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Transcript of the Testimony of <sup>(b)(7)(C) & (b)(7)(D)</sup>

**Date:** <sup>(b)(7)(C) & (b)(7)(D)</sup>

**Case:**

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STATEMENT UNDER OATH

OF

(b)(7)(C) & (b)(7)(D)

taken pursuant to Notice by Alison Salyards, a  
Court Reporter and Notary Public in and for the  
State of West Virginia, at the National Mine  
Health and Safety Academy, 1301 Airport Road,  
Room C-137, Beaver, West Virginia, on Friday,

(b)(7)(C) & (b)(7)(D) , beginning at (b)(7)(C) & (b)(7)(D)

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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Bandytown Fan Map

67\*

\* Exhibit not attached

P R O C E E D I N G S

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ATTORNEY BABINGTON:

My name is Matt Babington. Today is July 9th, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Eric Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the U.S. Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearance for the record.

MS. MONFORTON:

Celeste Monforton with Davitt McAteer's special team.

MR. FARLEY:

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

MR. O'BRIEN:

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

ATTORNEY BABINGTON:

And there are several members of the investigation team that may also be in the interview later. Eric Sherer will be conducting the questioning today, initial questioning.



1 All members of the Mine Safety and Health  
2 Accident Investigation Team and all members of the  
3 State of West Virginia Accident Investigation Team  
4 participating in the investigation of the Upper Big  
5 Branch Mine explosion shall keep confidential all  
6 information that is gathered from each witness who  
7 voluntarily provides a statement until the witness  
8 statements are officially released. MSHA and the  
9 State of West Virginia shall keep this information  
10 confidential so that other ongoing enforcement  
11 activities are not prejudiced or jeopardized by a  
12 premature release of information. This  
13 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.

19 Government investigators and specialists  
20 have been assigned to investigate the conditions,  
21 events and circumstances surrounding the fatalities  
22 that occurred at the Upper Big Branch Mine-South on  
23 April 5th, 2010. The investigation is being conducted  
24 by MSHA under Section 103(a) of the Federal Mine  
25 Safety and Health Act and the West Virginia Office of

1 Miners' Health, Safety and Training. We appreciate  
2 your assistance in this investigation.

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

8 Your statement is completely voluntary.

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

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

25 That means that if a judge orders us to

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

8 (b)(7)(C) & (b)(7)(D)

9 Yes, yes.

10 ATTORNEY BABINGTON:

11 Do you have any questions?

12 (b)(7)(C) & (b)(7)(D)

13 No.

14 ATTORNEY BABINGTON:

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

1 interview. Please speak loudly and clearly. If you  
2 do not understand a question asked, please ask the  
3 interviewer to rephrase it. Please answer each  
4 question as fully as you can, including any  
5 information you've learned from someone else.

6 I'd like to thank you in advance for your  
7 appearance here. We appreciate your assistance in  
8 this investigation. Your cooperation is critical in  
9 making the nation's mines safer.

10 After we've finished asking questions,  
11 you'll have an opportunity to make a statement and  
12 provide us with any other information that you believe  
13 to be important. If at any time after the interview  
14 you recall any additional information that you believe  
15 might be useful, please contact any of us or Norman  
16 Page at the contact information provided to you in  
17 that letter.

18 Finally, any statements given by miner  
19 witnesses to MSHA are considered to be an exercise of  
20 statutory rights and protected activity under Section  
21 105(c) of the Mine Act. If you believe any discharge,  
22 discrimination or other adverse action is taken  
23 against you as a result of your cooperation with this  
24 investigation, you're encouraged to immediately  
25 contact MSHA and file a complaint under Section 105(c)

1 of the Act. Terry?

2 MR. FARLEY:

3 I also want to advise you that the West  
4 Virginia Coal Mine Health and Safety regulations  
5 protect miners against potential discrimination for  
6 participating in these types of interviews and  
7 investigations. And I'm going to give you some  
8 contact information for the West Virginia Board of  
9 Appeals should anything like that occur, and I would  
10 advise you that should that occur, you would want to  
11 file a complaint within 30 days of the event. You  
12 also have my business card and one from Mr. Bill  
13 Tucker in the event that anything should come up.

14 ATTORNEY BABINGTON:

15 Okay. Let's go under oath.

16 -----  
17 (b)(7)(C) & (b)(7)(D) , HAVING FIRST BEEN DULY SWORN,  
18 TESTIFIED AS FOLLOWS:  
19 -----

20 ATTORNEY BABINGTON:

21 (b)(7)(C) & (b)(7)(D) I note that you have legal  
22 representation with you today. I'd just like to have  
23 a couple of questions on the record about the nature  
24 of that representation. First of all, can you please  
25 state your full name, address and telephone number for

1 the record?

2 A. (b)(7)(C) & (b)(7)(D)

3 (b)(7)(C) & (b)(7)(D)

4 ATTORNEY BABINGTON:

5 And your phone number?

6 A. (b)(7)(C) & (b)(7)(D)

7 ATTORNEY BABINGTON:

8 And do you have a personal legal  
9 representative with you today?

10 A. Yes.

11 ATTORNEY BABINGTON:

12 All right. Would your personal legal  
13 representative please identify himself?

14 ATTORNEY GREEAR:

15 Sure. My name is Dan Greear. I'm with  
16 the law firm of Kesner, Kesner and Bramble at 112  
17 Capitol Street in Charleston, West Virginia, 25301.  
18 Our phone number's (304) 345-5200.

19 ATTORNEY BABINGTON:

20 Thank you, Mr. Greear.

21 ATTORNEY BABINGTON:

22 (b)(7)(C) & (b)(7)(D) did you voluntarily choose  
23 to have this individual as your personal legal  
24 representative?

25 A. Yes.

1 ATTORNEY BABINGTON:

2 Okay. Did you feel like you had a choice  
3 in the matter?

4 A. I think it was for the best.

5 ATTORNEY BABINGTON:

6 Well, I mean, did you have a choice in  
7 selecting Mr. Greear ---

8 A. Okay. Yes, I had a choice.

9 ATTORNEY BABINGTON:

10 --- as your representative?

11 A. Yes.

12 ATTORNEY BABINGTON:

13 That's a yes?

14 A. Yes.

15 ATTORNEY BABINGTON:

16 Okay. Do you consent now to having this  
17 individual as your personal representative?

18 A. Yes.

19 ATTORNEY BABINGTON:

20 Okay. Do you understand that Massey  
21 Energy, its affiliates or its officers or directors or  
22 attorneys may not represent you or direct you in this  
23 matter?

24 A. Yes.

25 ATTORNEY BABINGTON:

1 Okay. Mr. Gear, are you legally  
2 representing the witness in this matter?

3 ATTORNEY GREEAR:

4 Yes.

5 ATTORNEY BABINGTON:

6 Okay. Do you understand that you may not  
7 communicate with Massey Energy, its affiliates or its  
8 officers or directors or attorneys concerning the  
9 substance of this representation?

10 ATTORNEY GREEAR:

11 Yes.

12 ATTORNEY BABINGTON:

13 All right. Are you being paid by a third  
14 party to provide such representation?

15 ATTORNEY GREEAR:

16 No.

17 ATTORNEY BABINGTON:

18 Erik?

19 EXAMINATION

20 BY MR. SHERER:

21 Q. First of all, <sup>(b)(7)(C) & (b)(7)(D)</sup>, I want to thank you for  
22 coming down here this afternoon. Your knowledge of  
23 the conditions and practices will help us in our  
24 investigation of this accident. Are you appearing  
25 today voluntarily?



1 A. No, I was sent a letter. You called me.

2 Q. Okay. Well, we asked you, but did somebody tell  
3 you you had to come?

4 A. No.

5 Q. Okay. Thank you. How many years of mining  
6 experience do you have?

7 A. (b)(7)(C) & (b)(7)(D) .

8 Q. (b)(7)(C) & (b)(7)(D) . How long have you been  
9 associated with Massey?

10 A. About (b)(7)(C) & (b)(7)(D) .

11 Q. (b)(7)(C) & (b)(7)(D) . Where did you work  
12 prior to that?

13 A. I worked in (b)(7)(C) & (b)(7)(D) at a subcontract mine before  
14 I come to Upper Big Branch.

15 Q. Okay. How long were you at Upper Big Branch?

16 A. From (b)(7)(C) & (b)(7)(D) to the day of the  
17 explosion, ---

18 Q. Okay.

19 A. --- which is April 5th.

20 Q. You were pretty much (b)(7)(C) & (b)(7)(D) of that  
21 mine.

22 A. I was there --- I (b)(7)(C) & (b)(7)(D) out of  
23 that mine.

24 Q. Okay. You're the expert then.

25 A. I don't know. I guess.

1 Q. That's actually very good. What have you done at  
2 Upper Big Branch?

3 A. I (b)(7)(C) & (b)(7)(D)  
4 (b)(7)(C) & (b)(7)(D)

5 Q. Okay. Were you working at a production section  
6 prior to the explosion?

7 A. Until about a week before the explosion I worked  
8 on the (b)(7)(C) & (b)(7)(D) they had.

9 Q. Okay.

10 A. It was (b)(7)(C) & (b)(7)(D) .

11 Q. Oh, okay, but down on the south side?

12 A. About a week before the explosion they had us over  
13 on the (b)(7)(C) & (b)(7)(D) , that's about (b)(7)(C) & (b)(7)(D)  
14 from the new portal.

15 Q. Okay. Well, what were you doing in there, in that  
16 (b)(7)(C) & (b)(7)(D) ?

17 A. The day of the explosion I was (b)(7)(C) & (b)(7)(D)  
18 for the air. It was going to be short longwall  
19 section.

20 Q. Uh-huh (yes).

21 A. They was going to move it to there.

22 Q. Okay. Do you recall what the conditions were like  
23 where you were (b)(7)(C) & (b)(7)(D) ?

24 A. They wasn't bad.

25 Q. Okay. Plenty of air?

1 A. I had good air.

2 Q. Was there any methane up where (b)(7)(C) & (b)(7)(D)  
3 (b)(7)(C) & (b)(7)(D) ?

4 A. No.

5 Q. Do you recall --- had you been working in that  
6 area for several days?

7 A. I'd only been there like (b)(7)(C) & (b)(7)(D) maybe.

8 Q. Okay. Do you recall if the air was moving the  
9 same direction all three of those days?

10 A. The day that --- the day I (b)(7)(C) & (b)(7)(D)  
11 it was moving inby.

12 Q. Okay. How about previous days? Was it moving  
13 inby on those days? Do you recall?

14 A. That's the (b)(7)(C) & (b)(7)(D) there. The other  
15 miner men had run it.

16 Q. Okay.

17 A. I hadn't.

18 Q. Okay.

19 A. Like the two shifts, production shifts before the  
20 explosion, ---

21 Q. Uh-huh (yes).

22 A. --- (b)(7)(C) & (b)(7)(D) . And I was on  
23 (b)(7)(C) & (b)(7)(D) shift, and they had me on the (b)(7)(C) & (b)(7)(D) section  
24 two nights. I had to go up there and (b)(7)(C) & (b)(7)(D)

25 Q. Okay. The 22 Tailgate?

1 A. Yes.

2 Q. Okay. So let me get this straight. You worked  
3 the day of the explosion at the --- (b)(7)(C) & (b)(7)(D) ?

4 A. I was on dayshift.

5 Q. Okay. What was the previous shift that you had  
6 worked?

7 A. On that?

8 Q. You said you were on the (b)(7)(C) & (b)(7)(D) .

9 A. Oh, it was like --- let's see. Been the Wednesday  
10 of ---

11 Q. Okay.

12 A. --- the prior week.

13 Q. Okay. So you worked Wednesday on the (b)(7)(C) & (b)(7)(D) ,  
14 and were you off? Did you take a long weekend?

15 A. We had that --- that was the holiday weekend. We  
16 had Friday, Saturday and Sunday off.

17 Q. Okay. So where'd you work on Thursday?

18 A. (b)(7)(C) & (b)(7)(D)

19 (b)(7)(C) & (b)(7)(D)

20 Q. Okay. So you (b)(7)(C) & (b)(7)(D)

21 (b)(7)(C) & (b)(7)(D)

22 A. Right.

23 Q. Saturday, Sunday and then you came on the dayshift  
24 (b)(7)(C) & (b)(7)(D) ?

25 A. Yes.

1 Q. Okay. That's important for us, because we're  
2 trying to, you know, establish the time and events  
3 that led up to the explosion, so I'll ask you some  
4 questions about the 22 Headgate or Tailgate later.  
5 But for right now, let's talk about the portal  
6 section. You say they were cutting some --- out some  
7 areas to build overcasts. Do you recall how many  
8 overcasts they were going to cut out for?

9 A. I think it was three.

10 Q. Okay.

11 A. Because they cut out for the --- they had already  
12 cut out for the belt channel.

13 Q. Oh, okay.

14 A. I didn't do any of that.

15 Q. Okay. So this is somebody else that cut those  
16 out?

17 A. Yes.

18 Q. What type of miner were you using up there?

19 A. A 12-12.

20 Q. Okay. Do you have any knowledge of anybody trying  
21 to defeat the methane monitor on the continuous  
22 miners?

23 A. No, I wouldn't run it if they did.

24 Q. Okay. How about just trying to get it a little  
25 off? I've heard of people spraying water on the

1 sensors and things like that. Okay.

2 ATTORNEY BABINGTON:

3 I'm sorry. Was that a no?

4 A. No.

5 MR. SHERER:

6 Okay.

7 A. Sorry.

8 MR. SHERER:

9 Thank you.

10 BY MR. SHERER:

11 Q. How many people were working up in that area on  
12 that construction site, do you recall?

13 A. There was eight on the day of the explosion.

14 Q. Okay.

15 A. Counting my boss and electrician there was eight.

16 Q. And <sup>(b)(7)(C) & (b)(7)(D)</sup> guys were mainly working on the overcasts?

17 A. Yes.

18 Q. Was there anything else going on down there?

19 A. They was working on the piece of equipment on up  
20 where the section was going to be.

21 Q. Okay.

22 A. I know the electrician and another guy.

23 Q. Okay. Just getting the power in there?

24 A. That might've been what they was doing.

25 Q. Okay.

1 A. I think so, yes.

2 Q. Was any of the belt crews or anybody like that  
3 working around there?

4 A. They was --- I think two of the bosses was working  
5 on the main belts that was going up. I think Number  
6 Four.

7 Q. Oh, okay. Anything unusual that you recall about  
8 that particular day or any --- and anything is of  
9 interest to us. If you smelled anything that was  
10 unusual or saw anything that was unusual?

11 A. No.

12 Q. This just seemed like a normal ---?

13 A. Just seemed like a normal day.

14 Q. Okay. What about --- did you run into any people  
15 going into the mine or in the bath house even? Did  
16 anybody say anything that was unusual?

17 A. No.

18 Q. Okay. Appreciate that. Let's go to the 22

19 Tailgate that <sup>(b)(7)(C) & (b)(7)(D)</sup> on. I think <sup>(b)(7)(C) & (b)(7)(D)</sup> a  
20 couple of shifts?

21 A. Yes, two shifts.

22 Q. Okay. And you worked the evening shift up there?

23 A. Yes.

24 Q. Okay. What were the conditions like up there, do  
25 you recall?

1 A. I know --- I know they had good air ---

2 Q. Good air?

3 A. --- on that section.

4 Q. Okay. Do you recall if the air on the belt line  
5 was moving into the section or outby?

6 A. Actually, I didn't even walk the belt line.

7 Q. Okay.

8 A. We walked up the intake, ---

9 Q. Okay.

10 A. --- which was the power entry.

11 Q. Okay.

12 A. The intake went overtop the power box.

13 Q. Okay. Was there a sign over the top of the power  
14 box?

15 A. Yes.

16 Q. Was it flapping?

17 A. Uh-huh (yes).

18 Q. Okay.

19 A. Best I can remember, yes.

20 Q. Okay. When you were --- can you take me through  
21 your cut sequence that you were doing that night on  
22 the 22 Headgate --- or Tailgate, excuse me.

23 A. Oh, well, I just take ten off the --- I don't know  
24 which side the air was on now. The curtain, curtain  
25 was on the left side. I took ten foot off the left



1 side then set back up and got 20 or 18 feet. It  
2 wasn't quite 20.

3 Q. Okay, sure. Was the coal cutting okay?

4 A. Yeah, it cut good. Pretty soft.

5 Q. Okay. What about the roof? Was it staying up  
6 pretty well?

7 A. Yeah, they had good top.

8 Q. Okay. Did you notice any methane bubbling out of  
9 the floor while you were taking the cut?

10 A. No, the most I got was about two-tenths.

11 Q. Okay.

12 A. That's the most I got all night.

13 Q. Did you notice any bubbles coming out of puddles?

14 A. No.

15 Q. Okay.

16 A. Not on that section.

17 Q. Okay. What about the ribs? Did you hear much  
18 methane coming out of the ribs or the face?

19 A. No.

20 Q. Okay. Are you aware of any methane inundations at  
21 this mine?

22 A. I helped drive the headgate section, the longwall  
23 section. I <sup>(b)(7)(C) & (b)(7)(D)</sup> from the  
24 mouth.

25 Q. Oh, okay.

1 A. And we had a lot of gas on that section,  
2 especially in the top end of it.

3 Q. And by the top end, which --- toward the setup  
4 side of the longwall?

5 A. Where we stopped running and backed up.

6 Q. Oh, okay. Could you point that area out on a map?  
7 Let's get this up.

8 A. Uh-huh (yes).

9 Q. And I'm going to do a little description for the  
10 record. We're looking at a 1 to 200 scale map of the  
11 current longwall panel at Upper Big Branch. And then  
12 if you would, just help us out by ---. This is that  
13 tailgate section that you were working on that night?

14 A. Okay. This is the ---.

15 Q. That's the headgate, yeah.

16 A. Okay. And I had started driving from here all the  
17 way up.

18 Q. Okay. And did you drive all the way to the  
19 Bandytown fan?

20 A. Yeah. Yes, I did.

21 Q. Okay. And do you recall, roughly, where you  
22 started running into the excessive methane?

23 A. It was up in this area somewhere. I can't see it  
24 on here.

25 Q. This is 105 Break.

1 A. Okay. It was somewhere around there.

2 Q. This is 105 Break.

3 A. Somewhere around 100 Break we started getting some  
4 gas.

5 Q. Okay. Could I get you to take this marker and  
6 just draw a big circle around that?

7 A. Where is that?

8 Q. Right here.

9 WITNESS COMPLIES

10 BY MR. SHERER:

11 Q. Okay. And write gas outside it, please.

12 WITNESS COMPLIES

13 BY MR. SHERER:

14 Q. Thank you, <sup>(b)(7)(C) & (b)(7)(D)</sup> .

15 MR. SHERER:

16 And the witness has marked the 100 Break  
17 of the headgate of the current longwall panel as it  
18 goes out to the Bandytown fan.

19 BY MR. SHERER:

20 Q. Do you recall what the levels were on the methane  
21 monitor on the machine when you were back in there?

22 A. Well, if we'd get --- we'd go up to one percent,  
23 we'd have to stop and hang the curtains.

24 Q. Did you exceed one percent?

25 A. A few times it went over and ---.

1 Q. Okay. When you say a few times ---?

2 A. Well, several times.

3 Q. Several times. I assume you were in there for  
4 several shifts. Was it all on one shift or was it  
5 scattered over several shifts?

6 A. Several shifts.

7 Q. Okay. So it was a large area that you had ---

8 A. Yes.

9 Q. --- problems with the gas?

10 A. There was several times we had to shut down and go  
11 to the power box and knock the power and let the boss  
12 and somebody go.

13 Q. Okay. So it exceeded, what, one half percent?

14 A. Yeah. One time it went up to eight percent.

15 Q. Eight percent. What did you do that time?

16 A. We went down to the next power box down ---

17 Q. Okay. I don't blame you.

18 A. --- and waited for the --- until it was out.

19 Q. Do you recall what they had to do to get the  
20 methane level back down at that point in time?

21 A. I don't know what they did. I stayed at the power  
22 box just ---.

23 Q. Okay.

24 A. He took one guy with him and they went back up  
25 there and got it straightened out. I don't know what

1 they did.

2 Q. Okay. What was the air like while you were  
3 running into those methane problems?

4 A. It wasn't very good at all.

5 Q. Okay. Did you recall what the --- the quantity  
6 you were supposed to have to cut coal?

7 A. Yes. I had to have 6,000 feet.

8 Q. Do you recall if you had problems maintaining that  
9 6,000 cubic feet?

10 A. Yes, we did.

11 Q. Where was the curtain? Where did you try to keep  
12 the curtain while you were making those cuts?

13 A. I tried to keep the --- where it was legal, you  
14 know, for the scrubber.

15 Q. Sure. Were you running the scrubber while you  
16 were taking those cuts?

17 A. Well, we had the 40-foot cut plan.

18 Q. Oh, okay. So you had 40-foot cuts.

19 A. Yes. But you couldn't get 40-foot cuts because  
20 there was too much gas.

21 Q. Oh, okay. About how deep could you go, do you  
22 recall?

23 A. I usually got about 20.

24 Q. Okay.

25 A. Sometimes 15.

1 Q. Uh-huh (yes), sure. Do you recall where the  
2 methane seemed to be coming from? Was it coming out  
3 of the roof or floor or face or ribs or everywhere?

4 A. Just everywhere, I guess. I really don't know  
5 where it come from.

6 Q. Okay, sure.

7 A. But there was a lot of water coming through the  
8 ribs.

9 Q. Okay. Did the water seem to come more from the  
10 left rib or the right rib, do you recall?

11 A. Left rib.

12 Q. Left rib. Okay.

13 A. It scared me more than the gas did, because I can  
14 watch the gas. I was afraid of the water ---

15 Q. Sure.

16 A. --- because I didn't know what was behind it ---

17 Q. Sure.

18 A. --- that was causing it.

19 Q. Did you discuss that situation with your boss?

20 A. Yeah. Yeah, sure.

21 Q. What did he tell you?

22 A. He didn't say much. I'm sure he told them  
23 outside.

24 Q. Who was your boss at that point in time?

25 A. (b)(7)(C) & (b)(7)(D)

1 Q. (b)(7)(C) & (b)(7)(D) , okay. Do you recall if anybody said  
2 anything about the sump of the previous mined area  
3 that was updip of where you were cutting?

4 A. People had talked about it, yes.

5 Q. Yeah. What'd they talk about? What'd they say?

6 A. It just didn't seem to worry them. They said it  
7 was far enough away, I guess.

8 Q. Okay.

9 A. They said it wouldn't come through.

10 Q. Okay. Do you have any idea how much water was  
11 coming in while you were doing that? Would you have  
12 to stop and pump it out or ---?

13 A. No, we was driving up here and it was running  
14 behind us.

15 Q. Oh, you were driving uphill?

16 A. Uh-huh (yes).

17 Q. That's interesting. The contour showed that you  
18 were going downhill.

19 A. No, we had to cut a lot of bottom just to try to  
20 get the water to run to the --- where that fan was  
21 at ---

22 Q. Do you recall ---?

23 A. --- where they put the pump in.

24 Q. Yeah.

25 A. We cut a lot of bottom and it still didn't run at

1 it very good.

2 Q. Did you cut the bottom while you were driving or  
3 did you have to come back and grade the bottom?

4 A. After we drove up, we pulled back and started  
5 cutting the bottom.

6 Q. Oh, okay. Do you recall how deep you had to cut?

7 A. Well, some of it was 12, 14 feet high.

8 Q. Oh, jeez. What was the normal mining height  
9 through there, do you recall?

10 A. Seven to eight feet.

11 Q. Okay. Take another seven or eight feet. Do you  
12 recall if you got all of it graded out to let the  
13 water flow down to the Bandytown pump?

14 A. It flowed, but not good, no. They still had to  
15 put some more pumps in it to get it to go.

16 Q. Do you recall where those pumps were located at?

17 A. They had air pumps and they had them all over the  
18 place, just scattered out from the mouth to the head.

19 Q. Oh, jeez.

20 A. It was producing quite a bit of water through the  
21 bottom, through the ribs.

22 Q. Okay. What about the roof, ribs and floor, what  
23 condition were they in?

24 A. The bottom was bad to bust up, hoove up all the  
25 way in a section.



1 Q. So the bottom was hooving?

2 A. Some places the belts where it hooved up was  
3 sideways.

4 Q. Oh, jeez.

5 A. It seemed to have a lot of weight on it.

6 Q. Yeah. And you were driving three or four entries  
7 up through there?

8 A. Four.

9 Q. Four, okay. Did you have to come back and grade  
10 the bottom as it hooved up?

11 A. Sometimes we did and sometimes we'd just run over  
12 it with a miner and it'd push it back down.

13 Q. Compacted that?

14 A. Uh-huh (yes).

15 Q. Do you recall any methane coming out of that floor  
16 as it cracked up?

17 A. I don't remember any.

18 Q. Okay. Now, you probably carried a methane  
19 detector.

20 A. Yes, I do.

21 Q. And do you recall what sort of levels that would  
22 read out?

23 A. Well, if it was one percent on my miner, I'd check  
24 it and it'd show the same thing.

25 Q. Okay. So they seemed to be pretty close to it, to

1 what the methane ---?

2 A. It was real close.

3 Q. Okay. Did you discuss the gas and ventilation  
4 problems with the section boss?

5 A. Yes. He done what he could do to take care of it.

6 Q. Okay.

7 A. He was really good about that.

8 Q. Okay. Do you think he was relaying that on up the  
9 line?

10 A. I'm sure he was.

11 Q. Do you think he was getting any help from the  
12 upper management from the mine to try to do something  
13 about that?

14 A. I can't answer that.

15 Q. Okay.

16 A. I don't know.

17 Q. While you were having those problems, do you know  
18 if somebody tried to get more air up to the section?

19 A. I know they was people that tried, yes.

20 Q. Were they having much success?

21 A. No.

22 Q. Do you know who was working on it?

23 A. Jamie Ferguson worked on it a lot, Andy Kolson.

24 Q. Uh-huh (yes).

25 A. Then there at last, I know Everett Hager and Wayne

1 Persinger and some of those was trying.

2 Q. Okay, sure. Were they working on it while you  
3 were up there mining?

4 A. Yes.

5 Q. Okay. Did they tell you that they would be making  
6 changes to the ventilation while you were up there?

7 A. Well, I don't know what they was doing. I mean,  
8 they just --- they walking --- they was walking the  
9 intake to look to see what was wrong, I guess.

10 Q. Okay.

11 A. I don't guess they made any changes while we was  
12 working, though, ---

13 Q. Okay.

14 A. --- as far as I know.

15 Q. Okay. Do you recall seeing crews of miners like  
16 patching up stoppings or something like that?

17 A. They had some men working on them, yes. Oh, yes.

18 Q. So they were just trying to tighten things up?

19 A. Yes.

20 Q. Okay. Did you ever come in on a shift and notice  
21 that the air was much better or much worse than it was  
22 the previous shift?

23 A. We noticed that a few times, yes.

24 Q. Okay. Do you recall if anybody said they had made  
25 some changes?

1 A. Not while we was driving that section up, I don't  
2 remember it.

3 Q. Okay. That's interesting. We appreciate that  
4 information. So you're basically saying you did a lot  
5 of work in there and they still had trouble getting  
6 the water to flow downhill to the Bandytown pump?

7 A. Yes, they did. They had a lot of trouble.

8 Q. Did anybody suggest taking more floor or ---?

9 A. Yes, it was suggested.

10 Q. Do you recall ----?

11 A. I tried to get them to do it right while they was  
12 up there.

13 Q. Okay. Why didn't they, do you recall?

14 A. I don't know.

15 Q. Okay. I'm sure you talked to Mr. Jones about  
16 that. Did you talk to anybody else about that?

17 A. Just to Andy Kolson. I talked to him.

18 Q. Okay. What did he say?

19 A. He had to do what they told him outside.

20 Q. Did he mention who told him to do that?

21 A. No.

22 Q. Okay. Do you have any feel for who was directing  
23 this operation?

24 A. Well, just truthfully, I don't care much about the  
25 president.

1 Q. Okay.

2 A. I don't have much confidence in him.

3 Q. That would be Chris Blanchard?

4 A. Yes.

5 Q. Do you feel that he was putting your safety and  
6 the safety of the other miners at risk from when they  
7 took some of these shortcuts such as the drainage?

8 A. Somebody did. I guess I can't prove that it was  
9 him.

10 Q. Sure.

11 A. Yes, I do.

12 Q. Okay. Thank you. Now, let me ask you a question  
13 that's going to be quite a bit later in time. Do you  
14 recall if they were having problems with water in that  
15 area maybe a little prior to the explosion?

16 A. I couldn't answer that. I don't know, I don't  
17 know.

18 Q. You don't know. Didn't get back up there?

19 A. I had my ideas, but ---.

20 Q. Okay, sure. Do you know if they were still having  
21 to pump that area? Did they have a pump crew?

22 A. If they didn't, they should've been.

23 Q. Okay.

24 A. Because I'm sure the water didn't stop.

25 Q. Okay. Did you ever get down on the longwall any?

1 A. Not since I'd left that headgate section.

2 Q. Okay. Did you ever talk to any of the people that  
3 worked on the longwall?

4 A. No, they portaled on the other side. They went to  
5 the new portal and I was still at the old one.

6 Q. Oh, okay. Did you ever hear that they were having  
7 problems, water problems?

8 A. No, I didn't.

9 Q. Okay. So you drove all the way out to the  
10 Bandytown fan. Were you up there when they installed  
11 the fan and pump?

12 A. I was there when they drilled the hole out. I  
13 helped keep the rock loaded out.

14 Q. Sure, uh-huh (yes). How did you do that, with a  
15 scoop?

16 A. With a miner.

17 Q. With a miner, okay. Did they raise more of those  
18 shafts?

19 A. Uh-huh (yes).

20 Q. Okay. Where'd you take that gob that was coming  
21 out of the shafts? Did they belt it out or ---?

22 A. Belt it out.

23 Q. Okay. When you left that area, what was the  
24 general conditions? Did you think that they had done  
25 what they needed to do to support the roof and ribs

1 for long-term usage or were you still having problems  
2 down there?

3 A. After we drove it up and moved the equipment back  
4 out, they had our crew up there. I was setting up  
5 pumps.

6 Q. Okay.

7 A. Then that's when they sent me to another section.

8 Q. Oh, okay.

9 A. But behind the longwall before I left, the top was  
10 very bad.

11 Q. Oh, okay.

12 A. It was very bad.

13 Q. Okay. Where'd you go when you pulled out of that  
14 section?

15 A. I went to Number Two section for a while. They  
16 said they needed another miner operator. Then they  
17 shut it down for a while, sent me to Three section on  
18 the low side of the mine.

19 Q. Okay. And <sup>(b)(7)(C) & (b)(7)(D)</sup> Three section until right  
20 before the explosion?

21 A. Yes.

22 Q. Okay. Going back to the 22 Tailgate, a couple  
23 shifts you worked there the week before the explosion.  
24 When you were working in there, do you recall anything  
25 that was unusual?

1 A. Not on my section, no.

2 Q. Okay. While you were working in there, did you  
3 notice any changes in the ventilation?

4 A. No.

5 Q. Okay. You said you had plenty of air?

6 A. I have good air on that section.

7 Q. Okay. Did you have any problems with methane that  
8 you recall?

9 A. No.

10 Q. How did you get to the 22 Headgate, do you recall?  
11 Did you come up the, what they're calling the Glory  
12 mains, North Glory mains?

13 A. We come up by the Glory mains and come up here and  
14 switch back somewhere.

15 Q. Okay. And then came down the crossover?

16 A. Yeah.

17 Q. Okay. Could you ---

18 A. Yes.

19 Q. --- ride all the way up to the section or did you  
20 have to walk a ways?

21 A. No, we had to walk probably 12, 15 breaks. I  
22 don't remember, something.

23 Q. Okay.

24 A. Maybe just ten, but in that area somewhere.

25 Q. Okay. When you were walking into the section, do



1 you recall what the dust, rock dust looked like?

2 A. No, I don't.

3 Q. Okay. When you were traveling into the mine, do  
4 you recall any equipment doors you had to go through?

5 A. You mean the airway doors?

6 Q. Uh-huh (yes).

7 A. Yeah, we had to go through probably --- let's see,  
8 probably about six or seven sets of doors.

9 Q. That's a lot of doors.

10 A. I would have to count them.

11 Q. Sure. Do you recall if those doors were  
12 maintained in good condition or were they beat up?

13 A. Most of them was in good condition.

14 Q. Okay. When you went up to the doors, did you ever  
15 come up and one or more of the doors would be open?

16 A. No.

17 Q. Okay. They were always closed?

18 A. Yes.

19 Q. Did you ever notice any ropes or chains attached  
20 to the doors so that they could keep them closed?

21 A. I don't remember any.

22 Q. Okay.

23 A. You know, I was just up in there two shifts.

24 Q. Okay, sure.

25 A. It had been a while.

1 Q. Okay. When you were on the tailgate section, did  
2 you cut much roof?

3 A. No.

4 Q. Okay. Just cutting floor?

5 A. I cut a little bit of floor ---

6 Q. Okay.

7 A. --- so it would be high enough to walk around.

8 Q. Okay, sure. So what was the mining height, about  
9 six feet or so?

10 A. The coal was about five feet ---

11 Q. Okay.

12 A. --- about five feet of coal.

13 Q. So you were taking a little more than five feet?

14 A. Yes.

15 Q. Okay. Were you ever sent home or told not to show  
16 up because of ventilation problems at this mine?

17 A. Yes.

18 Q. Do you recall when that was?

19 A. I don't know the dates. It was just a little  
20 while before the accident.

21 Q. Okay.

22 A. I know a couple of times we had to wait until,  
23 like, 11:00 or --- 11 o'clock before we'd go inside.  
24 And there was a few shifts we didn't work at all. One  
25 I got sent home. They made several changes.

1 Q. Did anybody explain what was going on, what sort  
2 of changes were being made?

3 A. They wouldn't say where they was at or nothing. I  
4 didn't know.

5 Q. Did they have a bulletin board where they posted  
6 ventilation plans, do you recall?

7 A. They had so many. I don't know.

8 Q. Okay. I understand that. You say that you recall  
9 some methane outbursts in this mine?

10 A. On that one section.

11 Q. On this headgate section?

12 A. Yes.

13 Q. Do you recall any methane outbursts that may have  
14 occurred back in the area that's now sealed when they  
15 were driving the longwalls or mining the longwall  
16 panels?

17 A. We hit a little bit on the head ends, not that  
18 bad.

19 Q. Okay. Do you recall one, I think it was in 2004,  
20 that they actually shut the mine down for several  
21 days?

22 A. Yeah. On the longwall?

23 Q. Uh-huh (yes).

24 A. Yes, I remember that.

25 Q. Were you anywhere near that when it happened?

1 A. No.

2 Q. Okay. Do you recall any other big outbursts like  
3 that?

4 A. No, I can't remember any more, just that one.

5 Q. Okay. Did you ever know if MSHA inspectors or  
6 State inspectors were onsite?

7 A. Yes, they wrote them up several times for low  
8 air, ---

9 Q. Okay

10 A. --- but it didn't seem to help much because they  
11 would go right back to mining the next day.

12 Q. Do you think that the air would be --- they'd do  
13 something to get the air up enough to abate the  
14 violation in one place and take air away from another  
15 place?

16 A. Sure, they did.

17 Q. Okay.

18 A. On the split air they'd shut doors. Curtain the  
19 one side off and direct all the air up into one place.

20 Q. Okay.

21 A. You'd have it. It'd be legal, you know?

22 Q. Uh-huh (yes), be legal on that side.

23 A. Be legal on that one --- one buggy and in that one  
24 cut.

25 Q. Did you ever get pressured to run without a legal

1 quantity of air?

2 A. No, they didn't mess with that pretty much. We  
3 was all old and knew better.

4 Q. There you go.

5 A. And we had a good boss that took care of us, too,  
6 on the air part. He'd hang all the curtains, all the  
7 fly curtains and he would even roll them up for me to  
8 run the miner in. And all I had to do is let it down  
9 as I advanced.

10 Q. Sure. That was good. Who was that?

11 A. Dean Jones.

12 Q. Okay.

13 A. He was hard to beat.

14 Q. Yeah, we've heard a lot of good things about Mr.  
15 Jones. When inspectors came on the property, was  
16 there any advance notice underground?

17 A. I'm going to have to wait a minute.

18 ATTORNEY BABINGTON:

19 Yeah.

20 MR. SHERER:

21 Sure. All right.

22 ATTORNEY BABINGTON:

23 Let's take a break.

24 MR. SHERER:

25 Sure.

1 ATTORNEY BABINGTON:

2 Off the record.

3 SHORT BREAK TAKEN

4 ATTORNEY BABINGTON:

5 Ready to go back on?

6 BY MR. SHERER:

7 Q. Okay. (b)(7)(C) & (b)(7)(D) , just a couple of minor points  
8 about this headgate that you were driving. Roughly  
9 what time period were you driving that headgate, do  
10 you recall?

11 A. It took us about a year to drive it.

12 Q. Okay. Do you recall about when you finished up?

13 A. Was it about around --- let's see. I can't  
14 remember whether it was New Year's or Christmas,  
15 somewhere in that time.

16 Q. Okay. The end of 2009?

17 A. I guess. That'd be close.

18 Q. Okay, okay. Thank you. Were you ever injured at  
19 this mine?

20 A. (b)(7)(C) & (b)(7)(D)

21 Q. Did you do light duty?

22 A. (b)(7)(C) & (b)(7)(D)

23 Q. Were you encouraged to do light duty?

24 A. They (b)(7)(C) & (b)(7)(D)

25 MR. SHERER:

1 Okay. Thank you. That's all the  
2 questions I've got.

3 EXAMINATION

4 BY MR. FARLEY:

5 Q. Yes. (b)(7)(C) & (b)(7)(D) , just bear with me. I want to  
6 clarify a few things, and I'll probably jump around a  
7 little bit, so ---. When you worked a couple of days  
8 the week before the accident on 22 Tailgate, now, if I  
9 understood you correctly, you would've walked through  
10 this crossover area toward the 22 Tailgate at the  
11 start and finish of your shift; is that right?

12 A. Yes. Yeah, we come up through here.

13 Q. Okay. Did you have to go through any doors in  
14 that crossover?

15 A. I think we drove to them. I think we drove to  
16 them ---

17 Q. Okay.

18 A. --- on the mantrip.

19 Q. About where was --- about where was the end of the  
20 track there? Can you estimate for me?

21 A. I think it was about --- I can't see without my  
22 glasses. It was right in this area right here ---

23 Q. And would you mark ---?

24 A. --- near the end of the track.

25 Q. And would you mark it for me, please?

1 A. I think it was right here.

2 Q. Okay.

3 A. It was close.

4 Q. Okay. Maybe just draw a line out there and put  
5 the end of the track or something, please.

6 WITNESS COMPLIES

7 BY MR. SHERER:

8 Q. Now, whatever doors you went through there and  
9 throughout the mine, did --- were these airlock doors  
10 --- were they also provided with a man door on the  
11 side or in the door itself?

12 A. I don't know.

13 Q. Okay.

14 A. I really don't know.

15 Q Okay. I mean, a smaller door.

16 A. I know some of them was, but I don't think the  
17 ones at 78 Break or 84 Break, whatever it is, I don't  
18 think it had any doors.

19 Q. Okay. All right.

20 A. I'm not sure they did.

21 Q. All right. Now, when you worked a couple shifts  
22 on 22 Tailgate, was Brian Collins your foreman on the  
23 evening shift?

24 A. Yes, yes.

25 Q. Was that both shifts?



1 A. Yes.

2 Q. Okay. Did you have confidence in him?

3 A. Yes, I do.

4 Q. Okay. The continuous miner you operated on 22  
5 Tailgate, did it have a strobe light?

6 A. Yes.

7 Q. Okay.

8 A. I had to run both of them, one at a time, you  
9 know.

10 Q. Okay.

11 A. I was the only miner operator there.

12 Q. Okay. I was going to say, if you could run both  
13 of them at the same time, you ---

14 A. I'm good.

15 MS. MONFORTON:

16 You were good.

17 BY MR. FARLEY:

18 Q. --- you'd be in demand out there.

19 MR. FARLEY:

20 I don't think I have anything else right  
21 now.

22 EXAMINATION

23 BY MS. MONFORTON:

24 Q. I just have a couple clarifying questions. I  
25 believe that you talked about on the day of the

1 explosion you were there, maybe a crew of about eight  
2 people. You were (b)(7)(C) & (b)(7)(D) for the  
3 overcasts. Other people were working on a piece of  
4 equipment, and you mentioned that there were two  
5 bosses working on the main Number Four belt?

6 A. Yes.

7 Q. Do you remember --- do you know who those people  
8 were?

9 A. One of them was Everett Hager and --- shoot. I  
10 can't remember the other one.

11 Q. Were they in that portal section with you? Is  
12 that what you were referring to?

13 A. I had to walk over to the power box and I seen  
14 them ---

15 Q. Okay.

16 A. --- when I was over there. I was talking to them.

17 Q. Okay.

18 A. I can't remember who the other one was.

19 Q. Okay. Thank you. On the two shifts that you  
20 worked on Tailgate 22, who was working with you those  
21 shifts?

22 A. Tailgate 22?

23 Q. The two shifts before --- you know, the week  
24 before the explosion.

25 A. Most of them I had never worked with before.

1 Q. Okay. Because you were (b)(7)(C) & (b)(7)(D) on that  
2 section.

3 A. I was just (b)(7)(C) & (b)(7)(D) as ---.

4 Q. Okay.

5 A. They came from another mine, most of that crew,  
6 and I had never got to know their names.

7 Q. Okay.

8 A. Just the faces.

9 Q. Thank you. Because you have so many years of  
10 experience, I'd just like to take this opportunity to  
11 ask you, what makes for a well-run mine in your  
12 opinion? What are the qualities of either the  
13 management or the operations that make it ---?

14 A. Well, you got to have the men. You've got to have  
15 the management to manage the men. You got to have the  
16 coal miners and the management, upper management you  
17 got to have.

18 Q. And what kind of characteristics do you see in  
19 upper management that make for running a good mine?

20 A. The experience. I'm going to say this. I think  
21 that's one of Massey's biggest problems, that the  
22 upper management hires the college graduates, which  
23 there's nothing wrong with that, but they put them in  
24 these positions before they get enough experience.  
25 That's one of the biggest problems they got.

1 Q. I think you also mentioned something about  
2 yourself and some of the older miners there. You'd  
3 speak up for yourself if ---

4 A. Sure, yeah.

5 Q. --- something wasn't right. What can we do in  
6 terms of helping younger miners understand how to do  
7 that?

8 A. I don't know. The one --- I talked to them and  
9 tried to explain to them that they didn't have to do  
10 these things. But they're young and scared and ---.

11 Q. Uh-huh (yes).

12 A. I mean, they didn't scare me anymore. I was too  
13 old. I know better ---

14 Q. All right.

15 A. --- and they wouldn't mess with me. My whole  
16 crew, we worked together for years, that crew that was  
17 on the headgate that got killed. I'd been with them  
18 for years. They didn't stay on their section much.  
19 They said we had one of the best run sections that  
20 Massey had. We did what we was supposed to.

21 MS. MONFORTON:

22 Those were good men. Okay. Thank you.

23 ATTORNEY BABINGTON:

24 Would you like to take another break or

25 are you okay?

1 A. I'm okay.

2 ATTORNEY BABINGTON:

3 Terry?

4 MR. FARLEY:

5 I've got a couple more little things.

6 RE-EXAMINATION

7 BY MR. FARLEY:

8 Q. When you arrived at work on the morning of April  
9 5th, was the midnight shift still there when you  
10 arrived?

11 A. Actually, they're still inside when I arrive.

12 Q. Okay.

13 A. They don't come outside until after we go in.

14 Q. Okay. All right. Now, I think you told us that  
15 the last shift that you worked before April 5th would  
16 have been the Thursday before, which would have been  
17 about April 1st; is that right?

18 A. Yes.

19 Q. Are you aware of anybody being sent home on  
20 Friday, April 2nd there because of ventilation  
21 problems or any other problems?

22 A. Well, Friday was a holiday. I didn't work.

23 Q. Okay. Would the longwall have worked that day?

24 A. Oh, they worked every day.

25 Q. Okay.

1 A. I don't have any knowledge of that.

2 Q. Okay. All right. That's fine.

3 MR. SHERER:

4 Okay?

5 RE-EXAMINATION

6 BY MR. SHERER:

7 Q. I got a question to test your memory. Were you  
8 driving these gate roads? Do you recall?

9 A. Did I what?

10 Q. Did you help drive these gate roads for ---?

11 A. I drove some of them, yes.

12 Q. Headgate 11 and 12, 13 ---?

13 A. I'd drive like every other one ---

14 Q. Okay.

15 A. --- because they'd have two going the same time.

16 Q. Oh, okay. Do you know why they skipped these  
17 blocks here?

18 A. Because it was so hard, the rock. The coal was  
19 low and the rock was real hard.

20 Q. Okay. So the coal had just finished out?

21 A. Yes, it was --- the rock was really, really hard.

22 Q. Okay. Thank you. Do you recall where you were at  
23 when the explosion happened?

24 A. Yes, sir, very well. I was <sup>(b)(7)(C) & (b)(7)(D)</sup> , right

25 around <sup>(b)(7)(C) & (b)(7)(D)</sup> . We was going back in the mine to go

1 back outside. We had to go to Ellis Switch to go out  
2 the old portal.

3 Q. Oh, okay. Do you recall what happened? Do you  
4 recall the pressure and the dust and such?

5 A. Yes, I do. Like I said, we was headed to Ellis  
6 Switch. We was going back in the mine. Deeper in the  
7 mine. And it felt like something just sucked all the  
8 air out of my head, out of my ears. Then the pressure  
9 started coming. You know how sometimes you just open  
10 the doors ---

11 Q. Uh-huh (yes).

12 A. --- and the air ---?

13 Q. Sure.

14 A. Well, that's the way it started, but it just kept  
15 getting worse. I had my fingers over my ears and it  
16 still felt like my head was going to burst.

17 Q. Oh, jeez. Was it hot, do you recall?

18 A. I can't remember it being hot, but I was sitting  
19 beside the boss and his detector went off and the  
20 oxygen level started going down, and I screamed at the  
21 guy driving the mantrip to hurry and go back the other  
22 way. But we'd lost our power because it blew so hard  
23 that it blew the plug loose on the batteries.

24 Q. Oh, jeez.

25 A. And some of us got our rescuers out and got them

1 ready to put on. But I was sitting there with him and  
2 the oxygen level started coming back up.

3 Q. Oh, okay.

4 A. But I didn't notice it, but some of the guys said  
5 it blew so hard it blew our mantrip back.

6 Q. Okay.

7 A. And I know I'd seen crib blocks and rocks and  
8 those things hit my ears and they burnt for three or  
9 four hours after that ---

10 Q. Oh, gee.

11 A. --- they hit so hard.

12 Q. Did it singe any of your hair, do you recall?

13 A. No, not that I know of.

14 Q. Okay. How did you get out of the mine, do you  
15 recall that?

16 A. We backed up and went out the new portal.

17 Q. So you rode it out?

18 A. We rode out.

19 Q. Okay. Do you recall what the boss' detector was  
20 doing as far as carbon monoxide?

21 A. I forget what he said it was.

22 Q. But it was getting on up there?

23 A. Yeah, it was going up, too. It was going up. The  
24 oxygen level was going down. But you know, we started  
25 --- finally got started back outside and everything



1 started leveling back out some.

2 Q. Okay. Did anybody actually don their  
3 self-rescuer?

4 A. We had them ready to, but all I had to do was pull  
5 the cord.

6 Q. Oh, okay.

7 A. Should've put them on, yes. Should have put them  
8 on, but ---.

9 Q. Did you have problems with visibility?

10 A. It just like got black. It was like black when it  
11 went by us, because I did see that crib block go by.  
12 It was two breaks behind us on the track when we went  
13 back out.

14 Q. When you got the power back on the mantrip, was  
15 the visibility starting to clear up?

16 A. Yeah, it was clearing up then. It's still pretty  
17 dusty for a while until we got probably halfway out of  
18 the mine.

19 Q. Okay.

20 A. And three break inside, they was --- you had to  
21 walk three breaks inside to get on the mantrips  
22 and ---

23 Q. Sure.

24 A. --- they was buckets and things laying there from  
25 the other crew that was waiting to come in.

1 Q. Uh-huh (yes).

2 A. We picked up some of their things and carried them  
3 out for them.

4 Q. Okay. When you got outside, what were people  
5 saying? Like what was ---?

6 A. Well, they was trying to say that it was a fall,  
7 and I told them I knew better than that. The oxygen  
8 level wouldn't have went down in a fall. I told the  
9 boss, I said, it's bad. I said, it's bad. We've got  
10 to get out of here. It's bad.

11 Q. Yeah. And the boss was --- who was that?

12 A. Bobby Baker.

13 Q. Bobby Baker. Do you see any other management  
14 types outside?

15 A. They was several.

16 Q. Do you recall who?

17 A. Jason Whitehead come, Chris Blanchard. The mine  
18 foreman and all of them was there.

19 Q. Did they get there pretty quickly?

20 A. Pretty quick, pretty fast.

21 Q. Were they aware that the CO levels had gone up and  
22 the oxygen levels had gone down?

23 A. Yes, they had.

24 Q. Okay.

25 A. Yes, they did.

1 Q. What did they do at that point in time?

2 A. They was worried about going in and checking on  
3 --- going in and checking on things.

4 Q. Okay. Did they go in?

5 A. They sent us back to the other side.

6 Q. Okay.

7 A. They was monitoring --- some of them was just ---  
8 my boss was over there monitoring what was coming  
9 outside, you know.

10 Q. Okay.

11 A. He was checking, but I can't say that I seen him  
12 go in.

13 Q. Okay, sure.

14 A. Because they sent us --- they take us back to the  
15 other side in a pickup truck.

16 Q. Okay. Were you involved in the rescue and  
17 recovery effort at all?

18 A. No.

19 Q. Okay.

20 A. I went to the other side and showered and we  
21 stayed there to about --- I stayed there to about six  
22 o'clock. They wouldn't let us call our wives or  
23 anything. And the guy I was riding with, he knew his  
24 wife was worried, so he wanted to leave, so we left  
25 about 6:30. I got about halfway home. I called my

1 wife.

2 MR. SHERER:

3 Okay. That's all the questions I've got.

4 ATTORNEY BABINGTON:

5 Can we take a quick break? Okay. Off

6 the record.

7 ATTORNEY BABINGTON:

8 Okay. Let's go back on. Terry?

9 SHORT BREAK TAKEN

10 RE-EXAMINATION

11 BY MR. FARLEY:

12 Q. After the explosion on April 5th, any particular  
13 reason why you guys weren't allowed to use the phone  
14 or that you know of?

15 A. I don't know why.

16 Q. Okay.

17 A. The guys come down, they made us all go into one  
18 room there for a while, and I don't think they wanted  
19 us hearing what they had to say on the mine phones and  
20 ---.

21 Q. Okay.

22 A. They said they wouldn't let us use the phone.

23 MR. FARLEY:

24 Okay. All right.

25 RE-EXAMINATION

1 BY MR. SHERER:

2 Q. I got just a general question, <sup>(b)(7)(C) & (b)(7)(D)</sup> . You  
3 have a lot of experience in this mine. You knew a lot  
4 of the people. You went to a lot of different places.  
5 It sounds like you're in the development of this mine.  
6 What do you think we should be looking at? What do  
7 you think may have caused this explosion?

8 A. I mean, I lay awake a lot of the night thinking  
9 about it. And the only thing I can figure out is  
10 either the water behind the longwall or they had a big  
11 fall and they couldn't --- you'd suck air through  
12 there and that gas would build up on the longwall.  
13 That's the only thing I can figure out.

14 Q. Okay. And by big fall you mean back in the  
15 bleeders behind the longwall?

16 A. Behind the longwall. It fell all the way across.

17 Q. Okay.

18 A. And plus that water. I don't know whether they  
19 took care of the water or not, you know. I don't  
20 know.

21 Q. Okay.

22 A. It could've been the water, it could've been a  
23 fall.

24 Q. Okay.

25 A. Maybe both.

1 Q. Let me ask you a question about --- we know the  
2 mine was shut down over the long weekend except for  
3 the longwall. Do you think --- are you aware of  
4 coming back over a long period of time like that where  
5 there was problems getting water pumped down and stuff  
6 like that?

7 A. That's possible.

8 MR. SHERER:

9 Okay.

10 EXAMINATION

11 BY ATTORNEY BABINGTON:

12 Q. Okay. Do you recall ever hearing anything about  
13 miners making safety complaints and then enduring  
14 retaliation from their bosses about it?

15 A. No, I don't.

16 Q. You've indicated you didn't have the best  
17 impression of Chris Blanchard.

18 A. No, I don't.

19 Q. Why is this?

20 A. I think he made some bad decisions, rushing  
21 people.

22 Q. Which decisions specifically?

23 A. I know before we started that section, the one  
24 that the longwall was on, he didn't even give us time  
25 to cut out all the belt channels and overcasts before

1 he started the section. Just I mean, I don't remember  
2 all of them, the decisions or anything. He was always  
3 rushing people too much to get things done. On that  
4 Three section that I was on, we hit a lot of rock and  
5 we was moving the section quite a bit, and like, they  
6 made us stay. They told us --- I was on evening  
7 shift. They told us we had to stay until we got the  
8 section moved and run two buggies. Well, it was 4:30  
9 in the morning before we got done. It was like 6:30  
10 before I got home.

11 MR. SHERER:

12 Oh, gee.

13 A. Had to get back up and go back to work. I don't  
14 like --- I don't like it. It's not right. That's  
15 just an example, you know.

16 RE-EXAMINATION

17 BY MR. SHERER:

18 Q. Did you feel like there was too much pressure to  
19 run coal at this mine?

20 A. No. It was a hard mine to run coal anyway. We  
21 cut so much rock, but they got so much out of the coal  
22 that you'd run 150 foot and still make money, you  
23 know? But I guess about every mine you work at,  
24 they're going to put some pressure on you to run coal,  
25 every place I've ever worked, but as long as they

1 don't make you do anything unsafe, ---

2 Q. Do you feel like ---

3 A. --- I can put up with it.

4 Q. --- some people did things unsafe because there  
5 was pressure?

6 A. I imagine somebody else probably did. I don't  
7 know.

8 MR. SHERER:

9 Okay, sure.

10 RE-EXAMINATION

11 BY ATTORNEY BABINGTON:

12 Q. Were you ever directed to do something that you  
13 felt was unsafe?

14 A. If I thought it was unsafe, I told them I wasn't  
15 going to do it.

16 Q. Oh, okay.

17 A. I've been there long enough that I didn't ---  
18 nobody didn't put no pressure on me no more. Now,  
19 when I was young, it was different.

20 Q. Sure.

21 A. I know what it's like being young.

22 RE-EXAMINATION

23 BY MR. SHERER:

24 Q. There are a lot of --- lot of new kids at this  
25 mine, are there?



1 A. There's several.

2 Q. When you were starting out in the mine, did folks  
3 take time to show you and tell you how to do things  
4 the right way?

5 A. It seemed like when I started in the mines that  
6 some of the older men were afraid that you was going  
7 to take their job, and they wouldn't even hardly talk  
8 to you.

9 Q. Okay.

10 A. Afraid you was going to take --- to take their  
11 piece of equipment or their job. But I always tried  
12 to teach the young guys the right way to do it.

13 Q. Sure.

14 A. And I'd tell them, don't let them put pressure on  
15 you. I said, I mean, there are jobs other places.  
16 You don't have to work here, you know? Go somewhere  
17 else where it's safer. You don't have to put up with  
18 it.

19 Q. And when you say go somewhere else where it's  
20 safer ---?

21 A. Or I hope it would be safer.

22 Q. Hope it'd be safer. Do you think it was unsafe  
23 here at this mine?

24 A. I don't think it was any worse than anywhere else.  
25 Maybe --- I know before Marfork took over --- see,

1 Performance Coal had their own people, president and  
2 everything. After Marfork people took over, it went  
3 downhill.

4 Q. Did you lose a lot of the experienced people when  
5 they took over?

6 A. The people that knew the mine and everything, they  
7 run every one of them off.

8 RE-EXAMINATION

9 BY ATTORNEY BABINGTON:

10 Q. When did Marfork take over?

11 A. Time flashes by. I don't know. Three years ago  
12 maybe. I don't remember exactly. It might've been  
13 five or ---.

14 Q. Okay. Do you have any strong opinions about any  
15 of the other management, especially those, you know,  
16 pretty close under Blanchard?

17 A. I do, but I'm not going to say.

18 RE-EXAMINATION

19 BY MR. SHERER:

20 Q. Anything else that may help us?

21 A. Well, there's one thing that --- on the other ---  
22 the headgate section, the men that I'd worked with for  
23 so long, ---

24 Q. Yeah.

25 A. --- I talked to them quite a bit and they told me

1 they didn't have any air. Even though we had it on  
2 that one section, they didn't have it on the other  
3 one. I mean, that's what they told me. I talked to  
4 them on the phone real often.

5 Q. How common was that? Did they mention it several  
6 times?

7 A. There was like three different guys mentioned it  
8 to me, three of them I worked with.

9 Q. They ever mention any problem with methane?

10 A. No, they just said they didn't have air.

11 Q. Didn't have any air.

12 ATTORNEY BABINGTON:

13 And that was Headgate 22 section?

14 A. It was the new headgate.

15 BY MR. SHERER:

16 Q. Anybody we should talk to?

17 A. I don't know.

18 MR. SHERER:

19 Okay. We appreciate it, <sup>(b)(7)(C) & (b)(7)(D)</sup> .

20 A. You're welcome.

21 ATTORNEY BABINGTON:

22 Terry, do you have anything further?

23 MR. FARLEY:

24 No.

25 ATTORNEY BABINGTON:

1 Celeste?

2 MS. MONFORTON:

3 No.

4 ATTORNEY BABINGTON:

5 Okay. We marked one map, one of the  
6 Bandytown fan maps, labeled <sup>(b)(7)(C) & (b)(7)(D)</sup> One.  
7 <sup>(b)(7)(C) & (b)(7)(D)</sup> Exhibit One  
8 marked for identification.)

9 ATTORNEY BABINGTON:

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

1 A. That's all.

2 ATTORNEY BABINGTON:

3 Okay. Thanks. And again, I want to  
4 thank you for your cooperation in this matter.

5 ATTORNEY GREEAR:

6 I would request on the record at the  
7 appropriate time when it's allowable that we be given  
8 a copy of his statement. If I need to make that in  
9 writing, I'll do that as well.

10 ATTORNEY BABINGTON:

11 I think we have been treating --- if you  
12 make the request on the record, then we can treat that  
13 as your written request.

14 ATTORNEY GREEAR:

15 Okay. I appreciate that.

16 ATTORNEY BABINGTON:

17 So we'll make a note of that. Okay.

18 ATTORNEY GREEAR:

19 Appreciate that.

20 ATTORNEY BABINGTON:

21 You're welcome. Off the record.

22 \* \* \* \* \*

23 STATEMENT UNDER OATH CONCLUDED AT 5:08 P.M.

24 \* \* \* \* \*

25

1 STATE OF WEST VIRGINIA )

2

3

4

CERTIFICATE

5

I, Alison Salyards, 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.

20



21

22

*Alison Salyards*

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24

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