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Transcript of the Testimony of John Kinder

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STATEMENT UNDER OATH
OF
JOHN KINDER

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Thursday, May 20, 2010, beginning at 10:30 a.m.

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IDENTIFIED

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Map

74*

*exhibit not attached

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ATTORNEY BAXTER:

My name is Derek Baxter. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Eric Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA. Also present are officials with the State of West Virginia. I ask that they state their appearance for the record.

MS. MONFORTON:

Celeste Monforton, with the Governor's special investigation team.

MR. FARLEY:

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

ATTORNEY BAXTER:

Today's May 19th, 2010. Mr. Farley will start the questioning today, followed by Mr. Sherer and then Ms. Montforton. Several other members of the investigation teams are also present in the room. All members of the Mine Safety and Health Administration Accident Investigation Team and all members of the State of West Virginia Accident Investigation Team participating in the investigation of the Upper Big Branch Mine explosion shall keep

1 confidential all information that's gathered from each
2 witness who voluntarily provides a statement until the
3 witness statements are officially released. MSHA and
4 the State of West Virginia shall keep this information
5 confidential so that other ongoing enforcement
6 activities are not prejudiced or jeopardized by a
7 premature release of information.

8 This confidentiality requirement shall
9 not preclude investigation team members from sharing
10 information with each other or with other law
11 enforcement officials. Your participation in this
12 interview constitutes your agreement to keep this
13 information confidential.

14 Government investigators and specialists
15 have been assigned to investigate the conditions,
16 events and circumstances surrounding the fatalities
17 that occurred at the Upper Big Branch Mine-South on
18 April 5th, 2010. The investigation is being conducted
19 by MSHA under Section 103(a) of the Federal Mine
20 Safety and Health Act and the West Virginia Office of
21 Miners' Health, Safety and Training. We appreciate
22 your assistance in this investigation.

23 After the investigation is complete, MSHA
24 will issue a public report, detailing the nature and
25 causes of the fatalities in the hope that greater

1 awareness about the causes of accidents can reduce
2 their occurrence in the future. Information obtained
3 through witness interviews is frequently included in
4 these reports. You should know that if you request
5 confidentiality, confidentiality will only be granted
6 on a case-by-case basis. Your statement may also be
7 used in other enforcement proceedings.

8 You may have a personal representative
9 present during the taking of this statement and may
10 consult with the representative at any time. Do you
11 have a representative with you?

12 MR. KINDER:

13 No, sir.

14 ATTORNEY BAXTER:

15 You may refuse to answer any question and
16 you may request a break at any time. Since this is
17 not an adversarial proceeding, formal Cross
18 Examination will not be permitted. However, your
19 personal representative may ask clarifying questions
20 as appropriate. A court reporter will record your
21 interview. Please speak loudly and clearly. If you
22 do not understand a question asked, please ask the
23 question to be rephrased. Please answer each question
24 as fully as you can, including any information that
25 you've learned from someone else. I'd like to thank

1 you in advance for your appearance here. We
2 appreciate your assistance in this investigation.
3 Your cooperation is critical in making the nation's
4 mines safer.

5 After we have finished asking questions,
6 you'll have an opportunity to make a statement and
7 provide us with any other information that you believe
8 to be important. If at any time after the interview
9 you recall any additional information that you believe
10 might be useful, please contact Norman Page at the
11 telephone number or e-mail address provided to you.
12 Would you please swear in the witness?

13 -----
14 JOHN KINDER, HAVING FIRST BEEN DULY SWORN, TESTIFIED
15 AS FOLLOWS:
16 -----

17 EXAMINATION

18 BY MR. FARLEY:

19 Q. John, would you please begin by giving us your
20 full name, home address and phone number?

21 A. Full name is Johnny Lee Kinder, K-I-N-D-E-R. I
22 reside at [REDACTED]

23 [REDACTED]

24 [REDACTED] .

25 Q. Are you employed with the West Virginia Office of

1 Miners' Health, Safety and Training?

2 A. Yes, sir, I am.

3 Q. Okay. What's your position?

4 A. I'm assistant inspector-at-large at Region 3,
5 Danville.

6 Q. Okay. Now, the Upper Big Branch Mine is not
7 included in the Danville region?

8 A. That is correct. It is not.

9 Q. How long have you been working as assistant
10 inspector-at-large?

11 A. Three years.

12 Q. Okay. How long have you been with the agency?

13 A. Eight years.

14 Q. Okay. What's your total number of years in
15 mining, in the coal mining industry?

16 A. Eight with the agency, 28 years underground.

17 Q. Okay. Now, who'd you work for before you joined
18 the agency?

19 A. I worked for 22 years with Eastern Associated
20 Peabody Coal Company at the Pine Ridge Coal Company
21 Big Mt. 16 Mine and the Sundial Complex, 10A, 10B
22 operations. I worked for Mingo Ligon --- Logan
23 (changes pronunciation) for a short span and I've
24 been, like I say, with the agency for eight years now.

25 Q. Okay. Have you received any special training that

1 you want to share with us?

2 A. No, sir, none. I'm a member of the mine emergency
3 State team.

4 Q. But you're a member of the mine rescue, outer mine
5 rescue team ---

6 A. Yes, sir.

7 Q. --- agency-wide mine rescue team?

8 A. Yes, sir.

9 Q. Okay. How long have you been a member of the
10 agency mine rescue team?

11 A. Four years.

12 Q. Okay. Now, would it --- am I correct that you
13 have not inspected the Upper Big Branch prior to April
14 5th?

15 A. That is correct, I have not.

16 Q. Okay. Well, let's start with April 5th, 2010.
17 Tell me when and how you learned that the problem
18 existed at the Upper Big Branch Mine.

19 A. On that particular Monday, we was having mine
20 emergency practice in Logan at the Southern West
21 Virginia Community College, and we had done quit for
22 the day, and I was on my way home. And actually, I
23 was probably ten miles from my house when a vehicle
24 come up behind me and flagged me down. And it was a
25 paramedic that lives in that area, said there was a

1 problem at the UBB operation.

2 Q. Okay. Good. How far do you work --- how far do
3 you live from UBB Mine?

4 A. I'm just a couple miles from the operation.

5 Q. Okay. What happened then? What'd you do?

6 A. Not having cell service in that area, and I had
7 never received a page about any problem of any kind, I
8 went directly to my house and, indeed, called our
9 office in Danville.

10 Q. Uh-huh (yes).

11 A. They then informed me that there was a problem and
12 I went directly to the mines.

13 Q. Okay. Approximately what time did you encounter
14 the emergency services' person?

15 A. That was probably 4:30.

16 Q. Okay. So shortly thereafter you called your
17 Danville Office?

18 A. Yes, sir. That is correct.

19 Q. Approximately what time did you arrive at the UBB
20 mine?

21 A. Probably by the time I got home and made the phone
22 calls, it was probably 5:10, 5:15.

23 Q. Okay. Which portal did you arrive at first?

24 A. The Ellis Branch Portal.

25 Q. Okay. Did you arrive in advance of the rest of

1 the State mine rescue teams?

2 A. Yes, sir. I think I was the first one there.

3 Yes, sir.

4 Q. Okay. When did they ultimately arrive?

5 A. It was probably 6:30 before everything got started
6 arriving at the time. There was different people
7 coming in at different times.

8 Q. Okay. About what time did the agency teams begin
9 arriving?

10 A. They was about --- it was probably 6:30 when the
11 actual vehicles started pulling onto the properties.

12 Q. Okay. Okay. If you got there at the Ellis Portal
13 at 5:10, can you give us just --- just a general
14 description of what you encountered and what you saw?

15 A. When I first got to the property, it was just ---
16 the other shifts had come on to work, and it was just
17 --- people was just setting around. It was confused.
18 People was running here, running there. I didn't know
19 what to expect when I got there. There was traffic at
20 the bottom of the hill at the road. The State Police
21 and everything did direct me on straight to the mines.
22 They didn't hold me up or anything. I went straight
23 to the mines.

24 Q. Uh-huh (yes).

25 A. They never stopped me, questioned me or anything.

1 And it was just --- when I first got up to the mine
2 property, it was chaotic, it really was. There was a
3 lot going on, not knowing that we had people outside
4 already or anything that had happened at that time.

5 Q. Okay.

6 A. I could tell something bad had happened, though.

7 Q. Okay. All right. By this time, had any of the
8 deceased miners been brought outside?

9 A. Yeah. I was probably there about 30 minutes
10 before I ever knowed (phonetic) that, because I went
11 directly into the mine office to start collecting
12 information of what may have happened ---

13 Q. Uh-huh (yes).

14 A. --- and try to get a bearing on the mine itself,
15 not being familiar with this mines, not knowing the
16 layout of this mine.

17 Q. Sure.

18 A. Okay? And it was my first thing to do and to try
19 to actually --- actually make some more phone calls to
20 our people, the State people, to make sure they are
21 aware of it and they are on the way. But we had no
22 phone service because all the phone service and power
23 at those mines had been taken out.

24 Q. Okay.

25 A. And we never had cell service either.

1 Q. Okay. All right. In your attempt to gather
2 information at the Ellis Portal office, what persons
3 did you speak with?

4 A. I spoke with --- Wayne Persinger was outside.
5 Elizabeth Chamberlin was there, which is a safety
6 person for Massey. She was there. I had talked to
7 Chris Adkins briefly on the mine phone. He was at the
8 other portal. I'm assuming that's where he was
9 at, ---

10 Q. Okay.

11 A. --- because he was on the mine phone, ---

12 Q. Okay.

13 A. --- because somebody had told him that a State
14 representative had arrived. And of course I did talk
15 to Chris briefly. And we didn't get into a lot of
16 conversation because there was just so much going on
17 at that time. He was just trying to tell me, you
18 know, what he thought maybe had occurred.

19 Q. You mean --- I'm sorry. You mean Chris Adkins?

20 A. Yes, Chris Adkins.

21 Q. Okay.

22 A. That's correct. Yeah. Just a brief statement
23 with Chris that, you know, that we did have people.
24 I'd say --- informed him, we did have other people on
25 the way to assist.

1 Q. Okay. Can you elaborate a little bit on what Mr.
2 Adkins told you and ---

3 A. He just ---.

4 Q. --- what was his description?

5 A. He just wanted to know what I thought we needed to
6 do. And I --- at that time I was told there was extra
7 --- there was other people underground looking for
8 people.

9 Q. Uh-huh (yes).

10 A. I assume from both portals, the UBB Portal and the
11 Ellis Branch Portal.

12 Q. Uh-huh (yes).

13 A. Not knowing how many or anything. I do know that
14 Massey had a mine rescue team there or had gotten
15 there while I was in the mine office.

16 Q. Uh-huh (yes).

17 A. And I noticed that they was getting their
18 apparatuses ready, which is normal procedure to do. I
19 noticed there were several other ambulances had
20 started pulling onto the properties. And at that
21 time, that is, like I say, about 30 minutes later when
22 --- I did see that we did have victims outside
23 already.

24 Q. Okay.

25 A. And I only seen that by walking over to that area

1 and seeing them myself.

2 Q. No one actually --- no one told you that?

3 A. Nobody had told me that, no.

4 Q. Okay.

5 A. No.

6 Q. But did you get any sense of what time the
7 deceased miners were brought outside?

8 A. No, not at that time. The first time that I asked
9 of a time was what time did this occur, and they told
10 me 3:02.

11 Q. Do you recall who told you that?

12 A. Yes, that was Wayne Persinger.

13 Q. Okay. Do you know Wayne's position at the company
14 or what his position was with the company at the time?

15 A. At that time I did not know. I didn't know ---
16 didn't even know that Mr. Persinger was in this area
17 again. I thought he was still across at the other ---
18 the other way.

19 Q. Okay. Did you have any conversations with any of
20 the other Performance UBB management folks?

21 A. No, not at that time I did not. I was just trying
22 to collect information and, like I say, get bearings
23 on the mine itself or what may have occurred; okay?

24 Q. Okay.

25 A The first thing I actually asked when I went into

1 the mines, or went into the mine office is seal
2 locations. I had concerns about seals, as we always
3 have, and I was asking about seal locations in this
4 area, and which they did pinpoint on the map to me.

5 Q. Okay. When you refer to this area, did Mr.
6 Persinger or anyone else give you any indication as to
7 which area of the mine was involved?

8 A. They just told me the longwall area.

9 Q. The longwall area?

10 A. Yeah, the longwall area. And I was trying to
11 still yet getting to learn --- learn the mine a little
12 bit.

13 Q. Uh-huh (yes).

14 A. Show me where the longwall was at. What do you
15 call it? Show me where your miners' sections are at.

16 Do you have other operating units in this mine?

17 Q. Okay.

18 A. I was just trying to get a bearing on the mine
19 layout itself.

20 Q. Okay. Did they offer you any indication as to how
21 many people were unaccounted for at that time?

22 A. No, not at that time. They did not.

23 Q. All right. Okay. Were any other State or MSHA
24 inspection personnel on the scene when you arrived?

25 A. Not when I arrived, no, not that I'm aware of.

1 Q. Okay.

2 A. There was another State representative, the first
3 that I had seen, did show up shortly thereafter.

4 Q. Do you recall who it was?

5 A. Yes, that was Wayne Wingrove.

6 Q. Okay. Okay. And is he from the agency's Oak Hill
7 office?

8 A. Yes, sir, that is correct.

9 Q. Okay. And you think you said earlier that the
10 mine rescue --- State mine rescue team, the agency
11 mine rescue team began arriving around 6:30?

12 A. That is correct, yes.

13 Q. Okay. Did it become necessary to --- for the
14 transfer of the operation with the rescue teams and
15 personnel to the other portal at Montcoal?

16 A. Yeah. Indeed what we had done at a State team, we
17 had actually started preparing our equipment, ---

18 Q. Uh-huh (yes).

19 A. --- our apparatuses, to go underground from the
20 Ellis Branch side.

21 Q. Yes.

22 A. And like I stated earlier, we had no power on that
23 side.

24 Q. Uh-huh (yes).

25 A. We had no telephone communications, so it was ---

1 and I don't know who made the decision. I'm sure it
2 was our coordinator, along with MSHA, to transfer from
3 there to the UBB side.

4 Q. Okay. And do you recall approximately what time
5 you made the move from Ellis to the other side?

6 A. It was pretty quick. Like I say, we had --- some
7 of the --- some of the team members, indeed, had
8 already started putting their apparatuses together at
9 the bottom of the hill in one of the trucks.

10 Q. Right.

11 A. So --- and our State truck, our southern team
12 truck, as we call it, was at the mine site. So by
13 about 7:30 we had done transferred to the UBB side and
14 was set up.

15 Q. Okay. Now, when you got to the other side at
16 Montcoal, did you determine if rescue teams were
17 already underground at that point?

18 A. At that time, they was not.

19 Q. Okay. Do you recall when the first rescue team
20 might've gone underground, approximately?

21 A. Yeah, it was probably about 8:15. There was two
22 Massey teams that was ready to go underground.

23 Q. Okay.

24 A. Indeed, shortly, about 8:30 two State teams went
25 underground.

1 Q. Okay. At 8:30 with the two State teams that went
2 underground, were you a part of either team?

3 A. Yes, sir, I was.

4 Q. Okay. Would you be good enough to view either of
5 the maps? We have a one inch 500 foot scale map of
6 the entire mine on the wall here. And there's a
7 smaller scale, larger scale, one inch equals 200 foot,
8 scale map of the general area of the explosion in
9 front of you. Would you be good enough to take us
10 through from the time that you entered the mine, where
11 you went to, how you got there and then how you got
12 through there?

13 A. Yes, sir. This map here doesn't show the UBB
14 Portal, ---

15 Q. Okay.

16 A. --- which it does show it up on this other scale
17 map right here. We traveled by --- on the rail by
18 battery mantrip from the UBB Portal up to Break 78,
19 which is right here (indicating) on this map.

20 Q. Okay. When you say right here, can you --- when
21 you indicate on the map, would you just take a marker
22 and indicate where you arrived and take your pen, if
23 you would, and draw a line from it and indicate ---?

24 A. You mean draw --- you mean draw from up here down?

25 Q. That's fine. You can just circle the area on the

1 map.

2 A. Okay. All right. Break 78 to 75.

3 Q. Circle the area on the map.

4 A. We was about --- actually we parked the mantrip
5 about right there (indicating).

6 Q. Okay. Circle --- draw a line from it, if you
7 would. Just ---.

8 A. Okay.

9 Q. Just note --- you can use your pen or your marker
10 and note that, arrived ---

11 A. Okay.

12 Q. --- approximately what time?

13 A. It's about a 45-minutes ride from there. So when
14 we left outside about 5 --- about 8:30, I'm going to
15 say about --- I'm going to say 9:30, be a little bit
16 more --- that we arrived on --- at that area.

17 Q. Okay. So you arrived in the area of 78 Break, so
18 after you arrived, what happens? Where'd you go?

19 A. We then proceeded on up the track a little ways
20 and we head to --- we have been told by somebody, and
21 I don't know how I received that information, that we
22 could not get up the track entry because it was
23 watered off. We had a lot of water. And I don't know
24 where that was at, because I was never in that entry,
25 up this (indicating) way.

1 Q. Now, when you say up the track, you mean in the
2 inby direction ---

3 A. Yes.

4 Q. --- from 78 up, what is it, Sixth North there?

5 A. Six North belt, that is correct.

6 Q. All right. And how far did you travel up in the
7 inby direction, moving up Six North?

8 A. We traveled up this (indicating) way here. Then
9 indeed we had been told about the water, so we come
10 over this way to this next entry.

11 Q. All right. Now, when you say this way, would that
12 be the ---?

13 A. The inby side.

14 Q. Okay. That would be the Number Three entry of the
15 five entries in Six North?

16 A. Well, it'd be one, two --- yes.

17 Q. Okay.

18 A. Yes, it would've been.

19 Q. All right. If you can, mark your route of
20 travel ---

21 A. Okay.

22 Q. --- with the ---.

23 A. We left the mantrip right here (indicating) and we
24 come up. These doors right here were completely gone.
25 They were not there. They had been blown apart.

1 Q. You mean the doors that are indicated on the map?

2 A. Yes, these doors indicated here as being
3 destroyed.

4 Q. Okay. Now let me ---.

5 A. Okay?

6 Q. Let me stop you right there. These doors, just
7 --- you can see their original location on the map.
8 Do you have any sense of where they were --- where
9 they ended up?

10 A. They seemed to be blown outby.

11 Q. In the outby direction?

12 A. And they was on the track. You'd have to go over
13 or around 'em.

14 Q. Okay.

15 A. Okay?

16 Q. All right.

17 ATTORNEY BAXTER:

18 And can you --- can you indicate which
19 --- where those doors are exactly that you're talking
20 about?

21 A. They would be located at ---?

22 BY MR. FARLEY:

23 Q. Meaning where they ended up after the explosion.

24 A. Oh, they was --- they was pretty much right in
25 this area right here where they're at. They were just

1 blown down. Okay? It's about 78, about 77 Break, I
2 think. Somewhere through there they had been blown
3 down.

4 Q. Okay. So now, again, you traveled inby up Six
5 North. How far did you go?

6 A. Approximately?

7 Q. Well, the best you recall.

8 A. We come through this crosscut right here to the
9 left.

10 Q. Is there as spad number there you can read?

11 A. No, I can't see it, Mr. Farley.

12 Q. I can't see it ---

13 MS. MONFORTON:

14 Here you go.

15 BY MR. FARLEY:

16 Q. ---- either, so ---. Okay. We're getting the
17 magnifying glass.

18 A. I can see with that. Looks like 19556.

19 Q. Okay. All right. Where did you explore after
20 that?

21 A. We come --- straight after we made this crosscut
22 right here at this (indicating) spad number, we turned
23 right-handed and traveled this entry up through here,
24 inby.

25 Q. Now, would that be the Number Two entry heading

1 north?

2 A. Yes, it would be. It'd be Number Two heading
3 north. We traveled up this way (indicating) all the
4 way up through to here, and we established a fresh air
5 base somewhere in this area here.

6 Q. Okay. Now, according to the breakthrough numbers
7 on the map, would that be somewhere in the vicinity of
8 95 or 96 Break?

9 A. Yes, sir, that is correct. We established a fresh
10 air base somewhere in this vicinity. I couldn't give
11 you a definite number on that.

12 Q. Okay. When you established a fresh air base
13 there, how many teams were at the fresh air base?

14 A. There was four teams.

15 Q. Okay. How many teams --- were there any teams
16 inby?

17 A. Yeah, there was. The first two teams that went
18 underground was on inby us.

19 Q. All right.

20 A. Yes.

21 Q. Okay. All right. What happened then?

22 A. Okay. At that time, we was directed by the
23 command center from the surface to go in through this,
24 what they call the cut-through area.

25 Q. Okay. Now, that would be to your ---?

1 A. It'd be to this left ---

2 Q. Okay. If you were ---.

3 A. --- of the Number One entry.

4 Q. If you were standing in the Number Two entry in
5 Six North here and facing in the inby direction, would
6 that be to your left?

7 A. Yes, sir, it'd be to the left.

8 Q. Okay. All right. All right. What did you do
9 then? Did you explore that area?

10 A. Yes, sir, we did. The team that I was on, like I
11 said earlier, was a State team. We went into this
12 (indicating) --- these cut-through areas and explored
13 this entire area right here.

14 Q. Now, to better explain where this area is located,
15 is it accurate to say that this cut-through area is
16 immediately outby the existing longwall panel?

17 A. Yes, sir, that would be correct.

18 Q. Outby the mouth of the longwall panel?

19 A. Yes, sir.

20 Q. Okay. All right. Did you ---? All right.
21 Continue with your exploration of that area, please.

22 A. Okay. I think --- well, as I can remember, Mr.
23 Farley, we come through --- we come through one of
24 these entries here, and I couldn't tell you which
25 entry it was. We come in ---

1 Q. Okay.

2 A. --- into these entries. And then we would connect
3 each entry up on our exploration as normal mine rescue
4 procedures.

5 Q. Okay. Now, this cut-through area that you go into
6 is --- is immediately outby the mouth of the longwall,
7 looks to me like you count from the left, you got
8 seven entries. Did you explore ---? Did you tie in
9 all the entries?

10 A. We tied in every portion of this cut-through area
11 here, seven entries, yes.

12 Q. Okay. What was your sense of the damage that you
13 saw there?

14 A. There was some old belt lines that had been left
15 in here through, I guess, the mining procedure at one
16 time and everything.

17 Q. Uh-huh (yes).

18 A. They had been --- seemed to be shifted some. We
19 noticed a lot of ventilation controls were gone that
20 are depicted on the map. These were taken down, blown
21 down, I presume. It was black in the area. There was
22 no rock dust in the area because it was all sooted up.
23 Appeared to be some bending of some of the pie pan
24 plates for the roof supports had been bent somewhat.

25 Q. Now, the pie pan roof bolt plate supports, did you

1 get a sense of how they were bent, in terms of how ---
2 which direction the forces came from to bend them?
3 Did you get any sense of that?

4 A. Yeah, they appeared to be bent to the outby side.

5 Q. Is that meaning the forces would have come from
6 the inby ---?

7 A. Yes, that is correct.

8 Q. Inby to the outby direction?

9 A. Yes, sir, that's correct.

10 Q. Okay. Was that consistent as far as the pie pan
11 plates were concerned?

12 A. Yes, sir, it was.

13 Q. Okay. All right. Now, you tied in that entire
14 area immediately outby the longwall panel. Did you
15 venture as far as the tailgate entries on the other
16 side of the longwall panel?

17 A. The only --- we come to this (phonetic) port ---.
18 We come to this point right here and stopped. We
19 never did go into the --- we never did go into the
20 tailgate area.

21 Q. Can you give us a spad number of where --- about
22 where you stopped there?

23 A. It looks like 23647.

24 Q. Okay. All right. Now, can you give us an idea of
25 approximately what time you finished up in that area?

1 A. Mr. Farley, I don't remember an exact time we
2 finished up in that area. It was so extensive in
3 here, we was in here quite a while. And to get back
4 to one of your earlier questions, you asked me about
5 what I remember in this area, I do remember one
6 distinct thing was our eyes were burning extremely bad
7 while we was in this area. We did have apparatus on,
8 but we was open-face.

9 Q. Okay.

10 A. We was not in any type of atmosphere that would
11 --- allowed us to have to go under apparatus.

12 Q. Okay. Were you open-face the entire time you were
13 here?

14 A. Yes, sir, we was.

15 Q. Okay. What was your --- I take it your CO
16 readings were acceptable ---

17 A. Yes, they was.

18 Q. --- or ---

19 A. Yes. They was in ---.

20 Q. --- tolerable?

21 A. They was in mid --- mid 30s.

22 Q. Okay. All right. After you explored that area
23 and you came --- and you came out of there, what
24 happened then?

25 A. After we explored this area. Now, we did go over

1 to this area, also, too, and stopped on this, where
2 this belt line is at right here, ---

3 Q. Now ---

4 A. --- just to tie this in for you.

5 Q. --- do you mean the belt that serves the longwall
6 section?

7 A. That is correct. Yes, we did come over to this
8 area right here just to show you that we did tie all
9 this in.

10 Q. Okay. Now, if you were standing at the mouth of
11 the longwall panel, looking inby, that belt would be
12 to the right; correct?

13 A. That is correct. That is correct.

14 Q. All right. What was the condition of the longwall
15 belt?

16 A. Just from where we was at, I didn't see anything,
17 just the material and stuff that had been laying
18 around, blowing around ---

19 Q. Uh-huh (yes).

20 A. --- different materials. I'm thinking, too, this
21 (indicating) overcast that was right here was
22 dismantled, if that's ---. I'm pretty sure it was
23 that one or this one had been dismantled.

24 Q. Now, when you say this overcast, is there a spad
25 number there?

1 A. Yes, sir, they are ---. It looks like 22616.

2 Q. Okay. You say that overcast was damaged or ---?

3 A. Yeah, it was completely taken out.

4 Q. Destroyed?

5 A. Destroyed, yes.

6 Q. Okay. All right. What about the overcasts ---
7 there appear to be a couple of overcasts in the inby
8 direction from there. What about them?

9 A. This is the only one I remember. This is the only
10 area that I was at right here. The other --- some of
11 the other team members were up in --- back and forth.
12 We got separated.

13 Q. All right. So by this time you've been in there a
14 pretty good while?

15 A. Yes, sir.

16 Q. What happened then?

17 A. At that time, after we tied all this area in, we
18 did retreat back to fresh air base. At that time, we
19 went to the outside. We'd have been here extensively
20 quite a bit of time.

21 Q. Okay. Now, was there a particular reason why you
22 went outside other than the fact that you'd been in
23 there a long time?

24 A. Yeah. I'm almost positive we was told to retreat
25 because of the high level of gases had went into

1 explosive range again.

2 Q. Okay. So after you left the mine, did you --- do
3 you recall the approximate time you arrived on the
4 surface?

5 A. That was probably --- I'm going to say six o'clock
6 the next morning, the following morning, ---

7 Q. Okay.

8 A. --- which would've been Tuesday.

9 Q. Okay. After that, did you re-enter the mine as
10 part of the rescue and recovery operation?

11 A. Yes, sir, I did.

12 Q. Okay. When was that?

13 A. That was Tuesday evening.

14 Q. Okay. That'd be Tuesday evening, April 6th?

15 A. Yes.

16 Q. And do you recall approximately what time you
17 entered the mine then?

18 A. I think it was about probably nine o'clock that
19 night.

20 Q. Okay. Is it fair to say that you entered the mine
21 in the same manner, via mantrip to the main UB Portal?

22 A. That is correct.

23 Q Okay. Now, where'd you go to this time?

24 A. At that time, when we did come to 78 Break again,
25 as I stated, we brought in a lot of material with us.

1 Q. Such as?

2 A. Stokes baskets. We carried curtain with us. We
3 was carrying pogo sticks. We had extra apparatuses
4 with us. We had phone canisters. We had vent ---
5 what we call CAREVents for rescue.

6 Q. Uh-huh (yes).

7 A. There was just a lot of material. We had carried
8 some extra wood, some timber, some things we had
9 brought in with us for if we would, indeed, need 'em.

10 Q. Uh-huh (yes).

11 A. Yes.

12 Q. Okay. By this time on Tuesday evening, how many
13 people remained unaccounted for in the mine?

14 A. At that time, there was four that I'm aware of
15 that was unaccounted for.

16 Q. Okay. All right. Okay. You're in the mine and
17 it's Tuesday evening. You got all these supplies.
18 Where do you go to and what do you do with it?

19 A. We carried --- we had to carry everything from 78
20 Break, do the same routine that we took on the first
21 night, going up here (indicating) and coming through
22 this crosscut into another entry. We carried
23 everything up and also establishing fresh air base as
24 we go and laying communications line, telephone
25 line ---

1 Q. Uh-huh (yes).

2 A. --- each time until at the time ---.

3 Q. Okay. Why don't you do us --- just do us a favor?

4 Take your pen or something there and mark ---.

5 MS. MONFORTON:

6 Maybe a different color?

7 A. Okay.

8 BY MR. FARLEY:

9 Q. Mark that same direction of travel and with a
10 different date, please.

11 A. Okay.

12 WITNESS COMPLIES

13 ATTORNEY BAXTER:

14 The witness is using a green pen for
15 Tuesday evening and started with a blue pen for April
16 5th.

17 A. And at that time, around a hundred break or Number
18 100 Break, I'm sorry, we did go back into the track
19 entry.

20 BY MR. FARLEY:

21 Q. Okay. Now, if you would please mark the date and
22 indicate the direction of travel on the map, please?
23 Approximate times, if you know.

24 A. Okay.

25 WITNESS COMPLIES

1 BY MR. FARLEY:

2 A. All right. That's probably 10:30.

3 Q. P.M.?

4 A. Yes.

5 Q. Okay. Seventy-eight (78) to about 100 Break,
6 roughly, would give you 22 crosscuts; is that about
7 right?

8 A. That is correct.

9 Q. Okay.

10 ATTORNEY BAXTER:

11 Did you mean to write April?

12 A. Oh, I'm sorry. I'm sorry.

13 BY MR. FARLEY:

14 Q. Okay. Now, after you arrive in the area of
15 Crosscut 100 there, was a fresh air base established
16 there?

17 A. Yes, we established several fresh air bases and we
18 went --- laid communications lines as we went was one
19 of our responsibilities to do that, lay out telephone
20 lines. And each time we would stop, we would, indeed,
21 establish a fresh air base, communicate outside, then
22 pursued on further inby.

23 Q. Okay. Can you take us through how you advanced,
24 please?

25 A. Yes, sir. Yes, sir. We did come over to the ---

1 back to the track entry, as I said, then started
2 heading inby again.

3 Q. Uh-huh (yes).

4 A. Okay? Up, all the way up, going inby.

5 Q. Now ---?

6 A. Wait a minute. I'm sorry, I'm sorry. I'm sorry.
7 I got turned around here.

8 Q. All right.

9 A. I'll have to take that --- that needs to come off
10 there. I'm sorry.

11 Q. All right.

12 A. I'm sorry about that.

13 Q. That's all right.

14 A. We indeed come up and we come up through here
15 (indicating). I'm sorry. Okay?

16 Q. That would be --- you mean the One North headgate
17 entrance?

18 A. Yes. Yes, sir, it is. Yes, we did come up
19 through this way.

20 Q. Okay.

21 A. I did come up through this way.

22 Q. Okay. Now, you're indicating that you're
23 traveling in the inby direction along One North
24 headgate entries from the location --- from what
25 location did you start there when you turned to the

1 left?

2 A. All right. This is Six North and I was on
3 Six ---. I assume there was a belt head right here
4 somewhere. I don't see a name of ---

5 Q. Okay.

6 A. --- that belt head.

7 Q. All right. So you marked on the map that you
8 traveled the Number Two entry, in other words, from
9 left to right, as you advance in the inby direction on
10 the One North --- in the One North headgate entries?
11 So and you're up to --- what spad number are you at
12 here?

13 A. 22759.

14 Q. Okay. Now, what happened then?

15 A. At that time, like I say, we was carrying all this
16 material up through here. And we had to stop several
17 times, like I said, because of the amount of material
18 we was trying to carry, plus establishing phone lines
19 and communications back outside. We could not proceed
20 any further until we had communications.

21 Q. Uh-huh (yes).

22 A. And at this point, when we did arrive to this
23 point right here (indicating), we was informed by
24 command center to drop everything and retreat to the
25 outside due to explosive mixtures at the boreholes.

1 Q. Okay. Now, when you say this location right here
2 when you were advised by the command center to
3 retreat, would you repeat that spad number, please?

4 A. Twenty-two (22) --- 22759.

5 Q. Okay. So once you retreated to the surface, do
6 you recall approximately what time you might've
7 arrived on the surface?

8 A. No, I don't remember exactly what time we got back
9 out that morning. I don't remember.

10 Q. Okay. Would that be into the morning of April
11 7th?

12 A. Yes, that is correct.

13 Q. Okay. So by the time you got back outside, four
14 people still remain unaccounted for?

15 A. Yes, they was.

16 Q. When did you reenter the mine again, or did you?

17 A. I did not go back into the mine until Friday.

18 Q. Friday would be April 9th; is that correct?

19 A. That's correct. Yes.

20 Q. Do you recall what time you entered on Friday,
21 April 9th?

22 A. No, sir, not at this time. I don't remember that
23 time. The days run from evening to --- my shift run
24 from one day up until the next morning, so I don't
25 remember exactly what times.

1 Q. Obviously you were there around the clock.

2 A. Yes, sir.

3 Q. Would it have been Friday afternoon, Friday
4 evening?

5 A. Yes, more likely it was Friday afternoon sometime,
6 but exactly what time, I couldn't tell you the time.

7 Q. Okay. Now, when you entered the mine on Friday,
8 okay, an you indicate where you went to at this time?

9 A. Yes, sir. Yes, sir.

10 Q. I assume you --- would it be fair to say you
11 entered the mine in the same location and ended up at
12 the same spot again, 78?

13 A. Same location, same location, same travelway each
14 time up to this (indicating) point of the inby fresh
15 air base, which had been established here at this spad
16 number 22759.

17 Q. So in other words, your direction of travel from
18 the 78 where you left the mantrip would've been the
19 same as the preceding time to that spad number?

20 A. Yes, sir, that is correct.

21 Q. Okay. In the Number Two entry?

22 A. That is correct.

23 Q. In the longwall headgate entry?

24 A. That is correct.

25 Q. All right. Where'd you go from there?

1 A. At that time, my duties for that night, too, was
2 they had inerted with nitrogen, all of this
3 (indicating) area in here for the past couple days.

4 Q. Okay. When you're saying this area in here, do
5 you know where they might've drilled the hole to ---?

6 A. I couldn't give you a definite. I know they
7 drilled several holes, ---

8 Q. Uh-huh (yes).

9 A. --- Mr. Farley, but I could not give you ---

10 Q. Okay.

11 A. --- a definite number exactly ---

12 Q. That's all right.

13 A. --- where that hole was that they did put the
14 nitrogen in.

15 Q. Okay. That's fine, but would that area have
16 included the 22 Headgate section and the Eight North
17 area and the Glory Hole area of the mine, or do you
18 know?

19 A. That would be correct. I'm going --- I'm almost
20 positive saying that the hole that they did put the
21 nitrogen down was up in this Eight North area, but I'm
22 not sure what number. They had these holes numbered.

23 Q. Okay.

24 A. I couldn't tell you exactly which number it was.

25 Q. During --- on this occasion on Friday, were you

1 under apparatus at this location?

2 A. At this location, we was not under apparatus.

3 Q. Again, this location being the same spad number
4 that you just mentioned?

5 A. That is correct.

6 Q. Okay. So where'd you go from there?

7 A. At this point, the team that I was with, our jobs
8 that night was to go into this (indicating) area here,
9 this cut-through from 23 Headgate, or Tailgate to 22
10 Headgate. We was to go in and do air quality checks
11 of four different places through here, and we did have
12 to don apparatus when we made this turn right here.

13 Q. Okay. Now, this cut-through you're referring to,
14 that would be north of the existing longwall face?

15 A. That is correct.

16 Q. Okay. Now, that would be toward location where
17 you would turn to go 22 Headgate?

18 A. That is correct.

19 Q. Okay. And what'd you find in that area?

20 A. We found --- like I say, we did have to don --- as
21 soon as we turned this corner here, our detectors all
22 when off, so we did, indeed, back out and did don
23 apparatuses at that time.

24 Q. Okay.

25 A. We know that would probably happen because of the

1 area where it had been inerted with nitrogen. We was
2 picking up --- I did not pick up any methane ---
3 anything. We did have low O2 and I think at that time
4 we was in like 150 parts per million CO, ---

5 Q. Okay.

6 A. --- at that time.

7 Q. Did you find any evidence of a fire or anything?

8 A. No, the air was just sooted up real bad, black as
9 normal as ---

10 Q. Okay.

11 A. --- we have found.

12 Q. Now, as you traveled --- how far did you travel in
13 the inby direction through that --- this crossover?

14 A. Well, what we done here is we had --- we'd come up
15 a couple --- up into this area and we took some ---.

16 And I can't give you the exact locations because I
17 don't remember those, what they was. We had to take
18 air quality checks in each of these four entries.

19 Q. Uh-huh (yes).

20 A. Okay? And then, indeed, what we done, we come out
21 and traveled this outside entry up.

22 Q. Now, when you say the outside entry, would that be
23 the entry on the extreme right as you were advancing
24 toward 22 Headgate?

25 A. That is correct.

1 Q. Okay.

2 A. That is correct.

3 Q. All right. Now, if you number those entries from
4 one --- one through four from the left as you're
5 advancing north, you will see what the map indicates
6 as a pretty good-sized roof fall, which seems to
7 extend here approximately two crosscuts. And it's
8 between a couple of spad numbers which I can't
9 possibly see here. Spad numbers 24064 on the inby end
10 and 24082 on the outby end of the roof fall. Did you
11 happen to see that roof fall?

12 A. No, sir, I did not.

13 Q. Okay. Or what the map indicates as a roof fall.
14 Okay. How far --- how much farther did you advance at
15 this point?

16 A. We advanced to this (indicating) outside entry.

17 ATTORNEY BAXTER:

18 Would you like to use another color pen?

19 We've got a yellow pen.

20 A. We advanced to this outside entry all the way up
21 to this point right here, which is --- it would be the
22 22 Headgate belt entry.

23 BY MR. FARLEY:

24 Q. Okay. Now, you indicated on the --- by marking
25 the Number Four entry through the cross --- entries in

1 the northerly direction?

2 A. Correct.

3 Q. All right. What was the condition of the 22
4 Headgate belt at that location?

5 A. Belt seemed to be untouched at that area.

6 Q. Untouched?

7 A. Yeah, I didn't see a thing wrong with that belt at
8 that area.

9 Q. Okay. What was the condition of the overcast?

10 A. Those overcasts were not in there. They had been
11 there at one time, ---

12 Q. Okay.

13 A. --- but I don't remember seeing those overcasts
14 there.

15 Q. The belt appeared to be undamaged?

16 A. Yes. Yes, it didn't appear to have any damage
17 whatsoever there.

18 Q. Okay. What about the damage coming through the
19 crossover area? What did that ---?

20 A. As we was going inby on this (indicating) area
21 right here, on this Number --- I'm going to call it
22 the Number Four entry.

23 Q. Uh-huh (yes).

24 A. Okay. If you go from left to right.

25 Q. Uh-huh (yes).

1 A. There was a scoop or a hauler setting here, which
2 would be the battery ends toward 22 Headgate.

3 Q. Uh-huh (yes).

4 A. The shields on that batteries were blown outby.

5 Q. Okay. Okay. Let me back up a little bit. As you
6 advanced on the inby direction in the One North
7 headgate entries with the longwall block to your left,
8 did you get any sense of the damage of that area and
9 from what direction the forces might've come from?

10 A. You couldn't really tell because they was so much
11 material that was blown around this area. It's kind
12 of hard to really indicate ---

13 Q. Uh-huh (yes).

14 A. --- exactly which way the forces come from. I do
15 distinctly remember, and I can't give you exact
16 location, they was a metal box that is stored, that is
17 used to store the SCSR caches that are put out through
18 the mines.

19 Q. Uh-huh (yes).

20 A. I do remember this particular metal box had been
21 sheared apart and part of that lid or part of that
22 covering for that box was actually drove into the roof
23 overtop of some metal screen.

24 Q. Okay.

25 A. I do distinctly remember that.

1 Q. Okay.

2 A. But other than that, there was so much material in
3 these areas that had been --- it's really hard to
4 indicate which way the forces did come from in these
5 areas.

6 Q. Okay.

7 A. But I do distinctly remember that metal box,
8 portions of it being drove into this metal screening
9 on the roof.

10 Q Okay. All right. Let's go back to the 22
11 Headgate belt here, where you stopped and you
12 indicated the belt was intact.

13 A. Uh-huh (yes).

14 Q. Where did you go from there?

15 A. At that point, the only thing we done at that
16 time, we took some air quality checks at the mouth of
17 22 Headgate.

18 Q. Uh-huh (yes).

19 A. And we come down here (indicating) and took one
20 here and at that time our mission was over for that
21 particular --- what we was in there to do for that
22 particular time.

23 Q. Okay. Now, this area, outby 22 Headgate,
24 approximately --- okay. There are a couple ---

25 A. Well ---.

1 Q. --- doors indicated on the map here.

2 A. We didn't go that far, Mr. Farley.

3 Q. Okay.

4 A. We didn't go that far down. Matter of fact, I
5 think, I think we took that test right in here on the
6 belt line. Pretty sure we took that test right in
7 here, which would've been outby.

8 Q. That would be one, about one crosscut outby where
9 this overcast is indicated?

10 A. That is correct.

11 Q. Okay. And your mission was over that morning?

12 A. Yes, sir, it was.

13 Q. Did you retreat the same ---?

14 A. Retreated back --- back the same way that we went
15 inby, retreated right back to the fresh air base. At
16 that time another crew was going to go into the 22
17 Headgate area.

18 Q. Okay. So this time you entered the mine sometime
19 Friday, Friday afternoon, and do you have any idea
20 when you got out?

21 A. Well, our mission wasn't over at that particular
22 time.

23 Q. All right.

24 A. We didn't finish. That was what we was scheduled
25 to do to get these air quality checks and everything.

1 Then we had other duties we was going to perform while
2 another team went in and started the 22 Headgate area.

3 Q. Okay. What other duties did you do?

4 A. Okay. At that time, we was told to go down there
5 and go across the longwall face area.

6 Q. Did you?

7 A. Yes, sir, I did.

8 Q. Okay. Can you describe what you saw as you
9 traveled across the longwall face? Is it fair to say
10 that you traveled across the longwall face from the
11 headgate entry side?

12 A. That is correct.

13 Q. Okay.

14 A. Yes, sir.

15 Q. Please describe what you saw as you entered.

16 A. Okay. There was ---. If I can --- the number of
17 team members that went down there, there was myself,
18 there was an MSHA inspector and three other team
19 members that went down, started proceeding down the
20 longwall face. And when we got to this (indicating)
21 area right here, we decided to drop off a team member
22 here because we had a feeling we was going to lose
23 communications.

24 Q. Okay. Now, when you say here, can you be more
25 specific?

1 A. Yeah, it was the stage loader area ---

2 Q. Okay.

3 A. --- the stage loader area right here.

4 Q. All right. Which is about one crosscut outby the
5 longwall face?

6 A. Yes, sir, that's about right. Well, indeed, when
7 we did drop off a team member there, because we had a
8 feeling that we might lose communications because we
9 was using handheld radios to go down this baseline ---

10 Q. Uh-huh (yes).

11 A. --- and you don't proceed any further under mine
12 rescue if you don't have communications.

13 Q. Sure.

14 A. Okay? So we did drop off a team member there, and
15 I don't know who that team member was. The teams were
16 kind of mixed in, in between there and everything.
17 And I was the next in front of him. Then we had a
18 gentleman in front of me, then three others heading
19 down the --- heading down the jack line.

20 Q. Okay.

21 A. Okay? Toward the tail end.

22 Q. Okay. And as you advanced along the longwall
23 face, what did you see?

24 A. Okay. We had a couple jacks that had come down in
25 this (indicating) area here due to where the power had

1 been off. You had ---

2 Q. Uh-huh (yes).

3 A. --- to get down and crawl.

4 Q. Are the jacks numbered from the headgate side?

5 A. Yes, they are. It starts with Number One jack
6 right here.

7 Q. Okay.

8 A. Start of the face.

9 Q. Did you recall approximately what number jacks
10 you're referring to are in the sequence?

11 A. They start from Number One all the way down. I
12 think there's 160, 170 jacks down this face.

13 Q. But you indicated a couple of them were down?

14 A. Yeah, I couldn't give you the number on that. I
15 don't know.

16 Q. Okay.

17 A. I don't know what ---.

18 Q. Would it be wrong to say the first 20?

19 A. It was in the first 20. That would be safe to
20 say, yes.

21 Q. Okay

22 A. Yes.

23 Q. All right. Can you continue as you traveled
24 across the longwall face?

25 A. Yes. As we traveled down through here, we got

1 down to about 12 jack and we stopped there for a
2 moment. We was bare-faced at that time because we had
3 good air, had air with us and everything.

4 Q. Uh-huh (yes).

5 A. There was no problem with it.

6 Q. Uh-huh (yes).

7 A. We was calling back air qualities to our --- this
8 individual here and then they was going to the command
9 center to the outside so we --- there was no problem
10 with any air or anything. And as we proceeded on down
11 through here, we started losing communication.

12 Q. Okay.

13 A. So, indeed, I dropped off then at Jack 42, ---

14 Q. Okay.

15 A. --- because of losing communications, and the
16 other ones then proceeded on toward the tail area.

17 Q. Okay.

18 A. And indeed about 80-some Break, 80-some Jack, that
19 is, another individual had to drop off because we was
20 losing communications again.

21 Q. Okay.

22 A. So we'd have to back up a little bit to try to
23 keep communications going.

24 Q. Sure.

25 A. And then three of the other team members --- two

1 team members and an MSHA inspector then went to the
2 tail area.

3 Q. Okay. Now, where was the shield located on the
4 longwall face?

5 A. The shield?

6 Q. Yes. Yes, sir. Excuse me, the shear. I beg your
7 pardon.

8 A. The shear, I was told, had cut out, was shuffling
9 in order to cut back, ---

10 Q. Okay.

11 A. --- is the way --- is the way it indicated --- the
12 way it looked to them.

13 Q. Okay. Over here on the tailgate; is that correct?

14 A. Yeah. Yes.

15 Q. Did you happen to find any of the individuals who
16 were still unaccounted for at that point?

17 A. Yes, sir we did. These teams --- if I could back
18 up just a moment, these ---

19 Q. Sure.

20 A. --- two teams that went into the 22 Headgate area
21 had, indeed, found the other three inby the mantrip up
22 here (indicating). So we know we had one more that
23 had not been discovered.

24 Q. Now, when you say the mantrip up here, you mean
25 the mantrip on the 22 Headgate; correct?

1 A. On 22 Headgate, that is correct.

2 Q. Okay.

3 A. And we know we had one that still had not been
4 discovered yet.

5 Q. Okay.

6 A. And this individual, like I say, I do not know his
7 name ---

8 Q. That's fine.

9 A. --- that was here at this head drive area.

10 Q. Uh-huh (yes).

11 A. --- hollered to me on the telephone, on the radio.
12 He said, John, I found the fourth one. I said, okay,
13 Joe. Joe. Joe's his name. Joe Runion was his name.

14 Q. Okay.

15 A. And I, indeed, radioed on down to the --- down the
16 line that we had found the fourth one, that they could
17 come on back now.

18 Q. Okay. After you traveled across the longwall
19 face, what was your sense of what happened? Could you
20 see evidence of destruction and where the forces might
21 have originated and how it might've progressed?

22 A. They was --- nothing on the longwall face, as far
23 as I went that would show me, give me any indication
24 of anything took place right there. I did not see
25 anything. The place --- the jacks, there was not a

1 lot of soot on 'em. The coal didn't have soot on 'em.
2 Down in the pan line, I looked. I didn't see a lot of
3 soot, you know, buildup or anything on any of the
4 material as far as I went.

5 Q. Uh-huh (yes). And how far along, across did you
6 make it?

7 A. Forty-two (42) Jack.

8 Q. Okay. What about --- what about the other folks?
9 Did they give you any, any description of what ---

10 A. No, sir. No, sir.

11 Q. --- they saw?

12 A. No, sir.

13 Q. Okay. Now, it's still Friday night?

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

15 Q. On April 9th?

16 A. Yes.

17 Q. Okay. After you located the fourth person who was
18 unaccounted for, ---

19 A. Uh-huh (yes).

20 Q. --- and you examined the longwall face in its
21 entirety, what happened then? Where'd you go?

22 A. At that time, all teams retreated back to the
23 fresh air base and ---.

24 Q. Where was the fresh air base at that point?

25 A. It was in this (indicating) area right here, at

1 that 227 --- 22759.

2 Q. Which would be in the --- numbering from one
3 through five, left to right, in the Number Two entry
4 of the longwall headgate entries about --- about a
5 crosscut outby the longwall face?

6 A. Yes, sir, that is correct.

7 Q. Okay. All right. What happened then?

8 A. At that time all teams then retreated back to the
9 fresh air base, and we was preparing to retreat to the
10 surface ---

11 Q. Uh-huh (yes).

12 A. --- for other teams to come in. And they had
13 asked for some of us to stay. And I hate to use this
14 term, to bag these victims that were found down on the
15 outby side. They needed some assistance to help do
16 that. They needed some of us to stay to do that.

17 Q. Okay. Now, in that area, would that be outby from
18 the fresh air base?

19 A. Yes, sir. This map here, I couldn't tell you
20 exactly where they're at. The other maps that I've
21 looked at has it marked on it and everything. This
22 one's not marked. I couldn't give you exact place
23 where they was at, and we had four people. Then they
24 was one down here to the Mother Drive area that needed
25 to do the same.

1 Q. Okay. Now, after you completed that work, what
2 happened?

3 A. We went to the outside.

4 Q. Okay.

5 A. Several of the team members left and went outside
6 that just did not want to be involved in this. And
7 there was several of us did stay to do it.

8 Q. Okay.

9 A. And that was only on a volunteer basis if you
10 wanted to do it or not. They left it up to each
11 individual. It had to be done, so ---.

12 Q. All right. Do you recall approximately what time
13 you were outside?

14 A. No, sir, I do not.

15 Q. Okay. Now, by late Friday night, all miners had
16 been accounted for?

17 A. That is correct.

18 Q. Did you reenter the mine after that to assist in
19 the continued recovery operation?

20 A. Yes, I did.

21 Q. Okay. When did you enter again?

22 A. That was Monday night.

23 Q. Okay. And do you recall approximately what time
24 you ---?

25 A. Yes, sir. About, about 6:30 Monday evening.

1 Q. Okay. Where did you go this time?

2 A. I went to --- we had several teams going
3 underground at that time to assist because we was
4 going to have to relay the bodies down, and we just
5 want --- everything would have to be carried. I was
6 in this (indicating) area right here of the Six North
7 belt. I think they actually called this the Mother
8 Drive area ---

9 Q. Okay.

10 A. --- of the longwall.

11 ATTORNEY BAXTER:

12 Is there a number on the --- number you
13 can refer to on the map?

14 A. Yeah, I can --- I'm going to say ---. Let me just
15 get my bearings here again, where exactly they did
16 bring 'em out at. And give me just a second here to
17 see exactly where I was at. It was probably at spad
18 number 2005, and it was around Break 100.

19 BY MR. FARLEY:

20 Q. Okay. Can you take --- take us through what you
21 did then?

22 A. Well, like I say, we had several teams on inby,
23 several teams outby. As we went in we --- each team
24 dropped off at certain locations where we was about
25 six to eight breaks apart. And as the inby ones would

1 transport one of the victims to us, we would take
2 over, transport them to the next one until we had all
3 nine people that was left on the ground that night
4 retrieved and put in mantrips to be taken to the
5 surface.

6 Q. Okay. Now, would those nine --- nine bodies have
7 been on the 22 Headgate section by this time?

8 A. Yes, that is correct.

9 Q. Okay. Now, the 20 --- the 22 Headgate section
10 faces --- what would you estimate the distance from 78
11 --- 78 Break from where the mantrip's parked, if you
12 can?

13 A. I want to say a mile-and-a-half.

14 Q. Okay. And as I understand, the deceased miners
15 were carried this entire distance; is that ---?

16 A. That is correct; yes.

17 Q. Okay. Physically carried by the mine rescue team?

18 A. That is correct.

19 Q. Do you recall what time you finished up? Were you
20 into Tuesday morning, the 13th by then?

21 A. It was Tuesday morning. I arrived outside at 3:30
22 Tuesday morning.

23 MR. FARLEY:

24 All right. Before I turn this over to

25 anyone else, you know, after having studied this a

1 while, this is --- the rescue effort is just all the
2 more impressive after than what we originally thought.

3 A. Yes, yes. Yes, it was.

4 MR. FARLEY:

5 The rescue recovery efforts.

6 A. Yes, it was.

7 MR. FARLEY:

8 Meaning the efforts of the mine rescue
9 team.

10 A. It's the toughest thing I ever went through in my
11 life.

12 EXAMINATION

13 BY MR. SHERER:

14 Q. First of all, Mr. Kinder, I want to thank you for
15 participating in this. I know it was an extraordinary
16 feat to accomplish what you guys did. And I think
17 everybody involved really recognizes that. Going back
18 to the 5th, when you first arrived at the mine, you
19 said it was chaotic. Do you recall who was in charge
20 of what was going on then? Did you ask?

21 A. I assumed at the time it was Wayne Persinger.
22 I've known Wayne for quite a few years at other
23 operations where I used to inspect at that time in the
24 Danville region. I didn't know Wayne was actually a
25 supervisor at the UBB at that time. Me and Wayne's

1 always had a good relationship together and I feel
2 Wayne would've told me everything I needed to know at
3 that time, so --- and that's actually the direction I
4 went.

5 Q. Do you know if he was a responsible person at that
6 point in time?

7 A. I could not tell you that. I do not know that.

8 Q. When you were going into the mine, you mentioned
9 that you experienced a burning sensation in your eyes.
10 Do you recall if there was any particular smell or any
11 other characteristic associated with that?

12 A. Yes, sir. There was a distinct smell. It's a ---
13 I can't describe that smell.

14 Q. Uh-huh (yes).

15 A. It's a smell of its own.

16 Q. Uh-huh (yes).

17 A. Yeah, you know, like I say, when we went into this
18 --- I'm going to call it the cut-through area --- in
19 here to do this exploration, it all started with us on
20 our, the team that I was with when we went into this
21 area here.

22 Q. Okay.

23 A. The smell and the irritation to the eyes, yes.

24 Q. Have you ever smelled formaldehyde?

25 A. No, sir, I'm not real familiar with it. No, sir.

1 Q. Do you recall approximately where you first
2 noticed that smell and/or burning sensation? Was it
3 after you got to the 78 Break and got off the mantrip
4 or was it before that?

5 A. No, I never really noticed a smell that I really,
6 you know --- until I got into this (indicating) cut-
7 through area. I didn't really pick anything up down
8 through here other until we got into this area here,
9 maybe because it's more a confined area in here, maybe
10 the reason it might've been a little stronger in these
11 areas.

12 Q. Yeah. Okay. Thank you. You mentioned that when
13 you went back in on the 9th, I think, you were still
14 --- the teams were still looking for four missing
15 victims. You mentioned that the last victim was found
16 on the longwall near the headgate.

17 A. That is correct.

18 Q. Do you know roughly how close you passed to that
19 victim as you went down the headgate?

20 A. Yes, sir. I walked right by him.

21 Q. Walked right by him. Did you or anybody on that
22 mine rescue team have any sort of device that can
23 detect the radiofrequency tag that that miner
24 supposedly had?

25 A. No, sir.

1 Q. Do you know if such a device is available?

2 A. No, sir, I do not.

3 Q. Do you think that that would be a useful device
4 for mine rescue operations?

5 A. Oh, I'm sure it would be, because when something
6 like this happens, if I may elaborate just a little
7 bit, where we found this gentleman, I hear, was real
8 close quarters. And we walked right directly by him.
9 I'm talking right beside; okay? So yeah, that would
10 be beneficial, because when devastation of this type
11 takes place, it's unbelievable what it does to the
12 person. It's unbelievable.

13 MR. SHERER:

14 Thank you. Again, I want to thank you
15 for your efforts.

16 A. I appreciate that comment. I really do.

17 EXAMINATION

18 BY MS. MONFORTON:

19 Q. Mr. Kinder, again, I thank you, too, for what you
20 did and for telling the story, because I'm sure that's
21 difficult to listen to and it must be even more
22 difficult to live through.

23 A. It's the hardest thing I ever went through.

24 Q. Could you talk a little bit about when you arrived
25 at the mine and you said the phone service out --- was

1 out and the power was out? What did you attribute
2 that to?

3 A. From what I understood about this mines, not
4 knowing a lot about this mines, but I've never ---
5 never been in this mines before because I don't
6 inspect in this area here, the power for this mines
7 comes from the UBB Portal through the mines to the
8 Ellis Portal. And just as soon as they told me that,
9 not knowing that's how that power run until I asked,
10 is I'm assuming it took the power out. So that's the
11 reason they never had power. And why the phone
12 service was out, I do not know that.

13 Q. Okay. Thank you. Were you the first person from
14 the State to arrive?

15 A. Far as I know, I was, yes.

16 Q. As far as you knew, okay. Thank you. And did you
17 ask when you arrived there and you encountered Mr.
18 Persinger and Elizabeth Chamberlin --- did you ask how
19 many people were unaccounted for?

20 A. I think I did. I just don't know if I've got an
21 answer from him at that time, because it was so just
22 chaotic there. It was just so much stuff being asked
23 and everything else. And I may have, and just don't
24 recollect that I did.

25 Q. Okay. Thank you. I think you said that you

1 thought Mr. Persinger was the responsible person in
2 charge of the rescue; was ---?

3 A. No, I didn't say that he was the responsible ---

4 Q. I'm sorry.

5 A. --- person. I said I thought he was a member of
6 the management team because I have dealt with Mr.

7 Persinger ---

8 Q. Okay.

9 A. --- before. I didn't know at what capacity that
10 he was.

11 Q. Who did you sense from the company was in charge
12 at that point when you arrived?

13 A. Well, at that point I thought it was Mr.

14 Persinger ---

15 Q. Okay.

16 A. --- because he's actually the first management
17 person that I did see.

18 Q. Did you get a sense that their --- the system that
19 they had for emergency tracking of personnel

20 underground was something that was informing their
21 decision-making?

22 A. I don't quite understand what you're asking.

23 Q. They had an emergency response plan that had a
24 tracking system defined in the plan.

25 A. That is correct, yes.

1 Q. Right.

2 A. Yes.

3 Q. Did you get a sense that information that
4 should've been provided from that system was helping
5 to inform the decision-makers on the surface of
6 information to relay to the mine rescue team?

7 A. Well, it would to a certain extent up to the time
8 of the explosion, because that's the only time ---.
9 From what I understood, it took this system clear out.
10 You're going to get an idea, a close idea of where
11 everybody might've been located at that ---

12 Q. Uh-huh (yes).

13 A. --- time, but ---.

14 Q. Can you elaborate a little bit more on that, when
15 you say, should give you an idea of where the people
16 were located? Like, could you kind of elaborate on
17 the mine map? What was the sense of what the area was
18 that it should have comprised?

19 A. Well, I don't know where they have their readers,
20 as they call them, installed. I have no idea about
21 this mines. It's going to give you indication where
22 you was out when you passed this reader.

23 Q. Right.

24 A. It's going to tell you outside that this
25 individual passed this reader.

1 Q. Right.

2 A. And it won't pick him again --- up again until he
3 passes another reader, okay? And I don't know how the
4 layout of this mine is and where they, indeed, have
5 their readers installed, so I really can't answer
6 that.

7 Q. Okay. When you talked about your eyes were
8 burning when you went into this cut-through area, had
9 you in your whole life ever experienced that same type
10 of sensation?

11 A. No, ma'am, I have not. No.

12 Q. And if you were to --- you said there was a
13 distinct smell. If someone were to have you smell
14 other things, do you think you'd be able to identify
15 it? Was it something very distinct?

16 A. It was unique. It had a unique smell.

17 Q. Okay.

18 A. Let me say that.

19 Q. Okay.

20 A. It was just a unique smell.

21 Q. When you were in that cut-through area and you
22 mentioned that you observed some damage to the pie
23 plates, can you elaborate a little bit more on what
24 that damage looked like? How did those pie plates
25 look?

1 A. Well, you know, by being round, they were just
2 bent down on one side, just bent, bent down to the ---
3 going to the outby side.

4 Q. So were they all bent in the same direction?

5 A. I'm not going to say every one of 'em was even
6 bent.

7 Q. Okay.

8 A. I'm not going to say that every one of 'em was
9 bent, just certain items you'd look at when you're
10 looking in these areas like this that you would pick
11 up where some had been bent down.

12 Q. So would it be correct ---

13 A. I'm not going ---

14 Q. --- to say ---?

15 A. --- to say that every one was bent.

16 Q. So some of them were bent.

17 A. Yes.

18 Q. Of those that were bent, were they bent in the
19 same direction or were they bent in different
20 directions?

21 A. The ones that I seen were bent at the same
22 direction.

23 Q. In the same direction.

24 A. Yeah.

25 Q. And that was --- what direction would that ---?

1 A. Bent down.

2 Q. Bent down?

3 A. Bent down.

4 MS. MONFORTON:

5 Thank you.

6 ATTORNEY BAXTER:

7 Let's take a short break.

8 SHORT BREAK TAKEN

9 ATTORNEY BAXTER:

10 Okay. Back on the record.

11 RE-EXAMINATION

12 BY MR. SHERER:

13 Q. Okay. We've got a bit of a follow-up. Could you
14 please describe exactly where the pie pans that you
15 were referring to were?

16 A. Well, as I can remember, these controls that are
17 showing here on the map, these were gone, too. I
18 don't think you asked me about that earlier, but I
19 don't care to tell you these controls right here were
20 gone, blown --- I assume blown out. This is on the
21 top end of this cut-through next to the solid longwall
22 face area.

23 Q. Okay.

24 A. And as well as I can recollect, they was ---.

25 MR. FARLEY:

1 You mean the outby mouth of the longwall?

2 A. That is correct. Clarification, outby mouth of
3 the longwall panel.

4 MR. FARLEY:

5 Okay.

6 A. Is that okay?

7 BY MR. SHERER:

8 Q. And the pie plates, where were they in
9 relationship to that?

10 A. In this (indicating) area.

11 Q. Okay. And could you please draw an arrow on the
12 map that shows in which direction those plates were
13 bent?

14 A. They were bent down.

15 Q. They were bent down. Were they bent on the north
16 side, bent down, or the south side?

17 A. Bent down on the north side. If we're going to
18 call this (indicating) north ---?

19 Q. Uh-huh (yes). North is straight up ---.

20 A. I'm going to say they was bent on the north side,
21 bent down.

22 MR. SHERER:

23 Okay. Thank you.

24 ATTORNEY BAXTER:

25 Why don't you, why don't you just draw an

1 arrow indicating from the side, you know, where
2 they're bent, pointing in that direction?

3 A. Okay. I'm going to ---. What I'm going to do,
4 I'm going to draw this (indicating) here, and I'm
5 going to draw a pie pan right there; okay?

6 BY MR. SHERER:

7 Q. Okay.

8 A. All right? This side right here, I'm going to
9 color it in right here; okay?

10 Q. Okay.

11 A. I'm going to put, bent down. How's that?

12 Q. Okay. So that's really the --- this would be the
13 western side, so the west side was bent down?

14 A. Yes, sir, if you want to call this --- yes, yes.

15 Q. Okay. Yeah, north is this direction. Thank you.

16 A. Like I say, it was in this area here where these
17 controls were taken out.

18 Q. Uh-huh (yes).

19 MR. SHERER:

20 Thank you.

21 RE-EXAMINATION

22 BY MS. MONFORTON:

23 Q. Mr. Kinder, so you were part of this very long,
24 more than a week-long operation underground. I
25 understand at the beginning it was chaotic, but as the

1 week progressed, what was your sense of what was going
2 on in the command center in terms of who was in
3 charge, and were you getting the information that you
4 needed?

5 A. I did visit the command center frequently on the
6 days that I was only on standby on the surface. I did
7 visit frequently. It seemed to be under control,
8 okay, at that time. We had representatives from the
9 State and Federal, and of course management people
10 there. It seemed to be under control at all times.

11 Q. Uh-huh (yes).

12 A. It wasn't something that, you know, that was a
13 hidden agenda. Yeah, you know, you didn't have no
14 business in there, you wasn't in there, okay? But I
15 felt it was under control ---

16 Q. Uh-huh (yes).

17 A. --- at all times.

18 Q. And do you recognize or know the names of people
19 that were in the command center when you ---?

20 A. Oh, gosh. It was, you know, different shifts each
21 time. The times I was there, mostly it was --- that
22 was actually communicating underground was Chris
23 Adkins, which is a Massey management person. I have
24 no idea what his title is. I do know Frank Foster at
25 one time did take over the actual phone communications

1 underground and everything. They was the only two
2 actual individuals that I seen that actually done any
3 speaking to the people underground.

4 Q. Underground. Thank you.

5 A. Yeah. All of the other members there, we had
6 headsets on that you could listen to see what was
7 going on and everything.

8 Q. When you were underground, you mentioned that
9 there were often several teams underground. Sometimes
10 it was two State teams and two ---.

11 A. That was the first night.

12 Q. The first night.

13 A. The very first night on the field.

14 Q. How did that work for the rest of the week? At
15 any time, how many different teams were underground?

16 A. That first night --- it's very unusual for State
17 teams to be together. It just happened that we was
18 the first on the property and we needed to get
19 underground, so we went. We had two Massey teams. We
20 had a representative from the State, and I assume the
21 Federal with those two Massey teams. Then, indeed, we
22 had two just primarily State teams underground. And
23 that's very unusual if that happens like that, because
24 usually we are accompanying another mine rescue
25 team ---

1 Q. Uh-huh (yes).

2 A. --- of another company.

3 Q. And when you were there underground with the
4 Massey team, can you describe a little bit of how you
5 worked together, how that worked?

6 A. Oh, we worked well together. Now, there's no
7 problem with that. When you're underground on a
8 rescue mode, as this was to start with, you're all
9 together, okay? It's not I'm the State, I'm the
10 Federal. No, it's not like that.

11 Q. Okay.

12 A. You're a team.

13 Q. Okay. And you mentioned Frank Foster. Do you
14 know who he worked for?

15 A. Yeah, Frank works for Magnum Coal, Patriot.

16 Q. Patriot Coal. So he's a Massey employee?

17 A. No.

18 Q. No.

19 A. No, no. No, he's Patriot Coal.

20 Q. So do you know anyone from the company that was in
21 charge of the rescue in the command center?

22 A. It would've been Chris Adkins.

23 Q. Chris Adkins.

24 A. Chris.

25 Q. Thank you.

1 A. Yeah.

2 MS. MONFORTON:

3 Thank you. Any other question?

4 ATTORNEY BAXTER:

5 And we'd like to mark the map, of course,

6 as Exhibit One. The latter ---.

7 (Kinder Exhibit One marked for

8 identification.)

9 ATTORNEY BAXTER:

10 Yes. On behalf of MSHA and the Office of

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

12 you for appearing and answering questions today. Your

13 cooperation is very important to the investigation as

14 we work to determine the cause of the accident. We

15 require that you not discuss your testimony with any

16 person, aside from a personal representative. After

17 questioning other witnesses, we may call you if we

18 have any follow-up questions that we feel we need to

19 ask you. If at any time you have additional

20 information regarding the accident that you would like

21 to provide to us, please contact us at the contact

22 information that was previously provided to you.

23 If you wish, you may now go back over any

24 answer you've given during this interview. You may

25 also make any statement that you'd like to make at

1 this time.

2 A. No, I'm fine.

3 ATTORNEY BAXTER:

4 Again, I want to thank you for your

5 cooperation in this matter.

6 A. No problem.

7

8 * * * * *

9 STATEMENT UNDER OATH CONCLUDED AT 11:45 A.M.

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CERTIFICATE

I, Alison Salyards, a Notary Public in and for the State of West Virginia, do hereby certify:

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

That the proceeding is herein recorded fully and accurately;

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



Alison Salyards