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**Transcript of the Testimony of Charles Lilly**

**Date:** August 24, 2010

**Case:**

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STATEMENT UNDER OATH  
OF  
CHARLES LILLY

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, August 24, 2010, beginning at 1:00 p.m.

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DESCRIPTION

IDENTIFIED

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Subpoena

9\*

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Return Receipt

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\* Exhibit not attached

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ATTORNEY WILSON:

Good afternoon. My name is Bob Wilson.

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

MR. FARLEY:

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

ATTORNEY KOERBER:

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

MS. MONFORTON:

Mr. Lilly, I'm Celeste Monforton. I'm with the Governor's independent team.

ATTORNEY WILSON:

Today is August 24, 2010 and we're here at the Mine Academy with Charles Lilly to conduct an interview as part of the investigation into the explosion that occurred at the Upper Big Branch Mine-



1 South on April 5th, 2010.

2 First of all, Mr. Lilly, I'm going to ask

3 that you face the court reporter and I'll ask that she  
4 swear you in.

5 -----

6 CHARLES LILLY, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
7 AS FOLLOWS:

8 -----

9 ATTORNEY WILSON:

10 Mr. Koerber has some matters that he  
11 wants to go over first of all pertaining to the  
12 subpoena that you received.

13 ATTORNEY KOERBER:

14 Sir, would you please state your full  
15 name for the record and spell your last?

16 A. Charles Benjamin Lilly, L-I-L-L-Y.

17 ATTORNEY KOERBER:

18 And would you please state your address  
19 and your telephone number?

20 

21 ATTORNEY KOERBER:

22 Sir, are you expecting an attorney or  
23 some other personal representative to be with you here  
24 today?

25 A. No.

1 ATTORNEY KOERBER:

2 Are you appearing here today as a result  
3 of receiving a subpoena?

4 A. Yes, sir.

5 ATTORNEY KOERBER:

6 And this is a copy of that subpoena that

7 I would like to be --- have marked as Exhibit One.

8 And this is a copy of the return receipt card signed  
9 by Sandra ---.

10 A. My wife.

11 ATTORNEY KOERBER:

12 Yes, Sandra. Okay.

13 A. And they served one on me.

14 ATTORNEY KOERBER:

15 Yes. You got double whacked.

16 A. Yes.

17 ATTORNEY KOERBER:

18 That's Exhibit One and Two.

19 ATTORNEY WILSON:

20 I'm marking those as Exhibit C. Lilly and

21 C. Lilly Two.

22 (Exhibits C. Lilly One and Two marked for  
23 identification.)

24 ATTORNEY KOERBER:

25 Sir, prior to the interview, you and I

1 spoke briefly about the statutory requirements that  
2 the director offer each subpoenaed witness a \$40 a day  
3 witness fee plus mileage so long as you're driving  
4 your personal vehicle, and reimbursement for any  
5 tolls. Do you want to fill out the forms and accept  
6 that money or do you want to decline?

7 A. I decline. I'm working and I'm in their vehicle.

8 ATTORNEY KOERBER:

9 Okay. Thank you, sir.

10 ATTORNEY WILSON:

11 Thank you. Mr. Lilly, government

12 investigators and specialists have been assigned to  
13 investigate the conditions and the circumstances  
14 surrounding the fatalities that occurred at the Upper  
15 Big Branch Mine-South on April 5th, 2010. The  
16 investigation is being conducted by MSHA under Section  
17 103(a) of the Federal Mine Safety and Health Act and  
18 by the West Virginia Office of Miners' Health, Safety  
19 and Training.

20 All members of the Mine Safety and Health

21 Administration Accident Investigation Team and all  
22 members of the State of West Virginia Accident  
23 Investigation Teams participating in the interviews of  
24 the investigation shall keep confidential all  
25 information that is gathered from each witness who

1 provides a statement until witness statements are  
2 officially released. MSHA and the State of West  
3 Virginia shall keep this information confidential so  
4 that other ongoing enforcement activities are not  
5 prejudiced or jeopardized by a premature release of  
6 information. This confidentiality requirement shall  
7 not preclude investigation team members from sharing  
8 information with each other or with other law  
9 enforcement officials. Everyone's participation in  
10 this interview constitutes their agreement to keep  
11 this information confidential.

12 After the investigation is complete, MSHA  
13 will issue a public report detailing the nature and  
14 causes of the fatalities in hope that greater  
15 awareness about the causes of accidents can reduce  
16 their occurrence in the future. Information obtained  
17 through witness interviews is frequently included in  
18 those reports. Your statement may also be used in  
19 other proceedings.

20 You may have a personal representative  
21 during the taking of the statement. And you've  
22 already stated that you do not have a representative  
23 with you; correct?

24 A. Right.

25 ATTORNEY WILSON:

1 This is not an adversarial proceeding.

2 Formal Cross Examination will not be permitted.

3 However, each of the parties will be allowed to ask  
4 follow-up questions. We will be interviewing other  
5 witnesses, so we ask that you not discuss your  
6 testimony with anyone outside of this room.

7 A court reporter will be recording the  
8 interview, so please speak loudly and clearly. If you  
9 do not understand the question asked, please ask that  
10 the question be rephrased. Please answer each  
11 question as fully as you can, including any  
12 information that you may have learned from someone  
13 else. If at any time you need to take a break, please  
14 let me know and we can go off the record for a short  
15 break.

16 After we have finished asking questions,  
17 we will provide you an opportunity to make a statement  
18 or to provide us with any additional information that  
19 you think may be important to the investigation. If,  
20 after today's interview, you think of any additional  
21 information, please contact us here at the Mine  
22 Academy. And I'm going to give you a letter dated  
23 today with contact information where you can reach us  
24 here at the Mine Academy.

25 At this time, I will pass it over to Erik

1 Sherer, who is going to start with questioning.

2 A. All right.

3 EXAMINATION

4 BY MR. SHERER:

5 Q. First of all, I want to thank you for coming down  
6 this afternoon, Mr. Lilly. We are investigation this  
7 explosion and we realized that we probably could use  
8 some information from security people just to try to  
9 fit a few pieces together. Roughly how long have you  
10 been associated with the Massey organization?

11 A. I started there, I think, January the 29th, 2001.

12 Q. Okay. Have you been at Upper Big Branch that  
13 entire time?

14 A. Yes. The location?

15 Q. Yes.

16 A. Not at Upper Big Branch, but at the performance  
17 gate and the area there.

18 Q. Okay. Does that gate also serve for any other  
19 mines in there besides Upper Big Branch?

20 A. Well, there's Progress people that go through  
21 there, and until just a while back, there was River  
22 Fork and Cedar Grove. Well, Cedar Grove has been out  
23 quite a while, but they were there when I was there.

24 Q. Are there other entrances to the Upper Big Branch  
25 Mine facility?

1 A. At that location or ---?

2 Q. Anywhere around there. Is that the only gate you  
3 can use to get into those facilities?

4 A. Right where I am, yes. There's the gate down at  
5 --- well, we call it Big Branch North.

6 Q. And if you went through that other gate, could you  
7 go to the UBB portals?

8 A. No, except through the mine.

9 Q. Okay. Thank you. What all are the duties of the  
10 security guards down there at the gate?

11 A. At the gate, you sign in sales vendors,  
12 deliveries, just anybody that comes in, and their  
13 vehicles and --- or their license number, time in and  
14 time out.

15 Q. Okay. Do you have any, like, monitors or readouts  
16 for anything that's going on in the mine down in the  
17 security gate?

18 A. No, no.

19 Q. Okay. Some mines do, some don't. Do you normally  
20 announce whoever comes on the property up to the mine  
21 facilities?

22 A. We were.

23 Q. You say you were. When did that change?

24 A. Since the explosion. There's new contract people  
25 in there. Sometimes they do, sometimes they don't.

1 Q. Okay. So you've gotten some new personnel since  
2 the explosion?

3 A. Yeah. They're contract people.

4 Q. Okay. Now, did you work on the day of the  
5 explosion?

6 A. No.

7 Q. What was the last shift you worked prior to the  
8 explosion?

9 A. Day before.

10 Q. Day before. Sunday?

11 A. Uh-huh (yes).

12 Q. Did you also work on Saturday?

13 A. Yeah. That would have been --- the day prior was  
14 my last day for that week. We work --- contractors  
15 don't, but the Massey people in-house security work  
16 four on, four off.

17 Q. Okay.

18 A. So the day of the explosion was my first day off.

19 Q. Okay. And you'd been there the previous four  
20 days?

21 A. Right.

22 Q. When does your shift normally start and end?

23 A. 7:00 to 7:00.

24 Q. 7:00 to 7:00. Twelve (12) hour shift. That's a  
25 long shift, buddy.



1 A. You get used to it. Nothing to it after a while.

2 Q. Okay.

3 A. Not with the shifts I used to pull.

4 Q. Okay. I understand. Who do you report to?

5 A. Do I report to?

6 Q. Yes.

7 A. Chief Stover, Albert Stover.

8 Q. And what's his position?

9 A. He's chief of security.

10 Q. Chief of security. Who does he report to?

11 A. I mean, I guess the president.

12 Q. Okay. And the president of Performance Coal?

13 A. Right.

14 Q. And that's Mr. Blanchard?

15 A. Right.

16 Q. Okay. On the Saturday and Sunday that you worked  
17 prior to the explosion, were there many people going  
18 in and out of that gate?

19 A. No idea. I think I was roving.

20 Q. Okay. What do you mean by roving?

21 A. Out on the property, just checking out all of our  
22 --- like, I go down to the Big Branch North, Workman's  
23 Creek, Parker, Peerless, Gold, Ellis Eagle.

24 Q. Okay. Who was working the gate on those two days?

25 A. That's too far back for me to remember.

1 Q. Okay.

2 A. I may have been. I can't say. That's too far  
3 back.

4 Q. Okay. Do you recall anything unusual that  
5 happened those two days?

6 A. No.

7 Q. Okay. It was just a normal weekend?

8 A. Right.

9 Q. Now, you mentioned that you used to announce  
10 people coming on the property. Did somebody tell you  
11 to do that?

12 A. Right.

13 Q. Who told you to do that?

14 A. Chief Stover. It's in some of our rules.

15 Q. Okay. Are those written rules?

16 A. I seen one a little earlier today that was.

17 Q. Okay. Is that something that's given out to  
18 everybody working with security there?

19 A. It was probably just posted at the gates.

20 Q. Okay.

21 A. It wouldn't have went to each individual.

22 Q. Okay. It was just kind of a guideline?

23 A. Right.

24 Q. Okay. Now, when you're roving around, what do you  
25 have to check that's associated with Upper Big Branch?

1 A. The equipment that's outside, if they're  
2 operating. There's not a lot to it. If they're not,  
3 we check the buildings and the doors and the  
4 equipment.

5 Q. Do you ever check the fans?

6 A. No.

7 Q. Okay. Have you ever been over to the Bandytown  
8 fan location?

9 A. I've been there, yes.

10 Q. Is that something that you normally check?

11 A. Well, we were until this, and then there's people  
12 there all the time now that we didn't ---.

13 Q. Did you have to do anything with the equipment of  
14 the Bandytown fan?

15 A. No.

16 Q. You just checked it for intrusion, things like  
17 that?

18 A. Right.

19 Q. Was part of your duties to see if the fan was  
20 running over there?

21 A. I would have to assume that it would be. I mean,  
22 if it wasn't running, we'd probably call and tell  
23 them.

24 Q. Okay. Do you recall there was a diesel compressor  
25 and a diesel power genset that ran over there that

1 also supplied another air compressor? Do you recall  
2 if you got around those that weekend?

3 A. I don't know.

4 Q. Okay. Just not familiar with it?

5 A. Right.

6 Q. Okay.

7 A. I mean, I know what you're talking about and I  
8 know they're there and was there, but whether I was  
9 there that weekend or not, I couldn't really say. I'd  
10 have to have looked at my daily report.

11 Q. Okay. So you do fill out a daily report. Would  
12 it contain that information?

13 A. Yeah. You know, if we're roving, I put where I  
14 checked and, you know, the approximate time and ---.

15 Q. Okay. And if you went up there and those diesel  
16 units weren't running, would you have reported that?

17 A. Oh, yeah.

18 Q. Okay. Where are those daily reports kept; do you  
19 know?

20 A. Chief Stover has them.

21 Q. Chief Stover. Do you think he would still have  
22 them April the 5th?

23 A. Yeah. He keeps them.

24 Q. What is his telephone number; do you know?

25 A. At the office or ---?

1 Q. Yes.

2 A. 1706. 854.

3 Q. 854-1706?

4 A. Uh-huh (yes).

5 MR. SHERER:

6 Thank you. That's all the questions I've

7 got for you.

8 EXAMINATION

9 BY MR. FARLEY:

10 Q. Okay. Did I follow that correctly? Chief Stover  
11 would maintain the records of who entered the gates?

12 A. Yeah.

13 Q. Okay. Now, in terms of who would record who was  
14 coming and going through the gate --- I believe you  
15 indicated vendors or delivery people, et cetera. Did  
16 you record the comings and goings of all Performance  
17 employees?

18 A. No, no, not a member.

19 Q. Okay. Now, would you record people who worked at  
20 the mine who were not members?

21 A. Like?

22 Q. Like any contractor laborers?

23 A. Yes.

24 Q. Okay.

25 A. Now, they weren't members. That was the only ones

1 we exempted was members.

2 Q. Okay.

3 EXAMINATION

4 BY MS. MONFORTON:

5 Q. So when the members would come through, they had a  
6 badge or something they would show you knew you didn't  
7 need to check them?

8 A. Right. They had a --- like this, only it had  
9 their photo on it and what they done.

10 Q. So they'd come through ---?

11 A. A laborer or miner operator, fire boss, whatever.

12 Q. And the other individuals that were going to work  
13 there with a contractor, like David Stanley  
14 Consultants, they would have to be signed in?

15 A. They had to be signed in.

16 Q. You mentioned that you're part of in-house  
17 security, but you also mentioned contractors.

18 A. Right.

19 Q. That's a contract security firm?

20 A. Right.

21 Q. And is there a particular contracting company  
22 that ---?

23 A. Uh-huh (yes).

24 Q. Who is that contracting company?

25 A. SGS, Security Group Services.

1 Q. Individuals who are working with SGS or the  
2 in-house security, they would be following the same  
3 procedures?

4 A. They better be.

5 Q. Okay. And so would the SGS security contractors  
6 --- they would get their instructions from Chief  
7 Stover?

8 A. Uh-huh (yes).

9 Q. Okay.

10 ATTORNEY WILSON:

11 That's a yes?

12 A. Yes.

13 ATTORNEY WILSON:

14 So she can get down the answer.

15 BY MS. MONFORTON:

16 Q. Mr. Lilly, what did you do before you started  
17 working security?

18 A. I am a retired chief deputy from this county.

19 Q. I had a feeling you had been in law enforcement.

20 MS. MONFORTON:

21 Thank you. That's all.

22 ATTORNEY WILSON:

23 If I could just follow up.

24 EXAMINATION

25 BY ATTORNEY WILSON:

1 Q. Sir, when members would come through the gate, did  
2 they have any kind of like a magnetic swipe card that  
3 they would use?

4 A. No. No. It hung on the mirror.

5 Q. And so somebody would just open the gate and they  
6 would be allowed in?

7 A. Right.

8 Q. And you were asked about calling up and notifying  
9 when people were ---

10 A. Right.

11 Q. --- coming on the property. Who would you notify?

12 A. It was all on the radio. You know, we'd just say  
13 --- what was your name?

14 Q. Bob.

15 A. Okay. The gate there at Performance is 301. 301,  
16 be advised Bob with such-and-such on the property.

17 Q. And so that message would go out to different  
18 places on the mine property; is that right?

19 A. Yeah. Just --- yeah. We repeated it on Montcoal  
20 and our security. Our security didn't go to nobody  
21 but us. I don't know why we done it, but we did. It  
22 was a waste of time, but ---.

23 Q. Would this include the main building up at the  
24 portal of the mine?

25 A. Uh-huh (yes).



1 Q. And again, that's a yes?

2 A. Yes.

3 Q. And do you know who would receive that information  
4 at the main building?

5 A. No idea.

6 Q. You don't know? And would that include when MSHA  
7 and State inspectors would come on property? Would  
8 you also call that in, that ---

9 A. Yes.

10 Q. --- inspectors were there? And was that something  
11 that you were instructed to do?

12 A. Sure.

13 RE-EXAMINATION

14 BY MR. SHERER:

15 Q. I got one follow-up question. You were talking  
16 about contractors since April the 5th. Were any  
17 contractors employed as security prior to April 5th?

18 A. Oh, yeah. Right.

19 Q. Okay.

20 A. The way we were then, there was two of us at a  
21 gate and two contractors. Then after the explosion,  
22 all in-house is there. Well, there's seven of us.  
23 Three are at Gold's in the headway. Me, I work four  
24 days, and then another --- we use the same schedule  
25 all the time. Wingo works the next four while I'm

1 off. Nighttime is Lieutenant Gillespie, and on his  
2 days off, Lieutenant Williams, so that it's all  
3 contract now.

4 Q. Okay.

5 A. Now, that's from the explosion on because of the  
6 --- now, there's been a couple times since then that  
7 one of us have went there when it was real hectic  
8 right in the beginning to ---.

9 Q. Sure. Now, I've got a little different sort of  
10 question for you. I just want your opinion and your  
11 help. Things were very confusing the night of the  
12 explosion. We're always trying to improve how we  
13 respond to emergencies, both as a Federal agency and  
14 we work with the State's people, of course, and the  
15 emergency service providers and the operators. In  
16 your opinion, what could we do to try to make that  
17 process better?

18 A. Well, the response time was good, I thought. I  
19 didn't get there until after I heard it on the radio  
20 and called, and he said, if you don't mind, could you  
21 come in? And I said, yes. Response time was good.  
22 Knowing who is in control or in charge, that would be  
23 an asset, because somebody would tell you one thing  
24 and somebody would tell you another. With us, that  
25 was no problem. We done what we were told by our

1 boss. But everybody else, you know, one says this and  
2 one says that. Who do you do it for? And that could  
3 stand to be improved, to know on the spot who was  
4 going to be the senior person there when it happened,  
5 if it happened. And I hope it don't. The parking  
6 situation was a mess. I mean, you were up there that  
7 night; weren't you?

8 Q. I wasn't there that night.

9 A. Oh.

10 Q. I saw it on CNN.

11 A. I couldn't even get my vehicle up there.

12 Q. Sure.

13 A. But you know, that's ---.

14 RE-EXAMINATION

15 BY MS. MONFORTON:

16 Q. Mr. Lilly, after the Sago disaster, all the mining  
17 companies were required to put an emergency response  
18 plan together. And it seems to me that part of the  
19 emergency response plan would be these issues with  
20 parking and how are people going to get in and out and  
21 so on. I haven't looked closely recently at the  
22 emergency response plan for this mine, but I'm just  
23 wondering, since you've been at this mine for a long  
24 time, were the Performance security services and Mr.  
25 Stover, were you all involved in reviewing or

1 developing any parts of that emergency response plan?

2 A. Yes. Mr. Stover was.

3 Q. Mr. Stover was?

4 A. Yeah.

5 Q. And do you know what parts he would have been  
6 involved in?

7 A. No, ma'am.

8 Q. No? Okay.

9 A. I'm wanting to think that anything having to do  
10 with the disaster, the seriousness of it and all that,  
11 he would be in control of until relieved by someone  
12 higher.

13 Q. Would you expect that an emergency response plan  
14 would have someone identified as the incident  
15 commander or someone of that sort?

16 A. Uh-huh (yes).

17 Q. And to your knowledge, was that part of something  
18 that was in the emergency response plan for UBB?

19 A. I'm thinking it is.

20 Q. Okay.

21 A. I'm thinking it is. I could be wrong, but I'm ---  
22 take into consideration that when I was chief deputy,  
23 I wrote a new policies and procedures book, and that  
24 wants to mix with ---.

25 Q. Understood.

1 RE-EXAMINATION

2 BY MR. SHERER:

3 Q. Were you just asked for your opinion?

4 A. Right.

5 Q. So how do you think that we could improve this  
6 process?

7 A. Those things could really help, but now, they got  
8 there fast, and everybody knows what everybody was  
9 doing up there as far as that part goes, but ---.

10 Q. I don't have anything but compliments for  
11 everybody involved in the rescue and recovery. But  
12 again, it's something we try to improve.

13 A. Right.

14 Q. Hopefully we'll never get a chance to even test it  
15 out.

16 A. We hope so.

17 RE-EXAMINATION

18 BY MR. FARLEY:

19 Q. Just a couple thoughts. In that type of  
20 situation, the agencies, MSHA and the Office of  
21 Miners' Health, Safety and Training need to focus on  
22 what is happening inside the mine.

23 A. Right.

24 Q. Now, do you think it best if somebody from law  
25 enforcement or some government emergency entity is in

1 charge of the security and all that's going on with  
2 the comings and goings of ambulances and emergency  
3 vehicles and so forth? What do you think about that?  
4 Who's best to be in charge if you have any thoughts on  
5 that?

6 A. Well, due to radio communications and all this  
7 other stuff, I would think whoever the head or top law  
8 enforcement person there was because they would have  
9 communications with these ambulances, you know, all  
10 this stuff. But I know there was a mix-up on ---  
11 somebody told certain ambulances to go down to Big  
12 Branch North. Some wanted them --- and then they  
13 wanted them at Big Branch South, and it ---.

14 Q. Well, I can understand that.

15 A. And I think they ought to have been not one of  
16 them or two of them, but they ought to have been  
17 several of those units right at the scene, right at  
18 the portal instead of sitting back out down the road  
19 somewhere trying to keep the public from seeing what's  
20 going on or something like that. I think they should  
21 have been right up there where they would have been of  
22 use. And you know, if somebody would have come out  
23 hurt, nobody there. I mean, they go sit and wait on  
24 them to come from wherever they're parked up there.  
25 That's just my opinion.

1 Q. That's an admirable suggestion.

2 MR. FARLEY:

3 Any other questions?

4 MS. MONFORTON:

5 No, sir.

6 ATTORNEY WILSON:

7 Mr. Lilly, on behalf of MSHA and the

8 State of West Virginia, I want to thank you for coming

9 in today and answering our questions. Your

10 cooperation is very important as we work to determine

11 the cause of the accident. We will be interviewing

12 additional witnesses, so we request that you not

13 discuss your testimony with anyone. And again, if you

14 think of any additional information that you would

15 like to provide to MSHA or to the State of West

16 Virginia, please contact us at the information that

17 was provided to you.

18 A. Just to make something clear, I stated that we

19 called in when the inspectors come on. Now, they do.

20 I mean, that's what we were told to do. But I can't

21 think of why one of them jumped all over me one day

22 for it. And I went to the chief about it. You know,

23 I told him, I said, I ain't getting in no jam over

24 this. He says, let me go back with you. And he

25 called the attorneys in Richmond and they supposedly

1 told him, yes, we can do that if we don't say where  
2 they're going. I said, well, you have the attorney  
3 send it to me in writing and then I'll resume what I  
4 was doing. From that day on, I never called. That  
5 was probably two years ago.

6 RE-EXAMINATION

7 BY ATTORNEY WILSON:

8 Q. So you're saying an inspector told you that you  
9 should not be notifying anyone else that he's there on  
10 the property; is that right?

11 A. Right.

12 Q. Do you recall, was that an MSHA or a State  
13 inspector?

14 A. MSHA.

15 Q. It was an MSHA inspector? Okay.

16 A. I can't think --- I don't know why --- maybe it  
17 was --- I know so many of them that it's hard to say.  
18 And since that day, he and I have been --- every time  
19 he comes through the gate, we'd talk and no problem,  
20 but ---

21 Q. And you ---.

22 A. --- I can't think exactly which one it was.

23 Q. And you told this to Chief Stover; is that right?

24 A. That I will call them out again when I see  
25 something from that attorney that tells me I'm not



1       liable.

2       Q. And did you ever receive anything ---

3       A. No.

4       Q. --- from the attorney ---

5       A. No.

6       Q. --- or from Performance?

7       A. No.

8       Q. Did you speak to anybody else other than Chief  
9       Stover about that incident?

10      A. Some of the contract security I told. You know,  
11      they were doing it and I said --- two or three would  
12      go in and I didn't say nothing. He said, ain't you  
13      going to announce it? Nope.

14      Q. But you never spoke with anyone in Performance  
15      about that?

16      A. No. Just the chief.

17      ATTORNEY WILSON:

18      Do you want to follow up on that?

19      RE-EXAMINATION

20      BY MR. FARLEY:

21      Q. You indicated that the security guards at the gate  
22      at Performance do not record the comings and goings of  
23      members.

24      A. Right.

25      Q. Okay. Is there any way to determine on any given

1 day if a member has come through the gate and been on  
2 the property?

3 A. Only for maybe a week, week and a half's time.  
4 Everybody who comes through that gate is filmed. Or  
5 not the gate, but when they come across that bridge,  
6 they're filmed. And you know, then we use, I think  
7 it's a set of 20 tapes. And then once you go through  
8 number 20, you go back to number 1 again instead of  
9 just stockpiling boxes and boxes of tapes.

10 Q. Okay.

11 MR. FARLEY:

12 Thank you very much.

13 ATTORNEY WILSON:

14 Mr. Lilly, is there anything else that  
15 you want to add at this time?

16 A. No.

17 ATTORNEY WILSON:

18 All right. And again, I want to thank  
19 you for your cooperation in this matter. Thank you.  
20 And go off the record.

21 \* \* \* \* \*

22 EXAMINATION CONCLUDED AT 1:33 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*