

IN RE: CRANDALL CANYON
MINE INVESTIGATION INTERVIEWS

INTERVIEW
OF
KEVIN STRICKLIN

INTERVIEWERS:
JOE PAVLOVICH, ERNEST TEASTER

DATE:
NOVEMBER 7, 2007

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TEASTER:

Well, let me read this statement in there and then we'll get into the questions. The secretary has assigned this group the task of evaluating MSHA's performance during the period preceding the August 6th, 2007 coal bounce at the Crandall Canyon Mine and the subsequent rescue effort. We will also be evaluating issues that were raised during the time period regarding Bob Murray and his interaction with MSHA. This is not an investigation or review of any individual person. It's an administrative review of MSHA's actions as an agency. This evaluation will be presented to the secretary in the near future, and it's intended that the results of the evaluation will be made public. This interview is being conducted to gather information for this assignment. We also intend to interview a number of other MSHA employees so that we may obtain unbiased information from all persons to be interviewed. We ask that you not discuss this interview with anyone until all of the interviews have been completed.

BY MR. TEASTER:

Q. Kevin, do you have any questions or anything?

A. No, sir.

Q. We will proceed.

MR. PAVLOVICH:

Now, you know why we're doing this?

A. Yes, sir.

MR. PAVLOVICH:

I guess, Kevin, because of your involvement and, obviously, Mr. Stickler's involvement.

A. Right.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

So the secretary's asked us to do that, and your friends here behind you have graciously agreed to help us under duress and beatings.

A. And I'll just say I appreciate you guys from MSHA doing this. I know it's a tough job. I've done an internal review before. And I mean, just call it like you see it, and there's no ramifications for anything you guys find. I mean, you know, I'm sure you'll be honest and do the right thing. We want to get better as an agency.

MR. PAVLOVICH:

Well, thank you, Kevin. I appreciate that.

BY MR. TEASTER:

Q. And also to advise you that we are going to tape this unless you have any objections to that.

A. Not a problem at all.

Q. And we're going to try to keep it, Kevin, as informal as we can. I'll start the questions and Joe can kick in any time and then we'll open it up to everyone down there. But what we want to do is try to flesh out each of the areas of concern that we have so that we can get the information that we need and draw some conclusions and hopefully come up with some recommendations that will make the agency better and provide better protection for our miners. Kevin, how did you first hear about the accident at Crandall Canyon Mine?

A. I was on my way to work the morning of August the 6th, and I received a phone call from Bill Crocco saying that there was a significant bounce at the Crandall Canyon Mine and there were six people unaccounted for. And I asked Bill to stay in touch with the folks out there and set up a command center in headquarters office as well as make sure the folks downstairs, the assistant secretary, was told up-to-date

1 information until I got in.

2 Q. What time was that, Kevin?

3 A. I would guess somewhere around 7:00 a.m. Eastern Time or about 5:00 a.m.
4 Mountain Standard Time where the accident occurred.

5 Q. Okay. Kevin, would you just state for the record your full name and job title
6 and your supervisor?

7 A. My name is Kevin Glenn Stricklin. I'm the administrator for coal mine safety
8 and health in Arlington, Virginia.

9 Q. And who's your immediate supervisor?

10 A. Robert Friend. He's the deputy assistant secretary for MSHA.

11 Q. And how long have you been in that position, Kevin?

12 A. It seems like ten years. Six months.

13 Q. Six months.

14 A. And prior to that I acted for six months. So I've been down in Arlington for a
15 little over a year.

16 Q. And what job did you have prior to that?

17 A. I was the district manager in Morgantown, West Virginia, District 3.

18 Q. And how long were you there?

19 A. Approximately three and a half years.

20 Q. And who was your supervisor when you were district manager in 3?

21 A. John Lankton (phonetic).

22 Q. So you set things up there in Arlington to start getting information from the
23 mine and set up so that you could keep the assistant secretary informed of what was
24 going on out there?

25 A. Yes. We have a conference room that we basically dedicated with phones

1 and a computer. And I asked for an update to be called in from the mine hourly.

2 Q. Every hour?

3 A. Yes. Now, in some cases Richard Stickler and some of the other deputies
4 spent time in the command center, so naturally we didn't have to go downstairs and
5 brief him because he was upstairs, but I recall one time I was having a meeting in his
6 office down below on the floor below us, and Crocco coming down and giving us the
7 information at that time. But we basically wanted to be set up so we could have hourly
8 updates.

9 Q. And who was updating you hourly from the district?

10 A. I believe it was Bill Taylor. Bill was the field office supervisor in Price. He
11 would have been the first to get to the mine. Al Davis, we talked to him in the district
12 office, but it was --- I think it was probably about a seven or eight-hour drive from
13 Denver out to where the mine was located, so Al didn't get there until late in the day
14 on the 6th.

15 Q. And when this information --- what type of accident was relayed to you that
16 had occurred out there?

17 A. I believe they told me it was a bounce.

18 Q. A bounce?

19 A. Yeah, a bounce is the terminology that was used.

20 Q. When did you decide to go to the mine site out there, Crandall Canyon?

21 A. That Monday. Monday afternoon I mentioned
22 --- I don't know if it was me mentioned it to Stickler or Stickler mentioning it to me, but
23 we need to get out there. I think someone suggested for me and Richard to go, but I
24 wanted to go out there from coal, and we decided that we needed to get on the next
25 flight available to get out to Utah. And I asked Bill Crocco to go with us as well

1 because Bill's our accident coordinator and I thought there may have been some stuff
2 that he could help with as well.

3 Q. Why did you feel there was a need for you to go to the mine site?

4 A. I'm just a hands-on person, and if there's something that needed to be done I
5 didn't want to let my guys hang out there by themselves.

6 Q. Did you travel out to the mine with Mr. Stickler?

7 A. Yes. We left the next morning, Tuesday morning. We caught a flight out
8 about seven o'clock in the morning. And we got out to Utah somewhere around 10:00
9 a.m.

10 Q. Got out to Utah. What time did you arrive at the mine?

11 A. Probably around 12:00 or 1:00 would be my guess. They had a plane waiting
12 for us when we got to Utah to fly us from Salt Lake City to Price, and then they had a
13 helicopter to take us from Price over to the mine. And I remember me and Richard
14 joking about it that we probably could have drove there faster than catching this small
15 plane and a helicopter, you know. But the governor had that set up for us so we did.

16 Q. Going back to --- you said you felt that someone from the Department had
17 suggested that Mr. Stickler go?

18 A. You know, I thought I heard someone say that. I'm not sure of that. He may
19 have wanted to go on his own anyhow. But someone maybe suggested to him --- I
20 think I heard that somewhere that he may want to go out there.

21 Q. Do you know from whom that may have suggested it?

22 A. No. There were so many people in the room talking, Ernie. I can't tell you
23 exactly who.

24 MR. PAVLOVICH:

25 Was there people from main labor there too?

1 A. No, it would have just been over the phone.

2 MR. PAVLOVICH:

3 Oh, someone over the phone.

4 A. I mean, naturally they kept calling over wanting to know what was going on
5 and we'd put them on the speakerphone and it would be talk back and forth to let them
6 know what was going on.

7 MR. PAVLOVICH:

8 And who was that, Kevin? Do you remember?

9 A. It may have been Howard Radzely.

10 MR. PAVLOVICH:

11 Okay.

12 A. Initially we started doing it through the phone, and then after that we got set
13 up that with our computer we started sending out the updates that way from our
14 computer to a long list of people, giving them an update of what was going on at
15 Crandall Canyon. But initially it was just a phone call.

16 BY MR. TEASTER:

17 Q. And Howard is the deputy Secretary of Labor?

18 A. Yes. I can't be positive of that, but I think it may have been him.

19 Q. How did you find things when you arrived at the mine as far as being
20 organized?

21 A. When we arrived at the mine, it was kind of in an uproar. And it wasn't so
22 much of the work going on at the mine. It was that Bob Murray had just held a press
23 conference, and I guess he was kind of ripping a lot of different people in the media.
24 And there was some concern about how he was handling himself and what he was
25 saying. And that came from the governor. Before we went up to the mine we sat

1 down with the governor for a few minutes.

2 And for instance, I remember the governor saying that he wanted to go to the
3 mine and Bob Murray wouldn't let him on the mine property. And he said his last news
4 conference, he was getting into political things rather than focusing on the accident
5 itself.

6 Q. Uh-huh (yes).

7 A. So it was kind of in an uproar because of that. And you know, we felt we
8 needed to go up and start addressing the rescue operation rather than those types of
9 things.

10 Q. Uh-huh (yes). How did you find the rescue operation itself being operated?

11 A. I thought it was pretty well under control when we got there. I mean,
12 everybody knew what was supposed to be done. We had a command center set up at
13 that time. Our Blue Goose command center was set up. I mean, we had maps laid
14 out. We knew where everybody --- what the intent was underground and what we
15 were going to try to do. And in addition to that, I mean, we were having regular
16 briefings from the people at the mine that was actually doing the work to come over
17 and sit down with our folks. And in addition to that, we were trying to plan ahead on
18 what we could do next.

19 Q. So who was in charge of the rescue operation when you got there?

20 A. Well, ultimately it would have been Al Davis, the district manager. He was
21 already on site. And the folks in the command center would have been the field office
22 supervisor from Price, Bill Taylor.

23 Q. Uh-huh (yes).

24 A. And then on the afternoon shift was Ted Farmer. And I think on the midnight
25 shift was Don Gibson. He had a field office supervisor there all the time. And Al was

1 just kind of overseeing everything and having meetings with the company, et cetera.

2 That kind of thing.

3 Q. And what role did you assume when you arrived at the mine?

4 A. I wanted to help in any way I could. And I mean, I guess I ultimately would
5 have sat down and had corporate meetings with the company as well as giving my
6 input into any plans that were brought forth. And to give my opinion on whether I
7 thought it may work or may not work.

8 Q. Did you ever assume the role as a senior MSHA official at the command
9 center or on site?

10 A. You know, I guess by title I was, Ernie. But I didn't want to go out there and
11 basically try to take over something that the district already had their hands on. But I
12 guess ultimately on paper I had the authority to take it over and be the senior official
13 in charge. I just didn't promote that idea, I guess I'll say.

14 Q. What about the assistant secretary? What role did he assume?

15 A. Well, he was going to be the chief spokesman to meet with the press, to meet
16 with the families. He sat in on the same meetings I did to discuss, you know, what we
17 could do, the location of the bore holes, what we could do for rib support. He was in
18 probably just about the same number of meetings I was other than the fact that when
19 he had to go to meet with the press he was away from us for a period of time.

20 Q. Uh-huh (yes). Do you think that he ever seen himself as being the senior
21 official in charge of that operation?

22 A. Well, again, on paper, I mean, naturally as the assistant Secretary he would
23 have been the senior official on site. But I don't think he really considered himself the
24 senior official in charge. He let the district do the paperwork as far as the 103(k) or
25 modifications or a plan approval. But I mean, me, him, and Al would have all

1 discussed the details before Al actually agreed or disagreed with the plan.

2 Q. Do you think it was clear to the people there on site who was in charge of that
3 operation be it Al, you, or Mr. Stickler?

4 A. I think people were aware of who was in charge, yes.

5 Q. And they felt that you were in charge?

6 A. Well, I mean, I don't know. I don't know what they thought. I guess they'd
7 have to give you their opinion on that, but I mean, with Stickler there, I think he was
8 the senior person. When he wasn't, I think I was.

9 Q. Has it been customary in the past that the most senior official on site is the
10 person to assume charge?

11 A. No.

12 Q. No?

13 A. I can think back to Sago, and I mean, McKinney was on site but I mean, I was
14 the one calling the shots.

15 Q. How often did Al Davis go to the press briefings and the family briefings with
16 you and Mr. Stickler?

17 A. Well, before we got there he was the person that did go to the press and the
18 family briefings, and he would have been the senior official when we arrived. There
19 were times when he came, but if there was a meeting going on up at the mine about
20 some type of plan, he may have stuck around and been part of that. I would guess 50
21 percent of the time he probably came to the family briefings after Richard got there.
22 And maybe 75 percent of the times to the news media briefings, because the family
23 briefings were about a half hour away from the mine site whereas the news media
24 briefings were only about five minutes away. So it was a lot easier access to get to
25 the news media briefings.

1 And when I say he went to those, he stood in the back. I mean, it's not like
2 him and I stood by Stickler when Stickler was on camera. We attended them, and
3 there's a whole lot of information that you've got to go through when questions come
4 up and what you want to say. And I guess one of my roles was going down with
5 Richard is if he said something that I didn't think was quite right, I could pull him aside
6 and tell him what was going on. Or if there's someone asked him a question I saw
7 where it was going, I could call back up to the command center, find out information,
8 and then share it with him so he could tell the press about it. For instance, like depth
9 of bore holes.

10 Q. Right.

11 A. You know, that was a big thing. How far down is the depth of the bore hole.
12 And I would call up to the mine office or the command center and get that information
13 for him, because he typically just came straight from the family briefing to do the news
14 media briefing.

15 Q. Okay. Kevin, would you walk us through say when you arrived at the mine in
16 the morning, what you done when you got to the mine, what preparation was done for
17 the family briefings and then the press?

18 A. Okay. Well, the first day, I think we arrived at the mine probably around 1:00
19 or 2:00. And we sat down. It was a big meeting. The coal company, Bob Murray was
20 there. He had a number of his top management officials as well as three or four
21 lawyers. And Richard Stickler, myself, Al Davis, the governor sat down with --- sat
22 down with Murray and his guys and got a briefing of everything that had happened up
23 to that point. And during ---.

24 Q. This briefing was from his people?

25 A. From Murray himself basically talked the most.

1 Q. Okay.

2 A. And then when he didn't know something, he asked his engineer, the guy out
3 there who was in charge. His name was Laine Adair. He'd chime in and help with the
4 answer. And it was at that time that we inquired to him and Al about, you know, how
5 often have you had family briefings, how often have you had news media briefings?
6 And I think --- I don't know if we made the decision or if it was already set up that we
7 would have two family briefings a day, one at 8:30 and one at 5:00. And we would
8 have news media briefings following the family briefings. So it would be somewhere
9 around like 10:00 and 7:00 or so. And that's what was set up originally when we were
10 out there, to go talk to the families and the news media at that time.

11 Q. Was there a prepared document to take down to brief the families?

12 A. At times there was. At times there was a statement, and naturally it's a fluid
13 thing that besides the statement there would be discussed at the family briefings,
14 something would come up shortly before we went down, so it was handwritten notes
15 like the depth of the bore holes. And I think there was a piece of paper that the
16 company gave to the families, but there was nothing that we actually gave to the
17 families.

18 In addition to that, I remember one of the big issues when we arrived is I
19 believe there were three families that didn't speak English. And there was a concern
20 because there was no Spanish translator that was there. What they would do was wait
21 until the meeting was over and then the Spanish translator would go over what notes -
22 -- or someone would go over the notes from the meeting and then bring a Spanish-
23 speaking person in to go over it. And I remember Richard saying that, you know, we
24 needed to get a translator there that when him or Bob Murray were talking or I was
25 talking, whoever was talking, they would translate it right at that time. I remember that

1 being an issue early on.

2 Q. Al Davis, he would attend these meetings with the company and then go down
3 and brief. And so there's some period of time there that he's, I'll say, out of pocket,
4 but I know he's close by, but if a plan came up or something developed underground
5 that needed a plan approved, who then would approve that plan? How would that be
6 handled?

7 A. We also had Bob Cornett. Bob is an ADM from Denver that was on site. You
8 had Tommy Hooker. Tommy was the DM in metal, non-metal that came out. He
9 worked like the midnight shift.

10 Q. Bob Cornett worked the afternoon shift?

11 A. Yes. So we had people out there. And I guess if something came up at that
12 time when Al was down at the family briefing, Bill Taylor, whoever was up at the mine
13 site would call Al and they would discuss it on the phone or Al would stay up there for
14 that meeting.

15 Q. So they would call Al and Al would discuss it and then they would approve a
16 plan?

17 A. Yes.

18 Q. Or I mean if it was approved?

19 A. Typically we tried to approve the plans beforehand, though, Ernie, so there
20 wasn't any wait. I mean, we tried to look at what if. What's our next step, and have the
21 plan approved so we didn't have to waste time when some --- we didn't want to wait
22 until something ended and then sit down and discuss a plan. It was always discussed
23 beforehand so when phase one may have been completed, we already have an
24 approval for phase two. We tried to stay ahead of the game I guess is what you could
25 say.

1 Q. And how was that handled when you sat down and you say you developed into
2 phase two? Phase one was basically what, and then you went to two?

3 A. That's an example. When I went out there, we were modifying the K Order
4 every time that the company would submit. Let's say when I went out there it was only
5 a day later, but I think we had modified the K Order about five times. In my
6 experience, and unfortunately I got experience in this, is instead of modifying the K
7 Order we just wanted to modify it one time and say that there will be plans approved.
8 It will be submitted by the company, agreed to, and signed by the company, and
9 MSHA both so we didn't have to keep doing the computer paperwork.

10 Q. Uh-huh (yes).

11 A. So the mine operator would typically put a plan together on what he wanted to
12 do. He'd bring it over and we'd sit down and discuss it and tell him what we agreed
13 with and what we didn't agree with. Tell him what he needed to revise. And he'd go
14 back and revise it. Then when he'd bring it back, if we all agreed to it, then Al Davis
15 or whoever was in charge at the mine as well as --- or the senior district official at the
16 mine as well as the company official would sign off on that plan so we'd be ready to
17 implement it as soon as we needed to.

18 Q. Was there a meeting set down, Kevin, with the company and decided this is
19 what we're going to do, and then the company would go back and draw the plan? Or
20 would the company come up with their ideas and then submit it to us and then we
21 would ---?

22 A. There were two meetings every day between the company and MSHA. There
23 was one at 7:00 a.m. and one at 7:00 p.m. that the company would come over and
24 we'd discuss items with them about ---.

25 Q. Come over to the Blue Goose?

1 A. Yeah. In front of the Blue Goose we had like an outdoor table and chairs
2 because it got too crowded in the Blue Goose. So there was a place, a working area
3 in front of the Blue Goose that the company would come over and sit down and we
4 would just talk through what may happen that day and what they may want to do and
5 try to just work through stuff at those two times, 7:00 a.m. and 7:00 p.m.

6 Q. Now, who was typically in that meeting from MSHA and the company?

7 A. I sat in on some of them. It would have been the field office supervisor in
8 charge of the mine. Al Davis would sit in on the majority of the daylight ones. Bob
9 Cornett on the after --- the 7:00 p.m. The company officials would be Bruce Hill, Laine
10 Adair, and Gary Peacock would be the three main ones because they were three
11 senior officials from the mine. And they would bring along someone with them
12 sometimes that, you know, let's say they wanted to --- I'm trying to give an example,
13 set up a belt tail piece at Crosscut 120 or whatever it was. They may bring over the
14 guy that was going to set it up and talk, in case they had any questions about how they
15 were going to do it. He would be there to answer those questions. Or if they wanted
16 to set up a monitoring station somewhere, someone with mine rescue capabilities
17 would come with them, that type of thing.

18 Q. Had you had any dealings with Mr. Murray prior to the Crandall Canyon Mine?

19 A. Yes.

20 Q. And what were those?

21 A. Well, as district manager in District 3 I had two of Bob Murray's mines under
22 my jurisdiction, Powhatan 6 and Century Mine. Prior to becoming a district manager
23 in 3, I was the ADM in District 2, and Maple Creek was under District 2's authority. So
24 I had met Mr. Murray a number of times.

25 Q. What do you think about his attitude towards health and safety issues?

1 A. Some stuff I think he goes above and beyond what the regulations require.
2 For instance, I think he did a good job of setting up fire brigades at both Century Mine
3 and Powhatan Mine. There were a couple of times that they detected a fire, and his
4 people were prepared to put the fire out. I mean, there's some ways I thought he did
5 pretty well.

6 Other ways, it seemed like him and I didn't see eye to eye on the way he
7 should have been protecting his mines.

8 Q. Was there any enforcement issues for say Maple Creek?

9 A. Yes.

10 Q. And what type of issues were you having there as far as enforcement?

11 A. Maple Creek, Bob Murray bought Maple Creek from U.S. Steel. And it's kind
12 of very similar to Crandall Canyon in some ways. The majority of the mine was
13 worked out, and Bob was trying to find coal where he could mine. And there was an
14 area, I think, --- now the terminology I'm going to use probably isn't familiar to you. I
15 think it was in nine flat that it was probably the furthest area of the mine. There was a
16 block of coal and he wanted to longwall mine it. I think there were like four panels that
17 he could get out, four small panels.

18 So he got out the first couple. And I mean, we had issued a number of
19 violations, and it was a wrap-around bleeder system. And we had had conversations
20 with the company, I recall, saying, I don't know if you're going to be able to get all four
21 of these out based on what I'm seeing. And sure enough, I think it was probably in the
22 third panel I had a phone call. I mean, I knew this was going on, but I got a phone call
23 from Tom Light. Tom Light was the field office supervisor saying we're having
24 problems down there. We're issuing a lot of violations, some orders. And he says, it
25 doesn't look like it's being ventilated.

1 So I personally went down to the mine myself and traveled the bleeder
2 system. At that time, I was the ADM of enforcement. And we spent probably three or
3 four days underground, you know. We find an issue, issue an order, and they'd put a
4 Band-aid on basically to get running. And then it will come back again like a couple of
5 days later. And finally I made the decision that enough was enough, and we were
6 going to shut the place down.

7 Q. Shut the mine down?

8 A. Shut ---.

9 Q. That section?

10 A. Yeah. Well, and that was the only section that was running basically. I mean,
11 that was the only area they were developing for this longwall panel and the longwall
12 itself. And you know, we shut the place down. And the only way they could get out
13 from it in my opinion was they were going to have to put a shaft in the back of the
14 bleeder system. And that's basically what they ended up doing. But that was my first
15 dealing with Mr. Murray. I mean, he ---.

16 Q. Was he on site when you was dealing with him on this issue?

17 A. Not until we shut him down.

18 Q. That got his attention?

19 A. Yeah. And he came out to the mine, or I got a phone call and he says, you
20 know, Mr. Murray wants to meet with you. And I said that's fine. And he says, when
21 can you meet? And I said whenever he wants. And they said, well, he's going
22 underground, and how about when he comes out we can have a meeting? And I said
23 okay, whatever you want to do. So we went down to Maple Creek. I remember Tom
24 Light being there, me. And Murray came out from being underground and we all sat
25 down in a meeting with the union. It was very adversarial between him and the union

1 down there, too. I mean, they didn't get along at all. And we sat down, and he was
2 real cordial at the time. He says, Mr. Stricklin, he says, how big of a shaft do you think
3 I need in the back of this bleeder system? And I says you need at least four feet. And
4 he said I'll give you five. And I'm thinking this ain't a bad guy.

5 So he says, well, is there anything we can do to keep the mining now? And I
6 said, put that five-foot hole in. And so we had him down for maybe two or three
7 months until that hole got in. And that was my first dealing with him one on one.

8 Q. That's the first time that you had met Mr. Murray, was that meeting?

9 A. I think we may have shaken hands, but we never had sitting across from each
10 other being like one on one making decisions like that.

11 Q. And who was your supervisor at that time?

12 A. Cheryl McGill.

13 Q. And was she aware of what was going on at the mine?

14 A. I told her about it, you know, when I came back to the office. I mean, I think I
15 told her before I went out to the mine. I said, Cheryl, I'm probably going to be shutting
16 this mine down today and you may want to be contacting headquarters. I made her
17 aware of what we were going to do.

18 Q. Uh-huh (yes). Okay. So what happened after the meeting?

19 A. I didn't think he was ---. Well, after the meeting they drilled the hole, I mean.
20 And you know, after like a couple of months or whatever, they went back to work and
21 they were able to ventilate it and actually mine those two additional panels.

22 Q. Was there any threats made to you while you were there at the ---?

23 A. I do recall after I said he wasn't that bad, we went out in the hallway. It was
24 just me and him, and he said something to me like you're costing me \$15,000 an hour
25 or something like that, you know. I thought I was doing the right thing and I wasn't

1 going to back down from him no matter what he did. And I was afraid ---. This mine
2 was filled with methane in the bleeder system. I was afraid it was going to blow up
3 before you could take action. And my guys down in the field office, they did exactly
4 what I asked them to do and today I still feel we did the right thing.

5 Q. Did you have any other encounters at Maple Creek that you can recall?

6 A. No, that was the big one, that he came in and met in the district office a
7 number of times with us afterwards. And Cheryl was there then, and I don't think it got
8 to the point that we shut any of his mines down anymore like for that extended period
9 of time. We issued orders here and there, but nothing to the extent of two or three
10 months.

11 Q. Did you get the support of the district manager in your enforcement actions
12 there?

13 A. She didn't overturn me. I mean, I did what I thought was right and she didn't
14 tell me to back off.

15 Q. Kevin, there's been a lot of allegations about inspectors being moved,
16 reassigned. Are you aware of anyone that was reassigned to another mine or
17 reassigned to another job or any kind of reassignment when you worked in District 2?

18 A. Yes, I am.

19 Q. As a result?

20 A. Well, I don't know if it was the result of Murray. I never could --- I never knew
21 if that was the case or not. But I was in Alabama as part of the Jim Walters
22 investigation. And it was in like March or April of 2002, because I think Jim Walters
23 happened in September of 2001. So I was still the ADM of enforcement in the spring
24 of 2002, and I got a phone call, a phone message from Cheryl telling me effective
25 immediately I'd been moved from ADM enforcement to ADM technical services. And

1 that Tom Light was being moved from the field office supervisor at Rough Creek to
2 roof control supervisor in the district. I thought it was kind of wild because it was in the
3 middle of a pay period even. And I'm thinking why'd they --- you know, that's not the
4 government's way to do stuff in the middle of a pay period.

5 Q. How long was this after you had the encounter at Maple Creek?

6 A. Ernie, I don't know. I'd have to look at a calendar, you know, to find out when
7 Maple Creek happened, but it was probably somewhere in the 2001 fall that Maple
8 Creek ---.

9 Q. Oh, this was early 2002?

10 A. '02. Yeah, it was probably in March or April of 2002. We started trying to get
11 back underground at Jim Walters to remove a power center, I remember. And that's
12 what I was down there on.

13 Q. What reason did Cheryl give you for making the move?

14 A. I'm not sure now. It was like the best interest of the district or something like
15 that.

16 Q. Did you have any discussions with anybody in headquarters or anybody else
17 as to why this move took place?

18 A. I later did. I mean, at the time, I mean, I mentioned it to Al a couple of times.
19 I had a couple strikes against me, I thought, because like Enlow Fork submitted a
20 two-entry plan that I wouldn't recommend for approval and then this Maple Creek thing
21 happened. I thought I had two strikes against me. Fortunately, QueCreek happened
22 for me. You know, it turned out that everything turned out well. I mean, I had a
23 conversation with Dave Lauriski later asking him, you know, did I do something
24 wrong? And Dave gave the impression he didn't know anything about any problems in
25 District 2. So that was the only person I talked to in headquarters. And then ---.

1 Q. Who was the administrator at the time?

2 A. I think Mike Lawless was the acting administrator. And shortly after that, Ray
3 got the job as the administrator. And Ray and I have always had a good relationship.
4 And Ray wouldn't have had anything to do with it because he wasn't there at the time.
5 But Mike Lawless would have been there when I got moved from enforcement to
6 technical services.

7 Q. Do you know if there was any discussions between Cheryl and Mike Lawless
8 prior?

9 A. I don't know that.

10 Q. So the only explanation you have as to why that move is because it was the
11 best interest of the district?

12 A. Yes, something like that.

13 Q. What about Tom Light? Do you know anything about what his reaction was
14 and what reason he was given?

15 A. I think he was told that they needed his services in roof control.

16 Q. Did he have a lot of expertise in that area that you know of?

17 A. Well, he was a roof control specialist at one time. And Tom's the kind of guy
18 that no matter what you put him in, he'd do a good job. I mean you can make him a
19 vent supervisor and he'd be excellent too, but he was doing a really good job, I
20 thought, down at Rough Creek. And Maple Creek was a problem mine. And Tom was
21 staying on top of it.

22 Q. Do you have any feeling at all as those moves may have been related to
23 enforcement actions at Maple Creek?

24 A. I don't know. I've heard Murray brag about him moving people around that
25 kind of didn't get along with him. And ---.

1 Q. And you'd put yourself and Tom Light in that category as to not getting along
2 with him or ---?

3 A. I shouldn't say we didn't get along. I mean, I respect Bob Murray. He's done
4 a lot of good things for the coal industry. He wouldn't be in the position he's in if he
5 didn't do some stuff that was right. It's just that there's time that I've had
6 disagreements with him, and I was going to do what I felt was the right thing.

7 Q. Did you have any similar type disagreements when you were district manager
8 in District 3?

9 A. No, it was kind of quieter then. I mean, we had problems at the mine.
10 Powhatan was a problem mine, but I never had any meetings with Bob Murray. We
11 dealt mostly with the people at the mine site.

12 Q. Did you have any face-to-face or I'll say interaction either communications
13 over the phone or in meetings with him from the time you went to District 3 to the
14 accident out at Crandall Canyon?

15 A. I've had a meeting with him at headquarters prior to Crandall Canyon, but I
16 don't think I had any involvement with him when I was in District 3.

17 Q. What was the meeting in headquarters in reference to?

18 A. It was in October of last year. He had just purchased all the mines out west.
19 And really at the time Crandall Canyon happened, I didn't even know there was a
20 Crandall Canyon mine. The mine that we were focused on out there is Aberdeen or
21 the tower mine. You'll hear them used interchangeably. He came in to meet with me
22 and Richard Stickler, and he wanted Aberdeen to be removed from the D sequence.
23 He felt that there's a new ownership and that we should remove the D sequence from
24 that mine. I believe that may have been October the 6th of 2006.

25 Q. And was the mine removed from the D sequence?

1 A. No.

2 Q. Was he informed as to how it could be removed?

3 A. Yes.

4 MR. PAVLOVICH:

5 Kevin, when you went to District 3, who was the previous
6 District manager there?

7 A. Tim Thompson.

8 MR. PAVLOVICH:

9 Have you ever heard of any problems that Tim Thompson
10 may have had with Mr. Murray?

11 A. Yes.

12 MR. PAVLOVICH:

13 And what did that relate to?

14 A. It related with District 3's enforcement of the Powhatan Mine. Tim was sitting
15 on Powhatan pretty heavy, and based on everything I heard they deserved it. I mean,
16 they had a lot of accumulations on the belt and we basically had inspectors there that
17 were issuing some heavy paper, and they deserved it. And that's, I think, --- I've
18 heard the terminology used a million times now that the last time I checked, Mitch
19 McConnell says I'm one of the five finest Americans, and the last time I checked he's
20 sleeping with your boss. I think that was told to Tim in one of the meetings that
21 Murray had with Tim down in District 3.

22 MR. PAVLOVICH:

23 So if Murray got rid of Tim, he was just jumping for joy when
24 you came?

25 A. Well, I'm not sure if he got rid of Tim or not.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

Okay.

A. You know, I can't ---.

MR. PAVLOVICH:

Well, he's made that ---.

A. Yeah. And you know, I guess he told ^{Ex. (b)(6) and Ex. (b)(7)(C)} he needs to be in an asylum, you know, because ^{Ex. (b)(6) and Ex. (b)(7)(C)} was issuing a lot of paperwork on him there in District 3 as well ^{Ex. (b)(6) and Ex. (b)(7)(C)} was an inspector. And Poncheroff's (phonetic) a hitter. I mean, Bill was down there doing the right thing as well. And it sounded like what we had in Maple Creek just carried over and was going on at Powhatan from my understanding.

MR. PAVLOVICH:

How did you find the Powhatan Mine to be? Did you see it improve or did it continue with the enforcement problems there?

A. They did a lot of paper still. I mean, it was one of the mines that we looked at for potential POV. So they're still getting a lot of paper.

MR. PAVLOVICH:

They still are?

A. I don't think they were as bad as when Tim had it. I mean, it sounds like they've done some stuff. They've hired some people on the belts. The belts were their big problem. They've hired additional people on the belt lines to try to keep it cleaned. When I was in 3, we had a number of issues at Powhatan 6.

The Century Mine of his, it seems to be a little better run, and it seemed to be kept up a little better than the Powhatan 6 Mine was. Powhatan 6 is a big old mine, you know, a lot of old outby areas and stuff. And it's a challenge keeping everything in line there it seems like.

1 MR. PAVLOVICH:

2 What field office is that inspected out of?

3 A. St. Clairsville.

4 MR. PAVLOVICH:

5 St. Clairsville?

6 A. Yeah.

7 MR. PAVLOVICH:

8 So you heard of face-to-face dealings then or meetings with

9 Murray and Tim Thompson and Ex. (b)(6) and Ex. (b)(7)(C)

10 A. And Poncheroff.

11 MR. PAVLOVICH:

12 And Poncheroff. Was there ever any kind of face-to-face
13 meeting between you and Murray in that regard where he told you you would be
14 moved?

15 A. No.

16 MR. PAVLOVICH:

17 So did you ever think when you were changed in your job
18 from ADM enforcement to ADM plans that it had anything to do with Murray?

19 A. Well, it kind of came up, yeah. I kind of thought about that a little bit, but
20 nobody ever told me that.

21 MR. PAVLOVICH:

22 Okay.

23 A. So I mean, I didn't know if it was just him or ---.

24 MR. PAVLOVICH:

25 And you thought about it because of ---?

1 A. Well, you know, everybody had said that he's a tough guy and he got a lot of
2 political pull. And you know, we kept him down for two or three months and I'm sure
3 he didn't like that.

4 MR. PAVLOVICH:

5 And it was you and Tom White basically that did that; right?

6 A. Yes.

7 MR. PAVLOVICH:

8 Since Tom was the supervisor?

9 A. Yes.

10 MR. PAVLOVICH:

11 And both of you ended up subsequently moved the same
12 day?

13 A. Yeah, and that seemed kind of fishy, you know. The same day we're the only
14 two in the whole district that was moved.

15 MR. PAVLOVICH:

16 Had you ever known of Murray ever asking for inspectors to
17 be moved?

18 A. Yeah.

19 MR. PAVLOVICH:

20 Oh, you have?

21 A. Yeah.

22 MR. PAVLOVICH:

23 Okay. Did he personally ask you to move an inspector?

24 A. No, Ex. (b)(6) and Ex. (b)(7)(C)

25 Ex. (b)(6) and Ex. (b)(7)(C)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

Okay.

Ex. (b)(6) and Ex. (b)(7)(C)



A. Yes.

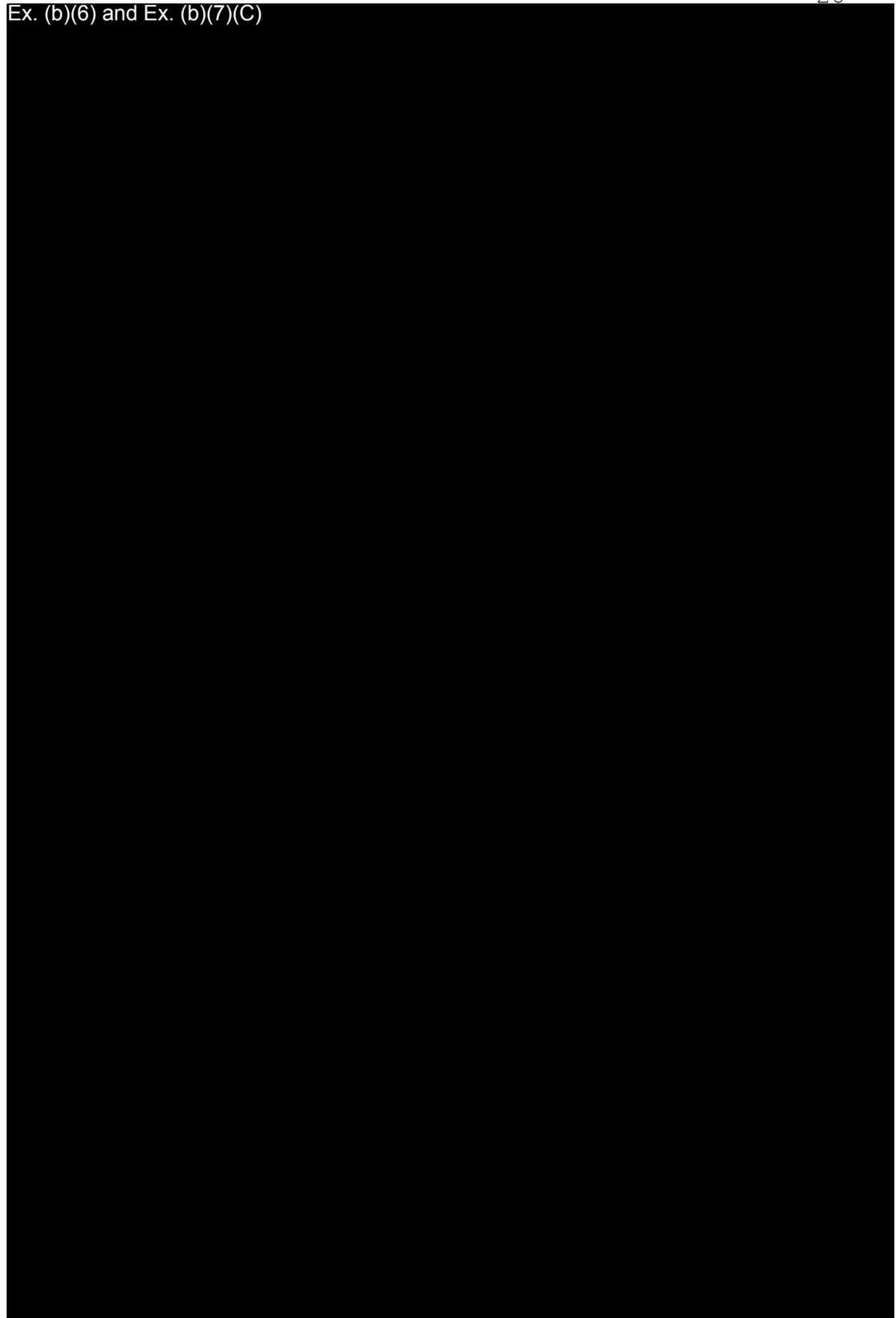
MR. PAVLOVICH:

Prior to this meeting with Murray?

A. Yes.

Ex. (b)(6) and Ex. (b)(7)(C)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

Okay. Did he ever mention anything about moving inspectors to you while you were the ADM in District 2?

A. He may have, Joe. I don't recall now. I mean, we have had a lot really. You know, as a district manager, you get a lot of complaints from people asking you to move them.

MR. PAVLOVICH:

Okay. Well, let me further ask that.

A. Okay.

MR. PAVLOVICH:

Did you ever move anybody because of Murray's requests?

A. Absolutely not.

MR. PAVLOVICH:

Okay. How about in District 3? Did you ever move anybody there?

A. No.

MR. PAVLOVICH:

Have you ever heard of anybody in the agency ever being moved because of requests of Murray, that you know of?

A. Not that I know of.

MR. PAVLOVICH:

Okay.

BY MR. TEASTER:

Ex. (b)(6) and Ex. (b)(7)(C)



Ex. (b)(6) and Ex. (b)(7)(C)



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TEASTER:

Do you have some others?

MR. PAVLOVICH:

Well, let me just go back a little bit and ask these couple of questions before we get too far away from the subject, and then you can continue on with where you were there, Ernie. I guess Ernie had asked you earlier, Kevin, about your role or assumed role or perceived role when you arrived at that Crandall Canyon. And I guess as a senior MSHA official coming on site, how do you think that the other MSHA people or the company people there or if there would have been Labor people there would perceive you as being on site? Would they assume that you're the person in charge, or in this case, Richard Stickler would be the person in charge?

A. Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

Okay. And so what does that do then? How would you think that would be perceived by the district manager?

A. Well, I think he probably felt I had the ability to overrule anything that he wanted to do. But when it came to like --- and I talked to him, bounces and bumps, that's not the type of stuff that I was real familiar with coming from the east. And I says he needed to make his decisions based on his experience and his district's experience on it. And I just wanted to help out any way I could.

MR. PAVLOVICH:

Do you think that somewhat usurps his authority?

A. What's that word?

MR. PAVLOVICH:

Takes away his authority when you show up?

A. You know, I've never looked at it that way, Joe, but I mean maybe he does. I don't know.

MR. PAVLOVICH:

You had mentioned at Sago, okay, you were the district manager in District 3 at the Sago explosion. And you said earlier that Ray McKinney came to the site, but he made it very clear to you, and I'm kind of paraphrasing, that you were in charge; is that true or not?

A. No, he never made it clear. We never talked about it.

MR. PAVLOVICH:

Oh, you never talked about it?

A. No. He just came and I was still the one making decisions. I mean, he may have threw in some input, you know, or suggestions, but I never felt like he was in

1 charge. I always felt like it was my responsibility as a district manager even though
2 him and Bob Friend both came to the site. I still considered myself to be the person
3 that needed to make the decisions.

4 MR. PAVLOVICH:

5 Okay. So you felt that way. Do you think most managers
6 would feel that way?

7 A. I don't know. I got a strong personality for that, so I mean, maybe they don't.
8 I don't know. I can't answer that. I didn't intend to go out there and try to take over
9 the operation. I intended to go out there to help out.

10 MR. PAVLOVICH:

11 Do you think Al felt that he was still in charge the same that
12 you felt when you were up there at Sago?

13 A. I don't know.

14 MR. PAVLOVICH:

15 You didn't get a feeling?

16 A. No. I don't know.

17 MR. PAVLOVICH:

18 Kevin, you made mention that when you got there they were
19 still doing the old way of modifying the K Order with each subsequent suggestion or
20 plan or change, which is pretty much two days into the operation, I guess. Was there
21 a reason why?

22 A. They were doing it that way?

23 MR. PAVLOVICH:

24 Yeah.

25 A. I don't think they've had any emergencies out there for a good while.

1 MR. PAVLOVICH:

2 Okay. So they really didn't know --- do you feel they didn't
3 know the plan process that you talked about and discussed with the K Order?

4 A. That was my impression of it.

5 MR. PAVLOVICH:

6 Okay. We could talk about that later on when we get into
7 the ---.

8 A. Okay. I figured we were about done.

9 MR. PAVLOVICH:

10 About done with the first half hour. Is that a suggestion?

11 A. You don't consider that humor, huh? I'm not very humorous today.

12 MR. PAVLOVICH:

13 With these guys they were all like saying Kevin's right. But
14 since Ernie and I don't work for you, we figure we got a couple more questions
15 anyway.

16 A. That was humor, Ernie. Pretty poor humor.

17 BY MR. TEASTER:

18 Q. Well, I think everybody got a pretty good laugh out of it.

19 MR. PAVLOVICH:

20 Okay. Go ahead, Ernie. Where are we at?

21 BY MR. TEASTER:

22 Q. How would you characterize Bob Murray's activities at Crandall Canyon? I
23 mean, was he overbearing, dominating? I know you had mentioned earlier something
24 about his dealings with the press.

25 A. He was unpredictable. I mean, in our meetings with them before we'd go

1 down to the families or the media briefing, it seems like we had an understanding with
2 him that he was going to take a back seat, not get confrontational, turn it over to his
3 second-in-command, Rob Moore. And when I say unpredictable, then we'd go down
4 to the family meetings or the news media and he'd just be a different person. You
5 know, I don't know if he couldn't stand, you know, some of the questions and he felt
6 like he had to address them. But I mean, it was unpredictable with him. A number of
7 times I had meetings with his handlers saying you need to pull this guy in and back
8 him off. And I think the best way to do that, why don't you let someone else do the
9 media briefings? If you want Bob to stand there, let him stand there. But let someone
10 else that isn't as emotionally charged as Bob help out. And you know, they'd say, oh,
11 that's a great idea but we don't know if we can talk him into it.

12 Well, then, you know, you talk to Bob, and you say, Bob, why don't you let
13 these guys help you out? You know, you try to reason with him, and it seems like
14 you're getting through to him, and then you go down to the family briefings or the news
15 media and it's like electrical shock goes off and he's back to where he was. And he
16 wants to get in front of the camera or get in front of the families. And we did try to
17 reason a number of times with the company over that issue.

18 Q. And did you ultimately prevail?

19 A. I don't know if we did or Bob just gave up. You know, he finally --- I guess we
20 did ultimately prevail, but I'm not sure if it's because of something we did or if his
21 handlers finally talked him into it or Bob just got so worn down and worn out after three
22 weeks of going through this 24 hours a day, seven days a week that he backed off. I
23 really don't know the exact reason how it occurred. It could have been any of those
24 three or all of those three.

25 Q. Kevin, he from the outset alleged that an earthquake had occurred. Were you

1 present when some of those --- when he mentioned that an earthquake had occurred?

2 A. Yes.

3 Q. Did we buy into that theory, that an earthquake had occurred?

4 A. Not at all. In fact, we encouraged him to just stay away from the subject and
5 let the investigation make its determination. And he would say, you're right. I'm going
6 to stay away from that. And then the next news media, he's saying after the
7 earthquake happened. You know, he'd go right back to it. And our position from the
8 start was we don't know what happened, but we're sure the investigation will be able to
9 pinpoint and find out if it did or not.

10 Now in the back of my mind I thought there was pretty slim chance that it was
11 an earthquake because I knew how these seismic events happen. After Sago's
12 explosion there was a 3.9 on the Richter scale, so I knew that these could occur. And
13 I never bought into the earthquake theory at all.

14 Q. Did we as an agency ever dispel that during the briefings with the families or
15 with the media that we didn't believe it was an earthquake? I know we kept referencing
16 it because I watched this thing unfold on television. It was called a seismic event. But
17 I didn't --- are you aware of anybody that said that this was not an earthquake when
18 they were dealing with the families or with the press?

19 A. I don't think anybody said it wasn't an earthquake, Ernie. I think we said let's
20 let the investigation make that determination. Right now we're in a rescue mode and it
21 really doesn't matter what it was. We need to just put that on hold and that
22 determination will come in due time.

23 Q. But I again watched this unfold on television, and I saw a guy from the U.S.
24 Geological Survey and others say clearly that this was not an earthquake, and yet
25 there continued to be that allegation that an earthquake had transpired.

1 A. I guess to us that was on the back burner. It really didn't matter what it was
2 right at that moment. We were focused on trying to get in there. And as I said, our
3 position was the time will come to make that determination.

4 Q. How would you characterize Bob Murray's dealings with us in terms of coming
5 up with a plan or whatever needed to be done to proceed with that rescue effort,
6 drilling bore holes and ---?

7 A. Probably bore holes was about the only thing that Bob was involved in as far
8 as sitting down with the plans. Bore holes kind of reached up to him, and he got
9 involved in where we should put them in at. As far as some of the, you know, outby
10 areas where we're going to monitor for gas and that type of thing, Bob really didn't
11 have his hands on that. I'd say he was probably in 25 percent of the planning meetings
12 at the most.

13 Q. Was he cooperative or hard to deal with? How would you characterize him?

14 A. I would say he was ultimately cooperative. Sometimes he had pretty strong
15 opinions about things, and then after we sat down and we talked about where we felt
16 the next bore hole should go or something, he kind of bought into it. But it wasn't an
17 agreement right from the start. It was, I guess, a discussion before we came to that
18 agreement.

19 Q. Kevin, you mentioned earlier that because you hadn't had much experience
20 with bumps that you relied on Al and his experience, his people. What experience
21 have you had with bumps or bounces, whichever? I think the term's interchangeable.

22 A. Yes. None.

23 Q. None?

24 A. Yeah. I've not been associated with the mine under my jurisdiction that has
25 had a bounce or a bump problem.

1 Q. Based on the notes and stuff that we've gone through, there was several
2 bumps that occurred underground. Do you know how this information was reported to
3 the command center?

4 A. It was just called out from the MSHA person in charge underground. My
5 understanding was if a bounce or a bump occurred they would call out and make the
6 command center aware of it as well as --- you know, I was underground twice myself.
7 And I guess I'll call it a --- from what they tell me it was a small bump. There were
8 small bumps occurring.

9 Q. Uh-huh (yes).

10 A. And I guess in some cases they differentiated between small bumps and large
11 bumps. You know, I saw in the notes of the command center a small bump occurred
12 or a bigger bump occurred. So there was some way to differentiate between the two.

13 Q. Do you know if there was anything that took place out in the command center
14 that was taking this information on bumps and trying to chart it and see if it was an
15 increase or a decrease in the frequency or the severity of the bumps?

16 A. We talked about that and we did try to do something with that. We had ---
17 Kravitz had his seismic equipment sent up, and we wanted to cross reference it with
18 his seismic equipment and basically --- it didn't happen right around but somewhere
19 along the operation we got the idea, well, let's see if we can apply what was occurring
20 to what the University of Utah was seeing in the seismic events. And that was later on
21 in the rescue operation. But we did talk about that. But I never looked at what
22 happened underground versus what a seismic event showed, but we talked about it.
23 And I'm not sure if Kravitz may have done that.

24 Q. Are you aware of any discussions based on the evaluation of these bumps
25 that occurred, and I'm talking about from the outset up until let's say the accident on

1 the 16th, evaluating the bumps to determine whether it was safe to continue with the
2 rescue effort? Whether there was discussions maybe to discontinue it based on the
3 bump activity.

4 A. We always had concern about the bump activity, but we felt that the support
5 we were putting in would protect us from any additional bump activity. The rock props
6 and the fencing and the cables, we thought that that was going to protect us from any
7 bump occurrence.

8 Q. And what did you base that on? I mean, I understand the rock props. Had
9 there been previous experience of them being successful in stopping movement of
10 coal?

11 A. I believe the same day this occurred we asked tech support folks to come to
12 the mine and to go underground and actually give us their best suggestion on what
13 they felt would work. And that's where we came up with this plan of rock props every
14 foot and a half, the screening. And to go in Number One instead of Number Four
15 entry as well as I know tech support contacted a number of experts in this field and
16 asked their position. NIOSH, the name that I'm familiar with is Tom Barzak
17 (phonetic). They contacted Tom Barzak who's supposed to be the world's best at
18 these types of things. And they didn't tell him what we were going to use, but his
19 suggestion also was rock props. And based on the fact that we had six people
20 unaccounted for, we wanted to try to get in there.

21 Q. Kevin, when you looked at the face of Number One when you got over there,
22 we call it the face because that's what they've been calling it where where they were
23 mining, what did you see in terms of coal being in the entries?

24 A. It almost looked to me like --- I mean, from someone from the east that had
25 never seen a bounce, it almost looked like they had gobbled an entry up. Like you

1 know how you see sometimes in crosscuts mine operators would just push material
2 and put it there.

3 Q. Uh-huh (yes).

4 A. That's kind of what the entry looked like.

5 Q. Was it pretty full from bottom to top?

6 A. Yes. It was fuller in the middle of the entry, and there was less of it. Like if
7 you wanted to try to travel over it, there was less than the crosscuts because I guess
8 the crosscut didn't have area to push out into the entry itself.

9 Q. Uh-huh (yes).

10 A. So there was a little dip there and then it would build back up as you went
11 between the crosscuts.

12 Q. Did you have the occasion to go over in Number Four entry or in the south
13 barrier to view that area over there?

14 A. Yes.

15 Q. And what did you see in Number Four entry when you went over?

16 A. I basically saw the same thing in all four of the entries that I went into. It was
17 material that was piled up toward the roof.

18 Q. Are you aware that Number Four entry was cleaned up with scoops or ram
19 cars up to Crosscut 126 on the first day prior to you getting there, and that a bump
20 occurred and dumped that coal back in that entry?

21 A. I don't think it was up to 126. I think it was only like one crosscut. They had
22 gotten in past 120, was my understanding.

23 Q. We can double check that. I think that's the information that we have that it
24 was up to around 126, but we can double check on that.

25 A. I don't think it was that far. I think it was --- that's like six crosscuts. I think

1 they were only in about 75 feet or so when that occurred. And it filled the entry back
2 up in Number Four.

3 Q. Okay. And you think based on the amount of material that you observed in
4 Four and One and the other entries as well as you said, that this support system that
5 we had with the rock props and the chain link fence and the ropes, the three ropes
6 would have been adequate to contain that movement between a jack and the coal
7 pillars?

8 A. Everything that we had available to us, Ernie, told us that was adequate to
9 advance. Now, when they did this over in Number Four the first day, they didn't have
10 any support at all. They weren't using rock props.

11 Q. That's correct, right.

12 A. Okay. So it was, we thought, a different situation. And when tech support
13 looked at it, they felt this barrier between the longwall gob and this Number One would
14 help in protection, and Number One would be a better way to travel up because, in
15 their opinion, they felt that the bounce came from the main west over toward the south
16 barrier section rather than the longwall gob coming over to the south barrier section.

17 Q. Moved in a southerly direction from the north?

18 A. Yes. So we felt our best shot after that was to go up Number One.

19 Q. Okay. And was there some discussion about the material itself that was in the
20 entry by its presence there help stabilize those pillars?

21 A. We were concerned if it was real compacted and hard, that that would provide
22 support. And we were concerned about that. But the material to my understanding
23 that we were loading out seemed to be pretty loose. We were able to get it out of
24 there. And again, we felt with the rock props, the screening, and the cables, that we
25 would be able to protect the people in there.

1 Q. Was there other support systems or other means of protection considered and
2 discounted and ultimately settling with the rock props and the fencing that we
3 ultimately went with?

4 A. We talked about jacks. We talked about wood support. There were a number
5 of different discussion points on that. And I guess we came to an agreement that
6 these rock props would be our best way to go forward.

7 Q. Do you know whose suggestion it was to use the rock props?

8 A. I guess it would have been our tech support guys that basically would have
9 recommended that to Al, Richard Stickler, and myself, and we agreed to it.

10 Q. Have you had any personal experience with these rock props in any of the
11 mines that you've been involved with?

12 A. No.

13 Q. Okay.

14 MR. TEASTER:

15 You have one of these, Joe. It's bumps.

16 MR. PAVLOVICH:

17 I do have?

18 MR. TEASTER:

19 Yeah, it's in that folder there.

20 BY MR. TEASTER:

21 Q. But we just went through here, and these are from the notes that we took from
22 different ---.

23 MR. PAVLOVICH:

24 It's in the log from the command center log; right?

25 MR. TEASTER:

1 Now, some of these are from personal notes of people
2 working underground and they're a combination.

3 A. I mean, I don't think the command center log would have had August 3rd
4 and ---.

5 BY MR. TEASTER:

6 Q. No, no, that's right. This came from another thing.

7 A. Okay.

8 Q. I just want to pick up on the 6th with it.

9 A. Okay.

10 Q. And it gives different ones. Some of them are relatively small, some are
11 larger than others. But there's some in here that seems to be --- they showed up like
12 2.2. The one that occurred in Number Four entry showed up as 2.2. One here
13 probably at 1702 is 1.9. But just go through that. There was a lot of bumps and some
14 of them significant. But there's one on the 15th. Well, the one that occurred over
15 here knocked two people down in Number Four entry when that occurred. It knocked
16 two people down and filled that entry, and there was nobody up in that area when that
17 occurred, but the inspector was outby. And then there was a person over there at the
18 load center that was also knocked down.

19 A. Right.

20 Q. But there's big bumps, little bumps. I wanted to go to you on the 15th.

21 A. Okay.

22 Q. It's 2:26. Okay. It said a bounce occurred, cleaning area, lots of dust, but
23 everyone accounted for. Bounce was significant as reported by Barry Grosby
24 (phonetic). Blew out a couple of Kennedy piles, curtain across 125, rough sloughage
25 across the miner, miner was 107 feet inby, 125. The atmosphere was black and

1 dusty. It appeared the rock props have moved out to tops and bottom. Question the
2 rocks' ability to support, and a miner was partially covered up. Are you aware of that
3 specific incident?

4 A. I'm sure at the time I was, Ernie. Like right now, I don't recall exactly that, but
5 I recall there being bumps that had been occurring underground.

6 Q. But I'm more concerned about it moving the jacks, these rock props.

7 A. Yeah. I don't recall this specific statement when I reviewed it, but I mean, I
8 recall knowing that did any material from the rock props and the screen coming out in
9 the entry and I remember being told no. It's happening over top of the miner where
10 we don't have the rock props installed yet.

11 Q. Okay. And were you aware that one had occurred somewhere in this time
12 frame that broke a couple of the shafts on the motors of the miner?

13 A. Yes.

14 Q. And the miner was covered up about level with the top of the miner?

15 A. I knew there was material that had come over and we had to replace the head
16 on the miner.

17 Q. And then on the morning of the 16th at 10:05, bump at the miner Number One
18 entry, recovered the body of the miner. Miner backed out and cleaned up. Bump was
19 reported. Stalled airflow, ---.

20 A. I guess I don't want to say --- I don't think you ever feel comfortable, but we
21 just didn't see any material where we had the props installed and the screen and the
22 three wires, cable meshes around, we just never seen anything come out into the
23 entry if we kept the people in the protected area there. And naturally the night of the
24 16th, I mean, it just overcame and knocked everything out. And we just --- I didn't see
25 that coming. If I would have, if I didn't think we were protecting people we wouldn't

1 have let anybody go in there.

2 Q. No, I totally believe that. What we're trying to do, Kevin, is come up with
3 something here that --- because, we did have the accident on the 16th, and what we're
4 trying to learn, is there anything here that gave us evidence of that.

5 A. Sure.

6 Q. And as I understand it when it occurred on the 16th, it occurred right there and
7 it blew that pillar out 30 feet from where the miner was toward outby in that particular
8 block?

9 MR. PAVLOVICH:

10 And it blew the rock props out as well?

11 BY MR. TEASTER:

12 Q. Right. And that we were having, for example, the one in Number One entry --
13 - Number Four entry on the first day, had that been in that immediate area, miners
14 been in that area we could have had similar results that we had on the 16th.

15 A. I agree.

16 Q. And the ones that we had on the --- the one that broke the shafts on the
17 motor, if we had people in that particular area. We didn't have the rock props, and
18 thing, but there seems to be some significant events that had transpired between the
19 one on the

20 --- morning of the 6th, August 6th, and the one on the evening of the 16th that could
21 have had similar results had just --- we're thankful that no one was in that area or it
22 could have been different if we had had the supports there. I don't know.

23 A. Well, I guess in my mind the one that happened in the Number Four entry, I
24 guess my thought process was that if we had these rock props installed over there,
25 what we ended up approving in Number One, it wouldn't have filled the entry. And as

1 far as where the miner was located, we didn't allow --- we had a plan in place. It had
2 to be done remote control. Nobody could be within so many feet of the mining
3 machine. And they had to always be behind ---

4 Q. The supports.

5 A. --- where the supports were. So it concerned us that we were having some
6 material move over top of the miner, and I guess have to repair the miner head. But
7 we at all times felt that the support that we were putting in was going to protect the
8 people up there. If we didn't feel that way, we would have took a lot of hammering
9 from the families and the media, but we wouldn't have let people go in there. And I
10 mean, I've been in situations at Sago that, I mean, I was --- the families called me a
11 killer because I didn't send people in immediately afterwards. If I felt at Crandall
12 Canyon that we were going to harm --- have people that were going to die during the
13 rescue operation, I would not have done it.

14 Q. Do you feel that there was any pressure from families, Bob Murray, or
15 anybody that you had to continue with the rescue effort?

16 A. No. The pressure was that we had six people unaccounted for. That was a
17 pressure we put on ourselves. I didn't feel any pressure from the families. I didn't feel
18 any pressure from Murray.

19 Q. Why was the rescue effort ultimately stopped?

20 A. We found out that the protection that we thought was going to hold up wasn't
21 enough. And I mean, unfortunately there's three people that died before we found that
22 out. If we would have known, like I said, that this protection wasn't enough, we would
23 have never let anybody go in there. We thought that it was and we found out that it
24 wasn't.

25 Q. Did you ever hear Murray ever say off the record that he thought that the

1 miners were probably dead three or four days into the rescue effort?

2 A. No. Again, that's --- yes. The answer's yes. He was unpredictable. I mean,
3 one time he'd say something like that and the next time he'd say we needed to get in
4 there as soon as possible. So he was across the board.

5 Q. Kevin, the rock props were being installed off of the --- from pressure off of
6 the ram cars. And then that --- and that was being pressurized, and it had a gauge on
7 it, it was being pressurized somewhere between 1,100 and 1,200 psi. And then it was
8 transferred to the miner. Do you know if the miner had gauges to make sure that they
9 were being pressurized to similar pressures?

10 A. I don't know that. I can't answer that. I mean, we was up there and I saw stuff
11 going on, but I can't tell you if the miner gauge checked it or not.

12 Q. Was there ever any --- I don't know how you would do it but I'm going to ask.
13 Was there ever any how much forces that might have been coming off of those things
14 when a bump occurred, let's say, similar to that one on the 6th, how much pressure
15 would have been coming off of that rib? Is there any way of determining that?

16 A. I'm sure there is, Ernie. I'm sure the investigation will do that, but I don't think
17 we had that at the time. I mean, we didn't try to figure out how much pressure there
18 was.

19 Q. And whether or not those rock props could contain that type of pressure?

20 A. I didn't do that personally. I'm not sure if anybody did or not.

21 Q. You mentioned earlier about your experiences at Sago. Was Sago ever
22 discussed?

23 A. I don't think Sago ever came up in conversation out there.

24 MR. PAVLOVICH:

25 Was it ever in the back of your mind, Kevin?

1 A. I think every one of the emergencies you're ever on is in the back of your
2 mind, you know. But it didn't stop me. If I felt that we were putting rescuers in harm's
3 way, I wouldn't have done it I guess is the bottom line. I just didn't think we were. I
4 was in there the day before, and I don't want to say you feel comfortable, but I was up
5 at the tail of the miner. And I felt protected based on what we had in place there.

6 MR. PAVLOVICH:

7 Did it bump when you were there?

8 A. It did.

9 MR. PAVLOVICH:

10 How did that make you feel?

11 A. I don't want to say you get used to it. There were a couple bumps, and they
12 were just small thumps. There wasn't anything heavy, I don't believe, that there was
13 dust in the air or anything. But there were bumps that occurred. And I guess I didn't
14 feel uncomfortable because I thought the supports that were in place was going to
15 protect me. The roof was good. It was the oddest thing you'd ever seen. I mean, the
16 roof bolts are still in but you've got your material in the entry itself. But I didn't feel
17 uncomfortable at all in there.

18 MR. PAVLOVICH:

19 Did you ever hear of any of those water props being knocked
20 out by a shuttle car?

21 A. No.

22 MR. PAVLOVICH:

23 Okay. No one ever told you that?

24 A. No.

25 MR. PAVLOVICH:

1 That you could --- easily knock one out with a shuttle car?

2 A. Never heard that.

3 MR. PAVLOVICH:

4 Okay.

5 BY MR. TEASTER:

6 Q. You relied on the district's experience with bumps, what was going on and
7 what was taking place was not out of the --- not really a problem, not a hazard?

8 A. Could you repeat that?

9 Q. I'm saying that because you didn't have any experience with bumps, that you
10 relied primarily on the district's, Al Davis and his staff's experiences with bumps and
11 how they react?

12 A. The district tech support and the mine operator's expertise as well.

13 Q. And the support system that they had, that tech support had come up with you
14 was comfortable that that would provide ---?

15 A. Yes. It sounded like it was the best there could be installed, and it sound --- at
16 the time we felt that it was going to protect us when bumps did occur, that the material
17 would not come out into the entry.

18 Q. Did you hear of any of our people having safety concerns while they were
19 underground?

20 A. Not that I'm aware of.

21 Q. Are you aware of any company people?

22 A. That question came up at a few news conferences, and the question was are
23 there people afraid to be up there that don't want to be up there. And Murray's
24 comment was that there's people that are tired and they don't want to be up there, but
25 he doesn't know of any safety concerns that they had. I didn't go around and talk to

1 any company people, but I know that was a comment or a rumor that I had heard as
2 well.

3 MR. PAVLOVICH:

4 So did you know where people transferred out of there?

5 A. My understanding was they were.

6 MR. PAVLOVICH:

7 And they were miners who had worked at that mine?

8 A. Yeah, I don't know if they were from that mine, Joe, or whether it was miners.
9 He had brought in miners from other mines as well. And I don't know if it was that
10 mine or other mines, but I knew that some guys asked to be removed. But his
11 comments was, no, they needed a break.

12 MR. PAVLOVICH:

13 Do you know if anybody from MSHA ever asked any of those
14 miners ---

15 A. I don't.

16 MR. PAVLOVICH:

17 --- about their concerns?

18 A. I didn't. I don't know if anybody did.

19 MR. PAVLOVICH:

20 You didn't? You don't know if anybody --- no one ever came
21 back and reported to you though those guys asked to be moved because they were
22 concerned about safety?

23 A. No. No one talked to me about that.

24 BY MR. TEASTER:

25 Q. Kevin, do you know of any of our people being moved from the rescue effort

1 for any reason at all?

2 A. Yes.

3 Q. Could you share that with us?

4 A. It was an inspector ^{Ex. (b)(6) and Ex. (b)(7)(C)} believe was his name. Al Davis came over to
5 me and Al said that there were people complaining underground about ^{Ex. (b)(6) and Ex. (b)(7)(C)} that he
6 was talking down to them and telling them they didn't know what they were doing and
7 they're lazy. And he said, we just can't have that up here right now and I'm going to
8 send him home. And I said, well, you do whatever you feel like you need to do. And I
9 don't know if it was the same day. It seemed like there was a number of discussions
10 there between Al and Larry Ramey. Larry Ramey was ^{Ex. (b)(6) and Ex. (b)(7)(C)} supervisor, and Larry
11 was at the mine site as well to help out. And ^{Ex. (b)(6) and Ex. (b)(7)(C)} was ultimately sent home.

12 And I got an e-mail from ^{Ex. (b)(6) and Ex. (b)(7)(C)} some time after that saying, you know, Kevin,
13 you seem personable. If there's some time that I'd like to be --- if there's an internal
14 review I'd like to be interviewed by them. And I think I sent something back to him
15 saying that I'm sure you'll get an opportunity to speak to the internal review team.

16 MR. PAVLOVICH:

17 Good.

18 BY MR. TEASTER:

19 Q. Do you know if Al approached him to get his side of the story or ---?

20 A. Well, I assume he did because I mean, Al said he was going to talk to him.
21 Now, what that conversation was, Ernie, I don't know. But I was aware that that
22 allegation came to Al and Al was going to address it. And I told him, I said it's your
23 district. You need to do whatever you feel is necessary.

24 Q. When we looked through the notes, we were looking through ^{Ex. (b)(6) and Ex. (b)(7)(C)} and
25 this was prior to knowing anything that you just addressed. But he raised in his notes,

1 there's a lot of issues that he raised that safety concerns underground --- now, when I
2 say safety concerns, it was --- one was that it was too dusty. They needed to water
3 the roadway down. And he said he approached the company official, I'll say in charge
4 or someone in authority underground that had that ability to get it done, and they had -
5 -- he didn't agree with it. He said this is an emergency, but apparently Ex. (b)(6) and
6 this is something that they could do.

7 And then there was another occasion of a ram car or some diesel powered
8 equipment was, in Ex. (b)(6) and Ex. (b) opinion was smoking excessively to the point that it needed
9 some attention. Again, there was this disagreement. And there was also some rock
10 dusting issues. Those are three that come to mind. But it seemed he raises these
11 issues in confrontational, and then later we found out, okay, the guy was removed
12 from the mine, and we're just trying to look back was there any relationship between
13 what he was doing there or was he condescending? That's the first I've heard that he
14 was condescending to these people.

15 A. That was what was told to me, Ernie. Naturally, I didn't review any of his
16 notes or anything. But I know he wanted an opportunity to talk to the internal review
17 team. But that was what was given to me.

18 Q. Right.

19 MR. PAVLOVICH:

20 We'll talk to him.

21 A. Okay.

22 MR. PAVLOVICH:

23 Before we --- it's about ten o'clock, about to take a break, but
24 let me ask you just a couple of questions before. You said you've never had any
25 experience with bumps before until basically you got out here. And I'm sure you

1 talked to Al quite a bit while you were out there, I guess; right? And also the company.

2 Had anybody ever seen --- did they ever tell you they'd seen a bump like this before?

3 A. No. Even the folks from tech support and Al who had worked the mid-
4 continent, and the district folks and Laine Adair, who was supposed to be the company
5 expert said they had never seen anything to this extent. I guess there was one in
6 Southern West Virginia. I believe it was the late '60s or early '70s that may have kind
7 of been as close to this as anybody had heard of even or read about. And nobody had
8 ever seen anything to this extent.

9 MR. PAVLOVICH:

10 So even though Al and Laine Adair and the other people out
11 there had experienced a lot of bumps, probably investigated, they were relatively
12 minor compared to this one?

13 A. Yeah. I guess we still don't know how far it extended.

14 MR. PAVLOVICH:

15 Right. Well, when you looked at the map, and I'm sure you
16 looked at the map early on when they called you about it. And obviously you saw the
17 longwall panels to the north, the longwall panels to the south, the barriers, the north
18 barrier that been mined, the south barrier that had been mined. What was your initial
19 thought about that?

20 A. Not much barrier.

21 MR. PAVLOVICH:

22 Not much left?

23 A. Not much left.

24 MR. PAVLOVICH:

25 Would that then give you some inclination about why this

1 bump was like something they had never seen before?

2 A. Well, I didn't know. I mean, I told Al, I says, you know, we need to --- I started
3 digging in to what was the district's process in the plan review, how we came up with
4 this determination. And we've since had Billy Owens do a lot of work putting together
5 his thought process and why it was approved. But when you look at a map, it --- I
6 mean, there's not much coal left in ---.

7 MR. PAVLOVICH:

8 I'm not even talking about the approval. I'm just thinking
9 when everybody says we never saw a bump this big before or this magnitude, there's
10 nothing there to hold anything up; right?

11 A. You're right.

12 MR. PAVLOVICH:

13 Okay. Did anybody ever say they --- did these guys that had
14 all this expertise there, they'd ever cleaned up a bump area before?

15 A. No.

16 MR. PAVLOVICH:

17 Nobody?

18 A. Nobody.

19 MR. PAVLOVICH:

20 So basically when they had a bump anywhere, whether they
21 have it in east Kentucky, and I know we've had some there and Virginia they've had
22 some, and certainly in Utah and Colorado, they basically just leave it or mine away
23 from it?

24 A. I don't know that, but I guess if there wasn't anybody trapped in by that area,
25 that makes a lot of sense to me. I mean, if we didn't have people trapped, I'm sure

1 we'd have never tried to clean anything up to go after the equipment.

2 MR. PAVLOVICH:

3 So we didn't --- nobody ever really said, hey, I've done this
4 before? I've cleaned up a bump like this before and I know what to do?

5 A. You're right.

6 MR. PAVLOVICH:

7 So it was just ---

8 A. No one ever.

9 MR. PAVLOVICH:

10 --- all brand new to everybody ---

11 A. Yes.

12 MR. PAVLOVICH:

13 --- that was there?

14 A. Yes. I guess it was. It was new to me, that's for sure. And I don't know of any
15 cases where we actually tried to go back in.

16 MR. PAVLOVICH:

17 And basically to your opinion it was new to the people that
18 were advising and counseling you also?

19 A. Yes, yes.

20 MR. PAVLOVICH:

21 Why don't we take ten minutes?

22 MR. TEASTER:

23 Take about a ten-minute break.

24 SHORT BREAK TAKEN

25 MR. PAVLOVICH:

1 A. I'm not sure that as far as the statement about the earthquake, I don't know if
2 we want to get into that until we've actually had an opportunity to do our investigation.
3 I mean, it seems like a waste of time to even try to refute that at that time. You
4 should be focused on the rescue operation rather than whether it's an earthquake or
5 not. And you know, I think Richard and me tried to just say, there'll be time for that in
6 the future, but right now we're focused on the rescue operation instead of ---.

7 MR. PAVLOVICH:

8 Is that really what the families wanted to hear or the media
9 wanted to hear?

10 A. I don't think the families really cared if it was an earthquake or not right at that
11 time. Now, the media, they wanted to take it and run with it. That was information for
12 them to have available to talk to the public. But the families really didn't seem as
13 concerned with that. They wanted to know what we're doing to try to get in there to
14 rescue their family members.

15 As far as what we can do in the future, the one thing --- I don't know how you
16 can keep someone like him off the news media. I mean, you might be able to do
17 something on mine property, but once you leave mine property, I mean, it's kind of
18 like shock journalism. I don't know how you can stop him from talking to the media.

19 And Richard Stickler is just kind of even keel and I mean, he gets in front of a
20 camera and he doesn't speculate, says what he thinks is right. But then that's not
21 what the public wants to hear. They want to hear Murray saying I'm not leaving the
22 mountain until we get them out dead or alive. I mean, I just don't know how you go
23 about that.

24 At one time Richard made arrangements with the sheriff that if Murray came
25 to the family meeting he was to be escorted out. I mean, so we were looking at that.

1 We felt we had the ability to do it there. We didn't think we could do it, I guess, as
2 news conferences off of mine property.

3 MR. PAVLOVICH:

4 Okay. Well, and it even got to the point and you saw the
5 news that --- I'd be watching it. I know everybody else in this room probably was
6 because you wanted to know what was happening, and Murray would get up and do
7 his grandstanding. And then when it was Richard's turn or Al or whoever, the news
8 media would switch to something else.

9 A. Exactly.

10 MR. PAVLOVICH:

11 Because they didn't care. They wanted ---.

12 A. That, and I mean, we had ---.

13 MR. PAVLOVICH:

14 But we're not getting any good things out that way.

15 A. We had deals with Murray that, you know, we'd wait, that the next news
16 conference is 8:00 a.m. Well, Murray would go underground at four o'clock in the
17 morning, come out with his mining clothes on and go down and talk to the media. I
18 don't know how you guard against that. I think he's the worst case scenario that coal
19 has. Most mine operators run from the microphone ---

20 MR. PAVLOVICH:

21 Right.

22 A. --- to get away from it.

23 MR. PAVLOVICH:

24 They're glad to let you have it.

25 A. They are glad to let us have it. I don't think --- I can't think of any other

1 operators other than Bob Murray that would do what they did.

2 BY MR. TEASTER:

3 Q. You know, Cecil Roberts at the House hearings, I think made a statement of
4 what he thought we should have done, and that's basically call a press conference and
5 say if you want the truth, listen to us. If you want other information, then you can go to
6 others. But we're going to have a press briefing. We want to give you the truth. Do
7 you have any thoughts about that recommendation?

8 A. I don't know if I'd make that statement, Ernie, about if you want the truth. But
9 maybe in the future we ought to consider just holding our own news conferences
10 without the company at all and not invite them. I mean, we tried to do this joint rescue
11 operation where you have to work with the mine operator. But maybe we need to
12 separate ourselves and not have a joint press conference or joint family meetings. I
13 think that makes it a whole lot of more difficult. But I think if we run into a situation or
14 an operator like Murray, maybe that's what we need to do.

15 Q. When we had the family briefings, did you feel that those were our family
16 briefings?

17 A. Yeah, I do. I think the family briefings were more --- Richard did most of the
18 talking and then the company would come up and add what they were doing. And
19 then it was open to questions, and you know, sometimes they asked Richard,
20 sometimes they asked the company. But I think those were handled better probably
21 because there wasn't any TV cameras there more so than --- the family briefings went
22 better I thought than the news media briefings.

23 Q. Going back to those --- Al's oversight hearings, the families seem to paint a
24 picture that these family briefings was conducted by Murray and Stickler would either
25 say yeah, he would confirm it or add a few things. But if you've got the picture they

1 painted, at least the picture that I saw was that he was just there and just chipped in
2 where he thought it was appropriate, but basically was just present.

3 A. I think that the information that the families shared to me looked like it was
4 information that the UMW gave them information to share. I mean, you know, when I
5 heard them say what --- and I testified at that same one. It was we'd like to thank the
6 UMW for being there for us. You know, they'd always start out, and I think the UMW
7 put that down for them to say. And the way the family briefings went, Ernie, is Richard
8 spoke first and gave them a briefing and then the company spoke second. And then it
9 was open to any questions that would come up.

10 MR. PAVLOVICH:

11 Go ahead, I'm sorry.

12 A. Murray said some things at that family briefings I'm surprised that the families
13 didn't get more upset over. I mean, one time I remember him, he got mad at the
14 families and walked out. And ---.

15 BY MR. TEASTER:

16 Q. Murray did?

17 A. Murray did. Yeah, he got mad at the families and walked out, and he would --
18 - they would show pictures of what they were doing, and he'd show them a picture of
19 these rock props or whatever and he said and I want to let you know that these are
20 very expensive. And I thought back to Sago then because I thought man, if I said
21 something like that to these Sago families they would just eat me alive. You know,
22 that we were talking about cost of something rather than rescuing miners. And they
23 just kind of sat there. And I thought, man, these folks are pretty different than what
24 I've ever been associated with.

25 So when they came in front of Congress and they made some of those

1 statements, it kind of surprised me because I had never seen that side of them at all.
2 When they said about the family liaison not working, that kind of shocked me because
3 we had someone there around the clock. We had three people dedicated eight-hour
4 shifts that they just stayed with the families and we reported down from the command
5 center, gave them any updates we could. And we made meticulous points of making
6 sure the families knew before the media did on anything we did.

7 BY MR. TEASTER:

8 Q. Kevin, the family members, ---.

9 MR. TEASTER:

10 Joe, I'll get back to you. I just wanted to follow up on this.

11 BY MR. TEASTER:

12 Q. The family members that you observed at that hearing, was those the primary
13 people, or not necessarily primary, but were they present in the family center?

14 A. Some of them were.

15 Q. Did you see any of them for the first time?

16 A. Yeah, the one guy that said MSHA let us down, I had never seen him at the
17 family --- now, he may have been there, Ernie. But if he was, he wasn't vocal. The
18 one guy I remember, the guy with the ball cap, that he was pretty vocal at the family
19 meetings. He spoke up, spoke his peace. But I thought we answered all his
20 questions. And I thought we had a pretty good relationship with him. But there were a
21 couple of folks that I hadn't really --- that weren't very loud or did any communicating
22 much at family meetings.

23 One of the issues that we had, I think, with the media briefings is some of the
24 family members seemed to me to be afraid to ask their questions in front of other
25 family members when we were in the big setting. So after that was over, Richard and

1 MSHA made themselves available for one-on-one questions after. I think Bob got in
2 the car and ran up to the media briefings. He got there before Richard did. Richard --
3 - people didn't know it but he's down there trying to satisfy the families, and Murray
4 wants to start the press conference before Richard gets up there. I think that was part
5 of the issue as well.

6 MR. PAVLOVICH:

7 Kevin, you said that you tried to have a meeting with the mine
8 operator or two meetings every day at 7:00 and 7:00 in the evening?

9 A. Yes.

10 MR. PAVLOVICH:

11 And I guess those would last about how long?

12 A. It all depended on how in depth the plan was going to be. I mean, I'd say an
13 average of an hour.

14 MR. PAVLOVICH:

15 Okay.

16 A. But some may have gone shorter than that and some longer.

17 MR. PAVLOVICH:

18 And so did you try and be in those?

19 A. If I could.

20 MR. PAVLOVICH:

21 And Richard also?

22 A. Well, the seven o'clock evening meeting's pretty tough because you didn't
23 have the family briefing until five o'clock.

24 MR. PAVLOVICH:

25 Okay.

1 A. And then there was a news meeting after that, so sometimes we --- depending
2 how long that lasted, sometimes we weren't getting back up to the mine until nine
3 o'clock or so in the evening. And those meetings were done.

4 MR. PAVLOVICH:

5 Okay. And you also had meetings twice a day with the
6 families usually, 8:00 or 9:00 in the morning and five o'clock in the evening?

7 A. Yeah. Now, later in the operation towards the end of August we may have cut
8 that back to one a day.

9 MR. PAVLOVICH:

10 After the second bump?

11 A. Yes.

12 MR. PAVLOVICH:

13 After the second accident?

14 A. After all our only work was from the surface, sometimes we cut that back to
15 once a day.

16 MR. PAVLOVICH:

17 Okay. And you also gave media briefings how many times a
18 day?

19 A. Twice a day.

20 MR. PAVLOVICH:

21 After the family?

22 A. Sometimes even --- yes, it was always after the family. We never went to the
23 media before the families.

24 MR. PAVLOVICH:

25 So out of the hours you spent there at the mine, how many

1 hours of it was spent or your shift, whatever long it --- if it was 24 hours or 10 hours,
2 what percentage of that or how many hours were you spending with families, media?

3 A. I'd say half of our time was dedicated to the families and media. Half of my
4 time.

5 MR. PAVLOVICH:

6 Half of your time?

7 A. Yes.

8 MR. PAVLOVICH:

9 And then also Richard's time, would you say?

10 A. Yes. Richard probably spent more. There was some news media that I just
11 left and came back up to the mine to do stuff, but naturally he had to stick around.

12 MR. PAVLOVICH:

13 Okay. So I think you already said you didn't really have a
14 chance or never heard anything about anybody that talked to the miners who
15 supposedly withdrew themselves?

16 A. We heard that rumor. I mean, I think the media was the one that I may have
17 heard it from first, I mean, asking questions of Bob Murray at a news media
18 conference.

19 MR. PAVLOVICH:

20 Did anybody check it out that you know of?

21 A. I didn't.

22 MR. PAVLOVICH:

23 Okay.

24 A. I don't know ---.

25 MR. PAVLOVICH:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

And so there may have been issues like the number of bumps, the fact that experienced miners may have withdrawn themselves because of fear, what was going on, that you never really had time to look into because of all these other things that obviously are extremely important to the agency, but you're spending your time doing that?

A. That's a fair statement.

MR. PAVLOVICH:

Okay.

A. And in addition, I mean, you're still calling people back in headquarters. They want to know what's going on.

MR. PAVLOVICH:

So you're providing updates, briefings?

A. Yes.

MR. PAVLOVICH:

And they want to talk to you?

A. Yeah.

MR. PAVLOVICH:

Right?

A. Yeah. No, you're exactly right.

MR. PAVLOVICH:

Okay. I had one other question here, Ernie, that's not in your notes so I'll ask him now before I give it back to you.

MR. TEASTER:

Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

You had Al Davis there and obviously Bob Cornett and his ---
and you had tech support people there advised. Was Bill Knepp ever there?

A. No.

MR. PAVLOVICH:

Was Billy Owens ever there?

A. No.

MR. PAVLOVICH:

Was anybody other than Gary Jensen that was involved in
roof control for District Nine ever at the mine that you know of?

A. No.

MR. PAVLOVICH:

Do you know why?

A. I think they wanted to keep someone in the district office to try to run the
district. So that would have been Knepp. And we looked at having Billy Owens
coming out there. I remember having a conversation. It had to be someone above
me. I mean, I'd say Stickler, but we were going to bring Billy Owens out and he
thought since we had tech support there, let's leave Billy Owens in Denver because
he's going to be involved in this controversy of the plan approval. We'll keep him
separated from what was going on out here.

MR. PAVLOVICH:

Okay. If you were the district manager in District 3 when you
were the district manager, if you had a roof issue, an accident, who would have been
the first people you would have took with you to the mine?

A. Ex. (b)(6) and Ex. (c)

1 MR. PAVLOVICH:

2 Why?

3 A. Because he's the roof control guy.

4 MR. PAVLOVICH:

5 He's your roof control guy.

6 A. Yeah.

7 MR. PAVLOVICH:

8 And that would have been your --- you'd have grabbed him by
9 the collar and said, Ex. (b)(6) and Ex. (b)(7)(C) let's go; right?

10 A. He'd have been out the door before me.

11 MR. PAVLOVICH:

12 There you go. And so did it not seem strange to you that ---?

13 A. Yeah, but Denver's such a strange district. I mean, when I say that, I mean,
14 they're eight hours away from their closest mine. And it makes it pretty difficult for me
15 kind of sometimes to evaluate because we just get in a car and go. Out there, it's
16 sometimes a lot longer for them to get somewhere.

17 MR. PAVLOVICH:

18 Well, but Al got there in a car?

19 A. You're right.

20 MR. PAVLOVICH:

21 And Bob Cornett got there in a car?

22 A. I can't dispute that.

23 MR. PAVLOVICH:

24 Okay. I just wondered if you had any comment about that?

25 A. No.

1 wanted to stick their foot in the door and be a part of something that they had no
2 knowledge or no expertise in, and they basically told you that. But they wanted to
3 come up and --- for instance, the one state guy says, you know, we need to do
4 something different, and we're thinking about installing a state 800 number. Let
5 people call in with their issues, and then we're going to give them to you and let you
6 go investigate them.

7 And I said, well, we've already got our 800 number. We don't need you to
8 have one. I says I don't think that's a very good idea at all. I mean, that's the kind of
9 comments that they were giving me.

10 Q. Uh-huh (yes).

11 A. And you know, they wanted to be part of the investigation, and we worked
12 through that. And they put someone on, but they basically had no mining knowledge
13 whatsoever. They called an oil and gas well group, but they had no authority to go
14 into a coal mine. And like I said, Murray, he didn't even want to let the governor come
15 onto the mine property.

16 Q. So this initial meeting that you had with Murray when you and Richard got
17 there, and Al and Laine Adair ---.

18 A. Yeah.

19 Q. And you said the governor was there. Was this like a briefing to bring you up
20 to speed?

21 A. Yes.

22 Q. And what was the governor's involvement? I mean, ---?

23 A. He just listened.

24 Q. He just wanted to be there?

25 A. He wanted to be there probably for political purposes.

1 Q. Okay.

2 A. You know, he wanted to stand by everybody when they were having news
3 conferences, and he had a trailer that he kept down close to where the family briefings
4 were, and it was kind of like a staging area that we all got together there to make sure
5 we were in agreement with what was going on up at the mine site. In other words,
6 everybody had the same depth of bore holes down and what was going on
7 underground and how the briefing would take place.

8 Q. So we know that governor's got involved at QueCreek. Also got involved at
9 Sago ---

10 A. Yeah.

11 Q. --- and Aracoma. Do you think that was some motivation for this governor to
12 be involved?

13 A. Yes. I mean, he even made the ---.

14 Q. He said, I wanted to be like all the other governors?

15 A. Yeah, yeah. I think you're right.

16 Q. But do they contribute anything at all?

17 A. They let us use their helicopter. I mean, there was some --- they use state
18 police presence to get equipment delivered to the mine quicker. I mean, it was more
19 that type of thing than any type of mine ---.

20 Q. We would have used the state police anyway.

21 A. Exactly.

22 Q. I mean, they would have assisted without the governor being there?

23 A. Yeah, yeah.

24 Q. Okay.

25 MR. PAVLOVICH:

1 Kevin, was there --- I was trying to in my own mind figure out
2 where he was coming from. Was there access to the mine? I mean, you said they
3 wouldn't let him on the property. But was there anything from that aspect to the
4 operation as far as security? Ambulances, medical care, food, and stuff like that?
5 Was there anything like that that you was not satisfied with that he might have been
6 addressing?

7 A. No. The sheriff did an excellent job of coordinating all that kind of stuff and
8 keeping people from coming up to the mine. So no, I was very well --- I was very
9 happy with the support we got from the sheriff's office.

10 MR. PAVLOVICH:

11 So when you got to the mine, the area was well secured, all
12 these things had been provided, and you were comfortable with it?

13 A. Very much so.

14 MR. PAVLOVICH:

15 What, Kevin, was your role with the families?

16 A. I was basically, I guess, a backup to Richard. If Richard was tied up or
17 something, I would go down and fill it in or Richard would ask me to discuss certain
18 aspects of the rescue operation. I think at one time there was --- I don't think Richard
19 was supposed to be out there for three weeks. I mean, things happened and he stuck
20 around, but I think maybe there was some type of plan that he was going to come out
21 originally and then he was going to leave and all this was going to be mine as far as
22 meeting with the families and the media briefings. But things kept going on and on
23 and on, and Richard, I think he wanted to stay. He wanted to try to see this through.
24 And so I guess I supported Richard in both the family briefings and the media
25 briefings. There were a number of interviews that were requested that I did with the

1 media, but I typically didn't stand in front of the cameras like Richard did for the media
2 briefing. It was interviews later that Richard went and did something and I took care of
3 those.

4 MR. PAVLOVICH:

5 So for the most part, most of the family briefings consisted,
6 and maybe others, but Richard, you, and AI?

7 A. Yes.

8 MR. PAVLOVICH:

9 The three of you would go to the family briefings, and one
10 would be the primary spokesman which would normally be Richard?

11 A. Yes. And then the company had a representative there. At first it was Bob
12 Murray, and then later it turned into Rob Moore. Rob Moore is his vice-president.

13 MR. PAVLOVICH:

14 We've had some statements that Richard would stick around
15 and meet with the families and have dinner with them and maybe was down there.
16 Did you ever participate in any of that?

17 A. He never had dinner with them. But I mean, he stuck around. Like I told you,
18 there were some family members that apparently didn't want to ask questions in front
19 of people, so we made ourselves available for one-on-one questions, and that's
20 probably what is meant by him sticking around.

21 MR. PAVLOVICH:

22 Okay.

23 A. But we never sat down and ate with anybody.

24 MR. PAVLOVICH:

25 But you would stay with him?

1 A. Sometimes. If there was something going on that I felt like I needed to get
2 back for, I'd go back. But typically I tried to stick around and ease his load in case
3 there were questions that came up. People could come up to me and ask me
4 questions as well.

5 MR. PAVLOVICH:

6 Was there any --- back to underground there just for a
7 second. To your knowledge, was there any other approaches considered in getting to
8 those miners?

9 A. Naturally the bore holes from the surface was an option. We looked at early
10 on trying to get into the sealed area of main west, coming up that way. And I also
11 asked about this fault area, if there's some way that we could --- that's just a lot more
12 time consuming, but bring a slope in to the top end of that bleeder system. And those
13 were the different options that we pursued or talked about.

14 We also had an inspector. I had an inspector crawl over top of the material in
15 the Number Four entry. He set up the 126 that cleaned up, and so I said I don't think
16 that's right, but I had an inspector, he could advance up to 126 in the Number Four
17 entry before he couldn't go any further. His name was Peter Saint.

18 BY MR. TEASTER:

19 Q. If you look at the mine map, and we again are probably wrong, but the
20 information that we had looked at led us to believe that there was a bump that
21 occurred in March over in the north mains, and then the one that occurred over in
22 Number Four entry of the south mains, and then ultimately the one that occurred on
23 the 16th. If you looked at the map, they're fairly straight across from one another.
24 Was that ever considered when you get up in that area that ---?

25 A. We didn't find out how extensive the bounce was in the north section until

1 after all this is over. I mean, even in my discussions out there with the company, they
2 didn't tell us --- I'm talking about Laine Adair now when I say they. He told us they quit
3 mining in the north barrier section because they couldn't travel the bleeder system.
4 We didn't find out --- I didn't find out until after the fact that it was so extensive that it
5 blew stoppings out. I don't know if anybody in the district was made aware that it was
6 that extensive either based on my conversations with Al Davis, Billy Owens. And we
7 had an inspector at the mine. His name was Randy Gunderson. Randy had already
8 completed his inspection of the north barrier section, and they were in a process of
9 putting the seals in and Randy asked them, I think, why they were putting the seals in.
10 And they said we couldn't travel the bleeder system and we quit mining on that side.
11 They didn't say that a bounce occurred to that extent. And it was never reported as
12 well.

13 So we never knew --- I say we, I mean MSHA, never knew that that bounce
14 was that extensive when it did occur. And no, we didn't --- we knew that we were
15 close to the maximum cover. Tech support went up on the surface and was looking
16 for cracks on the surface, et cetera. But we didn't put that all together, Ernie, no.

17 Q. The bump in the north mains, ---.

18 MR. PAVLOVICH:

19 North barrier?

20 BY MR. TEASTER:

21 Q. North barrier, I'm sorry, the north barrier. As I understand it, that happened on
22 the 12th of March of this year?

23 A. I don't know the exact date. I know it was March.

24 Q. Okay. And it's my understanding that they notified the district that they had ---
25 they had a problem with the bleeders or there's some action that took place over there

1 that they needed to seal that area. And I believe they called Billy Owens.

2 A. My understanding was they called Bill Reitsey (phonetic).

3 Q. That's probably right.

4 A. The ventilation supervisor. But I don't know probably as much as you guys
5 know about that.

6 Q. I think that's right. I think it was Bill that they called. Then there was some
7 action that I think Al ultimately called tech support to try to get some seals approved
8 so they could seal that area off because they wanted to get an evaluation point that
9 supposedly would --- floating or they was moving outby because they couldn't get up
10 there to examine that?

11 A. Yeah. It's a wraparound bleeder system to begin with and I'm glad we didn't
12 give them a point outby.

13 Q. Do you know if there was anything submitted by the company requesting that
14 that bleeder point be moved?

15 A. I don't know. I don't know if there was something submitted or if there was
16 just verbally over the phone.

17 MR. PAVLOVICH:

18 Do you know if there was a bleeder evaluation plan point
19 approved for that section to only examine the tow of the water?

20 A. I don't know that either. I thought that from
21 --- I don't know. I just assumed that they had to go to the deepest point of penetration
22 in that north side like we approved at the south side. I don't know that, anything about
23 the tow of the water.

24 MR. PAVLOVICH:

25 Okay.

1 BY MR. TEASTER:

2 Q. The Agapito analysis that was submitted in May of this year as in a part, I
3 guess, of a request to pillar the south mains was sent in, and that had a pretty good
4 discussion as to what --- about that bump and the extensiveness of it. Was you aware
5 of that?

6 A. No.

7 Q. The Agapito report?

8 A. Not until after all this occurred.

9 Q. So we didn't get any information, as you understand it, to raise a flag that a
10 bump had occurred that caused us to cease mining operations up in the north barrier.
11 But if you got this report in May that indicated that, what --- as your understanding,
12 what action should we have taken, if any, based on that information?

13 A. We should have considered it in whether we were going to approve the south
14 barrier or not.

15 Q. Do you know if that was done?

16 A. I want to say I assume it was done because we ended up reviewing the plan
17 before we approved the Agapito report before we approved it, but I can't tell you for
18 sure. That's something that I guess Billy Owens and Al Davis will have to say.

19 MR. PAVLOVICH:

20 Kevin, with your knowledge now of the bump in the north
21 barrier section that you stated it blew out stoppings and some other things, should that
22 bump have been reported to MSHA as per Part 50 on the immediate notification?

23 A. I would say yes.

24 MR. PAVLOVICH:

25 Okay.

1 A. I didn't find that out until I saw that in the BLM report.

2 MR. PAVLOVICH:

3 Okay.

4 A. And that ---.

5 MR. PAVLOVICH:

6 So you had a chance to review the BLM reports?

7 A. I just glanced at it, but there was something that an inspector --- I don't think
8 he even wrote it until after August 16th though.

9 MR. PAVLOVICH:

10 Of his last inspection, that's true.

11 A. Yeah. But I mean, that's where I saw how extensive the bounce was.

12 MR. PAVLOVICH:

13 Okay.

14 BY MR. TEASTER:

15 Q. Are you familiar with the roof control plan up in the --- for the north barrier?

16 A. I just reviewed it quickly, Ernie. No. No, I'm not. I reviewed the south barrier
17 portion, but I didn't look at anything on the north barrier side.

18 Q. I don't know just from talk that there was a significant difference in the plan
19 itself.

20 A. My understanding was that they let --- the pillars in the south was larger than
21 in the north.

22 Q. My understanding of that, Kevin, and I can be wrong, we'll further develop
23 that, but that the Agapito recommended that they be 37 feet longer than were
24 developed in the north barrier. But the plan didn't --- and they did, in fact, do it, but
25 the plan didn't specify that.

1 A. You know, you're right, because I looked at what occurred. And after I saw
2 that, I said, well, what made them --- what in the plan has showed that we've
3 increased the block size both with the drawing on the map and the plan information,
4 and I couldn't find that either.

5 Q. Now, the ventilation plan was submitted showing the larger size blocks, but
6 the roof control plan didn't address it.

7 A. There was some discrepancies, as I recall, between the vent plan and the roof
8 control plan. They didn't match up like they should have.

9 Q. And the roof control plan, when it talked about block size, it says nominal.
10 Nominal 80 by 90 or whatever the right dimensions was. What does nominal mean
11 and how would you enforce the size of that block?

12 A. Be tough to enforce if it says nominal. I mean, I'd want to put the minimum
13 numbers into the plan.

14 Q. Well, what is nominal in terms of the size of the block?

15 A. I guess that --- I mean, I'm speaking giving my opinion. I think it would mean
16 close to. And I don't know how you'd enforce that. I don't know. I can't give you a
17 good answer for that, Ernie. I'd have to ask the district what they meant by that.

18 Q. And we will. We'll ask it. I just thought maybe you'd have some experience
19 with that.

20 A. I don't like those kind of words.

21 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

22 Ernie, could I just ask one thing while you're on this subject?
23 Kevin, what discrepancies stood out to you between the roof control plan and the vent
24 plan? I know you didn't do the detailed review, but maybe some things stood out to
25 you that ---?

1 A. Well, the one thing where they were leaving the blocks. In the vent plan, I
2 think --- one of them allowed them to take the barrier pillar in that area, one of them
3 didn't. I mean, that was the big thing that stood out to me. And then when I looked at
4 the vent plan, I seen where they had pillared back between those sealed areas in the
5 south on each side of the longwall panel. And I said, how are you evaluating these
6 seals? And Al Davis said, well, we have a memo from Bob Eland (phonetic) going
7 back in time. And I said, man, I said, I know that ain't going to fly.

8 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

9 I remember that name.

10 A. Stickler's pretty sharp, and I know you're taping me here. But I mean, he
11 looked at that and he says to me, how are they evaluating these sealed areas. I
12 thought, oh, man, I wish he had taken a longer time than that for that question to come
13 up. So I told Al, I said, you know, Al, I says, you know this ETS with the seals tells us
14 that if you can't get the seals you have to evaluate them remotely like through a bore
15 hole or whatever. And they just weren't doing that. I mean, there's, you know, a
16 number of issues that my initial review, Al, told me that something --- I was a little
17 uncomfortable with those parts of the plan.

18 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

19 I don't want to belabor this, but did you see the evaluation
20 points for that south?

21 A. Oh, yeah, I did see it.

22 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

23 Because it was originally proposed to be sealed where we
24 were talking about that south mains that was pillared?

25 A. Yeah.

1 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

2 It was originally proposed to be sealed, and then for some
3 reason maybe due to the changes in the grades it wasn't sealed, or I'm not sure
4 what ---?

5 A. He said they couldn't get seals approved from tech support to get them in.
6 Now, there's a seal approval to do it.

7 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

8 Yes.

9 A. But they didn't seal. And that was another problem I had with the plan.

10 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

11 The evaluation points were far on the right hand side.

12 A. Yeah. It didn't look like an effective means to evaluate to me.

13 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

14 Okay.

15 A. And those are some of the points I said when I reviewed it I came up with
16 quickly that I would have questions about.

17 BY MR. TEASTER:

18 Q. Kevin, the Agapito report recommended that you get full pillar extraction in the
19 south barrier as a result of the bump in the north barrier. They said that you get pillars
20 and in addition to that you try to mine part of the barrier to the left to induce better falls
21 in that area. And then when the plan was submitted, it made no mention of that and it,
22 in fact, left box. Do you know how this was all considered and ultimately approved?

23 A. I don't.

24 Q. The ventilation plan showed just the one block, one row to protect that one
25 entry, but the roof control plan left these blocks in. Do you know why those blocks

1 were left in? Did you hear any discussion?

2 A. Yeah, because when you got down into the area between 140 and 141 where
3 you only had three entries, my understanding was they wanted to be able to leave
4 those in to support travel for an examiner to get to the back end to evaluate the
5 bleeder.

6 Q. Did you ever hear any discussion that that little thing jetting over from the
7 west mains was a sump?

8 A. Yes.

9 Q. Maybe to protect that?

10 A. Well, I heard that as well, but that's the whole reason that entry and main west
11 jetted out was because they made that into a sump. But I thought the --- my
12 understanding by talking to the district people is they left those eight blocks there so
13 people could travel to the back end of the bleeder system. If they would have mined
14 those --- continued to mine the two blocks, they wouldn't have been able to get to the
15 back end.

16 Q. Are you aware of any --- that they've mined part of the mine floor?

17 A. Yes, I am aware of that. I don't know if it's true or an allegation, but in one of
18 the meetings we had with the company there was an individual. His name was Gale
19 Anderson. Gale Anderson was like the midnight shift foreman, I believe. And he
20 started talking about them mining up to four feet of bottom coal through the area. And
21 the attorneys kind of pulled him to the side and the discussion ended at that time. And
22 he wouldn't say anything else about it. But we've made the investigation team aware
23 that I've talked to Richard Gates and I've told him he needed to pursue that with the
24 interviews to find out if bottom mining actually was occurring.

25 Q. And is that a violation, to your knowledge?

1 A. I'd have to look at what was exactly approved in the plan, Ernie, but to me that
2 would compromise, I would say, the Agapito report. I don't think that that was
3 something that they considered. So I would want to review the plan a lot closer to see
4 exactly what it said. But I guess the first blush, I'd say yeah, that was a violation.

5 Q. But we haven't seen anything in the roof --- I have not seen anything to
6 indicate they were leaving a coal bottom. There's some discussion over in the north
7 barrier about leaving some coal roof, and they ultimately decided that wasn't a good
8 idea and stopped it. But I had no --- never addressed --- I never seen anything that
9 addressed the mine floor.

10 A. I would think it would compromise the pillar stability if you took four additional
11 feet of floor coal.

12 Q. Yeah.

13 A. That would expose a lot more of the pillar. But I'm not a roof control expert,
14 and I haven't really had the opportunity to review the plan with a fine-tooth comb,
15 but ---.

16 Q. I definitely can see where that could influence some activity with the pillars,
17 but I didn't --- I've not seen anything to say that you won't mine, that you've got to
18 mine a certain height and you've got to leave so much coal. And that's what I was
19 concerned, about how they --- why they were leaving four feet of coal. That's a lot of
20 coal unless you didn't have the height to mine it, not it's to support the pillars.

21 A. I don't know.

22 Q. Okay. How was it determined where the bore holes would be drilled? Did you
23 have any involvement in that?

24 A. A lot of involvement.

25 Q. Could you share that with us?

1 A. Well, the first --- I guess the first two were decided before we got on site. I
2 mean, we knew where they were going down. One was --- they had trouble ---
3 Number One, they were going to have trouble building a road to get up on top of this
4 mountain. I mean, there's no roads up there. So they decided to bring in this --- they
5 called it a helicopter drill. It was a two-inch bore hole to go down somewhere around
6 the belt tail piece. That would be bore hole Number One. In addition, they started the
7 roadway up there, and then they were going to bring a regular drill up and put bore
8 hole two in.

9 The first bore hole was --- bore hole one was supposed to go in in the Number
10 Three entry at Crosscut 138. That was somewhere around --- I believe they called it
11 the kitchen. The second bore hole was supposed to go in near the belt tail piece. So
12 the first bore hole, when it went in, it drifted and we were fortunate enough that it even
13 hit the entry itself, and it went in in the Number Two entry rather than the Number
14 Three entry.

15 We pumped --- I don't want to say bottle samples. We took handheld
16 readings after it went in. It was probably a very discouraging time for me when it went
17 through. We knew we had some opening space there. We knew that ---.

18 Q. Do you remember what the void was?

19 A. A rough guess of five feet. I mean, I'd have to look at the records, but it was
20 somewhere --- it was a lot more than what we had seen down in here. And I felt really
21 good about the void. But then when the sample result came back seven percent
22 oxygen, I mean, that just like really took the air out of our balloon. And bore hole two
23 went in, and it was pretty similar to that.

24 Q. Going back a little bit to that Number One bore hole, the initial readings, as I
25 understand it that was reported down to the command center was in excess of 20

1 percent of oxygen.

2 A. You're right.

3 Q. And that determination was made about 11:15 that night?

4 A. I thought it would have been later than that. I recall like 1:00 in the morning, I
5 thought.

6 Q. Okay. Well, from what I understand it was late, around 11:15 that night. And
7 then about 1:45 a.m. is when they got a reading that indicated there was between
8 seven and eight percent oxygen?

9 A. Okay. I'm not exactly --- I know I left the mine right before they reported low
10 oxygen. I'd been there all day and it was like 1:00 or 2:00 in the morning that I had
11 left. And someone called down and talked to Tommy Hooker and said that they
12 basically haven't sucked on the line long enough to purge the air. And when they did,
13 the oxygen content was closer to seven percent --- it was close to seven percent.

14 Q. Now, when you got this reading of 20-plus percent, was that information
15 shared in any way with the family members?

16 A. I believe it was. I believe Richard said that that was the first sample, but he
17 basically told them something like, you know, you need to be cautious because we
18 haven't taken a bottle to confirm it, and we're trying to pull a sample from there.

19 Q. So was there a special meeting called with the families or was it relayed down
20 to the family liaison? Exactly how was that communicated to the families?

21 A. I think it may have been called down. I'm not exactly sure now, Ernie. You
22 know, there's so much going on right at this time. I'm not sure if that was a family
23 meeting or whether it was called down because it was --- I think it was after midnight
24 when all that, when the bore hole first went through. It shows it went through at 10:00
25 p.m.

1 Q. Yeah. And we have information to indicate that first reading was like 11:15
2 p.m.

3 A. Well, it's going to take at least an hour to get the drill seals out.

4 Q. Yeah. So we're somewhere around that area.

5 A. Okay.

6 Q. At any rate, I'm leading up this 1:45 when we got the reading, and it was
7 probably reported down there somewhere around 2:00 a.m. that the oxygen content
8 was seven percent. Now, when was that information relayed to the families?

9 A. It would have been the next morning.

10 Q. Nine o'clock?

11 A. Because I'll tell you, I remember coming back to the mine. I went back to the
12 hotel like 3:00 in the morning, and I'm coming back out at 6:00 or 7:00. And I get a
13 phone call from someone saying the oxygen's seven percent. And my first question
14 was did we get a bottle sample, and they said, yeah, that was part of the hold up.
15 After we took a handheld reading and found it to be seven percent, we took a bottle
16 sample, and we didn't want to go to anybody and tell them what it was until we
17 confirmed it with the bottle sample result. And that was done like at 6:00 or 7:00 in the
18 morning was my understanding. They called me from the mine or someone called me
19 to make me aware of it. So I got on the phone right away and called Richard and
20 says, you know, that oxygen's not as good as what the first reading was given to us
21 was.

22 MR. PAVLOVICH:

23 Kevin, in your notes there you --- and this goes back to, I
24 guess, the initial thing.

25 A. Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

You say contacted Jeff Kravitz just prior to press briefing, air readings of 20.5 oxygen, zero methane, 12 parts per million.

A. Do I got a time on that?

MR. PAVLOVICH:

Not on that one, but then you say left mine at 2:15 a.m., arrived hotel 3:00 a.m. Woke up at 6:45, left hotel 7:15, saw a couple of e-mails, made a return call to Amy Louviere.

A. That's who I heard it from.

MR. PAVLOVICH:

At 7:25 am., and found issue with air readings.

A. Yeah. I knew something was going to come up with that so I went into more detail about what happened that night. I knew that was going to be an issue.

MR. PAVLOVICH:

And then your next notation is called Jeff Kravitz who discussed air samples.

A. Okay.

MR. PAVLOVICH:

And then your next page says, looks like maybe on an MSA handheld 7.902, 139 CO?

A. Yes.

MR. PAVLOVICH:

Texas is 6.7 ---.

A. ITX.

MR. PAVLOVICH:

1 ITX, Solarus 6.8160, and five bag samples.

2 A. Right.

3 MR. PAVLOVICH:

4 Okay.

5 A. Yeah, I wrote those notes after the fact because I knew that was going to be
6 an issue.

7 MR. PAVLOVICH:

8 For possibly ---?

9 A. I'm not taking notes at three o'clock in the morning.

10 BY MR. TEASTER:

11 Q. So then what would be the reason for not getting this information to the
12 family?

13 A. I think they wanted to talk to them at the family briefing the next morning.
14 And it was scheduled for nine o'clock. That information --- there was a snafu at the
15 mine. For some reason they didn't want to report it until someone contacted me. And
16 I mean, even in the log book they had like no one's allowed to pull this off unless
17 Kevin --- until Kevin Stricklin sees it. And I'm not sure why they did that. Tommy
18 Hooker was in charge, but if you listen to Tommy I think he felt like he wanted to get a
19 bottle sample result. We didn't want to go to families and first tell them 20 percent
20 and then say seven percent until we had some confirmation from a bottle sample.

21 MR. PAVLOVICH:

22 Right.

23 A. And that didn't come until early the next morning like 6:00 or 7:00 in the
24 morning. When that happened, that's when they --- shortly after that the family
25 briefing was scheduled and that's when they told the families. It wasn't that they kept

1 it from them, I don't think, Ernie. It was that we had the briefing coming up and that's
2 where they were going to discuss that sample result.

3 BY MR. TEASTER:

4 Q. And what's your understanding of the reason for the erroneous reading of 20-
5 plus percent?

6 A. They didn't suck on the sample long enough. If they would have continued, it
7 would have went down to seven percent. That was a very discouraging time with that
8 seven percent.

9 Q. Had you seen any of the analysis air samples from behind the seals in the
10 west mains?

11 A. Yes. I mean, prior to that I did.

12 Q. And how did they compare to the readings that you ultimately got?

13 A. It was pretty close. And then I knew that we had low oxygen at the front end
14 here originally when this occurred, you know. But I mean, I didn't put this low oxygen
15 together with these two or this low oxygen here together with this until when I saw this
16 seven percent, I'm thinking, oh, shit, you know. This isn't good. So that's when we
17 made the determination that the best chance of survival, if they could have lived
18 through whatever this occurred initially, built some type of barricade across these
19 three entries, their best chance at survival would be the back of the bleeder system.
20 So when you're asking me did we have conversations, this is where we suggested to
21 the company our next bore hole needs to be toward the back of the bleeder system.
22 That's our best chance at survival. So we talked them in --- or we had a discussion. I
23 shouldn't say talked them in. That bore hole Three needs to come in back here.
24 Q. Going back to that seven plus percent, and it being compatible with the
25 reading you had, what did that mean to you?

1 A. That we broke into either main west or this longwall bleeder gob somehow for
2 the oxygen to go that low that quickly.

3 Q. And then you got similar readings at the bottom of Number Two?

4 A. Yes.

5 Q. And was cameras dropped down, to your knowledge, down the Number Two
6 hole?

7 A. Yes. Number One wasn't big enough. It was only two inches in diameter, but
8 we could stick a camera down Number Two. And then shortly after that we made the
9 decision that we would try to start pumping oxygen in one of these holes if we could.
10 And we made --- we started pumping air in.

11 Q. So Number Two had basically the same thing as Number One in terms of gas
12 readings?

13 A. Yes.

14 Q. And what did you find in Number Three bore hole?

15 A. Number Three, we found a void again, and we found 15 to 16 percent oxygen.
16 I mean, our thought process was pretty good. I mean, that was --- we thought that
17 was the best chance at survival, and of all the air readings, it did show that. It wasn't
18 good, but it was high enough that it could sustain life, we felt.

19 Q. Do you recall the void that you had at the bottom?

20 A. You know, again, Ernie, I think it was four to five feet. I'd have to look at the
21 notes from --- it was --- we were able to see posts in the crosscut that were still
22 standing from the TV camera that was sent down. And I think the void was four to five
23 feet there.

24 Q. And you were pumping oxygen or air down One and Two bore hole at this
25 time?

1 A. I'm not sure if we were pumping it in both of them. We may have been
2 pumping into one, taking an air reading out of the other one. And shortly after this
3 Three went in we started pumping air in Three as well because we felt the best chance
4 at survival would have been up in this area up here based on that air quality reading.

5 MR. PAVLOVICH:

6 Kevin, with what you saw and knew about the damage the
7 bump had done underground and the extent of the bump and obviously the forces,
8 and then also looked at the evaluation on that bore hole of seven percent, did you feel
9 there was little or no chance of survivability at that time?

10 A. Until we didn't find anything in Four, I still thought we had a chance.

11 MR. PAVLOVICH:

12 Was it diminished at all?

13 A. Oh, yeah. It diminished every bore hole, but I mean, when you try to think
14 through this, naturally they're going to try to come out. They can't make it out because
15 of the material. They come back. This low oxygen is starting to build, so I mean, my
16 thought process would tell me to barricade as tightly as you can and maybe in these
17 three entries, and try to barricade in here because this gob area, if it didn't break
18 through into here, this is so small that you would still expect there to be oxygen to
19 survive. So we put three in at 15 or 16 percent oxygen. And while we don't have
20 much confidence in the seismic equipment, when we're in Three, Kravitz and Urosek
21 feel that there's some pounding near where we ultimately put bore hole Four in that
22 cannot be explained. So we're still optimistic that we can --- we have something here.

23

24 MR. PAVLOVICH:

25 Okay.

1 A. So we come over and we put Four in. When we put Four in and we find only
2 13.8 percent oxygen, no communication, that kind of burst my bubble.

3 MR. PAVLOVICH:

4 What day was that that Four went in and you got the
5 samples?

6 A. August the 19th.

7 MR. PAVLOVICH:

8 Okay. So it was well after the second event?

9 A. Yes, yes. And then we made a decision to put a couple more bore holes in to
10 see if we could find anything. One went in closer to the kitchen and one went in over
11 top of where we thought mining was actually being conducted. But up until bore hole
12 Four, we still had a positive attitude, I'll say. But you're right. I think it diminished
13 every time. Naturally as time goes on, there's less and less of a chance.

14 MR. PAVLOVICH:

15 I mean, you never want to say there's no hope.

16 A. Right.

17 MR. PAVLOVICH:

18 We realize that. But ---.

19 A. I'd say after Four, Joe, is when we kind of realized that there was little if no
20 hope. And that's when the families started coming and they wanted to drill --- to put
21 the capsule into the mine and go in that way to see what was going on, and we made
22 the decision that that was unsafe based on what had occurred at 127 as well as we felt
23 there was a --- well, there was so many problems with sending something in 2,000
24 feet, whether you'd --- you'd have to almost do it under oxygen from the surface. You
25 don't know if the earth was shifting, if someone was going to get stuck in there. You

1 had no fresh air underground for people to get to, that we just didn't --- and we had no
2 communication with anybody. If we would have had communication with miners
3 underground, I'm sure that's a chance we would have taken. But based on what we
4 saw, we just didn't think that was acceptable.

5 BY MR. TEASTER:

6 Q. Were you getting a lot of pressure from the companies to put the capsule ---
7 drill a hole for the capsule?

8 A. Not from the company, but from the families.

9 Q. The families, I meant to say.

10 A. Yes. We had family members volunteer, that they said if you wouldn't do it,
11 MSHA, we'll --- the Mexican consulate that came to some of the meetings said they
12 had volunteers that would go in that way. And we said we just couldn't allow anybody
13 to do that.

14 MR. PAVLOVICH:

15 Kevin, in your notes again, I'm referencing, and I'm looking at
16 a date ---

17 A. Okay.

18 MR. PAVLOVICH:

19 --- that says 8/11. And I'll certainly let you look at these to
20 refresh your memory, but there are about two pages. Well, there's one page that has
21 some discussion about advance water jacks and other things. And there's one that
22 has a small sketch which you can probably explain to us.

23 A. Okay.

24 MR. PAVLOVICH:

25 Then you have some notes here that are crossed out, and

1 then one that says talk to Kravitz about MEU members on body retrieval. Could you
2 explain that to us?

3 A. That was, you know, again, I think what you do in all these, you look at all the
4 possibilities you have. And one of the things that we looked at the possibility of is we
5 were going to have to retrieve bodies. And the MEU guys seemed to be the most
6 trained for it. I think I was talking to Virgil Brown and some of the folks, and they said
7 they would be willing to go in and get the bodies out.

8 MR. PAVLOVICH:

9 Okay.

10 A. And we talked to the sheriff as well. The sheriff wanted --- he approached me,
11 and the sheriff was in place since Wilberg.

12 MR. PAVLOVICH:

13 Okay.

14 A. He said he had been underground at Wilberg and he did not want to have to
15 go underground here. And he asked would we do everything that he needed to do if
16 we came to that point? And I said yes. And I think that's probably the notes on the
17 body bag was more for the sheriff. His name was Larry Guymon. And he can confirm
18 with you that we had that conversation about us bringing the bodies out rather than
19 him sending people underground.

20 MR. PAVLOVICH:

21 So was that note made on the 11th, do you know, based on
22 that sequence there?

23 A. I'm sure that it was, Joe.

24 MR. PAVLOVICH:

25 Okay. So at that point it wasn't that you were saying on the

1 11th, Jeff, you need to get your guys ready to retrieve bodies, based on anything else
2 you knew?

3 A. No.

4 MR. PAVLOVICH:

5 Okay.

6 A. No. It was just that it was one of the possibilities, and it must have been that
7 conversation I had with the sheriff that made me put it in my notes.

8 MR. PAVLOVICH:

9 Okay.

10 A. And the Xs out, I probably made notes on what I needed to do. And after I did
11 it, I crossed it out.

12 MR. PAVLOVICH:

13 Okay.

14 A. Like talk to Virgil about Tygon --- we were looking at doing an SS6 study ---

15 MR. PAVLOVICH:

16 Okay.

17 A. --- at one time.

18 MR. PAVLOVICH:

19 You never did that though; right?

20 A. No.

21 MR. PAVLOVICH:

22 Okay.

23 A. But it was --- what we were going to do was release gas in one of the bore
24 holes and see if we could get it out at the seal. That would tell us if we were
25 communicating --- which side we were communicating with.

1 MR. PAVLOVICH:

2 Okay.

3 A. So that was an example of what I did.

4 MR. PAVLOVICH:

5 Okay. What are we doing? Are we getting something to eat?

6 MR. TEASTER:

7 No, we had a thing in there on the family liaison. He put a
8 couple copies in there. I just wanted one.

9 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

10 Can I ask a question on the bore holes, before we get out of
11 it?

12 MR. TEASTER:

13 Sure.

14 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

15 Do you know if it was the company or MSHA that passed on
16 the erroneous reading to the family and press?

17 A. I really don't know that, Ex. (b)(6) I don't know who it was.

18 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

19 Because Ex. (b)(7) it could make a --- I mean, you know, did the
20 company just say hey, we got this reading and I'm going to run out and tell them
21 something good without, you know, knowing if it was true or not?

22 A. I can't answer that for sure if it was reported to the families by the company or
23 us. The family liaison would be able to help you with that. On midnight shift it was
24 Richard Laufenberg's, his name from metal/non-metal. Carla was on afternoon shift, I
25 believe.

1 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

2 You didn't talk to ---?

3 A. I'll tell you, it's just sometimes overwhelming with all that's going on to try to
4 remember everything that happened three months ago right now.

5 MR. PAVLOVICH:

6 I'll bet.

7 MR. TEASTER:

8 Do you have anything else, Joe?

9 MR. PAVLOVICH:

10 Oh, go ahead with what you were going to do.

11 MR. TEASTER:

12 I was going to get into the family liaison.

13 MR. PAVLOVICH:

14 Go ahead.

15 BY MR. TEASTER:

16 Q. What training have you provided for the family liaisons?

17 A. After the MINER Act we got 16 MSHA people that we brought down to the
18 Academy here, and there was a training session put on for them by the Academy staff.
19 We had I believe some grief counselors come in and folks from the NTSB that
20 actually put training on and tried to prepare them the best they could for being in a
21 situation like this.

22 Q. What's the genesis of the MINER Act? Was that Sago, or was it ---?

23 A. Sago, Aracoma, and Darby all put together. That's when Congress felt like
24 they needed to address something. So in June of 2006, they came up with the MINER
25 Act.

1 Q. And has all of MSHA people been trained in the MINER Act, to your
2 knowledge?

3 A. I'm not sure I know what you mean by trained in the Miner ---. There's
4 regulations that ---.

5 Q. Right.

6 A. There's parts of it that everybody's been trained in, Ernie. Some of it hasn't
7 really even taken effect yet, like there's a provision for mine rescue that has to be
8 completed by the end of this year. So our inspectors wouldn't have any training on
9 that. But like ERPs, the things that have already been implemented, they would be
10 trained in.

11 MR. PAVLOVICH:

12 Kevin, what's your opinion of what the MINER Act primarily
13 addresses?

14 A. The fact that if you're trapped there's going to be breathable air or refuse
15 chambers or more SCSRs to help protect you.

16 MR. PAVLOVICH:

17 So it's really looking at after the fact of an explosion or a
18 disaster or something?

19 A. I can't say all parts of it are that way, Joe, but I mean, I'm thinking there's
20 redundant communications supposed to help you before the fact, tracking to let you
21 know where people are located at before the fact. But the majority of it is after the
22 fact.

23 MR. PAVLOVICH:

24 Well, even wouldn't the redundant communications be after
25 the fact because our concern is the phone lines being blown out, like at Sago. Same

1 with tracking. Do we really care about tracking miners while they're working or do we
2 want to find out where they are after the fact?

3 A. Well, we want to know where they are if something happens.

4 MR. PAVLOVICH:

5 If something happens.

6 A. Right.

7 MR. PAVLOVICH:

8 So that's after the fact?

9 A. You're right. No, you're right.

10 MR. PAVLOVICH:

11 So in essence, what we did was pass regulations, spend
12 millions of dollars, and countless, countless hours of inspection time and other time to
13 deal with something that happens after the fact in lieu of preventing the event to begin
14 with?

15 A. You know, I never heard it explained like that, but that's a very good point.
16 I've never looked at it that way.

17 MR. PAVLOVICH:

18 I mean, would you not --- and give me your opinion on it, but
19 is prevention or after the fact the most important issue to you?

20 A. Prevention is.

21 MR. PAVLOVICH:

22 Because of your experience, you realize that after you have
23 an explosion, you can have all these things in place and still not have any survivors?

24 A. That's true.

25 MR. PAVLOVICH:

1 But if you prevent the explosion to begin with you should have
2 all survivors?

3 A. Yes.

4 MR. PAVLOVICH:

5 Has anybody ever brought that up to Congress, to your
6 knowledge?

7 A. I doubt that anyone has. I mean, our involvement --- I mean, you both have
8 been with MSHA, so you know that no one came to us and asked us any opinion of
9 anything that should be put in. They basically gave it to us and says this is what you
10 need to implement. And it's been a reactive ---.

11 MR. PAVLOVICH:

12 Yeah, how did they get that information?

13 A. What I hear happens is congressmen meets with their constituents like some
14 folks meet with mine operators, some meet with the union. And the staff members for
15 the congressmen basically draft what they think the regulation needs to be. And then
16 they send it over to us after it's passed and says you need to enforce this. And I can
17 tell you ---.

18 MR. PAVLOVICH:

19 And MSHA had no involvement whatsoever.

20 A. No, none. And it's been reactive for us since it was implemented. I mean,
21 we're constantly doing spreadsheets and looking at what mines have implemented
22 instead of --- it's more of a reactive mode for us than a proactive mode, that's for sure.

23 MR. PAVLOVICH:

24 And so how has that affected your ability to manage
25 inspections and enforcement of the regulations, the prior regulations, not the MINER

1 Act, but the things that you need to do as a preventative nature?

2 A. Well, it's decreased our time in getting EO1 or triple A inspections done.

3 MR. PAVLOVICH:

4 To the point that maybe they weren't being done or they
5 weren't being done to the quality that they need to be?

6 A. I agree with both of those statements.

7 MR. PAVLOVICH:

8 And so along those same lines, I mean, the MINER Act
9 covers a great number of issues, breathable air, SCSRs, and I'm sure you're familiar.

10 A. Seals.

11 MR. PAVLOVICH:

12 Pardon me?

13 A. Seals.

14 MR. PAVLOVICH:

15 Seals. Has there been problems with trying to train your
16 personnel throughout MSHA on what all these requirements are? Well, let me ask
17 you, do you think every district manager is fully aware of all the requirements and
18 applies them consistently throughout his district?

19 A. Consistency is the key there. I doubt if it's consistent. Sometime this year,
20 Joe, I had a meeting with the DMs, and I told them that we need to have two days of
21 training. One day I wanted them to talk about the MINER Act, and one day I wanted
22 them to focus on all of the different recommendations of the internal review, because I
23 had heard from --- I'll tell you the NCFLL approached me and they felt that the
24 inspectors weren't prepared or didn't have enough knowledge about the MINER Act.
25 So I told them, and I committed that we would have at least one day in each district

1 that we would do nothing else but go over the MINER Act and the requirements of the
2 regulations with our inspectors.

3 You know what happens when you assume? But I'm assuming that that was
4 done.

5 MR. PAVLOVICH:

6 Okay. Even if that was done, you have 11 districts and 11
7 district managers under your responsibility. How did you know they all gave the same
8 interpretation or application?

9 A. I don't.

10 MR. PAVLOVICH:

11 Okay.

12 A. I just have to ---.

13 MR. PAVLOVICH:

14 So if they are more or less knowledgeable in certain areas,
15 then that same information is what was passed to the inspectors?

16 A. That, and I mean, we've shared a lot of guidance with the districts as to what -
17 -- you know, what would be acceptable.

18 MR. PAVLOVICH:

19 Has there been a lot of changes through that guidance?

20 A. There has been some. I think there's been one policy that has been revised --
21 - one program instruction letter or a PIB that has been revised.

22 MR. PAVLOVICH:

23 Was there a lot of changes to the way that seals would be
24 addressed?

25 A. Yes, there was.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

Do you think now that everybody understands, here's what our requirements are for sealing?

A. I'm still not sure they do because now we're --- we got something like an interim in place that's just emergency, temporary standard. And it's going to change again when the regulation comes out. And then on top of that, this S MINER Act talks about a seal that needs to withstand a 240 PSI pressure. And I mean, that number has never been discussed ever. I don't know where they came up with this 240 PSI, so it's going to be another change that we're going to have to implement.

MR. PAVLOVICH:

So as far as the requirements for sampling of seals, plans that operators have to put together for seals, do you think there's a problem there with everybody understanding the same thing and ---?

A. Yes. Basically right now it's like a crisis management type thing. Whenever something comes up we try to address it and stick our finger in the dyke. And I guess it's more of a reactive mode than a proactive mode. So I would agree with you.

MR. PAVLOVICH:

How do you get away from that?

A. I think I'll be able to when I get these 257 trainees trained and I can focus on having specialists in each district, you know. Gain some consistency by telling them, this is where we need to go and it's kind of shared with people, and get back to the point that we're kind of in charge and calling the shots rather than just crisis management and trying to answer questions for everybody.

MR. PAVLOVICH:

By the way, we did ask for staffing levels and hires from like

1 the last five years or ten years, but we never got any of that.

2 MR. TEASTER:

3 Yeah, we did.

4 MR. PAVLOVICH:

5 We did get it? Okay.

6 A. We're basically right now back to the staffing that was in place in the year
7 2000. But I mean, ---.

8 MR. PAVLOVICH:

9 What's the reason for that, Kevin, in your opinion?

10 A. Our budget has been cut over the years.

11 MR. PAVLOVICH:

12 And why was it cut?

13 A. We were below the radar screen. Fatalities were coming down. Money just
14 wasn't given to MSHA because it seemed like we were doing our job with less money.
15 And then all at once Sago, Aracoma, and Darby hit, and it got everybody's attention.

16 MR. PAVLOVICH:

17 So because you were successful as an agency in reducing
18 accidents and fatalities, Congress cut your budget? Someone cut your budget?

19 A. Yeah, I don't know if it was Congress or the Department of Labor didn't give
20 us the money, but our budget has been cut for the past four or five years prior to ---.

21 MR. PAVLOVICH:

22 And so you think then that the stress on the agency of losing
23 positions had some effect on these events that have happened since Sago? And I'm
24 asking for your honest opinion.

25 A. I can't say that --- I can't say because of Sago. I mean, we inspected the

1 mine. I don't know how we could have protected ourselves against a lightning strike
2 behind a shield. Aracoma and Darby, I don't know for sure.

3 MR. PAVLOVICH:

4 Okay. Well, you've reviewed those reports, I know, in detail.
5 And what was primarily the causes or the main causes of the Aracoma fire and the
6 loss of the two men there?

7 A. As far as MSHA's position at Aracoma, it was poor inspection and poor
8 oversight.

9 MR. PAVLOVICH:

10 Okay. So poor inspection and poor oversight from MSHA's
11 perspective which you feel greatly contributed to that?

12 A. I feel that if we would have done a better job of inspecting the mine, the
13 severity of what occurred could have been decreased.

14 MR. PAVLOVICH:

15 Okay. So what was done in regard to that lack of inspection
16 and oversight? What corrective actions were taken?

17 A. We put **Ex. (b)(6) and Ex. (b)(7)(C)**. We pulled them
18 out of there **Ex. (b)(6) and Ex. (b)(7)(C)** resigned. A **Ex. (b)(6) and Ex. (b)(7)(C)** resigned.

19 MR. PAVLOVICH:

20 Retired or resigned?

21 A. Retired, I'm sorry.

22 MR. PAVLOVICH:

23 Okay. So no penalty there, they just retired?

24 A. No penalty, yeah. Resigned wasn't the right word. And in addition, we got the
25 ability to hire 170 new inspectors not only in Aracoma but throughout the country to fill

1 some of the needs that we felt needed to take place, as well as replacing people that
2 left one for one. So we ended up hiring 257 or 274 people in a year and three months.

3 MR. PAVLOVICH:

4 Okay. But that was --- in other words, you said there was ---
5 the direct cause here was possibly that some **Ex. (b)(6) and Ex. (b)(7)(C)** and
6 **Ex. (b)(6) and Ex. (b)(7)(C)** were not doing their job properly? They were allowed to **Ex. (b)(6) and Ex. (b)(7)(C)**

7 **Ex. (b)(6) and Ex. (b)(7)(C)**
8 **Ex. (b)(6) and Ex. (b)(7)(C)**

9 A. Right.

10 MR. PAVLOVICH:

11 **Ex. (b)(6) and Ex. (b)(7)(C)**

12 A. **Ex. (b)(6) and Ex. (b)(7)(C)** Their hearing is ---.

13 MR. PAVLOVICH:

14 And so what message does that send to the thousand or so
15 other inspectors and supervisors and managers that you have?

16 A. I don't ---.

17 MR. PAVLOVICH:

18 And the end result, the 270 jobs that you got to hire, those
19 guys weren't doing their job because they didn't have enough help, did they?

20 A. Say that again.

21 MR. PAVLOVICH:

22 Okay. You said the other result of Aracoma was you got to
23 hire 170 or 200-some --- some number of people. Was the reason that those **Ex. (b)(6) and**
24 **Ex. (b)(7)(C)** **Ex. (b)(6) and Ex. (b)(7)** not doing their job at Aracoma the fact that they didn't
25 have enough help, or were they just not doing it?

1 A. They were just not doing their job.

2 MR. PAVLOVICH:

3 So the increased numbers of people doesn't help that problem
4 at all?

5 A. It doesn't help to weed out our problem people, but I think ---.

6 MR. PAVLOVICH:

7 So how do we weed out our problem people, and what do we
8 do with them?

9 A. We need to take action when we find out that they're not doing what they're
10 supposed to do.

11 MR. PAVLOVICH:

12 And with the policies and programs and personnel actions that
13 are presently in place, can you do that effectively? With the restrictions you have on
14 how you deal with personnel, can you weed out people effectively?

15 A. It's very time consuming, but I think we can do a hell of a lot better job than
16 what we've done in the past.

17 MR. PAVLOVICH:

18 Okay.

19 A. I'll give you an example. We found an ^{Ex. (b)(6) and Ex. (b)(7)(C)} [redacted] after all that

20 happened at Aracoma, we found ^{Ex. (b)(6) and Ex. (b)(7)(C)} [redacted]

21 ^{Ex. (b)(6) and Ex. (b)(7)(C)} [redacted]

22 [redacted]

24 MR. PAVLOVICH:

25 Do you think that's effective?

1 A. I think that ---.

2 MR. PAVLOVICH:

3 For somebody that wasn't doing their job after what happened
4 at Aracoma?

5 A. No. I think that was awful. This is a guy with ^(b) years of experience, but I
6 think it sends a message to the people that we're hiring ^(b) that we're not going to --- we're
7 not going to accept this as management. It's kind of ^(b) embarrassing that we have
8 people that won't do their job. And there's a lot of red ^(b) tape with the government.
9 There really is.

10 MR. PAVLOVICH:

11 Is there some other government agency or somewhere else
12 that is able to deal with employees who don't do their job more effectively than
13 MSHA?

14 A. The IG. I mean, he can come in and actually do an investigation.

15 MR. PAVLOVICH:

16 No, but I mean, you know, is there any agency that you know
17 of that doesn't have those restraints of --- I mean, if you walk out there and say,
18 ^{(b)(6) and Ex. (b)} you didn't even go underground and you filled out this whole report, you're
19 fired, here's your papers. And that guy walks out the door tomorrow. Is there any
20 agency that has the ability to do that?

21 A. I don't know of any.

22 MR. PAVLOVICH:

23 So you think it's inherently a government problem of dealing
24 with poor employees?

25 A. I think it's tough --- yes. Yeah. I mean, a mine operator can do it in a

1 heartbeat. Government can't.

2 MR. PAVLOVICH:

3 Does that hinder the way you can do your job?

4 A. Yes, I'm sure --- yes. There needs to be checks and balances. You don't
5 want someone firing everybody, you know, for something little, but I think it would help
6 us to have the ability that we wouldn't have to go through so much red tape to take
7 care of these issues.

8 MR. PAVLOVICH:

9 But you would agree that the issues **Ex. (b)(6) and Ex. (b)(7)(C)**
10 Aracoma wouldn't be something new?

11 A. I agree.

12 MR. PAVLOVICH:

13 Okay. And therefore action should have been taken?

14 A. Yes.

15 MR. PAVLOVICH:

16 In a much more timely manner and effective manner?

17 A. Yes.

18 MR. PAVLOVICH:

19 **Ex. (b)(6) and Ex. (b)(7)(C)**
20 **Ex. (b)(6) and Ex. (b)(7)(C)**

21 A. **Ex. (b)(6) and Ex. (b)(7)(C)**

22 MR. PAVLOVICH:

23 And that's two years ago?

24 A. Yes. We have a meeting set up. I have a decision-making meeting with them
25 January the 10th.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

Timely anyway. I'm sorry. I didn't mean that. With that in mind, with all that that we've just said, Kevin, does that make your job as the administrator and the manager's, district manager's jobs, more difficult in achieving compliance and preventing accidents and preventing the type of things here at Crandall Canyon by not having the ability to hire people when you need people, by not having the ability to control the work force, to discipline people properly, and do all that?

A. Yes, it does hinder.

MR. PAVLOVICH:

Greatly?

A. I think it depends on the circumstance, but it could be greatly.

MR. PAVLOVICH:

Okay. So you can attribute some of the problems to those issues?

A. Yes.

MR. PAVLOVICH:

Do you think throwing that in with all the additional work and requirements and programs and projects and recording that's required now by the MINER Act further complicates your ability to do this?

A. Yes, I think it does. I mean, it's to the point that I think morale is at an all time low. And we're trying to find --- I'm sure you'll hear this from Richard. He's kind of disgusted with the paperwork. I mean, we think the best way, and I agree with him, to protect the miners is having the inspectors in the mine rather than the paperwork that goes along with it.

1 MR. PAVLOVICH:

2 And the paperwork, I guess, is very time consuming right now
3 to document your inspection; right?

4 A. Very time consuming.

5 MR. PAVLOVICH:

6 So that takes away from the time underground?

7 A. We feel that our biggest asset in protecting miners is spending on-site time in
8 the mines.

9 MR. PAVLOVICH:

10 Okay. How about additional programs and projects and
11 initiatives and all that that are going on?

12 A. They're constant.

13 MR. PAVLOVICH:

14 And how does that affect the inspector's ability to inspect the
15 mines adequately?

16 A. Well, I've got to keep them outside. They're running spreadsheets for me and
17 reports to track down information and ---. I mean, how many seals are in a mine. I
18 mean, it just goes on and on. There's always some type of information needed. And
19 it seems like a lot of it has --- not by me, it's people in Congress that request the
20 information that we basically have to stop everything and just answer their questions
21 immediately.

22 MR. PAVLOVICH:

23 And that means when you have to stop everything you have
24 to take all your inspectors that are inspecting and do some other application rather
25 than promoting safety in the mine by enforcing the law and inspecting the mine?

1 A. I can't say it's every inspector, but I mean, it's always taking away from
2 someone that has --- should be in a coal mine to come up with the information that
3 we're requesting from them.

4 MR. PAVLOVICH:

5 You know, I looked at this IG report or this draft that came out
6 on October 26th --- October 26th. And I'm sure you've seen it. But they have a list
7 here of inspectors per MMU ratio that primarily shows you have a best ratio, I would
8 assume there's your interpretation and theirs. So one inspector per one MMU in one
9 district.

10 A. District 1.

11 MR. PAVLOVICH:

12 Yes. And your worst ratio is .44 inspectors per one MMU,
13 which means they would have to inspector two and a quarter or less MMUs per
14 quarter?

15 A. Yes.

16 MR. PAVLOVICH:

17 And yet, even with those ratios which sound pretty darn good
18 to me, the inspections aren't getting made? So in District 4, which is the worst ratio
19 you have of a little bit over 2 MMUs per inspector, that doesn't seem like an
20 overwhelming work load, but yet why were inspections not being completed in District
21 4 to the tune of some mines not getting any?

22 A. Well, you're including your specialists who are also supposed to approve all
23 these plans, the ERP plans, seal protocol plans.

24 MR. PAVLOVICH:

25 So by inspectors on this list, that includes specialists?

1 A. I think it does, yeah.

2 MR. PAVLOVICH:

3 Well, it shows 89 in Mt. Hope. What's your staffing in Mt.
4 Hope?

5 A. I'd have to look at it, Joe, but I think that may be --- that may be total ARs in
6 the district instead of just the regular inspectors. And that includes like all your
7 specialists as well.

8 MR. PAVLOVICH:

9 Do you have specialists presently doing triple AAAs?

10 A. Oh, yeah. That's the only way we can get it done.

11 MR. PAVLOVICH:

12 And how does that affect your ability to do your work?

13 A. Well, it pushes back our plan approval process. We're not making like the
14 six-month reviews or, you know, sometimes addendums have to sit for a longer period
15 of time.

16 MR. PAVLOVICH:

17 Or maybe do you feel there's times when the plans aren't
18 approved, they aren't evaluated as thoroughly as they should be?

19 A. I would hope that's not the case. I would hope it's just that it pushes the plan
20 review process back. But I'm sure people can make a point that we're pushing plans
21 through probably a lot quicker than maybe we would if we had more people. And we
22 could do a better review.

23 MR. PAVLOVICH:

24 Okay. Was there ever any issue that came up that maybe
25 District Nine didn't have enough people or adequate staffing to thoroughly evaluate

1 the pillar plans at Crandall Canyon that you know of?

2 A. I don't know of any at Crandall Canyon. But I mean, if you look at the
3 numbers you'll see District Nine is --- they need some people put in place to help out
4 right now.

5 MR. PAVLOVICH:

6 Okay. So they're short staffed in plan approval process and
7 inspections?

8 A. Yes, yes.

9 MR. PAVLOVICH:

10 I'm sorry, Ernie. I've got off right out there.

11 MR. TEASTER:

12 That's okay.

13 UNIDENTIFIED SPEAKER:

14 Can I ask one question on the ERP before we get away from
15 it? The breathing wire portion of the ERP has been standard and it says that, you
16 know, you got so and so. All I wanted to ask is if an ERP, I think, in June requires it
17 be implemented by that day?

18 A. I think we gave --- I think the companies had to submit an ERP to us by
19 August the 16th, I believe it was, of 2006. And that they had to submit everything
20 except breathable air.

21 UNIDENTIFIED SPEAKER:

22 Part of the ERP talks about maintaining miners underground,
23 and I'm assuming that means SCSRs. Does it also include food and water?

24 A. Yes.

25 UNIDENTIFIED SPEAKER:

1 say during the night or after hours that we think it's important for families to know
2 about, that's where that family liaison comes in. We don't expect them to get up in
3 front of the families and answer questions about the agency. That's where the briefing,
4 like Stickler or myself would, you know, well, what are you going to do next. We don't
5 expect this family liaison to know all the ins and outs of the command center
6 information. But we needed to have someone there as a go-between between the
7 command center and the families in case something came up or if the families had
8 any questions, the family liaison would be the person calling up and trying to find that
9 information out.

10 Q. It seemed like it talks about a lot of coordination between the primary
11 communicator for the media and the family liaison. Let's take a quick glance at that
12 and see if there's any --- I mean, I don't want to insinuate there's anything wrong with
13 the senior people giving the briefings necessarily. It's just that when I read that, the
14 role of all the briefings and the information from the families --- for the families was to
15 come via the family liaison. And I got the sense from what we know about this one that
16 that wasn't the case.

17 A. You're right. Maybe we need to revise this a little bit. I mean, this was only
18 the second time that we've ever used this family liaison. We used it at Tristar, the
19 surface double fatality in District 3 earlier in the year, and this was the second time
20 that we used this. So it may need some tweaking. I don't know if there's going to be a
21 whole lot of them that's going to raise its way up to Stickler being on site or me being
22 on site. And I think maybe that's part of --- maybe we need a couple of statements
23 here that this is the way it will go unless the assistant Secretary shows up because
24 naturally he's going to be the primary communicator.

25 Q. Sure.

1 A. When he shows up.

2 Q. Even if you go to --- let's just say, let's keep it at the district level where you've
3 got the district manager. And he is tied up as the person in charge. And say that it's
4 going to be a little bit more intense where you got rescue teams working inby and stuff
5 that more quick decisions need to be readily made and he may want to spend more
6 time right there at the command center and not leave it. Then maybe that's when this
7 role of a liaison would come in to do more of those briefings and stuff. I'm not exactly
8 sure, but do you see any potential problems with the person in charge of the rescue
9 unit mingling and briefing with the family? In other words, that emotion that may be
10 generated in the family center where the briefings and discussion and intermingling,
11 and then going back and making decisions that's got to be made on the facts.

12 A. I guess it depends on everybody's own personality. I'm not as concerned with
13 that as I would be concerned of taking someone out of the command center when
14 important decisions are made and you don't want to leave it to someone else to go
15 down and brief the families. I'd be more concerned about that than being afraid that
16 I'm going to wear my heart on my sleeve and bring it back from the families and
17 maybe take chances. I look at it a little differently than that. But there may be some
18 people that, you know, could be affected by that, Ernie, what you're saying.

19 MR. PAVLOVICH:

20 Do you think, Kevin, that that was part of why they established
21 the family liaison and primary communicator positions is because you got people
22 that's running the operation, you got separate people that are briefing families, you got
23 separate people that are briefing the news media? And the role you had, you did all
24 three jobs. And maybe the intent of that was to make that distinction to where it's
25 important to do all three, but by different people so that you don't have that influence,

1 so that you don't --- and plus you can devote all your time to the task that you have
2 assigned as opposed to trying to split yourself three ways?

3 A. Well, I personally think the whole reason for the family liaison was because of
4 Sago. At Sago, we had no communication with the families. My instructions from
5 David Dye was to not go over and visit the families and not talk to the media. I'm not
6 sure why he decided to do that. But I mean, it turned out really bad.

7 MR. PAVLOVICH:

8 Well, I agree, somebody should have whether it be you or
9 somebody. Somebody in authority that maybe wasn't running the operation, but
10 somebody should have.

11 A. I think Congress's intent in forming this was because of Sago.

12 MR. PAVLOVICH:

13 Okay.

14 A. And no one going over. I don't think they had it in their head to let's keep it
15 separate. I think that's a good idea, but I very much doubt that Congress had that in
16 their thought process when they put this in place.

17 MR. PAVLOVICH:

18 Okay.

19 A. But it makes sense. The problem you get into as far as like a media person
20 being our --- say a primary communicator, they don't know the mining terminology.
21 They don't know the answers to the questions. It seems easier if the person that
22 knows what's going on and makes decisions can go down there and talk about it, you
23 know, to me.

24 MR. PAVLOVICH:

25 Uh-huh (yes). Well, it's true.

1 A. If you put Amy Louviere in front of the microphone, she's going to do a great
2 job of giving bullets about what happens. But when they start asking questions, which
3 they do, it kind of puts her in a vulnerable position of not knowing what decisions are
4 being made, mining terminology. I guess there's good and bad to both of them, you
5 know.

6 MR. PAVLOVICH:

7 No, but we do have people that can do that.

8 A. Yeah.

9 MR. PAVLOVICH:

10 I mean, you got people that can do that and they don't
11 necessarily have to be the head of the command center?

12 A. Maybe it would be something for us to consider bringing like a DM from
13 another district out. And all he does is brief the media, you know, something like that.
14 And then you don't mess with the DM where it's occurring. It's not this emotional
15 state where you get tied into different things maybe. And he takes the role, and that's
16 all he does.

17 BY MR. TEASTER:

18 Q. We'd seen that for a while, they would take --- if Ray had a problem, so then
19 Joe would come over and help him or Carl would have a problem.

20 MR. PAVLOVICH:

21 Well, you got that backup management ---

22 A. Well, we still have that.

23 MR. PAVLOVICH:

24 --- plat that you have to assist.

25 A. But that's for the command center though. That's not for primary

1 communicator family liaison.

2 BY MR. TEASTER:

3 Q. No, but I'm saying that could fit into that role there where you could do that.

4 A. Yes, yes.

5 MR. PAVLOVICH:

6 Well, to be honest with you, Kevin, from my perspective, if I
7 was running that command center or a command center and you got people missing
8 and I'm looking for them, I'm not too sure I want to be going over to brief the families
9 and, you know, ---.

10 A. Sure.

11 MR. PAVLOVICH:

12 Because emotionally I'm going to be affected by the crying
13 and the emotion, their grief, their pain. And am I going to maybe make a mistake and
14 do something that I shouldn't because of that? I just wouldn't want to take that
15 chance.

16 A. Sure, I understand.

17 MR. PAVLOVICH:

18 And nor would I want to put someone else in that position.
19 And like you say, this is all new.

20 A. That's a good point. Maybe we need to revise it sometime.

21 MR. PAVLOVICH:

22 Well, maybe we can put something like that in this to help you
23 along with that.

24 BY MR. TEASTER:

25 Q. And we're looking at this as an issue for no other reason it was raised up on

1 the hill there, but --- and we're going to talk. That's not the sole genesis of this thing,
2 but we're going to talk to the family members hopefully when we go to Utah and get
3 some input into that. Obviously there was a lot of effort went into you guys providing
4 information and these liaisons staying with them and trying to console and comfort
5 these people and get information that they requested.

6 A. When it turns out bad, there's just no good answers to them, you know what I
7 mean? Sometimes they say you're being too optimistic, why don't you tell us the
8 truth? And then if you're not optimistic, they're saying, well, you're acting like you're
9 not even trying to rescue the people. I mean, it's just a very difficult situation that
10 there's no easy or good answer, I don't believe.

11 MR. PAVLOVICH:

12 You can't win. You're in a position where you can't win.

13 A. Yeah.

14 BY MR. TEASTER:

15 Q. Kevin, talk a bit about the press going underground. Could you tell us how
16 that issue developed and how --- who gave them permission to go underground?

17 A. It all started, I guess, --- it happened pretty quickly. At a press conference
18 Murray asked the press if anybody had some kind of light bulb for a camera, because
19 we had already allowed --- when I say allowed, permitted a photographer from Murray
20 to go underground and take some pictures. That was probably about the second day
21 of the rescue, I guess.

22 Q. You say you permitted him to do that? What do you mean you permitted him
23 to do that? You gave him verbal okay or ---?

24 A. No. Well, we could have. And let me tell you why, because we modified the
25 K Order to let a photographer go underground. And it doesn't fit the date that the

1 media went in. If you look at it, I think it was like the second or third day. And what it
2 was, the district thought that there had been a camera approval at this mine in effect.
3 So they were modifying it to let them go in. We found out that there was no camera
4 approval at the mine. But where they wanted to go was in intake air. So they didn't
5 need a permit to take the camera in.

6 So this guy was underground. He was taking pictures for Murray, and I think
7 they were sharing those --- well, they were sharing them with the families. Murray
8 stands up in front of this press conference, and I guess this guy's bulb wasn't working
9 correctly and Murray asked if there's anybody in the media that has this certain type of
10 bulb. And he kind of just at that time made --- said to the media, you know, if you
11 have this, if you have this bulb, we'll let a couple of you --- we'll take a couple of you in
12 and you can take pictures underground.

13 Q. So Murray told them for the bulb --- in exchange for a bulb we'll take you
14 underground?

15 A. That's the way I understand it. And I was there. I mean, that's the way I
16 remember it.

17 Q. Okay.

18 A. And Richard's standing next to him. So those two are talking there a little bit
19 while this press conference is going on. The press conference breaks up, and I think I
20 talked to Richard for a short period of time saying are you okay with the press going
21 underground? And his comment was I think he was in agreement with it because he
22 said or something, that he don't think the people understand why things are going
23 along so slow underground. We had no explosion, we have no fire. We didn't think
24 there was a possibility of anything occurring to them if they stayed in an outby area.
25 And that told --- I don't know if I came specifically out and said are you okay with them

1 going underground, but all of the information that I was getting from him was that it
2 was okay.

3 Q. Did he say anything in that meeting with the press there that it was okay or ---
4 ?

5 A. It wasn't a meeting. It was like the press conference was going on when this
6 occurred.

7 Q. Okay. All right, The press conference. Did he say anything in there to
8 indicate that he didn't have a problem with it, that you remember?

9 A. He didn't say anything that he had a problem with. Not that he didn't have a
10 problem.

11 Q. Did he address it all in that press conference?

12 A. No, no. He didn't address it at all.

13 Q. All right.

14 A. And that's why I say, as soon as it broke up I talked to him. I got a phone call
15 from up on the hill from Bob Cornett and Ted Farmer, one of the two. They were up
16 there, and they says, there's people up here in the media that's going underground
17 and we told them no. And I says, well, you need to change your answer because there
18 was just a press conference down here and there's an agreement that they can go into
19 the coal mine. I said the one thing we need to do is we need to make sure they're
20 hazard trained, they got SCSR training. And we go in, we need to have two people
21 with them like basically one in front and one behind to make sure that they don't get
22 out of place anywhere and they stay only in intake air. And they said okay. So that
23 was the --- that's how all that came about.

24 Q. Now, was you with Stickler when you talked to Ted Farmer or Cornett?

25 A. I mean, I might have been ---

1 Q. No, I mean, in the same general area.

2 A. --- 30, 40 feet away.

3 Q. And then from there you went back to the mine?

4 A. I went back up to the mine.

5 Q. With Mr. Stickler?

6 A. Yes. I mean, we weren't in the same car, I don't think, but we both went back
7 up to the mine.

8 Q. Okay. Did anyone approach Mr. Stickler up there from MSHA and say they
9 had a problem with people going underground?

10 A. Not that I'm aware of. I mean, I know Cornett and Farmer told me about it.
11 They didn't like it. But I overruled them and told them no, this is the agreement that's
12 been made. But I don't know if they talked to Richard about it or not.

13 Q. Are you aware of any discussions between Gary Jensen and Mr. Stickler ---

14 A. No.

15 Q. --- about some concerns with these people going underground?

16 A. No.

17 Q. Do you think allowing the press to go underground without modifying the K
18 Order was a violation of that K Order?

19 A. No, I don't because when you talk to the district they thought they already
20 modified the K Order days previous to this that addressed the media going in to take
21 pictures because they did it on the second or third day allowing this company official
22 to go in and take pictures. Do you see what I'm saying?

23 Q. I see what you're saying and I'm trying to relate that. There was one of the
24 modifications, I can't remember the specificity of that order --- modification, but it did
25 say it was modified it to allow something in accordance with the approved ---

1 MR. PAVLOVICH:

2 Photography plans.

3 BY MR. TEASTER:

4 Q. --- photography plans?

5 A. See, they thought they had already modified it one time so they didn't want to
6 --- they didn't feel like they had to do it again.

7 MR. PAVLOVICH:

8 But don't you think they modified it to allow pictures to be
9 taken, not necessarily to allow media people to go in?

10 A. Well, from ---.

11 MR. PAVLOVICH:

12 Yes or ---?

13 A. Yes.

14 MR. PAVLOVICH:

15 Okay.

16 A. You're right.

17 MR. PAVLOVICH:

18 Okay.

19 A. You're right. I mean, and quite frankly, I mean, stuff was going on that --- I
20 mean, I didn't follow through and see what was modified. I just assumed that things
21 were being done.

22 MR. PAVLOVICH:

23 Well, you're aware of the requirements of 103(k)?

24 A. Yes.

25 MR. PAVLOVICH:

1 underground?

2 A. I heard that rumor from someone or that discussion. I just can't remember
3 who I had heard that from.

4 MR. PAVLOVICH:

5 Okay.

6 A. But I don't know if they told me. It was just after the fact someone saying it.

7 MR. PAVLOVICH:

8 What would you have done if one of those media guys had
9 got hurt in there?

10 A. Probably got fired.

11 BY MR. TEASTER:

12 Q. Was there any specific instructions or limitations as to --- excuse me, as to
13 where the press could travel?

14 A. Well, I told Bob and Ted to keep an eye on them and keep them in the intake
15 air --- or keep them outby where anything was going on, I think is what I said. We
16 didn't want them going up Number One inby like where the shuttle car would travel
17 through.

18 MR. PAVLOVICH:

19 So do you know where they actually went to?

20 A. Yes. Now, I do.

21 MR. PAVLOVICH:

22 How far?

23 A. They went through Crosscut 120 over into look where the belt tail piece was is
24 my understanding.

25 BY MR. TEASTER:

1 Q. How far outby where they were loading was that at the time?

2 A. Maybe a crosscut and a half. I would think they would have been between like
3 somewhere around 121 or 122 loading when that occurred.

4 Q. Kevin, was there any consideration given to allowing one of your MSHA
5 inspectors that was underground or your MEU members to video the operation or at
6 least to show the material packed in the face and how it was having to be moved as
7 opposed to letting a whole group of photographers go in, which never showed that
8 anyway?

9 A. There was no consideration given to that. I guess it wasn't thought about until
10 --- even taking any pictures of it until Murray brought it up to the media.

11 Q. Because really what they showed didn't show what was taking long anyway.

12 A. Right.

13 Q. Murray showed some props ---

14 A. Roof supports.

15 Q. --- which you could have showed that in the portal.

16 A. Right. I think the supports they were showing was outby Crosscut 116 and
17 117.

18 Q. Which didn't show anything.

19 A. You're right. No, you're right. You're right.

20 Q. So Murray basically agreed to let these people go underground in exchange
21 for a bulb?

22 A. Yes.

23 Q. And then we looked at it a little bit further and said, well, maybe this would be
24 something good for the families?

25 A. I think when you talk to Richard, that will be his thought process.

1 Q. So Richard made the final decision on that?

2 A. Yes.

3 Q. Did you ever argue with him and tell him that violates the K Order?

4 A. I never argued with him about it.

5 Q. Okay. Have you ever known in the past of the media being permitted to go
6 underground?

7 A. No.

8 Q. What about the family members? Tell us about how that developed, went
9 underground.

10 A. Well, like the third or fourth day you could see that things weren't going very
11 well with the family members, that they were --- they were upset about how long it was
12 taking. And you know, you need to do more, you need to be quicker. And one of the
13 individuals ---

Ex. (b)(6) and Ex. (b)(7)(C)

14 Ex. (b)(6) and Ex. (b)(7)(C)

15
16 Ex. (b)(6) and Ex. (b)(7)(C)

17 So a decision again was made that the
18 families may be better able to understand and accept what's going on more
19 underground if these two miners or family members went in and came out and
20 basically told the families the same thing that Richard or MSHA and the company
21 were telling the families. And it did work to a great degree. I mean, they basically
22 came back, and I think they put the families' minds to rest that everything that can be
23 done is being done.

23 Q. Whose idea was it, Kevin, to send the family members under?

24 A. I think it was Murray's. I think Murray was the one that came up with it and
25 discussed it with Richard.

1 MR. PAVLOVICH:

2 And so Richard also agreed with that?

3 A. Yes.

4 MR. PAVLOVICH:

5 And did those family members assist in the operation at all?

6 A. No. You mean as far as the rescue operation?

7 MR. PAVLOVICH:

8 Yeah, with the rescue operation.

9 A. They did not.

10 MR. PAVLOVICH:

11 And then did they go in several times?

12 A. Yes. I can't tell you exactly how many times, but I'm sure the check in/check
13 out book would show that.

14 MR. PAVLOVICH:

15 Do you think some of this was just grandstanding on Murray's
16 part?

17 A. I think the press may have been. The family members, I think there was a
18 real feeling that it was going to help educate the families a little better if it came from
19 a family member rather than from MSHA or the company.

20 MR. PAVLOVICH:

21 Or was he just doing it to appease the families?

22 A. I don't know. But Richard will tell you thinks it helped to benefit the families'
23 knowledge of what was going on.

24 MR. PAVLOVICH:

25 I guess I don't need to ask you what would have happened if

1 one of those family members would have been ---?

2 A. I'd already been fired because of the media.

3 MR. PAVLOVICH:

4 Yeah.

5 BY MR. TEASTER:

6 Q. Kevin, as you know, is it fair to say that probably you as well as a lot of the
7 other people were not satisfied because it wasn't going fast enough? I mean, it's
8 always you want to do more, but you have a better understanding as to why you
9 couldn't.

10 A. Yeah, it's frustrating. I mean, ---.

11 Q. But in most of those situation where you got trapped miners, you're not going
12 to have the opportunity --- I mean, you're just not going to take that risk of putting
13 miners underground. I mean, I think you folks was trying to allay the family members'
14 concern, but that's an element you probably always deal with, you're not going fast
15 enough, it's too slow, all that stuff, and you just give them the best information as you
16 can?

17 A. Yes. I agree.

18 MR. TEASTER:

19 Let me have a couple of his notes over there?

20 MR. PAVLOVICH:

21 Kevin's?

22 MR. TEASTER:

23 Yeah.

24 BY MR. TEASTER:

25 Q. On the 11th, you have in your notes was the reason for developing a plan to

1 address changes in the recovery process in the Number One entry, and we just want
2 to know what that reason was.

3 MR. PAVLOVICH:

4 This one here? Changes in the smaller cut support roof with
5 miner inby?

6 MR. TEASTER:

7 Yeah.

8 MR. PAVLOVICH:

9 Here, Kevin. The highlighted areas.

10 A. I think this may have been one of the meetings that we sat down with the
11 company. Was I underground on August the 10th? Do we have ---?

12 MR. PAVLOVICH:

13 No, we don't have --- I don't know if we ever got those logs of
14 in-and-out logs, did we?

15 UNIDENTIFIED SPEAKER:

16 Handwritten ones are hard to follow.

17 MR. PAVLOVICH:

18 Yeah.

19 A. Okay.

20 MR. PAVLOVICH:

21 Let's see if we got any --- do you want to look at your notes
22 pertaining to that, Kevin?

23 Do you have it in them?

24 A. I think what ---.

25 MR. PAVLOVICH:

1 This would have been all the notes previous to that, so ---.

2 A. I think what had happened, we had gone underground on the 10th. And there
3 was some things that we felt we needed to address, and we wanted to sit down with
4 the company. Or maybe I went underground on the 11th, I'm not sure. We wanted to
5 sit down and just have them revise their plan to maybe take smaller cuts, support the
6 roof, keep the miner head up against the roof, tie in --- how we're going to tie in the
7 bottom of the props with cables, and we wanted to minimize the amount of people that
8 were inby. I think if you look at one of their plans that came in, it probably addressed
9 these issues. And that was probably from a meeting with the company that that's
10 where I have this at.

11 Because then if you look a little further, it says that roof control advance three
12 water jacks, set two hydraulic jacks to support bolting operation. I think this all fits in
13 with what we asked them to do with a plan revision. So you need to look at one of
14 those plans they submitted, and I think this will probably tie in to what they submitted.

15 BY MR. TEASTER:

16 Q. It seems --- we're not sure, but I don't think we have all the plans. There's
17 been some discussion about a thick book with plans in it out there. We do have some
18 plans, but we're not sure that we have them all.

19 A. There was a binder we kept in the command center that every time we
20 approved something it went into that binder.

21 Q. And the best description we can get is kind of thick. And what we have is not
22 thick. So I'm not sure whether we have them all.

23 MR. PAVLOVICH:

24 We only got like four or five plans.

25 BY MR. TEASTER:

1 Q. Four or five plans.

2 A. There should be more than that.

3 Q. Yeah, that's what we ---.

4 MR. PAVLOVICH:

5 Okay.

6 A. I can't tell you exact number, but there's more than four or five.

7 MR. PAVLOVICH:

8 Okay.

9 BY MR. TEASTER:

10 Q. Okay.

11 MR. PAVLOVICH:

12 Kevin, what's the first time you remember anybody --- the first
13 one of these events that you remember where the assistant Secretary and
14 administrator went to the mine where a rescue event was going on?

15 A. QueCreek.

16 MR. PAVLOVICH:

17 QueCreek's the first one you remember?

18 A. No. I think Laurisky and Lawless both went to Jim Walters as well.

19 MR. PAVLOVICH:

20 While it was going on? Okay.

21 A. I think so.

22 MR. PAVLOVICH:

23 Do you think that those visits pretty much set a precedent now
24 that any time we have one of these the assistant Secretary and administrator have to
25 --- have to go?

1 A. No. I don't think it set a precedent.

2 MR. PAVLOVICH:

3 So nobody told you or told Richard to get out there?

4 A. Someone may have told Richard. I don't know.

5 MR. PAVLOVICH:

6 You just went on your own?

7 A. I went on my own. I wanted to go out and try to help.

8 MR. PAVLOVICH:

9 Okay.

10 A. I just ---.

11 MR. PAVLOVICH:

12 Go ahead.

13 A. I mean, it may sound corny, but I mean, Al works for me. And I just felt like I
14 needed to be there to try to help him in any way I can. I didn't want to leave him
15 hanging out there.

16 MR. PAVLOVICH:

17 Okay. Do you think we've now set a precedent with taking
18 media and family members underground through this event?

19 A. I think we've set a precedent to not take them underground. I'm just telling
20 you the truth.

21 MR. PAVLOVICH:

22 And what happened --- and hopefully we never have another
23 one. But if we would have and the media shows up and says why can't we go, you
24 took the guys at Crandall Canyon underground?

25 A. My reasoning is a whole different circumstance, and that was one we've re-

1 evaluated where we're at and we'll share the information with you at our news
2 conferences. As far as I'm concerned, we won't do that again unless someone tells
3 me to do it.

4 MR. PAVLOVICH:

5 Unless the assistant Secretary tells you?

6 A. Yes.

7 BY MR. TEASTER:

8 Q. Would you go if you had another similar emergency with --- would you catch
9 the first plane out or ---?

10 A. In a heartbeat, unless someone told me not to.

11 Q. Kevin, when we got a mine fire explosion, we got gasses we can analyze and
12 do a lot of different things with and determine whether it's safe to go on, and we take
13 information that we get and put it in and consider it, this risk versus value theory. We
14 got information here at this mine where we got low oxygen at the bore hole. We got
15 these bumps taking place. Was that risk versus value ever discussed in any of the
16 meetings that you were privy to?

17 A. Yes. I mean, especially after the three rescuers lost their lives. I mean, we
18 realized then that the risk of trying to get in there, what we thought we could control as
19 far as the ribs, we couldn't. And we realized at that time that it was no longer
20 acceptable to try to go in underground or to try to find miners underground. So
21 unfortunately for us, it happened after the three rescuers died. Up until that time, we
22 didn't think the risk was as great as it was. We thought that the support was going to
23 hold us.

24 Q. You know, from the standpoint that --- going back to the bumps just
25 momentarily, most of the experience people have with bumps is when they're mining.

1 And as long as they're mining and they're getting some reaction, they feel pretty
2 comfortable and when it gets real quiet they get concerned because it might be setting
3 to release or something. And if you applied that same thing to this emergency here, I
4 guess everybody was comfortable that it was okay because based on the notes and
5 the information we've heard, it was quite noisy. There was a lot of bumps that
6 occurred, some more significant than others. But the bumps taking place, the low
7 oxygen, the blocked entries, was that --- was it ever considered to not continue with
8 the rescue effort prior to the 16th?

9 A. I don't --- I mean, if it was considered, it wasn't something that was done in an
10 open group. I mean, maybe people were thinking that. But nobody ever put that on
11 the table. I mean, our focus still --- you have to remember that the 16th we had just
12 put this bore hole in in the back end of Three, and we found 16 percent oxygen. And
13 we had heard what we thought was somebody making noise around where we were
14 putting in bore hole Four. So up to the 16th, we still thought --- I still thought we may
15 have had a chance to save lives. So I didn't think --- and the roof support was holding
16 us, or the rib support up to that time was holding us. So I didn't the risk was greater
17 than --- what's the word you used?

18 MR. PAVLOVICH:

19 Value.

20 A. Value.

21 BY MR. TEASTER:

22 Q. So going back, you had no knowledge, as I remember you saying, about the
23 bump that moved the jacks, both top and bottom out?

24 A. You know, I recall hearing there were bumps from underground, but I don't
25 recall seeing about the bump or the jacks being moved. And nobody --- I never even

1 had any verbal discussion of that.

2 MR. PAVLOVICH:

3 Have I talked to you at all about the severity of some of these
4 bumps that they had where, you know, they'd have a bump and they'd have to run and
5 do a head check in the dust and see was anybody hurt, was anything damaged?

6 A. I remember one time that occurred.

7 MR. PAVLOVICH:

8 Just one time?

9 A. Yes.

10 MR. PAVLOVICH:

11 And did you ever look through the command center log that
12 listed all these, because that's where we got them all?

13 A. Off and on I did, Joe, but I mean, like the one you said about the jacks being
14 moved, I don't recall seeing that.

15 MR. PAVLOVICH:

16 Did you ever ask any of the guys underground ---

17 A. Yes.

18 MR. PAVLOVICH:

19 --- were they reporting all the bumps that were occurring?

20 A. No, I didn't ask them that. When they came outside, at least I was always
21 there when the daylight crew came outside and always talked to like the guy that ---
22 Donnie Durrant ---

23 MR. PAVLOVICH:

24 Uh-huh (yes).

25 A. --- is one of the guys that was up in there. Ron Paletta. And I always asked

1 them how things are going underground and try to like debrief them. And I never got
2 the impression from the guys that I talked to that things were worse or that there was
3 bounces so bad that they were --- felt like we needed to stop the operation.

4 MR. PAVLOVICH:

5 Did you talk to Mike Gauna and Joe Zelanko much?

6 A. Yeah. I mean, any time they came out from underground we had a meeting
7 and basically got a briefing on what they found underground.

8 MR. PAVLOVICH:

9 Okay. Did they ever express any concerns with what was
10 going on?

11 A. I think they felt the weight of the world on their shoulders because we were
12 leaning on them to help make decisions. And I don't recall them ever saying we ought
13 to stop the operation underground. I felt really bad for them because I mean --- and I
14 told them it wasn't their responsibility. It's Kohl's responsibility to approve and not
15 approve the plans, and I mean, when we lost those three guys that night, I mean, I just
16 --- Joe was very distraught and upset because he felt like he had something to do with
17 it, and I told him, you know, you didn't make the decision. It was me, Stickler, and Al
18 Davis that made the decision to approve the plans. But I think they did the best they
19 could with the information they had available to them.

20 MR. PAVLOVICH:

21 Do you know, there was --- was there any other experts that
22 were brought in or consultants brought in during the rescue operation?

23 A. I don't know.

24 MR. PAVLOVICH:

25 Other than Gauna and Zelanko?

1 A. Joe Cybulski was out there for a while.

2 MR. PAVLOVICH:

3 Or Cybulski. But they were basically all three tech support.

4 Anybody else that was brought in that was independent of ---

5 BY MR. TEASTER:

6 Q. Outside the agency?

7 MR. PAVLOVICH:

8 --- Agapito?

9 A. No. I don't --- I think we tried to get NIOSH out there early on but they
10 wouldn't come.

11 MR. PAVLOVICH:

12 They refused to come?

13 A. I don't know. I don't know if they refused to come. They were busy, or
14 something was going on, but they came out like afterwards and kind of agreed that no
15 one should go in by 109, I think it was.

16 MR. PAVLOVICH:

17 After the ---

18 A. After the three rescuers died.

19 MR. PAVLOVICH:

20 --- accident on the 16th?

21 A. Yes. I don't think the company --- I don't think Murray had anybody in there.

22 MR. PAVLOVICH:

23 So after the second accident on the 16th you had a team of
24 so-called experts?

25 A. It was the Sunday after the accident.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

Okay. That were brought in now to evaluate continuing?

A. Yeah. They didn't even go underground.

MR. PAVLOVICH:

They refused to go underground?

A. Yeah.

MR. PAVLOVICH:

And said don't continue?

A. Well, they says we can make our decision from the surface by meeting here. And there was like three academia, three consultants, and NIOSH. And Mike and Joe Zelanko had done a good job of documenting everything that was in the mine, taking pictures. And they shared that with the experts. And they made the decision that they don't think anything should advance underground past 109.

MR. PAVLOVICH:

But they were never --- no one ever thought about calling those people up prior to the second accident?

A. Well, I know we contacted them.

MR. PAVLOVICH:

NIOSH?

A. Yeah. And you may want to talk to Zelanko. He may have called some consultants as well.

MR. PAVLOVICH:

Okay. Well, I think there was some issue that said people had been talked to on the phone?

A. Right.

1 MR. PAVLOVICH:

2 But no one ever was asked to come until after the second
3 accident?

4 A. No, I can't answer that.

5 MR. PAVLOVICH:

6 And I don't know if that's true. That's a news report, I think
7 that came out.

8 A. And I mean, I guess we're at fault somewhat, but I would think the mine
9 operator, that would be Murray's responsibility too to bring in like private consultants to
10 look at it.

11 MR. PAVLOVICH:

12 And he never did?

13 A. I don't think he ever did.

14 MR. PAVLOVICH:

15 What was the rate of advance up that Number One entry,
16 Kevin, by day?

17 A. Well, if we look at --- I think these are on 120-foot centers. Advanced about
18 900 feet in ten days, about 90 feet a day or 30 feet a shift.

19 MR. PAVLOVICH:

20 How much more did you have to go?

21 A. Oh, we were only about one-third of the way there.

22 MR. PAVLOVICH:

23 So you're talking if the rate of advance continued, 20 more
24 days?

25 A. Yes. Unless they picked it up some. And there was just no way to pick it up.

1 I mean, we didn't know how far this extensiveness was going to go either. You know,
2 we didn't know if this was going to go the whole way up to where the people were, or if
3 it was going to stop somewhere around 131. We just had no idea. But if it would have
4 continued the way it was up until 138 and a half, that was the last bore hole we put in.
5 It was filled to the roof. We didn't know that early on. But it would have taken at
6 least ---.

7 MR. PAVLOVICH:

8 So even at that point on the active section you found a bore
9 hole filled to the roof?

10 A. Both five and six were filled to the roof. But that came after the fact.

11 MR. PAVLOVICH:

12 Yeah.

13 A. Everybody had a different concept or feeling. And there was some concept
14 that, well, when this bore hole One went in and there was a big void there, then maybe
15 that means that over in Number One there's going to be a void for a while there too so
16 maybe we can get through this a lot quicker than people thinks we can.

17 MR. PAVLOVICH:

18 When you were underground and looked at the face of
19 Number One, I guess we'll call it a face but it's all just material that's packed in, were
20 you aware that the barrier pillar had actually been moved over into the Number One
21 entry to a certain footage?

22 A. Yes. That was, I think, during my second visit underground.

23 MR. PAVLOVICH:

24 So you saw that?

25 A. Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

And with seeing that and realizing that now you're mining out part of that barrier pillar, was that reducing the --- further reducing the stability of that pillar?

A. Yes.

MR. PAVLOVICH:

What did you think about that?

A. I didn't like it, but we thought that the rib protection we were putting in place was going to hold us from that issue of it being out. We kind of wanted to make sure we didn't knick it and touch it. We just wanted to go right beside it and move up further because at that time we still felt like we had a shot at getting to these six guys. And we got inby that and it seemed like it got better. It looked better, at least.

MR. PAVLOVICH:

Oh, so you got past the area where it was over into?

A. Yes.

BY MR. TEASTER:

Q. Kevin, you said you were not aware of the bump that moved the jacks based on the notes, and the fact that the shuttle car was not ---?

A. Well, I was aware there was some bumps. I just didn't know that there was a bump that moved.

Q. Right. I'm saying that one of these bumps, one of the inspectors had documented in his notes that this bump had occurred and moved the jacks out. There's also been reports. I don't remember it being documented, but I do know that we've learned that information in some fashion, that shuttle cars were occasionally knocking out these rock props. Now, had you had that knowledge, would you have

1 less confidence in those rock props to have the ability to withstand those types of
2 bumps that was ---?

3 A. Sure. I mean, that would have been something that I would have went to our
4 roof control experts and asked them, you know, hey, what does that mean? I mean,
5 how much pressure can a shuttle car put on or how much pressure has to be exerted
6 by a shuttle car to knock these jacks out. That would have been a concern.

7 MR. TEASTER:

8 Do you have anything else you wanted ---? I mean, on that
9 issue.

10 MR. PAVLOVICH:

11 No. Uh-uh (no). No.

12 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

13 Ernie, I've got one on that issue of rock props if you don't
14 mind?

15 MR. TEASTER:

16 Okay.

17 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

18 Kevin, what did the experts say about the type of support?
19 You know, they said on the surface we don't need to go in. Did they say anything
20 specifically about the rock props they were putting in that they thought they'd have
21 been okay or ---?

22 A. I don't know, (b)(6) They basically --- they wanted to be independent. They
23 & (b) didn't want us talking to them or the company talking to them, so I really don't know
24 what their ---. Joe Zelanko and Mike Gauna would have been the only two people
25 from MSHA that would have been with them when their discussions were taking place.

1 I don't know.

2 MR. PAVLOVICH:

3 And your understanding that the rescue operation was
4 stopped because the support that you thought was adequate to protect you was not ---
5 was not effective in providing that support?

6 A. Yes. I mean, when it blew those out, that was the end of it underground for
7 me.

8 MR. PAVLOVICH:

9 Was there any consideration any time during the rescue effort
10 to issue a 103J Order?

11 A. Yes.

12 MR. PAVLOVICH:

13 Could you share with us how that came about and what
14 resulted?

15 A. Well, we thought we were getting to a point, and I don't know which bore hole
16 it was, but Murray was getting to a point that he didn't want to put any more bore holes
17 in, and we weren't ready to give up yet. I mean, like after bore hole Three maybe
18 Murray didn't like the idea of putting four in or something. And we weren't ready to
19 give up. And I talked to Richard about it, and Richard talked to me. And we went
20 back to two people in headquarters. (b) (5)

21 (b) (5)

22

23

24

25

1 do we have enough money to pay for the drilling operation. (b) (5)

2 (b) (5)

3 (b) (5)

4 And it never came to the
5 point of us issuing a J Order because it always worked out that Murray gave us one
6 more hole. You know, as we went through this, after this hole, this will be your last.
7 Then we had to go to him again and he'd say, well, after this hole it will be your last.
8 But we were in consultation with Ed Clair about that.

8 MR. PAVLOVICH:

9 What was their answer?

10 A. We'll get back with you.

11 MR. PAVLOVICH:

12 You never got an answer as to what would happen if you
13 issued the J Order?

14 A. No. I mean, no one's ever told me that yet. And I mean it's a tough --- it's not
15 an easy answer probably.

16 MR. PAVLOVICH:

17 It's not a good time to do it during the middle of an operation?

18 A. Exactly. I mean, that's something that I'd like to address now so if we're ever
19 in that situation. I think the last time we did that was Scotia.

20 MR. PAVLOVICH:

21 Yes.

22 A. And we were close to doing it down at that RFH, if you remember. I don't
23 know if you recall that or not, but everybody died in the mine.

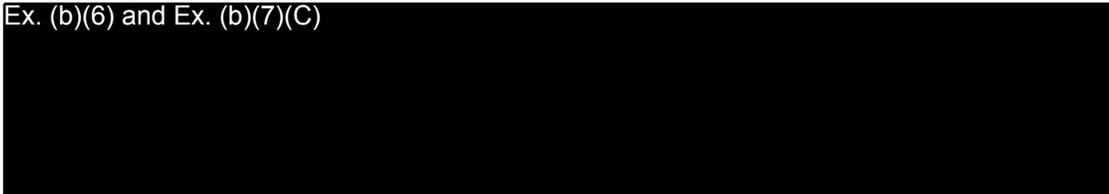
24 BY MR. TEASTER:

25 Q. Yeah.

1 A. And we were ---.

2 Q. Except the one guy that was on the surface. He was one of the three owners.

3 Ex. (b)(6) and Ex. (b)(7)(C)



4

5

6 A. But we were considering a (j), but we used the (k) instead. I don't know if you
7 remember that.

8 Q. I was on that investigation.

9 A. I know. And so we breached the subject, and that's something we really need
10 to pursue because you never know when something like this could come up again.

11 Q. Do you have an idea what it cost to drill one of those holes?

12 A. \$2 million.

13 Q. \$2 million. So it was roughly \$2 million a hole?

14 A. That's what Murray said. But it sounded like the department said if you feel
15 like you need another hole, we'll get you the money regardless of the (j) or the (k) or
16 whatever we had in place. It sounds like if we got to the point that we felt we needed
17 another hole, the department would get us the money.

18 Q. So what ultimately got Mr. Murray to agree to drill one more hole?

19 A. Conversations with Richard Stickler. I mean, I don't know what happened. It
20 was just one-on-one conversations those two had.

21 MR. PAVLOVICH:

22 So they had private conversations about that?

23 A. Yes.

24 MR. PAVLOVICH:

25 Did they have many of them during this operation?

1 A. No.

2 MR. PAVLOVICH:

3 Just pertaining to the holes?

4 A. I think that's probably the only time they had ---. And one of them, Richard
5 wasn't even out in Utah. He had to call him on the phone. Richard had left. So I
6 mean, and I talked to Richard on the phone and Richard said, well, I'm going to give
7 Bob a call.

8 MR. PAVLOVICH:

9 Why did they quit at seven?

10 A. We didn't find any other place that we could put a hole in that we had any
11 chance of life, we didn't feel. I mean, we had all the entries. We had the back end.
12 And we just didn't see anywhere else where anybody could survive.

13 MR. PAVLOVICH:

14 Plus no pounding, no signaling, no ---?

15 A. Nothing.

16 MR. PAVLOVICH:

17 Nothing.

18 BY MR. TEASTER:

19 Q. Were you at the mine when the accident occurred on the 16th?

20 A. No.

21 Q. How were you notified and what was your actions following notification?

22 A. I had left the mine and I was on my way back to the hotel, and I received the
23 call from Bob Cornett. Bob said we had a big bounce and we got two possible fatals I
24 think he said. So I immediately turned around and came back to the mine.

25 Q. And what did you do at the mine?

1 A. As soon as I got there, I made sure --- I ran up to --- I made sure the company
2 had someone to check in and check out people at the portal. I was afraid that there
3 would be people coming out and we weren't going to get it, and I knew there was a
4 bounce and I was afraid there was going to be people covered up in the bounce and we
5 weren't going to be able to account for everybody. So I made sure the company got
6 up there, and I just tried to get briefed on what was going on.

7 And I talked to the sheriff. He was already at the site, and I told him based on
8 what I'm hearing we're going to probably need about ten ambulances or transportation
9 for people out of here. And he got helicopters in and ambulances on the way.

10 Shortly after I got back there I think Richard came, and I briefed Richard on it.
11 And we had mine rescue team members, MSHA mine rescue team members gearing
12 up to go in, and I talked to them about what I knew to brief them on what was going
13 on. And basically shortly after that the people started coming out of the mine, the
14 injured started coming out. And I tried to get as much information as I could from the
15 injured that were coming out and the people that was part of the rescue to see how
16 many people we had up there.

17 Q. So how long did it take you to get back to the mine after you were notified?
18 Do you have a feel for the time?

19 A. Thirty (30) --- 20 to 30 minutes. I got back to the mine before the first injured
20 people came out.

21 Q. And about how long at the mine had you been when the first one was brought
22 out? Do you have a feel? I realize that's all hectic time.

23 A. Fifteen (15) or 20 minutes.

24 Q. So it's from --- around 45 minutes you think that people would have started
25 coming out of the mine, the injured, after you were notified?

1 A. That's a guess, Ernie, but I'd say about that.

2 Q. Okay.

3 MR. PAVLOVICH:

4 Did you know Murray went in?

5 A. No. I was wondering where he was. You know, and then when the last group
6 came, out here comes Murray out, you know.

7 BY MR. TEASTER:

8 Q. Did you attend that meeting? I understand they had a meeting over in the
9 shop, all the people that were underground at the time?

10 A. Yes.

11 Q. Could you share with us what went on at that meeting?

12 A. Well, I attended part of it. I mean, I got pulled out by the sheriff a couple of
13 times. But what it was is they put like a --- I guess it was almost like a big chalkboard
14 they put up. And they asked the people who came out of the mine, trying to get an
15 idea of what happened. And there was a drawing. I don't know if you guys got a copy
16 of it or not, but basically the people that were involved in --- that were closest to the
17 accident and in the rescue kind of drew on there what they felt --- what they recall
18 occurred. And there was the jacks from the right side of Number One entry were
19 thrown across the entry as well as about 30 feet of the pillar that moved everything
20 over to the barrier side of the Number One entry. And there's a --- like I said, there
21 was a drawing that depicted to the best of their recollection at that time what had
22 occurred.

23 Q. And were you aware that Gary Jensen was there being treated in an
24 ambulance for an extended period of time?

25 A. I was there when Gary came out of the mine.

1 Q. Did you talk to him?

2 A. Yes. I mean, Gary didn't say --- Gary wanted to know if anybody else was
3 hurt. And there was three or four of us around him trying to calm him down and say,
4 you know, everything will be okay. I thought Frank Marcosek was in worse shape than
5 Gary when he came out. And they life-flighted Frank out first. And then they life-
6 flighted Gary. There was one guy that came out that I knew he was dead already. It
7 may have been Dale Black.

8 There was a second guy that was in bad shape. They were performing CPR on him,
9 got him on a helicopter, and I didn't think he was going to make it. And you know, he
10 didn't. So we had two dead. And during this meeting that we were having the folks
11 draw up on the map, that's when the sheriff came over and he called me over and he
12 says I think we got a third fatal. He says, I think it's one of yours. And you know, you
13 hope it's not. And he said, well, we think it's someone Gary, but he said, we can't
14 confirm it. He said --- and then he called someone on the phone, and he says, no, we
15 can't confirm it. We'll get back with you. And about ten minutes later he called me
16 over. I knew why he was calling me over, and he said, you know, Gary Jensen just
17 died. And I got all the MSHA people together and I told them, you know, that Gary
18 had died.

19 Ex. (b)(6) and Ex. (b)(7)(C)
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

Did anybody that you talked to that night say what they saw?

I mean, was this just a sudden explosion of coal, or did they describe it to you in any way, Kevin?

A. They said it was real quiet. The miner had just backed out. They had installed the rock props on the right side of the Number One entry, and they were in the process of installing the rock props on the left side of the entry. And without any warning, it just blew out. And it took everything in the path between the right side, and the outburst just moved everything up against the left side rock props that were in place. I think the rock props on the left side are still in place.

Now, Gates and his crew, they went up in there.

MR. PAVLOVICH:

Uh-huh (yes).

A. And it sounds like it didn't move any more from the time that this accident happened because Gates says there's still boots there, you know, where they cut them off of people's feet. And nothing else is moved in there because he said it looks like it probably did when the accident occurred. So he probably has a real good depiction of exactly everything that's in place and how it occurred.

BY MR. TEASTER:

Q. Is the mine sealed as far as you know?

A. Yes. It's my understanding. We approved a plan to have it sealed. And I would think that it's been done by now.

Q. What type of seals did they erect there? Do you know?

A. It was some type of alternate seal approval. Some type of MANOVA.

Q. Okay. It wasn't just a matter of backfilling it to restrict entry, it was sealed?

1 A. It was --- yeah, it was sealed with concrete plugs or something similar to that.
2 And they've also filled all the bore holes in.

3 MR. PAVLOVICH:

4 Kevin, you got there on the 7th?

5 A. Yes.

6 MR. PAVLOVICH:

7 There was no activity going on that day, right, underground?

8 A. They were ---.

9 MR. PAVLOVICH:

10 They said a bump had happened the night before in Number
11 Four.

12 A. I think what they were doing was replacing all the stoppings that had been
13 blown out from the first one with permanent stoppings instead of chips.

14 MR. PAVLOVICH:

15 Okay.

16 A. And they were installing props or support on the ribs in outby areas.

17 MR. PAVLOVICH:

18 So there was no loading of material?

19 A. I don't think there was. Yeah, I don't think that started until late on the 7th or
20 early on the 8th, because they had to set up a belt tail piece. They had no belt tail
21 piece that was set up there. Naturally it was --- it was up near Crosscut 139.

22 MR. PAVLOVICH:

23 Where was the material that was coming out of four, Number
24 Four entry? Where was it deposited?

25 A. Sticking it in crosscuts wherever they could.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

So they just filled up crosscuts with that?

A. Yeah. That's why I'm saying, I don't think they advanced up seven crosscuts over the ---.

MR. PAVLOVICH:

Okay. Were you aware that on the 8th and 9th when there was --- I don't know when the loading started back, okay. It's something we'll have to look at. But there was no bumps or bounces reported on the 8th or 9th? And basically the bumps and bounces started back again when --- shortly after the loading started back, I guess?

A. I thought the loading started on the 7th. I mean, late on the 7th or early on the 8th.

MR. PAVLOVICH:

Do you have anything on that?

UNIDENTIFIED SPEAKER:

Not at the time.

A. It probably should say in the --- I mean, you may have a better idea than I do right now. I'm sure you do. You've sliced and diced this every way you could.

MR. TEASTER:

Not yet.

MR. PAVLOVICH:

Not yet.

MR. TEASTER:

We're just trying to get some.

MR. PAVLOVICH:

1 forward.

2 MR. PAVLOVICH:

3 So you think, Kevin, primarily that's --- I mean, that's the
4 reason why maybe a whole lot of concern wasn't given to these bumps that were
5 constantly occurring underground, is that no matter how bad they were they weren't
6 going to overcome what support we put in and we just march right up there?

7 A. Well, I don't think ---. Yeah, I don't say we're going to march up there
8 because, I mean, we were cautious in how --- I mean, we were moving slow.

9 MR. PAVLOVICH:

10 Yeah. Well, I mean that, but you're progressively going to
11 just continue on regardless?

12 A. Yeah. That's a fair statement.

13 MR. PAVLOVICH:

14 And it was never that, gee, we've had 50 bumps yesterday,
15 maybe we should think about it because nobody was hurt, and so there was no
16 indication that people were going to be hurt?

17 A. Right. We didn't think we were going to have anything catastrophic or
18 anything that would even blow the support out based on where we were. We thought
19 we had that covered.

20 MR. PAVLOVICH:

21 And I think what Ernie was asking, like on this particular thing,
22 what we did was look at the University of Utah records, and that's why it started on the
23 third. But we went back, and there was a --- it shows there was a seismic event of 1.5
24 on the 5th. There was 1.6 and 1.8. Then the one that happened on the 6th was 3.9.
25 And what we tried to do was compare when one was reported in the log that matched

1 the time with what the University of Utah had and matched those magnitudes. And
2 you could see some of these are pretty significant, 1.9, 2.2.

3 A. Yes.

4 MR. PAVLOVICH:

5 Right up to the one that occurred on the 16th, which was ---
6 and I'm trying to read upside down.

7 A. Yeah.

8 MR. PAVLOVICH:

9 I think ---.

10 A. 1.6.

11 MR. PAVLOVICH:

12 So it was only 1.6?

13 A. Yeah.

14 MR. PAVLOVICH:

15 And there are several in here throughout that are --- there's
16 1.5 that morning, 1.2. And I realize ---.

17 MR. TEASTER:

18 Here's the one I think that broke the shafts on the motor.

19 MR. PAVLOVICH:

20 Right. And I think what Ernie's asking you, did anybody ever
21 sit kind of like with this and say, well, we had bump, bump, bump, bump, and
22 look at Utah and say this is such and such, such, such, you know?

23 A. No.

24 MR. PAVLOVICH:

25 There could be some impending disaster here?

1 A. No.

2 MR. PAVLOVICH:

3 No? Okay. What do you have, Ex. (b)(6) and Ex. (b)(7)(C)

4 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)
(C)

5 The command center log at 10:20 that morning said miner's
6 getting ready to go.

7 MR. PAVLOVICH:

8 What morning?

9 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

10 This is on the 8th, I'm sorry. And on the afternoon of the 8th,
11 it says rock prop set, no estimate of when miner would start. That's at five o'clock.
12 And then at 2210, show car, equipment problems on section, equipment on the intake.
13 And then at 2240, it says .60. So sometime in the evening of the 8th was when they
14 started the miner up.

15 MR. TEASTER:

16 Late evening?

17 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex.
(b)(7)(C)

18 Yeah. Yeah, between five o'clock and ---.

19 MR. PAVLOVICH:

20 Of the 8th?

21 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex.
(b)(7)(C)

22 Of the 8th.

23 MR. PAVLOVICH:

24 Okay.

25 UNIDENTIFIED SPEAKER:

1 Kevin, would it be fair to say that since everybody had a lot of
2 confidence in this support that was being installed that once you started having this
3 bump activity or it's ongoing, in a way that could even solidify your opinion that the
4 support was good, if you're having these bumps on and on and on and nothing's
5 happening to the props?

6 A. Oh, that's true. Yes, definitely. I mean, we thought that we could withstand
7 whatever the earth was going to give us with these props. We were still cautious, but
8 we thought we were --- we had that under control.

9 MR. PAVLOVICH:

10 Did anybody ever explain to you, Kevin, roof support people
11 or the guys there that each time one of these bumps occurred more coal came off the
12 pillar? It was actually reducing the core of those pillars?

13 A. I mean, I understand that.

14 MR. PAVLOVICH:

15 Okay. So whatever support that those pillars were providing
16 for that whole mountain was being reduced every time one of these bounces
17 occurred?

18 A. That, but we were also under --- we also discussed the fact that somewhere
19 along the line it's going to settle and it's not --- everything will be down and it won't be
20 wanting to move anymore.

21 MR. PAVLOVICH:

22 So is that when it ---?

23 A. Well, I'm not ---. Yeah, I guess in some ways, I mean, just like a longwall.
24 There's a point in time when everything settles and there's no more --- there's not
25 going to be any more movement. And naturally we had no idea when that was going

1 to occur. And because the material in the entry was loose itself, it didn't seem to be
2 compacted to the point that it was part of the support in the area, and we thought that
3 the rock props would take the place of that material that was in the entry and make it
4 stronger for us.

5 MR. PAVLOVICH:

6 So nobody ever suggested or felt like that material that was
7 filling up the entry was actually providing lateral support of the pillar, like gabions
8 would?

9 A. I don't know what that word means.

10 MR. PAVLOVICH:

11 Gabions?

12 A. Yeah.

13 MR. PAVLOVICH:

14 Gabions are those wire baskets that they put rocks in like
15 against a high wall on the road.

16 A. No, that was a concern. But I mean, that was one of the things that we kept
17 asking about, is this material real compacted or was it loose? And my conversations
18 with the folks told me it was loose, which I thought --- I felt better about that because it
19 wasn't like all this pressure coming in on it. But that was a discussion point that we've
20 had --- we had there.

21 MR. PAVLOVICH:

22 Okay. Thank you.

23 A. You's are a tag team up here.

24 MR. PAVLOVICH:

25 Yes, sir, buddy. Two on one, it's a whole lot easier.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TEASTER:

Do you need a break?

A. No.

BY MR. TEASTER:

Q. Kevin, you may have answered this earlier. What was your first thoughts when you saw that west main up there between ---? First of all, would you consider those north barrier or south barriers being mined between two gobs?

A. Yes.

Q. What was your initial thought when you saw the mine map and seen this was the area that you had to concern that ---?

A. There's not a whole lot of barrier, not a whole lot of coal left.

Q. Have you seen mining like that in your previous experience in Districts Two or Three or anywhere else where that stuff was that far out between mined out areas?

A. I don't recall seeing anything like that. There was a time when I think it was Dillworth Mine, they went back in and mined some room and pillar mining after the longwall mining had been completed, but I don't think it was in the area where the barrier pillars were located. It was further out.

Q. And how much cover was at Dillworth?

A. A lot less than here.

Q. Considerably less?

A. Yes. That's the only mine that I can think of where that I've seen that done.

Q. Looking at --- have you looked at the Agapito report's analysis of those mining those barriers up there?

A. Yes.

Q. And looking at those and knowing that we approved the roof control plans for

1 development of the north mains and retreats and then development and retreat of a
2 south barriers, it's called a main to both barriers, do you feel that the agency fulfilled
3 its responsibility in approving those plans?

4 A. I'm going to leave that up to the investigation team to make that
5 determination. I don't know enough about it, Ernie.

6 Q. Okay.

7 A. And I haven't gone in as much depth as I'm sure they will, but I'll accept
8 whatever recommendation they tell me. I see where when you look at a map you kind
9 of --- you have to question, you know, the approval process. In talking with Billy
10 Owens, I mean, he had a thought process that he used in approving it, and I guess I'm
11 interested in seeing if the investigation agrees or disagrees with Billy.

12 Q. Recalling that the grad student or ---.

13 A. Oh, man, that was a mistake.

14 Q. He says that just particularly ---.

15 MR. PAVLOVICH:

16 You could have said he was a mining engineer.

17 A. You know, I got that from Billy Owens.

18 MR. PAVLOVICH:

19 Yeah, well, I think ---.

20 BY MR. TEASTERS:

21 Q. The mining engineer, Dale Peter --- Peter Del Duca?

22 A. Yes.

23 Q. His analysis that identify five areas of concern, are you aware of those five
24 concerns?

25 A. No. I just know from the investigation team that they felt Del Duca did a pretty

1 good job of evaluating the plan. But I don't know what his five concerns were.

2 Q. Okay. And we have heard, although I've not seen, I think some of us have
3 maybe, that NIOSH took a look at Agapito's analyses of mining in those areas and
4 they said that Agapito's analysis was flawed?

5 A. Right.

6 Q. Are you aware of that?

7 A. Yes. And I'll tell you how I know a little bit about this, Ernie. I try to stay out of
8 the investigation, but as you know, I went over before Congress.

9 Q. Yes.

10 A. And I asked the district for their reasoning on why they approved the plan just
11 in general. And then I knew NIOSH was going to come out saying that our approval
12 process was flawed. So I asked the district to tell me what do you think is wrong with
13 what NIOSH is going to say over at Congress. Got that information from the district,
14 and then I went to the investigation team and I asked them, do you agree with the
15 district's concept that NIOSH's information is flawed? And I don't think they agreed
16 with the district's concept that NIOSH's discussion in Congress is flawed. It sounds
17 like they agree closer to NIOSH. I don't know if you guys know that. They probably
18 know that already, too. So I tried to stay away from that in Congress.

19 MR. PAVLOVICH:

20 Okay.

21 BY MR. TEASTER:

22 Q. Okay. There was five --- apparently what happened is this Agapito analysis
23 was given to the district to basically say if we submitted a plan would you approve it?
24 And then this is where Del Duca identified these five issues and they sent a response
25 back to the company and said it wouldn't be approved if it were submitted. And then

1 we ultimately --- the report, the plan was approved, and there's nothing that we can
2 find in the record to indicate how those issues, those five issues, were addressed.
3 Now, we understand that Billy Owens says they were addressed and it may be that Del
4 Duca didn't fully understand, you know, the system. I'm not sure about that, but do you
5 know how those issues were resolved or was there any paper trail that we can find to
6 indicate how they were resolved?

7 A. I'm not sure they were resolved. From my understanding, I'm not sure if Billy
8 Owens agreed with Del Duca's recommendations.

9 MR. PAVLOVICH:

10 Okay.

11 A. You know, from just --- and I didn't sit down and talk to Billy Owens or I don't
12 even know this Del --- Peter Del Duca. But the impression I got from talking to the
13 investigation team is maybe Del Duca recommended some stuff that Billy didn't agree
14 with. And I'm not so sure that Agapito revised all of Del Duca's items. But you would
15 find out more from interviews with those two than what I had heard. But that may be
16 why you can't tell.

17 MR. PAVLOVICH:

18 Okay.

19 A. Because they didn't do it.

20 MR. PAVLOVICH:

21 Oh, I'm just going to go on with questions here. I don't have
22 anything any more about that. I mean, the plans I think are --- we beat those.

23 BY MR. TEASTER:

24 Q. Are you aware of these BLM reports?

25 A. Now I am.

1 Q. Yeah. Are you aware of any communications that the district would have not
2 necessarily specific to these reports, but is there any interaction between BLM and
3 District Nine to address issues such as these?

4 A. My understanding is we've never had any communication with BLM. And
5 we've never --- after this accident was the first time we've ever seen one of BLM's
6 reports.

7 Q. And you noticed there's a block. I don't know if you did. They have a --- I
8 mean, the reports we saw, some of them are like quarterly inspections and some are
9 like special inspections. But one, and I can't remember. Maybe it was a quarterly
10 inspection, but I'm not sure. But it had a block to check was it discussed with MSHA
11 because none of them were checked. But the fact that it had that would lead me to
12 believe that there may be some set up to communicate between the two agencies.

13 A. I asked Al and Al said he's never had any conversation with them. Now, in
14 headquarters we're working on a memorandum of understanding so we start working
15 with them. But I don't think up to this point we haven't done that. I think District Nine
16 is probably about the only district that would talk to BLM because that's federal land. I
17 don't think we have much of that in the eastern part of the United States. So it's
18 probably something that's specific to District Nine.

19 Q. Do you know if Richard has been able to interview anybody from BLM as part
20 of the accident investigation?

21 A. I think he did that the end of last week.

22 Q. Okay. Because I know last time we talked he said that they wouldn't talk to us
23 or something.

24 A. Well, I guess after the testimony in Congress took place, BLM got kind of
25 nervous. And my understanding is they hired personal lawyers and they decided they

1 weren't going to be interviewed because part of the investigation, it's a voluntary
2 process as you know. Somehow Richard kind of worked out a deal with them that
3 they were supposed to interview with him the end of last week.

4 Q. Okay.

5 A. And I talked to him on Monday. And if he didn't interview them, he would
6 have told me, you know, we were talking about a number of things, and that didn't
7 come up. So I'm assuming those interviews were conducted.

8 Q. Kevin, do you feel that your leadership, district managers and ADMs have
9 received adequate training in dealing with mine emergencies?

10 A. I'd like to see us improve on it. For a long period of time there, we were doing
11 MERD exercises, and they seemed to really be helpful. And we kind of got away from
12 that. And I think there's a lot of training we can do. There's a new office that's been
13 formed now. John Urosek's in charge of it, and I know one of his tasks is to conduct
14 training for people in the field. And I think that's something that we would find helpful.
15 I think we can use that.

16 Q. Can you recall roughly when the last MERD exercise was held? I always
17 thought those were very beneficial and, you know, you get a pretty good turnover.
18 There's a larger turnover than you might think in managers and assistant managers.

19 A. Ernie, I'll bet you it's been ten years at least. I'll bet you it's been that long. I
20 can't recall anything for a long period of time.

21 MR. PAVLOVICH:

22 And I guess, Kevin, you've had a lot of turnover in managers
23 since that time?

24 A. Oh, my, yeah. We just had a manager's meeting a couple weeks ago. And I
25 think 8 of the 11 managers have been in place since August of 2006. So I mean,

1 there's only three of them that go back prior to that, so there's been a big turnover.

2 MR. PAVLOVICH:

3 Well, earlier I had asked you a question about the K Order
4 and how it was being modified for individual plans. And when you got there you said,
5 no, we're going to modify it once to incorporate all plans under one modification. And
6 I guess I said we'd talk about it again later in this regard. Leave that alone.

7 A. I thought that was just a little toy over there. I didn't know --- I was wondering
8 where the microphone was.

9 MR. PAVLOVICH:

10 I thought he was going to rip it out. Man. And so I guess, you
11 know, is that something maybe Al and his guys had never --- never known about or
12 experienced?

13 A. That would be my guess. I mean, there's nothing wrong, I guess, Joe, with
14 modifying that K Order ---

15 MR. PAVLOVICH:

16 Right.

17 A. --- every time.

18 MR. PAVLOVICH:

19 There's not.

20 A. But it's just a lot more work in my opinion.

21 MR. PAVLOVICH:

22 Well, it's impossible to keep up with.

23 A. I think so. And yeah, I got the impression that they had never had to do that,
24 been in something for the long haul like this before.

25 MR. PAVLOVICH:

1 Okay. Do you got any more on this page or ---?

2 MR. TEASTER:

3 I was just going to ask him about the bumps, what kind of
4 guidance the district or headquarters provided for the districts in the handling of
5 bumps.

6 A. Prior to Crandall?

7 BY MR. TEASTER:

8 Q. Yes.

9 MR. PAVLOVICH:

10 Yeah.

11 A. None. I don't recall us having any guidance to them. Or after the fact we had
12 some, but not before.

13 BY MR. TEASTER:

14 Q. And what kind of guidance have you now provided?

15 A. Well, I asked AI to pull all the retreat plans over 1,500 feet in his district. And
16 he did that. And we've requested tech support to come out and look at all our bump-
17 prone mines. And we had shut down the Aberdeen longwall based on the fact that
18 there was 3,500 foot, of cover and we've had experienced bumps in the past. So
19 that's some of the stuff that we had done after the fact that prior there was no
20 headquarter guidance sent out.

21 Q. Do you know if NIOSH has done any work or has the agency requested that
22 NIOSH do anything to try to predict the occurrences of bumps?

23 A. We asked NIOSH to come out and accompany, help in the evaluation of the
24 bump-prone mines, and they declined.

25 Q. Oh, they declined?

1 A. They declined. They said that they couldn't come out and do that as another
2 government agency. (b)(5)

3 [REDACTED] They were saying
4 that because they're a research agency they didn't want to come up and get involved
5 in enforcement. And we felt we needed all the help we could get. And I mean, their
6 experts are the ones that have written a lot of papers on it, so we wanted their help in
7 evaluating some of these things, and they declined.

8 MR. PAVLOVICH:

9 So you think it is they just don't want the responsibility of ever
10 having been involved in a decision say yeah or nay?

11 A. I'd say that's probably a big part of it, Joe.

12 BY MR. TEASTER:

13 Q. How would you characterize MSHA's relationship with NIOSH?

14 A. (b) (5)

15 Q.

16 A. (b) (5)

17 (b) (5)

18

19

20

21

22

23

24

25

1 (b) (5)
2
3
4

5 MR. PAVLOVICH:

6 (b) (5)

7 A. (b) (5)

8 BY MR. TEASTER:

9 Q. Well, this guru that was established under the MINER Act for them to have a
10 person --- NIOSH to be directly a liaison more or less between MSHA and NIOSH to
11 identify areas of concern and research, is that not working well or it's not been fully
12 implemented or ---?

13 A. I think they work through tech support, through Mark Skiles' office. They don't
14 work with coal at all. But I think Skiles has a liaison. That's Kravitz. Kravitz is
15 supposed to be MSHA's liaison to NIOSH, and I'm not sure who the NIOSH person ---.
16 I think there's a guy by the name of Snyder from NIOSH that's the liaison that works
17 with Kravitz.

18 MR. TEASTER:

19 Okay. Joe?

20 MR. PAVLOVICH:

21 I know these guys probably have some questions, but can we
22 take about a five-minute break?

23 MR. TEASTER:

24 Well, let's keep going.

25 SHORT BREAK TAKEN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TEASTER:

You got any questions, gentlemen?

UNIDENTIFIED SPEAKER:

Yeah, I just got one. Hey, Kevin, you know, we talked earlier when we went through this policy manual on the family liaison, you know, we talked about the family liaison issues and actually what role they play. And maybe I have two questions now that I think about it. We interviewed a couple of the family liaisons already and the one guy that we talked to from District 10, Robert Gray, he almost came across like he seen his role to be more of a counselor than a family liaison, like he was a comforter. And I guess our thoughts were do we have any MOU with the Red Cross, or can we plan ahead maybe hopefully we don't have any more disasters. But if we do have some type of immediate contacts and maybe develop an MOU with the Red Cross where they can bring in counselors right away. And that would kind of free up the family liaisons to fill more of a role that was probably intended.

A. We did have counselors there in addition to the family liaisons.

UNIDENTIFIED SPEAKER:

Okay.

A. But I mean, maybe when Bob was there, maybe they had already left. I don't know.

UNIDENTIFIED SPEAKER:

Okay.

A. But our intent wasn't to make the family liaisons counselors, grief counselors.

MR. PAVLOVICH:

Well, your third point on your policy says the liaison is not a counselor.

1 A. Okay.

2 MR. PAVLOVICH:

3 But may be required to coordinate support through such
4 professionals as the American Red Cross.

5 A. We had them there.

6 MR. PAVLOVICH:

7 Yes.

8 A. The Red Cross was there with us the whole time.

9 MR. PAVLOVICH:

10 Cheryl told us that, that their company had counselors. It was
11 a private agency. And the Red Cross was there, so they were there. And I guess our
12 whole point was you're not a counselor.

13 A. Right. I agree with that. An MOU would be good, though. Maybe small
14 mines wouldn't have the capabilities as Murray would have to hire people.

15 MR. PAVLOVICH:

16 Right.

17 A. So that's a good idea.

18 UNIDENTIFIED SPEAKER:

19 I was thinking ahead, Kevin, or maybe even something
20 proactive that we could set up with the Red Cross that any time we have a mine
21 accident we got one number we call, like a liaison, and get them on site somehow if
22 they're needed.

23 A. That's an excellent idea.

24 UNIDENTIFIED SPEAKER:

25 The only second question I guess I have is in this directive it

1 talks about MSHA being a primary communicator. And I don't know if you've talked to
2 the solicitor's office at all. I guess we thought through in our mind how do you
3 implement that to make sure MSHA's the primary communicator and may be the
4 primary communication with the press. And we also have the freedom of speech, you
5 know, where anybody can't stop anybody from talking to the media. So has anybody
6 in the solicitor's office looked at our freedom of speech rights versus MSHA being the
7 primary communicator? What actions --- do we have like a protocol that we might
8 need to develop if we have --- I know we said earlier that maybe Bob Murray was the
9 worst case scenario. But should we look and develop some kind of protocol that if it
10 appears that somebody's interfering with our ability to get the truth out, how do we go
11 about dealing with that maybe in case it would happen again so you guys wouldn't kind
12 of be trying to solve it as you go? There's kind of a conflict between our guidelines
13 and actually the freedom of speech, if you think about it.

14 A. Yeah. I mean, we discussed that. We says how can you stop Murray from
15 going to a microphone off mine property? I don't know how you do that other than you
16 just disassociate yourself and you have your own news conference and you just deal
17 with your issues yourself instead of trying to do it jointly. But I just don't know how you
18 can control other people from going to a microphone. We talked to Clair about that.

19 UNIDENTIFIED SPEAKER:

20 Okay.

21 A. But he's never said anything back to us.

22 UNIDENTIFIED SPEAKER:

23 Still waiting on a response?

24 A. Well, I don't know if there is a good response to it.

25 MR. TEASTER:

1 Well, I think the MINER Act either in the legislative history or
2 in there, it says that that primary communicator rule was not to take away or eliminate
3 the operator's right to communicate with the public and the media.

4 UNIDENTIFIED SPEAKER:

5 I guess what hurts us is that perception that, you know, they
6 come out and say, well, we've given MSHA the authority to be the primary
7 communicator, actually directed us to be the primary communicator. And then
8 everybody's perception is, well, we're not doing that even though we tried. You know,
9 when they watch the news all they see is Bob Murray up on TV, and they think maybe
10 we failed.

11 A. And there's such a fine line there. I mean, you've been in it and I know you
12 guys have, that I mean, our whole goal is to work with the company as a team.

13 BY MR. TEASTER:

14 Q. Sure.

15 A. To try to get these people out of the mine. And the minute you finish working
16 at a table, say you guys stay here, we're going to go talk to the media. You're not
17 allowed to do that.

18 MR. PAVLOVICH:

19 You can't do that.

20 A. It's pretty tough.

21 MR. PAVLOVICH:

22 No, in fact, your last sentence even in your policy says
23 nothing in this policy shall prohibit the mine operator from establishing communication
24 with the families or the public. It's basically telling you you can't do that.

25 A. Right.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

So I don't know if they exactly knew what their role was or what was intended to be their role, you know. We don't know that.

A. It was the first big one that they did.

MR. PAVLOVICH:

Yeah. And I think they did a great job as far as ---

A. Yeah.

MR. PAVLOVICH:

--- being sympathetic and helping to be there. I mean, you couldn't have picked better people in my mind than Carla and Bill Denning. I mean, --
no further questions? No further questions.

UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C).

Kevin, did you state that there was a pager phone in the Blue Goose?

A. Yes.

UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C).

I thought somebody told us that there wasn't.

A. Oh, I'm positive there was.

UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C).

There was, okay. And another one. In the south barrier where they're mining and their bleeder approval plan, they had a stipulation for that in case they couldn't make the deepest penetration that you could make your evaluation at the tow of the water, same as it was in the north barrier plan for its wrap-around bleeder. Was it a concern that there was water accumulating in the back end or do we know for sure that somebody had been making that regular?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNIDENTIFIED SPEAKER:

We didn't have that information.

A. I didn't know that was in the plan. But my understanding is they made it the whole way to the back end all the time. And that's one of the reasons why we thought there was a chance that those guys --- the miners would have barricaded back there because they said it was high, safe for travel, posts were in place. So my understanding is, [REDACTED], they got to the back end.

UNIDENTIFIED SPEAKER [REDACTED] :

And water wasn't an issue?

A. No. No water at all. In fact, even when we put the bore hole down, we didn't see any water back there. I don't like that kind of plan, though.

MR. PAVLOVICH:

No, just in case.

A. Yeah. That's that nominal stuff, you know.

MR. PAVLOVICH:

That's right.

UNIDENTIFIED SPEAKER [REDACTED] .

Okay. And another one, when you look at that map, they have two 101(c) partitions approved for two entry systems that are collateral, the belt and return.

A. Okay.

UNIDENTIFIED SPEAKER [REDACTED] .

And to allow use of belt air. And were approved a long time ago. And the justification from the operator was that we're mining in this bump-prone country and two and three is safer, and we'll do this and this and make it just as safe.

1 Then when you look at the overall map anywhere that they couldn't longwall because
2 of surface screens or whatever, they grow multiple entries and pillar. Does that seem
3 to negate the operator's initial argument?

4 A. I never looked at either of those partitions, didn't even know they had them.
5 But yes, that does negate their concerns. I didn't see too many places where they had
6 ---. Well, I guess, yeah, all the longwalls are two and three. You're right. Everywhere
7 else is north of two entries.

8 BY MR. TEASTER:

9 Q. Kevin, while you're up, I was going to ask you what you felt about this mine in
10 this area here?

11 A. I don't like it.

12 Q. You don't like it?

13 A. No.

14 Q. Does that mean it shouldn't be permitted?

15 A. I don't know if we have anything that would not allow a district manager to
16 consider it. But to me, I think getting to these seals are important. And naturally when
17 you pillar mine between like that, that prohibits you from getting to it.

18 Q. Does the law require that those seals be examined or ---

19 A. It says ---.

20 Q. --- you're not supposed to leave them in the gob?

21 A. I think they either need to get to the seals or they need to be able to monitor
22 them remotely, which would mean they would have had to put a bore hole in from the
23 surface to be able to monitor those. I think regulations allows them that flexibility.

24 MR. PAVLOVICH:

25 But the seals have to be monitored somehow?

1 A. Yes. You have to be able to monitor the sealed area.

2 BY MR. TEASTER:

3 Q. I don't know of any bore hole is in there?

4 A. No.

5 Q. They're probably monitoring that here somewhere; right?

6 A. Well, all they were doing, they were coming back here somewhere to a corner,
7 an evaluation point. And that would be the only place that they would be able to
8 monitor everything through here. We made them put a bore hole or a hole through
9 this seal here.

10 Q. Yeah, that's the set we're going to discuss here.

11 A. Yeah, we wanted to see what we had back there.

12 MR. PAVLOVICH:

13 Did you ever see the analysis from that hole?

14 A. I think it was always intake.

15 MR. PAVLOVICH:

16 So we never were able to get ---?

17 A. Not that I'm aware of. And that makes sense. I even went --- I think Richard's
18 the one that told us to put it in. And I knew because of the fan pressure over this way
19 we were going to have a hard time getting it to exhaust.

20 MR. PAVLOVICH:

21 Okay. So we couldn't correlate the seven percent oxygen
22 with what we found in the Number One hole?

23 A. No.

24 MR. PAVLOVICH:

25 Okay.

1 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C).

2 It's my last one. Back to when the press went underground, it
3 was more or less, from what I understand, was to show the family why progress was
4 so slow?

5 A. I don't know if it would show the families as much because, I mean, we
6 already had two family members going underground. I think it was more to show the
7 public why things were slow.

8 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

9 And the rest of the question, family went in, you think?

10 A. I think the family went in first.

11 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

12 I just got a couple. Was it ever determined what the noise
13 that was picked up by the seismic equipment was?

14 A. No, other --- no. That might be a good question for Kravitz.

15 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

16 Okay.

17 A. I mean, they were real excited. Him and John were both really excited when
18 that happened. They thought they really had something there. I mean, they came
19 down and showed everybody the seismic charts, and it did look positive. But I can't
20 give an answer to that, Ex. (b)(6)

21 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

22 (T)okay. Kind of don't know how to ask this question, but you
23 know on two or three things, two or three emergencies we've had, I'm thinking Sago
24 and this one, it seemed like more than one drill would be good to get holes down
25 quicker, but I don't know what we can do. Have you guys thought about anything like

1 that, what could be done?

2 A. That was another reason I should have mentioned it earlier that we looked at a
3 J Order because Murray said that he --- the roads were so --- or the bulldozed roads
4 were so little up there and there was such little space that they could only service one
5 drill at a time. And we, as a group, thought that if we had more than one drill we
6 would have been in a lot better situation. And we do think more than one drill would
7 have helped because there was a lot of down time before you went from drill hole one
8 to two. And I mean, it just --- I remember Richard telling Murray, you know, your idea
9 if you didn't know you were going to need another drill for bore hole two, that worked
10 there, but when you started to get to bore hole three, you should have had other drills
11 up here to start drilling. And Murray's response was we can only service --- we only
12 had the space to service one drill at a time.

13 BY MR. TEASTER:

14 Q. And did you guys buy into that, that there's only enough space for one?

15 A. No, I didn't. But we didn't have --- I don't know if --- I didn't think we had the
16 authority to tell him that he had to have another drill up there. We weren't in a
17 position to do that, but we kept suggesting you need to get another drill here.

18 UNIDENTIFIED SPEAKER Ex. (b)(6) and [REDACTED].

19 My last one is just something that you said early on in your
20 interview. You said that you asked Cheryl to contact headquarters about shutting
21 down Murray's mines. Was that a normal thing or ---?

22 A. The only reason I had her do that is I figured someone was going to start
23 screaming and calling headquarters. And as a courtesy, I just wanted to make them
24 aware of it so they weren't caught off guard when they got the phone call.

25 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C) [REDACTED].

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

You know. Where the hell are you going to drill?

A. Yeah. The one thing, I'll tell you, I'm surprised that, you know, I'm probably answering the question you're not even asking.

MR. PAVLOVICH:

That's all right.

A. But I'm surprised we didn't get a lot more questions on breathable air. And you know, we got a back log on refuse chambers that aren't going to be delivered into the middle of 2009. So we're looking at a policy now that's going to tell operators they need to comply with bottled air and brattice cloth until they get that available. But I'm surprised that people, media, didn't say why weren't they using the breathable air that was part of the MINER Act. And it would have helped us in one way if we knew where they had it and where it was stored. That would have been a location where we would have put a bore hole in.

MR. PAVLOVICH:

Sure.

A. And I'm just surprised that we haven't gotten more questions and attention on that issue.

BY MR. TEASTER:

Q. I'd say one of the --- that issue was raised up by I think Congressman Miller, that why was the breathable air thing extended until August the 12th?

A. I'm not sure. I think the way the regulations were set up, Ernie, is it says 60 days after your plan's approved you have to have breathable air in. And in Crandall Canyon's case, the plan was approved on June the 12th, so they had 60 days, until August the 12th, to have the breathable air in the mine. But they still wouldn't have

1 had it because all they had was a purchase order for a refuse chamber. And I thought
2 that was going to be a bigger issue than it turned out to be.

3 MR. TEASTER:

4 Ex. (b)(6) and Ex. (b)(7)(C)

5 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

6 Yeah, I have a couple. Kevin, on some of the information
7 that was available, that went in to some of the decisions early on regarding, I guess
8 first of all, the decision to go into Number One after, you know, the initial excursion
9 into Four. And you mentioned some of the thought process that went into that, one of
10 it being the barrier where it was. When they encountered the barrier moving over into
11 the entry and getting the solid portion as they were cleaning up, did that generate
12 some discussion about --- you know, did they rethink what they thought might have
13 happened at that point?

14 A. No, I still think the thought process still was that the big bump came from the
15 main west. I don't think the folks from tech support changed their opinion about that.

16 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

17 From the north rather than from the south?

18 A. Yes, yes.

19 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

20 Okay. Tech support people. You mentioned their
21 involvement with the rock props as the primary support protecting them from future
22 bumps. What was the company's involvement with the generation of that plan? I
23 mean, did tech support propose it first, or was the company already thinking along
24 these lines? How exactly did that evolve?

25 A. I think the company was already thinking along those lines. And you know,

1 I'm sure they probably talked to him. I would assume they talked to a number of
2 experts as well, and everybody seemed to agree that these rock props were the best
3 choice. And as I said, I know Joe and Mike contacted a number of folks, including
4 Barzak of NIOSH, and he was even in agreement that these rock props were the way
5 to go.

6 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

7 One other one relating to, I guess, availability of information.
8 If I understood you correctly when Ernie was asking you about the March bump in the
9 north, did you state that that information was not readily available or understood as
10 this was going on?

11 A. Well, the regulations require that if a bump occurs and it basically stops
12 mining for one hour, the mine operator needs to report that. By reporting it, they need
13 to call our so-called call center. And there's no record of them doing that. What they
14 did was sometime in that same time period they contacted our district office, talked to
15 their vent supervisor, and basically told him that they wanted to get a seal plan
16 approved. But it wasn't because of the bounce as much as it was because they
17 couldn't travel the bleeder system.

18 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

19 But after this event on August 6th ---

20 A. Okay.

21 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

22 --- what was known for all the decision makers there about the
23 March bump? I mean was that common knowledge, that hey, we had a bump here in
24 March in the north?

25 A. It didn't become common knowledge to me until I saw the BLM report after the

1 16th.

2 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

3 Okay. And I guess this is what --- where I'm going with this is
4 that later on when you guys --- I mean, I understand you saw the BLM report, but later
5 on when you became aware of the Agapito reports that the district had, the Agapito
6 report from April really had that in May. And that report was pretty explicit, sustaining
7 that a large bump occurred with heavy damage from such and such crosscut, this
8 crosscut. And while this was going on, that was never brought up to anybody
9 considering where we might be going and what might impact where we're going?

10 A. If it was, Ex. (b)(6) I wasn't part of that conversation with the Agapito report at that
11 time. There may have been. I know there was copies of the Agapito report around
12 the mine site.

13 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

14 Okay.

15 A. But I don't know who all looked at them.

16 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

17 Okay. Well, that's kind of what I was wondering.

18 A. Okay.

19 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

20 I mean, I was hoping that that would have been the case, that
21 that information would be out there for people to consider that, hey, going to Ernie's
22 point that when we get to this location ---

23 A. Right.

24 UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

25 --- we're basically parallel to where we had that bump in

1 March?

2 A. Our roof control guy, I know those guys looked at that report.

3 MR. PAVLOVICH:

4 Did the people in the district basically tell you, Kevin, we
5 never knew anything about a bump?

6 A. They told me that --- I don't want to say they knew nothing about a bump. I
7 can't say that. My understanding was in talking with Al Davis and Billy Owens that the
8 mine operator pulled out of that north area because he couldn't travel the bleeder
9 system. I sat down with Laine Adair who submitted the --- who would submit the plan
10 to seal the area, and he basically said the same thing to me, that we made the
11 decision to pull out of there because we could not travel the bleeder system, not
12 because of the bounce, which is inconsistent with what the Agapito report says and
13 what this BLM report says.

14 MR. PAVLOVICH:

15 Sure. They called the BLM guy apparently and said we had a
16 bounce and we don't want to mine any more of this. That's why he comes out
17 because he's concerned about royalties.

18 A. Right.

19 MR. PAVLOVICH:

20 And agreed with that evaluation based on what he saw.

21 A. Right. We didn't know that. My understanding is we didn't know it even to the
22 point that we had this Randy Gunderson who was checking the seals here and asking
23 him why they put it in. And they didn't even tell him that it was because of the bounce.
24 It was because they couldn't travel the bleeder. That's my understanding. I'm sure
25 you will dig into that. But that's what I was told.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TEASTER:

Anybody else?

UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

Ernie, I got one more. Was that BLM report available at the mine site, or how did it just surface all of a sudden?

A. I think the guy wrote it after he knew of all the problems that occurred out there. I mean, it wasn't written until August the 19th or something, if you look at the date on it.

UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

And then he just said here's my report?

A. I don't know how I came upon it, but I mean it, ---.

UNIDENTIFIED SPEAKER Ex. (b)(6) and Ex. (b)(7)(C)

Because everybody ended up having it?

A. Well, yeah. I mean, we got a copy of it from someone, Ex. (b)(6) and Ex. (b)(7)(C) & But I mean, he didn't walk into the trailer up there and give it to us. He must have mailed it to someone and --- the company gave us a copy of it or something. I don't think he ever gave it to us. I think he gave it to the company and the company gave it to us.

BY MR. TEASTER:

Q. Did you read the BLM report back when Andalex wanted to not mine that area?

MR. PAVLOVICH:

2004.

A. No, I didn't.

BY MR. TEASTER:

Q. And are you aware of it?

1 A. No.

2 Q. Well, basically Andalex wrote this letter to BLM that says we can't mine this.
3 It's not safe to mine up here in the west main. They came back and conducted an
4 investigation and agreed with it, and it was a very detailed thing. And if you look at
5 that report, what that guy said, if you mine this area, this is what will happen.

6 A. Is that right?

7 Q. And it almost is to the T what happened.

8 A. Wow. I never knew that.

9 Q. Is that a fair assessment of that report?

10 UNIDENTIFIED SPEAKER:

11 Pretty much. The location ---.

12 MR. PAVLOVICH:

13 He says that Andalex requested that he come out there
14 because they did want to do no more mining in the main west.

15 A. Who was the BLM guy?

16 MR. PAVLOVICH:

17 Same guy, same guy.

18 UNIDENTIFIED SPEAKER:

19 Steven Falk (phonetic).

20 A. That told them later to go ahead and mine it?

21 MR. PAVLOVICH:

22 Well, what he says was --- and he says he came out here and
23 he traveled main west. Of course, none of the barriers were still intact yet. He said he
24 traveled the main west and he walked around. All this area here was so bad and so
25 deteriorated and so hazardous that he agreed don't do any more mining here.

1 A. Wow.

2 MR. PAVLOVICH:

3 Then he says in addition, they don't want to do any mining in
4 these barriers because it was never intended to mine those barriers anyway because
5 of the deep cover, and he would be extremely concerned if any mining was done. So
6 therefore, he agrees that BLM will collect no royalties in this area primarily.

7 Then when Murray comes in, Murray submits a plan that says
8 we want to mine this barrier. And the guy goes out and does an evaluation and says,
9 you know, it will be interesting to see if he can do it because the cover is so deep.
10 We've already had problems. But if MSHA says it's okay, it's okay. We're glad you're
11 going to do it because we're going to get the royalty.

12 A. Wow.

13 MR. PAVLOVICH:

14 But he's very concerned about bumps and all in that area and
15 says, I don't --- you know, it will be interesting to see if it will be mined or not.

16 BY MR. TEASTER:

17 Q. So they was happy that now that they found out that they could safely mine
18 things that they previously thought was not mineable.

19 A. Wow.

20 Q. From my standpoint. But he talks about these bumps and stuff. And as I
21 recall, he gives a pretty accurate description as to what actually did happen in those
22 areas of the mine.

23 UNIDENTIFIED SPEAKER:

24 He basically predicted it.

25 BY MR. TEASTER:

1 Q. Yeah, he predicted it.

2 A. Wow. I never knew that.

3 UNIDENTIFIED SPEAKER:

4 Aren't those on your W drive or something?

5 UNIDENTIFIED SPEAKER:

6 I have them here now.

7 UNIDENTIFIED SPEAKER:

8 Okay.

9 A. If they're on a W drive, I'm sure I can get them.

10 BY MR. TEASTER:

11 Q. Yeah. If you get a chance to read them, they're very interesting.

12 MR. PAVLOVICH:

13 There's four of them. There's four of them is the only ones we
14 had. But one is --- the first one from 2004.

15 A. Wow.

16 MR. PAVLOVICH:

17 And then the other three are the three inspections he made.

18 One was a regular inspection that he talks about and then there was two special
19 inspections he made. I guess one was when they wanted to mine it. The second was
20 when they had the bump in the north and he went out and said I agree, no more
21 mining here.

22 BY MR. TEASTER:

23 Q. Kevin, is there anything that you'd like to share with us that we've not asked or
24 you volunteered?

25 A. I can't think of anything, Ernie. I mean, you guys have done a pretty

1 extensive job on the questions, and I can't think of anything else I can add to it.

2 Q. Well, we sure appreciate you taking time out of your busy schedule, Kevin.
3 We know you've got an awesome responsibility and we know a lot of things have
4 happened to introduce you to that position up there and we wish you the best of luck.
5 We know you're very capable and competent, and we have a lot of faith in you doing
6 the right things. We appreciate you being candid with us, sharing your information.
7 We hope that as a result of this review that things will come out and help you better do
8 your job or identify some areas where you can make improvements.

9 A. That's the only thing that can come out of this now, to try to keep this from
10 ever happening again. So we'll take anything that you guys give us constructively and
11 we'll make whatever changes are necessary. I promise you that.

12 MR. PAVLOVICH:

13 Kevin, I'd like to say that first of all, I know none of this comes
14 easy to you. And I've known you for a long time and I've known your dad for a long
15 time and was good friends with him and he trained me in my early career with MSHA.
16 And I know from your family background that you're sincere about mining and mine
17 safety. And certainly you wanted everything to come out right in this regard.

18 A. Yeah.

19 MR. PAVLOVICH:

20 And we certainly express our sorrow with you of what
21 happened here. I was a good friend of Gary Jensen's. Known him for years out west,
22 and in fact, he even called me before he came to MSHA and asked me to put in a
23 recommendation for him because he listed me as a reference. So I know that hit all of
24 you hard.

25 A. Sure.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVLOVICH:

And they're a family.

A. He was quite an individual. I mean, you never heard anything bad about him.

MR. PAVLOVICH:

No. But we appreciate you coming in and talking to us and giving us your time and answering all our questions sincerely. And I think you've been more than honest and fair with us. And we'll try and be as fair and impartial and sincere in this to try and --- because we realize just like you were talking about the guard didn't get training or something. That doesn't help anything.

A. Yeah.

MR. PAVLOVICH:

The recommendations that Ernie and I, I think, have committed to try and make in this with these guys help is what can we really do to help you and to help this agency to get on the track without all this. And that's why some of the questions I asked you about MINER Act ---

A. Sure.

MR. PAVLOVICH:

--- and all that stuff is the reason we asked them. And so ---

A. I understand.

MR. PAVLOVICH:

--- that's fully our intent. And hopefully we can do that. I guess the way this is to be panned out is we're working for Radzely or the secretary's office or somebody.

A. Right.

MR. PAVLOVICH:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16