

01 EXAMINATION UNDER OATH
02 OF
03 RICHARD JAMES KLINE
04
05
06 Taken pursuant to Notice by Autumn D.
07 Furby-Pritt, a Court Reporter and
08 Notary Public in and for the State of
09 West Virginia, at Department of
10 Environmental Protection, 1101 George
11 Kostas Drive, Logan, West Virginia,
12 on Thursday, March 23, at 10:00 a.m.

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01 A P P E A R A N C E S

02

03 KENNETH A. MURRAY

04 District Manager

05 U.S. Department of Labor

06 Mine Safety and Health Administration

07 Coal Mine Safety and Health

08 District 6

09 100 Fae Ramsey Lane

10 Pikeville, KY 41501

11

12 DANIEL M. BARISH, ESQUIRE

13 U.S. Department of Labor

14 Office of the Regional Solicitor

15 1100 Wilson Boulevard

16 22nd Floor West

17 Arlington, VA 22209-2247

18

19 WILLIAM TUCKER

20 Assistant Inspector at Large

21 West Virginia Office of Miners'

22 Health, Safety & Training

23 142 Industrial Drive

24 Oak Hill, WV 25901

25

3

01 A P P E A R A N C E S (cont.)

02

03 WILLIAM J. FRANCAERT, P.E.

04 Mining Engineer

05 Pittsburgh Safety and Health
06 Technology Center
07 Ventilation Division
08 P.O. Box 18233
09 Cochrans Mill Road
10 Pittsburgh, PA 15236

11

12 ALSO PRESENT:

13 MICHAEL FINNIE

14 DENNIS A. BEITER

15 RONALD W. STAHLHUT

16 CHARLES W. POGUE

17 C.A. PHILLIPS

18 BETH SPENCE

19 JEFF WAGGETT

20

21

22

23

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

02 -----

03 MR. MURRAY:

04 Good morning, Richard.

05 MR. KLINE:

06 Good morning, Kenny.

07 MR. MURRAY:

08 How you doing today?

09 MR. KLINE:

10 I'm doing great.

11 MR. MURRAY:

12 Thanks for coming down.

13 I know you're a busy man. As
14 you know, my name's Kenny
15 Murray. And I represent the
16 Mine Safety and Health
17 Administration, which is an
18 Agency of the United States
19 Department of Labor. I am a
20 member of MSHA's accident
21 investigation team that is
22 charged with investigating the
23 accident that occurred at the
24 Aracoma Coal Company,
25 Incorporated, Aracoma Alma

7

01 Mine Number One, on January
02 19th, 2006.

03 This is a joint
04 investigation that MSHA is
05 conducting with the State of
06 West Virginia. I will be
07 asking the questions for MSHA
08 today. With me here today are
09 other members of MSHA's team
10 as well as the State's team.
11 MSHA's team includes various
12 subject matter experts from
13 throughout the United States
14 along with Mr. Barish from the

15 Solicitor's Office. At this
16 time, I'd like for each of the
17 members of MSHA's team to
18 identify themselves for the
19 record.

20 ATTORNEY BARISH:

21 Hi. My name is Dan
22 Barish. I'm an attorney with
23 the Solicitor's Office,
24 representing MSHA from
25 Arlington, Virginia.

8

01 MR. BEITER:

02 Denny Beiter, Tech
03 Support, Triadelphia, West
04 Virginia.

05 MR. STAHLHUT:

06 Ron Stahlhut, MSHA of
07 Vincennes, Indiana.

08 MR. POGUE:

09 Charlie Pogue with MSHA
10 from Hunker, Pennsylvania.

11 MR. WAGGETT:

12 Jeff Waggett, Hunker,
13 Pennsylvania.

14 MR. FRANCCART:

15 Bill Francart,
16 Pittsburgh, Pennsylvania.

17 MR. MURRAY:
18 As you know, I'm from
19 Pikeville, Kentucky. We also
20 have members of the State of
21 West Virginia's team. And to
22 my left is Mr. Tucker and Mr.
23 Phillips. And at this time,
24 they'd like to introduce
25 themselves and provide a

9

01 statement from the State. Go
02 ahead.

03 MR. TUCKER:

04 Thank you. The West
05 Virginia Office of Miners'
06 Health, Safety & Training is
07 conducting this interview
08 session jointly with MSHA.
09 We're in agreement with the
10 procedures outlined by Mr.
11 Murray. However, let me make
12 it clear that the Director
13 reserves the right, if
14 necessary, to call or subpoena
15 witnesses or require the
16 production of any record,
17 document, photograph or other
18 relevant materials necessary
19 to conduct this investigation.

20 And we also appreciate you
21 coming in today, Rich. And my
22 name's Bill Tucker. I'm the
23 Assistant Inspector at Large
24 for Miners' Health, Safety &
25 Training out of the Oak Hill

10

01 office.

02 MR. PHILLIPS:

03 Good morning, Rich.

04 MR. KLINE:

05 Good morning, Carl.

06 MR. PHILLIPS:

07 My name is C.A.

08 Phillips, I'm the Deputy
09 Director with the Office of
10 Miners' Health, Safety &
11 Training in Charleston, West
12 Virginia.

13 MS. SPENCE:

14 Beth Spence with the
15 Governor's Office.

16 MR. MURRAY:

17 Okay. Rich, this
18 investigation is being
19 conducted by MSHA and the
20 State of West Virginia to
21 gather information to

22 determine the cause of the
23 accident and to help prevent
24 this from happening in the
25 future. These interviews are

11

01 an important part of the
02 investigation. After the
03 investigation is completed,
04 MSHA will issue a written
05 report detailing the nature
06 and the causes of the
07 accident. MSHA accident
08 reports are made available to
09 the public in the hope that
10 greater awareness about the
11 causes of accidents can reduce
12 their occurrence in the
13 future. Information obtained
14 through witness interviews is
15 frequently included in these
16 reports. Your statement may
17 also be used in other
18 enforcement proceedings.

19 I'd like to thank you
20 in advance for your appearance
21 here. We appreciate your
22 assistance. The willingness
23 of miners and mine operators,
24 and in this case, members of

25 the agencies, is critical to

12

01 the success in making the

02 nation's mines safer.

03 This interview with

04 Richard Kline is being

05 conducted under Section 103(a)

06 of the Federal Mine Safety &

07 Health Act of 1977 as part of

08 an investigation by the Mine

09 Safety & Health Administration

10 into the conditions, events

11 and circumstances surrounding

12 the fatalities that occurred

13 at the Aracoma Alma Mine

14 Number One located at Route 17

15 North, Bandmill Hollow Road,

16 Stollings, West Virginia,

17 25646.

18 This interview is being

19 conducted at the State of West

20 Virginia Department of

21 Environmental Protection

22 Division of Mining and

23 Reclamation at 1101 George

24 Kostas Drive in Logan, West

25 Virginia, 25601 on March 23rd.

13

01 The time is approximately
02 10:14 a.m. Eastern Standard
03 Time.

04 Mr. Kline, may I call
05 you Rich?

06 MR. KLINE:

07 You sure can.

08 MR. MURRAY:

09 The interview will
10 begin by asking you a series
11 of questions. Feel free at
12 any time to clarify any
13 statements that you make in
14 response to the questions.
15 After we have finished asking
16 questions, you will have an
17 opportunity to make a
18 statement of your own and
19 provide us with any additional
20 information that you believe
21 may be important. You are
22 permitted to have a
23 representative with you during
24 the interview, and you may
25 consult with your

14

01 representative at any time.
02 You may designate any person
03 to be your representative.

04 Following the questions by
05 MSHA and the State, your
06 representative will be given
07 the opportunity to ask any
08 questions for the purposes of
09 clarification on areas already
10 discussed.

11 Your statement is
12 completely voluntary, and you
13 may refuse to answer any
14 question and you may end your
15 interview at any time. If you
16 do not understand a question,
17 tell me and I'll repeat it or
18 rephrase it. If you need a
19 break for any reason, let me
20 know.

21 You may request the
22 opportunity to make a
23 confidential statement, which
24 we will withhold from the
25 public to the extent allowed

15

01 by law. Should you desire to
02 give a confidential statement,
03 you should advise me before I
04 begin your interview so that I
05 can reschedule in order to

06 properly consider your
07 request. Do you request a
08 confidential interview?

09 MR. KLINE:

10 I do not.

11 MR. MURRAY:

12 We have a court
13 reporter in the room as well
14 and she will record your
15 verbal responses and later
16 produce a written transcript.
17 I'd ask that you state all of
18 your answers verbally because
19 she can't record gestures such
20 as nodding your head or
21 shaking your head.

22 Neither the transcript
23 of this interview nor the
24 content of the interview will
25 be released to the public or

16

01 the media until MSHA's final
02 accident investigation report
03 is issued or until required by
04 court order or until a public
05 hearing takes place.

06 If any part of your
07 statement is based not on your
08 own firsthand knowledge but on

09 information that you learned
10 from somewhere else or from
11 someone else, please let us
12 know. Please answer each
13 question as fully as you can,
14 including any information that
15 you learned from someone else.
16 We may not ask the right
17 question to learn the
18 information you have, so don't
19 feel limited by the precise
20 question that we ask. If you
21 have information about the
22 subject area of a question,
23 please provide us with that
24 information. Do you have any
25 questions about how this

17

01 interview will take place?

02 MR. KLINE:

03 I do not.

04 MR. MURRAY:

05 Okay. Will the court

06 reporter please swear Mr.

07 Kline in?

08 -----

09 RICHARD JAMES KLINE, HAVING FIRST

10 BEEN DULY SWORN, TESTIFIED AS

11 FOLLOWS:

12 -----

13 BY MR. MURRAY:

14 Q. Rich, please state your full
15 name, address and telephone number
16 and spell your last name for the
17 record.

18 [REDACTED]

[REDACTED]

24 Q. Thanks, Rich. Rich, are you
25 appearing voluntarily here today?

18

01 A. I am.

02 Q. Has anyone made any promise to
03 you, promises to you for giving this
04 statement or offered you any rewards
05 in exchange for making your
06 statement?

07 A. No.

08 Q. Has anyone threatened you or
09 warned you not to provide this
10 statement?

11 A. No.

12 Q. Do you understand that you may
13 refuse to answer any question or

14 terminate the interview at any time?

15 A. I do.

16 Q. Do you have a representative
17 with you today?

18 A. I do not.

19 Q. Do you request one?

20 A. No, I do not.

21 Q. You're willing to continue
22 without one?

23 A. Yes.

24 Q. Okay.

25 MR. MURRAY:

19

01 For the record, we had
02 another member of MSHA's
03 investigation team enter the
04 room. If he could identify
05 himself?

06 MR. FINNIE:

07 Mike Finnie of
08 Madisonville, Kentucky, MSHA.

09 A. Hi, Mike.

10 MR. FINNIE:

11 Hi.

12 BY MR. MURRAY:

13 Q. Okay. Rich, how long have you
14 worked for MSHA?

15 A. MSHA and the predecessor

16 organizations back through MESA and
17 the Bureau of Mines for about 33
18 years.

19 Q. And where is your current duty
20 station?

21 A. Mount Hope, West Virginia.

22 Q. And what's your current
23 position there?

24 A. Assistant district manager,
25 technical programs.

20

01 Q. How long have you held that
02 position?

03 A. About ten and a half years.

04 Q. What other jobs have you held
05 while at MSHA?

06 A. I was a student trainee when I
07 first came to work back in the '60s.
08 I worked up through the U.S. Bureau
09 of Mines at that time through the
10 different groups there, ventilation,
11 dust, diesel. And then went to
12 Arlington, where I worked for the
13 Division of Safety as a staff
14 engineer in Arlington for about three
15 years. I then went to Denver,
16 Colorado as the Division Chief over
17 the Health Activities and the Denver
18 Tech Support Center. I left Denver

19 Tech Support Center, went out to
20 industry. I came back to the Bureau
21 of Mines in '92 in Denver, Colorado.
22 When they shut the Bureau down, I
23 moved to Mount Hope in my present
24 position.

25 Q. Quite a tour.

21

01 A. I have.

02 Q. You've answered the next
03 question. When you refer to other
04 districts and other areas of MSHA,
05 you've described that you have worked
06 in other areas, other than District
07 Four?

08 A. That's correct.

09 Q. And we'll use what was on the
10 --- what's on the record for that.

11 Thanks.

12 A. Okay.

13 Q. And aside of your 30-plus
14 years with MSHA, do you have other
15 mining experience?

16 A. I do.

17 Q. And what would that be, Rich?

18 A. When I left the government
19 back in, I think it was '81, I went
20 to work for Foster Miller in

21 Massachusetts, where we developed a
22 shearer clearer and some of the other
23 spray systems that are used on miners
24 and longwalls. I left Foster Miller
25 shortly thereafter and went to work

22

01 for Island Creek Coal Company as
02 manager of ventilation. And I stayed
03 with Island Creek about 10 or 11
04 years, somewhere in that
05 neighborhood. Ended up as manager of
06 mine planning. And I saw that Island
07 Creek wasn't planning or purchasing
08 anything so that company wasn't going
09 to continue and I left. Part of that
10 time I spent with Island Creek was in
11 the Virginia mines, the VP Mines, I
12 was in charge of the ventilation and
13 de-gas systems in Virginia.

14 Q. When you say you left, that's
15 when you returned to MSHA?

16 A. Yes.

17 Q. Okay.

18 A. Well, Bureau of Mines
19 technically.

20 Q. Bureau of Mines, okay.

21 A. Right.

22 Q. The next series of questions
23 will be relative to January 19th,

24 2006 and the events that transpired
25 after that initial event. On January

23

01 19th, where were you working on that
02 day?

03 A. I guess the Mount Hope office.

04 Q. In the office?

05 A. Yeah.

06 Q. Did you have occasion to speak
07 with anybody from either Aracoma or
08 at Massey during that day?

09 A. I don't remember any ---
10 speaking with any of them.

11 Q. Okay.

12 A. They had a meeting, I believe,
13 in the ventilation department, but I
14 don't remember being there.

15 Q. Okay. And that meeting in the
16 ventilation department, was that
17 related to Aracoma?

18 A. I think so.

19 Q. Okay. Can you remember prior
20 to the 19th, when your last
21 conversation with anybody from
22 Aracoma would have been in your
23 capacity of Assistant District
24 Manager?

25 A. No, I don't know without

01 checking diaries and so on.

02 Q. Okay.

03 A. And you're talking about

04 having business with the mine, Alma

05 One Mine; right?

06 Q. That's what I'm talking about,

07 yes.

08 A. No. I'd have to look at a

09 diary. I can't recall that.

10 Q. Do most of your conversations

11 and dealings with the Aracoma Mine

12 occur in your office or at the

13 Aracoma Mine site?

14 A. Both.

15 Q. Both.

16 A. You mean in the past history?

17 Q. Yes.

18 A. Uh-huh (yes).

19 Q. When do you think the last

20 time you were at the Aracoma prior to

21 the 19th of January?

22 A. Well, it was soon after they

23 started and they had, what I'll call,

24 an inundation, they broke into the

25 old slope down there, and I remember

01 going down on that. The other

02 occasion I was at the mine was when

03 they put the box cut at the present
04 portal there. And we had an ice
05 condition on that portal. I was down
06 at that time when we wrote that
07 portal up for unsafe conditions with
08 the ice.

09 Q. Okay. When you say you wrote
10 that up, that would be a condition
11 that you observed on the outside of
12 the mine?

13 A. Yeah, in the box cut.

14 Q. Okay. And can you describe
15 what the condition was that ---?

16 A. Overhanging ice with miners
17 underneath. So there was a
18 possibility of grave fatal injuries
19 there.

20 Q. Who were you with that day?

21 A. Sherman Slider.

22 Q. Okay. And who represented the
23 company from that meeting?

24 A. What's his name? Penn State
25 boy, Zoomwalt (phonetic).

26

01 Q. Zoomwalt?

02 A. Yeah.

03 Q. That's his last name?

04 A. I believe that's what it is.

05 Q. Okay.

06 A. Richard. I think he's a

07 Richard, too.

08 Q. Do you know what his title

09 was?

10 A. No, I don't, but probably

11 general manager or something like

12 that or he could have been president

13 of that division. I don't really

14 recall.

15 Q. Okay. Do you remember the

16 last time you were underground at

17 Aracoma?

18 A. Actually underground was back

19 when they cut into that slope.

20 Q. Okay. And what was the reason

21 for your travel underground that day?

22 A. I wanted to see what they had

23 done, why they had cut into it, what

24 went wrong with the engineering.

25 Q. Okay. Did you come up with

27

01 any conclusions based on that visit?

02 A. Yeah, the maps were wrong.

03 They know it was there. They knew

04 the slope was there and they just

05 laid it out and cut into it.

06 Q. And what was the result of

07 them cutting into this particular

08 area?

09 A. They got a little bit of water
10 on them and some mud. Nobody was
11 hurt though.

12 Q. And the District investigated
13 that as an accident?

14 A. I think we did. I didn't.
15 But I think that our District did.

16 Q. Okay. Based on your findings,
17 was one of the conclusions was the
18 fact that the maps were inaccurate?

19 A. That's what I recall, yeah,
20 without looking up the report and
21 everything.

22 Q. Okay. Do you know if there
23 was a violation issue toward that?

24 A. No, I don't. I don't
25 remember.

28

01 Q. Okay. That's fine. Okay.
02 Back to the 19th, Rich. And if you
03 can remember, do you have any idea
04 what time you actually left your
05 office that day to go home?

06 A. That's not what I thought you
07 were going to ask.

08 Q. Well, I'll probably ask ---.

09 A. No, I don't remember, but I

10 usually get out of the office between

11 5:00, 4:30, 5:00, 5:30.

12 Q. Okay. And what time did you

13 receive the call from Aracoma

14 advising you of the mine fire?

15 A. 7:55. 7:55.

16 Q. Okay. And where were you at

17 when you received that call?

18 A. I was at home.

19 Q. And who called you?

20 A. Eddie Lester.

21 Q. Do you have any notes from

22 that call?

23 A. I do.

24 Q. Did you bring them with you

25 today?

29

01 A. I did.

02 Q. And will you provide that as

03 that copy to us as a ---?

04 A. I'll let you copy them, but my

05 originals are someplace in the

06 process. I could not produce my

07 original. It was taken by Joe

08 Mackowiak and you know, provided to

09 whomever.

10 Q. Okay.

11 A. So I don't know where --- but

12 I have a copy of my notes.

13 Q. Okay. The copy that you've
14 provided today, ---
15 A. I'll give you ---.
16 Q. --- in your opinion, to the
17 best of your knowledge, does that
18 represent the original?
19 A. Yes, it does.
20 Q. Okay. In its entirety?
21 A. Yes, it does.
22 Q. Okay.

23 MR. MURRAY:
24 Let's take a break.
25 SHORT BREAK TAKEN

30

01 BY MR. MURRAY:
02 Q. Okay. Rich, we're back on the
03 record. When we broke, we were
04 talking about some notes that you had
05 brought with you today and we're
06 going to enter those as an exhibit.

07 MR. MURRAY:
08 We'll call that Exhibit
09 A Kline. And what it is the
10 notes that were compiled at
11 the Mount Hope office while
12 the Aracoma Mine emergency was
13 initiated and continued
14 through the 23rd.

15 (Kline Exhibit A marked
16 for identification.)
17 BY MR. MURRAY:
18 Q. And if you would for the
19 record, explain to me how these notes
20 were broken down into --- into some
21 different specific subject areas?
22 A. Okay. I have 21 pages in this
23 exhibit you call it. The first page
24 is a summation, having date, time and
25 names of people that were in the

31

01 Mount Hope office covering, what I'll
02 call, the command center as we got
03 people out for this mine emergency.
04 You'll see they run through the 19th,
05 the day of the event, and through the
06 23rd. People on that are myself,
07 Richard Kline, Larry Cook, Mike
08 Dickerson and Jon Braenovich and
09 Harold Owens. I guess the four of us
10 manned that center for those days.
11 Now, I'll say for the record, too,
12 from best I can see from my notes, I
13 was at the office.

14 Now, we started out, I got a
15 call at 7:55 at home. That put me in
16 motion at home, and we'll go over
17 those notes, I'm sure. And I made it

18 to the office by about nine o'clock
19 that night and I stayed at that
20 office through that night and through
21 the next day, the 20th, until about
22 four o'clock, and then I went home
23 and got some sleep.

24 The notes on page one and two,
25 if you look at them, you'll see the

32

01 size paper there, it's a pad I use at
02 home when I get a call. And so those
03 are, whatever that's called, a three
04 by five pad or whatever size it is.
05 And then I continued on with notes on
06 a larger pad, three, four, five, six
07 and page seven, which appears to be
08 my handwriting, plus maybe some
09 others there. And then the pages
10 from eight on back through are the
11 other guys that I mentioned earlier
12 on the first page, the summation
13 page, their notes. What we did at
14 the end of this, after we shut this
15 down, I had Larry Cook collect this,
16 put it together so we had a record.
17 Now, it went to Joe Mackowiak and I
18 don't know where the original is.
19 I'm sorry, I just don't know. It's

20 in a pack of whatever, whoever has
21 it now.

22 Q. Okay. Rich, we appreciate
23 this information, it's very helpful
24 to us.

25 A. Now, do you want me to start

33

01 through the notes or how do you want
02 to do this?

03 Q. Yeah, we're going to talk
04 about that in just a bit.

05 A. Okay.

06 Q. I see on page one of the notes
07 themselves, the words numbered in the
08 top right-hand corner, page 1 of 20,
09 that you were called at 7:55 by Eddie
10 Lester from Aracoma Mine. And
11 according to the notes that you have
12 here, and I'll let you expand on it,
13 you indicate that there was a fire on
14 the mother belt and two people
15 unaccounted for. Is that the
16 information that Mr. Lester shared
17 with you?

18 A. That is.

19 Q. Did he expand on any kind of
20 time estimation of when the fire
21 began?

22 A. His --- you can see it on my

23 note there, he thought it was
24 approximately six o'clock the event
25 started. Now, I can't --- you know,

34

01 past evidence or whatever you call
02 that, is showing it to be a different
03 time, but I don't have personal
04 knowledge of that.

05 Q. That's correct. Right now,
06 and you correctly refer to that,
07 we're actually referring to the notes
08 that you took that night.

09 A. That's correct.

10 Q. And I appreciate that.

11 A. He thought it happened,
12 started --- his fire started about
13 six o'clock. He was very upset and
14 very emotional. He had two of his
15 miners missing. And I've known Mr.
16 Lester for a lot of years and he was
17 very upset.

18 Q. Okay.

19 A. So I had a hard time, you
20 know, asking him questions to get
21 information out of him. He didn't
22 have much.

23 Q. Okay.

24 A. He had already been frustrated

25 trying to call. He had a hard time

35

01 getting ahold of people, and they

02 finally got me at home.

03 Q. Okay. At that time, did Mr.

04 Lester indicate that he had attempted

05 to call other MSHA personnel before

06 he contacted you?

07 A. Yes, he did.

08 Q. And can you remember what he

09 told you?

10 A. He called several people,

11 couldn't get ahold of them, like the

12 supervisors over here at the Logan

13 Field Office.

14 Q. Did he indicate how much time

15 he spent prior to 7:55 in an attempt

16 to contact other folks?

17 A. I don't remember any time

18 period, no.

19 Q. The notation that you have

20 across from the date, 11/19/06 (sic).

21 The squiggly line in front of 6:00

22 p.m., that's approximate?

23 A. Approximate 6:00 p.m., that's

24 correct.

25 Q. And those are Mr. Lester's

36

01 words?

02 A. Yes.

03 Q. Okay. The chronological order
04 of your subsequent phone calls as we
05 go down page 1 of 20, you indicate
06 that at 8:03 p.m., you contacted Bill
07 Crocco in the headquarters office?

08 A. Yes, I did.

09 Q. And you were successful in
10 contacting Mr. Crocco?

11 A. Yes, I was.

12 Q. And what information did you
13 provide to Mr. Crocco?

14 A. Just what I had above, got a
15 call from Eddie Lester at 6:55. We
16 have a fire at Aracoma, two people
17 unaccounted for.

18 Q. Did Mr. Crocco offer you any
19 advice or guidance at that time?

20 A. I don't remember distinctly
21 what was said, but normally in these
22 cases, we talk about should we call
23 Tech Support and all that, and I
24 said, yes. That's generally what we
25 get. I mean, we have to get John

37

01 Urosek or Denny here to get started.

02 We have a fire. I knew we had a

03 fire, but I didn't know any detail.

04 Q. Okay. Do you know where Mr.
05 Lester called you from?
06 A. No, I don't.
07 Q. Do you have caller ID at your
08 home that would have indicated ---?
09 A. It was a Massey number, that's
10 all it said.
11 Q. Do you think it may have been
12 from Aracoma?
13 A. I think it was, but I don't
14 know that.
15 Q. Okay.
16 A. Didn't ask.
17 Q. Did Mr. Lester tell you that
18 you were the first person he actually
19 contacted?
20 A. First federal person?
21 Q. Yes.
22 A. Yes.
23 Q. That's what I mean, first MSHA
24 employee?
25 A. That's correct.

01 Q. Okay. Moving over to page 2
02 of 20 of your notes, you indicate a
03 time of 8:40 p.m., to where you
04 contacted John Langdon.
05 A. No, I think John called me for
06 an update.

07 Q. Okay. I'll let you tell me
08 then.

09 A. That's as I recall it. When I
10 don't have a phone number there, it
11 usually means they called me. I
12 don't know for sure, but John and I
13 talked. He wanted an update on the
14 fire. I believe he called me.

15 Q. Okay. Do you know at what
16 time and who was the first local
17 District Four MSHA person that you
18 contacted to ---?

19 A. Luther, the first page.
20 Couldn't get Gillenwater. I got
21 Luther.

22 Q. Okay. So on page 1 of 20, you
23 indicate that you contacted Luther
24 Marrs and it was somewhere between
25 7:55 and 8:03.

39

01 A. That's correct.

02 Q. And what were your
03 instructions to Luther?

04 A. We had a fire at Aracoma, get
05 --- call people and get the first
06 available inspector over there, find
07 out what we had.

08 Q. Okay. Do you know who the

09 first available inspector was?

10 A. Vicki Mullins. I don't know

11 how she was contacted though, Kenny.

12 I don't know.

13 Q. Okay.

14 A. I was told but I don't know

15 personally how to answer you

16 honestly.

17 Q. Okay. That's fine. Yeah.

18 A. I think Sharon Cook heard it

19 and called Vicki and Vicki lives

20 close and she went right over there,

21 and she was there by about 8:30 I

22 believe.

23 Q. Okay.

24 A. I did not call her and I don't

25 think Luther did, You'd have to ask,

40

01 you know, how that happened. I think

02 that's how it happened.

03 Q. Okay. Do you know if Vicki

04 was the first MSHA person onsite?

05 A. I was told that. I don't know

06 that.

07 Q. Do you know of any other MSHA

08 persons that arrived fairly quickly

09 to the site on or about the same time

10 Vicki did?

11 A. No, I don't really know. I've

12 been told that Minness got over there
13 quickly but I don't know that, no. I
14 wasn't told that.

15 Q. Would you have any information
16 on who would have called Minness to
17 advise him?

18 A. No, I don't. Don't know how
19 that happened. I'm thinking that
20 Gillenwater was finally gotten ahold
21 of and then he started calling
22 people, but I don't know that.

23 Q. Okay. Do you know what
24 specific role Vicki played on her
25 initial presence at the mine site?

41

01 A. I was told; is that okay?

02 Q. That's fine, yes.

03 A. I was told she wrote a (k)
04 order taking care of the situation.

05 At that time, there was already
06 Massey employees, management,
07 underground trying to find the two
08 men and seeing what they had in the
09 fire, trying to fight the fire.

10 Q. Okay. And we now know looking
11 up on that, some of the actual MSHA
12 documents that Vicki did, in fact,
13 write the (k) order, which we have

14 that document.

15 A. I don't know.

16 Q. Okay. We know that.

17 A. Oh, okay.

18 Q. Do you know --- do you know

19 Minness Justice's initial

20 responsibilities onsite?

21 A. No, I don't. Are you going to

22 back up? I got ahold of Jesse.

23 Jesse was coming back from

24 Barbourville with Joe Mackowiak, and

25 I strongly advised him to go to the

42

01 mine. That's a fair way to say that.

02 Q. Yes.

03 A. Now, he had been out of

04 pockets, you know, giving

05 presentations and I said, Jesse, we

06 have a situation here, you need to

07 get to the mine, so Jesse went to the

08 mine. I stayed in Mount Hope.

09 Otherwise, I would have hopped in the

10 car and been at the mine, but Jesse

11 went to the mine, so I stayed.

12 That's the way we usually work it.

13 Q. And Jesse went to the mine

14 with Mackowiak?

15 A. Yes.

16 Q. Okay. Rich, I guess it would

17 probably be best since --- to keep me
18 from jumping around since you
19 understand your own notes better than
20 I do at this point. Let's --- let me
21 let you begin on page 2 of 20.

22 A. Okay.

23 Q. And just briefly tell me what
24 each of those times would mean to
25 you.

43

01 A. According to my notes, at
02 8:40, I talked with John Langdon and
03 shortly thereafter, I talked with
04 Jesse. Jesse who knew that John
05 Urosek was on his way to Aracoma. I
06 was told to stay at the office, set
07 up the command center, be there
08 available for calling, get people
09 out. I was also advised to get
10 someone to the Logan office. The
11 next note would have been Luther
12 talking with me that he had gotten
13 ahold of Gillenwater. The next note
14 is Ray McKinney called and asked for
15 an update. He had told me that there
16 were ten people going back to find
17 two guys. I don't remember much more
18 than that. That probably is the

19 Massey people going back in. I was
20 told at that time, Vicki issued a (k)
21 order. She didn't call me. I was
22 told. And then Bill Crocco called me
23 back, Urosek would be on the way soon
24 with a chromatograph. 9:25 was still
25 in Bridgeport. And then Urosek

44

01 called and I gave him the information
02 to the Logan office and the mine and
03 so on, the phone numbers and so on.

04 Q. Okay.

05 A. Now, at the bottom of page two
06 we are now, you'll see the change in
07 the size there, apparently I'm now at
08 the office and I stuck this ---
09 you'll see a paperclip up here, I
10 stapled the small paper to a large
11 one, here I go with a tablet now. At
12 9:35, I called the Logan office, try
13 to get people there, so nobody had
14 showed up at the Logan office yet, so
15 I wrote no answer. At 9:40, you can
16 see where Mark Skiles called me and
17 told me to get a drill rig down,
18 survey in the last place where the
19 miners were, et cetera, et cetera,
20 there. And I called Logan again at
21 9:48, and no answer.

22 Page three, I called Kenny
23 Murray at, it looks like, 9:54. I
24 got Kenny and talked with Kenny. At
25 shortly thereafter, 9:55 --- at 9:55,

45

01 I got Al Davis, who is also one of
02 the alternates for us, to help us. I
03 got Al's wife, because he was out and
04 snowed in someplace south out there
05 and I finally got him and left a
06 message on his cell phone. And Al
07 called me back sometime later after
08 he told me where he was.

09 Q. And just so I could clarify
10 this for the record, the reason that
11 you called the District Managers of
12 District Six and District Nine,
13 that's according to your Mine
14 Emergency Plan, that those Districts
15 are backup Districts for District
16 Four?

17 A. That's correct.

18 Q. Okay.

19 A. Yeah, District Four's Mine
20 Emergency Plan has Six and Nine as
21 backup districts.

22 I talked with Ernie Ross at
23 that time, another supervisor our of

24 our Pineville Field Office and he was
25 standing by if I needed him for

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01 anything, as we tried to get people.
02 Clark Blackburn, I got ahold of him
03 then, and he also was standing by.
04 So I'm just trying to find people in
05 case I need them. Terry Price, busy.
06 I left a message there. Inspector
07 John Brown was in Florida. Someone
08 told me it was four miles underground
09 to the Two section. You have to be
10 very careful with my notes here, at
11 this time I have Arlington calling.
12 They want a map. There's no map in
13 Arlington. What I have in the
14 District office is a big map, and I
15 have no facility to scan electronic,
16 get it anywhere. But I'll get to
17 that later. But anyway, so I don't
18 know. I'm off memory, I'm trying to
19 understand. And I know now what it
20 was, but just keep that in mind.
21 That kind of thing will happen and
22 you'll write things down not fully
23 understanding what they're telling
24 you. Two boys, 26 at that time and
25 27 years old, were missing. We know

47

01 who they were now of course. Minness
02 Justice is there. I guess I got
03 ahold of him at the Logan office.
04 I'm sorry, I don't know. Charlie
05 Ward and Paul Prince at Madison if
06 needed. Vicki Mullins was at the
07 mine, called me back to ask if she
08 could do anything or anything else
09 needed, and I filled her in on what
10 was happening. 10:25, still no
11 answer at the Logan office. I got
12 ahold of Phil Stanley, one of our
13 CMIs, and left a message. He'll call
14 back later and I get Phil on the way
15 and someone else, I don't remember
16 who else, to the Logan office.

17 Q. Just a minute to where I can
18 back up. We have Minness Justice,
19 now being contacted and being a
20 person that we now know is either
21 headed to the mine or at the mine.

22 A. That's right. I don't know
23 from my notes. I don't remember.

24 Q. Okay. And we --- do we have
25 any understanding or knowledge of

48

01 what our expectations was when Mr.
02 Justice would have arrived at the

03 mine?

04 A. No, I don't know what he was
05 asked to do or --- my expectations
06 for him at the mine, no. We've got
07 notes, it's in the same set of notes
08 here where we're talking about in our
09 --- the two boys still missing and
10 everything. I don't know. I don't
11 remember.

12 Q. Okay.

13 A. Vicki is calling again, fire
14 at the mother drive belt on the
15 longwall. Got to the mine at 8:30.
16 And see, remember I told you before,
17 I don't know how she was called.

18 Q. That's right.

19 A. But anyway, here I am now, I'm
20 talking with her so I try to take
21 some information. One half between
22 Nine and Ten. One half between Nine
23 and Ten. Don't know what that is. I
24 don't know if that's the Nine
25 headgates and so on or not. I didn't

49

01 finish that note, so I'm not sure
02 what that meant. And it probably is
03 something to do with the headgates
04 but I don't remember the numbers up
05 there. They were --- Vicki was

06 telling me something about probably
07 that the guys were coming out where
08 that man who got out of the mantrip
09 and the two men got separated.
10 Q. Could that have been halfway
11 between Nine tailgate and Ten
12 headgate going out to the ---?
13 A. That probably was. It doesn't
14 say it in my notes, but it probably
15 was. And she's telling me the
16 mantrip was stopped there or that's
17 where the guys got out. Because they
18 were outside by then and they were
19 talking with them, where's the other
20 two guys. They were trying to figure
21 out, you know, what happened to those
22 two guys. So that's probably Vicki's
23 filling me in on what she's heard at
24 the mine. Off mantrip, one guy ran,
25 donned their rescuers, two were lost,

50

01 12 in the mine to get them back out.

02 Still two lost.

03 At the bottom of that page,
04 number three, Bill Gillenwater, we're
05 talking about now numbers of CO and
06 we have a note there that says
07 hand-held 865 parts per million of

08 CO, and that's the longwall return
09 bleeder. Smoke coming off the
10 section. The two guys ran.
11 Q. Okay. The air reading that we
12 --- or the air quality reading --
13 A. Air quality reading?
14 Q. Yeah. --- that we have 865
15 CO, do you know who took that
16 reading?
17 A. I have no idea.
18 Q. This is a report that Mr.
19 Gillenwater had given to you?
20 A. That's correct. Don't know
21 where he got it.
22 Q. Okay. We don't know what kind
23 of detector that was used to take the
24 reading?
25 A. Hand-held is all I know.

51

01 Q. Okay.
02 A. I passed, you know, just what
03 I heard from what I've heard. I
04 think the Massey people went down in,
05 because they thought those guys ran
06 to the bleeders. My guess is, this
07 is from Massey, but I don't know
08 that.
09 Q. Okay. When we say longwall
10 bleeder return, we think that reading

11 was taken underground as opposed to
12 outside at the exhaust of an
13 airshaft?

14 A. Yes.

15 Q. Okay.

16 A. That's how I took it.

17 Q. Okay.

18 A. Because what they're calling
19 the longwall bleeder return is where
20 that connection is made at the back
21 of that wall down there, because it
22 comes back out and comes around and
23 back up to that fan.

24 Q. Okay.

25 A. Page four?

52

01 Q. Yes, sir.

02 A. Twelve (12) company people
03 still underground, outside now,
04 flames at the tailpiece.

05 Q. These are reports given to ---
06 are we still talking to Vicki?

07 A. Gillenwater.

08 Q. Or Gillenwater is talking
09 about ---?

10 A. Gillenwater's still talking to
11 me.

12 Q. Okay. And these reports were

13 given to Mr. Gillenwater from --- do
14 you know who that would be?
15 A. No.
16 Q. Okay.
17 A. I can only guess, he was
18 standing around with the rest of them
19 there, they heard the reports come
20 out, but I don't know.
21 Q. Okay. These reports may have
22 been given by somebody that actually
23 was underground and went to the
24 scene, obviously, if they talked
25 about flames? They would have ---?

53

01 A. I would say at this time, this
02 is --- I don't know, Kenny. I better
03 not ---
04 Q. That's fine.
05 A. --- I better not guess.
06 Q. No, that's fine.
07 A. It could be either way and I
08 don't know. The mine's phone were
09 working, they were calling stuff out,
10 because they were after information.
11 They knew they had two guys missing.
12 I don't know.
13 Q. No, that's fine, Rich.
14 A. Okay. Now, Phil Stanley gets
15 ahold of me. He calls me back.

16 Remember I left a message at his
17 house. I'm trying to get people from
18 the Logan office. So he'll get ahold
19 of Bill Merritt and they'll get to
20 the office. He didn't think he'd
21 arrive until after 11:00, I believe
22 is what 11:03 means there. No, that
23 was at 11:003. It would take him
24 some time to get there. He lives
25 quite a ways from the Logan office,

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01 he and Merritt. So he said he'd get
02 to the office. I needed people in
03 the Logan office. Gave Crocco an
04 update a little after 11:03. Clark
05 Blackburn, that's what the Clark is,
06 he's headed to the Madison office,
07 his office. He is the supervisor,
08 one of the supervisors in Madison.
09 11:33, Madison talked to Clark, he is
10 headed to the mine. So Clark then
11 went to the mine. I don't know who
12 told him to go to the mine.
13 Q. Okay. Just a minute, I needed
14 to write on this that --- just so we
15 don't have to go back and look.
16 Where you talked about Clark at the
17 top of the page, top of page four,

18 would you care to add the word
19 Blackburn?

20 A. Okay.

21 WITNESS COMPLIES

22 BY MR. MURRAY:

23 Q. That way we'll --- we won't
24 have to ---?

25 A. How do you want me to put it,

55

01 over the top, up in the edge?

02 Q. If you just put a caret, if
03 you put a caret and then just write
04 it in the top margin there.

05 WITNESS COMPLIES

06 A. Okay?

07 BY MR. MURRAY:

08 Q. Yeah, that's good. Okay.

09 A. At 11:35 then, Bill Crocco
10 called me, said they're going to go
11 to the Arlington office and set up
12 there. He'll call me back when he
13 gets there.

14 Now, we move into the 20th,
15 midnight, past midnight. 12:08,
16 Crocco calls me and wants a map.
17 Faxed the map. I find Richard
18 Stephens, who is one of our CMIs in
19 the Mount Hope office. He come back
20 from inspection activities. I

21 shanghai him and have him tear up a
22 map and copy it and fax it. And that
23 did not happen quite that quick. We
24 had all sort of problems with that.
25 We finally got them a map of sorts to

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01 Arlington office. I have no idea the
02 mine number there, I'm not sure why I
03 have that there. That's the number
04 at Aracoma Alma Mine. Dennis
05 Holbrook has called me. He is an
06 inspector out of the Logan office.
07 He said two teams were underground,
08 now this is 12:30, somewhere up in
09 there, after midnight. Had a fresh
10 air base set up, they're advancing.
11 Neutrals were clear, they had 93 PPM
12 on the, I'll say, the left neutral, I
13 guess that is. Approximately 1,000
14 foot. Found one door, heavy smoke.
15 I don't know where these are. These
16 are --- I have not correlated to a
17 map. I still don't know where the
18 fire is. I know where the longwall
19 is now and the mother line of the
20 longwall, so I have an idea of where
21 the fire is. But I'm taking down
22 this just so I have information, not

23 knowing exactly where things are. So
24 I can't tell you --- this says 93 PPM
25 left and I would say that was the

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01 left side of the neutrals going up in
02 the north mains there, but I don't
03 write that down. Inundation hole is
04 a reference to the inundation we had
05 where that seal is up in the
06 northeast mains. That inundation
07 occurred, I don't have the date, but
08 some time ago. That's a reference
09 there. And that hole moved all
10 around, and I can't show you on a map
11 right now where that hole is. It's
12 not up at the inundation site where I
13 thought it was behind that seal. I
14 think that hole was down probably in
15 that tailgate, but I never clarified
16 where that hole was.

17 Q. When we talk about hole, is
18 that the six-inch borehole?

19 A. That's correct. That's that
20 small borehole.

21 Q. Okay. We've actually been
22 underground as you well know and
23 we've found that hole to be in the
24 intake.

25 A. Okay.

01 Q. Right adjacent to the roadway.

02 A. Okay.

03 Q. We found --- we located that
04 hole underground. So when you say
05 hole, that's the intake borehole that
06 was drilled ---.

07 A. It's right in the northeast
08 mains ---

09 Q. It is.

10 A. --- on the primary intake?

11 Q. Adjacent to it. It's actually
12 in the crosscut.

13 A. In a crosscut?

14 Q. Yeah.

15 A. Okay.

16 Q. But it's in the intake air
17 course.

18 A. I didn't know at the time.

19 Q. Okay.

20 A. They've just given me readings
21 and I have not correlated anything
22 yet.

23 Q. I tell you, Rich, in this, we
24 moved back into some of these --- we
25 were interested in your initial

01 response, which I probably --- I

02 believe we have into the record.
03 Unless there's anything between where
04 we're at right now 'til somebody else
05 took over on the initial --- the
06 initial response of the District that
07 you want to bring to our attention
08 based on your notes at this point?
09 A. I'm not sure how much detail
10 you're after when you're asking
11 something like that.
12 Q. Okay.
13 A. I mean, I'm continuing to keep
14 people up to date, but I'm not
15 directing anybody at the mine, so ---
16 Q. Right.
17 A. --- that's probably more of
18 what you're looking for. So all I'm
19 doing is collecting information and
20 being a go-between until the mine is
21 set up. Jesse got to the mine, I
22 think, around midnight and then of
23 course, he took over. And now I'm
24 just recording and being a backup for
25 him now.

60

01 Q. That's right. Did you, at any
02 point, report to the mine?
03 A. Yes, I did.
04 Q. Okay. And at what point was

05 that?

06 A. Saturday morning. Okay. Now,
07 I stayed at the Mount Hope office
08 through Friday afternoon, four
09 o'clock, whatever time I got out of
10 there.

11 Q. Okay.

12 A. I went home and went to bed.
13 I got up early Saturday morning, I
14 don't know what time I got to the
15 office. I don't remember. It's in
16 my diary someplace. But I got there
17 early in the morning. By then, the
18 night had gone, we had not found the
19 guys yet. The fire was still going.
20 All things were happening with the
21 teams. And I talked with Jesse and
22 he said get to the mine. I think I
23 left for the mine about nine o'clock
24 in the morning. Terrible morning,
25 fog on Bolt Mountain, the whole

61

01 thing. I think I got to the mine
02 11:00, 11:30, something like that.
03 And then I just sort of was in the
04 command center there. I thought I
05 was going to relieve Jesse and let
06 some guys get some sleep. Doug

07 Conaway had been there, Jesse, Linc,
08 Joe Mackowiak had been there for two
09 days without any sleep, but they
10 stayed on. So then those --- the two
11 victims were found then in the
12 afternoon. And then Jesse took off
13 and I took over in the command center
14 at that time.

15 Q. Okay. Let me back up just a
16 minute to make sure our times don't
17 conflict with your notes. On --- if
18 you want to look at your --- the
19 actual cover page where you had your
20 index ---

21 A. Uh-huh (yes).

22 Q. --- of the folks that were
23 there, there's a notation on the 21st
24 of January. It indicates in
25 parentheses, Rich Kline at 7:30 a.m.,

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01 then off to the side, it says went to
02 the mine.

03 A. Uh-huh (yes).

04 Q. Is that different than what
05 you told me as far as the times?

06 A. Yes, it is. I think I said I
07 went about nine o'clock.

08 Q. Okay.

09 A. That note says 7:30. I think

10 that's right.

11 Q. Okay.

12 A. I was guessing before ---

13 Q. That's fine.

14 A. --- because I don't have my

15 diary in front of me.

16 Q. Yeah, okay. That's fine.

17 A. I know I got there early ---

18 Q. Okay.

19 A. --- and talked with Jesse and

20 took off for the mine.

21 Q. And where did you talk to

22 Jesse at?

23 A. He was at the mine.

24 Q. And you were?

25 A. I was at the office in Mount

01 Hope. Jesse was at --- Jesse Cole

02 was at the mine at Aracoma Alma.

03 Q. Okay.

04 A. So it appears, you know, I got

05 my stuff together and took off. I

06 had it all there. I was dressed,

07 ready to go.

08 Q. Okay. So your first presence

09 at the mine site was on the morning

10 of January 21st?

11 A. 21st, Saturday morning, yes,

12 sir.

13 Q. I'm with you. Okay. Rich,
14 you can refer to your notes if you
15 wish, but in your own words and like
16 I say, if you want to refer to those,
17 tell us what you experienced at your
18 first presence at the mine site on
19 the 21st, and maybe approximately
20 what time it would have been whenever
21 you arrived there. You talked about
22 the fog and ---.

23 A. I think it's probably about
24 --- I'm going to say I arrived there
25 about 10:00 in the morning. I

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01 originally thought 11:00, but ---

02 Q. Okay.

03 A. --- leaving at 7:30, even with
04 the terrible time I had going over
05 Bolt Mountain, I should have been
06 able to make it in two hours, a
07 little better than two hours.

08 Q. Okay.

09 A. So I'll say I arrived there
10 about 10:00 or 11:00. Initially, I
11 could not even get in because the
12 state police were there and
13 everything was --- secured is not the
14 right word, but let's call it

15 secured. So I asked the state police
16 --- I told them who I was, identified
17 myself and said I had to get to the
18 command center. And they said,
19 you'll have to wait until somebody
20 comes out and lets you in. So it
21 took me a few minutes to get in the
22 command center to talk to Jesse.
23 Once I got in there, I asked what my
24 function should be. And Jesse told
25 me, just keep your ears open and your

65

01 eyes open and see what we're doing.
02 There was how many people around the
03 table, a lot of people around the
04 table in that command center, plus
05 all the others outside. In other
06 words, we had people on the phones
07 taking everything down that came from
08 the underground phone. We had a
09 scribe in the command center taking
10 everything down --- not everything
11 but taking notes in the command
12 center. And you had people trying to
13 sift through all the information they
14 had to decide what the teams should
15 do next and next and next.
16 Q. Can you remember who the

17 scribe was for MSHA in the command
18 center when you were in there?

19 A. I'm sure I don't.

20 Q. Okay.

21 A. I saw them. I don't remember.

22 Q. That's fine. Whenever you
23 arrived in the command center, did
24 Jesse leave the command center?

25 A. Not as such. He would not

66

01 leave. But remember he was giving
02 the briefings to the family and to
03 the news media, so he and Doug and
04 the Governor and others were in and
05 out all along depending on what news
06 and what time it was. So I think
07 they were on like a two-hour talk to
08 the family type thing and the news
09 people. I'm guessing that because
10 that's about what would happen.

11 Q. When you say Doug, that would
12 be Doug Conaway?

13 A. Doug Conaway, yeah.

14 Q. From the State of West
15 Virginia?

16 A. That's correct.

17 Q. Okay. Do you know where these
18 family briefings were being
19 conducted?

20 A. I was told they were down at
21 the church there at Melville.
22 Q. Okay.
23 A. But I never went there. I had
24 never --- was never a part of that.
25 Q. Okay. Do you want to continue

67

01 talking a bit about the command
02 center, the way it was set up and who
03 ---?

04 A. Right. It was a large table
05 with a map on it, and on that map,
06 all sorts of writing. As the teams
07 would call out, they'd write on the
08 map. It was quite a mess. But
09 anyway, that's what they were doing.
10 And of course, no one expected --- I
11 don't think anybody expected to go so
12 many days before they found the two
13 men.

14 Q. The map that you referred to
15 in the command center, would this
16 represent that map?

17 A. Part of it. It was bigger
18 than that map.

19 Q. Do you want to come to the map
20 to try to ---?

21 A. When I was in the command

22 center, I was on this end of the
23 table, whatever you want to call this
24 end.

25 Q. Okay.

68

01 A. I can't tell her the gesture,
02 so ---.

03 Q. Okay. How about --- if we
04 walked in the command center, as I
05 understand, was set up on the second
06 floor of the Aracoma bathhouse?

07 A. Correct. Had two doors to it.
08 One door was left-handed, one door
09 was right-handed.

10 Q. Okay.

11 A. And you went into it. I went
12 in the left door and stood at the
13 left end of that table.

14 Q. Okay. If you walked into that
15 left door and you're looking out,
16 you'd be looking at the window.

17 A. Looking at the elevator just
18 to your right.

19 Q. Okay. And you were at that
20 side of the table?

21 A. When I first went in, that's
22 correct.

23 Q. Okay.

24 A. The table was full, the chairs

25 were full.

69

01 Q. Okay. Looking out the window,
02 you would have been at the left-hand
03 extreme side of the table?

04 A. Correct.

05 Q. I'm with you.

06 A. And this map, if this is a
07 rendition of it, or a copy or
08 whatever --- of course I don't
09 remember the blue ink, but it could
10 have been.

11 Q. Do you know ---?

12 A. I thought it was a buff color
13 map, but it could have been. I see
14 all this writing, that's what I
15 remember, all this writing. I was
16 standing here on the left side
17 looking. But this thing, I thought
18 it went longer both ways.

19 Q. Okay.

20 A. Maybe not, maybe this is all
21 it was, because that table was, you
22 know, X wide. I just might --- there
23 must have been maps on top of maps
24 there then. There must be more than
25 one map if this really is the map.

70

01 Q. That's what's been represented
02 to us as being the map at the command
03 center.

04 A. Okay. Well, I don't know
05 where they went.

06 Q. Okay.

07 A. Mark Heath was there and I
08 don't know who --- I mean, there was
09 confusion.

10 Q. We'll label this map of the
11 command center as B, as in boy,
12 Kline.

13 (Kline Exhibit B marked
14 for identification.)

15 BY MR. MURRAY:

16 Q. By looking at the --- the blue
17 ink that looks like notations off to
18 the side of the actual mine workings,
19 can you remember who was making those
20 notations on the map?

21 A. They were already done before
22 I got there.

23 Q. Okay.

24 A. At that point --- look at it,
25 it's all so crowded. They started

71

01 saying we better --- we better get
02 another map. They started talking
03 things like that though and, you

04 know, the maps didn't come until
05 later. Get another map. We better
06 write then somewhere else.

07 Q. Do you know who was making
08 those requests?

09 A. Frank Foster.

10 Q. Okay.

11 A. Frank Foster was sitting over
12 in this side, the back side towards
13 the doors, that wall. And then he
14 and Dwayne and Chris and others were
15 sort of, you know, suggesting we do
16 this and then of course, the MSHA,
17 State and so on were there listening
18 and either yea or nay to those things
19 or offering their advice.

20 Q. Who do you think would have
21 been the highest ranking company
22 official at the command center when
23 you were in there on the 21st?

24 A. It changed. It changed
25 depending on what time of day it was.

72

01 Chris was there, Drexel was there.
02 They were in and out. So Frank
03 Foster, like I said, was sort of
04 trying to lead, let's say, the
05 operators --- operators' team rescue

06 efforts.

07 Q. Okay.

08 A. And he was advised. Dwayne
09 would come in, Chris, Drexel, all of
10 those guys would come in and talk to
11 them and then talk openly now. There
12 was --- we didn't have any of those
13 secret caucuses like has occurred at
14 other events like that.

15 Q. Okay. When you say Chris,
16 that'd be Chris Adkins?

17 A. Yes.

18 Q. And Drexel would be Drexel
19 Short?

20 A. Short.

21 Q. And Dwayne would be Dwayne
22 Francisco?

23 A. Francisco, ---

24 Q. Okay.

25 A. --- yes, sir.

73

01 Q. And Frank Foster would be
02 playing himself as Frank Foster?

03 A. Yes.

04 Q. Is there anything that stands
05 out in your mind about the
06 coordination and the conversations
07 within the command center as you
08 entered and became a part of it?

09 A. Kenny, hindsight is the thing,
10 because at the time, no.
11 Q. Okay.
12 A. I didn't have the information.
13 I had just arrived. Now, I had my
14 mind --- my brain's moving, you know,
15 and I'm trying to gain knowledge to
16 lend my two cents into the
17 conversation, but I didn't have any
18 knowledge. I had to play catch-up.
19 I didn't know where the teams had
20 been. I didn't know where they were
21 at the time. I just --- I stood
22 back, kept quiet and learned.
23 Q. Uh-huh (yes).
24 A. In hindsight though --- well,
25 in hindsight you learn everything,

74

01 don't you? But at the time, no. I
02 was simply just trying to gain
03 knowledge to find out where the
04 team's at, fresh air bases, learn
05 where we mark, what the marks meant
06 on the map. And here I'm standing
07 back behind all these people, so I'm
08 not down, I'm not an engineer doing
09 his job yet. I'm just trying to gain
10 knowledge to fit in.

11 Q. Just so I understand the
12 scene, was the table --- it was
13 fairly large. I've been in the room.
14 Was the table full as far as people,
15 participants at the table?

16 A. At the left end --- remember I
17 walked in that left door ---

18 Q. Yes.

19 A. --- from the left end. The
20 other end was not quite as full,
21 because the map was only that big and
22 what you had was people trying to
23 look at the things on that map. So
24 the right end of the table was not
25 real full. You'd have the

75

01 ex-District Manager, Joe Pavlovich.
02 He'd come in and sit up there at the
03 other end and then others like, some
04 of the other company people and the
05 people that had mine rescue teams
06 would come in and sit there from the
07 other mining company, the other
08 operators and just listen to the
09 conversations.

10 Q. Were they invited in or did
11 they just arbitrarily come in and
12 out?

13 A. I don't know.

14 Q. Okay.

15 A. Invited, I don't know. I
16 don't know how to answer that.

17 Q. Okay.

18 A. They had access because
19 there's state policemen out there.

20 So ---.

21 Q. Yeah. I guess when I said
22 invited, I meant, were they asked to
23 come in to provide insight or
24 information?

25 A. I think they were but I don't

76

01 know.

02 Q. Okay.

03 A. They did provide information,
04 by the way. They did add into the
05 conversation where they could.

06 Q. Okay. You mentioned Mr.
07 Pavlovich. What capacity did he ---
08 you said he was an ex-District
09 Manager. We all know that he has
10 since left MSHA.

11 A. That's correct.

12 Q. So what was his capacity at
13 the command center?

14 A. Only what I was told. I don't
15 know. I was told the State asked him

16 to come in to coordinate the mine
17 rescue teams. And he --- I would see
18 him debriefing and briefing mine
19 rescue teams.

20 Q. Okay.

21 A. But I never got to talk to
22 Joe, you know, off on the side. Was
23 just too busy. I was --- I never
24 asked him.

25 Q. I can picture the scene as you

77

01 lay it out in front of us and like I
02 said, I've been in the room so what
03 you've told me is --- I now have a
04 mental picture of it. Can you, based
05 on your presence and participation,
06 could you identify any person who was
07 in charge and who would have been the
08 guy to keep order in that --- in that
09 group?

10 A. It was not like that. Frank
11 was trying but it was not like that.
12 The order was not completely there.

13 Q. All right. Could you tell me
14 more about that?

15 A. Too many people were trying to
16 be in charge, Dwayne, Chris. They
17 all had their ideas of where those
18 mine rescue teams should go. They'd

19 be on the phone with underground and
20 you had Johnny Robertson down there.
21 And I didn't know at that time, but
22 I'm just --- see, here I go with my
23 hindsight versus what I actually saw.
24 And he's wanting to do his thing down
25 underground, because he thinks they

78

01 are here, there or wherever. And
02 that's the kind of conversations that
03 were happening there. MSHA nor the
04 state really stepped up except when
05 they had to. And now remember, I
06 walked in on this. I'm there after
07 the fact, so I don't know what ground
08 rules were set up. I've missed all
09 that and I'm trying to gain
10 knowledge. And I guess the ground
11 rules were left open for these people
12 to be --- talk away, you know, talk,
13 and then we'll come up with a plan.
14 And that's what I saw, a lot of
15 people trying to be in command or in
16 control to suggest where those teams
17 ought to go.

18 Q. Okay. You mentioned Mr.
19 Robertson.

20 A. Uh-huh (yes).

21 Q. Is it Robert or Robin?

22 A. Johnny? Robertson.

23 Q. Robertson, okay. And was he
24 underground?

25 A. Yes.

79

01 Q. And was he a member of a mine
02 rescue team?

03 A. That's how I --- I think so,
04 but --- he always has been, but he's
05 changed so many jobs.

06 Q. Okay.

07 A. I think he was, but --- he was
08 underground, had an apparatus.

09 Q. Who's his employer?

10 A. Massey.

11 Q. And specifically does he work
12 for one of the different mines or
13 corporate or could you tell me?

14 A. You'll have to ask Johnny.

15 Because he was assigned to another
16 mine and I can't even remember the
17 name of it. When I got to talk to
18 him, which we'll talk about later,
19 when he brought the two gentlemen
20 out, but he was somewhere else and
21 they brought him over because he has
22 mine rescue experience.

23 Q. Okay.

24 A. I don't know if he was in
25 Kentucky at an operation or where he

80

01 was, I don't remember. He told me,
02 but I don't remember.

03 Q. Okay. While teams were
04 underground and given specific
05 directions, who was the person at the
06 command center that was in
07 communication with the underground
08 operations?

09 A. Frank Foster. He took all the
10 calls off the mine phone ---

11 Q. Okay.

12 A. --- or nearly all at this
13 point, when I had just arrived there
14 Saturday morning.

15 Q. Okay. And these calls that he
16 was receiving, was it in a --- like a
17 speakerphone type thing or was it
18 just underground to receiver and then
19 you had to listen to what he told
20 you?

21 A Had to listen.

22 Q. So the only person that had
23 direct communication was Frank
24 Foster's ear to the receiver?

25 A. Remember we had a scribe in

01 the other office taking everything
02 down from underground to underground.

03 Q. Yeah. So there was another
04 phone that was patched in as almost
05 like a party line?

06 A. Yeah, but not speak, only
07 hear.

08 Q. That's right.

09 A. So he could hear everything
10 going on both ways.

11 Q. Okay.

12 A. In the command center, we had
13 a mine phone on the table. On the
14 table.

15 Q. Okay.

16 A. And Frank would receive and so
17 on.

18 Q. Okay. But if I was --- if I
19 was in your shoes and I was in ---
20 present in the command center,
21 itself, I couldn't hear what was
22 being communicated from underground
23 to the outside?

24 A. No.

25 Q. Okay.

01 A. He would tell us. He'd get
02 off and tell us, ---

03 Q. Right.

04 A. --- they found this, they did
05 this, they want here, whatever.

06 Q. Okay. But you had to depend
07 on his interpretation of what was
08 being heard?

09 A. That's correct.

10 Q. Okay. And if there was a
11 message that the command center
12 wanted to give to the folks
13 underground, who would communicate
14 that?

15 A. Frank Foster.

16 Q. Okay. You mentioned Mr.
17 Pavlovich and his role, and I don't
18 want to restrict this to just Mr.
19 Pavlovich, but who was responsible
20 for briefing the teams before they
21 went underground?

22 A. I was told he was.

23 Q. Specifically Joe?

24 A. Yes.

25 Q. Okay. Anybody else that you

83

01 would ---?

02 A. They would pull the, what I
03 call, the trainer of the team, the
04 coordinator or whoever, whatever mine

05 they were from, and I think the two
06 of them would do that. In other
07 words, Joe would come up to the map
08 or get the instructions to brief or
09 debrief and go do it. I never went
10 with him though.

11 Q. Do you know where they did it
12 at, as far as the location?

13 A. The room? What room would I
14 call that? Right outside the showers
15 down there at the bottom of the steps
16 from the second floor.

17 Q. Is that the waiting area where
18 miners congregate before they go in?

19 A. Correct.

20 Q. Is that where there's a ---?

21 A. There's a table and benches,
22 low benches, there right out of the
23 shower room. Bulletin board --- or
24 two bulleting boards actually on the
25 two walls.

84

01 Q. Okay. That's where the
02 check-in and check-out board is, too,
03 if I'm not --- as you walk out the
04 two double doors to the outside on
05 the left?

06 A. I don't remember it that way,
07 but yeah, I think it was there.

08 Q. Is there a wooden table with a
09 Plexiglas top?
10 A. Yes. Yeah.
11 Q. Okay. I'm with you.
12 A. Yep. Check-in and check-out,
13 by the way, Kenny, was handled at the
14 bottom in the box.
15 Q. Okay.
16 A. People were there. We had, I
17 think, three people checking them in
18 and out for a while.
19 Q. For this event?
20 A. Yes.
21 Q. Okay. Do you know if there
22 was a member or a person from the
23 company, from Massey I'm talking
24 about, that participated in these
25 briefings before mine rescue teams
85
01 were sent underground?
02 A. I don't recall. I'm sorry, I
03 don't know. No, I don't --- don't
04 know. I don't know.
05 Q. Okay. Do you know if each
06 mine rescue team that was sent
07 underground was provided with a mine
08 map?
09 A. Yes, they were.

10 Q. Okay.

11 A. I mean, I don't --- I didn't

12 see it ---

13 Q. Yes

14 A. --- but mine maps were

15 provided to every team.

16 Q. Okay.

17 A. And I was told that.

18 Q. Okay.

19 A. I didn't do it. I didn't see

20 it. I'm sorry.

21 Q. No, that's fine.

22 A. Okay. I got to answer --- be

23 careful of my answers, I guess, what

24 ---.

25 Q. We're not trying to trick you.

86

01 Okay.

02 A. I mean, they brought all these

03 maps back up into that command center

04 room and they were stacked there in

05 the corner and that's what I was told

06 they were.

07 Q. Okay. When the teams would

08 come back to the surface, were they

09 debriefed by personnel from state,

10 federal or the company as to their

11 findings?

12 A. As I said before, I thought

13 Joe was doing it, but other people
14 would be there with him, because
15 they'd usually come out into that
16 waiting room there on the first floor
17 of the office there, that trailer,
18 and they'd get something to eat and
19 drink, then they'd talk to them right
20 there. Just walking through, I'd see
21 that and I think at various times,
22 yes, there were, you know, state and
23 federal as well as the company people
24 there with Joe.

25 Q. Okay. And just so I

87

01 understand, the debriefings were held
02 in the same area where the briefings
03 were held? Is that the same ---?

04 A. To the best of my knowledge,
05 but I --- I only saw debriefing. I
06 never even saw a briefing so I don't
07 know how to honestly answer that. I
08 just didn't see it.

09 Q. Okay. And once Joe or whoever
10 else was present for the debriefings
11 learned the information from the mine
12 rescue teams, how was that
13 information communicated to the
14 command center?

15 A. Oh, that's a good question.
16 Joe would come up and talk but I
17 don't remember any formal way of
18 doing that. I don't know if he was
19 screening the information, you know,
20 and only bringing to the command
21 center what was needed or what. I
22 don't remember.

23 Q. Okay.

24 A. So it wasn't a formal thing.
25 That's what I do remember though so

88

01 I'm not sure how.

02 Q. Okay.

03 A. As I said, he'd come up and
04 sit at the end of the table and talk
05 every once in a while and say things,
06 but I don't remember him briefing the
07 command center on the debriefing of
08 the team, because Frank was getting
09 most of that off the phone. I think
10 they were relying on that information
11 from the fresh air base. As those
12 teams came back, that information was
13 brought upstairs.

14 Q. Okay. You talked about Clark
15 Blackburn being contacted and did you
16 know he was --- or that he is a
17 current member of MSHA's mine

18 emergency team?

19 A. I do know that, yeah.

20 Q. Okay. Whenever you contacted
21 him, was that in the capacity of a
22 District Four supervisor or to advise
23 him that he would be needed to
24 participate as a member of MSHA's
25 mine emergency unit?

89

01 A. No. Just I was getting
02 supervisors to help. I did not get
03 anybody from mine emergency or teams
04 or anything like that.

05 Q. Okay.

06 A. I probably didn't even realize
07 that at the time, that Clark was a
08 member of the mine rescue team unless
09 someone told me.

10 Q. Yeah. That was my question to
11 distinguish between his capacity as a
12 ME, mine emergency unit member, or a
13 supervisor of District Four.

14 A. Supervisor is how I remember
15 it, but I don't ---.

16 Q. Okay.

17 A. Because Kravitz or somebody or
18 Linc would have called out the teams,
19 you know. I don't usually do that.

20 Q. Okay. Before we get off the
21 subject of the command center, is
22 there anything at this point that you
23 wanted to talk about or bring up or
24 inform us that I haven't asked you
25 yet specifically about your

90

01 interaction, your involvement with
02 the command center?

03 A. Well, as the day went on, of
04 course, I became more involved as I
05 saw things happening and what was
06 going on. There's several things
07 come to mind that I mentioned, Johnny
08 Robertson is one of them.

09 Kept calling out and saying,
10 we have missed this place, I'll call
11 it, downwind of the fire, which would
12 be across the solid block of coal
13 from the fire area over to the
14 tailgate. That was always too hot for
15 them to get in, to get the teams
16 into. Whatever his reason, whatever
17 his sixth sense, whatever it was, you
18 know, he kept saying --- insisting
19 that we get in there. And of course,
20 when we did, we found the two
21 gentlemen in there then. I remember
22 that.

23 Once the first man was found,
24 of course, the whole area was secured
25 by the state police, completely

91

01 locked down. Cell phones were
02 confiscated. No calls made and all
03 that. And then the Governor and so
04 on. Then we found out what we had.
05 There was a lot of discussion about
06 bringing that guy out, confirming,
07 double confirming, triple confirming
08 who we had. And at that point, I
09 said, Frank, you need to get both of
10 those men. Let's just leave. Let's
11 walk down and leave everything quiet,
12 don't say anything, and find the
13 other guy. And that's what was done
14 then, went and found the second. And
15 then we reconfirmed again, because
16 you can't go out what happened like
17 up at Sago. So anyway, that was on
18 their minds. So they brought Jesse
19 and Doug Conaway and Governor Manchin
20 in then. And then he, again ---
21 again, asked Frank Foster to go
22 underground to Johnny Robertson, go
23 back, go back to those two guys,
24 confirm again what you have. And

25 that was done. And then you just had

92

01 to think about how you wanted to pick
02 them up, secure the area, not disturb
03 it too much for future investigation
04 type thing. I remember that. And
05 then of course when they brought them
06 out, then I was part of the team to
07 identify them.

08 Q. Once they were identified, who
09 delivered the news to the families?

10 A. I'm just going to say the
11 Governor, Jesse and Doug, because I
12 wasn't there. I stayed --- I stayed
13 at the mine, at the command center.

14 Q. Okay. Once the rescue effort
15 was over and the recovery effort
16 began, did any procedures change at
17 the command center as far as ---?

18 A. Yes, they did, because the
19 urgency is not there anymore.

20 Q. What about the communication
21 and the interaction with the mine
22 rescue teams?

23 A. Not significant change, but
24 it's a different objective now. It
25 definitely changes from that

93

01 perspective. Now you have to contain

02 your fire, try to save the mine.
03 We're not talking human life now.
04 We're talking the rescuers' lives.
05 We're talking the rescuers' lives.
06 We don't want anybody else hurt. So
07 now you're very cautious about how
08 you approach fighting that fire.
09 Roof control was important. Water
10 was important. Types of nozzles and
11 et cetera.

12 And then in the back of our
13 minds, we're thinking we can't
14 disturb too much, we had to get the
15 fire out, but we can't destroy
16 anything down there either. So both
17 those are playing games here with
18 you, but the paramount is, you cannot
19 get anybody else hurt. And you've
20 got tired people now, too. You've
21 got people who have been there for
22 three or four days and ---.

23 Q. Do you know who set the
24 rotation up of the mine rescue teams?

25 A. No. Big guy, Brian. Oh,

94

01 what's his last name? I could pick
02 him out.

03 Q. Did he ---?

04 A. Can't think of his last name.
05 Q. Does he work for the company?
06 A. He works somewhere in Massey I
07 believe. Not there at Aracoma
08 though. A young man.
09 Q. It wouldn't have been Keith,
10 would it?
11 A. No. Keith? No? Keith?
12 Q. Keith Heiner?
13 A. Keith who?
14 Q. Heiner.
15 A. Could have been. Daggonit, I
16 said Brian first, didn't I?
17 Q. Yeah.
18 A. I'm guessing.
19 Q. Okay.
20 A. I can pick him out, but I ---
21 he's a large gentleman.
22 Q. Okay.
23 A. When he --- I'm sorry. Go
24 ahead.
25 Q. You know Drexel Short?

01 A. Yeah.
02 Q. Would it have been Drexel?
03 A. No.
04 Q. Okay.
05 A. The guy I think is doing it,
06 --- coming in, we had a board, a

07 mark-off board up here on the wall,
08 and he come in and they'd have the
09 teams and they'd assign teams backup,
10 exploration and they'd go down. It
11 was on that wipe-off board, that
12 marker board.

13 Q. It wouldn't have been Mark
14 Heath, would it? The attorney?

15 A. No.

16 OFF RECORD DISCUSSION

17 BY MR. MURRAY:

18 Q. We'll leave the command center
19 at this point. Let's go back on the
20 19th. Do you recall, we talked about
21 --- I asked you if --- if there were
22 any meetings or subjects that were
23 discussed with Aracoma or Massey
24 people at the office, and you thought
25 there may have been a meeting going

96

01 on in the --- in another area of the
02 building on the 19th.

03 A. That's what I was told.

04 Q. Okay. Do you know what the
05 subject of the meeting was?

06 A. No, I don't.

07 Q. Do you know who was there?

08 A. The ventilation people and

09 Aracoma, but I don't know. I'd have
10 to look at the notes and diaries and
11 so on. I didn't bring that to ---.

12 Q. Okay. I'll just ask you
13 through memory, do you know who the
14 Aracoma folks were, by any chance?

15 A. No, I don't.

16 Q. That's fine.

17 A. That would be on that contact
18 page that we put together. I don't
19 remember. I can't remember all that.

20 Q. That's fine. We know that's
21 been in some point in history behind
22 us. Do you recall any problems with
23 submitted mine maps from Aracoma Mine
24 relative to stoppings, man doors,
25 overcasts, escapeways, things of that

97

01 nature?

02 A. Not on the particulars like
03 that, just generally. We have had
04 problems getting proper maps.

05 Q. Okay.

06 A. I don't remember, you know,
07 stoppings or anything like that.

08 Q. What about the use of belt air
09 as part of the approved mine
10 ventilation plan? I know we don't
11 have the plan in front of us but just

12 ---.

13 A. They did have permission to
14 use belt air. They did use belt air
15 on the longwall.

16 Q. Just the longwall?

17 A. According to the approved
18 plan.

19 Q. That's what I'm asking you.

20 Okay. So the Number Two section and
21 the Number Three miner unit sections
22 did not have approval according to
23 the approved ventilation plan ---

24 A. That's correct.

25 Q. --- that was in place on

98

01 January 19th?

02 A. That's correct.

03 Q. Okay. Have you ever had any

04 discussions with ventilation

05 specialists or regular mine

06 inspectors that were assigned to

07 Aracoma Mine relative to compliance

08 with the approved mine ventilation

09 plan?

10 A. Not that I recall. But we

11 have a problem, usually I try to keep

12 up to date with all my groups, you

13 know, to know what's going on. But I

14 do not recall. My guess is, yes,
15 that meeting on the 19th was probably
16 something to do with Aracoma on their
17 ventilation. Of course it was. But
18 I don't recall specifically, you
19 know, what the problem was at that
20 time.

21 Q. Okay.

22 A. With the change we've had in
23 the District and not having our
24 specialists, you know, in ventilation
25 out on the field offices, we don't

99

01 have that up-to-date knowledge
02 anymore. We rely on the EO-1
03 inspector now to kept track of our
04 plans.

05 Q. Based on your experience and
06 association with the Aracoma Mine
07 officials, who would be in charge of
08 ventilation at Aracoma Mine?

09 A. I don't know.

10 Q. Who normally submits the
11 ventilation plans and revisions to
12 the District?

13 A. All I know is this recent
14 history, Kenny Williams or Simon ---
15 Simon something.

16 Q. Would it be Simon Stepp?

17 A. Yeah. But that's just here
18 recently.

19 Q. Before that?

20 A. Before that we talked with
21 Eddie Lester. But Eddie was off
22 almost a year with his problems, and
23 he had just came back to the mine
24 days before this event occurred.

25 Q. Okay. So in Eddie Lester's

100

01 absence, Mr. Stepp and Mr. ---?

02 A. I don't know that. No. I
03 said, in recent times, it's been
04 Kenny and Simon. I don't know ---
05 let's say the last year before the
06 19th when the event occurred, I don't
07 know who it was. I just don't
08 recall. I mean, we could answer that
09 from Bill Ross or somebody but I
10 don't know.

11 Q. Do you know who signs the
12 submittals to the ventilation plans
13 ---?

14 A. Here recently, it's been Kenny
15 Williams.

16 Q. Okay.

17 A. I did not look at the --- like
18 the approved plan to see who signed

19 off on that plan.

20 Q. Okay. And when they bring
21 plans to the District office for
22 review and subsequent approval, who
23 actually brings them into the office?

24 A. I have no idea. Various
25 people. We've had the young

101

01 gentleman bring them and don't
02 anything about the mine. We don't
03 know --- I don't know who they are.
04 They're given to the District Manager
05 and then we get them to the right
06 group to have them worked on.

07 Q. So they're not in the building
08 to participate in any kind of review
09 process to find out why they had
10 requested a certain ---?

11 A. Afterwards they are, depending
12 on how it happens. They can call for
13 an appointment, bring a map with them
14 and then we'll sit down with them and
15 go over the map.

16 Q. Okay. And who would those
17 individuals normally be?

18 A. From where, operator?

19 Q. Yes.

20 A. I don't know. I don't recall.

21 I'm sorry.

22 Q. That's all right.

23 A. I just don't know. We have so
24 many, I don't keep track of that.

25 Q. Okay.

102

01 A. It's when we have a problem
02 that I get called back there and then
03 we usually have Frank Foster or
04 Dwayne or Chris or somebody in
05 because now it's elevated up to
06 myself and the District Manager.

07 Q. Okay. If there would be a
08 problem with the ventilation
09 submittals or mine plans or mine maps
10 at Aracoma, and the District Manager
11 would want to address them through a
12 meeting that would include you, ---

13 A. That's correct.

14 Q. --- would those persons then
15 present be the gentlemen you just
16 described?

17 A. Usually. Usually Dwayne,
18 Frank --- no, usually Drexel. Chris
19 or --- not usually Drexel though.
20 He's not usually there. But remember
21 at that point then, it's really been
22 elevated. We've had a problem.

23 Q. Right.

24 A. The ventilation group has not
25 been able to get what they need.

103

01 We've probably already given them the
02 denial letter and told them exactly
03 what's not right about the map or the
04 plan.

05 Q. Would those --- would Chris,
06 Dwayne and Frank ever bring somebody
07 from the actual mine themselves ---
08 the mine, itself, with them to the
09 meeting?

10 A. Yes, they usually do.

11 Q. And who would that be?

12 A. Kenneth and Simon.

13 Q. Are Kenneth and Simon actually
14 directly assigned to Aracoma?

15 A. I don't --- I can't answer
16 that. They are doing the stuff for
17 Aracoma, but I don't know that.

18 Q. Would they ever bring mine
19 officials, such as like the
20 superintendent or the mine foreman or
21 ---?

22 A. In the past when Eddie Lester
23 was there, yes, he came.

24 Q. And what was Eddie Lester's
25 capacity?

104

01 A. I call him general manager. I
02 have no idea how to rank these guys,
03 because he knew the mine, he helped
04 with the ventilation. He was a good
05 man to talk to, got things done. I
06 don't know if they called him
07 superintendent, general manager or
08 what. I just don't know.

09 Q. Do you know what Eddie
10 Lester's job title was on the 19th
11 when he called you?

12 A. No. I don't think he knew
13 either.

14 Q. Okay.

15 A. He said they replaced me, but
16 I'm back here and I'm going to do
17 what I can. And he didn't ---.

18 Q. Do you know if he was --- in
19 rank, whether he was above, equal to
20 or below Gary Goff?

21 A. No, I don't. No, I don't.

22 Q. Okay. Whenever Frank, Chris
23 and Dwayne or Drexel and others would
24 come over to meet with you and Jesse
25 on specific issues that were possibly

105

01 due to a denial or a question or a
02 problem with a submitted plan, were

03 they aware when they came that there
04 was a problem and it was going to be
05 --- the meeting was going to be
06 specific to address a particular
07 problem?

08 A. Yes, we usually told them
09 directly.

10 Q. And was this a regular
11 occurrence that you would meet wit
12 these folks?

13 A. Define regular. I'm not sure
14 what you mean by that. We have a lot
15 of mines. Most of our mines are
16 Massey mines and when we have a
17 problem, we can't work with the local
18 people, we call Chris. Chris this is
19 getting ridiculous, dot, dot,
20 whatever it is, Justice or wherever
21 it might be.

22 Q. Okay. I'm more interested in
23 Aracoma. Would Aracoma have a
24 history of problems with ventilation
25 plans or submittals that would

106

01 require ---?

02 A. No. No, not compared to the
03 others.

04 Q. When you would meet with these
05 company officials, how would they

06 respond to your criticism or
07 rejection of some of their submitted
08 plans?
09 A. Well, it depends on the
10 problem of course and how severe that
11 is in the way of them getting it
12 fixed. When you talk about, what
13 I'll call, minor problems with the
14 map where they don't know how to put
15 the stoppings in property, follow
16 escapeways, that's just an engineer
17 not doing his job. I'll say it that
18 way because I mean, that's the way I
19 feel. When you're talking about like
20 we have at Justice where we have a
21 belt line falling in around their
22 ears, we have severe mountain
23 problems with hooving and falls,
24 you're talking multi-million dollar
25 problem. So they're perceived

107

01 differently. There have been times
02 they've been --- would fight us,
03 would try to talk us out of things.
04 But generally, they're not two-sided,
05 they come in, we know who they are.
06 We know what they're after. We know
07 who we are, we know what we have in

08 the Title 30 and all the rest of it.
09 And those are just straightforward
10 meetings. We've written you for
11 this. This is fallen in. You've got
12 to do something, you've got ten days
13 or you got a week or, you know, we'll
14 extend this until and then they're
15 back in with their means to abate,
16 what they're going to do. Lately
17 it's been a lot better of course than
18 it was a year ago with them. Anybody
19 spars with each other until you
20 learn, you know, that we have the
21 teeth to do what we have to do, we're
22 going to make it as safe as we can
23 for the miners.

24 Is there give and take? Yeah,
25 there's some compromise that's been

108

01 negotiated with them. But I don't
02 look at it --- like some operators
03 come in and will lie right to you
04 right from the start, then you go out
05 to the mine and they haven't done a
06 doggone thing. Not that way
07 completely with Massey. A little
08 more cooperative than some of our,
09 what we call, outlaws amongst
10 ourselves.

11 Q. When you identify specific
12 obvious deficiencies on the mine map,
13 let's say --- just to use an example,
14 let's say that they had an escapeway
15 marked on the map and it was obvious
16 that it was in the wrong entry, and
17 it was obvious to everybody and they
18 agreed that it was an obvious
19 deficiency or oversight, ---

20 A. Uh-huh (yes).

21 Q. --- how would they respond to
22 that? Would they accept that as a
23 deficiency or would they identify
24 whose deficiency it was and point
25 blame and apologize that it was

109

01 brought in in that manner? Or what
02 would their reaction be to some
03 obvious, that each agreed on that
04 there was no room to spar?

05 A. Most of the time Dwayne, Frank
06 Foster, Drexel, Chris Short (sic) did
07 not know that things were wrong in
08 the mine and they'd be apologetic.
09 I'm an engineer so I look at things
10 pretty much that way. It doesn't
11 take much for somebody to follow,
12 follow an escapeway, primary or

13 secondary, follow air courses, look
14 for regulators, look for stoppings,
15 look for obvious deficiencies.
16 Aracoma was a mess. I'm hindsight, I
17 mean that's where I'm coming from.
18 Now, we're trying to get the mine
19 right and it's still --- still
20 fighting it.

21 Q. Can you offer an opinion on
22 why it would take a meeting in the
23 District Manager's office and be
24 elevated to that level before they
25 were made aware of basic deficiencies

110

01 on the mine map? Why they weren't
02 made aware at the mine level by mine
03 --- the local mine management?

04 A. No. I don't know how to
05 answer that. When you point out a
06 minor thing like a stopping in the
07 wrong place and it's been a denial
08 letter from the District Manager to
09 the mine, I don't know how to answer
10 that to you. To me, that's just
11 basic mining and somebody's not doing
12 their job and that's when we start
13 writing the paper.

14 Q. Do you think there's a
15 disconnect between these upper

16 managers and the local mine
17 management?
18 A. Say that again, Kenny.
19 Q. Do you think that there's a
20 disconnect between the upper mine ---
21 the upper Massey managers, such as
22 Drexel and Chris and Frank, and the
23 local mine management, such as the
24 mine superintendent, mine foremen?
25 A. I don't know. You want my

111

01 opinion?
02 Q. Yes.
03 A. Okay. I think they know
04 what's going on and I think they're
05 after coal production. And these
06 other things, they don't have and
07 they can't keep their engineers, they
08 can't kept their people, they're
09 having the same problems we're
10 having. And they're getting the coal
11 out and not keeping the mine system
12 proper.
13 Q. The local or the corporate?
14 A. Both. I think it's both.
15 Q. Are you aware of the
16 memorandum that was issued by Don
17 Blankenship on October of 2005 that

18 advised the superintendents that he
19 felt necessary to write that memo to
20 produce coal and not fool with
21 incidentals such as building
22 overcasts and outby work?
23 A. I'm aware of it.
24 Q. How do you think that was
25 received or perceived by the

112

01 superintendents that were on the
02 address list of that memorandum?
03 A. I have no idea.
04 Q. Do you think it's typical of
05 Massey management to feel that
06 production is of the utmost
07 importance?
08 A. In most cases.
09 Q. Do you think at times safety
10 is compromised because of production?
11 A. I don't know how to honestly
12 answer that.
13 Q. That's fair.
14 A. If I spend more time
15 underground, you know, in the faces
16 and watch guys, I could answer. I
17 can't answer that right off the way I
18 am.
19 Q. That's fair. If the mine were
20 to submit an addendum to their

21 ventilation plan that would request
22 the use of belt air in the Two
23 section, given the 2004 rule, would
24 you think that would be something
25 that you would approve or recommend

113

01 approval?

02 A. If everything was right, yes,
03 we would.

04 Q. When you say everything was
05 right, in compliance with the 2004
06 rule, ---

07 A. Absolutely everything.

08 Q. --- is that what you ---?

09 A. All compliance was right, air
10 quantities were right, directions
11 were right, CO system was right.
12 Everything has to be right to use
13 belt air.

14 Q. When Mr. Lester called you on
15 the evening of the 19th, did he
16 indicate that he had called the State
17 to advise them of the fire?

18 A. I believe he did say something
19 like that, but I really --- at this
20 time, I don't remember now.

21 Q. Did he indicate whether he had
22 called anybody else before he called

23 you?

24 A. Yes, he told me he tried.

25 Q. No. I don't mean with MSHA.

114

01 I mean, any other entity, the State
02 agency or 911 or ---?

03 A. I think he did, Kenny, but I
04 can't remember what he said to me.

05 You know, I really don't know. I
06 don't think my notes even said State
07 or anything on, did it.

08 WITNESS REVIEWS NOTES

09 A. No. I don't know. He told me
10 he tried to call a lot of people. I
11 don't remember --- he got ahold of
12 the State or he didn't get ahold of
13 the State and all that.

14 BY MR. MURRAY:

15 Q. When he called, according to
16 your notes, he indicated that there
17 was fire at the mother drive --- on
18 the mother belt?

19 A. Yes, sir.

20 Q. Did he indicate any opinion
21 about what caused the fire?

22 A. No. No. He was broken,
23 didn't talk and excited. No. He
24 didn't offer a thing.

25 Q. Okay. Do you know what caused

01 the fire?

02 A. No, I don't.

03 OFF RECORD DISCUSSION

04 BY MR. MURRAY:

05 Q. Back at the mine for just a

06 second. Do you know where they

07 maintain the 75-1200 map within the

08 mine office at Aracoma?

09 A. No, I don't because it was

10 gone when I got there.

11 Q. On the 19th --- or on the 21st

12 it was gone

13 A. Yeah, Saturday morning.

14 Q. Do you know what happened to

15 it?

16 A. Nope.

17 Q. Have you --- aside from the

18 event on the 19th, do you know where

19 the map would typically be kept?

20 A. No, I don't. I don't

21 remember. I was there at the office,

22 and I just don't remember.

23 Q. On the 21st when you arrived,

24 how did you know that the 1200 map

25 wasn't present?

01 A. Afterwards. Afterwards, the

02 22nd, 23rd, whenever it was, they
03 said the 1200 map's missing. That's
04 the only reason. I didn't go look
05 for it. I didn't see it missing.

06 Q. Okay.

07 A. They told me that someone took
08 it and it was missing.

09 Q. Do you know who told you?

10 A. No, I don't. I'm sorry, I
11 don't remember.

12 Q. Do you know why they told you?

13 A. Well, they were all just ---
14 we were all talking. We were just
15 all there and they were asking
16 where's the 1200 map, because all
17 these other maps were piled on that
18 side table in the command center.
19 And they said, well, it's not with
20 that, it's not there. That's sort of
21 how I heard it in a general
22 conversation, because I wasn't
23 looking for it or anything.

24 Q. Do you have any idea how ---
25 on the normal day, how the 1200 map

117

01 is maintained as far as who updates
02 it or how is it updated? How is the
03 information ---?

04 A. Not at Aracoma. Like at any

05 other mine. I mean, I know generally
06 how it's supposed to be.

07 Q. Yeah. No, I meant
08 specifically at Aracoma.

09 A. No. I'm sorry, I don't.

10 Q. Okay. On the 21st or the
11 22nd, subsequent days after --- after
12 the event --- I'm sorry, if you told
13 me, I didn't catch it. Did you tell
14 me who told you that the 1200 map was
15 missing?

16 A. I told you I didn't remember.
17 I don't remember who told me.

18 Q. Okay.

19 A. It was someone had walked in
20 and asked where it was. They said,
21 well, look in that pile over there.
22 People looked and --- I don't
23 remember who they were.

24 Q. Would it have been somebody
25 from Aracoma that --- or Massey that

118

01 ---?

02 A. I think. It could have been
03 Mark Heath even. I just don't
04 remember. I don't --- I don't
05 recall.

06 Q. Okay.

07 A. I'm there thinking who would
08 take a 1200 map off the wall. But I
09 wasn't --- you know, I wasn't a part
10 of what I was doing. Because I
11 talked with Mark about how he was
12 going to secure all his maps and I
13 guess he didn't do a very good job
14 from what I'm hearing.

15 Q. Did someone from District Four
16 request a 1200 map at all?

17 A. I don't recall. I don't know.

18 Q. Okay. Since the 2004 belt air
19 regulations came into effect, would
20 it be appropriate to issue a citation
21 and refer back to a Petition for
22 Modification relative to a deficiency
23 in, let's say, the minimum velocity
24 along the belt to comply with CO
25 monitoring?

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01 A. Somebody might do that, but I
02 don't see why that's needed? The
03 petitions are gone. We're in
04 regulation now. We're to comply with
05 the regulation. But they do that,
06 you know, to try to fight whatever
07 we're writing but that --- no.

08 MR. MURRAY:

09 Bill?

10 MR. TUCKER:

11 I don't have anything,

12 Kenny.

13 BY MR. MURRAY:

14 Q. Rich, based on the approved
15 mine ventilation plan that was in
16 place on the 19th, we talked a little
17 bit about the requirements for the
18 permissions to use belt air at the
19 face of the longwall only. Would you
20 say if the Two section was using belt
21 air at that point in time, it would
22 require an actual plan approval to do
23 that?

24 A. That's what I understand the
25 history of the approved plan, that is

120

01 correct. A plan of record did not
02 allow belt air to be used in the
03 Number Two section.

04 Q. Okay.

05 A. The ventilation plan
06 distinctly showed that.

07 Q. So they couldn't arbitrarily
08 decide on their own to mount an alarm
09 at the tail and ---?

10 A. They cannot do that
11 arbitrarily. All those changes that

12 were made and not done properly were
13 not done properly.

14 Q. Okay. Do you know if there
15 were any point feed approved at any
16 of the conveyor belts?

17 A. Point feed approved at any
18 ---?

19 Q. Of the conveyor belts
20 underground at Aracoma?

21 A. Aracoma had no point feeds
22 approved.

23 Q. And that's on the 19th?

24 A. That's on any day.

25 Q. Okay. Including today?

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01 A. Including today.

02 Q. Okay. Rich, I know we jumped
03 around just a bit. Is there anything
04 you would like to tell us regarding
05 what happened on the day of the
06 accident that we haven't already
07 discussed or any other day that you
08 would have on your mind that you may
09 have anticipated that we would get
10 into that we didn't that you wanted
11 to share with us today?

12 A. No, I don't think so.

13 MR. MURRAY:

14 We've got a closing

15 statement for the record. And
16 Rich, you know, I know your
17 schedule, and I personally
18 appreciate you finding time to
19 come over here.

20 A. I'm available. If you want me
21 to come back, I'll come back. That's
22 not a problem.

23 MR. MURRAY:

24 And I mean it. I know
25 that you have an aggressive

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01 schedule and it's a two and a
02 half hour, two hour trip to
03 get here from your office and
04 we appreciate you finding the
05 time to come over here and
06 work your schedule so you can
07 come in and talk to us. As we
08 talked about before, your
09 cooperation is very important
10 to us as we work to determine
11 the cause of the accident.
12 And before we continue with
13 the closing statement, Mr.
14 Tucker would like to ask some
15 questions.

16 BY MR. TUCKER:

17 Q. Just follow up a question, I
18 run by you, Rich. Normally if you
19 have an approval on a ventilation
20 plan submittal to your office, after
21 you approve that, do you ever send
22 out a letter of approval like to the
23 State offices?

24 A. I believe that's common
25 practice to do that, yeah.

123

01 Q. So on the approval for
02 Aracoma's ventilation plan, it'd be
03 common to send --- send that approved
04 plan to, say, the Danville Region
05 Three office?

06 A. I believe we do.

07 Q. Okay.

08 A. What you're really asking me
09 Bill, is, that plan was approved way
10 back in '05 sometime.

11 Q. Right.

12 A. No revisions. The revisions,
13 there were no revisions.

14 Q. All right. But if you were to
15 have a revision, is that something
16 also that would you would send to the
17 regional office?

18 A. That's right.

19 Q. Okay.

20 A. A revision also would be a
21 change to the approved plan, become a
22 part of the approved plan and the
23 record shows how many of those were
24 during that year or previous to the
25 19th.

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01 MR. TUCKER:

02 Thank you.

03 MR. MURRAY:

04 Rich, if you wish now,
05 you can go back over any
06 answer that you've given
07 during the interview and
08 clarify it or expand on it or
09 you can make a closing
10 statement to cover anything
11 else that you think should be
12 raised at this time.

13 A. I have no closing statement or
14 changes.

15 MR. MURRAY:

16 Thanks, Rich. We ask
17 that you not discuss your
18 interview today with any
19 person who may have already
20 been interviewed or who may be
21 asked to give a statement in

22 the future. This will ensure
23 that we obtain everybody's
24 independent memory of the
25 events surrounding the

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01 accident. And after
02 questioning other witnesses
03 and obtaining additional
04 information, we may ask you to
05 come back for further
06 questioning.

07 If at some later point
08 you have additional
09 information regarding the
10 accident that you thought
11 about after you leave here
12 today, we would ask that you
13 please either contact me or my
14 staff assistant, Anthony Webb.
15 And I'll provide these cards
16 to you. And Rich, again, we
17 really appreciate you coming
18 over here and sharing that
19 information.

20 MR. TUCKER:

21 I, too, would like to
22 thank you, Rich, on behalf of
23 Miners' Health, Safety &
24 Training for coming in today.

25 We appreciate your time.

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01 A. Any time

02 MR. MURRAY:

03 Thank you.

04 A. Thanks guys.

05 * * * * *

06 EXAMINATION CONCLUDED AT 12:17 P.M.

07 * * * * *

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