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Transcript of the Testimony of Brent Racer

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STATEMENT UNDER OATH
OF
BRENT RACER

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, July 13, 2010, beginning at 8:10 a.m.

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

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ATTORNEY WILSON:

We're on the record. Good afternoon. My name's Bob Wilson. I'm with the Office of the Solicitor, United States Department of Labor. With me is Erik Sherer, an investigator with the Mine Safety and Health Administration. Also present are several individuals with the State of West Virginia. And I'll ask that they state their appearance for the record.

MR. FARLEY:

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

MR. O'BRIEN:

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

MS. SPENCE:

I'm Beth Spence with the Governor's Independent Investigation.

ATTORNEY WILSON:

And today is July 13, 2010 and we're here to conduct an interview of Brent Racer. All members of the Mine Safety Health Administration Accident Investigation Team and all members of the State of West Virginia Accident Investigation Teams

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

16 Government investigators and specialists

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

1 You have a right to have a personal
2 representative or an attorney present with you. Do
3 you have an attorney or a representative?

4 MR. RACER:

5 No, sir.

6 ATTORNEY WILSON:

7 All right. And your statement's
8 completely voluntary. You may refuse to answer any
9 question. You may terminate your interview at any
10 time. This is not an adversarial proceeding. Formal
11 Cross Examination is not permitted, but each of the
12 parties are permitted to ask follow-up questions as
13 appropriate.

14 Your identity and the content of this
15 interview will be made public at the conclusion of the
16 interview process and may be included in a public
17 report of the accident unless you request that your
18 identity remain confidential or if your information
19 would otherwise jeopardize potential criminal
20 investigations. If you request us to keep your
21 identity confidential, we will do so to the extent
22 permitted by law. In other words, if a judge orders
23 us to reveal your name or some other law requires us
24 to reveal your identity, we may do so.

25 Also, there may be a need to use the

1 information that you provide to us or other
2 information that you may provide to us in the future
3 in other investigations or hearings concerning the
4 explosion. Do you have any questions concerning your
5 rights?

6 MR. RACER:

7 No.

8 ATTORNEY WILSON:

9 Okay. After the investigation is
10 complete, MSHA will issue a public report detailing
11 the nature and the causes of the accident in the hope
12 that greater awareness about the causes of accidents
13 can reduce their occurrence in the future.
14 Information obtained through witness interviews is
15 frequently included in those reports. We will be
16 interviewing other individuals, so we request that you
17 not discuss your testimony here today with anyone
18 else.

19 A court reporter will be recording the
20 interview, so it's important that you please speak
21 loudly and clearly so that she can get everything
22 down. If you do not understand a question, please ask
23 that the question be rephrased. Please answer each
24 question as fully as you can, including any
25 information that you may have learned from someone

1 else. If you need to take a break, please let me know
2 and we'll go off the record.

3 Again, I want to thank you in advance for
4 your appearance here today. We appreciate your
5 assistance. Your cooperation is critical in making
6 the nation's mines safer.

7 After we have finished asking questions,
8 we will give you an opportunity if there's anything
9 else that you want to add to the record. If at any
10 time after the interview you recall any additional
11 information that you believe might be useful, you can
12 contact Norman Page, who is the lead accident
13 investigator for MSHA. And I'll give you a copy of
14 the letter for your records, requesting your
15 appearance here today, and the letter has the contact
16 information if you wish to contact us at some time in
17 the future.

18 MR. RACER:

19 Thank you.

20 ATTORNEY WILSON:

21 Okay. Terry?

22 MR. FARLEY:

23 Mr. Racer, on behalf of the West Virginia
24 Office of Miners' Health, Safety and Training I want
25 to advise you that the West Virginia Coal Mine Health

1 and Safety Regulations also protect miners against
2 potential discrimination for participating in these
3 types of investigating interviews. I want to give you
4 some contact information, and it refers to West
5 Virginia Code, Chapter 22(a), Article 1, Section 22,
6 along with a business card for myself and Mr. Bill
7 Tucker, who's our lead underground investigator. And
8 should you experience any, any discriminatory type
9 treatment as a result of participating in this
10 interview, please contact us at that address. And we
11 urge you to remember that if something like that
12 happens, you need to file a claim within 30 days.

13 MR. RACER:

14 Right, right.

15 MR. FARLEY:

16 Okay.

17 ATTORNEY WILSON:

18 Beth, anything? No? Okay. So if you'll
19 face the court reporter, ---

20 MR. RACER:

21 Okay.

22 ATTORNEY WILSON:

23 --- she'll swear you in.

24 -----

25 BRENT RACER, HAVING FIRST BEEN DULY SWORN, TESTIFIED

1 AS FOLLOWS:

2 -----

3 ATTORNEY WILSON:

4 Would you please state your full name for
5 the record?

6 A. My name is Brent Racer.

7 ATTORNEY WILSON:

8 And could you give us your address and
9 telephone number?

10 A. Yes, [REDACTED]

11 [REDACTED] And the telephone number?

12 ATTORNEY WILSON:

13 Yes, please.

14 A. [REDACTED]

15 ATTORNEY WILSON:

16 Okay. Thank you. Terry is going to
17 start with the questioning.

18 EXAMINATION

19 BY MR. FARLEY:

20 Q. Okay. Have you been interviewed by anyone, anyone
21 else regarding the UBB explosion?

22 A. Yes.

23 Q. Okay. Who interviewed you?

24 A. I cannot think of their names, but they were ---
25 there were two lawyers that they had come in. I don't

1 know if Massey had hired them or what but they were on
2 Massey's property when I talked to them.

3 Q. Okay.

4 A. They were down at Marshfork. They said they
5 weren't Massey lawyers, but they were hired by Massey.

6 Q. All right. Well, the fact that they were hired by
7 Massey I think ---

8 A. Yeah.

9 Q. --- would suffice. Can you tell me about that
10 interview? What did they ask you?

11 A. Well, they had a map out like this here. They had
12 the map of the mines and I guess they just gathered
13 information. They were there ---- they were just
14 asking questions. They wanted to know more on how the
15 mines worked, they said, because they didn't know much
16 about it.

17 Q. Okay.

18 A. But they wanted to know where we were at the time
19 that this had happened or where the incident happened.
20 They wanted us to point it out on the map and they
21 wanted our thoughts and what we thought may have
22 caused it. And they asked if we've seen things done
23 wrongly or anything like that in the past, I guess
24 year. They wanted to know from the time I started to
25 recently where I've been all through that mines.

1 Q. All right. Well, let me back up on a few things.
2 We'll get a little background information and then
3 we'll get into what you experienced at UBB. How about
4 giving me a little bit of information about your
5 employment history? What's your total mining
6 experience?

7 A. Right at three years right now.

8 Q. Okay. Now, that three years, was that ---?

9 A. Well, that's a couple months off.

10 Q. Okay.

11 A. October the 10th is the first day I've ever
12 stepped underground in 2006 or 2000 --- I can't
13 remember now what ---. It's been a while. I was a
14 red hat contractor for David Stanley.

15 Q. So you're going on either ---?

16 A. Going on three years.

17 Q. Three ---

18 A. Yeah.

19 Q. --- or probably even, maybe even four.

20 A. Three.

21 Q. Okay. All right. Now, you say you started with
22 David Stanley. How long were you with David Stanley?

23 A. I was with them for about four months.

24 Q. Okay.

25 A. And I got hired in.

1 Q. Okay. Now, which Massey mine did you start at
2 first?

3 A. Performance.

4 Q. Okay, UBB?

5 A. Yeah, I've been there from that time until this
6 happened.

7 Q. Okay. All your mining experience is ---

8 A. Yeah.

9 Q. --- at UBB?

10 A. Yeah.

11 Q. Okay. And you think that was around October 2006.
12 Now, when you worked for David Stanley, what type of
13 work did they have you do when you first started out?

14 A. When I first started off I was on hoot owl, just a
15 outby belt man. And then eventually it come into
16 anytime there was a belt move, I went with the belt
17 move crew and we helped them do belt moves. And if
18 there wasn't a belt move, I stayed outby, replaced
19 rollers and, you know, fixed belt splices that needed
20 spliced.

21 Q. Okay.

22 A. Shoveled the belt, stuff like that as a red hat.

23 Q. Okay. So you spent about four months with David
24 Stanley and then you became a full-time employee
25 of ---?

1 A. Yeah, it was, like, four and a half months right
2 at that point. I went outside and I worked for about
3 half the month and got hired in.

4 Q. Okay. Now, the time you spent with David Stanley
5 as a contractor, is that sort of like a --- of a
6 tryout period ---

7 A. Yeah, I guess ---.

8 Q. --- as you understand it?

9 A. Yeah, I guess to see if you're worth anything,
10 just to see if before they hire you in and stuff, to
11 make sure that you actually want to stay there and
12 work.

13 Q. Okay. Well, apparently it worked out, must've
14 worked out for you?

15 A. Yeah, I tried to work as hard as I could.

16 Q. Okay. Now, you said you were a outby belt man
17 there with David Stanley. Now, after you became a
18 full-time employee or member, what'd you do then?

19 A. Well, when I got hired in I was a belt monitor, is
20 what they call it. I was actually outside.

21 Q. Uh-huh (yes).

22 A. I was still a red hat when I got hired in, and it
23 was in February when I got hired in.

24 Q. Would that be February 2007?

25 A. Yeah, 2000 --- I'd say 2008, because that's ---

1 I'm right at three years.

2 Q. Okay.

3 A. Yeah.

4 Q. So you started about 2007?

5 A. Yeah. So it was in February, the beginning of
6 February when I got hired in, and I was still outside,
7 so I was called a belt monitor instead of underground
8 belts. And I had worked outside for a couple months,
9 like, on the silo and stuff, and then I had ---.
10 Somebody was hurt. I think his name was Harold Peck,
11 I believe, and I was filling in for him for a while.
12 And I got sent back underground. And I only --- I
13 only lacked about three to four weeks tops to get my
14 black hat. But I was hired in already, but it took a
15 lot longer because they wouldn't sign off on me to get
16 my black hat, which made me a little aggravated.

17 Q. Any particular reason why they wouldn't do that?

18 A. You know, procrastinating, I guess. I don't know.
19 It took --- I took --- I spent another three months
20 underground before I got it, before I finally got them
21 to ---.

22 Q. Okay.

23 A. David Stanley wouldn't give me my time. I'd
24 called and asked for my time and they said they would
25 be sending it and they never did, and I asked the

1 people there at work, the superintendent. They'd just
2 sign off, and I guess they were kind of scared to
3 because they wouldn't for sure know, because we had
4 two different superintendents while I was there.

5 Q. Uh-huh (yes).

6 A. So they finally just signed off on me. They found
7 out that I had the time.

8 Q. Okay. So you started roughly October of 2007?

9 A. Yeah.

10 Q. Worked underground until sometime February of 2008
11 and then they let you outside?

12 A. Yeah. Yeah, well, I was outside before February.
13 I was outside the beginning of January.

14 Q. Okay.

15 A. Or end of January.

16 Q. Okay. And when did you ultimately get your black
17 hat card?

18 A. Probably in April.

19 Q. Okay.

20 A. Or later than that, actually. It was, like,
21 around my birthday, and my birthday's here in a couple
22 weeks. This is the beginning of July, I'd say.

23 Q. Okay. All right. Now, after you went back
24 underground when you got your black hat, what'd you
25 do? What kind of work did you do?

1 A. I went back on hoot owl. And I was only on hoot
2 owl for, like, a week. I did vulcanized splicing with
3 a guy. Then I went to dayshift on the section.

4 Q. Okay. Now, which section did you start working on
5 first?

6 A. It was the Two section.

7 Q. Okay. Would that have been in 2008?

8 A. Yeah.

9 Q. Okay. Now, can you point to Two section on the
10 map ---

11 A. That's what I was looking at ---.

12 Q. --- right there about where it was at the time
13 when you starting working there?

14 A. Oh, were it was when I started working up there?

15 Q. Yes, approximately.

16 A. I'm trying to find the track here.

17 Q. This is the 78 Switch area down here ---

18 A. Yeah.

19 Q. --- right where I'm pointing.

20 A. Okay. We weren't very far. We was only on 50
21 Break. Are these numbered here or ---?

22 Q. Okay. Fifty (50) would've been about right, right
23 here.

24 A. Yeah, it was in between, like, 45 and 50,
25 somewhere around in here ---

1 Q. Okay.

2 A. --- because I remember 55 there was --- the bottom
3 was hooved up real bad over towards the return.

4 Q. Okay. Now, as Two section advanced, did you
5 remain with the Two section crews that advanced all
6 the way towards the Bandytown fan area?

7 A. Yes. Yeah, I stayed on Two section for --- until
8 we merged with the headgate, the first headgate.

9 Q. Okay. About when did you finish up working on Two
10 section over there?

11 A. Oh, man. That's a while back. Let's see. It was
12 in 2009, I believe.

13 Q. Okay. Now, as you were driving Two section ---
14 you started there, you know, between 45 and 50.

15 A. Yeah.

16 Q. You referred to some bottom hooving in the area of
17 55. Did you consistently encounter bottom hooving as
18 you drove those ---?

19 Q. No, after that it was pretty good. It was just
20 hooved up right there for some reason. Only in one
21 entry it was real low. You'd have to drop your scoop
22 bucket all the way on the ground to get over the hump,
23 and then you had to drop your batteries all the way
24 down to keep continuing over and then finally you
25 could get through. It just made it real hard to bring

1 block up or anything like that.

2 I was a scoop man when I come up there. But after
3 that it was pretty much smooth sailing. It was pretty
4 nice through there until we got up --- okay. This is
5 the first time we cut over.

6 Q. You're pointing to the crossover from the longwall
7 tailgate entries connecting to the longwall headgate
8 entries at the starting point of the current longwall
9 panel?

10 A. Yeah, it was anywhere --- it was somewhere in here
11 around 95 and up that it started getting a little
12 sloppier and top started getting a little worse.

13 Q. When you say sloppier, do you mean water?

14 A. Yeah, water and stuff. It wasn't major, though,
15 right through there, not like it was shortly after the
16 wall got there.

17 Q. Okay. Now, what about as you advanced further
18 toward Bandytown, where the Bandytown fan ultimately
19 was?

20 A. Worse and worse conditions.

21 Q. Okay.

22 A. The top, the bottom, the water, the methane,
23 everything.

24 Q. Okay. Now, when you refer to the methane, can you
25 be more specific? How much methane did you routinely

1 detect and how often did you detect it?

2 A. Every day once you got farther up there.

3 Q. Uh-huh (yes).

4 A. You're always --- back in here sometimes you would
5 just hit it, like, maybe, like, .8.

6 Q. You're pointing to about 105 in the ---

7 A. Yeah, when we first ---

8 Q. --- One North Headgate?

9 A. --- cut through and we come back and we had to
10 drive this at a angle here ---.

11 Q. The diagonal?

12 A. Yeah, that's when we were done with this pretty
13 much, and they had a crew bring back equipment all the
14 way back to here, and I guess this is where they cut
15 through again.

16 Q. Okay. Now, when you ---?

17 A. Then they had another crew do this.

18 Q. When you say ---

19 A. Oh, sorry.

20 Q. --- bring equipment back, are you referring to ---

21 A. Trammig it back.

22 Q. --- trammig it back to the mouth of the longwall
23 area?

24 A. Yeah, where the longwall was to stop a couple ---.

25 That's right; right? Yeah, a couple breaks back from

1 where the longwall was to stop. I had nothing to do
2 with that part, so I don't know what went on there
3 with that.

4 Q. Okay.

5 A. But we came up with that six and three schedule,
6 or actually it was a five and four or something like
7 that at first when we came over with the One section
8 guys. And everything was all right up through here.
9 It was just the top was real sand, a lot of sandstone
10 and the bottom would crack a lot.

11 Q. Again, when you say up through here, you mean
12 Crosscut 90 --- you're pointing to Crosscut 95 and the
13 area inby that towards ---

14 A. Yeah, all the way to the Bandytown fan.

15 Q. --- where the Bandytown fan was ultimately
16 installed?

17 A. Yeah. It got worse as you got up. Sometimes
18 you'd see --- well, you'd see two percent a lot of
19 times. I've never seen it, but I had heard that the
20 dayshift --- because we were on straight evenings at
21 the time and there was no swing shift on our crew.
22 But the dayshift has said --- when they would come
23 out, I've heard a couple guys saying that they had
24 seen nine percent ---

25 Q. Okay.

1 A. --- on their methane detectors. And that was,
2 let's see, shortly before the fan. I'd say that was
3 probably around 125, 128, somewhere around in there.

4 Q. Okay.

5 A. That was shortly before they cut off there.

6 Q. Okay. Now, you ---?

7 A. And the upper rooms past the fan, I guess, ---

8 Q. Uh-huh (yes).

9 A. --- I've heard that they had found up to 10
10 percent, like, right at it, like, 9.8.

11 Q. Okay. Now ---?

12 A. I've never seen it with my own eyes, but that's
13 what I have heard.

14 Q. Okay. Now, when you were working in this area
15 driving towards the Bandytown fan and Two section as
16 it advanced, who was your foreman on the evening
17 shift?

18 A. My section boss?

19 Q. Yes, sir.

20 A. His name was Rick Hutchens.

21 Q. Okay. Did you have confidence in Rick Hutchens?

22 A. Yes, I still wish I had him as a boss, actually.

23 I've always --- I'd come to bond with him. I trusted
24 him. He was pretty good with me, pretty good with
25 everybody, not just me. He never put me in harm's way

1 and none of the other people on our section. I've
2 never heard a bad word out of anybody, really, with
3 him. I've always ---.

4 Q. Okay.

5 A. I've always trusted him.

6 Q. Okay.

7 A. He always seemed like he did the right thing to
8 me. Especially when we got up here (indicating) and
9 he would ---.

10 Q. Okay. Let's move to up here. When you say up
11 here, you're referring to ---

12 A. Headgate 22.

13 Q. --- the Headgate 22 section?

14 A. Yeah.

15 Q. Do you recall when you began driving the Headgate
16 22 section?

17 A. Yeah, we drove starting this way.

18 Q. When you say starting this way, you're referring
19 to ---

20 A. Yeah, the ---.

21 Q. --- the crossover ---

22 A. Yeah, I forget what ---.

23 Q. --- probably One North Headgate entries
24 traveling ---

25 A. Yeah.

1 Q. --- advancing north to where the 22 Headgate
2 section ultimately turns to the left?

3 A. Yeah, it turns and start driving for the panel. I
4 forget what they call that.

5 Q. We most often ---.

6 A. The face, basically. This is the end. This is
7 where they'll stop, right here.

8 Q. Uh-huh (yes). We've most often referred to it as
9 the crossover between ---.

10 A. But yeah, we started on this from the beginning,
11 drove towards the north here and then we got, I think
12 10 breaks or so and then drove rooms over, and that's
13 what starts your headgate panel there. And that's
14 when we started Headgate 22.

15 Q. Okay. Now, at the time was Mr. Hutchens still
16 your foreman?

17 A. Yeah, at the time he was, for this and a lot of
18 this until ---.

19 Q. And when you say this ---?

20 A. The headgate 22, the turn ---

21 Q. Okay.

22 A. --- the crosscut and the turn; right.

23 Q. Okay.

24 A. Let's see. It's kind of hard for me to know
25 exactly what break that he, like, left that at. It

1 was somewhere probably right in here. It was towards
2 --- it was a couple months before we got in --- right
3 in probably about the middle of this, maybe a little
4 less.

5 Q. Can you read one of those spad numbers?

6 ATTORNEY WILSON:

7 Here's a magnifying glass.

8 BY MR. FARLEY:

9 Q. Yeah, sure.

10 A. Are these the spad numbers right here?

11 Q. Yes.

12 A. I'd say it was probably around this one right
13 here, probably that one.

14 Q. Okay.

15 A. 24541 and it's got an X and an O. I don't know
16 what that means. I guess that's just ---.

17 ATTORNEY WILSON:

18 Want to just circle that ---?

19 BY MR. FARLEY:

20 Q. Sure. Why don't you just ---?

21 A. Yeah.

22 Q. Why don't you just mark it?

23 A. Yeah, now, I'm not 100 percent sure ---

24 Q. Just circle that area.

25 A. --- this is exactly right.

1 Q. You know, just draw a line out there and general
2 area. I'll mark general area when Mr. Hutchens left.

3 A. Yeah. Now, I'm not sure if that's exactly right
4 or not, but ---

5 Q. Okay.

6 A. --- that's around about ---.

7 ATTORNEY WILSON:

8 Now, we'll mark this map as Exhibit Racer

9 One.

10 (Racer Exhibit One marked for
11 identification.)

12 A. Yeah, he had left. I hated to see him go, but ---
13 I could understand why, too. They didn't treat him
14 very well and he was going through a divorce, too, so
15 he needed to go somewhere where he could get a hourly
16 rate.

17 BY MR. FARLEY:

18 Q. Okay. When you say he wasn't treated very well,
19 can you explain that?

20 A. The superintendent really didn't like him at all.
21 The superintendent thought that he was too easygoing
22 on his men because he didn't yell at us. He didn't
23 treat us like crap. They were hard on running coal
24 and trying to drive this to beat this, but it wasn't
25 going to happen. We was in so much sandstone here it

1 would take an hour and a half, two hours to get one
2 cut.

3 Q. Okay. Now, how thick was your coal seam,
4 approximately, on 22 Headgate?

5 A. Oh, man. Sometimes it would only be about three
6 foot high, if that.

7 Q. Okay.

8 A. And the rest ---

9 Q. How much height ---?

10 A. --- of it sandstone.

11 Q. How much height were you maintaining?

12 A. At least right at seven foot, six, seven foot, six
13 and a half, seven foot. Their longwall equipment, to
14 be able to, you know, maneuver in there, like, the
15 jacks and stuff like that, and they set the chinks up
16 and ---.

17 Q. Uh-huh (yes).

18 A. That had at least, I think, six and a half foot or
19 something, they said.

20 Q. Okay. Let's go back to Mr. Hutchens here.

21 A. Okay.

22 Q. Now, when you first began driving the 22 Headgate
23 section, can you recall how your ventilation was? Was
24 your ventilation adequate at that time?

25 A. You mean, like, did we have a lot of air?

1 Q. Did you have enough air?

2 A. Yeah, we had a lot of air driving this cross here.

3 And then when we turned, we had good air. But after a
4 couple crosscuts, probably right in here somewhere ---

5 Q. Now, you want to mark that area ---?

6 A. --- it started falling behind.

7 Q. You want to mark that area on the map where you
8 think the ventilation ---

9 A. Yeah.

10 Q. --- might've --- would have changed?

11 ATTORNEY WILSON:

12 We can do that in blue.

13 BY MR. FARLEY:

14 Q. Just the general area.

15 A. Let's see. All right. I'd say it was right in
16 here somewhere in this area ---

17 Q. Okay. Just ---.

18 A. --- right here.

19 Q. Just ---.

20 ATTORNEY WILSON:

21 Do you want to mark that in blue?

22 BY MR. FARLEY:

23 Q. Well, just indicate ventilation change.

24 A. Is this map fully marked up up-to-date?

25 MR. SHERER:

1 As far as we know.

2 BY MR. FARLEY:

3 Q. As far as we know.

4 A. It seems like we were farther than that. How many
5 breaks is in here?

6 Q. We don't guarantee the accuracy of the map.

7 A. It seems like we were about up here.

8 MR. SHERER:

9 Oh, jeez.

10 A. We had to walk 18 breaks because they didn't even
11 have no track laid.

12 BY MR. FARLEY:

13 Q. Okay.

14 A. That's almost what that is right there, and then
15 we had --- that was just to get to the back of the
16 power center. Then you had another four breaks up.
17 Seems like it's not marked up all the way.

18 Q. Okay. It could be. Okay.

19 A. I mean, like, it's not going to be super off, but
20 you know ---.

21 Q. Yeah, that's highly probable. Okay. All right.
22 Now, you indicated that you felt like you had pretty
23 good air coming through the crossover and as you
24 turned and headed, I guess west ---

25 A. Right.

1 Q. --- while driving to 22 Headgate. And then your
2 ventilation changed somewhat. Do you know why it
3 would change, any explanations for that?

4 A. That blows my mind there. I know I couldn't
5 figure out why we come through here, or come back to
6 here, cut over and had air so much that you couldn't
7 keep your curtain on the ground, you know. We had to
8 put rocks and bags of dust, sometimes bit buckets, two
9 or three of them. And just to keep the curtain down.
10 And when we turned here it was still pretty good.
11 Let's see. How did we have to do that? Those were
12 all stops here. I don't think we were punching
13 anything. Yeah, we had to cut out for overcasts over
14 here first.

15 ATTORNEY WILSON:

16 Excuse me. Whenever we talked earlier, I
17 said when you say ---.

18 A. Yeah, I'm sorry.

19 ATTORNEY WILSON:

20 If you put --- yeah. Can you ---?

21 A. I was thinking about what ---.

22 BY MR. FARLEY:

23 Q. Do you want to mark the area where you cut out for
24 overcasts?

25 A. Right here they are. They're marked already.

1 There's one.

2 Q. Okay. You're referring to the overcast to ---?

3 A. Yeah, the overcast to go towards the Glory Hole.

4 Q. That are marked --- that are shown on the map that
5 would be outby the mouth of 22 Headgate?

6 A. Yeah, they were, like --- whew, they were, like,
7 15 foot high in there. We had to build half of it one
8 day, a stopping, then the other half the next day.

9 And that's where the overcasts were going to go
10 through in there, and it was going to connect --- let
11 me get this straight. Our return was coming down this
12 way.

13 Q. When you say down this way, you mean outby ---

14 A. Comed in ---.

15 Q. --- in the Number Three entry?

16 A. Coming down the Number Three entry of the Headgate
17 22. And it was coming up --- there was a return.

18 There was doors in the return, too. I'm trying to
19 think where that was. It was right here where we
20 turned, somewhere over here in the return. But its
21 whole purpose was to go over an overcast, too, and
22 come up these rooms somewhere. I don't know anything
23 about this area. This is the only part I've never
24 been at.

25 Q. When you say this area, you're pointing to the ---

1 A. I mean, the Glory Hole area, the break ---.

2 Q. --- area over the Eight North Glory Hole?

3 A. Yeah, the Eight North and all the rooms up there
4 that they had butted ---. I had never seen them.
5 Usually the only people that got there is fire bosses.

6 Q. Okay. Now, back to the ventilation change or when
7 the ventilation seemed to change. I'll say that
8 correctly.

9 A. Right.

10 Q. Do you recall if the return air course may have
11 been rerouted around that time outby the sections ---?

12 A. It very well could've been, because there was
13 always --- the super and the other guys were ---. It
14 seems like in this mine ever since this --- ever since
15 right at this fan. At this fan ---.

16 Q. This fan, you mean the Bandytown fan?

17 A. The Bandytown fan. Once it was put it in, it
18 seemed like everything went to crap. Everything ---
19 everybody --- somebody was always, it seemed like,
20 doing ventilation change all the time. You know, and
21 then you set back and think after all this happened,
22 it's like do they know what they were really doing?
23 They were always messing with it.

24 Q. Okay. Now, when you refer to the ventilation
25 changes that were made, can you be more specific as to

1 when ---

2 A. Okay.

3 Q. --- and where and what might've been done?

4 A. All right. Well, after this fan was put in we had
5 to put doors somewhere on this old headgate panel as
6 you --- after you switch at the 87 Switch then you
7 come towards One section. You go through those two
8 sets of airlock doors and you pass right here where
9 the longwall stop is. There was a switch right here,
10 too, somewhere. And there's 78. Then you got a
11 switch here.

12 Q. Now, when you say here, where is here? Do you
13 mean around ---

14 A. What break is that?

15 Q. --- Crosscut 101 or 102?

16 A. I can't remember what break it is.

17 Q. That would be 100 right there.

18 A. We call it ---.

19 MR. SHERER:

20 Was it close to the Mother Drive?

21 A. Yeah, it was close to the Mother Drive. It was
22 just about five breaks away from the Mother Drive,
23 inby. And we called it the One section longwall
24 switch. And just shortly after it --- it was probably
25 right in here somewhere where this longwall stop is

1 right here. I'd be afraid to mark it because I don't
2 know exactly where. But there was a set of doors
3 there and we put them up, and then they told us to
4 take them down because they --- I guess they weren't
5 for sure that that's where they needed to go.

6 BY MR. FARLEY:

7 Q. Okay. How long were the doors in place before you
8 took them down?

9 A. We got one build and the other one half built and
10 they told us to take it down.

11 Q. Okay.

12 A. So we did. Well, we come back in ---.

13 Q. Now, can you tell us approximately when that was,
14 give me a time on it?

15 A. When?

16 Q. Yeah. When you tried --- you know, you started to
17 install the doors and then you aborted them.

18 A. Well, it was shortly after that fan was put in.
19 I'd say after that fan was put in and was running and
20 whatever, after it was done drilling. I mean, it was
21 put in. Or they had started the drilling process, I
22 think. That's when we started doing the doors.

23 Q. Okay. Now, was that before you started driving
24 the crosscut ---

25 A. Yes.

1 Q. --- in the north?

2 A. Yeah.

3 Q. Okay.

4 A. That was before that.

5 MR. SHERER:

6 It was back August or maybe before that

7 of the last year?

8 A. Let me think. Probably so, because it was
9 starting to get colder. Let's see. Because I had
10 worked 4th of July vacation. That was probably ---
11 yeah, because --- let me think. We didn't get 4th of
12 July; nor did we get --- we didn't get any vacations
13 being on that schedule.

14 BY MR. FARLEY:

15 Q. Was the longwall set up at that time?

16 A. Yeah, the longwall was pretty much done. It
17 wasn't running. It was just --- the longwall was
18 pretty much ready to go. And they needed us to put
19 doors in and do a lot of, you know, ventilation
20 stoppings and stuff here and there.

21 Q. Now, the first longwall passes were made in
22 September.

23 A. All right. And you know, it was just shortly ---
24 it was just ---. It was about two weeks before that,
25 then, because we were shut down for a week.

1 Q. So it was late August, maybe early September?

2 A. Yeah, because we were ---. After that night we
3 left. When we come back we stayed outside because
4 MSHA was underground and they were saying that the
5 changes that they had done outby, and I mean Ellis
6 punch-out side where you portal in at, all the way
7 down, they needed to be a lot of stoppings knocked and
8 ones rerouted and stuff. And I didn't fool with that,
9 so I couldn't tell you what all was down with that.
10 And they had us shut down and all --- and the only
11 people that was there was the bosses, certified
12 people.

13 Q. Sure.

14 A. And we was shut down for that day and then the
15 next day and --- we was shut down for about five days.
16 And then MSHA come in and lifted it and said it looked
17 all right. And that's when we got to come back
18 underground. We only worked Friday and then we were
19 off that weekend. They let us have that weekend off
20 still. And that next week --- I believe it was just a
21 week or a week after that one is when the longwall
22 fired up.

23 Q. All right. Now ---.

24 A. It's hard for me to remember some of this stuff
25 because I, you know, I wasn't paying attention. There

1 was, you know, a whole lot. You never know when
2 something like that was going to happen. Now, I've
3 never experienced --- I've only been in the mines for
4 a couple years, you know. I never thought anything
5 like this would ever happen.

6 MR. SHERER:

7 I hope you never have to worry about it
8 again.

9 A. Me neither.

10 BY MR. FARLEY:

11 Q. Okay. Now, let's go back to Headgate 22 here.
12 Now, when you traveled to the Headgate 22 section,
13 first of all, where did you portal?

14 A. From outside?

15 Q. Yeah. Yes, sir.

16 A. Ellis punch-out.

17 Q. Okay. Now, when did you begin portaling at Ellis
18 punch-out?

19 A. I portaled at Ellis punch-out for probably eight
20 months.

21 Q. Okay. Now ---?

22 A. Before the wall was even there we portaled from
23 there, before that bath house was actually up there.
24 I can't remember when they put that in there, but we
25 had portaled there a long time ago and the inspectors

1 come up there. And I guess they were kind of mad that
2 they were making us change out of our cars when we had
3 a perfectly good bath house on the other side. It was
4 just cutting shorter time getting there.

5 Q. Okay.

6 A. So they sent us back over there.

7 Q. Okay. Now, when you entered the mine and traveled
8 to 22 Headgate and you passed this switch at 101 or
9 102 on Six North, ---

10 A. Yeah.

11 Q. --- which way did you travel to the 22 Headgate?

12 A. Well, at first, even after these rooms were drove
13 over, we still traveled with the longwall, because the
14 longwall was up here somewhere.

15 Q. So you traveled up the longwall headgate
16 entries ---

17 A. Yeah.

18 Q. --- and turned right through the crossover?

19 A. Yeah, and then we had a switch here. You'd get
20 out and through the switch and it would pull us in
21 here, and there was a set of doors here ---

22 Q. Now, when you say here, you're ---

23 A. --- and up here and across.

24 Q. --- you're referring to the area where the
25 crossover starts?

1 A. Yes.

2 Q. Starts north from the longwall headgate entries?

3 A. Yes. And that was basically --- well, the track
4 went up there a little ways. They actually had the
5 track --- they had the track pretty good, I guess,
6 because it went all the way up to about right
7 here, ---

8 Q. Okay. Now ---?

9 ATTORNEY WILSON:

10 Okay. Well, hold ---.

11 A. --- which is ---.

12 ATTORNEY WILSON:

13 Hold on a second. Yeah.

14 A. Sorry.

15 ATTORNEY WILSON:

16 Let's go off the record.

17 OFF RECORD DISCUSSION

18 BY MR. FARLEY:

19 Q. You've indicated that you traveled the track entry
20 through the longwall headgate entries and turned right
21 through the crossover and stopped at that point; is
22 that correct?

23 A. Yes.

24 Q. Now, eventually did you continue traveling through
25 the crossover in --- headed north with the track and

1 turning left into 22 Headgate? Is that how you
2 eventually continued traveling to 22 Headgate?

3 A. Yes. Just for a few crosscuts, though, and then
4 we had to go back to where --- I guess you said 101
5 ---

6 Q. Yeah.

7 A. --- at the longwall and Glory Hole switch. And we
8 started traveling towards the Glory Hole then.

9 Q. Okay. So you've indicated that you eventually
10 changed and began traveling from 101 through Seven
11 North and eventually traveling into 22 Headgate
12 through that direction?

13 A. Correct.

14 Q. Okay. All right. As you traveled into and out of
15 the mine, now, you obviously passed through a number
16 of airlock doors on the track.

17 A. Uh-huh (yes).

18 Q. What was the usual condition of those doors?

19 A. The ones right past 78 Switch ---. I can't tell
20 you what break it is because I don't know nothing
21 about breaks.

22 Q. But the door's in the vicinity of 78 Break?

23 A. Yeah, in between 78 and the Glory Hole switch
24 there's two sets of airlock doors. There's one set of
25 double doors and then there's another one right after

1 it.

2 Q. Okay.

3 A. One of them, the first set was pretty good. It
4 was the next set that the bottom of them was bent up
5 where somebody had ran into them with the motor I
6 think they said. And they stayed that way, you know.
7 I didn't see them fixed.

8 Q. Okay. Were the doors manual or automatic?

9 A. Oh, they were manual. They used to be automatic
10 when I first started in that mines, because I remember
11 helping putting them in because they had just --- it
12 was in December or something. They had just started
13 around this 78. Now, Glory Hole was here, but they
14 had just started this here.

15 Q. Now, this ---?

16 A. This switch being the Two section or the
17 tailgate ---

18 Q. Okay.

19 A. --- however you want to say it.

20 Q. All right.

21 A. Driving towards the tailgate. I don't know if
22 they had that in mind at first or not and it just
23 happened to be the tailgate.

24 Q. Okay. Now, these doors that you encountered ---

25 A. Were manual.

1 Q. --- on the track, now, were they also equipped
2 with a smaller man door for persons to pass through if
3 they want to?

4 A. Yes. Yes, there was man doors in it.

5 Q. Okay. Was that all the doors were equipped with
6 man doors?

7 A. No, not every door. Now, every door on that right
8 through here was, yes.

9 Q. Now, when you say on that right through ---?

10 A. From 78 to Glory Hole switch.

11 Q. Okay.

12 A. Yes, those were equipped with man doors.

13 Q. Okay.

14 A. At Ellis Switch to go either towards the UBB
15 Portal or the Ellis Portal --- the one went towards
16 the UBB Portal. Those sets of airlock doors didn't
17 have a man door in them. They were solid.

18 Q. Okay.

19 ATTORNEY WILSON:

20 Now, Terry, can I have --- with a red pen
21 can you mark, circle and then write out in the margin
22 here what you're referring to as the Glory Hole
23 switch?

24 MR. FARLEY:

25 Yeah.

1 A. That has to be it right there, because here's the
2 --- this is the belt --- or this is the track; right?
3 Or is that representing the belt?

4 MR. SHERER:

5 Red's the belt.

6 BY MR. FARLEY:

7 Q. Red's the belt.

8 A. Okay.

9 Q. Yellow should be the track.

10 A. And this is 78, you said?

11 Q. Yeah, 78 Switch is around the area where you're
12 pointing to, maybe a couple of crosscuts inby from
13 there.

14 MR. SHERER:

15 The crosscut number should be on the top
16 of the entry.

17 BY MR. FARLEY:

18 Q. Crosscut numbers are over here.

19 A. Now, I have to say this --- around right in here
20 has to be where that switch is. I'm not sure if
21 that's it or not. I don't know it by break. I just
22 know ---

23 Q. Okay. Well, that's ---?

24 A. --- it's the Glory Hole switch, longwall switch.

25 Q. The switch --- you're indicating that the switch

1 at Crosscut 101, just inby 101 on Six North, you're
2 referring to it as the Glory Hole switch?

3 A. Yeah. So where you want me to mark ---?

4 ATTORNEY WILSON:

5 Okay. Just write over here on the
6 margin, Glory Hole switch.

7 A. Okay.

8 WITNESS COMPLIES

9 A. I found the only hole in the table, probably.
10 Yeah, it's --- I'm just going to say right in this
11 area somewhere in here.

12 ATTORNEY WILSON:

13 Okay. Thank you.

14 MR. FARLEY:

15 All right.

16 BY MR. FARLEY:

17 Q. Back to the doors. Did you frequently --- when
18 you frequently encountered the airlock doors on the
19 track in the UBB Mine, did you encounter doors that
20 were left open at any time?

21 A. Yeah, the second set of doors always had a real
22 bad problem not staying shut.

23 Q. Now, when you say the second set of doors ---?

24 A. The second set of airlock doors. You come
25 through ---.

1 Q. Inby 78?

2 A. Inby 78.

3 Q. Okay.

4 A. They had a real hard time with the second set of
5 doors, the airlock, you know. You got two, two sets
6 of doors with each airlock. The last one, the
7 farthest one inby would stay open. Like, it wouldn't
8 be, like, fully open, but it would be about, you know,
9 two or three foot open.

10 Q. Now, when you're saying they stayed open, was that
11 because someone failed to close it or because the door
12 was just simply not functioning as designed and would
13 pop open on its own?

14 A. Malfunctioning door. It was beat up pretty bad.
15 It never --- it was either that or the jacks that they
16 were on were, like, tilted out a little bit so it made
17 them lean out, but they needed to be fixed.

18 Q. Okay.

19 A. Definitely.

20 Q. Now, was that the condition of the door on the
21 last shift that you worked prior to the explosion?

22 A. Yes.

23 Q. Okay. Now, when was the last shift you worked
24 prior to the explosion?

25 A. That day that it happened.

1 Q. Okay.

2 A. I was underground about three breaks.

3 Q. Okay. Now, prior to that day, prior to that ---.

4 A. Oh, prior to that day?

5 Q. Because you didn't make it that far.

6 A. I was actually --- that was my first day back from
7 that three days off.

8 Q. Okay.

9 A. That six and three schedule we were on.

10 Q. So the week before, sometime around April 1st,
11 would that have been your last shift before April 5th?

12 A. Yeah.

13 Q. Okay. And as best you recall, the doors were in
14 that condition at that time?

15 A. Yeah, at first. Yeah, when we left there that
16 night, those doors were like that.

17 Q. Okay. All right. All right.

18 A. They usually had cinder block somewhere near that
19 you could prop up against it to help it, but sometimes
20 it would just still push it away.

21 Q. Okay. Now, let's go back to 22 Headgate. After
22 Mr. Hutchens left, the section foreman, who replaced
23 him as your section foreman on 22 Headgate?

24 A. Pat Hill, or is that his last name? Hilbert.

25 Q. Is it possible you mean Pat Hilbert?

1 A. Yeah, that's it, Pat Hilbert. I was just making
2 sure that's how you pronounced his last name.

3 Q. Okay. Now, would Mr. Hilbert have been your
4 foreman on the evening shift from the time Mr.
5 Hutchens left until the day of the explosion?

6 A. Yeah.

7 Q. Okay. Did the manner in which the section was
8 operated and managed change to any extent after Mr.
9 Hilbert took over?

10 A. No, not really. He was pretty good, too. The
11 conditions got worse up there as he got there, but it
12 wasn't his fault, not that type of condition. I'm
13 talking about, like, the top turned into slate. We
14 were finally out of the sandstone, you know. In
15 Number Three it was probably 12, 13 foot high. The
16 water was coming in from the bottom. It was getting
17 to the point where it was up to your knees sometimes.
18 Still not as bad as that panel there.

19 Q. When you say that panel, you're referring to
20 the ---

21 A. The first headgate.

22 Q. --- One North Headgate toward the Bandytown fan?

23 A. Yes.

24 Q. All right. Now, on the 22 Headgate section after
25 --- as it was developed, did you see evidence of floor

1 hooving at any time?

2 A. Oh, on the Headgate 22?

3 Q. Yes, sir.

4 A. Yes. That's why the water was coming in. It
5 broke up the bottom all the time. I mean, we had the
6 bolt machine stuck, trying to get to it where the
7 miner just cut. It'd be stuck for 45 minutes before
8 we could even get in there because the bottom broke up
9 underneath it.

10 Q. Okay. Now, how often did you encounter the bottom
11 breaking up? Was this a constant thing or did it
12 occur just from time to time?

13 A. Yes. Slightly at the last 15 or --- well, 15, 10
14 breaks from Headgate 22 it was like that all the time,
15 besides in One. One wasn't too bad.

16 Q. Okay.

17 A. But Three was the worst out of all these entries
18 on Headgate 22.

19 Q. Okay.

20 A. Number Three entry was the worst. Two was --- it
21 was decent. It still had a lot of breaking up here
22 and there, but Number One was the best, the belt entry
23 on Headgate 22.

24 Q. Okay. Now, we talked earlier about the
25 ventilation on Headgate 22, and you marked an area on

1 the map where you felt that the ventilation changed
2 for the worse?

3 A. Right.

4 Q. Now, were there times on your evening shift on 22
5 Headgate where you had to shut down and cease
6 production because there wasn't enough air?

7 A. Yeah, a lot of times.

8 Q. Okay. When you say a lot of times, can you give
9 me --- you know, is that three or four? Is that six
10 or seven or ---?

11 A. I'd say at least ten times ---

12 Q. Okay. Now ---?

13 A. --- eight, ten times they run out of air.

14 Q. Now, would that have been during the time that Mr.
15 Hutchens was your foreman or ---?

16 A. A couple times while he was our foreman, yeah. It
17 started --- right before he left it started getting
18 --- the air started getting worse. We had shut down
19 --- we had shut down a few times. I remember coming
20 in once and him taking an air reading in the intake,
21 which is where the power is. And what do you call it?
22 The anemometer was not --- it was barely moving. I
23 mean it was amazing. I think --- whew, I don't even
24 know how much he got, but he told all of us to wait
25 and not move.

1 Q. Now, he meaning Mr. Hutchens?

2 A. Yeah, Rick Hutchens. He told us not to go
3 anywhere. He said that we couldn't do nothing until
4 we found air and when we ---.

5 Q. Okay. Now, can you give me an approximate time?
6 when was this?

7 A. As soon as we come in, so it would be about ---.

8 Q. No, I mean what date?

9 A. Oh, Lord.

10 Q. Month, date? Was it 2010? Now, Mr. Hutchens
11 would have left sometime, we believe, in February.

12 A. Yeah. It might've been very beginning of 2010
13 towards ---.

14 Q. Okay.

15 A. It was after November. Yeah, it was somewhere
16 towards the very beginning or right at the end of 2009
17 or something like that.

18 Q. Okay. Now, in this particular instance where Mr.
19 Hutchens told you, wait right there. We don't have
20 enough air. What did he or the rest of you have to do
21 to change the situation? What action did he take?

22 A. We went with curtain. We drove the emergency
23 ride, that little four-wheeler thing, because that's
24 basically the only thing that you have to get up here,
25 because they didn't have the track in.

1 Q. Okay.

2 A. And we'd take it up here, up at the crosscut on
3 Headgate 22 where we drove over towards ---.

4 Q. Okay. Now, you're talking of the area at the
5 mouth of the 22 Headgate section?

6 A. Yeah.

7 Q. All right.

8 A. And we would put curtain overtop of stoppings that
9 we thought might be a little leaky and stuff like
10 that. And they had this right here. I don't know
11 what you're calling this still.

12 Q. You're referring to the crossover from the
13 longwall headgate entries up as it heads north toward
14 the turn to 22 Headgate?

15 A. Yeah. They had a curtain that went across in
16 here, this intake.

17 Q. Was it there as a regulator or do you know?

18 A. This is what blew my mind there. This air started
19 getting bad when they started fooling with stuff over
20 here in the Glory Hole.

21 Q. Now, when you say the started fooling with stuff
22 over here in the Glory Hole, are you talking ---?

23 A. When they were setting up the belts.

24 Q. Setting up the new Mother Drive?

25 A. Yeah, when they were setting up the Mother Drive

1 and all that, and they cut out and they had to cut the
2 top. They had to cut, cut out for the Mother Drive
3 and they had to split the blocks. They had to split,
4 like, three or four blocks. I didn't have nothing to
5 do with that, but I'd seen it just a little bit. But
6 ever since they started doing that and they added
7 doors here and stuff, that's when our air went
8 downhill.

9 Q. Okay.

10 A. I don't know why they had ---. In this intake
11 here --- this is the way our intake was coming --- had
12 this knocked off because our intake was being rerouted
13 this way, supposedly.

14 Q. Now, when you say the intake was re-routed, you're
15 talking about the intake coming to the 22 Headgate
16 section via Seven North?

17 A. Right.

18 Q. In the Number One entry as it ---?

19 A. Right, as it turns down towards our Headgate 22.

20 Q. Okay.

21 A. But yeah, we would have to go and make sure that
22 that was up and make sure that up here where Terry
23 Moore and them were at the Glory Hole belt, they
24 didn't have the doors shut, which I couldn't
25 understand that because some days you'd go in and the

1 boss would say, they told me to shut the doors on the
2 way in. And then some days they'd be like, well,
3 leave them open.

4 It's like they couldn't figure out what to do with
5 the ventilation, like, you know? That's not very
6 trustworthy, but when we would get down there, when
7 Rick Hutchens would find out there wasn't no air or
8 something, you know, you tried everything you can to
9 get the air up on the section.

10 So we'd go up there. They'd tell us that those
11 doors had to be shut, but when we opened them, that
12 gave us 27,000 more on our face. I don't see why
13 those needed to be shut, you know? We can't be up
14 there with no air, so he would leave them open.

15 Q. Okay.

16 A. But I don't know how the air works, you know. I
17 don't think really much anybody that was doing the air
18 changes up there really knew how the air was supposed
19 to be.

20 Q. Well, I think we get the picture there.

21 A. As far as in all of this going on, a lot of it, I
22 think, has to do up in this area, ---

23 Q. Now ---?

24 A. --- which is the headgate, the first one.

25 Q. What do you mean when you say a lot of this going

1 on up in here?

2 A. I mean what happened.

3 Q. When you say what happened, what do you mean, what
4 happened?

5 A. The explosion.

6 Q. Are you saying ---?

7 A. The cause.

8 Q. All right. Now, you're referring to the One North
9 Headgate entries in the area of 90, 95, 100, 105?

10 A. Yeah.

11 Q. Now, what do you think occurred there that
12 contributed to the explosion?

13 A. Water.

14 Q. Okay.

15 A. No return.

16 Q. Okay.

17 A. Roofed out. I had been back there many a times
18 where it's past my neck.

19 Q. Okay. Now, when was the last time you were in
20 that area, personally in that area?

21 A. We were down here. Let's see. Let me think in my
22 head before I start. They shut us down again, and I
23 can't remember the date.

24 Q. Who's they?

25 A. The inspectors would shut us down.

1 Q. And can you tell me when that was?

2 MR. SHERER:

3 Was it MSHA or was it State? Do you
4 recall?

5 A. It was MSHA.

6 BY MR. FARLEY:

7 Q. Was that in 2009?

8 A. Yeah, it was in 2009. Rick Hutchens was still
9 with us. They had shut our headgate section down for
10 something to do with air reason, why they were doing
11 --- and I can't remember what that was. I've
12 forgotten what that was. All I remember is --- oh,
13 this is what it was. On the longwall, the longwall's
14 --- I guess is the --- what is that? This is one of
15 their secondary escapeways. I'm trying to think here.
16 Let me see.

17 Q. Now, you're referring to the longwall headgate
18 entries?

19 A. Yeah, these where the intake comes up for the
20 longwall. And the tailgate's the return.

21 Q. Okay. When you're talking about water, where was
22 the water that you were referring to in the longwall
23 headgate entry?

24 A. It's hard because some of this stuff that's here
25 marked it's marked differently on the stoppings

1 underground. A lot of it was off. Like, I could tell
2 you, well, 60 is where I remember there was some water
3 at --- right in this area.

4 Q. Okay. Would the water have been inby 60 towards
5 the Bandytown fan area?

6 A. Yes, sir.

7 Q. Okay. Now, again, the last time you were in that
8 area, would that have been in 2009?

9 A. Yeah.

10 Q. Okay. Had the longwall started production yet?

11 A. Yeah.

12 Q. Okay.

13 A. Yeah.

14 Q. Now, when you were in the area, what work were you
15 doing?

16 A. When I was in the area the longwall was still
17 running. We were behind the wall while they were
18 running.

19 Q. Okay.

20 A. We were fixing up their primary or secondary
21 escapeway.

22 Q. Okay. Were you installing --- were you building
23 stoppings or installing ---

24 A. Jacks.

25 Q. --- temporary stoppings or jacks or ---?

1 A. Jacks and do you know what a Kennedy stopping is?

2 Q. Yes, yes.

3 A. Okay. We were taking Kennedy stoppings and we
4 were building a big, great wall, I mean huge, because
5 all their stoppings on that line was getting crushed
6 out.

7 Q. Okay.

8 A. So they figured they'd just come up with this.
9 We'll build this big, great wall all the way down, but
10 it was impossible almost to do it.

11 Q. Okay. All right.

12 A. But we had set a lot of props, jacks. And you'd
13 carry these jacks on your back for 20-some breaks
14 sometimes. That's about as far as we got. Probably
15 about 16 breaks is about as far as we got with the
16 jacks. And it would get worse. I mean ribs would be
17 falling out 100-some foot long and you'd see them.
18 The bottom was starting to hoove up the farther you
19 went back and water was getting up towards your waist
20 the farther you went.

21 Q. Okay. All right. Now, let's move back to 22
22 Headgate in the few weeks prior to the explosion.
23 Now, you've talked about floor hooving. Now, you
24 indicated a location on the map where you think the
25 ventilation took a turn for the worse. Now, in the

1 months or weeks before the explosion, did the overall
2 ventilation of 22 Headgate improve somewhat?

3 A. Yes.

4 Q. Okay.

5 A. The week before the explosion happened ---

6 Q. Okay.

7 A. --- we had great air, and I have no idea where ---
8 it just come from out of nowhere.

9 Q. Okay. But did the ventilation of 22 Headgate did
10 improve a week or so prior to the explosion?

11 A. Yes, and I mean great. It was a major change.
12 You could tell.

13 Q. Okay.

14 A. Then we had good air. I don't know what they had
15 done, but it gave us a lot of air on our face. I
16 don't know if it took away from these guys or --- I
17 don't know what, how they got it for us, but it was
18 great.

19 Q. Okay. All right. We've been at this for about an
20 hour. Do you need to take a break or anything?

21 A. No, I'm still good.

22 Q. Okay. Let me know if you need to.

23 A. Okay.

24 Q All right.

25 A. I'm just trying to answer as best I can. I know a

1 lot about the mines when I'm in it, but as far as
2 looking at a map, it's a lot different to me. I'm
3 trying to visualize this stuff before I say it

4 Q. You're doing great.

5 A. And times are real hard for me.

6 Q. I understand, I understand.

7 ATTORNEY WILSON:

8 Do you want a water? You've been talking
9 a lot.

10 A. Sure.

11 MR. SHERER:

12 You're doing good.

13 BY MR. FARLEY:

14 Q. Okay. Now --- all right. The ventilation
15 improved a week or so prior to the explosion. You're
16 not sure why, but it improved; okay?

17 A. Thank you very much.

18 Q. You were a scoop operator; correct?

19 A. Yes.

20 Q. All right. That was on the tailgate.

21 Q. What about 22 Headgate? What was your job up
22 there?

23 A. Buggy.

24 Q. Oh, you were a shuttle car operator up there?

25 A. Yes, sir.

1 Q. Okay. All right. How many shuttle cars were
2 operating up there on 22 Headgate?

3 A. Two.

4 Q. Okay. Who was the other shuttle car operator?

5 A. Greg Krauss.

6 Q. Okay. How many continuous miners were up there?

7 A. Two.

8 Q. Okay. And did you ever operate both of them at
9 the same time?

10 A. No. That's something we did not do.

11 Q. Okay. All right. Did you ever happen to be
12 around the scoop charging station on the 22 Headgate
13 section?

14 A. Yeah, I've been by them. You mean, like --- I
15 never really fooled with them, but I've been around
16 them.

17 Q. Okay. Now, in the week or so preceding the
18 accident, were you around the scoop charging station
19 on 22 Headgate?

20 A. Walked by them, but that's about it.

21 Q. Did you notice anything different, smell anything
22 different, anything unusual about it?

23 A. No, the batteries always stunk down there. They
24 always smelt like they were cooking.

25 Q. Okay. Now, in the week preceding the explosion,

1 did anyone detect any methane on 22 Headgate section
2 on your evening shift?

3 A. The week before?

4 Q. Yes.

5 A. Not to my knowledge. I hadn't heard any other
6 crews. I think we had picked up --- you only pick up,
7 like, .2 or something like that. I mean ---

8 Q. Okay.

9 A. --- nothing to even be alarmed about.

10 Q. Okay.

11 A. This section was actually pretty good for methane-
12 wise, I thought. I never seen it on my shift.

13 Q. Okay. All right. Now, the entire time you worked
14 on 22 Headgate section, were you shuttle car operator
15 the entire time?

16 A. Yes.

17 Q. Okay. Now, after your ventilation improved on 22
18 Headgate, did your coal production improve or did that
19 remain about the same?

20 A. It's about the same. It was tough just to cut in
21 that sandstone. We were cutting five foot, four and a
22 half foot of sandstone and three foot of coal, you
23 know? It takes a long time, even for them 12-12's.
24 It's hard for them to do.

25 Q. Okay. Did cutting that sandstone material create

1 more dust?

2 A. Oh, yeah, a lot more than what it would be if it
3 was just coal.

4 Q. Okay. And did you have any, have difficulty in
5 maintaining your line curtains, keeping them from
6 sucking against the rib?

7 A. No, because we didn't have enough air to push them
8 against the rib. Until we got enough, and then it was
9 just enough to run, you know.

10 Q. Okay. Now, were you ever actually with Mr.
11 Hutchens or Mr. Hilbert when they made an air reading,
12 took an air reading with an anemometer?

13 A. Yeah, I was with ---. Well, we sat down at the
14 power center while Rick Hutchens would take an air
15 reading before we even went up there to fire up, so
16 that way we knew --- we'd all be together and we'd
17 just go back here and try to fix their problem or see
18 where we could get some air from. But I was with Pat
19 once when he was taking one in the last open crosscut,
20 and it was only, like, 7800 or something. And that's
21 when he told me to go tell the miner to come back.
22 Don't worry about starting.

23 Q. Okay. Now, when?

24 A. Oh, about two and a half weeks prior to the
25 incident ---

1 Q. Okay.

2 A. --- the explosion.

3 Q. Okay. Mr. Hilbert made that air reading?

4 A. Yes.

5 Q. Okay. Now, during the time that Mr. Hilbert was
6 the foreman, which was roughly sometime from the
7 latter part of February until the day of the
8 explosion?

9 A. Yeah.

10 Q. And he took over for Mr. Hutchens?

11 A. Uh-huh (yes).

12 Q. About how many times during that period did you
13 have to cease production because of air problems?

14 Okay. Can you estimate ---?

15 A. While he was ---

16 Q. Yes.

17 A. --- in charge up there?

18 Q. Yes, sir.

19 A. Probably about five or six times.

20 Q. Okay.

21 A. Now, he was pretty good with it, too, you know?

22 He was a new boss. He just wanted to make sure he was
23 doing the right ---

24 Q. Sure.

25 A. --- the right thing. And he'd even made the --- I

1 don't know how you say it. He just said that he would
2 rather be fired than go to jail.

3 Q. Okay.

4 A. So you know, he said it makes sense to me. He
5 said he can find another job. He said, if I'm setting
6 in jail, I can't find nothing.

7 Q. That's rational thinking.

8 A. So he said he didn't care what they had to say
9 outside, whether it be the president or not, and he
10 was going to do what he had to do to take care of the
11 section.

12 Q. Okay. Now, you estimate five or six times during
13 the time that he was your foreman from ---

14 A. Yeah.

15 Q. --- February to April 5th? Okay. Now, how long
16 did it usually take to get back in production after
17 you took measures to improve your ventilation?

18 A. Oh, sometimes --- I remember with Rick
19 Hutchens ---.

20 Q. No, with Mr. Hilbert.

21 A. Oh.

22 Q. Staying with Mr. Hilbert.

23 A. Well, with Mr. Hilbert sometimes it would take ---
24 we wouldn't get started until about two hours after
25 --- prior to showing up on that section and finding

1 out we didn't have air. It'd take two, sometimes
2 three hours to get the air.

3 Q. Okay. Now, did that usually involve tightening
4 your curtains and ventilation control ---

5 A. Yeah, we always ---.

6 Q. --- on the section itself?

7 A. Yeah. No, that was to get the air behind the
8 power center right at the intake.

9 Q. Okay, okay. Now, with Mr. Hilbert as your boss,
10 how often did you have to go outby the section and do
11 work to improve the ---?

12 A. Five or six times.

13 Q. Okay. What did you usually do with Mr. Hilbert as
14 your boss when you went outby the section for ---?

15 A. Same thing we did with Rick Hutchens. As far as
16 going up towards the Glory Hole and making sure that
17 where they had cut over and split the blocks that they
18 had all their curtains in the right area and their
19 stoppings tight, putting curtain over their stoppings,
20 coming back over towards our return, putting curtains
21 on stoppings and same, same stuff with did with Rick
22 Hutchens.

23 Q. Okay. Is it possible that the people involved in
24 this Mother Drive construction area just --- and is it
25 fair to say they just didn't clean up after themselves

1 or ---?

2 A. Well, I don't know if it was that or just that the
3 way they had them plan out everything, do everything,
4 it was just a little out of whack or something.

5 Q. Is it fair to say that some of the work they did
6 damaged stoppings, doors or ventilation controls,
7 thereby affecting your air?

8 A. I'd say that whatever they were doing did affect
9 our air, yes.

10 Q. Okay.

11 A. As far as them damaging stoppings and stuff, I
12 don't know. I really wasn't up there for them
13 cutting. I mean, I'm sure they had to had knocked a
14 couple of stoppings to reroute air for them, too. I
15 mean ---

16 Q. Okay.

17 A. --- I don't know how that, this whole system on
18 the Glory Hole side worked.

19 Q. Okay. But you know, regardless of what they
20 might've done ---

21 A. Right.

22 Q. --- but whenever that work, that Mother Drive
23 construction area work began, it began to affect your
24 22 Headgate ventilation?

25 A. Yeah, it seemed like ---.

1 Q. Is that correct?

2 A. Yeah, to me it seemed like it was affecting our
3 air.

4 MR. FARLEY:

5 Okay. Good. You want to take a moment?

6 ATTORNEY WILSON:

7 Why don't we ---?

8 MR. SHERER:

9 May I suggest we take a break?

10 ATTORNEY WILSON:

11 Yeah. Let's go off the record.

12 SHORT BREAK TAKEN

13 ATTORNEY WILSON:

14 Back on. Erik?

15 EXAMINATION

16 BY MR. SHERER:

17 Q. Okay. Mr. Racer, ---

18 A. Yes.

19 Q. --- in general, do you think that when the air
20 started giving you problems --- and you marked this
21 area on the map on 22 Headgate --- was that about the
22 same time that you guys quit coming up by the longwall
23 and up the connector and you started coming in the
24 section via the Glory Hole route?

25 A. Yeah. Yes.

1 Q. Okay. You mentioned several times that there was
2 a lot of air changes made around the Glory Hole area.

3 A. Yes.

4 Q. Who was in charge of this project and making those
5 changes?

6 A. I don't know who was in charge of it. I mean, the
7 super, I would suppose, Everett. I don't know, Hager.

8 Q. Hager.

9 A. Yeah. I guess him and higher-ups, or Terry Moore
10 was the --- like, the section boss, I guess, down here
11 at the Glory Hole ---

12 Q. Okay.

13 A. --- side with that project with the construction
14 going on with the Mother Drive and stuff.

15 Q. Okay. Did you ever run into Terry Moore or
16 Everett Hager in this area?

17 A. Terry Moore, yeah. Everett, not as much. I've
18 probably only seen him up there one time.

19 Q. Okay. Did your section boss or any of the people
20 on the section, did you guys complain to Terry Moore?

21 A. No.

22 Q. Okay.

23 A. Not that I know of. They might --- I never had.

24 Q. Okay. Do you know if the section bosses, either
25 Mr. Hutchens or Mr. Hilbert, complained about the

1 problems with air on the section?

2 A. Yes.

3 Q. Do you know who they complained to?

4 A. Everett.

5 Q. Okay.

6 A. Both of them.

7 Q. What was his response? Do you know?

8 A. He told us just to shut down until we found it.

9 Q. Okay.

10 A. Even if we had to stay in there for 20 hours.

11 Q. Okay.

12 A. He was just mad, though, when he said that, ---

13 Q. Sure.

14 A. --- that we weren't running. But as far as I

15 know, him and Everett and Terry, and I guess other ---

16 I don't know, outby people or something, that it

17 seemed like they were always working on ventilation

18 outby from us. Like at the old North Mains area. The

19 Ellis Switch, UBB track area, that side and the Ellis

20 punch-out. Seemed like they were always working on a

21 stopping or something. I remember being shut down for

22 a day because there was a return stopping on the

23 tailgate of the longwall was crushed out or something,

24 and it was --- they had no return on the longwall.

25 Q. Sure.

1 A. They made them fix that and we stayed outside, and
2 MSHA was there, waiting for Everett and Wayne
3 Persinger to come outside and take them back in to
4 lift it.

5 Q. Sure.

6 A. But they were taking too long, so the inspectors
7 said that we weren't waiting here no longer and it
8 would just stay down. And they took off, ---

9 Q. Sure.

10 A. --- which I would have, too. And so we come back
11 the next day and they said that they had it fixed, but
12 it was --- I don't know where that was. I just
13 remember that was probably about a month before, prior
14 to this incident, within a month or three weeks before
15 this incident when that happened.

16 Q. I know we had an order on this wall on March the
17 9th. Would that be about that same day?

18 A. Yeah, probably.

19 Q. Okay. Now, you say that Everett and Wayne and
20 some of the other higher-ups were always making ---?

21 A. Seemed like they were, always fooling with
22 ventilation.

23 Q. Did they ever tell you guys on the section that
24 they were going to be making changes or just ---?

25 A. Sometimes they would tell Smurf or Pat, you know,

1 we should have some more air coming here shortly, ---

2 Q. Okay.

3 A. --- that they're working on it.

4 Q. Okay. But you guys were in there and they were
5 outby working on stuff?

6 A. Yeah.

7 Q. Okay. Did your bosses have to call out when they
8 loaded their first shuttle car?

9 A. Oh, yeah.

10 Q. If they were spending an hour or two hours, maybe
11 even longer hunting down air, do you think there was a
12 lot of pressure to call out that firs shuttle car?

13 A. Yeah. They want to act like there's not, but you
14 know, there is. I would think there was. Smurf would
15 get --- he wouldn't get, like, mad or smothered out or
16 anything. He'd just --- you'd see that worried look
17 on his face like he ain't going to have a job if he
18 don't come up with some coal or something, so we'd try
19 to get ---. But like he said, if you ain't got no
20 air, you can't run.

21 I mean he told Everett, I don't have air, and he
22 just --- Everett's one of the reasons why Smurf left.
23 He was always hard on Smurf. I have no idea why. I
24 guess maybe something from past places they worked
25 together. I don't know, but he just --- Smurf had

1 told me ---. Well, I'm sorry to call him --- Rick
2 Hutchens ---. I'm used to calling him Smurf.

3 Q. Yeah, that's his nickname.

4 A. Yeah. Rick Hutchens had told me that he just
5 didn't really like Everett, that Everett would tell
6 him things that if they didn't hurry up and get the
7 air, then he wouldn't have a job. He'd find somebody
8 else that would find it and get in the coal faster.
9 You know, that was Smurf's --- that was Rick Hutchens
10 telling me that. I never heard Everett say that. I
11 have heard Everett cuss him ---

12 Q. Sure.

13 A. --- a lot upstairs, but I've never --- you know.
14 I just walk away. It's not for me to listen to.

15 Q. Sure. When you guys --- you said you were running
16 buggy on this section. Do you remember if at any time
17 they, instead of cutting with air on your back, they
18 cut through so that the air was coming over the miner
19 and over the buggy?

20 A. No. They wanted us to at first like that. They
21 wanted us to turn in Two. They wanted us to --- on
22 Headgate 22 and on Two entry they wanted us to do
23 a ---.

24 Q. A left-hand cut?

25 A. Yeah, or a right-hand and go around and hit

1 head-on. But if you punched through, the air would be
2 over, you know.

3 Q. Sure.

4 A. It'd be coming back.

5 Q. You would get all that dust.

6 A. And Chris Blanchard is the one that made the big
7 commotion about that. As far as I know, from hearsay,
8 he kind of wanted you to cut into the air because he
9 didn't want that miner to move out of One. And we
10 kept saying, well, we can just turn it with that
11 miner.

12 Q. Sure.

13 A. You know, because you can ventilate it and then
14 when you punch it through there, you just keep
15 traveling out. But finally he agreed that you could
16 do that.

17 Q. Was there some reason he wanted to do it that way?

18 A. I have no idea. I guess maybe in his head he
19 thought it was better.

20 Q. Could he have run more buggies if he'd done it the
21 way he wanted to?

22 A. Yeah, probably. That's probably one of the
23 reasons why, now that you've mentioned it. Yeah,
24 probably, because when he would be turning that turn,
25 --- you know, they run one at a time because this last

1 crosscut, I can't run through.

2 Q. Sure.

3 A. I could if we had real good air and the fly pads
4 --- you know, if we had real good air, but where the
5 air wasn't as great, you're trying to get as much as
6 you can. There was fly pads. Plus, we had to put
7 curtain real tight ---

8 Q. Sure.

9 A. --- and make sure it was on the ribs. There's no
10 way for him to run straight up and then me to cut
11 through ---

12 Q. Sure.

13 A. --- and run with him, so there was always just one
14 buggy when it come to turning out. So yeah, you're
15 probably right on that. You know, he's a numbers man.

16 Q. Sure, uh-huh (yes). You were talking about water
17 down in the longwall headgate from about 60 Break on
18 inby. Do you ever see that water roofed out?

19 A. Uh-huh (yes).

20 Q. Can you describe that to us?

21 A. Let me think. I'm trying to remember where they
22 said that was at, if I can remember the break. What
23 they got this here for? Is that where they were
24 saying the water was or something?

25 Q. I think it was water.

1 A. I can't remember if it was in between where we cut
2 through or on up. It wasn't too far --- it was in
3 this area right here in between 85 and 100.

4 Q. Okay. That's good enough.

5 A. On the old headgate panel. Water was roofed out.
6 There's four entries, so it had to have been, yeah,
7 anywhere from there to here. Water was roofed out in
8 all the entries besides the first one.

9 Q. Okay.

10 A. It was only about two foot away from the top in
11 that one.

12 Q. Okay. So it was roofed out in three of the four
13 entries and you had about two foot where air could go
14 through the Number One entry?

15 A. Oh, yeah, it was like an ocean. That water from
16 that fan sucking, you know, where everything's pinched
17 off?

18 Q. Sure.

19 A. You just had that much to go through and it was
20 like an ocean. Me and the guy named Tattoo --- his
21 name's Jacob Doss, we were the ones that went back
22 there to ---. We went with Jamie Ferguson and Andy
23 Kolson ---

24 Q. Okay.

25 A. --- to try to get that water out. Set up pumps

1 and all kinds of stuff. It was nasty. It was
2 horrible. It was the worst time I think I've had in
3 the mines.

4 Q. Oh, jeez. So Jamie Ferguson, Andy Kolson were in
5 there.

6 A. And Everett.

7 Q. And Everett were in there with the owner trying to
8 pump that water?

9 A. Yeah.

10 Q. Was the mine in operation at that time?

11 A. No, we were stopped because of that water.

12 Q. Okay. So the mine shut down. You guys were just
13 trying to get basically the main return air ---?

14 A. Right. And we weren't shut down --- I don't
15 believe we were shut down for the inspectors. I don't
16 think the inspector had seen that at the time. I
17 think they had made the call to stop running. You
18 know, we had no return. That had to do with our
19 return, too.

20 Q. Sure.

21 A. And the longwall didn't have a return, so you
22 know, nothing was going on. So we had to get at
23 least, like I said, a couple entries at least pumped
24 down so the wall could start back up.

25 Q. Sure. So at that point in time it was like you

1 were trying to ventilate the mine through a drinking
2 straw?

3 A. Yeah. It was horrible. It was up to my --- I had
4 chest waders on and I got back out of the water and
5 just took them off because it was weighing me down. I
6 just wore my regular clothes ---

7 Q. Sure.

8 A. --- because it was coming in over my chest waders.

9 Q. Oh, jeez. Do you know about when that was? You
10 say the wall was started up.

11 A. It was cold.

12 Q. It was cold.

13 A. I remember it was cold ---

14 Q. Sure.

15 A. --- because when we come outside I was freezing
16 every night.

17 Q. Was it before Christmas? Do you know?

18 A. Yeah, it was before Christmas?

19 Q. Was it around Thanksgiving?

20 A. It's actually, I think, before Thanksgiving, too.

21 Q. Okay. Would it have been about the middle of
22 October or so?

23 A. Yeah, in between October and November, right in
24 there.

25 Q. Okay. Thank you.

1 A. I just remember it being real cold outside. It
2 wasn't like January cold yet, but it was getting cold.

3 Q. Well, if you're in your neck up to water, I
4 imagine it's pretty cold.

5 A. Yeah, because when we left there I sat at 78
6 Switch for, like, an hour and a half, waiting on the
7 motors in that air.

8 Q. Oh, jeez.

9 A. And I said, call outside. Tell them I'm freezing.
10 You got to get me outside.

11 ATTORNEY WILSON:

12 Almost as cold as is it in here; right?

13 A. Oh, yeah, twice as cold. It was like the --- it
14 hurt, it was so cold. Your legs hurt, it was so cold.
15 It makes you feel like your bones are breaking.

16 BY MR. SHERER:

17 Q. Oh, jeez. When you were working on these sections
18 and inspectors came on the property, State or Federal,
19 was there ever any advance notice that they were
20 coming up?

21 A. Yeah.

22 Q. How common was that?

23 A. A lot. Not like a whole lot, but I mean, like, if
24 they had one --- not if they were on the property, but
25 if they were coming up or something. Sometimes if

1 they were on the property they would say. Just they
2 would say that we had company.

3 Q. Okay. Sure.

4 A. Because I was --- sometimes I'd answer the phone
5 when they called down the section where I run the
6 buggy. The phone would be flashing. You'd answer
7 it ---

8 Q. Sure.

9 A. --- and then the dispatcher would be like, you got
10 company. I'd be like, okay.

11 Q. Sure. Overall, do you think that the ventilation
12 in this mine was adequate?

13 A. You mean decent?

14 Q. Uh-huh (yes).

15 A. I think it was until that fan was put in.

16 Q. Okay.

17 A. I know that fan was there to help us, and it did.
18 Like, it pulled a lot of return, but it wasn't the
19 fan's fault. It was the people behind the ventilation
20 up this part of the mines, whatever they did, or I
21 don't know. Just didn't seem like it was good.

22 Now, the longwall, it was great for them I guess,
23 because they had told us they had, like, 137,000
24 coming across their intake. And that's major. I've
25 never seen that before anywhere.

1 Q. That's a lot of air.

2 A. Yeah. Now, that's just in my opinion. I
3 mean, ---

4 Q. Yeah, sure.

5 A. --- I can't tell you that's exactly, but just my
6 opinion, just seemed like ever since that situation
7 ---. After this headgate panel was done, the first
8 one, it just seemed like the ventilation went, I don't
9 know, downhill, because like I said, when we did the
10 crosscut to go to Headgate 22, it was great there. So
11 it's a little bit --- I think between the Glory Hole
12 project and the Bandytown fan.

13 Q. Would it be fair to say that there were areas in
14 the mine after the fan was connected and after the
15 longwall started up that had problems with
16 ventilation?

17 A. Yeah.

18 Q. Okay. Did you ever about anybody mining without
19 curtains?

20 A. Oh, yeah, I've heard about it.

21 Q. Do you think it went on at this mine?

22 A. I'm pretty sure it probably has. We had some
23 pretty bad bosses that I never wanted to work for,
24 which I didn't, but ---.

25 Q. Any particular location or boss?

1 A. [REDACTED] I've heard that he's bad. I heard
2 that he likes to run outlaw-ish. I never --- I worked
3 with him when I first started, but I really ---. I
4 was a scoop man, so I really didn't know anything
5 about a section and what went on, and he was only my
6 boss for a week and he became the mine foreman.

7 Q. Oh, okay. So he ran his section as an outlaw and
8 then they made him a mine foreman?

9 A. Pretty much. He made big numbers. So I hear. I
10 mean, I can't ---. I hate to say that ---

11 Q. Sure.

12 A. --- if he really didn't, but I mean from what I
13 hear, yeah, everybody you talk to. Like, I went to
14 transfer to Marshfork. I guess he used to be over
15 there.

16 Q. Sure.

17 A. And that's what they said about him, too. So I
18 hear it more than one place, I'm sure it's pretty
19 true.

20 Q. Now, you mentioned numbers several times. Do you
21 think there was a lot of pressure to get big numbers?

22 A. There used to be. Now, I don't know about when we
23 were over here. I'm sure there, because we weren't
24 running, but --- on Headgate 22, but probably 150 foot
25 sometimes. You know, that's a lot of sandstone you're

1 cutting. I'm sure they want you to move faster
2 because you see where the wall was.

3 Q. Oh, yeah, the wall was just about mined out.

4 A. The wall was a couple, what, another --- well,
5 they were starting to run real good. I'd say that
6 probably just another month ---

7 Q. Yeah.

8 A. --- and they would've had that licked, and then
9 been waiting ---

10 Q. Sure.

11 A. --- until we got all of that out through there
12 done. So yeah, there was a little pressure on trying
13 to, you know --- just got to drive faster. You got to
14 drive faster, which I understand it's all about making
15 money, too, but ---.

16 Q. Sure. What about methane monitors? You ever hear
17 of anybody bridging them out or putting something over
18 the sniffer or ---?

19 A. There's something that I had heard. We were just
20 talking about this, like, two months ago. I had heard
21 that the whole reason that this had happened was
22 because the dayshift boss on our Headgate 22 section
23 had come over here and bridged out a methane monitor
24 on the shearer.

25 Q. Why would a boss on a section ---?

1 A. I mean, exactly. That's what I said. I mean
2 that's what ---.

3 Q. Yeah.

4 A. Or he had called and asked how you do it or
5 something, I don't know. That's just what I heard. I
6 heard a few people mentioning that. I wouldn't
7 believe that out of that boss on dayshift, because he
8 was a really good guy. I wouldn't see him doing
9 anything like that.

10 Q. Yeah, and what would it get him?

11 A. I don't know, nothing. But that's just what we,
12 me and a couple other guys have heard. We heard some
13 people say that they had bridged out the methane
14 monitor on the shearer.

15 Q. Okay.

16 A. And somebody --- and then somebody else had said,
17 well, yeah, I heard it was the section boss from
18 Headgate 22 showed him how to do it or something. I
19 don't see that, because that guy was like a Christian
20 guy, you know. He was a good guy. I don't see him
21 doing something like that.

22 Q. Sure. Do you know if he'd ever worked on the
23 longwall?

24 A. Who's that?

25 A. Was that section boss Dean Jones?

1 Q. Dino?

2 A. Yeah, Dino. No, I have no idea if he's ever
3 worked on the longwall or not.

4 Q. Yeah.

5 A. I know he's worked for this mines for a long time.
6 As far as I know, that's who that --- when I started
7 there, that's who was there.

8 Q. Sure. Who did you hear this from?

9 A. Let's see. It was after the week that this had
10 happened. I had picked up my paycheck. It was just
11 some of the guys --- I never even worked with these
12 guys. It was, like, outby people. I guess they had
13 heard it from people. I don't know their names. If I
14 could think ---. We went to go pick up our check down
15 there at the main office, and that's when I heard
16 somebody saying --- just a bunch of guys that worked
17 up there.

18 So a lot of these guys that just started up here,
19 I don't know. I'd never seen them before, a lot of
20 these outby guys. They hired about three weeks before
21 all this had happened, a lot of people, red hats and
22 stuff like that. So I never really set eyes on them,
23 maybe here and there, so I really don't know their
24 names and stuff. I just know all the main people that
25 I've worked with for the last couple years here, just

1 the people that's been here or a while, the supers and
2 stuff like that.

3 Q. Sure.

4 A. I don't know none of the newbies. I didn't know
5 any of them guys, because I never worked outby a lot
6 lately.

7 Q. We've talked a lot about ventilation changes. Do
8 you think any of these ventilation changes were what
9 you'd call major changes, changes that would affect
10 the basic airflow enough to present a hazard? And
11 that's generally defined as a change in the airflow of
12 at least 9,000 cubic feet per minute.

13 A. Yeah, I'd say. Yeah.

14 Q. Those were done with men inby?

15 A. That was done with men inby?

16 Q. Yeah.

17 A. Oh, like us, if we done stuff? Unless them doors
18 --- I didn't do much other than some of the overcasts
19 and a couple of doors. The bosses and stuff did most
20 of the major ventilation change, because the mines was
21 shut down over it.

22 Q. Okay.

23 A. So it was more outby with ventilation than it was
24 the inby people. The inby people mainly just took
25 care of their part ---

1 Q. Yeah.

2 A. --- you know ---

3 Q. Their section.

4 A. --- from the intake up, you know? That's on us.

5 You know, check curtains, line curtains, that's all on

6 us there, and you know, everything else was outby

7 besides when we had to get air, you know, try to fix

8 stuff to get air this way or open up them doors up

9 here at the Glory Hole side.

10 Q. Sure. What about retaliation? Did you feel

11 comfortable reporting problems with health and safety

12 or do you think if somebody did report problems with

13 health and safety, they would be retaliated against?

14 A. I had never really reported too many problems

15 myself besides one time. I didn't feel safe going

16 back behind the wall. There was a lot of bolts

17 popping off. You could hear them ---

18 Q. Sure. Oh, jeez.

19 A. --- pinging ---

20 Q. Yeah.

21 A. --- because of the weight. And it had just fell

22 up there. It was around November. And I just didn't

23 feel real comfortable going up there. And I had told

24 Everett that I didn't feel like I should go back

25 behind that wall no more. And I think at first he

1 seemed mad. He seemed like, you know --- he said,
2 well, I have nothing else for you.

3 And then I said, well, I don't know what to tell
4 you. I said, I'm not going. I told you nicely. I
5 said, now, I'm going to tell you, I'm not going. And
6 he said, well ---. And he said, I guess just leave.

7 I said, all right, I will. So I put my rescuer on
8 the desk and he told me to stop and asked me what I
9 did. And I told him I could run a buggy and scoop, a
10 couple other things, and he told me, just go to Four
11 section with Hammer and his crew and run a buggy or
12 help bolt or something. I said, okay. And after that
13 --- there was no more after that. He never, like,
14 picked on me or nothing like that. That was pretty
15 much it, just ---

16 Q. Okay.

17 A. --- right there. So from my point of view, I've
18 heard that, yeah, they, you know --- especially, you
19 know, like Smurf. He would --- you know, like I was
20 telling you, he'd take a long time getting air, you
21 know. And he'd get supposedly cussed out or something
22 over it. You know, he didn't want to hear that. He
23 was a good man, you know, Christian guy and church-
24 going. He didn't want to hear nobody sitting there,
25 G.D. this and G.D. that in front of him, so ---.

1 Q. Sure.

2 A. But from my point of view, you know, I had told
3 him one time, I --- well, I had told the ---. Well,
4 I'll tell you something that made me mad. I told the
5 safety director first, and his name was Berman. I had
6 told ---.

7 Q. Berman Cornett?

8 A. Yeah. I had told him that I didn't feel safe
9 behind the wall and that he --- I asked him. I said,
10 is that legal to be back there while they're running?
11 I said, I don't know. I said, I'm not trying to make
12 it a legal matter. I said, I just don't feel safe.
13 I said, I figured I'd come talk to you. And he kind
14 of made me feel like, you know, I didn't have a right
15 to talk to him, that he didn't have no power over it.
16 You know, he kind of told me that, you know ---. He
17 said, I've been back there a few times. He said, it's
18 really not that bad. He said, I've been in a lot
19 worse. He said, it's just part of the job. And it
20 kind of made me think, you know, here's a safety
21 director. You're supposed to come to him if you don't
22 feel safe ---

23 Q. Sure.

24 A. --- and I kind of felt like he was pushing me away
25 or kind of made me feel like, oh, I was going to do it

1 regardless.

2 Q. Let me ask you a slightly different question.

3 Have you ever been trained in miners rights?

4 A. Uh-uh (no).

5 Q. Do you know that you got some rights?

6 A. Yeah, somewhat, but I don't really like know them,
7 know them, you know what I mean? I don't know what
8 they really are to ---

9 Q. Yeah.

10 A. --- express them out or anything like that.

11 Q. Well, under the --- under the Federal Mine Act,
12 you're not required to work in anyplace that you think
13 is a hazard. You have to report that to your
14 supervisor. You have to be reasonable about it, you
15 know.

16 A. Right.

17 Q. But a miner can withdraw himself from anyplace
18 that he thinks is going to be a hazard to his health
19 or safety. You also have some other tools. You can
20 file a complaint. I think you can file a complaint
21 with the State. You can file a complaint with MSHA
22 and we'll come out and check it out.

23 We have a 1-800 anonymous telephone line. You can
24 call in. You can do it over the internet if you want
25 to do it that way. You can tell an inspector. If you

1 see an inspector at Wal-Mart, tell him. You got a lot
2 of rights and we're trying to give you a lot of tools
3 so you can do it ---

4 A. Right.

5 Q. --- in a way that won't jeopardize your job.

6 A. Right.

7 Q. And if you go to our webpage, www.msha.gov,
8 there's a --- one of the main items is miner's rights
9 and there's quite a bit of information on that.

10 A. I have to check that out and read up on that.

11 Q. Sure, uh-huh (yes). That's all the questions I
12 --- well, I got --- I got a couple more questions.
13 These are tough ones.

14 A. Okay.

15 Q. What do you think caused this explosion, just your
16 own opinion?

17 A. My own opinion, I still believe that, you know,
18 they had people working on that water where we were at
19 on the old headgate. I believe that water had roofed
20 out again and stopped the return and caused a buildup
21 of methane.

22 Q. Uh-huh (yes).

23 A. I don't know what would've arced it, but I just
24 think there was a buildup. Maybe it had just leaked
25 over or something or ---. There's two things, that it

1 could've built up back here and the top was so bad ---
2 I told you the roof bolts were falling out left and
3 right and the top was coming down --- that maybe that
4 that could've arced it, the roof bolts hitting metal
5 up against each other or something.

6 Q. Sure. And you're pointing to the back end of the
7 longwall?

8 A. Yeah, where the water and stuff was, where it's
9 roof out in the three out of four entries and almost
10 four. And there was one more that --- I'm not too
11 keen on this. This is crazy. That was more my
12 thoughts, but that's just an opinion, you know?

13 Q. Sure, uh-huh (yes). We're looking for any clues
14 we can get around here.

15 A. Another one was you said that you knew that they
16 had this wall shut down, like, a week prior to this
17 happening because they were ---. It's on the board.
18 I remember seeing it on the board. They had it shut
19 down because of a return stopping ---

20 Q. Yeah.

21 A. --- was crushed out. They had it, like, 100 and
22 some on the face on the intake and they only had,
23 like, 200 cubic feet in the return. And it don't make
24 sense to have it right here, coming straight down,
25 then it's not going nowhere. So that's when they got

1 it shut down or (d) ordered or something about that
2 crushed out stopping. Well, what's to say that that
3 didn't happen again when they advanced later on in
4 that week, you know? And obviously they were running
5 before when it was like that, because the inspector
6 shut them down.

7 Q. Sure.

8 A. So you know, obviously it didn't feel like they
9 respected him, so what's to say it didn't happen again
10 and they didn't catch it and it built up there ---

11 Q. Sure.

12 A. --- and it came back into the face with it?
13 That's just my only two opinions that I have. I don't
14 know if that would be even remotely close to anything,
15 but ---.

16 Q. Well, everything helps. We're looking for clues.
17 Did you hear about any ventilation changes being made
18 over that long Easter weekend?

19 A. Yeah.

20 Q. What specifically?

21 A. I don't know, just rerouting stoppings. That was
22 more outby, too, from what I heard, like, out towards
23 the Ellis punch-out way.

24 Q. Yeah, they were trying to set up a new panel
25 there ---.

1 A. Yeah, a new panel there. They had doors set up
2 when we come back.

3 Q. Okay.

4 A. But we weren't using them at the time. I don't
5 think it was ready to use them.

6 Q. They weren't closed?

7 A. Right.

8 Q. They were open. Anything else as far as a
9 ventilation change?

10 A. During Easter?

11 Q. Yeah, uh-huh (yes).

12 A. Not to my knowledge. Like I said, you never knew,
13 though, because it seemed like they were always doing
14 ventilation.

15 Q. Sure, uh-huh (yes).

16 A. I'm sure they were doing something.

17 Q. Yeah. Okay. Now, second tough question, what
18 would you recommend that we do to try to figure out
19 what happened in this mine? Is there someplace we
20 should look, somebody we should talk to?

21 A. I'm sure you probably talked to all the bigger
22 people like Everett and stuff by now.

23 A. No. We actually haven't. We've been working up.
24 I'm trying to think. I don't know who you would need
25 to talk to or --- I'm trying to think who fooled with

1 this. There was a guy that would probably know a lot
2 more about this than I would when it come to water.

3 Q. Who was that?

4 A. Andy Kolson is one of them.

5 Q. Okay.

6 A. And a guy named Jeremy Burdoff. They put him in
7 charge or something after we got back to running
8 again.

9 Q. Sure, uh-huh (yes).

10 A. They put him in charge of all that water back
11 up ---

12 Q. Sure.

13 A. --- through that way in the old headgate.

14 Q. Okay. We'll talk to them.

15 A. But I don't know if he was in charge when it
16 happened, when all that stuff happened, if he was
17 still in charge. They might've moved him and his crew
18 somewhere else ---

19 Q. Sure.

20 A. --- and just left that alone. That's why I think
21 if they did that, that that could've built back up.
22 But he was in charge so he would know a little more
23 about areas and exact breaks for you guys, I would
24 believe, than ---

25 Q. Sure.

1 A. --- I would, because it's been a long time since
2 I've been up there. I just remember the haunting
3 parts about it.

4 MR. SHERER:

5 That's all the questions I've got. Beth

6 MS. SPENCE:

7 Yeah, I have ---.

8 EXAMINATION

9 BY MS. SPENCE:

10 Q. Could you walk us through your day on April 5th?

11 A. Yeah.

12 Q. You were underground?

13 A. I'd just started. I wasn't, like --- really I was
14 only about three breaks, which is about --- a normal
15 block being 100 foot, about 300 foot under, tops. We
16 were actually running behind. You want me to just
17 start from, like --- after you get dressed you start
18 walking towards the mantrip?

19 Q. Uh-huh (yes).

20 A. Okay. We were just --- we were running a little
21 behind. They make us fill out these reports to say
22 who all's on the mantrip and fax them over to the main
23 office and stuff, so our boss was running a little bit
24 behind, which made us run a little bit behind. But we
25 walked to the mantrip. You walk at the Ellis

1 punch-out. The mantrips aren't outside at the time.
2 They didn't have that part fixed up.
3 They leave them underground on charge. And
4 they're about three breaks underground, so you had to
5 walk --- we walked all the way to the mantrip. And
6 when I first got in there I noticed that the power ---
7 you could see the lights on around that corner. You
8 walked two breaks, two and a half breaks and then it
9 turns to the left. And right there is, like, two
10 mantrips and a couple charging stations. We walk up
11 there. We were getting on the mantrip when I --- I
12 thought I could see light. I'm not 100 percent sure
13 if I seen the light or not, but I do notice that when
14 I was setting down that the power, it went off in
15 front of us at the other chargers around the corner,
16 because our mantrip was like this. And I think our
17 charger was already off. I'm not a hundred percent
18 sure, but the chargers up here weren't.
19 When we set down, I sat beside Greg Krauss, which
20 is the other buggy man. He's an older guy. He's a
21 good friend of mine. I sat down beside him and the
22 longwall crew was in front of us. They were already
23 ready to go. They were waiting on their boss, too,
24 and our bosses was coming in. At that time the lights
25 went out, that when the chargers --- around the

1 charging centers, all the power went out. Didn't
2 think nothing about it. That stuff happens all the
3 time. Power goes out all the time. Breaker knocks.
4 Because the belt was still running. You could hear
5 the belt running. And then you felt air pick up and
6 hit you in your face, which in my opinion, I thought
7 was the wrong way. I didn't think it comes out of
8 that portal. It's supposed to be coming in, you know?
9 I didn't think about that until after that
10 happened, though. You know, you just feel the air.
11 It's like, what? And it felt like sand picking up,
12 you know, like at the beach, ping-pong in the face
13 when it starts blowing real hard? And you couldn't
14 hear the belt, and all of a sudden you heard this big
15 roar, and that's just when the air just picked up. It
16 was just like that (indicates sound). I'd say it was
17 probably 60-some miles per hour. Instantly black. It
18 took my hardhat and ripped it off my head, it was so
19 powerful. I didn't know what was going on, you know.
20 I didn't think of an explosion. I never been in one
21 in my life, so you know, that's not the first thing I
22 thought. I didn't know what was going on.
23 When it first happened, I thought they had shut
24 them doors that they just put down there or something,
25 and it was just a sudden burst of dust and stuff. And

1 it just kept getting stronger and stronger, and then I
2 knew something was wrong.

3 All I could hear was Greg telling me, you know,
4 get up. You got to go. We got to get out. Well, I
5 didn't know where out was. My hardhat was off and my
6 light was dangling. I couldn't see nothing. I could
7 feel him holding onto me and he's like, come on. So
8 we got out.

9 And when we walked I accidentally pushed him down
10 because the wind was pushing me so hard I had to,
11 like, almost hold onto the mantrip. I mean, it was
12 really forceful. I never felt nothing like that
13 before. At that point I had no idea where the
14 longwall crew was in front of us in that mantrip.
15 But we had got out and it broke my hardhat and took it
16 and slung it up against the mantrip when I tried to
17 put it back on. And it cracked it.

18 We got out. I could see light, because, you know,
19 we was only three breaks in. Could see light, so you
20 know, you run as fast as you could. A couple guys
21 that was down a little farther down from us had donned
22 their rescuers, you know. They didn't know what was
23 going on either, and we set out there. We watched
24 stuff come out of there, crib blocks, you know, thrown
25 out of the portal. That's pretty tough. That could

1 have been a hazard to us, even just three breaks in,
2 you know, hit us in the head. Then there was a lot of
3 black dust, you know, everywhere. The longwall crew
4 come out right after we did. We were just kind of ---
5 me and Greg was kind of the last ones to come out. We
6 come out with kind of, like, the longwall guys.
7 Everybody else was already out, waiting for us.
8 Somebody mentioned a fall. Something went bad, and
9 then somebody --- his name was Stanly Stewart. He had
10 mentioned --- and he said, boys, I'll tell you what.
11 He said, I've been in the mines a long time. He said,
12 I don't think that's no fall. He said, a fall is an
13 instant. He said, that lasted a couple of minutes.
14 So then we started thinking for the worst and all
15 of them haunting noises of the phones, the COs going
16 off, the belt bosses, all that stuff, all them beeping
17 noises and stuff and no one answering the phones. And
18 something just seemed wrong. They kept trying to get
19 ahold of them, ahold of them, and I think Gary May and
20 somebody else, Rick Foster and them, had went back
21 underground, trying to see where a guy named Stevie
22 Harrah --- trying to get ahold of him.
23 They didn't know what was going on. They just
24 took their methane monitors and ran back underground
25 about 35, 40 minutes after all this happened. But we

1 kept trying to get ahold of people. I just sat
2 outside. Everybody had kind of left after about an
3 hour and a half of this besides our crew. We were the
4 only crew up there.

5 And I just set on the phone to listen to see if
6 anybody would answer, and they couldn't get ahold of
7 Dino, nobody on his crew, no --- I mean it's, like,
8 dead silence. No one was answering. So you know, you
9 got that gut feeling that something bad happened.

10 Then I kind of wanted to leave, you know. I didn't
11 want to stick around then, but I didn't. I was an EMT
12 so I figured if anything was to happen, they might
13 need my help. I'd want them to stay there for me.
14 But I had heard that they had found somebody and that
15 he was all right. He was just a little delirious or
16 something. They said he wasn't making any sense at
17 first, and then they --- it was that Timmy Blake.

18 I think that's his name.

19 They had found him and all --- they called back
20 outside and said --- he said to get ambulances, as
21 many as you can. And they said, why? And he said,
22 because --- he said that he didn't know what was going
23 on, but he said the rest of the men was laying around
24 the mantrip. Oh, man, that right there. My heart
25 dropped. I thought, oh, man. This is not good.

1 Shortly later they got them, I guess, up on the
2 mantrip and brought them outside and he hollered for
3 everybody to help. And we had pulled them off one by
4 one and Craig Boggs was there then. One of the
5 paramedics had showed up. You know, this was before
6 the big the big scene, you know, with 100s of people
7 there. But it was just one ambulance there. Waiting
8 on another one to come up the hill. Craig Boggs, Gary
9 May, Berman and Jim Walker, they showed up. I can't
10 remember who else was there. I know our crew was
11 there. It was such a hectic day, it was hard to
12 remember who all was around.

13 I just remember trying to give CPR to whoever I
14 could or help float out somebody if they needed help.
15 Or try to hook up as much oxygen bottles as I can for
16 people. Just did whatever I could to help. Some more
17 paramedics arrived and then that's when they --- the
18 one guy kept coming around and he would declare them
19 if they were dead or not, which almost every single
20 one of them that they brought out was dead.

21 Those guys were horrible looking. It still messes
22 --- sometimes when I think about it, it's still hard
23 to look at that picture in the back of my head and how
24 they smelt and what they looked like, you know. Some
25 things still remind me of it when I'm underground now,

1 noises. Those phones that they use over there where
2 I'm at now make some kind of weird noise when they
3 page a section and it just makes me think.
4 Ambulances going by makes me think of it and every
5 time I hear a siren or ambulance flashing lights, kind
6 of makes me take a --- you know, like, a deep breath
7 for a second.
8 It was definitely a weird situation and something
9 I thought I'd never see in my lifetime, never wanted
10 to see and hope I never see it again. So I'm here to
11 tell you whatever you need to know as much as I can
12 tell you, because I don't want to see it happen again.
13 A lot of them guys were my friends. But you know,
14 they helped me from the day I started when I was a red
15 hat, didn't know nobody and messed with me, made me
16 tougher until this happened.

17 MR. SHERER:

18 Sure.

19 BY MS. SPENCE:

20 Q. How long did you stay that evening? Do you
21 remember?

22 A. Until about 9:00 --- until about when I looked
23 over the hillside and it looked like --- I don't know.
24 It looked like something at 9/11 when the Trade
25 Centers went down, you know, just ---. I couldn't

1 believe how many ambulance --- there was probably 42
2 ambulances at the bottom of the hill at least. I'd
3 say MSHA was lined up from the bottom of the hill all
4 the way up the side of the road, the curve, the first,
5 the second switch back and all the way up there, just
6 lined up on the side of the road. And there was
7 probably --- I'd say probably 35, 40 of them, too, at
8 the time. And more was coming. Mine rescues from all
9 over came. It was wild.

10 I stayed there until about --- well, it might not
11 have been 9:00. It might've been around 7:30, eight
12 o'clock. About 8:30, I said that I felt sick after
13 they declared all of them men dead and ---.

14 MR. SHERER:

15 Sure.

16 A. I set back and I smoked a cigarette while I was up
17 there. I got in my car. I had to have a cigarette.
18 And I set back and it just kind of made my stomach
19 hurt. And then all of a sudden it dawned on me that I
20 hadn't talked to my wife. And it's like, I need to
21 get ahold of her. And that's when I hurry up, ran
22 upstairs, but they wouldn't let us use the phones. I
23 guess they were scared to get this out, which I mean
24 as much as commotion that was up there already, you
25 know, what was the point?

1 MR. SHERER:

2 Sure.

3 A. But I guess --- I don't know. They had somebody
4 like they were guarding the phone or something. At
5 first the phones weren't working, and then they
6 started to and they didn't want nobody on the phone,
7 didn't want nobody calling out. I guess just maybe
8 waiting for a call or something.

9 But so I just rushed home after that, because
10 there was still more men in there and they said it
11 could be --- and they told us to --- y'all want to go
12 home, anyway. After I left they told the rest of them
13 that they needed to leave, because they needed the
14 space up on the hill.

15 But yeah, I kind of rushed home, because I forgot
16 that my wife --- I'm sure that she had heard. When I
17 got home, she was devastated. She thought I was a
18 ghost or something, because all she knows is that on
19 TV all it said was six dead, twenty-nine missing. And
20 she can't get ahold of me. And she knows that's when
21 I go in underground, so it was definitely a bad day,
22 even for her, even my wife not experiencing or not
23 knowing anything about coal mining. That killed her
24 inside.

25 Now, when I started back about a month later to

1 work again, about three weeks down the road when I was
2 late the first time, it killed her, you know. She
3 called 100 times at the mine. When I got outside they
4 told me, your wife has called. I said, I can't blame
5 her. I understand.

6 BY MS. SPENCE:

7 Q. Yeah, that's very understandable. Where did you
8 go back to work to?

9 A. I went to a place I hope I never have to go back
10 to again. I went to Marfork. I don't like crawling
11 on my hands and knees. It's pretty low in there. I'm
12 a pretty big guy. I'm not exactly physically fit, so
13 crawling on your hands and knees, walking, crawling to
14 boulder to boulder and helping supply and build
15 stoppings and stuff, it's kind of hard on a guy my
16 size, so I didn't like that situation.

17 I didn't feel like, you know, I had anything to
18 with this. You know, I could walk around and stand
19 anywhere in this mines. I would figure they would've
20 at least put me somewhere where I could still walk
21 around or, you know, not put me somewhere I would
22 never been used to or done.

23 MR. SHERER:

24 Sure.

25 A. And when you work in low coal, you got to rethink

1 everything. You got to relearn how to work. It's
2 like starting in the mines all over again, you know.
3 Everything's different when it comes to low coal.

4 BY MS. SPENCE:

5 Q. So where are you working now?

6 A. I work at a much nicer place now. I work for ---
7 at Round Bottom, Shonk. I guess it's Elk Run ran,
8 because I'm still under Performance, though. I've
9 never switched. I'm still paid through Performance.
10 My timesheets are Performance. Everything's
11 Performance, but I'm at Round Bottom Shonk. I'm on
12 Three section now. It's pretty nice there. It's well
13 taken care of.

14 Q. Okay. One more question.

15 A. Okay. Good.

16 Q. You talked about Mr. Hutchins and Mr. Hilbert as
17 folks that sort of took care of you underground and
18 didn't put you --- I think your words were ---

19 A. Harm's way?

20 Q. --- didn't put you in harms way?

21 A. Yeah.

22 Q. Were there people who you felt ---

23 A. Would?

24 Q. --- put you in harm's way or would put you in
25 harm's way there?

1 A. Andy Kolson would have been one of them, I would
2 believe. He never did, but I wouldn't put it past
3 him. He's one of them type guys. Brandon Bowling was
4 a guy that worked over there with the headgate. He
5 was on the swing shift crew. They weren't there that
6 day. I've heard a lot of things about him. I've
7 never had to really work for him.

8 I did when I first went to Marfork and he didn't
9 seem that bad over there. He was all about safety,
10 but of course it was after this had happened. Maybe
11 he wasn't before it happened, so ---. You know,
12 people's attitudes change after this happens, but then
13 you find out who they really are, because I'm sure
14 they'll fall back into their old ways if they were
15 like that, eventually.

16 But now, I don't know. I guess --- I couldn't
17 tell you who because I never really worked for may
18 people underground boss-wise. Just people that would
19 put off that would be somebody like Andy Kolson, or
20 Everett at the time I thought would. But you know,
21 after I had that talk to him, told him I wasn't going
22 behind that wall, you know, he was a little mad for a
23 second, but after that he was fine with it, so I don't
24 think he would. If you felt like you was unsafe, I'm
25 sure he wouldn't make you do it.

1 Of course you're a grown man. I'm sure they
2 wouldn't make me do anything I wouldn't want to do.
3 You've got the choice, like you said. If you don't
4 feel safe doing it, then I wouldn't do it. But that
5 was the whole thing at this mines. Before that fan
6 and ventilation and everything else, everybody asked
7 me, man, why'd you work there if it wasn't safe? But
8 see, in my head, unless I was brainwashed or
9 something, in my head I felt like it was a safe mines.

10 MR. SHERER:

11 Sure.

12 A. I mean, I really did, I did. I felt like it was a
13 safe mines. The first couple years that I worked
14 there, man, I had a great time here. Everything was
15 really nice, ran really nice. The management went
16 downhill shortly after about a year of working there,
17 but up until this, end of this panel and putting in
18 the fan, everything started going to --- I don't know
19 how you word that, but you know what I mean.

20 MR. SPENCE:

21 Thank you. That's all I have right now.

22 RE-EXAMINATION

23 BY MR. FARLEY:

24 Q. Okay. A couple things to clarify. Earlier when
25 we were talking about floor hooving on Headgate 22,

1 now, did the floor hoove or just break up?

2 A. Break up.

3 Q. Okay. Now, when the bottom would break up on
4 Headgate 22, would water come out? Would it seep out,
5 trickle out? How would that happen?

6 A. Well, you could hear it bubbling underneath the
7 water when water was already there. You could hear it
8 like it was seeping out or something, but it was more
9 of, like, a process. I mean, you didn't see it rise,
10 the water level rise or nothing. Like, if we come in
11 that day and did a cut ---. The miner can, you know,
12 back up and drag his pan down and clean up gob and
13 load most of that water out and then put it on the
14 belt and it'll go off with the coal.

15 But you would notice it then, because it would be
16 kind of dry. It would be about like that. And then
17 when you go to go cut in Two, then you come back to
18 Three, when you come back to Three it's about that
19 deep.

20 Q. Okay. Now, you did some ---?

21 A. Okay. It was about --- yeah, let me clarify. You
22 go over to Three and you cut. The miner would load
23 out the water. You'd get it down to about three or
24 four inches deep, maybe even less. And you get a cut
25 out at Two, you know, prior to taking about an hour

1 and 45 minutes in the sandstone and stuff, and you
2 come back to Three, and when you come back to Three,
3 it looked like it just started again. The water would
4 be back to about a foot and a half deep.

5 And then you'd see changes, like, from shift to
6 shift. Like, you go home, you come back and all of a
7 sudden Number Three needs a pump in it. It's three
8 and a half foot deep.

9 Q. Sure.

10 A. But and then you'd go two or three crosscuts up
11 and they'd go uphill to try to get out of the water a
12 little bit and get on top of it, and it would be fine,
13 and then another crosscut on past it, it would start
14 doing it again, so ---.

15 Q. Also, on Headgate 22 you mentioned that you guys
16 used a four-wheeler vehicle.

17 A. Yes.

18 Q. Now, this four-wheeler vehicle, was it large
19 enough to accommodate an injured person on a
20 stretcher?

21 A. Yes. Yeah, ours was pretty big.

22 Q. Okay. Now, last question.

23 A. I don't know if I would want to be on that. That
24 thing's a bumpy ride.

25 Q. You indicated that following the explosion on

1 April 5th when you were outside at the Ellis Portal
2 and when the bodies were brought out, you assisted.
3 You mentioned a smell. Would that have been the ---

4 A. The dust.

5 Q. --- the odor of soot and dust?

6 A. Yes, the odor of soot and dust.

7 Q. All right.

8 A. Exactly right.

9 MR. FARLEY:

10 All right. Thank you.

11 RE-EXAMINATION

12 BY MR. SHERER:

13 Q. I only have one question. The trip that came out
14 with the victims, who was driving that trip? Do you
15 recall?

16 A. I can't remember if it was Gary May or Rick
17 Foster. I'm trying to think who else was with them.
18 It was one of them, I think. I'm not 100 percent
19 sure. I just remember them being there with it,
20 because they got out of the mantrip. Gary May
21 might've been up front with one of the guys, trying to
22 give CPR on the way out.

23 MR. SHERER:

24 Okay. Thank you.

25 EXAMINATION

1 BY ATTORNEY WILSON:

2 Q. Just a quick, quick point. Did you ever hear of
3 anyone smoking underground at the mine?

4 A. No. That's something I have never heard of since
5 the time I started there as a red hat. So no, I've
6 never heard of any --- I've never even heard of any
7 stories of anybody saying that they've seen somebody
8 smoke underground.

9 Q. Did they do smoking material searches at the mine?

10 A. Oh, yeah.

11 Q. How often?

12 A. That they did. I think they --- well, they did
13 that once a week, the patting down, checking your
14 bucket, your hat and stuff like that. But they always
15 talked about it, you know. They always had their
16 safety meetings, stuff and they'd talk about smoking,
17 but they did the smokers, like, the search, like,
18 patting you down and stuff, like, once a week.

19 Q. All right. Anything else?

20 A. Yeah, that's what I was going to say. I've heard
21 a lot of people say, yeah, back when I worked in the
22 mines you could smoke. And then I've heard people
23 say, we caught somebody smoking. I can honestly say
24 100 percent that I've never heard a story nor seen
25 with my own eyes of anybody ever smoking in this

1 mines. Outside in the parking lot but never around a
2 portal or in the mines.

3 Q. All right. Before we conclude and go off the
4 record, is there anything else that you would like to
5 add to the record?

6 A. I just need to ask a question about the track.

7 Q. Sure.

8 A. This was probably up to here, somewhere around
9 here, now, the Headgate 22. The track --- okay. I
10 didn't understand. How far does track have to be from
11 the face, 500 feet?

12 MR. SHERER:

13 We don't have any regulation that says
14 you have to have any track.

15 A. Oh, really?

16 MR. SHERER:

17 In fact, we got --- probably at least
18 half the mines in the nation don't have a bit of track
19 in them because they use rubber tires.

20 A. Right. But you do still have to have a ride.

21 MR. SHERER:

22 No, we don't. The State ---.

23 MR. FARLEY:

24 Regulations have changed somewhere in the
25 last few years. Typically 500 feet, but for that 500

1 feet can be in conjunction with some other type of
2 rubber tired vehicle. Now, as of the last couple
3 years is a requirement that for a mantrip of
4 sufficient size to accommodate the amount of people on
5 the section must be available.

6 A. Right.

7 MR. FARLEY:

8 Now, again, that could be track-mounted
9 equipment or that could be rubber-tired equipment.

10 A. Right. Okay. I was just wondering, because we
11 had to walk from pretty much right here where you
12 turn, somewhere in here on Headgate 22, from here to
13 20 breaks all the way up to the section all the time.
14 And I thought that was kind of unsafe. Something
15 happens, that's a good 15, 20-minute walk for us.
16 That's a life and death situation when it comes to
17 bleeding or anything like that. I mean, that's ---.
18 The guy's already dead by then if he's majorly
19 bleeding. But they had a rubber tire emergency ride.
20 But they said that the inspector --- we had to
21 walk for the last couple weeks before this happened,
22 because they said the inspector said that we couldn't
23 --- it was illegal to use that because it was an
24 emergency ride only.

25 MR. FARLEY:

1 Now, there may have been a notice of
2 violation issued by a State inspector in the week,
3 days or weeks preceding the explosion on that very
4 subject.

5 A. Oh, okay.

6 MR. FARLEY:

7 That's illegal.

8 A. Yeah. See, I didn't know the laws or nothing
9 about this. I was just wanting to clear that --- I
10 just wanted to know myself.

11 MR. SHERER:

12 Yeah. We understand that there was some
13 violations issued for that emergency ride. It wasn't
14 being maintained.

15 A. Yeah, like, they had a tire problem or something.

16 MR. SHERER:

17 Yeah, I think the tire ---.

18 A. A break in the tires, and we had the guy come out
19 and check it, and it actually passed that time.

20 MR. SHERER:

21 Yeah.

22 A. It was in bad condition at first. That's why we
23 had to walk so much.

24 MR. SHERER:

25 Yeah. That's just something that we

1 don't have a regulation for ---

2 A. Okay.

3 MR. SHERER:

4 --- on the Federal level.

5 ATTORNEY WILSON:

6 Was there anything else?

7 A. That's pretty much it.

8 ATTORNEY WILSON:

9 All right.

10 A. I couldn't think of anything else to ask or add.

11 I pretty much think I said everything I needed to.

12 ATTORNEY WILSON:

13 All right. Well, if you think of any

14 other information, we've provided you with the contact

15 information. You can reach us, so please feel free to

16 give us a call if there's anything else that you think

17 would be helpful. Before we finish I want to inform

18 you of your rights under the Mine Act.

19 Any statements given by miner witnesses

20 to MSHA are considered to be an exercise of statutory

21 rights and protected activity under Section 105(c) of

22 the Mine Act. If you believe that any discharge,

23 discrimination or any other type of adverse action is

24 taken against you as a result of your cooperation with

25 this investigation, you should contact MSHA and file a

1 complaint under Section 105(c) of the Act.
2 Remedies under the Mine Act include back
3 wages and immediate temporary reinstatement to your
4 most recent position pending a complete investigation
5 of the complaint. In order to file a complaint you
6 would contact the MSHA district office in Mount Hope.
7 And the contact information for that office can be
8 found at the MSHA website that Erik mentioned earlier,
9 www.msha.gov, that you can get that information there,
10 as well as other information about your rights under
11 the Mine Act.

12 On behalf of MSHA and the Office of
13 Miner's Health, Safety and Training, again, I want to
14 thank you for coming in today. I'll remind you that
15 we request that you not discuss your testimony with
16 anyone else, because we will be interviewing
17 additional witnesses. And if there's nothing else,
18 then we're through and we'll go off the record.

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STATEMENT UNDER OATH CONCLUDED AT 10:25 A.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Alison Salyards, 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.



Alison Salyards