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Transcript of the Testimony of Gerald Pauley

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STATEMENT UNDER OATH

OF

GERALD PAULEY

taken pursuant to Notice by Brett Steele, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Wednesday, May 12, 2010, beginning at 8:08 a.m.

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

2

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A P P E A R A N C E S (cont.)

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1 P R O C E E D I N G S

2 -----
3 ATTORNEY WILSON:

4 Good morning. My name is Bob Wilson.

5 I'm with the Office of the Solicitor, United States
6 Department of Labor. We're here this morning to
7 interview Gerald Pauley. With me is Jasey Maggard
8 with the Mine Safety and Health Administration. There
9 are several State of West Virginia personnel present
10 at the table. I'd ask at this time that they state
11 their appearance for the record.

12 MR. BECK:

13 My name is Jim Beck. I work for Davitt
14 McAteer on the independent team.

15 MR. FARLEY:

16 I'm Terry Farley with Miners' Health,
17 Safety and Training.

18 MR. O'BRIEN:

19 John O'Brien, Miners' Health, Safety and
20 Training.

21 MS. SPENCE:

22 Beth Spence, with Governor Manchin's
23 independent team.

24 ATTORNEY WILSON:

25 There are several other members of the

1 investigation teams present in the room this morning.
2 All members of the Mine Safety and
3 Health Administration Investigation Team and all
4 members of the State of West Virginia Accident
5 Investigation Team participating in this investigation
6 of the Upper Big Branch Mine explosion shall keep
7 confidential all information that is gathered from
8 each witness who voluntarily provides a statement
9 until the witness statements are officially released.
10 MSHA and the State of West Virginia shall keep this
11 information confidential so that other ongoing
12 enforcement activities are not prejudiced or
13 jeopardized by a premature release of information.
14 This confidentiality requirement shall not preclude
15 investigation team members from sharing information
16 with each other or with other law enforcement
17 officials. Your participation in this interview
18 constitutes your agreement to keep this information
19 confidential.

20 Mr. Pauley, government investigators and
21 specialists have been assigned to investigate the
22 conditions, events and circumstances surrounding the
23 fatalities that occurred at the Upper Big Branch Mine-
24 South on April 5th, 2010. The investigation is being
25 conducted by MSHA pursuant to Section 103(a) of the

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

5 After the investigation is complete, MSHA
6 will issue a public report detailing the nature and
7 causes of the fatalities in the hope that greater
8 awareness about the causes of accidents can reduce
9 their occurrence in the future. Information obtained
10 through witness interviews are frequently included in
11 these reports. You should know that if you request
12 confidentiality, confidentiality will be granted on a
13 case-by-case basis. Your statement may be used in
14 other enforcement proceedings.

15 You may have a personal representative
16 present during the taking of this interview and you
17 may consult with the representative at any time. Are
18 you appearing with a representative today?

19 MR. PAULEY:

20 No.

21 ATTORNEY WILSON:

22 Now, a court reporter will record the
23 interview. Please speak loudly and clearly. If you
24 do not understand a question, please ask that the
25 question be rephrased. Please answer each question as

1 fully as you can, including any information you may
2 have learned from someone else. Again, I would like
3 to thank you advance for your appearance here this
4 morning. We appreciate your assistance in the
5 investigation. Your cooperation is critical in making
6 the mines in this nation safer.

7 After we have finished asking questions,
8 we will provide you with an opportunity to make a
9 statement and to provide us with any other information
10 that you believe to be important. If at any time
11 after the interview you recall any additional
12 information that you believe may be useful to the
13 investigation, please contact Norman Page at the
14 telephone number that was provided to you in the
15 letter that was given to you this morning. At this
16 time I would ask that the court reporter swear in the
17 witness.

18 -----
19 GERALD PAULEY, HAVING FIRST BEEN DULY SWORN, TESTIFIED
20 AS FOLLOWS:

21 -----
22 ATTORNEY WILSON:

23 All right. At this time I'll turn it
24 over to Terry Farley to begin the questioning.

25 EXAMINATION

1 BY MR. FARLEY:

2 Q. Gerry, we'll begin with a few general questions
3 here. Would you please state your full name?

4 A. Gerald W. Pauley. As Terry said, known as Gerry.

5 Q. Okay. Would you mind giving us your home address
6 and phone number?

7 A. It's [REDACTED], [REDACTED]

8 [REDACTED]

9 Q. Okay. Thank you. How long have you been employed
10 by the West Virginia Office of Miners' Health, Safety
11 and Training?

12 A. Sixteen (16) and a half years.

13 Q. Okay. What's your position with the agency?

14 A. I'm listed as a deep mine inspector. I also do
15 roof control inspector work.

16 Q. Okay. Who's your immediate supervisor?

17 A. Steve Snyder and Randy Smith.

18 Q. Okay. And you work out of our Oak Hill office; is
19 that correct?

20 A. Oak Hill, Region 4.

21 Q. Okay. What's your total number of years in the
22 coal mining industry, including your time with the
23 agency?

24 A. Approximately 35.

25 Q. Okay.

1 A. Started in '74, but I was laid off for a year.

2 Q. Okay. Would you mind telling us who you worked
3 for before joining the agency?

4 A. I worked --- started out for Bethlehem and went to
5 Armco, which was purchased by Peabody.

6 Q. Okay.

7 A. And for a very short period of time, worked for a
8 mine seal company sealing up a few draft miles called
9 Alminco, A-L-M-I-N-C-O. That's right before I started
10 with the agency.

11 Q. Do you have a coal miner's certificate and mine
12 foreman/fire boss certificate?

13 A. Yes.

14 Q. Is there an electrician certification, anything
15 like that?

16 A. No.

17 Q. Any other special technical training that you may
18 have had relating to your job?

19 A. The classes we went to as inspectors and all.

20 Q. Okay. How long have you been assigned to inspect
21 the Upper Big Branch Mine?

22 A. I was assigned that mine April 1st, 2009.

23 Q. Okay. So I guess you first inspected there
24 shortly thereafter?

25 A. Well, over the years I'd have it one or two other

1 times, but I don't recall for sure what years those
2 were.

3 Q. Okay. Would that have been ---?

4 A. I'm thinking like ---.

5 Q. I'm sorry.

6 A. No, I'm sorry.

7 Q. Go ahead.

8 A. Maybe 2004, maybe '98 to 2000. I'm not sure.

9 Q. Okay. So if you were assigned the mine around
10 April 1st, 2009, I assume you made your first
11 inspection shortly thereafter; is that correct?

12 A. During that quarter, yes.

13 Q. Okay. And that would have been the second quarter
14 of ---

15 A. That's correct.

16 Q. --- 2009? So is it fair to say you've made three
17 quarterly inspections there last year?

18 A. Three last year and one this year, yes.

19 Q. When you would do a quarterly inspection at the
20 UBB Mine, how much time would it routinely take you,
21 since April 1st of 2009?

22 A. I think generally it was in the 20-some days.

23 Q. Okay.

24 A. But can I add something there?

25 Q. Okay.

1 A. Considering the other requirements of the roof
2 control job and other things, you know, the most
3 recent was that one.

4 Q. Okay. Was anyone from the Office of Miners'
5 Health, Safety and Training assigned to assist you
6 with your regular --- your quarterly inspections of
7 UBB during this period of time, from April 1st of last
8 year?

9 A. On a permanent basis?

10 Q. Permanent or part time.

11 A. Occasionally someone would have a day free to come
12 down. The last quarter of '09 Jeff Spratt was
13 finishing up his training period and he was there with
14 me for a period of time. I don't remember how many
15 days.

16 Q. Okay. Considering the size of the UBB Mine, would
17 it be your opinion that --- what would you think about
18 the likelihood of a --- the possibility that maybe it
19 should have a resident inspector?

20 A. You want an opinion?

21 Q. Sure.

22 A. My opinion would be that a couple of guys should
23 be assigned to that mine. And if I can expand on that
24 opinion, occasionally three or four other guys come
25 down with them and branch out over the time. It's a

1 very expansive mine, very large mine. Just to be able
2 to go in all directions at one time, every couple
3 weeks or something. That's my opinion.

4 Q. Okay. Now, concerning the shift schedules at UBB
5 for the people who worked there, what can you tell me
6 about that? What's their normal shift schedule there?
7 When do they start? When do they finish? What do you
8 know about that?

9 A. I think over that year, I believe, the hours may
10 have changed at different times. I may have them
11 wrote down for lately, if it's okay.

12 Q. Of course.

13 A. Then again, I may not.

14 WITNESS REVIEWS NOTES

15 A. I'm thinking, just off the top of my head, from
16 6:00 to 7:00 at different times. I think I have it
17 somewhere, but I don't see it there.

18 BY MR. FARLEY:

19 Q. Okay. All right.

20 A. They start at different times. You know, they
21 work different shifts. I think they've tried
22 different things, you know, about rotating schedules.

23 Q. Do you know if they typically worked eight-hour
24 shifts, ten-hour shifts, 12-hour shifts?

25 A. I think they're more in the nine-hour line. I

1 think the wall may work 12.

2 Q. Okay.

3 A. Ten or 12.

4 Q. Now, do they rotate shifts? Do shifts rotate from
5 day to evening or midnight on a regular basis?

6 A. I think here in the last few months they have.
7 The wall, I think --- I'm not sure about them. I
8 think they had like four crews that rotated like four
9 on, four off or something.

10 Q. Okay. Do they routinely work weekends?

11 A. Yes, most of the time.

12 Q. Okay. You may be aware that there are currently
13 about three active mines in seams above the Eagle seam
14 where the UBB Mine operates. They're known as the
15 Castle, Powellton, Black King Mine and Black Knight II
16 Mine. Have you ever inspected any of those mines?

17 A. No. Once, after Sago, I went to Blue Pennant.
18 And I'm not sure if it was one of those mines. It was
19 a belt tunnel, and they had us going around doing
20 special talks and then quick inspections through a
21 mine. And I'm not sure if it was a Castle or Black
22 Knight.

23 Q. Okay.

24 A. That was just like a one-day deal for whichever.

25 Q. Okay.

1 A. We just had to do a quick inspection like we did a
2 couple weeks ago.

3 Q. Okay. Now, moving back to the Upper Big Branch
4 Mine, over the period of, let's say, the last six
5 months, appreciating the explosion on April 5th, are
6 you aware of any major ventilation changes made at the
7 mine?

8 A. In the last six months?

9 Q. Yes, sir.

10 A. I wrote --- they have applied for a bunch of
11 ventilation changes. Actually, I don't see it on your
12 map here. Can I mention one of the last ones I know
13 of?

14 Q. Of course.

15 A. Over towards the Ellis Portal they were going to
16 start a new section. I got a map if you need another
17 map.

18 Q. Also we have a ---.

19 A. I can show you on the ---.

20 Q. Would you prefer to stand and point up here or
21 would you prefer to use a laser pointer from where you
22 are?

23 A. Well, is this it? It won't take just a second if
24 you want me to stand up. One I know that came in a
25 while back --- see, this wall was almost finished.

1 There's their line to stop. And obviously they're not
2 ready here, so they were going to set up a little wall
3 right here for --- to last them for a
4 month-and-a-half, two months. So they were bringing
5 equipment --- going to bring equipment in here to mine
6 this and this. I'm sorry.

7 Q. Can you be more specific in your description of
8 the location for the benefit of the court reporter, if
9 you can, please?

10 A. Okay. I'm not sure if they settled on a name on
11 that. This is an area --- this is the Ellis Portal.
12 And just inby the Ellis Portal, 10 or 12 breaks, they
13 were going to go down into what --- I don't know if
14 they were going to call it the Eunice area or Ellis
15 area longwall. I don't know that they had settled on
16 a name yet. But anyway, the ventilation plan that
17 they sent in had six phases to it just for this right
18 here. That's one that I know came in, and I think
19 that may be the latest. I'm not sure, because I
20 didn't work on that.

21 Q. When you say the latest, do you know approximately
22 when that might have ---?

23 A. It was this past quarter.

24 ATTORNEY WILSON:

25 Excuse me one second. Just for the

1 record, let's identify the map that you're referring
2 to is the one inch equals 500 foot scale of complete
3 map of the active areas of the mine.

4 A. Okay. Also, there was --- that's the latest one
5 off the top of my head I can think of. There had been
6 one for this barrier section. It was the Number Four
7 section that was here that now they call the barrier
8 section, working in the old --- it's the Number 16
9 longwall panel.

10 ATTORNEY WILSON:

11 On the map it shows MMU-062-0.

12 A. Okay. There was a plan sent in for it because
13 they had to put some overcasts in, make some changes
14 for this section to work. That was one ventilation
15 change. They had a ventilation change in the area
16 where the Number Four section on the south side of the
17 mine, went across the track into a little block and
18 mined in it. There was --- now, this one goes back to
19 September 25th, which is a little bit past the six-
20 month deal.

21 When they put the Bandytown fan on line
22 up here at the far end of the mine, on that end, it
23 began bringing the ventilation in from the Ellis
24 Portal over here. And what had happened, it was
25 bringing air in through all these entries. And that

1 was one of the special assessment violations I wrote
2 concerning this mine because it brought air overtop
3 the belt and the boxes and over everything all the way
4 up to the face of the wall.

5 BY MR. FARLEY:

6 Q. Now, this special assessment violation you're
7 referring to, when did you cite that?

8 A. That was on September 25th, that little path
9 that ---.

10 Q. 2009?

11 A. Yeah, 2009.

12 Q. Okay.

13 A. They had ventilation changes put in up here in the
14 Tailgate 22 area, Headgate 22 area, to those areas.
15 Also, they mined in this little number. They called
16 this Number Two section right here, just outby the
17 longwall. Also, they had applied for a ventilation
18 plan that I ended up writing a special assessment on
19 because there was air coming down this crossover from
20 Headgate 22 down to the longwall belt. And they had
21 to make some changes in this area. Yes, sir.

22 Q. When did you cite this second special assessment
23 violation?

24 A. That was cited on 12/31/09.

25 Q. Okay.

1 A. And the work that had to be done ended up --- I'm
2 going to get ahead of myself here. This solid side
3 longwall entry on the top end there is actually to
4 start with ---.

5 Q. Excuse me. Do you mean 22 Tailgate or do you mean
6 the ---?

7 A. The solid side of the wall, three entries. Let me
8 go --- can I go up there? It will be easier.

9 Q. Of course.

10 A. I can't sit and hold that pointer.

11 ATTORNEY WILSON:

12 I think this map on the table ---

13 A. Yeah, that will show you.

14 ATTORNEY WILSON:

15 --- shows the area that you're referring

16 to. So it may be easier to refer to this map. We can
17 use the markers for you to mark.

18 A. Well, you know, I'm thinking they had a plan for
19 their ventilation for this. They called that Number
20 Two section. Then this is what I call --- refer to
21 Tailgate 22, and I refer to this as Headgate 22. Now,
22 what ended up happening, when they started they had
23 sent a plan to MSHA and did not --- what the problem
24 with the plan, because they would send them to one and
25 not to the other and --- anyway, they had belt air

1 coming down, dumping onto the longwall belt. And when
2 it was changed, they had to make changes in here to
3 allow the air. And finally, the air was brought to
4 where it could go out this entry, and most of it was
5 going out this way and around.

6 BY MR. FARLEY:

7 Q. When you say out that way and around ---?

8 A. Well, it was circling around the stop point of the
9 longwall, down towards the mouth of Number Two
10 section, and then exiting up what would have been the
11 old One North section, going to Bandytown fan. And
12 part of the reason for some of the changes they had
13 --- this had prior been the --- the Number Three entry
14 on the longwall headgate side had prior been a return
15 for the crossover going to Headgate 22 and the Number
16 Two section had returned out this entry. But due to
17 conditions in this entry, you know, things
18 deteriorated up in here and so most of the return air
19 was brought around the mouth of the Number 22 and up
20 the main return, neutral side of the wall.

21 Q. What entry?

22 A. Excuse me?

23 Q. What entry?

24 MR. MAGGARD:

25 You were referring to entries, the entry

1 on the map, referring to the headgate of the longwall
2 in the Number One entry, Number Two entry, Number
3 Three entry was unclear.

4 A. That's okay. For which part? Where?

5 ATTORNEY WILSON:

6 We just need for you to identify what
7 entries you're referring to instead of saying this
8 entry. That's not going to show up on the transcript.

9 A. Okay.

10 ATTORNEY WILSON:

11 So you need to identify which number
12 entry you're talking about.

13 A. Okay. I'm going to do what I can. If I remember
14 how I numbered them, this would be --- what ended up
15 being return would be Number Three entry on the
16 longwall headgate side. Also, it would be a return
17 for Number 22 section coming through the crossover. I
18 suppose you call that the Number One entry, which
19 would go out Number Four and Five, located at 25
20 break, and head down to what would be Number One entry
21 on the Number One crossover, I believe it was. The
22 names are not on here, folks. I can't ---. And then
23 the air would cross over that area to Number One and
24 Number Two entries in the old One North and travel up.

25 ATTORNEY WILSON:

1 You're trying to describe the direction
2 that the return air was going; is that right?

3 A. Yes.

4 ATTORNEY WILSON:

5 All right. Why don't we take this
6 highlighter and you can just highlight the direction
7 that you're trying to describe.

8 A. Okay.

9 MR. MAGGARD:

10 Take your time, Gerry.

11 A. No, I'm fine. I just don't remember the number of
12 all these entries.

13 ATTORNEY WILSON:

14 We'll make this map an exhibit so that
15 the markings will be part of the record.

16 A. Okay. You want it right in the entry or beside of
17 it?

18 ATTORNEY WILSON:

19 You can just --- what is it that you're
20 trying to describe, the force that the return air was
21 taking?

22 A. Well, I was trying to describe the ventilation
23 changes that were made. You know, the question was,
24 what ventilation changes they made, and I was just
25 trying to describe areas where they changed it. I'm

1 probably going farther than what the question actually
2 asked.

3 ATTORNEY WILSON:

4 Well, instead of just referring to this
5 or that, you can use the markers, and we've got
6 several different colors, and then you can just
7 explain what it is that you're drawing on the map so
8 that when somebody looks at the transcript later they
9 can just refer to the map and know what you were
10 talking about.

11 MR. MAGGARD:

12 I had questions on this as well. I have
13 a copy of the drawing that you had with the notes for
14 that day that you issued the citation, a copy of the
15 citation. This map that you have right here, is ---
16 it actually showed air going this way into the return.

17 A. Uh-huh (yes).

18 MR. MAGGARD:

19 And there was a regulator right here and
20 a box check right here where it is kept from entering
21 the longwall belt.

22 A. Uh-huh (yes).

23 MR. MAGGARD:

24 Was this after you terminated the
25 citation or was that the way you observed it when you

1 wrote it?

2 A. What day was that?

3 MR. MAGGARD:

4 This is a copy of the citation. The

5 citation is 31062 on 1/27.

6 MR. FARLEY:

7 Can we take a short break?

8 SHORT BREAK TAKEN

9 (Exhibit Pauley One marked for

10 identification.)

11 ATTORNEY WILSON:

12 We're back on the record. I've marked as

13 Pauley Exhibit One the map that's on the table that's

14 a scale of one inch equals 200 feet map. Terry?

15 MR. FARLEY:

16 Okay.

17 BY MR. FARLEY:

18 Q. Gerry, the question is are you aware of any major

19 ventilation changes at the Upper Big Branch Mine in

20 the six months preceding this accident on April 5th,

21 2010?

22 A. Yes. They have made several changes and proposed

23 changes as well. And areas involved would be for the,

24 what I call Head --- or Tailgate 22, Headgate 22, the

25 Number One crossover, Number ---.

1 Q. I'll tell you what, it might be easier if you
2 refer to the mechanized mining unit.

3 A. Okay.

4 Q. That way --- for purposes of marking the map.

5 A. Okay. Headgate 22 would be MMU-029-0. Tailgate
6 22 would be MMU-040. The Number Two section does not
7 have an MMU now. It is worked out. It is outby the
8 longwall stop.

9 Q. And for the record, you've marked Number Two with
10 an arrow pointing to the Number Two section.

11 A. Also, just a week prior to this six-month period
12 there was a ventilation change that really affected
13 the whole mine. When the Bandytown fan was put on
14 line, it brought air in from the Ellis Portal all the
15 way through the mine. And there was four complete
16 pages of changes involved in that.

17 Q. Okay. Now, when was the Bandytown fan put on
18 line? When did it start up, if you know?

19 A. Early September '09. Late August, early September
20 '09, the Bandytown fan was put on line.

21 Q. Okay. All right. Anything else?

22 A. Oh, there may be. I'm not sure.

23 Q. You mean there may have been other ventilation
24 changes that you're not aware of or that you're not
25 sure?

1 A. Well, I'm not sure because they --- well, there
2 was a change. Let me think. Because of the change
3 for MMU-040-0 to start that section was implemented,
4 and the change that was made to use MMU-029-0 allowed
5 belt air to come to the longwall belt, which, you
6 know, that was changed.

7 Q. Okay. All right. Now, when was your last visit
8 or inspection this year at UBB, at the Upper Big
9 Branch Mine?

10 A. I closed out at --- stopped there, closed out
11 papers, went to both portals on, I believe it was
12 April the 1st. I was not underground. I was
13 underground on March the 30th. Also had with me MHS&T
14 guys Jeff Spratt and Mike Plumley.

15 Q. Okay. When you were underground on March 30th,
16 what area of the mine did you visit?

17 A. We walked intakes from Ellis Portal to 78 break
18 and went to the mother drive area. We were up to the
19 mouth of Headgate 22, the area where Tailgate 22
20 starts. We went to the barrier section.

21 Q. Well, if you went to the barrier section, did you
22 travel by mantrip or walk?

23 A. Track, mantrip.

24 Q. Okay. Now, was this on the same day?

25 A. All on the same day.

1 Q. Okay.

2 A. We had split our walking up in the intakes, before
3 we'd get the intake done, and ---

4 Q. In any of the ---

5 A. --- barriers.

6 Q. --- areas where you traveled that day, on March
7 30th, did you detect any methane?

8 A. No.

9 Q. Okay. Was the oxygen content normal?

10 A. Good.

11 Q. Did you detect any CO or other ---

12 A. No.

13 Q. --- gases? Did you happen --- when was the last
14 time you visited or inspected the Upper Big Branch
15 longwall section?

16 A. This last quarter, Jeff Spratt went up there for
17 me one day. I was in the mouth of the longwall
18 section and up to where the tailgate section and that
19 area were. I was not up at the longwall headgate or
20 anything this past quarter.

21 Q. When you say past quarter, can you be more
22 specific?

23 A. That would be January through March.

24 Q. Do you remember which month it might have been?

25 A. That --- oh, the last time I went up there?

1 Q. Yes. When was the last time you inspected the
2 longwall section of the Upper Big Branch Mine?

3 A. I would have to look through another notebook.

4 WITNESS REVIEWS NOTES

5 A. Well, I see here December 15th.

6 BY MR. FARLEY:

7 Q. December 15th, that is the last time you think you
8 visited the UBB longwall?

9 A. Bottom face up to that area, yes.

10 Q. Okay. Were you traveling alone then?

11 A. No. Jeff Spratt was with me. That's a state
12 inspector. He was there with me.

13 Q. Okay. Did you examine the entire longwall face at
14 the time?

15 A. No, sir, not that day.

16 Q. Okay. Did you travel the longwall tailgate
17 entries at that time or at any time since?

18 A. In that period of time, if it was, it was earlier
19 or middle quarter of last quarter of last year. It
20 wasn't this past quarter. I may have been --- it
21 won't be --- some things I don't put in my notes. I
22 may have been up in this area some. I don't write
23 everything down. I was up on this side because ---.

24 Q. When you say this side ---?

25 A. The Number One entry --- or Three entry, I'm

1 sorry, on the headgate side and those entries over
2 there. I had not been all the way up the tailgate
3 since --- I don't remember what day it was, actually.

4 Q. Okay. When would have been the last time that you
5 had traveled across the longwall face?

6 A. I'm going to try to figure that one out.

7 WITNESS REVIEWS NOTES

8 BY MR. FARLEY:

9 Q. If you want to determine the answer and get back
10 to us later, that would be ---.

11 A. Yeah, I'll get back to you. I'm trying to figure
12 out --- because some of these things I've got where
13 I've looked at the books, and I want to make sure I
14 don't give you a wrong answer.

15 Q. Okay. The sealed areas in the Upper Big Branch
16 Mine, have you encountered any problems or detected
17 any methane building up in any of those sealed areas,
18 as far as you know, ---

19 A. Not that I'm aware of.

20 Q. --- in the last six months?

21 A. Not that I'm aware of.

22 Q. Okay. Now, prior to April 5th, the date of this
23 explosion, let's go six months from that date, are you
24 aware of the Upper big Branch Mine being idled or
25 workers evacuated from the mine for any reason other

1 than scheduled holidays or non-scheduled workdays?

2 A. I'm not sure what day it was, but I think that
3 MSHA had found a problem --- I'm thinking it was in
4 March. I'm not real sure. It could have been
5 February. I believe it was March. They had found a
6 problem over here on the tailgate return side of the
7 wall. And what was happening, to the best of my
8 remembrance --- I don't want to answer for them, is
9 that the air coming off of the tailgate, instead of
10 like maybe going down a break and coming back up or
11 coming out this break next to the wall, it was --- I
12 think I've got it right, is that it was traveling down
13 numerous breaks and then circling back around and
14 going to the fan. It wasn't going out into other
15 workings, but it was going --- it was traveling ---.

16 Q. Again, please be specific in what you're
17 describing.

18 A. Okay. The air at the tailgate --- this is MSHA,
19 I wasn't involved with this, ---

20 Q. Yeah.

21 A. --- was coming out --- I'm going to put the mark
22 up here because I think it was back this way, was
23 traveling outby and circling around. I probably don't
24 have the locations right on the map.

25 Q. Now, do you mean to say that the air was traveling

1 in the outby direction in the tailgate entries?

2 A. I'm pretty sure that's what they were dealing
3 with.

4 Q. Okay.

5 A. And I could be wrong on that, but I'm pretty sure.

6 Q. Well, don't guess. If you don't know --- you
7 know, if you know, certainly answer. But if you
8 don't, I would suggest ---.

9 A. Well, there was something --- they had an issue
10 there with them about the air on the tailgate side.
11 And I think what they did was like here it shows
12 regulators put in to pull air more towards the wall
13 side, you know, how you have stoppings down this road
14 to force it more up that entry.

15 Q. Now, which road were you talking about?

16 A. That would be --- I'll call it Number Five
17 entry --- Number Six --- Seven.

18 Q. In the tailgate ---

19 A. Tailgate side.

20 Q. --- side?

21 A. It wasn't pulling up as much as they wanted. I
22 wasn't there, so I can't really be descriptive about
23 that.

24 Q. Okay. I mean, that's fine. If you don't know,
25 that's all right.:

1 ATTORNEY WILSON:

2 And Terry, just for the record, at break

3 55, on the tailgate side of the longwall, you drew an
4 arrow pointing in the outby direction.

5 A. Yeah, that's general area because I don't remember
6 the date for sure. It could be back or forth.

7 BY MR. FARLEY:

8 Q. Okay. All right. Now, is that the only situation
9 you're aware of where the mine may have been idled,
10 where the workers evacuated because of some safety
11 issue prior to April 5th of this year?

12 A. Just this three months? Okay.

13 Q. Within the preceding six months or preceding year,
14 for that matter, if you're aware of it.

15 A. There was the ventilation change that was made in
16 September of '09. I know that MSHA had them down for
17 a few days until they had it completed. And it was
18 where it was such a massive change that I think they
19 ended up writing an order on that. I don't know all
20 the details. I know that they didn't work for a few
21 days over that deal.

22 Q. Okay. You think that was in September of 2009?

23 A. I'm pretty sure. Yes. Yes.

24 Q. Okay.

25 A. The only thing that I did about pulling people

1 out, I didn't pull them out of the mines, was I had
2 followed that order on Headgate 22 dealing with
3 transportation, and I just pulled them outby the face.

4 Q. When was that order on 22 Headgate regarding
5 transportation?

6 A. March the 2nd.

7 Q. Okay.

8 A. That was cleared up on the same day.

9 Q. Okay. Now, I think during your earlier statement
10 you indicated that you were somewhere in the area of
11 the mouth or area just outby where the panels begin
12 for the 22 Tailgate section, 22 Headgate section and
13 also known as MMU-040-0 or 22 Tailgate and MMU-029-0
14 for 22 Headgate. When was the last time you visited
15 the working faces on either of those two sections?

16 A. The day specific, it would be in March.

17 Q. If you know. If you know.

18 A. It would be in March.

19 WITNESS REVIEWS NOTES

20 A. On the tailgate or the headgate?

21 BY MR. FARLEY:

22 Q. Either section.

23 A. I was here around the mouth of the tailgate, which
24 is right here on 12/30, to be up there, all the way to
25 the face.

1 Q. When you say 12:30, do you mean December 30th?

2 A. I'm sorry. March 30th. I'm sorry.

3 Q. Okay.

4 A. I think that was the date I told you earlier.

5 Q. Okay. Would it have been sometime in March?

6 A. Yeah. I was on both of them in March.

7 Q. Okay.

8 A. If you want specific dates, they're in here.

9 Q. Okay. Did you visit working faces on either of
10 the two sections ---

11 A. Both of them.

12 Q. --- in March?

13 A. Right.

14 Q. Okay. Now, when you visited the working faces on
15 both of those two sections in March, did you detect
16 any methane at any time?

17 A. No.

18 Q. Okay. What was the condition of the ventilation
19 on each of the two sections during your visits there
20 in March?

21 A. On Headgate 22, which is MMU-029-0, the trips that
22 I made there, the faces and the entries One, Two and
23 Three, it seemed like the times I was there, at least
24 two of them were belted off. And one entry may have a
25 partial cut or a cut out of it, so there wasn't a

1 whole lot of area on the curtain, in particular, and
2 ventilation was good. I didn't have any problem.
3 They weren't --- the trip I was there, they weren't
4 really mining much or anything. And the same is on
5 MMU-040. When I was there, the section was only in
6 maybe four breaks, five, and the overcast the intake
7 was right on top of them. They had a lot of air
8 blowing there.

9 Q. Okay. But you did not detect any methane on
10 either of the two sections there when you visited in
11 March; ---

12 A. No.

13 Q. --- is that correct?

14 A. Correct.

15 Q. Okay. The typical continuous miner section at
16 this mine --- obviously 22 Headgate and 22 Tailgate
17 are continuous miner sections and there are others
18 elsewhere. What is the crew makeup? In other words,
19 do they have --- I assume they have a miner operator,
20 roof bolter operators. What I'm getting at, is there
21 a specific person on each of their continuous miner
22 sections who is designated as a ventilation person?

23 A. I've never really asked that question. I think
24 everybody just worked on it. There was not like a
25 brattice man that I know of.

1 Q. Okay. All right. Now, when you visited the 22
2 Headgate section and the 22 Tailgate section and the
3 longwall section and any of the other active sections
4 elsewhere, did you typically review the pre-shift,
5 on-shift books and examination books before entering
6 the mine?

7 A. Most of the time.

8 Q. Okay. Now, when --- after you went into the mine
9 and you arrived at any of these sections, did your
10 findings actually --- were your findings consistent
11 with what the examiners had entered in the books?

12 A. It seemed good to me, as far as I can remember. I
13 don't recall right off anything.

14 Q. Okay. Have you ever heard of any methane
15 ignitions or fires at the Upper Big Branch Mine prior
16 to April 5th, 2010?

17 A. It had at least one, maybe two --- and if you're
18 talking about complaints, no.

19 Q. No.

20 A. No. There's been one or two ---.

21 Q. I said methane ignitions or fires.

22 A. Okay. There was an ignition in 1996, I think it
23 was.

24 Q. Okay.

25 A. That was on the south side of the mine. I believe

1 it might have been the second longwall panel that was
2 mined in this mine.

3 Q. Okay.

4 A. And ignition happened and a few people got maybe
5 some hair on their neck burned, nothing major. They
6 saw, I think, if I remember correctly, like a fireball
7 or whatever. One thing I do remember from that, which
8 I don't remember everything, that when --- because I
9 was one of the two guys from the state that walked up
10 through there. My buddy that was with me had picked
11 up a couple of pieces of rock from the area where the
12 longwall had fell, and that rock, as we came out of
13 there, you could take it and just hit it against and
14 there's like flint, you know, just like it would
15 spark. And that's caused me to wonder if possibly the
16 roof on this side may have been the --- I mean, it's
17 just an idea. But that was in '96, I think.

18 Q. Okay. All right.

19 A. Investigated another time, too, I'm sorry, just
20 came to mind, what was thought to possibly been a belt
21 fire. That would have been in the year after Sago,
22 Aracoma.

23 Q. Would that have been in 2007?

24 A. 2007. That was a few weeks after those incidents,
25 and it was at the mouth of the longwall. And I'm

1 not --- never was really sure from everyone if it was
2 actually a fire or smoldering or --- there was smoke
3 for sure. I'm not sure what panel they were on.

4 Q. Okay. Now, ---.

5 A. I'm thinking that's when it was. I'm pretty sure.

6 Q. Now, during your most recent quarterly inspection
7 this year, did you cite any Notices of Violation
8 related to ventilation rock dusting?

9 A. Now, the ventilation violations were special
10 assessments.

11 Q. Okay. I think you told us about that.

12 A. Yeah. And as far as face ventilation, I don't
13 think I wrote any. But I did write some on cleaning
14 and dusting.

15 Q. Okay. Do you remember specifically as to the
16 location ---

17 A. Most of them ---.

18 Q. --- when you cited cleaning and dusting?

19 A. It would be Four and Five Ellis belts, Four North
20 belt head area, Five North belt head area, the area
21 from the longwall switch to Headgate 22 switch. And I
22 also wrote cleaning and dusting on the Headgate 22
23 belt .

24 Q. The Headgate 22 section belt?

25 A. Section belt, yes.

1 Q. Okay.

2 A. It wasn't so much a problem of float dust. What
3 it was is a problem of ribs that had sloughed off into
4 the --- which, you know, you got some coal dust there,
5 ribs that sloughed into the walkway and needed
6 cleaned. It wasn't like --- it wasn't under the belt
7 or anything like that. The belt needed cleaned.

8 Q. Okay. Now, as far as you know, these Notices of
9 Violation pertaining to rock dust that you cited
10 during your last --- your quarterly inspection earlier
11 this year, prior to this explosion, were they all
12 abated prior to the explosion?

13 A. All of them except that one on that Headgate 22
14 belt that was written later in the quarter, middle to
15 late. And they had almost all of it done, just like a
16 little bit of cleaning to finish --- to finish dusting
17 it up. And I extended it like to the next morning or
18 something and then never got back in.

19 Q. Okay. Now, when you were making a determination
20 as to whether a specific location or area in a mine is
21 in need of rock dusting, do you have any type of
22 equipment that allows you to measure rock dust
23 content?

24 A. No.

25 Q. Okay. The idled section here referred to as Eight

1 North, ---

2 A. Yes.

3 Q. --- do you recall the last time you may have
4 visited that area up to and including the face areas?

5 A. It would have been --- it would have been in
6 excess of six months. I haven't been up in there.

7 Q. Okay. Now, whenever you were there, did you
8 travel to the face area?

9 A. I don't remember ---

10 Q. Okay.

11 A. --- because it would have been a long time.

12 Q. All right. Now, outby this Eight North section
13 faces you'll find a gas well, and it's enclosed in
14 a --- what would appear to be a large block of coal
15 with about a hundred-foot radius on each side. I
16 can't see the spad numbers from here. The well number
17 is --- API number is 5-1 --- 5-810D, I believe. Did
18 you ever visit that area around that gas well?

19 A. I don't remember. It's been --- any time I've
20 been up through there it would have been a good while
21 back.

22 Q. Okay. Now, whenever you were in the Eight North
23 area, in the face area, did you detect any methane
24 there at that time?

25 A. I don't remember, because --- I don't even

1 remember the last time I was up there.

2 Q. Okay. All right.

3 A. Now, down here around the mouth of the Eight North
4 section you have an area known as the Glory Hole.

5 When was the last --- have you visited that area?

6 A. Went there in that area every quarter.

7 Q. Okay. Do you recall specifically when you were
8 there this year?

9 A. I would have to go back through my book.

10 Q. Okay. Would it have been sometime in January,
11 February, March of this year?

12 A. Yeah, it would have been at this quarter. I'm
13 trying to think. We had wrote a violation up there,
14 but I believe it was the previous quarter. The
15 violation was on an acetylene tank, maybe one or two
16 up there with no cap in it.

17 Q. Okay. Now, were these ---?

18 A. Didn't find any methane or anything like that.

19 Q. These acetylene tanks, were they --- can you
20 explain in some detail where and how you found them in
21 the vicinity of the Glory Hole?

22 A. It was fairly close to where that hole was, and we
23 had it removed.

24 Q. Okay. Did you detect any methane in that area?

25 A. No.

1 Q. All right. Now, let's go back down here to, I
2 think, the area north of the longwall --- of the
3 current longwall face, which comes north and connects
4 to the 22 Headgate section, I think they call it, the
5 crossover or something like that; is that correct?

6 A. Yes.

7 Q. Okay. Now, in the --- if you're traveling north,
8 and it would be in the Number Three entry, about
9 roughly two crosscuts from the 22 Headgate conveyor
10 belt you see a roof fall which extends for
11 approximately --- what the map indicates is a roof
12 fall which extends for approximately two crosscuts.
13 Have you ever been in that area?

14 A. I have not looked at that roof fall.

15 Q. Okay. You have not seen it?

16 A. No, I have not.

17 Q. Okay. As far as you know, would you have any
18 reason to doubt the accuracy of a map and where it
19 shows the location of the roof fall?

20 A. No, I don't know anything about it.

21 Q. Okay. The exiting longwall headgate entries that
22 extend all the way to the Bandytown fan, have you
23 traveled those entries to the Bandytown fan this year?

24 A. No.

25 Q. Okay.

1 A. I've been down --- so far down this way one time
2 and water was up to my knees and on.

3 Q. Now, would that be the water indicated on --- in
4 the headgate entries between Number 70 and 75?

5 A. It may --- probably through there.

6 Q. Okay. Do you have any knowledge of the Upper Big
7 Branch Mine mining into and through any gas wells
8 prior to April 5th of this year?

9 A. No.

10 Q. Okay. Has anybody at the mine ever mentioned it
11 or do you have any knowledge of the Upper Big Branch
12 Mine encountering any gas wells that were uncharted,
13 left off the map or not known to exist, anything that
14 they might have mined into unexpectedly?

15 A. No.

16 Q. Okay. During your inspections at the Upper Big
17 Branch Mine, have you ever encountered any scenarios
18 where you've had a methane feeder coming from the mine
19 floor or the coal face on any of the working sections
20 or any other area of the mine?

21 A. Not since I've been assigned there, but it has
22 happened.

23 Q. And do you know when and where it happened?

24 A. I know they had one on the wall. It's been in the
25 past. I can't remember what year. They may have had

1 two.

2 Q. Now, ---.

3 A. And between shields.

4 Q. Okay. When you say you can't remember which year,
5 would that have been a few years back?

6 A. Yes.

7 Q. Okay. All right. Do you recall if you
8 investigated or inspected the area where this occurred
9 at the time?

10 A. I think so. That's the best I can do. It's been
11 a while.

12 Q. Did the methane feeder, as it was, result in lost
13 production time? Did they have to idle the area?

14 A. Yes.

15 Q. Do you know how long they were idled as a result
16 of that?

17 A. Not exactly.

18 Q. Okay. I asked the question because we've heard a
19 rumor or innuendo of such things in the past at the
20 mine, and we're just trying to pin down if there was
21 any substance to it.

22 A. That's why I'm trying to make sure I don't get it
23 compared to another mine.

24 Q. Okay.

25 A. But I'm thinking we did.

1 Q. Okay. Now, the Upper Big Branch Mine produces
2 coal in the Eagle seam. Is that your understanding?

3 A. Yes.

4 Q. Okay. Are you aware of a coal seam which is
5 immediately under the Eagle seam, possibly anywhere
6 from 10 to 30 inches below the Eagle seam?

7 A. No.

8 Q. Okay. A general question here. When you traveled
9 to the main portal at the south portal area of the
10 Upper Big Branch Mine, is that where you'd usually
11 enter the mine?

12 A. Lately, since they put a bathhouse in at Ellis
13 Portal, if I'm going on that side, I would go over
14 there.

15 Q. Okay.

16 A. And sometimes still I have went from the south
17 side over there, if I'm working an evening shift.

18 Q. Okay. Now, when you enter the property, do you
19 typically pass through a security gate?

20 A. Yes.

21 Q. Okay. Do you know if the security guard announces
22 your arrival to the mine after you pass there?

23 A. I don't know.

24 Q. Okay. Is it possible that that occurs?

25 A. I suppose.

1 Q. Okay. Now, when you're ready to go underground at
2 the Upper Big Branch Mine, the ride from the main
3 south portal to the longwall section area,
4 approximately how long does that ride take?

5 A. From the south side?

6 Q. Yes, sir. Again, approximately.

7 A. I don't know. Thirty (30) minutes. I'm not sure.
8 Because usually when I'm going, I might stop and look
9 at something on the way. It's hard for me to base it
10 on that.

11 Q. Okay. Prior to the explosion on April 5th, has
12 any employee from the Upper Big Branch Mine approached
13 you about a safety-related complaint there?

14 A. Yes.

15 Q. Do you recall who and when and what the nature of
16 it was?

17 A. When they started the barrier section, someone
18 even stopped at my house and was talking about it.
19 And then at the mine also different ones --- well, you
20 want names?

21 Q. Sure.

22 A. Ricky Brown had mentioned about --- you know, on
23 the barrier section, about how --- where they were
24 mining in between those longwall panels, about they
25 were worried about the roof and the ribs ---

1 Q. Okay.

2 A. --- and cracks in the roof and stuff. And then
3 when I got up there, I wrote a violation concerning
4 that issue.

5 Q. Okay.

6 A. Which I did not abate that violation yet. I had
7 changes made, something added to the roof control
8 plan. And the reason I did not completely abate the
9 violation, I wanted to make sure that what they were
10 doing worked or I was going to do --- take further
11 action with that violation.

12 Q. Okay. Apparently, that must have been recently?

13 A. It was whenever --- not long after they started
14 that section. It might have been early this year. It
15 was this quarter --- this past quarter, probably
16 January.

17 Q. Okay. Meaning the barrier section?

18 A. The barrier section. And one time on MMU-029-0,
19 Headgate 22, after they started in that general area
20 up there, Bobby Pauley had mentioned about
21 whenever --- the next time I went to the headgate
22 section up there, that you know, they were having a
23 lot of dust and stuff. It wasn't like a complaint
24 like you need to go now. It was like a --- but then
25 when I did go, like I said, the faces were pretty well

1 belted off and I didn't find anything.

2 Q. When you say the headgate section, do you mean the
3 Headgate 22 ---?

4 A. Headgate 22, MMU-029-0.

5 Q. Okay.

6 A. But that was not long after the section started,
7 and they did have some rock to cut. And when I was up
8 there, I didn't see anything.

9 Q. Okay. During the time that you've been assigned
10 to inspect the Upper Big Branch Mine, would it be
11 unusual for employees of the mine to approach you with
12 a specific safety complaint?

13 A. I try to keep a good rapport with all of them.
14 And actually the boss --- I'm trying to think of his
15 name. His nickname is Hammer. On this Tailgate 22,
16 it wasn't a complaint, but it --- Tailgate 22 is
17 MMU-040-0. After they had started mining at the
18 beginning of the section, he mentioned to me something
19 about the bottom hooving. And when I got up there, I
20 didn't see much of that. And where they were at, at
21 the face at that time, I didn't see any ---.

22 Q. Now, again, that was recently?

23 A. That was right after they started this little
24 tailgate section.

25 Q. Some bottom hooving?

1 A. A little bit of bottom hooving. He was talking
2 about they were having bumps and thumps, you know how
3 you get, and then he thought --- well, he --- I don't
4 really remember seeing much bottom hooving there.
5 There might have been a couple of spots, but I think
6 these guys were concerned because they were so close
7 to the wall of the other headgate.

8 Q. Right. But ---.

9 A. But I didn't see much of anything while I was
10 there.

11 Q. Okay. So he expressed a concern to you about
12 bottom hooving?

13 A. Well, it wasn't that. He was just talking about
14 how the place, it thumped a couple times and like
15 that. We were just talking in general.

16 Q. Okay. But did you find any actual physical
17 evidence of the bottom hooving in that area?

18 A. I'm thinking I might have saw a couple places that
19 might have been broke, but I didn't really notice
20 much.

21 Q. When you say broke, can you be more specific
22 how ---?

23 A. Well, the bottom hooving to me, you know, you got
24 your bottom is hooved up and you got big places in it.
25 I didn't see that.

1 Q. Okay. Any cracks or crevices or anything like
2 that?

3 A. Big stuff, no.

4 Q. Okay. Have you seen any evidence of bottom
5 hooving elsewhere in the mine?

6 A. I'm not avoiding your question. I'm trying to
7 think of anything in particular. If I remember, I'll
8 just have to get back to you guys because it's a big
9 mine and, you know, I'm not going to say there wasn't,
10 but I can't think of anything right off.

11 Q. At any time after this interview if something
12 comes to mind that you think ---.

13 A. If I know something, I'm going to tell you.

14 Q. Okay.

15 A. Now, I did have a complaint --- I've had two
16 complaints. One wasn't about this mine. I'm sorry.
17 Go ahead.

18 Q. At any time after this interview if something
19 comes to mind that you think would be helpful to this
20 investigation, please get ahold of Norman Page or
21 myself ---

22 A. Okay.

23 Q. --- or Bill Tucker.

24 A. Okay.

25 Q. Okay.

1 A. I did get a complaint from a guy, and I did tell
2 Bill Tucker. It's up here --- wrong one, where I
3 think --- I'm not sure where he was talking about. He
4 was talking about they were putting a belt in. I
5 thought he meant for this new section, inby Ellis
6 Portal for the new longwall setup, that they were
7 installing a belt and that somebody's methane detector
8 pegged, which that seems unusual to me to be there,
9 unless I'm mistaken. That was Ricky Brown again. I
10 can find out on that one exactly.

11 Q. Now, Ricky Brown, is he an employee at UBB?

12 A. He was. He worked on the barrier section. He's
13 the one that told me about, you know, the cracks in
14 the roof and the ribs sloughing some.

15 Q. When you say he was, does that mean he doesn't
16 work there anymore?

17 A. Well, they have moved all these guys to other
18 locations. He works at Slip Ridge at Marfork.

19 Q. Okay.

20 A. I can find out, if you need me to, about where he
21 was at on the methane deal. This was, I think, in
22 middle to late March.

23 Q. When you say you can find out, does that mean you
24 would talk to him personally?

25 A. Sure. I've known him all ---.

1 Q. We can also interview him, too, I suppose.

2 A. Well, I mean, that's fine. I mean, ---.

3 Q. Again, any time you come up with any information
4 that you think would be helpful to us, ---

5 A. Yeah.

6 Q. --- please fax it along after this interview.

7 A. Well, he just lives about a mile-and-a-half from
8 me, so ---

9 Q. Okay.

10 A. --- that's no problem.

11 Q. Now, during the course of your inspections at the
12 Upper Big Branch Mine, at any time has any management
13 employee or any other UBB Performance employee made
14 any attempt to threaten, harass or intimidate you or
15 impede your inspection?

16 A. No.

17 Q. Okay. Let's move to April 5th now. Were you
18 present at the Upper Big Branch Mine on April 5th of
19 this year?

20 A. Not until after it happened.

21 Q. Okay. Now, how and when and from whom did you
22 learn that an accident had occurred at the Upper Big
23 Branch Mine that day?

24 A. Steve had asked me --- they had mine rescue
25 practice in Logan. He had asked me to come to the

1 office that day because him and Randy both were going
2 to be gone, and to be at the office in case somebody
3 called. And Steve called me in the afternoon that he
4 had got something from Homeland Security concerning
5 Upper Big Branch.

6 Q. Okay. Let me stop you for just a second.

7 A. Okay.

8 Q. When you said Steve, did you mean ---?

9 A. Oh, Steve Snyder, my supervisor.

10 Q. Okay. Now, when you say he called you in the
11 afternoon, what time in the afternoon did he call you?

12 A. I don't know if I have that down. It was probably
13 close to 4:00.

14 Q. Okay.

15 A. You know, it could have been 10 'til, 15 'til.

16 I'm not sure.

17 Q. Okay. Now, what did he tell you at that point
18 when he called?

19 A. He told me that he had got a call concerning Upper
20 Big Branch, and if I remember correctly it was like
21 people were trapped by a roof fall or something like
22 that, and wanted me to call down there and find out
23 what was going on.

24 Q. Okay.

25 A. And I called and talked to Greg Clay, Greg Clay.

1 He is the purchasing clerk.

2 Q. Okay.

3 A. And his office actually is on the end of the
4 building that faces the supply yard.

5 Q. Okay.

6 A. And the reason I mention that to you is because to
7 the right of Greg, looking out that window would be
8 the track entry going in the north side. To the right
9 of the track entry is the north fan. To the left of
10 the track entry is a return. And he told me that ---
11 I wrote down a 303 is what he told me. The entry at
12 303, the entry to the left of the track, air came very
13 strong, then he said extremely strong. Air came out
14 very strong for approximately five minutes. So the
15 five-minute thing, you know, I'm not sure about, but
16 you know, ---

17 Q. Well, all you know is what he told you?

18 A. That's what he told me.

19 Q. He said air exited the return entry to the left of
20 the track; is that ---?

21 A. Yes. He said it came out very strong. And then I
22 called Steve back, and there were several calls
23 between me and Steve. And I think I may have talked
24 to Jonah Bowles. He'd be Marfork's safety director.
25 I called Greg back again and talked to him and was

1 trying to find out some more. At that time he didn't
2 really know anything. Then when I called him probably
3 the third time, he put Paul McCombs on the phone.

4 Paul McCombs is chief engineer.

5 Q. Okay.

6 A. And I think that Chris Adkins was with Paul.
7 Chris Adkins would be --- I don't know what his title
8 is, vice-president of --- under Blankenship or
9 something.

10 Q. Okay.

11 A. And Paul told me that smoke was coming out of the
12 fan at Bandytown. Air pressure went from
13 five-and-a-half to three and CO was pegged. Here's
14 where I called Jonah. Talked about someone had ---
15 Jonah mentioned someone talked about air reversal on
16 one of the belts at UBB, and CO was showing on the
17 belt system. CO was outside, 50 to 100 parts per
18 million, and they were pulling the people out. And
19 they had the mine rescue team going to Ellis.

20 Q. Okay. Now, let me make sure I followed you
21 correctly. You first got a call from Steve Snyder
22 going on 4:00 p.m., roughly ten minutes 'til, as best
23 you can remember. Then you called the mine and you
24 spoke to Greg Clay, and you probably spoke to him two
25 or three times. Then you spoke to Jonah Bowles at

1 some point, and then you spoke to Paul McCombs with
2 Chris Adkins with him. Now, when you spoke to McCombs
3 with Adkins with him, how much --- approximately what
4 time was that? How much time after the initial call
5 was that?

6 A. Well, these are all fairly pretty quick calls,
7 except for one space of time I was waiting for Steve
8 to call me back. So all this happened prior to 4:30
9 or whatever, I would say. Maybe 4:30, 4:45, within
10 that time period, made a bunch of calls.

11 Q. All right. Do you need to take a break or
12 anything to go to the bathroom or anything?

13 A. No. Do you?

14 Q. I can hold out for a little while.

15 A. Let's go. We'll take a break.

16 Q. No, I'm fine. Seriously, I'm fine. Don't worry
17 about me. I was just joking. Now, what happens after
18 that?

19 A. After that, one of the safety instructors, Steve,
20 had told me when I got through with what I was doing
21 to come down there, to UBB. And one of the safety
22 instructors, Randy Meadows, was still at the office.
23 And I asked Randy if he cared to stay a little late in
24 case somebody else called and gave him Steve's number
25 and all. And he said he didn't care, and he stayed

1 for a while. But when I talked to him later, nobody
2 else had called. And I went down to UBB, went to the
3 Ellis Portal, and they already had the men off the
4 mantrip outside when I got there.

5 Q. Okay. Was anybody else from our agency, Office of
6 Miners' Health, Safety and Training, at the Ellis
7 Portal when you arrived?

8 A. Yes. There were several people there.

9 Q. Okay. Approximately what time did you arrive
10 there?

11 A. I didn't write it down because ---

12 Q. Okay.

13 A. --- I might have been traveling quickly.

14 Q. Okay. Oak Hill office from the Upper big Branch
15 Mine ---?

16 A. It's normally probably an hour.

17 Q. Okay. All right.

18 A. It was less than that. Several of our folks were
19 there.

20 Q. Okay. Now, what happened afterward? What were
21 you assigned to do after you arrived, if anything?

22 A. When I was there, I went upstairs with Steve
23 Snyder, my supervisor. We went up in the office for a
24 couple minutes and ---.

25 Q. Now, when you say upstairs ---?

1 A. In the mine office.

2 Q. At Ellis Portal?

3 A. Ellis Portal.

4 Q. Okay.

5 A. Ellis Portal mine office. And it was decided that
6 Steve and I would go over to the main portal at UBB
7 --- or the Montcoal Portal. We went over there.

8 Q. Okay.

9 A. He wanted me to go over there with him.

10 Q. Okay. Now, do you know approximately what time
11 you arrived at the Montcoal portal?

12 A. We were there at the Ellis Portal for a little
13 while because by the time we got through traffic down
14 there and then got partway up the hill, had to park,
15 had to walk, had to walk back to the car --- my
16 vehicle another time, then walk back up, you know, I
17 really wasn't paying attention to any time then.

18 Q. Okay. Now, after you arrived at the main Upper
19 Big Branch portal with Mr. Snyder, were you assigned
20 to do anything specific after that?

21 A. Not really, no. I took a couple of notes about
22 readings that were coming out two or three different
23 times, but they had other folks doing that, and I
24 stopped doing that. Then one assignment he gave me
25 later that evening was to go with the Governor's press

1 secretary, Sara, is that her name?

2 Q. Could be. I don't remember.

3 A. Just to go with her and a couple State Troopers
4 down there to try to set up a meeting place for, you
5 know, media and her to give her talks, just try to
6 pick out a spot, and that was about it.

7 Q. Okay. Were you involved in any of the underground
8 rescue and recovery work?

9 A. No.

10 Q. Okay. Before I turn it over to Jasey here, is
11 there anything else you wish to offer that you think
12 might be helpful to this accident investigation?

13 A. I can't think of anything.

14 Q. Okay.

15 ATTORNEY WILSON:

16 Gerry, are you okay? Do you want to take
17 a break or do you want to ---?

18 A. Yeah. If we're going to have some more, why don't
19 we take two.

20 ATTORNEY WILSON:

21 A five or ten-minute break. Off the
22 record.

23 SHORT BREAK TAKEN

24 ATTORNEY WILSON:

25 Back on the record.

1 EXAMINATION

2 BY MR. MAGGARD:

3 Q. Gerry, your last visit at the mine was on March
4 30th; is that right?

5 A. Uh-huh (yes).

6 Q. What was the purpose of that visit?

7 A. We brought --- Mike Plumley and Jeff Spratt were
8 able to go with me that day. And they helped me walk
9 the intakes. We split up intakes in Ellis Portal, at
10 the 78 break. And let's see, went up there towards
11 the mother drive area and over towards the --- went
12 out to Headgate 22 there and --- well, I had to get
13 that intake done, the main thing. They helped me walk
14 it. I talked to them earlier about coming --- you
15 know, helping me there a couple days or something.
16 And we looked around up in these areas and then we
17 went down to the barrier section. I wanted to get
18 their opinion on what they thought about that area
19 down there.

20 Q. Was that the day that you went to this 040 MMU
21 that you talked to Hammer about the bottom hooving or
22 was that a different day?

23 A. No. That was right after they started there.

24 Q. Right after they started?

25 A. Yeah.

1 Q. And about what time period was that? Any idea
2 what time you was up there looking at that?

3 A. I don't remember what day it was. What I mean
4 when I say when it started, it wasn't on this day. It
5 was probably earlier in March.

6 Q. When you was up there, did you check the cracked
7 areas in the floor that you observed for methane?

8 A. I didn't find anything --- methane while I was up
9 there. I'm thinking that there might have been a ---
10 I can't remember if maybe a belt entry might have had
11 a little break in the floor or something. It wasn't
12 nothing that really drew my attention or anything.

13 Q. This guy named --- that you called Hammer, you
14 couldn't remember his name, is his name Brian Collins?

15 A. Is he kind of tall, you know, little goatee or
16 something maybe?

17 Q. Did he ever mention that he found methane in ---

18 A. I don't recall.

19 Q. --- from the bottom hooving?

20 A. Uh-uh (no).

21 Q. You're involved with roof control. Are you
22 involved in the plan approval process in roof control?

23 A. Yes.

24 Q. What would be your opinion as to why the bottom
25 may be hooving in Tailgate 22 that Hammer was talking

1 about?

2 A. Well, the first thing that came to my mind, that's
3 probably where it was so close to the headgate and the
4 wall over there. I'm not sure. That's --- but that
5 would --- that's the only thing I can think of.

6 Q. You've had the mines since April of last year;
7 right?

8 A. Yeah.

9 Q. What areas of the mine would you say that ---
10 could you point out to us that might beneficial as,
11 you know, what areas of the mine has bad roof
12 conditions or somewhat poor in your opinion?

13 A. The last time I was up on MMU-0290, it wasn't ---
14 what they had found was in the last break or two they
15 had some little tiny coal seams, you know, little
16 rock, little coal seam, little rock, little coal seam.
17 Wasn't no falling or anything like that. They'd have
18 to cut it out. So I'm not sure what would have
19 developed on up through there. As far as working
20 sections, the barrier section had me more concerned
21 than any of them because of where it was at. This had
22 me concerned, being between those two longwall panels.
23 They had, prior to that --- and I'll show you up here.
24 See this area right here, now that was done before I
25 was there. And I can't get ---.

1 Q. You're pointing right below the barrier section?

2 A. Here we go. This right here is the current
3 barrier section right here.

4 ATTORNEY WILSON:

5 Let's, just for the record, on the scale
6 of one inch to 500 map, you're referring to the
7 development section between Headgate 17 and Headgate
8 16?

9 A. Yes. Okay. That's the current section. And just
10 considering it had been walled on this side, and
11 actually overtop of it I found out there's an unmined
12 block that kind of angled that way. I'm not very
13 straight with this light. Kind of angled that way.
14 And what I'll call the top part of the section was ---
15 looked one way. The bottom part down here was a total
16 different section, split right in the middle because
17 of what was overtop of them. But anyway, back down to
18 the previous panel, they come in from the side and
19 they told me that this first part of the area went
20 pretty good and that after they went up through here
21 it kind of, their terminology, fell to pieces, had
22 roof, rib problems, and that's why they quit where
23 they did.

24 ATTORNEY WILSON:

25 And again, for the record, you're

1 referring to the area between Headgate 18 and Headgate
2 17?

3 A. Yes. That was done prior --- that's --- I'm not
4 sure when they mined that, prior to my going there.
5 And so this area here, as far as mining ---.

6 ATTORNEY WILSON:

7 And again, when you say this area, that
8 area, ---?

9 A. That's 16 to 17. It's a barrier section, was ---
10 out of all the sections they had, was the most concern
11 on roof and rib.

12 ATTORNEY WILSON:

13 Let's go off the record.

14 OFF RECORD DISCUSSION

15 ATTORNEY WILSON:

16 Let's go back on the record. We have
17 another copy of the one inch to 200 foot scale map, so
18 we're marking that as Pauley Exhibit Two.
19 (Exhibit Pauley Two marked for
20 identification.)

21 ATTORNEY WILSON:

22 So why don't you just write in on here
23 with just a pen barrier section? That's what you were
24 referring to this as, the barrier section; right?

25 A. Yes. Yes.

1 WITNESS COMPLIES

2 ATTORNEY WILSON:

3 And then the other --- the older section

4 that you were referring to is just below that on the
5 map; correct?

6 A. Yes. I was not there during that time. Actually,
7 back to Hammer, he's the one that told me that when
8 they started mining in here, it was good for a while.
9 But as they went --- progressed up through here, the
10 roof and the ribs deteriorated, and that's why they
11 stopped. That was done prior to me being there,
12 so ---.

13 ATTORNEY WILSON:

14 You're referring to the area between
15 Headgate 18 and Headgate 17?

16 A. Yes.

17 BY MR. MAGGARD:

18 Q. If you look at the mine map, Gerry, there's
19 several portions of the longwall panels that were
20 skipped. Do you have any knowledge as to why they
21 were skipped?

22 A. From what I've referred to as the barrier section
23 between 16 and 17 longwall headgates, there's a black
24 line that goes up and crosses --- you want me to show
25 you again? I can't see all those numbers from here.

1 That black line is a belt line, most of which is
2 underground at one of those Elk Run mines.

3 ATTORNEY WILSON:

4 And for the record, you're referring to
5 Black Knight II belt?

6 A. Yes.

7 MR. MAGGARD:

8 Now, that would be in one of the seams?

9 A. That Terry referred to. And I'm not sure if it's
10 all in the same mine or not. You know, it might go
11 across, I think. There's a little bit of area where
12 it's outside 300, 400 feet. You might go into another
13 mine. That's on Elk Run property. I don't --- I
14 don't go down there. But they left that, I was always
15 told, for that belt line. And you can see where it
16 kind of splits in all those areas where they stopped.

17 BY MR. MAGGARD:

18 Q. Let's get back to the last day you was there. You
19 traveled from Ellis Portal up the track entry; right?

20 A. While we were in the track and intake, we split up
21 the intake. I walked the intake from Ellis Portal up
22 and to --- actually, I walked inby Four North belt
23 head and I walked too far and came back and came out
24 there. And we kind of just split it up so nobody had
25 to walk the whole thing. This is the 78 break area,

1 and we came out through there.

2 Q. How did the rock dusting appear to be in the areas
3 you traveled that day?

4 A. It was okay.

5 Q. When you say it's okay, could you ---?

6 A. I mean, it had rock dust there.

7 Q. Was it thick, white? Could you explain?

8 A. Well, I probably --- where a person would walk,
9 you know, it might not be white, white. You know, you
10 might get the more grayer look. But you know, it had
11 been rock dusted. I can tell it had been.

12 Q. From a scale of one to ten, ten being exceptional,
13 one being very poor, how would you assess the mine
14 operator's cleanup program as far as rock dusting,
15 maintaining belt lines and so forth?

16 A. I don't know if I can lay a number out there,
17 but ---.

18 Q. Just a rough estimate.

19 A. I don't --- section-wise, if I wrote any cleaning,
20 dusting violations, it wasn't many. And when I did
21 write a belt up, it would basically need touch-up
22 cleaning and some additional rock dusting. The worst
23 parts of the belt line would obviously be the head and
24 take-up areas. And the track was good up until ---
25 like I said, I rode from the longwall switch to

1 Headgate 22 switch, where they dusted. And I didn't
2 really have a lot of problems when I was on the
3 sections, when I went there, but sometimes I might be
4 following somebody else that's already been there.
5 You know, I might be following one of your guys or
6 something that had been on the section. I didn't
7 write, I don't think, very many cleaning, dusting on a
8 section.

9 Q. Would you say that this mine is better than most
10 or not as good as most?

11 A. This mine is very large, sprawling, active,
12 fast-paced, a lot of activity, and I guess considering
13 the size, I'm not sure that --- you know, you don't
14 want to write a lot of violations anywhere. But
15 considering the size, it's like a lot of places, they
16 could do better.

17 Q. I seen that you wrote several violations on the
18 belt line.

19 A. Yeah.

20 Q. I think there was probably 6 this year and 15 or
21 16 last year. When you wrote those citations, how ---
22 was they very prompt in abating those, or did it take
23 some time to get them took care of?

24 A. No, they would get on it. Now, my abatement time
25 for me abating them might not always show that, but

1 they would be on and working.

2 Q. Had they ever --- did they --- when they done
3 their belt examinations, were they good about
4 reporting hazards, like float dust or, you know,
5 accumulations? Would they report that?

6 A. Yeah. Actually, if you look at my violations,
7 when I went there in April, the guy that had been
8 there before me had told me that he was having a
9 problem with the books and about getting them
10 countersigned and having people sign them right and
11 all. And I told him, well, I'll take care of that and
12 had to deal with that issue some. But that's leading
13 up to this, is that --- see, when I go and inspect, I
14 try to teach while I'm inspecting. Like the barrier
15 section, where they had some roof and rib problems and
16 some young guys up there, tried to teach them how to
17 do whatever.

18 I'm not the best teacher, but I tried to help
19 some. And even on the fire bosses, a lot of them were
20 close to my age or are my age. What they would do on
21 their belts is I found that they would have a belt
22 that might be a hundred breaks long and they would
23 write up the belt needed cleaned and dusted. And in
24 all actuality, part of it might have. And I guess
25 covering theirselves, they would write the whole belt

1 up. And I tried to deal with them, too. Guys, when
2 you do this --- and I tried to talk to all or most of
3 them anyway, that if you clean --- you've got clean
4 and dusted up to 40 break, put that in there that, you
5 know, it needs from 40 to 100 break, you understand
6 where I'm going, instead of carrying their whole belt
7 line over. It makes it look like they're not getting
8 anything done. I don't know if that helps you with
9 that or not, but I tried to teach those guys that you
10 need to put over on there what you're getting done and
11 all. Instead of carrying the whole belt line when you
12 got ten breaks that are --- actually need some
13 attention, put those ten breaks.

14 Q. Methane, quantities of methane during all your
15 inspection time, what would you say would be the
16 highest reading that you ever observed with a
17 multi-gas detector?

18 A. It might have been a couple tenths or something.
19 I don't recall. Usually --- a lot of times when I go
20 to a section, you know, they're not running much or
21 anything, loading-wise, you know, where more would be
22 released, but I don't really recall, right off,
23 anything like that or ---.

24 Q. Do you recall what area that ---?

25 A. I don't recall, really. I'm just saying I might

1 have got something --- I don't recall anything,
2 actually.

3 Q. You mentioned that you never detected any methane
4 at the Glory Hole; is that correct?

5 A. I don't think.

6 Q. Does that mean you never seen anything above zero
7 percent or may have seen a small amount?

8 A. Don't recall seeing any.

9 Q. Are you involved any at all with mine ventilation
10 plan approval?

11 A. I worked with Steve on one or two there, that's
12 all.

13 Q. How many ventilation plan revisions would you say
14 that this mine has submitted and had approved since
15 the original ventilation plan was approved? How many
16 would you say that this mine had?

17 A. When they opened up? I wouldn't have a clue.

18 Q. What about in the last year? Since you've been
19 inspecting it, how many revisions do you think they've
20 had?

21 MR. FARLEY:

22 That you know of.

23 A. I'm trying to think because what they do is like,
24 say, this area up through here, where they were going
25 to do all this work, like right here, they'll send

1 something in and it will have phases to it, four,
2 five, six phases. So you know, it might be one plan,
3 but you've got all these phases that go with it. And
4 the one out for the new longwall at Ellis Portal, it's
5 got like six phases to it. So do we want to call all
6 those different plans or is that one plan? You know,
7 there's probably been, since I've been there, I guess
8 a half a dozen. I can't hold myself to that.

9 BY MR. MAGGARD:

10 Q. Okay.

11 A. I don't really know.

12 Q. How many times --- I know that you issued a
13 violation for this, but how many times do --- does
14 MSHA get plans that you don't get? How do you all
15 know that the plans are the same? Do you have ---?

16 A. That's been the problem, is the one that I wrote
17 in September of '09 that I told you had four whole
18 pages, I might even have a copy of those pages in
19 here, you got four whole sheets that probably have 30
20 things on each sheet. And some lines have several
21 things on each line that they made a change.
22 Actually, MSHA had wrote them an order because I think
23 they went back to work and --- anyway, that's --- you
24 guys can find that out. But they didn't even send us
25 that plan. And the problem with the one that I wrote

1 on 12/31 was they did not send us that plan, and I
2 think I've talked to him enough and wrote a couple of
3 those where they've started sending them now. But
4 both of those plans --- the first two that I wrote had
5 to do with we didn't even receive them.

6 Q. During your inspections have you ever found low
7 quantities of air volume on any of the sections?

8 A. No. Where do you mean now?

9 Q. In the face, last open crosscut readings?

10 A. Oh, it's been awhile since I wrote, I think, a
11 ventilation in the face. It would be down on the ---
12 I know I wrote some on the other end of the mine. I
13 can't remember. I think it was three section maybe,
14 but that's been late summer, early fall of last year.
15 I haven't wrote hardly any of those.

16 Q. When you wrote that citation was it for face
17 ventilation, air level?

18 A. Yeah, face ventilation.

19 Q. Was it a problem because it didn't have curtains
20 or ---?

21 A. Yeah, I think that was the problem. It's been,
22 you know, like August, September.

23 Q. When you go to a working section, do you take air
24 readings every time you go?

25 A. I take air readings, check air and I might not

1 check every entry or anything all the time, but you
2 know, it's basically check air readings.

3 Q. In your opinion, do you believe that the pre-shift
4 records coincided with the readings that you were
5 getting?

6 A. As far as I know. I never checked them side by
7 side or anything. I just know what I had when I was
8 there.

9 Q. You mentioned it was December the 31st there was a
10 violation for --- in this area that I think you called
11 the crossover area between Headgate 22 and Tailgate
12 22?

13 A. Yes.

14 Q. Could you go back into that a little bit more in
15 depth? I have a lot of questions about this area
16 myself, what they actually have there. Could you
17 explain about the belt air leaving the Headgate 22 and
18 going down the crossover in the Number Two entry and
19 how it enters the return, how it entered the longwall
20 belt entrance before and how it is now?

21 A. I think the one on 12/31 I had to deal with ---
22 they didn't even send the plan in on that, and I wrote
23 another one in January, I believe it was, that they
24 hadn't done anything to fix it. And I've got a piece
25 of a map --- well, I've got something here. This is a

1 map that's actually dated 4/7. This map that we have
2 laying on the table is dated 4/16.

3 ATTORNEY WILSON:

4 Well, it was received on 4/16.

5 A. Okay.

6 BY MR. MAGGARD:

7 Q. Okay. Now, this map you have is dated what now?

8 A. 4/7/10.

9 Q. For the record, where did you obtain this map
10 from? Where did you get it?

11 A. Over at the office.

12 MR. FARLEY:

13 Okay. So after we finish can we make
14 copies of this and we'll give you ---

15 A. Sure.

16 MR. FARLEY:

17 --- back the original.

18 MR. FARLEY:

19 Well, unless we can have the original and
20 we give you a copy. Will that be all right?

21 A. It doesn't matter to me because I had a couple
22 copies made over there. It don't matter. I don't
23 know if that is the original. It just got dirt on it.

24 Okay. So we'll mark this then as Pauley Number Three
25 Exhibit.

1 (Pauley Exhibit Three marked for
2 identification.)

3 BY MR. MAGGARD:

4 Q. Was this submitted through the Oak Hill office?

5 A. No. All the maps were laying over on the desk and
6 I guess it's one of the ones that was over there.

7 Q. Okay. Could you show us something on this? Can
8 you show us how the belt air converses map from this
9 map? And I guess maybe mark it on both maps and ---.

10 A. Okay. And we're referring to how the air was
11 traversing prior to April 5th, 2010.

12 Q. Yeah. How was it --- I don't know how we can mark
13 this, but how --- first let's start ---.

14 A. How was this run down?

15 Q. Yeah.

16 A. Start with --- let me see what I got here. Let me
17 see if I got something else. That might help.

18 ATTORNEY WILSON:

19 Here's a magnifying glass if that'll
20 help.

21 A. Well, I got a couple little things here. I'm not
22 sure if that'll help or not. Here's kind of an idea
23 of things when we talked to --- how they had it. So
24 they'd have to start with --- you know, these drawings
25 were drawn inby Heath Lilly, so changes they would

1 make, you know, on their ventilation. And they just
2 had the belt coming down, neutral air down the belt
3 and it wasn't approved, you know, to go the way they
4 had it going. You see how we got now here? What
5 happened on the end of that, making this entry a
6 return and then it looks like --- it don't show
7 stoppings or nothing, but it's down here now, but ---.

8 BY MR. MAGGARD:

9 Q. Again, you're talking in the longwall Headgate
10 Number Three?

11 A. Yeah, Number Three entry of the headgate. Well,
12 we had everybody. Down through here we started ---
13 this started to deteriorate, this was the ribs, the
14 headgate number three entry was returned for like
15 Number Two section, Headgate 22 section I think and
16 they were returning up through here --- or air was
17 made ---. Let me get this straight now. That was
18 going over here. Anyway, let me get back. This was
19 starting to deteriorate up through here, ribs falling
20 out, the wall was actually falling over into these
21 areas and caused some of the stoppings to pressure
22 out, so they made this return all the way up through
23 there. I got to try to get Ps and Qs in order here.

24 Q. And we're talking about like from what break? Is
25 it 50, 55? What area?

1 A. It may have even started 45, 50 down through here
2 and they had this section down for a while and that
3 --- it would be Number Two section and Headgate 22
4 down for awhile because the turn air was traveling
5 that way and it didn't have a good travelway because
6 they had to put --- they put cribs, you know, wall to
7 wall, both sides. They even put Kennedy stoppings up,
8 or stoppings that crushed out because you didn't have
9 --- you had recurrent air from these places mixing in
10 over here with this other air.

11 Q. Okay. What was the reason they didn't want to
12 continue --- at this time when this was an issue
13 wasn't they using belt air for the longwall or do you
14 recall?

15 A. There was a point feeding down there somewhere
16 now. I don't know if it shows it on this map. See,
17 we got a check there now for that then return.

18 Q. It may be right. I don't know.

19 A. I don't want that there.

20 Q. So they were point feeding from the intake in the
21 Number Two to the belt entry somewhere around maybe
22 spad ---between 23713 to ---

23 A. Twenty-two (22).

24 Q. --- 22692 possibly?

25 A. It's 22713. I don't recall which one.

1 Q. So what do you recall about this, why it needed
2 it? I see on the map you've brought us that ---.

3 A. That's just something I was drawing.

4 Q. Right. They had this box checked to regulate 50
5 feet per minute, so that was how it was --- when you
6 found it, it wasn't per the plan; correct?

7 A. Uh-huh (yes).

8 Q. What was the purpose of them not continuing to do
9 that since they were using belt air anyway for the
10 longwall to continue to dump that belt air into the
11 longwall belt? Why did they reroute that to the
12 return?

13 A. What's that? What are you talking about?

14 Q. Why couldn't they have combined the two belt air
15 --- two belt entries into a common ---?

16 A. It needs to go out.

17 Q. I think --- now, you can correct me if I'm wrong.
18 Later on this changed directions. Right now currently
19 air is going in the outby direction; is that right?

20 A. What happens is in the ---.

21 Q. Belt entry?

22 A. Excuse me? No, I was --- I think some of your
23 guys --- I'm not sure what all the deal was. I think
24 MSHA wanted all this air to go out.

25 Q. When you say all this air, what do you ---?

1 A. The belt air. The belt air on the longwall. And
2 they tried to get it to go out. This was after this
3 deal I think and it wouldn't go, some still went that
4 way and some went that way, but once they got past
5 that point it all went out. You know, I guess it's
6 because we had this area coming down, but prior to
7 this point here they were --- I don't remember the
8 time period that was, whether it was February or
9 March, whatever. They wanted all of it to go out and
10 they couldn't get it to do that, and I wasn't involved
11 in that, so I can't really address that.

12 Q. Do you recall regulators around this bad 24176 to
13 24147 area?

14 A. There was --- let me see what I got on this one
15 fellows. I'm not sure if this is the same or not.
16 See, that area up there was one of those areas where
17 they had that phase ventilation thing going and some
18 of the stuff that might have been installed for a
19 short period of time, a few days whatever while I had
20 done something else, there probably were --- I think
21 I've got something that shows that they were not put
22 in or they were taken out. Let me look and see here.
23 Not this one. See up here where you have a lot
24 different changes, this was one of those phase deals.

25 Q. Okay. You're pointing to ---?

1 A. I'm pointing at the mouth of Headgate 22 and part
2 of the --- top part of the crossover.

3 Q. They show a regulator there. Can you recall if
4 they had any more than that?

5 A. I don't remember. I don't remember. That one is
6 showing one over here, too. I don't think --- that's
7 almost a year old.

8 Q. So would you consider this to be a confusing place
9 as far as a ventilation plan, knowing what's there?

10 A. Probably.

11 Q. Have you ever observed controls that have been
12 installed or put in a place that wasn't approved in
13 the mine and could you explain where it was at
14 and ---?

15 A. Well, the plan is just the plans I wrote up about,
16 you know, they didn't get them prior approved. As far
17 as putting in regulators or doors or something, I
18 don't know of any. If you want to talk about
19 ventilation, which is off topic, this mine has way too
20 many doors in it.

21 Q. Let's talk about doors. Have you ever seen
22 damaged doors, doors left open?

23 A. No. I've wrote doors up there before.

24 Q. Can you explain what you saw and ---?

25 A. The had been hit by motors, or mantrips or scoops

1 or whatever, knocked off center or --- well, I can't
2 tell you what hit them, but something had jarred them
3 and damaged them. To me, which, like I said, it's
4 changing the subject a little bit here is that
5 personally I don't think that you should have to drive
6 through the intake with a mantrip to go to your
7 section just because --- they had too many doors.

8 Q. Did you ever have any discussions with mine
9 management about ---

10 A. The first trip I ---.

11 Q. --- improving what they had?

12 A. I talked to them about doors, but I mean, they
13 already had doors installed and then they put more in.
14 Most of those doors were there before I ever went
15 there. They've been installed over the years, you
16 know, but ---.

17 Q. Had you ever heard anything from the miners or
18 observed it yourself that when you opened the door,
19 air reversed in any areas of the mine?

20 A. No, no.

21 Q. How many times would you say you've written
22 citations on doors not being properly maintained or
23 open since you started in April last year?

24 A. At least twice. I don't want to exaggerate. It
25 might be more, but ---.

1 Q. We've talked about bottom hooving, we've talked
2 about areas where you've seen bad roof, we talked a
3 little about methane, we've talked about ventilation
4 plan issues that you've seen. Can you tell us a
5 little bit about water accumulations in the mine,
6 where all of you seen excessive amounts of water,
7 locations where they have to pump, just whatever you
8 know that you think would be helpful to us?

9 A. Well, they've got pumps scattered out there for
10 places, massive accumulations, you know, especially on
11 the south end. I wouldn't call anything massive
12 accumulation down there. Excuse me. Between what I'm
13 calling the barrier section, which is between 16 and
14 17 Headgates and Ellis switch is that somewhere closer
15 to Ellis switch up there I noticed during last
16 quarter, water was coming over into the track area.
17 And I'm not sure where it was coming from. It hadn't
18 been there prior to, but the water issue --- the main
19 water issue, is that when the longwall started and
20 when I told you about the number three entry on the
21 longwall headgate side starting to deteriorate, the
22 water issues started before that and whether they
23 broke in through a creek or another seam or whatever I
24 don't know, but they were having water issues out
25 towards the fan and over in some of those entries and

1 even along the wall. And they had issues out through
2 there as far --- you get down to those four entries,
3 had really deep water there for a bit.

4 Q. And you're talking about four entries were from
5 90 ---?

6 A. Ninety (90) break up through there.

7 Q. Bandytown?

8 A. Yes. And some of these areas on the map on the
9 longwall headgate that show water are dips, a lot of
10 these areas are dips and water's still there. They
11 have turbine pumps down there at the Bandytown fan.
12 They've got air pumps. I don't know how many down
13 through that area that work from the surface.

14 Q. Is there any electrical pumps, submersible pumps
15 that you've seen being used?

16 A. I don't think so. I can't say for sure, but
17 from ---.

18 Q. You know, from the longwall where it's currently
19 at to Bandytown?

20 A. I don't know that they're still there. I can't
21 answer that.

22 Q. Have you found any water problems like on the
23 headgate sections or the tailgate?

24 A. We have areas with problems, you know. I haven't.

25 Q. In this area that we was talking about, you know,

1 between the longwall and Bandytown, is most of that
2 water coming from the --- you know, the roof or ---?

3 A. I would think. You know, you can't see back in
4 that gob, but I would think.

5 Q. Let's switch gears just a little bit and I
6 understand that you have an outstanding citation on
7 the communication and tracking system ---

8 A. Yes.

9 Q. --- at this mine. Can you explain what the State
10 of West Virginia currently requires for communication
11 and tracking?

12 A. They've got trackers and radios set up. Do you
13 want me to explain why I haven't abated that, first of
14 all?

15 Q. Go ahead, yeah, and explain when it was written
16 and tell us all about it if you don't care.

17 A. I don't know that I can tell you all about it.

18 Q. You're doing fine.

19 A. But you know, it was in --- it came into effect
20 that every man would have a tracking device to
21 determine when he went by a certain point to be able
22 to locate him in the mine and it would show the time
23 that he went by there. You have a radio for
24 communication. You got communications line running up
25 the track, running up the intake up to the sections

1 and it would give --- you know, they could tell where
2 the man had last past. Every time he went by a
3 tracker device, it would read out on the outside for
4 the communication man, and in that way communicate
5 with each individual phone-wise and just keep better
6 track of everybody. But to the fact that it's not
7 abated yet is that we were extending those violations
8 along the way. And a couple of times that I started
9 to abate that violation --- I might go there and maybe
10 some of the phones weren't working one day or some of
11 the tracking devices weren't working. I didn't want
12 to abate the violation and part of the system not be
13 totaled.

14 They were having problems with their tracking
15 devices there for awhile. One time I talked to those
16 guys that were installing that system. Several times
17 I tried to keep in good communication with them and
18 they would always be up front with me, you know, fine
19 young men. They were doing a good job. But 20
20 percent is what they told me of the tracking --- the
21 trackers, whatever you want to call them, when they
22 received them did not work. And one shipment had 18
23 out of 27 didn't work, and they were having to get
24 their folks they were buying them from, come in and
25 help them to adjust this, help them to adjust that and

1 were talking about several miles and miles, you know,
2 like from the Montcoal Portal to the Ellis switch.
3 That's at least three miles, not counting going down
4 to the other sections the other way. And probably
5 five miles from Ellis switch up to those other
6 sections. So to keep them all --- have them all
7 maintained where you could abate that thing, it was an
8 ongoing issue, and I was looking for that day that
9 everything would be right that I could abate it and
10 then deal with separate issues as they come. And then
11 ---.

12 Q. Did they work on it daily or just whenever ---

13 A. That's what they do.

14 Q. --- you arrived?

15 A. Those two young men, that was their job.

16 Q. Did they have --- at the last abatement you had,
17 did they have all the parts that they needed to
18 complete it or do you know?

19 A. They were waiting on some tracking devices and
20 they had received some. I think the last shipment
21 they received was like --- I could be wrong, but I
22 thought they said 40-some. I mean, they were making
23 good headway and --- but sometimes they would have to
24 replace one or something.

25 Q. Let's say the mine had 60 tracking devices. How

1 many would you guess were working at the time of the
2 accident?

3 A. I wouldn't know. I think they were probably very
4 close to being abated totally from my part, so I can't
5 guess on that because I thought that somebody said
6 that some of those men were picked up in by the mother
7 drive at the longwall. I just think that I heard
8 that, but ---.

9 Q. Did you have anyone assisting you when you were
10 checking the communication tracking system?

11 A. Two days Randy Bell went with me down there to
12 --- when we were checking on those trying to abate
13 them and found some issues outside the area and some
14 issues to deal with, but I tried to stay in constant
15 contact with those guys to find out how they were
16 doing and how they were getting it. They had traveled
17 for a good while of getting parts, which I think a lot
18 of folks did.

19 Q. Now, was most of their problems with the readers
20 or was it also problems --- did they also have
21 problems with the radio on --- with the leaky feeder?
22 Was portions of it not working?

23 A. The readers --- I was calling them trackers
24 before, so readers are what they are. There were a
25 couple of times they had trouble with the radios. I

1 don't recall exactly what it was, but they had to get
2 to one of the --- or a couple of the fellows from the
3 company they brought it from to come down. They
4 adjusted everything and it worked really good.

5 Q. When they changed --- I'm going to get probably
6 laid back on something I forgot to ask. When's the
7 last time would you say that you checked the CO system
8 at this mine or did you ever --- was you ever involved
9 with that?

10 A. No.

11 Q. Do you know if when they changed from belt air to
12 the longwall and changed the direction of air movement
13 on that belt, were they relocating CO sensors in the
14 mine when they made that change?

15 A. I believe I did, but I can't answer that for sure.

16 Q. I noticed that you've --- I seen that you've been
17 checking miners on some of the sections and checking
18 remote boxes at these stops, stuff like that. Do you
19 ever check methane calibrations on equipment?

20 A. I haven't.

21 Q. Have you ever witnessed an operator doing a
22 calibration?

23 A. I've seen people do it. It's been a while.

24 Q. Do you believe they were doing it at this mine or
25 --- you know, or keeping track of it well or ---?

1 A. I can't answer that.

2 Q. Okay. As far as the miners going underground in
3 your daily travels with them, did most of those men
4 carry their own personal spotters?

5 A. I thought so. As far as I know, but I didn't
6 actually go check them either.

7 Q. Who did you normally travel with when you were at
8 the mine during your regular inspection on the company
9 side?

10 A. It would be --- you want names or just positions?

11 Q. Yeah. Ones that you pretty consistently traveled
12 with.

13 A. Well, Everett Hager is --- now, here the mine was
14 set up as of October the 2nd of last year. It was set
15 up to have a superintendent and a mine foreman on each
16 side and the point of change was at Ellis switch up
17 there. Okay. So on that side I had Everett Hager,
18 superintendent, and Andy Coulson was mine foreman for
19 awhile and Terry Moore was mine foreman for a while
20 when changes were made. The UBB side had Gary May as
21 superintendent, Rick Foster as mine foreman, Vernon
22 Cornet as safety man, Jim Walker as safety man, John
23 Henline on the evening shift was the chief
24 electrician, he normally traveled with me on the
25 evening shift. Another one on the dayshift would be

1 David Tarackozy. You figure that one out.

2 Q. Doughnut.

3 A. Doughnut, yeah. You know Doughnut. I bet it's
4 T-A-R-A-C-K-O-Z-Y. I've had Rick Nicolau. I mean,
5 that's basically the ones. I've had various other
6 ones along the way, but ---.

7 Q. Let's change gears again. Had you had any
8 training issues up there at the mine, problems you've
9 encountered that you --- and how would you assess the
10 mine operator's training program?

11 A. Well, I know one type of training they went
12 through was --- I had wrote so many violations on the
13 books that they had a class for all the people about
14 doing their books, and I think Gary Frampton might
15 have done that. I wasn't there, but, you know, I knew
16 that they had class.

17 Q. Did you ever run into any new miners that hadn't
18 had any training?

19 A. No. I did run into a situation with a man that
20 was a red hat working as a black hat and dealt with
21 that. And also a man working as a foreman without
22 proper certification. That was found through the
23 newly required foreman retraining program. That's how
24 that was found.

25 Q. Do you think the company puts a good emphasis on

1 training or do you know?

2 A. I don't know.

3 MR. MAGGARD:

4 Do you want to take a break, see if the

5 guys have any questions?

6 ATTORNEY WILSON:

7 Do you have any questions?

8 MR. BECK:

9 Yeah, I got a couple questions.

10 EXAMINATION

11 BY MR. BECK:

12 Q. Mr. Pauley, you said that you were assigned to
13 Upper Big Branch on April 1st, 2009?

14 A. Yes, sir.

15 Q. Where were you prior to that?

16 A. Oh, golly. Now I'm going to have to stretch my
17 mind here. I would have to go back and look at my
18 list. I'm sorry.

19 Q. During your 16 and a half years with the Office of
20 Miners' Health, Safety and Training, would it be fair
21 to say that you've inspected a lot of mines?

22 A. Yes, sir.

23 Q. Would Upper Big Branch be a mine that would cause
24 you concern, worry?

25 A. It's a large, very active mine with a lot of

1 things going on all the time.

2 Q. You said that it was your opinion and a couple of
3 guys, inspectors should be assigned to this mine
4 because, as you just stated, too, it's expansive and a
5 lot of things going on. Did you express that opinion
6 to anyone?

7 A. Yeah. Well, as an opinion, I kind of, you know,
8 felt the question was phrased in such a way as to what
9 maybe we should be doing there. And, you know, I have
10 to talk to my supervisors about that, you know, talk
11 to a couple of the other inspectors and as of this
12 quarter, two of us were assigned to this mine. And
13 just thinking out loud there, you know, I felt like
14 the question wanted me to give me an opinion or some
15 insight that it wouldn't hurt to have even
16 occasionally a few extra guys come in and let's go to
17 all the sections at one time, not on a daily basis,
18 you know. Have a period of time picked there. That's
19 just a thought.

20 Q. Can you explain what's required of the quarterly
21 inspection? When you say like a quarterly, what is it
22 that makes up a quarterly inspection?

23 A. Well, I try on my part to get to as many places
24 and do as many things as I can there as far as ---.

25 Q. I mean, what in the law says you got to do this

1 quarterly in your assignment as an inspector? What do
2 they expect you to get done?

3 A. Well, I suppose quarterly they want you to --- I
4 don't know exactly the page in the law that you're
5 referring to. Is it make the whole mine --- is that
6 what ---?

7 Q. Well, I'm asking you. I mean, when you say you're
8 going to a mine to make a quarterly inspection, what
9 is it that your boss or you expect to get done during
10 that quarter to say, I completed a quarter?

11 A. Well, what I expect to get done is as much as I
12 can reach and as much as I can do as far as the belts,
13 the airways, equipment, sections, but I also do roof
14 control work as well. Plus I've had other issues to
15 deal with.

16 Q. So are quarterly inspections always completed
17 within a quarter?

18 A. Probably not. Sometimes, you know, they might not
19 be.

20 Q. What happens then?

21 A. Well, start a new quarter. You know, I don't know
22 how to answer it.

23 Q. That quarterly inspection, is it completed into
24 the next quarter or is it never completed or just they
25 didn't get it done?

1 A. There's been times if I just needed a couple days
2 to finish something completely it went into another
3 quarter.

4 Q. You usually get help doing that?

5 A. Doing that?

6 Q. When you're running behind on a quarterly
7 inspection.

8 A. Not always. Sometimes we get some help, a little
9 bit, but everybody's got so many assignments it's hard
10 to do.

11 Q. You said you were approached by Ricky Brown and
12 Bobby Pollock about some concerns they had. Did
13 anyone else approach you other than those two people?

14 A. Just Hammer mentioning where he was at there and
15 basically, you know, like he thought the bottom was
16 breaking and it was thumping, but I think it was where
17 --- it was near that other section.

18 Q. Okay. And when you were answering some questions
19 from Jasey; is that right? You also pointed out again
20 that Upper Big Branch was a very large, sprawling,
21 active, fast-paced with a lot of activity, and then
22 you stated you don't want to write a lot of violations
23 anywhere. Could you explain that?

24 A. I don't remember saying that. If I did, it was
25 misspoken. I write a lot of violations, I always

1 have.

2 Q. That's why I'm asking you to explain.

3 A. No, I don't recall saying that. If I did it was
4 not stated properly because I write a lot of
5 violations. I always have.

6 Q. Then the last thing I got you said there were too
7 many doors in the mine?

8 A. Yes. Well, I felt like that that was a change
9 that needed to be made to help the ventilation system
10 is what I was referring to.

11 Q. Are these doors part of an approved ventilation
12 plan?

13 A. Yes, but I think that would be an improvement to
14 make a change there in that for in the future at
15 least.

16 MR. BECK:

17 That's all I have.

18 ATTORNEY WILSON:

19 Okay. Let's go off the record and take
20 just a short break just to confer, then we'll come
21 back on and finish up. Okay?

22 A. Sure.

23 ATTORNEY WILSON:

24 I appreciate you --- go off the record.

25 SHORT BREAK TAKEN

1 ATTORNEY WILSON:

2 We'll go back on the record. Terry, do
3 you have any?

4 MR. FARLEY:

5 A couple of things just for clarification
6 purposes.

7 RE-EXAMINATION

8 BY MR. FARLEY:

9 Q. You indicated Randy Bell traveled with you one day
10 to check out the communication tracking systems. Is
11 Randy Bell an electrical inspector?

12 A. No. Actually he was there with me a couple of
13 days, went down there with me on that when --- you
14 remember back when we had a meeting that they sent us
15 out to try to abate those violations and Randy
16 traveled with me to Big Branch. No, he's the diesel
17 inspector.

18 Q. Okay. Concerning the quarterly inspections, does
19 the West Virginia Code Chapter 22(a) Article One and
20 Chapter 22(a) Article Two require the Office of
21 Miners' Health, Safety and Training to make all mines
22 in West Virginia or just some of them?

23 A. All mines; isn't it?

24 Q. Well, I'm asking you.

25 A. Oh, all mines of course.

1 MR. FARLEY:

2 Okay. Thank you.

3 MR. MAGGARD:

4 Are you done?

5 MR. FARLEY:

6 Yes.

7 MR. MAGGARD:

8 Okay. Thanks.

9 RE-EXAMINATION

10 BY MR. MAGGARD:

11 Q. There's a question I need to ask you. We talked
12 about these longwall panels and how this Black Knight
13 belt they kind of stopped all these panels right here
14 before they got to that. Could you tell us why they
15 stopped these two longwall panels right here? I guess
16 that would be 12 --- the two northernmost along the
17 current longwall panel, why they stopped those shorter
18 than the Black Knight belt shown on the map?

19 A. No, they only thing I ever heard was about that
20 belt. I don't know why they did that.

21 Q. Did you ever recall inspecting any of these
22 longwall panels right here? This one says November
23 --- well, at the end of December of 2000, the other
24 one ended May --- toward the end of May 2001?

25 A. It may have been in my time period there. I don't

1 remember. I didn't go back and look at anything back
2 that far.

3 Q. Do you ever remember the longwall encountering any
4 bad conditions or anything, any panels you've seen?

5 A. No.

6 MR. MAGGARD:

7 That's all I have.

8 ATTORNEY WILSON:

9 Okay. Thank you, again, for coming in on
10 behalf of MSHA and the Office of Miners' Health,
11 Safety and Training. We appreciate you appearing
12 today. Your cooperation is very important in the
13 investigation as we work to determine the cause of the
14 accident. We require that you not discuss your
15 testimony with anyone else because we will be calling
16 other witnesses to come in. After questioning those
17 other witnesses we may call you if we have any
18 follow-up questions that we feel we need to ask you.
19 If at any time you remember additional information
20 that you would like to provide to the investigation
21 team, please contact either Terry Farley or Norman
22 Page at the phone number that was provided to you.
23 At this time, before we wrap up, I want
24 to give you an opportunity, if you would like to make
25 any kind of a statement or if there's any other

1 information that you think would be useful to the
2 investigation.

3 A. I don't have anything at this time.

4 ATTORNEY WILSON:

5 Okay. Then, again, I want to thank you
6 for your cooperation in this matter.

7 A. Thank you.

8 ATTORNEY WILSON:

9 Off the record.

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STATEMENT UNDER OATH CONCLUDED AT 11:12 A.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Brett Steele, a Notary Public in and for
the State of West Virginia, do hereby certify:
That the witness whose testimony appears in
the foregoing deposition, was duly sworn by me on said
date and that the transcribed deposition of said
witness is a true record of the testimony given by
said witness;
That the proceeding is herein recorded fully
and accurately;
That I am neither attorney nor counsel for,
nor related to any of the parties to the action in
which these depositions were taken, and further that I
am not a relative of any attorney or counsel employed
by the parties hereto, or financially interested in
this action.



Brett Steele