

01 EXAMINATION UNDER OATH
02 OF
03 TIMOTHY L. JUSTICE
04
05
06 Taken pursuant to Notice by Autumn D.
07 Firby-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 Friday, March 31, 2006, at 1:56
13 p.m.

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

02

03 WILLIAM TUCKER

04 Assistant Inspector at Large

05 West Virginia Office of

06 Miners' Health, Safety & Training

07 142 Industrial Drive

08 Oak Hill, WV 25901

09

10 ARLIE A. WEBB

11 Special Investigations/

12 Staff Assistant

13 U.S. Department of Labor

14 Mine Safety and Health Administration

15 Coal Mine Safety and Health,

16 District 6

17 100 Fae Ramsey Lane

18 Pikeville, KY 41501

19

20 DANIEL M. BARISH, ESQUIRE

21 U.S. Department of Labor

22 Office of the Regional Solicitor

23 1100 Wilson Boulevard

24 22nd Floor West

25 Arlington, VA 22119-2247

3

01 A P P E A R A N C E S (continued)

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 ALSO PRESENT:

13 DENNIS A. BEITER

14 CHARLES W. POGUE

15 BETH SPENCE

16 DERRICK TJERNLUND

17

18

19

20

21

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01 I N D E X

02

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04 WITNESS: TIMOTHY L. JUSTICE

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

02 -----

03 MR. BEITER:

04 Mr. Justice, I
05 represent the Mine Safety and
06 Health Administration, which,
07 as you know, is an agency of
08 the U.S. Department of Labor.
09 I'm a member of MSHA's
10 accident investigation team
11 that's assigned the task of

12 investigating the accident
13 that occurred at the Aracoma
14 Coal Company, Incorporated,
15 Aracoma Alma Mine Number One
16 on January 19th, 2006.

17 This is a joint
18 investigation that MSHA is
19 conducting with the State of
20 West Virginia. I will be
21 asking the questions for MSHA
22 in today's interview. With me
23 here today are other members
24 of MSHA's team and the State's
25 team. MSHA's team includes

7

01 various subject matter experts
02 from throughout the United
03 States, along with members of
04 the Solicitor's Office from
05 Arlington. At this time, I
06 ask each of the members to
07 identify themselves for the
08 record.

09 ATTORNEY BARISH:

10 Hi, Tim. We've met,
11 but for the record I'll state,
12 my name is Dan Barish. I'm an
13 attorney in the Solicitor's
14 Office in Arlington. And I

15 represent MSHA.

16 MR. POGUE:

17 Charlie Pogue, MSHA,

18 Hunker, Pennsylvania.

19 MR. WEBB:

20 Anthony Webb, MSHA,

21 Pikeville, Kentucky.

22 MR. BEITER:

23 And my name is Denny

24 Beiter, and I work for MSHA in

25 Tech Support out of

8

01 Triadelphia, West Virginia.

02 Here with us today

03 representing the State of West

04 Virginia is Mr. Tucker. Mr.

05 Tucker has --- will be asking

06 the questions for the State.

07 He has a statement to make.

08 MR. TUCKER:

09 I need to read this

10 statement for the record,

11 Denny.

12 MR. BEITER:

13 Okay.

14 MR. TUCKER:

15 The West Virginia

16 Office of Miners' Health,

17 Safety & Training is
18 conducting this interview
19 session jointly with MSHA.
20 We're in agreement with the
21 procedures outlined by Mr.
22 Beiter.

23 However, let me make it
24 clear that the Director
25 reserves the right, if

9

01 necessary, to call or subpoena
02 witnesses or require the
03 production of any record,
04 document, photograph or other
05 relevant materials necessary
06 to conduct this investigation.

07 Again, my name is Bill
08 Tucker. I'm with Miners'
09 Health, Safety & Training. I
10 work out of the Oak Hill
11 office.

12 MS. SPENCE:

13 I'm Beth Spence with
14 the Governor's Office.

15 MR. BEITER:

16 This investigation is
17 being conducted by MSHA and
18 the State of West Virginia to
19 gather information to

20 determine the cause of the
21 accident and to help prevent
22 this from happening in the
23 future. As you know, these
24 interviews are an important
25 part of the investigation.

10

01 After the investigation is
02 completed, MSHA will issue a
03 written report detailing the
04 nature and causes of the
05 accident.

06 And as you know, MSHA
07 reports are made available to
08 the public in the hope that
09 greater awareness about the
10 causes of accidents can reduce
11 their occurrence in the
12 future. Information obtained
13 through witness interviews is
14 frequently included in these
15 reports. And your statement
16 may also be used in other
17 enforcement proceedings.

18 I would like to thank
19 you in advance for your
20 appearance here today. We
21 appreciate your assistance in

22 this investigation. The
23 willingness of miners and mine
24 operators and all others
25 involved in the mining

11

01 industry is critical to the
02 success in making mines safer.

03 This interview with Mr.
04 Timothy Justice 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 and Health
10 Administration into the
11 conditions, events and
12 circumstances surrounding the
13 fatalities that occurred at
14 the Aracoma Alma Mine Number
15 One, located at Route 17
16 North, Bandmill Hollow Road,
17 Stollings, West Virginia,
18 25646.

19 This interview is being
20 conducted at the State of West
21 Virginia Department of
22 Environmental Protection,
23 Division of Mining and
24 Reclamation at 1101 George

25 Kostas Drive, Logan, West

12

01 Virginia, 25601 on ---

02 ATTORNEY BARISH:

03 March 31st.

04 MR. BEITER:

05 --- on March 31st,

06 2006.

07 Mr. Justice, the

08 interview will begin by asking

09 you a series of questions.

10 Please feel free at any time

11 to clarify any statements that

12 you make in response to those

13 questions. After we have

14 finished asking questions, you

15 will also have an opportunity

16 to make a statement of your

17 own and to provide us with any

18 other information --- any

19 additional information that

20 you believe may be important.

21 You are permitted to

22 have a representative with you

23 during this interview, and you

24 may consult with your

25 representative at any time.

13

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

03 Your statement is
04 completely voluntary. You may
05 refuse to answer any question,
06 and you may end your interview
07 at any time. If you don't
08 understand a question, please
09 let me know and we'll rephrase
10 it. If you need a break for
11 any reason, just say so and
12 we'll take a break.

13 You may request the
14 opportunity to make a
15 confidential statement, which
16 we will withhold from the
17 public to the extent allowed
18 by law. Should you desire to
19 give a confidential statement,
20 you should advise me before I
21 begin your interview so that I
22 can reschedule your interview
23 to properly consider your
24 request. Do you want to have
25 a confidential interview?

14

01 MR. JUSTICE:

02 No.

03 MR. BEITER:

04 A court reporter will
05 record your interview and will
06 later produce a written
07 transcript of this interview.
08 I ask that you state all of
09 your answers verbally, because
10 the court reporter cannot
11 record gestures, like nodding
12 your head.

13 Neither the transcript
14 of this interview nor the
15 content of this interview will
16 be released to the public or
17 the media until MSHA's final
18 accident investigation report
19 is issued, or until required
20 by court order or until a
21 public hearing takes place.

22 If any part of your
23 statement is based not on your
24 own firsthand knowledge, but
25 on information that you

15

01 learned from someone else,
02 please just let us know that.

03 Please answer each
04 question as fully as you can,
05 including any information that

06 you learned from someone else.
07 We may not ask the right
08 questions to learn the
09 information you have, so
10 please don't feel limited by
11 the precise wording of the
12 questions that are asked. If
13 you have information about the
14 subject area of a question,
15 please provide us with that
16 information.

17 Do you have any
18 questions about the manner in
19 which this interview will be
20 conducted?

21 MR. JUSTICE:

22 No, I don't.

23 MR. BEITER:

24 Can you please swear or
25 affirm the witness.

16

01 -----

02 TIMOTHY L. JUSTICE, HAVING FIRST BEEN
03 DULY SWORN, TESTIFIED AS FOLLOWS:

04 -----

05 BY MR. BEITER:

06 Q. Mr. Justice, please state your
07 full name, address, telephone number,
08 including area code, and please spell

09 your last name for the record.

10 A. Okay. Timothy L. Justice,

11 [REDACTED]

14 Q. Thank you. Is it all right if

15 I call you Tim?

16 A. Yeah.

17 Q. Tim, are you appearing

18 voluntarily at this interview?

19 A. Yes.

20 Q. Has anyone made any promises

21 to you?

22 A. No.

23 Q. Has anyone offered you any

24 rewards in exchange for making this

25 statement?

17

01 A. No.

02 Q. Has anyone threatened you or

03 warned you not to provide this

04 statement?

05 A. No.

06 Q. Do you understand that you may

07 refuse to answer any question or

08 terminate, end this interview at any

09 time?

10 A. Yes.

11 Q. Do you have a representative
12 with you?

13 A. No, I don't.

14 Q. Do you wish to?

15 A. No.

16 Q. Would you want to proceed
17 without the representative?

18 A. Yes.

19 Q. Tim, how long have you worked
20 for MSHA?

21 A. This coming September will be
22 24 years.

23 Q. What is your current duty
24 station?

25 A. Madison field office.

18

01 Q. Where is your current job
02 title?

03 A. It's coal mine safety and
04 health inspector/ventilation.

05 Q. How long have you held that
06 position?

07 A. Since April of 1995.

08 Q. What other jobs have you held
09 with MSHA?

10 A. Just regular coal mine
11 inspection duties.

12 Q. Have you worked in any other
13 Coal Mine Safety & Health districts?

14 A. No.

15 Q. How many total years of mining
16 experience do you have?

17 A. Thirty --- a little over 34.

18 Q. Where did you work prior to
19 starting with MSHA?

20 A. Most of my work was in
21 McDowell and Wyoming County for
22 Consolidation Coal, Cannelton
23 Industries and Olga Coal Company.
24 And I did work for a couple small
25 companies, just contract mines.

19

01 Q. Did you previously work in
02 another field office in District
03 Four?

04 A. Yes. I worked in Logan field
05 office until February 5th of this
06 year.

07 Q. So on the date of the
08 accident, you worked out of Logan?

09 A. Right.

10 Q. And you had the same job title
11 when you were working at Logan?

12 A. Yes.

13 Q. When was the last time you
14 were underground at Aracoma Alma Mine
15 Number One?

16 A. Prior to the accident?
17 Q. Prior to the accident.
18 A. It would have been in July of
19 2005. I made a 15-day methane spot.
20 Would you want to know what section I
21 went to or anything?
22 Q. That would be fine.
23 A. I went to the miner unit that
24 was mining the rooms below where the
25 longwall's currently now installed.

20

01 Q. It used to be called old Three
02 section, ---
03 A. Right.
04 Q. --- from what I understand?
05 A. Right. They were mining those
06 rooms out of there.
07 Q. The rooms that are like right
08 behind ---
09 A. Down ---.
10 Q. --- Nine tailgate, between
11 Nine and Ten headgate?
12 A. Yeah, those right there.
13 Yeah, beneath the bleeder entries.
14 Q. Yes. And you have not been
15 back underground there since then?
16 A. Just since the accident. One
17 shift on the --- we had accompanied
18 on pre-shift on February 7th.

19 Q. I'd like to go back to January
20 19th, 2006.

21 A. Okay.

22 Q. Where were you working on that
23 day?

24 A. Oh, at Stollings Trucking at
25 the surface mine. And I was in Logan

21

01 at that time.

02 Q. In Logan at that time, you
03 were working out of the Logan field
04 office?

05 A. Right.

06 Q. Did you speak with anyone from
07 Massey during the day?

08 A. Not that I remember.

09 Q. Did you speak with anybody
10 from Aracoma directly?

11 A. Not that I recall.

12 Q. Do you recall when you first
13 heard of the fire at Aracoma?

14 A. Yes. Vicki Mullins contacted
15 me at home somewhere around eight
16 o'clock, 8:00 p.m. that night.

17 Q. On January 19th?

18 A. Yes. And she told me they had
19 a fire and two men unaccounted for.

20 And I told her to go straight to the

21 mines and issue a (k) order and that
22 I would be there as quick as I could
23 get there. And I got there probably
24 about ten after 9:00, because I met
25 Bill Gillenwater, Curtiss Vance and

22

01 David Trent at the Logan field
02 office. And Bill Gillenwater and
03 myself went in my vehicle, and the
04 other two took their own government
05 vehicles up there.

06 Q. Do you have any notes from
07 your telephone call --- conversation
08 with Vicki?

09 A. No, I didn't.

10 Q. Did she tell you what time the
11 fire had started ---

12 A. No, she didn't.

13 Q. --- at that time?

14 A. No, she didn't.

15 Q. Did you call anybody before
16 your leaving for the office?

17 A. I tried to call --- she said
18 she hadn't been able to get ahold of
19 Bill Gillenwater, and I tried to call
20 him. I call Luther Marrs, and I
21 called Terry Price to get Bill
22 Gillenwater's phone number, because
23 he had moved, and I didn't have his

24 number. But I didn't get in touch
25 with Bill or Luther Marrs.

23

01 Q. You said you called who to
02 get ---?

03 A. Terry Price.

04 Q. Is Terry an inspector out of
05 Logan?

06 A. He's supervisor out of
07 Madison.

08 Q. Okay. So you never did
09 contact ---?

10 A. Bill or Luther, no.

11 Q. Okay. Do you know what all
12 employees from MSHA were sent to the
13 mine site initially?

14 A. The four I named. And Vicki
15 was there. And later, Eddie Paynter
16 came up and Dennis Holbrook. They
17 got there probably around 10:30 or
18 11:00, somewhere around in that area.

19 Q. Who were the four that you
20 said, you and Billy, and ---?

21 A. Curtis Vance and David Trent.

22 Q. Did you meet Minness in the
23 field office?

24 A. Yeah, Minness did show up. I
25 forgot about that.

01 Q. Okay.

02 A. No, he showed up at the mines.

03 I didn't see him at the field office.

04 Q. After you were already there?

05 A. Yeah.

06 Q. Okay. Do you know if anybody

07 called Jesse Cole?

08 A. I don't know.

09 Q. Did you call Jesse Cole?

10 A. No, I didn't try. No. I

11 tried to make the calls real quick

12 and get out and go on to the mines.

13 Q. And Jesse Cole's the district

14 manager?

15 A. Right.

16 Q. And Luther Marrs is the

17 assistant district manager?

18 A. Assistant district manager.

19 Uh-huh (yes).

20 Q. When you arrived at the mine

21 site, do you remember what time that

22 was approximately?

23 A. I'm thinking it was around ten

24 after 9:00.

25 Q. I think you told me that

01 already.

02 A. Yeah.

03 Q. Can you kind of describe what
04 was going on at the time when you
05 first got there?

06 A. Quite a bit of chaos. And as
07 well as I can remember, Chris Adkins,
08 who is the corporate president or
09 something, and Dwayne Francisco, were
10 underground with the team, from what
11 I can understand, trying to fight the
12 fire. And then they came out, I'm
13 thinking around ten o'clock, and
14 hadn't been able to fight the fire or
15 whatever. Anyway, they were told to
16 come out by Bill --- from what I
17 understand, by Bill Gillenwater. I
18 didn't personally hear it, but that's
19 what I understand.

20 And we dispatched people to
21 the fans to monitor the fans, and
22 David Trent went up to the --- work a
23 borehole that was drilled during the
24 inundation in 2004.

25 Q. That's the borehole that's in

26

01 the northeast mains just a little bit
02 below the seal?

03 A. Yeah. Yeah. And he was sent
04 up there --- and when I --- when I

05 sent him, I told him that it should
06 be intake, because that's what it
07 done right after the flood, right
08 after the inundation.

09 Q. Uh-huh (yes).

10 A. As soon as the water was down,
11 it started intaking to that other
12 fan. And when he got up there he
13 said it was exhausted. And the first
14 report, I think we got was 1,700
15 parts per million CO. And I went up
16 there ---.

17 Q. Now, was the airflow exiting
18 through that borehole?

19 A. Yes. And later on, Bill Welsh
20 arrived with Joe Dooley and Dave
21 Morris. I don't remember --- I don't
22 think Raymond Brown was with them. I
23 don't remember. And we went up to
24 the borehole, somewhere around 1:00
25 a.m., as well as I can remember. And

27

01 at that time, ---.

02 Q. Could it have been later than
03 that?

04 A. It may have been.

05 Q. Maybe like 2:00, 2:30?

06 A. It may have been. And I would
07 have to look at my notes to see,

08 because I was taking notes, and we
09 were --- we were over ---. The
10 command center in the conference room
11 got pretty crowded, so I went over
12 into the room where we were getting
13 the calls from the fans and from the
14 borehole. And I was in there
15 probably an hour or so before Bill
16 said he wanted to ride up to that
17 borehole.

18 And when we got to the
19 borehole, John McNeely, who's a
20 foreman for Aracoma ---

21 Q. Yes.

22 A. --- was up there. He was the
23 one that took Trent, David Trent up
24 there. And I asked him if they were
25 injecting air out of the primary into

28

01 the belt entry somehow, because I
02 thought that was the only way that
03 that hole could be exhausted with the
04 direct pull on that fan. And he told
05 me yes, they were injecting air on
06 the primary at the top of the hill.
07 Now, he never did specify exactly
08 where.

09 Q. From the ---?

10 A. From the primary into that
11 area where that hole was.
12 Q. Air from the belt into the
13 primary?
14 A. No, from the primary end of
15 that area where the --- where the
16 verticalhole was drilled.
17 Q. Oh, okay. The intake ---
18 A. Yeah.
19 Q. --- was underneath the
20 borehole, in other words?
21 A. Yeah.
22 Q. Okay.
23 A. See, I hadn't been in there in
24 so long, I wasn't familiar with what
25 was up there on top of that hill now.

29

01 Q. When you said that --- okay.
02 And you said Dwayne came out from
03 underground, ---
04 A. Yes.
05 Q. --- and they were --- about
06 ten o'clock or thereabouts?
07 A. 10:00 or --- yeah, somewhere
08 about there.
09 Q. And you said they were
10 fighting the fire or attempting
11 to, ---
12 A. Attempting to, yeah.

13 Q. --- or whatever. Do you know
14 --- I guess that's my question. Do
15 you know anything about what they
16 were actually able to do, ---

17 A. No.

18 Q. --- or what they were doing?

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

20 Q. If they strung waterlines, or
21 if they strung fire ---

22 A. No, I don't know.

23 Q. --- hose? No?

24 A. No.

25 Q. Do you know about any

30

01 ventilation changes that they may
02 have made ---

03 A. No.

04 Q. --- from the time the fire
05 started until they came out?

06 A. No. I have no idea of
07 anything they did.

08 Q. Okay. And you said you went
09 up to the borehole ---

10 A. Yes.

11 Q. --- with Bill and Dave?

12 A. Yeah.

13 Q. Bill Ross and Dave Morris?

14 A. Yeah. And then Bill and Dave

15 came back to the mines --- we
16 probably --- they stayed up there
17 maybe an hour. And I stayed up there
18 the rest of the night with David
19 Trent and Jeff Perry, who was a
20 foreman for Aracoma.

21 Q. Uh-huh (yes). And Bill Ross,
22 is he the ventilation supervisor ---

23 A. Yes.

24 Q. --- for District Four?

25 A. Yes.

31

01 Q. And Dave Morris is a
02 ventilation specialist?

03 A. Out of the district office.

04 Q. It works directly for Bill?

05 A. Uh-huh (yes).

06 Q. How long did you say you
07 returned --- or stayed up at the
08 borehole?

09 A. I stayed up there until
10 probably about 8:00, 8:30 the next
11 morning, when Bill and Dave came back
12 to relieve us.

13 Q. On the 20th?

14 A. Yes.

15 Q. So they went up with you
16 initially, then they went back home?

17 A. Yeah. Yeah, they wanted more

18 than anything to find --- to find
19 where it was, because it's pretty
20 difficult to find on the surface.

21 Q. Okay. Yeah, I remember
22 hearing it was pretty --- they had a
23 hard time finding somebody who knew
24 how to get there, if I remember
25 right.

32

01 A. Yeah. Yeah.

02 Q. Okay. So then when you were
03 relieved by Bill and Dave the next
04 morning, where did you go then?

05 A. We came down and went up to
06 the ethel fan to make sure that
07 Curtiss Vance had been relieved out,
08 because he was up there. And then we
09 came back down to the mine office,
10 and Luther Marrs told us to be
11 prepared to come back that night.

12 Q. And the day you got relieved
13 is now the 20th?

14 A. Right.

15 Q. And coming back that night
16 would be that night, the 20th in the
17 evening?

18 A. Yeah. He said around --- be
19 prepared to come back about 11

20 o'clock that same night.

21 Q. On the 20th?

22 A. Yes.

23 Q. Okay. What did you do that
24 night?

25 A. Well, we didn't --- we didn't

33

01 actually end up going back, because
02 they had made up a roster in Mount
03 Hope. And I was prepared at 9:30 to
04 be leaving, but I was told that I
05 wasn't on the roster. And then I was
06 scheduled for the night of the ---
07 what would have been the Saturday
08 night on the hoot owl, which meant
09 Sunday shift, to man the office, and
10 then ---.

11 Q. Late night on the 21st into
12 Sunday morning, the 22nd.

13 A. The 22nd, right.

14 Q. Yes.

15 A. And after the two men were
16 recovered, they called and told me
17 that they didn't need me.

18 Q. Okay.

19 A. So then I got a call about an
20 hour or so later to be there Sunday
21 morning on dayshift.

22 Q. The 22nd?

23 A. The 22nd. And when I arrived,
24 Bill Merritt, myself, Curtiss Vance
25 and Bill Gillenwater showed up and

34

01 Rich Kline, who's an ADM, stated that
02 he only needed Gillenwater and one
03 other inspector. So one --- Bill
04 Merritt had driven from
05 Barboursville, so we just went on
06 back home. And then I wasn't back at
07 the mines until February 7th.

08 Q. And that's the day you said
09 that you ---?

10 A. I accompanied on pre-shift.

11 Q. Yes. Okay. I realize you
12 weren't around the command center all
13 that much or around the mine office,
14 it doesn't sound like that much.

15 A. No, I wasn't.

16 Q. But you were up on the
17 borehole. Did you say his name was
18 McNeely?

19 A. John McNeely took David Trent
20 up there.

21 Q. He just took him up, then did
22 he leave?

23 A. Yeah. He left after we got up
24 there.

25 Q. Okay. Did he discuss anything

35

01 more ---

02 A. No.

03 Q. --- about what happened?

04 A. No. He just told me that they
05 were injecting air out of the primary
06 into that area, which the way it may
07 have been ventilated, the primary may
08 have went right under that hole.

09 Q. Uh-huh (yes).

10 A. Which I, 'til this day, I
11 don't know.

12 Q. Okay. Back when you did go
13 into the mine --- well, I guess
14 that's another question. You were
15 not underground for --- when did you
16 say you were underground last there?

17 A. July.

18 Q. In July of 2005?

19 A. Yeah.

20 Q. Were you ever at the mine
21 office after that?

22 A. Not that I can remember.

23 Q. Back when you were going there
24 --- I assume you have been there more
25 than just one time?

36

01 A. Oh, yes. Yes.

02 Q. You know, before that.

03 A. Uh-huh (yes).

04 Q. Were you familiar with where,
05 you know, the 75, 1200 map? Are you
06 familiar where they maintained that
07 map?

08 A. At the time I was there, it
09 was in the conference room upstairs
10 in the mine office.

11 Q. It was?

12 A. Uh-huh (yes). It was on that
13 wall. Where you went in the door, it
14 was on that wall immediately to your
15 left.

16 Q. And how do you know that that
17 is the --- that is the map that they
18 consider the 1200 map?

19 A. When I was there in 2004 --- I
20 did a regular inspection in 2004,
21 from October to December, and that's
22 what it was. And after that, I
23 couldn't really be sure.

24 Q. Yes. Was it there the last
25 --- did you happen to see it the last

01 time you were there?

02 A. July of 2005?

03 Q. Yes.

04 A. I really can't remember. I
05 probably did look at it, because it
06 was always the one that was kept
07 up-to-date.

08 Q. Uh-huh (yes). Do you know
09 what means they used to keep it up to
10 date?

11 A. Usually just daily notations,
12 if there were any changes or
13 anything.

14 Q. Do they pencil in, what are
15 the ---?

16 A. They usually mark it in with
17 ink, or if they remove something,
18 they take it off or, you know, mark
19 through it.

20 Q. With White-Out or just mark
21 through it, like an X?

22 A. Usually they just marked
23 through it.

24 Q. Okay. An X just to indicate
25 ---

38

01 A. As well as I can remember.

02 Q. --- it or something like that?

03 A. Yeah.

04 Q. Okay.

05 A. Something to indicate it had
06 been removed, or ---

07 Q. Yes.

08 A. --- installed, or ---.

09 Q. Uh-huh (yes). How did they
10 mark up where the active sections
11 were?

12 A. They had smaller prints for
13 the sections.

14 Q. And do they keep them
15 separate?

16 A. They kept those, I'm thinking,
17 in the office where the pre-shift
18 books were. I'm pretty sure ---
19 yeah, they were. They were on the
20 wall --- when you went past the
21 conference room, I think it was the
22 second door on the left is where they
23 kept all the pre-shift books and
24 weekly exam books. Then there were
25 small section prints on that wall

39

01 when you went in the door on the left
02 side.

03 Q. Now, those --- I guess before
04 I forget, the map that you were
05 talking about being a 1200 map, did
06 they tell you that that was their
07 1200 map?

08 A. Well, I always look for the

09 certification on it, if it was
10 certified by the engineer. And I
11 accepted that as a 1200 map.

12 Q. Okay. And did you have
13 this ---?

14 A. If this was kept up-to-date.

15 Q. Yes. Did you have discussions
16 with any mine management officials
17 there and used that map as a talking
18 point such that they understood that
19 you thought that was a 1200 map as
20 well?

21 A. Probably. Probably I did.

22 Q. I guess I'm just wanting to
23 understand if, ---

24 A. Yeah.

25 Q. --- if ---

40

01 A. Usually ---.

02 Q. --- what you thought was a
03 1200 map was what they acknowledge
04 was the 1200 map.

05 A. Well, I'm pretty sure it was.

06 Q. Okay.

07 A. Yeah. Because any discussion
08 we had when I was in --- actually
09 doing the ventilation work, that's
10 the map we referred to.

11 Q. Okay.

12 A. Yeah.

13 Q. Okay. You, being you and the
14 mine management people ---

15 A. Yeah.

16 Q. --- if you had a question
17 about something?

18 A. Yeah. Usually it'd be the
19 superintendent or the vice president.
20 Eddie Lester.

21 Q. And which one is he?

22 A. He's the vice president. And
23 Lawrence Lester's the superintendent.

24 Q. Okay. Is Lawrence, Pepé?

25 A. Yeah, that's Pepé.

41

01 Q. You said the sections were
02 updated on the section maps ---

03 A. Uh-huh (yes).

04 Q. --- in another --- it was in
05 another office?

06 A. Right.

07 Q. How often was that information
08 transcribed ---

09 A. Transcribed?

10 Q. Yes. --- onto the other map
11 that was ---?

12 A. I couldn't honestly say. I
13 would say --- well, the 1200 map has

14 to be updated every six months, but I
15 would say it was done more often than
16 that, especially if a section was
17 finishing up, or a longwall was
18 getting ready to move. I'd say it
19 was probably updated at that time to
20 the 1200 map, I'd say probably once a
21 month.

22 Q. Okay. So as far as you
23 understood it or can remember you
24 that understood it, the map that was
25 the entire mine, that was on the wall

42

01 in the conference room, it was
02 recognized by you as the 1200 map ---

03 A. Yeah.

04 Q. --- was current with
05 everything in the outby areas as
06 well, with the exception of maybe
07 some of the information that was
08 still on the section maps in the
09 other room; ---

10 A. On section prints. Right.

11 Q. --- is that correct?

12 A. Yes.

13 Q. So everything that's not on
14 the section prints ---

15 A. Should be on there.

16 Q. --- should be accurate and

17 up-to-date on the 1200 map?

18 A. Exactly.

19 Q. Okay. So to get the full
20 mine, it'd be like a combination of
21 the full mine map as well as the
22 additional stuff on the ---

23 A. Right.

24 Q. --- section maps that hasn't
25 yet been transferred over; ---

43

01 A. Right.

02 Q. --- is that correct?

03 A. Uh-huh (yes).

04 Q. Okay. Those section maps,
05 were they like --- how much of a
06 projection was on there, do you know?
07 I mean, like ---.

08 A. Seemingly, usually maybe 10,
09 15 crosscuts. And on the longwall,
10 it might have been 1,000 feet, 1,500.

11 Q. Okay. So they have one for
12 the longwall section there, too?

13 A. Yes.

14 Q. Okay. And did it reflect when
15 controls were taken out as the face
16 was retreated?

17 A. Yes. As well as I can
18 remember, they did show me the

19 knocked stoppings on the tailgate and
20 headgate, both.

21 Q. Okay. Do you remember ever
22 looking to see if they were updating
23 the 1200 map behind where the section
24 maps were?

25 A. Yes. When I was doing

44

01 ventilation work, that's always done.
02 That's one of the key things I'd look
03 at on each six-month review, would be
04 the 1200 map.

05 Q. Okay. Are you familiar with
06 their ventilation plan?

07 A. Unless it's changed in the
08 last two years, I am.

09 Q. Are you familiar with it after
10 the 2004 belt air regulations became
11 effective?

12 A. Yes. As a matter of fact, I
13 made a trip prior to those
14 regulations being implemented with a
15 copy of the regulations and went over
16 it with them, exactly what they had
17 to do as far as recording, what they
18 do in the event of alert/alarm
19 malfunction. And as well as I can
20 remember, I think I may have went
21 back later and issued them a citation

22 for not maintaining it.

23 Q. Do you recall who you spoke

24 with about that at the time?

25 A. One was Dave Brown, who was

45

01 safety director at that time,

02 Lawrence Lester, the superintendent.

03 MR. BEITER:

04 Tim, we've had another

05 member of MSHA's investigation

06 team come into the room. And

07 if he'd please introduce

08 himself for the record.

09 MR. MURRAY:

10 Hello, Mr. Justice.

11 A. Hi.

12 MR. MURRAY:

13 Kenny Murray,

14 Pikeville, Kentucky.

15 A. Nice to meet you, Kenny.

16 MR. MURRAY:

17 Good to see you.

18 MR. TJERNLUND:

19 Derrick Tjernlund,

20 MSHA, Tech Support,

21 Triadelphia.

22 MR. BEITER:

23 Thank you, you two.

24 BY MR. BEITER:

25 Q. Do you know if their

46

01 ventilation plan permitted the use of
02 belt air on the development sections?

03 A. Yes.

04 Q. It did?

05 A. Yes. Just as well as I can

06 --- I know it did in 2004.

07 Q. Prior to the belt air

08 regulations?

09 A. Yeah. See, I did a 101

10 Petition up there.

11 Q. Okay. So your recollection

12 --- am I understanding it correctly,

13 that your recollection is back when

14 the petition was in effect?

15 A. Yeah. As well as I can

16 remember, Denny, they never used belt

17 air on the face in the miner units.

18 It was always on the longwall unit.

19 Q. Following the implementation

20 of the 2004 belt air regulations, was

21 their petition still valid?

22 A. No.

23 Q. Were they made aware of that?

24 A. Yes, they were.

25 Q. Okay. So when you had --- and

47

01 when I say were they made aware, when
02 you spoke with Mr. Lester and Mr.
03 Brown, when you described to them
04 what the regulations were, did you,
05 at that point, make them aware that
06 their petition was no longer valid?

07 A. Yes. We had one other mine
08 that had a 101 Petition, and I made a
09 trip to both mines to tell them that
10 their petition would be no longer in
11 effect.

12 Q. Do you recall when you talked
13 to Mr. Brown and Mr. Lester about the
14 belt air requirements?

15 A. I'm thinking it was in April
16 of 2004.

17 Q. Would you have made notes
18 about those conversations?

19 A. I could probably go back in
20 the reports.

21 Q. That's a while back, I know.

22 A. Yeah. Because I know when we
23 got to the first printing, that's
24 when I made copies and went to the
25 mines.

48

01 Q. Uh-huh (yes). Did anybody
02 else accompany you from MSHA?

03 A. No.

04 Q. Do you know who's responsible
05 for ventilation of the mine at Alma?

06 A. I'd say Lawrence Lester.

07 Q. Pepé Lester?

08 A. Yeah. Just at the time I was
09 --- the last time I was there, John
10 McNeely was the mine --- general mine
11 foreman.

12 Q. He was?

13 A. Uh-huh (yes).

14 Q. Is Mr. Lester, Pepé Lester,
15 does he get involved with the
16 planning control and coordination,
17 implementation of the ventilation
18 changes underground?

19 A. He did at the time when I was
20 actually ---

21 Q. Yes.

22 A. --- doing ventilation work.
23 He and Eddie Lester, the vice
24 president, usually made the change
25 --- made the proposals, and they

49

01 would usually call, you know, for a
02 meeting with me for my input.

03 Q. Uh-huh (yes).

04 A. But that --- now, that did
05 stop in October of 2004, because at

06 that time, I was given a list of
07 mines to inspect, in the six-month
08 review unit.

09 Q. Yes. From your involvement.

10 A. From my involvement. My ---
11 the in-mine reviews were --- there
12 haven't been any since then, since
13 October of 2004.

14 Q. You haven't conducted any?

15 A. No.

16 Q. Okay. Thank you. Is there
17 --- did you overhear any
18 conversations or have a chance to
19 speak to any of the miners or the
20 mine rescue teams during or after the
21 fire, that provided you with any
22 information about what might have
23 happened that day?

24 A. The only person that I talked
25 to that was involved was Johnny

50

01 Robertson. He was the superintendent
02 at Justice. And he told me that he
03 found, I think, the Hatfield boy.
04 When they were doing the recovery, he
05 found him.

06 Q. This is Johnny Robertson?

07 A. Uh-huh (yes).

08 Q. He's the superintendent at
09 Justice?
10 A. Yes. He went in with one of
11 their mine rescue teams. I think he
12 went at that point ---
13 Q. Uh-huh (yes).
14 A. --- that night.
15 Q. The first night he went in
16 with them?
17 A. Uh-huh (yes).
18 Q. Okay. Do you know if he's
19 familiar with the mine, with Alma?
20 A. I wouldn't think so.
21 Q. Pardon me?
22 A. I wouldn't think so.
23 Q. You don't think so?
24 A. No.
25 Q. Is Justice Mine a Massey ---

01 A. Yes.
02 Q. --- owned mine?
03 A. Uh-huh (yes).
04 Q. Did he discuss, Mr. Robertson
05 --- I think it's Robertson; isn't it?
06 A. Yes.
07 Q. Okay. Did Johnny Robertson
08 discuss anything else with you about
09 anything he saw on the ground or
10 anything he noticed about the fire,

11 or ---?

12 A. He told me that he saw
13 stoppings with the perimeters
14 burning, or the wood. And he --- and
15 we discussed airlock doors. And he
16 said that he didn't know if there
17 were two airlock doors on the inby
18 side of where they crossed under the
19 mother drive or not, because there
20 was some talk in the command center
21 that night about the airlock doors
22 being opened. And I don't ---.

23 Q. Do you know how that talk
24 originated?

25 A. It was discussed because of

52

01 smoke in the primary, from what I can
02 remember.

03 Q. As just trying to understand
04 how the smoke got in there?

05 A. How the smoke was in there.

06 Q. Was it more of that than
07 rather than somebody said a door was
08 open, or ---?

09 A. Yeah. They said --- as well
10 as I can remember, John McNeely said
11 --- it's probably Chris or Dwayne.

12 Q. Chris Adkins ---

13 A. Yeah.

14 Q. --- or Dwayne Francisco?

15 A. Or it may have been Pepé that
16 they asked, do you think those
17 airlock doors might be open? See, I
18 didn't even know they had airlock
19 doors on top of the hill, because
20 I've been away from the mine so long,
21 I didn't even know which way they
22 were traveling.

23 Q. Yes.

24 A. But that was the only thing
25 that ---. And Johnny said he could

53

01 see the coal on fire in the belt
02 line. And that was when he initially
03 got up there.

04 Q. When he initially got up
05 there?

06 A. Uh-huh (yes).

07 Q. And that was the first
08 evening?

09 A. That first night.

10 Q. Did he tell you what stoppings
11 he saw ---

12 A. No.

13 Q. --- burning through?

14 A. He just said he just seen the
15 perimeters burning.

16 Q. Were those stoppings between
17 the belt and the intake?

18 A. He didn't say.

19 Q. He didn't say?

20 A. No.

21 Q. Okay.

22 A. No. I really didn't want to
23 discuss it a whole lot with him. I
24 figured that was for the best.

25 Q. I can understand. Did you

54

01 have any discussions with anyone
02 else?

03 A. No. No, as a matter of fact,
04 I haven't even seen anybody on the
05 mine rescue team since then.

06 Q. Did Johnny Robertson indicate
07 that he had made --- or that he had
08 directed or made or participated in
09 making any changes to ventilation
10 controls?

11 A. That night?

12 Q. Uh-huh (yes).

13 A. No. He didn't indicate that
14 he had.

15 Q. Did he indicate any other
16 times?

17 A. No.

18 Q. Did he discuss anything about
19 water being available to fight the
20 fire?

21 A. No, he didn't say anything.

22 Q. Did you hear anything about,
23 you know, if there was water or no
24 water?

25 A. One of the --- one of the men

55

01 that was working on the longwall ---
02 I'm trying to think of --- his last
03 name is Neal. He's working at
04 Justice Mines now. And I'm pretty
05 sure he's the one that told me that
06 there was a stream of water running
07 down the --- one of the longwall
08 entries, which indicated to him the
09 waterline had burned in two.

10 Q. And when did he notice that?

11 A. That night. He was on the
12 longwall on the night of the fire.

13 Q. Oh, one of the crew before
14 they evacuated the mine?

15 A. Right. Uh-huh (yes).

16 Q. Okay. Did you hear any talk
17 about discussions of evacuations?

18 A. The only thing I was told by
19 --- and the same man told me, was
20 that they called them and told them

21 to come on out and to come through
22 that cut-through right there.

23 Q. The longwall person you talked
24 to on the longwall?

25 A. Yes. Uh-huh (yes).

56

01 Q. Is he the foreman?

02 A. No. He --- I think he was the
03 electrician.

04 Q. Did he say who called and told
05 him?

06 A. No, he didn't.

07 Q. Did he say when?

08 A. No.

09 Q. Did he tell you that they were
10 working on building any curtains or
11 anything up there?

12 A. No, he didn't say.

13 Q. Did he indicate that they were
14 still on the longwall face or section
15 when they were told to ---?

16 A. The way I kind of got it was
17 that they had come to the head.

18 Q. Yes.

19 A. And then they told them to
20 come on out, to evacuate.

21 Q. From headgate Eight?

22 A. Yeah. They came through that

23 first cut-through down that barrier.

24 Q. Yes. The diagonal cut-through

25 ---

57

01 A. Right.

02 Q. --- closest to the mouth?

03 A. Uh-huh (yes).

04 Q. Did you say the gentleman's

05 name is Chad, or ---?

06 A. No, his last name's Neal.

07 Q. Neal?

08 A. N-E-A-L.

09 Q. Okay.

10 A. Yeah. His father's mine

11 foreman.

12 Q. Do you know his first name?

13 A. No. His father's Gary Neal.

14 He's the mine foreman at Justice.

15 Q. Okay.

16 A. I'm thinking it might be Brad.

17 Q. Brad Neal?

18 A. It might be.

19 Q. Did you go into the box cut at

20 all during the ---

21 A. No.

22 Q. --- activities?

23 A. No, not 'til February 7th.

24 Q. So you wouldn't have went into

25 the dispatcher's office then either?

01 A. No. Now, Minness did.

02 Q. That first night?

03 A. Yeah. He went down --- I told

04 him to go down and look at printouts.

05 Q. Yes.

06 A. And he came back up, and he

07 had just written down on a piece of

08 paper that they had a, I think a nine

09 part per million alert about 9:30

10 that morning, and they had another

11 nine part per million alert about

12 2:00 or 2:30 that afternoon.

13 Q. Uh-huh (yes).

14 A. And I was told that he had the

15 book, but I never did see it.

16 Q. Okay.

17 A. The response book.

18 Q. The CO log ---

19 A. Right.

20 Q. --- or the book that they keep

21 the log in?

22 A. Right. Their responses.

23 Q. Yes. Did he or did anyone

24 else indicate to you what the maximum

25 concentration of CO was at those

01 alarms?

02 A. No.

03 Q. Do you know if any efforts

04 were made at the borehole to contact

05 the missing miners?

06 A. No, not at the existing

07 borehole.

08 Q. Did anybody beat on pipe or

09 anything?

10 A. Not that I know of.

11 Q. Do you know if the borehole

12 --- did it exhaust the entire time?

13 A. It did that night.

14 MR. BEITER:

15 Okay.

16 BY MR. TUCKER:

17 Q. Did Johnny happen to mention

18 anything about problems fighting the

19 fire, as far as ---

20 A. Johnny Robertson.

21 Q. --- Robertson, as far as

22 taking a long time to put it out or

23 anything?

24 A. No.

25 Q. Any comments about that?

60

01 A. No. the only thing I know is

02 that Sunday morning when I came back

03 over, they still had hot spots,

04 because Rich Kline told Chris --- or

05 no, no, told Frank Foster that he
06 wanted to plan what they were going
07 to do to get the hot spots out.

08 Q. The Neal guy that you said
09 that's working at Justice now, he
10 came from Aracoma?

11 A. Right. There's several people
12 from Aracoma that are at Justice
13 right now.

14 Q. Is that like on a temporary
15 basis?

16 A. Yeah. Yeah.

17 Q. And you're not sure of his
18 first name, whether it's ---?

19 A. No.

20 Q. Could it be Chad Neal, or ---?

21 A. It may be Chad. Chad, Brad,
22 something like that. You know, I've
23 only met him a couple times.

24 Q. And what's his ---?

25 A. He's electrician.

61

01 Q. He's electrician?

02 A. Yeah. I think he's
03 electrician on the longwall. He's
04 not on the wall at Justice as far as
05 I know.

06 Q. But he's an electrician at

07 Aracoma?

08 A. I think so.

09 MR. TUCKER:

10 Okay.

11 MR. BEITER:

12 Tim, do you mind if we

13 take about --- a short,

14 couple-minute break?

15 A. No.

16 BY MR. BEITER:

17 Q. You talked about that meeting,

18 or you talked about that meeting with

19 you and Mr. Lester, Pepé Lester, and

20 Dave Brown, ---

21 A. Dave Brown.

22 Q. --- and that was back in April

23 2004?

24 A. I'm thinking it was in April

25 of 2004. It was prior --- it was

62

01 prior to the belt airways going into

02 effect.

03 Q. Okay.

04 A. Because I wanted to talk to

05 him about point feed regulators and,

06 you know, everything that had to go

07 with that and where they had to have

08 sensors, the responsibility that they

09 were going to have to keep.

10 Q. Uh-huh (yes).

11 A. Which they should have already
12 been keeping with the petition.

13 Q. Was that meeting held at the
14 mine?

15 A. Yeah.

16 Q. At Alma Number One?

17 A. Uh-huh (yes).

18 Q. Did you make notes of that
19 meeting?

20 A. Yeah. They would be in a
21 report.

22 Q. Would they be in your
23 inspection report notes?

24 A. Uh-huh (yes). Yeah.

25 Q. Did you submit those notes?

63

01 A. Yeah.

02 Q. So if we went back, we could
03 find them?

04 A. Uh-huh (yes).

05 Q. Did Johnny Robertson --- we're
06 going back to the fire now.

07 A. Okay.

08 Q. I'm jumping around a little
09 bit on some of these questions. Did
10 Mr. Robertson indicate to you why he
11 came out of the mine after his first

12 entry in with Elk Run?

13 A. No.

14 Q. Do you know when the power was
15 removed from the mine?

16 A. No, I don't.

17 MR. BEITER:

18 Tim, on behalf of MSHA
19 and the accident investigation
20 team --- well, I guess before
21 that.

22 BY MR. BEITER:

23 Q. Do you have anything that you'd
24 like to add?

25 A. No.

64

01 Q. Is there any other information
02 that we haven't asked you that you
03 think we should no?

04 A. No, that's pretty much it.

05 MR. BEITER:

06 Okay. Tim, on behalf
07 of MSHA ---.

08 A. Well, no, there is one thing.

09 BY MR. BEITER:

10 Q. Okay.

11 A. When I went in on February
12 7th, down at that Number One Fourway
13 where they crossed from where they
14 had --- they had Two track and Four

15 track --- when they had track in the
16 mines, that there was a place where
17 you crossed through the belt entry
18 over into the primary. And on
19 February 7th there was only a single
20 door between the belt and the primary
21 escapeway. Well, back in October of
22 2004, I had cited them for that and
23 made them airlock by taking one entry
24 of the intake and building a stopping
25 and putting a door inby and outby the

65

01 track switch to let them airlock into
02 the primary, that that had been torn
03 out.

04 Q. So once you had them put in,
05 did you verify at that time, when it
06 was terminated, that it was actually
07 done?

08 A. Right. It was in there in
09 January of 2005.

10 Q. And after that time and before
11 you went in in February, that same
12 location ---?

13 A. Had been removed. And I asked
14 Mark Keyser, the foreman, when they
15 tore it out.

16 Q. Uh-huh (yes).

17 A. And he said when they got
18 diesel. And I said diesel doesn't
19 have anything to do with it. And I
20 said when was that, and he said in
21 November.

22 Q. In November of 2005?

23 A. Right. That that airlock was
24 taken out.

25 Q. So after you cited it and

66

01 found the violation, they determined
02 it by actually constructing controls
03 to create an airlock, ---

04 A. Right.

05 Q. --- and it was like that
06 until, according to him, in November
07 of 2005, at which time they tore that
08 ---

09 A. Tore that airlock out.

10 Q. --- set of doors out and no
11 longer maintained the airlock
12 separation ---

13 A. Right.

14 Q. --- between the belt entry and
15 the ---

16 A. Primary.

17 Q. --- primary escapeway intake?

18 A. Yeah.

19 Q. Thank you. Is there anything

20 else?

21 A. No, that's ---.

22 MR. BEITER:

23 I thank you for
24 appearing here today and
25 answering our questions and

67

01 sharing your information with
02 us about the mine.

03 Your cooperation is
04 very important to us as we
05 work to determine the cause of
06 the accident. If you wish,
07 you can go back over any
08 answer that you've given
09 during the interview for
10 clarification or to add
11 something, or if you have an
12 additional closing statement
13 covering any points, you may
14 make it at this time.

15 A. I don't have anything to add.

16 MR. BEITER:

17 We ask that you not
18 discuss your interview here
19 today with any person who may
20 have already been interviewed,
21 or with anyone who may be

22 asked to be give a statement
23 in the future. And the reason
24 we ask that is to ensure that
25 we obtain everybody's

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01 independent memory of the
02 accident and the events
03 surrounding the accident.

04 After questioning other
05 witnesses and obtaining
06 additional information, we may
07 ask you back for further
08 questions. If at some later
09 point you have additional
10 information regarding the
11 accident that you would like
12 to provide us, you can please
13 contact Mr. Murray or Mr.
14 Webb. And I know you know
15 both of them.

16 A. Okay.

17 MR. BEITER:

18 And here's just their
19 contact cards.

20 A. Okay.

21 MR. BEITER:

22 And again, thanks very
23 much.

24 MR. TUCKER:

25 Also, just on behalf of

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01 Miners' Health, Safety &
02 Training, I'd like to thank
03 you for coming in today. I
04 appreciate it.

05 * * * * *

06 EXAMINATION CONCLUDED AT 2:51 P.M.

07 * * * * *

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