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Transcript of the Testimony of Michael Shumate

Date: June 22, 2010

Case:

Printed On: June 25, 2010

Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH

OF

MICHAEL SHUMATE

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 & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, June 22, 2010.

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A P P E A R A N C E S

ROBERT S. WILSON, ESQUIRE

U.S. Department of Labor

Office of the Regional Solicitor

1100 Wilson Boulevard

22nd Floor West

Arlington, VA 22209-2247

PATRICK C. MCGINLEY

West Virginia Independent Investigation

West Virginia University College of Law

P.O. Box 6130

Morgantown, WV 26506-6130

DAVID STEFFEY

National Mine Safety and Health Academy

1301 Airport Road

Room C-137

Beaver, WV 25813-9426

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

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JOHN O'BRIEN
Safety Instructor
West Virginia Office of Miners' Health,
Safety and Training
Welch Regional Office
891 Stewart Street
Welch, WV 24801-2311

DANNY JARRELL
West Virginia Office of Miners' Health,
Safety and Training
137 Peach Court
Danville, WV 25053

REBA CONRAD, REPRESENTATIVE FOR MIKE SHUMATE

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P R O C E E D I N G S

ATTORNEY WILSON:

Good afternoon. My name is Bob Wilson.

I'm with the Office of the Solicitor, United States Department of Labor. Today is June 22nd, 2010. We're here to conduct an interview of Mike Shumate. With me is Dave Steffey. He's an investigator with the Mine Safety and Health Administration. And these other people sitting here at the table are with the State of West Virginia, and I'll allow them to state their appearance for the record.

MR. MCGINLEY:

Patrick McGinley, the Governor's independent investigation team.

MR. O'BRIEN:

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

MR. JARRELL:

Danny Jarrell, Office of Miners' Health, Safety and Training.

ATTORNEY WILSON:

There are several other members of the investigation teams also present in the room today.

All members of the Mine Safety and Health

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

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

1 Training. We appreciate your assistance in this
2 investigation.

3 After the investigation is complete, MSHA
4 will issue a public report detailing the nature and
5 causes of the fatalities in hope that greater
6 awareness about the causes of accidents can reduce
7 their occurrence in the future. Information obtained
8 through witness interviews is frequently included in
9 these reports. You should know that if you request
10 confidentiality, confidentiality may be granted on a
11 case-by-case basis. Your statement may also be used
12 in other proceedings. You may have a personal
13 representative present during the taking of this
14 statement and you may consult with your representative
15 at any time. Do you have a representative with you
16 today?

17 MR. SHUMATE:

18 Yes, I do.

19 ATTORNEY WILSON:

20 All right. And I would ask that you
21 state your appearance for the record, please.

22 MS. CRAWFORD:

23 Reba Crawford.

24 ATTORNEY WILSON:

25 And you're with?

1 MS. CRAWFORD:

2 MSHA.

3 ATTORNEY WILSON:

4 Okay.

5 MS. CRAWFORD:

6 AFGE.

7 ATTORNEY WILSON:

8 All right. Mr. Shumate, your statement

9 is completely voluntary. You may refuse to answer any
10 question. You may terminate your interview at any
11 time. Also, you may request a break at any time.
12 Just let me know. This is not an adversarial
13 proceeding. Formal Cross Examination is not
14 permitted. However, follow-up questions will be
15 allowed as appropriate.

16 A court reporter will record your

17 interview today, so I ask that you speak loudly and
18 clearly so that she's able to take down everything.
19 If you do not understand a question that is asked,
20 please ask that the question be rephrased. Please
21 answer each question as fully as you can, including
22 information that you may have learned from someone
23 else. I would like to thank you in advance for your
24 appearance here. We appreciate your assistance in
25 this investigation. Your cooperation is critical in

1 making the nation's mines safer.
2 After we have finished asking questions,
3 we will provide you with an opportunity to make a
4 statement or provide us with any additional
5 information that you believe may be helpful to the
6 investigation. If at any time after the interview is
7 concluded you think of additional information that you
8 would like to provide to the investigation teams, you
9 can contact Norman Page, MSHA's lead accident
10 investigator, at the contact information contained in
11 the letter that was provided to you asking you to be
12 here today. Did the State have anything they wanted
13 to add at this time?

14 MR. FARLEY:

15 No.

16 MR. MCGINLEY:

17 No.

18 ATTORNEY WILSON:

19 Okay. Then at this time I'll ask that
20 the court reporter swear you in.

21 -----

22 MIKE SHUMATE, HAVING FIRST BEEN DULY SWORN, TESTIFIED
23 AS FOLLOWS:

24 -----

25 ATTORNEY WILSON:

1 And Dave Steffey is going to start the
2 questioning for MSHA.

3 EXAMINATION

4 BY MR. STEFFEY:

5 Q. Please state your full name and spell your last
6 name.

7 A. Michael William Shumate, S-H-U-M-A-T-E.

8 Q. Please state your address and telephone number?

9 A. [REDACTED]

10 [REDACTED]

11 Q. Are you appearing here today voluntarily?

12 A. Yes.

13 Q. Has anyone else interviewed you concerning the
14 accident?

15 A. No.

16 Q. Mike, how many years of mining experience do you
17 have?

18 A. Forty (40).

19 Q. Forty (40). How many years of that's with MSHA?

20 A. Twelve (12).

21 Q. Twelve (12). Would you give us a brief
22 description of your coal mine employment history?

23 A. Well, before --- right before MSHA, was a
24 production foreman with U.S. Steel, Pinnacle
25 operation, in Pineville. Before that, Maben Energy,

1 as a foreman and a belt man. Wolf Creek Collieries
2 before that in eastern Kentucky as a production
3 foreman. The Eastern Associated/Peabody Coal at
4 numerous locations as safety inspector. And
5 Westmoreland Coal Company as a production foreman and
6 as union worker, and Island Creek Coal Company as a
7 union worker.

8 Q. Do you have any mining certifications?

9 A. Mine foreman, fire boss, certified shot firer.

10 Q. Okay. Are you currently employed with MSHA?

11 A. Yes.

12 Q. Where at?

13 A. Mount Hope field office.

14 Q. And when did you start with MSHA again?

15 A. In '98.

16 Q. And what's your present job title?

17 A. I'm help.

18 Q. Okay. Are you the regular inspector that's
19 assigned to Upper Big Branch?

20 A. No.

21 Q. Have you ever been the regular inspector assigned
22 to ---

23 A. No.

24 Q. --- Upper Big Branch?

25 A. No, I have not.

1 Q. Okay. Have you ever conducted inspection work
2 inside Upper Big Branch?

3 A. I have run one respirable dust survey on the
4 Number Three section, which was on the other side of
5 the mine, and I was there checking on a miner that had
6 a dust violation on it and issued a (b) order on it.
7 But that's --- that was my ---.

8 ATTORNEY WILSON:

9 And where --- I'm sorry. Where was that
10 miner located?

11 A. That was off of the Number Three section, which is
12 over on the --- I don't know if that's the Left
13 Portal, South Portal.

14 BY MR. STEFFEY:

15 Q. That is what the company calls the portal section?

16 A. The what?

17 Q. What the company calls the portal section?

18 A. I'm not sure. All I know, they just said Number
19 Three section and ---.

20 Q. Okay. And you say you issued a (b) order there?

21 A. Yes.

22 Q. And when was that?

23 A. That was last fall. As far as dates, I don't
24 know.

25 Q. And what was the (b) order for again?

1 A. It was a continuous miner was out on respirable
2 dust, and the miner was being --- supposed to have
3 been removed from the mine, but it hadn't been.

4 Q. Okay. All right. During your respirable dust
5 surveys on the section, did --- when you would hang
6 your pumps on the miner men and the shuttle car men,
7 how did the crew react?

8 A. To the best of my memory, they were a fairly
9 knowledgeable crew, you know. They understood their
10 plan. They knew what they had to do. They worked as
11 if they --- it was their normal routine.

12 Q. How did management seem?

13 A. They were all right guys.

14 Q. Okay. I think it would probably be best if we
15 just went ahead and went to the day of the accident.

16 A. Uh-huh (yes).

17 Q. Where were you at when you heard about the
18 accident?

19 A. I initially heard about it on my way home from my
20 daughter. She called and said that her husband --- my
21 son-in-law is a member of Massey's mine rescue team,
22 and she called and wanted to know if I had heard
23 anything, that Shane had been called to come to Upper
24 Big Branch, but they didn't know what it was. They
25 just had a mine emergency. And that was on --- that

1 was --- like I said, that was probably around quarter
2 'til 4:00 on the 5th of April. She called me back a
3 little bit later and said that, you know, there had
4 been something that happened, said that there was,
5 they thought, 28 people missing, and they --- so I
6 called Mike Hicks, my supervisor, and we're both on
7 the MEU team together, I called him at the office, and
8 his secretary said that he was on his way out here to
9 the Academy, had been called out. So I called him on
10 the cell phone and he told me to come on out here to
11 help get the MEU team truck and the command center
12 loaded up and ready to go. So I come out here, and he
13 and I loaded up the garment bags and stuff. I was
14 given a list. Mike was given a list of people to get
15 their equipment for, and we loaded it up. And he and
16 Jerry Cook from Pineville, an MEU team member, he
17 was --- he come in and --- so Jerry drove the team
18 truck and Mike took the command vehicle, and I went to
19 Mount Hope and got my vehicle so we'd have some
20 transportation and we proceeded on to Montcoal.

21 Q. About what time did you arrive on the property at
22 Montcoal?

23 A. It was roughly 5:45.

24 Q. Okay. And when you arrived on the property, then
25 what happened?

1 A. We were trying to find a place to set up the team
2 truck and start getting our apparatuses benched, get
3 them ready to go underground. And Jerry --- I think
4 Jerry went up into the command center and talked with
5 Link Selfe, and Link told them that he wanted Jerry
6 and Mike to go ahead to get ready to go. And while
7 they were getting ready, I was benching the
8 apparatuses and getting them set up and ready to go.
9 And once they got gone, then myself and Vince Nicolau,
10 CMI, surface, from District IV, we set up the team
11 truck and then got the command vehicle parked and
12 started setting it up.

13 Q. Okay.

14 A. And that was all through the evening there. It
15 was several hours of ---.

16 Q. Now, was this at the ---?

17 A. This was at UBB, at the bath house.

18 Q. Okay. And when you arrived on the property, were
19 there other mine rescue teams already there?

20 A. Yes.

21 Q. And do you remember who was there?

22 A. I know Massey's teams and --- which some of the
23 State --- if I'm not mistaken, there were some of the
24 State people. I know several of their vehicles were
25 --- several of their mine rescue vehicles were already

1 on location.

2 Q. Was anybody underground when you arrived there?

3 Did you hear if anyone was already underground?

4 A. I didn't know at the time, but you know, since ---

5 after the fact, you know, found out, yes, the ---

6 Massey's two southern West Virginia teams were

7 underground.

8 Q. And who was with them? Any ideas there?

9 A. To my knowledge, I'm thinking that --- from what I

10 was told, there was Jason Whitehead and Greg --- or

11 the president of Marfork.

12 Q. Chris Blanchard?

13 A. Yeah, that one.

14 Q. Was anyone from MSHA with them?

15 A. Not that I'm aware of.

16 Q. Okay.

17 A. No. No, because I think the only ones there was

18 Link and Mr. Hardman and Kevin Stricklin and I know I

19 seen Fred Wills.

20 Q. Did anybody ever say how far the Massey team and

21 Chris Blanchard and Whitehead had made it inside the

22 mine? Did you ever hear anything in passing?

23 A. What I heard was that they were up on the headgate

24 of the longwall. I'm not sure exactly what distance

25 from the face they were, but they were up in that area

1 where they had their supposed --- their fresh air base
2 set up and everything. There was, I guess --- I'm not
3 sure exactly how many there were there at the time,
4 you know, as far as their members and where they were
5 located.

6 Q. Did you ever hear if they went anywhere else in
7 the mine?

8 A. All I know is --- what I heard was they were
9 around the headgate and in that Mother Drive areas
10 and ---.

11 Q. Okay. All right. So the other guys went inside,
12 I guess, is that what you were saying?

13 A. Yes.

14 Q. All right. And then what happened? You all set
15 the truck up?

16 A. Uh-huh (yes).

17 Q. And then what happened after that?

18 A. By that time we had several of our other members
19 of MEU coming in, and they were --- I was --- I
20 continued to bench apparatuses and get them ready for
21 use. And I'm not sure exactly the time frame. I know
22 --- I'm thinking Virgil Brown, who was one of our
23 leaders in the MEU, he got on the property and he
24 wanted to break up some of the people so we could
25 shift, get into shifts. And now I'm thinking that was

1 somewhere in the neighborhood of 9:30 --- from 9:30 to
2 ten o'clock p.m., but --- and by the time we got
3 everything ready, I think he was --- myself, Eddie
4 Stafford and Dale Jackson and Jeff Maxwell, he told us
5 to go back --- you know, to go back --- go home and
6 get --- go to the hotel and get some rest and be back
7 out on Tuesday morning at six o'clock. So I think we
8 got away around 11:30, something 'til 12:00, and that
9 was it.

10 Q. Okay. So did you come back the next day?

11 A. Yes.

12 Q. All right. And what happened?

13 A. To the best of my knowledge, there wasn't a whole
14 lot happening because they were having --- I know I
15 ended up working on a couple apparatuses as far as
16 cleaning them up and getting them benched and ready to
17 go again. And we had --- there was something going on
18 that the teams weren't going in. I don't know what it
19 was. I can't remember. But we ended up --- they
20 continued just all day because it was right around
21 shift change time when they decided to let the teams
22 go back in. And at that time, the --- our second
23 shift people showed up, and they went in, and we went
24 home. But that's --- there wasn't anything --- which
25 for me, you know, what events I have participated in,

1 this is one of the quietest as far as information
2 being put out, you know, to mine rescue or anybody
3 else at the time. Because, you know, in the past
4 we've had access to the mine phone and we had a mine
5 phone set up in our team truck and we had individuals
6 with maps that kept a log and everything that was
7 going on. But for whatever reason, they wouldn't
8 allow our communications to be hooked up, and so all
9 we --- what we could find out, what we would know ---
10 how we would know what was going on was just through
11 communicating with the people coming out.

12 Q. And who wouldn't allow your communications to be
13 hooked up?

14 A. I'm not really sure. I don't know if it was
15 Massey or if it was MSHA or what.

16 Q. Okay. So you didn't go underground the second
17 time?

18 A. Nope.

19 Q. Okay. And you came back on the third day?

20 A. Didn't go underground the third day.

21 Q. Didn't go underground the third day.

22 A. No. I worked around there on the property again.

23 Q. Did you ever hear any of the other rescue teams
24 talking about what they had seen or ---

25 A. Just ---

1 Q. --- what they ---?

2 A. --- references to the destruction that they had
3 observed, you know, of the areas that they were I, you
4 know, the amount of the materials that was laying
5 everywhere and how hard it was to travel, to traverse
6 the entries.

7 Q. Did they believe there were any survivors?

8 A. You know, that's --- I guess we all kept that
9 hope, you know, that there was. But you know,
10 that's --- like I don't know. You know, myself, you
11 know, I didn't have the --- I didn't have that
12 knowledge of my own, you know, to see what it looked
13 like until later on.

14 Q. Okay. So when did you go in the mines?

15 A. My first trip --- my only trip in the mine was on
16 Friday. On Friday, Friday day, I traveled with myself
17 and Jeff Maxwell. We traveled with ICG, two of their
18 teams, the Beckley team and then the Wolf Run team
19 from up north, and we were sent --- and this is when
20 they were trying to re-establish ventilation to get 22
21 Headgate ventilated to where they could recover the
22 bodies. And we ended up traveling in the glory Hole,
23 in that Glory Hole belt mains, which we went up Number
24 Seven entry, which I think this is 123 Crosscut on
25 this mains and we traveled this outside entry. We

1 went bare-faced all the way up to the corner, made the
2 turn at the top of the headings there and come across.
3 And I think we got about --- it was either the fourth
4 or fifth crosscut in and we started getting CO. It
5 went over 50 parts per million. At that time we went
6 under oxygen. And we continued on around here to the
7 Eight North intersection, where the Glory Hole was cut
8 into Eight North. And at that point we lost
9 communications. We had the tail captain of the team
10 use sound power system, the thousand foot that it
11 would travel. And I know we had --- the fresh air
12 base at that time was set up in Crosscut 120. And he
13 was --- right in this area here was where he run out
14 of the cord, and we had to go to radio communications.
15 So we had --- he had radio with his headset, talking
16 to the fresh air base. We had to drop a member with
17 the radio here at this corner, and then we went ---
18 where we hit the high CO, we started losing our radio
19 signal. So we dropped a person off there. And when
20 we got over into the Eight North, communications was
21 lost. We couldn't communicate. And we finally got
22 back in touch with them and, you know, they notified
23 the command center that we weren't able to
24 communicate, and so they told us to come back out to
25 the fresh air base.

1 Q. Okay. Did you ever see anything burning?

2 A. Nope. There was a haze.

3 Q. There was a haze?

4 A. There was a haze in that whole area. I mean, you
5 could smell --- there was the smell, but no ---.

6 Q. Did it burn your eyes?

7 A. No. Nope, it didn't.

8 Q. If you would, with the pink highlighter would you
9 trace the route you traveled?

10 ATTORNEY WILSON:

11 I'll go ahead and mark this as Exhibit
12 Shumate One.

13 (Shumate Exhibit One marked for
14 identification.)

15 ATTORNEY WILSON:

16 Why don't you first mark where --- can
17 you put FAB to mark the fresh air base?

18 WITNESS COMPLIES

19 ATTORNEY WILSON:

20 And then from that location inby, trace
21 your route of travel.

22 WITNESS COMPLIES

23 A. Like I said, we traveled this. But whenever we
24 got over into this Eight North --- or into this,
25 excuse me, to the Glory Hole, into this --- we were

1 traveling this outside entry. And once we started up
2 in there, we started looking and --- looking for
3 stoppings and couldn't see any. So myself, I can't
4 think --- I can't remember the captain's name. We
5 walked over here. This would have been Number Six
6 entry, which was --- according to the map, that was
7 --- the stopping line was between Five and Six. And
8 we walked up Number Six entry just watching ---
9 looking for stoppings. And we would go into --- we
10 went over into these crosscuts between Five and Six to
11 see if we could locate them, and we found where they
12 had been. But they --- we started finding material
13 blowing over into the next entry or, you know, across
14 over through the crosscut into the other crosscut. So
15 we got up to the top end and it started --- there was
16 stoppings --- part of stoppings that were still left
17 and one side was --- would be blown out.

18 BY MR. STEFFEY:

19 Q. Did you ever smell anything?

20 A. Yeah, you could smell, you know, something
21 burning. It really didn't have the sulfur smell like
22 a coal burning, like an old coal stove or something.
23 I mean, it was there. I remember we had to --- I'm
24 not sure exactly what --- I'm thinking it was right
25 here we had to come down and go around. It was bad

1 top and a waterhole. We ended up right in here.

2 ATTORNEY WILSON:

3 You're showing that you went from the

4 Number Six entry over to the Number Five entry because
5 of bad top and ---?

6 A. Well, this was a row of crosscuts. This would
7 have been the second row of crosscuts outby the butt-
8 off. Let's see. We got there, and that's about where
9 our FBA (sic) is, furthest point of advance is right
10 there at --- I guess that's 139 right on this map.

11 BY MR. STEFFEY:

12 Q. Okay.

13 A. And that's where --- which they --- whenever we
14 come back out, they initially said they was going to
15 find something for us to do around the longwall ---
16 around the headgate, but then by the time we got back
17 out, they had decided for us to move the --- move the
18 fresh air base on up here to the mouth of the Eight
19 North and try to continue this exploration in the
20 Eight North and Nine North. And at that time, when we
21 got out to the fresh air base, then we rotated teams.
22 The team I was with, we stayed --- we moved the fresh
23 air base up and we stayed there at the fresh air base,
24 and the other team went in.

25 Q. Okay.

1 A. And all I know is they come up to the top end of
2 Eight North and they made the turn into Nine North.
3 What they --- I know what they were wanting us to do
4 was to get up here because there was a borehole that
5 was supposed to be drilled in right in here, about the
6 second or third crosscut outby the butt-offs. And
7 they were wanting us to investigate that area, just to
8 check it out. And the second team, whenever they got
9 up here, made the turn. And I'm not sure if they were
10 on the inby or if they were on the outby entries.
11 They had one member that had an apparatus malfunction,
12 and so they come back out. And by the time they got
13 back out, they were low on oxygen, and we were already
14 low on oxygen, so we were instructed to come on back
15 outside.

16 Q. And did you go anywhere else in the mine?

17 A. No. Just traveled --- just --- you know, we
18 had --- of course we had --- all of this was walking,
19 all the way from 78 Break there, at the turn, at the
20 switch, 78 Break Switch, we just had to walk that.

21 Q. So you didn't travel across the longwall or to the
22 headgates or ---?

23 A. No, sir.

24 Q. And you mentioned earlier that they were getting
25 ready to go get the bodies on the headgate section?

1 A. Well, that's what --- that's what they --- you
2 know, they were --- they said they were wanting to
3 explore this because this area had not been checked at
4 that time, and they were wanting to find out, you
5 know, if there was anything here. And their
6 intentions were to block this off temporary across
7 this Eight North and put ventilation, you know, up
8 into 22 to recover the bodies that they knew were
9 there.

10 Q. Did they know where the bodies were on Headgate 22
11 at that time or ---?

12 A. At that time, to the best of my memory, it was the
13 ones that was in the mantrip. They knew they were
14 there, but there was still three --- two or three
15 missing, but they didn't know where they were at.

16 Q. And how did they know those bodies were on the
17 mantrip?

18 A. I guess somebody seen them.

19 Q. Any idea who had seen them?

20 A. No.

21 Q. Were any pizza pans on the roof? Did you happen
22 to notice any pizza pans?

23 A. As far as being bent down, yeah.

24 Q. Did anything stand out in your memory about the
25 direction in which they were bent?

1 A. The ones that I looked at, that I remember, they
2 were bent both ways.

3 Q. Really?

4 A. Yeah. And I guess the biggest thing --- what I
5 seen on these, which we didn't get over here on this
6 stopping line over here, but this stopping right here
7 had been blown into the track, towards the track belt
8 head.

9 ATTORNEY WILSON:

10 Maybe you could put arrows indicating the
11 direction that the stoppings were blown.

12 WITNESS COMPLIES

13 A. But those --- the stopping --- the parts that were
14 blown out on these were also blown back.

15 ATTORNEY WILSON:

16 And these, can you explain what you're
17 referring to?

18 A. The blocks that were blown out of these stoppings
19 here were blown towards the out --- outby. These
20 blocks here were blown into --- towards the belt and
21 track entry as if force come this way.

22 ATTORNEY WILSON:

23 And you're also indicating ---.

24 A. And then this right here, they were blown --- to
25 the best of my memory, they were the blocks that were

1 blown out. You see, these stoppings were partially
2 intact. The parts that were blown out, where the
3 blocks were laying outby, in an outby direction.

4 ATTORNEY WILSON:

5 The series of arrows, can you just point
6 at the line out to that clear area and just write
7 direction stoppings blown?

8 A. Okay.

9 WITNESS COMPLIES

10 BY MR. STEFFEY:

11 Q. And this was your one time underground as well?

12 A. Yes, sir.

13 ATTORNEY WILSON:

14 Can you also just indicate --- let's do
15 this. In a blue --- with an arrow just indicate ---
16 put CO, the location where you stated that you had
17 encountered elevated CO.

18 WITNESS COMPLIES

19 BY MR. STEFFEY:

20 Q. Let's go back to when you were outside. During
21 the course of the days that you were outside, waiting
22 to get in the mine, do you remember anything being
23 said in passage as to why this would have happened?

24 A. Why ---?

25 Q. Any problems that they were having on the longwall

1 or ---

2 A. No.

3 Q. --- on the headgate sections?

4 A. No, sir. I just know myself from, you know, there
5 at the office, field office, that in the past several
6 months, prior to it, you know, they've been having
7 ventilation problems in that area. And you know, just
8 listening to people talking, you know, about who was
9 having problems with the air reversing on the longwall
10 and stuff at different times. But now that's ---
11 again, like I said, that was just what I heard in
12 passing there around the office.

13 Q. Did you ever hear of a reason why it was
14 reversing?

15 A. No, sir.

16 Q. When you were on the other end of the mine running
17 respirable dust, did anybody ever talk about
18 ventilation problems? First of all, was the
19 ventilation adequate where you were at?

20 A. Yes. Yes, it was.

21 Q. Did they talk about ventilation problems anywhere
22 else in the mine?

23 A. Not that I heard. Nobody spoke anything to me.

24 Q. Did the men speak to you at all?

25 A. Oh, yeah. Yeah. Uh-huh (yes).

1 MR. STEFFEY:

2 Got any follow-up questions?

3 MR. O'BRIEN:

4 Yeah, just two or three, if I might.

5 EXAMINATION

6 BY MR. O'BRIEN:

7 Q. Taking you back in the areas that you traveled
8 that day, at what point, if any, did you --- at what
9 point did you find any stoppings that were totally
10 intact? Did you ever see any?

11 A. Didn't see any.

12 Q. You didn't see any.

13 A. Well, I didn't see it, but I'm thinking this one
14 right here, which would have been --- it was where
15 they set the stopping line over up here on the top
16 end. I think this --- no. Yeah, it was. It was
17 intact. We walked right down. I remember seeing it.
18 To the best of my memory, yeah, I'm thinking it was.
19 That would be what, between Number Two and Number
20 Three entry in the Glory Hole belt heads. The second
21 crosscut outby the butt-off.

22 Q. You mentioned that you picked up 50-plus parts per
23 million. What was the highest methane reading you
24 found?

25 A. Methane?

1 Q. Yeah.

2 A. To the best of my knowledge, we never did --- I
3 can't remember seeing anything even close to one
4 percent. And of course, the detectors were all
5 swallowing and going off on CO, and you know, that's
6 what you're looking at. That's what they are showing.
7 But what times that I was --- we were carrying
8 hybrids, and it gives you the readings of all of them
9 there at one time. And there wasn't any --- I didn't
10 see any high methane readings.

11 Q. Oxygen stayed pretty much in the normal range?

12 A. Let's see. Until we got up into this area here,
13 where we started getting the high CO, I can't remember
14 what the readings was over --- it was reduced oxygen.

15 Q. Did you see any indication of heat damage in this
16 area that you traveled?

17 A. No, other than --- well, outby.

18 Q. Outby in this ---?

19 A. But up in here, really the only thing --- the only
20 thing that really caught my eye was --- and my
21 attention was the beltline right here at 123 back,
22 because that was either a five or a six-foot belt and
23 it was standing up on end. The rails, the belt rails,
24 was still attached to each other, but they were blown
25 --- forced over into the next --- to the crosscut

1 between the belt and the track entry, and all the
2 structure, top and bottom, was gone. It looked to me
3 like the way it was, the force had come out from this
4 and just straight across, just looking the way it was.

5 Q. Thank you.

6 ATTORNEY WILSON:

7 Let me just try and clarify. You're
8 saying that the forces looked like they came from the
9 Glory Hole ---

10 A. Out.

11 ATTORNEY WILSON:

12 --- out across ---?

13 A. Out across the main line.

14 ATTORNEY WILSON:

15 Across the main belt ---.

16 MR. O'BRIEN:

17 That's all.

18 ATTORNEY WILSON:

19 Pat?

20 EXAMINATION

21 BY MR. MCGINLEY:

22 Q. Just a couple questions, Mr. Shumate. You were
23 asked about your knowledge of who was in the mine when
24 you first arrived at UBB, the president, Jason
25 Whitehead --- Chris Blanchard and Jason Whitehead.

1 And you were just relating what you had heard.

2 A. Right.

3 Q. You said that you had heard that they were
4 supposed to be setting up a fresh air base near the
5 headgate of the longwall. Do you recall saying that?

6 A. Something like that.

7 Q. Yeah. And I'm just wondering why you used the
8 word supposed.

9 A. Well, that's ---.

10 Q. Just because ---?

11 A. Because that's what I heard.

12 Q. Okay. Was there any fresh air base set up there
13 that you know of by them?

14 A. Yes, according to Mike and Jerry, Mike Hicks and
15 Jerry Cook, who had traveled in behind them. They
16 were --- they had a fresh air base established.

17 Q. Were Whitehead and Blanchard calling out at any
18 point? Did you hear any of that?

19 A. No. I don't --- I never was in the command
20 center.

21 Q. I see.

22 A. And like I said, there was a --- pretty much a
23 blackout on the communications as far as anything
24 other than the command center.

25 Q. Do you think that was a problem, not having

1 communications available to you?

2 A. Well, it depends what you're referring to as a
3 problem. You know, it's --- you would like to know
4 what is going on, you know, as a mine rescue person.

5 Q. Sure.

6 A. You know, you want to know --- you know, be as
7 up-to-date as possible. And you know, that, yes, is a
8 problem when you don't know.

9 Q. And so people are just sort of conjecturing
10 or ---

11 A. Right.

12 Q. --- hearsay? You don't exactly know what is going
13 on?

14 A. And you can get --- you know, you end up with the
15 second, third, fourth-hand information.

16 Q. You said that about 9:30, ten o'clock on the
17 evening of April the 5th there was a decision made to
18 set up shifts for the ---?

19 A. Right.

20 Q. What were the length ---?

21 A. That was just for the MEU team.

22 Q. Oh, the MEU team?

23 A. That's not for the other MSHA people.

24 Q. I understand. What was the length of the shifts?

25 A. We normally tried to work, you know, establish an

1 eight-hour shift. The way our team starts, it starts
2 from the time we leave the hotel or the office until
3 we get back, so it ends up being 12, 14-hour days.

4 Q. Right.

5 MR. MCGINLEY:

6 I think that's all I have. Thank you.

7 RE-EXAMINATION

8 BY MR. STEFFEY:

9 Q. Before you went underground and before the other
10 teams went underground, did anybody brief you ---

11 A. Uh-huh (yes).

12 Q. --- as to what was going on? What did they tell
13 you?

14 A. We had a briefing there in the command center.
15 They reviewed the map, which they were showing us what
16 they were --- what their intentions were, you know,
17 what they were looking for and what they were wanting
18 to do. And like I said, they were wanting us to
19 explore this area here.

20 Q. Did --- go ahead.

21 A. And what they were planning on doing was --- to
22 the best of my memory, they was going to block this
23 Eight North off right here. Let's see. Yeah, they
24 were going to block this off and they were also going
25 to block this off outby here to bring your air up the

1 headgate and bring it across this crossing here and
2 up. It was like that was their initial plans. But
3 like I said, after I got outside there, that was on
4 Friday night, Saturday morning it was --- I think
5 everything, by that time, had gotten changed anyhow.

6 Q. Okay. During the briefing did they go over with
7 you what had been found?

8 A. No. You mean --- not a --- no. No. You know,
9 what they --- you know, they --- as far as what we
10 would be encountering up through here, yeah, where
11 people had already traveled, where we would be
12 traveling and everything, but that was pretty much it.

13 Q. Okay.

14 MR. STEFFEY:

15 I don't have anything else.

16 ATTORNEY WILSON:

17 All right. Let's take a short break.

18 We'll go off the record.

19 SHORT BREAK TAKEN

20 ATTORNEY WILSON:

21 All right. We're back on the record.

22 David?

23 BY MR. STEFFEY:

24 Q. All right. Mike, just a few more questions here.

25 Let's go back to Whitehead and Blanchard.

1 A. Okay.

2 Q. Now, you said they were inside the mine when you
3 got there; right?

4 A. That's what I was told.

5 Q. Do you know if they were trained in mine rescue
6 principles?

7 A. To the best of my knowledge, I'm thinking Jason
8 Whitehead had been a member of Massey's team at one
9 time. Mr. Blanchard, I don't know.

10 Q. Did you see them come out of the mine?

11 A. No.

12 Q. Did you ---?

13 A. I don't know if they come out --- even if they
14 come out the portal there or if they went out the
15 Ellis Portal.

16 Q. So you don't know if they came out with one of the
17 teams or not?

18 A. I don't know. No, sir.

19 Q. To the best of your knowledge, had anybody else
20 been in the area around the Glory Hole?

21 A. To my knowledge, no.

22 Q. You didn't see any footprints up through there or
23 anything?

24 A. No.

25 Q. Okay. When you were at the fresh air base, was

1 there anyone else in the mine that you saw there at
2 the fresh air base?

3 A. No.

4 Q. Okay. Were there other teams anywhere in the
5 mine?

6 A. To the best of my recollection, I'm thinking there
7 was some team over in the longwall headgate area.

8 Q. Okay. You wouldn't know who that was?

9 A. No. No, I don't know.

10 Q. All right. Is there anything else you can tell us
11 that may help us out?

12 A. Not that I'm aware of.

13 Q. Okay.

14 A. I don't --- you know, like I said, that was --- my
15 experience underground was just that one trip, and the
16 rest of the time was on the surface.

17 Q. Okay.

18 MR. STEFFEY:

19 That's all I've got.

20 ATTORNEY BAXTER:

21 Davitt, anything?

22 ATTORNEY MCATEER:

23 No.

24 ATTORNEY WILSON:

25 All right. Mr. Shumate, on behalf of

1 MSHA and the Office of Miners' Health, Safety and
2 Training, thank you for appearing and answering
3 questions today.

4 A. Okay.

5 ATTORNEY WILSON:

6 Your cooperation is very important to the
7 investigation as we work to determine the cause of the
8 accident. Because we will be interviewing additional
9 witnesses, we request that you not discuss your
10 testimony with anyone other than your personal
11 representative. After questioning other witnesses, we
12 may call you if we have any follow-up questions. If
13 at any time you think of any additional information
14 that you believe would be important to the
15 investigation, please contact Norm Page. His contact
16 information is contained in the letter that was given
17 to you.

18 Before we go off the record, is there
19 anything else that you would like to add to the record
20 at this time?

21 A. I would like to make a little statement.

22 ATTORNEY WILSON:

23 All right.

24 A. It's nothing rehearsed or anything. It's just
25 from the heart. As a mine rescue person, the one

1 thing that disturbed me the most about this operation
2 was the fact that we let bureaucrats and politicians
3 pretty much run the show. We ended up putting team
4 members in dangerous situations at times just to get
5 things done for politicians, and it's not right. We
6 weren't trained that way. It was just the deal that
7 first evening, when we got there and you had non-
8 rescue people underground doing exploring and whatever
9 else they might have been doing, you know, we don't
10 know.

11 And unfortunately, the one that seemed to --- at
12 one time that our own people allowed it. You know, we
13 sent a non-mine rescue individual in with our two
14 people. He was supposed to --- supposedly he was
15 there at the fresh air base. But you know, still yet,
16 that was against our training. But to have that type
17 of situation and if something would have happened, if
18 we would have had a team member or a non-team member,
19 something else would have happened, if they would have
20 been seriously injured or, you know, worse, it would
21 have been a fatality, you know, who's going to catch
22 the brunt of it? Who's going to be blamed? And you
23 know, we'd end up --- and like I said, that was what
24 really bothered me the most about the whole thing, was
25 we didn't go by any --- much at all as far as standard

1 mine rescue procedures, you know.
2 And I understand we're trying to find ---
3 hopefully find live people, but still yet we have some
4 standards that we're supposed to go by, but it didn't
5 happen, you know, in what I seen and what I've heard,
6 you know, the deal --- what --- whenever we recovered
7 --- the bodies were recovered, you now, myself, I
8 didn't have to participate in that this time at all.
9 I was thankful for that. But very easily we could
10 have lost a team member or more trying to handle these
11 body bags with the apparatuses on them, because all
12 you had to do was trip just a little bit, lose your
13 balance or something and that body bag catching just
14 right, and you jerked your hose, you break a seal on
15 that mask and then in that amount of CO, a person
16 would be down in a breath. It might not kill them,
17 but it would sure make them sick. And that's really
18 what bothers me about the whole thing.

19 ATTORNEY WILSON:

20 So you think that it's important to
21 follow protocols?

22 A. Yeah, most definitely.

23 ATTORNEY WILSON:

24 Any follow-up questions?

25 MR. MCGINLEY:

1 Yeah, I've got a couple questions now.

2 ATTORNEY WILSON:

3 Okay.

4 RE-EXAMINATION

5 BY MR. MCGINLEY:

6 Q. With regard to letting politicians and bureaucrats
7 run the show, can you be a little more specific? I
8 mean, what was troubling you and the other rescue team
9 members about those folks?

10 A. Well, it was --- again, it was just the fact that
11 we were put out there in areas where we had known ---
12 you know, there was --- there was hotspots and there
13 was known ignition sources, and you know, we were
14 still getting the high --- you know, they were still
15 picking up high methane readings and stuff. And we
16 were still --- we were pushing on, ---

17 Q. Right.

18 A. --- trying to ---. And you know, I can
19 understand, you know, the Governor and Representative
20 Rahall, you know, they're down there with the
21 families. You know, they're doing their best to deal
22 with them, and that's --- I'm sure that would be a
23 very difficult situation to be in at a time like that,
24 but you know, we need to follow our procedures.

25 Q. Because they're intended to save lives, rescuers'

1 lives.

2 A. Yeah. Well, that's --- the first rule of mine
3 rescue is the safety of the team.

4 Q. Right. And you felt that was compromised ---

5 A. That was compromised.

6 Q. --- not only on the first night but subsequently?
7 Like the example you gave was the carrying of the body
8 bags wearing apparatus.

9 A. Yes.

10 Q. You said that it was a non-rescue team person who
11 went in with rescue team members. Who was that?

12 A. It was Fred Wills. He's one of our supervisors,
13 field office supervisors in the district.

14 Q. Do you think --- do you know whether he was
15 trained in mine rescue at all?

16 A. Well, I know he had --- Fred had been a team
17 members years ago with Eastern Associated Coal. I
18 know that. I've worked with him, but --- with mine
19 rescue. So it's not that he wasn't totally trained,
20 but you know, if he had had to put on --- if something
21 had happened and he would have had to have tried to
22 put on an apparatus or something he had never been
23 trained on, it could be difficult.

24 Q. Sure. I understand.

25 MR. MCGINLEY:

1 Okay. That's all. Thanks.

2 ATTORNEY WILSON:

3 Anything else?

4 MR. O'BRIEN:

5 No.

6 ATTORNEY WILSON:

7 All right. Then Mr. Shumate, I want to

8 again thank you for your appearing and your

9 cooperation in this matter. At this time we'll

10 conclude and go off the record.

11 A. Thank you.

12 * * * * *

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

5

I, Alison Salyards, a Notary Public in and

6

for the State of West Virginia, do hereby certify:

7

That the witness whose testimony appears in

8

the foregoing deposition, was duly sworn by me on said

9

date and that the transcribed deposition of said

10

witness is a true record of the testimony given by

11

said witness;

12

That the proceeding is herein recorded fully

13

and accurately;

14

That I am neither attorney nor counsel for,

15

nor related to any of the parties to the action in

16

which these depositions were taken, and further that I

17

am not a relative of any attorney or counsel employed

18

by the parties hereto, or financially interested in

19

this action.

20



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Alison Salyards

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