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**APPEARANCES (Continued)**

**GOVERNOR'S INDEPENDENT INVESTIGATION PANEL**

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(b) (7)(C)

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**EXAMINATION INDEX**

**SCOTT KINDER**

BY MR. MAGGARD . . . . .	12
BY MR. TUCKER . . . . .	32
BY MR. BECK . . . . .	35
BY MR. CRIPPS . . . . .	37
BY MR. BECK . . . . .	50
BY MR. MAGGARD . . . . .	51

**EXHIBIT INDEX**

<b>Exhibit</b>		<b>Page</b>
1	Subpoena	11
2	Affidavit of Service	11

1           MR. KOERBER: My name is Barry Koerber.  
2 I'm the Assistant Attorney General, and I'm  
3 assigned to represent the West Virginia Office for  
4 Miners' Health, Safety and Training.

5           Today is March 9th, 2011.

6           I'm going to ask the three teams seated to  
7 the backside of the table, beginning with the  
8 individual to my immediate left, to identify  
9 themselves and who they're with.

10          MR. TUCKER: Bill Tucker, with the West  
11 Virginia Office of Miners' Health, Safety and  
12 Training.

13          MR. BABBINGTON: Matt Babbington, I'm an  
14 attorney with the U.S. Department of Labor.

15          MR. CRIPPS: Dean Cripps, with MSHA.

16          MR. MAGGARD: Jasey Maggard, with MSHA

17          MR. BECK: Jim Beck, with the Governor's  
18 Independent Team.

19          MR. KOERBER: The court reporter is from a  
20 court reporter agency known as Johnny Jackson &  
21 Associates.

22          For her purposes, I'm going to ask that  
23 instead of saying "uh-huh" or "uh-uh" or shaking  
24 your head yes and no, that you speak the words

1 "yes" and "no."

2 And for her benefit, I'm going to ask that  
3 you allow the question to be answered -- or asked  
4 before you begin your answer.

5 And I'm going to ask that the interviewers  
6 allow you to finish your answer before they begin  
7 the next question, so we don't have people speaking  
8 over one another.

9 Also, if you're utilizing the map, there  
10 is the tendency to point and say, I was here and  
11 then went there.

12 But for those people who are reading the  
13 transcript well after today, that doesn't make any  
14 sense. So I'm going to ask that you speak with  
15 some degree of identifying where you're pointing  
16 to, or we may even have you mark with a marker.  
17 Okay?

18 Also, Johnny Jackson & Associates is  
19 working under a three-day turnaround, as far as  
20 taking the words that are spoken here today and  
21 typing it onto paper. Three business days puts us  
22 through to Monday evening, or Monday afternoon.

23 So beginning next Tuesday morning, this  
24 transcript will be ready for review. You have the

1 choice, if you so desire, it is not mandatory, but  
2 you certainly have the option, if you choose, to go  
3 and review your transcript and with a separate  
4 document, called an errata sheet, make any  
5 corrections that you find while you're reviewing  
6 the transcript.

7 Now, you can go, you and your attorney can  
8 go, however, you will have to do it at Johnny  
9 Jackson's court reporter agency, which is located  
10 in Charleston, West Virginia.

11 I'm going to give you their business  
12 card. It contains their address and their  
13 telephone number.

14 Once you schedule an appointment, they  
15 will put you in a conference room, where you have  
16 privacy, you can review the transcript at your  
17 leisure, but you will not be permitted to take a  
18 copy of the transcript with you. Okay?

19 Another thing I want to mention is, if for  
20 any reason you want to take a break, just say so,  
21 we'll take a break. Okay?

22 THE WITNESS: Okay.

23 MR. KOERBER: Also, I'm going to ask that  
24 you not discuss what's talked about in the

1 interview here today after you leave here today  
2 with anybody other than your attorney. And the  
3 reason for that is to protect the integrity of the  
4 investigation.

5 At this time Matt may have something he  
6 would like to add, and if so, he can.

7 MR. BABBINGTON: Mr. Kinder, thank you for  
8 coming in and talking to us.

9 This is a letter from our chief accident  
10 investigator, Norman Page, and the letter describes  
11 kind of the background protocols for the interview  
12 here today.

13 If you would like to read it and ask me  
14 questions, feel free.

15 THE WITNESS: Okay.

16 MR. KOERBER: Okay. I would ask the court  
17 reporter to administer the oath at this time.

18 SCOTT KINDER, DEPONENT, SWORN

19 MR. KOERBER: Sir, would you please state  
20 your full name for the record and spell your last.

21 THE WITNESS: Scotty Joe Kinder, it's  
22 K-i-n-d-e-r.

23 MR. KOERBER: Would you please state your  
24 address and telephone number.

1 THE WITNESS: (b) (7)(C)

2 (b) (7)(C) And my phone  
3 number is (b) (7)(C)

4 MR. KOERBER: Do you have an attorney here  
5 with you today?

6 THE WITNESS: Yes.

7 MR. KOERBER: I would ask that he identify  
8 himself and his firm.

9 MR. MCCUSKEY: Yes. John McCuskey, law  
10 firm of Shuman, McCuskey & Slicer, counsel for  
11 Mr. Kinder.

12 MR. KOERBER: Mr. Kinder is your client;  
13 correct?

14 MR. MCCUSKEY: That is correct.

15 MR. KOERBER: Mr. Kinder, on April 5th,  
16 2010, where were you employed?

17 THE WITNESS: I was employed with Massey  
18 Coal Services.

19 MR. KOERBER: What was your job title?

20 THE WITNESS: I was a full-time mine  
21 rescue team member.

22 MR. KOERBER: As a full-time mine rescue  
23 team member, did you participate in safety audits  
24 of other Massey mines?

1 THE WITNESS: Yes.

2 MR. KOERBER: There is another gentlemen  
3 seated between me and Mr. McCuskey. I would ask  
4 that he identify himself, his firm and his client.

5 MR. WICKLINE: My name is Scott Wickline.  
6 I'm with the law firm of Allen, Guthrie & Thomas in  
7 Charleston, and I'm here on behalf of Performance.

8 MR. KOERBER: We also have two people in  
9 the back of the room. Beginning with the person  
10 that's seated in the row of tables closest to me, I  
11 would ask that the people identify themselves and  
12 who they're with.

13 MR. MCCUSKEY: J. B. McCuskey, Shuman,  
14 McCuskey & Slicer.

15 MR. HESS: Leland Hess, with MSHA.

16 MR. KOERBER: Mr. Kinder, are you  
17 appearing here today as the result of receiving a  
18 subpoena?

19 THE WITNESS: Yes.

20 MR. KOERBER: That would be a copy of that  
21 subpoena, would it not?

22 THE WITNESS: It looks about -- I guess.

23 MR. KOERBER: I would like that to be  
24 Kinder Exhibit 1.

1 (Exhibit No. 1 marked for  
2 identification.)

3 MR. KOERBER: You have not seen this  
4 document. This is an Affidavit of Service, which  
5 was signed by my process server, swearing that on  
6 the 3rd day of March, he personally served you at  
7 the Hunter Addition address.

8 I'm going to ask that that be made Kinder  
9 Exhibit No. 2, please.

10 (Exhibit No. 2 marked for  
11 identification.)

12 MR. KOERBER: There is two other things  
13 I would like to give you, sir.

14 I'm going to give you the Johnny Jackson  
15 business card, and that's the court reporter firm  
16 that I spoke about earlier.

17 I'm also going to give you Mr. Bill  
18 Tucker's business card. Mr. Bill Tucker is our  
19 lead accident investigator.

20 In the event you leave here today and  
21 think of something that you deem important, or  
22 would like to share with the State, please feel  
23 free to call Mr. Tucker, okay, and his contact  
24 information is on this card.

1 I'm also going to give you a memorandum,  
2 which contains the West Virginia Board of Appeals.

3 The Board of Appeals is the administrative  
4 agency charged with hearing coal miner  
5 discrimination cases.

6 West Virginia Code Section 22A-1-22  
7 protects coal miners from being discriminated  
8 against for participating in interviews such as  
9 this.

10 In the event you find that you've been  
11 discriminated against, this is the entity to which  
12 you would file your complaint, and your attorney  
13 could help you with that as well. So I want to  
14 give you this.

15 I would caution you that, under the  
16 statute, you only have 30 days from the day of the  
17 discriminatory event to file your complaint with  
18 this board.

19 THE WITNESS: Thank you.

20 MR. KOERBER: With that, I'm going to ask  
21 that the interview begin.

22 EXAMINATION

23 BY MR. MAGGARD:

24 Q. Okay. I'll start. I guess I've been

1 delegated.

2 Tell me, Scott, about your mining  
3 experience. How many years have you worked for the  
4 mines?

5 A. Started in February of '96. I've  
6 performed just about every job underground.

7 Q. Okay. What kind of jobs have you done?

8 A. Equipment operators, section foreman,  
9 section electrician, fire boss, construction.

10 Q. Okay. Where did you first start  
11 employment at? What was your -- has this always  
12 been with Massey?

13 A. Yes.

14 Q. Have you worked anywhere else other than  
15 Massey?

16 A. No.

17 Q. Okay. And how long have you worked with  
18 Massey Coal Services?

19 A. Since December of '09.

20 Q. Prior to December '09, which mine was you  
21 working at?

22 A. Black King.

23 Q. What was you doing at Black King -- is  
24 that right?

1           A.    Yes.

2           Q.    Okay.  What was you doing there?

3           A.    I was an electrician.

4           Q.    What kind of section was you working on?

5   Was it a continuous miner section?

6           A.    Yes.

7           Q.    Have you ever worked on a longwall before?

8           A.    No.

9           Q.    Tell me a little bit about the duties you  
10   have to perform at Massey Coal Services.  What jobs  
11   do you do?

12          A.    We do team visits, audits.

13          Q.    When you say "team visits," are you  
14   talking about mining rescue team visits?

15          A.    Yes.

16          Q.    When you're talking about audits, you're  
17   talking about safety audits; is that correct?

18          A.    Yes.

19          Q.    How often do you do a team visit to a  
20   particular mine?

21          A.    I think to satisfy the law -- I'm not a  
22   hundred percent sure -- I think you have to go  
23   every six months on a team visit.

24          Q.    How often do you do a safety audit at a

1 particular mine?

2 A. Every quarter.

3 Q. Are there some times quarters that you  
4 don't get to a particular mine?

5 A. Not that I'm aware of.

6 Q. What portion of the safety audit do you  
7 normally conduct?

8 A. We didn't -- before this happened, we were  
9 just -- where I was an electrician, I would look at  
10 the electrical stuff when we got to a section. I  
11 mean, everybody just kind of had their own little  
12 niche that we would fall into.

13 And then if we'd get done with that, we'd  
14 go on. So we didn't really have, like, assigned  
15 things. As long as everybody covered, you know.

16 Q. So sometimes you would -- would it be safe  
17 to say that most of the time you done electrical  
18 portions or electrical equipment, but you also did  
19 other duties during a safety audit?

20 A. If there was another electrician that was  
21 doing the electrical, I would do something. I  
22 mean, we would just split up. We would get on the  
23 section and go everywhere and check everything.

24 Q. I didn't ask you this before. What kind

1 of certifications do you hold?

2 A. I have a mine foreman certificate,  
3 electrician certification, shop fireman, dust  
4 certification, EMT, MSHA instructor, State  
5 instructor. There's more. Gas testing instructor.

6 Q. That's a pretty good lot. What type of  
7 MSHA instructor are you?

8 A. It's underground, unlimited.

9 Q. How long have you been an electrician?

10 A. Maybe two or three years somewhere.

11 Q. How about mine foreman? How long have you  
12 had that certification?

13 A. Since 2004.

14 Q. Prior to April 5th, when was the last time  
15 you had to visit Upper Big Branch mine?

16 A. I don't know the exact date. It was three  
17 weeks to a month, maybe. I really don't know.

18 Q. Okay. Do you remember what the purpose of  
19 that visit was?

20 A. I think it was an audit, but it could have  
21 been a team visit. I think it was an audit.

22 Q. Do you recall anything about that audit,  
23 any kind of hazards that were identified, where you  
24 went to, just tell me a little bit, if you can

1 remember anything about that audit?

2 A. I remember we went to the wall.

3 Q. Okay. You remember you went to the wall.

4 What did you look at on the wall?

5 A. I'm so not familiar with the wall that --  
6 it's just when I would go to the wall, I would, you  
7 know, kind of watch -- I don't know enough about a  
8 longwall to -- unless it's something obvious, you  
9 know what I mean?

10 Q. Right. So it's pretty safe to say you're  
11 still learning a lot about a longwall; right?

12 A. Yes.

13 Q. Okay. During that audit, what portion did  
14 you -- what part of the audit did you do?

15 A. We just -- I went outby from the wall,  
16 from watching, you know, the wall run. We'd go  
17 outby and just -- I really don't know, you know.

18 Q. Okay.

19 A. I remember being down, like, at the mule  
20 train. It's all so new, you know, you just --  
21 unless there's something obviously wrong.

22 Q. Who was with you on that visit, do you  
23 remember?

24 A. Mark Bolen, Clinton Craddock and James

1 Thomas. And there's probably more, but those are  
2 the three that I remember.

3 Q. Okay. About those three right there,  
4 what's their backgrounds? What kind of experience  
5 have they got? Are they longwall people?

6 A. Mark is a longwall guy.

7 Q. Do you know what he used to do on a  
8 longwall?

9 A. He was an electrician.

10 Q. So Mr. Craddock and Mr. Thomas, what's  
11 their backgrounds, what's their expertise?

12 A. James was new -- both of them were new, as  
13 well as myself.

14 Q. Okay.

15 A. James has done, you know, he was the  
16 section foreman underground.

17 Q. Was he a section foreman on the continuous  
18 miner section?

19 A. Yes.

20 Q. When you say "they were new," are you  
21 saying they were new to Massey, or new to Massey  
22 Coal Services, what do you mean by that?

23 A. New to Massey.

24 Q. Okay. As far as conducting safety audits,

1 who provided training on how to do that for you  
2 guys?

3 A. If I remember right, I have a hard time  
4 remembering before and after.

5 Q. Right.

6 A. But where I've worked here so long at  
7 Massey that I know -- I know what the policy is and  
8 all that, so I'm familiar with that. But we also  
9 have a book of the S-1 policies and things to go  
10 to.

11 Q. And this S-1 policy that you go by, is  
12 that a -- is a lot of that incorporated into the  
13 safety audit?

14 A. Yes.

15 Q. What else is incorporated into the safety  
16 audit?

17 A. The audits are pretty much state law,  
18 federal law, company policy and -- well, I guess  
19 that's it for the actual safety portion.

20 Q. When you went on the longwall, do you  
21 remember how -- did you go all the way across the  
22 longwall? Did you watch the shear operate?

23 A. I did watch the shear operate for a little  
24 while.

1 Q. Did you have any discussions with anybody  
2 about any kind of problems they were having on the  
3 longwall?

4 A. No.

5 Q. When you all went underground, was you  
6 accompanied by anybody other than this audit team?

7 A. I don't remember. I don't know.

8 Q. Okay. So you basically -- would it be  
9 safe to say you stayed around the mule train,  
10 looked at that on your part, or do you remember  
11 what you had to fill out as far as the audit?

12 A. No, I don't remember.

13 Q. Okay. But as far as that audit goes, you  
14 don't remember -- or do you remember any unsafe  
15 conditions that were found?

16 A. The only thing that I can remember is that  
17 there was some belt structure, a couple of pieces  
18 of structure that were -- or monorail or  
19 something. I don't remember -- it was a tripping  
20 hazard underneath the lifeline.

21 Q. Okay. During a safety audit, do you also  
22 spot belts? Do you check a belt line?

23 A. Yes.

24 Q. Did you check one at --

1 A. No.

2 Q. -- UBB that day that you recall?

3 A. No.

4 Q. What kind of instruments do you take  
5 during a safety audit? Do you take any kind of  
6 test equipment? What do you do?

7 A. Just our multi-gas detector, tape  
8 measurer, I mean, just basic coal mining stuff,  
9 anemometers.

10 Q. Do you carry a multi-gas detector?

11 A. Yes.

12 Q. And did you see any kind of methane  
13 readings on the multi-gas detector --

14 A. No.

15 Q. -- that day that you recall?

16 A. No.

17 Q. Did anybody mention any kind of problems  
18 with methane on the longwall --

19 A. No.

20 Q. -- during that audit?

21 MR. MCCUSKEY: Let him get finished before  
22 you answer.

23 THE WITNESS: I thought he was finished.

24 Sorry.

1 Q. I'm bad for that, too.

2 So do you all ever take any rock dust  
3 samples during an audit?

4 A. No.

5 Q. Do you have any equipment to take an --  
6 has it ever been done on an audit, or do you know?

7 A. I don't know. We haven't from the time I  
8 started until, you know, the event, but ...

9 Q. Okay. And you started on audits in  
10 December '09?

11 A. Yes.

12 Q. That's pretty correct?

13 A. Yes.

14 Q. I'll switch gears a little bit. You're on  
15 the mine rescue team; right?

16 A. Yes.

17 Q. On April 5th, did you have to go to the  
18 Upper Big Branch mine?

19 A. Yes.

20 Q. Okay. Where was you at when -- tell me  
21 who called you, how you found out about the  
22 accident, when you think you arrived, tell me a  
23 little bit about that day.

24 A. Mark Bolen, Jason Castle, me, I don't --

1 as far as I can remember, it was just the three,  
2 but Clinton may have been with us. I can't  
3 remember. I don't remember. We were at Parker  
4 Peerless, it's a mine right up the road from the  
5 station.

6 When we got back from Parker Peerless,  
7 Rob, our boss, was raising the door on the  
8 station. He was getting ready to a hook up to our  
9 trailers and said something happened at UBB. He  
10 didn't know what. He said, they just said get down  
11 there.

12 Q. When you were at Parker Peerless, who  
13 traveled with you to UBB at that time?

14 A. Mark and Jason Castle.

15 Q. Okay.

16 A. And if there was another person with us,  
17 which I don't remember, we all traveled together.

18 Q. Okay. So were you the first mine rescue  
19 employees that had made it to the Upper Big Branch  
20 mine on April 5th?

21 A. Yes.

22 Q. Where did you go to first?

23 A. Ellis portal.

24 Q. When you got to Ellis portal, tell me

1 about what was going on, what they told you when  
2 you got to the mine?

3 A. Someone was saying, I don't know who, it  
4 was a little chaotic, they didn't know if they had  
5 a roof fall, is what they was saying. They was  
6 trying to get ahold of the crews. They said they  
7 haven't got ahold of anyone.

8 Q. Who did you talk to from the mines that  
9 day when you arrived? Can you remember who was  
10 telling you this information?

11 A. No. This was just, what do we have, and I  
12 don't remember who said it. I don't. I just  
13 remember hearing it.

14 Q. Do you remember about what time you  
15 arrived at the mine, how far is it from Parker  
16 Peerless to UBB? How far a drive is it?

17 A. Five minutes, maybe. We were at the  
18 station, at our station which is closer than that,  
19 whenever, you know, we got the information to go.

20 Q. When you got to the mines, did anybody  
21 tell you who was underground at that time?

22 A. Me personally, no. I just hear people  
23 say, you know, the guys from the longwall was under  
24 there.

1 Q. Okay. On your team, what's your role on  
2 the mine rescue team?

3 A. As far as?

4 Q. What job do you do? Are you ...

5 A. Competition-wise?

6 Q. Just on your regular duties.

7 A. I don't have one.

8 Q. You're not a map man? You're not --

9 A. No.

10 Q. What do you do?

11 A. Well, I was training, you know, for  
12 competition purposes.

13 Q. Okay.

14 A. As No. 2 Gas Man on the competition team.  
15 As far as a real life event, I mean, I was ...

16 Q. When did you start on the mine rescue  
17 team? How long have you been on it?

18 A. Since December of '09.

19 Q. What kind of training did you have to take  
20 for that, can you recall?

21 A. I think it was a 40 hour -- I'm not sure  
22 on the hours. I think it was 40 hours training to  
23 get a mine rescue certification. I had to take a  
24 test.

1 Q. Okay. Had you all made a mine rescue team  
2 visit to Upper Big Branch, from when you started to  
3 prior to April 5th?

4 A. I think we did. I've been twice before.  
5 The first time, I think, it was a team visit, but  
6 I'm not for sure. I don't remember.

7 I was just excited about going to the  
8 wall. I've always heard of the longwall. I was  
9 just -- that's the first time I had ever seen one.

10 Q. I guess, was you briefed about what was  
11 going on, and tell me about that, and I know we've  
12 talked about it a little bit, and who decided  
13 that -- I guess, tell me did you go underground,  
14 who decided that you needed to go and how -- tell  
15 me a little bit about that.

16 A. As far as getting briefed, I don't  
17 remember. I'm sure that, like, Rob and Shane, and  
18 I don't know who -- I remember when we got there  
19 and the first thing we did, Mark Bolen and me, was  
20 to start getting our instruments out, our  
21 apparatuses, our ZM, to make sure, you know, it was  
22 like one final check. You want to make sure  
23 everything is good before you go. So that's what I  
24 was doing. And everything else, I would just catch

1 bits and pieces. It was our number one focus.

2 Q. So when you went -- you did go underground  
3 on April 5th; right?

4 A. Yes.

5 Q. When you went underground, who went with  
6 you?

7 A. Jeremy McClung, Tommy Dove, Jason Castle.  
8 Some more people went, but I don't remember who it  
9 was or didn't even know who it was.

10 Q. Where did you go to first? Where did you  
11 make it to?

12 A. I didn't get to go in until late that day,  
13 and we had already stopped going in the Ellis  
14 portal side, and we had to take our trucks over to  
15 the actual UBB portal.

16 Q. Okay. Was your team the -- when did they  
17 go in? Was they the first team, second team?

18 A. It was way down the list.

19 Q. Okay.

20 A. There was a whole lot of people  
21 underground already.

22 Q. Do you remember who the first team was  
23 that went underground that day?

24 A. The first mine rescue team?

1 Q. Right.

2 A. Rob Asbury, Jimmy Aurednik and Mark.

3 Q. Mark?

4 A. Bolen.

5 Q. Bolen? Okay.

6 When the first team went in, do you  
7 recall -- was they already -- I know Mark was, I  
8 heard you say him, I guess.

9 Was Rob already there when you got there?

10 A. He was the guy at the station that was --  
11 he was our boss that was -- he was getting ready to  
12 hook up when we got to the station.

13 Q. Okay. But did he leave and get over to  
14 UBB Ellis portal before you did with, I guess,  
15 McClung, Dove, and Castle; is that right?

16 A. No.

17 Q. You got there first?

18 A. No, but that's not right.

19 Q. Okay. Help me out here.

20 A. It was just Mark and Jason Castle. That's  
21 the only two that I remember that day. There may  
22 have been more. Like I said, I really don't -- I  
23 don't know. I can't remember.

24 But as far as when Rob got there, I don't

1 know if he beat us there. I don't know if he came  
2 after us. I don't know.

3 Q. When Rob Asbury, Mark Bolen and Jim  
4 Aurednik -- is that right?

5 A. Uh-huh.

6 Q. -- when they went underground, who went  
7 with them?

8 A. That was it, as far as I know.

9 Q. Do you recall anybody else being  
10 underground that had went in after the accident?

11 A. I'm not sure what you're ...

12 Q. Was there anybody else that went in after  
13 the event happened and they were underground before  
14 Rob Asbury and Bolen and Aurednik went inside?

15 A. Berman, I think, and Jim Walker. Maybe  
16 Wayne. I'm not sure. I'm guessing, you know. I  
17 was there when whoever was on the mantrip that  
18 brought the six victims out, the first six.

19 Q. How long was you at Ellis portal before  
20 you had to go -- I think you said you had to go to  
21 UBB. How long was you over there before you went  
22 to UBB?

23 A. I don't know. It seemed -- whenever I  
24 left Ellis portal, it was starting to get dark. It

1 wasn't completely dark. That's all I remember. I  
2 remember the road was lined with people.

3 Q. Can you remember how many teams had been  
4 underground before your team went underground?

5 A. I don't know.

6 Q. Do you remember what time you went  
7 underground?

8 A. No.

9 Q. Was it before midnight or after midnight?

10 A. I don't remember.

11 Q. Okay. Tell me where you ended up going,  
12 do you remember that, when you went underground?

13 A. When we got to go underground, there was  
14 advance in the fresh air base up, and we had  
15 supplies with us, and we was carrying them up to  
16 the fresh air base as they was, you know ...

17 Q. Where was the fresh air base at, and where  
18 was it advancing?

19 A. I think -- I don't know. I can't say that  
20 I know for sure because I don't. I never made it  
21 to the fresh air base, because whenever our team  
22 got underground, they was coming back saying we had  
23 to leave.

24 Q. Okay. And so I assume you all was the

1 first one out, then, probably, or not, first team  
2 back out?

3 A. I don't remember.

4 Q. Did you make any more attempts with a team  
5 and actually went underground farther than where  
6 the fresh air base was on April 5th?

7 A. No, that was my last time going in until  
8 we went in for the recovery of the mine. I had a  
9 baby during all that.

10 Q. Do you know if -- I guess at -- you have  
11 got to forgive me, I get confused, too.

12 But at Parker Peerless, what was you all  
13 over there that day doing?

14 A. We were helping out that day, just -- we  
15 were building overcast steps that day.

16 Q. But you wasn't on a safety audit or  
17 nothing like that?

18 A. No.

19 Q. Okay. Did you have any safety audits  
20 scheduled at UBB prior to April 5th?

21 A. I'm not sure.

22 Q. Was you planning on making a visit,  
23 another audit, like for another quarter or  
24 something, you know?



1 not going to UBB and going to Parker Peerless?

2 A. Because (b) (7)(C) very far along  
3 pregnant, and it was such a long way inside of UBB  
4 and hard, because of a lot of traffic and the size  
5 of the mine, it was hard to get out.

6 We was afraid that if she went into labor  
7 (b) wouldn't make it. So Mark suggested that we go  
8 to Parker Peerless instead of UBB.

9 Q. Okay. Because it would be quicker to get  
10 outside if you did get that call?

11 A. Yes.

12 Q. You mentioned that -- was talking about  
13 possible people underground when you arrived over  
14 at Ellis portal. You mentioned Bermen and Jimmy  
15 Walker.

16 Were they on the surface when you left, or  
17 what was their role as far as going underground, do  
18 you recall?

19 A. I don't. I don't know.

20 Q. Do you recall seeing them back on the  
21 surface before you left Ellis going to UBB side?

22 A. After the mantrip came out, I don't. It  
23 was chaos. Sorry. I really don't. I don't know.

24 Q. When the mantrip came out, was they with

1 the mantrip, or do you recall.

2 A. They was with the mantrip. I do remember  
3 that. They was, you know, trying to help the  
4 victims.

5 Q. Okay. So you said that first night that  
6 your team was making the way up to the fresh air  
7 base, and when the teams were called to come  
8 outside the mines. So was that inby 78 break?

9 A. Yes.

10 Q. Do you have an idea where that fresh air  
11 base had been established?

12 A. Just guessing, I'm thinking that it was  
13 almost to the mother drive, but I'm not a hundred  
14 percent for sure.

15 Q. You said you hadn't actually made it to  
16 the fresh air base?

17 A. No.

18 Q. And the team started coming back out?

19 A. Yes.

20 Q. Do you recall after that when you were  
21 back underground as part of mine rescue?

22 A. I didn't -- I came to work the next night  
23 and it was -- we got all of our stuff ready, you  
24 know, our equipment, and it was a hurry-and-wait

1 type deal.

2 And I was calling my wife, checking on  
3 her, (b) (7)(C) . I didn't  
4 go back. Rob sent me home. He said, we have  
5 plenty of people here, he said, you don't want to  
6 miss that. So I didn't go back until the recovery  
7 of the mine.

8 Q. Oh, okay.

9 MR. TUCKER: That's all I have.

10 EXAMINATION

11 BY MR. BECK:

12 Q. Scott, you started with Massey in February  
13 of '96; correct?

14 A. Yes.

15 Q. And then Massey Coal Services in December  
16 of '09?

17 A. Yes.

18 Q. How do you get picked to work for Massey  
19 Coal Services as a mine rescue team member? Do you  
20 apply or do you just get picked?

21 A. I called Rob Asbury. Some of the guys was  
22 -- some of the team members was at Black King doing  
23 some training, and I asked them, you know, hey, are  
24 y'all hiring, and they said, yeah. So I called

1 Rob.

2 Q. I was just curious about how that process  
3 worked.

4 You also said that team visits are every  
5 six months and safety audits are quarterly, is that  
6 correct, quarterly for safety audits?

7 A. Definitely correct for safety audits.  
8 Team visits, I think it's every six months.

9 Q. Has that always been the policy?

10 A. Since I've been with them it has.

11 Q. And the audit report, once the audit  
12 report is completed, do you know where that goes or  
13 how that's processed?

14 A. Usually, like, Mark would type -- we would  
15 all type and put it together and send it to Rob or  
16 Shane or both, and maybe a president. I'm not for  
17 sure. I never did do that.

18 But as far as where it goes, it definitely  
19 went to Rob, it definitely went to -- he would send  
20 it to, like, Elizabeth Chamberlin, or somebody like  
21 that, and I think either he sent it to the  
22 presidents or she sent it to the presidents of the  
23 resource group.

24 Q. Do you know of anybody else that got a

1 copy?

2 A. I don't know.

3 Q. Do you know of any follow-up on these  
4 audit reports to see that things that needed  
5 addressed were addressed?

6 A. I know that if we would do another audit,  
7 and it was like a repeat item, we would sometimes  
8 put that on there, "repeat item." We would try to  
9 -- usually if you were at a mine and you wrote  
10 something up like that, and then you go back, you  
11 remember that. So you go check that out, you know.

12 Q. Okay. Sure.

13 Now, working for Massey Coal Services,  
14 being a mine rescue member, doing safety audits,  
15 team visits, was that the extent of your duties?

16 A. No. I mean, that was primarily what we  
17 did. But if we were caught up with everything, we  
18 would go help out somewhere. And that could be  
19 from shoveling belt to anything.

20 MR. BECK: That's all I have.

21 EXAMINATION

22 BY MR. CRIPPS:

23 Q. So when was your baby actually born?

24 A. On the (b) (7)(C)

1 Q. On the (b) (7)(C)

2 A. Yeah.

3 Q. Boy or girl?

4 A. (b) (7)

5 Q. Is that your first one?

6 A. That was -- (b) (7)(C)

7 (b) (7)(C)

8 Q. You said earlier, one of your previous  
9 trips to UBB, you went up to the longwall?

10 A. Yes.

11 Q. Actually seen the longwall running?

12 A. Yes.

13 Q. What did you think about it?

14 A. I didn't like it.

15 Q. You didn't like it?

16 A. No.

17 Q. What didn't you like?

18 A. Whenever you're underneath the shields,  
19 how all the -- I'm not real good on any of the  
20 terminology. Where the shields are, like where  
21 that jack is in between the shields and the pan  
22 line, all down through there, I just feel like I'm  
23 in a pinch point area. It just doesn't feel right,  
24 always working around a miner section, you know,

1 just ...

2 Q. Okay. What about all that coal coming off  
3 the chain?

4 A. I don't think it was running real good  
5 whenever we were there. I mean, I didn't see the  
6 stereotypical graveyard hump and all that, you  
7 know.

8 Actually the very first time we went  
9 there, I think the wall was actually down. I  
10 really don't remember.

11 It seems like one time they were having  
12 power issues, and then the last time I actually got  
13 to see it run.

14 Q. When you visited the longwall up at UBB,  
15 your trip up there, did you go through several sets  
16 of equipment doors?

17 A. Yes.

18 Q. In your experience at other mines and  
19 traveling, did the number of doors you went through  
20 appear excessive to you?

21 A. There's more doors -- I went through more  
22 doors there than I have anywhere else.

23 Q. You said on April the 5th you had went to  
24 another mine, you was just helping build overcasts?

1           A.    We were building overcast steps.

2           Q.    Overcast steps?

3           A.    Yes.

4           Q.    You said on the morning of the 5th that  
5 Rob had told you guys to go to UBB. Did I hear  
6 that correctly?

7           A.    Yes.

8           Q.    Did Rob decide or did you guys take it  
9 upon yourselves not to go to UBB?

10          A.    No, Mark, another guy on our team, he went  
11 to Rob and said, hey, you know -- she had a  
12 doctor's appointment, my wife had a doctor's  
13 appointment that day.

14                    And he's like, you know, if she's going to  
15 go into labor, you know -- she was at term, you  
16 know. He said, maybe we ought to not go there.

17                    Because we were just going to help out  
18 somewhere, you know. It didn't really matter. The  
19 UBB part wasn't relevant. It was just go help out  
20 somewhere.

21          Q.    So you wasn't going to UBB as a result of  
22 any type of a problem or complaint that you was  
23 aware of?

24          A.    No.

1 Q. You was just going to UBB to help work?

2 A. Just help out, yes.

3 Q. Build overcast steps?

4 A. Yeah, anything.

5 Q. You said you was on the mine rescue team  
6 since December of '09. I want to just talk to you  
7 about the mine rescue team a little bit.

8 You said you was trained on the mine  
9 rescue team for competition?

10 A. Yes.

11 Q. Is that correct?

12 A. Yes.

13 Q. Explain to me what you did.

14 A. We would practice out on the field, and I  
15 think it was usually on Thursdays or Fridays.

16 We had just started not too long before  
17 this happened, and I had never even -- never been  
18 around anything like that, so it was all real new  
19 to me.

20 I was practicing with team two. We had  
21 two teams, competition teams. I was practicing for  
22 No. 2 Gas Man. I was still trying to feel  
23 everything out and try to learn, you know.

24 Q. Had you participated in any contests yet?

1           A.   No.  At the time or now?

2           Q.   I'm sorry.  At the time of the accident,  
3 prior to it?

4           A.   No.

5           Q.   Had you participated in any now since the  
6 accident?

7           A.   Not as far as the -- an actual being on  
8 the team?  I went to Lexington and pulled  
9 lifeline.  That's the only competition I've seen,  
10 you know.

11          Q.   So you still are on mine rescue team?

12          A.   Yes.

13          Q.   Okay.  As I understand, your team was the  
14 first team to arrive at the Ellis portal after the  
15 accident?

16          A.   As far as I know, yes.

17          Q.   And some of your team members actually  
18 went into the mine, was the first ones into the  
19 mine; is that correct?

20          A.   Yes.

21          Q.   Why was you not part of that team?

22          A.   They went in teams of three, as far as I  
23 know.  I was next one up, you know, it was, like,  
24 Rob, Mark, Jimmy went, Shane, Mike Alexander and

1 Larry, I think, was on the second team, you know.

2 And I was next in line and East Kentucky  
3 came, our East Kentucky guys had got there, so they  
4 went, you know, I mean, they're all experienced  
5 mine rescue guys, so it wouldn't be real good to  
6 send someone with no experience in whenever you  
7 have someone who is experienced.

8 Q. So when the second group of three went  
9 underground, who, besides yourself, was at the  
10 Ellis portal, as far as mine rescue members go?

11 A. Jason Castle, James Thomas, Clinton  
12 Craddock, I believe. Not a hundred percent sure on  
13 Clinton, but 99 percent sure he was there.

14 It was hectic, you know, so I really  
15 don't -- I know for sure James was, and I know for  
16 sure Jason was. Other than that, it's kind of  
17 fuzzy.

18 Q. Okay. So are you still doing audits at  
19 mines also?

20 A. Yes.

21 Q. Okay. So I just want to be clear. On  
22 April the 5th, then, when Rob had told you guys to  
23 go to Upper Big Branch, it was not in response to  
24 any type of a safety concern or a problem?

1           A.    No.

2           Q.    When you do your safety audits, who  
3 decides where and when you go do them?

4           A.    I'm not sure.  I don't know if its Rob.  I  
5 don't know if it comes higher than Rob.  I don't  
6 know.

7                    As long as we do one every quarter, I  
8 don't even know if it matters, unless a place was  
9 having trouble or something, if they had a lot of  
10 accidents or getting a lot of violations, I would  
11 think that that would put it at a higher priority  
12 than one that, you know, was just -- everything was  
13 okay.

14          Q.    When you go to do a safety audit, who  
15 actually gives you your directions to go and do it?

16          A.    It would be Rob Asbury usually.

17          Q.    Do you generally know, before you show up  
18 at work on a certain day, that you're going to go  
19 do an audit at a certain mine?

20          A.    Before the event or after?

21          Q.    Yes, the day before.

22          A.    You mean before the 5th or before ...

23          Q.    I'm sorry, before the 5th, yes.

24          A.    Before the 5th it was usually, you may

1 know, you may not know. It was no big deal, you  
2 know, you just --

3 It's still no big deal. I mean, you go on  
4 and do it. It just takes longer to do them now the  
5 way we do them.

6 Q. Prior to the 5th, when you went to do an  
7 audit, was there a hierarchy, I guess, on your  
8 team, the members was there, did you report to  
9 somebody, or was somebody in charge of your team?

10 A. Yes.

11 Q. Who would that have been?

12 A. It would have been Mark. And it wasn't  
13 really set in stone, you know, the hierarchy. It  
14 was more out of a respect thing, you know, he was,  
15 like, our crew leader. He was the one most  
16 familiar with the longwall.

17 If we would have went to, like, Black  
18 King, you know, and Mark would have been there, he  
19 would have still been our crew leader, but where I  
20 would have been most familiar with that mine, I  
21 could have helped us out a little bit as far as  
22 knowing the best way to get around and things like  
23 that.

24 Q. When you was doing the safety audits prior

1 to the 5th and also now, do you have authority or  
2 the power to remove equipment or a belt line from  
3 service?

4 A. Absolutely.

5 Q. What's the criteria for removing equipment  
6 from service?

7 A. Anything that is unsafe for sure, you  
8 know, like brakes not working, and anything that's  
9 not -- if I check a panel that has an opening in  
10 it, it's out of there, get it fixed.

11 Q. Have you or the members of your team, when  
12 you've been present, removed equipment for service?

13 A. Yes.

14 Q. Have you ever had the management at that  
15 mine refuse to remove it from service?

16 A. No.

17 Q. Do you or any of your team members, can  
18 you decide when to go do a safety audit at a mine?

19 I'll be a little more clear.

20 Say you're at church on Sunday, and  
21 somebody comes up to you and gives you a complaint  
22 about the mine he's working at, can you take it  
23 upon yourself to request a safety audit at that  
24 mine?

1           A.    Absolutely.

2           Q.    Have you ever done that?

3           A.    No.

4           Q.    Do you know of anybody, or if that has  
5 ever happened?

6           A.    I don't know if that's ever happened.

7           Q.    Okay. Do you feel that the miners at  
8 these mines can report problems to you?

9           A.    Yes.

10          Q.    Do you think they feel that if they report  
11 them, then they'll be taken seriously and taken  
12 care of?

13          A.    Yes.

14          Q.    Do you have any direction or ever been  
15 instructed that if guys do report problems to you,  
16 do you have to report them to management?

17          A.    Oh, yes. Yes, if someone would report  
18 something -- it depends on what it is exactly. I  
19 mean, if it's something bad, you know, I mean, if  
20 something was unsafe, I would go shut it down. You  
21 know what I mean?

22          Q.    Sure.

23          A.    If it was something -- if it was life-  
24 threatening or immediately dangerous, you know.

1           Q.    Do you feel the guys can -- by "the guys,"  
2 I'm talking about the hourly miners that's working  
3 underground, can they report a safety issue to you  
4 without fear of repercussions from management?

5           A.    I would assume that they could.

6           Q.    Okay.

7           MR. MCCUSKEY:  Mr. Cripps, may I ask, you  
8 asked a question about whether he would report that  
9 to management.

10           I didn't know if you were asking him  
11 whether he would report the person who reported it  
12 to management or the condition.

13           MR. CRIPPS:  I'll be a little clearer.

14           MR. MCCUSKEY:  Okay.

15           Q.    If an hourly miner was to report an unsafe  
16 or hazardous condition to you, are you required to  
17 report the condition and the person who told you  
18 that to management?

19           A.    I'm not required to report the person, as  
20 far as I know.  I mean, I've never -- I've never  
21 been in a situation where it was, like, sensitive,  
22 you know.

23           Everyone tries to work together and, you  
24 know, and it's my experience throughout that if

1 you're having a problem.

2 Q. But you would at least report the  
3 condition to management?

4 A. Absolutely.

5 Q. Okay. If that happens, do you have any  
6 method by which you can determine if that condition  
7 has been addressed?

8 A. Now we do follow-ups on our audits, you  
9 know, like, we'll actually -- sometimes we'll take  
10 an actual -- our audit from before and make sure  
11 that everything has been corrected.

12 Q. Is that a change since April the 5th?

13 A. I haven't -- I'm still kind of new, but  
14 it's -- you know, mentally you would try to go back  
15 if you remembered something, you know, that they  
16 said they was going to fix to check and make sure  
17 that they did.

18 So as far as actually carrying a copy of  
19 it, it's new to me, but I don't know if they ever  
20 done it before. You know what I mean?

21 I personally have never done it before the  
22 5th.

23 MR. CRIPPS: Okay. That's all I have.

24 MR. BECK: I just have one more.

## EXAMINATION

1  
2 BY MR. BECK:

3 Q. Scott, did you ever attend any meetings  
4 with Massey management in regards to these safety  
5 audits to discuss them and talk about it?

6 A. How high up management are you talking,  
7 like, mine foreman superintendent?

8 Q. No, or in the mine?

9 A. No.

10 Q. Do you know if anybody from your group  
11 ever did?

12 A. Yes, they have.

13 Q. Do you know who they met with?

14 A. Presidents, superintendent. That's as far  
15 as I know.

16 Q. That's at a subsidiary level; correct?

17 A. Yes.

18 Q. Like Performance Coal?

19 A. Right.

20 Q. Anybody outside of Performance Coal, like,  
21 from the Julian office?

22 A. I don't know. I never sat in on one. I  
23 know that they have met with discussing our audits,  
24 you know, they would meet with the president.

1 I don't know if Elizabeth was there. I  
2 really don't know for sure. It seems like one time  
3 that she was, I think I remember hearing. But I am  
4 not sure. That's speculation, I guess.

5 MR. BECK: That's all I have.

6 MR. MAGGARD: I've got a couple, I guess,  
7 I can ask.

8 EXAMINATION

9 BY MR. MAGGARD:

10 Q. When you are not making mine rescue team  
11 visits or safety audits, do they let you know which  
12 mine to go to, what kind of work needs to be -- I  
13 mean, what do you do when you go to help out at a  
14 mine?

15 A. We go and -- whenever I've done it, before  
16 we go and say, Here we are. What do you want us to  
17 do?

18 Q. How often does that happen in a week's  
19 time or a month's time, how often do you go to  
20 another mine and just work for a day?

21 A. From December until the event, it didn't  
22 happen a whole lot. I mean it was something that  
23 would happen a few times, but not very often.

24 It wasn't really a common practice that we

1 had that much free time.

2 Q. Okay. As far as normal jobs that they  
3 would ask you to do, what kind of jobs have you  
4 done in the past like that?

5 A. I've rock dusted. I have shoveled belt.  
6 Picked up trash. I've helped set a belt head. You  
7 know what I mean, just whatever they need help  
8 doing.

9 Q. Okay. Do you recall where you would have  
10 done some rock dusting at?

11 A. No, not exactly. I know I have, I just  
12 don't remember where.

13 Q. Was that running a machine or was that --

14 A. No.

15 Q. -- some hand dusting?

16 A. Yes.

17 Q. Was that, like, on a belt line or a head  
18 drive or around a power center, do you recall?

19 A. I've dusted around power centers several  
20 times, and I've rock dusted belt line. That was at  
21 Parker Peerless that time.

22 Q. Being a Massey Coal Service employee, have  
23 you ever got to go visit other mines outside of  
24 Massey to look at any new technology or anything of

1 that nature?

2 A. No.

3 Q. How familiar are you with the plans, like,  
4 ventilation plans, dust control plans, roof control  
5 at, let's say, UBB, for instance?

6 A. I'm not super familiar with it. I've  
7 reviewed it, you know, I've actually done some  
8 training on it the other day to an MSHA -- I don't  
9 want to call him an MSHA attorney, but he was an  
10 attorney who just works for MSHA, just handles  
11 MSHA's cases.

12 Q. Okay.

13 A. That was part of his training to be able  
14 to go underground.

15 Q. Oh, okay. I understand. But prior to  
16 April 5th, how familiar was you with those plans?

17 A. If we were running PDMs, we had a copy of  
18 their ventilation plan.

19 Q. When you say "PDMs," what are you  
20 referring to?

21 A. It's a Personal Dust Monitor.

22 Q. So you also done some dust sampling?

23 A. Yes.

24 Q. Is that correct?

1 A. Yes.

2 Q. Had you ever done any dust sampling at  
3 UBB?

4 A. No.

5 Q. Had you reviewed the plans prior to April  
6 5th at UBB, ventilation, dust plans, roof control  
7 plans --

8 A. No.

9 Q. Okay. So --

10 A. And -- I'm sorry.

11 Q. Go ahead.

12 A. Whenever you said "dust sampling," it's  
13 not, like, I'm not talking about, like, a rock dust  
14 survey. You know that?

15 Q. Yeah. You're using a monitor. You're  
16 just going in there --

17 A. It's like a computerized dust pump, pretty  
18 much is what it is.

19 Q. So how often would you do that at mines?  
20 How frequent was that? Is that something you was  
21 trying out, I mean, something new?

22 A. Yes.

23 Q. Okay.

24 A. We would go around from different places.

1 One day we went and Bob Hardman was up there, you  
2 know, Elizabeth was there. It was new to me, and,  
3 I guess, pretty much all of us.

4 Q. Okay. But let me -- when you go to do  
5 this safety audit, is it not -- is reviewing the  
6 plans something that is not necessary for doing an  
7 audit?

8 A. As far as the ventilation on the face, it  
9 is, you know, and as far as -- you need to know  
10 their bolt pattern as far as, you know, whenever  
11 you go to do an audit. It's part of you need to  
12 make sure all the bolts are in, you know, and  
13 right.

14 Q. So as far -- where do you get a copy of  
15 the plans at when you're reviewing them?

16 A. You can get them at the mine site, or you  
17 can get them -- I don't know where they get them to  
18 be honest with you.

19 We've got them at the mine site before,  
20 but sometimes we have them already, and I don't  
21 know where they came from.

22 Q. Let's talk about UBB.

23 Has anybody from the mine ever discussed  
24 plans with you, prior to you going to the mines or

1 before an audit or at any time?

2 A. I'm not sure what you're asking.

3 Q. Have they went over the plans with you?

4 A. The ventilation plan?

5 Q. Yeah. Did you have any discussions about

6 ventilation plans or roof control plans with

7 anybody at the mines prior to going to UBB?

8 A. Are you talking about at UBB?

9 Q. Yeah. At UBB.

10 A. Just during our, like, hazard training,

11 you know. And as far as, like, for our audit

12 purposes, I don't remember on that.

13 Like I said, I was just the new guy, and I

14 was just excited about getting to see the longwall.

15 Q. So do you recall who gave you hazard

16 training at UBB?

17 A. One time Everett did, and I'm thinking  
18 maybe the first time Bermen did, but I'm not sure.

19 Q. Okay. And was that -- how long did that  
20 hazard training take you to do?

21 A. Not long. Just normal time, I guess.

22 Q. I guess that's all I've got. Oh, I've got  
23 one more. I'm sorry.

24 When you go checking -- I guess part of

1 the safety audit is to check dust control, maybe  
2 water systems, dust collector boxes, stuff like  
3 that. Do you ever do any pressure gauge readings  
4 during an audit?

5 A. Yes.

6 Q. Is that something --

7 A. No.

8 Q. Go ahead.

9 A. No, not during an audit. If we thought it  
10 was an issue, then yes. Whenever we run PDMs, we  
11 do pressure tests.

12 Q. Okay. Have you ever, during an audit, had  
13 spray systems on the miner or whatever that were  
14 clogged that you had to do work on while you were  
15 there?

16 A. That I personally had to work on?

17 Q. Yeah, or you had to get the guys on the  
18 section to work on?

19 A. I don't remember. Between the audits and  
20 running PDMs, you know, I've seen them have to  
21 clean their sprays, you know. But as far as if it  
22 was an audit or running PDMs, I don't know.

23 Q. And when you seen them clean the sprays,  
24 have you noticed any kind of issues with sprays?

1 Were they easy to clean? What would they normally  
2 do?

3 A. They would have a wrench, take it out, bit  
4 them out, you know, or put new sprays in them, just  
5 whatever it was.

6 MR. MAGGARD: I guess that's all I got.

7 MR. KOERBER: Mr. Kinder, before we end,  
8 if there's anything you would like to clarify,  
9 anything you would like to add, anything you'd like  
10 to say, any statement you would like to make, the  
11 floor is yours.

12 THE WITNESS: I'm good.

13 MR. KOERBER: Let's go off the record,  
14 please.

15 (Interview concluded.)

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1 STATE OF WEST VIRGINIA, To-wit:

2 I, Jenny Taylor, a Notary Public and Court  
3 Reporter within and for the State aforesaid, duly  
4 commissioned and do hereby certify that the  
5 interview of SCOTT KINDER was duly taken by me and  
6 before me at the time and place specified in the  
7 caption hereof.

8 I do further certify that said proceedings  
9 were correctly taken by me in stenotype notes,  
10 that the same were accurately transcribed out in  
11 full and true record of the testimony given by said  
12 witness.

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

20 My commission expires the 6th day of March  
21 2019.

21 Given under my hand and seal this 13th day of  
22 March 2011.

23 -----  
24 Jenny Taylor  
Notary Public