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Statement Under Oath of Fred Martin

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STATEMENT UNDER OATH
OF
FRED MARTIN

taken pursuant to Notice by Brett Steele, 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 27, 2010, beginning at 1:00 p.m.

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P R O C E E D I N G S

ATTORNEY FERGUSON:

My name is Dana Ferguson. Today is May 27th, 2010. I am with the Office of the Solicitor, U.S. Department of Labor, MSHA Division. With me is Clete Stephan, an accident investigator with the Mine Safety and Health Administration, an agency of the United States Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearance for the record at this time.

MR. FARLEY:

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

MR. KINDER:

And this is John Kinder, with the West Virginia Office of Miners' Health, Safety and Training.

MR. MCGINLEY:

Patrick McGinley, an independent member of the investigation team.

ATTORNEY FERGUSON:

There are also members of the investigation team in the room, but Mr. Stephan will

1 be conducting the examination. All members of the
2 Mine Safety and Health Accident Investigation Team and
3 all members of the State of West Virginia Accident
4 Investigation Team participating in the investigation
5 of the Upper Big Branch Mine explosion shall keep
6 confidential all information that is gathered from
7 each witness who voluntarily provides a statement
8 until the witness statements are officially released.
9 MSHA and the State of West Virginia shall keep this
10 information confidential so that other ongoing
11 enforcement activities are not prejudiced or
12 jeopardized by a premature release of information.
13 This confidentiality requirement shall not preclude
14 investigation team members from sharing information
15 with each other or with other law enforcement
16 officials. Your participation in this interview
17 constitutes your agreement to keep this information
18 confidential. Do you understand?

19 MR. MARTIN:

20 Yes, ma'am.

21 ATTORNEY FERGUSON:

22 Government investigators and specialists
23 have been assigned to investigate the conditions,
24 events and circumstances surrounding the fatalities
25 that occurred at the Upper Big Branch-South on April

1 5th, 2010. This investigation is being conducted by
2 MSHA under Section 103(a) of the Mine Act and the West
3 Virginia Office of Miners' Health, Safety and
4 Training. We appreciate your assistance in this
5 investigation.

6 After the investigation is complete, MSHA
7 will issue a public report detailing the nature and
8 causes of the fatalities in the hope of a greater
9 awareness about causes of accidents can reduce there
10 occurrence in the future. Information obtained
11 through witness interviews is frequently included in
12 these reports. You should know that if you request
13 confidentiality, confidentiality will only be granted
14 on a case-by-case basis. Your statement may also be
15 used in other proceedings.

16 You may have a personal representative
17 present during the taking of this statement and may
18 consult with a representative at any time. Do you
19 have a representative here today?

20 MR. MARTIN:

21 No, ma'am.

22 ATTORNEY FERGUSON:

23 Your statement is completely voluntary.

24 You may refuse to answer any question and you may
25 terminate your interview at any time or request a

1 break at any time. Since this is not an adversarial
2 proceeding, formal Cross Examination will not be
3 permitted. But you may ask clarifying questions as
4 appropriate. A court reporter will record your
5 interview. Please speak loudly and clearly. If you
6 do not understand a question asked, please ask for it
7 to be rephrased. Please answer each question as fully
8 as you can, including any information you have learned
9 from someone else. I would like to thank you in
10 advance for your appearance here. We certainly
11 appreciate your assistance in this investigation.
12 Your cooperation is critical in making the nation's
13 mines safer.

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

23 MR. MARTIN:

24 No, ma'am.

25 ATTORNEY FERGUSON:

1 Swear the witness.

2 -----

3 FRED MARTIN, HAVING FIRST BEEN DULY SWORN, TESTIFIED

4 AS FOLLOWS:

5 -----

6 ATTORNEY FERGUSON:

7 Mr. Stephan.

8 EXAMINATION

9 BY MR. STEPHAN:

10 Q. Thanks for coming out today, Fred. Could you
11 please state your full name and spell your last name
12 for the record?

13 A. That's Fred Robert Martin, M-A-R-T-I-N.

14 Q. Would you please state your home address and
15 telephone number?

16 A. Home address is --- mailing address is [REDACTED]
17 [REDACTED]

18 The phone number is area code ([REDACTED] .

19 Q. Are you appearing here today voluntarily?

20 A. Yes, sir.

21 Q. Are you currently employed by MSHA?

22 A. Yes, sir.

23 Q. How long have you worked for MSHA?

24 A. Nine years.

25 Q. Where is your current duty station?

1 A. Norton, Virginia.

2 Q. And how long have you worked at that location?

3 A. Nine years.

4 Q. What is your present position?

5 A. I'm an education and training specialist.

6 Q. And how long have you been in that position?

7 A. July 2007.

8 Q. Who is your current supervisor?

9 A. Allen Kobran.

10 Q. How long have you been a member of MSHA mine
11 emergency unit?

12 A. Since October 2003.

13 Q. Do you have any specialized training or
14 certifications?

15 A. As pertaining to?

16 Q. Mining.

17 A. Are you talking about current certifications?

18 Q. Tell me about all of them.

19 A. Well, when I was in West Virginia, I was a West
20 Virginia mine foreman, shot firer. I have MSHA
21 certification in dust and noise, Part 48 training,
22 impoundment inspection, of course gas certifications,
23 things of that nature. I'm assuming that's the area
24 you're asking about.

25 Q. Yes.

1 A. And of course, you know, I'm on the MSHA rescue
2 team, all the training that we get there, which should
3 pretty well cover it.

4 Q. Thanks. Could you just run through your general
5 mining experience with us?

6 A. Okay. I started in 1976 with Pittston as a red
7 hat, worked there until 1978, where I went to Armco
8 Steel. Worked there until they were later purchased
9 by Peabody Coal, I worked there until 1991, at which
10 point I was laid off. I was out of the mining
11 industry for a while. I worked for the State of West
12 Virginia as Department of Motor Vehicles, Department
13 of Tax and Revenue. Then I got a job as a miner again
14 with Cannelton Coal, which was the Maple Meadow Mine
15 here in Raleigh County. I worked there for two years
16 until I got laid off there.

17 I still continued to work for the Tax Department.

18 Then I took a job, a part-time job, as a security with
19 Titan Security, providing security for Massey
20 operations down on Route 3. And then when I got this
21 job with MSHA in, I think it was 2001, then moved to
22 Virginia and lived happily ever after.

23 Q. I take it that when you said you worked as Massey
24 security that that was prior to the April 5th ---

25 A. Yes.

1 Q. --- accident?

2 A. To the best of my knowledge, I left Massey ---.

3 Again, we were a contract security firm, Titan

4 Security, out of Williamson, West Virginia. I believe

5 I left them in April of '99.

6 Q. Did your time with Massey security include any

7 time at the Upper Big Branch Mine?

8 A. I worked the main gate, when you first came

9 through the property there. At that time they had a

10 portal up in Hazy, I spent some time up there. And

11 sometimes on weekends we did what we called roving, is

12 you went to all the operations and checked all the

13 other security people and checked pumps and just, you

14 know, there's quite a bit of area you covered.

15 Q. You say you checked pumps, what did that entail?

16 A. Well, actually check the pumping station, make

17 sure it was locked. We actually didn't do any mining

18 per se, any mining-related activities. It was

19 strictly security work.

20 Q. Who did you report to when you were a security

21 guard there?

22 A. What was his name, he's still there --- he's out

23 of Clear Fork. I can't think of his name right off

24 the top of my head.

25 Q. Are you thinking of a Massey guy or a security

1 company guy?

2 A. Well, we had like a chief of security, who
3 reported to Massey's chief of security. I want to
4 call him Eldridge or --- the name escapes me, but ---.

5 Q. Would he have been your supervisor?

6 A. Indirectly, but ---. He had control over the
7 security people.

8 Q. In your regular day-to-day activities as a
9 security guard, did you ever have occasion to deal
10 with Massey personal?

11 A. Yeah. Yes, sir.

12 Q. And who might they have been?

13 A. Well, I would go --- at that time, I set up in
14 Hazy. I would go up there and --- at that portal and
15 kind of look over the area up there. You were on a
16 mountain and I could see the gate at the bottom of the
17 hill. We had an automatic gate that you had to type
18 in a code to raise the bar up and get entry. And I
19 would kind of just look over that operation, spent
20 quite a bit of time there. Only on occasion did I
21 actually go up to the portals that they're using now
22 to get in to Upper Big Branch.

23 Q. And I'm not talking about like a just good
24 morning, hello, how are you kind of meetings. I'm
25 wondering if you had any business associations ---

1 A. No.

2 Q. --- with any Massey people?

3 A. No. Just hi, how you doing.

4 Q. Okay.

5 A. You know, I'd speak to some of the guys.

6 Q. I'd like to talk a little bit about the April 5th
7 accident now at the Upper Big Branch Mine. How were
8 you notified of the accident?

9 A. My sister lives here in Raleigh County and I had
10 taken that day off, I was going to start my workweek
11 on Tuesday. The first time I done that all year. And
12 I was at home and she called me and said, had I heard
13 anything about anything going on at one of the mines
14 down at Route 3? I said no, I'm not --- I didn't work
15 today. She said, well, she saw 10 or 15 ambulances in
16 a row going down and local gossip had it that there
17 had been a problem at the Upper Big Branch Mines.

18 So at that point in time I got on the phone and I
19 called Chuck Barton, who was at that time our team
20 leader to see if he had heard anything. I couldn't
21 get ahold of Chuck. Chuck was in Florida at that
22 time. I didn't know it 'til later, but he was on
23 vacation. So I tried calling Eddie Sparks, who's also
24 a team member, he's a supervisor in Barbourville. I
25 couldn't get ahold of Eddie and I finally got ahold of

1 Virgil Brown, who is --- I guess you'd call it ---.
2 I'm not exactly sure what Virgil's title is, but he's
3 --- he makes sure all the miner rescue equipment,
4 machines and everything are kept ready and, you know,
5 he'd be a guy in the know.

6 Q. So he's the one that officially verified that
7 something had happened?

8 A. Well, yeah, I guess you could say that.

9 Q. And I'm wondering what happened between that
10 moment and when you arrived at the mine, could you
11 explain that?

12 A. Well, like I said, I talked to Virgil. And Virgil
13 said that they had called some people out. And I
14 said, well, I'd like to come down because, you know, I
15 used to live down there and I'd like to be a part of
16 this. And he said, well, come on down because one
17 person he wasn't sure was coming. So he said, you
18 know, get in your truck and come on down. That's what
19 I did, I went to the office, got my truck and got my
20 stuff and headed toward the mine.

21 Q. So did you arrive at the mine the same day the
22 accident happened?

23 A. Yes, sir.

24 Q. And was it in the evening?

25 A. 8:30, nine o'clock, I believe, is about what time

1 I got there.

2 Q. And who did you report to when you arrived at the
3 mine?

4 A. Well, when I got there, I talked to Dave
5 Leverknight, he's another MSHA MEU member. He was
6 there. Otis Matthews was there. He's an MEU member.
7 I believe Mike Shumate was outside and Mike told me
8 that Jerry Cook and Mike Hicks were underground. And
9 both of those are MEU members, Mike Hicks and Jerry
10 Cook.

11 Q. When you arrived, do you know who was in charge at
12 the mine site for the MEU?

13 A. No, sir.

14 Q. Well, when you arrived, do you know who in charge
15 at the mine site for the company?

16 A. No, sir.

17 Q. Do you know who was in charge for the State?

18 A. No, sir.

19 Q. Do you know who was in charge at the mine site for
20 MSHA?

21 A. No, sir.

22 Q. Can you tell us what surface activities were
23 occurring when you arrived?

24 A. A lot of chaos. There was a lot of people on the
25 surface. I made the comment, I said, it looks like

1 there having a state fair here, there was just so many
2 people milling about. We talked briefly among the MEU
3 members about what was going on. We kind of paired
4 up. I paired up with Otis, and they said we're going
5 to need somebody to go in and relieve Jerry and Mike.
6 And I said, well, you know, I'll go, Otis and I will
7 go. Otis volunteered to go, too. And we got our gear
8 and then got our stuff on and got our machines ready
9 and, you know, we just got ready to go underground.

10 Q. You say you volunteered, who did you volunteer to?
11 Who did you tell that to?

12 A. We just talked amongst ourselves. I remember I
13 believe Josh Brady was there at the time. Josh, he's
14 a relatively new guy. He had never been on anything
15 and I just --- you know, Otis and I talked amongst
16 ourselves like, you know, maybe some of the older guys
17 that have been on the team a while longer maybe should
18 go. And that was my feeling, you know.

19 Q. Well, can you tell me about like the management
20 structure of the MEU, like who's in charge and how
21 it's broken down?

22 A. Well, from what I understand, the top man is Dr.
23 Jeff Kravitz. Then it goes down to, I believe, John
24 Urosek and then ---. Virgil's in there somewhere.
25 Like I said, he mostly takes care of the equipment to

1 make sure everything's --- we got the latest and
2 greatest and everything's kept in shape. And like I
3 said, our team trainer who at that time was Chuck
4 Barton, Charles Barton. And then we had like --- we
5 had three offices, of course, we have one in
6 Pittsburgh, of course, the Beckley Station. Actually,
7 they're called stations. And Price. There's like a
8 group leader in each one of those.

9 Q. Who are they?

10 A. I believe Dave Leverknight is out of Pittsburgh
11 and he is now --- he took Chuck's place. Chuck got
12 off the team. Eddie Sparks, he's kind of like the
13 Beckley team and I'm not sure who's out in Price. We
14 don't have a lot of dealings with those. We see those
15 guys once a year in our joint practice in October.

16 Q. Did you see Jeff Kravitz at the mine site when you
17 first arrived?

18 A. No, sir.

19 Q. Did you see Jeff at any time at the mine site
20 while you were there?

21 A. Yes, sir.

22 Q. Okay. So he did come?

23 A. Oh, yeah.

24 Q. At the time that you arrived and you were at the
25 surface prior to even going underground, did you see

1 John Urosek?

2 A. No. John was on his way. John was headed to
3 Saint Louis and he was almost there when he got the
4 call and he flipped his vehicle around and came back.

5 Q. Did you see Virgil at that time when you were on
6 the surface?

7 A. No. I believe Virgil was in the command center at
8 that time.

9 Q. And what about Chuck Barton?

10 A. Chuck didn't make it, he was on vacation. He came
11 later in the week.

12 Q. Okay. You were telling me before that you had
13 heard about Jerry Cook and some others who were
14 underground. Can you tell me about like who you knew
15 was under ground at the time you arrived at the mine?

16 A. Well, Mike Shumate told us he had evidently
17 arrived with Jerry Cook and Mike Hicks. And he said
18 he --- that Mike and --- Mike Hicks and Jerry Cook had
19 went underground.

20 Q. And that's from the MEU perspective?

21 A. Right.

22 Q. Were there other people outside of the MEU that
23 you were aware of that had gone underground?

24 A. Well, I'm assuming that ---. Again, I don't know
25 factual, but I was assuming that they had some mine

1 rescue teams and I'm sure the State was there. I just
2 took that for granted.

3 Q. Would you happen to know what underground
4 activities were occurring when you arrived at the mine
5 site?

6 A. No, sir.

7 Q. Do you remember when it was that a decision was
8 made for you and other MEU team members to actually go
9 underground for rescue efforts?

10 A. Again, this is a rough guess. I didn't look at my
11 watch. I'm thinking that Otis and I went underground
12 10:00, 10:30, maybe.

13 Q. So when you arrived at the mine site and everybody
14 was gathered on the surface and everybody was talking
15 a little bit about what was going on, what was your
16 understanding of what had happened?

17 A. That evidently there had been an explosion and
18 that we had --- I believe at that time they told us we
19 had 22 people missing, something of that nature. That
20 six had already been killed on a mantrip and they had
21 gotten them out. And that's all they knew.

22 Q. How many different times were you underground,
23 actually, during this?

24 A. I went Monday night, Friday night, and these
25 nights ran into sometimes the next day. But I was

1 working the nightshift, so I was under Monday night,
2 Friday night and Saturday night. And like I said, you
3 might get out 10:00, 11 o'clock the next day. They
4 was really long shifts.

5 Q. What equipment, including gas detectors, did you
6 personally carry underground?

7 A. We carried some sampling tubes, some sampling
8 syringes, of course our BG4 apparatuses, Solaris gas
9 detectors. That's all I personally carried in.

10 Q. And what gas ---?

11 A. Oh, and we also carried a caravan.

12 Q. A caravan?

13 A. Yeah, emergency oxygen.

14 Q. And what gases does the Solaris detect?

15 A. CO, methane, nitrogen, nitrogen oxide, I guess,
16 NO2, rather.

17 Q. Who was the MEU supervisor on the shifts that you
18 worked?

19 A. Well, let's see, shifts got changed. We started
20 out and in the middle of the week we got shifted.
21 First started out it was myself, Otis Matthews, Mike
22 Hicks and Mike Shumate. And then it got switched
23 later in the week. It was myself, Paul Sutherland,
24 Josh Brady and maybe Dave Leverknight. I believe
25 that's how it ended up at the end of the week. But

1 like I said, the shifts were getting so elongated that
2 we --- instead of having three shifts, we went to two
3 12-hour shifts. And then personnel were shifted then.
4 I think that occurred Tuesday or Wednesday, maybe.

5 Q. Did you take an apparatus each time you went
6 underground?

7 A. Yes, sir.

8 Q. How much of the work that you performed
9 underground was completed under apparatus?

10 A. Monday night we did not go under oxygen. We got
11 --- oh, gosh, we walked ---. We didn't quite get up
12 to the headgate and we met some MSHA people and some
13 State people that, you know, had been told to
14 evacuate. We met them and we didn't go under oxygen
15 that night. But Friday and Saturday, when we explored
16 --- let's see, Friday night, I believe, it was the
17 headgate entry, 22 Headgate, we were under oxygen that
18 night. And then the next night when, I believe we
19 were on the Eight North, we were under oxygen there.

20 Q. Were all team members apparatuses benched and
21 ready for use each shift?

22 A. All the MSHA machines were.

23 Q. Where were they benched?

24 A. We have an emergency response vehicle that we use
25 as a staging area and they're benched in there.

1 Q. Did you bench your own unit?

2 A. What people normally do is the previous shift will
3 have three machines benched and I'll come in and I'll
4 do a final check. I'll check my machine for leaks,
5 just to double check, put ice in it and they're ready
6 to go.

7 Q. Earlier you told us that you had been underground
8 on three separate occasions?

9 A. Yes, sir.

10 Q. And what I'd like you to do is focus your
11 attention on the first time that you went underground,
12 the very first time. And what I'd like you to do is
13 just kind of describe that time from the time you went
14 underground to where you traveled and what you seen
15 and did. These maps are here for you to use. There's
16 markers here.

17 A. Okay. Well, there's really not a lot happened the
18 first night. Like I said, Otis and I went
19 underground. We were going to relieve Jerry Cook and
20 Mike Hicks. It took a little while to get
21 underground. It's quite a little bit of a ride and
22 then we had to walk quite a ways. And we were
23 carrying stretchers, communication phone line, water.
24 Everything, you know, had to be hand carried. And it
25 was --- you know, it was quite a bit of work. It was

1 hard walking. The explosion had blown a lot of crap
2 on the track and in the walkway areas. And so it made
3 walking difficult.

4 Q. Where did you enter the mine at?

5 A. We went through ---. Okay. When you first came
6 out of the bath house, let me see your portal mains
7 here. I think we went to --- we changed portals later
8 in the week also. We quite going --- I want to call
9 it Hazy Creek Portal, maybe. Where are the portals at
10 here? Okay. Coming out of the bath house, the shop,
11 we entered through the left hand side of the mountain,
12 which would have been this portal right here
13 (indicating).

14 Q. Why don't you mark it.

15 A. Okay. What color would you like me to use? Now,
16 again this is the --- this is the office building, the
17 shop; is that correct?

18 Q. Yes.

19 A. Okay. We went to that portal right there on 4/5.

20 Q. You're marking that with a green marker.

21 ATTORNEY FERGUSON:

22 Yes, let the record reflect that the
23 witness has marked the entry portal on 4/5/2010 and
24 his initials with an arrow in green ink.

25 A. And the rest of the week, Friday and Saturday we

1 entered on the opposite side. Let's see, Friday would
2 have been --- that would have been the 9th; am I
3 correct, my dates?

4 BY MR. STEPHAN:

5 Q. Yes.

6 A. On 4/9 and 4/10, we entered from that side.

7 ATTORNEY FERGUSON:

8 Let the record reflect that the witness

9 has marked the opposite portal as the point of entry
10 on 4/9 and 4/10 with his initials in red ink.

11 BY MR. STEPHAN:

12 Q. Do you know the names of those portals at all?

13 A. I know one of them was Hazy Creek and I can't
14 remember the other ones. I knew it at the time,
15 but ---.

16 Q. When you entered, were you riding or walking at
17 that time?

18 A. We entered on a battery-charged mantrip.

19 Q. Okay. So how far did you travel on that mantrip?

20 A. We went to the end of the track as far as we could
21 get that night. I want to say Break 79 on --- or 97.
22 I believe it was Break 79. Yeah, it was --- it was
23 just a little bit ---. I think we might have even
24 stopped out here, because there was just a lot of
25 debris and whatnot. And I'm pointing here --- I'm

1 just going to call it Break 75 and I'm going to
2 initial it in red, 4/5/10. And I'm going to initial
3 that. But it was within two or three breaks of ---
4 before you went up to the Number Six North belt.

5 Q. But where was the fresh air base?

6 A. Actually, we never did make it up to the fresh air
7 base. The fresh air base, from what I understand, was
8 maybe --- it was close to the headgate, if not at the
9 headgate. But we never did make it that far. We got
10 almost up to. I'm going to say 100 Break and that's
11 when we met some MSHA guys, some State guys. They
12 said --- you know, said that they were told to get
13 out, that they hadn't found nobody alive.

14 Q. So you rode in to approximately Crosscut 75?

15 A. Uh-huh (yes).

16 Q. And then did you carry supplies from that point?

17 A. We carried supplies, yes, sir.

18 Q. To where?

19 A. Close to probably 100, up here.

20 Q. So then you met the people coming out. What did
21 you do with the supplies?

22 A. We dropped them.

23 Q. And then proceeded ---?

24 A. I said --- you know, they told us to get the hell
25 out of here. We dropped everything and we started

1 walking back out. And it was --- by the time we got
2 everybody out and walked back down here, it was
3 probably two hours.

4 ATTORNEY FERGUSON:

5 And when you say walked back down here,
6 where is here?

7 A. We walked from approximately 100 Break back down
8 to where we --- I guess you'd call it our staging area
9 here at 75, where the mantrips were. We made sure
10 that the guys that had already been underground, they
11 took the first mantrips out to make sure that, you
12 know, they got out. And then we caught, you know, the
13 last one because, you know, those guys were pretty
14 well spent.

15 BY MR. STEPHAN:

16 Q. On this first ride in, who actually traveled with
17 you?

18 A. Otis Matthews.

19 Q. Just you and Otis on the ---?

20 A. No. There was a mine rescue team. I can't
21 remember if there was anybody from the State or not.
22 And I don't remember which team it was, but I'm
23 thinking it was one of the Massey teams.

24 Q. Then you say you met people coming out. Do you
25 know who they were?

1 A. Well, Jerry Cook was one of 'em. I believe Fred
2 Wills was one of 'em. I met Bill Tucker, Eugene White
3 a bunch of State guys that I had worked with in the
4 past. It seemed like they had a whole team there.
5 And I helped them carry some stuff out. They were
6 bringing back their stretchers and what equipment they
7 had taken in. Mike Plumley was one of 'em. I
8 remember talking to Michael.

9 Q. Before you went underground, did you know what the
10 specific plan was?

11 A. Well, we had a little meeting and basically we
12 looked at a map. Somebody had brought a map from
13 downstairs and it was basically showing where we were
14 going. But we didn't have a set game plan on what we
15 were going to do, basically, we were just, you know,
16 going to go in there and get these guys that were
17 tired and then find out how far they had gotten and
18 continue on from that point.

19 Q. At any time on this first trip underground, did
20 you experience any irritation of your eyes or ---?

21 A. No, sir.

22 Q. Did you ever get any gas readings that were
23 alarming to you?

24 A. Do you mean on the Monday?

25 Q. Yes.

1 A. No, sir. But again, we didn't get to where I
2 guess you'd say the action was. We were still --- the
3 air was still, you know, a little bit smoky but, you
4 know, all in all it was pretty clear, the areas that
5 we were in.

6 Q. Did you have to communicate with the command
7 center at all on that first trip?

8 A. No, sir.

9 Q. How long did this first exploration take in whole?

10 A. Oh, I'm guessing that Otis and I were probably
11 three or four hours just going in there and getting to
12 where we --- well, we didn't even actually get to
13 where we wanted to go and then came back out.

14 Q. Do you know how people entering and exiting the
15 mine were tracked?

16 A. No, sir. I do know that somebody had a clipboard
17 and was trying to get names of who was going
18 underground before we went underground.

19 Q. So somebody on the outside was ---

20 A. Somebody ---

21 Q. --- signing in?

22 A. --- was doing something. I don't know how
23 accurate it was, but somebody was doing something.

24 Q. Did you notice any smoke in the mine atmosphere at
25 all?

1 A. It might have been a little bit of light smoke but
2 it was really black. And you could --- if you've ever
3 been in one of these things, it has a very distinct
4 smell and the smell was --- you know, you could smell
5 the soot, fire whatever you want to call it, the
6 residue.

7 Q. Okay. After you got out of the mantrip, can you
8 tell us what the ventilation felt like?

9 A. We looked --- most of all these ventilation
10 controls were destroyed. I don't remember seeing
11 anything intact. I remember us walking across
12 ventilation doors that had been blown down. A lot of
13 cinder blocks. Didn't see any stoppings anywhere.

14 Q. Is there anything else you would like to tell us
15 about your first trip underground?

16 A. Relatively uneventful for Otis and I.

17 Q. Okay. Then let's turn our attention to the second
18 time you went underground.

19 A. Okay.

20 Q. Could you just tell us a bit about that?

21 A. That would have been Friday night. At that point
22 in time, we still had four people unaccounted for.
23 We went underground and went up to the 22 Headgate.
24 And I remember there was myself, Eugene White, with
25 the State and Robby Asbury, who is I guess the mine

1 rescue coordinator from Massey. He was --- us three
2 were kind of like the point people. We were trying to
3 go up and get to that rescue chamber to see if it had
4 been deployed or we could find the other people.

5 Q. Do you know we're looking for a lot of detail, so
6 if you could just start at the beginning.

7 A. Okay.

8 Q. So you showed us where you went underground
9 already. You, I take it, took a mantrip in?

10 A. Yes, sir.

11 Q. And how far did that mantrip travel?

12 A. The same place. Again, you could only get up to
13 about 75, somewhere in the 70s here. And then we
14 walked. We proceeded to walk up ---.

15 Q. Let's get a map that shows ---

16 A. Okay.

17 Q. --- where all you were headed.

18 A. Okay.

19 Q. So starting out by Crosscut Number 75, where you
20 said the approximate location of where the mantrip
21 stopped.

22 A. And it may have changed a break or two by this
23 time, but ---. In fact, it might have even been up in
24 here, you know, 79 or so. We might have been able to
25 get around the corner, because at that point in time

1 they were wanting to get these permissible rides in
2 and start using them to recover, you know, the miners.
3 The best I can remember, we traveled up the Six North
4 beltline. I'm just going to call it this area. We
5 came up here and we had established a fresh air base,
6 I believe right here at this location right here.

7 ATTORNEY FERGUSON:

8 I'm sorry, when you say we came up
9 here ---?

10 A. We came up traveling up these entries here.

11 ATTORNEY FERGUSON:

12 And you're referring to the Six North
13 belt?

14 A. Six North belt area. Most of the travel was in
15 the track. And then we came up here (indicating) and
16 we came up here and marched on up here, too. And I
17 believe this is where we set up our fresh air base.
18 It was either this break or this break, one of the two
19 --- or one of these intersections.

20 BY MR. STEPHAN:

21 Q. Did everybody travel together and stay together in
22 that ---?

23 A. Pretty much. I mean, there might be --- you might
24 be the distance of three crosscuts because some people
25 walk faster than others. But we all got up here and

1 what we did at this fresh air base was, we had 500
2 feet of phone cable and we went up here and 500 feet
3 inby this area we set up a phone communication system
4 there.

5 ATTORNEY FERGUSON:

6 Let the record reflect ---

7 A. Again, that's approximately 500 feet, because I
8 think that's how much cable they had for the phone.

9 ATTORNEY FERGUSON:

10 --- that the witness has indicated in red
11 ink fresh air base on headgate North --- One North,
12 where it intersects with the crosscut over to ---
13 well, going up 500 feet to where you set up phone
14 lines?

15 A. Right. What we had was we had --- we were
16 concerned about the communications with the hand-held
17 radios, because they're very limited. And we were
18 going to have to go so far and drop people off. We
19 were going to drop two at a time, to make sure that we
20 had communication to have enough to go all the way up
21 here to where we needed to go, which was up the 22
22 Headgate. We started with approximately, I want to
23 say 20 people, might even been a few more. And we
24 kept dropping people off to --- make sure we dropped
25 'em off in pairs, to make sure we could keep in

1 communication.

2 BY MR. STEPHAN:

3 Q. You marked on the map here a location where you
4 extended the phone line to; ---

5 A. Right.

6 Q. --- is that correct?

7 A. Yeah.

8 Q. Does that look like the entry that you actually
9 set the phone line in?

10 A. Yeah. I'm pretty sure it was this one.

11 Q. And did you continue in by in that particular
12 entry?

13 A. Well, we had to go across because there were some
14 gob and whatever entry was easier walking. Because
15 all these entries were pretty well --- there were
16 things laying on the ground. So we tried to find the
17 easiest point of travel.

18 Q. Just go ahead and continue with how it progressed.

19 A. Okay. And we kept progressing up through here and
20 I remember that we were all under apparatus because we
21 had to go under apparatus once we went by here because
22 of low oxygen. We were in about four percent oxygen
23 up here. I believe the CO was at that point in time
24 3,200, 3,000, something of that nature. Methane was
25 running maybe one percent, 1.2 percent, something of

1 that nature. There was still light smoke up here on
2 Friday.

3 ATTORNEY FERGUSON:

4 And where is up here?

5 A. On the 22 Headgate. All of these ventilation
6 controls, we didn't see any ventilation controls
7 anywhere, from this little connected point up to the
8 22 Headgate. We continued our march. We eventually
9 came to the mantrip, where, you know, the miners they
10 had found the other ---. I guess on that initial
11 exploration, they had got up --- from what I
12 understand, this is --- that's as far as they had
13 gotten and they told them to come back. Well, it
14 wasn't very far inby where the mantrip was, we, you
15 know, found a victim. And I think within ten minutes,
16 five or ten minutes from where the mantrip was, we had
17 located the other three victims. And by the time we
18 had found the last victim, we were --- had spent
19 probably close to half of our oxygen. And we called
20 out and told 'em, you know, we were coming back.
21 We began coming back, I remember it was myself,
22 Eugene and David. And, in fact, there might have been
23 one other person. By the time we got up to where the
24 last victim was, there was only four of us left.
25 Again, there was still light smoke up in here and we

1 started retreating out the way we'd get down and pick
2 our guys up as we got to 'em.

3 And we came back to the fresh air base. Once we
4 got back to the fresh air base, there was still
5 concern --- well, there was still one miner that they
6 couldn't locate. There was another team that was
7 going across the longwall face. The consensus was
8 this miner was up here, we just missed him, you know.
9 And sure enough after they went across it once, they
10 found the last missing miner. And at that point, once
11 these guys came back to the fresh air base, we all
12 came outside.

13 Q. Did you ever go across the longwall face?

14 A. No, sir. Did not go across the longwall face.

15 Q. When you were traveling inby through these
16 connecting entries, to the Headgate 22, you were
17 saying you extended the phone line 500 feet and every
18 time you dropped the phone, you dropped two guys off,
19 too.

20 A. With a radio.

21 Q. With a radio.

22 A. Yes.

23 Q. And then as you continued inby, did you continue
24 that process like about every 500 feet ---?

25 A. Well, no. Sometimes you couldn't go 500 feet. It

1 just depended on the radio, you know, where we had to
2 place 'em, because like I said, I don't think we were
3 really in a straight line because of debris or
4 whatever reason and --- but it took --- pretty well
5 took everybody we had to get the communications ---.
6 We had done decided, you know, there was a lot of
7 things going on, that we were going to go up here,
8 hell or high water. You know, no mater what we found,
9 we were going to go up here, because we knew the 96
10 hours was a big issue, and we were just going to go
11 and see what was up there.

12 Q. Now, you said you left the fresh air base with
13 about 20 people?

14 A. Yeah.

15 Q. Did you get back to the fresh air base with 20
16 people?

17 A. Oh, yeah, we got everybody back.

18 Q. Okay.

19 A. Yeah. By the time we got up to where we found the
20 last victim, I believe there was four of us left. And
21 I think that pretty well took care of Friday night.

22 Q. While exploring you're talking about communicating
23 back to the fresh air base.

24 A. Uh-huh (yes).

25 Q. Were you getting any instructions from the fresh

1 air base?

2 A. Well, the way the system was set up, like I said,
3 you know, we had a phone here, a phone here. There
4 might be six or seven radios in between. By the time
5 this person told this person told this person, this
6 person told this person, everything was old news. You
7 know what I'm saying? I do remember that we got
8 almost back to the mouth of the section and they
9 wanted us to go and look at that chamber to see if it
10 had been deployed. The fresh air --- I guess, the
11 command center had wanted us to go back up there and
12 look at that. We didn't have the air to do it. And I
13 think they pretty much told 'em, you know, bite me,
14 we're not going up there, because there was no point.

15 Q. Well, when you were inby Headgate 22 how many
16 people where at the fresh air base?

17 A. We had a backup team. I'm sure we had backup
18 teams to cover how many people we had up here. And
19 well --- I know we had 'em when we left.

20 Q. So everybody inby the fresh air base had an
21 apparatus?

22 A. Oh, yeah.

23 Q. And you weren't under apparatus because they
24 were ---?

25 A. You couldn't go past --- once you got over in

1 here, you were in the low oxygen, you had to have an
2 apparatus.

3 Q. Okay. And then there were 20 more people at the
4 fresh air base?

5 A. Probably. I just know that we all had man-for-man
6 backup.

7 Q. You were talking before about like at one point
8 you had to put an apparatus on. Can you describe
9 that?

10 A. Once you went inby --- well, see these doors were
11 gone. There's nothing there. Once you --- I'm going
12 to call it, once you started up the little neck here.

13 Q. So it would be like inby the new tailgate entries
14 is basically ---?

15 A. Pretty much, yeah, once you --- once you went
16 right through ---. I can't read this but --- it seems
17 to me like once you got right here (indicating), you
18 had to --- hit low oxygen, you had to have your
19 apparatus on. I still can't read that. It looks like
20 23 ---. Help a blind guy out. What's that one say?

21 ATTORNEY FERGUSON:

22 23962.

23 A. Okay. That's close enough. It was either inby
24 that survey station or the next one is when you had to
25 have your apparatus on ---

1 ATTORNEY FERGUSON:

2 Thank you.

3 A. --- because the oxygen just dropped off to
4 nothing. There's high CO. And, again, all this still
5 had light smoke.

6 ATTORNEY FERGUSON:

7 All the area inby that?

8 A. All the area pretty well inby us still had light
9 smoke. Everything was really black. Again, no
10 ventilation controls.

11 BY MR. STEPHAN:

12 Q. When you say no ventilation controls, you mean no
13 ventilation ---?

14 A. I did not see any stoppings, no doors, just blocks
15 laying everywhere.

16 Q. Was there any other obvious signs of pressure
17 damage there you could see?

18 A. Very black. Of course, you know, you always still
19 have the soot smell. The mantrip, where the six
20 miners were located, the top had been bent out by the
21 canopy legs. It's heavy-gauge steel. It had been
22 bent forward. Inby the mantrip there was a --- I
23 would call it a lowboy. It's used to transport
24 equipment and whatnot on. There was a lowboy nearby
25 and there was a bunch of steel jacks that had been

1 blown off of it. They were inby the lowboy. Of
2 course one of the miners, he had lost an arm due to
3 the --- I'm assuming the impact of the explosion. You
4 could just tell there had been a lot of force in
5 there. There were plates bent, roof bolt, we call
6 them pizza pans, they were bent. They were bent in
7 several directions, though. It was really hard --- we
8 were trying to figure it out because we were talking
9 to --- which way did the forces go, by trying to judge
10 which way the plates were bent. And they were just
11 bent in different places. It didn't make any sense to
12 us.

13 Q. Did you see any flame damage, melting, burning,
14 charring evidence?

15 A. Just black soot. Most of the miners that I saw, I
16 know in the past when I worked for security up there,
17 I know all the miners wore the striped --- I didn't
18 see any of those stripes. I assume they were melted
19 off.

20 Q. Just thinking about this second trip that you made
21 underground. Can you tell us like what the air flow
22 felt like?

23 A. There was no movement whatsoever. This was just
24 strictly dead air, from that stopping pretty well
25 inby, there was nothing, absolutely nothing.

1 Q. Okay. Then when everybody made their way back to
2 the fresh air base, what did you guys do then?

3 A. Well, we sat there. And, again, these guys were
4 still looking for that last miner. And once he was
5 located, we waited for them. They all came out and we
6 all went outside together. They told us to come on
7 out.

8 Q. So much for trip number two.

9 A. Okay.

10 Q. Clear your brain of that. And let's move on to
11 the third time that you went underground, ---

12 A. Okay.

13 Q. --- again, starting at the beginning.

14 A. Again, we --- basically this was on a Saturday
15 night. We parked around 79 again, Crosscut 79 and we
16 walked --- wait a second. Let me think of something
17 here. Okay. I'm thinking. I'm getting my nights
18 straight.

19 Q. You were telling us about the third time you went
20 underground.

21 A. We went up to --- I was calling this Eight North.
22 Is this --- I don't know if that's the official name.
23 Again, we had walked all the way up here. There was a
24 lot of damage, pretty well ---. Didn't see a
25 stopping.

1 Q. Where was the fresh air base, at that time?

2 A. Well, we were going to establish one. We
3 established --- once we left there, we came up here
4 and established a fresh air base in the track entry
5 somewhere --- I think it might be somewhere about
6 right here (indicating).

7 Q. You can mark that on the map in green.

8 A. I'm thinking that's it, but, again, I might be off
9 a break or two.

10 Q. Could you mark FAB there, so we know where that
11 is?

12 A. And that was --- what date would that have been?
13 The 10th, maybe.

14 ATTORNEY FERGUSON:

15 4/10. Let the record reflect that the
16 witness is marking a fresh air base established on
17 4/10/10, after traveling from around 79 up ---

18 A. Six North belt.

19 ATTORNEY FERGUSON:

20 --- Six North belt.

21 A. And Seven North belt.

22 ATTORNEY FERGUSON:

23 Seven North belt to the vicinity of the
24 Glory Hole.

25 A. Okay. What we did here that night was --- I was

1 with Paul Sutherland. And Paul, he was a relatively
2 new MEU person. Paul was kind of nervous. He had
3 never been on anything and I was telling him, you
4 know, this would be a good time --- because there was
5 nothing up here we had to worry about. This would be
6 a good chance for him to get some wear time in. So he
7 went up and they explored this, I guess, Eight North
8 panel up to here. The plan was once we got that
9 explored that we were going to come back here and
10 build some temporary checks here that they had planned
11 on drilling into this area and trying to bleed off or
12 --- they had a ventilation scheme going on.

13 So Paul had went up and they did some initial
14 exploration up in there. Actually, I think they
15 finished up from what the dayshift was doing and they
16 came back and those guys they were pretty well spent.
17 All their air was pretty well spent. So at that point
18 in time they came back to the fresh air base. I went
19 up with the second group. These guys were now backing
20 us up and we had came up here and we built some
21 temporary checks.

22 BY MR. STEPHAN:

23 Q. Do you know where those checks were? Like could
24 you draw them on the map?

25 A. Again, I don't remember exactly, but I'm assuming

1 that it was one or two of these crosscuts right here
2 (indicating). Somewhere in this area we built checks
3 across each entry. And we hung these loose because
4 that was our instructions. Okay. What I did was I
5 went with three guys. We took care of these three
6 entries over here (indicating), another group went and
7 took care of these over here. I remember while I was
8 over here we had a guy. He said, I can't breath, I
9 think there's something wrong with me machine. There
10 was four of us up there. I said, well, I'm going to
11 go ahead and take you. And I had a radio and I called
12 and told them that, you know, I had a guy I thought
13 that his face piece might be leaking. And that I was
14 going to bring him back for them to get a couple of
15 guys and start my way in case I had trouble or, you
16 know, we needed to bring the care ventilator.

17 And so I started back with him and I got down to
18 maybe right in here, and I met the other two guys.
19 And he says, you know, I'm okay, I'm okay, but when we
20 got him back to the fresh air base, he almost blacked
21 out on us. Come to find out later that he had been
22 treated for CO poisoning because his face piece was
23 leaking.

24 Q. Before you talked about, you know, team members
25 going inby where you drew this line of checks to

1 explore Eight North and the inby areas. Did they go
2 through all those entries do you think?

3 A. I do not think they probably did that.

4 Q. How many do you think they did cover?

5 A. I'm sure probably what they did was they probably
6 paired up ---. And they very well --- they may have.
7 They may have, you know, like two here, two here, two
8 here and kind of maybe ---. It just depends on how
9 many --- I don't know how many players they had, but I
10 can't say that they didn't do that because I know that
11 the dayshift explored part of it and we went up there
12 and finished it.

13 Q. And then after you completed that line of checks,
14 then what did you guys do?

15 A. Well, had some guys that --- well, I had one guy
16 that physically wasn't able to go and several others
17 didn't really want to go, but they wanted us to come
18 back out and go back up here.

19 Q. And here means in Headgate ---?

20 A. Going back up here to --- they wanted us to come
21 back up here and back up a team that was going to
22 explore MM-040. At that time we probably had 18 guys.
23 I had Paul go out ---. I told Paul that I would go up
24 here and do the backup, but I wanted to make sure that
25 he got ---. Well, two guys said that they just

1 weren't feeling good and the other one, you know, he
2 was feeling bad. I remember I got on the phone and
3 told him I had, you know, a bunch of guys that weren't
4 feeling good. I didn't know if we could do this or
5 not and he --- and I talked to Frank Foster.

6 And Frank said, well, we need to get somebody up
7 here to back them up so we can get this explored. I
8 said, well, if I can get enough volunteers, you know,
9 we'll go up there and we'll do this. If not, we're
10 coming outside. And I remember the State guy, myself
11 and I think I got maybe three guys off of one of the
12 teams, and the five of us went up there and was
13 backing up another team. I was backing up Tony
14 Benton, Anthony Benton, who's an MSHA MEU guy, while
15 they went up there and they explored this area right
16 here.

17 The other guys, they went on outside --- or they
18 went on out to the fresh air base that we had
19 established at 75, 79, wherever it was. And then once
20 we finished backing these guys up, we walked back
21 outside back to the fresh air base, 79, and that was
22 it for Saturday night. Well, actually, it was Sunday
23 morning.

24 Q. Throughout all this who were you actually
25 receiving instructions from?

1 A. Well, we pretty well just knew what we were going
2 to do. Once we would get to the fresh air base, if
3 they said, you know, let's go do this or let's go look
4 at that, but we pretty much knew when we went what our
5 mission was.

6 Q. Can you tell me about any gases that you detected
7 throughout this mine?

8 A. Again, like I said, the CO was running around
9 3,000, methane, it might have been 1.2, something of
10 that nature. Oxygen was around four percent. And,
11 again, this was on the Friday. The same for up here
12 on Saturday, had very low O2. The CO, I don't know if
13 it was 3,000. I can't remember what the CO was, but
14 it was pretty high. We had to do all this under
15 apparatus. Once you went pretty much inby here,
16 that's when everything pretty well dropped out.

17 ATTORNEY FERGUSON:

18 And if we could clarify for the record,
19 the condition ---.

20 A. Going up Eight North, there at the angle. I would
21 call that the four o'clock.

22 ATTORNEY FERGUSON:

23 And on Friday the conditions and the gas
24 that you're describing were on Headgate 22 and on
25 Saturday they're in the Eight North area ---?

1 A. Eight North, yes, ma'am.

2 ATTORNEY FERGUSON:

3 Thank you.

4 BY MR. STEPHAN:

5 Q. How long did your Friday night trip take?

6 A. Maybe I got out like nine o'clock in the morning.

7 It was --- like I said, the times, they were just, you
8 know, ---.

9 Q. When did you go underground?

10 A. Eight o'clock that evening, maybe.

11 Q. Eight o'clock ---

12 A. It was still daylight.

13 Q. --- the previous evening?

14 A. Yeah.

15 Q. Okay. And then how long did your Saturday night
16 trip take?

17 A. Went underground even earlier on Saturday and I
18 got out at about nine o'clock Sunday morning.

19 Q. Did you notice any significant floor hooving
20 anywhere in the areas that you traveled?

21 A. No, sir.

22 Q. Did any member of your team energize or
23 deenergize any circuits anywhere?

24 A. Not that I saw, no, sir.

25 Q. Okay. Was there a briefing at the beginning and a

1 debriefing at the end of each shifts?

2 A. Friday and Saturday for sure and we had --- I'm
3 going to call it a partial briefing on Monday. Again,
4 somebody came down with the map and then pretty well
5 told us, you know, this is what the mine looks like,
6 this is where the longwall is, this is where the
7 headgate is. We got people going up the headgate, we
8 got people on --- and that was pretty much it, but it
9 was enough information. You know, we were going to
10 find our guys and get what they had told us, and, you
11 know, go from there to complete what they did do.

12 Q. Who was conducting those briefings?

13 A. Friday night it was Harvey Ferrell.

14 Q. And who's Harvey?

15 A. Harvey, he --- I'm assuming he is the mine rescue
16 ---. I don't know what his --- I used to work for
17 Harvey. He's a mine rescue coordinator for --- I
18 don't know if he works for the state or if he works
19 for a private company. I really don't know who Harvey
20 works for, but Harvey was there. I know he's a very
21 experienced mine rescue guy. I can pretty well hang
22 my hat on what Harvey tells me usually, so that was
23 good enough for me.

24 Q. Who else gave briefings?

25 A. There were briefings conducted in the command

1 center. Sometimes Frank Foster was doing it. There
2 was just different people. I mean, I really --- some
3 of these guys I didn't know, but I would just be
4 standing there, you know, listening to the briefings
5 and the debriefings. I can't really give you all the
6 names, but things were a lot more organized on Friday
7 and Saturday than --- to me, than they were on Monday.

8 Q. Now, while you were underground, did you ever see
9 or become aware of anyone traveling inby the fresh air
10 base without an apparatus?

11 A. No, sir.

12 Q. During your entire experience at Upper Big Branch,
13 did you take any notes, write any notes for yourself?

14 A. No, sir.

15 Q. Out of all these areas that you traveled, do you
16 have an opinion as to which one of these areas
17 experienced the greatest pressure?

18 A. Well, it took a lot of force to bend that mantrip.
19 I don't know what the longwall looked like, so I can't
20 comment on that. To the best of my knowledge, there
21 was no mining equipment up in here. I do know that a
22 fire suppression system had been activated on a
23 shuttle car up here. Tony had told me that when he
24 came back from exploring on the Saturday night.

25 Q. When you say up here, you're talking about ---

1 A. I'm talking about the MM-040. He said that there
2 had been activation of the fire suppression system on
3 a shuttle car, but I do know that that mantrip on
4 Headgate 22 sustained a lot of force to bend
5 those ---.

6 Q. Were there any areas underground that you think
7 experienced the flame more than others?

8 A. It was very, very black. Again, I traveled
9 Headgate 22. It was very, very black up here on Eight
10 North. And, again, it --- of course it got lighter as
11 --- the closer you went outby, but it was still ---.
12 There was still blackness before we even got to where
13 we got off the mantrip. There was, you know, soot
14 quite a ways out.

15 Q. Did any miners approach you during the time you
16 were at the mine site with concerns regarding unsafe
17 mining conditions at this mine?

18 A. No, sir.

19 Q. Now, thinking about all your three trips you made
20 underground do you have anything else that you'd like
21 to add that would be relevant?

22 A. Well, I just got a thought. I don't know if it
23 means anything. Where they found Mr. Elswick, he was
24 behind a --- some type of an electrical box. I don't
25 know what type of box that was at that point in time.

1 I didn't look at it. I'm just curious as to, you
2 know, the placement of him at that location. I'm very
3 curious to know if that little red button is pushed in
4 on that electrical box.

5 Q. Where was that at underground?

6 A. I don't remember. It wasn't too far ---. I'm
7 assuming --- I can't remember, but I'm thinking it's
8 either through here (indicating) or through here. It
9 was either Six or Seven North belt. I don't know if
10 that was a feed-through box, a belt --- not a belt
11 starter box, but just a regular transformer, but after
12 I got home and thought about it I thought, well,
13 that's kind of an odd place for somebody to be unless
14 they were going to deenergize the box. Because if he
15 was waiting for a ride out, usually, in my experience,
16 I'm sitting close to the track, so I don't miss the
17 mantrip when it goes by or they don't miss me. I just
18 wish I had looked at that while I was under there,
19 but, again, I didn't think about it 'til --- you know,
20 you get home and you get to thinking about, you know,
21 what could be. I just thought it's maybe something
22 you want to look into.

23 MR. STEPHAN:

24 Do we want to break?

25 ATTORNEY FERGUSON:

1 Okay.

2 MR. STEPHAN:

3 And we can come back.

4 ATTORNEY FERGUSON:

5 We'll take a short break.

6 SHORT BREAK TAKEN

7 ATTORNEY FERGUSON:

8 Back on the record.

9 BY MR. STEPHAN:

10 Q. Okay. We have a couple more questions for you.

11 A. Sure.

12 Q. You said you had like three trips underground and
13 I'm interested in knowing if at any time on any three
14 --- any of those three trips underground you had ever
15 seen anyone without an apparatus while you were
16 underground?

17 A. Now, when it got toward Friday and Saturday some
18 of the guys were putting the apparatuses on the --- we
19 had permissible rides at that time. Some of them were
20 just putting them on the machine or in the --- we even
21 had some little pull trailers behind these, but they
22 were still there. But I never did see anybody go
23 underground without an apparatus or have one available
24 to them.

25 Q. Are you talking about MEU people or all the people

1 you were with?

2 A. I'm talking about MEU people.

3 Q. Okay. I'm interested, too, if you seen anybody,
4 let's say, from the company or any other entity?

5 A. No, sir.

6 Q. Okay.

7 ATTORNEY FERGUSON:

8 You didn't see or you don't know?

9 A. I did not see anybody.

10 BY MR. STEPHAN:

11 Q. Whenever you were preparing to go underground each
12 of these three times, was your particular group given
13 a map of underground workings?

14 A. No.

15 Q. Your only exposure to the map would have been
16 outside before you went underground?

17 A. But there was a --- usually the trips I went with,
18 they were all with a Massey team, the captain of the
19 Massey team. As best as I can remember he had at
20 least a partial map.

21 Q. Are you familiar with any inaccuracies from the
22 maps that he had compared to what you found
23 underground?

24 A. No, sir.

25 Q. I'd like to take you back to some of the

1 conversation we had about your employment for Massey
2 as security.

3 A. Okay. It was a contract employer.

4 Q. Yes. Thank you. Did you say that your location
5 in that job was at the front gate?

6 A. Part of the time.

7 Q. And the other part of the time where?

8 A. I would be up at the Hazy Portal, which was part
9 of the Upper Big Branch complex at that time. They
10 were connected. Sometimes I would be at a mine up
11 behind the prep plant, up there where the refuse area
12 was, but just different places.

13 Q. Were you ever in the vicinity of dispatch?

14 A. I went up to the dispatcher's office a couple of
15 times. When I would be like roving, I would drive up
16 to the Upper Big Branch and I would go in and just
17 speak to 'em. I thought it was fascinating. They had
18 these closed-circuit cameras at the belt heads and I
19 just thought that was pretty cool that somebody
20 outside could watch what was going underground from
21 these close-captioned cameras.

22 Q. But you were never there for any length of time?

23 A. No, sir.

24 Q. When you were a part of this security team, were
25 you ever --- or did you ever become aware of ways that

1 the company might notify employees that someone's
2 entering the property?

3 A. Well, we were directed to --- anybody that entered
4 the property, we got on the mine phone and keyed it to
5 where it would broadcast, that we would say Mr. X with
6 company A, B, C is on property, or Mr. Jones from MSHA
7 is on property or whoever it was. We had to identify
8 the person and the people that they were with.

9 Q. So as soon as they entered the property, they had
10 to come basically through your location?

11 A. When I worked the main gate, yes.

12 Q. When you worked the main gate. So you knew right
13 away that they were there. And when you say that you
14 had to page, where all did you page?

15 A. We had a telephone in the office that went to the
16 mine site, and we would page and --- whoever it was
17 and whoever they represented were on property.

18 Q. How many people would hear who was on property?

19 A. I couldn't tell you that because I don't know. I
20 was only in my little security shack and we would page
21 two or three times.

22 Q. Do you know anybody at all specifically who would
23 have heard that page?

24 A. Again, this would be an assumption. Anybody that
25 would be outside at the mine office or in the mine

1 office should have heard that page.

2 Q. But you didn't personally have any contact with
3 underground people?

4 A. No, sir.

5 Q. So when somebody entered, you actually said the
6 name or the affiliate --- and the affiliation of that
7 person?

8 A. Yes, sir. If it was from Progress Coal, again,
9 John Smith from Progress Coal is on property. If it
10 was --- now, we didn't announce the miners because we
11 got to know who the miners were. You didn't announce
12 the everyday employees, just anybody that was not a
13 direct Massey employee was announced.

14 Q. Did that apply to all other company people?

15 A. I'm not following that question.

16 Q. From any other company, any other affiliation
17 except Massey you would announce what affiliation ---?

18 A. If they were not a miner that worked at that mine
19 they were announced.

20 Q. So every time that MSHA came, they would be
21 informed that MSHA was on the property?

22 A. Yes, sir.

23 MR. STEPHAN:

24 Okay. Anything else along those lines?

25 ATTORNEY FERGUSON:

1 Uh-uh (no).

2 MR. STEPHAN:

3 Do you have any questions?

4 MR. KINDER:

5 Yeah.

6 EXAMINATION

7 BY MR. KINDER:

8 Q. Fred, I have a couple of questions I'd like to ask
9 you. I'm going to start out 22 Headgate and work our
10 way back, if you don't mind. On this mantrip that you
11 spoke about earlier, where six of the victims were
12 found, you talked about the damage to the mantrip.
13 What type of damage was there to that mantrip?

14 A. The control panel was because --- when we first
15 went up there, John, they had asked us was it going to
16 be possible to bring this mantrip outside? Because
17 they were thinking that was the easiest way to
18 transport these miners. The control panel was blown
19 off. There was some heat damage on the bus. The
20 canopy legs were bent and kind of had compacted a
21 little bit on the miners, didn't --- I don't think it
22 physically hurt any of them, but it had come down. It
23 had been --- it had been severely damaged.

24 Q. The legs on the mantrip you said were bent down?

25 A. Some of them were bent ---.

1 Q. Which way were they bent?

2 A. They were bent in the outby position and actually
3 some of the metal was even broken.

4 Q. That would be outby toward the mouth of the ---

5 A. Outby ---.

6 Q. --- mouth of the 22 Headgate?

7 A. Yes, sir.

8 Q. Okay. What about the canopy on the mantrip?

9 A. That's what I'm talking about, the canopy legs
10 themselves were ---.

11 Q. Canopy legs.

12 A. They were still intact, but they were damaged and
13 bent.

14 Q. Was there in deep canopies on both ends of this?

15 A. Yes, there was. I just remember noticing the inby
16 canopy more.

17 Q. Okay. And which way was it bent?

18 A. It was bent from 22 North --- 22 Headgate going
19 outby.

20 Q. Okay. Both canopies were still on the machine?

21 A. Best I can remember, but I just remember
22 specifically looking at the inby one.

23 Q. Okay. Back up now to the mouth of 22 Headgate.

24 There's a beltline right here. Was there any damage
25 to this beltline right here when you come through?

1 A. John, I did not go up the beltline. We traveled
2 up, which would have been the track entry. When we
3 came up this way (indicating) ---. And, again, I'm
4 assuming you're talking about the Headgate 22 belt?

5 Q. That one right here.

6 A. Okay. The Headgate 22 belt?

7 Q. Yes.

8 A. I did not go over in that entry.

9 Q. Okay. One other question I got for you. Which
10 entry did you travel here between 22 Tailgate and 22
11 Headgate?

12 A. We had to dodge some gob and dodge one thing or
13 another, so we pretty much traveled up this way. Then
14 I think we may have went around. We went around here
15 and came back. We did not have one specific one entry
16 of tracks.

17 Q. Did you see any machinery or anything in this
18 area ---?

19 A. It seems like I saw a roof drill somewhere, but I
20 don't remember. I can't swear to it that I saw it up
21 in here, but I didn't see any equipment up here. I
22 didn't see any equipment over on Eight North. That
23 kind of pretty well limits where it could have been,
24 though.

25 Q. These controls on 22 Headgate, was they intact?

1 A. Did not see a ventilation control, Johnny, from
2 --- intact from 79 Break in.

3 MR. KINDER:

4 Okay. Thanks, Fred.

5 EXAMINATION

6 BY MR. MCGINLEY:

7 Q. Just a couple of questions. You said the second
8 time you went underground Friday night you wanted to
9 go to 22 Headgate. That was the goal?

10 A. Yeah.

11 Q. I just wanted you to clarify for the record why
12 that was ---.

13 A. Well, the 96 hours was --- getting witching hour.
14 We were aware that people on the MEU team were aware
15 that we needed to get up there. And, again, I had
16 known Eugene White with the State. He and I worked
17 together. I had known Robby Asbury. We grew up on
18 the same hollow in West Virginia. We had pretty well
19 talked amongst ourselves that, you know, we were going
20 to go up there to see what was up there. So it was
21 --- we were going ---. The mission was going to be
22 accomplished one way or another.

23 Q. Just a couple background questions. On the way in
24 underground where was the first place approximately
25 you noticed some substantial debris? Was it at 75

1 or ---?

2 A. Well, substantial debris, that would have been
3 around the mid 70s ---

4 Q. Okay.

5 A. --- I guess coming up this Five North belt.

6 Q. And you said that there was debriefing certainly
7 after your trips in, the second or third, and there
8 was --- after the first time underground. Did anyone
9 write anything down, that you recall?

10 A. There were people in the command center. I don't
11 believe they were MSHA people. I didn't recognize
12 them as being MSHA people. It looked like they were
13 doing the majority of the writing.

14 MR. MCGINLEY:

15 Okay.

16 ATTORNEY FERGUSON:

17 I just want to clarify something for the
18 record.

19 EXAMINATION

20 BY ATTORNEY FERGUSON:

21 Q. Mr. Martin, several times you referred to this 96
22 hours that it was important. And I just want to make
23 sure your transcript is clear. Could you explain that
24 for the record, please?

25 A. The 96 hours deals with the approximate time X

1 amount of people could stay alive in a rescue chamber.
2 There was a rescue chamber stationed up here on the 22
3 Headgate. The hopes at that time were that these
4 miners, had any of 'em survived, would be in this
5 rescue chamber. And there was a meeting, actually ---
6 we, as rescuers knew, that they probably had plenty
7 more air than the 96 hours. The conception to the
8 general public was, no, they got 96 hours.

9 We felt that political pressure from the State
10 level had us go in and look at this thing, whether it
11 was safe or not. That was the consensus of several of
12 the MEU people, that we were kind of --- you know, we
13 were going to be ---. Whatever happened to us,
14 happened to us, but they wanted to see what was in
15 that box.

16 MR. MCGINLEY:

17 Within the 96 hours?

18 A. Within the 96 hours. And it was going to be found
19 --- once we went underground, we were going to go to
20 look what was in the box, but we didn't have to.

21 MR. MCGINLEY:

22 Right.

23 BY ATTORNEY FERGUSON:

24 Q. Your response indicates perhaps that you or
25 members of your team felt like the conditions were

1 unsafe for you to be underground?

2 A. Well, ---.

3 Q. Would that be a correct assessment?

4 A. I was told later that --- I think it was Friday
5 night. One of the MSHA guys who was working the
6 command center and went out and called his wife and
7 said, call the church, because we may not see these
8 guys again. They were that concerned that we were
9 going to not come out. I'm sorry.

10 MR. MCGINLEY:

11 That's okay.

12 ATTORNEY FERGUSON:

13 That's quite all right.

14 A. It just kind of makes you feel kind of --- you
15 know, they were trying to do something, but, you know,
16 just because somebody needs to see what you pretty
17 well know is not there, they're willing to, you know,
18 trade you off to look at it. And it kind of hurts
19 your feelings.

20 BY ATTORNEY FERGUSON:

21 Q. And who do you mean by they?

22 A. Well, the powers that be, but I mean, we didn't
23 call these shots. We're told. If they say the tool
24 needs to go do this, that's what the tool does. And
25 we were going to do it, you know. It was just, you

1 know --- again, this was after the fact we were
2 concerned. There was certain nights, you know ---
3 like Thursday night we were told, you know, there's no
4 way you're going underground, the conditions just ---
5 you know, they're too dangerous. Two hours later they
6 say get some team guys, you're going underground.

7 Again, I apologize for that.

8 ATTORNEY FERGUSON:

9 No.

10 RE-EXAMINATION

11 BY MR. MCGINLEY:

12 Q. Did this hit you more after you were out of there,
13 you know, or --- I mean, did you just sort of respond
14 and do what you were asked to do?

15 A. Yeah. You're going to do what you're expected to
16 do and ---. Like I said, we don't know ---. MEU
17 people, we get briefed a little bit, but, you know,
18 even one of the other MSHA guys said, you know, if you
19 get in there and you hear anything, the best place
20 you're going to get is get between the breaks and hold
21 onto your head the best you can if you hear something.
22 You know, they really thought that there was potential
23 --- of course, we'll go do it again, but, you know,
24 still ---. I think you should do things for the right
25 reasons.

1 Q. Right. And was it pretty much the consensus that
2 no one was going to be found in those rescue chambers?

3 A. To the MEU people was, yeah, because I mean, those
4 guys never knew what hit 'em. I mean, the ones that I
5 saw they just --- they never knew what was coming.

6 Again, I didn't see all of 'em. I saw 14 of 'em, but
7 I didn't see, you know, what was up on the longwall.

8 Q. So it was a likelihood that with the instantaneous
9 impact that that probably would have happened ---?

10 A. I don't see how anybody would have --- you know,
11 knew what hit them more than maybe a second. Just
12 there and you're done, you know.

13 ATTORNEY FERGUSON:

14 Do you have any additional questions,
15 John?

16 MR. KINDER:

17 No.

18 ATTORNEY FERGUSON:

19 All right. On behalf of MSHA and the
20 Office of Miners' Health, Safety and Training, I want
21 to thank you for appearing and answering questions
22 today. Your cooperation is very important to the
23 investigation as we work to determine the cause of
24 this accident. We request that you not discuss your
25 testimony with any person aside from your personal

1 representative. After questioning other witnesses, we
2 may call you if we have any follow-up questions. If
3 at any time you have additional information regarding
4 the accident that you would like to provide to us,
5 please contact us at the information that was
6 previously provided to you.

7 If you wish, you may now go back over any
8 answer you've given during this interview and you may
9 also make any statements that you would like to make
10 at this time.

11 A. I'm good.

12 ATTORNEY FERGUSON:

13 Again, thank you very much for your
14 cooperation.

15 A. You're quite welcome.

16 ATTORNEY FERGUSON:

17 Oh, before we go off the record, we need
18 to enter as exhibits three maps marked as Martin One,
19 Martin Two and Martin Three. Thank you.

20 (Martin Exhibits One through Three marked
21 for identification.)

22

23 * * * * *

24 STATEMENT UNDER OATH CONCLUDED AT 2:35 P.M.

25 * * * * *

1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Brett Steele, 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.



Brett Steele