

THE UPPER BIG BRANCH MINE TRAGEDY

FIELD HEARING

BEFORE THE
COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS
SECOND SESSION

HEARING HELD IN BECKLEY, WV, MAY 24, 2010

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THE UPPER BIG BRANCH MINE TRAGEDY

Monday, May 24, 2010

U.S. House of Representatives

Committee on Education and Labor

Washington, DC

The Committee met, pursuant to call, at 9:00 a.m., in room C, Beckley Raleigh County Convention Center, 200 Armory Drive, Beckley, West Virginia, Hon. George Miller, Chairman of the Committee, presiding.

Committee Members Present: Chairman George Miller, and Representatives John Kline, Ranking Minority Member; Lynn Woolsey; Jason Altmire; and Carol Shea-Porter.

Also Present: Senator John D. Rockefeller and Representatives Nick J. Rahall, Shelley Moore Capito, and Alan B. Mollohan.

Also Present: The Honorable Hilda Solis, Secretary of Labor; Joe Main, Assistant Secretary for Mine Safety and Health; and Brian Kennedy, Assistant Secretary, Office of Congressional and Intergovernmental Affairs.

Staff Present: Aaron Albright, Press Secretary; Jody Calemine, General Counsel; Lynn Dondis, Labor Counsel, Subcommittee on Workforce Protections; Richard Miller, Senior Labor Policy Advisor; Revae Moran, Detailee Labor; Meredith Regine, Junior Legislative Associate, Labor; Barrett Karr, Minority Staff Director; Loren Sweatt, Minority Professional Staff Member.

Chairman MILLER. Good morning. I'm Congressman George Miller and I want to just make a statement before we begin this hearing, a very important hearing. I'd like to recognize a special guest, and I'm very pleased that she has taken her time to join us today to listen to the families. And that is Secretary of Labor, Hilda Solis, who is sitting along over here. Hilda, Secretary Solis—we've known one another a long time.

Secretary Solis served as a Member of Congress from 2001 to 2009 and she was confirmed as Secretary of Labor in February of 2009. She traveled here from Washington in order to hear firsthand the testimony of the family members touched by the Upper Big Branch tragedy. And again, I want to thank her for being here and she was here right after the tragedy onsite with the members of her Department, and we certainly appreciate you being here then also, Hilda, and if you would like to take a couple of minutes for the purpose of making remarks before we start the hearing, you're recognized.

Secretary SOLIS. Thank you very much, Chairman Miller. I want to also acknowledge Senator Rockefeller, who is here in the delegation here from West Virginia, but more importantly, the Committee on Labor and Education for being here and, of course, obviously, the families. I wish we were here under different circumstances; however, we do need to begin our discussion. I just want to thank you, Governor, for also being here with us.

Let me first express my deepest condolences to the families once again, friends and co-workers of the twenty-nine miners who perished in the Upper Big Branch mine and the surviving miners. Our prayers and our thoughts are with you and your families. As the President said, we owe them more than prayers; we owe them action and we owe them accountability. They ought to know that behind them there's a company that's doing what it takes to protect them and a government that is looking out for their safety.

At 3:02 p.m. on April 5th, 2010, an explosion occurred at the Upper Big Branch Mine. I had the opportunity to watch the mine rescue teams and MSHA personnel coordinating their response and the search for the survivors. I traveled to West Virginia then because I knew and I felt it was my duty to make sure that you knew that the Department of Labor was doing everything in our power to get to your loved ones and to get them out of the mine and back at home.

I had the honor and privilege of meeting some of you and being with you as you waited for news about your loved ones. You showed an unbelievable level of courage and composure even when you knew you were facing the most difficult odds. I've held those conversations very close to me since then. The mother praying for the safe return of her son. The grandfather who himself is suffering from black lung, desperate for information about his grandson. And the wives and children agonizing over what they can do to ease the sufferers in pain. Tragically, we later learned that all twenty-nine men lost their lives, but we can all honor them by ensuring that justice is served on their behalf, and that an accident of this magnitude never happens again.

Shortly after the explosion occurred, I briefed the President, along with the leadership of MSHA, on the explosion and our response. He was very clear in his direction to us. First he asked us to maintain a level of transparency in our investigation. Secondly, he told us to provide regular updates to the family members. And finally, he instructed us to take no action to interfere with any ongoing criminal investigation.

The Mine Safety and Health Administration led by my very capable Assistant Secretary Joe Main, who is with me, is conducting a thorough and comprehensive investigation into what caused the explosion on that day. MSHA also is conducting a thorough physical investigation of the mine and will hold a number of public meetings. MSHA's process will allow for unprecedented public participation, enabling members of the public to offer their insights into the causes of the explosion.

If you have something to say, you will have an opportunity to say it. Our process is designed so we can learn the truth regarding what happened at Upper Big Branch and determine what is needed to enhance protections for mining safety.

I'm grateful to Chairman Miller and the Committee and all the Representatives here for having held this hearing today for us and the families. I look forward to working with members of the Committee to strengthen our mine safety and health laws. I want to thank Governor Joe Manchin and the entire West Virginia delegation for their leadership and commitment to the mining community and the people of West Virginia.

Again, I'd like to especially thank the families for their courage and those of you that are here to testify today before this Committee. Thank you for allowing me the opportunity to speak, and I thank you for agreeing to be here to speak on behalf of your husbands, your fathers, your sons, your brothers, your uncles, and your friends. We take every incident that results in injury or loss of life seriously and personally, and I personally make a commitment that we will do everything in our power to see that we resolve this issue and that it doesn't happen again. Thank you.

Chairman MILLER. Thank you, Madam Secretary. A quorum being present, the Committee will come to order. And I want to thank at the outset all my colleagues and certainly all of our witnesses today for being here. We appreciate the effort and we know how difficult it is. We're going to begin with opening statements by members of the Committee and the West Virginia delegation, so it's going to take us a little bit of time to get underway here, but we'll try to keep it short. It's something a politician says at the outset of every speech.

As I said, good morning. I'd like to welcome everyone to today's hearing on the Upper Big Branch Mine tragedy. The Education and Labor Committee has traveled to Beckley to hear from families who are grieving and to look for the answers to our nation's most devastating mine tragedy in forty years.

Just a few weeks ago, Americans were once again transfixed on the unfolding tragedy of the coal mine. While our rescuers worked heroically to find miners who we all hoped would still be alive, our nation hoped and prayed that early reports of four unaccounted miners indicated that there might be some survivors. Sadly, these hopes faded. Twenty-nine coal miners died that day. More importantly, this community lost husbands, fathers, sons, and best friends.

On behalf of all my colleagues, I want to express our deepest sympathies to you and your families. Our best thoughts and prayers continue to be with you and your communities who have suffered this big loss. I know that your testimony today will be painful for you to deliver. Nevertheless, your testimony is critical for us to hear. I thank you very much for being here to participate in today's hearing.

I would like to recognize all the brave miners involved in the rescue effort. These men and women worked around the clock, day after day. You, too, have the appreciation of our nation for your selfless efforts. I'd like to extend our gratitude to Governor Joe Manchin, Congressman Nick Rahall, and the rest of the West Virginia delegation that Nick will be introducing in a minute, all of whom were on the ground at that time helping families during the rescue efforts. Secretary Hilda Solis, who has joined us today, she was on the ground and met with miners and their families during

this same ordeal. And I'm also grateful for the participation of all the West Virginia delegation helping us to put this hearing together. They provided valuable support to make sure that the lessons from these tragedies are not forgotten.

I want you to know that we're all working together on legislation to make something—to try to make sure something like this doesn't happen again. Today we'll hear from you, the panel of family members, about how this tragedy has affected you.

While the cause of this tragedy remains under investigation, the hazards miners face underground are not a mystery. We know how coal dust can explode like gun powder when ignited by methane. We understand the disastrous results when miners operate at the margins of safety in order to put more coal on the belt. We know what happens when workers' voices are silenced by fear of retaliation for speaking out on safety problems that they see and experience. And we know the consequences for safety when operators game the system in order to escape much tougher safety oversight. What happens is that miners die.

Despite these truths, I am sure that many are skeptical that elected officials have the willingness to do anything about it. There is a frustration that as attention to the tragedy fades, mine owners simply will return to business as usual. There's a frustration that no one will be held accountable for the deaths of so many loved ones. The real safety reforms will fall by the wayside again. I share this concern. I've seen it happen before. But we cannot succumb to defeatism and cynicism when it comes to the lives of our fellow human beings, and I will not.

This Committee has heard from many families over the years who have suffered great loss, as you have. And I made a promise to them and I cannot forget that promise. I made a pledge to the families at Sago, Aracoma, Alma, Darby, and Crandall Canyon in Ogden, Utah that we would do everything in our power to uncover the cause of these tragedies, to hold responsible parties accountable, and to prevent miners from suffering a similar fate. And I extend that same promise to the families of Upper Big Branch.

Your families paid the ultimate price for a job our nation depends upon. Losing a family member to this kind of tragedy can fill one with a sense of powerlessness; however, I have found in the face of overwhelming tragedies, families display incredible strength and determination.

It was the coal miners' families that helped to provide the final push to give miners a fighting chance after the last tragedies of Sago and those mines. It was the coal miners' families that got the legislature to pass the MINER Act. As a result of that, we're looking more at what happened after the accident. Miners now have at least 96 hours of breathable air stockpiled; lifelines and tracking communication systems are being installed; and mine rescue teams are properly trained, equipped, and ready to respond.

While this is a significant step forward, I felt that we missed an opportunity to do more to protect the health and safety of our nation's miners. Every day miners show up for their shift knowing that there's a chance that they may not return to their families. Miners for generations have lived with this fear. But I firmly believe there are things that we can do to ensure every miner who

goes to work is able to return home safely to their families at the end of their shift. Congress has an obligation to make it so, and we will.

And I want to again thank you all for coming. I'd like now to recognize the Senior Republican Member of the Committee, Congressman John Kline from Minnesota, with the purpose of an opening statement.

[The statement of Chairman Miller follows:]

**Prepared Statement of Hon. George Miller, Chairman,
Committee on Education and Labor**

Good morning. I would like to welcome everyone to today's hearing on the Upper Big Branch Mine tragedy. The Education and Labor Committee has traveled to Beckley, West Virginia to hear from families who are grieving and looking for answers to our nation's most devastating mine tragedy in forty years.

Just a few weeks ago, Americans were once again transfixed on an unfolding tragedy at a coal mine, while rescuers worked heroically to find miners who we all hoped were still alive. On April 5, a massive explosion on a scale that is nearly incomprehensible ripped through the Upper Big Branch Mine.

Our nation hoped and prayed that early reports of four unaccounted miners indicated that there might be survivors. But, sadly, these hopes faded. Twenty-nine coal miners died that day. More importantly, this community lost husbands, fathers, sons, and best friends.

On behalf of all of my colleagues, I want to express our deepest sympathies to each of you and your families. Our thoughts continue to be with you and your communities who have suffered such a big loss.

I know your testimony today will be painful for you to deliver. Nevertheless, your testimony is critical for us to hear. I thank you very much for agreeing to participate in today's hearing.

I would also like to recognize all of the brave miners involved in the rescue effort. These men and women worked around the clock, day after day. You, too, have the appreciation of this nation for your selfless efforts.

I would also like to extend our gratitude to Governor Joe Manchin and Congressman Nick Rahall, who were on the ground helping families and miners during the rescue efforts.

Secretary Hilda Solis also joins us today. She was also on the ground and met with miners and their families during this ordeal.

I am also grateful for the participation of other members of the West Virginia delegation today -Congresswoman Shelley Moore Capito, Congressman Alan Mollohan, and Senator Jay Rockefeller. The West Virginia delegation has provided invaluable support to make sure that lessons from this tragedy are not forgotten.

I want you to know that we are all working together on legislation to make sure something like this doesn't happen again.

Today we will hear from a panel of family members about how this tragedy has affected them.

While the cause of this tragedy remains under investigation, the hazards miners face while underground are not a mystery.

We know how coal dust can explode like gunpowder when ignited by methane. We understand the disastrous results when a mine owner operates on the margins of safety in order to put more coal on the belt. We know what happens when workers' voices are silenced by fear of retaliation for speaking out on safety problems they see. And, we know the consequences for safety when an operator games the system in order to escape much tougher safety oversight.

Miners die. That's what happens.

Despite these truths, I am sure that many are skeptical that elected officials have the willingness to do anything about it. There is frustration that as attention to this tragedy fades, mine operators will simply return to business as usual. That no one will be held accountable for the deaths of so many loved ones, and real safety reforms will fall by the wayside again.

I share this concern. I've seen it happen before.

But we cannot succumb to defeatism and cynicism when it comes to the lives of our fellow human beings. I will not.

This committee has heard from too many families over the years who have suffered a great loss, as you have. I made a promise to them and I cannot forget that promise.

I made a pledge to the families of Sago, Aracoma Alma, Darby and Crandall Canyon that we would do everything in our power to uncover the cause of those tragedies, to hold responsible parties accountable, and to prevent other miners from suffering a similar fate.

I extend this same promise to all the families of Upper Big Branch. Your families paid the ultimate price for a job our nation depends on.

Losing a family member to a senseless tragedy could fill you with a sense of powerlessness. However, I have found that in the face of overwhelming tragedy, families display incredible strength and determination.

Coal miners' families helped to provide the final push to give miners a fighting chance after an emergency. As a result, mines must have at least 96 hours of breathable air stockpiled, lifelines, tracking and communications systems installed, and that mine rescue teams be properly trained, equipped and ready to respond. While this was a significant step forward, I felt that we missed an opportunity to do more to protect the health and safety of our nation's miners.

Every day, miners show up for their shift knowing that there is a chance they may not return to their families. Miners for generations have lived with this fear.

But I firmly believe that there are things we can do to ensure that every miner who goes to work is able to return home safely to their families at the end of their shift. Congress has an obligation to make sure that is the case.

And we will.

I thank you all for coming today and look forward to your testimony.

Mr. KLINE. Thank you, Mr. Chairman. I want to thank also the Governor for being here and certainly all the witnesses. I'm pleased to see Secretary Solis, Assistant Secretary Main, and the members of the community and the families for being here today and for being so welcoming to us.

This hearing is a somber occasion, but an important one. The April 5th explosion of the Upper Big Branch mine stole the lives of 29 miners and forever changed the lives of their families, friends, co-workers, and communities. Today's hearing provides us and the public a forum to hear directly from survivors of this tragedy, the family members who lost loved ones, and the leaders helping them cope.

The federal investigations are ongoing and congressional oversight has only just begun. There are still far too many questions and far too few answers. In Congress, our job is not only to write federal laws, but to exercise oversight of those laws and the agencies administering them. We have powerful investigative tools and a large bully pulpit from which to speak. With that comes a solemn responsibility to investigate carefully, thoroughly, responsibly, and openly.

Chairman Miller and I have worked together, as have members of our staffs, in preparation for that investigation. Our goal is to examine mine safety laws, looking at how they have been implemented and whether they're being obeyed. What we will not do is undercut or impede the important investigations currently underway by MSHA and other federal authorities. Instead, our job is to look more broadly at the safety of underground coal mining.

In time, I expect we will be discussing regulatory and legislative changes to strengthen mine safety by demanding step by step compliance with and enforcement of mine safety laws. That's not why we're here today. Today we're here for the families. You all are not here to listen to me, but I'm here to listen to you, and once again, I'd like to thank you for that opportunity and, Mr. Chairman, I give back.

[The statement of Mr. Kline follows:]

**Prepared Statement of Hon. John Kline, Senior Republican Member,
Committee on Education and Labor**

Thank you Chairman Miller and let me also extend my thanks to Governor Manchin, the community surrounding Montcoal, and especially the family members who are welcoming us here today.

This hearing is a somber occasion, but an important one. The April 5th explosion at the Upper Big Branch mine stole the lives of 29 miners and forever changed the lives of their families, friends, coworkers, and communities. Today's hearing provides us and the public a forum to hear directly from survivors of this tragedy—the family members who lost loved ones and the leaders helping them cope.

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Chairman Miller and I have worked together—as have members of our staffs—in preparation for that investigation. Our goal is to examine mine safety laws, looking at how they have been implemented and whether they are being obeyed. What we will not do is undercut or impede the important investigations currently underway by MSHA and other federal authorities. Instead, our job is to look more broadly at the safety of underground coal mining.

In time, I expect we will be discussing regulatory and legislative changes to strengthen mine safety by demanding steadfast compliance with—and enforcement of—mine safety laws.

But that's not why we're here today.

Today, we are here for the families. You all are not here to listen to me—I am here to listen to you, and once again, I'd like to thank you for that opportunity. I yield back.

Chairman MILLER. I thank the Gentleman. Without objection, the Committee is joined today by Congressman Rahall, Congresswoman Capito, Congressman Mollohan, and Senator Rockefeller. As they appreciatively welcome this Committee to the state, I would like to offer each of them an opportunity to have an opening statement and to submit any additional testimony that they would like to in written form. And with that I would like to recognize my colleague in the House, Chairman Nick Rahall.

Mr. RAHALL. Thank you, Chairman Miller. I appreciate you and Ranking Member Kline, members of the Committee and Subcommittee Chair Lynn Woolsey for being with us today. And I thank as well Congressman Mollohan and Congresswoman Capito for taking part in this hearing. I appreciate the Governor being here, Senator Rockefeller, and I know we have a representative from Senator Byrd's staff here as well. I thank Secretary Hilda Solis, a former member of our Natural Resources Committee, and find now that she once again has shown her concern for our coal miners' families and mine safety by being with us today.

We'll be hearing today from family members and friends of the 29 miners lost in the tragic mine explosion on April 5th of this year in Massey Energy's Upper Big Branch mine, not far from where we sit. I'm grateful to each of you for giving voice to the men who cannot speak for themselves. I know that you are still grieving.

We have many other family members in attendance as well that are not at the witness table and I know that this is going to be difficult, that you are under extreme pressures. But I assure you, by your speaking today, you are making a difference, you are making a difference for our future coal miners. You are reminding us that this is not just about better mine safety machines or more accurate

measurements. And it is certainly not about making money. This is about human lives.

Those 29 miners should not have perished in that mine and, for them and for all miners on the job today, I hope you will continue to keep speaking out. We must make every effort. We must go around every corner. We must turn every head in protecting our most valuable God-given resource, our coal miners.

Chairman Miller and many Members here, certainly Governor Manchin, Senator Rockefeller, we've been through this process before, trying to enact mine safety improvements. Congressman Mollohan, Congresswoman Capito had disasters in their districts as well. And the one element of that effort that can make a difference beyond anything else is the tenacity that Chairman Miller referred to in his opening comments, the tenacity of the family members who are determined to see that something good comes of their insurmountable and immeasurable loss.

It is a sad and infuriating reality that every piece of legislation ever passed that advanced mine safety has been written in the blood of coal miners. I thank each of you again for being here today. I thank our Governor and I will now recognize Congresswoman Shelley Moore Capito, in whose district, as we all know, the Sago disaster occurred several years back. Congresswoman Capito.

[The statement of Mr. Rahall follows:]

**Prepared Statement of Hon. Nick J. Rahall II, a Representative in Congress
From the State of West Virginia**

Chairman Miller, Ranking Member Kline, Members of the Committee, I thank you for allowing me and my fellow members of West Virginia's Congressional Delegation to take part in this hearing today. I appreciate your coming to Beckley, to my District, to gain what I believe will prove to be valuable insight.

I also thank Secretary Hilda Solis, a former member of the Natural Resources Committee, which I chair, for her presence here in Beckley, once again.

We will hear, today, from family members and friends of the 29 miners lost in a tragic mine explosion on April 5th of this year in Massey Energy's Upper Big Branch Mine, not far from here.

I am grateful to each of you for giving voice to men who cannot speak for themselves. I know that you are still grieving. I know this is difficult, and that you are under extreme pressures. But I assure you, you are making a difference by speaking today.

You are reminding all of us that this is not just about better mine safety machines or more accurate measurements. And it is certainly not about making money. This is about human lives. Those 29 miners should not have perished in that mine, and, for them, and for all miners on the job today, I hope you will keep speaking out.

Chairman Miller and I have been through this process before of trying to enact mine safety improvements. And the one element of that effort that can make a difference, beyond anything else, is the tenacity of family members who are determined to see that some good comes of their immeasurable loss. It is a sad and infuriating reality that every piece of legislation ever passed to advance mine safety has been written in the blood of coal miners.

I thank and welcome our Governor, Joe Manchin. Governor Manchin and I have been through too many of these kinds of tragedies together and he has worked hard to institute some impressive changes here in West Virginia that can help to inform and enlighten our efforts at the federal level.

I feel confident that he agrees with me when I say the explosion at the Upper Big Branch Mine was a tragedy that never, ever should have occurred.

We owe it to the families of those earnest, hard-working miners who perished in that mine to get to the bottom of it. We owe them accountability. And we owe them, and all mining families, our devoted energies to help prevent similar tragedies from occurring again in our nation's coalfields.

I appreciate this Committee's starting that concerted effort here and now.

Mrs. CAPITO. Thank you. I'd like to thank my colleagues. I'd like to thank each of them for coming to Beckley. Welcome to West Virginia to my colleagues and I'm glad we have a beautiful day for you to see that it is almost heaven, quite frankly, as we call it. To the families, thank you for your bravery for testifying today and for the strength that you bring to the table. I thank the Governor as well for being here and also for his steadfast support during that tragic week in April at the Upper Big Branch mine. I want to thank my colleagues as well and certainly the Secretary and Assistant Secretary.

Quite frankly, I have a longer statement, but I said I'd submit that for the record. I just wanted to say that being a West Virginian, this accident has taken a tremendous toll on all of us. It has simply been devastating for us, most certainly more personally for those who we're going to hear from today.

Many questions remain and we're not going to get those questions answered until the teams can actually re-enter the mine and find out exactly what happened, but some of the early descriptions of what happened down there when they say that the rails for the mantrips were twisted like pretzels and machinery tossed aside from the blast, there was obviously something horribly wrong.

But I find it hard to believe after Sago in 2006 in my district that an accident of this magnitude could actually occur. So, you know, we passed legislation in response to Sago with your leadership and others to avoid an accident such as this from happening again, and here we are. This proves we must continue to work together to keep our miners safe and prevent this from happening again.

I have numerous questions that I'd like to have answered, but I'd really rather listen to what our witnesses have to say today, so I will submit those questions for the record. But I just want you to know this is going to be difficult for you but I appreciate your willingness to come before us today. You will make a difference. Thank you.

Mr. RAHALL. Thank you, Congresswoman Capito. Joining us this morning from the first congressional district, your friend and mine, and a gentleman who called me every day wanting to know the status and how we were coming on our recovery efforts, is Congressman Alan Mollohan of the first district.

Mr. MOLLOHAN. Thank you, Chairman Rahall. It's an honor to join this panel. I want to thank the Chairman of the Committee for allowing me to do that, Chairman Miller. First of all to the family members, your testimony here today is brave and will be very, very useful and give us special insight as to what's happened here. And your knowing the day-to-day experiences of your loved ones as they went in and out of the mine, those added insights cannot be derived from any other source than from your testimony here today, so thank you for joining us. The tragedy that you and the community has experienced is really beyond belief.

Senator Rockefeller, I am not surprised that you're here joining this House panel. It's extraordinary that you'd do that and it's an indication of your commitment to the health and safety of West Virginians and coal miners in particular and your dedication overall.

Hilda Solis, thank you for the good work that you're doing. I had the honor to join Secretary Solis in the Federal Number 2 mine up in my congressional district about a year ago, so she had early on in her service to the country, the Secretary of Labor had coal mining high on her list. She's been down underground and from that experience at least knows the environment of which we speak here today.

Chairman Miller, thank you again for allowing me to join the hearing today and thank you for coming to West Virginia, for bringing your Committee to our state. There aren't very many coal mines in California, I understand one, and I was extraordinarily surprised to hear that there was one in your congressional district. But for more than 30 years, George Miller has been one of the mine workers' real champions. Whether you're an Oakland dock worker or an Indiana iron worker or a West Virginia coal miner, George Miller has always had your back. I think we heard that in his opening remarks, that commitment. In the dark days after Sago, it was George Miller who pledged his support for tougher mine safety laws and I know that he's angered and I know that he's pained by what happened at Upper Big Branch, and I know that his leadership will be crucial in the months ahead.

The other great leader in mine safety in the House of Representatives here today, of course, is Congressman Nick Rahall. He knows more about the coal industry and has fought tirelessly for the safety and welfare of the coal miners than anybody else in Congress. He understands better than anyone, what we need to do to protect those men and women who go underground every single day.

We don't know what went wrong at the Upper Big Branch but we'll be finding out. And once we do, Nick Rahall, Congressman Miller, Senator Rockefeller all will be making sure of two things. First, that we hold the people accountable; and secondly, that we make sure that what happened at Upper Big Branch never happens again. You'll probably never be able to guarantee a miner's safety anymore than we can guarantee any worker's safety, but that's the goal that we strive for. Nick Rahall and George Miller's leadership will bring us closer to that.

Again, to the family members, thank you for coming this morning. The nation needs to hear from you and you're brave to be here this morning to share with us the special insights into this disaster. I had the honor to meet with several of you last month and it's a special strength to be here today to share with this Committee and the public your grief and your sorrow and your knowledge. As Congressman Rahall just said, you're making a difference today. Thank you.

[The statement of Mr. Mollohan follows:]

**Prepared Statement of Hon. Alan B. Mollohan, a Representative in
Congress From the State of West Virginia**

Thank you, Mr. Chairman, for allowing me to join your hearing this morning. And thank you also for coming to West Virginia today, for bringing your committee to our state.

There aren't very many coal mines in the chairman's district, but for more than 30 years, George Miller has been one of the mine worker's real champions.

Whether you're an Oakland dock worker, an Indiana ironworker, or a West Virginia coal miner, George Miller has always had your back.

In the dark days after Sago, George Miller pulled Nick Rahall and me together and pledged his support for tougher mine safety laws.

And I know that he is angered and pained by what happened at Upper Big Branch, and I know that his leadership will be critical in the months ahead.

The other great leader in mine safety is, of course, Congressman Nick Rahall. He knows more about the coal industry—and has fought harder for it—than anyone else in Congress.

And he understands better than anyone what we need to do to protect those men and women who go underground every single day.

We don't know what went wrong at Upper Big Branch. But we will find out. And once we do, Nick Rahall will make sure of two things:

First, he will hold people accountable.

And second, he will make sure that what happened at Upper Big Branch never happens again.

We will probably never be able to guarantee a miner's safety, anymore than we can guarantee any worker's safety. But that is the goal that we strive towards. And Nick Rahall and George Miller's leadership will bring us closer to that goal.

Finally—to the family members testifying: Thank you for coming this morning.

I had the honor to meet with several of you last month. It takes a special strength to share with this committee and the public your grief and your sorrow.

As Mr. Rahall just said, you are making a difference today. Thank you.

Mr. RAHALL. Thank you. Chairman Miller, it is now my honor to introduce an individual from the other body, as we call it, the United States Senate. It's not often that a United States Senator will join a House Member's Committee hearing, but we're honored today to have our junior Senator from West Virginia, an individual who was on the scene at the UBB site many times and is no stranger to mine disasters, either, Senator Jay Rockefeller.

Senator ROCKEFELLER. Thank you, Congressman, and I sincerely thank the Chairman, George Miller, a champion on all fronts to workers of all kinds, coal miners in particular. Hilda Solis, whose father worked in a battery acid factory out in California, has all kinds of health problems himself. She knows what goes on and she can extrapolate that experience into your experience, and you know we're all here sharing the grief that you feel.

It's a very sensitive hearing today because I have an instinct to kind of want to talk about what we should do in terms of legislation, because that's just who I am. I want to make sure that this doesn't happen again, and I do believe that all mine accidents are preventable and I'll never waver from that opinion. And here you are, and it's hard.

I think that during the course of some of the statements that you give and questions that we ask, you may feel stronger now than you did then and it may be hard to answer, and that's okay, totally okay. because you are the experts. We come here because you're the ones who sit around the kitchen table every evening when you get home and talk to your family members. Or sometimes people don't talk to their family members about what they do, because that's also in the nature of coal mining. They hold it inside of themselves, which makes it more painful, in a sense, at a hearing like this. But that's why you're so brave to be here.

You're the experts. You're the ones that's been inside coal mines, many of you for decades, doing this work and you've seen it all. It always interests me that, you know, this hurts the nation, this tragedy, and yet at the same time I know that, you know, even in West Virginia, 98 percent of the people have never been underground, can't do it. You can if you're Governor, you can if you're

a Senator, you can if you're a Cabinet Secretary, but otherwise, pretty much you can't. And so it's in a secret world that's filled with danger that you do your work, and it's up to us who do know what happens underground to make sure we do all we can to hold companies accountable for what they do, to make sure that equipment isn't tampered with, to make sure that your lives are protected, shielded and protected to the extent that we can do that.

And then there's always the question of follow-up, you know, what is MSHA going to do? What are the state folks going to do? And I'm going to question Governor Manchin, I'm really proud of him, about how the state and federal government could cooperate better. Some do and I think we sometimes overlap and I don't think that's necessary, or maybe it is. We need to talk about that.

There's so many safety things that we can do. We can put it into legislation and it will make you and future generations of your families who go into coal mining safer. But, you know, in essence we've come here today to honor you in your grief, respect you, to cherish you, and yet to learn from you. We're not the experts and you are, so this is our day to listen to you and I really look forward to your testimony. Thank you.

Chairman MILLER. I want to thank again all the members of the West Virginia delegation. Senator Rockefeller, thank you for being here and joining our Committee. I'd like to recognize three members of our Committee who have come here. First of all, our Subcommittee Chair, Lynn Woolsey, who does safety every day for America's workers. Lynn is my colleague from California.

Ms. WOOLSEY. Right. And I have been underground. A couple months ago it occurred to me after several turns of chairing the Workforce Protection Subcommittee, I'd better get down, I'd better get underground in a mine so I'll have some idea of what we're talking about, what your experience would even be. And I'm so glad that I did, because I would probably not have been able to relate at all, I mean, other than tragically, to what happened. I want to thank you for coming here to testify.

It was a tragic explosion last month at the Upper Big Branch mine, and we don't know what the cause of the explosion was yet, I mean, it hasn't been determined. But indications are that the blast could have been avoided if the operator had put miners' safety above production and profits. So you have to know that we're so honored and so humbled that you would come here and speak with us after losing loved ones, friends, brothers, sons, those that make such a difference in your lives, and this is such a difficult time.

It's been truly a terrible year for miners, but none worse than your experience here at the Upper Big Branch mine. But so far in 2010, and this is May, forty miners have been killed in mine accidents, exceeding the total number of all of the year 2009. This is absolutely unacceptable and know that every single person up here believes and knows that.

The original Mine Act was passed some forty years ago and, you know, we know that health and safety has improved a bit, but it has not improved enough. This is the 21st Century, for heaven's sake, and we must do more. But we need your help and we're hoping that your valuable information about the conditions before the explosion will help us, because you know and have information

about how the mine was operated, not just this mine, but other mines operated by Massey Energy.

And your testimony today will assist us with what we need to do next to ensure that owners and operators are held accountable for the health and safety of their workers. I'm particularly concerned about what I've been hearing, that miners at Upper Big Branch felt they could not report unsafe conditions because they feared they would lose their jobs. Unfortunately, mine inspectors cannot be at the mines all the time and it is absolutely necessary that miners feel free to report violations.

To do that, we need to strengthen the whistleblower provisions of the mine law. We have done that just recently with the newly introduced Protecting American Workers Act, the OSH Act, which revamped the whistleblower program in the Occupational Safety and Health Act. So everyone on this panel this morning, every one of you is appreciated. We know you are committed.

Governor, we loved what you're doing from day one so that miners can go to work each and every day and come home safe to their families at night. No family member should stay home wondering if their loved one will be home with them that evening. So I look forward to your testimony and we promise we will be working to go forward to protect you. Thank you.

[The statement of Ms. Woolsey follows:]

**Prepared Statement of Hon. Lynn C. Woolsey, a Representative in Congress
From the State of California**

I want to thank you all for agreeing to testify today on the tragic explosion last month at the Upper Big Branch mine.

Our thoughts are with you and the other family members who have lost loved ones at Upper Big Branch and at other mines.

And thank you Governor Manchin for being here as well.

While the cause of the explosion has not yet been determined, indications are that the blast could have been avoided altogether if Massey Energy had put miners' safety above production and profits.

We are so honored that you who have lost fathers, sons, brothers and friends are willing to come forward at this very difficult time.

This has been a terrible year for miners.

So far in 2010, 40 miners have been killed, higher than mining fatalities in all of 2009.

This is unacceptable.

We now are in the 21st century, and we need solutions that will truly keep miners healthy and safe as they go about their work.

You have valuable information to give us about the conditions of the mine before the explosion and about how Massey Energy treats its workers.

And we want your advice on what we can do to ensure that owners and operators are held accountable for the health and safety of their workers.

There is a lot to be done but one essential reform is to ensure that workers are free to report safety and health violations and without worrying that they will lose their jobs.

From what I heard, miners at Upper Big Branch did not complain because they knew they would be fired if they did.

That culture needs to change, and I would like to see mine legislation contain the same whistleblower provisions that are in the Protecting America's Workers Act, which reforms the Occupational and Safety Act.

Again thank you so much for coming today, and I look forward to your testimony.

Chairman MILLER. Thank you. Now I'd like to recognize Congressman Jason Altmire from Pennsylvania, the Pittsburgh area. He's interested in coal mining and mine safety. Jason.

Mr. ALTMIRE. Thank you, Mr. Chairman. I just want to briefly say that we recognize, all of us up here, how incredibly difficult a day this is for you to be here, to tell your story about your family and your friends in the mine. And we don't take lightly the fact that you are in an incredibly unimaginable painful time in your life. And we want you to know, having Secretary Solis here, Governor Manchin, Senator Rockefeller, the entire West Virginia House delegation, members of this Committee, that we are here to hear from you, and we take very seriously what you have to say. And we are going to use the testimony that we hear today to hold accountable those who are responsible for this tragedy and to make sure that it will never happen again. That's the purpose of why we are here, we are here to hear from you, and we can't thank you enough for being here to join us and the pain that this has inflicted upon you and this entire community. We understand that this is a difficult time. So thank you, Mr. Chairman, for holding this hearing and thank you to the witnesses.

Chairman MILLER. I'd like to introduce Congresswoman Carol Shea-Porter from New Hampshire. She's a member of the Committee and she's very involved in all of the issues with worker safety.

Ms. SHEA-PORTER. I'm from New Hampshire and we don't coal mine there, but I will say that we are so grateful to our fellow Americans who do this dangerous work for all of us. We in New Hampshire watched and prayed with you and we cried with you. And we admired your courage and we also were very moved by your sorrow. It's our obligation on this Committee to find out exactly what happened and we can't do that without you.

So we're very grateful that you would come forward and tell your stories. We've heard these stories before. My heart breaks and my mind shouts no and I know every member of the Committee, and the Senator, and the Secretary of Labor, and the Governor, and everybody else gathered here has the same mission, to make sure that we're not back here or in some other hall in a couple of years hearing the same stories. It's our job to prevent it and I'm thanking you for telling us how.

Chairman MILLER. Thank you. With that, we'll move to our, to hear from our witnesses. Thank you for your patience during these opening statements, and I'd like to recognize Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman. It is my distinct honor to thank once again and to welcome the Governor of our state, Joe Manchin. He and I have been through a couple of these tragedies in a couple of years in my district alone, and the Governor, along with our state legislature, has worked tirelessly to institute some impressive changes here in West Virginia, to inform and enlighten our efforts at the federal level.

The Governor has served our state since the year '05, previously served as our Secretary of State from 2000 to '04. He comes from a family that's long dedicated to public service and he possesses a deep understanding of coal mining, what it means to our economy, what it means to our energy picture, and what it means to our state of West Virginia.

He's had personal experience, having lost a loved one in previous disasters in this state and his insight into how these tragedies

touch families is invaluable to our work here. He and I were together all week during this disaster at UBB and he certainly is a strong advocate for mine safety and the rights of our coal miners, and I certainly appreciate him being here today and welcome him.

Governor MANCHIN. Congressman—I'm sorry.

Chairman MILLER. No, I was going to say, roughly what we're going to do here is, we're going to begin with the Governor and then we'll work our way down the line. A green light will go on when you begin testifying and then, after 4 minutes, an orange light will go on, and then a minute later, a red light. So if you could sum up your testimony at that time.

But both to the Governor and to the members of this panel, we want you to testify in the manner you're most comfortable with and make sure you're able to tell us the things you think we should hear. So the lights are a little bit more guidance today than they might be in Washington, where we're fairly strict about it, because we want to make sure that we hear from you. Thank you very much. Governor.

**STATEMENT OF HON. JOE MANCHIN, III, GOVERNOR,
STATE OF WEST VIRGINIA**

Governor MANCHIN. Chairman Miller, thank you so much, and Ranking Member Kline; and Congressman Rahall, for your kind introduction; Congressman Mollohan; Congresswoman Capito; Senator Rockefeller; to all of the Members; and to Secretary Solis; and to Assistant Secretary Main. I'm honored to be here today with the families of these men who lost their lives in the Upper Big Branch mine, Mr. Stewart, and all the others here who represent the family members. And I think you know the commitment and dedication we all have and the love they have for the families.

Since I learned of the terrible tragedy, my first priority has been to ensure that our miners are represented honorably and their families have the support and protection that they need during this difficult time. I've personally been through this with the loss of my uncle in 1968 at the Farmington Number 9 mine explosion, along with a lot of my friends and classmates in school.

It's important for me to make certain that those who do not know West Virginia miners and their families will come to understand the character and substance of these wonderful people who play such an important role in this great state and in our nation. When you hear the testimonies of the men and women sitting alongside of me today, and as you see the strength and courage on their faces, you're going to be inspired as I am, and you will better understand the heart and soul of West Virginia and her people.

West Virginia has a rich history and mining is a very important part of that history. Coal from West Virginia has powered this country in times of prosperity, in times of depression, and in times of war. Mining coal is hard and challenging work and when it's not done properly, it's very, very dangerous as we know. However, in this day and age, we should be able to mine coal safely without risking the lives of our miners as they are the people we depend on to sustain our way of life.

That is why, since the tragedy at the Upper Big Branch mine, my main objective has been to determine what occurred, to make

certain it doesn't happen again, and determine whether there is intimidation or any other action at the Upper Big Branch mine that puts profits before safety. You can put a price on a ton of coal and I can tell you the price of every piece of machinery in that mine, but I cannot tell you the price of the miner, because he or she is priceless. West Virginia expects, we expect every employer in every field of work to prioritize safety ahead of everything else. The person who goes to work each morning to provide a living for themselves and their family should expect nothing less than to return home safe.

Almost immediately after I learned of the accident at the Upper Big Branch mine, I appointed J.W. McAteer, Assistant Secretary of the Mine Safety and Health Administration under President Clinton, to head an independent investigation into the explosion. Mr. McAteer is a native of Fairmont, West Virginia, my home area, Marion County and Fairmont. He brings a wealth of experience to the table. He's devoted a considerable portion of his professional life to mine safety and health issues and he is an experienced investigator. At my request, Mr. McAteer led an independent blue ribbon panel in 2006 after the Sago and the Alma-Aracoma mine accidents in West Virginia. He has also assembled a team of independent experts to work alongside Director Ron Wooten and his team of state investigators from the West Virginia Office of Miners' Health, Safety and Training.

Director Wooten and Mr. McAteer have been working closely with MSHA and we appreciate that cooperation and we'll continue to do so throughout this investigation. West Virginia deserves to know what happened at Upper Big Branch. We deserve to know why this tragedy occurred and whether it could have been prevented.

There are questions we need answered. Why did serious safety violations repeatedly occur at Upper Big Branch? Were the miners concerned about their safety? Were miners threatened or intimidated from speaking out? If state or federal regulators knew that the mine was unsafe, why was it allowed to continue to operate?

There's been much discussion about administrative and judicial procedures that can allow a mine to remain open in the face of significant safety violations that would otherwise warrant a closure order. We need to ask ourselves, "Is bureaucracy getting in the way of safety?"

I have asked Mr. McAteer's team and Director Wooten to answer these questions and many more. I've also asked them and other mine safety experts, including our State Board of Coal Mine Health and Safety, to recommend legal reforms. I will incorporate their proposals and some of my own into a comprehensive mine safety plan that will address several issues for West Virginia.

One proposal that I think is critical is the establishment of a certified mine safety team in every mine. I envision teams of miners in each mine that are trained and certified to identify dangerous situations and work day in and day out at those mines. These miners should be empowered to make decisions and take actions and should be protected by law from threats, harassment, or intimidation.

We also need to look at rock dusting standards. Just days after the Upper Big Branch explosion, I ordered Director Wooten to begin testing mines for compliance with an 80 percent total combustible content of rock dust standard. This has been recommended by the National Institute of Occupational Safety and Health reports. I believe West Virginia should mandate this standard.

Some other proposals I'm considering include updating mine ventilation standards in our state code, enhancing criminal penalties for tampering with or altering safety equipment, furthering whistleblower protections, and incorporating more technology in the mines for accident prevention and rescue.

In addition to specific reforms, we should reexamine our overall regulatory schemes, both state and federal. For example, I've been told by representatives of one coal operator that the United States Bureau of Mines, which was closed in the mid-nineties, had a program staffed with highly qualified personnel that reviewed and approved design plans for all new mines. I was told that there has not been as significant a level of engineering and review of new mine plans since the Bureau closed. Perhaps this is an area where we need to improve.

Corporate governance is another issue the state or federal government should address. No one in a corporate or business structure from the top to the bottom should be protected or untouchable under the law if the corporation or business fails to make safety a priority or fails to empower workers to make the workplace as safe as possible.

With that being said, we have many mining companies in West Virginia and around this country with excellent safety records that put the safety of their miners ahead of everything else. I want to commend those operators for focusing on safety and I encourage others to follow their lead.

We need to look at what these companies are doing that is above and beyond what is legally required, and ask ourselves whether those standards should be required of the coal mines. If a company can focus on safety ahead of profits and still compete in a global marketplace, every company can build a successful business model around the culture of that today.

I want to challenge the coal industry to set a new bar for workplace safety. That is why I ordered, in the days following the Upper Big Branch, a day of honor and mourning for our fallen miners, and asked coal operators to cease production for one whole day to focus on safety. I asked every underground mine operator and miner to go to work and commit for one day to focus completely on making their workplace as safe as possible. I felt this was an appropriate way to honor the miners at Upper Big Branch, and a way to give direction to the coal industry on where we need to go as a state and a nation.

As we move forward and form new goals for mine safety, I will continue to make certain that the laws that are already on the books are stringently enforced. I've already ordered increased coal mine inspections and stricter enforcement of coal mine health and safety laws in West Virginia. Just days after Upper Big Branch, I ordered the Office of Miners' Health, Safety and Training to immediately inspect every coal mine in the state of West Virginia. The

worst offenders, those with the records of the most serious health and safety violations, were inspected within hours of my order.

We've also established a 24-hour, 7-day-a-week industrial accident safety hotline, which allows callers to anonymously report problems in the workplace without fear or intimidation. The hotline has been up and running for a short time, but has already seen many, many results. I hope that it will encourage more workers to become involved in strengthening safety procedures from the front lines.

In closing, I want to thank you for this opportunity to speak to the Committee about these important issues. I also want to thank the families for being strong during this difficult time. I know the values and I know the strength of each one of you and your families and I appreciate it very much. West Virginia is a beautiful state, as you can see, filled with proud, hardworking people who are supported by strong families and who never ask for anything other than an honest day's pay for an honest day's work.

Mining is a way of life for many West Virginians. West Virginia miners, like their fathers and grandfathers who mined coal before them, have not only a strong commitment to provide a good living for their families, but also, which I think goes unnoticed or maybe not much known about, a patriotic pride that their work, their work, and the energy that they produce, has made this country what she is today. It's made her strong and free and continues to keep her strong and free. They're very proud of that.

I want to thank you for the opportunity to speak out about what I see and we will talk in more depth, I'm sure, about the overlapping events that go on in so many areas. Thank you.

[The statement of Governor Manchin follows:]

**Prepared Statement of Hon. Joe Manchin III, Governor,
State of West Virginia**

Secretary Solis and distinguished representatives, I am honored to be here today with the families of the men who lost their lives at the Upper Big Branch mine and with Mr. Stewart, a miner who worked at Upper Big Branch.

Since I learned of this terrible tragedy, my first priority has been to ensure that our miners are represented honorably and that their families have the support and protection they need during this difficult time.

I have personally been through this type of tragedy, losing my uncle and many friends in the 1968 Farmington No. 9 mine explosion.

So, it is important to me to make certain that those who do not know West Virginia miners and their families will come to understand the character and substance of these wonderful people who play such an important role in this great state and in our nation.

Today, and as you see the strength and courage on their faces, you will be inspired, as I was at Upper Big Branch, and you will better understand the heart and soul of West Virginia and her people.

West Virginia has a rich history, and mining is a very important part of that history. Coal from West Virginia has powered this country through times of prosperity, times of depression and times of war.

Mining coal is hard and challenging work, and when mining is not done correctly, it can be very dangerous. This we know for a fact. However, in this day and age, we should be able to mine coal safely without risking the lives of our miners—the very people we depend upon to sustain our way of life.

That is why, since the tragedy at Upper Big Branch, my main objectives have been to: determine what occurred, make certain it does not happen again, and determine whether there was intimidation or any other action at Upper Big Branch that put profits ahead of safety.

You can put a price on a ton of coal, and you can put a price on every piece of machinery in a coal mine, but you cannot put a price on the life of a human being;

it is priceless. West Virginia expects employers to prioritize safety ahead of everything else. A person who goes to work each morning to provide a living for themselves and their family should expect nothing less than to return home safely.

Almost immediately after I learned of the accident at Upper Big Branch, I appointed J. Davitt McAteer, assistant secretary for the Mine Safety and Health Administration under President Bill Clinton, to head an independent investigation into the explosion.

Mr. McAteer, a native of West Virginia, brings a wealth of experience to the table. He has devoted a considerable portion of his professional life to mine health and safety issues and he is an experienced investigator. At my request, Mr. McAteer led an independent blue ribbon panel in 2006 to investigate the Sago and Aracoma mine accidents in West Virginia.

Director Ron Wooten and his team of state investigators from the West Virginia Office of Miners' Health, Safety and Training. Director Wooten and Mr. McAteer have been working closely with MSHA and will continue to do so throughout this process.

West Virginia deserves to know what happened at Upper Big Branch. We deserve to know why this tragedy occurred, and whether it could have been prevented.

There are questions we need answered. Why did serious safety violations repeatedly occur at Upper Big Branch? Were the miners concerned about their safety? Were miners threatened or intimidated from speaking out? If state or federal regulators knew the mine was unsafe, why was it allowed to continue to operate?

There has been much discussion about administrative and judicial procedures that can allow a mine to remain open in the face of significant safety violations that would otherwise warrant a closure order. We need to ask ourselves: Is bureaucracy getting in the way of safety?

I have also asked them, and other mine safety experts, including our state Board of Coal Mine Health and Safety, to recommend legal reforms.

I will incorporate their proposals, and some of my own, into a comprehensive mine safety plan that will address several issues for West Virginia.

One proposal that I think is critical is the establishment of certified mine safety teams in every mine. I envision teams of miners in each mine that are trained and certified to identify dangerous situations. These miners should be empowered to make decisions and take actions, and should be protected by law from threats, harassment or intimidation.

We also need to look at rock dusting standards. Just days after the Upper Big Branch explosion, I ordered Director Wooten to begin testing mines for compliance with an eighty percent total incombustible content rock dust standard, as recommended by a National Institute of Occupational Safety and Health report. I believe West Virginia should mandate this standard.

Some other proposals I am considering include: updating ventilation safety standards in our state code; enhancing criminal penalties for tampering with or altering safety equipment; furthering whistle blower protections; and incorporating more technology in the mines for accident prevention and rescue.

In addition to specific reforms, we should reexamine our overall regulatory schemes—both state and federal.

For example, I have been told by representatives of one coal operator that the United States Bureau of Mines, which was closed in the mid-nineties, had a program staffed with highly qualified personnel that reviewed and approved design plans for all new mines. I was told that there has not been as significant a level of engineering review of new mining plans since the bureau closed. Perhaps this is an area we need to improve.

Corporate governance is another issue the state or federal government should address. No one within a corporate or business structure, from top to bottom, should be protected or untouchable under the law if the corporation or business fails to make safety a priority or fails to empower workers to make the workplace as safe as possible.

With that being said, we have many mining companies in West Virginia and in this country with excellent safety records that put the safety of their miners ahead of everything else. I want to commend those operators for focusing on safety and I encourage others to follow their lead.

We need to look at what these companies are doing that is above and beyond what is legally required, and ask ourselves whether their standards should be required at every coal mine. If a company can focus on safety ahead of profits and still compete in a global marketplace, every company can build a successful business model around a culture of safety.

I want to challenge the coal industry to set a new bar for workplace safety.

That is why I ordered, in the days following Upper Big Branch, a day of honor and mourning for our fallen miners, and asked coal operators to cease production for one whole day, to focus on safety. I asked every underground mine operator and miner to go to work and commit to one day focused completely on making their workplace as safe as possible. I felt this was an appropriate way to honor the miners of Upper Big Branch, and a way to give direction to the coal industry on where we need to go as a state and a nation.

As we move forward and form new goals for mine safety, I will continue to make certain that the laws that are already on the books are stringently enforced.

I have already ordered increased coal mine inspections and stricter enforcement of coal mine health and safety laws in West Virginia. Just days after Upper Big Branch, I ordered the Office of Miners' Health, Safety and Training to immediately inspect every coal mine in the state. The worst offenders, those with a record of the most serious health and safety violations, were inspected within hours of my order.

We have also established a twenty-four hour, seven days a week, industrial accident safety hotline, which allows callers to anonymously report problems in the workplace without fear of retribution. The hotline has been up and running for a short time, but is already seeing results. I hope that it will encourage more workers to become involved in strengthening safety procedures from the front lines.

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West Virginia is a beautiful state, filled with proud, hard-working people, who are supported by strong families, and who never ask for anything other than an honest day's pay for an honest day's work.

Mining is a way of life for many West Virginians. West Virginia miners—like their fathers and grandfathers who mined coal before them—have not only a strong commitment to provide a good living for their families, but also a deep and patriotic pride that their work, and the energy they produce, has made and continues to make America strong and free.

Thank you for the opportunity to speak today.

Chairman MILLER. Thank you, Governor. Congressman Rahall?

Mr. RAHALL. Thank you, Chairman Miller. Thank you, Governor Manchin. I'm going to introduce the six members of the panel all at the same time here. They will go right down the line and I will give a short bio of them right now.

First will be Mr. Gary Quarles, who is the father of Gary Wayne Quarles. Gary Wayne was a 33-year-old long wall shear operator at Upper Big Branch Mine who lost his life in the explosion on April 5th. Mr. Quarles is also a coal miner and has worked in coal mines for 34 years. He is currently employed at the Parker Peerless mine, which is also operated by Massey Energy Corporation.

The second one will be Mr. Steve Morgan. He is the father of Adam Morgan. Adam was just 21 years old when he was taken from his family in the Upper Big Branch explosion. He was an apprentice. He was just starting out. Steve Morgan has worked in the mining industry for 29 years and is currently employed at the Pinnacle mine in Pineville, West Virginia, but I am told, he has not been back underground since the explosion.

Our third witness will be Mr. Eddie Cook. Eddie is Adam Morgan's uncle. Mr. Cook has substantial experience in coal mining, having been a coal miner for over 30 years. He's currently employed at the Pinnacle Mining Company's mine which is operated under Cleveland Cliffs.

Our fourth witness is Alice Peters. She is the mother-in-law of Edward Dean Jones. Jones, age 50, was an assistant mine foreman who lost his life in the Upper Big Branch mine tragedy.

Our fifth witness is Mr. Clay Mullins. He is the brother of Rex Mullins. Rex was a 50-year-old long wall end gate operator at the

UBB mine. Clay Mullins has worked in mining for 32 years and formerly worked at the Upper Big Branch mine. Mr. Mullins is currently employed at Speed Mining in Cabin Creek, West Virginia.

And our sixth witness is Stanley "Goose" Stewart, who formerly worked in the coal mine industry for 34 years and spent the last 15 years working in the UBB mine until the date of the explosion. Mr. Stewart worked the second shift at UBB and was close friends with many of those that were killed that day.

I thank you all for your courage to be here to talk with us and I know that we have other family members in the audience as well, and hopefully we will give them a chance later to speak if they should so desire. We will start now with Mr. Quarles.

**STATEMENT OF GARY QUARLES, FATHER OF
GARY WAYNE QUARLES**

Mr. QUARLES. Thank you. My name is Gary Quarles. I am the father of Gary Wayne Quarles who was killed as the result of an explosion at the Upper Big Branch Mine on April 5th, 2010. Gary Wayne was my only son and my best friend. He has two children. We shared numerous good times together, including hunting and fishing. I live in Naoma, West Virginia, and Gary Wayne lived in a double-wide home immediately adjacent to my home on my property.

I am also a coal miner and have worked in the mines for 34 years. I worked in union mines for 23 years and I've worked in non-union mines the rest of the time. Other than working for 2 years in a saw mill, I've worked my entire adult life in the coal mining business.

I have experience in all aspects of coal mining, including being a roof builder, a long wall operator, and driving a shuttle car. My son and I actually worked together at several mines. I am presently employed by Massey at the Parker Peerless mine, but I am off work because of trauma I have suffered as a result of losing my son.

Safety inspections were much different in the union mines I've worked at than most of the non-union Massey mines. When an MSHA inspector comes onto a Massey mine's property, the code word goes out, "We've got a man on the property." Those words are radioed from the guard gate and relayed to all working operations in the mine. The mine superintendent and foreman communicate directly by phone and there are signals that require the foreman who is underground to answer the phone. This is one way the message is conveyed that an inspector is on the property. When the word goes out, all effort is made to correct any violations or direct the inspectors away from violations.

When I worked at the union mines, workers at the mine would accompany the MSHA inspectors during their inspections. I was on the safety committee and members of the committee took turns going around with MSHA inspectors and pointing out areas of concern. Moreover, at the union mine I was able to refuse to work in unsafe conditions without fear of retaliation.

When the MSHA inspector comes to a Massey mine, the only people accompanying him are Massey company people. No coal miner at the mines can point out areas of concern to the MSHA

inspector. In fact, for a miner working for Massey, the feeling is, if a MSHA inspector fails to say anything about all these safety problems, what right do I have to say anything about them. And I definitely would be terminated or retaliated against if I said anything.

MSHA inspectors at Massey do little to protect miners. Employees who work in the underground coal need the absolute right to address the MSHA inspectors directly and to tell them about any areas of concern they have without fear of retaliation. We absolutely look to MSHA for leadership, particularly on safety issues, but MSHA has let us down many times. The MSHA inspectors usually do their inspections during the day shift, but miners mine coal during many other shifts.

MSHA needs to conduct inspections during the evening shifts and Saturdays in addition to the weekdays to ensure that they are there whenever coal is being mined. Having them only inspect mines during the day obviously creates opportunity for the mines to not comply with all safety requirements during the hours that they know the inspectors will not be around. When MSHA is not present, there is no thought of doing anything other than producing coal. The miners are not allowed to hang curtains or conduct any other safety operations if they would interfere with or delay the production of coal.

In my experience, I believe the law could be strengthened to help protect the safety of miners in the following ways:

- Have the inspectors conduct inspections during every shift when coal is being produced at the mine, not just the day shift.
- Require inspectors to randomly select different miners to accompany them during their inspections so that the miners could tell the inspectors about their concerns without fear of retaliation.
- Hold inspectors responsible for the safety of the miners. These men look at federal mine inspectors for leadership.
- Do not allow any prior warnings of inspections. When an MSHA inspector comes onto a mine property to conduct an inspection, there should be a severe penalty for alerting anyone of the inspector's presence. A penalty that discourages anyone from providing such a warning. MSHA inspectors should be able to come unannounced and inspect mines at any time.

The Upper Big Branch mine used to be a very safe mine, but something happened. During the last year, I understand that there were serious violations at the mine and many D orders written. This mine was clearly not safe and the result was 29 miners died, including my son. He worked 14 years underground, was on the long wall for 8 years. Someone needs to be held responsible for these deaths and, more importantly, we need to change the laws or modify them to make sure this does not happen again.

I ask the members of this Committee to undertake such a commitment to my family and the families of all of us who have lost their loved ones in this explosion to make sure that this never happens again. We have had enough tragedy in West Virginia in the coal mines. There should be no reason for this to continue. And I am asking you to pass laws to ensure that miners do not have to work in an unsafe place and that they can refuse to work if it is unsafe without the fear of being fired. Thank you.

[The statement of Mr. Quarles follows:]

Prepared Statement of Gary Quarles, Father of Gary Wayne Quarles

My name is Gary Quarles. I am the father of Gary Wayne Quarles who was killed as a result of the explosion at the Upper Big Branch mine on April 5, 2010. Gary Wayne was my only son and my best friend. He has two children. We shared numerous good times together, including hunting and fishing. I live in Naoma, West Virginia and Gary Wayne lived in a double wide mobile home immediately adjacent to my home on my property.

I also am a coal miner and have worked in the mines for 34 years. I worked in union mines for 23 years and have worked in non-union mines the rest of the time. Other than working for 2 years in a saw mill, I have worked my entire adult life in the coal mining business. I have experience in all aspects of coal mining, including being a roof bolter, a long wall operator, and driving a shuttle car.

My son and I actually worked together at several mines. I am presently employed by Massey at the Parker Peerless mine, but I am off work because of the trauma I've suffered as a result of losing my son.

Safety inspections were much different in the union mines I've worked at versus the nonunion Massey mines. When an MSHA inspector comes onto a Massey mine property, the code words go out "we've got a man on the property." Those words are radioed from the guard gates and relayed to all working operations in the mine. The mine superintendent and foreman communicate regularly by phone, and there are signals that require the foreman who is underground to answer the phone. That is one way that the message is conveyed that an inspector is on the property. When the word goes out, all effort is made to correct any deficiencies or direct the inspector's attention away from any deficiencies.

When I worked at union mines, workers at the mine would accompany the MSHA inspectors during their inspections. I was on a safety committee and the members of the committee took turns going around with the MSHA inspectors and pointing out areas of concern. Moreover, as a union miner I was able to refuse to work in unsafe conditions without fear of retaliation.

When the MSHA inspector comes to a Massey mine, the only people accompanying him are Massey company people. No coal miner at the mine can point out areas of concern to the MSHA inspector. In fact, for a miner working for Massey, the feeling is, if an MSHA inspector fails to say anything about all of these safety problems, what right do I have to say anything about them, and I definitely would be terminated or retaliated against if I said anything.

MSHA inspections at Massey did little to protect miners. Employees who work in underground coal need the absolute right to address the MSHA inspector directly and tell him about any areas of concern they have—without fear of retaliation. We absolutely looked to MSHA for leadership, particularly on safety issues, but MSHA has let us down many times.

The MSHA inspectors usually do their inspections during the day shift, but the mines mine coal during many other shifts. MSHA needs to conduct inspections during the evening shifts and Saturdays, in addition to the week day shifts to ensure that they are there whenever coal is being mined. Having them only inspect mines during the day obviously creates an opportunity for the mines to not comply with all safety requirements during the hours that they know the inspectors will not be around. When MSHA is not present, there is no thought of doing anything other than producing coal. The miners are not allowed to hang curtains or conduct any other safety operations if they would interfere with or delay the production of coal.

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- Hold inspectors responsible for the safety of the miners. These men look to federal mine inspectors for leadership.
- Do not allow any prior warning of inspections. When an MSHA inspector comes onto a mine property to conduct an inspection, there should be a severe penalty for alerting anyone of the inspector's presence, a penalty that discourages anyone from providing such a warning. MSHA inspectors should be able to come unannounced and inspect mines at any time.

The Upper Big Branch mine used to be a very safe mine but something happened. During the last year, I understand that there were serious violations at the mine

and many (d) orders written. This mine was clearly not safe and as a result 29 miners died, including my son. He worked for 14 years underground and had been on the long wall for 8 years.

Someone needs to be held responsible for these deaths. And more importantly, we need to change the laws or modify them to make sure this does not happen again. I ask the members of this committee to undertake such a commitment to my family and the families of all of us who have lost their loved ones in this explosion to make sure that this never happens again. We've had enough tragedy in West Virginia in coal mining. There should be no reason this continues, and I'm asking you to pass laws that ensure that miners do not have to work in an unsafe place, and that they can refuse to work if it is unsafe without the fear of being fired.

Thank you.

Chairman MILLER. Thank you very much. Mr. Morgan, welcome.

STATEMENT OF STEVE MORGAN, FATHER OF ADAM MORGAN

Mr. MORGAN. Thank you. I'd like to thank you for the opportunity to talk on behalf of my son, Adam. My name is Steve Morgan. I'm the father of Adam Morgan who was 29 years old when he was taken from us on April 5th at the Upper Big Branch mine.

Adam and I would always talk in the evening when he would come home from work. He'd tell me the problems they'd run into. He talked a lot about they had a lot of ventilation problems at that mine. Stoppings were knocked out when he went in on his job on dayshift where he'd have to replace it while they were still running coal. Like six stoppings at a time when ventilation was broke and, even on the intake side fittings, the air to the long wall, a curtain would be around to direct it down the long wall face and he would go in and come home and tell me that he'd have to put them curtains up.

He was just a trainee, but he was smart enough to know that you had to have ventilation. He had 2 years of mine engineering so, you know, there he worked one summer an internship at the mine where I worked at when he was going to college, so he knowed everything that was supposed to be.

And he talked about water in the entries there that had blocked off the ventilation, you know, that restricted air flow with so much water, and he would come home and he'd be wet all the way up to his chest with water there, and he'd wade in that from the block back. And he talked—he come home several times early on account of ventilation problems, they sent him home early and talked about the methane, the high level of methane they'd run into, you know. And for that he would come home. One week prior to the accident, on account of high gas levels, they sent him home early.

And he talked about float dust, a lot of float dust in the mine there. Some places he'd work he couldn't even see what he was doing. And he told the rock dust had to be done. They'd call when the safety inspector was on the way in and rock dust certain areas. You're cleaning, he had to clean it to make it look pretty for the inspector when he come in. He done that.

Like I said, he was a trainee. He'd be left alone a lot, too. As a trainee, he ain't supposed to be left alone. He's supposed to have a black hat, a certified man, with the trainee. They would leave him alone back in the plow there, back behind the plow, back behind the entry building cribs and somebody would show up with the inspector and so on. They would bring him out of there and put

him with a black hat so they wouldn't catch him by hisself, because it's against the law for a trainee.

He told me, too, about—I told him, I said when they ask you to do something like that our practice at the mine when I worked in the union mine for 29 years, that if you are doing something that's unsafe and you feel it's unsafe, you go through a procedure and tell your foreman and say, "I feel it's unsafe, could you remove me from that area and find me some other work? I ain't refusing work, but I want to stay out of that place." That worked for us, you know, they'll move you and then they'll go around and take care of the situation.

So he told his boss that—I told him how to do it. I said, you know, go in this procedure so they won't get mad at you. I said, tell them you think it's unsafe and you want to be put out by in a safer area, because he was a trainee, and see what they tell you. The boss pulled him to the side there by hisself, and told him, said, "If you're going to be that scared of your job there, you need to rethink your career, because that's the way we do things."

Like I say, I worked a union mine for 29 years. We have that right to refuse to work in an unsafe area. And he was talking about every time he'd come home we talked about it. It was always ventilating for methane or unsafe conditions that he had to go through to work. And I told him, I said, you need to—actually, I tried to talk him into quitting 2 weeks prior to the accident. I said if it's that bad, you need to go ahead and come on out and we'll find you something else.

But that's the only place they were hiring trainees. And he said, "Well, Daddy," he said, "when I make my black hat, I'll get a better opportunity to get a job elsewhere when you've got your black hat," because he'd done been told by several miners if he had his black hat, they would hire him today, you know. I tried to talk him into that and he said, "When I make that black hat," he said, "I'll go ahead and quit right after that." He was up for—his time was up. He was going to make his black hat that week.

And you know, there's laws and everything out there already to protect these people, there just ain't nobody enforcing it. And that ain't, you know—the inspectors, we deal with them every day. I think they do a good job and our mine also, your foreman at that mine, when he takes on that job, he takes on that responsibility to make sure you work safe and take care of you. And I think the foreman, too, ought to, you know, rethink their job. They need to do what they're supposed to. They can make it safer. I've done some, you know, foreman or boss or two, and I ain't never had no accident or no violation. It ain't hard to do, I don't think. And I want to thank you for your time.

[The statement of Mr. Morgan follows:]

Prepared Statement of Steve Morgan, Father of Adam Morgan

My name is Steve Morgan. I'm the father of Adam Morgan, who was 21 years old when he taken from us on April 5, 1010 at Upper Big Branch.

Ventilation

Ventilation always bad

Stoppings regularly knocked out—rebuilt six one day. Very irregular and creates major ventilation concern to have 6 stoppings in one area down, however, ventila-

tion was so bad that they were constantly tearing down and reconstructing stoppings and even required engineers to come in and help design the layout. Was in water up to his waist which restricted air flow.

Curtain on intake side that feeds air to longwall face would be removed on a regular basis.

Ventilation was so bad he was sent home early several times, including once about a week before the explosion because they weren't getting enough air.

Methane

Would mention high levels of methane at least weekly.

Float Dust

Would be times it was so thick he couldn't see.

All return air was going to plow, pulling all dust towards his work area.

Once he told me that they were notified an inspector was on his way in, and he was told to hurry up and apply rock dust to keep the float dust down.

Overall Safety

Adam would be left alone to work behind the plow in bad top to build cribs despite being a red hat, or apprentice miner, and when an inspector came out they would take him outby with a black hat, or experienced miner, as required by law.

I told Adam to tell his boss that this practice was unsafe and he didn't want to do it and when Adam told boss, the boss told him if he was that scared, he needed to rethink his career

Working Union v. Working Massey

I have worked 29 years as a union coal miner. Adam worked 6 months at Massey.

When safety concerns are present, I have the right as a union miner to refuse to do an unsafe job without fear of losing my job. When Adam voiced his concern to company officials, he was told he may need to find a new job.

Instances such as those explained to me by my son would neither be condoned nor allowed to occur at the mine where I work, but were routine at UBB.

This has affected me to the point that my career as a miner is uncertain and I have been pulled out of the mine due to panic attacks and anxiety.

Chairman MILLER. Thank you. Mr. Cook?

STATEMENT OF EDDIE COOK, UNCLE OF ADAM MORGAN

Mr. COOK. My name is Eddie Cook. I'm Adam Morgan's uncle. Adam was 21. April the 5th, you know, the explosion took him away from us. I worked at Cleveland Cliffs Pinnacle mine for 30 years, union. And I went back to the mines right after the explosion, was talking to several people, you know, about the practices that was going on at UBB.

And one of the guys, I didn't get his name, come up to me and he said, "You know, I've worked here about 5 years." He said, "Everything that you're saying as far as mining with no curtain, lack of rock dusting, methane checks not being what they was supposed to be," he said, "I did it because I thought that was the way mining was." He said, "I was young and didn't know no better. Well, I come to work here and you guys as the union," and I'm not here to toot a union horn, but we showed him the right way to do it. And he said, "I appreciate it," you know. And he said, "The reason we done it and that most of the young people do it is they're taught that way."

And, you know, like Mr. Morgan said, you know, as a union person, we have the right to refuse to do work we think is unsafe. Non-union mines, you don't have that. You don't have the right to refuse. If you refuse, they tell you to "get your bucket and go home," you know. "If you don't want to work here, we've got people

out on the street wanting your jobs. And if you don't like the way we run it, you can go home."

And then you've got these people that tell, you know, you're talking about the whistleblowers. That's great if you can inform, you know, get a law that helps these whistleblowers keep their jobs, that's great, but they're going to fire them down the road for something else, you know? They're going to find something down the road to fire them for. "We didn't fire him for telling on us. We fired him for having a cat fight," you know.

Why don't we get a committee in each state to check on these people, you know? You get fired, give them a number to call, say "Hey, listen, they fired me. I want you to check in on it." You know? And then go back to the operators and say, "Okay, you know, you fired this guy for this. We're going to do this to you, you know."

As far as MSHA goes, I think MSHA at our mines does a great job, seriously. But I think they need a little bit more power. You know, you need to give these people some more power to where, if they see something wrong, okay, we're going to shut this down right now. We're going to shut it down until you get it fixed, is what I think on that.

As far as, you know, they have the power to come in and give you orders and shut you down, and they give you so many times and so much time, but if you keep doing this and you keep getting shut down, you're not going to do it much longer, you know, because you're losing production and if you shut down production, these people ain't going to be in business. I think that, if we could give MSHA more power to enforce the laws that we have now, I think we would see a difference.

But as far as union mines, ask yourself how many Massey's got, because they know their union would be people that would work like law enforcements. They have the right to say no. And they don't have the right to say no, now. I think we need to get them some power. Thank you very much.

[The statement of Mr. Cook follows:]

Prepared Statement of Charles E. Cook, Uncle of Adam Morgan

My name is Charles E Cook, but I go by Eddie.

I'm the uncle of Adam Morgan, who was 21 years old when he taken from us on April 5, 1010 at Upper Big Branch.

I have over 30 years experience in mining, 29 of which are at a union mine.

I work at the Pinnacle mine for Cleveland Cliffs, and we try to do things the right way. Not long after the explosion, I talked to a guy at the mine I work who used to work at the Upper Big Branch mine. I told him that I heard tales of things like coal being mined with the curtains pulled down, and he confirmed that this was a regular practice in his time at the mine, and he ultimately left the mine because of certain practices. He stated that he was not even aware that the way certain things were done at UBB were unsafe or illegal until he came to the Pinnacle mine and saw how we operated and tried to comply with mining laws.

As a union miner, I have the right to refuse to perform a job if I think it is unsafe without a fear of losing my job. I would like to see the same protections for all miners, not just union miners. There needs to be a system in place to protect whistleblowers and to ensure that these miners won't be fired a few weeks down the road for some other reason when in reality it is just retaliation for pointing out safety concerns or refusing to do unsafe jobs.

MSHA needs to be granted more authority and power to shut down sections of a mine or the entire mine if an unsafe condition is noted which presents a serious

risk to miners, instead of having to wait for several repeat occurrences of the same violation.

Chairman MILLER. Thank you. Ms. Peters, welcome to the Committee.

**STATEMENT OF ALICE PETERS, MOTHER-IN-LAW OF
EDWARD "DEAN" JONES**

Ms. PETERS. My name is Alice Peters and I am the mother-in-law of Edward Dean Jones. Dean was killed in the explosion on April the 5th at the Upper Big Branch mine. He was 50 years old and was a section foreman. He had worked at the mines over 13 years, and as a miner for over 30 years.

Dean was married to my daughter, Gina. They had one son, Kyle. Kyle suffers from cystic fibrosis and has medical problems that require constant medical care. I was very close to my son-in-law and regularly spoke with him on the phone and in person. I also helped them care for my grandson.

My daughter and I are particularly close. Since the death of her husband at the Upper Big Branch mine explosion, my daughter, Gina, has been very upset. She will not go out unless I'm with her, even to the grocery store or the beauty salon. She will not go out unless I am with her and then she cries the entire time. She is having an extremely difficult time with the loss of her husband and her concerns for the future.

Dean told me many times that he had concerns about the ventilation at the Upper Big Branch mine. He often told me and his wife that he was afraid to go to work because the conditions at the mine were so bad. He also told me at least seven times he told Massey that—they told him if he shut down production because of ventilation problems, that he would have no hours. He would lose his job. They knew about his son, and that Dean needed to keep his job to make sure his son could get the medical care he needed.

On more than one occasion, I called the mine and told them there was an emergency regarding his son, that he had to come home, in order to get him out of the mines because I feared for his safety.

My son-in-law was a very good miner and could have gotten a job anywhere. He had a college degree in mine engineering; however, because of the physical disability of his son and the absolute necessity of maintaining his health insurance benefits, Dean wasn't able to leave Massey's employment. He continued to work in that mine, even though he knew it was unsafe and he was afraid of being fired, losing his health insurance. Thank you.

[The statement of Ms. Peters follows:]

Prepared Statement of Alice Peters, Mother-in-Law of Edward Dean Jones

My name is Alice Peters and I am the mother-in-law of Edward Dean Jones. Dean was killed in the explosion on April 5th at the Upper Big Branch mine. He was 50 years old and was a Section Foreman. Dean had worked at the mine over 13 years and, as a miner for over 30 years. Dean was married to my daughter, Gina, and they have one son, Kyle. Kyle suffers from cystic fibrosis and has medical problems that require constant medical care.

I was very close to my son-in-law and regularly spoke with him on the telephone and in person. I also helped them care for my grandson. My daughter and I are particularly close.

Since the death of her husband at the Upper Big Branch Mine explosion, my daughter Gina has been very upset. She will not go out unless I am with her, even to the beauty salon. She will not go out unless I am with her, and then she just cries the entire time. She's having an extremely difficult time with the loss of her husband and her concern for the future.

Dean told me many times that he had concerns about the ventilation at the Upper Big Branch mine. He often told me and his wife that he was afraid to go to work because the conditions at the mine were so bad. He also told me that, at least 7 times, he was told by Massey supervisors that, if he shut down production because of the ventilation problems (bad air), he would lose his job. They knew about his son and that Dean needed to keep his job to make sure his son could get the medical care he needed. On more than one occasion, I called the mine and told them there was an emergency regarding his son that he had to come home and handle in order to get him out of the mine, because I feared for his safety..

My son-in-law was a very good miner and could have gotten a job anywhere—he had a college degree in mine engineering. However, because of the physical disability of his son and the absolute necessity of maintaining his health insurance benefits, Dean was unable to leave Massey's employment. He continued to work in that mine even though he knew it was unsafe because he was afraid of being fired and losing his health insurance coverage.

Chairman MILLER. Thank you. Mr. Mullins.

STATEMENT OF CLAY MULLINS, BROTHER OF REX MULLINS

Mr. MULLINS. Yes, my name is Clay Mullins. First of all, I'd like to thank Governor Manchin for all the support that you showed all the family members. I lost my brother Rex at the UBB Mine explosion. Rex was a good father, husband, a son, and a brother. He loved to hunt and fish. He loved working with wood, making chairs and all sorts of things. He loved spending time with his grandkids. He was an avid West Virginia football and basketball fan. He liked his job, and that job he had on the long wall and he did it well.

I'm also a coal miner. I've been a coal miner from 1977 to the present. I also work on a long wall section. I've been around long wall mining for approximately 10 to 12 years. I worked previously at UBB with my brother as well, as with all the other miners at UBB. I'm a maintenance foreman on the long wall and I'm currently employed at Speed Mining in Cabin Creek, West Virginia.

I have not worked since the UBB mine accident. I worked previously at UBB before we moved to Logan's Fork. When I was at UBB before, we always had methane. In that coal seam, you've always got methane. You've just got to take the right measures, the right ventilation will take care of your methane problems.

Sometimes we'd have water get in our returns and they would stop off ventilation and reverse the ventilation air filters, but we always corrected it. When I was there before, we always took care of the problems that we had. But things must have changed since I left, because I've been going through the violations they received, and they received a lot of ventilation violations, and a lot of serious ventilation violations.

As far as knowing when the inspectors was coming to the mines, when the inspectors come across the bridge to the guard shack, the guard at the guard shack immediately informs the mine office there's an inspector on the property. When he calls the mine office and the mine offices call underground and tell all the sections that they had an inspector on the property, to make sure everything was right and, if it wasn't, to fix it before the inspector got there, to make sure it was right.

A lot of this—I place a lot of fault with Massey on the way that they run the mines. Also, there's a lot of fault with MSHA for a mine having this many ventilation problems and not being shut down and being corrected. They might have corrected at the time, but apparently that correction didn't work or we wouldn't be here today.

I think you need to make some laws that, if you've got a mine that's having serious ventilation problems or any serious problems that's going to cause injury or death to any of our miners, that we need to pass a law to give MSHA the power or someone the power to come into that mine and, if the operator does not get that mine fixed and in the condition, a safe working condition for the men, then someone needs to come in, step in, and say, "Enough's enough, we're going to fix this. We're going to shut down and we're going to fix this. Until this problem is corrected, you're not going to operate no more."

This is my brother. I don't have him no more. I worked with all these guys at this mine, all except about four of them. I knew them. This is my other friends and brothers that I lost. And members of the Committee, I would hope that you all would pass a law that protects all these miners. There are 29 families that suffered. I don't want to see 2 years down the road or 4 years down the road another 10, 20, or 30 families wearing shirts like this. Thank you.

[The statement of Mr. Mullins follows:]

Prepared Statement of Clay Mullins, Brother of Rex Mullins

My Name is Clay Mullins
I Lost my Brother Rex Mullins
At the UBB Explosion.
Rex was a good Father Husband
And Brother. He Loved to Hunt-Fish
work on his home And spend time
with his grandchildren. He Loved
WVU. Football-Basketball. He Liked
his job And did it well.
I Am A Coal Miner Also. I have
been A Coal Miner Since 1977 to
present. I Also work on A Longwall
Section I have Around 10 years on
Long wall mining. I worked previously
AT UBB with my Brother AS well
with All the other Miners AT UBB
I AM A MAINTANCE Foreman on the
Long wall present AS well AS my time
AT UBB I AM currently employed with
Speed mining AT Cabin Creek WV Since
The UBB Mine Accident I have not
Returned to work. I worked previously
AT UBB. Before we moved to Logan's Fork
we Always had Methane but we took
The Right measures to ventilate the wall
Some times we would Have water problems
that would Hamper our ventilation But
we Always Corrected the problem

Things must have changed since I worked there because I have seen the violations they received on ventilation and there is some serious vent. violations they received as far as knowing when an inspector was coming to the mine I was not aware of that but when an inspector came by the guard shack they would call ~~tell~~ that we had an inspector on the property. They would call the sections and tell them we have an inspector on the property and make sure everything was right and if it wasn't to fix it. I have a problem with ~~MSHA~~^{SHA} for them to issue so many vent. violations why was there not something done to fix the ventilation problems permanently. In my opinion ~~I~~ I think MSHA when they see a mine having vent. issues that keeps having vent. issues they should bring in their vent. experts and work with the company or take control of the mine till they get the vent. problem fixed once and for all.

Chairman MILLER. Thank you. Mr. Stewart.

**STATEMENT OF STANLEY "GOOSE" STEWART,
UPPER BIG BRANCH MINER**

Mr. STEWART. I'd like to thank you, Chairman Miller, for allowing me to speak before this committee today. My name is Stanley Stewart. Most people know me as "Goose." I've worked in the coal mines for 34 years, the last 15 of those at Upper Big Branch. I worked as a jack setter, a shear operator on the long wall, and I was a continuous miner operator at the time of the explosion. I'm here to tell my story today because I worked at Upper Big Branch and I was 300 feet underground the day the explosion occurred.

Although I did not lose a family member, I feel as if I did. Men like William Griffith, Ricky Workman, Eddie Mooney, Timmy "Grizz" Davis, Gary "Spanky" Quarles, Rex Mullins, and 23 others who were like brothers to me.

I also know firsthand how bad conditions were at the mine and want everyone to know. In fact, last July because I was so scared and mad, I told my wife, Mindi, if anything happens to me for her to get a lawyer and sue them. I told her, I said, "This place is a ticking time bomb." She told me to write things down that were wrong because she wouldn't know what to do or say. So I began to write down a few things I knew that were illegal and wrong.

On April the 5th, I was sitting on the mantrip at about 3 p.m. with several other miners. We were approximately 300 feet underground. We were getting ready to head to the section when I felt a breeze coming from inside the mine. The intensity picked up quickly and I realized something bad was happening. So I left the mantrip and started making my way toward the outside.

Before I could get out, the air velocity increased to what I felt was hurricane strength, and I felt my feet wanting to leave the ground. The air was full of dust and debris, and I couldn't see. Although I didn't have far to go, I nearly panicked, afraid that I might not make it outside being that close.

Many things were wrong at the mine, such as low air. The area of the mine we were working was liberating a lot of methane. Mine management never fully addressed the air problem when it would be shut down by inspectors. They would fix it just enough to get us to load coal again and then it would be back to business as usual. The long wall worried me because of the ventilation. My experience on the long wall, I knew the ventilation system they used did not work and, with so much methane being liberated, no air moving, I felt that area was a ticking time bomb.

I was told before the April 5th explosion that they had experienced at least two fire balls on the drum of the shearer. I knew that meant methane was building in that area and also building ventilation problems. The questions that I have are: how does methane build up to the point where a fireball would start and how could this happen if the methane detectors had been working or working properly?

On July 26th, 2009, on the evening shift, our crew was told by management to make an air change from sweep air to split air on the Head Gate 21 where the long wall is now. But we were developing the continuous miner section at this time. We knocked stoppings while crews were still working. Anything to do with changing ventilation, by law, a mine has to be evacuated because there won't be enough air. People working "in by" will have their air short-circuited by the change in ventilation. However, the section crew was still working when the air change was made. And I'm not sure if MSHA was aware of the whole situation, but it scared me and, when I got home, I wrote it down.

The morale around the mine for the most part was bad. No one felt they could go to management and express their fears about the lack of air on our sections. We knew that we'd be marked men and that management would look for ways to fire us. Maybe not that day or that week, but somewhere down the line, we'd disappear.

We'd seen it happen, and I told my wife I felt like I was working for the Gestapo at times.

They took vacation time from the miners last year because they wanted a certain average of coal loaded a shift by vacation time. The conditions of the mine where we were working were so bad it was nearly impossible to load that much coal safely. So we lost our vacation.

I've worked close to 20 years in a union mine and 15 years non-union, so I've been on both sides of the fence—long enough to know the difference in how miners should feel in both working environments. In the union mine, if you had safety concerns, you had the right to refuse to work in unsafe conditions without fear of losing your job. Working in a non-union mine, you do not have those rights. You know you have to operate with a lack of air or in unsafe conditions. They want you to load coal at all costs, and I feel that mentality is handed down from top management.

I used to tell the guys during an organizing drive that no amount of money is worth your rights, but Massey—and Mr. Blankenship in particular—ran a hands-on anti-union campaign and threatened to shut the mines down if the union was voted in. He preached he wanted flexibility. It didn't take me long to know what his flexibility was. Do it his way or else. Massey don't need you. Get your bucket and get off the property.

In general, MSHA needs to examine if long wall ventilation systems should go to the gob areas and determine that this method properly expels methane and the bad air from the sections. I feel that the ventilation should be directed to the "out by" section of the mine. I've worked the long wall at the Peabody Number 7 mine next to UBB with this set up and it worked.

Outlaw companies need to be put on pattern of violations easier than the existing laws allow. Protesting violations should not keep them from being put on a pattern. Once put on a pattern, then the company should have to pay MSHA-sponsored people for an undetermined amount of days, 24/7 until they can find out why the mine is being put on a pattern of violation and make them fix it. I think it's a shame you would have to babysit companies to make them comply, but if that's what it takes, that's what it takes.

As far as I know, not one pattern of violation has been issued since the law was created in 1977. I feel that UBB should have been put on a pattern a long time ago. And also I feel the safety standards there, they're sufficient if they are obeyed and enforced, but there is room for improvement. Rock dusting standards should be improved and Congress needs to close the loophole to let mine operators off the pattern of violations.

That was one of the beauties of working in a UMWA mine. You did things right, the company tried to do things right, as opposed to my last 15 years of employment. We did some things right, but were forced to do many things wrong. Thank you, sir.

[The statement of Mr. Stewart follows:]

**Prepared Statement of Stanley "Goose" Stewart, Miner,
Upper Big Branch Mine**

My name is Stanley Stewart. Most people know me as "Goose." I have worked in coal mines for 34 years and at the Upper Big Branch mine for 15 of those years. I have worked as a jack setter and shear operator on the long wall, also worked

3 years on the outby long wall and from January 2009 to April 5, 2010, a continuous miner operator.

I am here to tell my story today because I worked at the Upper Big Branch mine until the day of the accident and was 300 feet underground the day the explosion occurred. Although I did not lose a member of my family, I lost several co-workers, including William Griffith, Ricky Workman, Eddie Mooney, Timmy Davis, Gary Quarles, Rex Mullins and 22 others who were like family to me. I also know firsthand how bad conditions were at the mine and want everyone to know. In fact, last July, I told my wife, Mindi, “If anything happens to me, get a lawyer and sue the [blankety blank] out of them! That place is a ticking time bomb.” Only I didn’t say “blankety blank” to her because I was so scared—and mad! She told me to write down things that were wrong because she wouldn’t know specifics or the terminology to convey what was happening. I began to write down things I knew were illegal or wrong.

On April 5th, I was sitting on a mantrip at about 3 pm with several other miners approximately 300 feet underground. We were getting ready to head to the section when I felt a breeze coming from inside the mine. The intensity picked up quickly and I realized that something bad was happening so I left the mantrip and started making my way toward the outside. Before I could get out the air velocity increased to what I felt was “hurricane strength” and I felt my feet wanting to leave the ground. The air was full of dust debris and I couldn’t see. Although I didn’t have far to go I panicked, afraid that I might not make it out to safety.

Red flags

Many things were wrong at the mine such as low air constantly. The area of the mine we were working was liberating a lot of methane. Mine management never fully addressed the air problem when it would be shut down by inspectors. They would fix it just good enough to get us to load coal again, but then it would be back to business as usual. The long wall worried me because of the ventilation. My experience in the mines showed me that the ventilation system they had didn’t work. And with so much methane being liberated, and no air moving it gave me the feeling that area was a ticking time bomb. I was told prior to the April 5th explosion, that they had experienced at least 2 fireballs on the drum of the shearer. This leads me to believe the methane was indeed building in that area, showing lack of air and ventilation problems. One question that I have is how could methane build up to that point where a fireball could start? How could this happen if the methane detectors had been working?

On July 26, 2009 on the second shift, our crew was told by management to make an air change from sweep air to split air in Head Gate 21. They knocked stoppings while crews were still working. Anything to do with changing ventilation, by law, the mine is to be evacuated because there won’t be enough air. People working inby will have their air short circuited by the change in ventilation. However, the section crew was still working when the air change was made. I’m not sure MSHA was aware of the whole situation. But it scared me, and when I got home I wrote it down.

Mindset of miners

The morale around the mine for the most part was bad. No one felt they could go to management and express their fears or the lack of air on our sections. We knew that we’d be marked men and the management would look for ways to fire us. Maybe not that day, or that week, but somewhere down the line, we’d disappear. We’d seen it happen and I told my wife, I felt like I was working for the Gestapo at times. They took vacation from the miners last year because they wanted a certain average of coal loaded a shift by vacation time. The conditions of the mine where we were working were so bad, it was nearly impossible to load that much coal safely.

Union vs. Non-union

I worked close to 20 years in the union and 15 years non-union so I’ve been on both sides of the fence long enough to know the difference in how miners feel in both types of working environments. In the union if you had safety concerns you had the right to refuse to work in unsafe conditions without fear of you job. You felt at ease and comforted by your rights. Working at a non-union mine you do not feel that comfort. You know you have to operate with a lack of air or in unsafe conditions. They want you to load coal at all costs and I feel that mentality is handed down from top management. I used to tell the guys during an organizing drive that no amount of money is worth your rights. But Massey and Mr. Blankenship in particular ran a hands-on anti-union campaign and threatened to shut the mine down if the union was voted in. He preached he wanted “flexibility”. It didn’t take me long

to know what his flexibility was; do it his way or else “Massey don’t need you. Get your bucket and get off the property”.

Law improvement

In general, MSHA needs to examine whether it should allow long wall ventilation systems to go to the gob area and determine if this method properly expels methane and bad air from the section. I feel that ventilation should be directed to the outby section of the mine. I’ve worked the long wall in the Peabody Number 7 Mine, next to UBB with this set up and it worked.

Outlaw companies need to be put on Pattern of Violations easier than the existing law allows. Protesting violations should not hide the violations and should not keep them from being put on pattern. Once put on a pattern then the company should have to pay MSHA sponsored people for an undetermined amount of days 24 hours, 7 days a week to find out why that mine has been put on the pattern of violations and make them fix it. Something is wrong when not one pattern of violation has been issued since the law was created in 1977.

I feel the safety standards can be sufficient if they are obeyed and enforced, but there is room for improvement. Rock dusting standards should be improved, and Congress needs to close the loop holes that let mine operators off the pattern of violation.

That was one of the beauties of working in a UMWA mine; you did things right, the company tried to do things right as opposed to my last 15 years of employment. We did some things right, but were forced to do some things wrong.

Chairman MILLER. Thank you, Mr. Stewart. Thank you to all of you for providing us your testimony. I think we can already see the value of it. Mr. Quarles, Mr. Morgan, Mr. Mullins, and Mr. Stewart, it’s my understanding that none of you have returned to work since this accident; is that correct?

[Affirmative nods from said witnesses.]

Chairman MILLER. So, what is your status? You’ve made this decision. You don’t want to; you cannot return to work. What is your status with the company or with the union?

Mr. STEWART. I’m currently drawing Workers’ Compensation. I’m under a doctor’s care. I cannot go back in that coal mine. Been through a lot in 34 years, and always stood tall and went back. I can’t go back this time.

Chairman MILLER. Mr. Mullins?

Mr. MULLINS. Same here. I’m under a doctor’s care. I’m just like Goose, I’m under a doctor’s care. I’m going to counseling. I don’t think I can go back there.

Chairman MILLER. Mr. Morgan?

Mr. MORGAN. Yeah. I’m under a doctor’s care. I went back 14 days after April 5th and tried it there. I worked 7 days and I was just getting more and more ill thinking about Adam there and had panic attacks, anxiety, and depression and didn’t want to be left alone. And I’d get, you know, angry, too. And I went to the doctor and asked about it and they told me I better take some time off.

Chairman MILLER. Thank you. Mr. Quarles?

Mr. QUARLES. I’m off under a doctor’s care, too. I just can’t see myself going back. I ain’t never been afraid to go underground in my life, but I just can’t see myself wanting to go even close to it, I dread that.

Chairman MILLER. Mr. Morgan, Mr. Mullins, Mr. Stewart, well, actually the four of you again, if you don’t mind. Mr. Cook, you can—in the discussions with your son and your brother and other members and your own experience working in the mine, and some of you worked there before, it sounds a little bit random whether

or not you were in a safe environment or you weren't, depending, you know, at this mine.

Mr. Quarles, you testified and you said it was a pretty good mine, but things have changed and Mr. Morgan tells us his son is almost telling a horror story at the beginning of every shift where he has to go back and put the mine curtains and the ventilation back into some kind of shape to get ready to go to work, but other people were working there on the previous shift where those things happened and the curtains were not rehung or what have you. Is that a fair summation?

Mr. MORGAN. Yeah, that's what he said. And they moved the power pack on the long wall when they set back, you know, and they wouldn't put the intake curtain back in. When he would go in in the morning, he'd even tell the foreman, he'd say we've got to have that curtain in there and he'd say this is just a young man who's been in the mine six months. But you're an engineer and you knew that curtain shouldn't have to go back in there, it should have already been back in there to feed the air down to the long wall.

Chairman MILLER. There's been a lot of discussion here about ventilation, and if I listened to you correctly as you related your discussions with your family members, if there was a ventilation plan, and it sounds like you began with a ventilation plan, when you know where you're going to be doing the cutting, where you know you're going to be doing the work, you design the ventilation plan to take into account the level of methane, the kinds of activities there, but that ventilation plan seems to rather quickly erode after you start working in that area. Correct me if I'm wrong, but that plan doesn't appear to be worth much for very late into that area where you're working.

Mr. STEWART. I used to tell my boss, I'd say if the management would get the air to the section, we could ventilate the section, but we've got to have it. And we couldn't get it. I mean, I've seen the anemometer not even move, right dead in our intake before it even got to the section. And, you know, I'll give that boss I had at that time credit. He said we weren't going to load and we went to look for air but, you know, if it ain't there, you can't find it. And management, I don't know, I would refer to them as the village idiots. They don't know how to ventilate a coal mine. I mean, it's their job to get the intake up to the section and then it's our job to ventilate the facings.

Chairman MILLER. Mr. Mullins?

Mr. MULLINS. That's correct, exactly what they said is correct.

Chairman MILLER. Mr. Cook?

Mr. COOK. You know, our mines probably about a month ago had ventilation problems and MSHA come in and shut us down. Said that's it. You're going to be shut down until you get this repaired. Now, if we can do that at a union mine, why can't you do it at non-union mines?

Chairman MILLER. Mr. Quarles?

Mr. QUARLES. I know when my son was there at UBB before the long wall, left UBB and went to Logan's Fork, me and him would talk about Logan's Fork, how bad Logan's Fork was. And then when the long wall left Logan's Fork and come back to UBB, he

said, "My God, Dad," he said, "Logan's Fork is a credit to what this is here." So something did happen. At some time or another, a lot of the people liked to work at UBB. That was my understanding. But between the time the long wall left UBB and went to Logan's Fork and come back, something changed. I don't work there—that's just what he was telling me.

Chairman MILLER. Thank you. Governor, if I might just take a moment here. I'm intrigued, very disturbed by this testimony, but I'm intrigued by your notion of certified mine teams, because again, throughout this testimony and these discussions with family members, and discussions staff have had, there's just—it appears in this case there's just a constant sense of intimidation and retribution if miners spoke out and the idea that it seems to me we have to devise a system here where an issue of whether or not safety is going to be reported, whether or not corrections are going to be made, whether or not men are going to have to enter the mine or not cannot be catch as catch can. Cannot be dependent upon who's in that mine at that particular time, whether that's an SOB who threatens to fire you or whether that's someone saying let's get this thing fixed.

The system seems to protect those individuals a little bit more than it does the miners, and you referred to the bureaucracy. When you work your way through, when we had the hearings on the avoidance of the patterns of violation, it's pretty clear that this whole system is set up and the people who could not get it were the companies who were interested in keeping themselves from being closed. If anybody else circumnavigated the system, they would just run out of strength at some point. So just listening to this testimony, I'd like to come back to your suggestion about the certified mining teams and about how we provide that kind of insulation protection for people who have to make life and death decisions about the operation of this workplace.

Governor MANCHIN. You know, it's quite disturbing to hear what we're hearing, and I heard this for 5 days after talking with the families and spending that much time with them, so it just weighed on me. After the Sago and Aracoma, we knew exactly that we had a problem if something, God forbid, happened, if somebody got trapped, there ought to be lifesaving measures. Lifesaving measures, we could go and get them and get them out safe. We had 12 miners onsite that we should have been able to save if we could have had these steps in place at Sago.

So we knew that we had to have rapid response. We weren't getting new people moving quick enough with the right equipment. We knew we had to have tracking and communications and we knew we had to have lifesaving oxygen. That was pretty, you know, standard and pretty straightforward. We did that immediately and passed legislation in one day, took it to Congress, and Congress took it. I commend all of you for working as quickly as you did.

This one here is telling us until we have an investigation, we really don't know. But we know by hearing testimony from everybody here that it was a time bomb waiting to happen.

Now, if this is going on in other mines and we don't know about it, and people are able and almost expect certain routine inspections at certain times and, even at that point in time, if there's a

surprise or there's enough knowledge or enough awareness to do something to make it look like everything is fine, how do you prevent that?

We've heard from UMWA mines, we've heard from basically companies that are responsible, and the majority in West Virginia empower their miners, empower people in the workplace, and all I have said is, if we have situations that don't do that because of a lack of organization or however they're structured, then we should empower every miner to be able to pull the plug and every good operator and every good corporate structure or business structure should have that as their standard of operation.

And I'm thinking, okay, how do we do that and do that in law or code? And I said, you know, all my life I've heard rescue teams and how well they were trained, and I've watched how brave too many times in my life, how brave these people are that would go in and risk their own lives. I've watched them at Sago and I've watched them at Aracoma. I even remember back in Farmington in 1968, they were willing to put themselves in jeopardy every time.

And I thought, if we can have a rescue team, why can't we have a prevention team? Why can't we have people that basically, 24/7, seven days a week they're on site? They report only to MSHA and to the state inspectors of what they see and are protected by law, that they can't be fired, retaliated, or intimidated and be able to say listen, I shut this down for this reason, and we're not going to continue that. And they have the power and the weight of the law with the criminal proceedings against people who try to circumvent that. That's all I try to do, is try to bring a common sense approach to how we could prevent this.

I don't want to sit with another family member, other than in good times. Not in such horrible, sad times. So that's where this came from and I know we can do it. You know, we have people—you know, there's only so many things that can cause an explosion. You've got to have fuel and you have to have an igniter. The fuel was methane and coal dust and you combine those two and you've got a real lethal force on your hands. The igniter could be many things in a mine. It could ignite a mine, just the sheer mining of a mine could have an igniter and sparks, so you've got to have sufficient ventilation.

And they know when it's the most dangerous time, when they're moving and switching and changing. That's when you—you're not operating at that time, you're really concerned about a safe condition. And if a person's on the front line 24/7, their life's on the line, and they are trained. These are certified trained by MSHA and by the state, people that can identify that. They're saying no, no, no, we don't need this. They should have the weight and protection of the law behind them.

Chairman MILLER. Thank you. I've taken a little prerogative as the Chair, I've gone over a little bit of time on this and I want to make sure Mr. Kline has the same amount of time, but it seems to me anybody at the gate and they're calling the mine to tell them the inspector's there or they're telling them, however they're interfering with that process of the MSHA Department of Labor people, somehow, that just on its face has to be an obstruction of justice,

if you're interfering with this really lifesaving activity that goes on on a regular basis. I look forward to working with you on this issue, and I think the members of this Committee will also.

When I was a young man, I worked in a lot of oil refineries and on oil tankers, went out to sea and it was before OSHA, and we had no protective gear. And when I worked in the oil refineries, some of those very large oil storage tanks, cleaning them out, we had individuals that would go face down because of the fumes. We'd just drag them out and go complain and say maybe we should have—sometimes they'd put a fan in one of them, the flanges, and they would just say, well, we don't have a fan today. It's your job to clean this out. And you know, to have OSHA there and have mine safety available, to not be able to enforce it because it is that line of protection for these families. I thank you. Mr. Kline?

Mr. KLINE. Thank you, Mr. Chairman. And thank the witnesses. We knew this would be tough testimony and I know that it was. It's pretty compelling. No one could be here today or be watching and listening to this on television or radio and not feel anger and some frustration. So I want to thank you for your testimony and just let you know that we, all of us, we can't feel your pain. No one can feel that pain like you can, but we all of us want to do everything we can to keep others from feeling that pain.

There have been many ideas that some of you put before us, some suggestions. I found myself starting to write a little note in the margin and then a bigger note and then another piece of paper full of notes and I know that staff behind us and around are doing the same things.

There are clearly some things that happened that shouldn't have happened, based on your testimony. Some of the things, apparently, there are already laws in place and they either weren't obeyed or weren't enforced, or both. Some of them are new ideas and we will be working together to explore those and see what can be done, what needs to be done in the way of legislation.

Governor, I just want to thank you as my colleagues have for everything that you've been doing. It's interesting because you're a mining state. We've looked at the situation a number of times where you have these two governmental entities that are involved, Senator Rockefeller broached this subject and you did as well, Governor, where you have the federal MSHA and then you have the West Virginia Miner's Health Safety and Training. I don't know how to ask this without putting you on the spot, but if you could just sort of in general tell us what you think about how those are working together and is that something that we should be looking to address, that overlap, I think the Senator called it.

Governor MANCHIN. Since I've been Governor, we have the best relationship right now. I will say that unequivocally. Now, it's been a very short relationship, but it's a good relationship, and I can tell people really want to get to the problems and work together. I couldn't figure out in Sago and Aracoma how we could have the feds doing their thing, meaning MSHA being the federal, and the state doing their things where both reported inspections to you, though. I'd say why weren't we sharing information? Why don't we share what one team had seen in a mine and why didn't we share it to see if it would benefit other people? Why are we having both

teams focused on inspection but making no one—but again, this is all training.

I don't know about the—I know the government sometimes, when we have a horrible, horrible tragedy or anything that happens, we will come back, whether it be state or federal, and pass pieces of legislation and have so-called word overkill. Well, the bottom line is, we know that if we don't act, what happens. We're all sitting here.

But, on the other hand, if you talk to the miners themselves, those on the front line, you talk to good operators, how can you make mistakes, starting with the engineering, I mentioned that, your mines would have to—mines would shut down. You know, why didn't they have the top engineers looking and overseeing saying, hey, that's not a good plan for a mine, that doesn't make sense. This is much better and it's proven to work.

Every seam is different. Some are different than others, but we don't have that type of oversight. I'm understanding now, the mines themselves, the mine companies hire their engineers to turn it in and it's supposed to be stamped off, and okay, looks good to me. I'll tell you for sure that's what they're telling me now.

The other thing is that MSHA is basically only inspecting. Could we devote more of our time in the state on training, to make it safer? We have to look at a way we can correlate better with you. We're going to mine coal in West Virginia. This country needs coal. We can do it better.

And I think working together now, developing a plan that really makes sense, having these men here on the front line, 34, you look at the experience just sitting here, having them tell you. If I had a guy come in and tell me this, this and this and work with him, if I could sit down on a review period or panel, how about when the inspecting team comes in? Shouldn't there be a cross-section of the miners sent down for exit so you can walk out after your inspection and say this is what we saw, what do you have to say about that? No one's ever enforced that, no one's ever asked them to do it or ever been involved. Some mine operators do it voluntarily, some don't do it at all, or won't do it.

And I'm not blaming them, I mean, everybody says why do I have that attitude coming in here? Well, I sit with the families. I know. I was a family member sitting there for a long time wanting to know in that vein what happened over 20-some years, what happened in Farmington with my uncle and all my friends. And I want to make sure that when we're done, we know exactly what happened and we have a third-party, if you will, that has the expertise that says we confirm and we're disagreeing until we get an answer.

Mr. KLINE. I very much appreciate your saying you're working very well with MSHA and I understand the Secretary and Assistant Secretary here are observing, so I won't ask for their input here. But I guess at the heart of the question is sometimes agencies work really well together because their personalities work well together, and sometimes they're doing that in spite of how they're set up and the legislation that controls them. So, the question for us is, we're going to go forward and we're going to look at this and see if this is an issue, a situation where it might not work so well

if it weren't for personalities. That's something apart of what we ought to be addressing in whatever legislative action we take.

Governor MANCHIN. I'll make a recommendation. We definitely will. Our state probably depends more on MSHA than any other state as far as coal mining, and with that being said, we think there are things you could do better. We think there's things that we could do better and there's certain things that we think that we do that we shouldn't be doing and probably vice-versa.

I would be happy to go down through the list. And I will be consulting with experienced miners and look at what we do. And I will give you a complete written recommendation of what we believe should be done and what we believe we should—everybody right now is afraid to make any changes because they're saying if I have an inspector, they'll think we're becoming lax on inspection. If we devoted more time towards training and working on safety and knowing that we had the force of law with one inspection, I've heard this many times, but no one will ever speak about it in public. They're concerned and will say we're not tough enough on crime. You'd have to be smart and we have to be smart as far as our mine safety. And if these gentlemen think it takes two agencies and it takes this and that or if it takes three—but that's why I say, if you empowered the miner, you've got the greatest inspector at all times at the front line 24/7 protected by law. And then we could make sure that everyone can do their job much better.

Mr. KLINE. Governor, I was busy writing down here one of my marginal notes, Bureau of Mines are now closed, their review plans. What happened? As I said, others are writing down much more extensive notes and this is all a matter of record and we're going to need that input as we go forward. Just another question again. I know I can't put you on the spot, although that's sort of our job up here, but I'll try not to do that. Can you give us any indication of when Mr. McAteer's investigation will have something that would be useful by you and us?

Governor MANCHIN. He's coordinating Sago and Aracoma-Alma mine. He's coordinating with MSHA and the state, also, but he's doing it independent, looking at everything he possibly can and reports back to me. And I don't have a timetable right now. As you know, they can't even get in the mine.

We're told by June the 2nd, fairly soon here we might be able to go up and inspect it, the long wall, to see if the readings are sufficient to get in and do the job. That's what I've been told. Until that's safe, until he's able to get in with his inspectors and be able to tell me, that's what he did with Aracoma and Sago and pretty much coincided with where MSHA was going at that time and also the state was going. But it just gives the extra comfort level for me to see independently and go back and talk to the families and have a report. Even when it's all said and done, there's going to be people with different theories on this, but I'm hoping this will be very conclusive of what happened.

Mr. KLINE. Thank you, Governor. Again, thank you all. I yield back.

Chairman MILLER. Mrs. Woolsey?

Ms. WOOLSEY. Thank you, Mr. Chairman, and thank you, witnesses, who were marvelous. You are marvelous. We were listening

to every word that was coming from you. This is the Ed and Labor Committee of the formal Committee. Labor meaning we're responsible for the National Labor Relations Act, et cetera, to protect workers who want to organize. So I have, it's appropriate for me to ask this question. I'm going off base just slightly, but when working for a union mine gives you voice and safety, why isn't Massey organized? What did they do to the organizers? What goes on? It is Mr. Cook? Who wants to answer that? Turn on your microphone, please, Mr. Cook.

Mr. COOK. When you give the people the right to refuse to do illegal findings, then they're going to not produce as much coal, and that's the name of the game, profit, to Massey. And that's the reason they don't want the union in there. They even—I had a brother-in-law that worked for Massey in '95 and was killed, and he said that they showed anti-union films as part of his orientation in that mine.

Ms. WOOLSEY. But this is the 21st Century and many of you all have great educations, so you know better than that. You know that if you organize—listen to me I'm going to organize you. As a group you do have a bigger voice than Massey, so what did they do that intimidates the workers so that this is not—you don't have that protection?

Mr. COOK. You can go to any mines and organize and they have a vote. If they vote it in, you know, over 50 percent, then they're union. But Massey says you vote us union and we'll shut down. So you're out of a job.

Ms. WOOLSEY. But those are threats.

Mr. COOK. The non-union mines pay more money. Pays—basically, they give them more money, bonuses for loading coal. We don't get that. Because it's incentives for producing coal over safety. So the union does not allow us to have bonuses.

Ms. WOOLSEY. Well, okay. Let me ask the question a little bit different. Not about the unions. Are you able to call MSHA and report directly and anonymously or individually what you see going on in your workplace?

Mr. COOK. Anyone can call MSHA anonymously, union or non-union.

Ms. WOOLSEY. Okay. And what is the response when that happens?

Mr. COOK. Usually MSHA will come out and check out your problem. Or the state, either one will come out and check out your problems. The procedure that goes on in a non-union mine, I couldn't tell you that because I've never worked at one.

Ms. WOOLSEY. This leads me to you, Governor. The certified mine teams, who would they report to? Who would have to respond to them after they come up with good ideas, and does MSHA and your state complement, do they have the staff and the resources to actually react and respond to everything that they would be hearing? I mean, it's my understanding that Massey has over 600 citations, MSHA citations.

Governor MANCHIN. First of all, the first thing we could do after 5 days sitting would be heard, Congressman Rahall was with me, the first thing we did was organize our hotline and expand out hotline. We've had a hotline, but I wanted to make sure we could tie

it in with advertising, people knew they were empowered. I didn't want any worker in any workplace associated with miners thinking they could be in a situation and not be pointed to us.

I would like to think that between MSHA and the state—and we're talking serious violations, okay? You hear so much and I don't know enough about how violations are written except that, when there's ventilation, when there's ignition, when there's belts, when there's fans running, things that cause serious injuries or death should be the highest priorities and there's, you know, a few of those. And those should be the highest alert that anyone should be on and if someone calls and we have a roof that hasn't been bolted, we have a belt, we have that, they should be able to go.

Ms. WOOLSEY. Well, do they have the resources and the staff?

Governor MANCHIN. I believe we do. We put in more and you all put in more and the bottom line is, are we over-bureaucrating it, if you will? I don't know enough and I can't sit here and tell you that—

Ms. WOOLSEY. I don't know how we'd be over-bureaucrating—

Governor MANCHIN. Well, the bottom line is, what do you consider a violation serious enough here? If someone calls about ventilation? Ventilation, you know, is going to kill somebody because, with that, then you get methane built up. If you're not rock dusting and you're—I don't know why for the last 40 or 50 years, we've only rock dust intake at 65 percent and everything else is 80. We immediately put an order out and said 80, we're going to do it by law. That should be common sense. Why didn't we do it before? You know, I'm not blaming anybody.

But the bottom line is, let's face it, when you say there's a ventilation problem, there's a rock dust problem, there's a roof bolt problem, those are things that kill people. That should be the first thing. I would think that would be a red flag for our state and also for the feds.

Now, the other types of violations, 6,000 violations, how can you have 6,000 violations on ventilation and rock dusting, you know, seriously, and we don't have enough resources, and a lot of those violations are serious where people are hurt or killed and just operational, the professionals can speak to that more than I can.

Ms. WOOLSEY. And my time is up. I suppose we'll go around again?

Chairman MILLER. It's the intent of the Chair, I'm going to go through the members of the Committee. I'll to Mr. Altmire next and then Ms. Shea-Porter and then we'll go back to the delegation, starting with Mr. Rahall, Ms. Capito, back and forth. Mr. Altmire?

Mr. ALTMIRE. Ms. Peters, you spoke about Dean's experience in the 13 years that he worked at Upper Big Branch, and you said that he had expressed many concerns about ventilation and had reported to Massey at least seven times that you were aware of. When did he first express these concerns? Was this something he noticed more recently, and was there a progression of concern in the recent years?

Chairman MILLER. Ms. Peters, if you could pull your microphone?

Ms. PETERS. It happened a long time before this happened. We had, me and my daughter, it went back to Don Blankenship, and

told them about the men that didn't have any air. And I don't know what happened, but my son-in-law, he would be driving and go to sleep and he would go to sleep coming from work. And they said, the doctors said it was because he wasn't getting enough oxygen and they said it was when the men came out on the mantrip that, not the day this happened, but most of the men went to sleep.

And he called, I don't know how many times, 2 or 3 days before this happened, he called and asked them and told them he needed air. And one of the men from Performance Coal told him you know coal. See, they wanted a 150 feet each day and they were unable to get that and keep all the curtains up and everything. So he told him, he said you go ahead and close the section down. He closed it down, but he told him he would fire him. He said you pack your bags and leave.

Mr. ALTMIRE. Mr. Morgan, you said that Adam had also talked about the ventilation problems at UBB in the short time that he had been there. And what did your experience tell you? What was the advice that you gave to him when he first came to you to talk about that?

Mr. MORGAN. Talking about the ongoing ventilation problems, he'd ask me questions about it, you know, about this. If you've got this, where the long wall miner's in a turn, one time he asked me, he said, "Ain't these curtains supposed to be up, Dad, over here?" And he explained it. And I said, "Yeah, all that has got to be up for the ventilation."

And he said, just about every shift he worked he had to do some kind of ventilation repair, you know, and some like I said he done on his own, which, you know, you're a trainee in a mine. He shouldn't be the one to have to know. Somebody there should know a lot more than he did.

Mr. ALTMIRE. You mentioned on that point, if I heard you correctly, that he did speak with one of his superiors about that and was given sort of a dismissive reply that, if you're worried about that kind of thing, maybe you should look for another line of work?

Mr. MORGAN. Yeah. They told him—a long wall coordinator—

Mr. ALTMIRE. Are you comfortable sharing with this Committee the name of that individual?

Mr. MORGAN. Yeah. I don't see why not. Jack Rolls is his name. That's when he told him if he was that scared or whatever doing his job and stuff that he needed to rethink the job.

Mr. ALTMIRE. Mr. Stewart, you have been at UBB for 15 years; is that correct? You talked about the violations that you saw and the concerns that you had. Similar to the question I asked Ms. Peters, is that something that you saw that was more progressive in recent years? That it was getting worse as time went on?

Mr. STEWART. As far as the long wall goes, it was just—we never had proper air on that long wall. The type of ventilation we used, we'd get down close to where you was finishing the panel and that you normally didn't have much air because they return it into the crib area and I believe it gets blocked.

I've worked where you can't see your hand in front of your face all day long. As far as the miner section goes, yeah, in the past year, we've had problems with it more recently. And I'd like to touch one fact that I don't know if this pertains to your question,

but we were made to turn crosscuts into the intake for awhile. This came from the president of the company. And we said, hey, that's against the law. You're not supposed to punch a crosscut through in your intake—you're supposed to turn it the other way. It's against the mine law. But the boss said no, he said do it this way. So that's the way we did it. Probably done about 25 like that before he finally said we could do it the right way. Now, why we were doing it the wrong way, I have no idea. Yeah, they've been—I think the ventilation got worse in recent times this past year.

Mr. ALTMIRE. Thank you, Mr. Stewart. Thank you, Mr. Chairman.

Ms. WOOLSEY. Ms. Shea-Porter.

Ms. SHEA-PORTER. Thank you. Thank you to all. I'm going to read some testimony from another mine disaster when we had a hearing in 2007 and ask you about this. I would say at the time, "Did somebody come to the mines quarterly or monthly and remind everybody, we understand the politics in this mine is tough. We know that you risk losing your job if you speak up, but we're going to provide some protection and anonymity and then we'll follow up. So, if you lose your job within 6 months or a year, we'll be standing alongside you and make sure that the people who punished you for speaking up pay the price. Otherwise, all we have are reports on a shelf and then we have families with pictures again."

So I'd like to start with you first, Governor. This is a different Governor. Is there some way for miners or their families to be able to reach out before the accident, and do you offer protection for them, whistleblower protection? Another mine disaster.

Governor, I love your idea of having somebody in that mine. But let me ask you for right now, is there an ombudsperson? Could there be somebody from your state, if there isn't, that would go into these mines monthly and remind the workers that you're actually there standing for them and they have a place to turn to?

Governor MANCHIN. I just asked Director Ron Wooten, because the question was asked by Ms. Woolsey about the resources, and we do, and they do, respond to every request. From the standpoint, my idea is based around if you have the people who will work and you have the most experience in someone on ventilation and someone on rock dusting and someone on roof bolting, and those are the most experienced people, they're working there every day. That would be the team. I understand, among all the mines, in almost all the mines, they have their safety teams, and a lot of the good operators can empower and they do empower the miners to pull the plug.

So, with that being said, you've got to make sure we do interact before we react. Because reaction is what we're doing now and that was in 2007, I think I know where that was, and ours was in 2006, and it continues on. How a person cannot come forward unless you give them the power of the law and criminal proceedings against the hierarchy, the corporate hierarchy, all the way up. If it just stops at the foreman, you can go find another foreman. But if it goes clear to the hierarchy as far as the corporate structure. from the CEOs to the Board of Directors, people knowing that this is our standard operating procedure. This is what we voted on. This is how we're running our company. Unless they feel they're protected

by the corporate veil when we can't get there, I'll guarantee you it won't change.

Ms. SHEA-PORTER. So what we hear today is fear and I think about all the people in the community who heard these stories. Now I remember a woman who lost her family member saying the mine was speaking to us. The mine was speaking to us. And what I'm hearing here is essentially the same thing. But somehow or another, what you know and who you tell, it just falls silent someplace. And so I'm not sure. I don't work in that environment. But I know one thing. I know that everybody in that mine needs to know that they can, if they stand together, that they won't lose their job in 3 months or 6 months.

So let me ask somebody who's been working the mine. Mr. Morgan, when somebody's hired in the mines, are they given the information about, this is the number that you call, here's an ombudsperson, here's a magnet you can put on your refrigerator? Is there some way that the signal comes to the worker and the family member that we really mean business here? Here's the information. Because, how can you go to a wall, for example, to see the number that you call up to report trouble, tells everybody that you're looking for a number to report something. Is there something done proactively when you're hired that makes it safe?

Mr. MORGAN. Like you say, on the board, all we've got is a number and we can call it.

Ms. SHEA-PORTER. It's on the board? So if you walk up to a board, somebody might see you?

Mr. MORGAN. Yeah, you know, you get the number off the board and take it home, you know, the hotline number and stuff like that, you'd have it handy then.

Ms. SHEA-PORTER. At the time I said maybe you should be given a card and a refrigerator magnet when you're hired so it goes home to the family members, it goes home and you don't have to possibly identify yourself. We've got to do better. I know now that we're all working to do that. This is really very familiar.

Governor MANCHIN. Public service announcements, as you know, we've stepped those up. And also the hotline, making sure everyone that calls in is absolutely protected, a secure line. We're doing more of that. We're starting to get phone calls and turning the mines in to the state inspectors and MSHA. The feds all have hotlines also and they say the hotlines are posted in every mine.

The bottom line is, if a person has nowhere else to work and they feel that that unspoken threat is there—these are the bravest human beings you ever—the families are the strongest human beings. Their will to survive and will to provide for their families, you've heard some testimony, just a few. It's unbelievable, and we should never allow this to happen.

And so, from that standpoint, we want to work with everybody in Congress. We're going to move forward as quickly as we must in the state of West Virginia, but we don't want to go along a path that's not parallel to what you all are doing either. But if we can move faster, we will, and we'll be prudent as we can and we think basically the protection of the corporate veil right now is to the point where we're not getting to the crux of the problem.

Ms. SHEA-PORTER. Thank you for your great suggestions. I yield back.

Chairman MILLER. Thank you. Mr. Rahall?

Mr. RAHALL. Thank you, Mr. Chairman. As you know, Chairman Miller, this week in the Committee that I Chair on natural resources, we will begin hearing on the oil rig disaster. Minerals Management Service, which is to the oil industry what MSHA is to the coal industry, comes under the jurisdiction of our national committee. We'll also have BP, TransOcean.

However, what strikes me here is, after hearing testimony last week before the Senate Appropriation Subcommittee, hearing our senior Senator conduct some tough questioning, it appears to me that BP, TransOcean, Halliburton, and Massey have all hired the same public relations firm. And the strategy is to point the finger at the other guy.

That seems to be what happened last week in the Senate Committee. Massey's saying it had a conflict with MSHA over a ventilation plan. Don Blankenship said that Massey engineers thought the plan that MSHA had Massey implement at UBB was unsafe. Now, I'd like to ask the panel, if you were the operator of a mine, and you thought the ventilation plan that MSHA gave you was unsafe, would you continue to operate that mine?

WITNESSES. No.

Mr. RAHALL. Is that a unanimous no? All right, I think I heard all six of you testify no. Let me ask you, and I believe I just heard the Governor say this, would a good operator where safety is indeed the number one concern for that operator, allow the coal miners to shut down the operation? Is that an accurate statement or no?

Mr. STEWART. Could you say that again?

Mr. RAHALL. Can a coal miner by himself in other operations, other than Massey, shut down a coal mine if he or she feels it's unsafe?

Mr. COOK. You mean the whole coal mine?

Mr. RAHALL. Yes.

Mr. COOK. No.

Mr. RAHALL. What about at a union mine?

Mr. COOK. You can't shut down the whole mine.

Mr. STEWART. You can remove yourself from unsafe conditions. You can't shut the mine down.

Mr. RAHALL. Okay. Are Massey employees required to sign as a condition of employment a "quit statement?" Are any of you familiar with a quit statement? You're shaking your head yes, Mr. Mullins?

Mr. MULLINS. I've heard that. When I worked for them I did not have to sign one, but I know of men that did have to sign one.

Mr. RAHALL. And what is a quit statement?

Mr. MULLINS. It's a statement they agree to quit and they keep it in their file and whenever they want to get rid of them, they use that to get rid of them.

Mr. RAHALL. It gives them ground to get rid of that person?

Mr. STEWART. They do have an enhanced agreement, have you heard of that?

Mr. RAHALL. Yes.

Mr. STEWART. You're aware of the "enhanced agreement." I call it a slave labor contract.

Mr. RAHALL. Would you explain what that enhanced agreement is?

Mr. STEWART. The enhanced agreement is the coal market opened up a few years ago, in '03 or something like that. And they went to losing employees in droves because, you know, the men were sick of putting up with things from it. Anyway, in order to keep their employees, they came up with what they called an enhanced agreement. Give everybody a pay raise, they sign it, they're guaranteeing you a job for 3 years. And it goes on to say that you can be fired for unsatisfactory work or anything, you know, but they're guaranteeing you a job for 3 years. If you don't sign, you'll be working at will and you will not get the same pay raise that everybody else gets. So, you know, it kind of blackmailed the men in there making six more dollars an hour than you are because you won't sign their agreement. And you also, if you quit or were fired or whatever, you could not seek employment in a 95 radius of any Massey mine.

I mean, this is America, isn't it? Now, I don't know if that would legally stand up. I don't think it would. But anyway, you know, the men sign it to get their pay raises and, you know, a lot of them probably figure, well, they own me now. So that's the enhanced agreement. I can get a copy of it for anyone who would like one.

Mr. RAHALL. Would you submit a copy of that to the record? Mr. Chairman, I'd like for him to submit a copy of that to the record.

Chairman MILLER. Yeah, without objection. It would be included in the record here.

[The information follows:]

**RE: ENHANCED UNDERGROUND HOURLY RATE AGREEMENT
AND COVENANT NOT TO COMPETE**

Dear Stanley Stewart:

We are pleased to offer you the opportunity to enter into an agreement with Performance Coal Company ("the Company"). We are calling this agreement the Enhanced Underground Hourly Rate Agreement and Covenant Not to Compete ("the Agreement"), and it will allow you the opportunity to increase your hourly earnings from January 1, 2008 through December 31, 2010. As the title suggests, this Agreement is only available for underground positions.

After reading over the Agreement below, and consulting with an attorney if you choose to do so, you may accept the Agreement by initialing and dating it in the designated places and signing it at the end. You are under absolutely no obligation to enter into this Agreement and your current at-will employment will not be impacted if you decide not to sign it. However, by signing this Agreement, you acknowledge it to be a binding and enforceable agreement. **You further acknowledge that the Company has advised you not to sign this Agreement unless you intend to remain employed with the Company until December 31, 2010.**

The Agreement consists of (1) your commitment to work for the Company through December 31, 2010; (2) the Company's commitment as described in Section II to employ you through December 31, 2010; (3) the Company's agreement to provide you with an enhanced hourly rate of pay over and above the Company's standard hourly rate of pay for the position from January 1, 2008 through December 31, 2010; (4) your agreement to repay the Company any and all additional wages earned as a result of the higher wage rate paid to you under the terms of this Agreement if you quit or are terminated for reasons described in Section II of this Agreement prior to December 31, 2010; and (5) your agreement to abide by a one-year non-competition clause that will come into effect if you quit or are terminated for reasons described in Section II of this Agreement prior to December 31, 2010.

I. YOU AGREE TO WORK FOR THE COMPANY UNTIL DECEMBER 31, 2010

Pursuant to this Agreement, you agree to work for the Company for a continuous period beginning on January 1, 2008 through December 31, 2010.

Initials: _____ Date: _____

II. THE COMPANY AGREES TO EMPLOY YOU AS DESCRIBED BELOW UNTIL DECEMBER 31, 2010

Under this Agreement, the Company will agree to employ you from January 1, 2008 through December 31, 2010. However, the Company reserves the right to terminate your

employment for lack of performance as determined by management, unacceptable conduct, including, but not limited to, unacceptable work and absenteeism, or a serious safety infraction, thereby removing you from participation in this Agreement. Additionally, for the reasons set forth above and in lieu of termination, the Company may remove you from this Agreement and assign you to another position at the Company, or to another Massey-affiliated company.

The Company reserves the right to choose your underground position and/or work location. If you are assigned to another underground position or location before December 31, 2010, you will receive the enhanced rate of pay for the new position if it is higher than your rate of pay under this Agreement. Additionally, if you are assigned to a new location, this Agreement will automatically be assigned to the new location.

Before December 31, 2010, if you request to be assigned to a different underground position and the Company reassigns you to that position, you will receive the enhanced rate of pay for the reassigned position.

Initials: _____ Date: _____

III. THE COMPANY WILL PAY YOU A HIGHER HOURLY RATE THROUGH DECEMBER 31, 2010

Under this Agreement, the Company will provide you with an enhanced hourly rate of pay over and above the Company's standard hourly rate of pay for your position from January 1, 2008 through December 31, 2010. You understand and acknowledge that the Company is agreeing to pay you the enhanced rate of pay because of its need to have a stable workforce and your commitment to work for the Company through December 31, 2010.

Initials: _____ Date: _____

IV. YOU WILL REPAY THE COMPANY ANY AND ALL ADDITIONAL WAGES EARNED AS A RESULT OF THE HIGHER WAGE RATE PAID TO YOU FOR EACH HOUR WORKED UNDER THIS AGREEMENT IF YOU QUIT OR ARE TERMINATED FOR REASONS DESCRIBED IN SECTION II OF THIS AGREEMENT BEFORE DECEMBER 31, 2010

The Company is paying you the enhanced rate of pay because you have committed to work for the Company from January 1, 2008 through December 31, 2010. You acknowledge that the Company will be harmed if you do not satisfy your obligation to work for the Company for this period of time. Therefore, if you quit your job with the Company or are terminated for reasons described in Section II of the Agreement prior to December 31, 2010, you agree that you will repay the Company any and all

additional wages earned as a result of the enhanced wage rate paid to you under the Agreement.

Accordingly, by signing below, you agree to repay the Company any and all amounts due and owing, as set forth above, as a result of quitting employment or being terminated for reasons described in Section II of this Agreement prior to December 31, 2010. You also agree to execute, at the end of each calendar year a Wage Assignment, in the form attached as Exhibit A, in order to ensure compliance with your repayment obligation if your employment ends before December 31, 2010. Furthermore, in the event your Wage Assignments are not sufficient to cover your repayment obligations, you agree to submit payment for the remainder of the obligation within ten (10) days of your last day of employment with the Company. That payment must be made by money order or certified check payable to the Company, and must be delivered to Human Resources, P O Box 497, Sylvester, WV 25193.

Initials: _____ Date: _____

V. YOU AGREE THAT IF YOU DO NOT REMAIN EMPLOYED WITH THE COMPANY UNTIL DECEMBER 31, 2010 YOU WILL NOT COMPETE WITH THE COMPANY WITHIN A NINETY (90) MILE RADIUS FROM YOUR PERFORMANCE COAL COMPANY WORK LOCATION FOR A PERIOD OF ONE YEAR AFTER YOUR EMPLOYMENT WITH PERFORMANCE COAL COMPANY ENDS.

In the event that you quit your employment with the Company or are terminated for reasons described in Section II of the Agreement prior to December 31, 2010, you agree not to compete or attempt to compete with the Company for one year within a ninety (90) mile radius of your work location with the Company. Competition would include not only your direct competition with the Company, but also accepting employment from any coal mining or coal processing company within the ninety (90) mile radius.

You also agree that, in exchange for your promise not to compete in this regard, the Company has provided you with the following consideration: (1) the Company's commitment as described in Section II to employ you until December 31, 2010; (2) the Company's payment to you, during the term of this Agreement, of a higher hourly rate than it would otherwise provide; (3) the specialized and unique training you receive as a Company employee; and (4) the use of the Company's confidential and proprietary information regarding the Company's practices and policies, including, but not limited to, its S-1, P-2, and M-3 policies.

You further agree that, within the one-year time period and the ninety (90) mile radius, the Company would be unfairly and irreparably harmed by your use of (1) the specialized and unique training you receive as a Company employee and (2) the Company's confidential and proprietary information regarding the Company's practices and policies,

including, but not limited to, its S-1, P-2, and M-3 policies, in competition with the Company. Moreover, you agree that this non-competition provision is necessary for the protection of these legitimate business interests.

You recognize that if you breach this non-competition provision, the Company's business will suffer irreparable harm and that remedies at law will be inadequate. You agree that in case of any breach or threatened breach of this non-competition clause, the Company is entitled to immediate injunctive relief or a decree of specific performance of this non-competition clause, in addition to any other remedies provided by law and without being required to prove irreparable harm or special damages.

Initials: _____ Date: _____

VI. THIS AGREEMENT SUPERSEDES ALL OTHER AGREEMENTS ENTERED INTO WITH ANY MASSEY-AFFILIATED COMPANY

This Agreement supersedes any other agreement you have previously entered into with the Company, or any other Massey-affiliated company. However, if you are a participant in a 3-3-3 Underground/Highwall Hourly Electrician Program you are still eligible for the bonus set forth in the Program and your entitlement to the bonus will be determined by the provisions of that agreement

Initials: _____ Date: _____

VII. GENERAL

If any provision of this Agreement is determined to be invalid or unenforceable, that determination shall not make any other provisions of this Agreement invalid or unenforceable, and this Agreement shall, if reasonable, be construed and performed as if the provision that is determined to be invalid or unenforceable had never been included in the Agreement.

Initials: _____ Date: _____

BY SIGNING BELOW, I ACKNOWLEDGE THAT I AM AWARE THAT I AM UNDER NO OBLIGATION TO ENTER INTO THIS AGREEMENT, THAT I HAVE CAREFULLY READ THE AGREEMENT, THAT I UNDERSTAND IT AND THAT I HAVE BEEN GIVEN THE OPPORTUNITY TO TALK TO AN ATTORNEY OF MY OWN CHOOSING BEFORE SIGNING THE AGREEMENT. I UNDERSTAND THAT, AS OF THE DATE I SIGN THE AGREEMENT, I WILL HAVE THE RIGHT TO CHANGE MY MIND AND REVOKE THE AGREEMENT WITHIN A TEN (10) DAY TIME PERIOD. IF I DECIDE TO REVOKE THE AGREEMENT WITHIN THAT TIME PERIOD, I MUST DO SO IN WRITING TO H.R., P. O. BOX 497, SYLVESTER, WV 25193.

AGREED AND ACCEPTED:

Member

[MEMBER NAME]

STATE OF _____,

COUNTY OF _____, To-wit:

The foregoing instrument was acknowledged before me this day of _____, 200__, by _____.

My commission expires: _____

Notary Public

Company

By: _____

Its: _____
(Title)

STATE OF _____,

COUNTY OF _____, To-wit:

The foregoing instrument was acknowledged before me this day of _____, 200__, by _____.

My commission expires: _____

Notary Public

EXHIBIT A

WAGE ASSIGNMENT

STATE OF WEST VIRGINIA,
COUNTY OF _____,

I, _____, hereby assign to Performance Coal Company future wages due me from Performance Coal Company in the total amount of One Thousand Dollars and no Cents (\$1000.00). I UNDERSTAND THAT THIS AMOUNT WILL BECOME DUE ONLY IN THE EVENT I QUIT OR MY EMPLOYMENT IS TERMINATED AS DESCRIBED IN THE ENHANCED HOURLY RATE AGREEMENT AND COVENANT NOT TO COMPETE EXECUTED BY ME. The amount shall be deducted from my final paycheck from the Company. Three-fourths of my earnings for my final pay period, less deductions, shall be exempt from this wage assignment. This assignment replaces the Wage Assignment executed by me on _____ and that assignment is revoked. This assignment shall be effective for a period of one year, or until I sign a replacement Wage Assignment and revoke this one, whichever is later.

[MEMBER]

Taken, sworn to and subscribed before me this _____ day of _____, 200__.

My commission expires: _____.

NOTARY PUBLIC

Accepted by Performance Coal Company on this the _____ day of _____, 200__.

Performance Coal Company

By _____

Its _____

Taken, sworn to and subscribed before me this _____ day of _____, 200__.

My commission expires: _____.

NOTARY PUBLIC

Mr. RAHALL. Thank you, Goose. Let me ask you, while you're speaking, and before I run out of time. At the same hearing last week, Mr. Blankenship was asked if he knew of miners that requested transfers from a mine due to their concerns about safety. He said he did not know of any such instances. Without mentioning any names, do you know of any miners who have sought transfers from UBB due to safety concerns?

Mr. STEWART. Honestly, I don't know of any personally that had.

Mr. RAHALL. Any other members of the panel?

Mr. MULLINS. Yes. Grover Skeens. One of the victims in there. His sister told me that he went to management and told them that he felt that something bad was going to happen and that he requested a transfer and they denied him that transfer.

Mr. RAHALL. Where is he working now?

Mr. MULLINS. He was one of the—

Mr. RAHALL. I'm sorry, I'm sorry. You're right.

Mr. STEWART. Excuse me, I'm sorry. My former boss quit about 2 months before the explosion due to concerns because he would go outside and tell upper management that we had low air. I worked at Head Gate 22 Section where Dean did. And nothing would be done. He got scared, not only for his safety, you know, he got scared, you know, that he was going to get in trouble himself if something happened. So he quit. He didn't ask to be transferred.

Mr. RAHALL. Who was that?

Mr. STEWART. Richard Hutchins.

Mr. RAHALL. Okay. I think my time is up. Thank you.

Chairman MILLER. Congresswoman Capito.

Mrs. CAPITO. Thank you. I would like to thank you all. Some of the suggestions that you've already brought forward, I think, are very good ones. First of all, the one that mentioned having MSHA inspectors inspect on the weekends and on the evening shifts makes great sense. I'm surprised it hasn't been done already.

The other one is the pre-warning for when the inspector is coming. We all know there are guard shacks, you know, to get up onto

a mine site, for safety reasons. In discussions I've had, I think MSHA has already started to make some adjustments there, but in this day of technology, I don't know how you cut off communications, and that's going to be a tough one. But hopefully, that's something we can work on. Simplistically, let me ask you this, Mr. Stewart, and give me a sense of—ventilation, obviously, is the issue here. During a shift—do you work an 8- or 10-hour shift?

Mr. STEWART. Ten.

Mrs. CAPITO. During a 10-hour shift, how many times could the ventilation change and shift during a 10-hour shift? Or does it change week to week or—could you just give a sense of that?

Mr. STEWART. Well, it shouldn't change. You should have plenty of air. But on our section there would be times, you know, we would go in and there wouldn't be any air. And then you would have a little bit. It would fluctuate.

Mrs. CAPITO. Would that be because of the curtains—?

Mr. STEWART. I'm talking about our main intake.

Mrs. CAPITO. The main intake?

Mr. STEWART. Right.

Mrs. CAPITO. You mentioned water, too, is a problem. Somebody mentioned.

Mr. STEWART. Yeah, water was a problem on the long wall. That's what I'm talking about. They ventilated, they returned—their return went in by where the roof fell in and they had water problems. I suspect it roofed out, which would allow a large area for possibly methane to accumulate.

Mrs. CAPITO. So basically then, how often in this particular mine—MSHA is required to inspect four times, but at this particular mine, MSHA was on site much more than four times? Does anybody know, or you weren't there?

Mr. STEWART. They were there on a regular basis.

Mrs. CAPITO. Monthly, weekly?

Mr. STEWART. I worked eight to ten. Like someone stated earlier, they weren't on the evening shift much. But I did see them fairly regular, so I had a couple tell us, you know, "hey, guys, if you all need to tell us anything, just in passing by, you know, just let us know," you know. I thought that night that he knew, you know, if we were caught going to an inspector, we were going home for good. But, you know, he was trying to give us a hint, you know, get him the word on whatever. I appreciated that.

Mrs. CAPITO. Let me ask the rest of you all that mined in deep mines. When ventilation shifts like this, and you shut it down, can you correct it in a matter of hours or is it something, you know? Give me a time sense on that.

Mr. MULLINS. It depends on what kind of ventilation problem you're having. I mean, you could have had stoppings knocked out. If it's a matter of stoppings being knocked out, then you've got—

Mrs. CAPITO. That could be small or large?

Mr. MULLINS. Yeah, that could be small or large.

Mrs. CAPITO. I think—go ahead. I'm sorry.

Mr. MULLINS. If you've got water in the gob area, like Goose is talking about, in the return area, blocking, then it could be hours or it could be up to a day or two to get a pump back there, get

pumps set up to pump the water out, to open that area up so that air could flow. It's different.

Mrs. CAPITO. It varies. One of the reasons I'm interested in this is because of one of Governor Manchin's suggestions on having somebody on task at the mine, you know, at all times, working at the mine, correct? MSHA can't be there every minute to see the shift changes and safety should be the culture, shouldn't be a chilling effect. And if you go forward with a concern about ventilation or anything serious, that you're going to be retaliated by job loss or loss of your insurance when you have a child, you have to have this insurance and many of us understand that as well.

And I guess what I'm wondering, in the broader sense, you all worked a lot of different mines. Is this a culture that—I mean, is this a concern that's pervasive? The morale has got to be low in terms of across the industry when you get a gut check like this, losing so many lives. But in terms of being more aware, being willing to come forward, being willing to whistleblow, being willing to pay attention to what ventilation is doing at the time, all the different signs of the methane gas, do you get a sense that things, you know, how is the general sense in the mines right now? And you all haven't gone back—well, you did, Mr. Morgan, go back again. In one of your discussions, and I know you've got a lot of friends and relatives who work in the industry.

Mr. MORGAN. Where we worked at, the morale was pretty good. Everybody knowed they could go in and work safe. They don't have to do nothing illegal or, you know, to be punished for it. It's just—I worked other mines, too, and I could tell a difference when you go back and forth to each mine.

Mrs. CAPITO. So each mine has its own personality?

Mr. MORGAN. Yeah, they do. When you're talking about the ventilation, when he was talking about that and water and stuff, too, a lot of times the ventilation, they'll cut down substantially. Like you say, you can notice it sometimes just by seeing it. A lot of your men won't know it and your foreman will have to take air in and if he tells you to go up there, like if you're running a continuous miner in the long wall and he tells you to go in there and cut coal, he's supposed to tell you how much air is behind that line there. If he tells you you've got the required amount, that's all you go by. You're taking his word, so if he's a couple thousand feet short on his CFM, what he's supposed to have, and he tells you you've got it, you don't know until you go in there and mine and you get gases. That's the only word you've got to go by unless you take an air reading and air monitor. Everybody ain't got that.

Mr. COOK. As far as Mr. Stewart talking about the ventilation from the long wall being pulled to the job, that's what ours is. And we had people that walked that perimeter every day. They checked for methane in the mine and they checked for air. It's a good system if it's done right.

Mrs. CAPITO. Thank you, Mr. Chairman.

Chairman MILLER. Congressman Mollohan.

Mr. MOLLOHAN. Thank you, Mr. Chairman. There's been an awful lot of testimony about questions about ventilation. I have a few myself. Mr. Morgan, you testified that Adam would talk about

the curtain, the intake side feeds the long wall face would be removed on a regular basis?

Mr. MORGAN. Yeah.

Mr. MOLLOHAN. Mr. Stewart, Mr. Quarles indicated that there would be code words for men on the property and that meant an inspector was around. My question is, first of all you have a ventilation plan that has been worked on, probably by a lot of different people in the mine, and it's been approved by federal and state inspectors; is that correct?

Mr. STEWART. Yes.

Witnesses. Yes.

Mr. MOLLOHAN. And that ventilation plan in this mine, do you feel as approved, if followed, it would have been adequate to ventilate the mine?

Mr. COOK. I don't know what they had.

Mr. STEWART. It should have been adequate, but for whatever reason, you know, I'm not in management. They couldn't get the air to the section. I don't know what problems they were having. They kept putting up double doors all over the mine, you know. I don't know if they needed to add another fan. I really can't answer that. But they just couldn't get the air up to the sections it was needed.

Mr. MOLLOHAN. Was that on a regular basis?

Mr. STEWART. It has been the past year.

Mr. MOLLOHAN. You've described a number of ventilation plans, ventilation problems, number one not being able to get enough air on the section, and you're talking about some saying that the curtain was taken down and that obviously was intentional. You're talking about men working when they were changing from a sweep to a split. And directing air into the gob, which you just said was okay if it's done properly and there's no obstruction.

But if you're having all these conditions, when—and are these conditions such a nature that an inspector, a federal or state inspector arrives at the mine, and there's notification that there's a man on the property, are these the kind of conditions that could be corrected before the federal or state inspector gets down to the area in the mine?

Mr. STEWART. Not all of that, but what they liked to do was like, you know, misdirect the inspector somewhere else. Say, they go check this, whatever, and on several occasions in the past year we have been withdrawn and the mine has been shut down. And whatever they did while they had a closure order on it, they done enough to get the inspectors to okay it to go back in. It wouldn't last.

Mr. MULLINS. They have regulators in your intake that you can regulate your air through to certain parts of the mine where you want it, and if you can't get enough air to one section, you can open up a regulator and send more air that way, but in doing that, you may take away from this section. So, yes, they can control the ventilation, somewhat.

Mr. MOLLOHAN. But your testimony here today is that it was, or let me ask you, was this effort to correct conditions before an inspector got into a problem area, was that on a regular basis, was that infrequently, was it—

Mr. MULLINS. I really can't answer that, because I left Massey 3 years ago and went to another company to work, but my brother remained there.

Mr. MOLLOHAN. Did he ever talk about that?

Mr. MULLINS. No. The only thing my brother said, I talked to him Easter Sunday before this happened, and the only thing that he said to me was that all they thought about there was running coal. The president of the company, I think was Chris Blanchard, he didn't like him very well and he said all he cared about, and he didn't care nothing about safety and stuff, all he cared about was production. He wanted to run, run, run, no matter what the conditions were, you run.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

Chairman MILLER. Senator Rockefeller?

Senator ROCKEFELLER. Thank you, Mr. Chairman. It just occurs to me listening to your very, very frank testimony and on the point about what ought to be done and what the problems are, that fear is a terrible, terrible thing to live with. But they've got you. Because they pay you \$60,000 or more, so what's a fellow to do? Gonna walk off the job? Gonna try to tell somebody there's something wrong, one of the management people? What are you going to do? And they know that. So they've got you.

Now, that's part of Appalachian culture. I'm not sure I like it, but it goes back 100 years, the way companies operate. All this reminds me—I wasn't here 100 years ago, but I was here 50 years ago, and it was sort of like the same thing. So I want to make these points and ask questions.

The, you know, my conference committee in the Senate, we conducted the hearing on Toyota. As you know, Toyota had some safety problems and we went after them pretty hard and now we're doing legislation that affects all car companies and it's going to be tough legislation. But one thing Toyota had at I think most of their production facilities, and I assume they still do, is if any single worker felt that something was going wrong on that line, and I've seen this, all they have to do is reach up and pull a string or small rope like that. The entire line shuts down. And immediately somebody in management comes over to find out what the problem is. And you don't start up until the problem is fixed. That's the way to do that.

People talking about British Petroleum and this oil spill. They take their CEO and took full responsibility, full responsibility. No American taxpayer is going to pay one dime for anything we did. He took responsibility as a CEO, which means that the Board is involved.

We don't do that in this industry. Everybody—oh, we've got all these experts. They know more than the federal government. They know more about ventilation than the federal government. The federal government isn't on the line all the time. We are, we know.

Well, maybe that's true, maybe it isn't but, you know, the pressure is on those folks who are the experts, too, and if production is issue number one, their expertise doesn't mean anything.

So if you get these conflicts between MSHA and, you know, the folks in the mine company about what constitutes good ventilation,

I'm really struck by the amount of conflict. Well, they don't know what they're talking about. We've got a plan.

In the meantime, the ventilation is what takes away the methane, takes away the rock dust, all the rest of it. The ventilation is key, you've all made that clear. But what's to be done about it? Massey said we're the experts. Experts are only good so long as they can exercise what they're expert at, and I don't think that's the case.

The CEO and the Board of Directors have to be involved in the consequences. I really believe in that. I really believe that there ought to be something akin to that Toyota pull down the rope. And the closest thing so far is the whistleblower. And I think that ought to be a part of it, a part of the new legislation with protections. But one of you said, "yeah, we'll have a whistleblower, but they'll be able to get around that." Who was it that said that? One of you did.

Mr. COOK. As far as fired?

Senator ROCKEFELLER. Yeah.

Mr. COOK. Yeah, they'll find something.

Senator ROCKEFELLER. Well, tell me.

Mr. COOK. They can find anything. If you blow the whistle and they find out about it, they can fire you for being an unsafe worker. They can fire you for having—

Senator ROCKEFELLER. Make up whatever they want?

Mr. COOK. Yeah, they can make up whatever they want, or they can dock you so bad that you want to quit.

Senator ROCKEFELLER. So, Mr. Chairman, that's something we've got to look at very carefully and make sure we get right so the protection really is there.

Mr. QUARLES. Sir, 2 months down the road they're having a lay-off and you'll be laid off, when they're still interviewing people to be hired.

Senator ROCKEFELLER. When the market is down, they'll use that.

Mr. QUARLES. You'll be gone some way or another. If you do anything toward them, some way or another, they will get rid of you.

Senator ROCKEFELLER. Isn't it possible, if I don't question, Mr. Chairman, isn't it possible, I cannot believe it is not possible to have ventilation as object number one, solving the ventilation problem and the whistleblower problem, so miners are people again, not serfs? They've got a whistleblower, they've got protection, they're people. You're the ones down there, you're the experts and you learn from experience.

Management may have all the engineering degrees from Penn State or whatever they want, but they're not down there the same way that you are. You learn through experience what did work, what didn't work, or worked at certain mines, union, non-union, whatever. But they've got to be able to listen to you.

So final question, Mr. Chairman. When you talked—well, I'll use you, Mr. Stewart. You didn't say this, but I'll just use you. That miners—about inspectors being there on a pretty regular basis, and see that, really opens up a question to me. Pretty regular. If they're there and they're going to get caught as they cross the bridge to come in at the check-in box, unannounced or not, they've got to be there a lot. Was it every day, was it every few weeks, were they

good, were they tired, were they working a 10-, 12-hour shift? I mean, I think a lot of this gets down to what the Governor talks about and that is bureaucracy.

Let's face it, we've had some administrations that didn't really care a whole lot about safety. And, during that time, there wasn't a whole lot of pressure on inspectors to, you know, keep them in training and get out there and be aggressive. We have to have aggressive inspections, both state and federal. And state and federal have to learn how to work together. I don't have time to ask you this question, Governor, but we have to learn how to work together to maximize our efficiency and our presence in the mines. I don't think that was a question, but I wanted to make that statement. Thank you, Mr. Chairman.

Chairman MILLER. Thank you. It is not the intention of the Chair to have a second round, but if there is a member who has a question—I'm not going to have a second round, but if someone has a burning question. I think the panel—it is also the intent of the Chair in our discussions in setting up this panel, there were people who had some qualms about whether they were going to come before the Committee or not, and I think maybe your testimony may make it easier for somebody if there's somebody in the audience that's related to a family member, if they want to come up, after we dismiss this panel, I would be happy to give a couple of minutes. We won't have questions, but just people who think there's something that ought to be put on the record.

If people are reluctant to do that, we certainly will recommend or we'll consider written statements from additional family members. Now that they see how this is unfolding, I think it's apparent to everyone how important this testimony about what people, unfortunately the victims here that were in the mines, were talking about prior to this accident. It's a very, very important component of our investigation. Mr. Kline? Is there any Member? Congresswoman Woolsey?

Ms. WOOLSEY. I'd like to pass on just so people realize that we're not passive about this, it is very clear that we're going to strengthen the mining laws and we also are very aware that MSHA and the Department of Labor is aware that MSHA doesn't have enough inspectors on the ground. We're not up to par in terms of where we ought to be with the numbers for 2010. And we do acknowledge the bureaucracy.

We need to strengthen our laws. The pattern of violation process has too many loopholes, and we want to strengthen the civil and criminal penalties to make it meaningful when we have penalties, make sure that laws are felonies and not misdemeanors. Of course, enhance the whistleblower protections so they're meaningful, and make sure that miners don't lose pay while a withdrawal order is in effect.

So it's all about empowering miners. The Department of Labor is totally with you, and they also and we also recognize that safety teams can only work if supervisors or foremen are expected to make the fixes when there's hazards, and if they don't do it, that they are punished. So thank you, Mr. Chairman.

Chairman MILLER. Thank you. Mr. Kline?

Mr. KLINE. Thank you, Mr. Chairman. We may not all of us on this panel agree about everything that needs to be done or ought to be done in Congress, but we do agree that there's a problem and we ought to work on it. We do agree that it's part of Congress's job to take a very close look at the Department of Labor and MSHA and make sure that they have the resources they need and also that they're doing what they're supposed to do.

I want to thank you, Governor. It's just terrific of you to take so much of your time and come here and share with us things that you're doing as a state and, of course, your support, love and support for the family members. And then to the family members again, thank you very much for your courage in coming up here today and the frankness of your testimony. It is indeed moving, as well as certainly informative. And again, thanks to my colleagues and all the people in the community for coming out here today. Mr. Chairman, I yield back.

Chairman MILLER. Thank you. Thank you very much. Thank you to all the Members of Congress for being here and for participating in this hearing. Thank you, Governor, for your time and your knowledge and your actions that have been so swift after these tragic accidents in your state. I certainly want to thank Secretary Solis for being here and listening and Assistant Secretary Main for all your work that you've been doing on this investigation.

When we have one of these tragic accidents, very often in the Congress and you've heard it here again today, we have talked about the fact that this is an industry that makes our country strong, makes our country free. It is very clear to most of the public and certainly members of Congress that coal mining is not an optional economic activity.

This country desperately needs the coal, the coal mines, and the miners to engage in this very dangerous occupation but critical occupation to the economy of this nation, the well-being of this nation.

I think today with the leadership of the Governor, the response of members of this Committee and we'll see the Senate and the investigations, nobody's drawing conclusions, but I think you can conclude that perhaps we have now drawn the understanding that the participation of miners in creating the safe workplace environment is no longer optional.

Whether they're union or non-union, this has got to be a matter of policy. You should not put your life at risk or your family's life in jeopardy over the question of what is the threshold when you step in that mine, is it union or non-union? We have a lot to learn from the unions and there's a lot to be said for how they engage in safety practices, but the fact of the matter is, this is going to have to be a matter of policy.

I think the Governor put his fingers on it. One with the certified committees but, two, with the bureaucracy. When we had our hearings earlier about the avoidance of—help me, staff—pattern of violation. You just wanted to go outside and scream when you were reading the manner and means by which this was enforced or not enforced or how it could be gamed or how the calendar could keep you from being a serious violator. Even though you were a serious violator, if you held on long enough and you sent enough lawyers

to court, you would look like one of the safer mines in the country. That's just got to stop. That just is going to have to stop.

It's very interesting in the preliminary work that MSHA did. They have a conclusion that this was, they did right after this accident at Big Branch and their conclusion is this. Today some mine operators can consistently, can consistently engage in dangerous violations of the law and then avoid the penalties by aggressively contesting every citation.

That just goes to the issue of the citations, but the fact of the matter is, when you wind your way through this bureaucracy that for the most part was constructed with the serious input of the industry, that some mining operations, and we're not saying all, can consistently engage in dangerous violations of the law and men have to work in those environments. That just has to be unacceptable to us as a nation, and to us as Members of Congress, and I just can't tell you how important your testimony is to get an understanding of this environment.

At an earlier accident, I was haunted by the testimony of a wife who spoke about her husband coming in the house late and describing how unnerved he was by the conditions at the mine and then how angry he was when he got up to go to work in the mine because of the conditions. And I just felt, as a Member of Congress, maybe that was the most important piece of testimony I've ever received around this set of circumstances because it told you all that you needed to know.

He kept going back to that mine until it took his life. And she knew something was very wrong. He knew something was very wrong and they had no way to transmit it and to get it corrected without putting themselves in jeopardy financially, whatever their situation was in the community. And we're talking about a very, very serious and dangerous work environment.

This mine we're discussing today, Big Branch, I've come to understand you've got to ventilate a million cubic feet of methane a day. That sounds like a ventilation plan that has to be seriously thought out and seriously enforced. That's not a casual amount of methane. So, again, thank you so very much. I know that several of you—Governor, you wanted to make a point. I'm sorry.

Governor MANCHIN. I just wanted to thank you on behalf of the miners and the miners' families and the state of West Virginia and all people for you bringing this powerful Committee, but most prestigious Committee here and yourself, Congressman Kline and to your staff members and to our West Virginia delegation and all of you all for taking the time to come to West Virginia. We appreciate this more than you know.

I don't mean to be derogatory at all when I say bureaucracy. We're all policymakers, but sometimes when the average person sitting here will say, "well, we're talking about hiring more people, appropriating more money, is it really going to fix the problem?" and I think they need to know that we're going to fix this problem. If it takes more people and money, that's what it will take. If it doesn't, and we revamp the laws we have, that's what we should do, and the bottom line is how they're empowered and protected and make sure that the corporate veil doesn't protect anybody from criminal wrongdoing when we know they did it.

I think those are the things that we're talking about, and overlapping or redundancy. How do we complement each other rather than doing the same thing? Redundancy doesn't make a lot of sense. When you see different inspectors coming with different criteria, these are all things that can be fixed, but these are things basically that's evolved over the years, really, since Farmington, my hometown 1968, things started happening. Everybody was truly just trying to move in the right direction and if it got embargoed, if you will, it's time to fix it, and I think that's what we're hearing, and that's why I appreciate so much you all taking the time to come.

And I know on behalf of all the men who testified and the wonderful mother-in-law who testified and probably knows more about her son-in-law than most people know, but these are wonderful people, they're good people, and they deserve to have the representation that you all are giving them right now and I appreciate that very much.

Chairman MILLER. Thank you very much. I think as I listen to you discuss bureaucracy and as I think about it, we know that laws grow up over time and there's a lot of inconsistencies and loopholes and over time you start playing them off against one another and you can never quite get it done. But we also know as Assistant Secretary Joe Main said when he came to our hearing earlier this year, he really told us about a system that had been conquered by the attorneys and if that system wasn't changed, it was going to crumble, and that was the system that was between safety and danger as it currently exists. I think we now recognize that what he told us, we have to act on, the system has got to change.

I know that several of you witnesses here today continue to work and be employed in the mining industry, and I want to be very clear about something. Your testimony aids this Committee's oversight activity. This testimony we seek in order to better perform our oversight of disasters, like the Upper Big Branch, as well as better inform our legislative response.

Attempts by any person to retaliate against you for your testimony are prohibited and would be viewed as an attempt to obstruct, influence, impede, or do improper exercise of this congressional Committee's power of inquiry.

Your willingness to aid the inquiries of this Committee and the United States Congress are deeply appreciated. So I want you to understand that. That is your right, that is your protection, and we need to know if any such actions are taken against you or other family members. This is a formal congressional investigation and we're here to protect our witnesses.

And without objection, all the members, the panel will have 14 days to submit additional materials or questions for the hearing record. And before we adjourn—You're excused. If there are family members, and I'm restricting this to family members, who think they might want to add something given what they've heard here this morning, I would certainly welcome them to come forward and make a statement. This is without attorneys, so you all have to make up your mind here in a couple of minutes. Thank you so very much. You said you wouldn't know what to say when you got up here.

Can we have a raise of hands, is there anybody that's interested? Mr. Long. Could we ask that conversations, can you take the conversations to the back of the room?

**STATEMENT OF LEO LONG, GRANDFATHER OF
RONALD LEE MAYNOR**

Mr. LONG. My name is Leo Long. I had a grandson that was killed in the Upper Big Branch mine at Massey. You know, he stayed with me for years and years. I put him through school, he graduated, went to work. I seen him every day, every night.

After he got married, he moved right beside of me and I'd see him when he'd come in of an evening from work from the mines. And I'd ask him about it. He said, "Papaw," he said, "we have to work in water." I said, "Ronald, why don't you just come on out?" And he said, "If I do, I'll be fired."

And he told me something else. I worked in union mines for 30-some years, but I wasn't inside. I was an outside man. He told me that Massey, as soon as the inspectors would start off the hill, they would call back in and if they found a violation, the boss would tell them get back to work. If they didn't go back to work, they'd be fired. And he had to work in water. And he'd come home, he'd come home many a day soaking wet where they had to work in water.

He had to leave his wife and two little kids, a little girl and little boy, one's eight and one's two. He left his family. I'm asking you all to please do something for the rest of the coal miners that's in the mines. I pray for it every night, every day. But if you all don't do something, something like this is going to happen again. But I beg you to do something.

And he told me something else, he told me something else that the men up here didn't mention. He told me, like the methane, he said that the company had a way to bridge the continuous miner over to keep on working if the methane got so—when the methane gets so high, it's supposed to shut everything down. But Massey had a way to keep the continuous miner working, bringing coal out. Money come before the men did. You was only a number. They could get men back in their place. But I ask you all to do something, please.

Chairman MILLER. Thank you.

Mr. LONG. And I went to see a lawyer. I told him I did not want one penny from his estate because I gave him everything that I owned. It should have been me under the ground instead of him. It should have been, not my grandson. He was just like a son to me. But I do thank you all for listening to me. And please, whatever you do, try to get some kind of law passed so they can ventilate them mines.

He would tell me the mine wasn't ventilated. He would go to sleep, as soon as he would get home and take a shower, he would go to sleep on the couch and just drop off and go to sleep, where he was breathing that gas, methane. But I thank you all for listening to me.

Chairman MILLER. Thank you.

Mr. RAHALL. Thank you, Mr. Long. As one who was at the site all week, I got to know Mr. Long pretty well. Mr. Long would stay

outside in his car continually waiting for word. And you're quite a brave individual.

Mr. LONG. I stayed there five nights and five days.

Mr. RAHALL. You were there in your car five nights and five days. I know the Secretary made sure as well she had the opportunity to visit, Assistant Secretary Main visited with you. Everybody who was there came over to say hello to Mr. Long.

Mr. LONG. And he had to stay in that mines nine days. They called us, called the home. After they called his wife, they called us Tuesday morning, on that following Tuesday morning about fifteen after one and said Ronald Lee was the last one that came out, the last man out.

Mr. RAHALL. Yes, sir. Thank you, Mr. Long.

Chairman MILLER. Thank you.

Mr. LONG. Thank you for listening to me.

Chairman MILLER. With that, the committee will stand adjourned.

[Additional submissions of Mr. Miller follows:]

NAMES OF THE 29 MINERS WHO DIED AT THE UPPER BIG BRANCH MINE ON APRIL 5, 2010

First name	Last name	Age	Job title	Total experience	At UBB mine	Family member who testified	Relationship
1 Jason	Atkins	25	Roof Bolter Operator	3 Yrs 24 weeks	44 weeks		
2 Carl	Acord	52	Roof Bolter Operator	>33 Yrs	44 weeks		
3 Christopher	Bell, Sr	33	Longwall Utility	36 weeks	8 weeks		
4 Gregory	Brock	47	Electrician	>5 Yrs	>5 Yrs		
5 Kenneth	Chapman	53	Roof Bolter Operator	>28 Yrs	24 weeks		
6 Robert	Clark	41	Continuous Miner Operator	>11 Yrs	44 weeks		
7 Charles T	Davis	51	Longwall Foreman	>32 Yrs	>8 Yrs		
8 Cory	Davis	20	Underground Apprentice	20 weeks	8 weeks		
9 Michael	Elswick	57	Beltman/Fireboss	33 Yrs	3 days		
10 William	Griffith	54	Continuous Miner Operator	>36 Yrs	16 Yrs 32 weeks		
11 Steven	Harrah	40	Assistant Mine Foreman	>9 Yrs	1 Yr 4 weeks		
12 Edward D	Jones	50	Assistant Mine Foreman	29 Yrs	13 Yrs 24 weeks	Alice Peters	Mother in Law
13 Richard	Lane	45	Longwall Foreman	>8 Yrs	36 weeks		
14 William	Lynch	59	Shuttle Car Operator	>34 Yrs	44 weeks		
15 Joe	Marcum	57	Continuous Miner Operator	>32 Yrs	>16 Yrs		
16 Nicholas	McCroskey	26	Electrician	>3 Yrs	1 Yr 24 weeks		
17 Ronald Lee	Maynor	31	Scoop Operator	3 Yrs 24 weeks	3 Yrs 24 weeks	Leo Long	Grandfather
18 James	Mooney	51	Shuttle Car Operator	32 Yrs 24 weeks	>10 Yrs		

NAMES OF THE 29 MINERS WHO DIED AT THE UPPER BIG BRANCH MINE ON APRIL 5, 2010—
Continued

First name	Last name	Age	Job title	Total experience	At UBB mine	Family member who testified	Relationship
19 Adam	Morgan	21	Underground Apprentice	8 weeks	8 weeks	Steve Morgan Eddie Cook	Father & Uncle
20 Rex	Mullins	50	Headgate Operator	>20 Yrs	6 Yrs 40 weeks	Clay Mullins	Brother
21 Joshua	Napper	26	Underground Apprentice	8 weeks	8 weeks		
22 Howard	Payne, Jr	53	Roof Bolter Operator	>12 Yrs	>11 Yrs		
23 Dillard	Persinger	32	Shield Operator	>2 Yrs	>2 Yrs		
24 Joel	Price	55	Shearer Operator	>35 Yrs	2 Yrs 24 weeks		
25 Gary W	Quarles	33	Shearer Operator	>14 Yrs	12 Yrs 24 weeks	Gary Quarles	Father
26 Deward	Scott	58	Shuttle Car Operator	>38 Yrs	44 weeks		
27 Grover	Skeens	57	Maintenance Foreman	>33 Yrs	>14 Yrs		
28 Benny	Willingham	61	Roof Bolter Operator	>34 Yrs	44 weeks		
29 Ricky	Workman	50	Shuttle Car Operator	>9 Yrs	>8 Yrs		

Source: MSHA's Preliminary Reports of Accident (Forms 7000-13) and information from the May 24, 2010 hearing (the names of the witnesses and their relationships to the miners).

SECRETARY OF LABOR,
Washington, DC, May 28, 2010.

Hon. GEORGE MILLER, *Chairman,*
Committee on Education and Labor, U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRMAN MILLER: I wanted to thank you again for allowing me to participate in the field hearing in Beckley last week on the Upper Big Branch Mine tragedy. I was so moved by the compelling testimony given by the family members of the victims and Mr. Stewart, the UBB miner. I will never forget listening to Steve Morgan testify about trying to convince his son Adam to quit his job at UBB just two weeks before the disaster. No parent should have to live with that kind of pain. I am so grateful to you for giving these families an opportunity to tell their stories.

I also want to assure you that Assistant Secretary Joe Main and I listened carefully to the lessons that these family members and Mr. Stewart have to teach MSHA about how we can prevent disasters like UBB. Even before the hearing, MSHA has already:

- adopted a new approach to inspections to ensure that our inspectors are getting a clear and accurate picture of conditions in the mines they inspect—not just the picture that the mine operators want to provide. MSHA is changing and varying the methods to predict the times and types of inspections that MSHA will perform;
- taken bold action, like our recent blitz inspections, to make sure we are focusing our enforcement efforts on the mines that pose the greatest danger to miners' safety;
- augmented our existing anonymous 1-800 tip line for miners to report hazards with a toll-free line specifically for anyone who has information related to the UBB disaster that they would like to communicate to MSHA anonymously; and,
- coordinated with the state of West Virginia to coordinate our investigations and oversight. In addition, MSHA Assistant Secretary Main reached out to all the state mining agencies upon his confirmation to improve the working relationship and better coordinate safety and health activities. He arranged for the state mining agencies to meet with all the MSHA Coal District Managers to discuss increased cooperation. MSHA will also soon sign a new Memorandum of Understanding with the state agencies to improve and expand cooperation and coordination in ensuring that mine safety and health laws are followed and are effective.

MSHA officials will be more than happy to meet with you and your staff to brief you on the details of these and other initiatives.

The hearing made clear that we have a great deal of work ahead of us to ensure safe conditions for all miners. I look forward to working with you and the entire Committee as this process moves forward.

Sincerely,

HILDA L. SOLIS,
Secretary of Labor.

[Whereupon, at 11:54 a.m., the committee was adjourned.]

