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**Transcript of the Testimony of Justin Mourad**

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STATEMENT UNDER OATH  
OF  
JUSTIN MOURAD

taken pursuant to Notice by Alicia R. Brant, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Beaver, West Virginia, on Tuesday, June 15, 2010, beginning at 8:03 a.m.

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P R O C E E D I N G S

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ATTORNEY BAXTER:

Let's go on the record. My name's Derek Baxter. Today is June 15th, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is John Godsey, an accident investigator with the Mine Safety and Health Administration, MSHA, 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.

MR. FARLEY:

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

MR. O'BRIEN:

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

ATTORNEY MCATEER:

And I'm Davitt McAteer with the Governor's Special Investigation.

ATTORNEY BAXTER:

There also may be members of the investigation team present in the room today. And Mr. Godsey, Mr. Farley and Mr. McAteer will be conducting



1 the questioning today.

2 All members of the Mine Safety and Health

3 Accident Investigation Team and all members of the

4 State of West Virginia Accident Investigation Team

5 participating in the investigation of the Upper Big

6 Branch Mine explosion shall keep confidential all

7 information that's gathered from each witness who

8 voluntarily provides a statement until the witness

9 statements are officially released. MSHA and the

10 State of West Virginia shall keep this information

11 confidential so that other ongoing enforcement

12 activities are not prejudiced or jeopardized by a

13 premature release of information. This

14 confidentiality requirement shall not preclude

15 investigation team members from sharing information

16 with each other or with other law enforcement

17 officials. Your participation in this interview

18 constitutes your agreement to keep this information

19 confidential.

20 Government investigators and specialists

21 have been assigned to investigate the conditions,

22 events and circumstances surrounding the fatalities

23 that occurred at the Upper Big Branch Mine South on

24 April 5th, 2010. The investigation is being conducted

25 by MSHA under Section 103(a) of the Federal Mine

1 Safety and Health Act and the West Virginia Office of  
2 Miners' Health, Safety and Training. We appreciate  
3 your assistance in this investigation.

4 You may have your personal attorney  
5 present during the taking of this statement, or  
6 another personal representative, if MSHA has permitted  
7 it, and may consult with your attorney or the  
8 representative at any time. Do you have a personal  
9 representative today?

10 MR. MOURAD:

11 No.

12 ATTORNEY BAXTER:

13 Your statement is completely voluntary.

14 You may refuse to answer any question and you may  
15 terminate your interview at any time or request a  
16 break at any time. Since this is not an adversarial  
17 proceeding, formal Cross Examination will not be  
18 permitted. However, your personal legal  
19 representative may ask clarifying questions as  
20 appropriate.

21 Your identity and the content of this  
22 conversation will be made public at the conclusion of  
23 the interview process and may be included in the  
24 public report of the accident unless you request that  
25 your identity remain confidential or your information

1 would otherwise jeopardize a potential criminal  
2 investigation. If you request us to keep your  
3 identity confidential, we will do so to the extent  
4 permitted by law. That means that if a judge orders  
5 us to reveal your name or if another law requires us  
6 to reveal your name or if we need to reveal your name  
7 for other law enforcement purposes, we may do so. We  
8 request that you refrain from discussing your  
9 statement with others who may be interviewed. Also,  
10 there may be a need to use the information you provide  
11 to us or other information we may ask you to provide  
12 in the future in other investigations into and  
13 hearings about the explosion. Do you understand?

14 MR. MOURAD:

15 Yes.

16 ATTORNEY BAXTER:

17 Do you have any questions?

18 MR. MOURAD:

19 No.

20 ATTORNEY BAXTER:

21 Okay. And that's another thing, too,

22 that, please, instead of nodding your head, speak and  
23 say yes or no.

24 MR. MOURAD:

25 Because of the reporter?

1 ATTORNEY BAXTER:

2 Exactly. After the investigation is  
3 complete, MSHA will issue a public report detailing  
4 the nature and causes of the fatalities in the hope  
5 that greater awareness about the causes of accidents  
6 can reduce their occurrence in the future.

7 Information obtained through witness interviews is  
8 frequently included in these reports. Since we will  
9 be interviewing other individuals, we request that you  
10 not discuss your testimony with any person aside from  
11 your personal representative or counsel.

12 A court reporter will record your  
13 interview. Please speak loudly and clearly. If you  
14 do not understand a question asked, please ask me to  
15 rephrase it. Please answer each question as fully as  
16 you can, including any information you've learned from  
17 someone else.

18 I'd like to thank you in advance for your  
19 appearance here. We appreciate your assistance in  
20 this investigation. Your cooperation is critical in  
21 making the nation's mines safer.

22 After we have finished asking questions,  
23 you'll have an opportunity to make a statement and  
24 provide us with any other information you believe to  
25 be important. If at any time after the interview you

1 recall any additional information that you believe  
2 might be useful, please contact Norman Page at the  
3 telephone number or e-mail address provided to you.  
4 Okay.

5 MR. FARLEY:

6 Justin, on behalf of the West Virginia  
7 Office of Miners' Health, Safety and Training, I would  
8 like to also advise you that the West Virginia Coal  
9 Mine Health and Safety regulations protect miners  
10 against discrimination, too. And I want to provide  
11 you with some contact information in the event you  
12 should experience some such treatment.

13 I would only caution you, if you  
14 experience that type of treatment from your employer,  
15 you should --- you must file a complaint within 30  
16 days. And you have my business card along with that  
17 for Bill Tucker, our other lead investigator.

18 ATTORNEY BAXTER:

19 Please swear the witness in.

20 -----  
21 JUSTIN MOURAD, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
22 AS FOLLOWS:

23 -----  
24 EXAMINATION

25 BY MR. GODSEY:

1 Q. Justin, what's your full name?

2 A. Justin E. Lee Mourad.

3 Q. Spell your last name.

4 A. It's M, like Mary, O-U-R-A-D.

5 Q. And your home address?

6 A. It's [REDACTED]

7 Q. Your telephone number?

8 A. Home number's [REDACTED] You need the cell  
9 number?

10 Q. If you want to.

11 A. It's [REDACTED]

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

13 A. Yes. I can say I was called here, I guess.

14 Q. Okay. Has anyone ---

15 A. Yeah.

16 Q. --- made any promises to you for giving your  
17 statement or offered you any reward in exchange for  
18 making the statement?

19 A. No.

20 Q. Has anyone threatened you or warned you not to  
21 provide the statement?

22 A. No.

23 Q. Has a company or a company representative  
24 interviewed you about the experience at Upper Big  
25 Branch?

1 A. Yes.

2 Q. When did they do this?

3 A. It's been maybe about a month ago. Lawyers from  
4 the company did.

5 Q. Where'd they interview you?

6 A. At Elk Run.

7 Q. Did you receive any instructions or direction to  
8 how you're supposed to give your testimony here?

9 A. No.

10 Q. How many years of experience do you --- mining  
11 experience do you have?

12 A. Two years, one month.

13 Q. Okay. Give us a brief description of your coal  
14 mine employment history.

15 A. Pretty much I've done work on belts. I first  
16 started out taking care of them. Then I did a lot of  
17 outby work, setting up belts, putting in structure.  
18 Now I'm working on the section, so I'm the scoop  
19 operator. Every once in a while I'll do shuttle car,  
20 but mostly I'll do scoop on the section. That's  
21 pretty much what I do, and rock dust and clean.

22 Q. Do you have any mining certifications or  
23 specialized training?

24 A. Just the EMT card. I have one of those.

25 Q. EMT?

1 A. EMT.

2 Q. Uh-huh (yes). Are you presently employed?

3 A. Yes.

4 Q. Where are you ---?

5 A. Elk Run at Hunter Peerless, I've been mining  
6 there.

7 Q. When did you start there, at Elk Run?

8 A. Let's see. They sent me there two weeks after the  
9 explosion.

10 Q. Late April?

11 A. Uh-huh (yes).

12 Q. And what is your present job title there?

13 A. Scoop operator on One section.

14 Q. Okay. How much of --- how much of --- all your  
15 --- you've been with Massey; correct?

16 A. Uh-huh (yes).

17 Q. And you hired in with --- how'd you hire into  
18 Massey? I mean, how did you get a job at Massey?

19 A. They had, like, a job fair and I went to talk to  
20 --- her name was [REDACTED] She's an HR  
21 director. I went to school with her, and she told me,  
22 she said, well, I'll give David Stanley a call and  
23 tell him to send you there. So I guess it's where I  
24 knew her. I pretty much got in real fast.

25 Q. How long did you work for David Stanley?



1 A. Three months before I got hired into Massey.

2 Q. And what all did you do when you worked for David  
3 Stanley?

4 A. Just the same things.

5 Q. Did you work on track crew?

6 A. Worked on the belts. I did outside belts. I  
7 first started at Marfork at Cedar Grove belts. Had to  
8 take care of them, shovel them, washing out the belts,  
9 greasing bearings, all that stuff.

10 Q. Did you ever actually work on, behind the active  
11 longwall there at Upper Big Branch?

12 A. Not as far as behind it. I did --- I worked  
13 setting up the belts where the Mother Drive was at.

14 Q. All the rest of the question I'm going to ask you  
15 will be about Upper Big Branch. It won't be about  
16 your present job at Elk Run.

17 A. Okay.

18 Q. What was your job assignment on your first shift  
19 at Upper Big Branch?

20 A. You mean what did I do?

21 Q. Uh-huh (yes).

22 A. We were outby crew.

23 Q. And on the first shift you was there, what areas  
24 did you travel to?

25 A. I mean, mostly we started going to the --- like,

1 the --- they call it the Glory Hole. We mostly went  
2 to One section.

3 Q. How long did you work at the Glory Hole? I mean,  
4 did you stay just one day there or whatever?

5 A. No, it was pretty much every night.

6 Q. What all did you do there?

7 A. Well, it depended on what needed done that night  
8 where we were hoot owl. We'd come in. Maybe they  
9 might want us to dust or maybe they might ---  
10 sometimes they'd want us to do stoppings because they  
11 were having bad ventilation problems. A lot of times  
12 we had to do stoppings, all the time, trying to get  
13 the air right down through there.

14 Q. I'm not trying to jump around, but what bad  
15 ventilation problems did you have?

16 A. They said they weren't getting --- they weren't  
17 getting enough air down through there, is what they  
18 were saying.

19 Q. Down through where, now?

20 A. Down through One section.

21 Q. Now, which was One section?

22 A. It was down through the Glory Hole, down through  
23 here.

24 Q. Okay. One Section, is that 22 Headgate?

25 A. Yeah.

1 Q. Do you have it in front of you?

2 A. Where's 78 Break at on this map?

3 Q. On Six North, look down through there, it'll be on  
4 the side there.

5 A. The break's right ---.

6 Q. Down in here? You're not talking about 78 Break  
7 on Six North ---

8 A. Uh-huh (yes).

9 Q. --- where the doors are?

10 A. Yeah, where those four doors are at.

11 Q. Right there.

12 A. Yeah. Yeah, we worked up at the --- they called  
13 it --- it was a new One section, but it was the Glory  
14 Hole, and that's where they were putting in the new  
15 longwall. I guess it was a longwall panel, is what  
16 they were putting in, because we started putting in a  
17 new longwall belt and all that down through there.

18 Q. Okay. Did anybody tell you what kind of problems  
19 they was having with the ventilation?

20 A. I heard the bosses every night talking about, you  
21 know, they weren't getting enough air down through  
22 there. They would take their anemometers, and they  
23 ---. I don't know what it's supposed to register, but  
24 I know they always said they weren't getting what they  
25 were supposed to.

1 Q. When was this?

2 A. This was --- I guess it was --- it was pretty much  
3 on a nightly basis when I was there.

4 Q. Can you put a date on it, about six months ago,  
5 something like that?

6 A. Well, I was on that --- I'm trying to think. I  
7 was on the outside. That happened April 5th; right?

8 Q. Uh-huh (yes).

9 A. April 5th. I guess I started hearing about it  
10 maybe about mid-February, something like that. I  
11 really didn't hear too much about it until I went on  
12 the hoot owl crew.

13 Q. Do you know if they made any ventilation changes  
14 while you were up there?

15 A. I wasn't aware of it, no.

16 Q. No one ever talk about it?

17 A. Uh-uh (no).

18 Q. Did you go over to the Glory Hole itself?

19 A. Uh-huh (yes).

20 Q. What's it like over there? Is it cool, warm  
21 or ---?

22 A. It's hot, very hot, the Glory Hole was.

23 Q. Do you know why it was hot?

24 A. No, I don't know. I know it was hot.

25 Q. Do you carry a methanometer with you, spotter?

1 A. No.

2 Q. Does your foreman? Did he ever take gas checks  
3 over there?

4 A. Yes.

5 Q. Did he ever tell you what he read?

6 A. Uh-uh (no). He never mentioned it.

7 Q. Did he ever tell you anytime that you had methane  
8 anywhere where you worked?

9 A. No. There was one time when we were up on the One  
10 section. There was a bolter up there working. He  
11 come and told us that he --- there was a little bit of  
12 gas coming on his monitor.

13 Q. How much was that? Did he say?

14 A. I don't know. He didn't say.

15 Q. Do you remember when that was?

16 A. That was probably about --- maybe a month before  
17 the explosion, a month, month and a half, something  
18 like that.

19 ATTORNEY BAXTER:

20 Do you remember who that was?

21 A. Rodney Osborne.

22 BY MR. GODSEY:

23 Q. And he was a roof bolter?

24 A. He was a bolter, yeah.

25 ATTORNEY BAXTER:

1 And do you remember which bosses you  
2 said, you know, were saying that you weren't getting  
3 enough air? Do you remember who in particular was  
4 saying that?

5 A. Well, Wayne Persinger was --- he was the V.P.  
6 there. He made some changes --- or not really  
7 changes, but he came in one night trying to fix the  
8 air on it, you know, building stoppings around. And  
9 we would go some places. He'd tell us no, let's knock  
10 this one down. And he'd go to another spot. Well,  
11 let's build one here.

12 BY MR. GODSEY:

13 Q. Were people, were they working running coal when  
14 this was going on?

15 A. No, this was at night when they were down on the  
16 longwall One section.

17 Q. Was anybody else --- well, was anybody else in the  
18 mines when they were doing this other than the people  
19 making ---?

20 A. Wayne was there and the two safety directors were  
21 there with him.

22 Q. Who were they?

23 A. Let me think for a minute what his name is. I  
24 can't think of it right off the bat what his name is.  
25 No, I can't think of it, what their two names ---.

1 Oh, it'll probably come to me in a minute.

2 Q. Okay. Did you ever notice any changes ---? Like,  
3 say you worked one place one night and the next, the  
4 air changes. Did you ever feel where the air was  
5 going a different direction than what it should be?

6 A. No, never noticed it.

7 MR. GODSEY:

8 Okay. Terry, any questions?

9 EXAMINATION

10 BY MR. FARLEY:

11 Q. A couple for you just to clarify things. When  
12 you refer to One section, do you mean 22 Headgate  
13 section?

14 A. Where is it here on this map?

15 Q. This is 22 Headgate section here.

16 A. And the longwall is ---?

17 Q. The longwall, you just pointed to it. That was  
18 the longwall ---

19 A. Headgate One North.

20 Q. ---- in operation at the time of the accident.

21 A. Uh-huh (yes). Yeah, this was it.

22 Q. Okay. That's what you you're calling One section?

23 A. Uh-huh (yes).

24 Q. Okay. And then you were helping, assisting in  
25 installing a new Mother Drive there ---

1 A. Uh-huh (yes).

2 Q. --- down at the 22 Headgate dumping point?

3 A. You want me to circle that?

4 ATTORNEY BAXTER:

5 Sure. And can you just say yes ---

6 A. Yeah.

7 ATTORNEY BAXTER:

8 --- or no?

9 A. Yes.

10 ATTORNEY BAXTER:

11 Okay.

12 BY MR. FARLEY:

13 Q. Okay. Now, I want to be clear. When did you  
14 actually start work at UBB?

15 A. Well, I was back and forth. When I very first  
16 started there, it was, I'm going to guess, maybe  
17 September.

18 Q. Last year?

19 A. Uh-huh (yes).

20 Q. Okay. Now, so you went back and forth?

21 A. Yeah, I worked at, worked at UBB for about three  
22 or four months ---

23 Q. Uh-huh (yes).

24 A. --- and then they sent a bunch of us to Slip  
25 Ridge, and then they sent us all back to UBB.



1 Q. Okay. And when did you come back the last time?

2 A. Came back to UBB, I'm going to guess maybe  
3 sometime early in the year, something like that.

4 Q. Early in the year, meaning 2010?

5 A. Right.

6 Q. Okay. Now, this roof bolter, Rodney Osborne, ---

7 A. Uh-huh (yes).

8 Q. --- told you that he had detected methane on his  
9 monitor. Now, which section did he come from? Where  
10 did he work?

11 A. He was up here on the One section through here.  
12 He was bolting.

13 Q. Okay. On the One section, which we sometimes  
14 refer to as 22 Headgate?

15 A. Uh-huh (yes).

16 ATTORNEY BAXTER:

17 Sorry. Is that a yes?

18 A. Yes. Sorry.

19 ATTORNEY BAXTER:

20 That's okay.

21 A. Sorry. Yes.

22 BY MR. FARLEY:

23 Q. Now, can you give me a time frame when he told you  
24 that?

25 A. I'm going to guess about 12:30 a.m., because he

1 was on the hoot owl shift with ---.

2 Q. What date?

3 A. Maybe sometime in March. I'm guessing, sometime  
4 in March maybe.

5 Q. A week before April 5th, two weeks before?

6 A. If I'm going to guess, I'd say about two or three  
7 weeks before April 5th.

8 Q. Okay. You indicated that Persinger came in one  
9 night in an attempt to fix some ventilation, and he  
10 brought a couple safety directors.

11 A. Berman Cornett, I just thought of it. That's one  
12 of the safety men.

13 Q. Do you have any recollection of the other one?

14 A. I'll think of it here in a second what his name  
15 was.

16 Q. Okay. Well, in the meantime, can you give me a  
17 good idea of the area that they were working in? You  
18 indicated they were knocking some stoppings and  
19 building some stoppings. And can you indicate where  
20 they were working?

21 A. This is the longwall through here; right?

22 Q. Well, the longwall face was right here.

23 A. Uh-huh (yes).

24 Q. Okay. Well, that was the longwall face as of  
25 around the end of March.

1 A. I'm thinking we were somewhere --- I'm trying to  
2 think exactly where we were at. I'm not sure. It was  
3 somewhere up through here on the longwall.

4 Q. Okay. You're pointing to the area which we call  
5 the crossover from the longwall headgate entries  
6 connecting to the 22 Headgate entries.

7 A. I'm thinking maybe it was somewhere in here. I  
8 honestly can't remember.

9 Q. Okay.

10 A. I don't know.

11 Q. Can you estimate when this occurred?

12 A. It was about two weeks before the explosion.

13 Q. Okay. Now, did you accompany them as they did the  
14 work?

15 A. Yes, it was our crew, and Wayne was in there and  
16 the two safety men were in there.

17 Q. Okay. Now, who else was with you other than Wayne  
18 and the two safety men?

19 A. It was two --- it was hoot owl foremans that was  
20 on our crew, and then just our regular crew was on  
21 there.

22 Q. And do you remember their names?

23 A. Kenny Farmer was one of the foremen, and Sean  
24 Walker, he was the main mine foreman. Then it was  
25 myself and there was a red hat. His name was Tom

1 Fleming. Then there was --- what's his name? Then  
2 there was --- what's his name --- Scott --- I can't  
3 remember Scott's last name. Scott and then Joe  
4 Tilley. He was on our crew. And Justin Spence. And  
5 that was what --- who was on there.

6 Q. Okay. All right. Now, this was on, during a  
7 midnight shift; right?

8 A. Correct.

9 Q. Did you spend all night doing this work?

10 A. Yes.

11 A. All night long. And they said when we came back  
12 the next night that for some --- I don't know why, but  
13 they said the air was actually worse than what they  
14 hoped for, because they said the inspector come in  
15 that morning and they shut them down.

16 Q. Okay. Did you do this work ---? Was Persinger  
17 and --- were any other fellows --- safety guys there  
18 more than one day?

19 A. No. They didn't come back. They didn't come back  
20 any other night.

21 Q. Okay. So they told you the next day that  
22 apparently whatever they did made things worse?

23 A. Yeah.

24 Q. Okay. All right. Now, during the course of the  
25 night when you were working with, ---

1 A. Uh-huh (yes).

2 Q. --- you know, your conversations that go back and  
3 forth, did they at any point indicate why they were  
4 making the changes? Where were they trying to get  
5 more air to? What was their intention, at least?

6 A. They were trying to get more air towards the One  
7 section, is what I always heard.

8 Q. Okay. One section, again, being 22 Headgate?

9 A. Uh-huh (yes).

10 Q. All right.

11 A. Because I remember when I first started working  
12 down there, they had a new boss come in, and he  
13 thought his anemometer was wrong. He said it wasn't  
14 even registering hardly nothing.

15 Q. Okay. Now, was he talking about the One section,  
16 as you call it?

17 A. Uh-huh (yes). That's it here.

18 Q. Do you remember his name?

19 A. He didn't stay there long. I'll think of it in a  
20 minute.

21 Q. When you say he didn't stay there long ---?

22 A. He got into an argument with the superintendent  
23 and he just ended up quitting. He just got mad at  
24 him.

25 Q. Okay. It would be very important if you could

1 remember that name.

2 A. Okay. I'll think of it.

3 Q. Even if you need to call us back after your  
4 interview.

5 A. Was it Roman? His first name's Roman. Roman  
6 something.

7 Q. Do you know why they got mad over something over  
8 safety or at the mine?

9 A. I'm not sure. They both ---. Everett was  
10 superintendent and still is. He always gave him hard  
11 times about, I guess stuff he did or didn't do the  
12 night. They just argued over things.

13 Q. Okay. Now, Roman, did he --- which shift did he  
14 work?

15 A. Hoot owl.

16 Q. Okay. When he quit, was it this year?

17 A. Yes.

18 Q. Okay. Was it within a month of the explosion?

19 A. Let me think for a second, because I'm thinking he  
20 was there ---. Let me go back a minute. I'm thinking  
21 it was sometime in '09, because I remember him being  
22 there when we were getting ready to go on vacation,  
23 and I'm thinking it was either Christmas vacation ---  
24 yeah, it was Christmas vacation. So he was there in  
25 '09.

1 Q. All right. 2009.

2 A. Because I remember us talking about how can we get  
3 a vacation week off, and I remember him talking about  
4 it.

5 Q. As a matter of curiosity, did you actually get  
6 vacation off as it was scheduled?

7 A. Well, some people did and some didn't. They made  
8 us sign a sheet saying we agreed to work Monday,  
9 Tuesday and Wednesday. If we didn't our jobs weren't  
10 secure.

11 Q. All right.

12 A. That was the sheet they sent around. And then  
13 everybody signed it, and they said --- they made you  
14 put a check mark for yes, saying, I'll agree to work  
15 Monday, Tuesday and Wednesday, or check no. And it  
16 says, my job will not be secure, pretty much what the  
17 sheet said.

18 Q. Did you interpret that to mean that you would be  
19 fired or laid off if you didn't ---

20 A. Uh-huh (yes).

21 Q. --- check the right one?

22 A. Yes, pretty much.

23 Q. Now, this was in December '09?

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

25 Q. Did you eventually take your vacation or were you

1 paid for it or ---?

2 A. I did eventually get to take my vacation, yeah.

3 Q. Okay. Now, when discussing ventilation change  
4 here, One section, 22 Headgate, as we call it, ---

5 A. All right.

6 Q. --- do you remember the names of the other bosses  
7 who said they weren't getting enough air on a nightly  
8 basis?

9 A. The move crew boss that worked down there, his  
10 name is Kyle --- I can't remember Kyle's last name,  
11 but it was only one up there on the move crew. But he  
12 was constantly getting problems with his air not  
13 getting right. I heard him mention it a lot, and I'd  
14 hear Sean and them talk about it a lot, ---

15 Q. Okay.

16 A. --- when he would fire boss and stuff.

17 Q. Did Roman or Kyle or any of the other bosses you  
18 worked with on the midnight shift ever indicate in any  
19 way that they had to put information in the pre-shift,  
20 on-shift books that was maybe not accurate?

21 A. No, I never heard them say anything about that.

22 Q. Okay. All right. As far as you know, did they do  
23 the examinations properly and at the correct time?

24 A. As far as I know, I guess they did.

25 Q. Okay.



1 EXAMINATION

2 BY ATTORNEY MCATEER:

3 Q. Justin, thank you again for coming down. We  
4 obviously are trying to get to the heart of the matter  
5 so we can prevent these things from happening. But to  
6 get there is a slow process, so maybe we kind of got  
7 to go through the whole thing.

8 A. Okay.

9 Q. Tell me again when you began to work hoot owl.

10 A. When? It was sometime in early 2010. If it  
11 happened in April, I'm going to guess --- I'm going to  
12 go --- I'm going to --- actually I'm going to go back  
13 on that. It was the first week of '09, because when I  
14 came back from Thanksgiving break, I was still on  
15 Three section. When I came back, that's when they  
16 told me I was getting transferred to hoot owl. So it  
17 was the first week of December, is when I went to hoot  
18 owl.

19 Q. And don't feel bad about not being able to  
20 get ---.

21 A. I can't get these dates, because --- right.

22 Q. Yeah, nobody ---

23 A. I'm just trying to get ---.

24 Q. --- on this side of the table can, either. I  
25 mean, we just interviewed one of the bosses that you

1 mentioned and I couldn't remember his name. But so do  
2 you move from Three section to One section, what we're  
3 calling 22 Headgate?

4 A. Right.

5 Q. And at that point you began to notice bad air, the  
6 lack air?

7 A. Right, lack of air. We were building stoppings,  
8 airlock doors it seemed like every night. And I know  
9 you're probably going to ask me where, but I --- it  
10 was somewhere on One section. I can't remember where,  
11 but there was a rock fall one night. We had to go in  
12 there and we had to put jacks around it and danger it  
13 off.

14 Q. Do you remember what time that rock fall, roof  
15 fall was?

16 A. I came in about 11:00.

17 Q. Or date or how long ago or ---?

18 A. It was about maybe a month before the explosion.

19 Q. Do you know about where it was? You don't know  
20 where?

21 A. It was somewhere on One section. I'm not sure  
22 exactly where, but it happened approximately maybe  
23 about 8:00, because I came in at 11:00 and they said  
24 it just happened maybe two hours ago.

25 Q. Was the fall above the anchorage zone of the roof?

1 A. As far as I remember, yes.

2 Q. Okay. Do you remember the length of it or ---?

3 A. It was about a break long. It was pretty big.

4 Q. Okay. Now, the night that Wayne Persinger came  
5 in, he came in with Berman Cornett and says that he's  
6 concerned about the stop of the air, and so he began  
7 to instruct you to --- and the crew, to change the  
8 stoppings and to try to increase the air velocity?

9 A. Correct.

10 Q. Okay. How many stoppings did you change or did  
11 you modify?

12 A. We built about five of them that night and may ---  
13 and we knocked probably about five or six.

14 Q. Was Mr. Persinger working from any paper or  
15 working --- or was just kind of ---?

16 A. He had a map like this, him and the safety  
17 directors, and they would go through them.

18 Q. Did they make any reference to a ventilation plan  
19 or just ---?

20 A. No.

21 Q. Okay.

22 A. I didn't hear of any. I'm not sure.

23 Q. Okay. Now, you mentioned on your work crew that  
24 there --- Scott --- was he an electrician?

25 A. No, he was a outby man like me.

1 Q. Okay. And Tilley, what did Tilley do?

2 A. He's move crew.

3 Q. Move crew? How about Justin Spence?

4 A. He was move crew.

5 Q. Did you have anybody who was a rock dust crew  
6 working with you?

7 A. Not directly with us. We had --- who was that ran  
8 the --- not the scoop but the motor.

9 Q. Right.

10 A. He did dusting. His name was Nate Mills, I  
11 believe. They called him Nate Dog. He was a black  
12 guy. And I'm trying to think of that guy that worked  
13 with him. There was a red hat that worked with him,  
14 Dustin.

15 Q. Did there come a time when Mr. Mills or the red  
16 had was discharged?

17 A. Mills was, yes.

18 Q. And do you know the reason?

19 A. We heard that Wayne caught him asleep at a spur  
20 where he was spurred up. And he had flipped the  
21 switch the wrong way and Wayne got out of the mantrip  
22 to go change it and he looked over and noticed him  
23 asleep in the motor. Dustin Richardson, that was his  
24 name, the guy that worked with Nate.

25 Q. Did he continue to work there, do you know,

1 Dustin?

2 A. Up until the explosion he did.

3 Q. Okay. Now, was Nate replaced?

4 A. He was. I'm not sure who the guy was.

5 Q. Okay.

6 A. I just seen him one time.

7 Q. Okay. You said that there was --- that this  
8 fellow Roman who was a new boss --- where was he from?

9 A. I'm not sure. He never said where he came from.

10 Q. Okay. And Everett Hager would have discussions  
11 about, for a variety of things?

12 A. Right.

13 Q. Did Roman --- was he directly in charge of you  
14 or ---?

15 A. Sean Walker was directly in charge of me.

16 Q. Okay. And Roman, did he say to you that his  
17 anemometer would not register?

18 A. He said it to the crew. That night we were  
19 building an overcast, and he went out to fire boss.  
20 And I remember him coming back and telling us all that  
21 he wasn't registering anything on his anemometer.

22 Q. And the night after --- I'm jumping around and I  
23 apologize, but the night after Wayne Persinger had you  
24 come and changed the stoppings, you were advised that  
25 the inspector had shut the mine down?

1 A. That morning.

2 Q. That morning?

3 A. Right.

4 Q. Do you know if that was March the 9th?

5 A. I think it was March the 9th. I'm not sure. It  
6 was pretty close to when the explosion was.

7 Q. Okay. And that evening was just the evening after  
8 Persinger was in there. Did you make any  
9 modifications on the ventilation system?

10 A. Not that I'm aware of or not that I can remember.

11 Q. Okay. You worked for David Stanley for Three  
12 months?

13 A. Correct.

14 Q. And how long were you a red hat?

15 A. How long was I a red hat? Six months.

16 Q. Six months; okay. So you testified that there was  
17 --- that it was hot at the Glory Hole. How about at  
18 the Number One section which we're calling 22  
19 Headgate?

20 A. It just seemed average there, average like  
21 everywhere else in the mines. It didn't seem pretty  
22 hot.

23 Q. At the Glory Hole, did the heat appear to be  
24 coming down or going up or change? I mean, do you  
25 have any recollection of how air was moving?

1 A. It seemed like it was, like it was coming up to  
2 me, is what it seemed like.

3 Q. Going up the hole?

4 A. Right.

5 Q. Uh-huh (yes). Now, finally, about the four days  
6 you've mentioned back here at 78, was there anytime  
7 that you worked on those doors?

8 A. Yes. One of the doors, and I'm trying to think  
9 --- it was the very first door. Actually it was the  
10 first and second ones as you're going down towards One  
11 Section. We had to replace them because the blocks  
12 were messed up, and one of them, the doors was turned  
13 the wrong way. We had to go and completely take the  
14 frame out and switch it around.

15 Q. Any recollection of when that might have been?

16 A. About a month and a half before the explosion.  
17 All this stuff was pretty close to the explosion.

18 Q. February, March?

19 A. Something like that. And I'm trying to think.  
20 Something --- what happened ---. Think for a second.  
21 I'm thinking that the mine was shut down that night  
22 over --- I'm thinking over ventilation. I'm not sure.  
23 I think it was shut down. They sent the red hats home  
24 and the black hats, we had to go in there and work on  
25 them doors. And we end up finishing up about three,

1 four o'clock in the morning and then we left. They  
2 shut them down all the time over ventilation problems,  
3 constantly.

4 Q. Who would have been the foreman with --- that  
5 night with ---?

6 A. Sean and Kenny.

7 Q. Sean and Ken?

8 A. And Kyle was there, too. We had several fire  
9 bosses there, and one was Glen Allman. Another one  
10 was Billy. I can't remember his last name.

11 Q. So on the evening in question that was the evening  
12 where you worked on the doors, you worked on the first  
13 and second doors. That would have been an outby ---?

14 A. Outby.

15 Q. Yeah. And then replaced one door. Turning the  
16 other way, do you remember if that was second or  
17 first, first or second, which one that was?

18 A. I think the first one is the one we flipped the  
19 frame around. And then the other door going inby we  
20 put new blocks and everything in it. People were  
21 constantly --- they were losing control of the  
22 mantrips and motors and they would run into the doors  
23 and tear them down. We'd have to go back and replace  
24 them.

25 Q. Pain in the neck.



1 A. Yeah. They used to be --- at one time all four of  
2 them were electric. Then we had to start getting out  
3 and opening them by hand.

4 Q. Yeah. Were these electric when you were working  
5 there?

6 A. Uh-huh (yes).

7 Q. And worked?

8 A. Yeah. And then people started running into them  
9 and I guess they decided to not fix them anymore and  
10 just open them by hand.

11 ATTORNEY MCATEER:

12 Okay. That's all the questions that I  
13 have, Justin, at the moment.

14 RE-EXAMINATION

15 BY MR. GODSEY:

16 Q. While we're talking about those doors, did you  
17 ever come up there and see them, all of them open at  
18 one time?

19 A. I've seen them open, yes.

20 Q. I mean, all of them at one time?

21 A. Well, the other two that's inby was a little too  
22 far for me to see, but I know the first set I always  
23 --- I would see them open a lot.

24 Q. Do you know at the end of the shift or during the  
25 shift that they would --- on the way out that they

1 would --- when the crews went out, they'd just open  
2 all of them there and the last mantrip out would close  
3 them?

4 A. Yes.

5 Q. Was that pretty routine?

6 A. Uh-huh (yes). Like, if there were several ---

7 Q. Yeah.

8 A. --- the first one would open them all and then  
9 whoever's last would close them, yeah.

10 Q. And could that --- that's the practice, pretty  
11 much a practice there?

12 A. Uh-huh (yes), yes. Sorry.

13 Q. Did anybody --- we was talking back there a while  
14 ago on this 22 Headgate section about the air. Once  
15 they made those changes, did any of those people on  
16 the section talk to you about it, how they felt about  
17 the air up there?

18 A. I didn't really talk to the guys on the section,  
19 because by the time they came in, we were leaving.

20 Q. Did you hear anything? Did anybody else maybe  
21 heard anything that they were having problems up there  
22 on the --- the kind of problems they were having on  
23 the face up there?

24 A. I didn't hear anything, no.

25 Q. Have you ever been on the 22 Headgate up at the

1 face?

2 A. Not up to its face, no.

3 Q. What's the closest that you've been up there?

4 A. We pretty much, we just worked moving belts, just  
5 wherever was that where the feeder was at. We'd move  
6 it up another break or two.

7 Q. Could you tell which way the air was traveling on  
8 the belt? Did you notice that?

9 A. I really never noticed it, no.

10 Q. What about the --- well, how'd they keep the  
11 belts? Was it dirty all the time or ---?

12 A. Gobbed up, dirty. Up there on the One section it  
13 looked like --- we had to spend several months  
14 dusting. It looked like they never cleaned.

15 Q. What about float dust? Did you see a lot of float  
16 dust up there?

17 A. I never seen any float dust, no.

18 Q. Okay.

19 A. But I know the belts were constantly dirty and  
20 black.

21 Q. What kind of --- what shape do they keep the belts  
22 in, the structure and the ---? Did they keep it,  
23 maintain the belt structure and all that? Or did they  
24 have a lot of stuck rollers or ---?

25 A. There may have been a few stuck rollers. They

1 used a lot of old structure that they had retrieved  
2 from, you know, old, I guess old belts that they had  
3 had before. But there were a lot of areas that, or  
4 some areas that they would kind of be gobbled. You  
5 know, they would be --- the rollers would be rolling  
6 in gob.

7 Q. Did you see --- ever see any hot rollers up there?

8 A. I never seen any, no.

9 Q. At the feeder --- you said you went to the feeder  
10 and stuff --- did you see very much --- any curtain  
11 hanging across the feeder, check curtain or ---?

12 A. Just once.

13 Q. Okay. How'd they maintain their stoppings? What  
14 condition were they in?

15 A. Stoppings were --- they sealed them pretty good.  
16 They used that B-Bond, so they did a pretty good job  
17 on those.

18 Q. What's the mining height up on 22 Headgate?

19 A. I'm going to guess maybe about eight feet. It's  
20 pretty high.

21 Q. Did you ever see any rib problems up there?

22 A. They did have rib problems, yeah.

23 Q. What kind of --- what were those?

24 A. Like, rib rolls.

25 Q. What about floor problem? See it heaving or

1 anything, bottom coming up?

2 A. No, I did see some heaving. Yes.

3 Q. Where did you see that at?

4 A. It was --- let me think. This is Headgate 22. We  
5 went down --- let's see. We went --- we were working  
6 down through here.

7 Q. Towards Eight North?

8 A. Uh-huh (yes), yes. And we started putting in some  
9 panels, ---

10 Q. Panel?

11 A. --- you know, kind of like ---.

12 Q. Was it like --- like Kennedy stopping?

13 A. Like Kennedy stoppings. I'm going to guess  
14 somewhere down through here we were at, and the  
15 heaving was real bad.

16 Q. Were you talking about 150 Crosscut towards Eight  
17 North?

18 A. Something around through here.

19 Q. When you say bad, just how much --- how many feet  
20 or so did it heave, inches or feet?

21 A. Several feet. Like, you could look down and  
22 literally see the water below it, the water that was  
23 underneath it.

24 Q. Did you ever take --- did you take a gas check or  
25 anything there?

1 A. I didn't have a gas checker.

2 Q. Did your supervisor?

3 A. He had one. I don't know if he took it.

4 Q. What kind of water? I mean was it running water,  
5 standing water?

6 A. Standing water.

7 Q. Okay. Did you go in up in there, up in towards  
8 Eight North?

9 A. Yes.

10 Q. Okay. Did it block --- it didn't block any  
11 ventilation? Did it block any ventilation?

12 A. No.

13 Q. Okay. What about the air up there? What kind of  
14 air movement did you have? Do you remember?

15 A. I'm guessing it was not correct if we had to take  
16 those Kennedy panels and stuff up there to be building  
17 around.

18 Q. So would it be in your opinion that they didn't  
19 maintain the ventilation there? I mean, correct  
20 ventilation?

21 A. Yes.

22 Q. I'm going to change this a little bit. I'll come  
23 back to that in a minute. What was your last shift  
24 you worked before the explosion?

25 A. It was the day of the explosion, April 5th.

1 Q. And where did you work that last shift? What area  
2 in the mine did you work?

3 A. I believe somewhere up here on Headgate 22, I'm  
4 sure. It's pretty much where we stayed at.

5 Q. Not in the face area, but ---

6 A. No.

7 Q. --- outby the feeder?

8 A. Right. Outby the feeder.

9 Q. And who did you work with that night?

10 A. Sean, Kenny, Tilley --- let me see --- Scott.

11 Q. Okay.

12 A. And Tom

13 Q. And Sean Walker, right, was your supervisor?

14 A. He was my main mine foreman, hoot owl mine  
15 foreman.

16 Q. Did you have another foreman beside him that you  
17 worked for?

18 A. Kenny Farmer. He worked with us.

19 Q. So you really had two, most of the time two  
20 supervisors with you?

21 A. Right.

22 Q. That night --- I'm going to ask you question.

23 Now, this may sound silly to you, but outby 78

24 Crosscut did you ever notice any fog, a thick fog or  
25 any change of temperature in that area on the track?

1 A. It seemed like every once in a while I might  
2 notice a little dusty through there.

3 Q. Was it dust or was it kind of like a fog?

4 A. It seemed like fog to me.

5 Q. Did you ever have any hard time breathing?

6 A. No, not that I can recall.

7 Q. You never --- how long that area, how many  
8 crosscuts, or crosscut did that extend?

9 A. I'm not sure. I really didn't pay much attention  
10 to it because most of the time we'd come through  
11 there, we'd be flying and we were always in a hurry.

12 Q. But did you notice it every time you come through  
13 there?

14 A. No, not every time.

15 Q. Okay. Now, that last night before the explosion,  
16 did you notice anything different, like ---? Well,  
17 what portal were you all in? Which portal was you in?

18 A. Ellis.

19 Q. Did you notice any air change on the Ellis Portal  
20 that night?

21 A. I didn't notice any difference, no.

22 Q. And nothing on the section up here? Did anything  
23 feel strange to you that night that didn't seem right?

24 A. No, not that I can recall.

25 Q. Did it seem like just any other night? Did you



1 talk to anybody about --- or did anybody else make you  
2 do anything that maybe didn't seem right that night?

3 A. No, they didn't mention anything about it.

4 Q. Okay. So have you went on the tailgate, 22  
5 Tailgate? Have you worked on that section down here,  
6 on 22 Tailgate?

7 A. No.

8 Q. And have you worked on the longwall, 0-50  
9 longwall?

10 A. I never worked on the section on the longwall, no.

11 Q. Have you ever got up to the section?

12 A. Just when it was idle, but it was very brief, very  
13 brief.

14 Q. How do they keep the belt? Is it clean on the  
15 longwall?

16 A. I actually --- the only belt I actually seen or  
17 pretty much dealt with all the time was the Mother  
18 Drive. We had to rob the belt. I never went down or  
19 ---. I really don't know exactly how they kept the  
20 belt on the longwall, because we pretty much stayed at  
21 the Mother Drive.

22 Q. Okay. So have you worked on the portal section,  
23 the one that they're getting ready for the ---?

24 A. Ellis?

25 Q. Yeah.

1 A. Ellis side?

2 Q. When's the last time you worked there?

3 A. That's where I --- that's where I come in every  
4 night.

5 Q. I mean, where they were working there, where they  
6 was cutting the overcasts, have you been in that area?

7 A. No.

8 Q. Okay. And do you remember ever being underground  
9 and someone calling up on the section or calling you  
10 and saying that there was an inspector on the  
11 property?

12 A. Yes.

13 Q. How many times?

14 A. All the time.

15 Q. Who would call in?

16 A. Who would call ---?

17 Q. Yeah, who would call and notify the ---?

18 A. I guess it was --- I don't know if it was the  
19 outside men or if it was the boss up there. I don't  
20 know. But that's something they do all the time.

21 Q. What would they do? What would the supervisor ---  
22 make him want to do, then, when they call?

23 A. He'd come tell us, we got an inspector coming.

24 Q. And then what would you normally do?

25 A. And everybody would start putting their curtains

1 up.

2 Q. Do they use curtains all the time when there's  
3 mining up there?

4 A. Sometimes. Sometimes they got them up and  
5 sometimes they're rolled up. Sometimes they're down.

6 Q. Did you ever do any scooping up there on the  
7 section?

8 A. On Three section, I did.

9 Q. Okay. Is it the same way on Three section?

10 A. It's been ever --- every place I worked at it's  
11 the same, same thing. Where I'm at now, same thing.

12 Q. How many --- when they cut, do they ---? They  
13 don't have any --- they don't put the curtain in or  
14 --- when they're mining?

15 A. I don't even really notice because I'm on the  
16 scoop and I'm going everywhere, getting supplies. I  
17 really don't --- I'm not really watching the miners.

18 Q. Okay. How about the drill?

19 A. The bolters?

20 Q. Yeah.

21 A. They're pretty good about putting their curtains  
22 up. I don't know about the miner because I'm really  
23 not paying attention to it.

24 Q. But you do see a lot of curtains down?

25 A. Uh-huh (yes).

1 Q. Okay. Do you know anything about the --- well,  
2 tell me something about the methane monitors on the  
3 miner. Have you ever heard them being --- being  
4 bridged out or any type of plastic bag placed over the  
5 sensor?

6 A. I haven't heard anything about a bag, but I've  
7 heard that inspectors have got them over --- I guess  
8 it's not reading correct or whatever. I don't know  
9 much about the miners, but ---.

10 Q. Okay. What's the depth of the cut? You said you  
11 scoop some. How deep do they usually ---?

12 A. I think it's 20 feet, isn't it, what they do? I  
13 don't know. I've heard 20.

14 Q. Do they use a scrubber?

15 A. I think so, yes.

16 Q. Your supplies, did you ever notice the drill up  
17 there? Did they ever talk to you about getting  
18 methane while they were drilling or ---?

19 A. Talking about UBB?

20 Q. Yeah, everything I'm talking to you about UBB.  
21 Nothing --- no ---?

22 A. No, not on Three section. No.

23 Q. After a drill bolted a place, did you usually go  
24 in behind it and clean it?

25 A. Yes.

1 Q. How did you --- who took the gas check for you  
2 when, before you went in there?

3 A. I normally --- I would keep one on my side.

4 Q. Okay. So you are qualified to take a gas check?

5 A. Not really, but they had give me one. I guess I'd  
6 be qualified, but they said, here's a meter. I don't  
7 know exactly what you mean by qualified.

8 Q. I mean was you --- did someone --- did you take a  
9 --- show that you could take a gas check and they  
10 checked you out and said, now you're qualified to do  
11 it? Or did they just give you a spotter ---

12 A. They just say, here's a spotter.

13 Q. --- and go at it?

14 A. Yeah, go at it.

15 Q. Okay. When you cleaned the place, did you always  
16 roll the curtain up?

17 A. Yes.

18 Q. And what kind of spotter did you have?

19 A. I don't know what kind. It had a ---.

20 Q. Was it like a Solaris?

21 A. No, it wasn't Solaris.

22 Q. It was silver?

23 A. Yeah, it was silver.

24 Q. Okay. Did you hang it up the face when you were  
25 --- had it rolled up to make sure your methane ---?

1 A. Yes.

2 Q. Okay. Did you ever have anybody stand up there  
3 and monitor for you?

4 A. No.

5 Q. Okay. Did you ever find any --- have any methane  
6 when you were ---?

7 A. Not when I checked it, no.

8 Q. Okay. When's about the last time you did that?

9 A. You mean what day?

10 Q. Yeah, roughly.

11 A. It was maybe a few days before Thanksgiving  
12 vacation, because I remember. I remember now, the  
13 last time I was on Three section was right at, up  
14 until Thanksgiving vacation.

15 Q. So you feel they was lax on their ventilation  
16 crew?

17 A. Oh, yeah.

18 Q. And how about air ventilation? Did they have  
19 enough ventilation to handle the dust and stuff?

20 A. Yeah.

21 Q. Did you have sufficient air? Do you feel like you  
22 sufficient ---?

23 A. On Three section we did, yeah.

24 Q. Did you all have split ventilation or single ---?

25 A. Single.

1 Q. Okay.

2 A. Now, over here on what we were talking about the  
3 air, no, they didn't. You know, they had air  
4 problems.

5 Q. Okay. Say, did you talk to the, any of the men up  
6 there about the problem?

7 A. On the headgate?

8 Q. Yeah.

9 A. I never talked about it, but I'd hear them joking  
10 about it all the time, you know, saying, oh, we got  
11 shut down again because air problems. And they're  
12 never going to get this right. I heard that all the  
13 time. They're never going to get it right and ---. I  
14 heard that all the time.

15 Q. Do you know --- did anyone ever talk to you about  
16 being concerned for their safety up there?

17 A. Some of the guys that got killed, yeah, I heard  
18 them, you know.

19 Q. What did they say?

20 A. Well, some of them I would hear, they'd just ---  
21 they'd say, you know, I'm worried. Carl Accord was  
22 one of them. I'd hear him talking about it, you know,  
23 just saying he don't know what they're going to do  
24 and, you know, just ---. He just seemed like he was,  
25 you know, a little, I guess concerned is what I ---

1 what you could say.

2 Q. Well, if he would have went to management and made  
3 a complaint about it, what would happen to him? Would  
4 he have been retaliated against?

5 A. Probably.

6 Q. What would they have --- what would be done to  
7 him?

8 A. I don't know what they would have done. They may  
9 have made it hard for him. I don't know what  
10 management would have done.

11 Q. Do you know of anybody that's made a complaint?

12 A. Not that I'm aware of, no.

13 Q. You don't know of anybody that's called the 800  
14 Massey number?

15 A. Ethics?

16 Q. Yeah.

17 A. Ethics, whatever?

18 Q. Yeah, that number.

19 A. Not at UBB, but I know where I work at now they  
20 did.

21 Q. Okay. Well, did anybody call the MSHA hotline?

22 A. Not that anybody said anything. They know not to  
23 say anything because they know they'll probably get  
24 fired by the bosses.

25 Q. Okay. Who was the one there that does all the



1 firing?

2 A. All the firing? Everett.

3 Q. Did you see a lot of --- been a lot of them been  
4 fired by --- for making complaints or anything?

5 A. No, but he just nitpicks, just little things here  
6 and there. Blanchard was the worst. He was the  
7 president. He was the worst for it.

8 Q. What would he do? I mean, what was his attitude?

9 A. He was just very cocky, very arrogant. He was a  
10 young guy and --- you know, he was just very cocky,  
11 you know? Just the least little thing, you know, he'd  
12 want to either suspend or fire you over.

13 Q. Could you talk to him?

14 A. I talked to him a few times here and there. When  
15 we were up on Three section, the superintendent that  
16 was on that side --- his name was Gary May --- he got  
17 suspended for three days for ---. They had an  
18 inspector come up there and he gave him five (d)  
19 orders, because two of the scoops didn't have any  
20 canopies on them and the shuttle cars didn't have any  
21 canopies. And he suspended him over that.

22 Q. What was the general attitude of the workforce  
23 towards Massey?

24 A. They don't like them. They took a survey probably  
25 about two, three weeks before the explosion, and

1 they'd have how you felt, like, about your first line  
2 super --- or supervisor, and then they put towards the  
3 mine foreman and then superintendent. And when it  
4 come to the, like, the president and V.P., they were  
5 the lowest. They scored the lowest.

6 Q. Well, did anybody say anything to you about that,  
7 the results of it? Did they talk to you about it?

8 A. Wayne went over the results.

9 Q. We was talking earlier about back in maybe middle  
10 of --- excuse me, March that they made a ventilation  
11 change. And are you aware that they had a violation  
12 or a condition there where the belt, the tailgate air  
13 was going in the wrong direction?

14 A. I never heard anything, no.

15 Q. Were they ever down over an extended period of  
16 time making --- in March, not producing to make a  
17 ventilation change, that you're aware?

18 A. I'm sure they were, but I've never --- I don't  
19 know for --- I don't know positively, but I mean let's  
20 just say it wouldn't surprise me, because I know they  
21 were down all the time over ventilation and ---.

22 Q. How did you feel there? Did you feel safe working  
23 there?

24 A. Not really.

25 Q. In what way?

1 A. Just it was a combination of everything, just  
2 where they were having air problems and you felt like  
3 you couldn't really say anything, because you know if  
4 you did, you'd probably be fired. Or the attitude was  
5 if you don't like it, then get your stuff and get off  
6 the hill. I mean, that's pretty much the attitude,  
7 you know? If you don't like it, get out.

8 Q. Uh-huh (yes). Did you ever dread coming to work?

9 A. Yes, every day.

10 Q. You talked about you said you left UBB and went  
11 somewhere and came back and worked a year or something  
12 like that?

13 A. Uh-huh (yes).

14 Q. What kind of training did you get when you came  
15 back or when you came to UBB?

16 A. I don't remember having any type of training. I  
17 just went back and they told us what we'd be doing.

18 Q. Well, when you left David Stanley, what kind of  
19 training did you get before you came to work for UBB?

20 A. What kind of training?

21 Q. Did you have to pay for your own training or ---?

22 A. You mean when I took the 80-hour course?

23 Q. Okay. When did you have the 80-hour course, and  
24 what did it consist of?

25 A. Let's see. I started there in May of '08, so I'm

1       guessing sometime in April is when I took my 80-hour  
2       course, I don't know, whatever the 80-hour course is.  
3       We did videos and ---.

4       Q. Okay. You said you operated a scoop?

5       A. Right.

6       Q. Did they ever task train you on the scoop at all?

7       A. Yes.

8       Q. And at all the --- what other jobs have you done  
9       besides scoop and running machinery?

10      A. What equipment have I ran?

11      Q. Yeah.

12      A. I did scoop, ran the underground forklifts,  
13      motors, mantrips. I've occasionally ran shuttle cars.  
14      I've moved around the bolter here and there, but not  
15      enough to work on it.

16      Q. So you worked on a motor?

17      A. Yes.

18      Q. We was talking about those doors. When the motor  
19      crew comes in and they got cars and stuff, do they all  
20      wait --- do they open all the doors and bring it  
21      through or do they ---?

22      A. Yes.

23      Q. Okay. Is that normal operation? They'll just  
24      take all, open all the doors and bring them in?

25      A. Yes.

1 Q. Okay. Have you been underground and they've had  
2 to evacuate the mine for any reason?

3 A. Yes. Fire --- or not fire, a fan would go out.  
4 Motor would go out.

5 Q. You don't remember when that approximately  
6 happened?

7 A. I don't remember. I know a motor went out about a  
8 month before the explosion happened on the Ellis side.  
9 We hadn't been underground yet. We were getting ready  
10 to go. No, no, no, I'll go back on that. We were  
11 actually on the mantrip going underground and they  
12 called us and said the motor just went out. And we  
13 headed back outside.

14 Q. Okay.

15 A. Because I remember we were in the mantrip getting  
16 ready to call for the road.

17 Q. I'm going to jump around here a little bit. Have  
18 you ever traveled the primary escapeway?

19 A. Yes.

20 Q. From where?

21 A. I've traveled it from the Mother Drive to outside.

22 Q. The Mother Drive's ---. You got the longwall  
23 Mother Drive?

24 A. Right.

25 Q. This one on Six North?

1 A. Yes, right here. I've went through here to the  
2 outside on the Ellis side, and then from Three section  
3 to on the UBB side.

4 Q. When did you do that? Do you have any idea when  
5 was the last time you would have traveled?

6 A. We traveled from the Mother Drive to Ellis, maybe  
7 about two months before the explosion, two, two and a  
8 half months.

9 Q. How many of you all traveled?

10 A. It was just our crew, the ones we --- I mentioned  
11 our men.

12 Q. Okay. What kind of shape did --- what kind of  
13 shape was it in?

14 A. From what I remember, a lot of these, really, the  
15 roadway needed to be cleaned. A few things that I  
16 remember, there were spots that, you know, there was a  
17 lot of buildup, rocks and --- you know.

18 Q. Just a lot of stumbling hazard?

19 A. Yeah, stumbling hazards and ---.

20 Q. What about the lifeline? Was it maintained?

21 A. The lifeline was maintained, yes.

22 Q. How about your SCSR storage cabinet?

23 A. They were okay.

24 Q. Do you know of any other place that up there that  
25 anybody talked about having floor heave or gas coming

1 up from the floor, methane?

2 A. No.

3 Q. Have you ever been injured in the mine there?

4 A. I've had little injuries. Nothing severe.

5 Q. Have you ever had to go to the doctor over it?

6 A. No.

7 Q. Do you know anybody that's have?

8 A. I've known several people that's --- you know,  
9 they called the ambulance on them, just, like, rock  
10 falls on them and ----.

11 Q. Did they get lost time or were they put on light  
12 duty or did they work outside?

13 A. It was lost time.

14 Q. You don't know anybody that they did put on light  
15 duty like that?

16 A. I'm sure there was. I can't remember off the top  
17 of my head. I think [REDACTED] was put on light  
18 duty. He was injured. Something happened with his  
19 shoulder. I don't know if he injured his shoulder.  
20 And he came back and was --- worked as the outside man  
21 for a few months.

22 Q. Have you ever worked as a dispatcher?

23 A. No.

24 Q. Do you know anybody that has? I mean, pretty  
25 close to him?

1 A. No. No, I'm not close to --- really, to the  
2 dispatchers.

3 Q. Did this explosion surprise you?

4 A. Yeah, especially as bad as it was.

5 Q. Did anybody else ever talk to you about maybe it's  
6 possible something like this happening?

7 A. Nobody really mentioned anything about explosion.  
8 They were just constantly concerned about the air.

9 Q. Since the explosion, have you talked to any of  
10 your fellow miners and discussed this explosion?

11 A. Yes.

12 Q. What'd you all talk about? What'd you all ---  
13 what'd you talk about? What were some of the things  
14 that you thought might have happened?

15 A. We just --- we talk about just how every night we  
16 would be working on the stoppings and, you know, how  
17 --- I don't really know how to explain, just, you  
18 know, basically like they had to. You know, we knew  
19 this --- well, not really knew this would happen. But  
20 we just talk about how they --- you know, they just  
21 --- it's like they don't, they don't listen to what  
22 people tell them, you know? It's just, it's sad.

23 Q. Do you think if they listened it may have  
24 prevented this?

25 A. It's possible. I'm not sure, but they just don't



1 want to take any advice. They just want to do it  
2 their way, the top bosses, you know? They want to do  
3 it their way and they don't want to hear what you have  
4 to say.

5 Q. Where were you at the time when this happened?  
6 Where were you located when you found out about the  
7 explosion?

8 A. I was at a house in bed.

9 Q. Somebody --- who woke you up or how'd you get  
10 contacted?

11 A. My mom woke me up. My cousin, she lives down ---  
12 she lives down that way. She lives on Maxville Road.  
13 She called us up and she first said there'd been a  
14 rock fall and said there was ambulances going down  
15 there. And then a few minutes later she called and  
16 said she heard it was explosion. She said, I think it  
17 was first like, nine of them had been killed.

18 Q. Did you call up to the mine or get back to the  
19 mine?

20 A. I tried calling. The lines were busy. I never  
21 could get ahold of them.

22 Q. Did you ever go up there after the ---?

23 A. I never went up there after the explosion.

24 Q. Have you ever been back since, other than get your  
25 equipment?

1 A. No, just get the equipment is the only time I've  
2 been back.

3 Q. Did you give Massey's attorneys the same  
4 information you gave us today?

5 A. Yes.

6 RE-EXAMINATION

7 BY MR. FARLEY:

8 Q. Okay. I've got a few more. Now, let me go back  
9 to the time you spend with Wayne Persinger when you  
10 came into the mine on the midnight shift with some  
11 other folks in the attempt to improve ventilation.  
12 The stoppings that you helped build, did you plaster  
13 them on one or both sides or cover them with curtain?  
14 How did you do that?

15 A. We plastered them.

16 Q. One side or both?

17 A. As far as I remember we did both sides.

18 Q. Okay. Now, during this night did you see Mr.  
19 Persinger or anybody else adjust a regulator?

20 A. No, I never saw him.

21 Q. Okay. Were you in the vicinity with any  
22 regulators that you know of?

23 A. Not that I can recall, no.

24 Q. Okay. Other than this night, how often did you  
25 see Wayne Persinger underground on the midnight shift?

1 A. That was actually the only night I seen him on the  
2 hoot owl shift.

3 Q. Okay. Now, I think Berman Cornett was one of  
4 their safety people you could identify. How often did  
5 you see him or the other safety person on your  
6 midnight shift?

7 A. I never saw Berman except for that one night. The  
8 other one, he actually worked regularly on the evening  
9 shift, and when I worked on Three section he was up  
10 there every night.

11 Q. Okay. All right. Now, this is kind of general  
12 question, but you worked on the 22 Headgate Section,  
13 as you call it, One section, on April 5th, 2010?

14 A. Right.

15 Q. Now, what time did you leave there that morning?

16 A. About 7:00 a.m.

17 Q. Okay. And you got there what time the night  
18 before?

19 A. I normally would get there about 10:00 ---

20 Q Okay.

21 A. --- 10:15.

22 Q. Did you ride in and out on a mantrip?

23 A. Yes.

24 Q. Okay. As you rode in, best you can recall, and as  
25 you rode out, tell me what you saw in regard to the

1 quality of the rock dusting and coal dust. What do  
2 you recall?

3 A. The main track, as far as from One section pretty  
4 much to outside, it was pretty well rock dusted,  
5 pretty well maintained. Now, the track that was ---  
6 that went down to Headgate 22, that little track that  
7 goes down through there, it wasn't as well maintained  
8 as the main track.

9 Q. Okay. Now, when you say the main track, where are  
10 you talking about?

11 A. I always call it 78.

12 Q. Okay. Now, forget 78. From the mouth of 22  
13 Headgate to the end of the track ---

14 A. Right.

15 Q. --- on 22 Headgate, what did it look like?

16 A. As far as I can recall, it was kind of black. It  
17 looked like it hadn't been very well maintained, I  
18 guess you could say. I don't know where. I can't  
19 remember where it's at. There were some overcasts  
20 that were down here and there were a few spots where  
21 --- and I'm assuming it was like a rib roll or  
22 something ---

23 Q. Uh-huh (yes).

24 A. --- that came onto the track and we had to clean  
25 it off. But it was not that night.

1 Q. That's your last shift there? Now, again, you're  
2 talking about from the mouth of 22 Headgate to the end  
3 of the track on 22 Headgate; right?

4 A. Uh-huh (yes).

5 Q. Okay. Now, which way did you travel to the portal  
6 area from the mouth, 22 Headgate? Which way did you -  
7 -- which way did the track go from there?

8 A. From here to outside?

9 Q. Yes, sir. Did you go down Seven North, Six North?

10 A. Yeah, we went down through here.

11 Q. Okay. Same --- is that the same way you came  
12 in ---

13 A. Yes.

14 Q. --- on your last shift?

15 A. We traveled the same way in and out.

16 Q. All right. Same question. What did it look like  
17 when you came in and on your way out? How do you  
18 remember it? Track entry.

19 A. Track entry is --- the main, like I said, the main  
20 track was pretty well maintained as far as dusting,  
21 because that was pretty much that rock dust ---. You  
22 know, the motor guy. That was his job, rock duster.  
23 And I never really seen as far as the main track, you  
24 know, looking black or not very well maintained. They  
25 did a good job. I can say that ---

1 Q. Okay.

2 A. --- with the main track.

3 Q. All right. Now, let's go back up to 22 Headgate.

4 Did you ever have the --- happen to travel the 22

5 Headgate or One section, as you call it, conveyor belt

6 in its entirety from one end to the other? Did you

7 ever travel it?

8 A. Not that I ---.

9 Q. I mean just walk?

10 A. Not that I can recall, no.

11 Q. Okay. When was the last time you saw any part of

12 that 22 Headgate section belt?

13 A. I'm assuming --- as far as just seeing it?

14 Q. Yeah.

15 A. Maybe just a few days before the explosion.

16 Q. Okay. Where did you see it? Where were you when

17 you saw it?

18 A. I'm assuming it was the --- I helped move belt

19 that night and, you know, it ---.

20 Q. When you say, that night, do you mean April the

21 5th?

22 A. No. I'm going to say maybe April 2nd, because

23 they moved belt about every other month.

24 Q. Okay. All right. Now, so if you're moving belt,

25 you saw the end of the belt; right?

1 A. Right.

2 Q. Tailpiece area and ---.

3 A. Tailpiece and outby that.

4 Q. What did it look like in terms of ---

5 A. Gob.

6 Q. --- quality of rock dusting?

7 A. That part there was not very well maintained. It  
8 was really wet, black looking. You know, it looked  
9 like they never really dusted it. There were times  
10 where we had to clean the feeder up, the feeder all  
11 gobbled up, piled up.

12 Q. Okay. All right. Now, from the feeder outby ---

13 A. Right.

14 Q. --- on the belt, did you happen to take a look at  
15 that when you made that belt move?

16 A. Yes.

17 Q. Okay. How did that look?

18 A. Pretty much the same thing, gobbled up, black.

19 Q. Okay.

20 A. And it looked like it's not been scooped, you  
21 know, the trip hazard, that sort of thing.

22 Q. Now, was that for as far as you could see?

23 A. As far as I could see, yes.

24 MR. FARLEY:

25 Okay. All right. That's it right now.

1 SHORT BREAK TAKEN

2 BY MR. FARLEY:

3 Q. Justin, I think you were asked earlier if anyone  
4 ever notified you underground in advance that an  
5 inspector was on the way?

6 A. Yes.

7 Q. And somebody says --- did they just simply call  
8 you and say an inspector was on the way?

9 A. There were times, yes.

10 Q. Okay. Were there other times they would use some  
11 type of a code ---

12 A. Yes.

13 Q. --- to specify when an inspector was on the way?

14 A. Yes.

15 Q. Was there any particular code they used? Can you  
16 explain that to us?

17 A. They would say --- if you heard on the mine phone  
18 that --- if you heard Gary is bringing in blocks, that  
19 means there's a blitz.

20 Q. Now, a blitz would mean --- what would that mean?  
21 Would that mean ---?

22 A. Blitz, as far as I know, means a bunch of  
23 inspectors coming.

24 Q. Okay. All right. Okay. Would they use that code  
25 when they were not in a position to speak openly about



1 an inspector coming in?

2 A. They'd never use that code. They would just call  
3 and say inspector's coming.

4 Q. Okay.

5 A. But if they used Gary bringing blocks, that means  
6 they specifically meant a blitz.

7 Q. Okay.

8 ATTORNEY BAXTER:

9 And who told you that was the code, what  
10 that meant?

11 A. Gary May.

12 MR. FARLEY:

13 Thank you.

14 RE-EXAMINATION

15 BY ATTORNEY MCATEER:

16 Q. And Gary May was the Gary in question?

17 A. He was the superintendent. He was one of the  
18 superintendents. And he told that to us on Three  
19 Section, and I was on Three Section.

20 MR. GODSEY:

21 Did you ever have a blitz, have to use  
22 that?

23 A. No.

24 MR. GODSEY:

25 You don't ---?

1 A. I've never been around with a blitz.

2 BY ATTORNEY MCATEER:

3 Q. Justin, you don't remember the name of the lawyers  
4 who interviewed you for Upper Big Branch, do you?

5 A. No. They're still doing it, because I know today  
6 they have some guys going down to Elk Run.

7 Q. Okay. You testified that at the mine you're  
8 working at currently, and I can't recall the name of  
9 the mine ---

10 A. The mines I'm at now is Hunter Peerless.

11 Q. --- Hunter Peerless, that there were ventilation  
12 problems there, a curtain problem?

13 A. Curtain problems, yes, just not keeping curtains  
14 up. But they don't have any as far as low air, no.  
15 They have great air. It's just they're just, you  
16 know, bad --- keep the curtains down. And that's the  
17 way it's been every mines I've been at, at Massey.  
18 It's not just there.

19 Q. Uh-huh (yes). Okay. On the day of the Sunday  
20 night going into the 5th that you worked, was there  
21 any air changes made, if you can recall?

22 A. Not that I'm aware of.

23 Q. What did you do that night, the last night you  
24 worked?

25 A. The last night I worked, I'm pretty sure we robbed

1 the Mother Drive. And I know we put in a  
2 flow-through. And it was somewhere very close to where  
3 the portal was, that new flow-through we put in.

4 Q. Could you speak to what's robbing the Mother Drive  
5 first?

6 A. Yeah, it means taking out existing belt in the  
7 longwall, pretty much to shorten it up as they mine.  
8 Like, we may have to, what they call rob 1,000 foot of  
9 belt, which means we take out 1,000.

10 Q. And this is the Mother Drive serving the longwall  
11 or serving the Headgate 22?

12 A. The longwall.

13 Q. Uh-huh (yes). Okay. And then the flow-through,  
14 can you describe what that is?

15 A. Flow-through is --- that's kind of a little hard  
16 to explain, but a flow-through is pretty much where  
17 the coal is dumping off onto the belt. And they have  
18 what they call impact rollers under there, and it's, I  
19 guess, kind of helps, you know, maintain the belt from  
20 collapsing, because that's where all the weight's  
21 falling at ---

22 Q. Sure.

23 A. --- on the --- when it dumps.

24 Q. And what did you do there?

25 A. We shivved in a brand new flow-through to the

1 belt. And I'm thinking it was somewhere around here,  
2 Five North, because it was very close to the portal  
3 outside.

4 Q. How was the air?

5 A. As far as I know, the air up there was pretty good  
6 up near the portal.

7 Q. Okay. What'd you have for lunch?

8 A. It has to be the same what I've been eating every  
9 day. I take my sandwiches and ---.

10 Q. What kind of sandwiches?

11 A. Just turkey sandwich. That's the same thing I've  
12 took every day pretty much two years. That's how I  
13 can remember. And I always stop and get them yogurt  
14 parfaits from McDonald's.

15 Q. Okay.

16 A. I always get those every day.

17 Q. So you just had that. So now you're after lunch,  
18 and what did you complete --- how did you complete the  
19 shift?

20 A. How did I complete ---?

21 Q. What did you do over the last part of the shift?

22 A. We pretty much --- they had pretty --- everybody  
23 up there had electricians. The end of the shift  
24 consisted of installing that flow-through.

25 Q. Okay. Did you get it completely installed?

1 A. Yes.

2 Q. Was that at the very end of the shift?

3 A. Yes, because we got it in right as soon as the  
4 morning crew was coming in, dayshift crew.

5 Q. But that would have put you down in the Five North  
6 area?

7 A. Right.

8 Q. And then how'd you get out?

9 A. We took the mantrip out.

10 Q. Any unusual circumstances, anything?

11 A. I'm sorry?

12 Q. Anything unusual on the mantrip?

13 A. Nothing unusual that day.

14 Q. Did you see the dayshift coming in?

15 A. Yes.

16 Q. Do you have any thoughts on what caused the  
17 explosion?

18 A. I've heard that they said that the longwall may  
19 have cut into a gas line or a gas something. I don't  
20 know if there was a gas pocket, I think, is what I've  
21 heard.

22 Q. Okay.

23 A. That's pretty much what I've heard.

24 ATTORNEY MCATEER:

25 Thank you, Justin. That's all the

1 questions I have.

2 RE-EXAMINATION

3 BY MR. GODSEY:

4 Q. Do you remember the name of the bosses that told  
5 you that the inspectors were coming, coming into the  
6 mine?

7 A. When I was on Three section, it was --- Gary May  
8 was one. Tim Williams was one, Rick Foster. I worked  
9 with Sean Walker, but I don't really --- because we  
10 never really had inspectors on the hoot owl shift.  
11 I'm sure he probably would have mentioned it, too.  
12 Wayne would call in. Well, it wasn't Wayne at that  
13 time. It was Jamie Ferguson. He was the V.P. then.

14 Q. Okay.

15 ATTORNEY BAXTER:

16 Did Wayne Persinger call in, too?

17 A. Not that I'm aware of. I'm sure he did, but he  
18 pretty much came close to the end. He kind of --- he  
19 was the V.P. close to the end when the explosion  
20 happened. But I'd say yeah, he would.

21 BY MR. GODSEY:

22 Q. Was Chris Blanchard any on the hoot owl as much?

23 A. He worked that one night. He actually came in  
24 that night when they were doing the sweep, or the  
25 changes, block and stuff when we did the stoppings.

1 Q. And he was the one that kind of directed  
2 everything?

3 A. Yeah, sort of.

4 Q. What do you mean by sort of?

5 A. I'm assuming he did. I really never seen him. I  
6 just seen his car there.

7 Q. Let's go back on the section a little bit. You  
8 said you scooped stuff up there. How about  
9 maintaining stoppings on return intake? Did they  
10 always keep them up, the ventilation stoppings?

11 A. Yes.

12 Q. That's the way they're supposed to be in? They  
13 never left behind or ---?

14 A. No.

15 Q. Do you know of any time that a foreman shut the  
16 section down because of a safety hazard and then  
17 called outside and then outside told him go ahead and  
18 get back on coal?

19 A. There were times that they would --- I'm trying to  
20 think here for a second, because ---. They wouldn't  
21 really shut it down, but they would pretty much keep  
22 the section going, but at the ---. Let's say if it  
23 was a stopping that needed built, instead of stopping  
24 it to build it, you know, to still be --- you know,  
25 comply, they'd keep running the section, but they'd

1 have somebody over here building it, you know, at the  
2 same time.

3 Q. You don't know of a time they were told from  
4 someone outside that, you know, go ahead. Get back on  
5 the coal and we'll fix something later?

6 A. No.

7 Q. Your last shift --- I talked to you earlier about  
8 that, the fog --- did you see anything that night, any  
9 kind of fog or anything as you were leaving?

10 A. No, I never saw the fog that night.

11 Q. How about did you all leave the doors open that  
12 night when you all left, those four doors at 78  
13 Crosscut?

14 A. No, we didn't. We always closed them.

15 MR. GODSEY:

16 That's about it.

17 RE-EXAMINATION

18 BY MR. FARLEY:

19 Q. Okay. I think you said that you were aware that  
20 the Massey attorneys were interviewing people today?

21 A. Right.

22 Q. Do you know if they're interviewing people who  
23 already had an interview with us?

24 A. Yes. Well, as far as --- I don't know if it's  
25 with you all, but I've heard that MSHA come to the



1 house and FBI and everything.

2 Q. Okay. And you know, several folks have told us  
3 they've been interviewed by Massey attorneys. Now, I  
4 guess I'm just curious as to are they being  
5 interviewed again after they're interviewed by us?

6 A. I don't know where, I don't know.

7 Q. Okay.

8 A. I know they told me that whenever I'm interviewed  
9 by MSHA, they would prefer to be here with me.

10 Q. Yeah. Okay. Did they ask you to get back to them  
11 with any information about the interview?

12 A. Yes.

13 Q. Okay. Do you know if other people have done that?

14 A. Not that I'm aware of.

15 Q. Okay. But they did, in fact, ask you to speak to  
16 them again about the interview you had with us?

17 A. If I needed to, they would, yes.

18 Q. Okay.

19 A. If I needed to contact them, they did.

20 Q. Okay. All right.

21 RE-EXAMINATION

22 BY ATTORNEY MCATEER:

23 Q. You said that the Massey attorney made a statement  
24 about being with you when you were being interviewed  
25 by MSHA?

1 A. Right.

2 Q. If you could think carefully for me and try to  
3 remember the language that was used there, what they  
4 said. Was it he?

5 A. It was two of them. Yeah, it was two men. They  
6 said they --- they pretty much told me that we would  
7 prefer if you, I guess, let them know whenever you're  
8 going to be interviewed by MSHA so they can be there.

9 Q. It's important to get the words, specific words in  
10 this case, if you recall. We would prefer if you ---?  
11 When you're interviewed by MSHA ---?

12 A. Right. To, I guess let us know. I'm assuming. I  
13 can't really remember the exact words.

14 Q. Sure. Okay.

15 A. But they pretty much said, if you --- whenever  
16 you're interviewed to let, let them know so they, I  
17 guess, make the arrangements to be here. I really did  
18 not want them here.

19 ATTORNEY MCATEER:

20 Okay. That's all the questions I have,  
21 Justin. Thank you.

22 RE-EXAMINATION

23 BY MR. FARLEY:

24 Q. How would you think --- how did the place safety  
25 over production or were they more production oriented?

1 A. Production.

2 Q. Is there anything else you would like to say  
3 before we end this? Any other statements you'd like  
4 to talk about our anything at the top of your mind  
5 since we started?

6 A. One thing that --- is talking about the spotters.  
7 I've mentioned them. I said I don't know why all of  
8 us are not required by law to wear the spotters, you  
9 know, like the Solaris. They have them now where just  
10 the bosses and fire boss wear them. Well, when we go  
11 to the section or when we go work outby, you know, we  
12 wouldn't be with the foremen all the time. They'd go  
13 off their own way and, you know, there'd be crew. You  
14 know, we wouldn't even have a spotter. So I wish they  
15 would, you know, try to change that were all of us are  
16 required to wear Solaris's.

17 Q. So you're saying that you work outby by yourself  
18 without a methane --- methanometer, without a spotter?

19 A. Right.

20 Q. Did that happen an awful lot?

21 A. Yes.

22 Q. Did you ever ask for a spotter?

23 A. Not there, but where I'm at now, especially after  
24 what happened, the gas. Where I'm at now, I do, yes.

25 Q. Okay.

1 RE-EXAMINATION

2 BY ATTORNEY MCATEER:

3 Q. And have you been given one where you're at now?

4 A. No.

5 Q. What you're suggesting is not that you as an  
6 individual working independent, but all miners ---

7 A. Right.

8 Q. --- have spotters? Okay.

9 A. And the answer that I've been given was they cost  
10 too much money. That's what I've been told. It costs  
11 too much to give everybody one, but they're making us  
12 wear those radios now and those tracker things.

13 Q. Okay. Thank you.

14 ATTORNEY BAXTER:

15 On behalf of MSHA and the Office of  
16 Miners' Health, Safety and Training, I want to thank  
17 you for appearing and answering questions today. Your  
18 cooperation is very important to the investigation as  
19 we work to determine the cause of the accident. We  
20 require that you not discuss your testimony with any  
21 person aside from your personal representative.

22 After questioning other witnesses, we may  
23 call you if we have any follow-up questions that we  
24 feel we need to ask you. If at any time you have  
25 additional information regarding the accident that you

1 would like to provide to us, please contact us at the  
2 contact information that was previously provided to  
3 you.

4 Any statements given by miner witnesses  
5 to MSHA are considered to be an exercise of statutory  
6 rights and protected activity under Section 105(c) of  
7 the Mine Act. If you believe any discharge,  
8 discrimination or other adverse action is taken  
9 against you as a result of your cooperation with this  
10 investigation, you are encouraged to immediately  
11 contact MSHA and file a complaint under Section 105(c)  
12 of the Act. Remedies under the Mine Act include back  
13 wages and immediate temporary reinstatement to your  
14 most recent position with the company pending a  
15 complete investigation of your complaint. In order to  
16 file such a complaint, you should contact the MSHA  
17 District Four Office.

18 For more information concerning your  
19 rights as a miner under the Mine Act, please visit  
20 MSHA's website at [www.msha.gov](http://www.msha.gov). If you wish, you may  
21 now go back over any answer you've given during this  
22 interview, and you may also make any statement you'd  
23 like to make at this time.

24 A. Not that I'm aware of.

25 ATTORNEY BAXTER:

1 Again, I want to thank you for your  
2 cooperation in this matter.

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STATEMENT UNDER OATH CONCLUDED AT 9:40 A.M.

\* \* \* \* \*

1 STATE OF WEST VIRGINIA )

2 )

3

4 CERTIFICATE

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

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

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

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



22 *Alicia R. Brant*

23

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