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Transcript of the Testimony of Randy Gwinn

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Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH

OF

RANDY GWINN, JR.

taken pursuant to Notice by Alicia R. Brant, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Friday, August 27, 2010, beginning at 9:00 a.m.

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1 A P P E A R A N C E S

2

3 DANA FERGUSON, ESQUIRE

4 U.S. Department of Labor

5 Office of the Regional Solicitor

6 1100 Wilson Boulevard

7 22nd Floor West

8 Arlington, VA 22209-2247

9

10 BARRY KOERBER, ESQUIRE

11 West Virginia Office of Miners' Health,

12 Safety and Training

13 1615 Washington Street East

14 Charleston, WV 25311

15

16 ERIK SHERER

17 Mine Safety and Health Administration

18 1100 Wilson Boulevard

19 Arlington, VA 22209-3939

20

21 TERRY FARLEY

22 West Virginia Office of Miners'

23 Health, Safety and Training

24 1615 Washington Street East

25 Charleston, WV 25311

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24
25

J. DAVITT MCATEER, ESQUIRE
West Virginia Independent Investigation
132 West German Street
P.O. Box 1050
Shepherdstown, WV 25443

DAVID J. HARDY, ESQUIRE
Allen, Guthrie & Thomas, PLLC
500 Lee Street, East
Suite 800
Charleston, WV 25301

COUNSEL FOR PERFORMANCE COAL

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EXHIBIT PAGE

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IDENTIFIED

One

Subpoena

8*

Two

Return Receipt

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* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY FERGUSON:

4 Mr. Gwinn, my name is Dana Ferguson.

5 Today is August 27, 2010. I'm an attorney with the

6 Office of the Solicitor, U.S. Department of Labor.

7 With me is Erik Sherer, an accident investigator with

8 the Mine Safety and Health Administration, MSHA. Also

9 present are several people from the State of West

10 Virginia. I would ask that they state their

11 appearance for the record at this time.

12 MR. FARLEY:

13 I am Terry Farley, with the West Virginia

14 Office of Miners' Health, Safety and Training.

15 ATTORNEY KOERBER:

16 I'm Barry Koerber, an Assistant Attorney

17 General assigned to represent the West Virginia Office

18 of Miners' Health, Safety and Training.

19 ATTORNEY MCATEER:

20 And I'm Davitt McAteer, and I'm the

21 Governor's Chief --- independent investigation team.

22 ATTORNEY FERGUSON:

23 There are members of the MSHA

24 investigation team also present in the room today.

25 Mr. Sherer, Mr. Farley and Mr. McAteer will be doing

1 the questioning. Will you swear in the witness,
2 please?

3 -----

4 RANDY GWINN, JR., HAVING FIRST BEEN DULY SWORN,
5 TESTIFIED AS FOLLOWS:

6 -----

7 ATTORNEY KOERBER:

8 Sir, would you please state your full
9 name for the record and spell your last name?

10 A. It's Randy Arlen Gwinn, Jr. Last name is spelled
11 G-W-I-N-N.

12 ATTORNEY KOERBER:

13 Would you please state your address and
14 telephone number?

15 A. Address is [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED] [REDACTED]

18 ATTORNEY KOERBER:

19 And do you have an attorney or a personal
20 representative that you're expecting to appear here
21 today with you?

22 A. No.

23 ATTORNEY KOERBER:

24 I see that there is an attorney in the
25 room, and I would ask that he identify himself for the

1 record, together with his firm name and whom he is
2 representing.

3 ATTORNEY HARDY:

4 Yes, sir. I am David J. Hardy. I'm from
5 Allen Guthrie & Thomas, and I'm here to represent
6 Performance Coal.

7 ATTORNEY KOERBER:

8 Mr. Gwinn, are you appearing here today
9 as a result of being served with a subpoena?

10 A. Yes.

11 ATTORNEY KOERBER:

12 This is a copy of that subpoena. You can
13 take a look at it and make sure that it is a copy, but
14 I'd like this to be Exhibit One and have that marked
15 as Exhibit One.

16 (R. Gwinn Exhibit One marked for
17 identification.)

18 ATTORNEY KOERBER:

19 This is a copy of the return of service
20 filled out by the Deputy Sheriff. You have probably
21 not seen that, but it shows that he served you on
22 August 9th, at 12:05 p.m. And then he has attached
23 also to that return a copy of the actual subpoena that
24 you got that has the received mark on it as well. I'd
25 like that to be Exhibit Two.

1 (R. Gwinn Exhibit Two marked for
2 identification.)

3 ATTORNEY KOERBER:

4 Mr. Gwinn, what actually gives the

5 Director the authority to subpoena witnesses requires
6 the Director to offer to each witness that he
7 subpoenas a \$40-per-day witness fee, plus mileage ---
8 roundtrip mileage at the rate of 15 cents a mile, so
9 long as you've driven here in your personal vehicle,
10 plus reimbursement for any tolls that you may have
11 passed to and from this place. Prior to the interview
12 I gave you some forms to be filled out to receive that
13 money. Have you completed those forms?

14 A. Yes, I have.

15 ATTORNEY KOERBER:

16 And have you returned them to me?

17 A. Yes.

18 ATTORNEY KOERBER:

19 Thank you. No other questions.

20 ATTORNEY FERGUSON:

21 All members of the Mine Safety and Health
22 Accident Investigation Team and all members of the
23 State of West Virginia Accident Investigation Team
24 participating in the investigation of the Upper Big
25 Branch Mine explosion shall keep confidential all

1 information that is gathered from each witness who
2 provides a statement until the witness statements are
3 officially released. MSHA and the State of West
4 Virginia shall keep this information confidential so
5 that other ongoing enforcement activities are not
6 prejudiced or jeopardized by a premature release of
7 information. This confidentiality requirement shall
8 not preclude investigation team members from sharing
9 information with each other or with other law
10 enforcement officials. Your participation in this
11 interview constitutes their agreement to keep this
12 information confidential.

13 Government investigators and specialists

14 have been assigned to investigate the conditions,
15 events and circumstances surrounding the fatalities
16 that occurred at the Upper Big Branch Mine-South on
17 April 5th, 2010. The investigation is being conducted
18 by MSHA under Section 103(a) of the Federal Mine
19 Safety and Health Act and the West Virginia Office of
20 Miners' Health, Safety and Training. We appreciate
21 your assistance in this investigation.

22 Your identity and the content of this

23 conversation will be made public at the conclusion of
24 the interview process and may be included in the
25 public report of the accident, unless you request that

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

13 A. Yes.

14 ATTORNEY FERGUSON:

15 Do you have any questions?

16 A. Uh-uh (no).

17 ATTORNEY FERGUSON:

18 After the investigation is complete, MSHA
19 will issue a public report detailing the nature and
20 causes of the fatalities in hopes that greater
21 awareness about the causes of accidents can reduce
22 their occurrence in the future. Information obtained
23 through witness interviews is frequently included in
24 these reports. Since we will be interviewing other
25 individuals, we would request that you not discuss

1 your testimony with any person aside from a personal
2 representative or attorney. A court reporter will
3 record your interview. Speak loudly and clearly. If
4 you do not understand a question asked, please ask
5 that it be rephrased. We would also ask that you give
6 your answers verbally and say yes or no because
7 nodding and uh-huh and uh-uh doesn't come across very
8 well in the transcript. I'll remind you if you
9 forget. Please answer each question as fully as you
10 can, including any information you've learned from
11 someone else.

12 We'd like to thank you in advance for
13 your appearance here. We appreciate your assistance
14 in this investigation. Your cooperation is critical
15 in making the nation's mines safer.

16 After we have finished asking questions,
17 you'll have an opportunity to make a statement and
18 provide us with any other information you believe to
19 be important. If at any time after the interview you
20 recall any additional information you believe might be
21 useful, please contact Norman Page at the telephone
22 number and e-mail address provided to you in the
23 information I gave you this morning. Do you have any
24 questions before we get started?

25 A. No.

1 ATTORNEY FERGUSON:

2 Terry?

3 MR. FARLEY:

4 Mr. Gwinn, on behalf of the Office of

5 Miners' Health, Safety and training, I'd like to

6 inform you that the West Virginia State Mine

7 Regulations also provide protection against potential

8 discrimination which might result from participation

9 in these type of interviews. I'd like to pass along

10 some contact information from the West Virginia Board

11 of Appeals. The Board is charged with hearing

12 complaints from miners regarding discrimination.

13 Should you have any such problems, you should contact

14 the Board at that address. Also, I would caution you

15 that should you have a problem, you need to file a

16 complaint within 30 days of when the event occurred.

17 A. Okay.

18 ATTORNEY FERGUSON:

19 Erik?

20 EXAMINATION

21 BY MR. SHERER:

22 Q. I want to thank you for coming down here this

23 morning, Mr. Gwinn.

24 A. Yeah.

25 Q. Your input on this is very important to us. We're

1 trying to determine the conditions and events that led
2 up to this explosion. And we're really trying to do
3 that for two reasons. The first is the families and
4 the friends and the coworkers of these miners deserve
5 some closure. Second is we want to prevent this type
6 of explosion from ever happening again. So any
7 information you can give us that will help us
8 determine what took place is --- we appreciate it.

9 How many years of mining experience do you have?

10 A. A little bit over two.

11 Q. Has it been with the Massey organization?

12 A. Yes.

13 Q. Okay. When did you start working at Upper Big
14 Branch?

15 A. It was about a year before the explosion happened,
16 during the longwall setup there.

17 Q. Okay. What was your job description prior to the
18 explosion?

19 A. Electrician.

20 Q. Electrician. Was there any --- did you work on
21 the section, work on the longwall?

22 A. I worked on the section.

23 Q. Which section?

24 A. The longwall section.

25 Q. Okay. Which shift did you work?

1 A. It rotated from days to evenings.

2 Q. Okay. What was the last shift you worked prior to
3 the explosion?

4 A. Saturday before on dayshift.

5 Q. Saturday before on dayshift. When you first got
6 on the section Saturday morning, did you notice
7 anything the least bit unusual?

8 A. No.

9 Q. Okay. During the day, did you notice anything
10 unusual?

11 A. No.

12 Q. When you were going out of the mine, did you
13 notice anything unusual?

14 A. No.

15 Q. Okay. What was the ventilation like on Saturday?

16 A. It was good.

17 Q. It was good. Was it steady or did the air seem to
18 fluctuate any?

19 A. To the best I can remember, it was steady.

20 Q. Okay. Do you wear a methane spotter?

21 A. Myself, no.

22 Q. Do you work with anybody that does?

23 A. Yes.

24 Q. Do you recall if anybody's methane detector went
25 into alarm any time on Saturday?

1 A. No.

2 Q. Have you ever smoked anything when you were
3 working on the longwall face that was kind of a
4 kerosene sort of odor?

5 A. No.

6 Q. Okay. What did you guys do Saturday?

7 A. Run coal.

8 Q. Run coal. Was it a good day?

9 A. Yes, it was a good day because I had Sunday off.
10 My three-day stretch started.

11 Q. That's a real good day. How about the production?
12 Was it a good production day?

13 A. I can't remember, to tell you the truth. I really
14 can't.

15 Q. That's probably a good day.

16 A. It must not have been too bad because I wasn't
17 working on anything.

18 Q. Okay. That is a good day. A good production
19 day, electricians don't do much.

20 A. Right.

21 Q. That's good.

22 A. I mean, they still stay busy, but I mean, it's not
23 hurry up and you better get running and ---.

24 Q. That's good. Did you get a chance to get down
25 near the tail of the wall on Saturday?

1 A. On the face?

2 Q. Yeah.

3 A. Yeah.

4 Q. What did the tailgate side look like?

5 A. It was hard.

6 Q. Hard cutting?

7 A. Yeah. It was all sandstone.

8 Q. Did you look down in the tailgate entry itself?

9 A. I'm going to say yes, but I don't remember what it
10 looks like.

11 Q. Okay. So you don't recall anything unusual?

12 A. No.

13 Q. I see. How about thumping and bumping on the
14 face, was that normal or did you notice more or less?

15 A. There was one day --- I can't remember if it was
16 that Saturday, but it was during that week I did feel
17 the floor bump pretty hard and the face was taking
18 weight, popping, carrying on and stuff.

19 Q. Was it just all along the face or was there any
20 particular place that seemed to be worse?

21 A. It had to have been --- I was between mid-face and
22 the tail.

23 Q. Okay. Do you recall if any of the shields --- the
24 overpressure valves had popped off during that week or
25 so?

1 A. Not that I can remember.

2 Q. Okay. What condition was the high voltage cable
3 and the britby in on Saturday?

4 A. It was in good condition.

5 Q. Good condition.

6 A. It was a new cable. We had had issues with the
7 cable we had before, with it walking in the britby,
8 and we had ---. It's a guard that guards the cable
9 from rocks and damage.

10 Q. So when did you guys replace that cable?

11 A. It wasn't --- I'm trying to think. It wasn't too
12 long before the explosion. I mean, it was a little
13 while, but I can't remember the exact date.

14 Q. Sure. A couple weeks, two or three weeks?

15 A. I can't remember, to tell you the truth. I can
16 remember getting it set up for it, but I can't
17 remember the day exactly.

18 Q. Okay. But it was a relatively new cable?

19 A. Yes.

20 Q. Have you had any other problems with the high
21 voltage on the wall?

22 A. No.

23 Q. Okay. When's the last time you guys did a
24 firefighting evacuation drill?

25 A. It was --- it's probably less than a month.

1 Somewhere right around there.

2 Q. Did you practice fighting a fire on the face?

3 A. I'm trying to remember where the fire was at. I
4 think that we simulated the fire was like around the
5 head drive.

6 Q. Okay. Tell me what you guys did to fight that
7 fire?

8 A. Fight the fire?

9 Q. Uh-huh (yes).

10 A. Well, my --- we --- everybody had a
11 responsibility. They have a job title for everybody
12 on fire hazards.

13 Q. Okay.

14 A. My responsibility is to kill the power and then
15 establish communications with people fighting the fire
16 and the person on the phone.

17 Q. Okay. So if you had a fire anyplace on the face,
18 would you kill the power?

19 A. Yep.

20 Q. Okay. And you mentioned you establish
21 communications on the phone. Is that to somebody
22 outside of the mine?

23 A. Yes.

24 Q. Okay. Where was the fire hose stored?

25 A. There was a fire hose down the --- they call it

1 the monorail, what the actual cables and stuff run
2 down. And there was --- I forgot how many breaks it
3 is exactly. There was three --- there was actually
4 more than three rolls. There was probably about four,
5 five, six rolls at each spot, every so many breaks.
6 There was firefighting equipment up at the head.
7 There was --- let me think where else. There's fire
8 extinguishers around everywhere. We've got fire
9 extinguishers around the power center, all the pumps
10 and everything, which it's all hooked together on the
11 track and overtop the chargers. Every charger they
12 had had fire suppression above it. And there's fire
13 valves down the line, places where you can hook the
14 fire hose up. And I'm pretty sure there's
15 firefighting stuff --- I can't remember for sure on
16 the tail.

17 Q. Okay. If you had a fire near the tail, ---

18 A. Uh-huh (yes).

19 Q. --- would you do the same basic tasks? Would you
20 cut the power?

21 A. Yeah.

22 Q. How about the water to the shearer, would you cut
23 that off?

24 A. The water to the shearer? I wouldn't.

25 Q. Okay. Do you think you have enough water to keep

1 the shearer sprays going and charge the fire hoses?

2 A. I'd say yes.

3 Q. Okay. Where's the closest fire valve or fire
4 outlet to the tail?

5 A. At the tail?

6 Q. Uh-huh (yes).

7 A. I'm trying to think. Trying to remember things
8 all the way up and down. I think it was right back
9 next to the tail, if I remember right.

10 Q. Is there one maybe not at the tail but further up
11 the line?

12 A. One I think it's mid-face.

13 Q. Okay.

14 A. And then there's one on the head.

15 Q. So you got three fire outlets down through there?

16 A. At least. I mean, there might have been more, but
17 I can't remember exactly ---

18 Q. Okay.

19 A. --- where they were at.

20 Q. Okay. But you got at least three of them. But
21 one of the things you have trained in is that somebody
22 immediately communicates outside?

23 A. Yes.

24 Q. Okay. And then you say that was your job?

25 A. Well, my job is to cut the power, and then I

1 establish --- it will be the headgate man's job. His
2 job was to establish communications with outside. And
3 mine is to keep communications between him and the
4 people actually fighting the fire, and if they need
5 anything to make sure they get it.

6 Q. Okay. Let me tell you what we know about the
7 longwall. I want your opinion.

8 A. Uh-huh (yes).

9 Q. We know that the high voltage had been pulled
10 manually. The manual disconnects had been pulled. It
11 was pulled prior to the explosion because they're
12 still set on the handle. We know that the water was
13 turned off and it was turned off prior to the
14 explosion. We know that the shearer was cut out on
15 the tail end. We know that the pan was fairly empty.
16 It was totally empty up near the head. It was totally
17 empty down near the tail.

18 A. Right here?

19 Q. No, it's right here.

20 A. I'm just trying to remember where we were at.

21 Q. This is the face location. It was like you just
22 passed this cut-through.

23 A. Yeah, that's where they were driving the next
24 headgate panel.

25 Q. We know the face was --- or the pan was fairly

1 empty, except in the middle, between about Shields 40
2 and 110. There was a little bit of coal and some
3 larger-size pieces of rock. The overall condition of
4 the face looked pretty good. There didn't appear to
5 be any areas taking a lot of weight. For the most
6 part, the shield line is looking pretty good, except
7 there has been a few shields collapsed, and we think
8 that's from fire damage. The hoses basically leaked
9 off.

10 A. Right.

11 Q. Several of the victims were found near mid-face.
12 There was several more victims scattered out between
13 mid-face and the head. Then there was two people,
14 including the headgate operator, up near the stage
15 loader.

16 A. Yeah. That's where usually he would be at.

17 Q. What we know about what took place Monday is the
18 shearer had been --- they changed one of the cowl
19 blades. I think the hoot owl shift on Sunday, they
20 changed several of the --- or replaced several of the
21 chain flies that night. We understand it was in good
22 shape and it was parked up near the head, ready to go
23 that shift. It sounds like they started running coal
24 about normal time. They had a major maintenance when
25 the hinge pin on the --- one of the ranging arms came

1 out.

2 A. Uh-huh (yes).

3 Q. They were down most of the day.

4 A. Which one? Which hinge pin was it?

5 Q. I think it was on the tail arm.

6 A. It was on the tail arm?

7 Q. Uh-huh (yes).

8 A. Because, see, we had the --- the head side arm had
9 the hinge pin on the face side come out on us one
10 night.

11 Q. Okay. It may have been the head side. I'd have
12 to look at the transcript to make sure. It was one
13 that had given them problems before.

14 A. Okay. It was the head side.

15 Q. Bobby Goss said that he was actually going to
16 replace that pin on the hoot owl shift Monday night.

17 A. Right.

18 Q. But they had made roughly one pass during the day.

19 A. That's not a very good day.

20 Q. No. They were down most of the day. They called
21 out --- the last contact anybody had with the wall was
22 at 2:42 p.m., and they called out that they were going
23 back into coal. They had gotten the hinge pin fixed.
24 The explosion occurred a few minutes after three
25 o'clock. So they had been at it roughly 15, 20

1 minutes when the explosion occurred. We know the
2 second --- or the evening shift had just entered the
3 portal at Ellis. So it was still too early for the
4 operators to be coming off the wall.

5 A. Right.

6 Q. Do you have any idea what could have been
7 happening on the wall, given where the victims were
8 located and ---?

9 A. You said the shearer was on the tail?

10 Q. The shearer was actually cut out about half drum
11 into the tailgate.

12 A. And you found them around mid-face?

13 Q. Yeah.

14 A. The operators?

15 Q. Uh-huh (yes). Yeah, they were around --- I think
16 the closest victim to the tail was about Shield 87 or
17 88, and that was ---.

18 A. Was it Gary Quarles?

19 Q. I think so, yeah.

20 A. He was the tail-end operator.

21 Q. Yeah.

22 A. I don't know.

23 Q. Okay.

24 A. I really don't. I don't know exactly where the
25 explosion did happen. I mean, I've --- you've seen

1 stuff in the paper and stuff ---

2 Q. Sure.

3 A. --- and I've heard stuff, and they say it happened
4 on our face and ---.

5 Q. Well, we're still trying to determine that. We've
6 got people that have mapped out the entire explosion
7 area and looked at what the flames did and what the
8 forces did, ---

9 A. Right.

10 Q. --- and it's possible. That's all that we can say
11 right now, is it's possible it did start on the face.
12 There's some other possibilities, too, so ---.

13 A. What time was it? The explosion happened again
14 around three o'clock?

15 Q. The best estimate we got, and it is just an
16 estimate, is 3:02. And that's plus or minus a minute
17 or so.

18 A. They were either --- I'd say they were either
19 running from something or if the explosion did happen
20 on our face, it could have blown them.

21 Q. We don't think they were blown up there, just
22 given the condition of things.

23 A. I mean, it's 500 feet, though.

24 Q. Yeah.

25 A. That's too far.

1 Q. Yeah. That's a long way to have been blown.

2 A. It's almost like they were running from something.

3 Q. Okay. Do you think they could have been fighting
4 a fire or trying to fight a fire?

5 A. I don't really know.

6 Q. Okay. I appreciate it. Let me ask you another
7 opinion.

8 A. Uh-huh (yes).

9 Q. If something happened near the tail, would you be
10 more likely to try to get out around the tail or to go
11 back across the face?

12 A. It depends on where it happened out on the face,
13 I'd say. If it happened and I was --- if it happened
14 and say I was --- it happened on the tail and I was up
15 from the tail, I'd have to come across the face,
16 because all your fresh air is hitting you in the face.

17 Q. Okay.

18 A. But if I was down from where it happened, I could
19 probably go over and come out under here somewhere and
20 try to get into fresh air.

21 Q. Okay.

22 A. If you go --- try to go back up in it, you know,
23 it's --- you know what I mean?

24 Q. Sure. Uh-huh (yes). Okay. Appreciate it. What
25 did you know about the area back behind the face,

1 toward the --- back into the panel?

2 A. Not a whole lot. When I first started the
3 production, they ran for about a week or two, and then
4 we went with this six and three schedule with three
5 crews and that's when they put me on the face,
6 working.

7 Q. Never had a chance to get back in the headgate or
8 tailgate?

9 A. No, I never --- not that I can think of. I never
10 went way back in there. Before we started running,
11 you know, I actually went past it, you know. But I
12 had been in --- when we were up there doing setup, I
13 was up there, ---

14 Q. Sure.

15 A. --- you know, setting up the wall. But most of it
16 was already set up because I was outside working on
17 shields, building shields.

18 Q. Okay. Tell me about the curtain. Usually it's
19 tied onto Shield One?

20 A. Uh-huh (yes).

21 ATTORNEY FERGUSON:

22 Is that a yes?

23 A. Yes. It goes all the way from --- there's a piece
24 of curtain that goes from the rib and it usually goes
25 to about Number Two Shield?

1 BY MR. SHERER:

2 Q. Okay. What condition was that curtain in on
3 Saturday?

4 A. Good condition.

5 Q. Good condition. Do you recall if it was high,
6 whether it was flapping?

7 A. I'd say it wasn't flapping.

8 Q. Have you ever seen it flapping?

9 A. If we see it flapping, we usually fix it ---

10 Q. Okay.

11 A. --- if it comes loose because, I mean, it's going
12 to flap because when you advance your face.

13 Q. Sure.

14 A. But then we go right behind it and put the curtain
15 right back.

16 Q. Okay. Sure.

17 A. And we usually keep a roll of curtain right there
18 on the head drive in case it gets tore out and put
19 underneath the shield or whatever.

20 Q. Have you ever seen that curtain just hanging limp
21 or even bowed back toward the face?

22 A. Back towards the face?

23 Q. Uh-huh (yes).

24 A. Uh-uh (no). Never.

25 Q. Have you ever come on the shift before you got on

1 the face and noticed that the ventilation just didn't
2 seem to be right, didn't have enough air?

3 A. No. It seemed like we always had too much air.

4 Q. Okay. Did you normally wear a jacket or a hoodie
5 or something like that?

6 A. When we started the panel?

7 Q. Uh-huh (yes).

8 A. Yeah. It was cold. I mean, if you were on the
9 head side, there was so much air. If you were going
10 to stay there for a long period of time, you better
11 have a jacket on because you're going to freeze.

12 Q. What about that last shift you worked, was it
13 cold, was it bearable?

14 A. It was pretty --- it was bearable, I guess you
15 could say. It wasn't really cold.

16 Q. Okay. Had you noticed any significant change in
17 the temperature when you were working on the wall in
18 about a week or two prior to the explosion, it got
19 warmer, it got colder?

20 A. Not that I can remember. It seemed like it was
21 always about the same.

22 Q. Okay.

23 A. I know when we started down there, it seemed like
24 we had a whole lot of air. I mean, way too much. And
25 then by the time we advanced to here over a period of

1 time, you could tell the air had dropped. But it
2 wasn't --- we still had more than what we needed.

3 ATTORNEY FERGUSON:

4 And advanced to here, do you mean where
5 the face was on the 5th?

6 A. Yes.

7 BY MR. SHERER:

8 Q. What was the cave like? Were you getting good
9 cave behind the shields?

10 A. Yeah.

11 Q. Was it tight?

12 A. What do you mean, tight up against the back of the
13 shields?

14 Q. Yeah.

15 A. I'd say yeah, it was. That's what you want it to
16 do.

17 Q. Sure.

18 A. You want it to fall. The only place that it
19 wouldn't be tight would be right at your --- I'd say
20 probably one, two, --- probably your first two or
21 three shields there. And that's because that's your
22 belt entry and you have bolts to helping support it.

23 Q. Sure.

24 A. And it would hang, but I mean, it wouldn't hang no
25 more than probably a break. And then once you

1 advanced past that, it would usually fall in.

2 Q. What about on the tail side, would that hang up
3 there sometimes?

4 A. To the best of my knowledge, at the end of the
5 face, where our last shield is, no, because we had
6 problems. We had what they call a gob shield that
7 goes up probably the size of your last shield to keep
8 rocks from coming in. And it had been messed up for a
9 little while, and it was a long time before the
10 explosion happened. Me and my chief, because we had
11 two electricians on the face, which is Luke Ford, we
12 went back there and fixed it, because we were having
13 so much problem with gob coming in and breaking
14 shearer pins and stuff.

15 Q. Okay. Any other problems on the wall?

16 A. Nothing I can remember.

17 Q. Okay. What about the methane monitors on the
18 wall, were they in good shape?

19 A. As far as I know, yes.

20 Q. Did you normally calibrate those methane monitors?

21 A. It was done on hoot owl.

22 Q. Okay. Had you ever seen --- did those monitors
23 ever fail? Did you ever have to replace any of them?

24 A. No.

25 Q. What about the sniffers and the cables going to

1 them?

2 A. When we were at Performance, not that I know of.

3 Q. Okay. Did you ever see any of those bridged out?

4 A. No.

5 Q. Okay. How do you feel about the ventilation in
6 the entire mine? Do you think it was adequate?

7 A. I didn't understand it.

8 Q. How come you didn't understand it?

9 A. Because it seemed like there was always inspectors
10 or something there and they were always changing stuff
11 around, you know. I mean, it seemed like constantly
12 there was, I guess, a problem with it because they
13 would --- I remember there was one day in particular
14 they made us stay outside until the inspectors went in
15 and cleared it because there was --- I guess there was
16 a problem with the air supply.

17 Q. Was that around the 1st of March or so?

18 A. I'm trying to remember. I was on dayshift. I
19 guess that's when it was. I can't remember for sure.

20 Q. And we issued an order on --- I think it was March
21 the 9th.

22 A. The reason I remember it is because we were
23 waiting to go in Ellis Portal, and they kind of
24 started checking the mantrips. And we were usually
25 the first mantrip to leave.

1 ATTORNEY FERGUSON:

2 And by they, you mean ---?

3 A. Inspectors.

4 BY MR. SHERER:

5 Q. And we issued a lot of violations on ventilation,
6 virtually all the sections of this mine. Did you have
7 any reason to feel that there was problems with
8 ventilation aside from the violations that the State
9 and Federal inspectors were issuing?

10 A. No.

11 Q. Did it bother you that inspectors were issuing
12 violations on the ventilation?

13 A. No.

14 Q. Okay. What about rock dust? Do you think it was
15 in good shape?

16 A. I remember the day before the explosion --- I
17 mean, my last day, Saturday, ---

18 Q. Sure.

19 A. --- our utility guy --- I can remember I was going
20 off the face and there was rock dust flying somewhere.
21 And I come up the track entry and our utility guy, he
22 was rock dusting up the track entry by hand.

23 Q. Okay. Ever had any occasion to walk down the
24 longwall belt?

25 A. Yeah. What was the rock dust like on that?

1 Q. Best I can remember, pretty good.

2 Q. What was the rock dust like on the tailgate side?

3 A. It was --- it's been a long time since I've been
4 out on the tailgate side.

5 Q. Okay.

6 A. Because like normally we come on the face from the
7 head side.

8 Q. Sure. Uh-huh (yes).

9 A. I'm trying to think the last time that I was on
10 the tailgate side, we actually had a --- the top come
11 down overtop our stage loader and stuff. And we
12 knew --- and we got by and everything. We ended up
13 having to come off the tail side. And the tail side,
14 before they started actually running coal, actually
15 went in the tail side and there was me and one of them
16 guys --- the boss was my old boss. He's one of the
17 guys that got killed, and we went and recovered high
18 line.

19 Q. Thank you. Do you know where the boss did his
20 date, time and initials on the tail? Was there a date
21 board out in the tailgate or did he write it on a
22 shield or the tail drive?

23 A. Normally, if he was going to date up on the face
24 or if he got off at the tail or date up or something.
25 I don't know about out there. But as far as going

1 across the face, they would date up either on
2 backboards or on the shield, top of the shields, you
3 know.

4 Q. Okay. We've had a little trouble finding those.
5 Of course, you know, everything is covered with soot
6 now.

7 A. Right.

8 Q. Okay. Anybody ever call in the mine --- ever hear
9 anything on the mine phone or somebody tell you that
10 there were inspectors on the property?

11 A. They would tell you that there was company.

12 Q. Yeah. How many sets of remote controls for the
13 shearer did you guys have on that wall?

14 A. I know there's three for each side at least.

15 Q. Where were those normally kept and did you have
16 chargers for them someplace?

17 A. Yes. They are kept on the entry, which was ---
18 would be your power center, starter box, where there's
19 a plug-in and it's got a charger. And the reason I
20 said there's three for each side is there's three
21 plug-ins for that charger --- I mean, four --- I'm
22 sorry, six plug-ins for that charger.

23 Q. Okay.

24 A. So they usually kept three on each, you know what
25 I mean?

1 Q. Sure.

2 A. And then usually the equipment operators would
3 have one each their self.

4 Q. Okay. So would you have three sets in the charger
5 plus a set being used or just three sets total?

6 A. It would depend on how many was up there, you know
7 what I mean, how many spares they had.

8 Q. Okay.

9 A. Normally there would be --- on charge, there might
10 be another one laying there that's not on charge. But
11 normally there would be four on the charger and each
12 operator would have one.

13 Q. Okay. Where would the operators normally leave
14 the remotes if they had to get away from the shearer
15 for a while?

16 A. Like just ---

17 Q. Just temporary.

18 A. --- temporary? They would leave them at the
19 shearer.

20 Q. Okay. That's all the questions I've got for you
21 right now. I want to thank you for talking to me.

22 EXAMINATION

23 BY MR. FARLEY:

24 Q. Mr. Gwinn, I'd like to maybe try to clarify a few
25 things. Now, as of your last shift at UBB on

1 Saturday, April 5th, who was your longwall foreman
2 that day?

3 A. Mikey Webb.

4 Q. Mike Webb?

5 A. Yes.

6 Q. How long had he been the foreman on the longwall,
7 on your shift that is?

8 A. Not long. I mean, he had only been --- it had
9 been a few months probably. I can't say. I can't
10 tell you for sure.

11 Q. Did you have confidence in Mr. Webb?

12 A. Yes, I did.

13 Q. Did you feel he made a fair effort to comply with
14 health and safety requirements?

15 A. I know he did.

16 Q. Okay. And when he did his examinations and called
17 out his reports or carried them out or whatever he
18 did. Do you think we can believe what was entered
19 into the exam book?

20 A. Yes.

21 Q. Now, Erik had asked about some ventilation
22 matters. Now, ---

23 A. Uh-huh (yes).

24 Q. --- for the month of March, based on my reading of
25 the longwall pre-shift exam the quantity of air on the

1 longwall main intake is around 115,000 cubic feet per
2 minute at the first of the month, March.

3 A. Yes.

4 Q. Now, throughout the month it continues to decrease
5 to where by April 3rd and April 5th it levels off at
6 the area 55,000 or so, give or take a little,
7 sometimes up around 60. Now, throughout the month ---
8 now, this is basically a situation where the air is
9 --- at the end of the main is half of what it was at
10 the start of the month.

11 A. Right.

12 Q. Now, did you feel that?

13 A. No. I never knew there was that much ---.

14 Q. Anybody else notice it that you're aware of?

15 A. not that I --- I never heard anybody say anything
16 about it.

17 Q. Okay. Did you do any electrical exams, where you
18 had to complete exam books?

19 A. Yes.

20 Q. What did you examine?

21 A. I'm trying --- it actually depended on --- there
22 was one certain day they did electrical examinations.
23 A lot of it depended on whether or not you were there.
24 And the last time I filled out the books, I'm trying
25 to remember what all I did do because it's been so

1 long ago. And it seemed like we were down that day
2 and I got to do a pretty good bit of equipment, you
3 know, as far as like a scoop and shield haulers. I
4 think I done the power center and starter box, but I
5 don't know if that was the last time it was done or
6 not. I can't remember right off the top of my head.

7 Q. Okay. Mr. Webb, the longwall foreman, do you
8 recall of any instances where he would travel outby
9 the headgate entry for any extended periods of time?

10 A. I know when he went and done his --- you know, his
11 bossing. And I don't know exactly what's included in,
12 you know, bossing and dating up and everything, you
13 know, but he would go outby the headgate, you know.

14 Q. Do you know where he went?

15 A. I know he would go over, I guess, to the intake.
16 I had seen him in the entry, you know, the belt entry.
17 I'd see him a little bit everywhere, you know, down
18 the face. I seen him down the face all the time. See
19 his initials everywhere. Every time you seen him, he
20 was constantly.

21 Q. Okay. Now, as you traveled in and out on the ---
22 from the longwall, here ---- let's see, approximately
23 around Crosscut 10 or so on the longwall headgate,
24 here near the mouth of the longwall. You see where
25 the air splits and it goes in one direction to the

1 miner sections through Seven North and then comes up
2 the Number Two entry, the track entry I think, ---

3 A. Uh-huh (yes).

4 Q. --- toward the longwall. Now, inby this area
5 where the area splits there appears to be a set of
6 doors, one on each side of an overcast. Do you recall
7 those doors?

8 A. Yes. One of them is built more like a regulator.

9 Q. Okay. Which one was built more like a regulator?

10 A. I'm trying to ---.

11 Q. Or were both of them built more like a regulator?

12 A. I can't remember. I know there was doors right
13 there because --- and they were built like a regulator
14 because one side had the block up but the other side
15 only had block, you know, so far up it.

16 Q. Uh-huh (yes). Okay.

17 A. But I can't remember exactly which set of doors it
18 was. There were so many doors in this place, it would
19 drive you crazy.

20 Q. Do you remember approximately when you first saw
21 this set of doors that you're referring to here?

22 A. It couldn't have been no more than a month or two.

23 Q. Okay.

24 A. That's the ones that I told you looked like the
25 regulator. There was another set of doors up there

1 that they had been there for a while.

2 Q. Did Mr. Webb, to your knowledge, ever receive a
3 call from anyone asking him to travel outby and make
4 any adjustments in those doors?

5 A. Not to my knowledge.

6 Q. As you were traveling to and from the section and
7 doing your daily routine, did you ever see anyone
8 stationed in that area?

9 A. No. I had seen somebody taking air readings
10 there.

11 Q. Who do you recall taking an air reading there?

12 A. I don't remember who it was. I just remember
13 seeing their lights.

14 Q. Okay. Do you recall when that was?

15 A. No, I don't.

16 Q. Would that have been like a few days prior to the
17 accident or ---?

18 A. No. It was like when they first put the doors up
19 there.

20 Q. Okay. All right. Now, I know Erik asked you if
21 there were any problems with the longwall methane
22 monitoring system. I think you answered there were
23 none, to the best of your knowledge. Did you happen
24 to observe any of the monitors on the last shift on
25 April 3rd?

1 A. I'm sure I looked at them, but it was --- we never
2 had a problem with them gassing off. Never even
3 getting close to the warning. I mean, it never even
4 --- usually it wouldn't read no higher than, you know,
5 .3.

6 Q. Okay.

7 MR. FARLEY:

8 Mr. McAteer?

9 ATTORNEY MCATEER:

10 Thank you.

11 EXAMINATION

12 BY ATTORNEY MCATEER:

13 Q. Mr. Gwinn, thank you again for coming in and
14 kindly answering questions so we can then solve this
15 mystery and improve the health of the mining industry.
16 You've testified about the sandstone on the tailgate
17 side . And Erik had asked you about I guess on
18 Saturday generally what was the nature of the tailgate
19 --- I'm sorry, the top?

20 A. The top?

21 Q. Uh-huh (yes).

22 A. It was sandstone.

23 Q. But a hard sandstone?

24 A. Yeah, really hard. I know we set a whole drum of
25 bits and went, I think it was four or five shields,

1 which are five foot wide, and the coal ream bits were
2 wore plum out, I mean, and stubbed, and it would shoot
3 sparks. I mean, it would shoot them at you. I mean,
4 it was pretty bad.

5 Q. And had this lasted for a period of time, this
6 hard sandstone?

7 A. Yeah, we've been having problems with it on the
8 tailgate side.

9 Q. Had you?

10 A. Yes.

11 Q. And were you the ones that changed the bits?

12 A. Yes, I'd help change the bits if I got time.

13 Q. Okay.

14 A. Because normally I have to service the machine,
15 grease the whole ---.

16 Q. Right. Right. But that was a constant problem,
17 needing to keep the bits changed out?

18 A. Yes.

19 Q. Now, you talked --- you said there was a new cable
20 walking in the guard.

21 A. That was the old cable that was walking in the
22 guard. That's the reason we replaced the cable.

23 Q. How long do those cables typically last?

24 A. They normally last the whole panel.

25 Q. Do they?

1 A. Yes.

2 Q. Did this one?

3 A. The old one?

4 Q. Uh-huh (yes).

5 A. The one that was walking ---

6 Q. Right.

7 A. --- before we put in the new one? No. It had
8 been in since the beginning of the panel. But when it
9 started walking, they had to repair the cable and it
10 just kept walking, kept having problems with it.
11 That's the reason they replaced it, because we was
12 having so much downtime trying to keep it fixed.

13 Q. What kind of job is that? What's the nature of
14 the job to replace it?

15 A. To replace the whole cable?

16 Q. Yeah.

17 A. You have to pull the cable out of the shearer.
18 Normally what they would do is hook the cable to the
19 shearer and drag the cable down the line, ---

20 Q. I got you.

21 A. --- you know, without the shearer running. And
22 they pulled it down and then when they got it to where
23 they wanted it, which I've never actually seen anybody
24 do it, I just heard about it, they would --- you have
25 to re-enter it into the shearer, and then you have to

1 run it. Let's see. It goes to mid-face. The cable
2 goes up to mid-face and then it comes out of the
3 backboards, and then you got 500 foot of cable that
4 flip flops, is what it does.

5 Q. Okay. And do you remember when that was that this
6 cable was put in?

7 A. I don't remember.

8 Q. But did you work on it?

9 A. The only thing we did --- actually, no, I didn't.

10 Q. Okay.

11 A. They set it up for us. We helped another
12 electrician, the outby electrician, helped him set it
13 up to where they would be ready to pull it in.

14 Q. And who was that outby electrician?

15 A. Delbert Bailey. But they --- I think they worked
16 on it --- it was either on the evening shift or on the
17 hoot owl or something like that. And I think when we
18 come in to run coal, we was ready to go.

19 Q. Ready to go?

20 A. Best that I can remember.

21 Q. Now, during the exercises for firefighting you
22 talked about that it was your responsibility, among
23 other things, to kill the power.

24 A. Uh-huh (yes).

25 Q. How would you go about doing that?

1 A. I would go to the power center and hit the E stop.

2 Q. Okay.

3 A. That would kill every bit of power.

4 Q. Can that be done by anybody?

5 A. Yeah. Anybody can hit the button.

6 Q. Okay. So it doesn't take a two-part test or a
7 two-part step, it's just hitting the button?

8 A. You hit the button. If you wanted to pull power
9 on the shearer only, you could pull the power at the
10 headgate.

11 Q. How do you do that?

12 A. It has blade switches ---

13 Q. Okay.

14 A. --- at the headgate.

15 Q. And what do you have to do there?

16 A. You have --- they have --- they have three knife
17 switch --- knife --- they call them knife blades,
18 switchblades, whatever, and they're in --- it's got a
19 handle on the side of it and then you pull it and it
20 goes down, connects to a ground bar.

21 Q. Okay. Is that a two-step process or two-hand
22 process?

23 A. No, just single. You just pull it with one hand.

24 Q. Would anybody in the mine know how to do that?

25 A. Yes.

1 Q. Are you working presently?

2 A. Yes, sir.

3 Q. Where are you working?

4 A. I work at --- I'm working for --- it's Massey
5 still, but it's Green Valley at Pocahontas Coal.

6 Q. Okay. On the Saturday that you worked, who did
7 you work with that Saturday; do you remember?

8 A. Meaning as far as like my crew ---

9 Q. Yes. Right.

10 A. --- that I worked with?

11 A. My boss would be Mikey Webb. My chief
12 electrician, he would be --- that's Luke Ford. My
13 head shearer operator would be Roger Bragg. The tail
14 shearer operator is Terrence Adkins. The jack setter
15 or shield setters is Travis Nelson. The headgate man,
16 Pacer Pettry. Utility man is Jimmy Williams. And
17 then when you're on dayshift there is a lot of outby
18 people.

19 Q. Okay.

20 A. And a lot of them people are, you know, the ones
21 that were involved in the accident, ---

22 Q. Sure.

23 A. --- which you know, they were up there, too. You
24 know, they would be up there.

25 Q. Okay.

1 A. The names I listed, they're with me at all
2 times, ---

3 Q. Okay.

4 A. --- unless I miss a day of work.

5 Q. Now, this Saturday was the Saturday before Easter?

6 A. Before Easter.

7 Q. All right. So it was probably a day that people
8 wanted to get through so they could get to the
9 holiday?

10 A. Yeah. Well, we had been working about every
11 holiday.

12 Q. Is that right?

13 A. Worked all through Thanksgiving. And we was
14 supposed to have the week of Christmas off and got
15 Christmas Eve and I think Christmas day off. And we
16 weren't supposed to get Easter off, we was going to
17 run coal, and the last minute they decided to give us
18 Easter off for, I guess, you're going to be talking to
19 somebody else.

20 Q. So that Saturday morning you get there, and do you
21 remember assignments for that day?

22 A. Run coal.

23 Q. That's an understood kind of ---.

24 A. Yeah. I mean, there wasn't really no assignment.

25 You know what I mean? You had your checks you had to

1 do. You had PM sheets, and you had to go through and
2 check stuff on your PMs, ---

3 Q. Right.

4 A. --- you know, such as coal and stuff, you
5 know, ---.

6 Q. But there must have been some joking about the
7 holiday coming, about things like that?

8 A. Yeah. Well, yeah, because, like I said, we got
9 --- after --- Easter Sunday was supposed to be our
10 three-day run, and we ended up getting an extra day
11 off, so that --- you know, we were ready to go, ready
12 to get out of there.

13 Q. Right. Exactly right. And did you have a pretty
14 good day of running? I can't remember. You started
15 to testify about ---.

16 A. I can't remember.

17 Q. Any kind of electrical problems that you can
18 specifically think you worked on?

19 A. No.

20 Q. No?

21 A. Uh-huh (yes).

22 Q. Now, you testified that there was --- when Erik
23 asked you about the pin and suggested that there had
24 been a problem with the pin, ---

25 A. Uh-huh (yes).

1 Q. --- tell me what you had --- what your experience
2 with the pins have been.

3 A. The pins --- the arm that was on the head side was
4 a new arm. I can't tell you exactly how long it had
5 been on there, but it was a newer arm. We come in and
6 put it in. And the --- they have --- the outside pin,
7 they've got a thing they call a B-lock on them.

8 Q. A B-lock?

9 A. Yeah, a B-lock.

10 Q. Okay.

11 A. It was like three rings and it --- well, as you
12 tightened it up, it --- you know, it clamps down
13 around it and out and outside of it.

14 Q. Okay.

15 A. It's got them on it. And then the outside has got
16 a cap on it that is welded.

17 Q. All right.

18 A. Well, what happened to us, we was on the evening
19 shift and our shearer operator on the head side, he's
20 an older gentleman, he's a real experienced shearer
21 operator.

22 Q. Do you remember his name?

23 A. Roger. He's one of the ones I told you his name,
24 Roger Bragg.

25 Q. Okay.

1 A. I mean, not Roger Bragg, I'm sorry, it's Roger
2 Scarbro. I might have told you the wrong last name.

3 Q. That's all right. We'll fix it.

4 A. I know so many Rogers.

5 Q. Yes, indeed. So he's the experienced guy?

6 A. Yeah, he's --- he's been doing it for a long time.

7 Q. Uh-huh (yes).

8 A. He was getting ready to retire. And he hollered
9 at me and my chief, Luke Ford, and he told us that he
10 thought the pin might be out of the arm. So we went
11 down there and checked it out and seen the pin was
12 missing, because you could see the shearer on that one
13 side. It has two pins in each arm, and then you have
14 a pin on the bottom for your jack to raise your arm up
15 and down.

16 Q. Okay.

17 A. Well, it was towards the end of the shift we got
18 it. They were headed towards the head, almost to the
19 head. We got it to the head, shut them down, got the
20 pin, the cap was missing off the back of it, and the
21 pin was gone and everything in the --- it seemed like
22 the B-locks were still in it because we slid the pin
23 in. We loosened them up, trying to keep from taking
24 them all the way back out, you know, or whatever. But
25 we ended up, the one come out and we had started

1 trying to get the pin in and stuff, and hoot owl
2 showed up and they took over. They're the ones that
3 actually I guess, you could say, put the pin in.

4 Q. Finished it.

5 A. Yeah.

6 Q. Okay.

7 A. Because I took and cut a cap out for it to weld
8 back overtop of it ---

9 Q. Oh, okay.

10 A. --- to make sure, you know, that it didn't come
11 back out again, even if the B-locks let go.

12 Q. Okay. And did anything like this happen on
13 Saturday, this --- anything you can remember?

14 A. No.

15 Q. Okay. Let's say you had finished this project on
16 the arm, what would be the ordinary procedure
17 afterwards? You'd get it done and you'd say to ---
18 okay, start it up, or you'd signal to somebody to
19 start the thing up?

20 A. Yeah, we'd have to --- the line --- we actually
21 have little boxes in there called --- their
22 communication boxes. They're called control phone.

23 A. Okay.

24 Q. And there was so many of them down the line you
25 could talk to your headgate operator. And there's

1 also a phone at the mule train, which is where our
2 power is, our pumps and stuff like that for our
3 hydraulics and stuff and our starter box. We've got a
4 phone down there. You can talk to it, too. And all
5 it is, is a metal box, and it's got a switch on this
6 side. You hit that switch to the top, and you can do
7 is stand there and hit that switch and you can talk.

8 Q. Okay.

9 A. You let off of it and you can hear the other
10 person talk to you.

11 Q. Okay.

12 A. On the left-hand side it's got a kill switch on
13 it. It looks the line out, where the line cannot be
14 started until that is tightened and flipped back in
15 the right position. Then after that, you would
16 holler --- you would make sure everybody is out of the
17 way and everything. You would unlock the line, holler
18 at your headgate man, and he would start you up.

19 Q. Would you stay and observe it or watch it to see
20 that you repair work ---?

21 A. Yes.

22 Q. You know, just ---.

23 A. Yeah.

24 Q. So you'd watch it for a period of time and see if
25 it was moving properly ---

1 A. Right.

2 Q. --- and see if it was steady. And if it was,
3 good. If it wasn't, ---.

4 A. Well, we even --- after we had that one come out
5 on us, we would --- when we were servicing the shearer
6 and stuff, ---

7 Q. Right.

8 A. --- we would actually check it to make sure that
9 the cap was still on it.

10 Q. Oh, okay. Would you need to stop it again to do
11 that or would you do ---?

12 A. We would do it while they were putting bits in and
13 while they were servicing.

14 Q. Okay.

15 A. Because normally you have to crawl on top of the
16 shearer, you put a shield in, crawl on top of the
17 shearer and look over the edge of it.

18 Q. Oho, okay.

19 A. And then you check your --- while you're up there,
20 you've got your fluids you've got to check anyhow.

21 Q. So in order to see that the thing was functioning
22 properly after the repair, you'd wait until there was
23 a stoppage and then go check it?

24 A. Well, you could watch the arm and tell by the way
25 the arm acts.

1 Q. That's it, right.

2 A. But I mean, yes, you would stop it because I mean,
3 they did stop a lot. They had to set bits a lot.

4 Q. Okay. Going back to the Comcast (sic) box, the
5 communication box, did you ever do any repairs on
6 those?

7 A. Normally what you could do, you could repair them
8 normally. If the battery was dead, that's the only
9 thing you could do, is put a battery in. But normally
10 if something is messed up in it, you would take it out
11 and replace it. But as far as the cables, if you cut
12 the cable in two, you can't repair it. You'd have to
13 run a new cable.

14 Q. Okay. Did it have any recording device in it back
15 at the ---?

16 A. No.

17 Q. Just a straightforward ---?

18 A. Right.

19 Q. Sort of a walkie-talkie kind of thing?

20 A. Yeah, pretty much, except on the cable.

21 Q. Okay. What time did you --- this is Saturday now.
22 It's just before Easter, and you guys want to get out
23 of there. What time did you get out?

24 A. To tell you the truth, I can't remember. I was
25 just happy to get out.

1 Q. Did you go home, did you go to the tavern, did
2 you ---?

3 A. No. I went home.

4 Q. Went home?

5 A. Yeah.

6 Q. Did you talk to anybody on the way out or
7 anything?

8 A. We always talk to the other crew.

9 Q. Sure. Did you talk among yourselves sort of
10 thing?

11 A. Yeah. I mean, ride out. It, you know, takes you
12 probably 45 minutes from there to get out that side.

13 Q. Right.

14 A. So you know, we'd talk and joke and carry on, you
15 know.

16 Q. Sure.

17 A. You would see the other crews pass other crews,
18 too, ---

19 Q. Right.

20 A. --- you know, the ones that were driving our other
21 headgate panel.

22 Q. But were they going in at this point on Saturday
23 evening?

24 A. What do you mean, when I was coming out?

25 Q. Yeah, when you were coming out.

1 A. Yeah. Normally we would pass them. We'd have to
2 spur up somewhere or something.

3 Q. But on this occasion were they coming in because
4 it was to be a holiday?

5 A. I'm trying to remember now. Yes, they were. It
6 was the evening shift.

7 Q. Okay.

8 A. Because they had to --- if I remember right, they
9 had to rock dust the portals, rock dust the portals
10 and walk the belt and walk the outside and everything,
11 the lights and stuff.

12 Q. Do you remember anybody on that crew or ---?

13 A. Yeah, the whole crew.

14 Q. Okay.

15 A. Do you want their names or ---?

16 Q. Just give me a couple of names.

17 A. One of them is Dustin Ross, the headgate guy, I
18 can't --- Kenny Woodrum I think was his name. They
19 called him Woody. I can't remember. There was
20 another Woody, and I'm thinking that's the one that
21 got real bad down there. I don't --- everybody just
22 called him Woody. I don't remember ---

23 Q. Okay.

24 A. --- because I always got them messed up.

25 Q. That's all right.

1 A. And who else? I'm trying to remember their last
2 names.

3 Q. Well, I can get it from there, but you're
4 suggesting that they were organized to rock dust?

5 A. Yes, where you enter the mine at, at the portal.
6 If I ain't mistaken it was that. It was on Easter
7 Sunday that they had them do that. It wasn't another
8 holiday, I don't think, if I'm not mistaken.

9 Q. But they were going to rock dust outby --- out
10 near the portals?

11 A. Yeah. And the reason they were doing that is it
12 would leave footprints if anybody were to enter the
13 mine when nobody was there, like sneak in past
14 security or something. Because I kind of wondered
15 what that was for, but ---.

16 Q. Yeah.

17 A. But I can't tell you for sure that that was that
18 day. I just remember them doing it, and it seemed
19 like it was that day. It might have been another
20 holiday.

21 Q. But say --- I mean, how far in would they rock
22 dust?

23 A. I don't know. I don't know. I've never seen
24 anybody do it because I thought it was crazy when they
25 told me about it. I said, you lost your mind.

1 Q. I've never heard of the practice. Do you remember
2 talking to anybody about that or anything?

3 A. Like I said, I can't remember sure, but I ---

4 Q. Yeah.

5 A. --- think it was, for Easter. I remember when it
6 happened we thought it was funny because we didn't
7 have to do it, stay over and do it.

8 Q. Which is a good thing?

9 A. Yeah.

10 Q. Were they happy about it?

11 A. I'm sure they probably weren't.

12 Q. But any --- I know Erik asked you this, but any
13 memory of any kind of --- anything that was slightly
14 off, slightly different, unusual? Saturday --- this
15 Saturday afternoon, now you're getting ready to go
16 home. What do you drive home?

17 A. What do I drove?

18 Q. Uh-huh (yes).

19 A. I got a little car I drove back and forth then
20 because I live --- I drove about an hour and 45
21 minutes each way to work.

22 Q. That's a good bit of distance.

23 A. Yeah. I had a little car I drove back and forth.

24 Q. So just before you get in the car, anything you
25 remember about that day?

1 A. Not right off hand.

2 Q. Okay. That's all the questions I have right now.

3 Thank you, Mr. Gwinn.

4 MR. SHERER:

5 Do you want to take a short break?

6 ATTORNEY MCATEER:

7 Please.

8 SHORT BREAK TAKEN

9 RE-EXAMINATION

10 BY MR. SHERER:

11 Q. I've got a few follow-up questions.

12 A. Uh-huh (yes).

13 Q. You were talking about the rock dust at the
14 portals. Do you know who was going to check that rock
15 dust?

16 A. Who was going to check it?

17 Q. Yeah.

18 A. No, I don't.

19 Q. Okay. When you were going out, do you remember
20 the track was broke?

21 A. No, I don't remember it being broke.

22 Q. Okay. When you were around the mid-face area, did
23 you ever feel any air coming back out of the gob
24 around that area?

25 A. No.

1 Q. Okay.

2 A. Because I'd have to climb in shields to fix them
3 and, you know, you're right there against the gob, you
4 know.

5 Q. Now, we understand that some walls have a methane
6 monitor mid-face and we think this one didn't. Do you
7 recall anything like that?

8 A. I know that there's one on the shearer. It's in
9 the read-outs, down next to where you're --- I'm
10 trying to think where the read-out is at. It's
11 towards the center shearer, the readout is, and then
12 your sniffer, I can't remember if it's up towards the
13 front of the shearer or what. I can't remember where
14 it was mounted, if it was towards the tail. It seemed
15 like it was towards the tail of the shearer, but I
16 can't remember.

17 Q. Sure.

18 A. And then there's a read-out, I know, at the
19 headgate, but I can't remember if that's actually ---
20 I don't remember seeing it --- I think --- I can't
21 remember if there's a sniffer there or what because I
22 never fooled with them.

23 Q. Okay.

24 A. I never really fooled with them.

25 Q. Okay. You haven't worked on any other walls, have

1 you?

2 A. No. That's the only one. That's what I've been
3 doing the whole time I was in the mines, doing this.

4 Q. Okay. Anybody ever discuss the ventilation plan
5 for the longwall with you?

6 A. What do you mean by the ventilation plan?

7 Q. There's actually a ventilation and dust control
8 plan for the longwall. It talks about how much air,
9 where it needs to be measured.

10 A. Yeah. Actually, I have heard somebody --- it was
11 especially I remember hearing it when they first
12 started running the longwall. They were having
13 problems with the air. And they put that fan in back
14 there, and it was sucking all the stoppings out, then
15 they had to go back and rebuild the stoppings and
16 re --- every one of them we had to go back and
17 re-B-Bond. I mean, it was ---.

18 Q. Oh, geez.

19 A. It was horrible.

20 Q. Okay. That was the last time you heard about a
21 ventilation plan?

22 A. No, I heard about it after that, but I can't
23 remember when it was.

24 Q. Now, you were talking about the rock dust. You
25 said you thought it was pretty good. What color do

1 you consider pretty good?

2 A. White.

3 Q. White.

4 Q. So everything you saw was pretty bright and white?

5 A. I know the ribs were and some of the ground. You
6 know how it is when you travel through it?

7 A. Sure.

8 Q. Did you ever notice any float dust around
9 anywhere?

10 A. What do you mean, like coal dust?

11 Q. Yeah. Uh-huh (yes).

12 A. There would be float dust up on the line, but we
13 tried to keep it washed down.

14 Q. When you left it Saturday, had you washed it down
15 pretty good?

16 A. Yeah.

17 Q. Now, you mentioned there was firefighting
18 equipment on the tail?

19 A. I think there was. I can't remember for sure. It
20 seemed like there was firefighting equipment on the
21 tail there.

22 Q. Do you think it was a fire hose or a fire
23 extinguisher?

24 A. I'm pretty sure there's fire hoses down there.

25 Q. Okay. Were there any fire extinguishers?

1 A. I don't believe so, but I can't remember for sure.

2 Q. Okay.

3 MR. SHERER:

4 That's all the questions I've got.

5 ATTORNEY FERGUSON:

6 Do you have anything else, Davitt?

7 ATTORNEY MCATEER:

8 I just have one other question.

9 RE-EXAMINATION

10 BY ATTORNEY MCATEER:

11 Q. You talked about the remote controls and you said,
12 generally speaking, they would leave them on the
13 shearer ---

14 A. Uh-huh (yes).

15 Q. --- if it got away from them. How big are these
16 remote controls?

17 A. They're --- I couldn't tell you in inches. I can
18 show you with my hands better.

19 Q. Okay.

20 A. About that long, about that wide, ---

21 Q. Right.

22 A. --- about that thick,, and it got a rubber
23 antennae on top of it about like that.

24 Q. All right.

25 ATTORNEY FERGUSON:

1 Okay. I hate to ask you to do this, but
2 for the transcript ---

3 A. I knew ---.

4 ATTORNEY FERGUSON:

5 --- can you estimate like inches or ---?

6 A. I'd say about eight inches ---

7 ATTORNEY FERGUSON:

8 Wide.

9 A. --- long.

10 ATTORNEY FERGUSON:

11 Long.

12 A. And probably about five inches wide, four or five
13 inches wide, and it had probably about a three-inch
14 antennae on top of it.

15 BY ATTORNEY MCATEER:

16 Q. And how heavy are they?

17 A. They're light.

18 Q. Okay.

19 ATTORNEY FERGUSON:

20 Can you define that?

21 A. They don't really weigh anything. I mean, they're
22 --- they probably weigh like maybe a pound or two, you
23 know.

24 BY ATTORNEY MCATEER:

25 Q. So in your experience, where would --- where on

1 the shearer would they place them?

2 A. They'd usually place them like right behind your
3 cutter motor or they would leave them laying on the
4 backboards right where the drums were ---

5 Q. Right.

6 A. --- so you knew where they were at. Or
7 sometimes --- it all depended who it was, they would
8 be right there somewhere, in the center of the shearer
9 or laying on the backboards or laying out from the
10 edge of the drums at the backboards or on top of the
11 shearer, behind the cutter motor.

12 Q. But the whole idea was to leave them there so that
13 the next guy could find them?

14 A. No. Actually, that's just like if they're just up
15 there and they've got something else going on or it's
16 broke down or something, ---

17 Q. All right.

18 A. --- when the other crew comes in, they actually
19 grab a remote control off their own remote control,
20 one that has full charge on it, and take it with them.

21 Q. So you change them out, in effect?

22 A. Yes. It keeps the batteries charged.

23 ATTORNEY FERGUSON:

24 Now, based on your hand motions, I take

25 it we're talking about two?

1 A. Yes, there's two operator controls.

2 ATTORNEY FERGUSON:

3 Okay. Sorry, Davitt.

4 ATTORNEY MCATEER:

5 No, that's fine. Thank you.

6 BY ATTORNEY MCATEER:

7 Q. So the total operated controls would be four, two
8 on the charger and two in operation?

9 A. There would be four on the charger and two in
10 operation.

11 Q. Okay. But when you made the shift, you'd take two
12 in and two out?

13 A. Yeah. You'd take two to the mule train or the
14 power center and then the other two guys would bring
15 two new ones up.

16 Q. Okay.

17 A. They have different frequencies.

18 Q. Okay.

19 A. They've got one that controls --- so they don't
20 --- you know, it's just like your cell phone. If you
21 had the same frequency or a radio or anything, you
22 know, they would communicate with each other. You'd
23 be working --- fighting.

24 Q. Fighting each other?

25 A. Yeah. But you could run the shearer actually on

1 --- with one remote control, you could run both sides
2 of the shearer.

3 Q. Oh, really?

4 A. Yes. But they --- like I said, the remotes have
5 different frequencies.

6 Q. Okay. So if something went wrong, who would you
7 expect to have --- where would you expect --- if an
8 emergency happened, what would you expect them to do
9 with the ---

10 A. With the pack ---?

11 Q. --- remote controls?

12 A. We called them packmen. I'm sorry.

13 Q. Packmen?

14 A. Yeah, the remote controls. I would expect for
15 them to drop them wherever they're at.

16 Q. Just drop them?

17 A. Yeah.

18 Q. Yeah. But if you were trying to power things down
19 and you wanted to do that, would you use that or would
20 you use something else?

21 A. There's an emergency stop button on the side of
22 the shearer also that would kill ---.

23 Q. Okay.

24 A. You know, it would kill the power, I mean, to the
25 machine, but you'll still have power going to the

1 cable.

2 Q. Right. Okay.

3 ATTORNEY MCATEER:

4 No more questions. Thank you, Mr. Gwinn.

5 ATTORNEY FERGUSON:

6 Mr. Gwinn, on behalf of MSHA and the

7 Office of Miners' Health, Safety and Training, we want

8 to thank you for appearing and answering questions

9 today. Your cooperation is very important to the

10 investigation as we work to determine the cause of the

11 accident. We request that you not discuss your

12 testimony with any person aside from a personal

13 representative or an attorney.

14 A. Yes.

15 ATTORNEY FERGUSON:

16 After questioning other witnesses, we may

17 call you if we have any follow-up questions. If at

18 any time you have additional information regarding the

19 accident you would like to provide to us, please

20 contact us at the information that was previously

21 provided to you. If you wish, you may now go back

22 over any answer you have given or you may also make

23 any statement you would like to make.

24 A. I don't have no statement.

25 ATTORNEY FERGUSON:

1 Thank you very much for coming in.

2 * * * * *

3 STATEMENT UNDER OATH CONCLUDED AT 10:21 A.M.

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1 STATE OF WEST VIRGINIA)

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4 CERTIFICATE

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

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

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

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



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21
22 *Alicia R. Brant*
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