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Transcript of the Testimony of **Richard Gray**

Date: August 27, 2010

Case:

Printed On: September 1, 2010

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STATEMENT UNDER OATH

OF

RICHARD GRAY

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 Friday, August 27, 2010, beginning at 3:50 p.m.

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P R O C E E D I N G S

ATTORNEY HAMPTON:

My name is Pollyanna Hampton. Today is August 27th, 2010. I am with the Office of the Solicitor, U.S. Department of Labor. With me here is Erik Sherer. He is an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the United States Department of Labor. And also present are several people from the State of West Virginia, and I ask that they now state their appearance for the record.

MR. O'BRIEN:

John O'Brien, with the West Virginia Office of Miners' Health, Safety and Training.

ATTORNEY KOERBER:

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

ATTORNEY MCATEER:

Davitt McAteer, with the Governor's investigative arm.

ATTORNEY HAMPTON:

We also might have other members of the team in the audience. All members of the Mine Safety

1 and Health Accident Investigation Team and all members
2 of the State of West Virginia Accident Investigation
3 Team participating in the investigation of the Upper
4 Big Branch Mine explosion shall keep confidential all
5 information that is gathered from each witness who
6 provides a statement until the witness statements are
7 officially released. MSHA and the State of West
8 Virginia shall keep this information confidential so
9 that other ongoing enforcement activities are not
10 prejudiced or jeopardized by a premature release of
11 information. This confidentiality requirement shall
12 not preclude investigation team members from sharing
13 information with each other or with other law
14 enforcement officials. Your participation in this
15 interview also constitutes your agreement to keep this
16 information confidential.

17 Government investigators and specialists

18 have been assigned to investigate the conditions,
19 events and circumstances surrounding the fatalities
20 that occurred at the Upper Big Branch Mine-South on
21 April 5th, 2010. The investigation is being conducted
22 by MSHA under Section 103(a) of the Federal Mine
23 Safety and Health Act and the West Virginia Office of
24 Miners' Health, Safety and Training. We really do
25 appreciate your assistance in this investigation. You

1 may have a personal attorney present at the taking of
2 this statement or if you would like a personal
3 representative. And just so that the record is clear,
4 do you have anybody with you here today?

5 A. No.

6 ATTORNEY HAMPTON:

7 Okay. Your identity and the content of
8 this conversation will be made public at the
9 conclusion of the interview process and may be
10 included in the public report of the accident, unless
11 you request that your identity remain confidential or
12 your information would otherwise jeopardize a
13 potential criminal investigation. If you do request
14 that you have your identity kept confidential, we can
15 only do that to the extent permitted by law. And this
16 is also something that only the Federal side says.
17 The State has their own FOIA concerns and their own
18 rules of keeping things confidential. But what this
19 means that if a judge orders us to reveal your name or
20 if another law requires us to reveal your name or if
21 there is another law enforcement purpose for revealing
22 your name, we will have to do so. Also, there might
23 be a need in the future to glean more information from
24 you, which we might use in other investigations or
25 hearings into the explosion. Do you understand?

1 A. Yes, ma'am.

2 ATTORNEY HAMPTON:

3 Do you have any questions?

4 A. No.

5 ATTORNEY HAMPTON:

6 After the investigation is complete, MSHA

7 will issue a public report detailing the nature and

8 causes of the fatalities in the hope that greater

9 awareness about the causes of accidents can reduce

10 their occurrence in the future. Information obtained

11 through witness interviews is frequently included in

12 these reports. Since we will be interviewing other

13 people, we do request that you not discuss your

14 testimony today with any other person aside from if

15 you were to have an attorney or a personal

16 representative.

17 As you can see, we have a court reporter

18 here who is recording the interview, so we ask that

19 you speak loudly and clearly. If you don't understand

20 a question, please ask the person to rephrase, and

21 they can certainly do that. And also, please answer

22 each question as fully as you can, including giving us

23 any information you might have heard from somebody

24 else. We'd like to thank you in advance for your

25 appearance here. We really do appreciate your

1 assistance. Your cooperation is critical in making
2 the nation's mines safer.

3 After we have finished asking questions,
4 you'll have an opportunity at the end to make any
5 statement that you would like or to clarify any of the
6 information that you provided to us. And if after the
7 time that you leave here today you think of other
8 things that you would like to share with the team or
9 something you'd like to clarify or any other
10 information, please feel free to contact us. There is
11 contact information in the letter that I handed to you
12 earlier today. Norman Page is the team leader for the
13 Federal Accident Investigation Team, and you can
14 contact him at any time and talk to him if you have
15 further things that you'd like to discuss with us.

16 Finally, any statements given by miner
17 witnesses to MSHA are considered to be an exercise of
18 statutory rights and protected activity under Section
19 105(c) of the Mine Act. If you believe any discharge,
20 discrimination or other adverse action is taken
21 against you as a result of your cooperation with this
22 investigation, you may contact MSHA and file a
23 complaint under Section 105(c) of the Act.

24 ATTORNEY KOERBER:

25 Mr. Gray, on behalf of the West Virginia

1 Office of Miners' Health, Safety and Training, I'd
2 like to inform you that under West Virginia law, West
3 Virginia Code 22A-1-22, West Virginia law also
4 protects miners from discrimination for participating
5 in interviews such as this. What I'm going to hand to
6 you is some contact information, in particular the
7 address for the West Virginia Board of Appeals, which
8 is the tribunal that hears and decides cases involving
9 discrimination against miners. Their address is here.
10 If you believe you have been discriminated against,
11 please free to file a complaint with the Board of
12 Appeals. I would caution you, though, that there is a
13 short statute of limitations on filing the complaint.
14 It must be filed with the Board of Appeals within 30
15 days from the day the discriminatory action occurred.
16 Also with this memorandum are two business cards, one
17 from Mr. Terry Farley, who is the lead interview
18 investigator for the Office of Miners' Health, Safety
19 and Training, and also a business card for Mr. Bill
20 Tucker, who is the lead underground investigator for
21 the Office of Miners' Health, Safety and Training.
22 And if you would have any additional information and
23 would like to provide that to the State, you can get
24 ahold of either of those two individuals at the phone
25 numbers and addresses listed on those business cards.

1 A. Thank you.

2 ATTORNEY KOERBER:

3 Would you swear in the witness?

4 -----

5 RICHARD GRAY, HAVING FIRST BEEN DULY SWORN, TESTIFIED
6 AS FOLLOWS:

7 -----

8 ATTORNEY KOERBER:

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

11 A. Richard Dwayne Gray, G-R-A-Y.

12 ATTORNEY KOERBER:

13 And would you please state your address
14 and telephone number?

15 A. (b) (7)(C)

16 (b) (7)(C) .

17 ATTORNEY KOERBER:

18 Okay. Sir, are you appearing here today
19 as a result of receiving a subpoena?

20 A. Yes.

21 ATTORNEY KOERBER:

22 This is a copy of that subpoena. You may
23 feel free to look at that, but I'd like that to be
24 marked as Exhibit One.

25 (R. Gray Exhibit One marked for

1 identification.)

2 ATTORNEY KOERBER:

3 And then this is a copy of the return

4 receipt card signed for on --- it looks like 8/14/10.

5 You may look at that as well. Do you know a ^{(b) (7)(C)}

6 (b) (7)(C)

7 A. Was that the one that was at my house or ---?

8 ATTORNEY KOERBER:

9 I have no idea. That's who signed for

10 it. Did you get an envelope with this subpoena?

11 A. Yeah. I got an envelope and then they brought me

12 one to my house, too.

13 ATTORNEY KOERBER:

14 Okay. The Sheriff's office did?

15 A. Yeah.

16 ATTORNEY KOERBER:

17 Okay. So you got served twice?

18 A. Right.

19 ATTORNEY KOERBER:

20 Okay.

21 ATTORNEY HAMPTON:

22 Would you like to mark the receipt of

23 service as ---

24 ATTORNEY KOERBER:

25 Yeah, as Number Two.

1 ATTORNEY HAMPTON:

2 --- Exhibit Two?

3 ATTORNEY KOERBER:

4 Yeah, please.

5 (R. Gray Exhibit Two marked for
6 identification.)

7 ATTORNEY KOERBER:

8 Sir, the statute that authorizes the

9 Director to issue subpoenas to witnesses compelling
10 your attendance at interviews such as this also
11 requires the Director to offer to each witness
12 subpoenaed a \$40-per-day witness fee, plus roundtrip
13 mileage from your home here and back, so long as you
14 drove in your personal vehicle, at the rate of 15
15 cents a mile, plus reimbursement for any tolls that
16 you might have passed coming to or going back. In
17 order to receive that money there are two forms that
18 need to be filled out. And if you would like, we will
19 complete these at the end of the interview. One of
20 these forms is a Form W-9 from the IRS, which is a
21 request for your Social Security number, because the
22 \$40 witness fee is considered taxable income and it
23 will be reported to the IRS, and you'll get a 1099
24 miscellaneous at some later date down the road. We
25 briefly spoke about this before we went on the record.

1 I believe you would like to fill these out at the end
2 of the interview or have you changed your mind or ---?

3 A. Yeah, we'll fill them out.

4 ATTORNEY KOERBER:

5 Okay. Thank you, sir.

6 A. Uh-huh (yes).

7 ATTORNEY HAMPTON:

8 Okay. We'll start the questioning.

9 EXAMINATION

10 BY MR. SHERER:

11 Q. First of all, I want to thank you for coming down
12 here, Mr. Gray.

13 A. No problem.

14 Q. We're investigating the explosion. We're looking
15 for any clues we can use to help us figure out what
16 caused the explosion, what the conditions were, maybe
17 what practices contributed to the explosion. We're
18 doing that for two reasons. The first one is the
19 families and the friends and the coworkers of the
20 miners, they deserve to know what happened. And the
21 second reason is we want to prevent similar explosions
22 from ever happening again. And any information you
23 can share with us would be greatly appreciated.

24 Roughly, how many years of mining experience do you
25 have?

1 A. All together?

2 Q. Yeah, just roughly.

3 A. Twenty (20) years.

4 Q. When did you start with the Massey organization?

5 A. 2000.

6 Q. 2000. When did you start with --- at Upper Big
7 Branch?

8 A. 2000, ---

9 Q. Okay.

10 A. --- when I started.

11 Q. Had you been at Upper Big Branch that entire time?

12 A. Yes, sir.

13 Q. What was your job description at the time of the
14 explosion?

15 A. I was a buggy operator.

16 Q. Buggy operator. Which section did you work on?

17 A. Headgate 22.

18 Q. Okay. Thank you. Where are you working now?

19 A. It's called Hunter Peerless now. It's up at Sand
20 Creek.

21 Q. Okay. Still running buggy?

22 A. Yeah.

23 Q. Which shift did you work at Upper Big Branch?

24 A. Well, I was on this crew --- there was three crews
25 running the headgate, and I was on the one that worked

1 three dayshift and three evening shift and off three.

2 Q. Okay.

3 A. Sounds like a rough schedule.

4 A. It was. Ten-hour shifts.

5 Q. Uh-huh (yes). Who's the boss of that section?

6 A. Brandon Bowling.

7 Q. Brandon Bowling. Do you recall what was the last
8 shift you guys worked prior to the explosion on April
9 the 5th?

10 A. Yes, I do. It was on Saturday because we was all
11 off on Sunday. Then Monday, when we come back, it
12 happened. And I was off on Monday. But dayshift
13 started, you know, their six days.

14 Q. Sure. That last shift you worked on Saturday,
15 when you got out of the mine, you rode into the
16 section, when you first got on the section, did you
17 notice anything unusual?

18 A. No.

19 Q. Okay. How did production go during the day
20 Saturday?

21 A. We might have run 150 foot. I'm not --- don't
22 know exactly. Is that what you mean?

23 Q. Yeah. Was it about normal?

24 A. About normal, yeah.

25 Q. Does anything stand out as unusual during the

1 production shift?

2 A. Well, the same as always, didn't have enough air.
3 It didn't seem like anyhow.

4 Q. We've heard that from a lot of people, and we'll
5 talk about that a bit. But does anything else stand
6 out?

7 A. No. It was just like a normal shift.

8 Q. When you were headed out of the mine at the end of
9 the shift, did you notice anything unusual?

10 A. No. But they did make us take the rescuers and
11 stuff off the equipment and take them upstairs because
12 they was scared somebody might break into the mines
13 over the weekend when it was closed. And they was
14 wanting us to take rock dust and put it on the
15 entries, you know, so they can see footprints if
16 anybody did go into the mines.

17 Q. Okay. Do you know who was going to check that
18 rock dust?

19 A. I know the boss put it down.

20 Q. Okay.

21 A. But as far as checking it, I don't. I just took a
22 shower and went home.

23 Q. Sure. So if somebody wanted to sneak in, they
24 could have gone in. And if they would have just
25 brought a bag of rock dust bag out, they wouldn't have

1 had any problems?

2 A. Wouldn't have had no problems, no.

3 Q. Okay. Now, you mentioned you didn't have any air
4 on the section.

5 A. Oh, there was air, but not enough, you know.

6 Q. Not enough. Can you give us some details about
7 that, please?

8 A. Well, sometimes we would come in --- the intake
9 was coming up Two and the power centers and stuff is
10 in the intake. You've got a high voltage sign there,
11 you know. Sometimes we'd come in, it would be
12 blowing, you know, moving a little bit.

13 Q. Sure.

14 A. And some days we'd come in and it wouldn't be
15 moving at all.

16 Q. Now, when it wasn't moving at all, I assume you
17 didn't have much air coming up through there?

18 A. No.

19 Q. What would Mr. Bowling do when that happened?

20 A. Well, he would try to see if the doors were shut.
21 Sometimes, you know, they was left open, which changed
22 the air. And we tried to get it, you know --- get air
23 up there.

24 Q. Sure. Did he have much luck getting that air?

25 A. Sometimes.

1 Q. What if he didn't have any luck getting air?

2 A. Well, sometimes we'd shut down the one buggy and
3 we'd hang a check, forcing all the air over to One so
4 that we could --- I guess we had enough air. He was
5 the one checking it. He said we did.

6 Q. Did you ever see him taking an anemometer reading?

7 A. Yes, sir.

8 Q. Okay. When the miner was cutting and you were
9 getting loaded by the miner, did it always seem like
10 you had enough air to keep the dust moving away from
11 you?

12 A. At times.

13 Q. Okay.

14 A. Not all the time.

15 Q. Did you have to eat much dust?

16 A. Sometimes.

17 Q. Did you ever notice the methane monitor readout on
18 the miner?

19 A. Yeah. I looked at it all the time.

20 Q. What's the most methane you ever seen on this
21 section?

22 A. On this section?

23 Q. Uh-huh (yes).

24 A. I don't believe it has ever been over one percent.

25 Q. Okay.

1 A. It might have been a tenth, you know.

2 Q. Okay. Now, have you seen it higher than that on
3 any other section or any other location?

4 A. Yes, sir.

5 Q. Where was that at?

6 A. Headgate 21.

7 Q. Headgate 21. Was that out near where the
8 Bandytown fan is now?

9 A. Yes, sir.

10 Q. What's the highest level you've seen out there?

11 A. How much gas?

12 Q. Uh-huh (yes).

13 A. I've seen two to three percent.

14 Q. Okay. I assume that they had problems getting
15 enough air out there also?

16 A. Yes. On every headgate I've ever --- which I've
17 run into a lot of them, they've always had problems
18 with their air. But this headgate they was doing
19 something different.

20 Q. What's that?

21 A. They was putting the belt in the head --- the
22 longwall belt in as we was going, a five-foot belt.
23 So the feeder and stuff was over in One. And normally
24 we just run it up Two with a four-foot belt, and then
25 they'd come in later and put the five-foot belt in.

1 But this is the first time they ever done it this way,
2 which I don't think that had nothing to do with it,
3 but it's something different they done.

4 Q. I've been to mines that did it one way and other
5 mines that did it another way. There's advantages and
6 disadvantages to both. Can I ask you about --- we
7 understand there's some construction going along ---
8 that was taking place at the mouth of the section. Do
9 you recall that? They were putting in I think another
10 Mother Drive.

11 A. Well, like I said, they had all of that put in as
12 we was going.

13 Q. Okay.

14 A. Because that was the main belt, you know, what we
15 was dumping on.

16 Q. Okay. I didn't realize that. So that was done at
17 the time you turned off the section?

18 A. Yes.

19 Q. Okay. Now, I understand at one time the belt went
20 down and dumped on the longwall belt. Do you recall
21 that?

22 A. Let's see. Was that on 21?

23 Q. No. It was on 22. It seems like there were
24 several changes to the two miner sections. They put
25 in this Tailgate 22. We think that occurred sometime

1 in February. And about that same time, in fact,
2 February 10th, is when they did the ventilation
3 change. The belt from 22 Headgate did go --- there
4 was a drive out in this crossover, and the belt went
5 down to dump on the longwall belt. And because the
6 longwall had advanced to the point where the mule
7 train was getting close to that belt, they had to pull
8 it out. And at that time they rerouted the belt off
9 of Section --- the 22 Headgate section to the Seven
10 North belt ---

11 A. Right.

12 Q. --- and put in a new drive on this crossover belt
13 and basically reversed it.

14 A. Yeah, I remember that because I made the remark
15 the structure was turned around the wrong way. I was
16 going to see if they was going to turn it all around,
17 you know.

18 Q. I imagine it would be a bit confusing. So do you
19 recall a bunch of air changes and such that occurred
20 about that same time? And the question I really want
21 to ask you is, did that materially affect the
22 ventilation on Headgate 22?

23 A. It didn't get no better, no.

24 Q. Okay. Now, the week prior to the explosion, had
25 the ventilation been about average for that section or

1 got worse or got better?

2 A. I'd say average.

3 Q. Okay. Now, how many buggies were running on that
4 last Saturday?

5 A. Two.

6 Q. Who was the other buggy operator?

7 A. Bobbie Pauley.

8 Q. Bobbie.

9 A. She's a woman.

10 Q. Uh-huh (yes).

11 A. You all probably know her.

12 Q. We've spoken to Ms. Pauley.

13 A. Yeah.

14 Q. Did you run --- which side did you run on?

15 A. I ran the middle on.

16 Q. The middle on, okay. Which one did she run?

17 A. The right one.

18 Q. The right one. What about when you were cutting
19 in one, who went up there?

20 A. Most of the time it was me ---

21 Q. Okay.

22 A. --- because we would hang a check, you know, to
23 get the air coming from Two over to One, and she
24 covered it most of the time.

25 Q. How about when they were cutting in Number Three,

1 who would --- which buggy or did both buggies, were
2 they used in Number Three?

3 A. Both of them if they had enough, you know,
4 crosscuts so I could go across.

5 Q. Okay. Would you take a look at this map here?

6 And is this the configuration you remember in the face
7 on Saturday?

8 A. Is this One?

9 Q. Yeah. One is pushed up almost like about 79, 80
10 percent of the distance to the next crosscut. Two is
11 pushed a little bit past the existing crosscut. Two
12 is cut back toward Number Three and just about holed
13 through. And Three is driven up just about to the
14 point where it will hole through into that crosscut.

15 A. To be honest, I really don't remember.

16 Q. Okay. Just wondering. Do you remember what the
17 last break was that you guys were working on?

18 A. I'm thinking in the 30s maybe.

19 Q. Okay. Thank you.

20 A. Uh-huh (yes).

21 Q. What was the roof like in this section?

22 A. It was pretty good.

23 Q. About how high were you guys cutting?

24 A. Six to seven foot.

25 Q. Six to seven foot?

1 A. Because you have to have the eight for the
2 longwall. We was cutting some rock.

3 Q. Were you taking rock off the ceiling or off the
4 floor?

5 A. Well, if it was slate, we'd take it off the top.
6 And if it wasn't, we would have to get down on the
7 bottom.

8 Q. Was there much water on the section?

9 A. No, not that section. Uh-uh (no).

10 Q. What were the ribs like?

11 A. Do what?

12 Q. What were the ribs like?

13 A. The ribs? Well, when you take --- cut the top, we
14 would have to pin the brows to make it safer for the
15 longwall when they come, you know, and us.

16 Q. Were you guys putting any mesh on the roof?

17 A. In One.

18 Q. In One, okay. The Belt entry?

19 A. Right. And cable bolt.

20 Q. Okay. On Saturday, do you recall if the feeder
21 was in a break or so of the last open or how far out
22 did you have to run?

23 A. I believe it was at a crosscut up above it.

24 Q. Okay.

25 A. It went all the way across.

1 Q. Okay. So when you're hauling out of Number Three,
2 you actually had to haul down, up and then back and
3 then up?

4 A. Right.

5 Q. That's a long way to haul?

6 A. Well, those are big blocks, too.

7 Q. They are. Personally, I don't see how you guys
8 managed all that equipment in those three entries.

9 A. Well, before we used to have three buggies and
10 they had the belt entry in the middle.

11 Q. Okay. So that's a lot of stuff going on in a
12 little bit of space?

13 A. Yeah.

14 Q. When you were working on this section, did anybody
15 ever call in and say there were inspectors on the
16 property, either State or Federal?

17 A. Yes.

18 Q. How common was that?

19 A. Well, most of the time any time they would show
20 up.

21 Q. We understand there were several sets of doors you
22 had to go through to get onto the section. Were those
23 doors maintained in good shape?

24 A. No.

25 Q. Did you ever come up and find any of those doors

1 open?

2 A. Yes.

3 Q. Do you know if some of the crews, when they were
4 changing out, would --- the first crew leaving would
5 open the doors and the next crew would shut them?

6 A. Yes.

7 Q. Was that a common practice?

8 A. Pretty much, yes.

9 Q. Thank you.

10 A. And there would be sometimes blocks out of the top
11 of them.

12 Q. Did you ever hear of, when an inspector was going
13 to one of the sections, people would open or close
14 doors or adjust regulators to redirect air?

15 A. Well, sometimes it seemed like it would pick up a
16 little more. You know, I don't know what they was
17 doing, you know, because I was on the section,
18 but ---.

19 Q. Maybe that's how we could help this thing is put
20 an inspector on each section.

21 A. Yeah.

22 Q. Now, you mentioned that there was a general lack
23 of air, lack of ventilation, on Headgate 22. What do
24 you feel about the ventilation in the rest of the
25 mine? Do you think it was adequate?

1 A. Well, the longwall was, but the other sections I
2 really couldn't tell you. They said they had good
3 air, but I really seldom went to them. I was always
4 on the headgate.

5 Q. Okay.

6 MR. SHERER:

7 That's all the questions I've got. Thank
8 you.

9 EXAMINATION

10 BY MR. O'BRIEN:

11 Q. Mr. Gray, I appreciate you being here and helping
12 us out.

13 A. I hope I can.

14 Q. I'm sure you have already. A housekeeping issue.
15 Do you have any West Virginia certification? Do you
16 have a miner's certificate?

17 A. Yes, sir.

18 Q. Do you have any other ---?

19 A. No, that's all I've got.

20 Q. Okay. Now, what kind of shuttle car did you run?
21 Was it Joy or ---?

22 A. Yeah, the Joy Super 10.

23 Q. Okay. Where was the operator's deck located? Was
24 it located on the end or the middle?

25 A. On the end.

1 Q. On the end?

2 A. Yeah.

3 Q. Okay. While mining, did the dust ever roll or
4 boil back all the way to your operator's compartment?

5 A. Sometimes when we was in Three, a return, you
6 didn't have much choice, you know.

7 Q. Do you know --- when you say not much choice, can
8 you explain that a little bit, how the ventilation
9 ---? I'm trying to get it straight in my head.

10 A. Well, like especially when you would start in
11 Three, you couldn't do much with it, you know, because
12 the air would come right back on you.

13 Q. Oh, okay. So ---.

14 A. And you've got curtain in there.

15 Q. It's like when it was flush and you're
16 starting ---?

17 A. Right.

18 Q. Okay. I understand that. Thank you.

19 Q. Did you folks ever run the scrubber?

20 A. Sometimes.

21 Q. Now, you mentioned something earlier, and I may
22 have misunderstood it, so I'm going to ask for
23 clarification. You said when you were mining in
24 Number One a lot of times or most of the time or
25 sometimes you were the only one who could run your

1 shuttle car?

2 A. Yes, sir.

3 Q. And you put a curtain in Number ---

4 A. Two.

5 Q. --- Two. Would that be across the entry or is
6 that ---?

7 A. A diagonal, yeah.

8 Q. And if we may, let's look at this map that we
9 have. Just for clarification, for my benefit, for
10 example, if it was --- the faces were like they are
11 shown on this map, One's ahead of Two, and it looks
12 like Two to Three is in a few cuts, and Three's up.
13 Now, if you were Number One, where would normally your
14 feeder be located? Would it be located at the first
15 crosscut outby the last open break or the second
16 crosscut outby or ---?

17 A. Well, it depends if they moved belt.

18 Q. Okay.

19 A. If they moved belt, sometimes it would be just one
20 crosscut and sometimes you'd only run one buggy until
21 you got it opened up.

22 Q. Okay. Now, in this scenario, where would you
23 put --- you said you'd put a diagonal in Number Two?

24 A. It would be from across from here to here to push
25 the air up in One.

1 Q. Across here ---

2 A. Yeah.

3 Q. --- and outby Number Two, one crosscut outby the
4 Number Two? Okay. Now, if your feeder was located at
5 the first crosscut outby the LOB in Number One, did
6 you have fly pads or something in Number Two here?

7 A. Yes. Yes, sir.

8 Q. Were they permanent fly pads in the respect they
9 were nailed or affixed to fly boards or was that
10 something that you would have to take down?

11 A. Yeah, we'd have to move them. That was just
12 nailed up there on fly boards.

13 Q. But you would keep them up until you mined ahead
14 far enough to move them up; ---

15 A. Right.

16 Q. --- is that correct?

17 A. Yes, sir.

18 Q. I understand. Thank you.

19 A. Uh-huh (yes).

20 Q. Did you ever walk the return off of the section,
21 by chance?

22 A. Yes, sir.

23 Q. Did you ever encounter any water in that return?

24 A. Yes, sir.

25 Q. Where might that be?

1 A. That was when we was coming out towards the Ellis
2 punch-out. We had to walk that one shift.

3 Q. Okay. But on the --- I'm sorry, on the 22
4 Headgate section alone, just by itself, say from the
5 face down to the mouth of the section, have you ever
6 walked the return off of the section?

7 A. No.

8 Q. Okay. Riding up or just walking up from the
9 mouth, have you ever seen any excessive amounts of
10 water at the mouth of the section or somewhere else?

11 A. Unless someone dug a hole or something and it
12 filled up with water, no. But as far as hitting
13 water, no, I don't recall it.

14 Q. No accumulations, regular large accumulations of
15 water on the section anywhere that you knew of?

16 A. Not on that section.

17 Q. Thank you.

18 A. Uh-huh (yes).

19 Q. How long had you worked on Headgate 22, from the
20 very beginning or from when it first started or ---?

21 A. Yes, when it first started.

22 MR. O'BRIEN:

23 That's all I have. Thank you.

24 EXAMINATION

25 BY ATTORNEY MCATEER:

1 Q. Mr. Gray, was the section wet in your mind?

2 A. Damp.

3 Q. Damp, okay.

4 A. Yeah.

5 Q. Did it vary from place to place or as you went
6 further in? As you were mining, did it get --- or did
7 it stay about the same?

8 A. It stayed about the same.

9 Q. Okay. And did you --- you testified about rock
10 dusting. Did you rock dust on a continuous basis?
11 Did you run the machine or ---?

12 A. No, I did not.

13 Q. Was there a crew that came in and rock dusted?

14 A. Sometimes the scoop man did at the end of the
15 shift.

16 Q. Scoop man?

17 A. Yes.

18 Q. But that wouldn't be something you guys would do,
19 to clear ---?

20 A. No.

21 Q. All right. I know you testified that the methane
22 concentrations that you'd seen in this section, this
23 is now Headgate 22, were approximately --- I don't
24 remember what you said.

25 A. In the tenth.

1 Q. In the tenth?

2 A. Yeah.

3 Q. Did you have your own methane calibrator (sic)?

4 A. No, sir, I didn't have to have one.

5 Q. Right. But so where would you see that number in
6 the tenth?

7 A. On the miner.

8 Q. Okay. Did you take any pictures when you were
9 underground?

10 A. No, sir. I've seen other people take pictures,
11 but I haven't.

12 Q. A number of people have taken pictures?

13 A. I've seen other people's, yeah.

14 Q. Yeah. Now, you testified that they didn't use the
15 four-foot belt first but used the five-foot belts and
16 skipped the step of putting the four-foot intermediate
17 belt in?

18 A. Yes.

19 Q. Had you seen that done in this mine other times?

20 A. No, sir. That's the first time I ever seen it.

21 Q. Now, this may sound --- the questions are a little
22 odd, but I'm having trouble wrapping my mind around
23 this. So you're on your way out and they want you to
24 rock dust the portal?

25 A. Yes.

1 Q. Who did that rock dusting?

2 A. The boss did.

3 Q. Who was that?

4 A. Brandon Bowling.

5 Q. Now, you also testified that you carried your
6 SCSRs?

7 A. Yes, sir. They had us take them off the mantrip
8 so no one would steal them or something, and we had to
9 take them upstairs.

10 Q. Did somebody suggest to you that there was the
11 possibility of somebody stealing over the downtime?

12 A. Well, they was making sure they didn't, I guess.

13 Q. Okay.

14 A. I guess it's been happening at other places.

15 Q. Oh, is that right?

16 A. That's the best I can figure.

17 Q. You just figured?

18 A. Yeah.

19 Q. Had this ever happened before?

20 A. No, sir.

21 Q. Have you ever had that happen in any other mine?

22 A. No, sir.

23 Q. On the 3rd, which is a Saturday, it was just
24 before Easter.

25 A. Yes.

1 Q. The air was about average?

2 A. Yes. There wasn't none.

3 Q. Wasn't any. Okay. The methane was about --- you
4 didn't notice any?

5 A. I didn't notice none.

6 Q. It would be --- in your case, you would be looking
7 past the miner operator at the dial on his machine?

8 A. Yes, sir.

9 Q. So it wouldn't be something you would see all the
10 time. You'd kind of glance at it from time to time?

11 A. Yes.

12 Q. Any difference in the witness, dampness?

13 A. Not that I can recall.

14 Q. Any difference in the ventilation?

15 A. No, sir.

16 Q. Anybody talk about changing the ventilation?

17 A. No, sir.

18 Q. And you mined 150 feet?

19 A. I'm just guessing.

20 Q. Which is average?

21 A. About normal, yeah.

22 Q. And then you went home?

23 A. Yes, sir.

24 ATTORNEY MCATEER:

25 No further questions.

1 RE-EXAMINATION

2 BY MR. SHERER:

3 Q. I've got one follow-up question, Mr. Gray. Did
4 you ever get an occasion to go down through this
5 connector, down toward this tailgate section?

6 A. What do you mean?

7 Q. Did you ever travel any of these entries in this
8 connector to go down and maybe pick up some supplies
9 or something?

10 A. Now, is this going from 21 to 22?

11 Q. Yeah.

12 A. That was the cross belt before they started
13 the ---?

14 Q. Yeah. Uh-huh (yes).

15 A. Yeah, we used to have to walk that.

16 Q. The last time you were down in that area, what was
17 the rock dust like?

18 A. They had a fall there one time, too.

19 Q. They had a big fall?

20 A. Yeah. As far as I can remember, the rock dust was
21 all right.

22 Q. Okay. Did you ever notice any float coal dust
23 either on the Headgate 22 section or this connector?

24 A. No, sir.

25 Q. Okay. Thank you.

1 MR. SHERER:

2 That's all the questions I've got.

3 MR. O'BRIEN:

4 I've got a couple, three, please.

5 RE-EXAMINATION

6 BY MR. O'BRIEN:

7 Q. Was there any particular face on Two or Three that
8 seemed to have less air than the other or were they
9 all about the same or ---? Did you have more trouble
10 with any particular face?

11 A. Seemed like one we had to get --- just about force
12 the air up in there because the intake was coming up
13 Two, which normally, you know, if the belt was in Two,
14 like it normally used to be, the air would be up One
15 and it would sweep across. But the way they was doing
16 it this time they had to push the air over to One.

17 Q. That last shift, did you folks shut down for ---
18 stop production, stop mining for any reason, for any
19 length of time, whether you knew what it was for or
20 not? Maybe you were waiting extraordinarily long
21 outby, waiting for your turn to come up to the miner
22 or maybe up at the miner. Had the miner shut down for
23 any length of --- extraordinary length of time?

24 A. Not that I can remember.

25 Q. That night or since then, have you heard anyone

1 talk about having significant amounts of methane in
2 Number Two and Number Three on your last shift?

3 A. I don't remember.

4 Q. That's all. Thank you.

5 RE-EXAMINATION

6 BY ATTORNEY MCATEER:

7 Q. Just one follow-up question. As you came out
8 Saturday, did you see any supervisory personnel that
9 you can recall?

10 A. No, sir.

11 Q. Okay. Thank you, sir.

12 ATTORNEY HAMPTON:

13 Okay. On behalf of MSHA and the Office
14 of Miners' Health, Safety and Training, we'd like to
15 thank you for appearing and answering questions today.
16 Your cooperation is very important to the
17 investigation as we work to determine the cause of the
18 accident.

19 We do request that you not discuss your
20 testimony today with any other person other than if
21 you were to retain an attorney or have a personal
22 representative. After questioning other witnesses, we
23 might have some follow-up questions for you. And if
24 at any time you have additional information that you
25 would like to share with the teams, please feel free

1 to contact us at the contact information that was
2 provided to you in the letter that I gave you earlier.

3 A. The first one?

4 ATTORNEY HAMPTON:

5 Yes. Norman Page is the head
6 investigator for the Federal team, and his contact
7 information is there. So please feel free to contact
8 us at any point if you have something you'd like to
9 say.

10 So now, at this point, if you have any
11 answer you would like to go over and further clarify
12 or any additional information you'd like to provide to
13 us or any statement you would like to make, please go
14 ahead and feel free to do that now.

15 A. I just don't understand why it happened. They
16 said the crack at first, then they said that wasn't
17 the cause of it. Could the longwall have hit a gas
18 well?

19 MR. SHERER:

20 We don't think so.

21 A. You don't think so.

22 MR. SHERER:

23 Let's go off the record and we can talk
24 about it.

25 A. Okay.

1 ATTORNEY HAMPTON:

2 Okay. Off the record.

3 * * * * *

4 STATEMENT UNDER OATH CONCLUDED AT 4:33 P.M.

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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