

1 **WEST VIRGINIA MINE SAFETY AND HEALTH ADMINISTRATION**

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4  
5 **IN THE MATTER OF:**

6 **THE INVESTIGATION OF THE**  
7 **APRIL 5, 2010 MINE EXPLOSION**  
8 **AT UPPER BIG BRANCH MINE.**

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15 **The interview of DELBERT RAY BAILEY, taken**  
16 **upon oral examination, before Magdalena Szczerba,**  
17 **Court Reporter, and Notary Public in and for the**  
18 **State of West Virginia, Wednesday, March 2nd, 2011,**  
19 **at the Mine Academy, 1301 Airport Road, Beaver,**  
20 **West Virginia.**

21 **JOHNNY JACKSON & ASSOCIATES, INC.**  
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23 **Charleston, WV 25301**

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28  
29 **GOVERNOR'S INDEPENDENT INVESTIGATION PANEL**  
30 **James Beck**

31  
32 **Also Present :**

33  
34 **Dean Cripps, MSHA**  
35 **Leland Hess, MSHA**

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1 PROCEEDING

2 MR. KOERBER: Let's go on the record.

3 My name is Berry Koerber. I'm the  
4 Assistant Attorney General. I'm assigned to  
5 represent the West Virginia Office of Miners'  
6 Health Safety and Training.

7 Today is March the 2nd, 2011.

8 There are other team members on the left  
9 side of the table and beginning at my immediate  
10 left I'm going to ask those individuals to identify  
11 themselves and who they are with.

12 MR. TUCKER: Bill Tucker with West  
13 Virginia Office of Miners' Health Safety and  
14 Training.

15 MR. CRIPPS: Dean Cripps with MSHA.

16 MS. HAMPTON: Polly Hampton, Solicitors  
17 Office Department of Labor.

18 MR. BECK: Jim Beck with the Governor's  
19 Independent Team.

20 MR. KOERBER: Mr. Bailey, the court  
21 reporter here is from a firm known as Johnny  
22 Jackson & Associates. It is a court reporter firm  
23 in Charleston, West Virginia.

24 For her benefit I'm going to please ask

1 you to reframe from using uh-huh and huh-uhs and  
2 say yes and no, and don't nod your head if you --  
3 please don't nod your head yes or no, please speak  
4 verbally. And I'm also going to ask you to please  
5 allow the interviewer to finish his question before  
6 you begin your answer and I'm also going to ask the  
7 interviewers to please allow you to finish your  
8 answer before they begin the questions so we don't  
9 have people talking over one another.

10 If we utilize a map, even though everybody  
11 can see here today where you're pointing to, on a  
12 transcript saying you were here and went there,  
13 isn't going to mean too much, so we're going to ask  
14 you to be more specific as to how you identify a  
15 specific place in the mine, if we use the maps.

16 The other thing about the court reporter  
17 is this, the court reporter firm is operating under  
18 a three day turnaround for the transcripts. With  
19 this being Wednesday three business days would take  
20 us to Monday so come Tuesday of next week, if you  
21 desire, you can call Johnny Jackson & Associates,  
22 and I'm going to give you their business card here  
23 in a moment which contains their phone number and  
24 address, you can call and schedule a time where

1 either you or you and your attorney would go to  
2 Johnny Jackson Court Reporters' firm in Charleston  
3 and they would place you in the conference room  
4 where you have privacy to look and review the  
5 transcript, you would be given an errata sheet that  
6 you would be able to make any corrections to the  
7 transcript that you see when you read it.

8           This is not mandatory. This is your  
9 right. You can do it if you want. You can talk to  
10 your attorney about it. What I would ask, although  
11 you do not have to call Tuesday of next week, we  
12 would ask that you call within a couple weeks and  
13 schedule your appointment and don't just wait  
14 months and months and months and then say I would  
15 like to review my transcript.

16           A. Okay.

17           Q. Also, I want to mention to you that if for  
18 any reason whatsoever you want to take a break just  
19 say I want to take a break and we're on break,  
20 okay.

21           I'm going to ask that you not discuss your  
22 interview with people outside of this room otherlly  
23 than with your attorney. And the reason I'm asking  
24 that is we're trying to protect the integrity of

1 the investigation.

2 At this point in time Polly Hampton may  
3 have something that she would like to add and if  
4 so, please do so.

5 MS. HAMPTON: Yes. Before we got started  
6 I handed you a letter on behalf of MSHA's accident  
7 investigation team. Did you get a chance to review  
8 that letter?

9 MR. BAILEY: Yes.

10 MS. HAMPTON: And did have you any  
11 questions for me?

12 MR. BAILEY: No.

13 MS. HAMPTON: I would like to point out in  
14 the letter is contact information for Norman Page.  
15 He is the lead accident investigator for the MSHA  
16 team. If you leave here today and you have  
17 additional information you would like to share with  
18 our team or something else you'll like to clarify  
19 or anything you think is relevant that we should  
20 know in investigating this accident, please feel  
21 free to contact Norm or have your attorney contact  
22 us with that information.

23 MR. BAILEY: Okay.

24 MR. KOERBER: I would ask that the court

1 reporter administer the oath at this time.

2 DELBERT RAY BAILEY, WITNESS, SWORN

3 EXAMINATION

4 BY MR. KOERBER:

5 Q. Sir, would you please state your full name  
6 for the record?

7 A. Delbert Ray Bailey, Sr.

8 Q. Spell your last name.

9 A. B-a-i-l-e-y.

10 Q. And would you please state your address  
11 and telephone number?

12 A. [REDACTED]

13 [REDACTED]

14 Q. Sir, do have an attorney with you here  
15 today?

16 A. Yes, I do.

17 MR. KOERBER: And would your attorney  
18 please identify himself and his firm?

19 MR. McCUSKEY: Yes. John McCuskey,  
20 Shuman, McCuskey and Slicer, Charleston, West  
21 Virginia. Attorney for Delbert Bailey, Sr.

22 MR. KOERBER: Mr. Bailey is your client?

23 MR. McCUSKEY: He is.

24 MR. KOERBER: Mr. Bailey, as of April 5th



1 2010, what was your job title at UBB?

2 THE WITNESS: I was classified as  
3 assistant longwall maintenance foreman.

4 MR. KOERBER: So you supervised  
5 individuals?

6 THE WITNESS: If I had them.

7 MR. KOERBER: Pardon me?

8 THE WITNESS: If I had any to supervise I  
9 would. But that was my job classification at that  
10 time in -- yes, I would supervise.

11 MR. KOERBER: And as a maintenance person  
12 would you perform electrical exams and record  
13 those, results of those exams in the electrical  
14 books?

15 THE WITNESS: Yes.

16 MR. KOERBER: We also have another  
17 individual seated at the table and at this time I  
18 would ask her to please introduce herself, her firm  
19 and her client.

20 MS. DEEM: Pamela Deem. My firm is Allen,  
21 Guthrie and Thomas from Charleston, West Virginia.  
22 And I represent Performance Coal Company.

23 MR. KOERBER: We have one other individual  
24 in the back. At this time I'd like for him to

1 identify himself and who he is with.

2 MR. HESS: Leland Hess with MSHA.

3 MR. KOERBER: Mr. Bailey, are you  
4 appearing here today as a result of receiving a  
5 subpoena?

6 THE WITNESS: Yes.

7 MR. KOERBER: This is a copy of that  
8 subpoena, would you agree with that?

9 THE WITNESS: Yes.

10 MR. KOERBER: And I note for the record  
11 that the subpoena compels your attendance here on  
12 February 23rd, 2011, at 1:00 p.m. After that  
13 subpoena was served upon you I had a conversation  
14 with your attorney and through a mutual agreement  
15 with your attorney we agreed to continue that  
16 subpoena until today at this time. Is that your  
17 understanding as well?

18 THE WITNESS: Yes.

19 MR. KOERBER: This is another document.

20 I would ask that this be Bailey Exhibit  
21 1. This is another document that you probably  
22 have not seen. It's an Affidavit of Service signed  
23 by my process server showing that he served you  
24 Delbert R. Bailey on the 19th day of February 2011.

1 THE WITNESS: Yes.

2 MR. KOERBER: And I'm going to ask that be  
3 marked as Bailey Exhibit No. 2.

4 (Bailey Exhibit No. 1, 2 marked  
5 for identification.)

6 MR. KOERBER: Mr. Bailey, not only am I  
7 going to give you the Johnny Jackson business card,  
8 I'm also going to give you the business card of  
9 Mr. Bill Tucker. Mr. Bill Tucker is the gentleman  
10 seating to my left here. He is the lead accident  
11 investigator for the West Virginia Office of  
12 Miners' Health Safety and Training.

13 If after this interview you think of  
14 anything that would be helpful to the investigation  
15 that you would like to share with the West Virginia  
16 Office of Miners' Health Safety and Training,  
17 please contact Mr. Tucker. Okay?

18 THE WITNESS: Okay.

19 MR. KOERBER: Also I want to give to you a  
20 memorandum. This memorandum contains the  
21 address to the West Virginia Board of Appeals.

22 The West Virginia Board of Appeals is the  
23 administrative tribunal that's charged with hearing  
24 cases involving coal miner discrimination. West

1 Virginia Code 22A-1-22 protects miners from being  
2 discriminated against for participating in  
3 interviews such as this.

4 In the event that you believe you've been  
5 discriminated against because you participated in  
6 this interview, this is the body that you would  
7 lodge your complaint with. Your attorney can help  
8 you with that I'm sure.

9 I would caution you, however, that you  
10 only, under the statute you only have 30 days from  
11 the day of the discriminatory event to file any  
12 complaint that you would like to file.

13 So I'm going to give you these three  
14 things now and with that I'm going to turn the  
15 interview over to Mr. Cripps and ask that he begin  
16 the interview.

17 EXAMINATION

18 BY MR. CRIPPS:

19 Q. Hi, Delbert.

20 A. Hi, Mr. Cripps.

21 Q. You can call me Dean if you want. Is it  
22 okay if I call you Delbert?

23 A. Yeah, that'd be just fine.

24 Q. I've been doing it for about seven months.

1           Delbert, I've read through your first  
2 transcript so I'm going to try to stay away from  
3 repeating any questions, if I can. I got just a  
4 few areas that I want to ask you some questions on  
5 to clear up a few things if you don't mind.

6           I would like to start with when you left  
7 UBB and went to Logan's Fork. When was that, do  
8 you recall?

9           A. No.

10          Q. Approximately what year even?

11          A. I went down in the spring of -- I don't  
12 know what year. It was in the spring because we  
13 had to get things ready, we started from scratch.  
14 I went down probably a year before, maybe nine  
15 months before.

16          Q. Nine months before what?

17          A. Before they started running coal with the  
18 longwall.

19          Q. So your purpose of going to Logan's Fork  
20 was to assist in setting up the longwall?

21          A. Uh-huh.

22          MR. McCUSKEY: Yes. Make sure --

23          A. Yes.

24          MR. McCUSKEY: You said uh-huh. We all do

1 it.

2 THE WITNESS: He was shaking his head like  
3 that.

4 MR. McCUSKEY: Yes, he lured you into it.

5 Q. I'm sneaky that way.

6 How many longwall panels did you pull at  
7 Logan's Fork?

8 A. Did I pull?

9 Q. Did the longwall pull, how many panels?

10 A. At Logan's Fork?

11 Q. Yes.

12 A. I know we went down to pull three but I  
13 believe we just ended up pulling two. That's what  
14 I thought. That's all I can remember.

15 Q. When did you come back to UBB?

16 A. In the spring of 2009.

17 Q. When you came back to UBB do you recall  
18 what you did?

19 A. I set up a longwall.

20 Q. Did you work outside repairing any  
21 shielding before you went underground?

22 A. Yes, I did. Yes, I did.

23 Q. Do you remember at all how long that  
24 lasted?



1 whenever it would come time to set a longwall up I  
2 was transfered to set that longwall up. I helped  
3 set that up.

4 Q. So you've been involved in every longwall  
5 pannel at UBB?

6 A. Yes, I have.

7 Q. When you said your worked production, what  
8 exactly do you mean by that?

9 A. When they were running coal like on the  
10 day shift or on the evening shift when they were  
11 running coal, producing coal.

12 Q. So when they was producing coal you was  
13 the maintenance person on that crew?

14 A. I was -- I started out as electrician. I  
15 was just an electrician, and then -- and then I  
16 became a maintenance foreman and that didn't last  
17 long. And then they made me on that production,  
18 maintenance foreman production. And then they  
19 wanted me to be an assistant to Danny and I took  
20 that job.

21 Q. How long have you been in that position?

22 A. Not very long.

23 MR. KOERBER: If I can just clarify.

24 Danny who?



1 THE WITNESS: Lafferty.

2 MR. KOERBER: Thank you. Sorry.

3 A. That started when I was at Logan's Fork.  
4 But when I went to Logan's fork I worked outby,  
5 mainly outby, just an outby electrician at Logan's  
6 Fork.

7 Q. Outby on the longwall?

8 A. Yeah, maintaining stuff outby like the  
9 hollows, getting things ready to move the next  
10 panel or setting pumps, set a pump somewhere or  
11 whatever needed to be done. And if they needed any  
12 help on the wall, if they had a big job, they would  
13 ask for my assistance.

14 Q. So on the panel that was running UBB on  
15 April 5th for the length of their panel you had  
16 been in the same position?

17 A. Yes.

18 Q. And that was a straight day shift  
19 position?

20 A. Yes.

21 Q. And so you generally seen all three of  
22 their production crews?

23 A. Generally.

24 The third shift I didn't see them very

1 much because they pulled it from the UBB side and  
2 we pulled it from the Ellis side.

3 Q. But the production crews, as I understand,  
4 there was three different production crews?

5 A. Yes.

6 Q. And when they rotated around on the day  
7 shift would you --

8 A. I would be with them, uh-huh. But I  
9 mainly stayed outby because I was by myself. They  
10 started a third crew and the two guys I had working  
11 for me, they had to use them for electricians to  
12 maintain the wall while they was running and then  
13 that left me by myself. So I maintained the  
14 equipment outby. And if I could ever get any help,  
15 I would get somebody to help me.

16 Q. So the production crews on the longwall  
17 had electricians on each crew to take care of the  
18 face; is that correct?

19 A. That's right.

20 Q. But you generally took care of everything  
21 outby?

22 A. Yes.

23 Q. Describe to me the water supply up to the  
24 longwall. Do you know where the water comes from?

1           A.    From outside?

2           Q.    Yes.

3           A.    I thought it comes through on the south  
4 portal side through some filters and it comes up to  
5 the longwall face and we have a pumping station  
6 there that pumps water, gives it more pressure  
7 toward the face, put more pressure on the shear and  
8 start the motors.

9           Q.    Does the water from the outside, does it  
10 come out of the river?

11          A.    Yes, I believe it does.

12          Q.    I understand in talking to some people  
13 there is a separate water supply line going up to  
14 the longwall, are you familiar with that?

15          A.    Yes.

16          Q.    Describe that to me.

17          A.    That is for our emulsion to mix with our  
18 emulsion oil that operates the shields, the jacks  
19 on the shield.  And they mix that water with the  
20 emulsion.  I think it's two percent emulsion and 98  
21 percent water.

22          Q.    Do you know where that water supply  
23 originates outside?

24          A.    I'm thinking it's from a well down at the

1 bottom of the hill, down there close to the  
2 tracks. And it's pumped up to a tank and then we  
3 pump it underground.

4 Q. Do you know why they have the two separate  
5 water supplies?

6 A. It's clean. Cleaner. It's cleaner.  
7 Don't have dirt or nothing in it and then it won't  
8 clog up the solenoids on the shields.

9 Q. So the well water is cleaner?

10 A. It helps -- yeah, it helps the shields,  
11 the solenoids would get, stop up some of the  
12 function on the shield, wouldn't work  
13 automatically. We'd have to work them manually.  
14 And we was all the time changing the solenoids. So  
15 if the water is real clean and everything is clean,  
16 you will not have little bits of sand and stuff  
17 coming from the creek to stop that up. Like what  
18 if a big, of a flood we'd have problems with our  
19 shields.

20 Q. So that was when you was using the river  
21 water to make your emulsion?

22 A. We would have problems so we went to this  
23 clean water to where it would always be clean and  
24 everything would operate smoothly.

1 Q. You said when you had a flood it gave you  
2 problems, what is that --

3 A. Yeah. The muddy water washing out, water  
4 from the creek, so that's the reason why we went to  
5 the well water.

6 Q. The river water got muddy and created  
7 problems for you?

8 A. Yes.

9 Q. We see that there was some filters on the  
10 pump car that you mentioned, are you familiar with  
11 the filters on the pump car?

12 A. Uh-huh.

13 Q. When we looked at those filters  
14 underground we opened them up and there is some  
15 baskets in there but there was no socks on the  
16 baskets, are you familiar with that?

17 A. Yes.

18 Q. Had you ever used socks on those baskets?

19 A. Yes.

20 Q. Do you know when you quit using the socks?

21 A. When we went to the well water. Because  
22 we, you know, we had to keep -- we was mixing the  
23 emulsion with the water and we had to keep it as  
24 clean as possible so we used the socks.

1 Q. But even with the socks it still gave you  
2 problems?

3 A. Yes.

4 Q. Did the muddy river water, did it create  
5 any other problems for you besides just with the  
6 emulsion?

7 A. Just with the emulsion. The emulsion  
8 would get, if it was dirty it would get kind of  
9 silky like, it was just . . .

10 Q. Did the muddy water ever create problems  
11 for your sprays on the shear?

12 A. I don't know.

13 Q. Are you aware or familiar with if the  
14 drums on the shear ever had to be flushed out due  
15 to having dirt and mud in them?

16 A. We flushed them out at the beginning but  
17 then afterwards, no, I don't know of them being  
18 flushed out.

19 Q. What do you mean at the beginning?

20 A. When we first set up we put the drums on,  
21 hook everything up and from moving everything  
22 around if it's dirty, so we flush everything out.  
23 We flush it real good. After we flush everything  
24 out then we put all of the sprays in and we go from

1 there.

2 Q. But tell me about how you actually flush  
3 it out, what do you mean by flushing everything  
4 out?

5 A. After everything is hooked up before we  
6 start running coal, we turn all the water on, turn  
7 the pumps on and then we start the drums and they  
8 just sit there and just run and wash, everything  
9 washes out.

10 And then we put our sprays in on the  
11 drums, on the drums there is a scroll a line that  
12 goes around. And at the end of each scroll there  
13 is a plug. And I have done it this way before too,  
14 I took that plug out and then run it and let it  
15 flush everything out and whatever is in those  
16 should be flushed out. And I'll put the plug in  
17 and it was fine.

18 Q. Are you familiar with or ever heard of  
19 taking sprays out and operating with the sprays  
20 missing to flush the drums out?

21 A. No. Not operating them.

22 Q. So I mean have you ever instructed any of  
23 the electricians or mechanics on the face to flush  
24 them that way?

1           A.    No.

2           Q.    And are you aware of it ever being done?

3           A.    No.   The only time that I know of it being  
4 flushed is at the beginning.

5           Q.    If I told you that a longwall electrician  
6 had removed several sprays from each drum and they  
7 operated for the better part of the shift in that  
8 condition, would that surprise you?

9           A.    Why would he remove the sprays from the  
10 drum?  Yes, that would.

11          Q.    I understand that you take care of the  
12 scoops and the shield movers outby?

13          A.    Uh-huh.

14          Q.    Does that include putting them on charge?

15          A.    Uh-huh.

16          MR. McCUSKEY:  Yes?

17          A.    Yes.  But I take care of them.  Generally  
18 the operator puts them on charge but I have put  
19 them on charge.

20          Q.    Are you familiar with where the chargers  
21 were located right prior to the accident?

22          A.    No.

23          Q.    If I told you that the chargers are in the  
24 crosscuts at the mule train between the track entry



1 and No. 3 entry would that sound reasonable to you?

2 A. That sounds reasonable.

3 Q. Is that a common place where they would be  
4 located?

5 A. That's right.

6 Q. We also found a forklift charger up near  
7 the mule train. Are you familiar with the forklift  
8 charger?

9 A. Yes.

10 Q. Is it common for it to be located in a  
11 crosscut also --

12 A. Yes.

13 Q. -- near the mule train?

14 A. Yes.

15 Q. There is also a mantrip charger it appears  
16 on the very outby end of the mule train.

17 A. Uh-huh.

18 Q. Are you familiar with that charger?

19 A. Yes.

20 Q. What's that charger for?

21 A. To charge our mantrip.

22 Q. And so it's common for any of those pieces  
23 of equipment to be on charge at any time during the  
24 shift?

1           A.    Yes.

2           Q.    I understand you took care of the CO  
3 system up on the longwall?

4           A.    Yes.

5           Q.    Do you know, was there CO sensors over in  
6 the track entry?

7           A.    Yes.

8           Q.    Do you know how many were there and where  
9 they were located?

10          A.    I know of one inby and I'm thinking there  
11 was one down around the mule train.  Yes, there was  
12 two that I know of.

13          Q.    You said one inby, can you be more  
14 specific?

15          A.    Let's say about four, five breaks inby,  
16 there was one inby.

17          Q.    Inby the mule train?

18          A.    Uh-huh.

19          Q.    Was there normally one right at the very  
20 inby end of the --

21          A.    Yes, that one there and then another one  
22 inby that one.

23          Q.    And we did find one on, right at the inby  
24 end of the mule train.

1           A.    You did.

2           Q.    Yes, it was still there and we did find  
3 that. We also found one it appears like it was  
4 outby the mule train at about No. 15 crosscut.

5           A.    That would be right.

6           Q.    Why was that one there, do you know?

7           A.    That was put there at the beginning of the  
8 set up. I don't know exactly why it was there. I  
9 don't know.

10          Q.    Were you aware that belt air was being  
11 used on the face of the longwall?

12          A.    No, I wasn't.

13          Q.    Are you aware that belt air is used at the  
14 face, there is extra requirements for CO seal  
15 sensors in your primary escape way?

16          A.    That there is extra requirements from a  
17 seal?

18          Q.    For the CO sensors?

19          A.    At the belt entry?

20          Q.    Also over in the intake entry.

21          A.    Yes.

22          Q.    Did you calibrate the sensors?

23          A.    Yes.

24          Q.    How often did you do that?

1           A.    About once a month.

2           Q.    Also during our investigation we checked  
3 that the gate box, do you know the one I'm talking  
4 about by the gate box?

5           A.    Yes.

6           Q.    Are you familiar with the gate box?

7           A.    Yes.

8           Q.    It has 480 volts going into it that  
9 extends from the power center. Are you familiar  
10 with that?

11          A.    Uh-huh.

12          Q.    We found --

13          A.    Yes.

14               MR. McCUSKEY: You guys may be too close  
15 to each other. You're like having this little  
16 conversation right next to each other. Might be  
17 better if we split you up a little bit.

18               MR. CRIPPS: That's the room.

19          Q.    We've had a bunch of conversations at the  
20 mine.

21          A.    Yes, yes.

22          Q.    Let me get back to it.

23          A.    I'm familiar with the gate box.

24          Q.    The 480 volt circuit that provides power

1 to that gate box it's terminated, the ground  
2 monitor for that circuit breaker is terminated  
3 through a diode. Are you familiar with that at  
4 all?

5 A. Yes. It's terminated, yeah.

6 Q. And the emergency stop switch on that box  
7 is ahead of that diode, does that make sense to  
8 you?

9 A. Yes.

10 Q. And therefore if you hit the emergency  
11 stop switch it opens your pilot water circuit?

12 A. Right, it knocks the power.

13 Q. Knocks the breaker on the ground monitor?

14 A. Right.

15 Q. Are you familiar with that?

16 A. Right.

17 Q. We found a diode on the back of the  
18 receptacle where that cable enters the box  
19 installed between the pilot water and the ground  
20 conductor right where that cable enters the box.

21 A. Uh-huh.

22 Q. In that condition what effect would that  
23 diode have on that circuit?

24 A. In that -- it's connected right straight

1 to the box.

2 Q. Right on the back of the receptacle on the  
3 end of the box there is none.

4 A. Not going through the emergency stop?

5 Q. No.

6 A. Well, if you hit the emergency stop, it  
7 would knock the power.

8 Q. And that's what we --

9 A. We found that.

10 Q. We found that. Did you know that, that we  
11 found that?

12 A. Yeah, I know that.

13 MR. McCUSKEY: What's that?

14 THE WITNESS: I know that.

15 Q. All the stuff that we found we had Shannon  
16 or Danny Lafferty or Dwayne or some of them with us  
17 and so --

18 A. Right.

19 Q. Does that surprise you to hear that that  
20 was in that condition?

21 A. That surprised me.

22 Q. Do you have any idea when that would have  
23 occurred?

24 A. No, I don't.

1 Q. In any of your times up around there on  
2 this panel do you recall seeing anybody working  
3 inside of that enclosure?

4 A. I can't recall.

5 Q. With that diode in there and like you said  
6 when you hit the E-stop it's not going to kill the  
7 power; correct?

8 A. Correct.

9 Q. So if a headgate operator was to hit that  
10 E-stop he would expect that the lights on the face  
11 would go off, wouldn't he?

12 A. Right.

13 Q. But, in fact, if he hit the E-stop with  
14 that diode in there, they would not go off, would  
15 you agree with that?

16 A. I agree.

17 Q. We also found in the tailgate disconnect  
18 enclosure, do you know where that's at up at the  
19 headgate?

20 A. Yes.

21 Q. We found a diode inside of that enclosure  
22 also. However, on that diode only one end of it  
23 was connected.

24 A. To what?

1 Q. It was connected right to the frame.

2 A. Okay.

3 Q. The other end was not connected to the  
4 pilot water in that cable. Any idea why that diode  
5 would be installed in that condition in that box?

6 A. It would be for troubleshooting.

7 Q. What would they need to troubleshoot with  
8 that diode?

9 A. The monitor, circuit ground monitor.

10 Q. The ground monitor?

11 A. (Nodding head.)

12 Q. We else found a diode in the junction box  
13 on board the shear installed in the same  
14 condition. Do you have any idea about that diode  
15 why it would be in there?

16 A. Just for troubleshooting purposes.

17 Q. Are you aware of the E-stop switch on the  
18 shear ever not working?

19 A. No.

20 Q. As I understand, the diode in the junction  
21 box on the shear, if that diode was installed  
22 between the pilot and the ground water that would  
23 have the effect that the E-stop switch on the shear  
24 then would not function, is that the way you



1 understand that?

2 A. That's the way I understand it.

3 Q. So you don't have any knowledge of that  
4 E-stop switch actually ever being bypassed and not  
5 working?

6 A. No, not on this shear.

7 Q. Do you have any knowledge of that  
8 emergency stop switch being changed recently?

9 A. No, I can't recall.

10 Q. We understand that on the day of the  
11 accident the shear had been down for a pretty good  
12 part of the shift and they was working on a ranging  
13 arm. Have you heard anything about that?

14 A. Yes.

15 Q. Have you learned by talking to anybody  
16 that, where the shear was actually worked on that  
17 day?

18 MS. DEEM: I going to object just to the  
19 extent that anything Mr. Bailey says is a result of  
20 anything he learned during the investigation on the  
21 basis of work product doctrine. If he knows  
22 anything that's not connected with the  
23 investigation, of course, that's fine.

24 MR. CRIPPS: Well, I don't think

1 Mr. Bailey has been underground on any of Massey's  
2 investigation team. And so consequently what I'm  
3 asking is just what he's learned by talking to  
4 people at the mine that he's involved with.  
5 Nothing what I'm asking would have been found as  
6 part of Massey's investigation.

7 MS. DEEM: Okay. Thank you.

8 BY MR. CRIPPS:

9 Q. And that's what I'm asking is just during  
10 your conversations with people at the mine after  
11 the accident has anybody told you where the shear  
12 was located when they actually worked on that B  
13 lock?

14 A. Not actually. I've heard it's between big  
15 face and the head, is what I heard. I don't know  
16 exactly. I know they didn't -- I don't know.

17 Q. And I know you wasn't at the mine the day  
18 of the accident to talk to anybody to find out  
19 about it either. So I was just curious if you'd  
20 talked to anybody since then.

21 A. They haven't given me a definite place  
22 where it was at. I wondered and I asked but I  
23 really have not got a definite.

24 Do you know?

1 Q. No, I don't. That's what I keep asking.

2 A. Yeah, I don't know. I don't -- I've heard  
3 that on the head and then they had brought it to  
4 the head to work on it. And I heard they worked  
5 on -- I don't know.

6 Q. I think there was one guy that knows for  
7 sure and he's not talking to us.

8 A. Grover.

9 Q. No, Grover does. But I think Jack Roles  
10 knows.

11 A. Okay.

12 Q. But Jack hasn't told you?

13 A. No.

14 Q. I've got a couple of questions here I want  
15 to ask you and, Delbert, if you feel like answering  
16 them fine, if you don't, fine.

17 The shear when we found it it's down near  
18 the tail gate and we're thinking the accident was  
19 around 3:00 or something like that, getting up near  
20 the end of the shift. After the explosion during  
21 the investigation Grover was located down on the  
22 face at about mid-face. In your experiences  
23 dealing with Grover that time in the shift would he  
24 normally be on the face or where did you normally

1 see Grover near the end of the shift?

2 A. Things change over time. People change,  
3 get new bosses, and I think at this time Grover  
4 would have been on the face with this crew.

5 And it depends on the situations too how  
6 good they're running, what they're running, the  
7 conditions of the face. I kind of think that  
8 Grover would be right there on the face. The times  
9 before now when the things, you know, things  
10 change. At this time I believe he would have been  
11 there.

12 Q. We know that they was down a good a part  
13 of the shift working on that, it was the face side  
14 tail gate ranging arm pin. Are you familiar with  
15 the pin I'm talking about?

16 A. Uh-huh.

17 Q. If they was down for a couple or several  
18 hours working on it who would have been working on  
19 that pin on that crew?

20 A. Grover.

21 Q. Grover would have been there?

22 A. Grover and Nick, a couple of the shear  
23 operators. That's all I would -- that's, yeah,  
24 whoever else was the operator.

1           Q.    But Grover in his capacity as the chief  
2 electrition on that crew, if it's a major breakdown  
3 Grover is the man; is that correct?

4           A.    Grover is the man.

5           Q.    And we know from the 30 minute call out  
6 from the day shift, after they got running they had  
7 a little additional down time later that said  
8 checking tightness of B lock, something along those  
9 lines.  Would that sound like something you would  
10 do that after you got it put in to run for a while  
11 and then recheck the tightness of the pin?

12          A.    I would have checked it when I got back to  
13 the head.  If I had installed it correctly the  
14 first time it'd just -- maybe it was something he  
15 forgot or something.  You know, I don't know why he  
16 would check it.  But, no, if it was installed  
17 properly and everything is tight, go to the tail,  
18 come back and look at it.

19          Q.    That's why I'm asking you because I know  
20 you've got the experience.  After the shear got  
21 running they ran for a while down passed mid-face  
22 and they showed a couple minutes down time just  
23 checking B lock is what the 30 minute call out  
24 said.  With that, do you think Grover would have

1 been the one to check the B lock?

2 A. Yes.

3 Q. And --

4 A. So then he would have been on the face  
5 then, wouldn't he?

6 Q. That's something --

7 A. We weren't there.

8 Q. That's what I'm trying to figure out why  
9 was Grover on the face and to me that makes sense  
10 and, you know, with us being longwall guys, you  
11 know, when you got something like that, your head  
12 mechanic is going to be there.

13 A. Yeah.

14 Q. That's just -- well, that's the lady as we  
15 know that.

16 A. Yeah.

17 MR. CRIPPS: I'm going to take a break and  
18 let Bill ask you a few questions.

19 THE WITNESS: Okay, Mr. Bill.

20 EXAMINATION

21 BY MR. TUCKER:

22 Q. All right. I will be bouncing around a  
23 little bit. Just a couple of things, different  
24 areas there to talk to you about.

1           Just to follow-up on, just to talk about  
2 repaired hinge range pin. Do you know if there is  
3 any cutting or welding done during that repair?

4           A. No.

5           MR. KOERBER: You don't know or, no, there  
6 is not any cutting and welding done.

7           THE WITNESS: I don't know.

8           Q. Have you helped make that repair yourself  
9 in the past?

10          A. No. I put it together but there is no  
11 cutting or welding to put it together and tighten  
12 the B locks on it. But then you weld a cap on the  
13 end of it and we did that on 7th, put a cap on it.  
14 Did he weld the cap, I don't know. I don't know.  
15 Why -- I mean, why did he check the B lock. I  
16 don't know.

17          Q. Would you normally be on the longwall  
18 while they were running?

19          A. No.

20          Q. Occasionally or was you typically outby?

21          A. I was typically outby.

22          Q. Say a couple weeks prior to the explosion  
23 do you recall being on the face while they were  
24 running?

1           A.    I was on the face Tuesday and a couple  
2 weeks before I believe I was.

3           Q.    So on the Tuesday -- did you notice any --  
4 were they having any problems as far as -- was you  
5 around the shear?

6           A.    I was around the shear.

7           Q.    Was they having any problems that you know  
8 of with the water system?

9           A.    No, not that I know of.

10          Q.    Did you happen to be there maybe while  
11 they were bitting up?

12          A.    Yes, I was there one time while they were  
13 bitting up.

14          Q.    Do you recall if they were having any --  
15 do you recall having any issues with the sprays?

16          A.    No.

17          Q.    As far as stopping up or missing or  
18 anything?

19          A.    No.

20          Q.    In your opinion as far as being around  
21 a longwall, would there be any reason to take the  
22 spray out and just leave it out?

23          A.    Not on the drum.

24          Q.    I think during your last interview you



1 mentioned like being up there on that Tuesday, and  
2 saw the curtain there in No. 3 entry on the head  
3 gate side blowing outby --

4 A. Yes.

5 Q. -- do you recall that?

6 A. (Nodding head).

7 Q. Do you have any idea what was going on  
8 with that while -- was that unusual for it to be  
9 coming outby instead of blowing inby?

10 A. Yes.

11 Q. Do you know what was done to correct that  
12 condition?

13 A. No.

14 Q. I think the day on your last interview you  
15 was talking about some problems they was having  
16 there with the track there just inby Ellis portal,  
17 you went in to help them some?

18 A. Yes.

19 Q. Do you recall a set of trap doors, air  
20 lock doors?

21 A. No.

22 Q. Just inby Ellis portal 11 or 12 brakes had  
23 been installed?

24 A. There was doors -- there was doors there.

1 There've been doors there.

2 Q. Had they --

3 A. Yes.

4 Q. -- been there quite a while?

5 A. Yes.

6 Q. How did they use those doors?

7 A. I don't know.

8 Q. Did you normally see them open or shut?

9 A. Both.

10 Q. And just say within the last month, couple  
11 weeks or month prior to the explosion, had you saw  
12 them both ways open and shut?

13 A. I can't recall. I can't recall how that  
14 went. And I remember opening the doors and I  
15 remember shutting them.

16 Q. Normally when you'd go in would the crews  
17 already be underground?

18 A. No, I would catch someone in.

19 Q. You would ride in with the mantrip?

20 A. Uh-huh. Sometimes the longwall mantrip  
21 would be too crowded and I would catch headgate 22  
22 and I would ride in with them.

23 Q. You're aware that the construction that  
24 was taking place there for the setup for the new

1 longwall?

2 A. Yes.

3 Q. And they were having to cut some top there  
4 with belt channels?

5 A. Yes.

6 Q. Do you recall any dust coming from that  
7 project while they were cutting that top?

8 A. Yes.

9 Q. Did it come out onto the -- which way did  
10 it travel, to the best of your recollection?

11 A. I just remember coming through there one  
12 time and it was so dusty we could hardly see.

13 Q. Was the dust going -- go ahead.

14 A. I can't recall which direction. I just --  
15 it was -- it may not even have been moving. I  
16 can't recall. I just know it was dusty.

17 Q. Was it dusty like from the construction  
18 site until you got all the way outside?

19 A. No.

20 Q. Did you run into any dust say at Ellis  
21 switch?

22 A. It was right after we passed Ellis switch.

23 Q. Had you ever seen any unusual dust say  
24 from 78 coming towards Ellis?

1           A.    No.

2           Q.    So it's just that one time you say that  
3 you --

4           A.    Just that one time.

5           Q.    -- ran into --

6           A.    Uh-huh.

7           Q.    Sometimes you say you rode in with the  
8 headgate 22 section?

9           A.    Yes, sir.

10          Q.    Just listening to them talk on the way  
11 in -- and sometime would you ride out also?

12          A.    Yes.  I would ride in with them and I'd go  
13 up where the longwall was and I'd do what I needed  
14 to do there, work on the hollow or whatever.  And  
15 then I would catch Jack Roles, Everett or somebody  
16 else back out, whoever was up there because there  
17 was no room.

18          Q.    Right.

19          A.    You got to get out.

20          Q.    Whoever was coming by close to quitting  
21 time?

22          A.    Right.

23          Q.    Do you recall hearing conversations from  
24 guys on 22 headgate about ventilation problems?

1           A.    No.

2           MR. TUCKER:  That's all I have for right  
3 now.

4                               EXAMINATION

5 BY MR. BECK:

6           Q.    Delbert, I want to try and clear up a  
7 date.  Performance Coal, when you speak of  
8 Performance Coal you're speaking of Upper Big  
9 Branch Mine or is there any other mines that are  
10 Performance Coal?

11          A.    Upper Big Branch Mine is Performance Coal.

12          Q.    Do you know when Massey acquired property  
13 from Peabody to set up what is now Performance Coal  
14 and I guess Marfork and the rest?

15          A.    I'm thinking it was '85.  And I'm not for  
16 sure but I'm thinking it's '85.  And then I think  
17 they started longwall up in '87.

18          Q.    I'm pretty sure it was '94.

19          A.    Am I getting my centuries mixed up?  Maybe  
20 I am.

21          Q.    I think.

22          A.    Yeah.

23          Q.    But I'm pretty sure of the date --

24          A.    Yeah.

1 Q. -- 1994.

2 A. You are right. I'm glad you correct me on  
3 that.

4 Q. I just wanted to --

5 A. That is right. I'm glad. Good catch  
6 right there. Time flies.

7 Q. Yes. Now you were at the Ellis portal on  
8 the day shift; right?

9 A. Yes, sir.

10 Q. And do you know if there was a rock dust  
11 crew on the day shift that their responsibility was  
12 to rock dust various parts of the mine?

13 A. No.

14 Q. There wasn't, is that what you're saying?

15 A. On the Ellis portal, I don't know of one  
16 on the Ellis portal.

17 MR. McCUSKEY: I think he's asking you was  
18 your answer I don't know or no?

19 A. And the question was if I was aware of a  
20 rock dust crew?

21 Q. Yes.

22 A. No, I'm not aware.

23 Q. When you traveled in and out of the mine  
24 you talked about you'd catch a ride or mantrips,

1 whatever, in your travels other than the doors that  
2 Bill spoke to you about there at the construction  
3 site near Ellis, did you ever come across any doors  
4 that were left open?

5 A. No.

6 Q. Any doors that were damaged that wouldn't  
7 close completely?

8 A. They were damaged but they were closed.  
9 They weren't damaged to where they couldn't close.  
10 They were damaged, but they would close.

11 Q. And part of what you took care of were I  
12 believe were scoops and shields over outby?

13 A. Uh-huh.

14 Q. And would that be outby on the longwall?

15 A. Yes, sir.

16 Q. Were any of the scoops equipped with rock  
17 dusters?

18 A. No.

19 Q. Do you know of any scoops in Upper Big  
20 Branch that were equipped with a rock duster where  
21 it could be used to rock dust a section?

22 A. I haven't been on the sections. And I  
23 wouldn't know. I would not know.

24 Q. But the scoops that you were responsible

1 for --

2 A. Just the one on the longwall.

3 Q. -- it did not have a rock duster?

4 A. No, I don't recall a rock duster on that  
5 scoop.

6 Q. And then in your longwall experience if  
7 the shear had a spray missing out of a drum, a drum  
8 had a spray missing out of it, would that  
9 necessitate the shear being shut down?

10 A. No.

11 Q. If it had two or three missing?

12 A. Yes.

13 Q. What number is the number that says we  
14 need to shut the shear down, replace the spray?

15 A. I wouldn't know.

16 Q. But with one it wouldn't necessitate it  
17 being shut down?

18 A. No, they would put it in. They would  
19 install it when it got to the head while they were  
20 setting bits.

21 MR. BECK: That's all I have.

22 EXAMINATION

23 BY MR. TUCKER:

24 Q. I want to clarify just one in my mind



1 here. We was talking about those track doors on  
2 Saturday when you went in to help work on the track  
3 on that particular, on a Saturday the before  
4 Easter, if you can remember.

5 MR. McCUSKEY: This is from the first  
6 interview, you're relating that testimony?

7 MR. TUCKER: Yes.

8 Q. During your first interview you talked  
9 about going in and they was having some problems  
10 with the track and you went in to help them on some  
11 repairs.

12 A. Yes. What's the question?

13 Q. And my question is: On that Saturday did  
14 you go by the area where those doors are installed  
15 next to Ellis portal?

16 A. I can't recall where that track was in two  
17 at. I can't -- and I can't recall going past no  
18 doors, opening door or getting -- getting to repair  
19 the track.

20 Q. So you're not sure if you went by them or  
21 not, if they were open or shut --

22 A. Right.

23 Q. -- is that correct?

24 A. I'm not sure.

1 MR. TUCKER: Thank you.

2 MR. CRIPPS: You doing okay?

3 THE WITNESS: Yeah, and you?

4 MR. CRIPPS: I'm okay, but I had a break  
5 you haven't. We'll plug along then.

6 EXAMINATION

7 BY MR. CRIPPS:

8 Q. In your experience on the longwall, do  
9 they ever run the shear without water turned on  
10 it?

11 A. No.

12 Q. Is there any -- would there be any reason  
13 to run it without water, to your knowledge?

14 A. No.

15 Q. You're familiar with the fire suppression  
16 on the shear?

17 A. Yes.

18 Q. Are you aware that we found it  
19 non-functional?

20 A. Yes.

21 Q. Do you have any thoughts about when those  
22 conditions occurred?

23 A. No.

24 Q. Are you familiar with the conditions I'm

1 talking about?

2 A. The handle off.

3 Q. The handle off, the tailgate arm and the  
4 valve off of the headgate arm?

5 A. I learned about the valve today. I did  
6 not know about the valve until today.

7 Q. Were you aware where those valves were  
8 located on the shear?

9 A. Yes.

10 Q. So you was not aware that the system was  
11 not functional?

12 A. No.

13 Q. In your first interview you talked about  
14 an experience sometime in 2003 or 2004 where a  
15 large amount of Methane came on the face that you  
16 was working on, do you recall that?

17 A. Yes.

18 Q. In that first interview you mentioned that  
19 there was enough longwall that it actually  
20 activated the Methane monitor on the shear and  
21 caused the shear not to function?

22 A. Yes.

23 Q. Is that your recollection?

24 A. Yes.

1 Q. During that incident, if you can remember,  
2 can you kind of tell me what transpired after the  
3 gas come on the face and what you guys had to do in  
4 response to it?

5 A. The shear stopped. They tried to figure  
6 out what was wrong. And then somebody noticed the  
7 Methane monitor flashing. And they said something  
8 is wrong with the Methane monitor. They took the  
9 detector up and checked, no, we're gassing off.

10 So the Methane Monitor shear gassed off  
11 and then after a little bit the line shut off. And  
12 then when the line shut off you can hear. You  
13 heard a roaring sound in behind the shield. That's  
14 where the gas was coming from, from beside the  
15 shield.

16 Q. What happened after the gas was found?

17 A. It was about the exchange of shift and  
18 hoot owl was coming on and we stopped everybody.  
19 And we checked our tools. What strikers we had, we  
20 taped up. And we eased off the line and went down  
21 and knocked the power.

22 Q. You said someone used their spotter and  
23 checked that they was, was gassed off.

24 A. Uh-huh.

1 Q. Whoever that person was when they got  
2 upwind of the shear up end where the gas was coming  
3 out of behind the shields, was you gassed off there  
4 also?

5 A. No.

6 Q. I'm going to try to describe that. The  
7 gas then was located from where it was actually  
8 coming out of the mine floor towards the tailgate  
9 into the longwall face?

10 A. Uh-huh. Yes.

11 Q. And so when you went to the mule train and  
12 killed the power to the face, you did not have  
13 Methane out at the mule train?

14 A. No.

15 Q. Do you recall how long this condition  
16 actually existed before you was able to go back to  
17 producing coal?

18 A. No.

19 Q. Do you think it was over a shift?

20 A. It was over a shift.

21 Q. What transpired in that time?

22 A. I can't recall.

23 Q. Was there people up there monitoring, do  
24 you recall?

1           A.    This was on the evening shift, on the hoot  
2 owl shift, and it's a change of shift and then the  
3 hoot owl came on and I don't know who was in charge  
4 and I don't know what they did.  But I know the  
5 next day we were hanging curtains and I'm not for  
6 sure if it was the next day.  I don't know.  But I  
7 know we hung curtain to deflect as much air up to  
8 the ceiling as we could.

9           Q.    When you say you hung curtain, did you  
10 hang curtain on the face?

11          A.    On the jack -- yeah, on the jack lines up  
12 to keep all the air from going in behind one and  
13 two shield and going that way, divert it as much as  
14 we could that way.

15          Q.    And you'd hang it then -- you're hanging  
16 it from the headgate into the face down to the  
17 location where the Methane was coming out of the  
18 box?

19          A.    Uh-huh.

20          Q.    So when you was hanging that curtain was  
21 you guys, in fact, working in Methane?

22          A.    No.  We was outby the Methane.  And I  
23 wasn't the one hanging the curtain.  You know,  
24 that's just what -- the next day that's what was

1 there.

2 Q. And so the Methane then was going with the  
3 flow of the air --

4 A. Uh-huh.

5 Q. -- towards the tailgate?

6 A. Uh-huh. Yes.

7 Q. And I know you haven't been down to the  
8 longwall face. I've got just a couple questions  
9 about the longwall face.

10 This is just a drawing of the face showing  
11 general location of the shear. The tailgate drum  
12 on the shear is actually, is cut out from the  
13 longwall block. Have you seen any of the pictures  
14 --

15 A. Yes.

16 Q. -- that the guys have taken?

17 A. Yes.

18 Q. In your experience on the longwall, have  
19 you ever seen or known of a shear being stopped  
20 right there and operators or somebody setting bits  
21 and working on water sprays in that location?

22 A. Not right there.

23 Q. Why would that be?

24 A. They're not in under support.

1 Q. So in your opinion, with the shear parked  
2 right there would it have been so they could set  
3 bits right there?

4 A. If they were just going to set it on one  
5 end. If they were going to set the bits on the  
6 head end, they could do that but they couldn't do  
7 it on both ends. But normally if they do set bits,  
8 they do both ends. They would back up to here.  
9 But I don't know -- can I ask a question?

10 Q. Surely.

11 A. Were these shields pulled in?

12 Q. No.

13 A. They weren't setting bits then.

14 Q. Of course, you know the shear operators  
15 were not actually located at the shear after the  
16 accident. They was down at about 105 shield. And  
17 so naturally the question is why is the shear there  
18 and the operators are a good ways from it.

19 In your first interview I think that was  
20 brought up a little bit and you mentioned that  
21 perhaps a shear broke down or they had a problem at  
22 mid face with the cable, which would explain that.  
23 During our investigation we checked the cable and  
24 the cable was okay. The cable is fine.



1           A.    Sometime I've known them to claim a pass  
2 you got to cut out.  They would cut out and then  
3 leave, end of shift.

4           Q.    Describe what you mean by cutting out?

5           A.    Just after they cut out at the end of the  
6 pass, at the end just cut out.  I've seen them do  
7 that before.  Whether this is the case or not and  
8 if it was in three or something, I would say they  
9 still had more time to run but that wouldn't have  
10 been the case this time, I don't think.

11          Q.    Because the oncoming crew was still out at  
12 Ellis portal so they was --

13          A.    Right.  They still had time to get back to  
14 mid cutting, where they were cutting.

15          Q.    And if that crew had walked of the face at  
16 3:00 and left the shear there --

17          A.    They would have been setting.

18          Q.    -- they would have been in trouble, do you  
19 agree with that?

20          A.    I agree.  But I'm just trying to figure  
21 this out too.  Just a thought in my head.

22          Q.    And I appreciate any thoughts you can come  
23 up with, Delbert.

24                In all of your experience on the longwall,

1 not just this one, just all of your experience,  
2 have you had any talks or any thoughts about, hey,  
3 if something happens on this face, how am I getting  
4 out of here?

5 A. Yes.

6 Q. I would like just to -- if you had an  
7 emergency on the longwall and you had to evacuate  
8 quickly, tell me how you was going to get off that  
9 face?

10 A. It ain't but one way.

11 Q. Which way is that?

12 A. Towards the head.

13 Q. Can you get off the tailgate?

14 A. I couldn't with the shear right there. I  
15 don't think.

16 Q. Why is that?

17 A. There is not enough room. If I was going  
18 to get off the tailgate, the shear would have to  
19 not be on the tail. With the shear not on the tail  
20 I could get out there. If something had happened  
21 out here, I could go that way. If it's not fell  
22 in.

23 Q. Right. Say, for instance, you get a fire  
24 out there on the mule train and as I understand the

1 way the ventilation is on the longwall, if you've  
2 got a fire the air that's ventilating the mule  
3 train is going to come down the face. If you was  
4 near the tailgate, do you think possibly you'd try  
5 to get off the tailgate?

6 A. I'd squeeze through a hole somewhere.

7 Q. I will tell you that the shear there we've  
8 been on and off this face many times through the  
9 tail, but squeezing through the hole is a very good  
10 analogy.

11 A. It's tight there, right?

12 Q. It's tight, yes.

13 Yes, in fact, sometimes I wonder if Danny  
14 Lafferty is going to make it through there or not.  
15 But, yes, it is tight.

16 Say you had an event out here in this  
17 tailgate entry and you're down there, which way are  
18 you going to go off the face?

19 A. Toward the head.

20 MR. CRIPPS: I appreciate that, Delbert.

21 MR. KOERBER: You guys got anything else?

22 EXAMINATION

23 BY MR. TUCKER:

24 Q. I had one question. I've just noticed I

1 had a note here and I missed it.

2 I noticed reading your transcript, we was  
3 talking a little bit about that Tuesday that you  
4 was on the face and during your first interview you  
5 described that you thought that it was a little  
6 more dusty than normal. Can you describe that, how  
7 would you describe that?

8 MR. McCUSKEY: Would I be correct that,  
9 reviewing the transcript and we're not quoting from  
10 it, but I think he said near the tail but you  
11 correct me if I'm wrong about that.

12 MR. TUCKER: No, he mentioned he was on  
13 the tail.

14 McCUSKEY: Is --

15 MR. TUCKER: That's correct, yes.

16 Q. When you were on the tail you noticed that  
17 it was more dusty than normal, how would you  
18 describe that dust as far as it was moving, what  
19 direction, was it lingering, just if you can try to  
20 remember how it was.

21 A. Being on the tail that would be between  
22 176 to 154, or it could be between 146 to 170,  
23 that's the tail. That area down there. I was down  
24 there straightening up sideboards while the shear

1 was down here cutting out, and I was on the outby  
2 end of the shear and it was dusty. Dusty right  
3 there at the shear. It was dusty and not moving as  
4 well as it does out here close to the head, closer  
5 to the head or mid-face.

6 Q. Do you recall how it was caving in behind  
7 the shields? Did you pay any attention to that at  
8 all?

9 A. No. No.

10 Q. So from where you were at, I mean right  
11 there all the way down at the tail where you go  
12 into the actual tail entry, you couldn't tell which  
13 way the air was going, what it was doing right  
14 there in that area?

15 A. No. No. I probably -- I didn't go passed  
16 170. And that's -- you know, I was around in this  
17 area here because I remember -- I might not have  
18 gone that far. I just remember them, you know,  
19 cutting and I just -- it was a little dustier than  
20 normal. Or they were cutting a lot of rock, I  
21 didn't pay that much attention I just noted that.

22 Q. Which we know the cutting was hard on the  
23 tail. Do you happen to notice the shear itself  
24 hitting in the top, what it looked like?

1           A.    No.

2           MR. TUCKER:  Thank you.  I don't have  
3 anything else.

4           MR. CRIPPS:  I think I'm done.

5           MR. KOERBER:  Do want to take a brief  
6 break?

7           MR. CRIPPS:  Yes, let's take a quick  
8 break.

9   (Break.)

10           MR. KOERBER:  I would like to go back on  
11 the record and I would like to state for the record  
12 that during the early part of the interview Polly  
13 Hampton left and that a new person took her place  
14 and I would like him to identify himself and who  
15 he's with.

16           MR. BAXTER:  Derek Baxter.  Office of the  
17 Solicitor Department of Labor.

18           MR. KOERBER:  Go ahead.

19   EXAMINATION

20 BY MR. CRIPPS:

21           Q.    Just a couple of quick question I hope,  
22 Delbert.

23   Your CO system up on the longwall.

24           A.    Uh-huh.

1 Q. Did it have an alarm near the longwall  
2 tail?

3 A. Yes, it did.

4 Q. Was it visual and audible alarm?

5 A. Yes, it was.

6 Q. Are you familiar with the construction  
7 section out around the Ellis portal?

8 A. I wasn't at the time.

9 Q. At the time of the explosion you mean?

10 A. Right. I am now.

11 Q. But on the early part of April you was not  
12 familiar with that section?

13 A. All I knew that they were cutting up, out  
14 a place to set a belly. And they were bringing  
15 equipment in. That's all I know about.

16 Q. I think you mentioned either in this  
17 interview or your previous interview that you had  
18 noticed some change in the ventilation on the  
19 longwall.

20 A. Yes.

21 Q. Do you know, did the ventilation change  
22 coincide with the start of this construction  
23 section or when they was cutting the overcast?

24 A. No.

1 Q. Let me rephrase that. Is that, you don't  
2 know or did not?

3 A. I did not know with it, coincide with the  
4 Ellis construction. The ones that I knew about was  
5 when they started the section beside the longwall.

6 Q. That would be the tailgate 22 section?

7 A. Yes. They had to do some work there to  
8 get that. What they did, I don't know. I know  
9 they worked on ventilation.

10 MR. CRIPPS: That's all I have.

11 MR. KOERBER: Bill? Jim?

12 MR. BECK: I don't have anything else.

13 MR. KOERBER: Anybody else?

14 Mr. Bailey, at this time if there is  
15 anything you would like to clarify, anything you  
16 would like to add, any statement you would like to  
17 make, anything you would like to say, the floor is  
18 yours, if you have anything you would like to say.

19 THE WITNESS: Do you all know what  
20 happened?

21 MR. CRIPPS: We have some thoughts on it,  
22 yes. And we've actually made some of those  
23 thoughts public to the press and to the families.

24 THE WITNESS: Did it happen on the tail of



1 the shear, right there at the tail entry?

2 MR. CRIPPS: We feel that it did. Yes.  
3 We feel that's where the initial ignition started.

4 MR. BAXTER: We're still reviewing the  
5 evidence, of course. So that's --

6 MR. CRIPPS: Right. That's what we said  
7 during the family meeting, what we told the  
8 families then and what we told the press.

9 THE WITNESS: Okay.

10 MR. McCUSKEY: I don't have any  
11 clarification questions to ask.

12 THE WITNESS: I'm fine. I'm good.

13 MR. KOERBER: With that we'll go off the  
14 record.

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1 STATE OF WEST VIRGINIA, To-wit:

2 I, Magdalena Szczerba, a Notary Public and  
3 Court Reporter within and for the State aforesaid,  
4 duly commissioned and qualified, do hereby certify  
5 that the interview of DELBERT RAY BAILEY was duly  
6 taken by me and before me at the time and place  
7 specified in the caption hereof.

8 I do further certify that said proceedings  
9 were correctly taken by me in stenotype notes, that  
10 the same were accurately transcribed out in full  
11 and true record of the testimony given by said  
12 witness.

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

20 My commission expires the 26th day of June,  
21 2017.

21 Given under my hand and seal this 7th day of  
22 March, 2011.

23 \_\_\_\_\_  
24 Magdalena Szczerba  
Court Reporter  
Notary Public