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**WEST VIRGINIA MINE SAFETY AND HEALTH
ADMINISTRATION**

IN THE MATTER OF:

**THE INVESTIGATION OF THE
APRIL 5, 2010 MINE EXPLOSION
AT UPPER BIG BRANCH MINE**

**The interview of DAKOTA A. DAVIS, taken upon
oral examination, before Jenny Marmol, Court
Reporter and Notary Public in and for the State of
West Virginia, Friday, February 25th, 2011, at 1615
Washington Street East, Charleston, West Virginia.**

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1 MR. TUCKER: My name is Bill Tucker, with
2 Office of Miners' Health, Safety and Training.

3 Today is February 25th, 2011.

4 I'll ask that the other team members and
5 representatives around the table to identify
6 themselves, please.

7 MR. BABINGTON: Matt Babington. I'm an
8 attorney with the Department of Labor.

9 MR. CAUDILL: Steaven Caudill, Mine Safety
10 and Health Administration.

11 MR. MAGGARD: Jasey Maggard with MSHA.

12 MR. CRIPPS: I'm Dean Cripps with MSHA.

13 MR. MCGINLEY: I'm Patrick McGinley with
14 The Governor's Independent Investigation Team.

15 MR. TUCKER: Okay. Dakota, the court
16 reporter that we have here today is with Johnny
17 Jackson & Associates.

18 They'll have your transcripts ready to
19 review after three business days. So probably
20 after Wednesday of next week you'll have an
21 opportunity, if you want to go in and review your
22 transcript, make any corrections on an errata sheet
23 with your attorney, you'll have an opportunity to
24 do that.

1 You can't take the transcript with you,
2 but you can review it for a mistake.

3 It's not something you have to do, but you
4 have that right if you choose to do that.

5 MR. MCCUSKEY: Like we did on this one.

6 MR. TUCKER. We'll take a break any time
7 you want for whatever reason. If you need a break,
8 you just tell us and we'll be glad to do that.

9 We would ask that you not discuss your
10 testimony with anybody outside of the room here
11 today. That's just to protect the integrity of the
12 investigation.

13 At this time, I'll turn it over to Matt.

14 MR. BABINGTON: Mr. Davis, I have a letter
15 here for you from Norman Page. It basically
16 describes the background of protocols for the
17 interview here today. I'll just note that it's
18 substantially the same as the letter that you
19 received for your first interview.

20 MR. MCCUSKEY: But go ahead and take a
21 look at it for a minute, because it isn't exactly
22 the same.

23 MR. TUCKER: I am going to go off the
24 record for a second while he reviews that.

1 MR. MCCUSKEY: Okay.

2 (Break.)

3 MR. TUCKER: I would ask at this time if
4 the court reporter would swear in the witness.

5 DAKOTA A. DAVIS, DEPONENT, SWORN

6 MR. TUCKER: Dakota, would you state your
7 full name and spell your last, please.

8 THE WITNESS: Dakota Anthony Davis,
9 D-a-v-i-s.

10 MR. TUCKER: Could you state your address
11 and telephone number?

12 THE WITNESS: [REDACTED]

14 MR. TUCKER: Do you have an attorney here
15 with you today.

16 THE WITNESS: Yes.

17 MR. TUCKER: I would ask that you identify
18 yourself and who you're with.

19 MR. MCCUSKEY: Yes, sir. John McCuskey,
20 the law firm of Shuman, McCuskey & Slicer. I'm
21 counsel for Dakota Davis.

22 MR. TUCKER: He is your client; correct?

23 MR. MCCUSKEY: He is my client, yes, sir.

24 MR. TUCKER: Okay.

1 Dakota, I think we gave you one of these
2 at your last interview, but, you know, you're
3 protected by law for cooperating in an
4 investigation like this, as far as being
5 discriminated against.

6 So I'm going to give you some contact
7 information from the board that would hear your
8 claim if you feel that you have been discriminated
9 against.

10 You have -- if that were to occur, you
11 have 30 days from the time it occurs to file your
12 claim.

13 I'm also going to give you a card for
14 Johnny Jackson & Associates where you can contact
15 them, as far as reviewing your transcript.

16 And I'll give you one of my cards in case
17 something comes up after today that you think might
18 be relevant to the investigation, just the contact
19 information where you can contact myself or Norman
20 Page. Matt has given you his information.

21 Also, just show you these here. I would
22 like to enter these as exhibits. This is a
23 subpoena served for you to be here today. Then
24 your attorney, he signed the Acceptance of

1 Service.

2 So I just wanted you to look at those for
3 a second, then we'll enter those as exhibits. Here
4 is that information.

5 Matt, I'll let you go over a few things,
6 and then we'll get started.

7 MR. BABINGTON: Sure. We're going to go
8 ahead and mark the copy of the subpoena as Davis
9 Exhibit 1.

10 (Exhibit No. 1 marked for
11 identification.)

12 MR. BABINGTON: And a copy of the
13 Acceptance of Service as Davis Exhibit 2.

14 (Exhibit No. 2 marked for
15 identification.)

16 MR. BABINGTON: Mr. Davis, I just want to
17 remind you of a few things before we get started.

18 One is, you're going to be asked yes-or-no
19 questions. As much as possible, try to remember to
20 affirmatively say "yes" or "no," rather than
21 "uh-huh," "uh-uh," shaking your head, any of that
22 stuff.

23 And also, please wait for the interviewer
24 to complete asking his questions before you start

1 answering.

2 And I'm going to remind the interviewers,
3 also, to wait for Mr. Davis to complete answering
4 the question before you start asking the next one.
5 That way we don't have people talking over each
6 other. It makes for a cleaner transcript.

7 Thank you.

8 EXAMINATION

9 BY MR. TUCKER:

10 Q. Dakota, I'll start off with a few
11 questions for you, and then we'll kind of pass it
12 around the table and a couple other gentlemen will
13 be asking you some questions.

14 I would say that we definitely appreciate
15 you being here today and answering our questions.

16 If you would, just, on a normal day, when
17 you arrive on the section, when you first arrive on
18 the section, could you just kind of describe what
19 you do from the time you get to the end of the
20 track?

21 A. Say a prayer, then go get my packman and
22 head up to the line.

23 Q. What shift do you normally work?

24 A. We was on swing.

1 Q. Swing? So if you're on the evening shift
2 and, say, the day shift is working, how would that
3 work as far as -- would you relieve them out? What
4 job title did you have?

5 A. Head end shear operator.

6 Q. Okay. So the shear operator on a normal
7 day, when you start, you know, down the longwall
8 face, would you usually relieve the other shear
9 operator out on the jack line?

10 A. Yes.

11 Q. Okay. And if they were having any
12 problems or whatever, they would share that with
13 you?

14 A. Yes, sir.

15 Q. Okay. What was the last shift you worked
16 prior to April 5th?

17 A. It would be the Saturday evening shift.

18 Q. Okay. On that particular shift, when you
19 talked to the day shift, did they seem to be having
20 any unusual problems, or did everything seem
21 normal?

22 A. Everything seemed normal.

23 Q. Now, on your shift, once you started and
24 you all started, you know, you were producing coal,

1 did you notice anything unusual throughout your
2 shift?

3 A. No. It was real warm and it got real
4 dusty towards the tail there, but that was about
5 it.

6 Q. Okay. The dust you're talking about
7 toward the tail --

8 A. It would be coal dust.

9 Q. Okay. So when you're cutting out there,
10 and that dust is, I guess, kind of hanging, you say
11 it gets pretty dusty, could you tell which
12 direction the dust was moving?

13 A. It was going outby. Well, towards the
14 gob.

15 Q. Okay. So that will be -- it would be
16 going, you say, toward the gob?

17 A. Yes.

18 Q. If you're in the jack line, facing in the
19 jack line, looking down towards the tail, it would
20 been pulling to the right?

21 A. Yes.

22 Q. Which would be toward the gob?

23 A. (Witness nods.)

24 Q. Okay. As the shear operator, I'm sure

1 oftentimes you -- part of your job duties would be
2 to change bits?

3 A. Yes, sir.

4 Q. Okay. When you're changing bits, how do
5 you decide if one needs replaced?

6 A. When they're pretty good wore -- like
7 after -- I don't know. It's hard to describe.
8 Like, it will be, like cut off on the end or
9 something and you would change them.

10 Q. Okay. As far as the tip on the end of the
11 bit, did that have any bearing on whether you
12 changed the bit or not?

13 A. Yeah. Like, if the tip ain't there no
14 more, we change it. Like, I don't know how to
15 explain it.

16 Q. Right. But if the tip was there, if the
17 tip at the end of the bit was still there, then you
18 necessarily wouldn't change that one?

19 A. Wouldn't change it.

20 Q. Okay. While you was changing bits, did
21 you ever notice missing sprays?

22 A. Sometimes.

23 Q. Sometimes. How often? I mean, do you
24 have an idea of is that something that regularly

1 happened every shift?

2 A. No.

3 Q. Okay. Can you recall what is the most
4 amount of bits that you saw out at any one given
5 time, or I'm sorry, most amount of sprays that you
6 saw out at any one given time?

7 A. Probably about five.

8 Q. Okay. When you would see those out, would
9 you always replace them, or would -- if you --
10 would you always have sprays to replace them on it?

11 A. Yes. We would have our electrician come
12 up there and put the sprays in.

13 Q. Okay. Typically, the electrician or
14 maintenance person would be the one that would
15 replace sprays?

16 A. Yes.

17 Q. Did you ever replace any yourself?

18 A. A couple.

19 Q. A couple.

20 MR. TUCKER: Okay. That's all I have for
21 right now. I'll pass it off to one of these other
22 gentlemen.

23

24

EXAMINATION

1
2 BY MR. CRIPPS:

3 Q. Okay, Cody. I appreciate your coming in
4 also.

5 I read your first transcript, so I'm going
6 to try not to repeat those same questions, but
7 there's a few areas that I want to -- I had a
8 couple questions I want to clarify a little bit.

9 First off, let me explain, I'm from
10 Mountain, Illinois. Some of my terminology and
11 your terminology is a little different. So if I
12 ask you a question and you don't understand what
13 I'm talking about, by all means, speak up.

14 A. All right.

15 Q. Because I've already got a question for
16 you. You said you're a head entry operator?

17 A. (Witness nods.)

18 Q. Is that -- are you, in fact, a shear
19 operator?

20 A. Shear operator.

21 Q. And you operate the headgate end of the
22 shear?

23 A. Yes.

24 Q. Is that what that means?

1 A. (Witness nods.)

2 Q. Okay. How many operators, shear
3 operators, are there on the face?

4 A. There's two on each shift.

5 Q. Okay. And so you have an operator that
6 operates the head end?

7 A. And the tail end.

8 Q. Okay. And you operate the head end?

9 A. Uh-huh.

10 Q. Okay. Who operates the tail on your
11 shift?

12 A. Chad Brown.

13 Q. Okay. Very good.

14 I'd like to get a little more information
15 about your work history. If you would, can you
16 tell me when you actually started in the mines?

17 A. It was June 20 to the end of that month
18 there, in 2008.

19 Q. So you started in the mines in June of
20 '08?

21 A. (Witness nods.)

22 Q. And that was at Logan's Fork?

23 A. Yes.

24 Q. Okay. What job did you do at Logan's

1 Fork?

2 A. I was a shield tech.

3 Q. Okay. And you did that the entire time
4 you was at Logan's Fork?

5 A. I did it and I -- outby, pull out. I
6 helped them put up screen and all that on top, mesh
7 wire.

8 Q. You did that while the longwall was
9 running?

10 A. No, I was on hoot owl.

11 Q. Okay. So at Logan's Fork you worked third
12 shift?

13 A. Uh-huh.

14 Q. The whole time you was there?

15 A. Yes.

16 Q. Okay. When did you leave Logan's Fork and
17 come to UBB?

18 A. I think it was in August.

19 Q. What did you do when you first got to UBB?

20 A. I put in -- set props on -- towards the
21 Bandytown fan there.

22 Q. So you worked underground?

23 A. Yes.

24 Q. Okay. We talked --

1 MR. BABINGTON: I'm sorry, Dean.

2 That's August 2009?

3 THE WITNESS: Pretty sure it was.

4 MR. BABINGTON: Go ahead, Dean. Sorry.

5 Q. We've talked to some people that come back
6 from Logan's Fork and worked on the surface
7 repairing shields. Did you do any of that?

8 A. No.

9 Q. So your first day back at UBB, you was
10 underground?

11 A. Yes.

12 Q. What shift was you on?

13 A. The evening.

14 Q. Okay. Do you recall when the longwall at
15 UBB started up?

16 A. No.

17 Q. When did you start operating the shear?

18 A. Probably about two months before -- it
19 would be April, March -- probably around February
20 something.

21 Q. Okay. So that would have been February of
22 2010.

23 At your time at UBB by the time -- from
24 the time you got to UBB to when you started

1 operating the shear, what jobs did you do?

2 A. I was outby for about a week, and then I
3 went to just a shield -- jack setter.

4 Q. Okay. And so that would have been on a
5 production crew?

6 A. Yes.

7 Q. Okay. Who was your boss on that crew?

8 A. Rick Lane.

9 Q. Okay. And so whenever you took the job as
10 a shear operator, did you change crews?

11 A. Yes.

12 Q. Okay.

13 A. Well, whenever I was outby, my boss was
14 Rick Lane. Then I got switched to a different crew
15 where I became a jack setter, and my boss was a --
16 I can't think of his name. He got fired from
17 there, and then Kevin Medley took his spot. Kevin
18 Medley is my boss.

19 Q. Okay. So when you was on Rick Lane's
20 crew, you was working --

21 A. Outby.

22 Q. -- outby. Is that the longwall utility?

23 A. Yes.

24 Q. Okay. But then when you started being a

1 jack setter you went onto the --

2 A. Next crew --

3 Q. The other crew?

4 A. The other crew.

5 Q. Would that have been Lawrence Stevens or
6 Stevenson?

7 A. Yeah.

8 Q. Okay. If you would, explain to me the
9 process of making a cut from the headgate towards
10 the tailgate. And what I'm looking for in general
11 is the location of the shear operators, the jack
12 setter, the position of each drum on the shear.

13 A. I don't know what you mean.

14 Q. Okay. The shear is sitting at the head,
15 and you want to cut towards the tail. The tailgate
16 drum of the shear, where would it be in relation to
17 the coal face?

18 A. Like, if the head end of the drum was
19 cutting out?

20 Q. Uh-huh.

21 A. It --

22 Q. Let me be a little clearer.

23 A. All right.

24 Q. If you're cutting towards the tail --

1 A. Yes.

2 Q. -- the tailgate drum on the shear. Is it
3 going to be against the roof, or is it going to be
4 against the bottom?

5 A. Be cutting top.

6 Q. So the tailgate drum will be cutting the
7 top?

8 A. Yes.

9 Q. Okay. The headgate drum, where would it
10 be located?

11 A. Cutting bottom.

12 Q. Okay. Where are the shear operators
13 located in relation to the shear when you're
14 cutting towards the tail?

15 A. Let me think how it goes. It would be out
16 -- I can't think of it. Inby, maybe -- no, outby
17 the sheer on the head end side.

18 Q. Towards the headgate side of the face?

19 A. Yes.

20 Q. Okay. Now, that's -- Chad, your tailgate
21 operator, would he also be outby that drum?

22 A. Yes.

23 Q. Or would he be somewhere towards the
24 middle of the shear?

1 A. Sometimes he had to get up there where you
2 couldn't really see what you was cutting, but he
3 mostly stayed behind me.

4 Q. Okay. What about your jack setter?

5 A. He's probably about four or five shields
6 behind us. Maybe a little bit farther than that.

7 Q. What's he doing during this time?

8 A. Just pulling in the shields and pushing
9 the line out.

10 Q. Okay. Do you know, when he's pulling the
11 shields in, is he having to pull every shield
12 individually?

13 A. Yes.

14 Q. I understand these shields are designed to
15 -- I think it's been described to me as a prime?

16 A. Uh-huh.

17 Q. Where you can set the prime and several
18 shields were pulled automatically. Are you
19 familiar with that?

20 A. Yeah, we never did that because none of
21 our shields really worked that good.

22 Q. Okay. You say you never did that?

23 A. (Witness shakes head.)

24 Q. Do you mean on this whole panel?

1 A. On this whole panel.

2 Q. Okay. When you was a jack setter, prior
3 to operating the shear, was it on this particular
4 face?

5 A. Yes.

6 Q. With this set of shields?

7 A. Yes.

8 Q. When you was a jack setter, that prime did
9 not work?

10 A. It worked, but none -- all of the shields
11 wouldn't pull in as they should. Like, the
12 solenoids would be stuck somehow, or something like
13 that be messed up on them.

14 MR. MCCUSKEY: Did you say solenoids?

15 THE WITNESS: Yes.

16 Q. And so to your knowledge, when you was
17 pulling it -- and the jack setter on your crew
18 pulled every shield individually?

19 A. Yes.

20 Q. And now let me clarify that a little bit.
21 When they're pulling the shield, they're not
22 actually standing on that particular shield; is
23 that correct?

24 A. No.

1 Q. Where are they standing?

2 A. On the shield farther than the one they're
3 pulling in. They have got a direction button, then
4 you got the, like, air down and the advance button
5 that brings the shield in, then you set it to the
6 top and then you go to the next one.

7 Q. Okay. Now let's turn the shear around and
8 let's cut from the tail towards the headgate. The
9 headgate drum on the shear, which you would be
10 operating, would it be located against the roof or
11 would it be down against the bottom?

12 A. It would be cutting top, coming back to
13 the head.

14 Q. Okay. What about the drum on the tailgate
15 end of the shear?

16 A. It would be cutting bottom.

17 Q. Okay. Where would the two shear operators
18 be located?

19 A. In front of the shear.

20 Q. Okay. So you would be -- by in front, you
21 mean towards the headgate end of the face?

22 A. Yes.

23 Q. What about Chad, when he's operating the
24 tailgate drum, where would he normally be located?

1 A. He'll be behind me, but sometimes he'll
2 get up there and make sure he's cutting the right
3 amount of bottom there. Then we'd go about 20
4 shields and wait for a jack setter to go down there
5 and bring shields back.

6 Q. Okay. So you say when he'd get up there,
7 you mean he would get towards the middle of the
8 shear?

9 A. Yes.

10 Q. He would be, I'll say, downwind of the
11 headgate drum?

12 A. Yes.

13 Q. Did the jack setter ever stay downwind of
14 the shear when he's cutting?

15 A. No.

16 Q. Okay. You don't recall him ever being
17 down there pulling the shields while you're
18 cutting?

19 A. Maybe sometimes, but not all the time.

20 Q. Okay. Did he have problems keeping up?

21 A. Yes.

22 Q. Why is that?

23 A. The shields are slow.

24 Q. If he has to stay out by the shear, or

1 towards the headgate end of the face, how could he
2 be pulling shields when you're cutting?

3 A. We stop -- we'd cut probably about 20 --
4 20 shields or 25, then we would turn the shear off
5 and he'd run down there and get them, bring them
6 all the way back up to us, and then push his line
7 out and we'd take off again.

8 Q. Okay. Does the shear have -- I call it a
9 horizon control, some people refer to it as a
10 memory cut, to where that tailgate drum, when
11 you're cutting to the head, stays at that same
12 level every time?

13 A. No, not as my understanding. I didn't
14 know that.

15 Q. Okay. Would Chad have problems keeping
16 his drum at the right level if he's having to stand
17 outby the --

18 A. Yes.

19 Q. Okay. Explain that to me.

20 MR. MCCUSKEY: Let him finish.

21 Q. Explain that to me, if you would.

22 A. When we'd be going to the head, like, say
23 we're going to the head cut now or whatever, he'd
24 have to go back to the middle of the shear and make

1 sure his arm hasn't kicked up or lowered while it
2 was coming down, and he'd just try to get it where
3 it needed to be, like, crib block high from the
4 pan, just trying to get the right cut where it
5 won't be -- I don't know how you'd say it, turn the
6 pan line over and all that.

7 Q. Is it important to cut the bottoms at the
8 correct --

9 A. Yes.

10 Q. -- depth? What happens if they don't get
11 cut to the correct depth?

12 A. You're either going to roof out or you're
13 going to stroke out.

14 Q. So it's going to cause problems --

15 A. Yes.

16 Q. -- on the face?

17 A. (Witness nods.)

18 Q. Let's start with when you get on the
19 section on day shift. When you arrive up at the
20 face, is it normally operating?

21 A. No. On day shift, right?

22 Q. On day shift, yeah.

23 A. No.

24 Q. Okay. It would be idle?

1 A. Yes.

2 Q. Is the third shift an idle shift?

3 A. Sometimes our coordinator would have them
4 run just to get the shear going, like, set up bits
5 and servicing and all that, they'll run a pass and
6 bring them back to the head and be waiting for us
7 when we get there.

8 Q. Do they normally already have bits already
9 set in the shear when you arrive on the face?

10 A. On day shifts they do.

11 Q. On day shift. Okay.

12 Describe the process, what goes on when
13 you get on the face, on day shift and you're
14 getting ready to start loading?

15 A. We just go up there and turn the shear on
16 and go at it.

17 Q. Do you ever see anybody check the water
18 pressure on the shear?

19 A. No. Whenever we go for bits and service,
20 they'll check it.

21 Q. How do they check it?

22 A. I don't know. They just check the gauge
23 -- let me think where it was at. They'll go check
24 a gauge. I forgot where it's -- in that box or

1 whatever it is, they'll check gauges in that.

2 Q. Do you know what your ventilation plan
3 required as far as the number of sprays and the
4 pressure on the shear?

5 A. I used to. I think it was like a 180-some
6 or something like that.

7 Q. Okay. I know it's been a while.

8 A. Yeah.

9 Q. But as a shear operator, you didn't check
10 the pressure yourself on the water sprays?

11 A. I never did.

12 Q. Okay. Who was your boss on the last day
13 that you worked?

14 A. Kevin Medley.

15 Q. Okay. On the shear, there's a red E-stop
16 button. Are you familiar with that?

17 A. Yes.

18 Q. Had you ever used that button?

19 A. Yeah. We used it the last -- our last
20 shift when we went out, we knocked the power on the
21 shear.

22 Q. That would have been on --

23 A. Saturday.

24 Q. Saturday evening?

1 A. (Witness nods.)

2 Q. And so do you recall where you left the
3 shear?

4 A. I can't remember.

5 Q. Okay. But when you left, you pushed the
6 E-stop button?

7 A. Yes.

8 Q. Pushing that E-stop button, what did that
9 actually do?

10 A. It just killed the shear.

11 Q. The power on the shear?

12 A. Yes.

13 Q. Did the JNA or the computer stay energized
14 when you did that?

15 A. No.

16 Q. Okay. Do you know if the power stayed on
17 the cable when you did that?

18 A. I'm not sure.

19 Q. Do you recall that ever having problems
20 with that switch?

21 A. No.

22 Q. By "problems," I mean do you recall the
23 switch ever not working?

24 A. No.

1 Q. Okay. Do you remember if the switch was
2 ever replaced on your shift?

3 A. No.

4 Q. I guess --

5 MR. MCCUSKEY: I'm not sure -- you might
6 want to clarify whether you meant, no, it hadn't
7 been or, no, I don't know. I'm not sure what you
8 mean.

9 Q. Do you remember if it had been switched,
10 or, okay, let me stop and clarify this.

11 Had the emergency stop switch ever been
12 replaced on your shift?

13 A. No, it hasn't.

14 Q. Okay. Do you carry a multi-gas detector
15 with you?

16 A. No, my head -- the tail end operator did.

17 COURT REPORTER: I'm sorry. You said
18 what? The tail end --

19 THE WITNESS: Operator carried the hand-
20 held gas trigger.

21 Q. When you was working on Rick Lane's crew,
22 did you get up on the face very often?

23 A. Just whenever I packed bits up there for
24 him to set.

1 Q. Did you know Gary Quarrels?

2 A. Yes.

3 Q. What did Gary do?

4 A. He was the tail end shear operator.

5 Q. Do you recall if Gary carried a multi-gas
6 detector?

7 A. I think he did.

8 Q. Do you recall if he carried it in a pouch
9 on his belt?

10 A. He normally carried it right here on a
11 strap.

12 Q. Okay. Do you know what kind of detector
13 that was?

14 A. I can't think of their names, but it was a
15 little green one that had the two buttons on the
16 side, and then the volume button and an on off
17 buttons.

18 Q. Okay. What about -- did anybody on your
19 crew, or any of the crews you've worked on at UBB,
20 wear air stream helmets?

21 A. I did.

22 Q. You did?

23 A. (Witness nods.)

24 Q. Did you wear one every day?

1 A. No, I normally - I'd wear that one, and if
2 the batteries weren't working, I had to wear the
3 mouth ones there with the filters on the side.

4 Q. Okay. A respirator?

5 A. Yes.

6 Q. Okay. So did you say when the batteries
7 wouldn't work?

8 A. Yeah, if somebody didn't put it on the
9 charger, something like that.

10 Q. Was the charger for the air stream helmets
11 kept on the unit?

12 A. They was on the a mule train where the
13 chargers were.

14 Q. Okay. Your air stream helmet, where did
15 you keep it?

16 A. In my locker.

17 Q. On the surface?

18 A. Yes.

19 Q. And so you would carry it underground with
20 you every day?

21 A. (Witness nods.)

22 Q. Would you wear it underground from the
23 portal while you was on the mantrip to the section?

24 A. No.

1 Q. What did you wear?

2 A. My hard hat.

3 Q. Okay. When you arrived on the section,
4 when would you switch from your regular hard hat to
5 the air stream hat?

6 A. When I got to the headgate.

7 Q. Okay. What would you do with your hard
8 hat?

9 A. Put it under the head drive there.

10 Q. I've been on the wall several times.
11 There is an area there where there's a whole bunch
12 of bits, it looks like, that was stored?

13 A. Yes.

14 Q. Is that the same area where you'd keep
15 your hard hat?

16 A. Yes.

17 Q. Anybody else on your crew wear it?

18 A. No.

19 Q. Do you recall on Rick Lane's crew if
20 anybody wore them?

21 A. Joel Price normally wore one and Dewey
22 Persinger wore one.

23 Q. Do you remember if Gary wore one?

24 A. I don't think he ever -- he wore it at the

1 beginning of the shift, then he went to the mouth
2 ones.

3 Q. Okay.

4 A. The respirators.

5 Q. Do you know if any of the guys kept their
6 air stream helmets on the unit?

7 A. I know some of them kept some right there
8 at the bits, where the bits and everything was, and
9 then there was some of them put them up in the tool
10 cars.

11 Q. Okay. Am I confusing you when I say
12 "unit"?

13 A. Yeah.

14 Q. If I say "unit," I mean the section, or
15 how do you refer to it?

16 I want to talk a little bit about the
17 water on the shear. I understand any time the
18 shear was running, you had to have water turned on;
19 is that correct?

20 A. Yes.

21 Q. Where was that water controlled?

22 A. At the headgate.

23 Q. Who would turn the water on and off?

24 A. The headgate operator.

1 Q. Okay. Did he normally wait to be called
2 when you was getting ready to start to turn the
3 water on?

4 A. Yes.

5 Q. Okay. What about to turn the water off?
6 Would he normally wait to be called before he would
7 turn the water off?

8 A. Yes.

9 Q. Let's say, for instance, if the face was
10 running and the belt goes off, what happens to the
11 line or the face conveyer?

12 A. He'll turn it off.

13 Q. It would go off?

14 A. The headgate operator hollers and tells us
15 the belts are down, we'd turn everything off.

16 Q. Okay. Would he go ahead and turn the
17 water off on the shear?

18 A. Yes.

19 Q. Prior to you guys calling in?

20 A. I thought he was calling us -- or how was
21 you saying that again?

22 Q. What I'm trying to get at is, if the
23 headgate operator ever shuts the water off without
24 you guys calling him?

1 Q. And do you remember when that was?

2 A. It was probably about a week or two
3 before.

4 Q. So it would be sometime in March, would
5 that be fair?

6 A. Yes.

7 Q. Okay. When that drum was changed out, did
8 you all experience any problems with the shear
9 after that, or do you recall anything?

10 A. I can't remember if it was the tail end
11 arm or head end arm that we had to replace shortly
12 after that.

13 Q. Okay. Was you having problems with a gear
14 case leaking on one of the cutter drums, do you
15 recall that?

16 A. No. No, I don't recall.

17 Q. Did you have any other problems with the
18 drums after you changed them?

19 A. Nothing with the drums, just the arm. I
20 can't think of what it's called, but it's the thing
21 that holds the arm on there.

22 Q. Would that be the ranging arm pins?

23 A. Yes.

24 Q. Okay. And do you recall which ones you

1 had problems with, was it the head end, tail end?

2 A. I think it was the tail end.

3 Q. Okay. Was it on the face side or gob
4 side?

5 A. I don't know.

6 Q. Okay. So you had one that may have come
7 out during your shift and you all had to repair it
8 and get it back in place during the shift?

9 A. We ain't ever had it come out on our
10 shifts. We just had to tighten up the bead locks
11 around it.

12 Q. Okay. Have you ever been involved with a
13 fire suppression check of the shear?

14 A. No, sir.

15 Q. Do you know where the valves are at for
16 the fire suppression?

17 A. In the panels.

18 Q. But you never operated them?

19 A. No.

20 Q. Never seen nobody else --

21 A. No.

22 Q. -- check it?

23 That E-stop that Dean was talking about, I
24 need a little clarification on it. Had it ever

1 been damaged during your shift?

2 A. No. Well, that last question you asked
3 me, if I ever seen anybody check it, I don't know
4 if he was state or federal inspector, but an
5 inspector did come in and take all the panels off
6 and check everything in there.

7 Q. How long ago was that?

8 A. It was probably about four or five months
9 ago. Well, not ago, but whenever I was working.

10 Q. Okay. Four or five months prior to April
11 5th?

12 A. Yes.

13 Q. Okay.

14 MR. MCCUSKEY: You're talking about the
15 fire suppression system?

16 THE WITNESS: Yeah, they checked their --
17 like took all the panels off and everything in
18 there.

19 Q. I think the last time you were interviewed
20 you talked about a little bit of methane showing on
21 the methane monitor, like, maybe .4 percent was the
22 max?

23 A. Yes.

24 Q. Was that on the shear?

1 A. Yes.

2 Q. Had anybody seen anything on the tail
3 display, the tail monitor display, at the headgate?

4 A. Not as I recall.

5 Q. Okay. So clarify this for me. Where was
6 you at along the face when you seen .4 percent?

7 A. Normally towards the tail, like, from --
8 let me think. 115 to the tail you had more shows
9 of methane than you would on the head.

10 Q. Okay. When you got to .4 percent, did
11 anybody call the headgate operator and see what he
12 had for the tail sensor at that time?

13 A. No.

14 Q. Who would be responsible on your shift for
15 doing dates, times and initials, any kind of
16 examinations?

17 A. Like the boss? Kevin Medley.

18 Q. So as far as date, times and initials,
19 Kevin done all those on the section?

20 A. Yeah. And sometimes he had Tommy Estep do
21 it, our chief electrician.

22 Q. Okay. Was Tommy Estep a foreman?

23 A. Yeah.

24 Q. Where would they do their dates, times and

1 initials?

2 A. Well, when they're on the face there, they
3 do it on the face, the first or sixth shield,
4 they'll date up on the shields and the pan line.

5 Q. What about on the tail side. Did they --

6 A. I think there was a post, a prop back
7 there, they would normally dated up on. Whenever I
8 first started to panel there, there used to be a
9 piece of belt rotor there and they dated up on
10 that.

11 COURT REPORTER: I'm sorry. Dated up on
12 what?

13 THE WITNESS: A piece of belt rotor.

14 Q. I think you mentioned you had seen five
15 water sprays out --

16 MR. MCCUSKEY: I think you said four,
17 didn't you? I'm not sure.

18 A. I think I said five.

19 Q. Probably five.

20 MR. MCCUSKEY: Okay.

21 Q. Had you ever had to remove any sprays at
22 any point?

23 A. I don't believe I had to remove any.
24 Changed a couple of them because they was stopped

1 up and we would have to replace them.

2 Q. Do you know why they were stopping up?

3 A. I guess the rocks inside the drum or dirt
4 or whatever coming out of the water would go up
5 there and stop up the spray.

6 Q. Was that common for them to get clogged
7 up?

8 A. I say so.

9 Q. So how often would they have to take some
10 out, do you recall?

11 A. No.

12 Q. Was it once a week or every day?

13 A. You would probably have to change one
14 every day.

15 Q. Had you ever had any problems that they
16 were clogging up and you had to remove sprays to
17 keep motors from overheating or anything like that?

18 A. Not as I can recall.

19 Q. Okay. Had you ever had any problems with
20 the water supply to the mule train, or any times
21 during when you was operating the shear that you
22 had to shut down on account of water?

23 A. Yeah, the face chain wasn't getting
24 enough -- I guess it's pressure to run it there.

1 It didn't have enough water going to the face chain
2 to run it, it would keep shutting off on us.

3 Q. When do you recall the last time that
4 occurred?

5 A. I don't know.

6 Q. When you all bitted up, did you normally
7 do that on the -- after you done the shuffle on the
8 tail, let's say on the tail side, when would you
9 normally bit up?

10 A. We'd -- let's say we bitted up, we'd run,
11 we'd get to the tail, we'd shuffle -- well, we'd
12 cut out, then we'd come back to our shuffle. Then
13 we'd check that for bits and make sure all the bits
14 are good.

15 Then we'll go through our shuffle, cut out
16 and make it back to the head, and if the bits are
17 good, we would go back to the tail, or mid face,
18 anywhere, and, you know, if it's sort of hard to
19 start cutting, we would stop and check it up for
20 bits and change bits on it. Because we normally
21 kept probably about six buckets of bits on the
22 shear.

23 Q. So if you had to change bits on the head
24 side and you made a cut to the tail, would you go

1 ahead and cut to the tail and then do the shuffle
2 and then check bits again? Is that what I'm
3 understanding or am I wrong?

4 A. Like after we would go through shuffle,
5 then we would come back through and then -- like
6 I'd cut bottom for a little bit, then he would just
7 go ahead and cut the top.

8 And then he wants to cut his own bottom on
9 the tail to make sure it's right, and I would
10 change my bits after he gets done cutting the
11 shuffle.

12 Q. Okay. When you were changing bits, and
13 you're seeing water sprays that are every now and
14 then missing, is it hard to see all the sprays with
15 the way you all change bits?

16 A. Sometimes. I mean, it depends if the drum
17 is real nasty or, you know -- more than likely you
18 see all the bits.

19 Q. You can see all the bits but --

20 A. I mean the sprays.

21 MR. MAGGARD: Okay.

22 EXAMINATION

23 BY MR. MCGINLEY:

24 Q. I've got a few questions for you.

1 I want to go off on a little bit of
2 different area.

3 When you went to Logan's Fork, that was
4 the first job you had as a miner?

5 A. Yes.

6 Q. And did you -- were you hired as a
7 contractor or as a Massey member?

8 A. A contractor.

9 Q. Who was the contractor?

10 A. David Stanley.

11 Q. How long did you work as a contractor?

12 A. I can't -- like six months -- no, it was
13 90 days -- let me think. I think it was, like,
14 90--some days I worked as a contractor, then they
15 hired me in through the company.

16 Q. I see. And at what point did you get your
17 black hat?

18 A. I got it in December 31st -- well, it
19 wasn't December 31st. About January 1st, think.

20 Q. Of 2009?

21 A. 2009.

22 Q. When was the first time you actually
23 worked on a longwall?

24 A. I guess whenever I first started there I

1 was working on the shields.

2 Q. At?

3 A. Logan's Fork.

4 Q. Okay. Are you familiar with the Massey

5 Mentor --

6 A. Uh-huh.

7 Q. -- training program?

8 Who was your mentor?

9 A. Eugene Williams.

10 Q. How long did that last, that mentor?

11 A. A little over eight months probably.

12 Q. What was involved?

13 A. He just showed me how to run a roof bolter
14 and just showed me the rights and wrongs in the
15 coal mine.

16 Q. When you went to -- strike that.

17 Who was the safety director at Logan's
18 Fork, do you remember?

19 A. Shane. Shane something.

20 Q. Who was the safety director at UBB?

21 A. I can't think of his name.

22 Q. James Walker, does that ring a bell?

23 A. Rings a bell, but I don't think that was
24 the one that I --

1 Q. Berman Cornett?

2 A. Yeah, that one.

3 Q. So you came over from Logan's Fork to UBB?

4 A. Yes.

5 Q. And what did you do on your first day?

6 A. On my first day we had Jack Roles and -- I
7 can't think -- might have been -- I can't think who
8 the president was, but they took us around and
9 showed us all --

10 Q. Blanchard?

11 A. I don't think it was a Blanchard.

12 Q. Okay.

13 A. But they took us around and showed us
14 everything, all that good stuff.

15 Q. Did you go to the production section?

16 A. I never been to the miners section.

17 Q. What was the first time you walked the
18 escapeway?

19 A. Probably the third day I was there. Then
20 we walked it -- well, we walked it out the Ellis
21 portal, then they changed it around and we had to
22 walk all the way out the UBB portal there.

23 Q. At some point at UBB you were asked to do
24 the head entry shear operator, right, at some

1 point, you didn't go into UBB with that job?

2 A. No.

3 Q. What point did you do that?

4 A. What do you mean?

5 Q. I mean, just generally. I know you're not
6 going to remember the day or even the month. How
7 long after you got to UBB did you start doing that
8 work? Do you have any sense of that?

9 A. No. Probably a little bit over six months
10 before I became the shear operator.

11 Q. Okay. So they were setting up the
12 longwall in August of 2009, so you probably started
13 around January, December, January of 2010? Does
14 that sound right?

15 A. Nine.

16 Q. Well, that's six months?

17 A. No, this is -- like I don't know how to --
18 I don't know when the wall started running, but
19 after the wall started --

20 Q. I'll tell you it started running in August
21 there, the beginning of September of 2009.

22 A. When the wall started running, it was six
23 months, then I became the shear operator.

24 Q. From January. So you were doing that for

1 about -- before the explosion about three months or
2 so?

3 A. Yes.

4 Q. Describe your training.

5 A. When I first started learning how to run
6 the shear, I would walk up and down the line with
7 Joel and Spanky, and then I'd float Joe off for
8 lunch, like, he'd go eat lunch, and that's how it
9 went.

10 Q. How long did you do that?

11 A. Probably about a month.

12 Q. Then you started -- you took over the job?

13 A. I think it was Mike Webb become a boss,
14 then I took his spot. He was the head end shear
15 operator on Kevin Medley's crew.

16 Q. Okay. And what was -- so what was your
17 training for that job? I mean, other than that you
18 took over during the lunch break, but how did you
19 know what to do?

20 A. I walked up and down the line with them.
21 They showed me how to -- what the certain length to
22 cut and how to cut the bottom.

23 Q. Okay. Now, you've been asked some
24 questions about the bits. And you said, for

1 example, you said you would look and see if the
2 bits were good.

3 A. Yes.

4 Q. What was your training? How were you
5 trained about when bits were good or when they
6 needed to be changed?

7 A. No. When the bits are good, they'll still
8 have that real good sharp, like, pointy tip on the
9 end. When they're bad, they're, like, real, like,
10 worn down, like, rounded off right there at the --
11 I guess, it's carbon. They're rounded off right
12 there pretty good.

13 Q. Who explained that to you?

14 A. Joel Price.

15 Q. Did he say how often typically that he had
16 to change them?

17 A. It depends on the conditions, rock.

18 Q. Right. What about water sprays? Who
19 explained about how the water sprays operate?

20 A. Grover Skeens and Dustin Ross showed me.
21 If they're spraying, how they're supposed to
22 spray. If they're not spraying right, they'd have
23 to change it and take out the pins and replace them
24 and all that.

1 Q. That wasn't work, or did you do that work?

2 A. I done it sometimes. A lot of times an
3 electrician will come up there and they'll change
4 it when they're servicing the shear while we're
5 changing bits.

6 Q. Was part of your training -- what did they
7 tell you about how long you could go when there
8 were sprays that weren't working? I mean, how many
9 sprays?

10 A. They never told me anything like that. I
11 mean, just common sense, you see a spray out, you
12 would change it?

13 Q. You would stop production -- when would
14 you stop production?

15 A. When we would changed bits.

16 Q. I think you talked about that earlier.

17 A. (Witness nods.)

18 Q. How many times did you see Mr. Cornett on
19 the longwall?

20 A. Who.

21 Q. Berman Cornett?

22 A. I see him -- he comes to the head, he'll
23 come to the head and check everything, but I never
24 see him up on the face.

1 Q. Did he know anything about how longwalls
2 operate?

3 A. I don't know. I never talked to him.

4 Q. How many times did state inspectors come
5 up to the longwall when you were operating the --

6 A. Pretty often.

7 Q. How about MSHA inspectors?

8 A. I really can't tell them apart. I
9 mean ...

10 Q. Right. So you seen inspectors?

11 A. Yeah, I seen inspectors.

12 Q. Do you remember when the longwall first
13 came into UBB before it started operating, the mine
14 was shut down for a few days because of the
15 inspection?

16 A. It rings a bell, but I really can't
17 remember what it was over. I know we had a lot of
18 building stoppings and taking down stoppings a lot.

19 Q. Right at the beginning?

20 A. Yeah.

21 Q. What do you know, or were you trained
22 about the ventilation on a longwall?

23 A. No.

24 Q. Do you know anything about it?

1 A. I know how to hang curtain and all that
2 stuff. I never knew what the air was going down
3 the face or nothing.

4 Q. Did you know which way the air was
5 supposed to go?

6 A. Yeah.

7 Q. Did it ever change the direction?

8 A. Yeah, a couple times.

9 Q. Explain that, if you could.

10 A. At the tail end, where it mostly done all
11 of its changing, really, whenever we'd do a
12 ventilation move, we'd get different air going this
13 way and -- let me think of what it was.

14 On the -- I think it was -- had the belt
15 entry, track entries, then had the -- well, the
16 intake air return, and better intake come down the
17 track entry, then they changed it again and had --
18 I think it was a neutral or something like that.

19 But you had fresh air coming this way,
20 down both the belt and the track entries, then they
21 changed it again so we couldn't have better air.

22 Then we had the return come back down
23 where we was building cribs on the third entry
24 over, then it was all kinds of different air

1 changes.

2 Q. What about at the face, though, I mean,
3 did the direction of the air change at all, go
4 towards the --

5 A. It always went towards the tail.

6 Q. Towards the tail, never changed?

7 A. No.

8 Q. Whose job was it, if you know, to check
9 the pressure for the water sprays?

10 A. Electricians, all of them. Could have
11 been my job, but they never told me it was my job.
12 All I know is electricians checked it.

13 Q. You've heard the terms S-1 and P-2?

14 A. Yes.

15 Q. What does that mean?

16 A. Safety first and production second.

17 Q. Was there any S-1 requirements with regard
18 to water pressure on the shear or the changing
19 bits, or the changing water sprays?

20 A. What do you mean?

21 Q. I don't know. We've heard testimony and
22 we've heard, you know, executives at Massey saying
23 that this S-1/P-2 program went beyond the
24 requirements of the law that kept miners more safe,

1 and we've heard from some of the folks that we've
2 talked to about what they thought S-1 requirements
3 were. I'm just asking if you know any S-1
4 requirements that relate to the operation of a
5 longwall?

6 A. No. I don't get the question, but ...

7 Q. What does S-1 mean, other than safety
8 first?

9 A. You just check all your stuff before you
10 would run.

11 Q. Anything else?

12 A. That's all I got. I mean ...

13 Q. Right. So S-1 was sort of a safety
14 slogan?

15 A. Yes.

16 MR. BABINGTON: Pat, can I piggyback on
17 that?

18 MR. MCGINLEY: Sure.

19 MR. BABINGTON: Did you ever see an S-1
20 manual?

21 THE WITNESS: Yes, when I started working
22 over at Performance. And when I started working
23 over at Logan's Fork, they give us all like a
24 little handbook that had all your S-1 -- I can't

1 remember what all it said, but we got a big old
2 folder and everything about it.

3 MR. BABINGTON: I think what Pat is trying
4 to get at is whether or not there was any
5 provisions in that S-1 manual or pamphlet that they
6 gave you that talked about water sprays on the
7 longwall shear.

8 THE WITNESS: Yeah, it tells you how many
9 water sprays you have got to have and how much
10 pressure they have got to have and all that, but I
11 can't tell you how much pressure and how much --
12 how many water sprays there are. It's been so long
13 since ...

14 BY MR. MCGINLEY:

15 Q. Well, you never checked the pressure so
16 you didn't have to know it; right?

17 A. Well, we had to know it on the black hat
18 test and everything like that, but I never checked
19 it.

20 Q. You didn't have to know it after the black
21 hat test, because you -- that wasn't -- you didn't
22 think that was your job?

23 A. Yeah, I mean, I never thought I would be
24 head end shear operator.

1 Q. And when you took the job as a head end
2 shear operator, nobody talked about the pressure or
3 the requirement of --

4 A. Yeah, they asked me how much pressure I
5 should have and how many sprays I should have on
6 the shear.

7 Q. Who asked you?

8 A. The electricians and, I mean, about
9 everybody. I mean, when I first started, like,
10 they asked me these questions, just trying to see
11 if I knew them or not.

12 Q. Did you know them?

13 A. Yeah.

14 Q. But you never had to use them?

15 A. No.

16 Q. The information you got, you said you had
17 an S-1, you thought it was an S-1 manual; is that
18 correct?

19 A. I know it was S-1 manual because it had
20 S-1 Handbook on the front of it.

21 Q. S-1 Handbook?

22 A. Yeah.

23 Q. Was it sort of a Xerox copy, a pamphlet?

24 A. I don't know. It was a big old folder, a

1 three-ring binder, it had a big old M on it, then
2 it had S-1 underneath of it.

3 Q. Where did you get that?

4 A. Elk Run's main office.

5 Q. When you were hired?

6 A. Yes, when I had to fill out all kinds of
7 contracts and so forth.

8 Q. How often did you look at the S-1 manual
9 after they gave it to you?

10 A. I didn't.

11 Q. Do you still have it?

12 A. Yeah.

13 Q. Would you provide that to the
14 investigation if you've got it?

15 A. If I can find it I'll let y'all have it,
16 but ...

17 Q. You think you know where it is?

18 A. I can't tell you. I know I still got it.
19 It's at the house somewhere.

20 Q. You just sort of brought it home and --

21 A. Threw it in the closet.

22 Q. -- put it up somewhere?

23 A. Yeah.

24 Q. Okay. What's P-2 mean?

1 A. Production second. It means you do safety
2 first and you do production after that. Make sure
3 everything is right, and then you go run coal.

4 Q. So how important was production in your
5 experience?

6 A. I don't know.

7 Q. Nobody ever talked about production of
8 coal?

9 A. Yeah, they said -- I mean, it's a big
10 deal, production is, that's the man's money, so
11 you're going to run coal for whoever you got to. I
12 just done it because I liked it, you know.

13 Q. Sure.

14 A. Then we talked about safety all the time,
15 too. I mean, every morning we -- well, evening,
16 morning, we came in, we had, like, a little piece
17 of paper we had to fill, like, sign our names, and
18 we went over the dust control plan, roof bolt
19 control plan, all these plans. I mean, we went
20 over all -- every -- different plans every morning
21 or evening we come into work.

22 Q. What was the roof control plan?

23 A. That just shows you, like, how to roof
24 bolt, like, things like 46 inches or however long a

1 four-foot roof bolt is, that's how far they got to
2 be apart, and don't drill straight up into a kettle
3 bottom, drill beside it and put the panel and the
4 kettle bottom, not up in it. I mean, just
5 different stuff.

6 You can always add, but you can't take
7 away.

8 Q. Was that information relevant when you
9 were working up in the longwall?

10 A. Our roof control plan was a little bit
11 different because where we had shields and that.

12 Q. Sure.

13 A. But other than that ...

14 Q. Did you, in your -- you had this little
15 safety meeting before you started a shift. Did you
16 always talk about just things relevant to the
17 longwall?

18 A. No, we talked about outby and -- I mean,
19 all over the mines really, I guess.

20 Q. So the safety talks weren't specifics to
21 the work you were doing?

22 A. No. Some of it was and some of it
23 wasn't. I mean ...

24 Q. Like the dust?

1 A. Yeah.

2 Q. But they never talked about changing bits
3 or water pressure or --

4 A. They talked about water pressure and the
5 sprays and that, but we never talked about changing
6 bits.

7 Q. Okay. And they would talk about changing
8 it when it's appropriate to change sprays?

9 A. No, they never -- whenever they're stopped
10 up, that's the only time we know when to change or
11 when they're missing them.

12 Q. Did anybody ever talk about that, or is
13 that just common sense?

14 A. Just common sense.

15 Q. So nobody ever talked about it?

16 A. Talked about how many sprays and how much
17 pressure and water you got -- had coming and all
18 that stuff, but we never talked about ...

19 Q. Did they talk about it in the safety
20 meetings, or was that when you started the job as
21 the shear operator?

22 A. Safety meetings, we really didn't talk
23 about the changing bits or nothing like that, just
24 talked about dust control and roof control and all

1 that stuff.

2 Q. What did they tell you about ventilation?

3 A. What do you mean?

4 Q. Well, I noticed in your first interview
5 you were talking about the ventilation changed --

6 A. Uh-huh.

7 Q. -- in March. Things got hot up there
8 where you were working?

9 A. Yes.

10 Q. So what did that indicate to you about
11 ventilation? What is a coal miner supposed to do
12 if they're -- if you perceive that there may be
13 problems or a significant change in ventilation,
14 what do you do?

15 A. I guess if it's right, you just run. I
16 mean, if it's the requirement.

17 Q. And who do you rely on to determine if
18 requirements are met?

19 A. I guess Kevin Medley.

20 Q. And based on -- how would he base the
21 determination?

22 A. He would have like a little -- I can't
23 think of the name of it anymore, a little fan he
24 goes through the breaks --

1 Q. Anemometer?

2 A. Yeah. He goes through the breaks with it,
3 and if it's good air, put the hammer down.

4 Q. So you have -- as far as you know, you had
5 good air right up until the last day you worked at
6 UBB?

7 A. We had good air. I mean, it was a
8 requirement. I mean, we had enough air to run, so
9 we ran, but it wasn't air we had.

10 Q. So that -- were you concerned at all?

11 A. Yes. I don't think a longwall should have
12 that less air.

13 Q. You think that the requirements of the law
14 should be that there's more air than currently is
15 required?

16 A. Yes.

17 Q. What about when you saw the dust? I
18 noticed the interview there towards the end you
19 said it got really dusty, you couldn't see down at
20 the tail?

21 A. Yes.

22 Q. And how often did that happen when you
23 were working at UBB at the longwall?

24 A. Whenever -- I can't remember what the air

1 was, but when it got cut down from 105 to
2 50-something, that's when you started seeing a lot
3 more of the dust accumulation on the tail, but I
4 never thought anything about it.

5 Q. But how often did that happen? Was it
6 only at the end or --

7 A. Just at the end.

8 Q. Okay. Thanks.

9 MR. BABINGTON: Dean, can I ask a couple?

10 MR. CRIPPS: Do what?

11 MR. BABINGTON: Can I ask a couple
12 follow-ups and we'll get back to you.

13 MR. CRIPPS: Sure.

14 MR. MCCUSKEY: Gentlemen, would this be
15 maybe a time to take a break for a moment? Of
16 course, Matt and a few others were here earlier,
17 but as you know, [REDACTED]

20 MR. TUCKER: Off the record.

21 (Break.)

22 EXAMINATION

23 BY MR. BABINGTON:

24 Q. Cody, I've just got two quick ones. You

1 had refresher training at UBB?

2 A. Uh-huh, yes.

3 Q. What time of the year would you all have
4 refresher training?

5 A. Beginning of, like, every quarter.

6 Q. Every quarter?

7 A. (Witness nods.)

8 Q. At that refresher training, would you go
9 over S-1 guidelines, federal/state regulations,
10 both, neither, what was the basis for doing the
11 training?

12 A. A lot of it was S-1, but different stuff.

13 Q. When you talked about there was -- I think
14 it was on April 3rd was the last shift that you
15 worked?

16 A. Yeah.

17 Q. And there was dust that kind of -- there
18 was more dust than normal on the longwall face?

19 A. Yes.

20 Q. Could you tell if the water spray system
21 was working properly, and did it look like all the
22 sprays that were in had a fine mist, or did you see
23 some missing and there was -- you know how the
24 water can kind of -- are shooting out one hole more

1 intake.

2 Q. Okay. As part of your job, when you was
3 on the utility job, did you maintain curtains in
4 the Number 2 and Number 3 entry?

5 A. Yes.

6 Q. Okay. Can you describe where those
7 curtains would be located in relation to the
8 longwall face?

9 A. You have got the last open break, and then
10 they'd -- I'd, well, normally set it in probably
11 about -- it was about a half a foot back to where
12 you can get the crib or the props in there and just
13 hang your curtain up.

14 And then I don't -- whenever I was a
15 utilityman, I don't think I ever hung a curtain on
16 that other side, because we had the stoppings going
17 down toward the intake.

18 Q. That's between -- would be between Number
19 3 and Number 4 entries?

20 A. Yes. Well, 3 and the track entry. You
21 have got the stoppings right there at the track
22 entry, then you got your third entry over.

23 Q. Okay. So the curtains that you hung, you
24 hung them just inby the last open crosscut?

1 A. Yes.

2 Q. I'm going to use the term "move the air
3 crosscut." Do you know what I'm talking about?

4 A. No.

5 Q. Okay. As the longwall advanced outby and
6 you got past the crosscut that was supplying air to
7 the face --

8 A. Yes.

9 Q. -- what would you do?

10 A. I'd move all, like, the -- I can't tell
11 you what, it's been so long, the big old yellow
12 thing, bring the barricade chambers, bring it up
13 and then move all the tool cars up, and then bring
14 the -- I already forgot what it was called, the
15 safety line there --

16 MR. CAUDILL: Lifeline.

17 A. Bring it up. Yeah, lifeline, bring it up
18 and tie it up and make everything right and put the
19 curtain up there, and direct air going -- bring it
20 up to the next open, to the last open.

21 Q. Okay. Would you -- or did you have to
22 knock a stopping?

23 A. Yes.

24 Q. Knock a stopping between the belt entry

1 and the track entry?

2 A. Yes.

3 Q. Okay. How did you knock it?

4 A. With the scoop.

5 Q. Okay. The curtains that I talked about a
6 little earlier in the Number 2 and Number 3 entry,
7 when you would hang those curtains or check those
8 curtains, which direction -- let me phrase that
9 better. Could you tell if they was blowing or
10 bowed in either direction, inby or outby?

11 A. You could tell where there's bowing going
12 towards the gob, like the air pushing -- I don't
13 know, like, make them get tight around props
14 there. I guess it rebounds it and it goes up that
15 way.

16 Q. Okay. Did you ever observe them where
17 they was bowed outby or the opposite direction?

18 A. No.

19 Q. Okay. When you was on Rick's crew, how
20 much of the shift would Rick normally spend
21 actually on the face?

22 A. I guess just to go up there and date up
23 and come back through and go up the belt line and
24 come back down and check the data up at the tool

1 cars and all of that stuff.

2 But I never really -- well, I seen him a
3 couple times but never really seen him a lot.

4 Q. Okay. So he didn't normally follow the
5 shear up and down the face?

6 A. Probably once or twice, maybe.

7 Q. Okay. How about Grover? Was it common
8 for Grover to be on the face?

9 A. Yes.

10 Q. He was on the face a lot?

11 A. Yes.

12 Q. Okay. Would he be up on face right up
13 until the end of the shift?

14 A. Yes.

15 Q. What was he normally doing when he was up
16 there?

17 A. Fixing shields and -- I don't know. I
18 know he fixed a lot of shields, and I guess if
19 something went down, he'd grab something from the
20 headgate there and take it up there and fix it.

21 Q. Okay.

22 A. They normally set probably at the 10
23 shield and just watch them -- the coal run -- the
24 face train a lot.

1 Q. When I read your first transcript, I
2 didn't really read anything about the day of the
3 accident where you was at the mine and what was
4 going on. Are you comfortable talking about that?

5 A. (Witness nods.)

6 Q. If you would, explain to us just when you
7 arrived at the mine on April 5th, about what time
8 you got there, and describe what you did right up
9 until the actual time of the accident.

10 A. Well, we got there and went and put my
11 clothes on and all that, then we went upstairs and
12 sat in the longwall room and waited for, I guess it
13 was Rick, to call out and talk to Kevin there, and
14 whenever he got done talking to Kevin, we would go
15 get on the mantrip and go in.

16 But Kevin got off the phone probably
17 about, I don't know, it was about 2:57 or something
18 like that.

19 And we had enough time to walk from
20 upstairs to the mantrip, get in the mantrip, kick
21 the breaker on, and as soon as we started moving,
22 we got stuff blown back on us there.

23 And we thought it was just a normal rock
24 fall, but then when it started coming in harder,

1 well, me and Tom Estep jumped in a break, and a
2 couple other boys stuck in the mantrip.

3 So me and Tommy grabbed Dave Shears and
4 pulled him in the break with us. Then Dustin Ross,
5 he was the only one that had the hard hat and light
6 on right there, so we was all just -- well, we
7 looked at each other and we said, let's get the
8 hell out of here.

9 I mean, you couldn't see nothing. When we
10 got out, it blew our hard hats and everything,
11 couldn't see nothing. We just started running.

12 Q. When it blew your hard hats, did they go
13 outby?

14 A. Yeah.

15 Q. Out towards the portal?

16 A. (Witness nods.)

17 Q. Okay. Back up. You said "we got there at
18 the mine." Who is "we"?

19 A. Me and Josh Stout.

20 Q. So you and Josh rode to work together?

21 A. Yes.

22 Q. Okay. Do you know what time you got
23 there?

24 A. It was probably about, let me think,

1 probably around 2:35 maybe.

2 Q. Okay. And then when you got there, that's
3 at the Ellis portal; is that correct?

4 A. That was at the Ellis portal.

5 Q. Okay. And then did you guys actually
6 change clothes in the bathhouse there?

7 A. Yes.

8 Q. That bathhouse is on the first floor
9 there; is that correct?

10 A. Yes.

11 Q. Okay. Then you said you went to the
12 longwall room?

13 A. Uh-huh.

14 Q. Where is that located?

15 A. Upstairs.

16 Q. Who all was there?

17 A. Just our crew, Chad Brown, Tom Estep,
18 Dustin Ross -- who was the other one -- Josh Stout,
19 Kevin Medley, and the outby guy was -- I can't
20 think of his name now.

21 Q. I can't either. I know it and I can't
22 think of his name.

23 Okay. That's fine. Kevin Medley was in
24 there with you?

1 A. Uh-huh.

2 Q. So did you hear Kevin get the call out
3 from Rick Lane?

4 A. Yes.

5 Q. Okay. Now the call out that I'm referring
6 to, was that the -- I call it the "pre-shift." You
7 probably refer to it as the fire boss call out?

8 A. Well, you got, like, the pre-shift, and
9 then you got the 3 o'clock report. And I think --
10 I don't know if -- I'm pretty sure we got the 3
11 o'clock report, because it's, like, 2:50
12 something.

13 Kevin Medley was talking to somebody
14 underground, and I guess he was writing stuff down,
15 and we went underground.

16 Q. Where was he writing the stuff down?

17 A. In the book.

18 Q. In the fire boss book?

19 A. I guess.

20 Q. Do you know who he was talking to?

21 A. No, I don't.

22 Q. Okay. So do you know if Kevin talked to
23 Rick Lane at all?

24 A. No, I don't.

1 Q. Okay. And so was it pretty quickly after
2 Kevin wrote the information in the book that you
3 guys left?

4 A. Yeah, as soon as he wrote it, we went in
5 the mine.

6 Q. Okay. And so you left and you walked down
7 the stairs.

8 A. (Witness nods.)

9 Q. And then where did you have to go to catch
10 the mantrip?

11 A. We would have to go in the drift mouth, go
12 in there and get the farthest mantrip, because we
13 was always the first ones to leave.

14 Q. How far from the longwall office is that?

15 A. We'll say 1500 foot, maybe. Maybe a
16 little bit farther.

17 Q. Okay. So it's -- let me be a little
18 bit --

19 A. We was probably about four breaks
20 underground, five.

21 Q. Okay.

22 A. Then you got from right there at the mouth
23 to the -- whatever.

24 Q. Okay. You read my mind. I was getting

1 ready to ask you about how far from the drift
2 mouth.

3 So you guys actually walked the four or
4 five breaks to the mantrip?

5 A. Yes.

6 Q. And was the whole crew there?

7 A. Yes.

8 Q. Kevin was there?

9 A. Yes.

10 Q. Okay. And you guys were preparing to go
11 inside?

12 A. Yes.

13 Q. Okay. When you was on -- I'm going to
14 jump back to when you was the utilityman on Rick's
15 crew.

16 Did you, as part of your job, did you do
17 any rock dusting?

18 A. Yes.

19 Q. Okay. Describe what you would do when you
20 rock dusted.

21 A. Just rock dust the ribs and the top and
22 mostly the -- like the real dark spots, I'd rock
23 dust more than I would the lighter spots there.

24 Where you can already see the rock dust

1 over top of them, I'd get the -- where the ribs
2 would fall, I'd rock dust that real good.

3 Q. Was you hand dusting?

4 A. Yes.

5 Q. Okay. Did you ever machine dust?

6 A. No.

7 Q. Did you ever hand dust on the belt line?

8 A. Yes.

9 Q. Okay. Did you hand dust the full length
10 of the belt line or just the dark spots?

11 A. I just did parts of the belt line. I
12 never really was up that far. I mean, I just
13 stayed in that general area, getting stuff and
14 putting the timbers and that side of the headgate
15 monorail and all that.

16 MR. CRIPPS: Okay.

17 EXAMINATION

18 BY MR. MAGGARD:

19 Q. When you was going in the mine, did you
20 walk in with Kevin Medley, or was he behind you?

21 A. I can't say he was behind me because me
22 and Josh -- well, it was me and Chad and somebody
23 else, we was the ones in front there. He was
24 behind us.

1 Q. Okay. I guess, so you made it to the
2 mantrip first. Do you recall how quick it was
3 before he made it to the mantrip?

4 A. No.

5 Q. Okay.

6 A. He was in the mantrip -- well, we was all
7 in the mantrip, and whenever he kicked the breaker
8 to start it up and whenever we started moving,
9 that's when it happened.

10 Q. Okay. So he was driving the mantrip; is
11 that right?

12 A. (Witness nods.)

13 Q. Okay. I know there's been questions about
14 you had seen more dust on Saturday. Was that more
15 dust down at the tail end? Where was you seeing
16 more dust at?

17 A. It was at the tail end, but I wouldn't say
18 it was more dust. But there was a lot. I mean, it
19 was a lot of dust.

20 Q. Okay. I know you said that you thought
21 the sprays were working okay. I know you're
22 running the head end.

23 A. Uh-huh.

24 Q. But to clarify for the record, are you

1 talking about the sprays on your end, or are you
2 talking --

3 A. On my end.

4 Q. On your end?

5 A. (Witness nods.)

6 Q. Thank you. I know that --

7 MR. BABINGTON: I'm sorry, Jasey, you said
8 "your end," and you nodded your head. Is that a
9 yes?

10 THE WITNESS: I said yes.

11 MR. BABINGTON: Okay.

12 Q. Now, I understand that the water system
13 that supplies the shear and the conveyer couplings
14 and shield water, well, except the emulsion
15 water --

16 A. Yes.

17 Q. -- comes from the river at UBB?

18 A. Yes.

19 Q. And I had a question if you could -- had
20 any -- seen any problems, like, when there was a
21 rainy day that maybe the sprays got clogged more,
22 they had more problems with the filter system or
23 anything like that, that you recall?

24 A. We had a lot of problems out of the filter

1 systems. Whenever we first started coming out of
2 the river there, we had a lot of problems out of
3 the filter, but then started straightening up.

4 But I think -- I don't know if they ever
5 done it or not, but I thought we had regular, like,
6 city water or something coming to the mines.

7 And we had a pump for the creek that city
8 water every -- whatever. We had it pumped from the
9 river.

10 Q. The way I understand it is, they did swap
11 over the well water for the emulsion system.

12 Okay?

13 And do you recall when you were told or
14 heard that they swapped over to a different water
15 system up there for that?

16 A. No, I don't.

17 MR. MAGGARD: Okay. I'll pass it on.

18 EXAMINATION

19 BY MR. CAUDILL:

20 Q. I have just got a couple things.

21 You stated that when you first started
22 using the river water that you had problems with
23 the sprays and so forth.

24 What did they do to correct the -- you

1 said it started getting better?

2 A. I don't know what they done to correct it
3 out there, but what we done inside the mines we --
4 they changed the filters every, like, 15 minutes.
5 I mean, we would go through them filters like it
6 was crazy.

7 Q. Okay. What kind of filters was it?

8 A. Big old long white ones.

9 Q. With, like, a sock?

10 A. A screen. Yeah, like a giant sock.

11 COURT REPORTER: Like a what?

12 THE WITNESS: A sock. Well, the screens,
13 they look like one -- I don't know how to explain.

14 MR. MCCUSKEY: What word did you use?

15 MR. CRIPPS: Sock, S-o-c-k.

16 THE WITNESS: Sock.

17 MR. CAUDILL: Is that what you said?

18 THE WITNESS: Yeah.

19 BY MR. CAUDILL:

20 Q. Now, when you were having these problems
21 with the water, who would generally clean the
22 sprays?

23 A. The electrician.

24 Q. Electrician. Okay. And how often did

1 that occur?

2 A. About every -- well, about 15 minutes when
3 it was real bad we had to keep changing. But then
4 after that, whatever it was, it got better and we
5 didn't have to change them very much after that.

6 Q. During that time you were having trouble,
7 did you notice, was the river up? I know, like, in
8 that area, like, if you get a heavy rainstorm, it
9 gets muddy and you get a lot of sediment in the
10 river. Do you recall?

11 A. I don't recall.

12 MR. CAUDILL: That's all I got.

13 EXAMINATION

14 BY MR. MAGGARD:

15 Q. I've got one quick question.

16 Did you ever notice it being worse early
17 in the week, like on a Monday versus later, you
18 know, like a Tuesday or a Wednesday?

19 A. Well, sometimes the water pressure gets
20 pretty bad during the middle of the week.

21 Q. In the middle of the week?

22 A. Yeah.

23 Q. Okay.

24 A. It gets better by the end of the shifts.

1 I mean, the shield will start working better.

2 Q. Okay. What about the -- instead of the
3 shields on the shear, I mean, did you notice, like
4 on certain days of the week, other than weather,
5 that they may have plugged worse than other days?

6 A. No.

7 Q. What about on the weekend? Would it be
8 worse or couldn't tell?

9 A. Couldn't tell.

10 MR. MAGGARD: Okay.

11 EXAMINATION

12 BY MR. TUCKER:

13 Q. Just got a couple for you, Dakota.

14 About how far outby the face was the end
15 of the track?

16 A. It was probably a good -- it was a long --
17 probably about six or seven breaks maybe.

18 Q. Do you know if they had a rubber-tired
19 vehicle that you could use for transportation from
20 the end of the track to the face?

21 A. They did.

22 Q. Did you all ever ride that?

23 A. No.

24 Q. You typically just walk?

1 A. (Witness nods.)

2 Q. Just to clarify something in my mind. As
3 far as Kevin, the call out that he took, do you
4 recall him being on the phone once or twice, once
5 you were up in the longwall room?

6 A. I can't recall.

7 Q. As far as you know, it was one time he was
8 on the phone?

9 A. Yes.

10 Q. Not sure. It could have been a second,
11 but you're not sure?

12 A. It could have been.

13 Q. Okay. We've heard a lot of comments about
14 the possibility of someone being in the mines on
15 Easter Sunday possibly messing with the air. Have
16 you heard those same comments?

17 A. Uh-huh.

18 MR. BABINGTON: I'm sorry. Is that a
19 yes?

20 THE WITNESS: Yes.

21 Q. Do you have any idea who could -- would
22 have any first-hand knowledge that we could talk to
23 that could say for sure that happened?

24 A. No.

1 MR. TUCKER: Okay. That's all I have.
2 Thank you, Dakota.

3 EXAMINATION

4 BY MR. MCGINLEY:

5 Q. I've got a couple more questions. Just a
6 couple more.

7 When you're talking about changing the
8 filter in the water line, that you would have to
9 change it every 15 minutes at some point before it
10 got better, that was the line that was feeding
11 water to the sprays?

12 A. I don't know. I know it was feeding it to
13 the shields, because the shields would get real
14 slow and you couldn't move them.

15 Q. So production didn't stop when they were
16 changing the filters. I assume you had to turn off
17 the water when you changed them?

18 A. I know we had to stop pretty good -- a lot
19 of times because they had to change the filter
20 because the shields wouldn't move.

21 Q. It would be stopped in the shear?

22 A. We would have to back flush the ...

23 Q. I see. So you would stop the production?

24 A. (Witness nods.)

1 MR. BABINGTON: Is that a yes?

2 THE WITNESS: Yes.

3 Q. The longwall room. There was a room set
4 aside just for the longwall crew?

5 A. Yes.

6 Q. Was there anything different about that
7 than -- I mean, what was the purpose of that?

8 A. My guess is you go out there and sit, I
9 mean, wait until we go under.

10 Q. Were there rooms for the production
11 sections?

12 A. No. I mean, you just had different
13 rooms. I mean, we didn't really talk -- well, we
14 talked to the miner section, but ...

15 Q. Did the foreman or management talk about
16 production, come in and talk to you?

17 A. No, just -- no, not really.

18 Q. So you're just waiting to go in?

19 A. Just waiting.

20 Q. Okay. Just a couple more questions.

21 In your testimony back in your interview
22 back in August, I think you said something about
23 this today as well, you said about four or five
24 days before the explosion the air changed. Do you

1 recall that? Is that your recollection?

2 A. It was four or five days. Maybe a little
3 bit longer than that.

4 Q. Was it any more than a week?

5 A. It was right at a week. I mean, I really
6 can't know off hand. I'm just giving you a rough
7 estimate.

8 Q. Yeah, that's exactly what I wanted. Could
9 it have been three weeks?

10 A. It wasn't that long. It was about two --
11 we'll say two to one week there, or one to two
12 weeks, however you want me to say it there.

13 Q. You think it could have been two weeks?

14 A. It could have been.

15 Q. The reason I'm asking is that the -- MSHA
16 issued some violations that called for the crews
17 production to stop and crews to be withdrawn. It
18 was back in March 9th or 10th. And then people
19 couldn't go back until they made those changes. Do
20 you recall it being out then?

21 A. I remember -- I can't remember, pinpoint
22 what day it was or what time.

23 Q. I understand that, but do you remember --

24 A. I know we was shut down for the air and

1 the return -- or in the entry, we had to go back
2 there and do stoppings and knock down stoppings.

3 Q. Right. I think you testified about that.
4 You did some plastering and --

5 A. Yeah.

6 Q. But that was three weeks before?

7 A. (Witness nods.)

8 Q. But the air change that you experienced
9 that got hot was towards the end, so four or five
10 days about -- well, was it hot for two weeks, or
11 was it really the last four or five days, if you
12 have any sense of that?

13 A. No. It just got where -- I mean, it
14 didn't get worse. It was just where I was used to
15 wearing a jacket and we was running coal, I mean,
16 it was cold, I mean, you couldn't hardly stand it.

17 Then you had to, like, after the
18 ventilation change and all that, we had to start
19 cutting our sleeves out of our shirts and all
20 that.

21 And going farther during, like, towards
22 the end of the time there, it started getting
23 warmer, but, I mean, it could have been anything,
24 like walking up and down the face, it could have

1 got warmer that way. But it was hot. I'll tell
2 you that.

3 Q. That was right towards the end?

4 A. Yes.

5 Q. The last four or five days?

6 A. Yes.

7 Q. So, I mean, after the air change that
8 occurred after the MSHA pulled everybody out of the
9 mine, when you first went there, did you say, wow,
10 the air is a lot less, or did it happen later on or
11 gradually?

12 A. I mean, I can't say the air was bad
13 because it was good. It was just a lot less than
14 what we had.

15 Q. Was it immediate back three weeks before,
16 or was it closer to the time of the explosion?

17 A. I mean you could tell the difference in
18 the air from the time we changed, but, I mean, you
19 could tell whenever we done it.

20 I don't know if that's the answer you're
21 looking for, but it was immediately. I mean, when
22 we done it, you could feel the air change.

23 Q. I was trying to connect the air change to
24 what you experienced. I looked at your testimony

1 and you said four five days before the explosion it
2 got really hot.

3 It sounded like there was a significant
4 change a week or two after the MSHA shut the mine;
5 is that correct?

6 A. It did get cut. The air did get cut short
7 somewhere, because we did -- I mean, it got warm.
8 I mean, you could tell there wasn't very much air
9 up there.

10 Q. But that was a week or two after the MSHA
11 violations and the air changed?

12 A. Yes.

13 MR. MCGINLEY: Okay. That's all the
14 questions.

15 EXAMINATION

16 BY MR. BABINGTON:

17 Q. I have one quick one.

18 On the 5th, when Kevin Medley, I think you
19 said he got to the mantrip after you did. Did he
20 just get straight onto the mantrip and start
21 operating it, or did he use the phone first?

22 A. Well, he had to call to the dispatcher and
23 see if we had the road in, but ...

24 COURT REPORTER: See if what?

1 Q. Who relayed that to your crew?

2 A. Kevin -- I don't know who relayed it. It
3 got relayed to us by Kevin Medley.

4 Q. Was Jack Roles there? Did he talk to you
5 guys before you went underground?

6 A. No. We passed him coming out of the drift
7 mouth, him and two inspectors there. We passed him
8 coming out and we was going in.

9 Q. Okay. So you seen him come out of Ellis
10 portal?

11 A. Yes.

12 Q. Was anybody else with him?

13 A. I don't think so.

14 Q. What time was that? Was that -- you said
15 you got there about 2:30 something?

16 A. Yes.

17 Q. Estimate?

18 A. When we passed Jack and them, it was
19 probably around, like, 2:50 -- well, about 2:59.
20 Well, we left there at the room about 2:57, 2:58 or
21 something. We made it to the drift mouth at 3
22 o'clock and when we was -- whatever. Then it
23 happened. So we passed him, like, in between the
24 drift mouth and the office.

1 Q. These times that you think you -- 2:57,
2 where was you getting that from? Was there a clock
3 on the wall or --

4 A. Yeah. And I had a watch on. I always --
5 normally Kevin, he wants to jump up a little early
6 and get under there, but he was -- I forgot what he
7 was doing. He got that call out, or whatever it
8 was, and he wrote something down in the book. Then
9 he hung the phone up and we went underground and
10 that was it.

11 Q. Okay. Let's step back to Saturday.
12 Was there anything that your crew had to
13 relay to anyone about any work that needed to be
14 done after your shift?

15 A. No. I know our crew, when we got outside,
16 we had to rock dust, like, four or five breaks from
17 the mantrips all the way up. We had to take all
18 the rescuers, put them up when we got back that
19 day.

20 Q. Okay. So did you all leave a little bit
21 early from the section to be able to rock dust --
22 and I'm assuming you were saying, meaning you had
23 to rock dust down there at the portals?

24 A. Yes. And then we had to rock dust in the

1 -- right there from the mule train back, had to
2 rock dust all of that.

3 Q. Okay. So from the mule train. Was that
4 in the track entry?

5 A. Yes.

6 Q. Okay. And so how far did you have to rock
7 dust?

8 A. All the way down to the last open.

9 Q. Okay. So inby from the mule train you had
10 to?

11 A. (Witness nods.)

12 Q. How many bags of rock dust did you use
13 there?

14 A. I probably used about eight myself, and
15 the other people, I don't know.

16 Q. Okay. But was it just in the track
17 entry?

18 A. Yes.

19 MR. MAGGARD: Okay.

20 EXAMINATION

21 BY MR. CRIPPS:

22 Q. Cody, I need you to clear something up.
23 You said you seen Jack Roles coming out of the
24 mine. I understood you to say Jack and two

1 inspectors.

2 A. (Witness nods.)

3 Q. Can you clarify that for me? Was it state
4 and federal inspectors?

5 A. I don't have a clue.

6 Q. Okay. But you think it was two --

7 A. It was inspectors, but I don't know if it
8 was state or federal.

9 Q. Could it have been Massey employees?

10 A. Don't have a clue.

11 Q. Okay. I've seen some records and heard a
12 lot of people talk about the 30-minute call out
13 from the longwall. Do you know what that is?

14 A. Pre-shift, I guess; right?

15 Q. The one I'm talking about is the one
16 that's made every 30 minutes during the shift?

17 A. Oh, they call out and they report the
18 passes they got?

19 Q. Correct

20 A. Yeah.

21 Q. Are you familiar with that?

22 A. Yes.

23 Q. Who does that call out?

24 A. That would be Rex Mullins, the headgate

1 operator.

2 Q. The headgate operator?

3 A. (Witness nods.)

4 Q. So a headgate operator on each crew calls
5 that information out?

6 A. Yes.

7 Q. To whom is that information called out to?

8 A. To a foreman. It would be the shift's
9 like -- I don't know how you'd -- I guess the
10 dispatcher would get it, too, maybe. Because the
11 dispatcher would call in wanting a report every 30
12 minutes, or sometimes it was, like, 15 minutes.

13 Q. Okay. When Kevin got off the phone prior
14 to you guys going underground, did he say anything
15 to you guys, give you any indication that there was
16 a problem on the longwall?

17 A. No.

18 Q. When you're on the face, how often would
19 Kevin be on the face with you?

20 A. Just whenever we start checking bits and
21 he'll walk down with us and date up and all of
22 that, but, other than that, we wouldn't see him on
23 the face really.

24 Q. Okay. What do you think was -- as far as

1 being your foreman, was Kevin a pretty good foreman
2 as far as his concern for you guys' safety?

3 A. Yeah.

4 Q. This is probably going to ask you for an
5 opinion, but if you would like to, do you feel that
6 if Kevin knew there was a problem on the longwall
7 that you guys would have went ahead and went
8 underground on the 5th?

9 A. Probably not.

10 MR. CRIPPS: Okay.

11 EXAMINATION

12 BY MR. TUCKER:

13 Q. Just real quick couple. I promise.

14 You mentioned looking at your watch. Can
15 you recall the last time you looked at your watch
16 on April 5th what time it was?

17 A. No. Whenever -- the last time I looked at
18 it was whenever that explosion happened. When I
19 got outside, it was, like, 3:05, maybe 3:06. But
20 whenever we sat down in the mantrip, it was exactly
21 3:01.

22 Q. As far as you know, is your watch pretty
23 accurate?

24 A. Yes.

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MR. TUCKER: Okay. Thank you. That's all I have.

EXAMINATION

BY MR. MAGGARD:

Q. Before you went in, did anybody say where they thought the shear was at at that time?

A. I remember him saying where the shear was at, but I couldn't remember. I mean, it was -- I think it was 1:30 something going to the tail. That was the last I remember.

EXAMINATION

BY MR. BABINGTON:

Q. Cody, you said you were familiar with the 30-minute reports that you had to call out to the dispatcher.

Do you recall if that was exclusive to the day shift or whether you had to do that on the day and the night shift?

A. On the evening shift, I think it was an hour maybe. I think it was an hour on evening shift and 30 minutes on the day shift.

MR. MCCUSKEY: Matt, would you accept a clarification? You said "you called it out." I think you understood that he didn't call it.

1 Q. Right. Your crew is what I'm talking
2 about, or whoever on your crew would make that
3 phone call.

4 And you said you were on swing shift, so
5 you would have -- how do I say this? You worked
6 swing shifts; right?

7 A. Yes.

8 Q. So you worked day shifts and night shifts?

9 A. Evening.

10 Q. Evening shifts. Thanks.

11 And you said that they were hourly reports
12 on the evening shift?

13 A. Yeah, I believe it was hourly on the
14 evening, 30 on the day.

15 Q. Thank you.

16 MR. BABINGTON: Let's take two minutes to
17 get just final follow-up questions, and then we'll
18 finish up. Let's go off the record.

19 (Break.)

20 MR. BABINGTON: Okay. Let's go back on
21 the record.

22 Bill, do you have anything else?

23 MR. TUCKER: No.

24 MR. BABINGTON: Pat?

1 MR. MCGINLEY: No.

2 MR. BABINGTON: Dean?

3 MR. CRIPPS: Not me.

4 MR. BABINGTON: Jasey?

5 MR. MAGGARD: I'll ask one more, I guess.

6 EXAMINATION

7 BY MR. MAGGARD:

8 Q. When you normally bitted up, did you bit
9 the head drum?

10 A. Yes.

11 Q. Okay. And when you said that you had seen
12 five sprays out, was that -- how recent was that?

13 A. Whenever I first started running the
14 shear.

15 Q. Okay. And was that on your drum, or was
16 that on the head drum or tail drum, or what was it?

17 A. It was on the head drum.

18 Q. On the head drum?

19 A. (Witness nods.)

20 Q. And you noticed that when you bitted up;
21 is that correct?

22 A. Yes. Well, whenever they was doing the
23 shuffle, you could see they was missing there
24 because it was shooting out bigger quantities of

1 waters than the little mist.

2 Q. Okay. Would it be safe to say it kind of
3 looked like a garden hose at some point?

4 A. Yes.

5 Q. Is it also kind of hard to notice that
6 unless you're in a certain position while you're
7 running the shear?

8 A. No, because it will get you wet
9 eventually.

10 MR. MAGGARD: Okay. That's all I got.

11 MR. CRIPPS: I'm done.

12 MR. TUCKER: We just --

13 MR. MCCUSKEY: I had a couple
14 clarifications I wanted to make.

15 MR. TUCKER: Sure.

16 EXAMINATION

17 BY MR. MCCUSKEY:

18 Q. Based on your first interview and some
19 questions that were asked of you today, Mr. Davis,
20 let me ask you if you would clarify for the record
21 and for the -- whoever might be reading this down
22 the road.

23 You had described water problems, water
24 pressure problems, on the sprayers that I

1 understood it when you first began operating the
2 shear when you first begun working at UBB, and you
3 described them and told about the sock.

4 Tell me what the condition of the water
5 was and what problems you were having, if any, by
6 the time -- at the time of the explosion or near
7 the last time you worked.

8 A. None.

9 Q. Okay.

10 A. It done cleared up and was going good.

11 Q. Okay. And now with respect to the
12 ventilation, and I read your transcript this
13 morning from the first one, there were two events
14 you described before, and you described today, that
15 impacted the air or the ventilation under the
16 mine.

17 Correct me if I'm wrong, then I'll ask you
18 to describe it.

19 The first one, which took place sometime
20 between mid March and toward the end of March,
21 which was described as being done through -- as
22 required by MSHA, is that way you described it?

23 A. Yes.

24 Q. Now, you know that changed. Clarify for

1 the record what observations you made with respect
2 to quantity of air, the presence or absence of coal
3 dust, and the temperature where you were working as
4 a result of the first change and sometime around
5 mid March, which was made by, either by or at the
6 request of MSHA.

7 A. It cut our air down, but still had the
8 right air, but it did create a little bit more
9 dust. But it -- the reason they done it, because
10 it was going outby. When I'm saying outby, it's
11 going farther than one break outby the tail entry
12 there, it's going farther than that, and there's a
13 requirement of just one break, but it was going,
14 like, two or three or something like that.

15 Then we had to cut it down a little
16 whenever they came in there and told us to cut the
17 -- well, not cut it down, but, you know, put the
18 stoppings up where the air won't go all the way out
19 three breaks, just going out one or whatever and
20 cutting back towards the gob there.

21 And, then, that's about all it really
22 done, I mean, whenever they slacked the air down.

23 Q. Was it warmer or colder after that change
24 in the air?

1 A. It was warmer.

2 Q. There was a description in your first
3 interview, and I think Mr. McGinley asked you about
4 it today, that you believe the air, at least it was
5 your understanding, it cut from in the hundreds to
6 in the 50s. Is that what you understood?

7 A. Yes.

8 Q. And then thirdly, is that when you began
9 to observe more coal dust at the tail of the
10 longwall?

11 A. Yes.

12 Q. And then there was a second change that's
13 been described here, which I believe a couple doors
14 were installed within, say, a week before the
15 explosion? Is that a second event that you
16 described?

17 A. Yes. That is a set of doors put up outby
18 the longwall there. I can't remember where it was
19 at.

20 Q. Okay. It's described in your first
21 interview.

22 To what extent did any of the three things
23 you just described, the quantity of air, the
24 temperature of the air, or the coal dust, change

1 further from the way you described it after the
2 first change resulting from the MSHA event?

3 A. Not much. But it did change a little bit,
4 but not much.

5 Q. For the better or worse?

6 A. Worse. Well, when I say "worse," it got
7 warmer.

8 Q. Okay. Is warmer the main thing you recall
9 as being different?

10 A. Yeah.

11 MR. MCCUSKEY: That's all I have to
12 clarify. Thank you.

13 EXAMINATION

14 BY MR. TUCKER:

15 Q. That just raises a question when you talk
16 about being warmer, and I know you were just coming
17 out of the winter months which has some affect on
18 the temperature underground, do you recall back the
19 week prior to April the 5th if the temperatures had
20 increased where it was warmer outside than what it
21 previously had been?

22 A. I believe it was.

23 Q. Okay. So that possibly could have had
24 some bearing on the temperature on the jack line?

1 Q. There's a question up at the top. Did you
2 have good air after they shut you down? And you
3 said, We still had a little bit of air, but not as
4 good?

5 Then you were asked, Did you notice any
6 problems after we shut you down? And you said, Not
7 really until a couple of days later, about a week
8 or whatever, the air reduced down a lot where we
9 had to take our jackets off and cut our sleeves off
10 and our shirt.

11 So the air reduced a lot a week after the
12 MSHA violations and the shutdown for an air change;
13 is that right? That's what you said?

14 A. Yeah, it increased our air a pretty good
15 bit.

16 Q. Okay. But it was a week after they made
17 the air change and you went back in after you had
18 been shut down? It seems that's what you've said
19 here.

20 A. What do you mean, like a week after they
21 came back in and shut us down?

22 Q. The questions here were talking about the
23 MSHA air change in March, right at the top of the
24 page, you had good air before they shut it down,

1 then you still had a little bit of air, not as
2 good. And then you say -- and the question was,
3 Did you notice any problems after they shut you
4 down? Not really until a couple days later, about
5 a week or whatever, the air reduced down a lot.

6 So a week after you came back in?

7 A. It was a couple of days, because after --
8 I was on evening -- I think I was on -- no, I was
9 on day shift, made that stoppings and all that.
10 Then I was off for three days and we came back that
11 following week, and then the air was really bad
12 when I came back in to work.

13 Q. What are you talking about the following
14 week?

15 A. Like I was off through Friday, Saturday
16 and Sunday, and I came back Monday. Then when I
17 came back Monday, the air was -- see, I really
18 didn't go back to the face whenever we got done.
19 I -- shift changed at the end of the shift there,
20 at the tail where we was doing stoppings, evening
21 shift came in, they took us over, and then we went
22 outside. When I came back that Monday and then it
23 was bad.

24 Q. Well --

1 A. Well, what I say bad.

2 Q. It still was adequate air according to
3 regulations?

4 A. Yes, it was adequate air.

5 Q. I'm just not clear of what time this was.
6 Was this at the end of March there before the
7 explosion?

8 A. I can't tell you. I can't pinpoint the
9 time. All I know is it was during March. Sometime
10 from the 1st to the end of the month.

11 Q. You had said, on page -- where is it -- on
12 Page 24, you're asked on Line 13, Approximately how
13 long prior to the explosion would you say that
14 was? And your answer was, Probably about four or
15 five days. Is that right?

16 A. I was talking about those doors they put
17 up on that one.

18 Q. Okay. Thank you.

19 MR. MCCUSKEY: Let me try to clarify the
20 clarification by asking this question.

21 So the first time you came back to work
22 after the MSHA shutdown, was the air reduced as you
23 explained on Page 24?

24 THE WITNESS: Yes, it was reduced.

1 MR. MAGGARD: I have got a question about
2 the doors. Was that also something that MSHA asked
3 them to -- was that something they made the company
4 do?

5 THE WITNESS: I don't know about that
6 one. Because whenever I was on my days off and
7 when I came back, the doors was up.

8 EXAMINATION

9 BY MR. BABINGTON:

10 Q. So the air change was made, you were off
11 for three days, and then you came back and the air
12 was different?

13 A. Yes.

14 Q. And the doors were added during that same
15 time period?

16 A. I can't remember if it was during that
17 same time period or it was on another set of days
18 off that I had when I came back the doors was up.

19 There was two doors -- let me think.
20 Well, there was two doors, sets of doors there, put
21 up. And there was a hole on this side of the
22 doors, and then there was a hole on this side of
23 the doors, I guess, for, like, a regulator they
24 didn't finish building or whatever. But there was

1 a set of doors there.

2 Q. Was that at 78 break, or was that along
3 the longwall headgate?

4 A. You know how -- let me think. You had the
5 -- well, what we call a "Wal-Mart" where all of our
6 tools are, you had that curve right there, then you
7 had two sets of doors.

8 And then when we went on down through
9 there, there was a little -- I can't remember if it
10 was 78 break or not, but they put two more sets of
11 doors up that we had to get out and open that.

12 Q. So the Wal-Mart, as I understand it,
13 that's along the -- that's at the mouth of the
14 longwall headgate entries. I'm just going to state
15 that for the record.

16 MR. MCGINLEY: Is that correct? You have
17 to respond to that. I think he was asking a
18 question.

19 A. Yes, it was outby the longwall there.

20 MR. MCGINLEY: Go ahead.

21 MR. CRIPPS: Well, I've got a few,
22 another -- I guess, a line of questioning if you
23 want to go. It's kind of getting off the
24 ventilation, though, so if you want to go ahead

1 while we're on this.

2 EXAMINATION

3 BY MR. MCGINLEY:

4 Q. So there was -- so in that testimony in
5 about the -- in March there around -- where you
6 said you had to go to the tail end and make --
7 reset blockings and build stoppings and plaster
8 stoppings, you mentioned there is a regulator
9 there, there's a hole where they use it as a
10 regulator. What do you mean by that?

11 A. When we went to the tail and did that
12 ventilation change?

13 Q. Right.

14 A. Just building stoppings and plastering
15 them.

16 Q. Okay.

17 A. We didn't build no regulators, I don't
18 think, no.

19 Q. Okay. Were there holes? I thought you
20 said something about there were holes?

21 A. They was in those two doors I was talking
22 about.

23 Q. Okay.

24 A. They was on the head end -- or the head

1 side of the tail.

2 Q. What was the purpose of the holes, if you
3 know?

4 A. I don't know. When they came back the
5 doors was put up with not all the blockings there.

6 Q. You ever seen anything like that before?

7 A. No, I mean, I don't know if they haven't
8 finished building them, or that's how they was
9 supposed to build them or what. I don't know.

10 Q. Well, did they stay like that?

11 A. They stayed like that for a while.

12 Q. Did they ever fill them in?

13 A. I don't think so.

14 EXAMINATION

15 BY MR. CRIPPS:

16 Q. I've got a few questions I want to ask
17 you. Are you doing okay or do you need a break?

18 A. I'm good.

19 Q. Okay. From your experience as a shear
20 operator, if the shear is at the tailgate of the
21 face, and an event happens on the longwall that you
22 have to evacuate quickly, how would you leave the
23 section?

24 A. I would knock the power on the shear and

1 leave.

2 Q. Would you go towards the headgate, or
3 would you go out the tailgate entries?

4 A. It depends where it was at, I guess.

5 Q. Explain to me each.

6 A. Like, if it was on the tail end side, I'd
7 leave on the head. And if it was on the head, I'd
8 go out the tail and leave.

9 Q. So if an event happened, let's just say a
10 fire ignition out on the tail entry, which
11 direction would you go off the face?

12 A. I'd go off the head.

13 Q. Okay. Let's say there's a fire at the
14 mule train and all the smoke is coming onto the
15 face. And as I understand from your description of
16 the intake earlier, the air that's going over the
17 mule train ventilates the face; correct?

18 A. Yes.

19 Q. Consequently, if there is a fire at the
20 mule train, the smoke would go onto the face?

21 A. Yes.

22 Q. Let's say that's the scenario. Which way
23 do you think you would go off the face?

24 A. Off the tail side, because you'll run into

1 fresh air once you cut to the left and stuff. You
2 know, like, how it goes up and cuts back up the
3 tail entry?

4 Q. Uh-huh.

5 A. You're supposed to run into fresh air once
6 you got so far up in there.

7 Q. So when you got in the tailgate entry, you
8 would hit fresh air?

9 A. Yeah.

10 Q. That's because there was fresh air coming
11 inby in the tailgate entries?

12 A. Yes, it's coming down, like it's pushing
13 it out.

14 Q. Okay. If -- and so consequently the smoke
15 from that fire would go inby towards the Bandytown
16 fan?

17 A. (Witness nods.)

18 MR. BABINGTON: Sorry, is that a yes?

19 THE WITNESS: Yes.

20 Q. Let's say, for instance, then, if the air
21 coming off the face, in fact, did not go inby, but
22 rather it went outby at the tailgate entries, what
23 effect would that have on people trying to escape
24 off the longwall face that direction?

1 A. Pretty bad. I mean, pretty bad effect,
2 because you really wouldn't be able to do nothing
3 but grab the lifeline and try to get out.

4 Q. Why is that?

5 A. Because you couldn't see.

6 Q. Because you would be in smoke?

7 A. Yes.

8 Q. So, in your opinion, is it a good idea to
9 have fresh air coming up the tailgate entries?

10 A. It should be.

11 Q. Okay. Are you aware of that, that is, in
12 fact, a regulation?

13 A. Yeah. The fresh air has to come down the
14 -- I don't know if it was a regulation or not, but
15 I know it was, like, we had that fresh air coming
16 down. I didn't know if you was supposed to have it
17 or you wasn't.

18 Q. Okay. But if the air then leaving the
19 face is, in fact, going outby in the tailgate
20 entry, that probably would not be a good thing from
21 a safety standpoint. Do you agree with that?

22 A. If it's going up and it wasn't going
23 towards the gob?

24 Q. Yes.

1 A. Yes, that would be.

2 MR. CRIPPS: Okay. That's all I have.

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

4 EXAMINATION

5 BY MR. MAGGARD:

6 Q. I don't know if it's been asked. Are you
7 currently working anywhere right now?

8 A. No.

9 Q. Have you got any intentions of going back
10 to work?

11 A. Not underground.

12 Q. Okay.

13 MR. TUCKER: Dakota, on behalf of the
14 Office of Miners' Health, Safety and Training and
15 the other teams here today, I certainly want to
16 thank you for coming in today and answering all of
17 our questions and being patient with us.

18 And at this time, I'd just like to give
19 you an opportunity, if there's a statement you want
20 to make, the floor is yours now, any type of
21 statement you want to make.

22 THE WITNESS: No. They just need more air
23 on the longwall. That's all I got.

24 MR. TUCKER: Thank you. We're off the

1 **record.**

2 **(Interview concluded.)**

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1 STATE OF WEST VIRGINIA, To-wit:

2 I, Jenny Taylor, a Notary Public and Court
3 Reporter within and for the State aforesaid, duly
4 commissioned and do hereby certify that the
5 interview of DAKOTA A. DAVIS was duly taken by me
6 and before me at the time and place specified in
7 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 attorney
14 or counsel for, nor related to or employed by, any
15 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 6th day of March
21 2019.

22 Given under my hand and seal this 2nd day of
23 March 2011.

24 -----
Jenny Taylor
Notary Public

ERRATA SHEET

I, the undersigned, DAKOTA DAVIS, do hereby certify that I have read the foregoing sworn statement and that, to the best of my knowledge, said deposition is true and accurate (with the exception of the following corrections listed below):

PAGE/LINE	CORRECTION AND REASON FOR CORRECTION
<u>16/20</u>	<u>Change the word "Fort" to "Fork"</u>
<u>18/8</u>	<u>Change "No" to "Yes" and add: "because there were several times when we had to shut down to pump water"</u>
<u>25/12</u>	<u>Add the word "coal" in front of "dust"</u>
<u>33/20</u>	<u>Change the word "Fort" to "Fork"</u>
<u>34/20</u>	<u>Add ", to the head gate operator" after the word "yes"</u>
<u>44/12</u>	<u>Replace "miner section" with "Long wall"</u>
<u>46/14</u>	<u>Change the word "taking" to "talking"</u>

And all those changes or clarifications reflected in the second interview testimony of Dakota Davis taken on February 25, 2011 at the offices of the West Virginia Mine Health and Safety Training with William Tucker presiding.

Dakota Davis
DAKOTA DAVIS

Subscribed and sworn to before me this 4th day of April, 2011.

Melody A. McCormick
Notary Public

