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Transcript of the Testimony of Johnny Syner

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STATEMENT UNDER OATH

OF

JOHNNY SYNER

taken pursuant to Notice by Brett Steele, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Friday, May 14, 2010, beginning at 1:09 p.m.

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

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P R O C E E D I N G S

ATTORNEY BAXTER:

My name is Derek Baxter. I'm with the Office of the Solicitor, United States Department of Labor. With me is Eric Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA. Also present are personnel with the West Virginia Accident Investigation Team. I'd like them to identify themselves, please, the questioners at the table.

MR. BECK:

I'm Jim Beck. I work for Davitt McAteer on the independent team.

MR. FARLEY:

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

MR. SNYDER:

Steve Snyder, with the West Virginia Office of Miners' Health, Safety and Training.

ATTORNEY BAXTER:

Today is May 14th, 2010. Several other members of an investigation team are also present in the room. All members of the Mine Safety and Health Administration Accident Investigation Team and all

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

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

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

11 You may have a personal representative
12 present during the taking of this statement and may
13 consult with a representative at any time. Do you
14 have a personal representative with you here today?

15 MR. SYNER:

16 I have Reba.

17 ATTORNEY BAXTER:

18 Would you please identify ---?

19 MS. CRAWFORD:

20 Reba Crawford.

21 ATTORNEY BAXTER:

22 Thank you. You may refuse to answer any
23 question, and you may request a break at any time.
24 Since this is not an adversarial proceeding, formal
25 Cross Examination will not be permitted. However,

1 your personal representative may ask clarifying
2 questions as appropriate. A court reporter will
3 record your interview. Please speak loudly and
4 clearly. If you do not understand a question asked,
5 please ask that the question be rephrased. Please
6 answer each question as fully as you can, including
7 any information you've learned from someone else.

8 I'd like to thank you in advance for your
9 appearance here. We appreciate your assistance in
10 this investigation. Your cooperation is critical in
11 making the nation's mines safer. After we finish
12 asking questions, you'll have the opportunity to make
13 a statement and provide us with any other information
14 that you believe to be important. If at any time
15 after the interview you recall any additional
16 information that you believe might be useful, please
17 contact Norman Page at the telephone number or e-mail
18 address provided to you. Would you please swear the
19 witness in?

20 -----
21 JOHNNY SYNER, HAVING FIRST BEEN DULY SWORN, TESTIFIED
22 AS FOLLOWS:

23 -----
24 EXAMINATION
25 BY MR. SHERER:

1 Q. Good afternoon. Could you please state your full
2 name and spell your last name for the record?

3 A. Johnny Ray Syner, S-Y-N-E-R.

4 Q. Okay. Thank you. How about your address and
5 telephone number, please?

6 A. My address is [REDACTED]

7 [REDACTED] .

8 Q. And your telephone number?

9 A. [REDACTED] .

10 Q. Thank you. Are you appearing here today
11 voluntarily?

12 A. I was requested to be here.

13 Q. Okay. Thank you. How long have you worked for
14 MSHA?

15 A. Two years.

16 Q. What's your current duty station?

17 A. Coal mine inspector at the Mount Hope office.

18 Q. Okay. How long have you worked at that location?

19 A. Two years.

20 Q. Okay. What's your present position?

21 A. Coal mine inspector.

22 Q. How long have you been in that --- well,
23 that's --- we have that. Who's your current
24 supervisor?

25 A. Thomas Moore.

1 Q. Thank you. Could you tell us a bit about your
2 experience with mining, Mr. Syner?

3 A. I started in the coal mines in 1976, running
4 equipment. Worked for Allied Chemical, Peabody Coal
5 Company, Cannelton Industries, and Eastern Associated
6 Coal.

7 Q. Thank you. Do you have any specialized training
8 or certificates in the coal mining industry?

9 A. Just foreman's papers.

10 Q. State of West Virginia?

11 A. Yes.

12 Q. Thank you. Can you briefly explain your areas of
13 responsibility, please?

14 A. Such as being a coal miner?

15 Q. No.

16 A. Being a mine inspector?

17 Q. A mine inspector, yes.

18 A. To watch out for the health and safety of the coal
19 miner.

20 Q. Thank you. Are you the authorized representative
21 assigned to the Upper Big Branch Mine this quarter?

22 A. I was one of them, yes.

23 Q. Okay. When was the last time you inspected the
24 Upper Big Branch Mine?

25 A. April the 5th, 2010.

1 Q. And that was the date of the incident?

2 A. Yes.

3 Q. What type of inspection were you conducting at
4 that time?

5 A. An EO1.

6 Q. EO1. Could you explain what that is for the
7 record, please?

8 A. It's just a general inspection of the coal mine
9 for the health and safety of the coal miners.

10 Q. A quarterly inspection?

11 A. Quarterly, yes.

12 Q. Thank you. Did you go underground that day?

13 A. Yes.

14 Q. Did anyone accompany you on your inspection?

15 A. Yes, Rick Foster, the mine foreman.

16 Q. So he was a company representative?

17 A. Uh-huh (yes). Yes.

18 Q. Was there a representative of the miners involved?

19 A. No, there wasn't.

20 Q. Okay. Thank you. Could you start with when you
21 arrived at the mine and just walk us through the steps
22 of your inspection?

23 A. If I had my notes, I could go through them a lot
24 better.

25 ATTORNEY BAXTER:

1 Let the record show you just provided him
2 a copy of his inspection notes.

3 MR. SHERER:

4 Yes. Uh-huh (yes).

5 A. I arrived at the coal mines before the dayshift
6 started, at 5:20 a.m., and went to the --- it's called
7 the South Portal, the mine office at the South Portal,
8 and held a pre-inspection conference there that
9 morning with Steve --- no, with --- let me think of
10 his name. Gary May and Rick Foster was present at the
11 pre-inspection conference. We just talked about
12 citations and looked at the map. And after that, I
13 went down and gave the employees a brief safety talk.
14 We talked about the ventilation, roof control and we
15 talked about black lung some, and I gave the men some
16 stickers. And after that, we made a pre-operational
17 check on the manbus and followed the crew from the
18 portal to the barrier section, which was the section I
19 was going to inspect.

20 After I arrived at the section, I made an imminent
21 danger run across the faces, checking for dates,
22 times, initials, roof bolt pattern, ventilation
23 controls and that, then made a dust perimeter check,
24 checked the sprays on the miner, the water pressure
25 and checked the vacuum on the roof bolters. During my

1 imminent danger run, I think it was, I got an air
2 sample of the left return. And then after we went
3 across the faces there, I started checking some
4 equipment. On my way across the section, as well as I
5 recollect, I found a cable splice on the miner that
6 wasn't sealed so as to exclude moisture, and I wrote a
7 citation on that.

8 BY MR. SHERER:

9 Q. Okay. What type of citation was that, please?

10 A. It was a 104 --- 104(a) citation I think is what
11 it was.

12 Q. Thank you. Was that a --- could you tell us what
13 the standard was you cited in that case?

14 A. 75.604(b).

15 Q. Thank you. And after that?

16 A. Let me see here what I'm doing after that. I done
17 the dust perimeter checks on the miner and the roof
18 bolter, checked the vacuum, the --- checked the vacuum
19 and the dust boxes on the roof bolter, checked the
20 water sprays and the water pressure on the miners
21 and ---.

22 Q. You say there's miners. There were two miners on
23 that section?

24 A. Yes. And as well as I can remember, there were
25 two roof bolters. I guess you call it a super

1 section. You had part on the left and part on the
2 right, equipment on the left and the right.

3 Q. Did they have split ventilation?

4 A. Let me think. No. No, I don't think. I think
5 they just run one miner at a time.

6 Q. Okay.

7 A. I think it was exhausting ventilation.

8 Q. Okay.

9 A. And I checked the --- watched them run some coal,
10 watched the miner --- I think they were in the Number
11 Four entry, and watched them load coal and watched the
12 roof bolter bolt some. And then I checked the section
13 KVA box. Everything was okay on it. Checked the
14 section escapeway map. Okay. There was --- it wasn't
15 up to date, so I issued a citation on the section
16 escapeway map.

17 Q. Okay. Do you remember what standard you cited for
18 that?

19 A. 75.1505(b).

20 Q. Okay. That escapeway map, that is important
21 because of the potential for people having to evacuate
22 the mine. How many people would be affected by that
23 map?

24 A. Only the people on that immediate section. That
25 section that I went to wasn't very far underground.

1 It's called the barrier section.

2 Q. Do you remember how many people you marked as
3 affected by that citation?

4 A. No, I don't.

5 Q. okay.

6 A. No, I don't.

7 Q. Thank you. Okay. And then what did you do?

8 A. Checked the intake telephone. It was fine.

9 Checked the emergency supply sled. It was fine. I
10 checked the sanitary toilet, the section firefighting
11 equipment and the pressure pump.

12 Q. Okay.

13 A. And then after that, I left the section and walked
14 the belts back toward the outside.

15 Q. Okay. What do you think about that section, if
16 you had to say? It was in good shape, bad shape?

17 A. The morning I arrived on the section, the section
18 had been cleaned and had been rock dusted, and I
19 commented to Rick Foster that the rock dusting looked
20 good on the section.

21 Q. Good. Thank you. Did you go through any record
22 books before you did this inspection?

23 A. Yeah. I think I went through the pre-shift book
24 for the barrier section, yeah.

25 Q. Did the conditions you observed on the section,

1 were they reflected accurately in the pre-shift books?

2 A. Yes.

3 Q. Thanks. When you were documenting the two
4 violations you mentioned, was the company
5 representatives --- did they take any photos or take
6 any notes associated with those?

7 A. Notes, I don't know, but there was many photos
8 taken.

9 Q. Okay. Thank you. Did you have any conversations
10 with the mine workers, either before you went to the
11 section or while you were doing your duties there on
12 the section?

13 A. I held a safety meeting outside before we went in.

14 Q. Did you have --- did they express any complaints
15 or concerns to you at that time or some other time?

16 A. No, they didn't.

17 Q. Okay. Prior to the last --- or to this quarter,
18 have you ever been the authorized representative
19 assigned to the Upper Big Branch Mine?

20 A. I wasn't assigned to it, but I went down there and
21 helped another inspector some.

22 Q. Did you get the opportunity to go to different
23 parts of the mine?

24 A. I checked --- I'm not sure what section it was. I
25 think they called it like Number Two section, the

1 section I went to. It was shut down. I just went
2 there to check equipment.

3 Q. Okay. So you haven't done like walking returns
4 or ---?

5 A. No.

6 Q. Okay.

7 A. I did as a trainee.

8 Q. Okay. How long ago was that?

9 A. Two years. Almost two years ago.

10 Q. Are you aware of any complaints lodged against
11 this mine?

12 A. Not to me there hasn't been any complaints.

13 Q. Have you ever gone to this mine as a result of
14 another hazardous condition complaint being phoned in
15 or ---?

16 A. No.

17 Q. Okay. Thank you. Are you aware of any conditions
18 that ever required any or all the miners to be
19 evacuated from this mine or portions of this mine?

20 A. No.

21 Q. Okay. Let's shift gears a little bit and go to
22 the accident itself. I assume you finished your
23 inspection and exited the mine. Do you know
24 approximately when that occurred?

25 A. The day when I left the mines?

1 Q. Yes. Uh-huh (yes).

2 A. Somewhere between 1:00 and 2:00 p.m.

3 Q. Okay. Did you leave the property at that time?

4 A. Yes.

5 Q. Okay. When and how were you notified of the April
6 5th accident?

7 A. I was notified at home. I was called at home.

8 Q. Okay. Were you involved in any of the rescue and
9 recovery efforts at the mine?

10 A. I went back that night and was just there, you
11 know, in case they needed something, more or less to
12 run errands and ---

13 Q. Sure.

14 A. --- stuff.

15 Q. Okay. Were you there at any later day?

16 A. No.

17 Q. Okay. So it was just the night of the event?

18 A. Yes.

19 Q. Do you remember who was in charge of the mine site
20 when you arrived?

21 A. For MSHA or for ---?

22 Q. For all the respective parties.

23 A. No, I don't know.

24 Q. Okay. So you just showed up and started trying to
25 help out?

1 A. Yeah. My supervisor called me at home, and I
2 reported to the office. And he told me to go to Upper
3 Big Branch, and when I got there I'd be instructed as
4 to what to do.

5 Q. Okay. When you were making your inspection
6 earlier in the day, who was the responsible person?

7 A. Gary May.

8 Q. Gary May.

9 A. I'm sure that's who it was.

10 Q. And how do you know that?

11 A. How do I --- he's the superintendent.

12 Q. Was that listed on any bulletin board or
13 whiteboard or anything?

14 A. I can't recall seeing --- you know, I don't
15 remember looking at it.

16 Q. Do you know if he was in charge for the company
17 when you arrived at the mine?

18 A. No, I don't.

19 Q. Thank you. When you arrived at the mine site,
20 were you approached by any of the miners wanting to
21 talk to you about the conditions in the mine or
22 anything that may have contributed to the accident?

23 A. Not that I can remember, no.

24 Q. Okay. And how long were you at the mine that
25 night?

1 A. Until about six o'clock the next morning.

2 Q. Okay. That was a long day?

3 A. Yes, it was.

4 Q. Do you have anything that you would like to add
5 that may be relevant to this investigation?

6 A. No, sir, nothing I can think of right now.

7 Q. Okay.

8 EXAMINATION

9 BY MR. FARLEY:

10 Q. Johnny, I think you indicated that prior to this
11 quarter, ---

12 A. Uh-huh (yes).

13 Q. --- and this quarter would have started on April
14 1st; right?

15 A. Yes.

16 Q. Prior to this quarter, you had gone to UBB Mine to
17 help another inspector?

18 A. Yes.

19 Q. Now, prior to the quarter, can you tell me
20 approximately when that was?

21 A. It wasn't the quarter prior to this one but the
22 quarter prior to that. I can't remember the dates.

23 Q. Would that be like last fall?

24 A. Yes.

25 Q. 2009?

1 A. I think so.

2 Q. Okay. Approximately, how many days did you spend
3 there then; do you recall?

4 A. I'm thinking two days. It may have been three,
5 but I can recall two days being there.

6 Q. Do you recall which inspector you accompanied?

7 A. Who I was helping?

8 Q. Yes, sir.

9 A. Yes, sir. Kevin Lyall was his --- the mines was
10 assigned to Kevin.

11 Q. Okay. Now, I think you said you went to the
12 Number Two section?

13 A. I think that's right. I'm not --- I'm not for
14 sure.

15 Q. Okay. Now, I may not be as familiar with the mine
16 as you are, but can you point out on the map the
17 section that was called Number Two at that time?

18 A. No, not really.

19 MR. SHERER:

20 You can either get up or we have a laser
21 pointer. If you can hand that over, Jim, please?

22 MR. BECK:

23 Sure.

24 MR. SHERER:

25 We had a laser pointer. Let me explain

1 it that way.

2 MR. FARLEY:

3 Oh, here it is.

4 A. It may have been that section right there.

5 BY MR. FARLEY:

6 Q. Are you referring to the section which is
7 immediately outby the mouth of the currently active
8 longwall or the longwall which was active on April
9 5th?

10 A. It may have been right there. If I had my notes,
11 I would know, you know, which section it was.

12 Q. Okay. Did you walk or ride through that section?

13 A. We road the mantrip.

14 Q. Okay. Would that have been the only time prior to
15 your April 5th inspection that you were here, those
16 two days last fall?

17 A. Yes, sir.

18 Q. Okay.

19 A. Now, when I was a trainee, I traveled with an
20 inspector, but you know, I wasn't AR'd. I don't even
21 really recall where we were in the mines.

22 Q. Okay. And that would have been how long ago?

23 A. Almost two years ago.

24 Q. Okay. Did your conversations with any of the
25 miners at UBB during this quarter or last fall, did

1 you ever hear any discussion or talk of possible
2 methane feeders coming from the bottom that might have
3 disrupted the productivity?

4 A. No, I didn't.

5 Q. Okay.

6 ATTORNEY BAXTER:

7 Do you have any questions?

8 MR. BECK:

9 Yeah.

10 EXAMINATION

11 BY MR. BECK:

12 Q. Mr. Syner, for this quarter, when you were
13 assigned to Upper Big Branch, was April 5th the first
14 day of your quarterly inspection?

15 A. Yes, it was.

16 Q. And for a quarterly inspection, normally how many
17 days do you expect to be at that mine?

18 A. I don't know. That's a big mines, and it takes
19 several days to --- you know, to complete it. I have
20 no idea how long ---.

21 Q. I was just wondering if you had like a planned
22 amount of days that you said, well, this probably will
23 take us 30 inspections or whatever.

24 A. No. No, I didn't.

25 Q. Okay. Is there a procedure in place to notify

1 miners of their rights to designate a miners' rep?

2 A. Yes. And I explained those rights the morning I
3 gave the safety meeting.

4 Q. In all, from the time you were a trainee to
5 getting your AR card, how many times do you think you
6 inspected Upper Big Branch, either as the AR or a
7 helper or a ---?

8 A. I think I was there twice as a trainee and maybe
9 three days as an AR.

10 Q. Three days as an AR?

11 A. Uh-huh (yes).

12 Q. And I believe you stated earlier that you check
13 the pre-shift books before you go in?

14 A. Yes. On the day that --- on April 5th I did.

15 Q. In your travels as an inspector, do you ever come
16 across anything that is a violation and you think it
17 should have been in the pre-shift book?

18 A. At this mines or at any mines?

19 Q. At this mine.

20 A. No, I didn't. I didn't.

21 Q. Did you ever hear anyone joke about the air at
22 Upper Big Branch, for example, if you're going to
23 Headgate 22, bring your own air, anything like that?

24 A. Not that I can recall.

25 Q. And you stated that you watched them load the coal

1 and bolt?

2 A. Yes.

3 Q. How long did you watch them?

4 A. I watched the miner complete a cut, then watched
5 the roof bolter part of it, and then I went on with my
6 inspection.

7 Q. Are they normally running when you're there or are
8 they down more than they're running when you're ---?

9 A. At this mines here, I was only there one day and I
10 can't say. And the other time I was there when I was
11 helping Kevin, the section I went to, the section was
12 shut down. The power was even knocked on it.

13 Q. Had you heard anything about the ventilation
14 system at this mine? Were there any problems? Was it
15 in good shape or ---?

16 A. Only through other inspectors, you know, where I'd
17 hear them discussing, you know, they being down there
18 and then be in the office and hear them discussing it.

19 MR. BECK:

20 That's all I have.

21 ATTORNEY BAXTER:

22 Anything else? Let's take a break.

23 A. Okay.

24 SHORT BREAK TAKEN

25 ATTORNEY BAXTER:

1 Okay. Back on the record.

2 RE-EXAMINATION

3 BY MR. SHERER:

4 Q. I got one follow-up question. You mentioned that
5 you walked the belt south from the barrier section.

6 A. Yes.

7 Q. What was your impression of their cleanup and
8 dusting program on this belt?

9 A. The belts looked --- I didn't write any citations,
10 so the belts were fair.

11 Q. Okay.

12 MR. SHERER:

13 Okay. That's all.

14 MR. BECK:

15 I have one.

16 RE-EXAMINATION

17 BY MR. BECK:

18 Q. Mr. Syner, when you were assigned the AR, to be
19 the AR for Upper Big Branch, which I guess was April
20 5th; is that right --- April 1st?

21 A. Yes.

22 Q. Did anyone brief you as to any of the issues or
23 any of the problems that were encountered on the
24 previous quarter so that you knew what you were
25 getting into?

1 A. Well, from --- the previous inspector sat right
2 beside me, you know, and he would talk about, you
3 know, things that he had found down there. And I
4 reviewed the mine file, and so I was familiar with it,
5 yes.

6 Q. But is there any formal mechanism that says, you
7 got to do this, this, this and this before you go to
8 that mine?

9 A. Review the mine file.

10 Q. Review the mine file?

11 A. Uh-huh (yes).

12 Q. Okay.

13 MR. BECK:

14 Thank you.

15 A. Uh-huh (yes).

16 MR. SHERER:

17 I've got one more as a follow-up to that.

18 RE-EXAMINATION

19 BY MR. SHERER:

20 Q. The mine files you refer to, that's the uniform
21 mine file?

22 A. Yes.

23 Q. That lists the previously-issued violations and
24 things like that, doesn't it?

25 A. Yes.

1 Q. It also lists whether the mine is on a (d) pattern
2 or not?

3 A. Yes.

4 Q. Does that serve as a indication of previous
5 conditions and problems that may have been encountered
6 at that mine?

7 A. Yes.

8 MR. SHERER:

9 Thank you.

10 A. Uh-huh (yes).

11 ATTORNEY BAXTER:

12 On behalf of MSHA and the Office of
13 Miners' Health, Safety and Training, I want to thank
14 you for appearing and answering questions today. Your
15 cooperation is very important to the investigation as
16 we work to determine the cause of the accident.

17 We require that you do not discuss your
18 testimony with any person, aside from your personal
19 representative. After questioning other witnesses, we
20 may call you if we have any follow-up questions that
21 we feel that we need to ask you. But any time you
22 have additional information regarding the accident
23 that you'd like to provide to us, please contact us at
24 the contact information that was previously provided
25 to you.

1 If you wish, you may now go back over any
2 answer you've given during this interview. You may
3 also make any statement that you would like to make at
4 this time.

5 A. Yeah. I'd like to clarify --- you asked me what
6 time I left the mines and did I leave the mines
7 immediately. I came outside and issued two citations.
8 I held the daily closeout with the operator, and then
9 I left the coal mines. You know, after I issued the
10 citations and we discussed the citations, I didn't
11 hang around. I left.

12 MR. FARLEY:

13 Thank you.

14 ATTORNEY BAXTER:

15 Again, I want to thank you for your
16 cooperation in this matter.

17 A. Okay. Thanks.

18

19 * * * * *

20 STATEMENT UNDER OATH CONCLUDED AT 1:44 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

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



Brett Steele

August 24, 2010

Mr. Norman Page
Lead Accident Investigator
Upper Big Branch Mine - South Accident
National Mine Academy
Beaver, WV

Dear Mr. Page,

I was interviewed following the accident at Performance Coal Company, Upper Big Branch Mine - South. I have carefully reviewed the transcript of that interview and have found the following discrepancies.

1. Page 17, Line 7: Should have read "...there wasn't any photos taken"
2. Page 23, Line 13: I misunderstood the question. I thought I was asked if I walked or rode to that section. Therefore,
3. Page 23, Line 14: The answer should have been that I walked through the section.

Thank you for allowing me the opportunity to review the transcript.

Sincerely,

Johnny Syner

