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Transcript of the Testimony of Berman Cornett

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STATEMENT UNDER OATH

OF

BERMAN CORNETT

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 Thursday, August 26, 2010, beginning at 1:29 p.m.

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CLOSING STATEMENT

By Attorney Ferguson

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CERTIFICATE

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EXHIBIT PAGE

PAGE

NUMBER	DESCRIPTION	IDENTIFIED
One	Subpoena	10*
Two	Return receipt card	10*

* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY FERGUSON:

4 My name is Dana Ferguson. Today is
5 August 26th, 2010. I am with the Office of the
6 Solicitor, United States Department of Labor. With me
7 is Erik Sherer, an investigator with the Mine Safety
8 and Health Administration, MSHA, an agency of the U.S.
9 Department of Labor. Also present are several people
10 from the State of West Virginia. I would ask that
11 they state their appearance for the record at this
12 time.

13 MR. FARLEY:

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

16 MR. O'BRIEN:

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

19 ATTORNEY KOERBER:

20 And I'm Barry Koerber, and I'm an
21 Assistant Attorney General assigned to represent the
22 West Virginia Office of Miners' Health, Safety and
23 Training.

24 ATTORNEY MCATEER:

25 And I'm Davit McAteer, from the

1 Governor's investigative team.

2 ATTORNEY FERGUSON:

3 There are also several members of the
4 investigation team present in the room behind you
5 today, but Mr. Sherer will be primarily doing the
6 questioning. If you would swear the witness, please.

7 -----

8 BERMAN CORNETT, HAVING FIRST BEEN DULY SWORN,
9 TESTIFIED AS FOLLOWS:

10 -----

11 ATTORNEY KOERBER:

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

14 A. Berman Charles Cornett, last name C-O-R-N-E-T-T.

15 ATTORNEY KOERBER:

16 And your address and telephone number.

17 A. [REDACTED]

18 [REDACTED]

19 ATTORNEY KOERBER:

20 And do you have an attorney that you're
21 expecting to appear ---?

22 A. Yes.

23 ATTORNEY KOERBER:

24 And what's his name?

25 A. Morgan Hayes.

1 ATTORNEY KOERBER:

2 And have you been in contact with him?

3 Is he coming?

4 A. Yes. He's stuck in traffic.

5 ATTORNEY KOERBER:

6 Mr. Cornett, are you appearing here today

7 as a result of receiving a subpoena?

8 A. Yes.

9 ATTORNEY KOERBER:

10 Would this be a copy of that subpoena?

11 A. Sure looks like it.

12 ATTORNEY KOERBER:

13 I'd like that to be Exhibit One.

14 (B. Cornett Exhibit One

15 marked for identification.)

16 ATTORNEY KOERBER:

17 And you may not have seen this, but this

18 is a copy of the return receipt card addressed to you

19 and signed by a [REDACTED].

20 A. Yeah, that's my wife.

21 ATTORNEY KOERBER:

22 Signed for on 8/16/2010. I'd like that

23 to be marked as Exhibit Two, please.

24 (B. Cornett Exhibit Two

25 marked for identification.)

1 ATTORNEY KOERBER:

2 Mr. Cornett, as a subpoenaed witness, the

3 statute that gives the Director the authority to

4 subpoena witnesses requires the Director to offer to

5 each witness subpoenaed a \$40-per-day witness fee,

6 plus mileage, roundtrip mileage, at the rate of 15

7 cents a mile, so long as you have come here in your

8 personal vehicle, and reimbursement for any tolls that

9 you may have passed coming here or going home. In

10 order to receive that money, I have two forms that you

11 will need to fill out, one of which is an IRS Form

12 W-9, which is a request for your Social Security

13 number. The witness fee of \$40 would be considered

14 taxable income and will be reported to the IRS, and

15 you will receive a 1099 miscellaneous at some later

16 date. I have those forms available. We can fill them

17 out now while we wait on your attorney. Or if you do

18 not want to give out your Social Security number, you

19 can decline the receipt of the money. But you need to

20 make your decision on the record at this point in

21 time.

22 A. I decline.

23 ATTORNEY KOERBER:

24 Thank you. I reserve the right to get

25 the attorney to say his name and firm on the record

1 when he does arrive, and that Mr. Cornett's his
2 client, and I'd ask that the other attorney in the
3 room identify himself at this time.

4 ATTORNEY HARDY:

5 Yes. I'm David J. Hardy with Allen
6 Guthrie & Thomas, appearing for Performance Coal.

7 ATTORNEY FERGUSON:

8 Mr. Cornett, all members of the Mine
9 Safety and Health Accident Investigation Team and all
10 members of the State of West Virginia Accident
11 Investigation Team participating in the investigation
12 of the Upper Big Branch explosion shall keep
13 confidential all information that is gathered from
14 each witness who provided a statement until the
15 witness statements are officially released. MSHA and
16 the State of West Virginia shall keep this information
17 confidential so that other ongoing enforcement
18 activities are not prejudiced or jeopardized by a
19 premature release of information. This
20 confidentiality requirement shall not preclude
21 investigation team members from sharing information
22 with each other or with other law enforcement
23 officials. Their participation in this interview
24 constitutes their agreement to keep the information
25 confidential.

1 Government investigators and specialists

2 have been assigned to investigate the conditions,
3 events and circumstances surrounding the fatalities
4 that occurred at the Upper Big Branch Mine-South on
5 April 5th, 2010. The investigation is being conducted
6 by MSHA under Section 103(a) of the Federal Mine
7 Safety and Health Act and the West Virginia Office of
8 Miners' Health, Safety and Training. We appreciate
9 your assistance in this investigation. You may have
10 your personal attorney present during the taking of
11 this statement or another personal representative, if
12 MSHA has permitted it, and may consult with your
13 attorney or representative at any time. Since this is
14 not an adversarial proceeding, formal Cross
15 Examination will not be permitted. However, your
16 personal representative may ask clarifying questions
17 as appropriate.

18 Your identity and the content of this

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

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

10 A. No.

11 ATTORNEY FERGUSON:

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

22 A court reporter will record this
23 interview. Please speak loudly and clearly. If you
24 do not understand a question asked, please ask that it
25 be rephrased or re-asked. And I would tell you, too,

1 to answer yes or no. Answer verbally, don't nod your
2 head or say uh-huh or uh-uh, so that the court
3 reporter can take down the information accurately.
4 There are also several maps that we have available.
5 So if there's a map that is necessary to help you
6 respond to any questions that are asked, we can
7 certainly provide different areas of the mine and
8 those maps for you to do so.

9 Please answer each question as fully as
10 you can, including any information you have learned
11 from someone else. We would like to thank you in
12 advance for your appearance here. We appreciate your
13 assistance in this investigation. Your cooperation is
14 critical in making the mines safer.

15 After we have finished asking questions,
16 you will have an opportunity to make a statement or to
17 provide us with any other information you believe to
18 be important. If at any time after the interview you
19 recall any additional information you believe might be
20 useful, please contact Norman Page at the telephone
21 number or e-mail address provided in the letter I gave
22 to you earlier. Do you have any questions?

23 A. No.

24 ATTORNEY FERGUSON:

25 At this time we'll go off the record,

1 awaiting Mr. Cornett's attorney. Do you want to put
2 that ---?

3 MR. FARLEY:

4 Another little item here that I can take
5 care of.

6 ATTORNEY FERGUSON:

7 Okay.

8 MR. FARLEY:

9 Mr. Cornett, on behalf of the West
10 Virginia Office of Miners' Health, Safety and
11 Training, I'd like to inform you that the West
12 Virginia Mine Safety Regulations, specifically Chapter
13 22A, Article One, Section 22, also provides protection
14 to miners against potential discrimination which might
15 result from participating in these type interviews.
16 And I'd like to pass along to you some contact
17 information for the West Virginia Board of Appeals.
18 The Board hears complaints from miners regarding
19 potential discrimination. And should you experience
20 any problems as a result of participation in this
21 interview, you should contact the Board immediately.
22 I would caution that should you need to file a claim,
23 you need to do so within 30 days of whenever the
24 problem occurred. Thank you.

25 ATTORNEY FERGUSON:

1 Now we'll wait again.

2 SHORT BREAK TAKEN

3 ATTORNEY FERGUSON:

4 So if we can go on the record. And I

5 think that Mr. Koerber has some additional questions

6 that he'd like to ---.

7 ATTORNEY KOERBER:

8 When we were on the record during the

9 preliminary matters, Mr. Cornett identified you as his

10 attorney, so I'd just like you to state your name and

11 your firm for the record.

12 ATTORNEY HAYES:

13 My name is Morgan Hayes. I represent

14 Berman Cornett. Law Offices of Morgan B. Hayes, P.O.

15 Box 636, Ripley, West Virginia, 25271, (304) 372-9874.

16 Bar I.D., 8553.

17 ATTORNEY KOERBER:

18 And Mr. Cornett is your client?

19 ATTORNEY HAYES:

20 Yes.

21 ATTORNEY FERGUSON:

22 When we were on the record earlier, Mr.

23 Hayes, just for your information, two exhibits were

24 marked that Mr. Cornett identified as the subpoena he

25 received for his appearance today, along with the

1 return receipt that his wife signed, receiving the
2 subpoena from the State of West Virginia. And those
3 were marked as Exhibit One and Two for the record.

4 ATTORNEY HAYES:

5 Great. Thank you.

6 ATTORNEY FERGUSON:

7 Mr. Sherer?

8 EXAMINATION

9 BY MR. SHERER:

10 Q. Again, I want to thank you for coming down this
11 afternoon, Mr. Cornett. We're looking into the facts
12 and the conditions and the circumstances and events
13 that contributed to this explosion, and we're doing it
14 for two reasons. The first is the families and the
15 friends and the coworkers of these 29 miners deserve
16 to know what happened. The second reason is we want
17 to prevent this in the future. So any information you
18 can share with us is greatly appreciated. Roughly,
19 how many years of mining experience do you have, Mr.
20 Cornett?

21 A. September makes 40 years.

22 Q. Forty (40) years. That's impressive. When did
23 you start with the Massey organization?

24 A. April 1st, 1993.

25 Q. Okay. When did you first become associated with

1 Upper Big Branch?

2 A. March of 2009.

3 Q. Okay. What's your --- what was your position
4 description prior to the explosion?

5 A. Safety director.

6 Q. Safety director. Was that just Upper Big Branch
7 or did that incorporate other mines?

8 A. Just Upper Big Branch.

9 Q. Do you have any State or Federal mining
10 certificates?

11 A. Yes.

12 Q. What are those, please?

13 A. I have an underground foreman's card, gas
14 instructor's card, mine foreman, examiner, the new
15 test that they have, dust card, shot firer's card,
16 just about everything except electrical card.

17 Q. Okay. Again, very impressive. Who do you report
18 to at Upper Big Branch?

19 A. Chris Blanchard.

20 Q. And what was his position?

21 A. He was the president.

22 Q. Okay. We understand there's several people with
23 the same title, safety director. Did you guys cover
24 certain shifts, or how did that work?

25 A. Yes. We worked different shifts and sometimes we

1 worked the same shift.

2 Q. Who else had --- were safety directors at this
3 mine?

4 A. James Walker.

5 Q. Okay. I think we talked to Mr. Walker a week or
6 so ago. Did you have anybody that worked for you?

7 A. NO, not really.

8 Q. Okay. Were you hourly or salary?

9 A. Salary.

10 Q. Okay. Do you consider yourself part of the
11 management of this mine?

12 A. Well, yes, in a ---.

13 ATTORNEY HAYES:

14 Well, you can fully answer, fully
15 explain.

16 A. Well, you know, I didn't run the mines, per se. I
17 was just up there to reduce accidents and things of
18 that nature.

19 BY MR. SHERER:

20 Q. Okay. Have you ever shut down production for some
21 safety-related reason?

22 A. No.

23 Q. Okay. Do you think you have the authority to do
24 that?

25 A. Yes.

1 Q. Okay. Thank you. Did you have the authority to
2 contract for training or purchase personal protective
3 equipment?

4 A. Well, that's mostly done corporate.

5 Q. Okay. Can you requisition that sort of services
6 or equipment?

7 A. Yes.

8 Q. Okay. Briefly, what was the duties of the safety
9 director at Upper Big Branch?

10 A. Well, this is a different situation. Mine was to
11 travel the mines and travel with examiners, make sure
12 they were doing their jobs right, teaching and
13 training guys, basically, you know, finding --- if I
14 find anything wrong, pass it on to the management so
15 it could get corrected, just reduce accidents and
16 violations and make the mines safer mines.

17 Q. Okay. So you travel with examiners. You
18 mentioned training. How hands on did you get in
19 training? Did you actually give classes or anything
20 like that?

21 A. Yeah, annual retraining classes we did. And the
22 other was just traveling the mines and, you know,
23 being around guys, talking to them about work habits
24 and stuff.

25 Q. Sure. And you --- you said you kept up with

1 safety, I think. Did you actually keep up with like
2 safety statistics and things like that?

3 A. Well, the six months prior to April 5th, all my
4 travels was underground and all the paperwork was done
5 by somebody else.

6 Q. Is there any particular reason that you started
7 spending most of your time underground during that
8 six-month time period?

9 A. That's what I was requested to do.

10 Q. Okay. Was there any particular reason that you
11 were requested to do that?

12 A. Because the mines was growing.

13 Q. Okay.

14 A. When I first went there, the longwall wasn't in.
15 They were adding more people and the mines was getting
16 bigger, so it was an opportunity to --- it was going
17 to be the biggest mines, so ---.

18 Q. Sure. So you just targeted the underground
19 safety-related issues?

20 A. Right.

21 Q. Did you get involved with violations that you
22 received?

23 A. Yes.

24 Q. What had happened with those in that six-month
25 period?

1 A. Well, the --- actually, they were down some. Our
2 accidents was down, so I felt like, you know, it was
3 --- you know, it was going better. I mean, you know,
4 we just had finished all of our annual retraining ---

5 Q. Sure.

6 A. --- and our NFDL was zero, and it just --- stuff
7 was just looking better. You know, that's what we
8 told the guys. You know, just keep up the good work.

9 Q. Okay. Thank you. You said you spent most of your
10 time underground. Was that 100 percent of the time
11 underground or 75 percent of the time?

12 A. Closer to 100 percent in that six-month period,
13 yes.

14 Q. Okay. Good. Good. When was the last time you
15 were in this mine prior to the explosion?

16 A. Well, I was in there that day.

17 Q. Prior to the explosion?

18 A. Prior to it. It would be the day before, I'd say.

19 Q. Okay. What did you do and where did you go the
20 day before?

21 A. Boy, I can't remember the day before.

22 Q. Okay. Let me ask a slightly different question
23 that is related to that. The day before would be
24 Sunday, ---

25 A. Okay.

1 Q. --- Easter Sunday. Do you remember anything
2 unusual that day?

3 A. No.

4 Q. Does anything stand out in your mind, even a
5 different smell or anything, the thumping or bumping
6 around the longwall possibly? Does anything stand
7 out?

8 A. No.

9 Q. Okay.

10 A. I wasn't in there Saturday. Yeah, I was off three
11 days. You had me confused.

12 Q. Okay. I'm sorry. When you said the day before, I
13 assumed that was Sunday.

14 A. Yeah.

15 Q. Okay. So you would have been out what, on
16 Thursday?

17 A. Yes.

18 Q. Okay. Do you recall if it was the dayshift, the
19 evening shift?

20 A. It was dayshift.

21 Q. Okay. What do you remember of that Thursday? Did
22 you go on the longwall?

23 A. No. I really can't remember.

24 Q. Okay. But you don't remember anything unusual?

25 A. Nothing.

1 Q. Over that long weekend, did anybody call you and
2 ask you anything that seemed unusual?

3 A. No.

4 Q. Did you talk to anybody or possibly even e-mail or
5 fax anything ---

6 A. No.

7 Q. --- related to the mine? Okay. Just had a good
8 Easter weekend?

9 A. A wonderful one.

10 Q. That's good. Do you recall what you did the day
11 of the explosion prior to the explosion?

12 A. Yes.

13 Q. What did you do that day?

14 A. James Walker and I walked in the mines and walked
15 to the barrier section. He walked one side of the
16 belt and I walked the other side, and we met Rick
17 Foster, and I think it was John Syner, MSHA, and
18 talked to them a minute. And they walked on out, and
19 we walked on up the beltlines to the section and just
20 checked the section out, took some air readings and
21 talked to some of the guys and, you know, spent some
22 time on the section and walked back out and caught a
23 ride.

24 Q. Okay. About what time did you get back out of the
25 mine?

1 A. Around 15 or 20 'til 3:00.

2 Q. Okay. So you spent most of the day underground?

3 A. Yes.

4 Q. Do you recall anything on the mine phone or
5 anything you might have overheard that seemed unusual?

6 A. No.

7 Q. Thank you. Where were you at when the explosion
8 occurred?

9 A. I was standing at the purchasing director's
10 window.

11 Q. That's Greg Clay?

12 A. Yes.

13 Q. Let's talk about some other things for a while.

14 If you want to take a break, you certainly can. Okay.

15 Thank you. So you traveled with the examiners.

16 When's the last time you recall traveling with an
17 examiner?

18 A. I can't remember.

19 Q. Okay. Did you do that regularly?

20 A. I started out doing that. And you know, once you
21 traveled with all the examiners, then we'd just start
22 doing other things.

23 Q. Okay. So you kind of familiarized yourself with
24 the mine?

25 A. Right.

1 Q. Okay. That makes sense. When you're traveling
2 with examiners, what did you think about the job they
3 were doing?

4 A. You know, some guys, you know, are more
5 experienced than others. We had some younger guys
6 that, you know, we talked to, you know, gave them some
7 tips and things, you know, on our experiences and, you
8 know, just tried to help out any way we could. Some
9 of them walked a long ways and ---.

10 Q. That's for sure. Do you think those examiners had
11 enough time to do quality examinations?

12 A. Yeah. Most of them, yeah.

13 Q. Okay. Who didn't fit into the most of them part?
14 Was there any particular part of the mine that was
15 problematic?

16 A. Well, no. You know, sometimes guys just, you
17 know, --- people always complain about not having
18 enough time to do something, but you know, if you go
19 ahead and do it, you know, then you get it done.

20 Q. Sure. What about those evening/night examiners
21 that had 12-hour shifts and actually had to do two
22 pre-shifts, do you think they had enough time?

23 A. Well, I don't really know. You know, they had ---
24 you know, in 12 hours, that's 6 hours, you know, that
25 they would have to do it, and then they got six other

1 hours to do other things, so I don't see why they
2 couldn't.

3 Q. Okay. Did you actually travel with any of those
4 examiners?

5 A. Jim worked the evening shift mostly. I didn't
6 work the evening shift that much.

7 Q. Okay. Thank you. Who was in charge of
8 ventilation at this mine?

9 A. I guess from the president down through the
10 superintendent and on down through the mine foremen,
11 the engineering.

12 Q. If you had a problem with ventilation in the mine,
13 who would you go to?

14 A. Me, personally?

15 Q. Yeah. Uh-huh (yes).

16 A. I'd go to the superintendent, the mine foremen.

17 Q. Who was that?

18 A. Well, they had two. They had two superintendents
19 and two mine foremen.

20 Q. And that was split, the north part of the mine,
21 the south part of the mine?

22 A. Right.

23 Q. Did you ever go to any of those superintendents or
24 foremans about ventilation-related issues?

25 A. No.

1 Q. Did you ever have any problem with ventilation
2 anywhere in the mines?

3 A. No, I didn't.

4 Q. Did you check the ventilation anywhere in the
5 mine?

6 A. Yes.

7 Q. Okay. And never had any problem with it?

8 A. Well, I mean, they had --- you know, there was
9 violations written, you know, but ---. Violations
10 written, but I mean, it all depends on what you mean
11 problem.

12 Q. Do you think the ventilation was adequate in this
13 mine?

14 A. Yes.

15 Q. Okay. Did the --- I think it was 46
16 ventilation-related violations in a couple months
17 preceding the accident. Did that bother you?

18 A. Yes.

19 Q. What did you do about it?

20 A. We had meetings with guys and, you know, stressed,
21 you know, the importance of, you know, keeping your
22 curtains right on the sections and, you know, just
23 doing what's right all the time.

24 Q. Some of those violations, if I recall correctly,
25 were actually things that would have occurred outside

1 of the sections. You're looking at the basic
2 ventilation system throughout the mine. What did you
3 do about that?

4 A. I just done what I was asked to do.

5 Q. Who asked you to do things?

6 A. Well, I was working for Wayne Persinger from
7 January, when he came.

8 Q. Okay. So after January you were no longer working
9 for Mr. Blanchard and you were working for Mr.
10 Persinger?

11 A. Well, both of them, really. We've got more than
12 one boss.

13 Q. Okay. Sure. I certainly understand that. Did
14 Mr. Persinger ask you to do things about ventilation
15 in the month or two prior to the accident?

16 A. Well, we were helping on the vent changes that was
17 going on.

18 Q. Who directed those vent changes? Who figured out
19 what to do and how to do it?

20 A. Well, I don't know who actually done it. I just
21 went by what the engineering, you know, worked out and
22 gave to Wayne, and Wayne gave it to, you know, us and
23 we just went and did it.

24 Q. Okay. And who did the engineering work?

25 A. Eric Lilly was one of the engineers.

1 Q. Okay. Were there others?

2 A. Well, the other engineer is down in the
3 engineering department, but he was kind of the
4 engineer at the mines.

5 Q. Okay. He was kind of the liaison, I guess?

6 A. Yeah.

7 Q. Did he actually participate in the ventilation
8 changes?

9 A. Yes. He's been in there before, yes.

10 Q. Did it seem to you that there was an abnormal
11 number of ventilation changes at this mine?

12 A. Well, there was a lot of changes, you know, but
13 there's just a lot of areas. And like I say, you
14 know, with everything that was going on, there had to
15 be, you know, different changes for, you know, a new
16 section starting up and things like that. You have to
17 make ventilation changes.

18 Q. Sure.

19 A. Very common.

20 Q. I get the impression looking at some of the
21 violations and such you made a lot of those
22 ventilation changes to address those violations. Is
23 that --- does it seem that way to you?

24 A. Well, that could be true. You know, I don't quite
25 understand, you know, ---. You do --- if you get a

1 violation, yeah, you got to --- you know, you got to
2 correct it. So if it means, you know, changing
3 something, then that's what you do.

4 Q. Okay. Let's talk about doors a bit. I understand
5 this mine had a tremendous number of doors. Do you
6 know why there were so many doors?

7 A. No.

8 Q. What did you think about all those doors?

9 A. A lot of stops.

10 Q. A lot of time and effort getting through those
11 things. At other mines you worked in, did they have
12 that number of doors?

13 A. No. But I haven't been in a mine that big either
14 for a long time.

15 Q. Okay. This was a big mine.

16 A. Uh-huh (yes).

17 Q. So you actually --- how did you participate in air
18 changes? Did you take readings and ---?

19 A. Mostly took air readings, yes.

20 Q. Okay. When were most of those air changes done?

21 A. Time-wise?

22 Q. Dayshift, evening shift?

23 A. Mostly --- well, we did work the midnight shift
24 once on one change. Jim and I came out on the
25 midnight and ---. But other than that, you know,

1 personally, you know, I worked on dayshift.

2 Q. Okay. So I guess a fair number of those changes
3 you worked on was during the dayshift?

4 A. Well, changes were made on midnight. The only
5 thing I would do, take air readings.

6 Q. Okay. So you'd take air readings on the dayshift
7 after the changes were made on the midnight shift?

8 A. Yeah, sometimes.

9 Q. Okay. You mentioned that you worked with the
10 various examiners. Did you ever review the
11 examination books, weeklies and the
12 pre-shift/on-shifts and things like that?

13 A. Yeah. Periodically, I looked at them, yes.

14 Q. What was your impression of those books? Do you
15 think hazards were being recorded in them?

16 A. Sometimes, yes.

17 Q. When wouldn't they be recorded?

18 A. They should be recorded, you know, when you make,
19 you know, their --- if it's a weekly, you know, they
20 make the weekly. And then when they get out and fill
21 the book out, if they find something, then it's
22 recorded and then took care of.

23 Q. Do you understand that all hazards should be
24 recorded in those books?

25 A. Yes.

1 Q. Did you think that the examiners were doing that?

2 A. I can't say that all the time they did, you know.

3 Q. Okay. Thank you. Did you ever review the rock
4 dust program for this mine? Did you keep up with how
5 much dust was being applied and what the combustible
6 content was?

7 A. Personally, no, I didn't. You know, they dusted
8 the mines and I didn't personally check the content,
9 no.

10 Q. Okay. Did you think the content was sufficient?

11 A. Yes.

12 Q. Okay. Did you ever ask or tell somebody that
13 there needed to be some more rock dust in any certain
14 area?

15 A. I can't recall, but you know, I could have, you
16 know.

17 Q. Okay. Now, there was, I understand, a bulk rock
18 duster rail-mounted unit. Did you direct those
19 people?

20 A. No.

21 Q. Who did that?

22 A. The mine foreman or the superintendent.

23 Q. Okay. Are you familiar with that unit and the
24 people that spread that rock dust?

25 A. Personally, I'm not real familiar with them, but I

1 just saw results of, you know, what they've done.

2 Q. Do you know if there was anything that may have
3 interfered with that crew a week or two, possibly even
4 a month before the explosion?

5 A. No.

6 Q. Do you think they were applying the rock dust the
7 same way they always had?

8 A. Yes.

9 Q. Okay. Did you ever get an opportunity possibly
10 when you were traveling with the examiners to get off
11 in the --- away from the belt and the track entries,
12 off into the returns or intakes?

13 A. Yes.

14 Q. What condition did you think those entries were
15 in?

16 A. They were pretty good walkways overall.

17 Q. What about the rock dust in them?

18 A. I'd say pretty good.

19 Q. Okay. Did you ever review the belt books, the
20 belt examiner's books?

21 A. Yeah. I've looked at them occasionally, yes.

22 Q. Do you recall that a vast majority of their
23 entries for the belts said needed dusting?

24 A. I've seen that in there before, yes.

25 Q. What did that mean to you?

1 A. It just means a daily thing in a coal mines, that
2 you know, as you're working, you need to apply dust
3 every day. And you know, you can walk a beltline and
4 you can have water on a beltline, but dust is going to
5 generate in a coal mines, and ---

6 Q. Sure.

7 A. --- so it's seen and it needs dusted.

8 Q. Okay. Who would come back and make sure that dust
9 was applied to those belts?

10 A. The mine foreman typically.

11 Q. Do you think dust was being applied to those
12 belts?

13 A. Yes.

14 Q. Did you ever check up on it?

15 A. Yes.

16 Q. And then you felt comfortable with it?

17 A. Yes.

18 Q. Okay. Thank you. Now, you mentioned training was
19 part of your duties, and we actually have quite a few
20 training questions. We've asked a lot of other people
21 about training, and they just --- they obviously
22 weren't familiar with it as you are. Do you recall a
23 Jonah Bowles or a Jackie Stover?

24 A. Yes.

25 Q. Who were those people, please?

1 A. Jonah Bowles was my mentor.

2 Q. Your mentor. Where is he at?

3 A. He's retired, but he was the safety director at
4 Marfork.

5 Q. Okay. Thank you. I think we've got his name on
6 some of the training records and just weren't sure who
7 he was. How about Mr. Stover, who is he?

8 A. Jackie Stover is a registered nurse, who's also a
9 trainer at Marfork.

10 Q. Okay. We're asking the right guy.

11 A. Well, I worked with him for six months up there.

12 Q. Thank you. Did you do the experienced miner
13 training?

14 A. Sometimes.

15 Q. Okay. What did that training consist of?

16 A. Part 48, and you have to go over the entire mines
17 with a person, all the aspects of the mines,
18 escapeways, the type of bolts and things that's used
19 in there, particular areas and what you may encounter
20 and what you may not, and see that they --- and they
21 have to take a mine tour after you go over the entire
22 map with them and all the details.

23 Q. You mentioned you did that sometimes. Who else
24 conducted that training at Upper Big Branch?

25 A. Any of the --- either a mine foreman or

1 superintendent who was instructors, certified
2 instructors.

3 Q. Okay. How often did you normally do that?

4 A. When they'd get somebody, you know, new.

5 Q. So when they'd hire somebody?

6 A. Right, they'd hire somebody.

7 Q. Okay. Did you have any specific material or
8 syllabus or outlined that's used?

9 A. We got a task training outline book. They had
10 that down there.

11 Q. Okay. Was that a mine-specific book or ---?

12 A. Yes. You're going to do mine specifics. Each
13 mine's like --- everything is different.

14 Q. Okay. And you mentioned you went over escapeways
15 and such. Did you give a tour of the mine at that
16 time, when you did the experienced miner training?

17 A. Well, somebody would. You know, I've done it in
18 the past, but --- you know, when I was superintendent.

19 Q. Okay. What did that tour consist of?

20 A. Have to travel into the mines basically to --- at
21 least like to a section to get a general outline of
22 the mines.

23 Q. Okay.

24 A. Would you also go to the longwall?

25 A. I guess they could.

1 Q. Okay. Do you know if they normally did for
2 everybody?

3 A. Yes.

4 Q. What did they do? Did they do it, do it up at the
5 longwall?

6 A. Yes. As far as I know they did, yes.

7 Q. Thank you. What about the dispatcher and AMS
8 training, who did that?

9 A. I've done some of it.

10 Q. Okay. What did that training consist of?

11 A. I do it straight out of the law book.

12 Q. Okay. How often did you do it?

13 A. Well, the first time I did it is when they pulled
14 everybody out and I had to do it.

15 Q. Okay. That's a good reason. Had you done it
16 since then?

17 A. No, I haven't.

18 Q. When was it when they pulled everybody out, just
19 roughly?

20 A. Probably way back around the 1st of the year or
21 before the year or something like that.

22 Q. Okay. Do you know if those dispatchers and AMS
23 people went to each of the working sections?

24 A. Yes.

25 Q. Okay. Who did the seal examiner's training?

1 A. I don't know.

2 Q. Did you have a seal examiner's training program?

3 A. I don't know, you know.

4 Q. Okay. Who else would not possibly know about
5 that?

6 A. I would say Jonah, but he wasn't really up there.

7 Q. Okay. Thank you. Did you have an emergency
8 rescue chamber training program?

9 A. Yes.

10 Q. Who did that?

11 A. It was mostly done at Marfork, the training unit
12 that they would take around, and they --- sometimes it
13 --- I think they did it some at Performance, but most
14 of the time everybody went to Marfork and did it.

15 Q. Do you recall about how often that was conducted?

16 A. That's every year.

17 Q. Okay. Did you have any training for your
18 certified and qualified people?

19 A. Yes.

20 Q. And who did that?

21 A. Well, Jonah and I were trained in that initial
22 State thing at the same time, and so the --- the
23 foreman training program, you know, and there was
24 other people that was trained after that.

25 Q. Did you have any specific outline or course plan

1 for that?

2 A. Yes. Yes, they had outlines.

3 Q. Okay. And one last series of questions. Oh, no.

4 I'm sorry. There's several. Did you do the Massey
5 initial training?

6 A. Jackie Stover done the vast majority of that.

7 Q. Okay. What was that?

8 A. That's the initial training that Massey requires,
9 and any time anybody comes in they have it done there,
10 and it's good for five years. And they can go to any
11 site. As long as they got proof of it, they can go to
12 any Massey site if they've got that training, you
13 know, on the property.

14 Q. Just roughly, what does it consist of?

15 A. Well, he shows a lot of videos, training videos,
16 and he goes over accident policies. He does rescuer
17 training and, you know, just --- like I say, on his
18 outline, just generalized, you know, training.

19 Q. Okay. Did you guys have any contractor training
20 programs?

21 A. Yes, they did that, too.

22 Q. Who did that?

23 A. Jackie. He'd train contractors also.

24 Q. Okay. And did you have an outline for that?

25 A. Yes, they used --- had outlines for that.

1 Q. Okay. Who did task training?

2 A. Task training would be anybody that was qualified
3 to do a certain job, then they could do task training.

4 Q. Did you have like a list of people that were
5 qualified or how did that work?

6 A. Basically on that, you know, it would be --- for
7 example, an equipment operator, if somebody had been
8 running a piece of equipment for 10 or 15 years or
9 longer, ---

10 Q. Sure.

11 A. --- they're pretty qualified to teach somebody
12 else task training-wise.

13 Q. How did you keep up with that? Did you have some
14 sort of form you'd fill out or ---?

15 A. Yeah. You got a 5023 Form you got to fill out
16 each time --- each new task.

17 Q. Okay. Who updated the training plans?

18 A. Probably --- I'm going to say any update would
19 have been done by Jonah.

20 Q. Okay. Now, we understand that the longwall left
21 Upper Big Branch at some point in time and went to
22 another mine. How long was that longwall at that
23 other mine?

24 A. I don't know.

25 Q. Do you recall if there was any specific training

1 given to those people when they came back to this
2 mine?

3 A. Well, I'm sure it was. I wasn't up at the mine
4 site when they first came back, ---

5 Q. Okay.

6 A. --- so I'd say the management up there trained
7 them.

8 Q. Okay. Where were you at when they came back?

9 A. Well, my office was at the foot of the hill, and
10 when I originally started out there I actually did
11 have other operations.

12 Q. Oh, okay. Thank you, sir. Are you familiar with
13 Michael Ellsley?

14 A. Never met him.

15 Q. We understand that he started in the mine just a
16 few days prior to the accident. Have you looked at
17 his training records before or after the accident?

18 A. I've never seen him or --- you know, I don't know
19 anything about him.

20 Q. Okay. Thank you. Our training guy is a little
21 carried away with the questions, so I apologize.

22 A. That's okay.

23 Q. Tell you what. It's been about an hour. Do you
24 need to take a little break?

25 A. I'm okay.

1 MR. SHERER:

2 Anybody else? That's all the questions

3 I've got for right now. I'll pass it on to Terry.

4 EXAMINATION

5 BY MR. FARLEY:

6 Q. Mr. Cornett, I'm probably going to try to clarify
7 some things, so be patient with me, please.

8 A. Okay.

9 Q. Did I understand correctly that you became the
10 safety director at UBB sometime in the fall of 2009?
11 Is that about when you got there?

12 A. It was March 2009.

13 Q. So you assumed the position of safety director at
14 that time?

15 A. Yes.

16 Q. Okay. Now, the other safety director, Mr. Walker,
17 did he report to you or did he also report to Mr.
18 Blanchard?

19 A. Well, kind of both, you know. He didn't start
20 when I did, okay.

21 Q. Okay. When did Mr. Walker start?

22 A. It was --- it's probably what you're talking
23 about, the fall of '09. That's when he came probably.

24 Q. Okay. Now, did you and Mr. Walker cover the mine
25 in its entirety or did you split up the territory

1 somewhat?

2 A. We just covered it in its entirety.

3 Q. Okay. On April 5th you indicated that you would
4 go onto the barrier section, where you met Rick Foster
5 and John Syner; is that correct?

6 A. I think that's his name.

7 Q. Who is Mr. Syner? What was his job?

8 A. He's an MSHA inspector, and he went in early that
9 morning to check the dust parameter.

10 Q. All right. I understand.

11 MR. SHERER:

12 We interviewed him a long time ago.

13 MR. FARLEY:

14 Well, out of 200 people, though.

15 BY MR. FARLEY:

16 Q. You were talking about Eric Lilly is one of the
17 engineers. Is Mr. Lilly still employed by Performance
18 or Massey?

19 A. No.

20 Q. Do you know when Mr. Lilly left his employment
21 with Performance or Massey?

22 A. I don't recall the day.

23 Q. Was that before or after April 5th?

24 A. It was after.

25 Q. Okay. Did you provide continuing education and

1 training for mine foreman and fire boss certificate
2 holders at UBB, as required by State law?

3 A. Let me think. When we did the initial class, I
4 was still at Marfork. And I guess those guys, they
5 came down to those classes, you know, everybody that
6 went through it, so probably yes, most of them.

7 Q. Okay. As the safety director, were you familiar
8 with the criteria for reporting events to the State
9 and Federal agencies?

10 A. Yes.

11 Q. Okay. Were you the person responsible for
12 determining what injuries would be reported to the
13 State and Federal agencies?

14 A. Yes, if I knew, if I was clear on it.

15 Q. Would some other person occasionally make that
16 decision?

17 A. Sure. Yes.

18 Q. Who would that other person be?

19 A. I'd probably ask Jonah.

20 Q. Okay. All right. Now, as part of your daily
21 travels throughout the mine, did you routinely travel
22 with State and Federal inspectors?

23 A. On occasions, yes.

24 Q. When you say on occasion, was there any particular
25 reason for determining why you did or did not travel

1 with them? Was it just an availability type of
2 situation?

3 A. Well, if there was too many there that the mine
4 management couldn't travel with, then I would help
5 them out and travel with somebody.

6 Q. Okay. Now, during your travels --- you came to
7 UBB roughly a year before the explosion. During your
8 daily travels throughout the UBB Mine, how often did
9 you detect any methane?

10 A. Rarely.

11 Q. Okay. And do you recall the last place in the UBB
12 Mine you might have detected methane?

13 A. Probably up around Headgate 22.

14 Q. Okay. And do you recall when that occasion was?

15 A. It's when we was doing one of the vent changes. I
16 don't remember exactly when.

17 Q. Okay. Well, speaking of vent changes, you
18 indicated that your participation in ventilation
19 changes was usually limited to making air
20 measurements.

21 A. Uh-huh (yes).

22 Q. Do you possibly recall the dates of any of the
23 major air changes that might have been made in the UBB
24 Mine?

25 A. I don't recall the dates, no.

1 Q. Were you involved in any ventilation change that
2 would have been made about March 9th or 10th resulting
3 from a violation?

4 A. I'm not for sure.

5 Q. Okay. We also understand that there was a
6 ventilation change made on February 10th. Now,
7 February 10th, if I can refresh your memory, was Super
8 Bowl Sunday. We understand that the return air course
9 off the miner sections was rerouted. You know, it
10 originally, at that time, was traveling outby, down
11 Seven North, ---

12 A. Yeah.

13 Q. --- in the Number One entry, ---

14 A. Uh-huh (yes).

15 Q. --- and it was switched through the crossover and
16 in the outby direction in the Number Four and Number
17 Five entries of the longwall headgate. Is that
18 correct?

19 A. Yeah. I think that's right. It used to come down
20 this way, towards the intake now.

21 Q. Okay. Now, did you participate in that
22 ventilation change?

23 A. Yes, I was there somewhere. I don't remember ---.

24 Q. Do you have an understanding of why the
25 ventilation change was made?

1 A. Well, to get better air, you know. I mean, you
2 know, to get more positive air. You know, I ---.

3 Q. Presumably.

4 A. I can't recall specifics, but you know, ---.

5 Q. Do you recall who directed that particular air
6 change on February 10th?

7 A. Well, I was following what Wayne told me I was
8 supposed to do. That's who.

9 Q. When you say Wayne?

10 A. Wayne Persinger.

11 Q. Okay.

12 A. That was ---.

13 Q. All right. Would he have been in charge?

14 A. Yeah. He was my immediate boss at the time, yes.

15 Q. All right. When you made the change that day, did
16 you travel with Mr. Persinger or were you at a
17 separate location?

18 A. Separate. We was all separated.

19 Q. Okay. When was the last time you were in the area
20 known as the Mother Drive construction site where the
21 22 Headgate belt dumps onto Seven North? Do you
22 recall being in that area prior to April 5th?

23 A. Yes, I have been, but I can't remember exactly
24 when.

25 Q. Okay. Was the construction work in that area

1 still ongoing as of April 5th or had it been completed
2 sometime before?

3 A. Well, this beltline was running when --- the last
4 time I was up there with a State inspector. I don't
5 think they was completely finished, but ---.

6 Q. Okay. Did the work --- did anyone ever report to
7 you or complain to you that the construction work in
8 that area may have had a negative impact on the
9 ventilation on the 22 Headgate section?

10 A. No.

11 Q. Okay. Did any of the miners who worked on the 22
12 Headgate section ever approach you personally and
13 offer complaints about ventilation in that section?

14 A. No, not really, you know. I mean, we --- you
15 know, we had --- some of the reasons for change, there
16 was, you know, struggles for air, but --- at times,
17 but when these changes were made, you know, they had
18 good, you know, good positive air, you know, 20,000 or
19 so in the last open breaks.

20 Q. Okay. So based on my reading of the pre-shift and
21 on-shift exam books for the longwall section, during
22 the month of March the examination books reflect a
23 main intake air reading around the 1st of the month of
24 approximately 150,000 cubic feet per minute. Now,
25 throughout the month of March, that air reading

1 continues to decrease until ultimately, by the end of
2 the month, it averages about 55,000 to 60,000. Do you
3 have any understanding of why that occurred?

4 A. Now, just for this section, is that what you're
5 talking about?

6 Q. No. The air readings I'm talking about for the
7 month of March were for the longwall, the longwall
8 main intake areas. Now, as I said --- let me repeat
9 it. In the beginning of March, if you look at the
10 pre-shift/on-shift examination book for the longwall,
11 it would show a main intake air reading of about
12 150,000 cubic feet per minute. Now, throughout the
13 month of March that air reading, as it was recorded in
14 the book, continued to decrease until by the end of
15 the month the average reading is about 55,000 cubic
16 feet per minute. And my question was, do you have any
17 explanation as to why the quantity of air to the
18 longwall section was reduced?

19 A. The only thing I can really remember is that there
20 was too much --- they talked like they had too much on
21 the wall and they kept, you know, trying to make ---
22 they didn't want to use this belt air and they kept
23 trying to make the air go the wrong way. So they was
24 basically trying to choke it down from going to the
25 wall.

1 Q. Okay. Now, we also understand that sometime, we
2 believe the early part of March, there were some doors
3 constructed in the longwall headgate entry here at
4 this location, where I have my finger, which is about
5 Crosscut --- roughly Crosscut Ten or so in the
6 longwall headgate entries. Now, we understand that
7 those doors are constructed in such a manner as to
8 where the side panel portion of the door was left out
9 in an apparent attempt to regulate air. Are you
10 familiar with when those doors were constructed?

11 A. I don't recall when.

12 Q. Are we correct, it was sometime in early March?

13 A. It could have been. I know there was doors there,
14 you know, prior to that.

15 Q. Now, at that location, it would appear that those
16 doors are just inby where the air for the longwall and
17 the air going to the miner sections seems --- splits
18 on the map.

19 A. Okay.

20 Q. Is that a fair assessment there?

21 A. Yeah.

22 Q. Is that map accurate, as far as you know?

23 A. Yeah.

24 Q. Okay.

25 ATTORNEY FERGUSON:

1 Is that a yes?

2 A. Yes.

3 BY MR. FARLEY:

4 Q. If one wanted to control or regulate the air
5 coming to the longwall or to the miner sections,
6 couldn't it be easily done at that location by
7 increasing or reducing the size of that opening in the
8 side panel?

9 A. Should be, yeah.

10 Q. Do you recall anyone ever being stationed at that
11 location at any time for that purpose?

12 A. No.

13 Q. Did you have any input in the development of the
14 mine plans, particularly ventilation and roof control
15 plans?

16 A. No.

17 Q. Who would have taken the lead role in plan
18 development?

19 A. I don't really know. You know, I always just
20 assumed the president of the company and the
21 engineering department, you know, took care of that.

22 Q. All right. Now, I think I got sidetracked here
23 earlier on a question. I asked you when the last time
24 was that you had detected any methane in the UBB Mine.
25 You indicated that that was on the 22 Headgate

1 section.

2 A. Yeah.

3 Q. Now, do you recall when that occasion was?

4 A. I don't remember the date, you know, when we were
5 up there, but it was somewhere like two-tenths or
6 something like that ---

7 Q. Okay.

8 A. --- in the return.

9 Q. Okay. All right. Now, during the year or so that
10 you worked as safety director at UBB, did you ever
11 have occasion to detect more than one percent methane
12 at any location?

13 A. No.

14 Q. Did you ever hear of more than one percent methane
15 being detected at any location?

16 A. No.

17 Q. Okay. During the time ---.

18 A. Well, ---

19 Q. Excuse me.

20 A. --- I take that back.

21 Q. Go ahead.

22 A. On the --- when they were developing up to the
23 Bandytown fan, they did have --- it was like
24 two-and-a-half percent in a face up there because
25 there was a (d) order written on it.

1 Q. Okay.

2 A. I mean, I wasn't up there, but ---

3 Q. Okay.

4 A. --- I do remember that.

5 Q. All right. Have you ever heard of any higher
6 concentration of methane being detected in that area?

7 A. No.

8 Q. Okay. I asked earlier about Mr. Lilly, the
9 engineer who's no longer employed at Performance or
10 with Massey. Do you know why Mr. Lilly left?

11 A. No, I don't.

12 Q. Did he just resign or was he fired? Do you know?

13 A. I don't really know. I never asked.

14 Q. Okay. How often did the miners at the UBB Mine
15 approach you with some kind of safety complaint?

16 A. It was a rarity. The only thing they complained
17 about was Raymond gifts. I mean, ---.

18 Q. Raymond gifts?

19 A. Yeah.

20 Q. Raymond gifts, was that some type of incentive
21 program?

22 A. Yes.

23 Q. Can you briefly explain how it worked?

24 A. Just that if you didn't miss any day in a month
25 and you didn't have any accident and your crew didn't

1 have an accident, you accrued points. And once you
2 accrued your points, they had catalogs that they could
3 get gifts out of.

4 Q. All right. Okay. Any particular reason why
5 people complained about the Raymond gifts?

6 A. Because they wanted more points and stuff, you
7 know. They just ---.

8 Q. Okay. Were you the person who managed the
9 program?

10 A. Well, they thought I was. You know, I was
11 supposed to have been, but I was still learning a lot
12 of aspects of the job and ---

13 Q. Okay.

14 A. --- I had to have a lot of help with that, so ---.

15 Q. Okay. Now, prior to your time at UBB, had you
16 worked as a safety director or officer prior to that?

17 A. No, only six months at Marfork, working with
18 Jonah.

19 Q. I think you may have indicated that you had worked
20 as a superintendent.

21 A. Yes.

22 Q. How long had you been a superintendent?

23 A. Probably 12 or 13 years.

24 Q. Okay. What mines did you work as a
25 superintendent?

1 A. Every one on Marfork property just about.

2 Q. Okay.

3 A. Low Gap, White Queen, Coon Cedar Grove, Ellis
4 Eagle.

5 Q. Okay. Now, during the years that you worked at
6 UBB prior to the explosion on April 5th, do you have
7 any knowledge of any methane monitors provided for any
8 mining machine, be that longwall or continuous miners,
9 ever being bridged out, defeated or manually
10 overridden in any way?

11 A. No.

12 Q. Did you ever hear of anything of such fashion?

13 A. No.

14 Q. Okay. As safety director, was it part of your
15 normal job duty to have return-to-work meetings with
16 employee who had been off with some type of injury?

17 A. Yes, I have.

18 Q. Okay. Who participated in these type of
19 interviews?

20 A. Sometimes the superintendent, if he was available,
21 and maybe a VP or even president if they were
22 available.

23 Q. Okay. So was there a standard format for the
24 meeting?

25 A. We had a form, yes, and basically it was --- I

1 guess you could say it was a standard format.

2 Q. Okay. Now, I want to ask some questions about
3 what transpired on April 5th. Now, we've been going a
4 pretty good while. Do you want to take a break first
5 or would you prefer to continue?

6 A. We can keep going.

7 Q. All right. Okay. You indicated that on April
8 5th, when the explosion occurred, that you were in the
9 purchasing agent's office, Greg Clay, looking out a
10 window; is that correct?

11 A. Right.

12 Q. Now, was this at the moment that the explosion
13 occurred?

14 A. Yes.

15 Q. Now, would you describe for me what you saw, what
16 you felt, what you heard, your experience when you
17 first realized that something was happening?

18 A. I saw a lot of dust coming out of the return. You
19 know, it was just like a big wind noise. My first
20 thought was, you know, we've had a fall in there and
21 it's blowed a stopping out and it's blowing out the
22 return. The fan was kind of bogging down. And you
23 know, I just said, something is wrong. And then Gary
24 May, who was the superintendent, was in there, and we
25 just took off. And it just lasted like a minute or

1 two. The dust that was coming out of the return, it
2 sounded like something going (indicates sound). And I
3 found out later that that was a roll of curtain that
4 had blowed out and was hung in the canopy, and that's
5 what was making the flopping noise. But you know,
6 just within a minute or two then, you know, the fan
7 started picking back up and I think ---.

8 Q. Excuse me. A roll of curtain was --- became
9 lodged in the fan?

10 A. I think it was in that return somebody had used it
11 or something and I guess it just got blowed out and,
12 you know, the wind pressure just opened it up a little
13 bit and it was just hung there and as the wind blew,
14 just like a kite or something.

15 Q. Okay. Now, you mentioned Gary May. Who else was
16 present in the office at that moment?

17 A. I don't remember who was exactly in the area. I
18 just ---.

19 Q. As best you recall.

20 A. Well, Gary and Jim Walker was somewhere around
21 there and --- I can't remember if Greg Clay was
22 actually at his desk or not.

23 Q. Okay.

24 A. You know, that's all I can remember, really, of
25 who was actually in there.

1 Q. Okay. Now, what did you do next?

2 A. We took --- went and got --- I got my belt and
3 light and stuff, and Gary got his. And Gary took off
4 walking first, and Rick Foster got a mantrip out and
5 Jim went in --- I think the electricians knocked the
6 power and --- they knocked the power and we went in
7 and Rick was knocking the pins out of the door,
8 because where they knocked the power, the doors won't
9 work without power. So we started up the track and,
10 you know, there was normal dust in the air. It wasn't
11 anything harmful. All four of us had detectors, and
12 they all read 20.8 and 0 of everything.

13 Q. Okay. Let me catch up with all four of you. You,
14 Mr. May, Walker and who else?

15 A. Rick Foster.

16 Q. Okay. I'm sorry. Go ahead.

17 A And we got through the doors and I said, let's get
18 in the switch because the barrier section crew was
19 coming out. So we got in the switch out of the way
20 and as the barrier section crew come by, I told them,
21 just be careful. Take your time. You could see it
22 was just normal dust like, you know. So they went on
23 out. And I had my radio and I hollered at the
24 dispatcher, and he told me to holler at him every, you
25 know, 15 breaks or so, and I said okay. And so ---

1 but once we got past where the barrier section was,
2 the radio didn't work and --- but we went on to the
3 Ellis Switch, and the phone worked there. Gary --- he
4 talked to somebody there, and we proceeded up Four
5 North. And about 47 Break we saw Jack Roles and Tim
6 Blake.

7 Q. Would you like to take a minute?

8 SHORT BREAK TAKEN

9 BY MR. FARLEY:

10 Q. Now, Mr. Cornett, I think you arrived at Break 47
11 and you saw Jack Roles and Mr. Blake; is that correct?

12 A. Right.

13 Q. What were they doing?

14 A. They were walking. We stopped and briefly talked
15 to them. I had asked, you know, what happened, and
16 Tim was just in shock. And he just said dust and
17 stuff everywhere and people everywhere, and so we ---
18 Gary and I told everybody else to stay there. They
19 went a few breaks outby, I think 42 Break --- 41 Break
20 there was like a phone, and Gary and I continued
21 walking. And we just walked a few breaks and we saw
22 lights coming. And when the lights approached us,
23 somebody said, need an EMT in here with Head, and Gary
24 jumped in there and I got in beside Bill Lynch, and we
25 went out.

1 Q. Who was operating the vehicle?

2 A. I don't know.

3 Q. Okay. All right. Did you see anyone else?

4 A. No.

5 Q. All right. Now, let me back up to the time you
6 got outside after going to the barrier section.

7 During the time that you were in the mine office, did
8 you ever hear any calls from underground to the
9 dispatcher or to Mr. Clay or to anyone else?

10 A. No.

11 Q. Okay. Have any knowledge of any calls or any
12 communication between Mr. Clay, the dispatcher or
13 anyone else with the longwall face or anyone on the 22
14 Headgate section after the explosion?

15 A. No.

16 Q. Okay. After the explosion, did you make any notes
17 as you were traveling in the mine or during the rescue
18 operation?

19 A. The only notes I barely jotted down was about Tim,
20 meeting Tim there. And I don't even have them now. I
21 mean, they're somewhere, but ---.

22 Q. Okay. When you exited the mine after coming upon
23 those who needed assistance, where did you exit the
24 mine?

25 A. The Ellis Portal.

1 Q. All right.

2 MR. FARLEY:

3 Mr. McAteer?

4 ATTORNEY MCATEER:

5 Thank you.

6 EXAMINATION

7 BY ATTORNEY MCATEER:

8 Q. Mr. Cornett, the Raymond gifts, you manage that?

9 You said you manage that program?

10 A. No, I don't --- I don't really manage it, no.

11 It's just a company-wide program.

12 Q. Right. But who hands out the points? That's the
13 key issue.

14 A. Well, I was supposed to, but other people done it
15 for me.

16 Q. Okay. Who would do that for you?

17 A. Marsha Lewis was the last one doing it for me.

18 Q. Uh-huh (yes). Marsha? Is it Marshall or Marsha?

19 A. Marsha.

20 Q. Marsha. But if I were a miner and I wanted to
21 complain about it, I'd come to you; is that right?

22 A. Well, that's where it starts.

23 Q. Okay. All right. Now, you said you participated
24 on the fan change in February --- I'm sorry, the
25 ventilation change in February; that's correct?

1 A. Yes.

2 Q. How did you organize that? How was that plan
3 change organized? You sat down in a room with some
4 people and said, here's what we're going to do?

5 A. No, I didn't sit in with them and do that.

6 Q. Okay.

7 A. It was done elsewhere, and then --- you know, I
8 was just there when the maps were given to us and we
9 went in.

10 Q. Who gave the maps to you?

11 A. Well, Wayne got them from the engineers, ---

12 Q. Right.

13 A. --- and that's how we got them.

14 Q. And who explained the changes?

15 A. Wayne would explain --- him and the engineers is
16 the ones that explained it.

17 Q. And as you testified, you were really trying to
18 get better air, ---

19 A. Yes.

20 Q. --- is that what --- is that what they --- the
21 objective was?

22 A. That or, you know, just to redirect the air.

23 Q. Okay. Okay. And who made the --- how was the
24 presentation made? Who talked at the meeting?

25 A. Well, I wasn't at that ---.

1 Q. But when you were told what to do, who was there
2 with you?

3 A. Jim walker and me.

4 Q. So who gave you the directions?

5 A. Well, Wayne gave it to Eric, and we just --- the
6 best I can recall, ---

7 Q. Sure.

8 A. --- it was either Wayne or Eric that showed on the
9 map, you know, that had the stages.

10 Q. But what I'm getting at is somebody said to you
11 and to Walker we want you to do something when you go
12 in to make these changes. Was that Mr. Lilly or was
13 that Mr. Persinger?

14 A. That would have been Mr. Persinger probably.

15 Q. Now, following the changes and you come out, is
16 there any conversation that day about the changes?

17 A. No. We just gave our air readings.

18 Q. Okay. And you gave those to?

19 A. To Wayne.

20 Q. Right. And did you have any conversation about, I
21 think it's better or I think it's worse, maybe that
22 will work, anything like that?

23 A. I really don't recall.

24 Q. Okay. Now, on the 9th of March were you working
25 in that period of time, the 9th and 10th, that's early

1 March?

2 A. I'm sure I was, yeah.

3 Q. Sure. And did there come a time when a group of
4 inspectors came in and inspected about ventilation?

5 A. Yeah, they were there a lot.

6 Q. Right.

7 A. Could have been.

8 Q. Was there a time when the mine was closed for
9 ventilation purposes, violations?

10 A. The entire mine or ---?

11 Q. Or a section thereof or ---.

12 A. I'm sure, yeah.

13 Q. 1st of March there was a time when things were
14 closed and changes were made?

15 A. I mean, we or ---?

16 Q. Yourself or the group. I mean, around the 3rd ---
17 the 9th of March a group of MSHA ventilation
18 inspectors came in, made an inspection and found
19 violations, and the mine is closed. Do you remember
20 that at all?

21 A. Vaguely, yes.

22 Q. Okay. And did you have any conversation about ---
23 with Mr. Persinger or Mr. Walker about those
24 ventilation changes?

25 A. Well, I'm sure we talked about it. I can't

1 remember what we said, you know. I just dealt with
2 the violations. We just went to correct things.

3 Q. Okay. In answer to Mr. Farley's questions, you
4 said you wanted to keep the air from --- you wanted to
5 choke the air off to the longwall. Can you point out
6 that location, please?

7 A. Well, that --- the --- your longwall face ---

8 Q. Right.

9 A. --- is like this. And you know, at the time it
10 was more back here, so more air is wanting to go, you
11 know, this way.

12 Q. Right.

13 A. So you had to, you know, keep that curtained off,
14 you know, for air to go across the face. But this fan
15 down here is going to pull air ---

16 Q. Right.

17 A. --- strongly, so you have to do things to try to,
18 you know, keep that from doing it. You got two
19 blowing fans and then an exhaust fan, you know. So
20 that's basically why.

21 Q. So the natural tendency of the air would do what?

22 A. Well, this fan is going to pull it.

23 Q. Right. And these fans are going to blow it.

24 A. Yeah

25 Q. And what's the air going to try to do?

1 A. Well, it's going to go this way, ---

2 Q. Right.

3 A. --- you know.

4 Q. Inject yourselves to get it, ---

5 A. Right.

6 Q. --- okay, around to the other ---.

7 ATTORNEY FERGUSON:

8 And can we let the record reflect that

9 the witness was pointing to the headgate side of the
10 longwall and pointing in the direction of the
11 Bandytown fan with respect to the air being pulled
12 inby and that the witness and Mr. McAteer were also
13 referring to the air being pulled by fans outby,
14 towards the 78 Break at the same time in speaking
15 regarding the air movement in the area of the headgate
16 longwall.

17 BY ATTORNEY MCATEER:

18 Q. Now, on the rock dusting, did you have any
19 responsibility with regard to training of rock dusters
20 or anything?

21 A. No. You know, I didn't.

22 Q. Okay. And did you examine --- did you see any
23 rock dusting in the --- let's say the month before the
24 explosion occurred, anybody rock dusting?

25 A. Yes.

1 Q. And who was that?

2 A. Well, I saw the results of, ---

3 Q. Okay.

4 A. --- you know, because I walked some beltlines up
5 here with an inspector and they had dusted and we
6 walked down, and it was all, you know, dusted up, ---

7 Q. Okay.

8 A. --- so ---.

9 Q. And who ran the rail-mounted duster?

10 A. I don't know what the guy's name was.

11 Q. Was he African-American?

12 A. They may have had one on there at one time, yes.

13 Q. Were any red hats with him?

14 A. I think he did have a red hat that worked with him
15 once.

16 Q. Do you remember any of those names?

17 A. I think that was Nate Jeter, I believe. The red
18 hat, I don't know what his name was.

19 Q. And at the time of the explosion, was Mr. Jeter
20 employed at the mine?

21 A. I don't know.

22 Q. When did Jonah leave the employment of Massey? Do
23 you remember?

24 A. He retired the first of July.

25 Q. 2000 ---?

1 A. 2010.

2 Q. So he was there through the accident, through the
3 explosion?

4 A. Yes.

5 Q. Okay. Now, when you trained the dispatcher, you
6 said straight out of the law books. What law books
7 were those?

8 A. Federal law book.

9 Q. Okay. And you're talking about the Code of
10 Federal Regulations?

11 A. Yes.

12 Q. Okay. Now, when you did training, you talked
13 about doing a series of training, and you mentioned
14 some instruction manuals. Can you tell me about those
15 instruction manuals, what they --- any names or
16 whether they were Massey instruction manuals or MSHA?
17 You testified on a number of occasions to say you did
18 training for individuals, and you said --- you
19 referenced instruction manuals.

20 A. Yeah. Task training books.

21 Q. Okay.

22 A. Now, task training books are for, you know,
23 specific job occupations.

24 Q. Right.

25 A. And those are, you know, compiled together. Some

1 could be company. Some could be State or Federal.

2 Q. Uh-huh (yes). And the annual retraining, was that
3 your responsibility?

4 A. Part of, yes.

5 Q. Okay. And can you tell us what part of it was
6 your responsibility?

7 A. Well, actually, the ones that I've been involved
8 in, I've assisted Jonah. We've helped each other
9 through all the retrainings.

10 Q. And did you use these instruction manuals for
11 that, too?

12 A. Jonah had the outlines right out of the law and
13 the training, you know, programs ---

14 Q. Right.

15 A. --- that's in the law.

16 Q. Did you use the S-1 materials at all?

17 A. May have mentioned S-1 stuff, but ---.

18 Q. What's S-1 for?

19 A. S-1 is safety first.

20 Q. Right. But I mean, it's not training material, so
21 it's --- what's it for?

22 A. Well, it's --- it could be training material.

23 It's safety ---.

24 Q. You didn't use it as training materials as such,
25 but --- but I just don't --- I mean, I'm trying to

1 understand what it was --- the purpose.

2 A. The purpose is to get people to realize that
3 safety is the first thing that you think of in
4 anything that you do.

5 Q. Okay. And excuse me. I apologize. At the time
6 of the explosion on the 5th of April, you were in
7 Clay's office?

8 A. Yes.

9 Q. And is that --- where is that located?

10 A. It's in the mine office, and there's a window
11 there that you can view the North Portal, track
12 entry ---

13 Q. Right.

14 A. --- and you can also see the return entry from
15 that window.

16 Q. Did you see Everett Hager at the time?

17 A. Everett was on the other --- the Ellis Portal
18 side.

19 Q. Okay.

20 A. I didn't see him until we came back outside.

21 Q. And did you happen to see Jason Whitehead?

22 A. I didn't see Jason.

23 Q. How about Chris Blanchard?

24 A. I didn't see him either.

25 Q. Was there any concern about going into the mine

1 after the explosion occurred for your own safety
2 or ---?

3 A. I had none whatsoever.

4 Q. Did anybody say anything like we should notify
5 MSHA or ---?

6 A. I guess somebody did. My thought was my guys
7 there.

8 Q. On a regular basis when you said you spent most of
9 your time underground, what was --- give me a
10 short --- not long, but a short description of what
11 you did during the day.

12 A. During the day?

13 Q. When you'd walk in underground.

14 A. Well, if I could catch a ride, you know, sometimes
15 I'd catch a ride at six o'clock and I would ride
16 in, ---

17 Q. Right.

18 A. --- you know, with somebody. It depended on what
19 I was doing. I did a lot of different things. And
20 I'd catch a ride up to a certain area, and I may go
21 from there and, you know, walk a beltline or walk an
22 airway or walk to a section and then catch a ride out
23 that evening. And sometimes I'd just start from
24 outside and I'd just walk in.

25 Q. And when you were there, say, on a section, what

1 would you do?

2 A. I would see how, you know, the --- do little S-1
3 audits, we called them.

4 Q. Okay.

5 A. Just like an inspection.

6 Q. And if there was problems that you found, how
7 would you manage those?

8 A. Well, just an example, if I saw a guy didn't have
9 his safety glasses on, I'd say, where's your glasses?

10 Q. Okay.

11 A. And they'd say, well, they're right here, they're
12 dirty. And I'd say, well, clean them off and get them
13 on.

14 Q. Okay. And did you do any of this on the Headgate
15 22?

16 A. I've been on the Headgate 22, yes.

17 Q. In the months running up to --- from, let's say,
18 February through the time of the accident?

19 A. I can't recall when I was up there, but you know,
20 it could have been in that time frame.

21 Q. And anytime did you --- did anybody speak to you
22 about the air, the adequacy of the air?

23 A. Not really. Uh-uh (no).

24 Q. At no time no one raised the air issue?

25 A. No different than what I said earlier, that ---

1 when I stated that they --- when they was starting
2 that section, it could have been where we made the
3 changes, you know, they may have --- being the
4 farthest place in the mine, it would be the hardest
5 one to get the air, too, but ---

6 Q. Sure.

7 A. --- new changes, and you know, it was accomplished
8 and they had, you know, good air.

9 Q. If the air was not very good during any particular
10 day, how would that be remedied? How would that be
11 fixed?

12 A. They'd shut down and fix it.

13 Q. Who would fix what?

14 A. Well, I know what kind of guy Dino was. If he
15 didn't have it, he shut his section down, he'd call
16 outside, and they'd, you know, start checking, you
17 know, the immediate section first. And then, you
18 know, if you didn't have the air coming up there, then
19 you go outby.

20 Q. But if I'm a foreman and I've got guys on the crew
21 in the section and I want to get something changed, do
22 I walk out and change the doors or send somebody to
23 change doors?

24 A. No. I wouldn't --- not that. I don't know ---.

25 Q. Okay.

1 ATTORNEY MCATEER:

2 That's all the questions I have.

3 RE-EXAMINATION

4 BY MR. SHERER:

5 Q. I have some follow-up questions. And I'm going to
6 jump around a bit just due to the nature and the
7 organization of the questions. You stated that the
8 superintendent was in charge of ventilation at the
9 mine. Who was that superintendent?

10 A. Well, Everett Hager was superintendent on that
11 end.

12 Q. Of the northern end?

13 A. Yeah, of the north end up there.

14 Q. Okay. You said that people didn't complain to you
15 about air on Headgate 22. Did you have any awareness
16 of lack of air up there?

17 A. Only what I stated before, you know, the --- you
18 know, was you know what they --- what they had, but it
19 was really before the Headgate 22 section. It was
20 really when they was developing that out there is the
21 only time they really had what I'd call air problems.

22 Q. Did you actually measure the air up on Headgate
23 22?

24 A. I have taken air readings up there, yes.

25 Q. What sort of air readings did you get?

1 A. I think the last time --- just the best of my
2 memory, this could be --- was it like 19,000-something
3 in the last open break the last time I remember doing
4 that.

5 Q. Okay. Did you have to do anything to get that
6 19,000?

7 A. No. I walked up there.

8 Q. Just walked up and took it. Do you have any
9 knowledge of people manipulating doors to get air on
10 the sections or a certain part of the mine?

11 A. No.

12 Q. Do you think that was done when inspectors went in
13 the mines?

14 A. Not that I know of.

15 Q. Okay. Have you ever heard of anything like that?

16 A. No.

17 Q. Okay. When was the last time you were on the
18 longwall?

19 A. I can't remember.

20 Q. Do you think it was within a month of the
21 explosion?

22 A. It may have been longer than that. I don't know.

23 Q. Did you not get up on the longwall regularly?

24 A. Not a whole lot.

25 Q. Did somebody else keep up with the safety on the

1 longwall?

2 A. Well, Jim and I both had been up there before, you
3 know, on different shifts, you know.

4 Q. Did you ever have a problem with anything on the
5 longwall safety-wise?

6 A. In what way?

7 Q. Anything that you recommended that they did
8 differently, something that you thought wasn't done
9 right, something that needed improving?

10 A. No, not on the longwall itself. You know, the
11 only thing that --- you know, when the inspectors at
12 one point back way up in the ---

13 Q. Headgate.

14 A. --- headgate section, that was a long time back,
15 you know. We went up in there. It was difficult to
16 travel. That's why they was developing this new
17 tailgate.

18 Q. Okay. Why was it difficult to travel in the
19 headgate?

20 A. Well, it was --- ribs was sloughing out and you
21 had where it was cribbed and prop setters up through
22 there. It was getting difficult to travel, and water
23 in there.

24 Q. Was it deep water?

25 A. Sometimes it was.

1 Q. Was any of it roofed out?

2 A. Yes, I've --- sometimes, one entry.

3 Q. Had you gone back either on the headgate side or
4 the tailgate side of the longwall since the longwall
5 started up?

6 A. Yeah. I've been all the way to the fan
7 underground.

8 Q. And when is the last time you went all the way to
9 that Bandytown fan?

10 A. I don't remember.

11 Q. Okay. Don't remember. Did you travel with any of
12 the examiners that went up through there?

13 A. Yeah. I've walked up there with examiners.

14 Q. Do you recall who that examiner was?

15 A. Charles Saminsky.

16 Q. Saminsky.

17 A. Uh-huh (yes).

18 Q. Was he doing the examinations at the time of the
19 explosion; do you know?

20 A. Well, he did part of it, and then they had a
21 foreman that worked back there every day, and he did
22 the other end of it.

23 Q. Who was that foreman?

24 A. Jeremy Burdoff.

25 Q. Did you ever travel with Mr. Burdoff?

1 A. No, I've never traveled with him.

2 Q. Were you aware that they had red hats back there
3 working in neck-deep water?

4 A. Neck-deep water?

5 Q. Yes, sir.

6 A. I know they had some red hats that went back there
7 before. I didn't know anybody was working in
8 neck-deep water.

9 Q. Okay. Did you ever hear about one that got a
10 serious skin rash?

11 A. No.

12 Q. Okay. Thank you. You said at one point in time
13 there was too much air on the longwall. Do you recall
14 who said that?

15 A. Not really, just kind of generalized statement.
16 They said they was freezing to death.

17 Q. Okay. I understand that. It can get quite cold
18 on the longwall. It can actually get quite cold in
19 this interview room. You said that you worked with
20 the mine examiners mainly when you first came to UBB.
21 Did you observe them taking air measurements?

22 A. Charles is probably the only one. The others was
23 just fire bosses.

24 Q. Okay. As you understand it, what air measurements
25 have to be made at this mine?

1 A. In this mine?

2 Q. Uh-huh (yes).

3 A. Well, the sections have to make their last open
4 break readings and their face readings. You have to
5 have readings at your fan weekly, what's going in.
6 You got to have your return readings. You need to
7 take readings at the intake splits. And you know, in
8 a mine this size, you've got a lot of readings. You
9 want to know what's --- like from your fan to the
10 first place that you're going to make a turn, that's
11 where you'd want to know what's there so you know what
12 kind of loss you have from there to another point and
13 then across overcasts. If you got like three
14 overcasts that's got intake going over, you want to
15 know what's going over each one.

16 Q. Sure.

17 A. So taking it all off and add them up.

18 Q. Okay. Did you ever review any of the ventilation
19 maps?

20 A. Review as in?

21 Q. There's an annual 75372 ventilation map has to be
22 submitted.

23 A. I personally didn't, no.

24 Q. Who would have been in charge of that?

25 A. I'm going to --- I guess engineering and the

1 management, you know.

2 Q. Any particular person in management that reviewed
3 that map that you know of?

4 A. If I was going to say, I would just say from the
5 president down through engineering, you know. That
6 could include the superintendent also or even the mine
7 foreman.

8 Q. Okay. Do you think the same people decided where
9 to take air measurements?

10 A. Yes, they should have. Yes.

11 Q. Okay. Do you know where the regulators were for
12 the 22 Headgate section?

13 A. Well, 22 I can't say right off.

14 Q. Okay. How about the 22 Tailgate section?

15 A. No, I don't know where their regulator is, to be
16 honest with you.

17 Q. Okay. Did you feel that the ventilation in this
18 mine was adequate prior to the explosion?

19 A. Yes.

20 Q. What do you base that on? There wasn't air
21 readings hardly anywhere.

22 A. Well, I base that on, you know, walking --- you
23 know, I've walked all the airways and everywhere that
24 --- if I took readings, there's always been plenty of
25 air, you know, everywhere that I, you know, have been.

1 And I mean, there was so much air blowing in the fan
2 that I went through there with a Federal inspector, it
3 about blew us down, so ---.

4 Q. Okay. How come the --- and we've got tons of
5 testimony that --- people who worked on the 22
6 Headgate in particular, they'd get on the section and
7 not have enough air to start up. It wouldn't even
8 move an anemometer blade. Where'd the air go?

9 A. I don't know.

10 Q. Okay. Were you aware of those sorts of problems?

11 A. Just like I said earlier, you know, the problems
12 they had and working through the changes.

13 Q. Okay. Compared to other mines that you've been
14 at, do you think that there was an inordinate number
15 of ventilation changes?

16 A. Well, like I said earlier, there was a lot of
17 changes. But when you look at the mines, the way it
18 was expanding, you know, it warrants, you know, a lot
19 of changes.

20 Q. Okay.

21 A. I've never been in a longwall mine prior to this.

22 Q. Okay. Who took the --- was anybody supposed to
23 --- you mentioned before that Mr. Saminsky took air
24 readings, but the fire bosses didn't.

25 A. Well, the ones that went on the belts, they might

1 have been other --- I know there was other fire bosses
2 that also walks other airways. You know, Charlie
3 walked some airways and took readings. And they took
4 them on their end of the mines, you know, wherever
5 they would go.

6 Q. Did the fire bosses on the belts have anemometers?

7 A. I don't know. I'm sure they did.

8 Q. Okay. Did you ever ask anybody about the air
9 quantities and air movement directions on the belts?

10 A. I never really had to ask anybody. You know, it
11 was always --- when I walked them, it was always
12 positive air on the belts.

13 Q. Did you take any air readings when you were on the
14 belts?

15 A. Well, I hadn't taken any actual readings, you
16 know, not that I can recall.

17 Q. Okay. Do you know anybody that did take readings
18 on the belts?

19 A. Well, I'm sure they would have --- when they do
20 their vent maps, that they'd have either the mine
21 foreman or superintendent take them.

22 Q. Okay.

23 A. That's typically how it is.

24 Q. Okay. I understand you guys had the carbon
25 monoxide monitoring system on the beltline.

1 A. CO system, yeah.

2 Q. When you first became aware of the dust and such
3 rushing out of the portals at UBB, do you recall if
4 that thing was alarming?

5 A. I just don't --- I don't remember.

6 Q. Okay. Were you aware that certain air velocities
7 had to be maintained in beltlines that had CO
8 monitoring?

9 A. Yeah, you got certain ones, yes.

10 Q. Who checked that?

11 A. I don't know.

12 Q. Okay. Did Performance Coal or UBB or anybody that
13 you're aware of ever take rock dust samples in this
14 mine?

15 A. Like the inspectors take?

16 Q. Uh-huh (yes).

17 A. Not that I recall.

18 Q. Okay. But the inspectors took samples?

19 A. Right.

20 Q. Did you rely on those inspector samples?

21 A. I don't know.

22 Q. Okay. Do you recall traveling down the tailgate
23 side of the longwall?

24 A. I have.

25 Q. After the longwall was in production?

1 A. Yes. Uh-huh (yes).

2 Q. What was the rock dust like back there?

3 A. It's pretty good shape back through there, what I
4 recall.

5 Q. What's pretty good?

6 A. Well, white everywhere, unless a rib rolled off or
7 something.

8 Q. Okay.

9 A. It had been dusted before they come out of there.

10 Q. Okay. What about the rock dust on the belts, what
11 sort of shape was that in?

12 A. Overall, the belts were dusted pretty good, real
13 good, you know.

14 Q. Okay. Did you ever notice any float coal dust
15 along those belts?

16 A. Very rare, you know.

17 Q. What would you do when you noticed it?

18 A. Get somebody to clean it up.

19 Q. Okay. Do you think the examiners always recorded
20 hazards?

21 A. Probably not always.

22 Q. Did you ever take any steps to improve their
23 recording hazards?

24 A. Yeah. We talked to them, you know, and told them,
25 you know, that you know, you find something wrong,

1 you've got to --- if you can't fix it, you've got to
2 record it. If it's not something that's, you know, an
3 imminent hazard, you've got to record it in the book
4 and take the steps to get it fixed.

5 Q. And what would you do if it was an imminent
6 hazard?

7 A. Then you'd have to shut down.

8 Q. Do you recall if any of your examiners ever shut
9 things down?

10 A. I'm sure they have, yeah.

11 Q. Can you recall any specific instances?

12 A. Just vaguely I remember it seems like --- I know
13 they've shut One South belts down before, you know,
14 have a bad roller. I've heard them call out and say,
15 I'm going to have such and such belt down, you know,
16 got to drop a roller or something like that.

17 Q. Okay. When you guys got plan revisions, vent
18 plan, roof control plan, methane dust control plans
19 changed, how did you communicate those plans to the
20 miners? Was there some system to do that?

21 A. Yes. In addition to, you know, going over those
22 at annual retrainings, any time you had one, all of
23 our foremen would carry their plans with them and they
24 reviewed a part of the plans, you know, on a daily
25 basis, especially the roof control. And the MMU

1 plans, they pretty much do the same with that. Any
2 time there's a change, you know, review it with
3 everybody.

4 Q. And who gave those changes to the foremen? Did
5 you have some particular person that did that or how
6 did that work?

7 A. Well, the changes, that would come --- you know,
8 it would actually come through the engineering, you
9 know, the actual letter changes, and that would be
10 distributed, you know, to the management at the mines.
11 And the superintendent either would do it or give it
12 to the mine foremans and right on down, you know, like
13 that.

14 Q. And do you think that was getting to the foreman
15 and getting to the miners in a timely manner?

16 A. Yes.

17 Q. Okay. I'm a bit confused. Did this mine have an
18 engineering department?

19 A. Well, yes, I guess you could say that. Yeah.

20 Q. Okay. Who were the engineers? I may have asked
21 you this before.

22 A. Yeah.

23 Q. I remember you mentioning Eric Lilly. Were there
24 others?

25 A. Well, you know, down at the engineering office,

1 you know, they had other engineers, you know, down
2 there. You know, you had a chief engineer and then,
3 of course, he's over all of it.

4 Q. All of UBB?

5 A. Yeah. He's over all --- the whole Performance,
6 everything outside and everything ---.

7 Q. Who is that chief engineer?

8 A. Well, it was Paul McCombs. He retired.

9 Q. When did he retire?

10 A. A couple months ago, I guess, something like that.

11 Q. After the accident?

12 A. Yeah.

13 Q. Who's the chief engineer now?

14 A. Well, I think he's acting chief engineer, Ken
15 Brown.

16 Q. Okay. When you were issued citations or orders,
17 were you responsible for seeing that those were
18 terminated or who was in charge of that?

19 A. Well, that would be the superintendent or mine
20 foreman. I'm in charge of the paperwork on them.

21 Q. Oh, you get the dirty part of it. Okay. When
22 state or federal inspectors came on the mine site, did
23 the people of the mine normally know when that
24 happened?

25 A. If they came, you knew ahead of time, you know.

1 Like if they was running dust or something, you know,
2 they got to come there early to do that.

3 Q. Okay. But if they just came after the shift
4 started or anything like that, would anybody call that
5 underground? Ever heard of anybody doing that?

6 A. I'm sure over the years that's been done, yeah.

7 Q. Would the guards normally announce that, when
8 people came on the property?

9 A. I never heard them.

10 Q. You wouldn't have a hearing loss, would you?

11 A. No, I don't think so.

12 Q. Thank you. I think you mentioned something about
13 people training at Marfork possibly or trained with
14 the Marfork people. Was that how it worked?

15 A. Well, what I was saying is, you know, Marfork is a
16 big operation in itself and, you know, when annual
17 retraining, you know, comes around, you know, I would
18 just go and help him with his, ---

19 Q. Uh-huh (yes).

20 A. --- and then we'd schedule, you know, all the UBB
21 training and then he would come and help me with that.

22 Q. So you did the site-specific stuff ---?

23 A. Oh, yeah, just for ---.

24 Q. Okay.

25 ATTORNEY FERGUSON:

1 And by he you mean?

2 A. Jonah Bowles and ---.

3 BY ATTORNEY SHERER:

4 Q. What was Jonah's title?

5 A. He was safety director.

6 Q. Safety director for?

7 A. Marfork Coal.

8 Q. And he was a --- was he a Marfork employee or
9 Performance employee?

10 A. Marfork.

11 Q. Okay. This Jackie, who did she work for?

12 A. He.

13 Q. Or he. Excuse me.

14 A. He works for Marfork Coal also.

15 Q. Okay. Do you have the authority to take
16 disciplinary actions for safety violations?

17 A. Yes, I can.

18 Q. Have you ever done that?

19 A. Yes, I probably have.

20 Q. Can you recall any specific incidences?

21 A. Probably took Raymond points away for people
22 speeding, not wearing seatbelts on the property.

23 Q. Okay. Do you recall who conducted the mine chairs
24 that the new-hires or people coming back would take?

25 A. Typically, that would fall under the

1 superintendent. You know, it could be him. It could
2 be the mine foreman. It could be, you know, one of
3 the foremans on a particular shift.

4 Q. Okay. Do you know if they were MSHA-approved
5 instructors?

6 A. Yeah. The ones that took --- the ones that, you
7 know, gave them their training and --- I couldn't say
8 on all of them because I don't know --- I don't know
9 who all went in or who didn't.

10 Q. Do you recall who oversaw the training when the
11 longwall returned from Logan's Fork?

12 A. Well, I know Jack Roles was the longwall
13 coordinator, and I'm sure --- and there was another
14 fellow that helped set it up. I'm trying to think of
15 his name. He was an instructor also. I know he did
16 training.

17 Q. Okay. Now, you mentioned Jonah Bowler (sic) and
18 Jackie Stover. Was there anybody else involved in
19 training at UBB aside from yourself?

20 A. Well, Gary May. He was one of the
21 superintendents. He was a certified instructor. He
22 would assist. And then Nina Lacey, she teaches First
23 Aid. She does EMT training and stuff. She's employed
24 at Marfork also.

25 Q. Anybody else that you can recall?

1 A. Well, anybody that was certified as an instructor.
2 You know, most of the superintendents and some of the
3 mine foremans are.

4 Q. Okay. Let's talk about accidents. I think Terry
5 asked you several questions about reporting of
6 accidents. Did you guys report restricted time or
7 restricted duty accidents?

8 A. Well, yes, when they know --- when it's known that
9 it is restricted, yes.

10 Q. Okay. In your opinion, what do you think happened
11 as far as this explosion?

12 A. I'll tell you, it just --- it boggles my mind,
13 really. I don't --- I never would have thought ---
14 all the travel and stuff that I done in there, I never
15 would have dreamed anything like that could have
16 happened. So you know, it's pretty evident that, you
17 know, methane just came from somewhere, whether it
18 came through the floor or through the gob or whatever
19 happened, but you know, whatever it was, it happened
20 awful quick, and it just --- I just can't believe it.
21 The way I've been through it, I never would have
22 dreamed it.

23 Q. Have you been back in the mine since the
24 explosion?

25 A. Yes.

1 Q. Do you recall the --- whether the crews working on
2 the longwall --- do you recall when they last had
3 firefighting evacuation training?

4 A. Mine Rescue did it, but I can't remember exactly
5 when.

6 Q. Okay. You said you measured 19,000 CFM at
7 Headgate 22. Was the section producing coal then?

8 A. No.

9 Q. Was 19,000 sufficient air to run that section?

10 A. Yeah. 15,000 is what the plan called, but we
11 didn't want sections running without less than 20,000.

12 Q. So 19,000 was less than 20,000.

13 A. That's less than 20,000.

14 Q. Was it still okay to run?

15 A. Well, I don't --- I can't really recall, you know,
16 what --- you know, what --- I don't even remember what
17 day that was when we was up there. It's just
18 something that I do remember.

19 Q. Okay. Do you think it was common to run in
20 sections with less than 20,000 CFM?

21 A. Only if you got permission and it warranted that
22 you couldn't get 20,000.

23 Q. Who would give that permission?

24 A. Probably the president.

25 Q. Did you ever hear anybody ask for permission to

1 run with less than 20,000?

2 A. Never really heard anybody ask that, no.

3 Q. You say you traveled up the tailgate of the
4 longwall. Do you recall which entry you traveled up?

5 A. The last time I was on the tailgate side I was
6 with a Federal inspector, and we went up the old track
7 entry.

8 Q. Okay. Now, you said that you reviewed the weekly
9 record books; is that correct?

10 A. Yeah, occasionally I did. It wasn't an everyday
11 practice of mine. That was the superintendent/mine
12 foreman's job ---

13 Q. Okay.

14 A. --- more than ---.

15 Q. And they had to countersign them?

16 A. Yes.

17 Q. We also talked about information that should have
18 been collected and put in the weekly books, such as
19 air readings and intakes, returns, overcasts, so on
20 and so forth. Did you notice that there wasn't many
21 readings like that in the ---?

22 A. Well, I didn't notice. I thought there was, you
23 know, quite a few readings in there. If there wasn't
24 any in there, then it would have been brought to
25 somebody's attention, and then they would have had to

1 put them in there.

2 Q. Okay. Do you recall anybody complaining that
3 there wasn't enough readings in the books?

4 A. I don't recall.

5 Q. Okay. Now, you say you had the authority to shut
6 down --- or to discipline people for safety
7 violations. Have you ever stopped production for a
8 safety violation or a safety issue?

9 A. I've never had to there.

10 Q. Okay. Do you know if anybody else has stopped
11 production for safety-related issues?

12 A. I'm sure they have, but I don't really recall.

13 Q. Okay. Would you expect the section foreman to
14 stop production for safety violations?

15 A. Sure.

16 Q. Do you recall if anybody --- any of them done
17 that?

18 A. I'm sure Dino's done it before, yeah.

19 Q. Okay. Do you think anybody else would have done
20 it?

21 A. I'd say they would, yes.

22 RE-EXAMINATION

23 BY MR. FARLEY:

24 Q. Just a couple things that I neglected earlier.

25 After the explosion, you indicated that at first you

1 considered the possibility that a major roof fall
2 occurred. At what point did it occur to you that it
3 was something much more than that?

4 A. When I rode out with the men, tried to, you know
5 --- couldn't do anything until we got outside, and I
6 helped do CPR.

7 Q. Okay. Now, when you --- after you encountered Mr.
8 Roles and Mr. Blake at around 47, there was a mantrip
9 which approached you; is that correct?

10 A. (Indicates yes).

11 Q. Do you recall who ---?

12 ATTORNEY FERGUSON:

13 Is that a yes?

14 A. Yes.

15 ATTORNEY FERGUSON:

16 Okay.

17 BY MR. FARLEY:

18 Q. Do you recall who was operating the mantrip and
19 who might have been inby the mantrip at that point?

20 A. I don't really know.

21 Q. Okay. All right. Thank you.

22 ATTORNEY MCATEER:

23 I just have a couple, please.

24 RE-EXAMINATION

25 BY ATTORNEY MCATEER:

1 Q. You testified that there are contractors working
2 at this mine?

3 A. That contractors were ---?

4 Q. Contractor employees at this mine?

5 A. We have had contractors, yes.

6 Q. Have any of them ever had accidents?

7 A. I'm sure they have.

8 Q. And have those been reported to the State?

9 A. To the best of my knowledge they have.

10 Q. Is that your responsibility?

11 A. It probably was, if I knew.

12 Q. And do you recall reporting any of those --- any
13 contractor accidents since March of '09, when you were
14 employed there?

15 A. The only one that I know of through this Part 50
16 thing, there was a contractor that was working on the
17 Ellis Portal highwall that I had no knowledge of him
18 being a lost time or restricted duty or anything until
19 the audit. I knew nothing about it.

20 Q. Part 50 audit?

21 A. Yes.

22 Q. I see. Okay. So that was an accident. But
23 because you lacked knowledge, it was not reported?

24 A. Well, it was reported to somebody, but you know,
25 the --- I think it was the contracting company ---

1 Q. I see.

2 A. --- is what it was.

3 Q. And do you know Elizabeth Chamberlin?

4 A. Yes.

5 Q. And do you report to her?

6 A. Sometimes. I'm supposed to.

7 Q. What are you supposed to report to her?

8 A. Well, just, you know, if I need anything or, you
9 know, if she --- they have, you know, monthly meetings
10 with safety directors, which I didn't go to for a long
11 time because I traveled underground all the time. I
12 didn't go.

13 Q. I see. And you testified about your thinking
14 about what happened here. You've been in the mining
15 business quite some time.

16 A. Uh-huh (yes).

17 Q. Was this a pretty big explosion?

18 A. Yeah.

19 Q. Do you think dust was involved in this explosion?

20 A. I don't know. You know, something, you know, ---
21 I just don't know.

22 Q. Given the size of this explosion, do you think
23 that dust wasn't involved with it?

24 A. I ain't saying that it wasn't. I just --- you
25 know, personally I can't say.

1 Q. Thank you.

2 ATTORNEY MCATEER:

3 I have no more questions.

4 ATTORNEY FERGUSON:

5 Do you have anything else? Terry? Mr.

6 Cornett, on behalf of MSHA and the Office of Miners'
7 Health, Safety and Training, we want to thank you for
8 appearing and answering questions today. Your
9 cooperation is very important to the investigation as
10 we work to determine the cause of the accident. We
11 request that you not discuss your testimony with any
12 person aside from your personal representative. After
13 questioning other witnesses, we may call you if we
14 have any follow-up questions. If at any time you have
15 additional information regarding the accident you
16 would like to provide to us, please contact us at the
17 information provided to you with the letter I gave you
18 earlier this afternoon. If you wish, you may now go
19 back over any answer you have given during this
20 interview. You may also make a statement that you
21 would like --- any statement you would like to make at
22 this time.

23 A. No.

24 ATTORNEY FERGUSON:

25 Thank you very much for coming out.

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STATEMENT UNDER OATH CONCLUDED AT 3:58 P.M.

* * * * *

1 STATE OF WEST VIRGINIA)

2)

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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.



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21
22 *Alicia R. Brant*
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