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Transcript of the Testimony of ^{(b)(7)(C) & (b)(7)(D)}

Date: ^{(b)(7)(C) & (b)(7)(D)}

Case:

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OF

(b)(7)(C) & (b)(7)(D)

taken pursuant to Notice by Alison Salyards, a
Court Reporter and Notary Public in and for the
State of West Virginia, at the National Mine
Health and Safety Academy, 1301 Airport Road,
Room C-137, Beaver, West Virginia, on Monday,

(b)(7)(C) & (b)(7)(D) , beginning at (b)(7)(C) & (b)(7)(D)

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A P P E A R A N C E S

1
2
3
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A P P E A R A N C E S (cont.)

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(b)(7)(C) & (b)(7)(D)

I N D E X

1		
2		
3	OPENING STATEMENT	
4	By Attorney Wilson	7 - 15
5	STATEMENT	
6	By Mr. Farley	15 - 16
7	WITNESS: (b)(7)(C) & (b)(7)(D)	
8	EXAMINATION	
9	By Mr. Sherer	16 - 39
10	EXAMINATION	
11	By Mr. Farley	39 - 41
12	EXAMINATION	
13	By Ms. Monforton	41 - 42
14	RE-EXAMINATION	
15	By Mr. Sherer	42 - 43
16	EXAMINATION	
17	By Attorney Wilson	43
18	RE-EXAMINATION	
19	By Mr. Sherer	43 - 44
20	RE-EXAMINATION	
21	By Mr. Farley	44
22	RE-EXAMINATION	
23	By Ms. Monforton	44 - 45
24	RE-EXAMINATION	
25	By Mr. Farley	45

I N D E X (cont.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RE-EXAMINATION

By Ms. Monforton

45

DISCUSSION AMONG PARTIES

45 - 46

CLOSING STATEMENT

By Attorney Wilson

47 - 48

CERTIFICATE

49

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT PAGE

PAGE

NUMBER	DESCRIPTION	IDENTIFIED
One	Subpoena	10*
Two	Return of Service	10*

* Exhibit not attached

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
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14
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ATTORNEY WILSON:

Good morning. My name is Bob Wilson.

I'm with the Office of the Solicitor, United States Department of Labor. With me is Erik Sherer, an investigator with the Mine Safety and Health Administration. Also present are individuals with the State of West Virginia. I'll ask that they state their appearance for the record.

MR. FARLEY:

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

MR. KOERBER:

I'm Barry Koerber, Assistant Attorney General assigned to represent the West Virginia Office of Miners' Health, Safety and Training.

MS. MONFORTON:

And I'm Celeste Monforton. I'm with the Governor's independent team.

ATTORNEY WILSON:

Today is August 23rd, 2010 and we're here to conduct an interview of (b)(7)(C) & (b)(7)(D) would you please state your name for the record?

(b)(7)(C) & (b)(7)(D)

1 (b)(7)(C) & (b)(7)(D)

2 ATTORNEY WILSON:

3 Thank you. And I'm going to ask that you

4 face the court reporter and we'll have her swear you
5 in.

6 -----

7 (b)(7)(C) & (b)(7)(D) HAVING FIRST BEEN DULY SWORN, TESTIFIED
8 AS FOLLOWS:

9 -----

10 ATTORNEY WILSON:

11 Okay. And I'm going to turn it over to

12 Barry, who's going to go over some preliminary matters
13 concerning the subpoena that you were served.

14 ATTORNEY KOERBER:

15 Would you please state your address and
16 telephone number for the record, please?

17 A. (b)(7)(C) & (b)(7)(D)

18 (b)(7)(C) & (b)(7)(D)

19 ATTORNEY KOERBER:

20 And your telephone number?

21 A. (b)(7)(C) & (b)(7)(D)

22 ATTORNEY KOERBER:

23 And you have an attorney with you here
24 today?

25 A. Yes, I do.

1 ATTORNEY KOERBER:

2 And is he your personal attorney?

3 A. Yes, sir.

4 ATTORNEY KOERBER:

5 And sir, would you please identify
6 yourself?

7 ATTORNEY MARONEY:

8 Yeah. My name is Thomas P. Maroney. I

9 go by Pat. My address is (b)(7)(C) & (b)(7)(D)

10 (b)(7)(C) & (b)(7)(D)

11 ATTORNEY KOERBER:

12 And sir, is (b)(7)(C) & (b)(7)(D) client?

13 ATTORNEY MARONEY:

14 He is.

15 ATTORNEY KOERBER:

16 (b)(7)(C) & (b)(7)(D) you appearing here today

17 as a result of being served with a subpoena?

18 A. Yes.

19 ATTORNEY KOERBER:

20 This is a copy of that subpoena if you

21 want to take a look at that. Would you agree that

22 that's a copy of the subpoena?

23 A. Yes.

24 ATTORNEY KOERBER:

25 Okay. I'd like that to be Exhibit One.

1 (b)(7)(C) & (b)(7)(D) Exhibit One marked for

2 identification.)

3 ATTORNEY KOERBER:

4 And this is something you probably have

5 not seen. This is the return of service signed by the

6 deputy that (b)(7)(C) & (b)(7)(D) And

7 there's a copy of that subpoena attached to the

8 return. I'd ask that that be Exhibit Two.

9 (b)(7)(C) & (b)(7)(D) Exhibit Two marked for

10 identification.)

11 ATTORNEY KOERBER:

12 (b)(7)(C) & (b)(7)(D) the statute that authorizes

13 the director to issue subpoenas compelling witnesses

14 to attend interviews such as this also requires the

15 director to provide to that witness a \$40 witness fee

16 plus mileage at the rate of 15 cents a mile, together

17 with any tolls you may have passed to and from your

18 residence to here so long as you traveled in your own

19 personal vehicle. I have provided you forms prior to

20 the hearing to fill out. Did you complete those

21 forms?

22 A. Yes.

23 ATTORNEY KOERBER:

24 And did you return those to me?

25 A. Yes.

1 ATTORNEY KOERBER:

2 Thank you.

3 ATTORNEY WILSON:

4 Okay. Thank you. (b)(7)(C) & (b)(7)(D), government

5 investigators and specialists have been assigned to
6 investigate the conditions, events and circumstances
7 surrounding the fatalities that occurred on April 5th,
8 2010 at the Upper Big Branch Mine. The investigation
9 is being conducted by MSHA pursuant to Section 103(a)
10 of the Federal Mine Safety and Health Act and by the
11 Office of Miners' Health, Safety and Training. As
12 part of that investigation, we've been interviewing a
13 number of witnesses, and we appreciate you coming in
14 today and helping us with our investigation.

15 All members of the Mine Safety and Health
16 Administration Accident Investigation Team and all
17 members of the State of West Virginia Accident
18 Investigation Team participating in the investigation
19 of the Upper Big Branch Mine explosion shall keep
20 confidential all information that is gathered from
21 each witness who provides a statement until witness
22 statements are officially released.

23 MSHA and the State of West Virginia shall
24 keep this information confidential so that other
25 ongoing enforcement activities are not prejudiced or

1 jeopardized by a premature release of information.
2 This confidentiality requirement shall not preclude
3 investigation team members from sharing information
4 with each other or with other law enforcement
5 officials. Everyone's participation in this
6 investigation constitutes their agreement to maintain
7 confidentiality.

8 (b)(7)(C) & (b)(7)(D)

 you may have an attorney
9 present with you. Mr. Mahoney has stated his
10 appearance for the record. This is not an adversarial
11 proceeding. Cross Examination type questions will not
12 be permitted, but all the parties and your attorney
13 may ask follow-up questions for clarification
14 purposes.

15 Your identity and the content of this
16 conversation will be made public at the conclusion of
17 the interview process and your identity may be
18 included in a public report of the accident, unless
19 you request that your identity remain confidential or
20 if revealing your identity would jeopardize other
21 enforcement activities. If you request us to keep
22 your identity confidential, we will do so to the
23 extent permitted by law.

24 In other words, if a judge or some law
25 requires that we reveal your identity, we may have to

1 do so. Also, we may use the information that you
2 provide to us today in other law enforcement
3 activities, including hearings concerning the
4 explosion. Do you understand your right to request
5 confidentiality?

6 A. Yes.

7 ATTORNEY WILSON:

8 Okay. Do you have any questions
9 concerning that?

10 A. No.

11 ATTORNEY WILSON:

12 All right. After the investigation is
13 complete, MSHA will issue a public report detailing
14 the nature and causes of the fatalities in the hope
15 that greater awareness about the causes of accidents
16 will reduce their occurrence in the future.
17 Information obtained through witness interviews is
18 frequently included in those reports. We've
19 interviewed a number of people, and we have several
20 more people to interview. So that we get everybody's
21 independent recollection, we ask that you not discuss
22 your testimony with anyone outside of your attorney or
23 anyone in this room.

24 A court reporter will be recording the
25 interview today, so please speak loudly and clearly.

1 If you do not understand a question asked, please ask
2 that the question be rephrased. If you need to take a
3 break at any time, just let me know and we'll go off
4 the record.

5 Again, I want to thank you in advance for
6 your appearance here today. We appreciate your
7 cooperation. After we've finished asking questions,
8 we will provide you with an opportunity to add
9 anything else to the record that you think might be
10 useful.

11 A. Okay.

12 ATTORNEY WILSON:

13 Because the reason we're here today is to
14 find out what you know. And we're going to ask a lot
15 of questions, but we may not ask all the right
16 questions.

17 A. All right.

18 ATTORNEY WILSON:

19 So if there is anything that you think
20 that might be useful to the investigation, but we
21 don't ask you about that specifically, please let us
22 know.

23 A. Okay.

24 ATTORNEY WILSON:

25 If at any time after the interview you

1 recall additional information that you think might be
2 useful, please contact Norman Page, who is MSHA's lead
3 accident investigator here at the Mine Academy. And
4 Mr. Page's contact information is included in the
5 letter that I've given to you here this morning.

6 A. Okay.

7 ATTORNEY WILSON:

8 All right. Terry, did you want to add
9 anything?

10 MR. FARLEY:

11 Yes. (b)(7)(C) & (b)(7)(D) on behalf of the Office
12 of Miners' Health, Safety and Training, I want to
13 inform you that the West Virginia Coal Mine Health and
14 Safety Regulations also provide protection against
15 potential discrimination for participating in these
16 type interviews. I want to pass along some contact
17 information for the West Virginia Board of Appeals.

18 The board hears complaints from miners
19 concerning discrimination and other matters. Should
20 you have any problems, you should contact the board
21 immediately. I would caution you that should you have
22 a problem with that, you need to file a claim within
23 30 days of when it happens; all right? Also, you have
24 my business card ---

25 A. Right.

1 MR FARLEY:

2 --- in case you have any questions or
3 need any assistance.

4 ATTORNEY WILSON:

5 Celeste?

6 MS. MONFORTON:

7 Nothing.

8 ATTORNEY WILSON:

9 No? All right. I'm going to pass it to
10 Erik Sherer, who's going to begin the questioning for
11 MSHA.

12 EXAMINATION

13 BY MR. SHERER:

14 Q. All right. First of all, I want to thank you for
15 coming down here this morning, ^{(b)(7)(C) & (b)(7)(D)}. This is
16 extremely important for this investigation, because
17 we're trying to determine the circumstances and
18 conditions and practices that lead up to this
19 explosion. And we're doing that for two reasons.

20 The first is the families and friends and
21 co-workers of these 29 miners deserve to know what
22 happened. The second reason is we want to prevent
23 this type of explosion, and until we understand what
24 led up to it, it's going to be hard to make any
25 effective change to prevent that. Roughly how many

1 years of mining experience do you have?

2 A. (b)(7)(C) & (b)(7)(D)

3 Q. Okay. Has that (b)(7)(C) & (b)(7)(D) been with the
4 Massey organization?

5 A. Yes, sir.

6 Q. Have you been at Upper Big --- or had you been at
7 Upper Big Branch that entire time?

8 A. No, sir. I was at (b)(7)(C) & (b)(7)(D) first.

9 Q. Okay. Did (b)(7)(C) & (b)(7)(D) ?

10 A. Yes.

11 Q. About when did you come back to Upper Big Branch?

12 A. I (b)(7)(C) & (b)(7)(D)

13 Q. Okay. And so you come back roughly, what, (b)(7)(C) & (b)(7)(D)
14 or so?

15 A. Yes, around --- yeah, it was around (b)(7)(C) & (b)(7)(D) .

16 Q. Okay. Of (b)(7)(C) & (b)(7)(D)

17 A. Yes.

18 Q. Okay. What shift did you normally work?

19 A. We was on (b)(7)(C) & (b)(7)(D)

20 Q. Okay. What was the last shift you worked prior to
21 the explosion?

22 A. Evening shift.

23 Q. Okay. Of the --- Sunday?

24 A. Saturday.

25 Q. Saturday. Okay.

1 A. Come in Monday.

2 Q. Okay. So you --- yeah. Okay. So your last day
3 would've been the evening shift of the 3rd of April?

4 A. Yeah.

5 Q. Saturday the 3rd. Okay. What did you do on the
6 longwall?

7 A. At the time I (b)(7)(C) & (b)(7)(D) .

8 Q. Okay.

9 A. I done (b)(7)(C) & (b)(7)(D)

10 (b)(7)(C) & (b)(7)(D)

11 Q. Okay. Let me ask you just some general questions
12 about the longwall.

13 A. Okay.

14 Q. When was the last time you guys did a fire
15 training drill?

16 A. It was on ---. I want to say it was in --- for
17 some reason, I'm wanting to say March.

18 Q. Okay. We've heard March from some other people,
19 so that sounds reasonable. When you did that drill,
20 did you practice fighting a fire?

21 A. Yes, sir.

22 Q. Did you deploy the fire hose?

23 A. Yes, sir.

24 Q. Tell me about the fire hoses on this longwall.

25 How many are there?

1 A. Oh, man. We got them on top of our head drive.

2 We got them in our headgate, and you know, down the
3 belt line they're spread out. I mean ---.

4 Q. Do you have any down the face of the wall?

5 A. Actual fire hose?

6 Q. Uh-huh (yes).

7 A. No, sir.

8 Q. Do you have fire outlets?

9 A. Not for the fire hose, no. We have wash down
10 hoses from head to tail.

11 Q. Okay. But they're not ---

12 A. Spray hoses.

13 Q. --- fire hose?

14 A. Not a fire hose.

15 Q. Now, the fire hose on the headgate, is that long
16 enough to go to the tailgate? If you don't know,
17 that's fine.

18 A. Yeah, I'm not sure.

19 Q. Okay, okay. Are the nozzles on the fire hoses or
20 are they stored near the fire hoses or were they?

21 A. Actually, they're on --- one is on a hose, and we
22 do have more stored other places.

23 Q. Okay.

24 A. But I do know that.

25 Q. Okay. Where's the valves that you open up for

1 those fire hoses? Where are they located?

2 A. You got one right on top of the head drive where I
3 know for a fact there's 400 foot of hose. And then
4 you got one at the head --- or the headgate. I can't
5 remember how many feet behind the headgate box it was.
6 I'm not exactly sure on the headgate part, but I know
7 there's one over there.

8 Q. Okay. And do you recall any down the face
9 anywhere?

10 A. Not on the --- not a fire hose hookup, no.

11 Q. Okay, okay. Thank you. All right. Let's talk
12 about the ventilation on the wall.

13 A. All right.

14 Q. Had you noticed any changed on the --- as far as
15 the quantity or the velocity of the air during the
16 month of March?

17 A. Yes.

18 Q. Can you explain what you noticed?

19 A. All right. We was on the face that day, running
20 coal. And well, one day we was up there and it was
21 --- I think --- I'm pretty sure that ^{(b)(7)(C) & (b)(7)(D)} had 110,000
22 cubic foot of air in the last open. Okay. The next
23 day I'm wanted to say he had, like, 50,000, 54,000
24 within a day's period of time there. But we was on
25 the face, running coal. It was so cold one day. The

1 next day, you know, it was so hot you couldn't --- it
2 was just miserable. And we was running. The dust was
3 just floating, you know, just pretty much wasn't
4 flowing like it was supposed to, and we hollered at
5 our boss, told him, you know, that the dust wasn't
6 moving, this and that, and so we shut down and he
7 called outside. And they called up there and said, if
8 it's any way possible, run coal until we get there,
9 the outside guys, which it was not possible, so we
10 didn't run.

11 Q. Sure.

12 A. Okay. So we sat at the headgate, the three of us,
13 three face crew guys. And they come up, two mine
14 inspectors come up, went down all the way to the tail,
15 and they come back and we had to start a ventilation
16 move. We didn't run no more after that.

17 Q. Okay.

18 A. And we done the ventilation move up until it was
19 our three days off and we didn't --- our crew didn't
20 go back to run.

21 Q. Okay, okay. Now, about when was that?

22 A. It was on a Wednesday or a Thursday.

23 Q. Was it toward the 1st of March or was it closer to
24 the explosion?

25 A. I'm wanting to say it was closer to the explosion.

1 Q. Okay.

2 A. I think. I really can't remember.

3 Q. Okay. Well, let me ask you a couple questions
4 related to that. You say there was a couple
5 inspectors came in with them.

6 A. Yes, sir.

7 Q. Do you know if they were State or Federal?

8 A. I can't remember.

9 MR. FARLEY:

10 What color coveralls ---

11 A. Blue.

12 MR. FARLEY:

13 --- did they have?

14 A. Blue.

15 MR. SHERER:

16 Okay. Probably Federal, then.

17 MR. FARLEY:

18 Did they have silver or ---?

19 MR. FARLEY:

20 Did they have silver or ---?

21 A. Yeah, silver stripe, silver ---.

22 MR. FARLEY:

23 That's probably your guys.

24 MR. SHERER:

25 Yeah.

1 MR. FARLEY:

2 A lot of ours wear orange stripes.

3 MR. SHERER:

4 Uh-huh (yes). Okay.

5 MR. FARLEY:

6 I said that --- but I don't know, just

7 probably.

8 MR. SHERER:

9 Sure.

10 BY MR. SHERER:

11 Q. Do you know if they issued any violations because
12 of that?

13 A. I don't know if they issued any. All I know is we
14 got right to work on it.

15 Q. Okay. We can check our records.

16 A. Okay.

17 Q. And we certainly appreciate the information. So
18 you had your three days off coming up after that
19 ventilation issue. When you came back after your
20 three days, did you have good ventilation? Let me ask
21 a slightly different question.

22 A. All right.

23 Q. You said it got real hot. When you came back,
24 went back to work, were you still wearing your coat or
25 did you have to take your coat off or jacket or

1 whatever it was?

2 A. I think I got my --- I think I got mixed up here.

3 I might have to ---.

4 Q. Okay, okay.

5 A. I think that that ventilation move --- I'm wanting

6 to say we was working on it the week before the

7 explosion. I'm not 100 percent sure. I really can't

8 remember. I don't know. I'm trying to think and I

9 just ---.

10 Q. Sure. Yeah, just take your time. Take your time.

11 Now ---?

12 A. Something's telling me we was, and then

13 something's telling me it was earlier before the

14 explosion.

15 Q. Okay. Now, we know that ---. We had an inspector

16 go in on the wall, and he ---

17 A. Right.

18 Q. --- found the direction there on the tailgate

19 going the wrong direction.

20 A. Yes, yes.

21 Q. And that was about March the 9th, the best ---

22 A. Okay.

23 Q. --- I remember.

24 A. Okay.

25 Q. Does that sound familiar?

1 A. Yes. Yes, it does.

2 Q. Do you think that was the same incident you were
3 describing?

4 A. Yeah.

5 Q. Okay.

6 A. I believe so.

7 Q. Now, we do know that the wall was down for several
8 days because of that.

9 A. Right. Okay.

10 Q. It took a long time to get the ventilation
11 straightened back out.

12 A. Yes.

13 Q. The week or so prior to the explosion, do you
14 recall any changes in ventilation? Did it seem
15 hotter? Did it seem colder?

16 A. I think that's where I got mixed up. The
17 ventilation move was, like you said, beginning ---
18 towards the beginning of March. And then when the air
19 started doing its changes, I'm wanting to say that was
20 what happened the week before ---

21 Q. Okay.

22 A. --- the explosion, that coming up week ---

23 Q. Uh-huh (yes).

24 A. --- because I remember we went off on Saturday
25 night for, you know, the night before Sunday,

1 Easter ---

2 Q. Sure.

3 A. --- and then Monday.

4 Q. Uh-huh (yes).

5 A. But I'm pretty sure that that was the week ---

6 Q. Okay. So ---

7 A. --- that the air done that.

8 Q. --- the air basically went way down in volume and
9 in quantity ---

10 A. Right.

11 Q. --- roughly a week prior to the explosion? And
12 the pre-shift books actually show some of that. The
13 air quantity on the longwall near the 1st of March was
14 over 100,000 cubic feet per minute.

15 A. Yeah.

16 Q. On the 1st it was 115,000 cubic feet ---

17 A. Okay.

18 Q. --- a minute. It went --- bounced around a little
19 bit up through the 9th, when they made that
20 ventilation change, and from the 9th on down to the
21 date of the explosion, it looked like it gradually
22 decreased down to about 55,000 cubic feet per minute.

23 A. What exactly was you all's standards on the face?

24 Q. This wall had to have a minimum of 30,000 cubic
25 feet a minute. 30,000 feet --- cubic feet a minute

1 probably wasn't enough to control the dust.

2 A. No.

3 Q. But that's just the minimum that's in the
4 regulations. The vent plan minimums may have been
5 higher, and I'm just not sure what that was, myself,
6 at his mine. But you can see that there was a
7 dramatic decrease in the air quantity.

8 A. Yeah.

9 Q. So you think about a week prior to the explosion
10 there --- you noticed a major decrease. Did you ever
11 notice any fluctuations while you were on the wall?
12 Would it all of the sudden seem to get stagnant or the
13 dust stay around or ---? And then would it start back
14 normal ventilation?

15 A. Not really, because where I was --- like I said,

16 as (b)(7)(C) & (b)(7)(D), when (b)(7)(C) & (b)(7)(D)

17 (b)(7)(C) & (b)(7)(D)

18 Q. Sure.

19 A. --- and the air's, you know, ---

20 Q. Sure.

21 A. --- (b)(7)(C) & (b)(7)(D)

22 (b)(7)(C) & (b)(7)(D)

23 Q. Sure. Okay.

24 A. But as far as the dust-wise, it was always blowing
25 real good, you know.

1 Q. Okay. Did you ever notice any odd smells coming
2 from the gob?

3 A. No.

4 Q. Any kerosene or petroleum type smells?

5 A. No.

6 Q. Okay. Well, let me ask you about the curtain in
7 the headgate entry. There was three shown on --- in
8 entries One through Three on this map.

9 A. Right.

10 Q. The one that I always noticed was right at the
11 headgate itself.

12 A. On Number One Shield?

13 Q. Number One Shield, exactly.

14 A. Okay.

15 Q. Did you ever --- when you were coming around that
16 corner, did you ever notice that curtain not tight?

17 A. Blowed back or ---?

18 Q. Blowed back or something?

19 A. Yeah, yeah. Several, you know, here and there,
20 but most of the time it was put up, yes.

21 Q. Did you ever notice it just --- instead of being
22 blowed back tight with pressure on it, just kind of
23 loose or even blowed back toward the face?

24 A. No. From what I can remember, it's always had
25 good pressure on it.

1 Q. Okay, okay.

2 A. Honestly, we've even took them sometimes, you
3 know, Three or Four Shields just to keep it ---

4 Q. Sure.

5 A. --- to have stronger air on the face.

6 Q. Uh-huh (yes). Sure. Okay. Did you carry a
7 methane detector?

8 A. Myself, no.

9 Q. Okay. Did you ever hear anybody else's methane
10 detector going off?

11 A. No.

12 Q. Did you ever notice anybody working on the two
13 methane monitors? There's one on the shearer and one
14 on the tailgate with the readout for the tailgate up
15 ahead.

16 A. The sniffers?

17 Q. Yeah.

18 A. Uh-huh (yes).

19 Q. Ever notice anybody working on those?

20 A. No.

21 Q. Did you ever notice the cover of either of those
22 two readouts being off?

23 A. No.

24 Q. Okay. Did you ever get back in the tailgate of
25 the longwall, get off the wall itself, back in the

1 tail?

2 A. When we done that ventilation move, that's the way
3 we traveled.

4 Q. Oh, okay. What did you do back there when you did
5 that ventilation move?

6 A. Knock stoppings and rebuild them, knock them again
7 and rebuild them.

8 Q. Who was directing that?

9 A. Two many people, know what I mean?

10 Q. Okay.

11 A. Yeah, too many people. Yeah, we ---.

12 Q. Okay. Do you feel that the ventilation on this
13 longwall was adequate?

14 A. At the time of the explosion, you know, my
15 opinion, I thought in my opinion it had something to
16 do with ventilation. That was my opinion, you know.

17 Q. Sure.

18 A. Just because of what we, you know, went
19 through ---

20 Q. Sure.

21 A. --- that day up there and ---

22 Q. Sure.

23 A. --- but ---.

24 Q. Well, let me ask you about some doors. We
25 understand there was two new doors built near the

1 mouth of the longwall about roughly a month prior to
2 the explosion.

3 A. Right.

4 Q. Do you recall those doors?

5 A. Yes.

6 Q. Do you know ---- can you help us out with a better
7 date of when they first were built?

8 A. I'm not good with dates.

9 Q. Okay.

10 A. I don't know.

11 Q. Okay. We understand that there was an opening on
12 the side of both those doors. Do you recall that?

13 A. An opening?

14 Q. Yeah, where they'd left some of the block out. We
15 think that it was kind of a --- part of it was a door,
16 part of it was a regulator.

17 A. I mean, I really didn't pay no attention to that.

18 Q. Okay. Sure.

19 A. I was just in and out the doors.

20 Q. Okay. I understand, buddy.

21 A. Yeah.

22 Q. Did you ever get a chance to get up in the
23 headgate, particularly the last few days prior to the
24 explosion, some of the entries off away from the belt
25 or track?

1 A. No, I (b)(7)(C) & (b)(7)(D)

2 Q. Okay. That last Saturday night that you guys
3 worked, how many passes did you cut? Do you recall?

4 A. I don't recall.

5 Q. Well, let me ask that a different way. Was it a
6 good production shift?

7 A. Honestly, no, I don't think it was that night.

8 Q. Did you have any particular problems?

9 A. Belt time, I believe. I believe it was belt time.
10 Down on belts over at --- on the Ellis side.

11 Q. Oh, okay.

12 A. I'm pretty sure.

13 Q. Okay. Any other production related problem or
14 maintenance related problem that you can recall?

15 A. On Saturday?

16 Q. Uh-huh (yes). Was the wall in good ---

17 A. No.

18 Q. --- shape that last shift?

19 A. Yeah, yeah.

20 Q. Okay. What about the shields themselves? Were
21 they washed down pretty good or did you have some dust
22 on them?

23 A. I (b)(7)(C) & (b)(7)(D) you know. I (b)(7)(C) & (b)(7)(D)

24 (b)(7)(C) & (b)(7)(D)

25

1 Q. Sure. Uh-huh (yes). So the (b)(7)(C) & (b)(7)(D)
2 (b)(7)(C) & (b)(7)(D)

3 A. Yeah, yeah.

4 Q. Okay. Let me tell you what we know about the
5 status of the longwall on April the 5th, and I'm going
6 to ask your opinion on what may've been going on.
7 They had had trouble almost the entire shift. They
8 had made about one pass. The hinge pin in the ranging
9 arm was coming out, and they'd actually scheduled to
10 replace that hinge pin on the hoot owl shift Monday
11 night, because it was giving them so many problems.

12 The wall --- they called out from the wall at 2:42
13 p.m. and said that they were back up and they were
14 going to start running coal. The wall --- the shearer
15 had cut out on the tail, and they had actually snaked
16 the wall up. It looked like they were getting ready
17 to cut back toward the face. There wasn't much coal
18 on the pan line. It was pretty clean, the head side
19 and the tail side. A little bit of coal from about
20 Shield 40 through Shield 110.

21 There were some rocks, some good size rocks in
22 there, which looks like they had been cutting at the
23 tail. They were taking some roof to turn the cowl
24 around. The high voltage disconnect was pulled at the
25 headgate. The water was shut off at the headgate.

1 There was four victims near midface, three
2 scattered out between midface and the head, another
3 two victims up around the head. What do you think was
4 going on when that explosion happened?

5 A. Well, from what you just told me there, they
6 started up at 2:40 ---?

7 Q. 2:42.

8 A. 2:42.

9 Q. And the explosion was a few minutes after 3:00.

10 A. Right. Okay. So all these guys on the face ---
11 do you think that they still had the blades forward
12 and the water off from where they was working on the
13 pin?

14 Q. Don't know. When they said they were going to
15 start up, you'd have to assume that everything's
16 powered up.

17 A. Yeah, but that ain't --- yeah.

18 Q. Yeah, and ---

19 A. Right.

20 Q. --- that's a good question. And right now we
21 don't know. Got any opinions at all? We don't think
22 that they were ---

23 A. No.

24 Q. --- coming off the wall because of shift change,
25 because it still had over 30 minutes to go. Well,

1 think about it, and if something comes to mind, please
2 give us a call.

3 A. Okay. I will think about that one.

4 Q. Okay. Well, let's talk about doors a bit.

5 A. Okay.

6 Q. We understand there was a lot of doors in this
7 mine ---

8 A. Uh-huh (yes).

9 Q. --- where most people would use overcasts. What
10 condition were those doors in? Were they maintained
11 in good shape or ---?

12 A. The ones at the mouth of the longwall, those was
13 in good shape. You come out and you hit --- you're
14 going towards 78 Break. You got these (indicating)
15 two doors right here. Okay. The second set going in,
16 I remember they've changed them probably three or four
17 times. Okay.

18 Q. They get beat up pretty bad?

19 A. Yeah, I guess you could say that. The motor men
20 hit them. But this set here, it always stayed in good
21 shape, because it was right on a flat --- kind of a
22 flat area ---

23 Q. Uh-huh (yes).

24 A. --- coming into it.

25 Q. There's a bit of hill then. There was a hill on

1 that second set.

2 A. Yeah.

3 Q. Yeah.

4 A. Yeah.

5 ATTORNEY WILSON:

6 And you're talking about the two outby

7 doors near 78 Break?

8 A. Right.

9 MR. SHERER:

10 And he's talking about the two inby doors

11 being in bad shape.

12 A. Yeah, when you come from 78 Break and then you
13 turn down towards them doors, the first set was good,
14 the second set after that was the one that was usually
15 stayed pretty beat up, which, like I said, they
16 changed them. I know --- and we come through on
17 several nights coming off shift, and they'd be down
18 there working on this and that.

19 BY MR. SHERER:

20 Q. Sure. Did you ever pull up to any of those doors
21 and find one or more of them open?

22 A. Maybe once or twice, but that's ---

23 Q. Did you ever hear ---

24 A. --- all that I can think of.

25 Q. --- about when several crews were going out, the

1 first crew would open them up and the second crew
2 would shut them?

3 A. We always kept ours shut.

4 Q. Okay.

5 A. We always shut ours.

6 Q. Okay, okay. What do you know about the water back
7 behind the longwall? Do you recall ---?

8 A. Behind the longwall?

9 Q. Yeah. Uh-huh (yes). Do you ever recall talking
10 to anybody that went back there to check it or back
11 there to pump on it or anything like that?

12 A. I know of them on the tail side pumping water
13 somewhere on the tail. I don't know where. I just
14 got a buddy that was on that pump crew, and he said it
15 was back on the tail.

16 Q. Okay. Who was that?

17 A. Jason.

18 Q. Jason ---?

19 A. He was a contractor still.

20 Q. Jason Stanley?

21 A. Yes.

22 Q. Okay.

23 A. I don't know --- like I said, I don't know where
24 back in there they was at, but on the head side, no, I
25 don't know of anybody ---

1 Q. Okay.

2 A. --- saying anything about it.

3 Q. Do you know if they built stoppings across the
4 track anywhere on the tail side? We had heard that.

5 A. I'm not for sure.

6 Q. Okay, okay. When inspectors were on the property,
7 did anybody ever call in on the mine phone or anybody
8 ever tell you there were inspectors coming?

9 A. What, call from outside and tell us ---?

10 Q. Yeah.

11 A. No.

12 Q. Okay.

13 A. No.

14 Q. Did you ever talk to anybody on the two miner
15 sections up here?

16 A. Not a whole lot, no.

17 Q. Do you recall anybody on either of those sections
18 complaining about a lack of air or ventilation?

19 A. Just, you know, out in the bathhouse, hearsay and
20 stuff, yeah. I did hear a few things about
21 ventilation, but like I said, I don't talk to them
22 guys a lot ---

23 Q. Sure.

24 A. --- that much and ---.

25 Q. Now, did you hear that prior to the explosion or

1 after the explosion?

2 A. It'd been before.

3 Q. Okay.

4 A. It'd had been before.

5 Q. Now, I got one last question for you. All right?
6 When you were traveling in and out of the mine or any
7 opportunity you got to get off the longwall face, did
8 you ever see any problems with the rock dust?

9 A. No.

10 MR. SHERER:

11 Okay. Thank you. That's all the
12 questions I've got right now.

13 EXAMINATION

14 BY MR. FARLEY:

15 Q. ^{(b)(7)(C) & (b)(7)(D)}, I want to just clarify a couple ---
16 three things here.

17 A. All right.

18 Q. Erik just asked you if you ever had advance notice
19 of inspectors coming. Now, he's also asked you about
20 the doors that were here, outby the longwall face and
21 headgate entries where they were designed with the
22 partition out on one side. And we think they were put
23 in there for purposes of regulating the air.

24 A. Right.

25 Q. Now, who was your section foreman on the longwall?

1 A. Kevin.

2 Q. Kevin?

3 A. Medley.

4 Q. Kevin Medley. Do you know if Kevin ever got a
5 call from anybody, asking him to go to those doors and
6 add or remove blocks to in effect reduce or increase
7 the flow of air?

8 A. Not that I can recall, no.

9 Q. Do you recall anybody being stationed around those
10 doors at any time?

11 A. Yes, they was people working there, but it wasn't
12 us.

13 Q. Okay. Well, the reason I asked you the question
14 is it would be possible there to increase or decrease
15 the flow of air coming to the longwall and the two
16 miner sections.

17 A. Okay.

18 Q. As for Kevin, your boss, did you have confidence
19 in him?

20 A. Yeah, yeah.

21 Q. Did you feel like he made ---

22 A. Yeah.

23 Q. --- an honest effort to comply with health and
24 safety regs?

25 A. Yeah.

1 Q. Okay. Where are you working now?

2 A. (b)(7)(C) & (b)(7)(D) .

3 Q. How long have you been off?

4 A. (b)(7)(C) & (b)(7)(D) .

5 MR. FARLEY:

6 Okay. I don't think I have anything

7 else.

8 MR. SHERER:

9 Okay.

10 ATTORNEY WILSON:

11 Celeste, did you have ---?

12 MS. MONFORTON:

13 Nope, no questions.

14 MR. SHERER:

15 I don't have anything else.

16 ATTORNEY WILSON:

17 Okay. Well, then, (b)(7)(C) & (b)(7)(D)

18 MS. MONFORTON:

19 I actually do have one question.

20 EXAMINATION

21 BY MS. MONFORTON:

22 Q. (b)(7)(C) & (b)(7)(D) when you mentioned making the
23 ventilation changes back on the tailgate ---

24 A. Yes, ma'am.

25 Q. --- section and you said that knocking and

1 rebuilding --- someone asked you who was in charge and
2 you said too many people. Do you recall about how
3 many days those activities went on?

4 A. Not real sure.

5 Q. Was it one shift or was it ---?

6 A. Oh, no, it was several shifts, actually.

7 Q. Several shifts?

8 A. Yeah.

9 Q. Okay. Thank you.

10 A. Yeah.

11 MS. MONFORTON:

12 That's it.

13 MR. SHERER:

14 I've got a couple.

15 RE-EXAMINATION

16 BY MR. SHERER:

17 Q. That last shift or two you worked, ---

18 A. Okay.

19 Q. --- what were the condition of the sprays on the
20 longwall drives? They ---

21 A. Good.

22 Q. --- spray them pretty good?

23 A. Yeah.

24 Q. You ever notice much sparking when they were
25 particularly cutting down near the tail?

1 A. Well, I mean, you got to expect that, kind of,
2 because they was cutting a good bit of sandstone ---

3 Q. Okay.

4 A. --- top and bottom.

5 Q. Sure.

6 MR. SHERER:

7 Okay. Thank you.

8 EXAMINATION

9 BY ATTORNEY WILSON:

10 Q. Just a quick follow-up. Celeste asked you about
11 when you were making those ventilation changes on the
12 tailgate. You indicated that there were too many
13 people in charge?

14 A. Uh-huh (yes).

15 Q. Can you recall any of those individuals who were
16 directing the work?

17 A. Yeah. Yes, I can. There was --- not Chris Adkins
18 --- Chris ---.

19 MS. MONFORTON:

20 Blanchard.

21 A. Yeah, it was Chris Blanchard, Jamie Ferguson ---
22 Chris and Jamie, and I can't think of any other names.

23 RE-EXAMINATION

24 BY MR. SHERER:

25 Q. Was Wayne Persinger down there?

1 A. Wayne was up there.

2 Q. How about Everett?

3 A. Everett was there, and then you had Michael and
4 then Jack and Harold.

5 ATTORNEY WILSON:

6 Who?

7 MS. MONFORTON:

8 Jack who?

9 A. Jack Roles.

10 ATTORNEY WILSON:

11 Jack Roles.

12 A. And then Harold Lilly and ---.

13 RE-EXAMINATION

14 BY MR. FARLEY:

15 Q. What did Harold Lilly do? What was his job?

16 A. What was his job title?

17 Q. Yes, sir.

18 A. He was assistant longwall coordinator.

19 Q. Okay.

20 A. He was a good guy, real good guy.

21 RE-EXAMINATION

22 BY MS. MONFORTON:

23 Q. ^{(b)(7)(C) & (b)(7)(D)}, do you remember about when those
24 activities were taking place, because we've heard
25 other testimony that there was some activity like that

1 maybe around March?

2 A. It was in March.

3 Q. It was in March.

4 A. Yeah.

5 Q. Okay.

6 A. I don't know ---.

7 RE-EXAMINATION

8 BY MR. FARLEY:

9 Q. You're talking about the event where you had the
10 MSHA inspectors ---?

11 A. Yes, come in and --- yeah.

12 Q. Okay.

13 A. Yeah.

14 RE-EXAMINATION

15 BY MS. MONFORTON:

16 Q. Is that the same time when they were building and
17 knocking out the stoppings in March?

18 A. After --- yeah. Yes, yes.

19 Q. After the inspectors came in?

20 A. Yes.

21 Q. Okay. Thank you.

22 ATTORNEY WILSON:

23 Anything further?

24 MR. SHERER:

25 I don't have anything.

1 ATTORNEY MARONEY:

2 ^{(b)(7)(C) & (b)(7)(D)} tell him you want reserve the right
3 to request confidentiality and remain confidential
4 until you get --- tell him otherwise.

5 A. Okay.

6 ATTORNEY MARONEY:

7 I'm advising ^{(b)(7)(C) & (b)(7)(D)} on the confidentiality
8 side of it for it to remain confidential until he
9 would state otherwise.

10 MR. SHERER:

11 Can we go off the record for a minute?

12 ATTORNEY MARONEY:

13 Yeah.

14 ATTORNEY WILSON:

15 Then let's go off the record.

16 OFF RECORD DISCUSSION

17 ATTORNEY WILSON:

18 We're back on the record. We had a
19 discussion, and ^{(b)(7)(C) & (b)(7)(D)} is requesting that the
20 interview remain confidential to the extent permitted
21 by law, and there was some discussion explaining how
22 FOIA works differently under the Federal FOIA
23 requirements and under the State requirements.

24 ATTORNEY MARONEY:

25 Right.

1 ATTORNEY WILSON:

2 Okay. Okay. If there's nothing further,

3 then, ^{(b)(7)(C) & (b)(7)(D)}, I want to thank you on behalf of MSHA
4 and the Office of Miners' Health, Safety and Training.
5 Your cooperation is important to this investigation.

6 Again, because we will be interviewing
7 additional witnesses, we request that you not discuss
8 your testimony with anyone other than your attorney.
9 After questioning other witnesses, we may call if we
10 have follow-up questions that we would like to ask.

11 And again, if you think of any additional
12 information after this interview is over, please
13 contact us at the information that was provided.
14 Before we finish up, I did promise you that I would
15 give you an opportunity to add anything else to the
16 record. If there's anything else that you would like
17 to say --- say, you may do so at this point.

18 ATTORNEY MARONEY:

19 ^{(b)(7)(C) & (b)(7)(D)}, you can reserve the right to ---
20 after you've had an opportunity to reflect on the
21 questions to supplement the ---.

22 ATTORNEY WILSON:

23 Absolutely.

24 A. Right, right. I don't think there's anything,
25 really.

1 ATTORNEY WILSON:

2 Okay. Then again, I want to thank you

3 for your cooperation, and we can go off the record.

4 * * * * *

5 STATEMENT UNDER OATH CONCLUDED AT 10:00 A.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

5

I, Alison Salyards, a Notary Public in and

6

for the State of West Virginia, do hereby certify:

7

That the witness whose testimony appears in

8

the foregoing deposition, was duly sworn by me on said

9

date and that the transcribed deposition of said

10

witness is a true record of the testimony given by

11

said witness;

12

That the proceeding is herein recorded fully

13

and accurately;

14

That I am neither attorney nor counsel for,

15

nor related to any of the parties to the action in

16

which these depositions were taken, and further that I

17

am not a relative of any attorney or counsel employed

18

by the parties hereto, or financially interested in

19

this action.

20

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Alison Salyards

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