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**Transcript of the Testimony of Brandon Bowling**

**Date:** August 24, 2010

**Case:**

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CONFIDENTIAL STATEMENT UNDER OATH

OF

BRANDON BOWLING

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, August 24, 2010, beginning at 2:26 p.m.

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## P R O C E E D I N G S

1  
2 -----  
3 ATTORNEY WILSON:

4 Good afternoon. My name is Bob Wilson.

5 I'm with the Office of the Solicitor, United States  
6 Department of Labor. With me is Erik Sherer, an  
7 investigator with the Mine Safety and Health  
8 Administration. We're here today on August 24, 2010,  
9 to conduct an interview of Brandon Bowling. Also  
10 present are individuals with the State of West  
11 Virginia. I'll ask that they state their appearance  
12 for the record.

13 MR. FARLEY:

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

16 ATTORNEY KOERBER:

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

21 MS. MONFORTON:

22 Mr. Bowling, I'm Celeste Monforton. I'm  
23 with the Governor's independent team.

24 ATTORNEY WILSON:

25 Mr. Bowling, you have a representative



1 with you today; is that correct?

2 MR. BOWLING:

3 Yes.

4 ATTORNEY WILSON:

5 Mr. McCuskey, would you please state your  
6 appearance for the record?

7 ATTORNEY MCCUSKEY:

8 Yes. My name is John McCuskey. I'm an  
9 attorney with Shuman, McCuskey and Slicer in  
10 Charleston, West Virginia, and I'm Mr. Bowling's  
11 Counsel.

12 ATTORNEY WILSON:

13 And also present is Counsel for  
14 Performance Coal Company. Mr. Hardy, would you state  
15 your appearance?

16 ATTORNEY HARDY:

17 Yes, please. David J. Hardy, Allen  
18 Guthrie & Thomas for Performance Coal.

19 ATTORNEY WILSON:

20 And what I'd like to do at this time, Mr.  
21 Bowling, is have you face the court reporter and she  
22 will swear you in.

23 -----

24 BRANDON BOWLING, HAVING FIRST BEEN DULY SWORN,  
25 TESTIFIED AS FOLLOWS:

1 -----

2 ATTORNEY KOERBER:

3 Would you please state your full name for  
4 the record and spell your last name?

5 A. Brandon Collier Bowling, B-O-W-L-I-N-G.

6 ATTORNEY KOERBER:

7 And would you please state your address  
8 and telephone number?

9 A. [REDACTED]

10 ATTORNEY KOERBER:

11 And are you appearing here today as a  
12 result of receiving a subpoena?

13 A. Yes.

14 ATTORNEY KOERBER:

15 I would ask that this be marked as  
16 Exhibit One. This is a copy of your subpoena.  
17 (B. Bowling Exhibit One marked for  
18 identification.)

19 ATTORNEY KOERBER:

20 And although I have yet to receive the  
21 green card back, I did off the United States Postal  
22 Service website print off that it was delivered on  
23 August 18th. Does that sound about correct for when  
24 this was received by you?

25 A. I've had it since last week, I think. About

1 Friday.

2 ATTORNEY KOERBER:

3 The 18th would have been Wednesday.

4 A. It's in my --- it's at the house, in my  
5 possession.

6 (B. Bowling Exhibit Two marked for  
7 identification.)

8 ATTORNEY KOERBER:

9 So that would be Exhibit One and Exhibit  
10 Two. Sir, as a subpoenaed witness, the statute  
11 authorizes you to receive \$40 a day as a witness fee  
12 together with roundtrip mileage if you've driven in  
13 your personal vehicle. There's forms to be filled out  
14 for that money if you desire to receive it, or you can  
15 decline. Do you have a preference as to whether or  
16 not you accept or decline the money?

17 A. I decline.

18 ATTORNEY KOERBER:

19 Okay. Thank you.

20 ATTORNEY WILSON:

21 Mr. Bowling, government investigators and  
22 specialists have been assigned to investigate the  
23 conditions, events and circumstances surrounding the  
24 fatalities that occurred at the Upper Big Branch Mine-  
25 South on April 5th, 2010. That investigation is being

1 conducted by MSHA pursuant to Section 103(a) of the  
2 Federal Mine Safety and Health Act and by the West  
3 Virginia Office of Miners' Health, Safety and  
4 Training.

5 You are entitled to have a representative  
6 with you today, and Mr. McCuskey has identified  
7 himself as your Counsel. And you chose Mr. McCuskey  
8 as your Counsel; is that right?

9 A. Yes.

10 ATTORNEY WILSON:

11 And you consent to his being here?

12 A. Yes.

13 ATTORNEY WILSON:

14 And you understand that Mr. Hardy is  
15 representing Performance Coal Company?

16 A. Yes.

17 ATTORNEY WILSON:

18 And do you consent to his being present?

19 A. Yes.

20 ATTORNEY WILSON:

21 After the investigation is complete, MSHA  
22 will issue a public report detailing the nature and  
23 the causes of the fatalities in the hope that greater  
24 awareness about the causes of accidents can reduce  
25 their occurrence in the future. Information obtained

1 through witness interviews is frequently included in  
2 those reports. Your statement may also be used in  
3 other proceedings. This is not an adversarial  
4 proceeding. Formal Cross Examination will not be  
5 permitted. However, each of the parties and your  
6 attorney and Counsel for Performance Coal will be  
7 permitted to ask follow-up, clarifying questions as  
8 appropriate. We will be interviewing additional  
9 witnesses, so we request that you not discuss your  
10 testimony with other potential witnesses.

11 A court reporter will be recording the  
12 interview, so please speak loudly and clearly. If you  
13 do not understand a question asked, please ask that  
14 the question be rephrased. Please answer each  
15 question as fully as you can, including any  
16 information that you may have learned from someone  
17 else. After we have finished asking questions, we  
18 will provide you an opportunity to add anything to the  
19 record that you think may be important in helping us  
20 with our investigation. As I said earlier, we're here  
21 to know what you know. And we may not ask all the  
22 right questions, so we ask that you help us to  
23 understand any information that you may have that  
24 might help us to determine what caused this accident.  
25 If at any time after the interview you

1 recall any additional information that you would like  
2 to provide to the investigation team, please contact  
3 us at the information --- contact information that was  
4 provided to you today in the letter that I gave to  
5 you. Terry, do you want to add anything?

6 MR. FARLEY:

7 Yes. Mr. Bowling, on behalf of the West  
8 Virginia Office of Miners' Health, Safety and  
9 Training, under West Virginia Code, Chapter 22A,  
10 Article One, Section 22, also offers protection  
11 against --- due to discrimination for participating in  
12 these type interviews. I want to pass along a brief  
13 memo which provides the address for the West Virginia  
14 Board of Appeals, which hears complaints from miners  
15 concerning discrimination. And should you experience  
16 any such problems as a result of participating in this  
17 interview, you should contact the Board of Appeals. I  
18 would caution you, should you need to file a claim,  
19 you need to do so within 30 days of the occurrence of  
20 the problem.

21 ATTORNEY WILSON:

22 Celeste, anything?

23 MS. MONFORTON:

24 Nothing.

25 ATTORNEY WILSON:

1 Mr. Bowling, one thing, you know, because  
2 the court reporter will be taking everything down, if  
3 we're referring to the map here, please identify areas  
4 of the map that you're referring to. And we've got  
5 highlighters here we can use to mark the map and put  
6 notations on it. We can mark this as an exhibit. So  
7 feel free to use this any way that you think would be  
8 useful in explaining your testimony. Okay? I'll pass  
9 it over now to Erik Sherer to start the questioning.

10 MR. SHERER:

11 Thank you.

12 EXAMINATION

13 BY MR. SHERER:

14 Q. The first thing, Mr. bowling, I want to thank you  
15 for coming down here this afternoon. As Bob mentioned  
16 before, we're trying to do two things. We're trying  
17 to determine what led up to this explosion, what  
18 contributed to it, because we want to provide those  
19 answers to the family and the friends and the  
20 coworkers of those 29 miners. The other reason is we  
21 want to prevent this type of explosion from ever  
22 happening again. So your testimony and your  
23 information that you can share with us is greatly  
24 appreciated.

25 Let's start with some background questions. How

1 long have you been employed in the coal mining  
2 industry?

3 A. Approximately seven years.

4 Q. Seven years. Did you start with Massey or did you  
5 work for some other company?

6 A. Massey Energy.

7 Q. When did you first start working at Upper Big  
8 Branch?

9 A. 1999.

10 Q. 1999. So you've been there about 11 years?

11 A. I had broken time where I was deployed with the  
12 military and I had another occupation, and then I come  
13 back in the coal industry after that.

14 Q. Okay. When did you come back to Upper Big Branch  
15 the last time?

16 A. 2008.

17 Q. 2008, okay. Almost everything we're going to ask  
18 you probably has been --- will have been in the past  
19 year or so. What was your position description at  
20 Upper Big Branch?

21 A. Section foreman.

22 Q. Section foreman. Did you have a particular  
23 section you were associated with?

24 A. Headgate 22.

25 Q. Headgate 22. And we understand that had started



1 up sometime in February, didn't it?

2 A. Yes.

3 Q. Were you associated with that section from the  
4 time it turned out?

5 A. Yes.

6 Q. Okay. Where had you worked prior to Headgate ---  
7 or Tailgate 22?

8 A. Number Three section.

9 Q. Where was that, please?

10 A. East mains.

11 Q. East mains.

12 A. It's not on the map.

13 Q. Okay. That's down hear the UBB Portal?

14 A. Yes.

15 MR. FARLEY:

16 Excuse me. Are we talking about this  
17 section?

18 A. No. We're talking about the headgate section.  
19 Here's the tail, here's the head.

20 BY MR. SHERER:

21 Q. Okay. You were on the headgate?

22 A. Yes.

23 Q. Okay. Excuse me. I'm sorry. So you worked on  
24 the Three section down near the UBB Portal. Had you  
25 been involved in driving any of the gate roads

1 associated with the current longwall panel?

2 A. No.

3 Q. Okay. Thank you. When did you start working on  
4 the headgate of the longwall --- or 22 Headgate?

5 A. Could you rephrase that? This, this, this or  
6 this?

7 Q. Okay. Were you --- were you working on the 22  
8 Tailgate or 22 Headgate?

9 A. Headgate.

10 Q. When did you first start working on the Headgate?

11 A. November of ' 08.

12 Q. Okay.

13 A. Or '09.

14 Q. '09. Okay. Okay. And let's talk about the  
15 conditions on the headgate. What was the ventilation  
16 like?

17 A. Can you rephrase that?

18 Q. Yes. Was the ventilation quantity always  
19 sufficient?

20 A. Yes.

21 Q. It was?

22 A. Yes.

23 Q. Okay. Did you ever have any occasion to shut down  
24 the section to try to get additional air?

25 A. Rephrase that as to shut down the section, meaning

1 not run coal or just stop mining and ---?

2 Q. Did you ever have to stop mining coal or not start  
3 mining coal and then work on the ventilation?

4 A. Yes.

5 Q. When did that occur?

6 A. Between cuts you'd, you know --- I mean, it's  
7 every day you maintain your ventilation.

8 Q. Okay. And how would you maintain that  
9 ventilation?

10 A. By hanging your curtain.

11 Q. So you had to hang some curtain. Did you ever  
12 have to shut down the section and go outby and try to  
13 get additional air to come onto the section?

14 A. No.

15 Q. You never did?

16 A. (Indicates no).

17 Q. Okay. Thank you. What was the minimum quantity  
18 you were required to keep in the last open crosscut on  
19 this section?

20 A. 15,500.

21 Q. 15,500. What was the minimum quantity that you  
22 had to keep on the miners?

23 A. 6,000.

24 Q. 6,000. And did you have minimum quantities for  
25 the roof bolters?

1 A. 4,500.

2 Q. 4,500. Do you have minimum quantities for the  
3 idle faces?

4 A. 3,000.

5 Q. 3,000. Did you always have those quantities?

6 A. No.

7 Q. Okay. Were you able to restore those quantities  
8 by working with the curtains?

9 A. Yes.

10 Q. Okay. Thank you. Have you ever detected any  
11 methane on this section?

12 A. Yes.

13 Q. What sort of levels did you detect?

14 A. One percent.

15 Q. What did you do when you had that one percent?

16 A. Adjusted ventilation.

17 Q. Okay. Where was that one percent detected?

18 A. The face of Three.

19 Q. Face of Three. With the continuous miner?

20 A. No, with my handheld spotter.

21 Q. Okay. Had that face been bolted up?

22 A. Yes.

23 Q. Okay. Were you able to clear that methane with  
24 --- through changes in the curtains?

25 A. No. Normally just putting an extra nail in the

1 curtain would make it go down.

2 Q. Okay. Now, who was on your crew? Who worked for  
3 you?

4 A. Specifically?

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

6 A. Chris Allen.

7 Q. And what did he do?

8 A. Scoop, roof bolter, scoop helper.

9 Q. Okay. Who else?

10 A. Daniel Davis.

11 Q. Okay. What did he do?

12 A. Roof bolter and scoop man.

13 Q. Okay. Who were your miner operators?

14 A. James Griffith.

15 Q. Okay. Did you have a second miner operator?

16 A. No.

17 Q. Okay. He ran both of them?

18 A. Yes. He would walk between miners.

19 Q. Okay. Who was your electrician?

20 A. Tracey Lambert.

21 Q. Who ran the shuttle cars?

22 A. Richard Gray and Bobbie Pauley.

23 Q. Okay. Did you have anybody else that worked on  
24 the section?

25 A. I had a Josh Massey.

1 Q. What did he do?

2 A. Just helped out roof bolting.

3 Q. Okay.

4 A. We had Kortaa Hall, a roof bolter operator also.

5 Q. Okay. Who was your boss? Who did you report to?

6 A. Terry Moore.

7 Q. Terry Moore. And what was his position?

8 A. Mine foreman.

9 Q. Okay. What was the roof like on the 22 Headgate?

10 A. Just sand rock, sand rock slate.

11 Q. Okay. Was it staying up pretty good?

12 A. Yes.

13 Q. Were you guys hanging mesh on the roof?

14 A. Yes.

15 Q. What sort of bolts were you installing?

16 A. Six-foot torque tension was the main roof support.

17 Q. Did you put any cable bolts as supplementary  
18 support?

19 A. Yes, in Number One and Number Three entries.

20 Q. Did you put those on a regular basis --- or  
21 spacing or did you just put them in intersections?

22 A. Every row in the Number Three entry. Cable bolts  
23 were installed in the intersections in Two, and Number  
24 One was --- along with the mesh when it was installed.

25 Q. Okay. What about the ribs, what were they like?

1 A. Like just coal ribs, coal rock ribs.

2 Q. Did you have to bolt the ribs?

3 A. Yes.

4 Q. What did you use to bolt those with?

5 A. Six-foot torque tensions and four-foot  
6 fully-grouted resin bolt.

7 Q. Okay. Did you spot bolt them or did you have to  
8 bolt them continuously?

9 A. Depended on the conditions. We would spot and  
10 also put them up with a rope.

11 Q. Okay. What about the floor, was it heaving any?

12 A. Yes.

13 Q. Were you able to grade that down with your scoop  
14 or did you have to pull the miner back to grade it?

15 A. Sometimes miner, sometimes scoop. It depended.

16 Q. What about the --- did this section ever thump or  
17 bump while you were developing it?

18 A. No.

19 Q. It was pretty quiet?

20 A. Yes.

21 Q. Okay. Was there any noise associated with the  
22 floor heave?

23 A. I don't know.

24 Q. Okay. You didn't feel it or didn't hear it?

25 A. No.

1 Q. Just hooved up sometimes?

2 A. (Indicates yes).

3 Q. Was there any gas associated with the floor heave  
4 that you know of?

5 A. No.

6 Q. Did you ever smell any kerosene-like or  
7 gasoline-like odors ---

8 A. No.

9 Q. --- on this section? Okay. Which shift did you  
10 work?

11 A. I worked the swing shift, three days day, three  
12 days evening.

13 Q. Did your entire crew work that same schedule?

14 A. Yes.

15 Q. Were you guys scheduled to work the night of the  
16 5th, the night of the explosion?

17 A. No.

18 Q. What was the last shift you had worked prior to  
19 the explosion?

20 A. April the 3rd.

21 Q. April the 3rd.

22 A. On evening shift.

23 Q. So that would have been a Saturday?

24 A. Yes.

25 Q. Okay.



1 A. The evening shift on Saturday.

2 Q. Okay. Do you now if anybody worked on the 22  
3 Headgate on Sunday?

4 A. No.

5 Q. Was it down?

6 A. Yes. I was the last boss to leave that area.

7 Q. Okay. That Saturday night, Mr. Bowling, did you  
8 notice anything unusual on the section?

9 A. No.

10 Q. Okay. Did you smell anything unusual?

11 A. No.

12 Q. Thank you. Now, we understand there was quite a  
13 bit of construction going on with, I think, a new  
14 mother belt drive that was being installed. Do you  
15 know if that construction was finished?

16 A. Yes, it was.

17 Q. Okay. About how long prior to the explosion do  
18 you think that construction was wrapped up?

19 A. Three weeks.

20 Q. Three weeks, okay. Had you noticed any changes in  
21 the ventilation quantity of the air coming onto the  
22 section during that three-week period or so from the  
23 time the construction finished up until the explosion?

24 A. I don't know the exact time this was finished, so  
25 I don't know.

1 Q. In the two or three weeks prior to the explosion,  
2 had you noticed any significant change in the  
3 ventilation quantity coming onto the section?

4 A. Yes.

5 Q. Can you explain that to us, please?

6 A. Air quality was better.

7 Q. Just more cubic feet?

8 A. More cubic feet.

9 Q. Do you know approximately when that happened, when  
10 it got better?

11 A. I would say two weeks prior to the explosion.

12 Q. Do you know why it got better?

13 A. I don't know the exact reason.

14 Q. Would you care to speculate at what may have  
15 happened to increase that ventilation quantity?

16 A. Well, we were --- or the mine itself was --- could  
17 have made a change in this area here.

18 Q. And by this area here, you're pointing to the  
19 headgate of the longwall?

20 A. Yes.

21 Q. Do you have any idea what may have changed down  
22 there?

23 A. I do not know.

24 Q. Okay. Did anybody mention anything about a change  
25 in the ventilation during that time period?

1 A. I had heard, yes.

2 Q. Who had you heard it from?

3 A. Just bath house talk.

4 Q. In that bath house talk, did anybody have any  
5 explanation for the change?

6 A. MSHA.

7 Q. MSHA. Okay. Would that be the --- we issued an  
8 order on the tail of the longwall on March the 9th.  
9 Do you think that was what it was associated ---

10 A. Yes.

11 Q. --- with? Okay. Thank you. Now, when you would  
12 come on the 22 Headgate section in the afternoon, did  
13 you ever have to wait to start production until you  
14 could get ventilation quantity? Did you ever have ---  
15 not have enough air to start running coal immediately?

16 A. Yes.

17 Q. When was that?

18 A. I don't know exactly. I mean, the situation  
19 dictated you might show up and, you know, a condition  
20 --- the top might have dropped a rock and ripped down  
21 a check curtain, so you have to reinstall that  
22 ventilation before you could run.

23 Q. Now, it was always temporary face control ---

24 A. Yes.

25 Q. --- issues? Never anything outby?

1 A. No.

2 Q. Okay. Had you heard rumors that the people on  
3 this particular section were saying that there wasn't  
4 enough air to run coal?

5 A. Rumors as ---?

6 Q. No air on 22 Headgate?

7 A. Yes.

8 Q. Can you explain why people were talking about  
9 that?

10 A. Maybe because it was hot. When they worked, they  
11 got hot. Maybe they were used to something down here  
12 and it wasn't the same as where they worked at now. I  
13 don't know.

14 Q. Okay. And we understand that there was some  
15 Massey policy that there had to be 20,000 cubic feet  
16 per minute in the last open crosscut. Did you always  
17 have that?

18 A. No.

19 Q. If you didn't have that, what did you do?

20 A. We would work on face ventilation or the tailpiece  
21 inby.

22 Q. And were you always able to restore that 20,000  
23 cubic feet a minute?

24 A. Yes, with the means of a concrete stopping.

25 Q. Okay. So you just had to build ---?

1 A. Build a stopping and then that would normally  
2 always fix it.

3 Q. Okay. When you got on the section, what's the  
4 first thing that you did?

5 A. Well, I would run the faces.

6 Q. Okay. Looking for imminent dangers?

7 A. Yes.

8 Q. Would you measure the air?

9 A. Yes, in the last open break and behind the  
10 curtains.

11 Q. Okay. Did you ever get on the section and the air  
12 quantity was significantly different from the quantity  
13 called out on the pre-shift?

14 A. Yes.

15 Q. What did you --- when you noticed that different,  
16 what would you normally attribute it to?

17 A. The rocks or the curtain being pulled down or  
18 falling down, rib roll, a natural ---.

19 Q. But just temporary ventilation controls?

20 A. Yes. All these things I'm speaking of are  
21 temporary fixes, ---

22 Q. Okay.

23 A. --- or problems that exist between the oncoming  
24 --- outgoing and oncoming shifts.

25 Q. Okay. Thank you. Now, as a section boss, you

1 obviously directed your workforce?

2 A. (Indicates yes).

3 Q. Is that a yes?

4 A. Yes.

5 Q. Okay. Did you have the authority to hire or fire?

6 A. No.

7 Q. Okay. Did you refer that to one of your  
8 superiors?

9 A. Can you rephrase that?

10 Q. Yes. If you had a --- and I'm just assuming ---  
11 just for argument sake, if you had an employee that  
12 was a problem, could you recommend that they be  
13 removed?

14 A. Yes.

15 Q. Okay. Did you have the ability to purchase  
16 supplies or equipment?

17 A. No.

18 Q. Did you have the ability to requisition supplies  
19 or equipment?

20 A. I could ask.

21 Q. You could ask. Did the supplies or the equipment  
22 you asked for, was that normally approved?

23 A. Yes.

24 Q. Okay. Let's talk about rock dust on and around  
25 the section. That last Saturday that you worked, did

1 you have an occasion to walk down the section belt?

2 A. Not on a fire run.

3 Q. What condition was that belt in?

4 A. Can you rephrase that?

5 Q. Was the rock dust in good shape on the belt?

6 A. For the most part, yes.

7 Q. Was there any float coal dust along that belt?

8 A. Yes.

9 Q. Did you spread additional rock dust to take care  
10 of that float coal dust?

11 A. Yes. We had a trickle duster that we would run.

12 Q. And you think that took care of the float dust?

13 A. Yes.

14 Q. Did you do any specific dusting either by hand or  
15 with maybe a machine-mounted duster along the belt  
16 that night?

17 A. On the belts, hand dust.

18 Q. Okay.

19 A. Well, and with the use of the trickle duster.

20 Q. Sure. How much dust would that trickle duster  
21 hold?

22 A. You can, I know, put 15 bags in it.

23 Q. Did you normally keep it full?

24 A. Yes.

25 Q. Do you recall if you loaded it up on Saturday

1 night?

2 A. Before I left?

3 Q. Uh-huh (yes).

4 A. No.

5 Q. Okay. Had you loaded it up any time during the  
6 night that night?

7 A. I don't know.

8 Q. Okay. Did you normally fill it up before you left  
9 at the end of your shift?

10 A. Yes.

11 Q. Okay. When you came on the section Saturday  
12 night, was that trickle duster full, halfway full or  
13 empty?

14 A. I wasn't the one who inspected it. It was running  
15 when we showed up.

16 Q. Okay. Who normally kept over that trickle duster?

17 A. Myself sometimes and the scoop operator.

18 Q. Who was the scoop operator?

19 A. Daniel Davis.

20 Q. Did he mention anything about that trickle duster  
21 that night?

22 A. No.

23 Q. Okay. What condition was the belt in as far as  
24 spilled coal or accumulations? Were there any places  
25 that were problematic?



1 A. No.

2 Q. Okay.

3 ATTORNEY MCCUSKEY:

4 Erik, if you don't mind, are we --- I

5 just wasn't sure which belt you were talking about.

6 MR. SHERER:

7 I'm referring to the section belt.

8 ATTORNEY MCCUSKEY:

9 In the area of his section?

10 MR. SHERER:

11 Yes.

12 ATTORNEY MCCUSKEY:

13 Okay.

14 BY MR. SHERER:

15 Q. When's the last time that your crew had to --- or  
16 anybody on your crew had to shovel this belt? Do you  
17 recall?

18 A. We shoveled the tailpiece. We never went down the  
19 belts and shoveled.

20 Q. Okay. Was that something that you had to do  
21 regularly?

22 A. The tailpiece?

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

24 A. Just dead work, meaning, you know, we're not  
25 running. Find something to do.

1 Q. Would that be once a week, once every two weeks?

2 A. When we were not producing coal.

3 Q. When you had time to shovel the tail?

4 A. It was quite often.

5 Q. Quite often, okay. Would it be more than once a  
6 week, just on average?

7 A. Yes.

8 Q. Okay. Did you have any place along the belt that  
9 you occasionally had spillage that had to be shoveled  
10 up?

11 A. No.

12 Q. So it operated fairly well?

13 A. It was new belt, new structure, new beltline.

14 Q. Thank you. Did you have any equipment chargers on  
15 the section or the mouth of the section?

16 A. Yeah, scoop chargers.

17 Q. Where were those at, please?

18 A. One of them is located behind the power center.  
19 And this is as you advance.

20 Q. Sure.

21 A. One would be located behind the power center and  
22 one in front, meaning the power center charging back  
23 here, just anywhere would be a charger.

24 Q. Okay. As a normal practice, how many breaks back  
25 from the face did you keep your power center?

1 A. Sometimes we'd be three lines up and not move  
2 three crosscuts.

3 Q. Would you go past four or five crosscuts?

4 A. No.

5 Q. Okay. So you tried to keep it moved up pretty  
6 close?

7 A. Within three.

8 Q. Okay. Within three. When you moved up, where  
9 would the power center be located in relationship to  
10 the last open break?

11 A. It would be Three --- well, two crosscuts would  
12 have been 15 foot back from the coal --- the corner of  
13 the block of the --- where the feeder line ---.

14 Q. So you routinely kept it between two and three  
15 breaks outby?

16 A. Yes.

17 Q. You guys moved a lot?

18 A. Well, it was about every other night, yes.

19 Q. Okay. How many buggies were you running on that  
20 section?

21 A. Two.

22 Q. Did you ever have to hang diagonal curtains?

23 A. Yes.

24 Q. Was that a regular occurrence?

25 A. No.

1 Q. Okay. When was the last time the methane monitors  
2 on the miners were calibrated?

3 A. I don't know.

4 Q. You didn't do that on your shift?

5 A. No. I don't do the books or the --- if the  
6 electrician did it, I didn't know about it or he  
7 didn't alert me to the fact that he did do it.

8 Q. Have you ever seen them calibrate those monitors?

9 A. Yes.

10 Q. Do you recall if it was in the past month or so?

11 A. No.

12 Q. Have you ever seen anybody remove the face plate  
13 on the monitor readouts?

14 A. No.

15 Q. Okay. Have you ever seen any of those monitors  
16 bridged out?

17 A. No.

18 Q. Ever seen anything that would interfere with the  
19 function of the sensor head, like a bag over it  
20 or ---?

21 A. No.

22 Q. Okay. Thank you. Who did the pre-shift for you  
23 when you came in Saturday night?

24 A. Edward, Dino, Jones.

25 Q. Do you recall if there was anything out of the

1 ordinary about the pre-shift exam book?

2 A. No. Business as usual. Nothing whatsoever.

3 Q. Okay. And did you do a pre-shift at the end of  
4 your shift Saturday night?

5 A. Yes.

6 Q. Was there anything unusual about that?

7 A. No. As far as me doing it or when I actually  
8 examined?

9 Q. What you found.

10 A. No.

11 Q. Okay. Everything was within normal tolerance?

12 A. Yes.

13 Q. Okay.

14 A. Because if it wasn't, I couldn't leave anyway,  
15 so ---.

16 Q. Now, did you call that out Saturday night or ---?

17 A. No, it was brought out.

18 Q. You took it out. Did you enter it in the books on  
19 Saturday night?

20 A. Yes, I did. Should have been maybe Saturday night  
21 or Sunday morning.

22 Q. Okay. When you were --- when they were cutting  
23 break-throughs on this section, did anybody ever tell  
24 you to cut into the wind, cut into the air?

25 A. No.

1 Q. Okay. Thank you. Do you know who was in charge  
2 of ventilation changes in this area of the mine?

3 A. Who carried them out?

4 Q. Yes.

5 A. Massey or --- can you rephrase that?

6 Q. Yes. What individual did ventilation changes that  
7 would affect the 22 Headgate?

8 A. I do not know.

9 Q. Do not know. Have you ever seen anybody making  
10 any ventilation changes?

11 A. No.

12 Q. Okay. Are you aware of any ventilation changes  
13 that were associated with this particular section?

14 A. Only the one you spoke of in March.

15 Q. Okay. Now, that was down on the tailgate of the  
16 longwall.

17 A. Okay. What about as the longwall advanced, we  
18 understand that the mule train advanced to the point  
19 where everything coming off the 22 Headgate section  
20 had to be rerouted. We understand at some point in  
21 time the belt had to --- that used to dump on the  
22 longwall belt had to be rerouted, I guess the track  
23 possibly had to be rerouted, and there were several  
24 ventilation changes associated with advancement of the  
25 longwall. Do you recall those?

1 A. Yes. I remember this belt was took out of  
2 service, and then we traveled another way to our  
3 section instead of coming this way.

4 Q. Do you recall about when that happened?

5 A. No.

6 Q. Okay.

7 ATTORNEY WILSON:

8 Let's clarify that for the record. You  
9 said that they took out this belt. You were referring  
10 to the belt --- that crossover from the 22 Tailgate to  
11 the 22 Headgate; is that right?

12 A. Well, no. I think this belt stayed in. And once  
13 --- what he was speaking of, the longwall got to this  
14 point, we could no longer travel this way. So we  
15 traveled on down through north mains to get to our  
16 section.

17 ATTORNEY WILSON:

18 So instead of traveling up the headgate  
19 of the longwall, ---

20 A. Yes.

21 ATTORNEY WILSON:

22 --- you traveled up the Six North, Seven  
23 North ---

24 A. Uh-huh (yes).

25 ATTORNEY WILSON:

1 --- main entries?

2 A. And then this is the route we took to get to the  
3 section after this was in this area.

4 ATTORNEY WILSON:

5 And then did it also reroute the belt to  
6 go outby ---?

7 A. Yes, out to this Six or Seven North Head or this  
8 area.

9 ATTORNEY WILSON:

10 This area, meaning the area where the  
11 Glory Hole was located?

12 A. Yes.

13 ATTORNEY WILSON:

14 Okay. Erik?

15 BY MR. SHERER:

16 Q. Did that occur after Christmas or before  
17 Christmas?

18 A. I don't know.

19 Q. Don't know. So you don't recall when you stopped  
20 traveling from the longwall up to the point where you  
21 --- I guess you took the mantrip directly onto the  
22 section?

23 A. Yes. I don't recall the exact time.

24 Q. Do you recall an approximate time?

25 A. January.



1 Q. Okay. Did you ever use explosives on this ---

2 A. No.

3 Q. --- section? Okay.

4 ATTORNEY WILSON:

5 Can I just follow up with one question?

6 MR. SHERER:

7 Sure.

8 ATTORNEY WILSON:

9 I believe earlier you stated that you

10 started driving the headgate in February; is that ---?

11 A. I don't --- I cannot recall or I don't know exact  
12 times. A lot has happened to me since ---

13 BY MR. SHERER:

14 Q. Sure.

15 A. --- this, you know, right here, so I'm trying to  
16 recall the exact times. We sometimes traveled this  
17 way, and then we found it better to go this way as far  
18 as the --- but when exactly that was, I do not know.

19 Q. Okay. And we understand that, sir. We're just  
20 trying to piece together a lot of different pieces of  
21 the puzzle.

22 A. The problem I had was my schedule was days,  
23 evenings, three days off, you know, and I never could  
24 --- I was never in the same time zone. You know, I  
25 was always walking around going, is tomorrow Sunday?

1 Days ran into evenings, and it was real hard to ---

2 Q. I can imagine.

3 A. --- remember everything.

4 Q. I can certainly sympathize with that. I've worked  
5 similar schedules. And we're not trying to pin you  
6 down ---

7 A. Yeah, I understand.

8 Q. --- to exact dates or anything.

9 ATTORNEY WILSON:

10 I just wanted to make sure if there was  
11 something contradictory in what you said, I just  
12 wanted to give you a chance to try and clear it up.

13 A. Yeah. I'm not trying to contradict myself, but I  
14 really don't know the exact ---

15 BY MR. SHERER:

16 Q. Sure.

17 ATTORNEY WILSON:

18 Okay.

19 A. --- dates and times of when exactly I was here,  
20 you know, to over here.

21 BY MR. SHERER:

22 Q. We're just trying to get some rough ideas of when  
23 things happened.

24 A. Yes.

25 Q. Our real concern for exact dates is about the week

1 prior to the explosion.

2 A. Okay.

3 Q. And I'm sorry I didn't explain that earlier.

4 Okay. Did you ever have any occasion to go down  
5 either the headgate or the tailgate of the current  
6 longwall?

7 A. Yes.

8 Q. When did you do that roughly?

9 A. Christmas.

10 Q. Christmas. Was there any specific incident or  
11 reason that you went down?

12 A. I was putting temporary supports on the headgate  
13 side.

14 Q. On the headgate, okay.

15 A. I was installing temporary roof support, cribs and  
16 jacks, hand jacks.

17 Q. Was there any specific reason that you were doing  
18 that?

19 A. We were trying to supplement the roof support on  
20 the headgate on this end, the headgate entry or the  
21 --- this entry here.

22 Q. Okay. Number Three entry ---?

23 A. Number Three entry on the headgate, yes.

24 Q. Okay. Now, we understand that there was something  
25 going on and they were --- somebody was building

1 Kennedy stoppings along there. Was that about the  
2 same time that you ---?

3 A. Yes.

4 Q. Thank you. What was the conditions --- do you  
5 remember any water down in the headgate when you went  
6 back there?

7 A. Yes.

8 Q. Do you recall roughly where that water was, where  
9 it became impassable?

10 A. None of it was impassable, ---

11 Q. Okay.

12 A. --- to me, my, you know, ---.

13 Q. How deep in water did you get?

14 A. Waist high.

15 Q. That's not too bad. Okay. Thank you. Just for  
16 the record, how tall are you?

17 A. Five foot, nine.

18 Q. Okay. I'm kidding.

19 MR. SHERER:

20 That's all the questions I've got for  
21 you. Terry?

22 EXAMINATION

23 BY MR. FARLEY:

24 Q. Mr. Bowling, if the last shift you worked at UBB  
25 prior to the explosion was Friday, April 3rd, ---

1 ATTORNEY WILSON:

2 Saturday, April 3rd.

3 BY MR. FARLEY:

4 Q. --- excuse me, Saturday, April 3rd, when were you  
5 due back to work?

6 A. Sunday was a --- they gave us a holiday. So I  
7 should have worked Sunday. I would have been off  
8 Monday, Tuesday, Wednesday and come back to work on  
9 dayshift Thursday for the dayshift on the headgate  
10 section.

11 Q. Okay. So you were due back on Thursday?

12 A. Yeah. So I actually got an extra day off for  
13 once, and I was quite happy about that.

14 Q. Okay. In the week preceding the accident,  
15 specifically Tuesday, Wednesday and Thursday of the  
16 week before, was the ventilation better than on  
17 Headgate 22 than it was on Thursday and Friday?

18 A. I remember the two weeks --- what I spoke to you  
19 about, the two weeks --- around the two-week period  
20 when my air, the CFM, was increased to a more workable  
21 content or, you know, during that time, the last two  
22 weeks before my last shift. And for what reason I ---  
23 I spoke to him about the ventilation was ordered to be  
24 changed down in that area. That's the best of my  
25 knowledge about why it was to that point.

1 Q. The last --- the Saturday before the explosion and  
2 the Friday before the explosion, was your ventilation  
3 on those two days a little bit less than it had been  
4 on the previous three days, as you recall?

5 A. I don't --- I can't recall. I don't know.

6 Q. Okay. While you were section boss on Headgate 22,  
7 did you ever have an occasion where it was necessary  
8 to pick up the mine phone, call outside and talk to  
9 the mine foreman, the shift foreman, the  
10 superintendent or anybody else and say, hey, my  
11 ventilation right now is not sufficient to produce  
12 coal?

13 A. No.

14 Q. Okay. Did any supervisor, superior, ever call  
15 underground and ask you to leave your section to go to  
16 any door or regulator and make an adjustment?

17 A. No.

18 Q. Where do you work now?

19 A. I work at the Marsh Fork Mines for Marfork Coal  
20 Company.

21 Q. What are you doing there now?

22 A. Mine foreman.

23 Q. Is that a promotion for you?

24 A. I wouldn't call it a promotion, but yes, it was  
25 --- from where I worked at here to that.

1 Q. While you were a section boss on Headgate 22  
2 section, did any of the miners on your crew approach  
3 you at any time and complain that they did not have  
4 sufficient ventilation to mine coal?

5 A. Yes.

6 Q. How often did that occur?

7 A. Maybe once a week.

8 Q. Now, how would you ordinarily respond to those  
9 complaints?

10 A. I would take care of the issue or physically walk  
11 to that point and be shown what was wrong and then ---  
12 in their opinion, and either explain myself or take  
13 action.

14 Q. Were you usually able to resolve the issue?

15 A. Yes.

16 Q. During your last shift on Headgate 22 on Saturday  
17 evening, April 3rd, when you arrived on the section  
18 that evening, was there a crosscut turned to the right  
19 in the Number Two entry that had not been holed  
20 through yet?

21 A. Yes.

22 Q. Okay. Do you recall detecting any methane in the  
23 face of that crosscut?

24 A. Yes.

25 Q. Do you recall how much?

1 A. No.

2 Q. Would it have been less than one percent?

3 A. Yes.

4 Q. Okay. At any time during your last shift on April  
5 3rd on Headgate 22, did you detect any methane in  
6 excess of one percent?

7 A. Yes.

8 Q. Okay. What time and where?

9 A. It was the face of three, but I --- I know I said  
10 one percent, but I don't know the exact time. But  
11 that was one of the times that I would --- you know,  
12 doing my exam. So it was every two hours on a two-  
13 hour period.

14 Q. Okay. So sometime during your on-shift --- during  
15 one of your on-shift examinations you detected methane  
16 in excess of one percent in the Number Three entry  
17 face; is that correct?

18 A. I don't know. I just --- I mean, I detected  
19 methane. It normally ran between five-tenths and one  
20 percent, you know. That was the normal range for  
21 methane in the faces.

22 Q. Okay. Now, was that the face on --- during ---?

23 A. Well, I don't recall the exact time, no.

24 Q. Sometime during the shift on April 3rd; ---

25 A. Yes.



1 Q. --- is that correct? Did it require you to adjust  
2 any ventilation controls?

3 A. Just nails in the curtain. That was our biggest  
4 thing. The roof was high, so you had to use more  
5 nails, you know. If you would skip roof bolt plates,  
6 you know, you would have that void in your curtain,  
7 and you would have to go and sew more nails in it.

8 Q. Now, did you install any --- was it a routine to  
9 install fly boards?

10 A. Yes, and on cycle.

11 Q. Were those installed for back-up curtains or was  
12 that for face ventilation also?

13 A. Face ventilation and back-up curtains, back-up  
14 checks.

15 Q. Okay. The make-up of your production crew on 22  
16 Headgate while you were at UBB, did it include a  
17 person specifically designated as a ventilation  
18 person?

19 A. No. Everybody on the section or face is  
20 responsible for ventilation. I mean, that's how I ran  
21 my section. That's what the company --- the  
22 company --- you know, it's a requirement of everybody  
23 to help, not just one person. And it's required by  
24 me, you know, if --- because everybody needs help, you  
25 know, working.

1 EXAMINATION

2 BY MS. MONFORTON:

3 Q. Mr. Bowling, I just have a couple of follow-up  
4 questions. Was there a gentleman on your crew that  
5 had a nickname Dude?

6 A. Yes, James Griffith.

7 Q. That was Mr. Griffith. So he was the miner man?

8 A. Uh-huh (yes). He was the miner operator.

9 Q. This is a follow-up to what Mr. Farley was saying  
10 because maybe this will --- this was recollection from  
11 a previous witness who talked about Dude. And I think  
12 it was the same day, April 3rd, where they were  
13 running a miner and saw the methane level picking up  
14 on the miner maybe to 1.5 to 1.7. And this witness  
15 said that they told you about it, that you went over  
16 to the power center and that one of the solutions was  
17 going to be to turn the scrubber on, do you remember  
18 that, to flush it out?

19 A. Turn the scrubber on? No. If that was the case,  
20 you would work on your ventilation.

21 Q. Okay.

22 A. And I wasn't made aware or took to the scene of  
23 this going on, ---

24 Q. Okay.

25 A. --- if it even did happen. Nobody approached me

1 and told me, hey, you know, we need to take care of  
2 this or I feel there's a problem.

3 Q. Okay. I'm just trying to --- this is what we've  
4 heard, so I'm just trying to confirm ---.

5 A. No, the miner operator never come to me and said,  
6 hey, we have an issue or a problem. And if he did,  
7 we'd address it.

8 Q. Okay. Again, back to the --- what Mr. Farley was  
9 asking you about. We've heard from a number of  
10 witnesses who've testified and talked about the  
11 ventilation on that Headgate 22, and they said it did  
12 seem like it got better in a couple of weeks ---

13 A. Uh-huh (yes).

14 Q. --- before the explosion. And several have said  
15 that Tuesday, Wednesday, Thursday of that prior week  
16 was better and they could actually see the high  
17 voltage sign swinging, but then they thought that on  
18 Friday and Saturday it got bad again and that I think  
19 one person said, you know, it was bad like the way it  
20 was when I first started up there. So I'm just trying  
21 to refresh your memory.

22 A. You know, I don't remember. And this is the thing  
23 that --- it's so hard to recall everything. You know,  
24 I'm still crunching numbers in my head with my current  
25 employment. So it's real hard --- I done a pre-shift

1 for the --- you know, before I left, so you know, my  
2 book states, you know, what --- I done a book, so  
3 that's my best evidence of the way I left that section  
4 that night. And you know, so it is hard for me to  
5 realize everything --- every little detail. You know,  
6 it's --- the way I worked, you know, the swinging of  
7 shifts was really --- really has me turned around on  
8 exact dates and times, but no, I don't remember ---  
9 well, I don't know of anything that was different on  
10 the Thursday and Friday.

11 Q. Okay.

12 A. And you could have been talking to somebody on the  
13 other crew, dayshift, you know, or the --- you know,  
14 if we could break it down and specify which crew felt  
15 what or, you know, or --- you know, I couldn't tell  
16 you because I didn't notice any difference. I know  
17 the two weeks prior our air was better. That's what  
18 --- I do know that to be fact. And that's the way I  
19 feel about that, you know.

20 Q. That's fair enough.

21 A. Thank you.

22 MS. MONFORTON:

23 I don't have any other questions.

24 MR. SHERER:

25 I have a couple.

1 RE-EXAMINATION

2 BY MR. SHERER:

3 Q. When did you start bossing, Mr. Bowling?

4 A. For Performance Coal or ---?

5 Q. Just in general.

6 A. 2000 --- well, I substituted in 2002.

7 Q. Okay. And you've been section bossing pretty much  
8 since then?

9 A. No, since '07.

10 Q. Since you've been at Upper Big Branch, I think you  
11 mentioned you may have gone away and come back, ---

12 A. Yes.

13 Q. --- had you been section bossing that entire time?

14 A. No.

15 Q. What else did you do?

16 A. Between my layoff of the coal mines?

17 Q. Yes.

18 A. I worked at the Federal Correctional institution  
19 at Beckley, West Virginia, the United States Marine  
20 Corps.

21 Q. Okay. Now, when you came back to Upper Big  
22 Branch, had you done anything besides running the  
23 section at Upper Big Branch?

24 A. Had I done things in the past, yes. I worked at  
25 the mines prior, you know, to my leaving and coming

1 back.

2 Q. But since you came back, had you just worked as a  
3 section boss?

4 A. At Performance, yes. That's all I had done.

5 Q. Do you recall any instance where you --- anybody  
6 on the section reported greater than two percent  
7 methane anywhere in this mine that you were bossing?

8 A. Can I recall somebody actually reporting it?

9 Q. Yes.

10 A. No.

11 Q. Okay.

12 A. I haven't seen it in writing or if I did, it was  
13 --- well, I have, but it's been bath house talk. I've  
14 never seen it in a book where it showed, you know, two  
15 percent methane.

16 Q. Okay. And that was up, you know, in this area for  
17 a long time ago, a year ago.

18 Q. And you're pointing to the tailgate of the  
19 longwall?

20 A. When it was drove, yeah. That's all known fact,  
21 so ---.

22 Q. Were you involved with the driving of this?

23 A. No, I wasn't. I was on the Number Three section.

24 Q. Okay. Have you ever had any instance where you  
25 had to cut the power to the section because of

1 methane?

2 A. No.

3 Q. Okay. At what point would you cut the power to  
4 the section because of methane?

5 A. At two, two-and-a-half percent, two percent, I  
6 would probably pull the power, adjust ventilation, if  
7 I had a problem with it. But I never had to do that  
8 because I do ---.

9 Q. Where does that two percent have to be?

10 A. Anywhere in the mines, around my feeder or  
11 anywhere. If I detect it, we're down.

12 Q. Okay. Thank you. When you were working on the 22  
13 Headgate, was it routine for people to call in and say  
14 there were inspectors on the property?

15 A. No.

16 Q. Did you ever hear that?

17 A. Yes.

18 Q. How common was it?

19 A. How common? It wasn't common where I worked at.  
20 Ellis --- you know, Ellis, I bath house at Ellis, so  
21 there wasn't no --- I don't think there's any phones  
22 out there in that shack they had at the time, you  
23 know, to do any --- call anybody.

24 Q. Okay. Who was in charge of ventilation at this  
25 mine?

1 A. Engineering. Can you rephrase that? On what  
2 level?

3 Q. Who was in charge of ventilation plans at this  
4 mine?

5 A. Engineering.

6 Q. And who would make up engineering; do you know?

7 A. No, I do not know.

8 Q. Okay. Are you familiar with Erik Lilly?

9 A. Yes.

10 Q. Would he be an engineer in charge of ventilation?

11 A. I don't know about being in charge, but I think he  
12 is --- I do believe he's an engineer.

13 Q. Do you have any reason to think that he worked on  
14 ventilation at this mine?

15 A. Yes.

16 Q. Okay.

17 A. Physically, no, but ---.

18 Q. Making plans?

19 A. Yeah.

20 Q. Okay. Who was in charge of directing ventilation  
21 changes at this mine?

22 A. The last --- it was him and from what I  
23 understand, it was MSHA who would make us change our  
24 ventilation.

25 Q. MSHA is not in charge of ventilation anywhere in



1 this country.

2 A. they're not, but they force or enforce their  
3 version of it.

4 Q. We enforce our regulations and policies.

5 A. Okay.

6 Q. Who would direct the workforce to make those  
7 changes; do you know?

8 A. I guess it would be the mien foreman.

9 Q. And who was that?

10 A. Terry Moore.

11 Q. Okay. Thank you. Do you think the ventilation in  
12 this mine was adequate prior to the explosion?

13 A. Yes.

14 Q. Okay.

15 A. And that's only --- I'm only speaking for my area.

16 Q. Okay.

17 A. That's Headgate 22.

18 Q. Do you think the rock dust around Headgate 22 was  
19 adequate?

20 A. Yes.

21 Q. Okay. Thank you. In your opinion, and I realize  
22 this is speculation, what do you think may have caused  
23 this explosion?

24 A. I don't know.

25 Q. Thank you.

1 RE-EXAMINATION

2 BY MR. FARLEY:

3 Q. Again, April 3rd, Saturday evening, do you recall  
4 any problems with the section power center or any of  
5 the electrical equipment? And I mean electrical  
6 problems.

7 A. No.

8 Q. The reason I ask is we've heard from one  
9 individual who worked on April the 5th that Jones may  
10 have called out sometime in the afternoon talking  
11 about a power center or something and he was using the  
12 word phasing.

13 A. The only reason I can see him using the word  
14 phasing, I had a shuttle car down, single phase in the  
15 cable, which was very common. See, I was never  
16 alerted to anything that was --- when he called out  
17 the pre-shift, you know, so --- on Saturday. This is  
18 Saturday, that afternoon. And I had no --- I don't  
19 know about any power center problems.

20 Q. All right. Thank you.

21 RE-EXAMINATION

22 BY MS. MONFORTON:

23 Q. Mr. Bowling, I just have one more questions. In  
24 terms of you being a foreman on that section and then  
25 there were several other men who were foremen on that

1 section but for other shifts, was there an opportunity  
2 for you to compare notes with each other, share  
3 information? How would --- you know, because you ---  
4 you know, you see things going on in the section and  
5 they ---.

6 A. The oncoming and outgoing?

7 Q. Yes. How does that work?

8 A. Yes. Every --- well, just about every day we  
9 would stop at 78 and talk about today's --- you know,  
10 what happened, you know, communicate, which to me is a  
11 good tool to, you know, handle things, take care of  
12 business, know what the other one is getting into or  
13 what can you expect when you show up.

14 Q. Right.

15 A. And you know, that's also through the means of a  
16 pre-shift and word of mouth. So we did stop and speak  
17 on a daily basis.

18 Q. So in your couple of months working up on that  
19 section since you started it, were yourselves and the  
20 other section foremen, did you have an agreement about  
21 how things were going on the section or did you guys  
22 have a difference of opinions about how that section  
23 was going?

24 A. Maybe a difference of opinion, but --- I'll speak  
25 --- and his name is Dino. To me, Dino was the more

1 experienced foreman. He had 20 years plus probably in  
2 the coal mines, and he kind of led me --- was more of,  
3 you know, of a mentor. If I had questions, I'd go to  
4 him because he was --- you know, been around a long  
5 time. And he was a straight dayshift foreman on that  
6 headgate.

7 Q. So when you would compare notes about how things  
8 were going in this section, what were you hearing from  
9 him?

10 A. We'd just talk normally about, you know, my miner  
11 went down over a cable splice or something, you know,  
12 and he had to do this to --- you know, maybe this  
13 ain't bolted because that equipment might be down in  
14 it or --- nothing really ever too exciting, except,  
15 you know, I'd have to put up belt hangers that evening  
16 because he didn't get to them. You know, that's the  
17 kind of things, like sorry, old buddy, but you're the  
18 younger guy, you'll heal faster than me, so you go put  
19 up the belt hangers this evening, stuff like that.  
20 But you know, he was a 20-year --- I'd say  
21 20-some-year coal miner, so he pretty much led the  
22 show up there and we all followed him, so ---.

23 Q. And you don't recall him talking to you about  
24 ventilation problems that he felt were up on that  
25 section?

1 A. The only time he would speak of what was a problem  
2 would be when he --- let's say he had a federal mine  
3 inspector that day and he had to do something to abate  
4 the violation that he had received on that day. You  
5 know, and normally --- or I would come in, you know,  
6 what happened these three days, and you know, Dino  
7 would tell me while I was off, you know, and then  
8 that's what he'd tell me, what they done to correct  
9 it. And you know, we keep going on, so ---.

10 Q. Thank you.

11 EXAMINATION

12 BY MR. WILSON:

13 Q. Mr. Bowling, I just had a couple clarification or  
14 follow-up questions, if you don't mind. You said part  
15 of your responsibilities was to submit requisition  
16 forms for supplies; is that right?

17 A. If I needed something, I'd get on the phone and  
18 call out and say, hey, I need some more cable bolts.  
19 I'm out of cable bolts. And then, you know, they  
20 would bring it from the outside to underground as  
21 quick as they could. But if it was something I needed  
22 right then and there, it would have to be right then  
23 and there.

24 Q. What other types of supplies would you request  
25 other than bolts?

1 A. Bolt-related supplies?

2 Q. Any kind of supplies.

3 A. Block, stopping block, plaster, B-Bond. We used  
4 B-Bond instead of plaster, a cement mixture. Block,  
5 B-Bond, bolts, we call them pie pans, roof disks, rock  
6 dust, bag hand dust, bolt dust for my breeder duster,  
7 you know, and then hand dust for my trickle dusters  
8 and for the face.

9 Q. What about PPE, personal protective equipment,  
10 would you ever request that for your crew?

11 A. Well, they were supposed to have it on them,  
12 gloves, glasses and stuff like that, rubber gloves for  
13 stoppings and glasses and metacarpal gloves to bolt  
14 with.

15 Q. So if somebody needed gloves, how would they make  
16 a request?

17 A. They had to go upstairs and say --- ask the people  
18 who had it locked up, you know.

19 Q. Did you ever have a request for any supplies  
20 denied?

21 A. No. See, I would never physically write it on  
22 paper and sign my name on it and hand it to a  
23 purchasing clerk and him to say no --- yes or no or it  
24 go up the chain and be denied. But you know, if  
25 sometimes I need a pair of gloves, I'd walk up and ask

1       them, you got a pair of gloves? I got a bolt man who  
2       needs it. Here you go. Here's a hammer, you know,  
3       tape measure.

4       Q. I have just one other question. You stated  
5       earlier that sometimes you would find that there was  
6       as difference in the amount of air that you would  
7       measure when you would run your faces compared to what  
8       was in the pre-shift report from the previous shift.

9       A. Well, that's only in the last open break. Behind  
10      the curtain reads were never in the book, just the  
11      last open break.

12     Q. How often would there be a difference in those air  
13      measurements; do you recall?

14     A. Well, it depends on the machine. He could be  
15      using a --- the old anemometers, you know, and I could  
16      have a small one or --- the difference where he took  
17      it at, the measurements. It could be higher where I  
18      took it. You know, he would have to put an exact  
19      arrow on a rib exactly where he paced his steps and  
20      probably left the anemometer sitting right there for  
21      me. That's about how close we would have to do it to  
22      get exactly the same reading, you know, as far as down  
23      to the ones and tens.

24     Q. So how often would there be a difference? Are you  
25      saying like all the time?

1 A. Yeah. I mean, all the time there would be a  
2 hundred --- a couple hundreds or, you know, difference  
3 on the readings, but nothing ever alarming.

4 Q. Okay.

5 ATTORNEY WILSON:

6 John, Dave, did you have any follow-up or  
7 clarifying questions?

8 ATTORNEY HARDY:

9 No.

10 ATTORNEY MCCUSKEY:

11 I don't have any.

12 ATTORNEY WILSON:

13 All right. Then Mr. Bowling, on behalf  
14 of MSHA and the Office of Miners' Health, Safety and  
15 Training, I want to thank you for appearing and  
16 answering questions. Because we will be interviewing  
17 additional witnesses, we request that you not discuss  
18 your testimony with anyone else. After questioning  
19 other witnesses, we may call you if we have any  
20 follow-up questions. And again, if you think of any  
21 additional information that you think might be  
22 helpful, please contact us with that information.  
23 Before we finish and go off the record, I  
24 wanted to give you an opportunity. If there's  
25 anything else that you would like to add to the



1 record, you may do so now.

2 A. No, I don't have anything.

3 ATTORNEY WILSON:

4 Okay. Then again, thank you for your  
5 appearance and cooperation, and we'll go off the  
6 record.

7 ATTORNEY MCCUSKEY:

8 Bob, before you go off the record, my  
9 customary request, and I want to make sure it's my  
10 client's request, I've talked to him earlier, Brandon,  
11 do I understand that you'd like to review your  
12 transcript to make sure that it's accurate before it's  
13 published?

14 A. Yes.

15 ATTORNEY MCCUSKEY:

16 And so he's making that request, that as  
17 soon as it's available, that you provide it.

18 ATTORNEY WILSON:

19 And what we'll do is we'll notify you and  
20 we'll give you an opportunity to come in here at the  
21 Mine Academy and review the transcript. We're not  
22 going to release any until they're officially  
23 released.

24 A. This is all made public to ---?

25 ATTORNEY WILSON:

1 Eventually --- at some point later on.

2 And before we make it public, we'll contact your  
3 attorney, and we can set up a time for you to come in  
4 and we'll provide you with a room, you can sit down  
5 and review your transcript. And if there are any  
6 corrections to it, you can make those at that time.

7 A. Just times --- just times, that's the only thing I  
8 don't ---.

9 MS. MONFORTON:

10 Yeah, the dates.

11 A. You know, I'm very sorry I can't give you exact  
12 times or dates because ---.

13 MR. SHERER:

14 Let's go off the record. We'll discuss  
15 that, if you don't mind.

16 ATTORNEY WILSON:

17 Okay. Thank you. And we'll conclude and  
18 go off the record.

19 \* \* \* \* \*

20 CONFIDENTIAL STATEMENT UNDER OATH

21 CONCLUDED AT 3:30 P.M.

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1 STATE OF WEST VIRGINIA )

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CERTIFICATE

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



*Alison Salyards*