

01 EXAMINATION UNDER OATH
02 OF
03 RICHARD BOGGESS
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 Monday, March 20, 2006, at 10:00
13 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
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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. FRANCO, 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 RONALD W. STAHLHUT

15 CHARLES W. POGUE

16 C.A. PHILLIPS

17 BETH SPENCE

18

19

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21

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01 I N D E X

02

03 INTRODUCTION 6 - 16

04 WITNESS: RICHARD BOGGESS

05 QUESTIONS

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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. BOGGESS:

06 Morning.

07 MR. MURRAY:

08 How you doing today?

09 MR. BOGGESS:

10 All right.

11 MR. MURRAY:

12 Good. My name is Kenny
13 Murray, as you know. And I
14 represent MSHA, which is an
15 Agency of the United States
16 Department of Labor. I am a
17 member of MSHA's accident
18 investigation team that's
19 charged with investigating the
20 accident that occurred at the
21 Aracoma Coal Company,
22 Incorporated, Aracoma Alma
23 Mine Number One, on January
24 19th, 2006.

25 This is a joint

7

01 accident investigation that
02 MSHA's conducting with the
03 State of West Virginia. I
04 will be asking the questions
05 today for MSHA. Here with me
06 today are other members of
07 MSHA's accident investigation
08 team, as well as your own
09 State team. MSHA's team
10 includes subject matter
11 experts from throughout the
12 United States along with
13 members of the Solicitor's
14 Office in Arlington, Virginia.

15 At this time, I would like for
16 each of those folks to
17 introduce themselves, too.

18 ATTORNEY BARISH:

19 Hi, Richard. My name
20 is Dan Barish, I'm an attorney
21 with the Solicitor's Office in
22 Arlington, Virginia.

23 MR. STAHLHUT:

24 Ronald Stahlhut, MSHA
25 of Vincennes, Indiana.

8

01 MR. POGUE:

02 Charlie Pogue with
03 MSHA, Hunker, Pennsylvania.

04 MR. FINNIE:

05 Mike Finnie, MSHA of
06 Madisonville, Kentucky.

07 MR. FRANCCART:

08 Bill Francart,
09 Pittsburgh, Pennsylvania.

10 MR. MURRAY:

11 And Richard, I'm from
12 Pikeville, Kentucky. And here
13 with us today are some
14 familiar faces to you, your
15 co-workers from the State of
16 West Virginia. And I would

17 ask for those folks to put a
18 statement on the record.

19 MR. TUCKER:

20 Okay. Thank you. The
21 West Virginia Office of
22 Miners' Health, Safety &
23 Training is conducting this
24 interview session jointly with
25 MSHA. We're in agreement with

9

01 the procedures outlined by Mr.
02 Murray. However, let me make
03 it clear that the Director
04 reserves the right, if
05 necessary, to call or subpoena
06 witnesses or require the
07 production of any record,
08 document, photograph or other
09 relevant materials necessary
10 to conduct this investigation.
11 And for the record, my name is
12 Bill Tucker. I'm with Miners'
13 Health, Safety & Training out
14 of the Oak Hill office.

15 MR. PHILLIPS:

16 Good morning, Richard.
17 C.A. Phillips, Deputy
18 Director, Charleston, West
19 Virginia Miners' Health,

20 Safety & Training.

21 MS. SPENCE:

22 Beth Spence with the

23 Governor's Office.

24 MR. MURRAY:

25 Richard, the

10

01 investigation is being
02 conducted by MSHA and the
03 State of West Virginia to
04 gather information to
05 determine the cause of the
06 accident and to help prevent
07 this from happening in the
08 future. The interviews are an
09 important part of the process.
10 After the investigation is
11 completed, MSHA will issue a
12 written report detailing the
13 nature and causes of the
14 accident. MSHA accident
15 reports are made available to
16 the public in the hope that
17 greater awareness about the
18 causes of accidents can reduce
19 their occurrence in the
20 future. The information
21 obtained through witness

22 interviews is frequently
23 included in these reports.
24 Your statement may also be
25 used in other enforcement

11

01 proceedings.

02 I'd like to thank you
03 in advance for your appearance
04 here. We appreciate your
05 assistance in the
06 investigation. The
07 willingness of miners and mine
08 operators to work with us is
09 critical to our success in
10 making the nation's mines
11 safer. I guess I would add at
12 this point, the cooperation
13 between the different agencies
14 is just as important.

15 This interview with Mr.
16 Richard Boggess is being
17 conducted under Section 103(a)
18 of the Federal Mine Safety &
19 Health Act of 1977 as part of
20 an investigation by the Mine
21 Safety and Health
22 Administration into the
23 conditions, events and
24 circumstances surrounding the

25 fatalities that occurred at

12

01 the Aracoma Alma Mine Number
02 One located at Route 17 North,
03 Bandmill Hollow Road in
04 Stollings, West Virginia,
05 25646.

06 This interview is being
07 conducted at the State of West
08 Virginia Department of
09 Environmental Protection,
10 Division of Mining and
11 Reclamation, at 1101 George
12 Kostas Drive in Logan, West
13 Virginia, 25601 on March 20th
14 and the time is 10:05 a.m.
15 Eastern Standard Time.

16 Mr. Boggess, may I call
17 you Richard?

18 MR. BOGGESS:

19 Yes, please.

20 MR. MURRAY:

21 Okay. Richard, this
22 interview will begin by asking
23 you a series of questions.
24 Feel free at any time to
25 clarify any statements that

13

01 you make in response to the
02 questions. After we have
03 finished asking questions, you
04 will have an opportunity to
05 make a statement of your own
06 and provide us with any
07 additional information that
08 you believe may be important.
09 You are permitted to have a
10 representative with you during
11 the interview, and you may
12 consult with your
13 representative at any time.
14 You may designate any person
15 to be your representative.
16 Following the questions by
17 MSHA and the state, your
18 representative will be given
19 the opportunity to ask
20 questions for the purposes of
21 clarification on areas already
22 discussed.

23 Your statement is
24 completely voluntary. You may
25 refuse to answer any question

14

01 and you may end your interview
02 at any time. If you do not
03 understand a question, tell me

04 and I'll rephrase it. If you
05 need a break for any reason,
06 let me know. You may request
07 the opportunity to make a
08 confidential statement, which
09 we will withhold from the
10 public to the extent allowed
11 by law. Should you desire to
12 give a confidential statement,
13 you should advise me before I
14 begin so that I can reschedule
15 your interview in order to
16 properly consider your
17 request. Do you want a
18 confidential interview?

19 MR. BOGGESS:

20 No.

21 MR. MURRAY:

22 We have a court
23 reporter and she'll produce a
24 written transcript of your
25 interview. So I ask that you

15

01 state all your answers
02 verbally because she can't
03 record gestures, such as
04 nodding your head.

05 Neither the transcript

06 of this interview nor the
07 content of this interview will
08 be released to the public or
09 the media until MSHA's final
10 accident investigation report
11 is issued or until required by
12 court order or until a public
13 hearing takes place.

14 If any part of your
15 statement is based not on your
16 own first-hand knowledge but
17 on information that you
18 learned from someone else,
19 please let us know. Please
20 answer each question as fully
21 as you can, indicating any
22 information that you learned
23 from someone else. We may not
24 ask the right question to
25 learn the information that you

16

01 have, so don't feel limited by
02 the precise question that we
03 ask. If you have information
04 about the subject area of a
05 question, please provide us
06 with that information. Do you
07 have any questions about how
08 the interview will proceed?

09 MR. BOGGESS:

10 No.

11 MR. MURRAY:

12 Okay. Would the court

13 reporter please swear Mr.

14 Boggess?

15 -----

16 RICHARD BOGGESS, HAVING FIRST BEEN

17 DULY SWORN, TESTIFIED AS FOLLOWS:

18 -----

19 BY MR. MURRAY:

20 Q. Okay. Richard, for the

21 record, please state your full name,

22 address and telephone number and then

23 spell your last name.

24 A. [REDACTED]

[REDACTED]

04 Q. Okay. Thanks, Richard.

05 Richard, are you appearing

06 voluntarily here today?

07 A. Yes.

08 Q. Has anyone made any promises

09 to you for giving this statement or

10 offered you any rewards in exchange

11 for making your statement?

12 A. No.

13 Q. Has anyone threatened you or
14 warned you not to provide this
15 statement?

16 A. I didn't understand.

17 Q. Has anyone threatened you or
18 warned you not to provide this
19 statement?

20 A. No.

21 Q. Do you understand that you may
22 refuse to answer any questions or
23 terminate this interview at any time?

24 A. Yes.

25 Q. Do you have a representative

18

01 with you today?

02 A. No.

03 Q. Do you desire one?

04 A. No.

05 Q. Okay. Richard, how long have
06 you worked for the State of West
07 Virginia?

08 A. Fourteen (14) years.

09 Q. What's your current duty
10 station? Where are you assigned to
11 work? Are you signed to a particular
12 office?

13 A. Well, it's the Danville

14 office.

15 Q. The Danville office?

16 A. Yes.

17 Q. Okay. And what's your current

18 job title?

19 A. State mine inspector.

20 Q. How long have you held that

21 position?

22 A. Fourteen (14) years.

23 Q. Okay. Have you had any other

24 jobs with the State?

25 A. No.

19

01 Q. Okay. And how many total

02 mining --- total years of mining

03 experience do you have, other than

04 the 14 with the State?

05 A. Total 31 years.

06 Q. Okay.

07 MR. MURRAY:

08 Bill?

09 MR. TUCKER:

10 Thank you.

11 BY MR. TUCKER:

12 Q. Richard, how did you first

13 become aware of a fire at the Aracoma

14 Mine?

15 A. At 7:33 p.m. on January 19th,

16 Eddie Lester called me from the mine.
17 Eddie Lester's in upper management.
18 I'm not sure exactly what his title
19 is right now. He stated to me that,
20 Richard, you know I wouldn't be
21 calling if it was good news. And I
22 said, what's happening. He said, I
23 have a fire and two men missing. I
24 said, okay, I'm on my way. So I hung
25 up from him and called Denny Ballard,

20

01 my supervisor and told him what we
02 had. Then I immediately left for the
03 mine.

04 Q. Did Eddie mention anything
05 about the fire as far as what time it
06 had started or any other information?

07 A. No.

08 Q. Okay.

09 A. I arrived at the mine within
10 the hour. It's a 40-minute drive
11 from the house and I was there within
12 the hour.

13 Q. Okay. Could you tell us,
14 after arriving at the mines, what
15 role you played or what you did?

16 A. Well, when I got there, I was
17 already surprised because the State
18 Police had the road block up already.

19 That kind of surprised me, but of
20 course, I went right on through and
21 it was pretty hectic. And I went to
22 Eddie to find out the current
23 situation and after a period of time,
24 I found out there was --- I was told
25 by Eddie there was 14 people

21

01 underground. Twelve (12) people
02 looking for the two victims and the
03 two victims which totaled 14 people
04 underground at that time. Then
05 within just a few minutes of
06 arriving, I saw Vicki Chapin, federal
07 mine inspector, Minnes Justice,
08 federal inspector. And just a few
09 minutes after that, my boss, Denny
10 Ballard, was there. And then just a
11 few minutes after that, Bill Conway,
12 our Director, was there.

13 Q. Okay. You mentioned Vicki
14 Chapin, would that have been Vicki
15 Mullins?

16 A. Vicki Mullins, I'm sorry,
17 yeah. Thank you.

18 Q. Okay.

19 A. We were just assessing the
20 situation trying to find out what was

21 going on and it was pretty chaotic.

22 Q. Okay. Did you issue a control

23 order at some point or ---?

24 A. Yes.

25 Q. Do you recall the time?

22

01 A. No, I do not.

02 Q. Okay.

03 A. But relatively soon after

04 arriving, I issued that, but the time

05 frame I don't know.

06 Q. Right. Just to back up a

07 little bit. On January the 18th,

08 were you at the Aracoma Mines?

09 A. Yes.

10 Q. Do you recall what section you

11 went to?

12 A. The 18th, I went to the

13 longwall section.

14 Q. Did you encounter any problems

15 or have to issue any violations on

16 the section?

17 A. When I arrived at the longwall

18 section, I took an air reading in the

19 main intake where it dumps onto the

20 wall. Their plan calls for 45,000 on

21 the intake for the longwall section.

22 I only measured slightly over 25,000.

23 So we immediately --- I immediately

24 shut the wall down, told them
25 something's wrong with the air. We

23

01 --- Eddie Lester was with me. I was
02 traveling with Eddie at this time.
03 And we started evaluating the
04 situation and normally, the air on
05 the mother drive belt compliments the
06 intake. So I tried to get air an
07 emission on the belt line and the air
08 on the belt line was going toward the
09 mother drive instead of coming toward
10 the longwall section. The air, or
11 intake air, essentially split right
12 there. Part of it was going across
13 the longwall and part going down the
14 belt. And that's why the longwall
15 section didn't have enough air to
16 operate.

17 Q. Do you recall approximately
18 how long it took to get the air?

19 A. Not exactly, but it was a ---
20 it was a period of time. It was, I'm
21 guessing, an hour, because we were
22 evaluating the situation, trying to
23 figure out what was going on. They
24 hung check curtains outby to try to
25 keep the air from going down the belt

01 line. And as a stop gap just to kind
02 of --- trying to get air onto the
03 wall so I'd open the wall back up.
04 And after a period of time, I made
05 another air reading and they had
06 enough air to run the longwall, so we
07 turned it loose. And as I was
08 leaving through the check curtains, I
09 checked to see which way the air was
10 going then and it was going toward
11 the wall. The air had reversed. And
12 I do know that they made a phone call
13 outby somewhere and they made some
14 ventilation changes somewhere that
15 reversed the air and put the air the
16 way it was supposed to go toward the
17 wall.

18 Q. Were you ever able to find out
19 where they made those changes?

20 A. I told Eddie --- when the
21 changes were made and I determined
22 that the air was right, I told Eddie
23 when we get outside, he can show me
24 on a map what they did, but that
25 never happened. I never did find out

01 what happened, what they did.

02 Q. Okay.

03 MR. TUCKER:

04 That's all I have for

05 now.

06 MR. MURRAY:

07 Okay.

08 BY MR. MURRAY:

09 Q. Just a couple. On the 18th,
10 whenever you found that the minimum
11 requirements weren't being met as far
12 as the intake that reports to the
13 longwall face, do you know if the
14 tail was blocked on that day?

15 A. I was told it was. I never
16 observed it myself, but one or two
17 days before that, I wrote a violation
18 on their tail blockage plan because
19 they couldn't show me documentation
20 where they went over the tail
21 blockage plan with the personnel. So
22 I did write a violation on that a day
23 or two before this incident.

24 Q. Okay. Do you know what time
25 it was that Eddie Lester called you

26

01 on the evening of the 19th?

02 A. 7:33.

03 Q. 7:33?

04 A. P.M. It's still on my caller

05 ID.

06 Q. So you didn't have to depend
07 on your wristwatch, that's actually
08 --?

09 A. Exactly.

10 Q. --- at 7:33? Yeah. When he
11 called, did he mention any time about
12 what time he thought the fire had
13 started?

14 A. No, nothing at all. No. The
15 only thing he mentioned to me is he
16 had a fire and he had two men
17 missing.

18 Q. Were you the first State
19 employee to be notified as far as you
20 know?

21 A. I don't have that knowledge,
22 but I'm assuming I was. I'm assured
23 I was. But I really don't have that
24 knowledge. I was the first one on
25 the scene.

27

01 Q. Do you know what time that was
02 whenever you arrived at the mine?

03 A. All I know is within the hour.

04 Q. Okay.

05 A. I don't know exact time. It's
06 a 40-minute drive from my house and I
07 left right then. So I was there

08 before 8:30.

09 Q. Okay. When you arrived, Vicki
10 was there, Vicki Mullins?

11 A. I'm not sure but I remember
12 seeing her shortly after I arrived.

13 I don't know if she beat me there or
14 --- I don't know.

15 Q. Okay. But you talked about
16 the 14 people that were underground,
17 two of which were the victims. Were
18 they already underground whenever you
19 arrived?

20 A. Yes. That's what I was told.

21 Q. Okay. Did they tell you the
22 names of the guys that were
23 underground?

24 A. No. They told me a few of the
25 names.

28

01 Q. Were they mine rescue
02 personnel?

03 A. I don't have that knowledge.

04 Q. Who were the names that you
05 knew?

06 A. The names I knew were Chris
07 Adkins, Dwayne Francisco. Those are
08 the only two I know for sure that
09 were underground. They told me they

10 were underground.

11 Q. And you mentioned when you
12 arrived at the scene, that the State
13 Police had already established road
14 blocks and check points and things of
15 that nature?

16 A. Yes.

17 Q. Where do you think that State
18 Police force was dispatched from?

19 A. The Logan office I assume. I
20 mean, I have no knowledge of that.

21 Q. Okay. And how far do you live
22 from the mine?

23 A. A 40-minute drive.

24 Q. A 40-minute drive. You
25 mentioned some type of an order that

29

01 you issued. Would that order be
02 similar to what we call our 103(k)
03 order that prevents the ---?

04 A. I'm not familiar with your
05 103(k) order, but our control order
06 is just controlling the situation.

07 Q. Does it close the area?

08 A. I guess essentially it does
09 close the area and gives the State
10 control of the situation, yes.

11 Q. Is there a time that you
12 document on that order?

13 A. Yes.

14 Q. Do you know what time that
15 was?

16 A. No, I do --- I don't remember.

17 Q. Whenever you put the time on
18 the order, is it the time that you
19 sit down and write it or is it
20 actually the time that you verbally
21 advise management that it's being
22 issued?

23 A. I assume it could be either
24 way. I don't remember issuing an
25 order over the phone to Eddie. I

30

01 don't remember doing that if I did.

02 Q. Okay.

03 A. But shortly after arriving, I
04 did write the order and I'm assuming
05 I put the time that I wrote it, but I
06 can't remember.

07 ATTORNEY BARISH:

08 Let's take a break.

09 SHORT BREAK TAKEN

10 BY MR. MURRAY:

11 Q. Richard, you mentioned the
12 fact that Eddie Lester called you at
13 about 7:33 p.m. At that point, did
14 he give you any indication whether he

15 had called MSHA or if he was about to
16 call MSHA?

17 A. I don't recall anything like
18 that.

19 Q. He didn't mention anything
20 about the series of phone calls he
21 was making?

22 A. No, not that I'm aware. Not
23 that I can remember.

24 Q. Did he tell you whether or not
25 he had called anyone else, like 9-1-1

31

01 or anybody that ---?

02 A. Not that I can recall.

03 Q. Okay. This caller ID, how
04 does that work? Is it stored for an
05 X amount of days or is it X amount of
06 calls or ---?

07 A. My caller ID?

08 Q. Yes, sir.

09 A. It records 25, the last 25
10 calls and it keeps knocking them off
11 if I don't delete them and I wanted
12 to save that one.

13 Q. Okay. Is that something that
14 you shared with anyone else or is
15 that --- as far as the actual time
16 and ---?

17 A. I'm sure I've shared it with

18 my people, yes.

19 Q. Have they seen it or you just
20 talked about it?

21 A. Just told them what time I was
22 called.

23 Q. Has anybody else seen it
24 besides yourself?

25 A. Seen?

32

01 Q. The actual caller ID?

02 A. Not that I'm aware of.

03 Q. Okay.

04 MR. MURRAY:

05 That's it.

06 BY MR. MURRAY:

07 Q. Okay. Richard, is there
08 anything else that you had on your
09 mind that you wanted to share with us
10 that we haven't asked you about?

11 A. Not that I'm --- not that I
12 can think of.

13 Q. Okay.

14 MR. MURRAY:

15 Well, again, we really
16 appreciate you coming in here
17 and taking the time to share
18 your thoughts with us today.

19 And on behalf of MSHA and the

20 other team members, we
21 sincerely thank you for taking
22 that time. You know, as we
23 talked about it before, your
24 cooperation and the
25 cooperation of the two

33

01 agencies working together is
02 important in order to get the
03 --- determine the cause of
04 this accident. If you would
05 like, you can go back now over
06 anything that you've talked
07 about and you could clarify
08 it, expand on it or give us a
09 closing statement.

10 A. No, I really don't have
11 anything else.

12 OFF RECORD DISCUSSION

13 MR. MURRAY:

14 Just one other point
15 before we close the curtains
16 on this interview.

17 BY MR. MURRAY:

18 Q. When you got the mine, you
19 talked about, you know, there was
20 some --- a lot of things going on,
21 the police had their road blocks set
22 up. Did you spend any time at all in

23 the command center that was
24 established?

25 A. I was there almost

34

01 continuously.

02 Q. In the command center?

03 A. Yes.

04 Q. Is there anything you wanted
05 to --- any statement you wanted to
06 make about the scene and the layout
07 of the command center that comes to
08 mind?

09 A. Well, after the fact, I can
10 see ways we can improve it, but then
11 again, we don't want to get good at
12 it anyway, because if we get good at
13 it, that means it's happening too
14 often. But of course, any time after
15 the fact, you can see places where
16 you could have improved on. But as
17 far as the way everything went and
18 the way everything ran, I don't have
19 any problem with it.

20 Q. Okay. And what improvements
21 would you suggest for future?

22 A. Well, I think we need to
23 station --- the State Police are on
24 the scene, we need to station them at

25 the doors of the command center and

35

01 not let anybody in or out unless it's
02 approved by the command center. I
03 think we needed to have a
04 check-in/check-out system in the
05 command center so we knew who we were
06 dealing with. And we need to have
07 more formal telling who everybody is
08 that's making decisions on the
09 command center, because I was dealing
10 with people that I had no idea who
11 they were at times. And just things
12 like that.

13 Q. Okay.

14 A. I know we looked up in the
15 command center and it'd be wall to
16 wall people in there and noisy and
17 loud and we'd clear it out and after
18 we cleared it out, maybe two people
19 would leave. You know, it's still
20 wall to wall people. And I see where
21 it'd be more efficient if we had more
22 control of that.

23 Q. Okay. Richard, thank you.

24 Did you spend any time at all
25 underground or was most of your time

36

01 spent on the surface?

02 A. During?

03 Q. During the recovery?

04 A. I was in the control room the
05 whole time just about. I was not
06 underground.

07 Q. Okay.

08 MR. MURRAY:

09 We'd ask that you not
10 discuss your interview today
11 with any person who may have
12 been interviewed or who we may
13 call in to interview so that
14 we can ensure we obtain
15 everyone's independent memory
16 of what had happened. And
17 after questioning other
18 witnesses and obtaining
19 additional information, we may
20 ask you to come back for
21 further questions to clarify
22 some of the information that
23 we gather. Again, we really
24 appreciate you coming in.
25 Richard, thank you.

37

01 A. No problem.

02 MR. TUCKER:

03 We'd like to thank you,

04 too, Richard. And here's a
05 card for C.A. Phillips if you
06 ever need him, you can get
07 ahold of him.

08 * * * * *

09 EXAMINATION CONCLUDED AT 10:32 A.M.

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