you have any questions about that?

22 A. No, sir.

23 ATTORNEY WILSON:

24 After the investigation is complete, MSHA

25 will issue a public report detailing the nature and

1 the causes of the fatalities in the hope that greater
2 awareness about the causes of accidents can reduce
3 their occurrence in the future. Information obtained
4 through witness interviews is frequently included in
5 those reports. We've interviewed over 160 people.
6 We're going to be interviewing more people. We ask
7 that you not discuss your testimony with anyone. All
8 right?

9 A court reporter will be recording the
10 interview, so please speak loudly and clearly. If you
11 do not understand the question asked, please ask that
12 we rephrase the question. If you need to take a break
13 at any time, just let me know and we'll go off the
14 record. I want to thank you in advance for your
15 appearance here. Your cooperation is important in
16 making the nation's mines safer.

17 After we have finished asking questions,
18 we'll provide you with an opportunity. If there's
19 anything else that you want to add to the record,
20 we'll give you that chance at the end. Also, if you
21 think of any additional information after the
22 interview, you can contact Norman Page, who is MSHA's
23 lead accident investigator, here at the Mine Academy.
24 And I'm giving you a letter right now which contains
25 the contact information for Mr. Page. It also

1 contains information concerning your rights as a miner
2 under the MINE Act. And you can find additional
3 information concerning your rights at MSHA's website,
4 which is www.msha.gov. Terry, is there anything else
5 that you wanted to add?

6 MR. FARLEY:

7 Yes. Mr. Athey, I'd like to advise you
8 on behalf of the Office of Miners' Health, Safety and
9 Training, that the West Virginia State Mining
10 Regulations also provides protection against
11 discrimination for miners who participate in these
12 investigative interviews. I'd like to pass along to
13 you some contact information from the West Virginia
14 Board of Appeals. The Board hears complaints from
15 miners regarding any form of discrimination. And
16 should you experience any problems, by all means,
17 contact the Board. I would caution you, should you
18 have a problem, you need to file the complaint within
19 30 days. Also you have my business card and the phone
20 number for Mr. Bill tucker, our lead investigator, if
21 we can assist you in any way.

22 ATTORNEY WILSON:

23 Thank you. Mr. Athey, I remind you that
24 you are under oath. I will turn the questioning over
25 to Dave Steffey.

1 EXAMINATION

2 BY MR. STEFFEY:

3 Q. Please state your full name and spell your last
4 name.

5 A. Charles Athey, A-T-H-E-Y.

6 Q. Okay. And Charles, please state your address and
7 telephone number?

8 A. [REDACTED] .

9 Phone number is [REDACTED]

10 Q. Okay. Are you appearing here today voluntarily?

11 A. I was subpoenaed.

12 Q. Has anybody made any promises concerning the
13 testimony you're about to give?

14 A. No, sir.

15 Q. Has anybody given you anything in exchange for the
16 testimony you're about to give?

17 A. No, sir.

18 Q. Has anybody made any threats?

19 A. No, sir.

20 Q. Has anybody else interviewed you concerning the
21 accident and your knowledge of the conditions in the
22 mine?

23 A. Massey's lawyers.

24 Q. Okay. And when did that interview take place?

25 A. Oh, it was --- I think it was about two months ago

1 or a month ago.

2 Q. Where did this interview take place?

3 A. Elk Run office.

4 Q. Elk Run office?

5 A. Yes, sir.

6 Q. Did they caution you about this interview?

7 A. I don't know if they did or not. I don't know if
8 they did.

9 Q. Do you remember any instructions they gave you
10 about this interview?

11 A. No. They might have said that I might have been
12 called or you all was going to talk to us.

13 Q. Did they ask to speak to you after you were
14 interviewed here?

15 A. No, sir.

16 Q. Mr. Athey, how many years of mining experience do
17 you have?

18 A. A year and eight months.

19 Q. A year and eight months?

20 A. Yes.

21 Q. Would you please give us a description of your
22 coal mine employment history, just a brief
23 description?

24 A. It's always been outby, just whatever.

25 Q. Do you have any mining certifications?

1 A. No.

2 Q. Is your entire work history with Massey?

3 A. Since I've been in the mines, yes, sir.

4 Q. Are you presently employed?

5 A. Yes, sir.

6 Q. Where at?

7 A. Hunter Peerless.

8 Q. When did you start there?

9 A. Right --- it was the last part of April. I don't
10 remember exactly what date.

11 Q. Okay. What's your present job title?

12 A. Scoop man.

13 Q. When was your first day of employment with the
14 Upper Big Branch Mine?

15 A. Is that counting when I was a contractor?

16 Q. Yeah. When did you start as a contractor?

17 A. It was in November, the first part of November.

18 Q. November 2009?

19 A. '08.

20 Q. '08?

21 A. No, I'm sorry --- yeah, it was '08.

22 Q. Okay.

23 A. No. It was 2009.

24 Q. 2009?

25 A. Yeah, because I ain't been there --- December made

1 me a year.

2 ATTORNEY WILSON:

3 Just so the record is straight, the
4 accident occurred in April of 2010.

5 A. '10, right. And I worked there December, that
6 December. December was a year for me.

7 BY MR. STEFFEY:

8 Q. So December of '09 was a year for you?

9 A. Yeah. December of '09 was a year for me.

10 Q. So you started as a contractor in November of '08?

11 A. Yes, sir.

12 Q. When were you hired by the company? Were you
13 hired by the company in December?

14 A. December the 16th, I think.

15 Q. Of 2008?

16 A. Yes, sir.

17 Q. Did you receive the Massey Initial Training?

18 A. Yes.

19 Q. When did you receive that?

20 A. The day before I started.

21 Q. Okay. And what subjects did they cover?

22 A. Oh, gosh. They showed us --- took us in the
23 trailer and, you know, turned the lights out and I
24 guess --- I mean, it's been a year ago. I really ---.

25 Q. Okay. And you said your job assignment at Upper

1 Big Branch was outby?

2 A. Yes.

3 Q. Has that always --- was that your job assignment,
4 the first thing you started at Upper big Branch?

5 A. Yes, sir.

6 Q. What about when you were a contractor, what did
7 they have you doing?

8 A. The same thing, outby work.

9 Q. Did you receive any job training at Upper Big
10 Branch?

11 A. As in?

12 Q. Any task training?

13 A. Yes, sir, pretty much anything I went around.

14 Q. When you were working outby, what were you working
15 on?

16 A. When I first started, we just had set up the head
17 for Four section, and we went up there and helped load
18 track. And I'm trying to think where we went after
19 that. I think we started doing the belt for the
20 longwall.

21 Q. Okay.

22 A. And after we got done with the belt, with the
23 longwall, we went down to the Glory Hole to clean it
24 up for our sections and just odd jobs.

25 Q. Your first day as a contractor there, where did

1 they take you in the mine?

2 A. I'm trying to think. I really ain't for sure. I
3 think we went --- I think we went to Four section to
4 set it up.

5 Q. Did you go anywhere else in the mine that day?

6 A. I think they took us --- showed us around and
7 showed us the airways or the escapeway and --- I
8 really ain't for sure. It's ---.

9 Q. I understand. What about escapeways? Did they go
10 over escapeways with you?

11 A. Yes, showed us --- of course, I think they showed
12 us the map. And I think we went and walked out on
13 Three section. We walked the airway out from Three
14 section.

15 Q. What did they tell you about the escapeways?

16 A. Just to follow the green area and told us about
17 the safety rope and ---.

18 Q. Okay.

19 A. Told us as a red hat if something would happen, we
20 would --- one of them would take us out.

21 Q. Okay. Did you have your own spotter, methane
22 detector?

23 A. No, sir.

24 Q. You didn't have one. Who had one?

25 A. Mike Kiblinger and Marvin Perdue.

1 Q. Who was Mike Kiblinger?

2 A. He was my mentor.

3 Q. Your mentor. What's that?

4 A. The one that trained us.

5 Q. Okay. What about now where you're working at, do
6 you have your own spotter now?

7 A. No, sir.

8 Q. Are you qualified by MSHA to conduct methane and
9 oxygen deficiency checks?

10 A. I guess everybody is.

11 Q. When you were working outby at UBB, when you first
12 started there as a contractor, how many company people
13 were with you in your group?

14 A. There was me and --- there was me, Erik, Marvin
15 and Mike. That's --- probably about four of us.

16 Q. And who had methane detectors?

17 A. Mike and Marvin.

18 Q. Did you ever see them use them?

19 A. Yes, sir.

20 Q. Did the company give you any other kinds of
21 training?

22 A. Just whenever you hire in and annual training.

23 Q. All right. Now, you said how many people were
24 typically on your outby crew?

25 A. About four.

1 Q. Okay. And where did you guys typically work at?

2 A. Just really all over. Are you talking about as a
3 red hat or once I reached black hat?

4 Q. When you were a red hat and then later as a black
5 hat, any areas stand out in particular?

6 A. No, just the Four section because we helped set it
7 up, and the longwall belt.

8 Q. What portal did you typically enter?

9 A. When I first started, it was the Performance side.
10 And they finally moved us over to the Ellis side.

11 Q. Did you ever have to travel through any equipment
12 doors?

13 A. The doors that open?

14 Q. Yeah.

15 A. Uh-huh (yes).

16 Q. Track doors?

17 A. Yeah. There was only a thousand of them in that
18 mines.

19 Q. Were these doors automatic or did they have to be
20 opened by hand?

21 A. I guess the first four sets was automatic and
22 there was some that was automatic, but they was broke,
23 so we had to open them up by hand.

24 Q. What kind of shape were these doors in?

25 A. Oh, they'd stick them in new and two or three days

1 later they'd get ripped out. I don't know how many
2 times we'd put them back.

3 Q. Why would they get ripped out?

4 A. The motors would hit them. The mantrips would hit
5 them. It was kind of on a downgrade, and them big
6 motors, they just don't stop on a dime.

7 Q. So you were going back to work on these things
8 very often?

9 A. Yeah. We would stop all the time and have to fix
10 them.

11 Q. Were they airtight, perform a good airlock?

12 A. No. There was a lot of times you would go down
13 there and there was air coming through them. We would
14 have to stop and put new block and plaster them.

15 Q. Are you familiar with the equipment doors that
16 were at Break 78?

17 A. Yes, sir.

18 Q. How often were you around those doors?

19 A. I'd go through them all the time, not every day,
20 but ---.

21 Q. Were they automatic or did you open them by hand?

22 A. They was supposed to have been automatic, but we
23 had to open them by hand.

24 Q. What kind of condition were they in?

25 A. They stayed pretty rough.

1 Q. When you would open those doors at Break 78, could
2 you feel any changes in the air? Could you describe
3 to me what you felt?

4 A. Well, as long as they all were shut, not really.

5 Q. But when you opened them?

6 A. Well, if you opened the first set, the other set
7 was shut.

8 Q. Yeah.

9 A. And then it just ---.

10 Q. When you opened the first set, could you feel any
11 change in airflow?

12 A. No.

13 Q. No. Did you ever find them open?

14 A. Yeah. There for a while they was --- as we all
15 started going in, the mantrips wasn't --- would be
16 another mantrip would leave them open right in front
17 of us. But I mean, if it was just one mantrip, no.

18 Q. So they would leave them open if there were
19 several mantrips ---

20 A. Coming in behind.

21 Q. --- going in? What about when you were coming
22 out, would they leave them open then?

23 A. If there was a mantrip in behind them. Then they
24 all got in trouble. I think Everett about fired a
25 whole crew for leaving them open.

1 Q. Did the section crews, the headgate crew, the
2 tailgate crew, did they quite at about the same time?

3 A. I ain't for sure what time the tailgate --- the
4 longwall crew quit, but the section crew quit pretty
5 much on time, the same time every day.

6 Q. Okay. So both section crews, did they come out
7 back to back and go in?

8 A. I ain't for sure how they would do it.

9 Q. Okay. Any other doors in the mine that you found
10 open?

11 A. No. I guess they left them all open at one time,
12 you know.

13 Q. What about --- let's come down here to the Ellis
14 Portal. You turn out here left hand and go out toward
15 what was going to be the mini-panel. Were you ever
16 over in there?

17 A. Yes, sir.

18 Q. What were you over in there for?

19 A. We was setting up for the new panel or longwall,
20 whatever they was going to do over there.

21 Q. Okay. There's a row of stoppings right here just
22 prior to where the headgate for the new mini-panel was
23 to turn off coming across here. You had a regulator,
24 a stopping and two sets of equipment doors. Can you
25 tell me what kind of shape these stoppings were in?

1 A. I think these were Kennedy panels we stuck in.

2 Q. They were? What kind of shape were they in?

3 A. Pretty decent.

4 Q. Any holes in them?

5 A. No, because I sealed them good, me and Marvin.

6 Q. What about these equipment doors right here?

7 A. They was --- if I think where them are at.

8 Q. Now, these are the most inby set, this down here.

9 A. This was ---.

10 Q. Now, there's two more sets up here.

11 A. I don't know if few went down this far.

12 Q. You don't know if you went down that far?

13 A. No. But we stuck --- we stuck some Kennedy panels
14 in that went straight across.

15 Q. This track that runs down through here ---.

16 ATTORNEY WILSON:

17 And just so the record's clear, we're

18 talking about an area just outby the short longwall
19 projected panel.

20 A. We stuck some --- I was the one that stuck the
21 Kennedy panels in. It was my crew. I just don't
22 remember them doors being there. I mean, I could be
23 wrong, but I just don't remember the doors being
24 there. I was thinking we stuck Kennedy panels all the
25 way across it.

1 BY MR. STEFFEY:

2 Q. There is a set of doors there. Now, there's track
3 that runs through here and it runs under these doors.
4 Do you know how far over in here this track goes?

5 A. No.

6 Q. Were you ever over in this turn over here?

7 A. Because on this side we went down. If this is UBB
8 --- or LBB. Is this LBB? Yeah. If this is LBB, we
9 went down when I first started and pulled some track
10 out.

11 Q. Okay. Back up here toward Ellis Portal, where the
12 first turnoff left handed going toward that mini-
13 panel, there's two sets of doors here.

14 A. Right.

15 Q. What can you tell me about these doors? Did you
16 ever work in this area?

17 A. Yes, sir.

18 MR. STEFFEY:

19 Can I have a blue marker?

20 BY MR. STEFFEY:

21 Q. Would you circle this area for me and indicate
22 that area that you worked in?

23 WITNESS COMPLIES

24 BY MR. STEFFEY:

25 Q. Thank you.

1 MR. STEFFEY:

2 The record would indicate that he marked
3 the area that he worked in with a blue marker just
4 inby the Ellis Portal.

5 ATTORNEY WILSON:

6 And why don't you, off from the side
7 here, write area worked.

8 WITNESS COMPLIES

9 A. See, these doors was pretty decent. They was ---
10 I think they was E set, and then they used to have a
11 double stopping. If I'm write, we tore that out and
12 put these doors in. I remember.

13 BY MR. STEFFEY:

14 Q. There's a set of doors there.

15 A. Yeah. There was a double stopping that we tore
16 out and put some doors there.

17 Q. Now, were you on the crew ---?

18 A. They was new doors.

19 Q. Now, were you on the crew that was cutting the
20 belt channel?

21 A. I wasn't on the crew. I was up there.

22 Q. You was up there?

23 A. Yeah.

24 Q. Were you up there when they were cutting the belt
25 channel?

1 A. Yeah. Are you talking about the overcasts?

2 Q. Yeah.

3 A. Yeah, I was up there.

4 Q. Why did they have --- leave their mantrip parked
5 inby and then block it in there when they were cutting
6 the belt panel?

7 A. I have no idea, because we usually just walked in.
8 I mean, my crew, when we was working right there, we
9 usually just walked in.

10 Q. Did you ever see them just prop these doors open
11 when they were working right in here?

12 A. I ain't never saw them doors.

13 Q. The first set of double doors?

14 A. No. They would always open the first door and
15 park their mantrip in here and close them. I never
16 saw them open. Now, these doors I have.

17 Q. Never saw them propping them open with block or
18 anything?

19 A. No.

20 Q. When these doors were open in here, what could you
21 tell me about this air direction? Could you feel the
22 air direction change?

23 A. You know, I really ain't for sure. I mean, I know
24 when I went in the day of the explosion --- that
25 morning, the air was going down the track.

1 Q. So air was going in?

2 A. Yeah, it was all going down the track, because I
3 had to go shovel belt that day.

4 Q. Which way did the air normally go?

5 A. It came out of the return. I think it came up and
6 around and went out the ---.

7 Q. So the air in your belt air course and everything
8 went out?

9 A. Yeah. Yeah. And then when I went in Monday
10 morning, it all was coming down the track?

11 Q. At Ellis Portal?

12 A. Yeah.

13 Q. Now, there was a vent supplement submitted to
14 MSHA, and it was subsequently approved, showing how
15 they were going to do ventilation in this area. Did
16 anybody ever go over those vent supplements with you?

17 A. No, sir.

18 Q. Did anybody ever go over the ventilation plan at
19 all with you?

20 A. No, sir. I was just told to go build stoppings.
21 They marked them for me, and that's what I did.

22 Q. You know, the law says that they're supposed to go
23 over any vent changes with all affected persons?

24 A. No, I didn't know.

25 Q. Did anybody ever ---

1 A. No.

2 Q. --- tell that to you?

3 A. No.

4 Q. Well, there was a vent supplemented submitted for
5 this area, and it consisted of several parts. And
6 that was what you all were working under right there.
7 No one ever covered that with you or your crew?

8 A. No. See, I --- we couldn't figure out why they
9 stuck doors here and then I think right over here on
10 the next thing they stuck another set of doors.

11 ATTORNEY WILSON:

12 And you're pointing to the doors ---

13 A. On the track.

14 ATTORNEY WILSON:

15 --- towards the Ellis Portal, outby that
16 crossover area where you were working?

17 A. Yeah. We stuck another set of doors in that was
18 on the tracks.

19 BY MR. STEFFEY:

20 Q. Did you ever find these doors open?

21 A. They stayed open.

22 Q. They stayed open?

23 A. Yeah.

24 Q. Okay.

25 A. And then there was another set I guess a break,

1 maybe two breaks over, that we stuck in and they
2 stayed open.

3 Q. These doors were open when I made this area.

4 ATTORNEY WILSON:

5 Just to clarify, you've been talking
6 about the work going on in the area that you marked as
7 area worked. What was the time period that you were
8 working in that area?

9 A. I guess about a month because we just started up
10 there. I mean, I guess that last month, bringing
11 equipment up there. It might have been a little bit
12 before that because we had --- like I said, we went
13 down there and built all of these stoppings and ---.

14 BY MR. STEFFEY:

15 Q. Is this the area that you were working in just
16 prior to the explosion?

17 A. Yes, sir. Well, the day of the explosion I was
18 shoveling belt on Four Head.

19 Q. Where is Four head?

20 A. That's down here somewhere.

21 Q. So it's between Ellis Switch and Ellis Portal?

22 A. Right. Right.

23 Q. Okay. Were you in the mine at the time of the
24 explosion?

25 A. No, sir. I just walked out.

1 Q. Okay. Let's come back to this area right here,
2 the area that you got circled as area worked, because
3 I'm real interested in this. Now, how long were you
4 guys over in here did you say?

5 A. About a month.

6 Q. About a month?

7 A. Yeah, before they started bringing equipment and
8 actually cutting.

9 Q. And who all was on your crew?

10 A. Me and Marvin Perdue and Tattoo, I don't know his
11 real name, they called him Tattoo, and Dennis Simms.

12 Q. Okay.

13 A. A lot of times Wayne Persinger would come down and
14 help.

15 Q. Who brought the supply motor and the flatcar in
16 and left it parked between the doors?

17 A. I don't know for sure.

18 Q. You're not for sure on that?

19 A. No, I have no idea.

20 Q. Okay. Do you remember when you were walking out
21 from Four Head inby this point seeing these doors
22 open? Do you remember looking over and noticing that?

23 A. I'm trying to think because that's where I kept
24 their toolboxes at. No. No, because I walked up the
25 track and over a little bit to find Marvin.

1 Q. So was Marvin Perdue working in this area on this
2 day?

3 A. I ain't for sure where he was working at that day.

4 Q. Do you remember ---?

5 A. Because that was --- we first came in and he told
6 me Everett was going to come and get me. I had to go
7 with him.

8 Q. But he was the boss over this crew?

9 A. No, he was not the boss.

10 Q. Okay. Who was the boss over this crew?

11 A. I guess Wayne. Nobody really. They'd just give
12 us our --- tell us what to do and you'd go do it.

13 Q. You had how many men on your crew that day?

14 A. It was me and Marvin and Dennis Simms and Tattoo.
15 I don't know his --- I just know him by Tattoo.

16 Q. Who was the foreman?

17 A. Terry Moore.

18 Q. Did any of you guys have a methane detector?

19 A. I never had one.

20 Q. Anybody else have one?

21 A. I think Marvin always kept his.

22 Q. Okay.

23 A. And actually, I think Dennis had one.

24 Q. When you were underground that day, were you near
25 a mine phone?

1 A. Yes, sir.

2 Q. Okay.

3 A. Because about two o'clock I heard them --- kept on
4 --- I think it was Dino talking to somebody outside
5 and saying something kept on phasing out on the box,
6 power box. It was about two o'clock because I was
7 waiting on --- deciding on whether I should have
8 walked out or not.

9 Q. Did you hear anything else that day?

10 A. No.

11 Q. Anything out of the ordinary?

12 A. No. That was it.

13 Q. Was there ever any call out saying they had
14 methane or somebody's spotter was over range?

15 A. No, not that I heard.

16 Q. Okay. So you were around the belt head about two
17 o'clock and you heard Dino call out, saying that
18 something was what?

19 A. Kept on phasing out.

20 Q. Kept on phasing. Did you ever find out what that
21 was?

22 A. No. I have no idea.

23 Q. Do you know if they had been having any problems
24 on that section that day ---

25 A. No.

1 Q. --- other than that?

2 A. No.

3 Q. What about ventilation problems inside this mine,
4 what can you tell me about those? Do you remember
5 ever having any?

6 A. No. I mean, as far as I know, it was normal. I
7 don't know how all that stuff works. I mean, I
8 couldn't tell you. But I do --- the only reason I
9 knowed that the air was moving wrong that day coming
10 down the track because they were cutting and you could
11 see all the dust. And Everett come and got me and
12 told me he needed me to shovel belt.

13 Q. Where were they cutting at?

14 A. In here somewhere. They was cutting over to the
15 belt drive.

16 Q. Cutting a belt channel?

17 A. Yeah.

18 Q. And you could see the dust on the track?

19 A. Yeah, you could see it because I was sitting here,
20 hesitating, waiting on it to clear up to walk down
21 there to Four Head.

22 Q. Okay. Do you remember any other air
23 reversals, ---

24 A. No.

25 Q. --- any other air was --- had changed?

1 A. No.

2 Q. Okay. So you --- I kind of jumped ahead here, but
3 it kind of led us this way. We'll come back to some
4 other stuff, though. What were the roof and rib
5 conditions like? What can you tell me about them?

6 A. It was pretty good, I guess. I mean, nothing
7 major I don't guess.

8 Q. Did you ever see any methane bubbling up through
9 the water here? Any water in that area?

10 A. Well, yeah, there was water, but I didn't pay
11 attention to that stuff.

12 Q. Never seen anything bubbling through?

13 A. No, at other places in the mines, but I don't
14 remember seeing anything up there.

15 Q. Okay. But you had seen it at other places?

16 A. Yes, sir.

17 Q. Where were those other places; do you remember?

18 A. I'd say one of them was One section, because I was
19 down there helping them --- I went down to help Ron.
20 He was scooping, and I had to go down there to get the
21 scoop.

22 Q. Now, where is One section?

23 A. A new section they was cutting. Yeah, I think it
24 was over here.

25 Q. Now, you had the tailgate section, the headgate

1 section and the longwall.

2 A. Okay. Well, maybe I'm wrong. It was this one
3 right here.

4 Q. And that's the headgate?

5 A. Yeah.

6 Q. And that was where Dino's crew was working?

7 A. I think, yeah. The other crew was working on the
8 other side.

9 Q. Okay. All right. So you saw some methane
10 bubbling up up in here?

11 A. Well, that's --- they said that's what it was.

12 Q. Okay.

13 A. One of the old boss foremans, I went with him, and
14 we went to check the pumps when I first started. He
15 said it was more than likely methane bubbling up, so I
16 guess that's what it was.

17 Q. Did anybody ever seem alarmed by this methane
18 bubbling up?

19 A. If that's what it was, no.

20 Q. Did anybody ever say if it got worse?

21 A. No.

22 Q. What about the tailgate section, were you ever
23 over on the new tailgate section?

24 A. Maybe about a week --- this is Head's crew, ain't
25 it?

1 Q. I'm not sure. I know that's the new tailgate.

2 A. That's the new one. Yeah, I've been over there a
3 couple times.

4 Q. What can you tell me about it?

5 A. I'm trying to think what we done down there. We
6 had to go over there and build some stoppings, so I
7 was working with Terry Moore on the evening shift.

8 Q. What did you have to build the stoppings for?

9 A. And some overcasts. I guess they was doing an air
10 change.

11 Q. When was this?

12 A. I guess it was a couple --- about three weeks
13 maybe during --- before all that happened.

14 Q. Okay. How often did they make air changes in this
15 mine?

16 A. It's hard telling about them. I mean, we was
17 always building stoppings or doing the overcasts.

18 Q. They never told you why, though?

19 A. No. I didn't ask them. I just do what I'm told.

20 Q. What about the longwall, were you ever around the
21 longwall any?

22 A. Yeah, a little bit. I mean, not a whole lot. Not
23 around the wall itself. We went behind the wall.

24 Q. You went behind the wall. What were you doing
25 back there?

1 A. They was trying to save the return.

2 Q. Crib it?

3 A. Crib, pins and ---.

4 Q. What was that like back there?

5 A. It got kind of eerie sometimes. You would be
6 working there one day and come back and all your
7 supplies would be covered up the next day.

8 Q. So the top was bad?

9 A. Yeah, and the sides was bad.

10 Q. Sides was --- the ribs were bad?

11 A. Yeah.

12 Q. What about the floor, did you ever see ---?

13 A. I didn't stick around long enough to see it.

14 Q. What about water?

15 A. There was some down there, yeah.

16 Q. How deep did it get?

17 A. Without them pumps, I guess it was chest deep.

18 Q. Did it ever roof out?

19 A. No, I never saw it.

20 Q. Never saw it?

21 A. No.

22 Q. What about on the tailgate side, were you ever
23 over on the tailgate?

24 A. No, sir.

25 Q. What about going out toward the Bandytown fan?

1 A. That new fan?

2 Q. Yeah, the new big fan out ---?

3 A. We've been out there. I helped them build the
4 stoppings and stuff for the fan.

5 Q. Okay. When did you build the stoppings out toward
6 Bandytown?

7 A. I don't remember exactly, just whenever they first
8 stuck it in until they turned it on. Well, it was
9 Kennedy panels. Kennedy panels.

10 Q. Can you remember approximately when you build
11 those Kennedy panels?

12 A. I guess in 2009 sometime.

13 Q. Do you remember problems with methane or water out
14 through there?

15 A. I think they had some water, yeah, because they
16 had a big old --- I guess ditch or something dug where
17 they took the miners and ---.

18 Q. How was the roof out there?

19 A. Pretty good as far as I could tell. I didn't
20 notice ---.

21 Q. Was there any work going on around the Bandytown
22 fan just prior to the explosion?

23 A. I have no idea. I don't know.

24 Q. Don't know. Didn't hear of anything. Okay.

25 Let's come back to this area right here, the headgate

1 area where you were working and you came back and the
2 tools would be covered back up the next day. Did you
3 all ever report any concerns to management outside?

4 A. I didn't. Like I say, I just --- I mean, I was
5 new at it. I didn't, you know, know.

6 Q. Did you have to build any Kennedy panels or
7 anything up through here?

8 A. Yeah, about 26 breaks long, straight run.

9 Q. Straight run of Kennedy panels, huh? What was the
10 purpose of that?

11 A. Something to do with the air. That's all they
12 said.

13 Q. Okay. So you were knocking stoppings a lot and
14 building stoppings?

15 A. Yeah, just different --- shoveling belt.

16 Q. Shoveling belt. Now, where all did you shovel
17 belt at in the mine?

18 A. Mainly Ellis punch-out.

19 Q. Mainly Ellis punch-out. Did you ever shovel ---?

20 A. Yeah. I had to go down to 42 Break and shovel
21 that one, and then we had to --- I had to --- I guess
22 the last week prior to the explosion we shoveled it
23 and then me and Everett went down and dusted he whole
24 belt. We was dusting the whole beltline.

25 Q. And how did you dust the beltline?

1 A. We had just one of them pumps that you pour dust
2 in.

3 Q. And how much dust did you use that day?

4 A. Oh, gosh. I guess it was Monday to Saturday, and
5 then the next --- well, it was Monday through
6 Thursday, and then we had Easter break, and I thought
7 that's what we was going to go do because he came and
8 got me again and told me he needed me to shovel belt.

9 Q. How often were the belts rock dusted?

10 A. I ain't for sure. I mean, when I shoveled belt, I
11 would rock dust every day.

12 Q. Did you ever have any areas along the belt that
13 were black, float dust or anything like that?

14 A. No. I mean, just from coal and stuff, I guess.

15 Q. So you just mainly spent your time shoveling loose
16 coal and ---?

17 A. Yes.

18 Q. Did They have any track-mounted dusters or
19 anything like that?

20 A. They had one that ran at night, I think.

21 Q. And how often did they use that?

22 a. I think at least once a week I saw it going up and
23 dusting.

24 Q. Did they have their own dust crew or ---?

25 A. Yes, sir. They had two guys on --- one on a motor

1 and one just throwing dust.

2 Q. Did they keep them all --- do you know who those
3 guys were?

4 A. No. I know they fired two. And I think --- I
5 think Clifford and Stewart was on the last part. We
6 all worked together and they split us up.

7 Q. So they had two, they fired them, is that what I
8 understood you ---?

9 A. For sleeping.

10 Q. For sleeping. So who did the rock dusting after
11 that?

12 A. I think Clifford and Stewart on the motor. I
13 don't know what he used to do.

14 Q. What did Clifford do?

15 A. Well, when he left --- he was down there with us
16 because we worked down toward the Glory Hole cutting
17 out the head for the new longwall over here, and we
18 just --- whatever they told us. We would bolt. We
19 would run scoop. They stuck us all up here. And I
20 think they stuck him on the hoot owl. I think.

21 That's what --- I ain't for sure, but I think that's
22 what he --- they stuck him doing.

23 Q. Okay. Were you ever in this Glory Hole area over
24 here?

25 A. Yes, sir.

1 Q. What can you tell us about that?

2 A. As in?

3 Q. What type of conditions were there?

4 A. It was pretty decent. We went down and cleaned it
5 up, you know, to get all the stuff off the ribs and
6 putting in doors and ---.

7 Q. Was the hole sealed when you were working over
8 there?

9 A. Yes, sir. You mean, the --- just I guess the
10 scoop --- the chute that the coal fell down into,
11 yeah.

12 Q. So it was sealed off and sealed up?

13 A. No, it wasn't --- I mean, it just had --- it still
14 had the belt head and stuff.

15 Q. Still had the belt head?

16 A. Yes, sir.

17 Q. Was there air moving going up or down it?

18 A. I ain't for sure. I never ---.

19 Q. Okay. What about up here in what they call the
20 Eight North area, were you ever up in there?

21 A. Just a couple times. I went up there twice, I
22 guess, with Terry Moore when he was fire bossing.

23 Q. So you went up there with him while he was fire
24 bossing; right?

25 A. Yes, sir.

1 Q. Did you find anything?

2 A. No, sir.

3 Q. No hazards?

4 A. No, sir.

5 Q. Did you detect any methane?

6 A. No, sir.

7 Q. What about air movement?

8 A. I mean, it just, I guess, felt normal.

9 Q. Felt normal?

10 A. Yeah.

11 Q. Did you see him take an air reading?

12 A. No. I don't know if he did that night because the
13 normal fire boss had called in.

14 Q. What about ventilation in the mines, did you ever
15 hear of any problems, low air on the sections or
16 longwall?

17 A. There were problems on the section and always
18 changing air on the section.

19 Q. So they always had air problems?

20 A. I mean, I never worked up there, just from hearing
21 people talk.

22 Q. They would talk?

23 A. Yes.

24 Q. Did they get a lot of tickets because of that?

25 A. I don't think too many. I don't know how many ---

1 they was always getting some kind of order --- written
2 up for something.

3 Q. When inspectors would be getting ready to come in
4 the mines, would you guys know that they were getting
5 ready to come in?

6 A. Not until they was in there.

7 Q. Not until they was in there.

8 A. I didn't anyways, because I worked outby.

9 Q. Did you ever hear anybody hollering on the phone,
10 saying there was an inspector coming in?

11 A. No.

12 Q. So ---.

13 A. Of course, a lot of times when the inspector would
14 get there, we went --- had already seen him out there
15 yet.

16 Q. So you knew he was in the parking lot, you knew he
17 was coming?

18 A. Right.

19 Q. You knew he wasn't there just to sit around?

20 A. Right.

21 Q. Do you know if this mine ever mined through a gas
22 well anywhere ---?

23 A. Not that I know of.

24 Q. Did anybody ever talk about the Little Eagle Seam
25 with you, underlying Eagle Seam?

1 A. Uh-uh (no).

2 Q. Nobody ever discussed the seam of coal under you?

3 A. They did once talked about --- a long time ago
4 they said they might try to mine --- eventually mine
5 it, but that was it.

6 Q. Nobody ever discussed any problems resulting
7 from ---

8 A. No.

9 Q. --- the Little Eagle Seam of coal?

10 A. No.

11 Q. What about methane outbursts? Did you ever hear
12 of anybody talk about them or do you know anything
13 about them?

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

15 Q. What about problems with excessive water?

16 A. Well, just behind the wall and stuff, we were
17 constantly trying to get pumps down there. And they
18 had a crew on the tailgate side all the time to check
19 the panels.

20 Q. What kind of pumps did they use? Did you ever
21 help set those pumps?

22 A. No, sir, I didn't help set them.

23 Q. Did you ever hear anybody from management say
24 anything about the water?

25 A. Just said if they didn't get pumped out, the

1 inspectors would shut them down.

2 Q. Okay. What about gate roads, did you ever hear of
3 any water on the headgate section or the tailgate
4 section?

5 A. No, sir, not just ---- besides the normal water
6 behind the wall.

7 Q. You never heard of any water up here on Dino's
8 section?

9 A. No, sir.

10 Q. Now, you mentioned you shoveled belt outby. Were
11 there --- anybody pre-shift those areas before you
12 were working?

13 A. What do you mean as a pre-shift?

14 Q. Before you go in and work in that area, somebody
15 has to examine that area for hazards.

16 A. I guess they did. I mean, ---

17 Q. Anybody ever go ---?

18 A. --- fire bosses would go in.

19 Q. Did anybody ever talk to you about what they
20 found?

21 A. No, sir.

22 Q. Were there any hot spots along the belt?

23 A. As in --- you mean coal or ---?

24 Q. As in spots that had either fallen out or had been
25 mined so high that you couldn't ---?

1 A. No. It was pretty ---.

2 Q. Even around the belt heads you could hold your
3 head up and get up to the roof? You could hold your
4 hand up with a spotter and get up to a foot of the
5 roof?

6 A. Oh, yeah. Yeah.

7 Q. So you had high spots there?

8 A. Yeah, I guess.

9 Q. Did they have a probe or anything to be able to
10 extend a methane detector up?

11 A. I have no idea.

12 Q. No idea?

13 A. I don't know.

14 Q. You know methane gathers in those high points, ---

15 A. Right.

16 Q. --- and that's the reason why you say you've got
17 to get your detector up within a foot of the roof,
18 so ---. The continuous miners in this mine, now they
19 were equipped with methane detectors; right?

20 A. Yeah, I guess. I mean, I don't know too much
21 about the miners.

22 Q. Did you ever hear of anybody bridging one out or
23 otherwise disabling the methane monitor?

24 A. No, sir.

25 Q. Okay. What about on the longwall?

1 A. No, sir.

2 Q. Did you ever hear of anybody disabling it in any
3 way?

4 A. No.

5 Q. Did anybody ever discuss the approved methane dust
6 control plan with you?

7 A. Yeah, they'd read that over. I guess that's what
8 it was.

9 Q. Did anybody ever discuss any changes they were
10 getting ready to make? I may have already asked that.

11 A. As in air or ---?

12 Q. Yeah, air changes. They were getting ready to
13 make an air change. Did they go over it with you?

14 A. No.

15 Q. Okay. Let's go back down to that area that you
16 were working in just inby the Ellis Portal. Now, you
17 had one miner there cutting a belt channel; right?

18 A. Yes.

19 Q. Did you have another continuous miner sitting
20 around in there anywhere? Did you see them take one
21 in?

22 A. Not that I saw, no. I know there was the bolter,
23 there was that miner and then we had the scoop.

24 That's --- as far as I know, that's all that was in
25 there. I just don't pay attention to stuff like that.

1 I mean, ---.

2 Q. You just go in and do your job ---

3 A. Yeah.

4 Q. --- and expect everybody else to do theirs?

5 A. Yeah. I just --- yeah.

6 Q. When that miner was cutting down there and cutting
7 that belt channel, do you know if he was running his
8 scrubber?

9 A. I don't even know what a scrubber is. I hear
10 people talk about it all the time, and like I said, I
11 went over to Hunter Peerless, and this is the first
12 time I've been on --- actually worked on a section.

13 Q. Do you know anything about --- have you ever been
14 underground when a citation has been issued by an
15 inspector?

16 A. When they've written somebody --- not around them.

17 Q. Not around when they've written anything. Do you
18 come outside after one's bee issued?

19 A. Yeah.

20 Q. Have you ever been --- have you ever had to be
21 withdrawn from the mine because of a citation being
22 issued?

23 A. I think there was a couple times they pulled us
24 out over the air, I think it was.

25 Q. What did management have to say about that?

1 A. We all went home, so I didn't really ---.

2 Q. When was that?

3 A. Oh, probably the first part of last year maybe.

4 Q. Do you remember any other times that you had to
5 come outside?

6 A. Just when the fan went off.

7 Q. When the fan went off? Did you ever have a shift
8 canceled due to an unsafe condition?

9 A. No. Like I said, just whenever the fan or
10 something went off.

11 Q. Do you know if anybody ever had any --- expressed
12 any concerns for safety considerations in this mine or
13 any hazards in this mine or they filed a complaint?

14 A. No.

15 Q. You're not aware of that?

16 A. No.

17 Q. Did you ever have any concerns?

18 A. No. I mean, like I said, I trusted the guys I
19 worked with. I mean, Marvin, he wasn't over us, but
20 you know, he had been in it for 30 years and I trusted
21 him. I went to church with him, so he wouldn't have
22 done nothing --- he wouldn't have done anything stupid
23 --- he wouldn't have --- if it was unsafe, wouldn't
24 let us go in.

25 Q. You mentioned a little earlier that they had some

1 ventilation problems on the working section.

2 A. You hear that they had that all the time.

3 Q. Do you know when these started?

4 A. It was there from the time as far as I can
5 remember. I mean, always complaining about not enough
6 air or --- up in the face or ---.

7 Q. And who did that complaining?

8 A. Just everybody, I guess.

9 Q. Did you ever talk to anybody specifically that you
10 can remember that had a complaint?

11 A. No.

12 Q. Do you know if the carbon monoxide system ever
13 went into alarm or alert status while you were working
14 in the mine?

15 A. As far as I know, no.

16 Q. Do you think there was a lot of pressure to run
17 coal at this mine?

18 A. Yeah.

19 Q. Why? What makes you say that?

20 A. The way they was pushing people to get stuff done
21 and --- I mean, Everett, the superintendent, he didn't
22 have control of that mine for months. Wayne Persinger
23 was pushing everybody to get stuff done. When we were
24 working up there, he was pushing about those Kennedy
25 panels and pushing everybody to get stuff done.

1 Q. And who would he push?

2 A. Just I guess Everett and us and telling us we need
3 to hurry up and it had to be done at a certain time,
4 and they were running behind and just stuff like that.

5 Q. Nobody ever went over the plan with you guys as to
6 what you were supposed to be doing down there, as to
7 what the ventilation plan was, what was ---?

8 A. No. They went down and marked it and they marked
9 the ribs or the openings where they wanted the ---
10 now, Marvin and them might now, you know, but I
11 just ---.

12 Q. You were just doing what you was told to do?

13 A. Yeah, pretty much.

14 Q. Do you feel like this pressure may have caused
15 people to take shortcuts, maybe not all the time ---?

16 A. Maybe not all the time, but yeah, some, I guess,
17 especially on the longwall, cutting them new channels
18 and stuff for it.

19 Q. Now, what do you mean? Let's talk about that.

20 A. They was always --- I mean, because they said they
21 was always behind and stuff on cutting the panels.

22 Q. Now, who was they would say they were always
23 behind?

24 A. Just different people. I mean, you'd hear
25 different people talking about it.

1 Q. Did you ever see Chris Blanchard or Jason
2 Whitehead in the mine?

3 A. Yes, sir.

4 Q. Where did you see them at?

5 A. Just going down --- I'd pass them or something
6 going down towards --- you know, they would be in
7 there and they would just go inby different places.

8 Q. Did you ever see them over in the area of the
9 mini-panel where you guys were working?

10 A. Yeah, I did one time, when we first started. They
11 was walking down --- actually, they was coming out as
12 we was going in.

13 Q. Did they stop and talk to your crew or anything?

14 A. No, we didn't talk to them. I mean, I didn't know
15 who they was at the time, and Mike told us who they
16 was. I still ain't for sure if I'd know Blanchard if
17 I saw him today.

18 Q. What about Chris Adkins and Don Blankenship, did
19 you ever see them at the mine?

20 A. No, sir.

21 Q. Now, you mentioned earlier that when they were
22 cutting that belt channel that there was dust over in
23 the beltline where you were working and air was going
24 inby that day?

25 A. Right.

1 Q. So in order for that dust to go over into the ---.

2 MR. STEFFEY:

3 Can we roll that map back out?

4 BY MR. STEFFEY:

5 Q. And we're talking about this area here that you
6 circled, area worked. Now, if they're cutting that
7 belt channel, and I know that belt channel was right
8 in here, just inby these doors, that first set of
9 double doors; right?

10 A. I think, ain't for sure, they was coming across
11 here, this way right here.

12 Q. Yeah. But in order for this air to get over into
13 this belt air course and be dusty where you were at,
14 how did that happen?

15 A. Buddy, I don't know. I mean, like I said, I mean,
16 I don't know. All I know is they just told me to go
17 shovel belt that day, and Five Head, wherever it's at,
18 I mean, from Five Head down, I mean, --- I thought
19 they might have dusted that night, but you could --- I
20 mean, you could just feel the air coming ---.

21 Q. You could feel it coming in?

22 A. Yeah.

23 Q. Okay. That was --- when I first saw, that was my
24 first opinion, they dusted.

25 Q. Do you know anything about a ventilation change

1 that was made over the weekend prior to the explosion?

2 Did you hear anything?

3 A. Just rumors that they went in and changed --- I

4 heard there was a roof fall and that's why they

5 changed the air.

6 Q. Where was there a roof fall?

7 A. I don't know. That's just stuff you hear.

8 Q. Did you hear anything about how they changed the

9 air ---

10 A. No.

11 Q. --- or what they did?

12 A. No.

13 Q. Okay.

14 MR. STEFFEY:

15 Do you have any follow-ups, Terry?

16 MR. FARLEY:

17 Yeah, a couple, three.

18 EXAMINATION

19 BY MR. FARLEY:

20 Q. You said earlier that you helped build some

21 Kennedy stoppings back here around the Bandytown

22 fan ---

23 A. Right.

24 Q. --- like late 2009?

25 A. Just whenever they first stuck the fan in, yeah.

1 Q. Okay. Now, if you look at this map around the
2 Bandytown fan, it shows some permanent stoppings in
3 place at various places. When you built those Kennedy
4 stoppings back there, did you build them in locations
5 like you see here where the stoppings were going to
6 be?

7 A. Yeah. It was actually like --- kind of like, you
8 know, ---.

9 Q. It goes around?

10 A. Yeah.

11 Q. Okay. Now, were you back around that area this
12 year any time?

13 A. No, sir.

14 Q. Did you ever work with a guy named Michael
15 Williams?

16 A. Yes, sir.

17 Q. Okay. When did you last work with Mr. Williams?

18 A. Let's see. They stuck me on second shift, I
19 guess, probably the first part of this year. And when
20 I went back they stuck Mike --- I think they stuck him
21 with Jaybird.

22 Q. Who is Jaybird?

23 A. He's the one that checked the pumps.

24 Q. Is that Burdoff?

25 A. Yeah, Burdoff. I'm trying to think if I worked

1 with him any. I guess that's --- well, we worked on
2 the belt, the longwall belt together, but I ain't
3 really for sure.

4 Q. But oh, let's say, a few --- a week or two or
5 three before the explosion on April 5th, do you know
6 if Mr. Williams would have been working with Burdoff
7 at that time?

8 A. I really ain't for sure.

9 Q. Last count you had on him, he was working with
10 Burdoff?

11 A. Yeah.

12 Q. You said earlier that Mike Kiblinger was your
13 mentor?

14 A. Right.

15 Q. Was he just your mentor when you started there or
16 was he your mentor ---?

17 A. Just when I first started, I guess, up until I got
18 my black hat.

19 Q. Now, I think Mr. Kiblinger may have had a crew
20 down here at this Mother Drive construction area, down
21 here at the mouth of 22 Headgate?

22 A. Right.

23 Q. Did you do any work in that area?

24 A. Yes, sir, that's when we helped put the head in.

25 Q. Okay. When was the last time you were in that

1 area?

2 A. Let's see. I'm going to say probably sometime in
3 March, early March maybe.

4 Q. Okay.

5 A. Maybe late part of it. Just --- I mean, one day I
6 would be there and the next day I would be somewhere
7 else.

8 Q. They moved you around?

9 A. Right.

10 Q. Didn't you have to cut a belt channel or something
11 down here, too?

12 A. Yes. Yes, sir.

13 Q. Okay. Now, when you were working around that
14 area, did you notice stoppings gone, knocked out,
15 holes in them, doors open, anything like that?

16 A. Well, there was one set when you first went in
17 that we took out and then they stuck back and you
18 stuck back in and you took out. We had the stoppings
19 --- I really ain't for sure about this map. This is
20 the belt channel. I really ain't for sure where we
21 are.

22 Q. The Mother Drive construction area would be around
23 that area, around 130 there?

24 A. Yeah. And then there should be another set of
25 doors. We stuck a new set in here and they came

1 across the track and put another set of doors ---
2 well, the old set of doors that was there, that was
3 just pretty much tore up, you put them there.

4 Q. Did you hear of anybody on 22 Headgate complaining
5 of air problems while you guys were working on that
6 Mother Drive construction site?

7 A. No. No.

8 Q. Okay.

9 ATTORNEY WILSON:

10 Beth?

11 MS. SPENCE:

12 No.

13 MR. STEFFEY:

14 I guess it's back to me. Do you got
15 anything, Bob?

16 ATTORNEY WILSON:

17 No.

18 RE-EXAMINATION

19 BY MR. STEFFEY:

20 Q. When you were working right in here, do you ever
21 remember your eyes burning?

22 A. No.

23 Q. And when I say right here I mean at the mouth of
24 22 Headgate.

25 A. Right. No, not that I can remember. I get

1 heartburn and stuff.

2 Q. Did anybody complain of their eyes burning?

3 A. No, not as far as I know of.

4 Q. What about the men working on the 22 Headgate, did
5 you ever hear them complain that their eyes were
6 burning?

7 A. No.

8 Q. Back down in that area that you circled area
9 worked, when that miner was cutting there, the miner
10 has got to have water on it; is that correct?

11 A. Yeah, I guess. I don't know.

12 Q. Do you know where that water source came from?

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

14 Q. Did you help put the water up to the miner when
15 they put it in there?

16 A. No, sir, I did not.

17 Q. Okay.

18 MR. STEFFEY:

19 All right. I think I'm --- I don't have
20 anything else.

21 ATTORNEY WILSON:

22 Before we finish, let me mark the map
23 that we were referring to as Exhibit Athey Three.
24 (Athey Exhibit Three marked for
25 identification.)

1 ATTORNEY WILSON:

2 If there's nothing further, Mr. Athey, on
3 behalf of MSHA and the office of Miners' Health,
4 Safety and Training, I want to thank you for appearing
5 today and answering our questions. Your cooperation
6 is very important to the investigation as we work to
7 determine the cause of the accident. as I indicated
8 earlier, we will be interviewing additional witnesses,
9 so we ask that you not discuss your testimony with
10 anyone.

11 After questioning other witnesses, we may
12 call you if we have any follow-up questions. If at
13 any time you can think of any additional information
14 that you think would be helpful to our investigation,
15 please contact either MSHA at the contact information
16 that is provided or the contact information that Terry
17 provided you for the State.

18 I want to --- I do want to remind you of
19 your rights under the Mine Act. You're coming in and
20 talking with us today is considered protected
21 activity. If anyone takes any adverse action against
22 you, discrimination or anything like that, as a result
23 of your cooperating with this investigation, you
24 should --- you're encouraged to contact MSHA and file
25 a complaint under Section 105(c) of the Mine Act. And

1 you can do that by contacting the MSHA district office
2 in Mount Hope. And as I indicated earlier, you can
3 find additional information concerning your rights
4 under the Mine Act at MSHA's website, www.msha.gov.

5 Before we finish, I do want to give you a
6 final opportunity. If there's anything else that you
7 feel would be helpful or anything else that you would
8 like to add to the record, you may do so now.

9 A. I don't have anything.

10 ATTORNEY WILSON:

11 Okay. Again, I want to thank you for
12 your cooperation in this matter, and we'll go off the
13 record.

14 * * * * *

15 STATEMENT UNDER OATH CONCLUDED AT 1:44 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