

IN RE: CRANDALL CANYON  
MINE INVESTIGATION INTERVIEWS

INTERVIEW  
OF  
ALLYN DAVIS

INTERVIEWERS:  
JOSEPH PAVLOVICH and ERNEST C. TEASTER, JUNIOR

DATE:  
January 24, 2008 and January 25, 2008

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MR. PAVLOVICH:

I guess you're familiar a little bit maybe with how Ernie and I got involved in this. Normally the agency would do an internal review and they've done this Pyro. And because of the fact that Mr. Stickler and Kevin Strickland were here during the rescue effort, the Secretary decided that she wouldn't take their subordinates to head up an internal review.

So Ed Clair contacted both of us, through the Secretary's Office, and asked us if we head this, what's called an, independent review of it, ---

MR. DAVIS:

Right.

MR. PAVLOVICH:

--- because we no longer work for MSHA and if we would do that. And we asked these folks here to help us because the two of us obviously couldn't do what all needed to be done.

So that's kind of how we're here. You've known Ernie and I for a long time ---

MR. DAVIS:

Yeah.

MR. PAVLOVICH:

--- so you know our backgrounds. And we're here. The other thing we'd ask you, Al, we have been taping the interviews that we've done so far. We'd ask your permission to tape this one? Our intent with that is to be able to, should we sit down to write the report and somebody says Al said it was black and no, Al said it was white, we can go back and listen to the tape and see ---.

MR. DAVIS:

1 That's no problem, Joe.

2 MR. PAVLOVICH:

3 Okay. I have a brief statement to read to you here. The  
4 Secretary's assigned this group the task of evaluating MSHA's performance during the  
5 period preceding the August 6, 2007 coal bounce at Crandall Canyon and the  
6 subsequent rescue effort. We will also be evaluating issues that were raised during  
7 this time period regarding Bob Murray and his interaction with MSHA.

8 This is not an investigation or review of any individual person.  
9 It's an administrative review of MSHA's actions as an agency. The evaluation will be  
10 presented to the Secretary in the near future and it's intended that the results of the  
11 evaluation will be made public. This interview is being conducted to gather information  
12 for this assignment, we also intend to interview a number of other MSHA employees.  
13 So that we may obtain unbiased information from all persons to be interviewed, we  
14 ask that you not discuss this interview with anyone until all the interviews are  
15 completed. We feel, Al, that this week, we'll probably take next week and maybe work  
16 at home some and the following week after that we'll be in Price and that should finish  
17 our interviews.

18 MR. DAVIS:

19 You're going back to Price?

20 MR. PAVLOVICH:

21 We're going back to Price, we need to interview a few more  
22 family members and we have a few follow-up questions for a few of the guys. I mean,  
23 it's not going to be much intense, but there's some clarification and some other things  
24 we've decided we needed to do.

25 And we talked to two representatives of, I guess, families of

1 two of the miners who were killed in the original bump, and I think probably for respect  
2 for them and to make sure we get the whole picture on the family liaison program and  
3 all that stuff, we should interview at least someone from all the families.

4 MR. DAVIS:

5 Yeah.

6 MR. PAVLOVICH:

7 So we certainly want to provide that opportunity if they want to  
8 talk to us, and I think ---.

9 MR. TEASTER:

10 The governor.

11 MR. PAVLOVICH:

12 Oh, yeah, we need to talk to the governor because he's made  
13 some allegations about MSHA when he testified before the Senate subcommittee.  
14 And so we need to interview him and he's agreed to talk to us. And who else?

15 MR. TEASTER:

16 Steve Falk.

17 MR. PAVLOVICH:

18 Oh, and Steve Falk.

19 MR. DAVIS:

20 Do our people know you're coming and when so we have ---  
21 so they can be scheduled to be in the office?

22 UNIDENTIFIED SPEAKER:

23 Well, we've not sent anything out yet.

24 MR. PAVLOVICH:

25 Who did we want to talk to over there?

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UNIDENTIFIED SPEAKER:

That's what we didn't say for sure yet. We want to talk to Donnie again I know.

UNIDENTIFIED SPEAKER:

Randy Gunderson.

MR. PAVLOVICH:

Gunderson, okay.

MR. DAVIS:

I'll just ask you if you can get information to them so they can make sure those guys are ---.

MR. PAVLOVICH:

And we'll try to accommodate them, you know, if they need to make inspection we can get them at 2:00 in the afternoon or something. Yeah, that will be okay. I think we should have enough time over there to be pretty flexible with their time as opposed to, say, you know, be here at seven o'clock, you're going to get interviewed all day. I think it's going to be a half hour or something, just some questions.

MR. TEASTER:

The reason we haven't, Al, is we've been trying to work with the families and trying to accommodate them when they can meet and we just about got all of that.

MR. DAVIS:

Yeah, well it's just a matter of making sure the guys are in the office.

MR. PAVLOVICH:

1 We'll do that, we'll make sure ---.

2 MR. PAVLOVICH:

3 The only ones that might be a problem, but I don't know that  
4 you'll be talking to any more are the trainees again, but ---.

5 MR. PAVLOVICH:

6 I don't think so.

7 MR. PAVLOVICH:

8 I think they're in Beckley, so ---.

9 MR. PAVLOVICH:

10 No, I don't think there's any trainees. Mostly you had those  
11 guys on the log book.

12 MR. DAVIS:

13 Yeah.

14 MR. PAVLOVICH:

15 And I think we've got a pretty good representation of Brown  
16 and Serazio. We didn't get Tim Curtis I think, but his name showed up a lot.

17 MR. DAVIS:

18 He's down in Beckley now.

19 MR. PAVLOVICH:

20 He's in Beckley?

21 MR. DAVIS:

22 No, he's done.

23 MR. PAVLOVICH:

24 Oh, he's done?

25 MR. DAVIS:

1 He just got his AR card.

2 MR. PAVLOVICH:

3 Oh, he did?

4 MR. DAVIS:

5 Yeah.

6 MR. PAVLOVICH:

7 Okay. Well, good for him. Good for him. I know him from  
8 being on, I guess, Energy West Rescue Team several years ago.

9 MR. DAVIS:

10 Yeah.

11 MR. PAVLOVICH:

12 So good. Okay. Al, also you are a management person with  
13 MSHA so you're not entitled to NCFL representation. I figured I ought to inform you of  
14 that right off.

15 MR. DAVIS:

16 Well, **Ex. (b)(6) and Ex. (b)(7)(C)** you know, so I don't even  
17 know who's running the show.

18 MR. PAVLOVICH:

19 Did **Ex. (b)(6) and Ex. (b)(7)(C)**?

20 MR. DAVIS:

21 Yeah.

22 MR. PAVLOVICH:

23 He finally did?

24 MR. DAVIS:

25 Yeah, **Ex. (b)(6) and Ex. (b)(7)(C)**

1 MR. PAVLOVICH:

2 Really?

3 MR. DAVIS:

4 He's gone.

5 MR. PAVLOVICH:

6 So who's the vice president now, they don't have one out  
7 here?

8 MR. DAVIS:

9 I don't know.

10 MR. PAVLOVICH:

11 Well, they only had 11 of them, I mean maybe they can get  
12 by with ten?

13 MR. DAVIS:

14 Maybe.

15 BY Mr. PAVLOVICH:

16 Q. Al, would you state your full name for us please?

17 A. Allyn Kurtis Davis.

18 Q. What is your present position here with MSHA?

19 A. District manager.

20 OFF RECORD DISCUSSION

21 BY MR. PAVLOVICH:

22 Q. And so you're the district manager here in District 9, and how long have you  
23 been in that position, Al?

24 A. I started on September 10th, 2001.

25 Q. 2001. And prior to your position here as the district manager, what was your

1 previous duty station and your brief history of what you did there?

2 A. Just go back in time, immediately before I came here I had been in  
3 headquarters for 12 years. And the last roughly two years I was in the accident  
4 investigation group, the head of that. But prior to that, and most of the time I was in  
5 headquarters, I was the chief of safety.

6 Q. Okay. And so you were in headquarters 12 years?

7 A. Twelve (12) years.

8 Q. And when did you start your career with MSHA?

9 A. 1987, the first of the year.

10 Q. And where was that at?

11 A. Right here in District 9.

12 Q. How long were you here in 9 then?

13 A. I started in '87 and I transferred to headquarters in the fall of '89.

14 Q. And so what job did you work in when you were ---?

15 A. I was in the roof control group for District 9.

16 Q. Okay. Did you work for Lee Smith in the roof control group?

17 A. Yes.

18 Q. And subsequently Lee Smith worked for you in Arlington?

19 A. Yes.

20 Q. What a strange turn of events. Could you briefly tell us a little bit about your  
21 mining background prior to MSHA, AI?

22 A. Yeah, prior to MSHA I worked in the coal industry about 12 years, and it was  
23 all for the same operator, but at different mines. I worked for Mid-Continent Coal and  
24 Coke. They had --- I started working for them ---.

25 Q. I guess you guys can't hear very well?

1 A. Can't hear?

2 Q. Can you try and speak up I guess?

3 A. Okay. I worked for Mid-Continent Coal and Coke for 12 years. Initially I  
4 worked at their mine in Rock Springs, Wyoming. My job there was mine engineer. I  
5 worked in Rock Springs from '75 until '78. That mine closed, just economic reasons. I  
6 was transferred down to their group of five mines near Redstone, Colorado, and I  
7 worked there for the next nine years. The last five years that I was there, I was the  
8 superintendent of Dutch Creek Number One Mine.

9 Q. Did you know Bob Murray prior to the accident at Crandall Canyon, AI?

10 A. No, I met Bob Murray for the first time at the accident scene.

11 Q. At the accident scene?

12 A. Yeah.

13 Q. Had you ever talked to him prior to ---?

14 A. I never even talked to him on the phone.

15 Q. Okay. So you knew, I guess, that he had acquired the mines in Utah?

16 A. Right.

17 Q. And, I guess, did you have any knowledge of how those mines were working?

18 A. Let me say this, I had heard of Bob Murray's reputation being kind of a tough  
19 operator and I had a lot of concerns when I heard that he had purchased the mines.

20 Q. Okay.

21 A. And but in the reality of things, I mean he never came to any of our meetings  
22 with his people, plan meetings I'm talking about. But to his credit, I think they turned  
23 around and made a number of improvements in the mines.

24 Q. Okay.

25 A. And he --- well, he brought more resources into these mines that belonged to

1 him. I heard he was pretty rough on the people and so I --- you know, I figured it might  
2 be kind of a rocky road when it came to trying to negotiate plans and so on with him in  
3 the future. But in reality, I think they made a number of improvements in ventilation in  
4 the Aberdeen mine. But we never had specific issues that I can recall in Crandall.  
5 Crandall was kind of the mine of that group that was not on the radar screen.

6 Q. Okay. So it was more West Ridge and Aberdeen?

7 A. West Ridge and Aberdeen in particular being the deepest mine.

8 Q. Okay. So your focus and your attention if you were thinking of Utah American  
9 was more Aberdeen, West Ridge type of work?

10 A. Right.

11 Q. Okay. What about the enforcement issues at the Murray mines, did they  
12 seem to improve, less actions after Murray took over or was there more violations  
13 after Murray took over?

14 A. You know, I've never really looked at the numbers prior to and after. I don't  
15 think there was a dramatic increase, but I think there probably was an increase.

16 Q. So you think there was some increase in some areas?

17 A. Yeah. But they had always received a fair number of citations up there  
18 before.

19 Q. Even with, what, Genwal, was it or ---

20 A. Yeah, well ---.

21 Q. --- whatever company it had been?

22 A. They operated under two different companies, though we dealt with the same  
23 people all the time. They called it Tower and they called it Genwal.

24 Q. Okay.

25 A. Crandall was Genwal, Aberdeen was Tower, and even to this day it's

1 confusing because they still call it the Tower Mine, but on the ID it's the Aberdeen.

2 Q. But it was the same people? Laine Adair, those kind of guys were --- Poulson,  
3 Jim Poulson ---?

4 A. Poulson's new?

5 Q. Oh, he's new? Okay.

6 A. He came from the Skyline mine. Laine Adair goes way back with the Genwal  
7 and Tower, the pre-Murray folks.

8 Q. Okay.

9 A. A few of the other engineers and so on have changed along the way, but  
10 always Laine Adair.

11 Q. Okay. Did you --- so you say you didn't really have a chance to compare  
12 violations pre-Murray, post-Murray, but do you analyze violation histories normally for  
13 the mines, I mean, in your area?

14 A. Well, I've looked at the numbers that we were at issue with.

15 Q. Did you see anything stand out to you about any of these mines in particular?

16 A. Well, they were always on the higher end of the list when you look at all the  
17 mines in the Price area.

18 Q. Was that heavy enforcement too, I mean D orders, that kind of thing?

19 A. There were sporadic D orders, they weren't real heavy in terms of orders, but  
20 it would still stand out compared to other mines in Price.

21 Q. In Price, okay. Did you ever talk with Bob Cornett about that or any of the  
22 field office supervisors in Price?

23 A. Oh yeah, we talked quite a bit because we had a lot of concerns and our  
24 focus, of course, was on Aberdeen and to a little lesser extent to West Ridge because  
25 we had a fatal accident at Aberdeen pre my time, but it was '98, I think.

1 Q. '98. Okay. Was that an outburst?

2 A. It was a bounce in the tailgate.

3 Q. A bounce in the tailgate?

4 A. Yeah.

5 Q. Okay.

6 A. And I actually came out when they had a second bounce, but not --- it was a  
7 bounce that happened after the initial bounce where the fellow got killed and then they  
8 had another bounce that did a lot of damage to the shear. I think it actually broke the  
9 shear in half and pushed it back into the pan --- the spill plates. And it's my  
10 recollection that is when they drew the line and said we're not going to proceed with  
11 this panel, we're going to drop this panel, go to the next one. And then ever after that  
12 we've had single panels up there.

13 Q. When there was some Ds or enforcement actions at any of these Murray  
14 mines where you guys took a pretty hard position, did Laine Adair call you, did he  
15 complain a lot about violations or any of that? Did anybody from those mines call you  
16 personally and say, Al, these guys are picking on us?

17 A. Let me think back. Ex. (b)(6) and Ex. (b)(7)(C)

18 Ex. (b)(6) and Ex. (b)(7)(C)  
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21 Q. Okay.

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

23 Ex. (b)(6) and Ex. (b)(7)(C)  
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25 Q. Okay.

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

Q. The operator?

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

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

A. Yeah.

Q. Okay.

A. Now, in the course of this going on, they --- Ex. (b)(6) and Ex. (b)(7)(C)

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

Q. So you think Bob maybe talked to Murray?

A. Yeah, I know he did because he mentioned the conversation to me. And of course, Murray was after the same thing. Ex. (b)(6) and Ex. (b)(7)(C)

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

Q. Okay.

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

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

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

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

Q.

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

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

Ex. (b)(6) and Ex. (b)(7)(C) Now when Laine Adair asked me --- not Laine, Bruce Hill. When Bruce Hill --- actually he came over here to Denver and we had about an hour-long meeting, about 45 minutes was general chitchat about their plans for the future and all this improvements they're going to make and so on.

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

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

Ex. (b)(6) and Ex. (b)(7)(C) may have to move up front next to you here, Ex. (b)(6) because she can't hear you.

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

I'm hard of hearing. Me and two others back there at least.

A. Well should I move somewhere else?

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

No, if you can just keep your voice up?

1 A. Talk louder?

2 BY MR. PAVLOVICH:

3 Q. No, it's hard, Al, I know because we're just kind of talking here. You're talking  
4 in your normal tone of voice and with the kind of ventilation above them, they're  
5 hearing that roar and ---.

6 A. Okay. Well, I ---.

7 Q. This looks like you --- Ex. (b)(6) and Ex. (b)(7)(C)

8 A. Yeah.

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

10 A. Yeah.

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

12 A. Ex. (b)(6) and Ex. (b)(7)(C)  
13 Ex. (b)(6) and Ex. (b)(7)(C)

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

15 A. Yeah.

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

17 A.

18 Q. Okay.

19 Ex. (b)(6) and Ex. (b)(7)(C)  
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21 Q. Obviously.

22 A. Yeah.

23 Ex. (b)(6) and Ex. (b)(7)(C)  
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25 A. Yes.

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

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A. Uh-uh (no).

Q. No?

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

A. Yeah.

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

A. Right.

Q. So they did you tell that afterwards?

A. Yeah.

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

Q. Okay.

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

Q. Okay.

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

Q. Was there a work group change, too, at that time?

A. Yeah.

Q. Was that because of complaints from Murray's people or ---?

1 A. No. No, that wasn't. That was because we found out that Ted Farmer had a  
2 [REDACTED] working at one of those mines.

3 Q. Okay.

4 A. And Ted had the mines at the time early on. It wasn't right at that time, but it  
5 was soon after Murray got here.

6 Q. Pretty quick. I guess Murray came in September --- no.

7 MR. TEASTER:

8 August.

9 BY Mr. PAVLOVICH:

10 Q. July or August and the first of the fiscal year you rotated the work out?

11 A. Yeah.

12 Q. Or you didn't really rotate all the work, you just took all the Murray mines and  
13 assigned them to Bill, away from Ted?

14 A. Right. Just because we didn't want that perception there.

15 Q. But Ted's [REDACTED] had they just started working there or had they been working  
16 there for awhile?

17 A. No, I think he might have been working there for awhile, but I didn't know  
18 about it until after all of this was --- I guess it was right after or about the same time all  
19 this stuff is playing out with [REDACTED] that we became more alerted to  
20 possibilities that ---.

21 Q. So you could see where people could draw the conclusion that perhaps  
22 because Hill and Murray and the rest of them were complaining about [REDACTED]  
23 [REDACTED] Ex. (b)(6) and Ex. (b)(7)(C) and those mines are moved away  
24 from Ted to Bill?

25 A. Yeah, I could see where that could be, but that's not the reason why.

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MR. TEASTER:

Allyn, [redacted] Ex. (b)(6) and Ex. (b)(7)(C)

[redacted] Ex. (b)(6) and Ex. (b)(7)(C)

[redacted] Ex. (b)(6) and Ex. (b)(7)(C)

MR. TEASTER:

So you didn't do the investigation, it was done by the ---?

A. I talked to [redacted] Ex. (b)(6) and Ex. (b)(7)(C)

MR. TEASTER:

Right.

A. And I guess that was --- [redacted] Ex. (b)(6) and Ex. (b)(7)(C)

[redacted] Ex. (b)(6) and Ex. (b)(7)(C)

MR. PAVLOVICH:

I think so, yeah.

MR. TEASTER:

Yeah.

[redacted] Ex. (b)(6) and Ex. (b)(7)(C)

MR. TEASTER:

Well how did you determine if you didn't talk to anybody at the

mine that there was [redacted] Ex. (b)(6) and Ex. (b)(7)(C)

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

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MR. TEASTER:

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

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MR. TEASTER:

And none of those factors were considered when you talked about moving the mines?

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A. No, it was 100 percent based on finding out that Ted had someone --- had a [redacted] at the mine.

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MR. TEASTER:

Because this is now much later after the incident occurred that Murray --- I mean, [redacted] Ex. (b)(6) and Ex. (b)(7)(C)

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[redacted] Ex. (b)(6) and Ex. (b)(7)(C)

And this meeting as I understand it was ---.

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A. Murray was --- he was in there for awhile, his people, steering things. It's not

1 like they just arrived on the scene.

2 BY MR PAVLOVICH:

3 Q. So they were doing some management functions prior to this?

4 A. Yeah, they were. Yes, they were. It took a long time to get these IDs cleared  
5 up, straightened out with those people. And as I recall, that process was at least a  
6 month or more.

7 MR. TEASTER:

8 Would you consider what Murray said a threat Ex. (b)(6) and Ex. (b)(7)(C)

9 Ex. (b)(6) and Ex. (b)(7)(C) is that a threat?

10 A. Well, I mean it sounds threatening, but kind of a hollow threat, I think it came  
11 to that.

12 MR. TEASTER:

13 If you don't send him back ---?

14 A. Well, he was back after that.

15 MR. TEASTER:

16 He was back after that meeting?

17 A. Yeah. Yeah, Ex. (b)(6) and Ex. (b)(7)(C)

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

19 MR. PAVLOVICH:

20 I think the people in Price told us Ex. (b)(6) and Ex. (b)(7)(C)

21 MR. PAVLOVICH:

22 Do you remember? I remember Ted calling me ---.

23 UNIDENTIFIED SPEAKER:

24 I was thinking that we was told Ex. (b)(6) and Ex. (b)(7)(C)

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MR. PAVLOVICH:

Until the accident?

UNIDENTIFIED SPEAKER:

Until some later things.

MR. PAVLOVICH:

Until what [redacted]

UNIDENTIFIED SPEAKER:

Until some later things. Until some other initiative or something.

MR. PAVLOVICH:

Okay. So it may have been the [redacted] AI's talking about. That may have been what they said.

A. I can't remember the date of that.

BY Mr. PAVLOVICH:

Q. Well, we can always look at his time. It's going to show. [redacted]

[redacted] we could see it. AI, [redacted] Ex. (b)(6) and Ex. (b)(7)(C)

[redacted] Ex. (b)(6) and Ex. (b)(7)(C)

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

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A. Call it what you like. Maybe that's what it is.

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

A. I intended it to be no more than what I wrote.

Q. Okay. Which is what?

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

MR. TEASTER:

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

A. A year.

MR. TEASTER:

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

BY MR. PAVLOVICH:

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

Q. Okay. So that kind of started the deal with what you felt like maybe complaints about heavy enforcement at these mines?

A. Right. Heavy enforcement, yeah.

Q. Okay. Any other times they called and complained about heavy

1 enforcement? Well, let me hand you a page out of your notes that you provided to  
2 someone and I'm not real sure what --- there's a date on there I think. We highlighted  
3 some things there that appear to be a call from Poulson concerning Ex. (b)(6) and Ex. (b)(7)(C) and  
4 Ex. (b)(6) and Ex. (b)(7)(C) issued too many orders over there?

5 A. Well, I sent Ex. (b)(6) and Ex. (b)(7)(C) over especially to have him look at the mine. One thing I've  
6 always been concerned of is that we --- from one field office to the next, we're not as  
7 consistent as we ought to be in terms of what's acceptable and what isn't especially  
8 when you're talking about accumulations and that.

9 Q. Okay.

10 A. You know, I remember that, now that I see this, you know, that they were  
11 upset about Ex. (b)(6) and Ex. (b)(7)(C) issuing orders over there, accumulations of roadways and so  
12 forth.

13 Q. And so what was the result of that call?

14 A. I don't know that there --- I listened to what the complaints were, but we didn't  
15 change anything.

16 Q. Did you talk to Ex. (b)(6) and Ex. (b)(7)(C) about it?

17 A. I don't recall that I did.

18 Q. Did you ask Bob Cornett to talk to Ex. (b)(6) and Ex. (b)(7)(C) about it?

19 A. I don't remember that he did.

20 Q. So you don't remember either one?

21 A. I don't remember ---.

22 Q. You just made that note where they talked to you and there is no further  
23 notation there of any action or anything that was taken, you don't remember  
24 specifically anything that was done?

25 A. Certainly. You know, I didn't take any action to change any of these orders or

1 to ---. But [REDACTED] was just there for a short while. He was over there for a week or  
2 maybe two. I'm not so sure that he went to other mines, too, maybe.

3 Q. So would you assume --- or would you say that [REDACTED] kind of a heavy hitter?

4 A. Oh yeah. That's why I sent him over there.

5 Q. So he was like your hatchet man? Was there any other time that you had  
6 requests to move inspectors because of enforcement issues, AI, that you know of?

7 A. No. I don't --- you're talking about Murray?

8 Q. Anybody?

9 A. Anybody?

10 Q. Yeah, since you've been here since 2001, which is a six-year period. I mean,  
11 that's ---.

12 A. We had complaints about inspectors being too rough and especially out of the  
13 Delta Field Office where [REDACTED] been, and he is --- you know, they feel like they're  
14 being held to a higher standard. I had complaints when I had [REDACTED] down in  
15 Aztec, that the same companies that had open pit mines up in Gillette and mines  
16 down in Aztec said that it wasn't a level playing field, that they were being held to a  
17 higher standard, so I transferred [REDACTED] up to Price ---

18 Q. To Gillette?

19 A. --- or to Gillette to level the playing field and I haven't had any complaints  
20 about that since.

21 Q. Okay. Well, I can understand having complaints about enforcement. I guess  
22 the next question is were there any personnel changes made and people moved  
23 because of those complaints?

24 A. No.

25 Q. Not to your remembrance?

1 A. No. I had a complaint just recently --- well, a complaint asking me to ease up  
2 on them at Aberdeen after they had laid off all their people and we were in there doing  
3 a EO-1 and citing a lot of things and they had no people to fix it. I didn't do anything  
4 about it, but ---.

5 Q. Okay. So they requested that though?

6 A. Well, yeah.

7 Q. Was there a D order issued by Randy Gunderson in February of 2007 at  
8 Murray's mines for not having enough rescue teams?

9 A. Yeah.

10 Q. Do you know were the mines shut down when that order was issued?

11 A. I think for a brief period of time ---.

12 Q. So you believe that they ---.

13 A. In terms of hours, they scrambled and got an agreement.

14 Q. So you think that actually people were withdrawn from the mine or ---?

15 A. It all went down in one day as I recall. I believe it might have been, but it  
16 wouldn't have even been the whole shift before they put an agreement in place with  
17 Energy West, I think.

18 MR. PAVLOVICH:

19 I don't know, were they ever withdrawn, (b)(6) and

20 UNIDENTIFIED SPEAKER:

21 What we were told was that while he was issuing and getting  
22 ready to have them withdrawn that he got word do not withdraw men, it's going to be  
23 taken care of.

24 A. As I recall, I mean they called here saying that they were getting this  
25 agreement in place, as we speak, with Energy West. And I guess maybe we said if

1 you can get that faxed over to us right away, so I guess we didn't.

2 BY MR. PAVLOVICH:

3 Q. So you might have told Randy ---?

4 A. I just remember that the whole thing came down in a matter of hours.

5 Q. Pretty quick?

6 A. Pretty quick.

7 Q. And I guess that was a result of a complaint?

8 A. Yeah, somebody had called in saying that they laid off so many people that  
9 they no longer had two teams.

10 Q. You ever know of any managers or other MSHA employees that were moved  
11 because of enforcement issues now? Well, let me give you a little hint to ponder, why  
12 was Jack Kuzar transferred from District 9 to District 1, did you ever know or hear  
13 anything about it?

14 A. I don't know that story, it was never told to me. So I'm not an investigator so I  
15 didn't figure it was none of my business.

16 Q. No one ever said anything to you about it when you got out here?

17 A. (Indicates no).

18 Q. Why did you move from headquarters to D-9?

19 A. Well, I wanted to come back west. It's what I consider to be home.

20 Q. So you wanted to come back home?

21 A. Yeah, I had actively tried over a period of a couple years.

22 Q. So you asked for ---?

23 A. I have made it a point since I've been here not to say anything derogatory  
24 about anything Jack has done or what happened while Jack was here.

25 Q. And why would you have to do that?

1 A. Well, I just think it's a descent way to approach it.

2 Q. All right. It wasn't that you thought there was anything and so you just don't  
3 say anything about it?

4 A. That was Jack's time and now it's my time and I try to make no judgments  
5 about what Jack did.

6 Q. When you were transferred here, did you receive any instructions from  
7 anybody at headquarters or MSHA about how they wanted things done out here now,  
8 did they want changes, did they want any difference regarding enforcement or plans or  
9 any of that?

10 A. No, not any specific instructions. As I recall, Marvin said keep peace on the  
11 reservation.

12 Q. That was about as specific as ---?

13 A. Yeah, it was.

14 Q. To the best of your knowledge, that's about it, huh?

15 A. Yeah.

16 Q. Okay. Have you ever reviewed the inspection hours charged to activities at  
17 Murray's mines, AI, in District 9?

18 A. Just in looking at the whole field office, you know.

19 Q. Okay.

20 A. I don't recall it being out of line with any of the others.

21 Q. So you think that if you'd look at the whole field office, if you look at all mines  
22 in that work group or in that field office and if they all appear about the same, you  
23 don't see anyone that stuck out saying this is more office time, more outby time or any  
24 of that? I mean, ---.

25 A. We've been trying to track down this other time and I do have a couple of

1 inspectors that I'm concerned about, about their time at the mines. But honestly, I  
2 don't know --- I mean, I didn't. I was looking at their time at the mines, period, not just  
3 at Murray.

4 Q. Okay. And that focuses more on individual inspectors as particular mines?

5 A. Right.

6 Q. I mean, if you see a guy that has high underground hours at one mine, he  
7 probably has them somewhere else?

8 A. Yeah.

9 Q. If he's a guy with low underground hours at one mine, he probably has them  
10 somewhere else. And are you taking steps to --- you said you're looking into it?

11 A. Well, ---.

12 Q. I mean, you're trying to deal with that through the supervisor level or ---?

13 A. Right. It's been discussed with me and both supervisors over there and also  
14 movement is not as swift as I had hoped and I have Don over there right now dealing  
15 with some of those issues.

16 Q. So do you see that to be a problem primarily in the Price Field Office more so  
17 than others?

18 A. You know, I probably have more worries at the Price Field Office than I do at  
19 others.

20 Q. Okay. Well, that's where all your underground mines are?

21 A. Well, no.

22 Q. Most of them?

23 A. Two-thirds of them I guess.

24 Q. But a good portion of your underground mines are in Price and that's primarily  
25 what they have is underground?

1 A. Virtually all.

2 Q. Yeah. I mean, I don't think they have much surface.

3 A. There was a little operation there once, but it's really all underground facilities.

4

5 MR. PAVLOVICH:

6 Where's that spreadsheet you were talking about here, Ex. (b)(6) and

7 UNIDENTIFIED SPEAKER:

8 This one? These are charts. Have you looked at this?

9 MR. TEASTER:

10 No, I just got it at the same time you did.

11 MR. PAVLOVICH:

12 Q. Al, you look at --- you said you looked at man hours, I would assume you also  
13 look at the number of violations that an inspector issues; right? Are you seeing  
14 anything out of line on any of the guys over in Ex. (b)(6) and Ex. (b)(7)(C)

15 A. Yes.

16 Q. Anything in particular you looked at?

17 A. Ex. (b)(6) and Ex. (b)(7)(C) Those are the Ex. (b)(6) and Ex. (b)(7)(C) that pop into my  
18 head.

19 Q. So it seems unusual that other guys would go to, say, Crandall Canyon and  
20 issue 25 or 30 violations and then a certain one would go there and issue one violation  
21 and then the next quarter it's back to 25?

22 A. Worried about that and working on that since I've been here.

23 Q. Is that almost possible that that could be realistic to only find one violation? I  
24 mean, did it get that much better?

25 A. No, I don't think it should be that way.

1 Q. Okay. And how are you going about working on that? I mean, supervisors?

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

3  
4 A. Yeah, that kind of bit us in the ass, too, on this at Crandall because we were  
5 working on one of the inspectors up there and Ted had made some notes, you know,  
6 was bearing down on him about completing this inspection and he looked at  
7 everything too, you know, and that shows up somewhere in there where, I guess ---  
8 well, it's been out in the newspapers and everything else about it, incomplete  
9 inspection.

10 MR. TEASTER:

11 AI, can you speak up just a little bit?

12 A. It was ---.

13 BY MR. PAVLOVICH:

14 Q. Yeah, I'm almost not hearing you.

15 A. Ted Farmer had --- was working on this issue about completeness of  
16 inspections and trying to approach some of our underperformers, if you will, and it was  
17 at Crandall on one of the inspections that was looked at in this investigation. And he  
18 had some notes in the file about a few of the things that were not articulated in the  
19 notes and a memo back to the inspector about not doing a complete inspection.

20 Q. And so now that has been provided to all parties that asked for it, and now  
21 everybody's looking at it saying what is this?

22 A. Yeah.

23 Q. So it's like you knew they weren't doing a complete inspection and what were  
24 your doing about it? Or somebody knew, Ted knew?

25 A. Well, that's the implication of it. Ex. (b)(6) and Ex. (b)(7)(C)

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

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Q. Have you heard any policy here in District 9 or issued any policy that when you do an EO-1 inspection, there will be no more than three days inspection time on an MMU to totally complete it with dust, noise, inspection, whatever?

A. No. No, I don't know. I've never said that. I don't know where that might be coming from if you've heard that.

Q. Okay. Well, we have heard it. I mean, people said that's what our policy is and of course, nobody could give us a written policy, but ---.

A. It could be part of this whole thing trying to, you know, speed things up and get inspections done, because honestly it's hard to explain why with our number of mines and our number of inspectors why in the world we're having trouble getting them all down, trying to get at the root of them. Now, maybe some field office supervisors are giving guidance, you know, don't spend more than three days on this section, get out there and get the rest of the mine done.

Q. Okay. But that's not a policy that comes out of your office ---

A. No.

Q. --- or the District? Not to your knowledge, it didn't come out of Bob or anybody else?

A. Not to my knowledge, it didn't.

Q. How are complaints handled in D-9, AI? Do your supervisors and inspectors think if someone --- say someone walks up to you at Wal-Mart and says, AI, I know you from the mines, I'm real concerned about dirty belts at Aberdeen, do you investigate them?

A. Yes.

1 Q. Do you expect that your supervisors would investigate that?

2 A. Yes, I would. Well, they're supposed to be entered into the system.

3 Q. In the system, have you looked at the system as far as what's entered, do you  
4 see many face-to-face complaints that come out of Price?

5 A. No, I don't.

6 Q. Have you ever seen any?

7 A. I'm not so sure that I have actually.

8 Q. Do you think that in a pretty small closely knit mining community where  
9 everybody knows everybody and everybody kind of works around the mines that that  
10 wouldn't ever happen?

11 A. I wouldn't say it would never happen.

12 Q. You think it would probably be common; right? I mean, if I saw you and I had  
13 a concern, I'd probably come up and tell you as opposed to picking up and calling the  
14 hotline just because I know you, hey, Al, you know?

15 A. Yeah.

16 Q. We've known each other a long time, how about ---?

17 A. I know we've gotten them that way at the Delta Field Office.

18 Q. Sure, probably everywhere.

19 A. Yeah.

20 Q. Probably Gillette you had them?

21 A. Probably.

22 Q. But yet not in Price. Do you think that maybe they were considering them to  
23 be complaints in Price if that happened?

24 A. Well, they should have been, but you know, I don't know to what extent that  
25 might --- people might have heard those sorts of things or to what extent they might

1 have just said ---.

2 Q. Well, it's an unknown, we don't know that --- because if you went and asked  
3 everybody, did anybody come and they said no, then we don't know for sure. It just  
4 seems to me that that would be --- I mean, in District 7, we probably did 150 of those a  
5 year, face-to-face.

6 A. Yeah.

7 Q. Yet Price doesn't do any. Okay. I'm just asking was there any instruction  
8 given on that, you know, we do them only on calls to the office or we do them only on  
9 --- your instruction is any complaint, face-to-face, called at home ---?

10 A. Yeah, it's right in the manual how it's supposed to be handled.

11 Q. Okay. And so you assume that's what they're ---?

12 A. Yeah.

13 Q. Do you feel that you have adequate manpower to make complete inspections  
14 at your mine?

15 A. I think when we get everybody ARed that we currently have as trainees, we'll  
16 be in pretty good shape.

17 Q. What was your completion rate, AI, for like last fiscal year?

18 A. I haven't seen it since they added in the last quarter, but we did get a hundred  
19 percent.

20 Q. Let's say like '07, it would have been end of September?

21 A. That information might have just come out, but the previous quarter we had  
22 dropped down. Seventy-eight (78) is sticking in my mind for the third quarter.

23 Q. Seventy-eight (78) percent, okay. Apparently, you've asked for manpower;  
24 right?

25 A. Oh, yeah.

1 Q. Was headquarters pretty amendable toward providing you with ---?

2 A. Not until just in the last few months --- well, no, I say the last few months, until  
3 Senator Byrd said we could have 170 people.

4 Q. So like the last year or so after Sago, ---

5 A. Yeah.

6 Q. --- after Sago, after Aracoma, after Darby, then they started hiring people?

7 A. Right.

8 Q. Prior to that, were they letting you hire people?

9 A. No. No, I had to justify every person.

10 Q. Okay.

11 A. And couldn't --- we didn't replace a lot of people.

12 Q. So you might get one for three or one for four, something like that?

13 A. Right.

14 Q. So was your number of inspectors steadily declining, do you think, during that  
15 period of time since you got here?

16 A. Oh, yeah.

17 Q. I mean, from 2001 to 2005 or 6, your number of inspectors went down?

18 A. It did, yeah.

19 Q. And did the mines go down commensurately or were they going up?

20 A. I'd have to say there's been a decrease, but not a big one.

21 Q. So they stayed about the same, but manpower stayed low?

22 A. Yeah.

23 Q. How about your specialists, AI?

24 A. Constant struggle trying to keep staff with specialists. And a difficult situation  
25 in this district because of the geography. Headquarters has been pushing to put all

1 specialists in the field, especially with the prior administrator. And we deal with these  
2 amendments on a daily basis here and when you got no manpower at the district, it's  
3 hard to keep up. But we're still low with no relief in sight on specialists.

4 Q. I mean, in roof control you had Billy as your supervisor and then who did he  
5 have working for him?

6 A. Kathleen Kellerher (phonetic).

7 Q. In Delta?

8 A. In Delta.

9 Q. So what was she able to do as far as plan approvals out of Delta, much, if  
10 any?

11 A. Well, she did a lot of the review work over there, he'd send the stuff over.

12 Q. So he'd have to mail it over?

13 A. He'd have to mail it to her, she'd have to review it, send her recommendations  
14 back to Billy.

15 Q. And how did that help with the interaction of plans people?

16 A. It's not very good, but --- as much complaining as I've done, nobody at  
17 headquarters wants to hear it.

18 Q. So you've talked to people in headquarters about that?

19 A. Yeah.

20 Q. And when you say they don't want to hear it, what did they tell you, just forget  
21 it, Al, you're not going to --- you can't move her here or you can't integrate her into the  
22 regular plans?

23 A. Yes.

24 Q. You were told that?

25 A. I was told that.

- 1 Q. Who told you that?
- 2 A. Ray McKinney.
- 3 Q. So when Ray was still the administrator ---
- 4 A. Right.
- 5 Q. --- Ray told you he wanted her to stay at Delta?
- 6 A. I specifically sent a request up there to do that and it was denied.
- 7 Q. That was denied?
- 8 A. Right.
- 9 Q. Do you happen to have that request?
- 10 A. Ex. (b)(6) and Ex. (b)(7)(C) might have it.
- 11 Q. Okay. How about requests to replace engineers or plans personnel?
- 12 A. We had, you know, since the gate now was open, we were given permission
- 13 to hire another two engineers and we had announcements out and we had --- we've
- 14 been unable to get somebody to fill them.
- 15 Q. Just can't attract people with the starting salary and ---
- 16 A. That's right.
- 17 Q. --- the industry's paying them ---?
- 18 A. The industry will double what we can give them.
- 19 Q. So with that I mean, you had Billy, you had Kathleen?
- 20 A. Right.
- 21 Q. They had Gary in Price; right?
- 22 A. Right.
- 23 Q. And was Gary also reviewing plans in Price?
- 24 A. Yeah, Billy would send him things to look at.
- 25 Q. And was Gary collateral duty?

1 A. Gary did collateral duty with SI.

2 Q. How was that managed, AI? I mean, I realize SI kind of depends if nobody  
3 files a case or you don't have a 110, if you don't have any work, so you can work on  
4 roof control?

5 A. Right.

6 Q. But now if five miners walk in tomorrow and file a discrimination complaint,  
7 there goes your roof control work out the window; right? How do you deal with that?

8 A. Got no alternative, the squeaky wheel gets the grease.

9 Q. So basically that guy is just out of the loop as far as roof control goes then if  
10 that happened?

11 A. Well, he could be for a period of time, yeah.

12 Q. Was Gary involved in a lot of discrimination cases, had he had a pretty heavy  
13 workload?

14 A. I'm not sure what his workload was, but he did a number of investigations. He  
15 hadn't been in it too long, but we had --- in fact, just before the accident he was permit  
16 applied ---

17 Q. He was equipped?

18 A. --- for that permanent position.

19 Q. So he was no longer doing collateral, it was full-time SI then right before the  
20 accident?

21 A. You know, I don't know that we ever actually got him into that full-time.

22 Q. Okay.

23 A. Maybe on paper, but like I say, the squeaky wheel gets the grease. He was  
24 still ---.

25 Q. Still helping you with what you need?

- 1 A. And then he helped out on inspections, I think, in the meantime, too.
- 2 Q. And then he had Pete Delduca (phonetic); right?
- 3 A. Well, just in the last --- Pete's been around about a couple of years part-time  
4 up until less than a year ago.
- 5 Q. Pete wasn't an AR, I mean, you couldn't send him out?
- 6 A. No.
- 7 Q. He didn't have mining experience; right?
- 8 A. Right.
- 9 Q. So who was approving the plans for the most part in that group?
- 10 A. Billy was doing it.
- 11 Q. Billy was having ---?
- 12 A. The mine sheriff I guess.
- 13 Q. And now are you kind of in the same boat with ventilation?
- 14 A. Well, we had a little more staff in ventilation just because the workload is  
15 greater. We've got Jeff Fleishman, Sid Hanson, and Hillary Smith.
- 16 Q. But what's Sid doing for you now?
- 17 A. He's acting for Billy.
- 18 Q. What's Jeff doing?
- 19 A. Jeff is --- on paper he's in roof control, but he's never let it ---.
- 20 Q. I don't see where you helped yourself at. Not through any fault of your own,  
21 okay. I'm just saying ---.
- 22 A. Well, we --- this inability to hire is what's done this to us.
- 23 Q. So you actually had finally got approval to hire some, but you can't get them?
- 24 A. Right.
- 25 Q. Can't find them?

1 A. And I've told headquarters, and I've got an agreement with Kevin, this was --- I  
2 don't think it was the Ray looked at it, but we can't put just anybody in the roof control  
3 group. We need an engineer. We need somebody that's capable of looking at these  
4 stability programs and not just, you know, a guy that's paid his dues out in the field  
5 and wants to be a specialist.

6 Q. So you need somebody with technical ---?

7 Ex. (b)(6) and Ex. (b)(7)(C)  
8  
9  
10

11 Q. Okay.

12 A. Ex. (b)(6) and Ex. (b)(7)(C) Well, we talked  
13 about that, not just me.

14 Q. So you're basically looking at trying to get some more engineers, you feel  
15 that's your need here right now?

16 A. Right, absolutely.

17 Q. What's the morale like in the Price Field Office, AI? Do you have any feel for  
18 that at all?

19 A. Price Field Office Ex. (b)(6) and Ex. (b)(7)(C)

20 Ex. (b)(6) and Ex. (b)(7)(C)  
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A. No.

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

A. Right.

Q. So Don is actually over there in the capacity of an ADM ---

A. Right.

Q. --- now working with those guys?

A. Yeah.

Q. Al, have you or any of your ADMs ever gone to a mine over in Price without the supervisors there knowing about it?

A. I don't think so.

Q. Have you ever done it that you know of?

A. No.

Q. Let me ask you this, have you ever gone to a mine in the Price area without one of your supervisors or local guy being with you?

A. Yeah, I've done that, but they knew I was going to be there.

Q. How do you know they knew?

1 A. I talked to them.

2 Q. You personally told them that I'm going to a mine?

3 A. Well, because when I'd come over there and I'd go down to the office, too, I'd  
4 tell them I was coming.

5 Q. So the best you remember, if you went to a mine over there, you always told  
6 them in advance I'm going to be over in the area, I'm going to such and such mine?

7 A. Yeah.

8 Q. They didn't just hear about it from the operator the next day that Al was here  
9 yesterday or anything like that?

10 A. Well, I don't think they would have.

11 MR. TEASTER:

12 Al, can you think of a reason why you'd go to a mine in a  
13 supervisor's jurisdiction that you wouldn't take him with you?

14 A. Well, probably --- well, I know I've done that and I've gone for various  
15 reasons. I can't think of a specific reason why I would do that.

16 BY MR. PAVLOVICH:

17 Q. Well, was it --- did you have a meeting scheduled with operators, did you go to  
18 do an underground visit, did you ---?

19 A. Well, I'd have a meeting scheduled and usually go underground afterwards.

20 Q. But you wouldn't have anybody from the field office with you, you'd just go  
21 yourself?

22 A. I've done that, but that's not --- I don't do that purposefully to exclude  
23 anybody.

24 Q. Okay.

25 A. So it wasn't ---.

- 1 Q. It wasn't to exclude them, you just did it?
- 2 A. Yeah.
- 3 Q. But you don't remember the circumstances of why you did it?
- 4 A. No.
- 5 Q. It wasn't an investigation or something to that matter?
- 6 A. No.
- 7 Q. Mine visit or ---? Do you get a lot of calls from mine operators at home about  
8 enforcement action?
- 9 A. Uh-uh (no).
- 10 Q. No? Have you ever instructed an inspector/supervisor to vacate or modify an  
11 order or enforcement action based on a call from an operator or based on other  
12 information you received?
- 13 A. I can remember one, but it was after I went to the mine and looked at it myself  
14 and it wasn't in Price.
- 15 Q. It wasn't in Price. So under what circumstances would it be that you would  
16 have went to the mine? Did they call and say, Al, we got an order here, how about  
17 you coming to look at it?
- 18 A. Yeah.
- 19 Q. And so you went and looked at it. Where was that at?
- 20 A. West Elk.
- 21 Q. Would that have been one of [Ex. (b)(6) and Ex. (b)(7)] mines?
- 22 A. (Indicates yes).
- 23 Q. Did [Ex. (b)(6) and Ex. (b)(7)] go with you?
- 24 A. No.
- 25 Q. You just went ---?

1 A. I stopped at the mine on the way to Delta.

2 Q. Okay. So you went yourself again, looked at it, and what was the result of  
3 that?

4 A. I had the inspector vacate it.

5 Q. Was he there --- was he still there at the mine?

6 A. No.

7 Q. Where did you get with him at?

8 A. In the office.

9 Q. So after you went to the mine, you saw a condition that the operator showed  
10 you?

11 A. We were having a lot of meetings at that mine and usually Bob and I went to  
12 those meetings.

13 Q. Bob Cornett?

14 A. Yeah.

15 Q. Okay.

16 A. And we'd usually have [REDACTED] and sometimes the inspectors.

17 Q. So [REDACTED] and the inspector might then meet you at the mine for a meeting?

18 A. Yeah, for awhile we had quarterly meetings.

19 Q. And why was that?

20 A. That was at the operator's request.

21 Q. At the operator's request?

22 A. Yeah.

23 Q. Because of ---?

24 A. Because they thought that the standards that they were being held to for  
25 cleanup of accumulations was higher than they should.

1 Q. So let me understand you, the operator felt like they were being held to a  
2 higher standard of cleanup in coal accumulation violation so they requested of you ---?

3 A. They didn't think --- they thought they had a deteriorating relationship with  
4 MSHA.

5 Q. With who?

6 A. With MSHA.

7 Q. With MSHA?

8 A. With the local field office.

9 Q. Okay. With Ex. (b)(6) and Ex office?

10 A. Yeah. And so we decided we'd have these meetings and have Ex. (b)(6) and and the  
11 inspector who had the mine assignment that quarter at the meetings and discuss those  
12 issues.

13 Q. So you and Bob would physically go over to the mine, and Ex. (b)(6) and when he was  
14 inspector for that quarter, would come up and you would have a meeting?

15 A. We'd meet at the mine.

16 Q. What would those meetings entail?

17 A. They'd talk about, I guess, issues that they had with enforcement actions, but  
18 then we also talked about other ventilation plan-related issues, too.

19 Q. So what was the message sent to Ex. (b)(6) and Ex and his inspectors by having those  
20 meetings, special meetings with that particular operator?

21 A. That they have to be --- they have to apply the standard correctly with the  
22 regulations.

23 Q. Were they not applying it correctly before you had the meetings?

24 A. Well, there was a lot of debate about just what --- what's an accumulation and  
25 what isn't an accumulation. And we were trying to get that resolved to where

1 everybody would mutually agree.

2 Q. Was that possible?

3 A. It hasn't been resolved yet, they still think that they were held to a higher  
4 standard.

5 Q. Something that's probably not convincible?

6 A. One thing I did to try to get more universal understanding within the district to  
7 what that standard was to create what we called our belt task force. And we had  
8 actually started this before Aracoma happened.

9 Q. Okay.

10 A. But then soon after when Aracoma happened, then it was obviously a good  
11 thing to keep doing. And what we would do is get --- I had Don Gibson leading the  
12 task force. I'd get inspectors from the local field office and inspectors from another  
13 couple field offices and we'd go out and they would do the belt inspection portion of  
14 the EO-1s at whatever mine we'd select, we'd try to do two of them a quarter, so that  
15 those guys would work together. Our people don't get the chance to get together, you  
16 know, we're all hundreds of miles apart. And they work for years and they don't have  
17 any  
18 --- we've only had one all-employee meeting in District 9 since I've been here. It cost  
19 \$30,000 to hold that meeting. And Ray was mad about it, spending that kind of  
20 money.

21 So this was one way of trying to get some of the other guys --- we'd always try  
22 to put somebody we thought was focused in pretty correctly on this issue with  
23 accumulations and that to be on this task force so the others could see what he's  
24 doing. And so we were trying to cross pollinate between field offices.

25 Q. Let's go back to --- now, you said you had your quarterly meetings, but you

1 brought that up with West Elk, but you brought that up as a result of discussion about  
2 going to West Elk to look at a condition that the operator asked you to come over and  
3 check, they didn't think the inspector treated them fairly or something. So you went to  
4 the mine and what happened?

5 A. It was about a compressor that they had outside.

6 Q. A compressor outside?

7 A. Right.

8 Q. And what was the issue with it?

9 A. Whether or not it was dirty, whether there was an accumulation. And when I  
10 looked at it, I didn't think it was. I didn't tell the operator that we vacated, but I went  
11 down and talked to Ex. (b)(6) and Ex. (b)(7)(C), who had written the citation at the field office. And  
12 we discussed it back and forth and I told him I thought he vacated it, which he did.

13 Q. How do you know that the compressor looked the same when you saw it as  
14 when Ex. (b)(6) saw it?

15 A. I don't know.

16 Q. You had to take the operator's word apparently?

17 A. Yeah.

18 Q. Okay. Does that happen on any other occasion?

19 A. Bob Cornett was called out once by that same operator to go down and look at  
20 the longwall. We had the inspector come up and meet him, and that was afterwards,  
21 but I don't think we changed any paper.

22 Q. So Bob agreed with the inspector on that one?

23 A. There was a lot of debate, but we didn't change any paper.

24 MR. TEASTER:

25 Did the inspector agree that that compressor looked the way

1 you described it as when he saw it?

2 A. He told me later that he went back later and looked at it and said it didn't look  
3 the same to him. It was about a month or so later that I heard that from him.

4 MR. TEASTER:

5 Was there any documentation that you provided on vacating  
6 that? I think there's some policy out that says when you vacate one that there's some  
7 memorandum for the record or something?

8 A. I know that there's been a policy in the last couple of years about that, but I'm  
9 not sure that there was prior to that or that we were doing them prior to that and I don't  
10 think there's anything on that one issue and I think that was about three or four years  
11 ago.

12 MR. TEASTER:

13 What kind of action did he take, was it a D sequence or just a  
14 citation or ---?

15 A. To my recollection it was a citation.

16 BY MR. PAVLOVICH:

17 Q. Did you tell you anyone recently, recently within the last few months, in Price  
18 to vacate anything here when Crandall Canyon was going on?

19 A. Oh, yeah, there was an issue about an order written in a section where they  
20 had just taken the equipment out for part of the rescue, the miner and the shuttle cars,  
21 and everything was pulled out of ---.

22 Q. So this is at another mine, not Crandall Canyon?

23 A. This is at --- it was either Aberdeen or West Ridge, they pulled that section of  
24 equipment out, loaded it on the truck and brought it over to Crandall.

25 Q. Okay.

1 A. And then there was ---.

2 Q. Was it all the section equipment or the scoop? I mean, they brought the  
3 miner?

4 A. Yeah.

5 Q. Miner and everything, cars, the whole thing?

6 A. Miner, shuttle cars, scoop, everything.

7 Q. Okay.

8 A. Damn near everything they could move over there, yeah. And I talked at  
9 length with Ted about that and Ted was in agreement that we shouldn't cite that  
10 because we pulled all that equipment over for the rescue.

11 Q. So what was the citation for, the coal accumulation?

12 A. Yeah, cleanup.

13 Q. Pulling your equipment didn't clean the coal up, did it?

14 A. No.

15 Q. It might have been --- if it was a violation, as a violation, it might have  
16 extended the abatement time because you didn't have equipment; right? But did it  
17 make it not a violation?

18 A. I suppose not. I mean, I just ---.

19 Q. It didn't change anything ---?

20 A. It eventually had the equipment down there.

21 Q. Okay. Is there documentation that you know of, AI, that's required when a  
22 citation order is vacated? Is that sent to you if someone vacates one?

23 A. Orders come to me, the others might ---.

24 Q. Like an eminent danger order they would send you a memo saying here's  
25 why?

1 A. Here's why, right.

2 Q. Okay.

3 MR. PAVLOVICH:

4 Why don't we take about a five or ten-minute break?

5 SHORT BREAK TAKEN

6 BY MR. PAVLOVICH:

7 Q. It says Congressional inquiries, what's the status of any 110C citations issued  
8 to Murray mines including any such citations resulting from the December 2006  
9 inspection. Let me refresh your memory. You remember December 2006, Ted  
10 Farmer went up there with a couple guys as a result of something, some complaint or  
11 something and pretty much wrote a lot of orders up in the north barrier area where  
12 they were developing the north barrier. Were you aware of that or remember anything  
13 about it?

14 A. Honestly, I don't remember any detail about that.

15 Q. And I guess there was some 110C action? Okay. Did the congressional  
16 inquiry ask about that, is that why some of this ---?

17 UNIDENTIFIED SPEAKER:

18 Yes, sir, we got two questions from congressional inquiries  
19 and just like Joe said of our role, these other groups is going to be asking you  
20 questions. We want to know everything that they want to know so that's why we're  
21 asking if you know anything about it.

22 BY MR. PAVLOVICH:

23 Q. Do you remember if those went on anywhere, Al, was there any --- as far as  
24 the 110C requests, were they recommended for investigation, SI work, or ---?

25 A. I can't speak specifically. My guess is they were recommended for 110, but I

1 know that we had to --- we cancelled some cases, some of them were at Murray mines  
2 but not all of them. I mean, it wasn't a conscious thing to do, just cancel cases at  
3 Murray mines, but they were old and we lost our staff ---

4 Q. Okay.

5 A. --- in SI and some of them just got too old.

6 Q. So it was because of ---.

7 A. Some of those were at Murray mines, but I was thinking they were over at the  
8 other mines.

9 Q. Okay. But there may have been some because I think Ted and those guys  
10 went in and issued quite a few Ds on that inspection.

11 MR. TEASTER:

12 And Jensen was supposedly conducting an investigation. And  
13 these were issued in December ---.

14 A. The ones that he was ---?

15 MR. TEASTER:

16 Yes.

17 A. I think that there was a conscious decision talk at the headquarters to just not  
18 pursue that case any further since we didn't have --- they looked for his stuff and I  
19 don't think they got it all that he might have had.

20 BY MR. PAVLOVICH:

21 Q. Oh, okay. These are the cases Gary was working on and they don't know  
22 where all the stuff ---

23 A. Well, I don't know how many cases there were.

24 Q. --- or where he was on the investigation, I guess.

25 A. I thought he was working on a case, ---

1 Q. Oh, a case.

2 A. --- but maybe it was more than one. Maybe it was a case that had ---.

3 MR. PAVLOVICH:

4 Do we want AI to look into that for us and kind of get us the  
5 status of that?

6 UNIDENTIFIED SPEAKER:

7 It would probably be helpful for us to know that, yes.

8 A. Ed --- not Ed. Dan Vetter (phonetic) is our SI supervisor now, he could --- I  
9 can get him to track all that down for you.

10 MR. PAVLOVICH:

11 Okay.

12 UNIDENTIFIED SPEAKER:

13 We'll send an e-mail to you describing your thing about that;  
14 would that be okay? And then you can forward that to ---.

15 A. Yeah, then I'll have Ed answer each one individually.

16 UNIDENTIFIED SPEAKER:

17 Okay.

18 A. But I know there are cases, some at Murray mines, some at other mines that  
19 just haven't --- just give up and move on.

20 MR. TEASTER:

21 You may have answered that already, AI, because that came  
22 to you in the form --- or come to the agency in the form of questions that needed to be  
23 answered by this Congressional request.

24 A. You know, we were getting requests in here before I even got back from  
25 Crandall and so I haven't seen everything that went out, so maybe that's ---.

1 BY MR. PAVLOVICH:

2 Q. I guess another issue ---.

3 A. But I thought you guys had everything that we sent.

4 MR. TEASTER:

5 We do have everything you sent us, but we didn't get that.

6 BY MR. PAVLOVICH:

7 Q. We have everything you sent us, but we also have everything that somebody  
8 sent to Kennedy and we have everything that somebody sent to Miller and we have  
9 everything that somebody send to IT, and we have everything that somebody sent to  
10 the union and we have everything somebody sent everywhere else. Well, some of it's  
11 duplicate stuff, some of it's not. And I'll be honest with you, it's like 200 and some  
12 thousand pages and you know, all of us together haven't had a chance to ---. But  
13 really one guy needs to read it all, but how the hell can you remember what's a  
14 duplicate and what's not? They said here, this is everything we got and that was good.

15 A. If Gary was working on it, it was never completed if that's the one we're talking  
16 about.

17 Q. You think maybe they were just killed?

18 A. It's possible, but not for certain.

19 Q. And you may have talked to headquarters about it and you probably have  
20 some documentation as far as ---?

21 A. Ed would --- I mean Dan.

22 Q. Dan Vetter?

23 A. I've got two Vettters, an Ed and a Dan. And I get them ---.

24 Q. So Dan's the one here?

25 A. Dan's the one here.

1 Q. Another thing that came out of this, too, Al, was there something about  
2 describe all you know about a February 1st, 2007 meeting between Bruce Hill and  
3 District 9 employees. Do you know anything ---?

4 A. District 9 employees? No, I don't know anything.

5 MR. TEASTER:

6 Well, that'd just be maybe yourself and some others, that  
7 don't mean --- I mean, that's just District 9 people?

8 BY MR. PAVLOVICH:

9 Q. Yeah, it wasn't the whole thing, it was just some District 9. Were you involved  
10 in a meeting with Bruce Hill on February 1st?

11 A. I was --- well, I can't come up with these dates and I ---.

12 Q. Well, had you been involved with many meetings with Bruce Hill? More than  
13 one, I'm assuming?

14 A. Oh, yeah, he's came over once, maybe twice when we were just doing regular  
15 plan meetings about the various mines. But he did come over that one time that I met  
16 with him that I described to you already.

17 Q. Okay. Would that maybe have been the February 1st meeting?

18 A. If I could look at my ---.

19 Q. Isn't this the meeting when he ---?

20 A. If I could look in my notes, I could tell what the date was because ---.

21 Q. I don't know if this is all of your notes, but there's a bunch of notes there.

22 MR. PAVLOVICH:

23 Is it in there (b)(6) and (b)(7)(C) do you know?

24 UNIDENTIFIED SPEAKER

25 It's in there.

1 A. It should start out with a thing about Bruce Hill.

2 UNIDENTIFIED SPEAKER:

3 I don't think it's in there.

4 MR. PAVLOVICH:

5 It's not in there?

6 UNIDENTIFIED SPEAKER:

7 It's just pretty much, I mean you got a couple pages, but  
8 everything else deals with ---.

9 A. Those are just my pocket notebook notes. I've got in my notebook over in my  
10 desk. Do you want me to run and get it?

11 MR. PAVLOVICH:

12 Q. Yeah, I guess you could run over and grab it.

13 A. What was the date again?

14 Q. It's February 1st, 2007.

15 A. 2007?

16 Q. Uh-huh (yes).

17 SHORT BREAK TAKEN

18 BY MR. PAVLOVICH:

19 Q. That's too organized, Al.

20 A. Well, these flags are on anything to do with Crandall.

21 Q. Okay.

22 A. February 1st, 2007 meeting with Bruce Hill. Now, I don't --- there was no  
23 other employees in this one.

24 Q. So it was you and Bruce?

25 A. Yeah.

1 Q. Do you remember what that was about?

2 A. Discussed improvements at the mines, discussed keeping good relationship,  
3 thought District 9 enforcement was more strict than what they get in the other districts.

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

5

6 Ex. (b)(6) and Ex. (b)(7)(C) don't know whether he had already switched the mines by this time or not, we  
7 might have.

8 Q. Yes, I think you switched them in October 1st of '06. But he says he thought  
9 the enforcement in his mines out here was more than what he got in the other  
10 districts?

11 A. Yes, he did.

12 Q. And that was here, he actually came up here?

13 A. That was here in this office --- in this building.

14 Q. And so what was the result of that meeting? Basically you listened to him ---

15 A. Yeah, right.

16 Q. --- and went about your business?

17 A. Right. Nothing happened.

18 Q. He complimented you, thanks for telling me I'm enforcing the law?

19 A. I told him, I said don't tell me that, tell the administrator.

20 Q. Al, what's your involvement in the plan approval process in general?

21 A. Well, you know the plan approval process for the most part is amendments. I  
22 mean, the base plans have been in place for these mines for years. But there's this  
23 continual stream of amendments. I mean, we hold everybody's feet to the fire, every  
24 longwall, every time they move from one section to another, you know, another  
25 submittal on what the ventilation is going to be.

1           You know, any change, so we get a lot of them. And typically, they'll come in  
2 and I don't see them until they've already been in the group and when there's issues,  
3 then we have meetings to talk about it.

4           Q.     So if there's issues, your guys would bring that to you?

5           A.     Right.

6           Q.     What do you think about this, AI, or ---?

7           A.     Yeah.

8           Q.     Do you ever get calls from operators when they can't get a plan approved or  
9 don't get it approved as quick as they want?

10          A.     Sure and we set up meetings for them to come here. We had one this  
11 morning with Laine Adair.

12          Q.     Oh really, Laine was here?

13          A.     Yeah.

14          Q.     We could have met him and interviewed him.

15          A.     Another opportunity missed.

16                         MR. TEASTER:

17                         Could have met him anyway.

18          A.     But he went home basically empty handed and when we have these meetings,  
19 I have --- we fill the room with the specialists and the supervisor and the ADM for  
20 plans. I'm not always in the whole meeting if they get down to discussing the nuts and  
21 bolts of some things.

22                         BY MR. PAVLOVICH:

23          Q.     I guess with your limited staff and plans, you get people crying all the time for  
24 we need it yesterday; right?

25          A.     Well, that's typical, yeah.

1 Q. So is there any particular operators that call more than others?

2 A. One time or another [Ex. (b)(6) and Ex. (b)(7)(C)] is bitching about everybody. West Elk probably  
3 one of the more frequent offenders.

4 Q. Do you usually get involved in those? I mean, as far as going to your guys  
5 and saying hey, are we holding this plan up for something or is there a particular ---?

6 A. No, that's not the way I get involved in it.

7 Q. Okay.

8 A. Usually there's some issue.

9 Q. Something to be hammered out then?

10 A. Yeah.

11 Q. Not just it's sitting on the bottom of the pile and we want it moved to the top?

12 A. Yeah.

13 Q. You get those, too, I guess, don't you, or does that usually just go through

14 [Ex. (b)(6) and Ex. (b)(7)(C)]

15 A. Yeah, they still go through them and then I get these things that says rush and  
16 I'll fax to the operators and so on.

17 Q. Right. Have you ever had your plans people say, you know, we just don't buy  
18 this, Al, and you tell them well, let's go ahead and approve it anyway?

19 A. When we hold these meetings --- typically, just the way it played out this  
20 morning, we listened to all their issues that they had, they want to shorten the panel,  
21 shorten the next panel, which is not really a problem, but then they want to put a  
22 longer panel right adjacent to it and that leaves a corner out there, what we call an  
23 interior corner.

24 We told them we could give them approval for the short panel, but we  
25 wouldn't approve the longer panel until there was a study done on the stability of that

1 corner and that that study has to convince us and their tech support people before  
2 we'd approve anymore ventilation.

3 But what we do, we got up to that point and then I call a break and all of those  
4 guys leave the room and then we sit down and talk about it and we come to a  
5 consensus amongst us. I don't think we've ever --- that I ever told somebody to  
6 approve something that I didn't think was approvable.

7 Q. So if one of your vent guys said I don't think we should approve this, Al, you  
8 don't remember saying let's approve it, I think it should be approved?

9 A. Well, Ex. (b)(6) and Ex. (b)(7)(C) is the one guy that's --- you know, he's quick to say well, let  
10 the bastard starve. I mean, you've got to come to some decision.

11 Q. Okay. So it does happen basically?

12 A. Probably in his mind it has.

13 Q. Okay. What do you do about that?

14 A. What?

15 Q. How do you handle that? I mean what do you do about that? Does it create  
16 Ex. (b)(6) thinking then he's always being overruled? You know, Al's going to give them  
17 anything they want anyway, I'm going to quit doing this or have you ever heard  
18 anything like that?

19 A. No. For instance like today, I went to Ex. (b)(6) afterwards, I said are you satisfied  
20 with the outcome of things? He said oh, yeah.

21 Q. So you try and handle it through communication when you need it?

22 A. Yeah.

23 Q. I know you're gone a lot, Al, you have to be because you got meetings in  
24 Beckley all the time and everything else. If someone signs plans in your absence,  
25 when you get back do they kind of review those or discuss it with you that hey, Al, we

1 approved this, here's something you need to know about it, especially if it's something  
2 unusual?

3 A. Well, I set this policy up in the past and anything that was approved while I  
4 was gone that I would get a copy of the approval letter, not the whole package, per se.  
5 I can look through those and see what it was and if I've got questions about  
6 something.

7 Q. So it's not somebody said we did this or this, you've got those cover letters  
8 and you look through them, if there's something you have a question about or you  
9 want more information on, you go and talk to them?

10 A. Right. Yes.

11 Q. Do you do that pretty often, AI? I mean, go and look through those and see  
12 something you need more clarification on or pretty much, you know, what's going on?

13 A. Occasionally.

14 Q. And is there times when they call you somewhere and say, AI, we've got  
15 something that's a pretty big issue here and we'd like to talk to you about it before you  
16 get back, I mean, we need to get with you?

17 A. That's happened.

18 Q. Okay. So that happens once in a while?

19 A. Sure.

20 Q. I guess what kind of communication do you maintain with your plan groups,  
21 AI?

22 A. I talk to them all the time.

23 Q. So you're here, you walk through, you talk to them about what they're doing  
24 and that sort of thing. I guess how do you ensure, attempt to ensure, you know, that  
25 you're getting good quality plans out there? Is that through communicating with your

1 people, do you think?

2 A. Yeah, probably more communication with the supervisor than necessarily  
3 every individual specialist.

4 Q. Okay. So with the specialist supervisors?

5 A. Yeah.

6 Q. Do you have any policy concerning consolidating these large number  
7 addendums into the base plan? I mean, is it like on a regular basis?

8 A. On the sixth month review.

9 Q. So you think they do it on the six-month review?

10 A. On the six-month review, right; which we're behind on.

11 Q. So you hadn't done the six-month review in two years or something?

12 A. You know, I'd say that we're a year behind right now just by virtue of all the  
13 new seal regulations, seal protocols and all these other changes.

14 Q. So right now it's getting pretty difficult to do that? I mean, you might have  
15 plans out there, there's a lot of addendums that ---?

16 A. Right now it's getting a little better because we're kind of over the hump with  
17 that.

18 Q. With the seal thing?

19 A. Yeah.

20 Q. So you're getting more time to maybe do some of these reviews?

21 A. Yeah, not to mention the impact that Crandall Canyon's had.

22 Q. That's true. Al, would it be a common practice in District 9 to mine barrier  
23 pillars similar to what was done here at Crandall?

24 A. I don't know that I'd say it's a common practice, but it had been done in  
25 Crandall before.

- 1 Q. Okay. Talking it had been the south, south mains ---?
- 2 A. Yeah, those barriers up against the gobs, they'd been mined all the way up out  
3 of the south mains.
- 4 Q. A little different circumstance though?
- 5 A. How do you figure?
- 6 Q. Well, I mean, you've got a very small barrier at the end of a longwall where  
7 the face has been extracted and then you drive ---.
- 8 A. Well, it's continuous all the way up.
- 9 Q. Then you drive maybe a room or two off and pull that room? You kind of not  
10 extend it out into the middle of --- I mean, you got more pillars and all behind you than  
11 ---
- 12 A. Yeah.
- 13 Q. --- this one, plus the cover's different, I guess, you know?
- 14 A. In the central area, yes, it was. Out at the end there, it's gobs.
- 15 Q. Yeah, I wouldn't say that the mining that was done --- well, he knows what it  
16 looks like. This mining that was done in the south mains mirrored driving, developing  
17 panels 3,000 feet up through a barrier, as you did here, or as they did here?
- 18 A. No, it's ---.
- 19 Q. I mean, we can say it's mining barriers, but it's like apples and oranges there  
20 on those two?
- 21 A. Well, in some comparison it's not this unrelated when you look at the length of  
22 this, of size of what was left, I mean, this is all a gob and that's all gob.
- 23 Q. Well, even the length of that is not ---?
- 24 A. No, it's not as much, but it's three-fourths of it.
- 25 Q. Yeah, but you're driving ---.

- 1 A. This is how much was done.
- 2 Q. These were entries that primarily were developed and then you roomed into  
3 these barriers and a crosscut or two less and pulled it back as a gob line?
- 4 A. Two or three cross cuts down in here it looks like.
- 5 Q. Some of them may have been way down in there, yeah.
- 6 A. Three or four.
- 7 Q. Okay. All right. Would mining these kind of barrier pillars be pretty common?
- 8 A. No, not common.
- 9 Q. Had you ever seen ---
- 10 A. Although ---.
- 11 Q. --- that done before? And I realize you were 12 years in headquarters so, you  
12 know, you weren't intimate with the mining going on here, but in your time before  
13 when you were here and since you've been back?
- 14 A. Well over at the Bally (phonetic) mines, another mine, it's one of the older  
15 mines that was retreated out, taking what, you know, coal is left and that they could  
16 get on the way out, but when you said --- how did you describe that, taking the barrier?  
17 Well, ---.
- 18 Q. I guess you're actually developing up through a barrier with a series of entries  
19 and then pulling the pillars back?
- 20 A. Yeah.
- 21 Q. As opposed to maybe, you know, more slab in a barrier or something in that  
22 particular configuration?
- 23 A. Yeah, in that sense it's different.
- 24 Q. Okay. Al, do your field office people have any input in the plan approval  
25 process?

1 A. Well, you know these 2004 forms, we get comments on those sporadically,  
2 not every time.

3 Q. Okay.

4 A. But whenever we get one, we always send the memo back, you know,  
5 agreeing or disagreeing, whatever the case might be.

6 Q. Well, I guess that's an involvement in commenting on an approved plan if  
7 they think it's adequate or inadequate or there's deficiencies or no deficiencies. But  
8 I'm talking if an operator sends an amendment in here to do something, is there any  
9 input solicited from the field, either supervisor or inspector, prior to that approval or  
10 that plan being approved?

11 A. I've got to say that it probably could go both ways on that.

12 Q. Both --- which way?

13 A. There's not policy where we send something out asking for something.

14 Q. So you may or may not?

15 A. Yeah.

16 Q. You don't have a policy that says we're going to solicit input from the field on  
17 all plans?

18 A. No.

19 Q. Okay. And I guess which ones would they decide to solicit input --- how do  
20 they --- I mean, do you have any guidance?

21 A. I don't know how to answer that. I guess where they put some special  
22 concern.

23 Q. Would you think that it's pretty much done on a regular basis?

24 A. No, I'm not going to say regular basis.

25 Q. Okay.

1 A. It's done, but I wouldn't say --- if it was a regular basis then we'd be doing it all  
2 the time in my mind, and I'm sure we don't do that.

3 Q. So if I told you that, you know, most of you field office supervisors and field  
4 office supervisors we talked to, we didn't talk to all of them, and most of the inspectors  
5 we talked to said, basically, we find out about a plan once it's approved, that for the  
6 most part they don't have much input?

7 A. It could be that way, yeah.

8 Q. On the 2004 forms that are sent back, Allyn, I realize they fill those out with  
9 every inspection and send that back, is it your guidance and your instruction to your  
10 people that when one of those comes in and list deficiencies that they need to respond  
11 back and provide feedback to that inspector, whether positive or negative? I mean,  
12 you would expect to see a memo come out that says ---

13 A. I haven't ---.

14 Q. --- or not?

15 A. I can't say that I have said you shall respond to all these memos, but I ---.

16 Q. Okay.

17 A. I sign a lot of things that are ---.

18 Q. And you would sign that memo that goes back?

19 A. Yeah.

20 Q. Well, I guess we got the same information that everybody else got. We had,  
21 how many was it?

22 MR. TEASTER:

23 Forty-four (44).

24 MR. PAVLOVICH:

25 Forty (40) what?

1 UNIDENTIFIED SPEAKER:

2 Forty-four (44) planned deficiencies in two years.

3 BY MR. PAVLOVICH:

4 Q. In two years we were sent 44 204 forms that identified where an inspector  
5 wrote something and checked deficiency and there was two memos from you attached  
6 to two of those, which means 42 we didn't have an answer. Now, I think [REDACTED] brought  
7 in --- after we asked [REDACTED] about it he said, oh yeah, and he brought in three plans that  
8 were --- that he actually got changes made on the plans, he says because of things  
9 identified by the inspector. Which I mean, that's good.

10 A. Yeah.

11 Q. But what about the rest of these? I mean, would there be hidden --- some that  
12 maybe aren't in the file? I mean, you've got to recall signing more than two; right,  
13 when you said you ---?

14 A. Sure I recall that --- I mean ---. But I think that maybe these guys --- you  
15 know, I don't see the 204 form.

16 Q. No, you don't get it.

17 A. So I don't know whether it's there or not there. Billy has always told me that  
18 he calls and talks to people about it now. So maybe he's dropping it at that and it's  
19 likely

20 --- or more likely than not talk to his supervisor rather than the inspector.

21 Q. Okay. For the most part, people kind of said we don't get anything back, so  
22 that's why we weren't surprised. I mean, if everybody said oh, yeah, I always get a  
23 response, but I only found two, then I would say, well, somewhere we didn't get all the  
24 paperwork. Now, that's not to say there's not more out there and, you know, if you  
25 asked one guy one time and he wrote something and didn't get an answer, he's

1 probably going to tell you ---. But I guess the other thing is if I wrote it two or three  
2 times and said I got a deficiency and I never got anything back, then pretty soon I'd  
3 just quit writing deficiencies, it's a waste of my time.

4 I'm saying as an inspector, I would feel that way and people do say that. You  
5 know, if I've written three or four times and didn't get anything and nobody even said  
6 we got it, then why bother keep writing these things. So anyway that's something that  
7 we asked they guys if they had any more bring them, [REDACTED] brought us three.

8 MR. TEASTER:

9 And [REDACTED] pretty much said what he done, he went ahead and  
10 addressed them, it may have taken several months, he incorporated them into a plan,  
11 but he may not have gotten --- there was nothing written to go back to the inspector or  
12 the supervisor. He said he may have called but he didn't have a record of it, but he  
13 didn't recall.

14 MR. PAVLOVICH:

15 Yeah.

16 BY MR. PAVLOVICH:

17 Q. So the guy may not even know ---?

18 A. Well, ---.

19 Q. He might not ---.

20 A. Yeah.

21 Q. Yeah, I mean eight months later he might have forgot he even wrote that  
22 down.

23 A. Yeah.

24 Q. Now, a new plan comes in that, you know ---. So I guess when they get them,  
25 if [REDACTED] going to work on planning, he probably ought to send something back that

1 says I'm looking into it, I'm trying to change the plan.

2 A. Yeah, I wouldn't argue with that.

3 Q. Al, do you guys --- what's your feelings about utilizing tech support for  
4 assistance?

5 A. We've utilized it a number of times. There's a lot of feelings, negative  
6 feelings, within my ventilation group about ventilation support that we get from tech  
7 support.

8 Q. We gather that. Why is that? Have you ever got to the bottom of that and  
9 kind of ---?

10 A. I've tried to run interference on that since I've been here and, quite frankly, I  
11 think it stems from the issues that we deal with with spontaneous combustion in these  
12 mines and have been dealing with for 20, 30 years out here.

13 Q. Sure.

14 A. But tech support has basically the position that --- you know, that a bleeder  
15 system has to have X amount of air, period, and that just doesn't work out here.

16 Q. So they're not buying the bleederless system that prevents SPONCOM?

17 A. Now days they're saying they are. They have a bleederless plan.

18 Q. Which you already did?

19 A. No, there's only a couple of bleederless plans right now.

20 Q. Okay.

21 A. But there's a lot of plans that don't move a lot of air through the right cavity.

22 Q. So it's a difference of philosophy?

23 A. And the operators are on our back all the time about setting the mine on fire,  
24 trying to get more and more air all the time.

25 Q. So it would be safe to say then the ventilation group very seldom, if ever, asks

1 for help from tech support, what about the roof control group? I mean, I realize there's  
2 been some visits out here and you've had some of the guys at Aberdeen and in fact, I  
3 think Bill was out on one of the projects one time. Would you think Billy was more  
4 free to utilize and ask, request help of tech support?

5 A. Yeah, although there's probably not anybody back there right now that knew a  
6 whole more about bounces than Billy does.

7 Q. Okay.

8 A. Those people are all here, the Western Tech support that quit after they  
9 closed the center.

10 Q. So you feel Billy knew probably as much about bounces as anybody?

11 A. Well, I'd say he was as good as anybody that's in tech support now, yeah.

12 Q. What's Billy's background? I mean, he was the center chief and also roof  
13 control expert, I guess?

14 A. Right. I mean, that's what he did before he became chief. I mean, he was in  
15 tech support for quite a few years.

16 Q. When they closed it, he came here as the roof control supervisor; right?

17 A. Yeah.

18 Q. You recall that? I mean, it was sometime ---?

19 A. I don't know, he might have been here --- I don't know whether he came  
20 directly into that job or not, I wasn't around here then. He might have because Steve  
21 Miller was in that job for a long time.

22 Q. I thought Steve --- oh, no, I remember Steve. He was Health's guy, but I'm  
23 thinking as soon as the center closed down, they ---

24 A. He might have moved directly into that.

25 Q. --- moved Billy into that.

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MR. TEASTER:

At about the time they moved the chief to ---?

MR. PAVLOVICH:

I don't know.

A. I can't remember offhand all those changes.

BY MR. PAVLOVICH:

Q. I don't remember the dates either and the circumstances of it. So with Billy's background, with his knowledge, you felt pretty confident in what he was doing?

A. I relied on him, yeah.

Q. Did you take him to Crandall Canyon with you when this bump happened?

A. No.

Q. Well, if he was the most knowledgeable guy maybe in the country, why not?

A. Well, at that point in time we already had the fellows out from tech support.

Q. Yeah, but you said Billy knew more than they knew?

A. I said he knew as much as they knew.

Q. But you trusted him, you had confidence in Billy, didn't you?

A. Yeah. I guess maybe at that point in time, we were just concentrating on the rescue.

Q. Well, you had a major bump, the biggest bump you ever saw probably ---

A. Oh,. Yeah.

Q. --- and by far the biggest bump anybody else saw, including Billy, and Billy will tell us --- did tell us. You were cleaning that bump up, which you hadn't done very often, if ever. You usually don't go in and clean up after a bump too much, you might mine past it on the longwall, you might clean one off the face, but ---

A. We might have. I clean them up all the time.

1 Q. --- you never mined one like this, did you?

2 A. I never saw one like this.

3 Q. So that's all new ground. Billy's knowledge and expertise and this continuing  
4 to bump, would you not have wanted him there?

5 A. We talked to Billy a lot over the phone about things, but as far as just bringing  
6 him onsite when they already had Joe and Mike there and we had business to keep  
7 going in the district, no, I didn't call him over.

8 Q. So you didn't think you needed Billy there?

9 A. Not at that time.

10 Q. Or did you not want Billy there?

11 A. No, that wasn't the case.

12 Q. Were you protecting Billy in anyway? Do you think Billy wanted to be there?

13 A. He never expressed that to me.

14 Q. Did you think he might want to have been there? I mean, if you have a mine  
15 fire, the heating and gases, would you take Reitze with you?

16 A. We've done in that in the past, but we usually had to prod him to get him out  
17 there.

18 Q. It's maybe a product of him, not what you want?

19 A. Yeah.

20 Q. So you would say I'm going to take my best knowledgeable people out there.

21 A. Yeah.

22 Q. And yet it appears funny to me and everybody else, that Billy being your best,  
23 most knowledgeable person on roof control and ground control and bumps, why was  
24 he not there?

25 A. Not any specific reason.

- 1 Q. Okay.
- 2 A. And I know after a couple of days, the pressure was on us to get people out of  
3 there. So beyond that, I ---. He did come over for another issue at ---.
- 4 Q. Yeah, at the other mine, at one of the other mines he came over, but he didn't  
5 come to Crandall when he was there and he was right in the neighborhood.
- 6 A. He was digging information and responding to all kinds of inquiries from over  
7 here.
- 8 Q. I can imagine.
- 9 A. And he was busy with that.
- 10 Q. Yeah but, I guess, would you not ask that question?
- 11 A. I can see where it's a legitimate question.
- 12 Q. You really don't have a particular answer for it other than --- did Kevin or  
13 Richard or anybody ever say why don't we have Billy here?
- 14 A. No.
- 15 Q. They never said that?
- 16 A. No.
- 17 Q. Do you think they know Billy or know about him?
- 18 A. Well, I don't think Stickler does.
- 19 Q. He may not, but Kevin probably does?
- 20 A. Yeah.
- 21 Q. Do you think Gauna and Zelanko know about Billy? I mean, they'll tell you  
22 he's one of the best roof guys out there. Did they not feel like maybe we could use  
23 him here?
- 24 A. They never said that.
- 25 Q. They never ---?

1 A. Had that been expressed, I mean, I have no reason that I would not have  
2 brought him in.

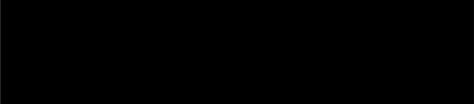
3 MR. TEASTER:

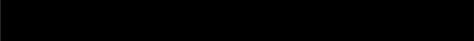
4 Did you consider it and discount it?

5 A. Well, a little bit at first maybe, but then when all these requests for information  
6 started coming in, which was the next day, we just kept firing more stuff, questions to  
7 him and stuff and just left him here.

8 BY MR. PAVLOVICH:

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

10 A. 

11 Q. 

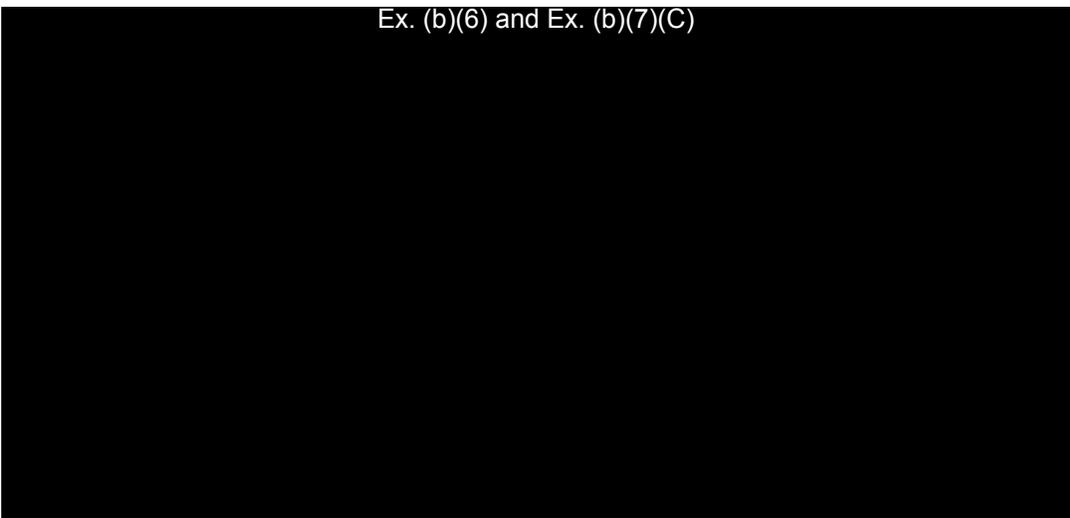
12 A. Yeah.

13 Q. From?

14 A. Kevin.

15 Q. From who?

16 A. Kevin.

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

18  
19  
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24  
25 Q. Okay.

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

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5 Q. At McClain?

6 A. Yeah.

7

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

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15 A. Yeah, but then also in my mind, I didn't want to take both ADMs out of the  
16 district.

17 Q. Well, I mean I can understand your logic there to leave somebody here  
18 running the district, you still got things going on although this is number one by far.  
19 You know, there's still other work to do, I just wonder, you know, my plans guy,  
20 Ex. (b)(6) and Ex. (b)(7)(C) been around here a long time and although I realize a lot of his background is  
21 vent, he and Billy are pretty close and certainly, you know, I think they've  
22 communicated a lot over the years and Ex. (b)(6) knows quite a bit.

23 I mean, I guess looking at it from an outsider, AI, if I was, you know, I'm going  
24 to say --- if I was the district manager there and they called me and said we had a  
25 major bump over here, we got six men trapped, the first two guys I would have

1 grabbed is probably [REDACTED] and Billy. And yet I'm thinking why weren't they even  
2 there? Now, I know why [REDACTED] wasn't there. Did [REDACTED] tell you that the morning  
3 before you left?

4 A. No, I didn't talk to [REDACTED]

5 Q. When was it?

6 A. It was early on over there.

7 Q. While you were over there?

8 A. Yeah.

9 [REDACTED] Ex. (b)(6) and Ex. (b)(7)(C)

10

11

12

13

14 A. Yes.

15 Q. Okay. So I guess all this started because we were talking about tech support  
16 for some darn reason and I think, you know, [REDACTED] Ex. (b)(6) and Ex. (b)(7)(C)

17

[REDACTED] Ex. (b)(6) and Ex. (b)(7)(C)

18

19 A. Right.

20 Q. --- as maybe you'd like to see him?

21 A. Yeah. Well, we've also ---.

22 Q. So do you think that there was --- go ahead.

23 A. We've gotten repeated comments from [REDACTED] Ex. (b)(6) and Ex. (b)(7)(C) about you don't want me to  
24 come out there.

25 Q. [REDACTED] Ex. (b)(6) and Ex. (b)(7)(C) said that, you don't want me to come out there?

1 A. Yeah.

2 Q. And you take that in a threatening manner like I'll stir up enough crap or  
3 something that you will be sorry ---?

4 A. He'll find problems with the plan that I don't know how we're going to be able  
5 to reconcile.

6 Q. Well, you know, it's not a damn secret that District 9 is in this country and it's  
7 not a secret --- your plans aren't a secret. I mean, they're available for --- I could do a  
8 FOIA and get every plan you've got.

9 A. Right.

10 Q. Now, if headquarters and tech support feel that way, that these plans are bad,  
11 and they're not --- why don't they do something about it?

12 A. That's the perception we had.

13 Q. Well, then I mean ---.

14 A. I don't know, we just feel like we're in a constant state of defending ourselves.

15 Q. I mean, why don't they get you to join the rest of the world here and come out  
16 and say yeah, these are either okay or no, they're not, AI, do something about it? Did  
17 you ever ask them that? I mean, do you ever ---?

18 A. I went back and we had a briefing with Stickler when he first got there about  
19 SPONCOM plans.

20 Q. Okay.

21 A. We talked and I took Reitze in and we explained. We took some sample  
22 plans and we explained why they were that way. Came back home and nothing ever  
23 changed.

24 Q. So Stickler agreed with you?

25 A. He did.

1 Q. He didn't see a problem or he didn't say well, that's bad, Al, you change it?

2 A. That's right.

3 Q. He just looked at it and basically acknowledged, understood I guess, asked  
4 questions and said be on your way?

5 A. That's about the way it happened, I mean, the meeting didn't last very long.

6 Q. Did he cut it short and say I don't want to hear any more?

7 A. No.

8 Q. Was the meeting the result of his concerns about your plans?

9 A. No. I think it was just early on when he first got here --- I think he might have  
10 asked that we come back and talk about SPONCOM.

11 Q. So had he requested that you come back?

12 A. Yeah.

13 Q. Did he think that it's a real thing?

14 A. I hope he does because I'm convinced that it is, all these mine fires that we've  
15 had ought to convince somebody.

16 Q. And so I guess where does that leave you as far as if you want help from tech  
17 support, you basically can't get it?

18 A. Not without difficulties.

19 Q. Have you ever heard where if you would want help from tech support, you  
20 have to send a memo to Terry Bentley, the chief of safety, and then Bentley will  
21 forward it on to tech support and to prioritize?

22 A. Yeah, I've heard that.

23 Q. Is that something new, Al? I mean, when you were chief of safety were the  
24 districts sending you a memo saying we'd like tech support's help on this certain  
25 matter and then you prioritized and decided what you'd send to tech support and what

1 you wouldn't?

2 A. No.

3 Q. You never heard that?

4 A. We prioritized any of their work, but sometimes I'd be involved in an issue  
5 going on.

6 Q. And sometime if we talked to you and said we've got an issue with you, you  
7 might say let's get tech support involved?

8 A. Yeah.

9 Q. But I wouldn't have to send the memo to you --- I mean we could just call?

10 A. Yeah.

11 Q. But you can't do that?

12 A. Not according to that memo. I'm not saying we always follow the memo.

13 Q. But you actually have a memo from headquarters that says that?

14 A. Yeah.

15 Q. Do not follow tech support, send a memo to chief of safety and they'll let you  
16 know if you need their help or not?

17 A. Yeah.

18 Q. How does that work, I mean ---.

19 A. It doesn't work. You know, really a lot of our things are kind of ongoing issues  
20 and we talk to tech support a lot.

21 Q. So let me say this, okay, you kind of get the feeling you're out here on an  
22 island as far as SPONCOM, two entry, deep cover, all these things that are maybe not  
23 totally unique to the west, but certainly prevalent here and you get the feeling that  
24 nobody in headquarters likes the plans you have that you're allowing to go on here ---?

25 A. I think that they're suspect.

1 Q. Okay. They're suspect of them. And yet, nobody will help you with them. So  
2 it's like if I put my head in the sand and forget about District 9, it doesn't exist until  
3 something like this happens and then what?

4 A. Like I say, our time is spent defending usually what ---

5 Q. What you have approved?

6 A. --- what this plan was. Yeah.

7 Q. Did you ask for help by the safety? You were chief of safety, you were  
8 familiar with this. Did you educate people there on the need for some of these things  
9 or try to?

10 A. Yeah.

11 Q. And did it fall on deaf ears?

12 A. None of them are there. None of them are there anymore.

13 Q. They're all gone?

14 A. Yeah.

15 Q. So everybody that you were able to discuss this with, now they're all gone,  
16 now there's a whole new crew there?

17 A. I don't want it to sound like we never call ---

18 Q. No, I don't ---.

19 A.. --- we never called tech support because we do, but we don't get backing from  
20 them. We feel like we got to deal through these problems ourselves and we got to get  
21 through them. I mean, the mines continue to work every day and we got plans at all  
22 the mines and we don't have these kinds of things happening every day.

23 Q. Right.

24 A. So I don't think the plans are bad, I've not signed any plan that I feel bad  
25 about. But we have issues out here that, quite frankly, the mainstream thinkers in the

1 east don't deal with. Hydrogen sulphide, how many mines in Kentucky have hydrogen  
2 sulphide plans?

3 Q. None that I know of.

4 A. We've got them at three or four mines out here. Spontaneous combustion  
5 plans. I would argue that there is such a thing as a spontaneous combustion plan and  
6 it looks different than just the standard ventilation of a longwall, but it's not addressed  
7 to such in the bleeder and gob venting. And so those are things we battle all the time.

8 Q. And you have to fight MSHA's own people?

9 A. Yeah.

10 Q. But yet, do they tell you don't approve it, AI?

11 A. No.

12 Q. They never come right out and say don't approve that, they just kind of hint at  
13 we don't like it. AI, did you ever consider any mine, because of methane, deep cover,  
14 bumps, bounces, SPONCOM, that you might consider issuing a 107D1 order?

15 A. You know, we've always wondered when we'd get to that point, you know, with  
16 a mine. We thought we were headed there with Aberdeen. We worked out that roof  
17 control plan in conjunction with tech support, they were a big help with the roof control  
18 issues. I'm not satisfied they can go much deeper than they are. All we're able to  
19 throw at it right now is this more protections for people and not mine design, it's  
20 addressing the bump problem.

21 You know, we got these --- that Aberdeen plant now with these hellacious  
22 sprags, full length sprags that come down and then the conveyer belting unit --- you're  
23 just totally isolated from the face, you're looking through these cracks in the belting  
24 and every shield to see things going on, people are wearing helmets and riot gear. I  
25 just bought riot gear for my inspectors in the Price Field Office. People in the mines

1 have been wearing those for years, but my people don't want it. And now the plan ---.

2 Q. How could you inspect the area if you don't have ---?

3 A. That's right. And really this is the first time we've committed it to the plan.

4 Lots, like Energy West, has worn it for years just because the coal spits off the face,  
5 you know, and hits you.

6 Q. Because they required it just because of company policy?

7 A. Yeah, it's not part of their plan.

8 Q. But you actually approved it now as part of a plan?

9 A. Right. That's the ---.

10 Q. So what you're saying is --- and I guess, you made a good point, Al, but you're  
11 not sure what they can do, so primarily now you approve barriers?

12 A. Right. That's really all it is.

13 Q. It's like a pair of safety glasses, okay, it's a barrier. If you had eye injuries,  
14 now we got safety glasses. But you didn't protect anybody from flying objects?

15 A. I think we protected them from flying objects, but what I haven't done anything  
16 about was to stop it from flying.

17 Q. Okay. You didn't stop the flying object?

18 A. Yeah.

19 Q. That's what I meant, you didn't stop the ---. So now we're not doing anything  
20 to stop the bumps or minimize the bumps, but we're putting body armor on people?

21 A. More or less. Now, I wouldn't say we're not doing anything to minimize the  
22 bumps, because there's design that's going into pillar sizes and stuff on the gate rows  
23 and that. But nobody's doing anything like we did in terms of distressing the coal prior  
24 to mining.

25 Q. Okay.

1 A. All we've got is these various types of barriers and people positioning. We've  
2 got red zones, nobody's in a red zone when a shear comes into this zone, you know,  
3 that sort of approach.

4 Q. So there's some predictability to an area based on cut?

5 A. Oh, yeah. Went back and look at the accidents over a number of years and  
6 where they happened and what was happening, where was the shear at the time the  
7 accident happened, that sort of analysis and we've got these red zones in the  
8 headgate area and in the tailgate.

9 Q. Okay. So you said just yesterday or today or something, you signed a  
10 requisition for body armor for your people, because I know that's been an issue?

11 A. Yeah.

12 Q. And the guys basically say, you know, the miners have it, they don't have it  
13 and how do you inspect the face, well, we kind of have to hang around and when the  
14 opportunity's right we run through real fast?

15 A. Yeah.

16 Q. Now, that's not an inspection.

17 A. Well, we're supposed to observe the mining cycle.

18 Q. You can't observe it to keep from getting hit?

19 A. So I've taken the MSHA approach and buying two sets, one for the inspector  
20 that's got the mine assignment this quarter and one for --- usually we have another  
21 inspector doing the 103Is, a different guy.

22 Q. Okay. So you didn't buy everybody a set?

23 A. Quarter by quarter I will eventually get everybody a set, but I'm spreading the  
24 cost out.

25 MR. TEASTER:



1 everything else, he almost needs it. Stuff is flying off all the time from what you say  
2 and everybody else said. And it says personal protective equipment applicable to  
3 mine conditions and MSHA directives shall be worn. Well, certainly that's mine  
4 conditions. So when you ask headquarters can I buy these body armor for my guys,  
5 what'd they say?

6 A. I didn't ask headquarters, I just told Ex. (b)(6) and Ex. (b)(7) to buy it.

7 Q. So you never in the past have asked headquarters ---?

8 A. No.

9 Q. This is the first time?

10 A. No, it was never done before.

11 Q. I mean, you didn't ask them, you just told Ex. (b)(6) and Ex. (b)(7) to buy it?

12 A. Right.

13 MR. TEASTER:

14 Was you aware of any inspectors, anybody ever requesting  
15 this equipment?

16 A. I couldn't tell you who, but I think there has been some discussion about that  
17 in the past.

18 MR. TEASTER:

19 What was the response back to that?

20 A. It never came to me, but I'm not saying that there hasn't been an inspector  
21 voice, you know, their desire to have something like a special helmet.

22 MR. TEASTER:

23 Usually their requests --- I mean, the response being provided  
24 to them, according to the information they provided to us, is the company stuff.

25 A. Well, I think they have done that and, to my knowledge, they have done that

1 in the past when they needed to, but then there's concerns about wearing a helmet,  
2 you know, somebody else's ---.

3 BY MR. PAVLOVICH:

4 Q. Yeah, you don't want to wear somebody else's. I mean, the guys said even at  
5 Crandall Canyon, there were some of those vests hanging in there and somebody told  
6 them use the company's and said these old, nasty, dusty vests, they said, we weren't  
7 putting them on. I mean, I can understand that.

8 MR. TEASTER:

9 And yet the company people were reportedly wearing them.

10 BY MR. PAVLOVICH:

11 Q. So you're attempting right now to try and buy those on a prorated basis, I  
12 guess, to where you can equip your guys ---

13 A. Yeah.

14 Q. ---over a period of time.

15 A. If I equip the whole field office, it would, you know, \$20,000 probably. I think  
16 it's about \$1,200 to buy everything that the company's ---.

17 Q. That might be something you need to ask Kevin for. I mean, I need \$20,000  
18 to equip my guys. Because now you're kind of limited if you got two sets, you can ---.

19 A. Well, we should be buying four sets because I told her to get them for the  
20 people that have mine assignments at West Ridge and the ones at ---.

21 Q. Are those kind of a one size fits all thing?

22 A. No, in my e-mail I said to the field office secretary to send the sizes on --- the  
23 vests apparently had a size, but not the shin guard.

24 Q. But the shin guards probably don't, but the vests I think do.

25 A. Yeah.

1 Q. AI, have you ever had any guidance even when you were chief of safety up  
2 there, was there any kind of instruction or guidance ever submitted to the field by  
3 headquarters or tech support on minimize or prevention of bumps or bounces?

4 A. I'm sorry, you said was there guidance from headquarters about minimizing  
5 ---?

6 Q. Yeah. Or preventing bumps or bounces, any kind of guidance, policy memos  
7 or any kind of guidance at all?

8 A. You're talking pre-Crandall?

9 Q. Yeah.

10 A. No.

11 Q. You don't remember any at the time, any of that was ever said?

12 A. No.

13 Q. How about tech support, did they ever put out anything that you know of?

14 A. Well, I mean in specific situations generally at our request.

15 Q. Okay. So they might. If you called them out, they would recommend  
16 something on a specific situation like don't mine this area or expand these pillars ---

17 A. Correct.

18 Q. ---- or something for that, but as far as some kind of general guidance, ---

19 A. I don't remember.

20 Q. --- you don't remember anything like that? So, to your knowledge, they don't  
21 have it, there is none, you don't have it here, Billy never talked about having any, did  
22 he?

23 A. No, not from our headquarters. I mean, he had information from, you know,  
24 the Bureau and ---.

25 Q. So you might have some stuff on maybe an ARMS program or LAMODEL

1 programs and stuff like that?

2 A. We couldn't run LAMODEL before, but we've since got additional software to  
3 do that.

4 Q. Okay. I think that will probably be another question somewhere. Al, you ever  
5 had any interaction with BLM?

6 A. Not before Crandall.

7 Q. Okay, not before Crandall. So there was no kind of working agreement to  
8 share information or anything prior to Crandall?

9 A. I didn't even know they had an office at Price.

10 Q. And so is there now some kind of working agreement with BLM since  
11 Crandall?

12 A. I think there's one in the works.

13 Q. Okay.

14 A. They asked me to come attend the meeting that they had here in the west with  
15 all of their western people, most of them are the only ones that deal with bumps and  
16 bounces. They're the only ones anyway, there's no BLM back in the east.

17 Q. No.

18 A. So we talked about --- I could tell listening to their discussion, they had a  
19 three-day meeting, I was there for one day of it. And they didn't know whether they're  
20 coming or going, they were arguing over what their charge was as an agency. And  
21 there was a lot of internal argument that they didn't belong in this issue about bumps  
22 and bounces and mine safety.

23 And there were others that felt if they knew something, they ought to be  
24 contributing. And they were struggling with are they going to do that and how are they  
25 going to contribute. I know since that meeting then there's been higher level

1 Washington meetings, but I haven't seen anything come across the desk with it in  
2 writing.

3 Q. But you're not having regular communications monthly or anything with the  
4 chief of BLM in Salt Lake or anything like that?

5 A. I haven't talked to them since I was in --- well, I've talked to them, I mean, at  
6 that meeting and that. But no, I mean, as far as interaction on other mines or anything  
7 like that, no.

8 Q. Al, how familiar are you with Agapito?

9 A. I'm familiar with them as a consulting group. I don't know the man personally.

10 Q. You know them as a group and apparently, they're a fairly large consulting  
11 outfit?

12 A. Right.

13 Q. They consult with a lot of mines in the west?

14 A. Quite a few is my understanding.

15 Q. Primarily in areas of ground control, ventilation or what?

16 A. I don't think that they're really into ventilation.

17 Q. Okay.

18 A. They might be, but always ground control.

19 Q. So always ground control that you knew?

20 A. Yeah.

21 Q. Do they do a lot then with evaluations and recommendations with bump-prone  
22 mines?

23 A. Yes.

24 Q. That's kind of their expertise is deep cover?

25 A. Right. Keep in mind though, we never deal directly with that.

1 Q. Right.

2 A. That's always kind of secondhand, if you will.

3 Q. Okay. So in other words, you might get a plan from an operator and their  
4 justification and the justification they're trying to provide for you is an Agapito report  
5 that says if you do this and this and this, this should be successful?

6 A. That's the way it happens, yeah.

7 Q. And then you or Billy or Knepp wouldn't pick up the phone and talk to Agapito  
8 about that report, you'd go back through the mine operator?

9 A. Right.

10 Q. I mean, you didn't have personal dealings with Agapito?

11 A. To my knowledge, Billy never did talk to them directly about a plan.

12 Q. And neither did you or anybody else?

13 A. Nor would we accept the plan from Agapito for a mine.

14 Q. Sure. I mean, the mine has to submit the plan?

15 A. Right.

16 Q. And they never did submit one, did they?

17 A. No. Are you --- Agapito?

18 Q. Yeah. Were you aware that --- well, do you feel that they're pretty credible?

19 A. Yes.

20 Q. And that the quality of work and information that they give was always pretty  
21 good?

22 A. That was the feeling that I had. I would not say that I've changed that opinion  
23 a whole lot based on just what happened. They're made up in a bunch of ex-Bureau  
24 Mine people and some academics.

25 Q. Are they --- after what you --- I guess you've looked at the two Agapito reports

1 or however many were --- there's actually four or five, I think, through this series of  
2 lists. Butt you've looked at those, I don't know whether you have any doubts or  
3 questions about them now, but would you now be concerned and say, you know,  
4 they're doing the report that truly justifies what --- realistically what occurred or they're  
5 kind of giving the report based on what the operator wants?

6 A. There's always some of that when you're dealing with a consultant, I think.

7 Q. Sure.

8 A. But in terms of --- I'm not really qualified to dispute what they're saying one  
9 way or the other. If they're talking to Billy who was qualified to make some kind of a  
10 judgment about their work, he felt that they were following the guidance that was out  
11 there at the time.

12 And I think one of the worst things to come out of all of this is the NIOSH  
13 changing --- basically changing how their program is operated very quietly and then  
14 presenting the facts from the new way of doing this analysis to Kennedy's people and  
15 saying that it showed a problem.

16 Q. Well, I know there was an analysis done by NIOSH of the Agapito report and  
17 (b) (6) had tried to explain that to me what changed. I'm not sure I bought in to the fact  
18 that they changed everything, although I think they evaluated some of the entry and  
19 pillar left standing not as a solid barrier, but actually reduced the number somewhat to  
20 take into consideration that entry being mined ---

21 A. Right.

22 Q. --- and what may be left of part of a pillar.

23 A. Plus the coal.

24 Q. That's the difference, which kind of makes good logical sense. I mean, you  
25 wouldn't ---. I normally wouldn't say that, you know, if I saw an entry in a pillar that I

1 would add that total distance to the barrier as far as the stability of that barrier, even  
2 though I realize that's maybe how the 2004 NIOSH program or whatever didn't cover  
3 that, so therefore you could almost --- well, we can do that, but it wouldn't seem right?

4 A. Right. I've never done one of those.

5 Q. I don't know much about it myself.

6 MR. TEASTER:

7 But the coal strength, AI, that you mentioned that they use for  
8 the ARMPS program was the same that was used by Delduca in his analysis. Now,  
9 for the LAMODEL, they used the 1650 or whatever number that was for the coal  
10 strength?

11 A. Yeah.

12 MR. TEASTER:

13 But if you go back to the ARMS program, which is what  
14 Delduca used, they used the same coal strength, which was 900, they used that.  
15 That's what Agapito used.

16 A. Right. Billy convinced me that 900 wasn't the appropriate number to use  
17 based on the guidance that was out there at the time that that was done. They was to  
18 use numbers that have been developed elsewhere in the mine and the number they  
19 used was very conservative compared to numbers for this Hiawatha seam.

20 BY MR. PAVLOVICH:

21 Q. Okay. So I think --- I guess the question was, what's your opinion of their  
22 credibility now and you've not really changed that a whole lot. I mean, you felt they  
23 were very credible prior to this accident and obviously you still think they're credible  
24 people?

25 A. I think they are. I'm sure they're going to adjust what there doing after this,

1 too.

2 Q. Yeah, I would think ---. Were you aware --- or when did you become aware I  
3 guess that Laine Adair had asked Billy to kind of look at an Agapito report in August or  
4 September of 2006 to consider mining those north and south barrier blocks? Were  
5 you aware that that happened? I mean, were you aware at the time or did you find out  
6 about it later sometime?

7 A. It was later, it wasn't right at the time.

8 Q. Do you remember like how much later?

9 A. I remember sitting in here at a meeting, we were talking about one of the other  
10 mines and then they said as long as we're here, also here's what we're going to be  
11 wanting to do over at Crandall.

12 Q. Okay.

13 A. And I remember Billy telling them, you know, that they need to look at those  
14 barriers and there has to be something, you know, convincing that it's safe.

15 Q. So Billy told them --- I don't think [REDACTED] can you hear you back there, but do you  
16 want to repeat that, Al, just the last part about Billy told them what?

17 A. That they need to look at the feasibility of mining the barriers.

18 UNIDENTIFIED SPEAKER:

19 This is a meeting that you had in here?

20 A. Yeah, it was not a Crandall-specific meeting. It was the tail end of another  
21 meeting when they said also over at Crandall, you know, we're looking at this.

22 BY MR. PAVLOVICH:

23 Q. So Billy kind of indicated before we're going to consider that we want to see  
24 some engineering study that shows it's going to be feasible and they said okay?

25 A. Yeah.

1 Q. And then sometime after that, they brought in or sometime in passing they  
2 had this Agapito report that they asked Billy to look at; is that your understanding of it?

3 A. (Indicates yes.)

4 Q. Would that normally be something that you would do, Al? I mean, if I walked  
5 in here and said hey, I'm not submitting the plan, but I've got this engineering study,  
6 you look at it and you kind of tell me what you think. Do you really have the staff to do  
7 that or do you got the staff to more or less approve plans and review plans? Because  
8 that could cover you up with all kind of crap.

9 A. Well, I think Billy considered this a special case and I know he wanted to take  
10 kind of a look and see approach at it.

11 Q. But wasn't it just as easy done that by saying hey, submit the plan, attach the  
12 report to it and I'll review it as a plan, I'm not going to sit here and expend my time and  
13 resources looking at your engineering report that I can't approve or disapprove  
14 anyway? I mean, you know, I wasn't going to come to you and say, Al, let's approve  
15 this and where's the plan, Billy. Well, I don't have a plan, I just review the report, that  
16 wasn't going to happen.

17 I mean, I guess was this an isolated instance or did this happen frequently that  
18 it wasn't --- didn't think it was any big deal or is that kind of how these people dealt  
19 with this?

20 A. Well, I think --- I mean Agapito has done a lot of different things for them over  
21 at all their mines ---

22 Q. Yeah.

23 A. --- and their group. And Billy was interested in seeing what they ---.

24 Q. So you think it was more of Billy's interest as seeing not so much the fact that  
25 ---?

1 A. Well, the report wasn't part of the plan, it was just that the report ---.

2 Q. Well, I would say that the plan was justified based on the report. Would you  
3 say your approval of that plan was justified based on the report or was it just based on  
4 that plan and the report wasn't considered?

5 A. I don't think you can say that the report didn't have anything to do with it.

6 Q. All right. I wouldn't think you'd say that, I mean, you justified your approval  
7 based on the report?

8 A. Well, and Billy's analysis of the report, I mean, whether he thought it was a  
9 credible report or not.

10 Q. But if he didn't have the report and just reviewed that plan ---?

11 A. Well, I don't think that the report was --- he said you need to look at that and I  
12 don't know at what point Billy actually saw the report from Agapito. I can't tell you  
13 that, I don't know.

14 Q. But I think we have a timeline on that.

15 MR. TEASTER:

16 It's September 9th ---.

17 BY MR. PAVLOVICH:

18 Q. Yeah, Laine actually came through here, I think, to talk to him about  
19 something else and dropped that report off and said --- and that's the first one, we'll  
20 look into that tomorrow sometime, but that first one and said here's the report we got  
21 from Agapito about mining that and we'd like you to look at it, and that's when Billy  
22 gave that report to Pete and said, Pete, do some kind of a cursory review of this  
23 report?

24 A. Yeah.

25 Q. Is it about your quitting time, Al?

1 A. Yeah.

2 Q. It's about mine, too. So can we pick up on this tomorrow where we're leaving  
3 off today?

4 MR. TEASTER:

5 Does eight o'clock work?

6 A. Yeah.

7 1/24/08 INTERVIEW CONCLUDED

8 1/25/08 INTERVIEW BEGINS

9 BY MR. PAVLOVICH:

10 Q. Al, yesterday when we finished up, we were talking about the Agapito reports  
11 that were submitted and we talked about the one that primarily they handed to Billy  
12 and asked him, you know, would you kind of review this and consider it and see what  
13 you think and if it's a possibility. Are you pretty familiar with those, I mean, you've  
14 looked at it?

15 A. Well, last fall, you know, when things were happening, I looked at them, but  
16 not recently.

17 Q. I don't think we want to sit here and go through them, but you know, there was  
18 actually four of them, I guess, that we found or was given to us. There was one July  
19 20th, '06, it was a main west barrier evaluation and it looks like it was an evaluation to  
20 propose mining barriers, both north and south barrier and west main and it was a  
21 model program that was run?

22 A. Yeah.

23 Q. And they must have come back on August 9th, 2006 and reported data then  
24 and gave that one to Billy, too, because it also had the ARMS included, which I think  
25 Billy admitted he was much more familiar with and plus you couldn't run LAMODEL?

1 A. Right.

2 Q. So then they submitted that one. Were you aware of the letter that was  
3 prepared, I guess, by Pete Delduca when he did his analysis and sent it back to the  
4 operator?

5 A. Not at the time.

6 Q. So how did that kind of go out of the shop here? Did Billy generate it or Pete  
7 and then Billy just signed it and sent it out or did it go out under your signature; do you  
8 remember?

9 A. I don't remember it going out under my signature.

10 MR. PAVLOVICH:

11 Do we have that letter that addressed the five issues --- I don't  
12 remember either now.

13 MR. TEASTER:

14 November the 21st ---.

15 BY MR. PAVLOVICH:

16 Q. Would it be, I guess, normal for, I guess, if somebody came in with something  
17 like this, it wasn't a plan, but it was a report and give it to Reitze or Billy and said, you  
18 know, will you look this over and see what you think, would you guys kind of address  
19 that in a formal letter back? Would that be normal or was this something unique like  
20 to just give Pete some training or something, or do you know?

21 A. I don't think it was to give --- well, Billy giving it to Pete to look at was a form  
22 of training.

23 Q. Okay.

24 A. Even since then now, we've gotten reports from these contract folks that  
25 they're not necessarily committed to be, you know, part of the plan.

1 Q. Okay. You get reports that aren't part of the plan now. It kind of looks like it's  
2 stamped Allyn Davis, but that doesn't mean you signed it. I mean, someone ---.

3 A. I think if you look at that it's K-N-E-P-P.

4 Q. Okay. So you think Knepp sent that out under your signature?

5 A. Yeah.

6 Q. And I guess he could have very well been acting for you, would you leave  
7 Knepp acting?

8 A. Oh, yeah, quite often.

9 Q. Quite often, okay. Do you remember if anybody ever discussed those five  
10 concerns there that Pete iterated in that memo, Al, when they were sending that out or  
11 did Billy talk to you at all about there's some concerns about this?

12 A. No, we didn't have a conversation at the time.

13 Q. Okay. Did you ever know how if you sent something like this out, Al, under ---  
14 you know it's out of the district office signature, whether it's you or Knepp or whoever,  
15 would you expect that the operator would respond to those items in writing?

16 A. Well, I think it would be normal to expect that, yes.

17 Q. So under normal circumstances, if you write --- and it's kind of a rejection  
18 letter. I mean it talks about a preliminary analysis and all that, but in essence some  
19 kind of a submittal and it's kind of a rejection and it says, you know, you've got to  
20 address these five things, what you would normally do with the plan anyway; right?

21 A. Right.

22 Q. And then you would expect those five items to come back addressed in  
23 writing, would you not?

24 A. Typically, yes.

25 Q. Do you know were they addressed in writing?

1 A. No, I don't know.

2 Q. Did you ever hear how they were addressed or if they were addressed?

3 A. Well, it's my understanding that they were --- that Billy had talked with the  
4 company about it, but then Billy found some issues with that at some point in time and  
5 I can't tell you exactly, you know, what the date was, when that happened.

6 Q. Okay. Do you know if that was before the plan to mine the north was  
7 approved or was it after?

8 A. I think it was before.

9 Q. So you think Billy, although he sent this out, out of his shop, he didn't agree  
10 with it or he had some issues with it?

11 A. Those issues might have come out when it got back to the company and  
12 they're talking to Billy on the phone back and forth, it's possible.

13 Q. Did you ever talk to Pete about that and ask him what was --?

14 A. No.

15 MR. TEASTER:

16 No, not about that letter.

17 A. No, not about that letter.

18 BY MR. PAVLOVICH:

19 Q. Either before or after?

20 A. No.

21 Q. So you don't really know how it was addressed? I mean, you've heard maybe  
22 Billy thought it was okay or something or talked to the company?

23 A. Yeah.

24 Q. You never saw any notes of his conversation or ---

25 A. No, no notes.

1 Q. --- anything like that? But you wouldn't feel that would be normal business to  
2 just write a formal letter out telling them, address these issues, but yet there's no  
3 documentation to show where those were addressed and the plan basically is  
4 approved kind of as with the issues?

5 A. Well, I would --- it would have been normal to get something back from them.

6 Q. That's what you would have expected --- if you had signed that letter  
7 sometime, you would have been expecting another letter come in. You might not  
8 have seen it, but

9 ---

10 A. Yeah.

11 Q. --- it would have went to your group, but you would have expected they  
12 address that in writing? When were you aware of the November 11th plan, Al, to drive  
13 the entries in the north barrier? Were you familiar with that at all, did anybody talk to  
14 you about they want to plan to drive those?

15 A. Well, I don't know that I could recall the date, but it was --- well, to answer  
16 your question when, no, I can't tell you.

17 Q. Were you even aware that they were --- that plan was in to there, to mine  
18 those barrier pillars, the barrier blocks?

19 A. I knew, yeah, that the plan had come through.

20 Q. So someone came and discussed with you hey, Al, Crandall Canyon wants to  
21 mine these barriers and I realize maybe you didn't sit down and go through that plan  
22 step by step, but you were aware they were wanting to do that?

23 A. Yeah.

24 Q. What was your initial opinion on that when Billy or Knepp or somebody  
25 brought that to your attention?

1 A. Well, I guess they're --- you know, when we talked about it, we thought that  
2 this area down here was --- had been successful.

3 Q. Okay.

4 A. And there was a reasonable likelihood to have success up there, but we really  
5 wanted to see how things went on development before we went any further.

6 Q. So with that, you wanted to see how things developed, how was this plan  
7 approved then in stages?

8 A. There was a plan just for the development of the north barrier.

9 Q. So the first plan was to develop the barrier?

10 A. Right.

11 Q. So they're going to drive four entries up through that north barrier and then  
12 you'll think about that and pull it back; is that kind of how it went out?

13 A. Right.

14 Q. And was there any evaluations done or anything you heard about how the  
15 mining went in there?

16 A. The only thing that I got any feedback on was Billy's trip over there.

17 Q. So Billy actually went and looked at it while they developed it?

18 A. He was in there while they were developing, I think, but before they were told  
19 ---.

20 Q. So if you went over there and looked at that while it was being developed, do  
21 you feel that would give you a real good indication, Al, of what it was going to be like  
22 when you started pulling back?

23 A. Well, I think that had we seen indication of developer problems, we probably  
24 would have had a lot of concern about pulling back.

25 Q. What would those have been?

1 A. Excessive bouncing or yielding on development.

2 Q. If you saw some red around the tops of the pillars, would you think that might  
3 be a concern?

4 A. Yes.

5 Q. Did Billy ever tell you that he did see red around the tops of those pillars, but  
6 felt that was a good sign?

7 A. He saw red around them and thought it was a good sign, I don't remember a  
8 conversation like that.

9 Q. You don't remember any of that comment?

10 MR. TEASTER:

11 AI, can you speak up just a little bit?

12 A. Okay.

13 MR. PAVLOVICH:

14 If I move back and you're not talking so close to me, maybe  
15 that will help.

16 MR. TEASTER:

17 AI, let me go back to this south main. How did you know that  
18 mining had been done successfully in south mains?

19 A. Well, we had had plans through there and we had conversation with the  
20 company when they were over here and that work was ---.

21 MR. TEASTER:

22 Was there a special mining plan for south mains? I mean, did  
23 they get an addendum approved or did they just do that under their approved plan?

24 A. You know, I don't recall specifically an addendum way back then, but I  
25 remember looking at the map and talking about it.

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MR. TEASTER:

As I recall, they didn't complete mining up in there until like  
October of '06?

A. Yeah, but they'd been mining for sometime.

MR. TEASTER:

And you was aware of that?

A. Yeah.

BY MR. PAVLOVICH:

Q. I think the best we can find out of that, Al, is they just mined it on their regular pillar plan, they didn't submit a plan to do that. Would you have expected they would have, since they were kind of developing those little barriers to an extent? I mean, if several guys --- and I think you said yesterday that you guys are really tightened up on plans, if somebody wants to mine an area or something, they have to submit a specific site-specific plan to do that and, you know, in here, I could see well, if you just pull the barrier back --- or not the barrier, but just the entries, but they were actually developing in these small barriers with a couple rooms, I guess, would you had thought maybe they had a plan to do that or should they have had a plan?

A. I think they probably should have had a plan.

Q. So you think they probably should have, not just used their regular pillar plan to do that on? Did you know that, I guess, none of your people ever saw pillaring being done in the north barrier?

A. Not until after the accident.

Q. Okay. So you would have assumed that an inspection would have been made in there? I mean the last inspection was December 28th, I think, when Ted Farmer went over with a bunch of guys and kind of blitzed them so to say, you probably heard

1 about that one and I think they wrote some heavy paper. And the next time that an  
2 inspector was there was a couple days after they had the bounce, so that was March  
3 17th, or something?

4 MR. TEASTER:

5 13th.

6 BY MR. PAVLOVICH:

7 Q. Thirteenth (13th). I think he was there maybe the 15th or 14th, Almost three  
8 months. That wouldn't kind of be normal, would it?

9 A. To not be there for three months?

10 Q. Yeah.

11 A. Normally, I mean, if you went back a few years, we probably be there more  
12 often, but with this shortage of inspectors, I'd say there's other properties we haven't  
13 gotten back to.

14 Q. So with the extra projects and initiatives and that sort of thing you had going  
15 on, there may have been lapses of several mines like that because of your manpower  
16 shortage. When did you first hear of the bounce that happened in the north barrier?

17 A. As I recall, the bounce happened on a Saturday and I got a call at the  
18 academy on Tuesday I think.

19 Q. Okay. And what did that call consist of? Who called you and what did they  
20 tell you?

21 A. Bill Reitze called me, said that they had had the call from --- I think from Laine  
22 Adair at the mine that they'd been having some issues with bounces in the north  
23 barrier and that they'd like to just stop mining and they want to seal it and they did not  
24 have an approved seal in their plan, asked me if I could get a hold of tech support to  
25 try to speed that process up.

1 Q. So he did tell you they had a bounce in there?

2 A. He told me they had a bounce.

3 Q. Did he tell you anything about the extent of that bounce or the specifics about  
4 it?

5 A. No.

6 Q. What did the bounce --- what did it do? I mean, eventually what did it do that  
7 made them want to seal?

8 A. He said that after the bounce that they didn't want to continue to travel into  
9 their later evaluation point. And we told them that they had to either be able to  
10 evaluate the bleeder at the back end or they were going to have to pull off the section  
11 and they said well, we'll pull off, that's why they needed the seals.

12 Q. So what did you feel was the real reason there that they were pulling out of  
13 that area, evaluation of the ---?

14 A. Well, they said that the conditions back --- going back into that single entry  
15 were not good.

16 Q. And you understand the bounce had ---?

17 A. Well, it was after the bounce, so I assumed that that had something to do with  
18 it.

19 Q. So you assumed the bounce was big enough or bad enough to have caused  
20 some damage to that bleeder entry where they didn't want to travel. Although I think  
21 Laine Adair did tell Reitze he did go up in there, but he didn't want to send other  
22 people there; you heard that?

23 A. Right.

24 Q. Okay. And so what did you do then when you heard that? Did you question  
25 any more about the extent of this bounce?

1 A. No, I didn't. I mean, we hear about bounces all the time, it just didn't register  
2 on my screen.

3 Q. Did it surprise you that they wanted to pull out and leave that coal? I mean,  
4 they put a lot of effort and a lot of work and a lot of consulting into getting it and all of  
5 a sudden they're going to leave half a panel?

6 A. No, it really didn't. I didn't know exactly what crosscut number they were at, I  
7 just ---.

8 Q. So you weren't told about it, they could have been just a few crosscuts away,  
9 you never got to look at the map or anything?

10 A. No.

11 Q. So what steps did you take, did you contact somebody in tech support?

12 A. I called John Fredland.

13 Q. Okay. And what was his response?

14 A. Well, this whole issue about seals, it just grew and grew and grew and it kept  
15 changing how we were doing things, and it was always confusing just what was going  
16 to get approved and how it was going to get approved and so on, because it started  
17 out under Kelvin Woo (phonetic), then Kelvin retired and they changed their mind on a  
18 few issues.

19 And at this point in time, things had kind of loosened up from the original  
20 instruction that you had to have this engineering analysis on every spot you were  
21 going to build a seal. So it was individual seal approvals for every seal in the mine to  
22 more of an approach like we had before that if you had a seal approved for the mine  
23 and the conditions were okay, you could use it in multiple places.

24 Q. Right.

25 A. So I called Fredland and asked him, is there anyway that they can use the

1 approval for their West Ridge seal at Crandall mine.

2 Q. Okay. And he answered you in e-mail, I think; right, that it'd be okay to do  
3 that?

4 A. Yeah.

5 Q. And so his e-mail kind of starts out as a result of the bump in the north barrier  
6 that you talked to me about sealing there, so he knew there was a bump in the north  
7 barrier, too?

8 A. Yeah.

9 Q. When you talked to him, you told him that's why they were pulling out?

10 A. Yeah.

11 Q. Did you ever ask Billy if he went back over and looked at that bump or looked  
12 at the pillaring in there to see how that pillaring was going?

13 A. No.

14 Q. Do you know if he did or did he ever say anything about maybe he should go  
15 look at it --- not to your knowledge?

16 A. No.

17 Q. Did you know why they skipped those pillars in there, did anybody ever tell  
18 you anything about that?

19 A. Not at the time, but I know that it's been a practice if there's trouble to skip a  
20 couple rows and start over.

21 Q. But you didn't know what trouble they had?

22 A. No.

23 Q. Do you know if Billy talked any more in detail with Laine or anybody else  
24 about the extent of that bump?

25 A. Not to my knowledge, he didn't.

1 Q. How about Reitze, did he talk to anybody about --- I mean, he talked to him  
2 first, I guess, about the ---?

3 A. Reitze was talking to him.

4 Q. Okay.

5 A. I don't know exactly what they talked about it, but Bill has told me that he  
6 never got the impression from him that it was in the magnitude that apparently it was.

7 Q. So Billy told you that that he never got the impression it was as big as they ---  
8 ?

9 A. Reitze did.

10 Q. Oh, Reitze did, okay?

11 A. Bill Reitze

12 Q. Bill Reitze, okay. I'm sorry. How about Billy Owens, did he ever tell you what  
13 he knew about the extent of it?

14 A. No.

15 Q. Did you ever ask him what he knew about the extent of it? Have you ever  
16 seen the photos of it?

17 A. No.

18 Q. Want to?

19 A. Yeah.

20 Q. Here's the map that they made and the purpled colored areas there are the  
21 pillars that bounced or the rib lines that bounced off, and then you'll see with each,  
22 there's also a small inset that kind of shows the direction of where the picture was  
23 taken.

24 A. Who did these come from?

25 Q. We got those from the accident investigation team who got them from Laine

1 Adair, I think. And I think that was a result of ---.

2 MR. PAVLOVICH:

3 Was it Agapito?

4 UNIDENTIFIED SPEAKER:

5 Yes.

6 BY MR. PAVLOVICH:

7 A And Laine and maybe Peacock or somebody went up there after that bump  
8 and examined the area for, I guess, whether they should continue trying to mine it or  
9 not. Would that appear to be a pretty severe bounce to you, Al?

10 A. Yes, it does.

11 Q. Would you think that's something that the company should have pretty much  
12 been straightforward and come out and say we had a pretty major bump, this runs us  
13 out of here?

14 A. Now that I see the pictures, yes.

15 Q. What's that lead you to believe about their truthfulness?

16 A. They're like a whole lot of other people, try to downplay the problems that they  
17 have.

18 Q. So you definitely agree that should have been reportable, something that  
19 disrupted ventilation or mining for a period of time?

20 A. After looking at those pictures, yeah.

21 Q. Someone told us --- you say they loaded 60 ---?

22 MR. TEASTER:

23 Sixty (60).

24 BY MR. PAVLOVICH:

25 Q. Sixty (60) shuttle cars of coal out to get the scoop out, so that's fairly

1 substantial. If you knew they had a bounce like that in there, Al, what would your  
2 feelings been about mining that south barrier?

3 A. I don't think we'd ever approved that.

4 Q. You think that's why they didn't tell you in detail?

5 A. I would guess.

6 Q. Did you think Laine Adair ever told Billy in detail about that?

7 A. I can't imagine he did or Billy would have reacted differently.

8 Q. You feel he would have reacted differently?

9 A. Yeah.

10 Q. But he never told you anything about a discussion with Laine or talking about  
11 the extent of that bump?

12 A. No.

13 MR. TEASTER:

14 Al, since this is not a bolt coal mine, there seems to be that  
15 most people don't think that Crandall Canyon is going to have a bump, but does the  
16 fact that they did have one would raise the flag that you maybe should send someone  
17 up from the field office to look at it? I mean, you get these all the time at Aberdeen.

18 A. Yeah.

19 MR. TEASTER:

20 So wouldn't be --- but if you got one at Crandall Canyon,  
21 which many people know of too many bumps occurring during the life of that mine, if  
22 we had one, it would raise a flag that we should go look at it, at least notify the field  
23 office?

24 A. Well, I don't know the history of the whole mine and I don't know that I could  
25 say that this is a mine that never had bumps. It's right next door to Energy West, Deer

1 Creek and they have bumps at the same seam.

2 BY MR. PAVLOVICH:

3 Q. Well, most of the people we've talked to, your people here in the district, have  
4 said we never worried much about bumps here, we never had bumps, that Aberdeen  
5 is one of their big concerns and a lot of the other mines over there. So like just to fall  
6 on Ernie's question, if that's true, because quite a few people knew about it here,  
7 would someone not have thought well, maybe we need to look at that bounce, I mean,  
8 they don't have them over there on a regular basis?

9 A. Well, certainly we should have, but it didn't raise that flag with anybody.

10 Q. Okay.

11 A. Part of the discussions also were that they wanted us to move that later  
12 evaluation point so they could continue to mine.

13 Q. Right.

14 A. And it was based on our refusal to do that, that they decided to seal. So that  
15 didn't send us a message that things were really bad.

16 Q. Okay. Yeah, because would you want to continue to try and mine that? So I  
17 guess that you kind of feel like at least what Reitze told you, the company misled him  
18 on what they had?

19 A. Yeah.

20 Q. Now, subsequently they backed out of there and they submitted pretty much  
21 the same plans for the south barrier; right?

22 A. Well, the south barrier was already approved for development.

23 Q. Okay. So they were already developing the south barrier and you had  
24 approved that. And again, that was done in a two-step process of development and  
25 then retreat?

1 A. They came over here (indicating) for a little while.

2 Q. Up here (indicating).

3 A. Yeah, until they worked out all the seal issues with the seals.

4 Q. Okay. And then they continued developing and they had a plan to develop  
5 the south barrier. And then they submitted the plan to pull the pillars in the north  
6 barrier?

7 MR. TEASTER:

8 South barrier.

9 A. South barrier.

10 BY MR. PAVLOVICH:

11 Q. Or south barrier, I'm sorry, the south barrier, north was already sealed. So  
12 now did you look at the Agapito report that was submitted to justify pulling those pillars  
13 in the south barrier?

14 A. No, I haven't seen the ---

15 Q. You've not seen it?

16 A. --- Agapito report. No.

17 Q. Okay. Did you know there was a statement right in the very start of that report  
18 --- I'll find it somewhere, AI. Anyway, the statement said something to the effect that a  
19 large bump occurred at this point resulting in heavy damage to the entries located  
20 between crosscuts 133 and 139, the remaining north panel was abandoned in favor of  
21 mining the south barrier. So I mean, this was a statement in the April 2007 Agapito  
22 report that asked to or justifies pulling pillars in the south.

23 Now, do you think that if someone was doing a review --- they didn't tell you  
24 the whole truth about the bump on the phone call, but if you were reviewing that report  
25 and looked at that Agapito report, and on the very first page says a large bump

1 occurred causing heavy damage in the entries for six crosscuts, that maybe you would  
2 think twice about approving that report or that plan?

3 A. I can't tell you that I wouldn't have thought that if I had seen it.

4 Q. Well, who would have seen it?

5 A. To my knowledge, Billy's the only one that saw it. And I don't remember the  
6 date, it definitely wasn't in April.

7 MR. TEASTER:

8 It was in May, early May.

9 UNIDENTIFIED SPEAKER:

10 That report was received by the District on May 15th.

11 MR. TEASTER:

12 Yeah.

13 BY MR. PAVLOVICH:

14 Q. Yeah, I think this is the --- this is the report, the actual Agapito report, and I  
15 think it's in that second paragraph, Al, somewhere that ---. I mean, it's pretty much  
16 right there on the front page. You didn't have to read very far to see. So I guess if  
17 you had that information, and obviously you used --- Billy used Agapito reports as a  
18 pretty good justification to advise you to allow this mining; right, would you say that?  
19 Now, he's got this one that says there's a heavy bump that happened here, can you  
20 give me any idea for the rationale to allow the south pillar mining?

21 A. The only thing I can say is, I guess, Billy was convinced by the rest of the  
22 report where they said it could be done.

23 MR. TEASTER:

24 You would say what, Allyn? I'm sorry, I missed ---.

25 A. The only thing I could say is that Billy must have been convinced by the

1 remainder of their report, which indicated it could be successfully retreated.

2 BY MR. PAVLOVICH:

3 Q. And what changes did --- do you know what changes they made to say it could  
4 be successful?

5 A. Larger pillar.

6 Q. Okay, a longer pillar.

7 A. Longer, same width and removing some of the barrier in addition to the two  
8 rows of pillars, make a wider pillar line.

9 Q. So were you familiar that the first Agapito report that was sent in to mine the  
10 north barrier said lengthening pillars is insignificant?

11 A. No.

12 Q. Well, they did, so now they somewhat contradict and they say, you know,  
13 longer pillars in the north barrier is insignificant in preventing bumps, that the shorter  
14 side of the pillar is basically what's the strength --- determines pretty much the  
15 strength. But now all of a sudden in the south barrier, the longer pillar solved  
16 everything; does that make sense?

17 A. The longer --- well, you know, you're asking me these questions after a  
18 disaster that's killed ---.

19 Q. I know. And I guess I'm just asking your opinion on those things. If you had  
20 looked at all that and you had known all that --- and I understand sitting in your chair  
21 you don't see all these intricate things. So yeah, I have to ask your opinion on those  
22 of course. I mean, you might say I don't have any opinion on it, I don't know, but I  
23 know you do. Your background is strata control, ground control; right?

24 A. Well, I've been involved in it and yeah, I'd say it certainly should have raised a  
25 red flag.

1 Q. How in depth --- I mean, this was not just the average mining. Somebody  
2 submits a plan to mine an area, normally they wouldn't be sending an Agapito report  
3 to say this is what we used to justify, or would they? Out here would you normally get  
4 those?

5 A. No.

6 Q. So somebody's paid a lot of money for that report?

7 A. Right.

8 Q. And done a lot of effort into it. It's a rather unique situation, so if you were  
9 sitting there reviewing that, would you not put a lot of emphasis into what they're doing  
10 here and why, why did they go through this much trouble and examine, I guess, pretty  
11 thoroughly or would you just kind of talk to the operator and he says, hey, it's going to  
12 be fine, AI? Okay. I mean, it wasn't normal to get these kind of things to mine an  
13 area this small; right?

14 A. Not the norm, but not unheard of either.

15 Q. Okay. So to mine --- I mean, if you would have did a longwall zone, you  
16 might get an Agapito report for it, but to mine a small couple entries, would that be  
17 normal?

18 A. No.

19 Q. No. Did anyone talk to you personally about approving that plan,  
20 recommending that it should be approved prior to the approval?

21 A. Only at this meeting that they had prior to the plan actually being submitted.

22 Q. Only in the meetings that you had prior to the plan?

23 A. Yeah.

24 Q. And what meeting was that, AI?

25 A. That was a meeting with the Laine Adair and some of the folks.

1 Q. Do you remember about when that was?

2 A. No, I really don't.

3 Q. Was the south barrier being developed at the time when the meeting  
4 occurred, do you know?

5 A. I don't think so, I think it was prior to that. I think it was prior to both of them.

6 Q. Prior to the --- oh, to both of them?

7 MR. TEASTER:

8 As I recall, yesterday you talked about being in a meeting with  
9 Laine Adair and they asked about it and that's when Billy told you we need some  
10 justification.

11 A. Right.

12 MR. TEASTER:

13 So that would have been in April of '06, somewhere around  
14 that time frame.

15 A. Maybe even before April.

16 BY MR. PAVLOVICH:

17 Q. So that's the meeting you're talking you heard them that they wanted to  
18 develop both of these and pull pillars back in both of them?

19 A. Right.

20 Q. You never had a meeting after that with them about this?

21 A. I don't remember being at a meeting with them.

22 Q. Okay. So after they pulled out of the north, I mean, you were aware of that  
23 because you helped get the seals approved and I guess you assumed they were  
24 already mining in the south barrier, developing. And did Billy or anybody come and  
25 say, Al, they submitted this plan to pull the pillars here, I think we should let them do it

1 or anything like that?

2 A. I don't recall that kind of conversation.

3 Q. You don't recall. Do you recall who signed that plan for you to pull those  
4 pillars in the south? I know you weren't here.

5 A. No, that was Bill Denning.

6 Q. Did Bill ever talk to you about that after he signed the plan?

7 A. No.

8 Q. Did Billy ever talk to you?

9 A. I can't say that I recall a specific discussion about that.

10 Q. Did Bill Denning ever say since then, you know, Al, I was really concerned  
11 about signing that plan, but Billy convinced me it was okay and then he assured me a  
12 week or so later that he had reviewed it with you and you were in agreement with him?  
13 Do you ever remember anything like that?

14 A. I don't remember that kind of a conversation.

15 Q. You don't remember Billy ever coming and saying, Al, I told Bill Denning we  
16 should approve this plan, I want to review it with you now so you understand what's  
17 going on?

18 A. I don't recall the conversation.

19 Q. Was there any conversation at all from Billy about pulling those pillars?

20 A. Not between Billy and I that I can recall.

21 Q. Okay.

22 MR. TEASTER:

23 Al, were you in the meeting later on, I think it was September  
24 when Laine Adair came in again on another mine, it was either Aberdeen or West  
25 Ridge when they gave that Agapito report to Billy for review?

1 A. I don't remember that meeting, there's a possibility I was, but I don't --- I don't  
2 recall any specifics about it.

3 MR. TEASTER:

4 It just seems that, you know, Billy had a big concern with that  
5 when he first was introduced to it and he brought the Agapito report and then Billy ---  
6 there was a lot of concern there. Is this not something that you would try to put on the  
7 radar and follow and try to get some oversight and involvement in? Because there  
8 seemed to be a lot of concern, you know, about going up in there and usually if it's  
9 something unusual, out of the ordinary, that they would bring that to your attention and  
10 you'd kind of follow through on it and watch it and see what was going on. Was that  
11 ever done?

12 A. That was not done.

13 BY MR. PAVLOVICH:

14 Q. You did know Billy went over there twice though, both times to see ---?

15 A. Right.

16 Q. Did he ever come back and tell you what he saw there, AI?

17 A. We didn't personally talk about it, that I can remember.

18 Q. Do you think he talked to Knepp about it?

19 A. Very likely.

20 Q. And Knepp never brought anything to your attention about it?

21 A. No.

22 Q. Denny signed the plan for you and then they approved both a vent plan  
23 amendment for the bleeders in that area and also a pillar roof plan or roof plan  
24 amendment. Are you pretty familiar with those now, AI?

25 A. (Indicates no.)

1 Q. I know you're sitting way over there and we asked you to --- I'll have to ask  
2 you to slide back over here?

3 A. Okay.

4 Q. This is your vent plan, I have them upside down, but I'm looking at them,  
5 okay. This is your vent plan and your roof plan?

6 A. Right.

7 Q. And you see the vent plan showed the approval was to leave a row of pillars  
8 between three and four and then at the offset, leave a single row to protect the bleeder  
9 entry. And then be able to pull the barrier all the way back and the number one pillar  
10 all the way back.

11 And the roof plan shows that at that offset area, they were not to pull the  
12 barrier and to leave eight pillars intact. When did you become aware of --- would you  
13 say that's a discrepancy, first of all?

14 A. Yeah, that's a discrepancy. I wasn't aware of it at the time, but I think it has to  
15 do with the dates when those plans were approved.

16 Q. Well, we wondered about that. And I guess, you know, these plans, one's  
17 approved the 1st of June and one's approved the 15th of June, that's not real far  
18 apart. But you see even on the vent plan Billy Owens signs off on it on 5/30/07 that  
19 he knew this, and 6/14 he approves the different drawing or signs off?

20 A. Yeah.

21 Q. He also does the review, he signs it for Knepp and Denny signs it. So I mean,  
22 I could see if it was three months, four months apart, you wouldn't maybe remember,  
23 but a week or so, two weeks, should --- you know, it's not that far that you'd say well,  
24 it's different, I guess. I don't think so especially when the amount of emphasis that's  
25 going into this with these Agapitos now.

1           Were you aware in that Agapito report there, the one that said we're going to  
2           lengthen the pillars to increase the stability, we're also going to mine the barrier to  
3           better promote a good roof fall that they recommended that no pillars be left?

4           A.       I became aware of that after the accident.

5           Q.       And so you think if Billy truly reviewed that right there, he would have said  
6           leave these eight pillars here?

7           A.       There's this dog leg that exists.

8           Q.       Right there (indicating), yeah.

9           A.       Yeah.

10          Q.       And you can't protect that, the way the bleeder has to go around that new  
11          shaped curve and Billy's rationale was that you should pull one left, one set of pillars  
12          right past that, that there ought to be a clean break and start another one.

13          Q.       So Billy rationalized that to you as to why this was like this or why he made  
14          them break the pillar line and start over?

15          A.       Yeah.

16          Q.       The fact that they drove this stump or whatever it was down here and then  
17          had the dog leg wasn't really MSHA's fault ---

18          A.       Well the stump pre-existed.

19          Q.       --- I mean, it's their fault. I know. Did anybody ever think maybe since that  
20          report says don't skip pillars because it's pretty critical that maybe they should have  
21          said just start pillar mining out by that dog leg and pull that? Was that ever discussed,  
22          do you know?

23          A.       No..

24          Q.       Al, is it normal that they would approve in a vent plan, a floating evaluation  
25          point? In other words, if it says, you know, as water builds up in the back, you can

1 move your evaluation point along with the toe of the water?

2 A. We've done that in the past.

3 Q. Is that pretty common?

4 A. No, it's not real common.

5 Q. What's your opinion of approving a floating evaluation?

6 A. Well, in my opinion it's not really that bad if the area flooded behind it.

7 Q. Yeah, but at some point you have the toe of the water and at some point you  
8 have water roofed. I don't think any of us would be concerned about the point where  
9 the water is roofed, because there can't be any void there. But depending on the  
10 elevations, how much distance would be acceptable from the toe of the water to the  
11 roofed water and the fact that, you know, you have to knock stoppings out to the toe of  
12 the water, you don't leave that stopping line intact. So is that anything that's taken into  
13 consideration, is the length of that area that's not being examined?

14 A. That's an issue, but --- but what's your question?

15 Q. When you would approve one of those plans with the floating evaluation point,  
16 is --- the distance from the toe of the water to the roofed water, is that taken into  
17 consideration at all? I mean if you say well it's two crosscuts, I don't have a problem  
18 with that, but if it's ten crosscuts, I have a problem?

19 A. I'd say yeah, that'd be a concern.

20 Q. And so what kind of rule of thumb would apply on that or do you have one?

21 A. I don't have a rule of thumb.

22 Q. Okay. So it's really --- I mean, somebody might take into consideration, but  
23 it's not a rule of thumb over three crosscuts is no good, over five is ---?

24 A. No.

25 Q. Okay. If I pick up the plan for the north barrier and it had the same floating

1 evaluation point approved, okay, if you're allowing that evaluation point to float in  
2 some area between the toe of the water and the roofed water, you can't be sure what's  
3 in there, it's not ventilated, you're not examining it, what difference does it make to  
4 approve that evaluation point back where it bumped?

5 A. There's a big difference, I think.

6 Q. Okay. What is it?

7 A. The distance.

8 Q. Well, how much distance would it have been from the ---?

9 A. I don't know.

10 Q. So I mean --- do you understand, if you're looking at it and you say you  
11 already approved a floating evaluation point for this section, but now they want to  
12 move the evaluation point back here (indicating) ---?

13 A. We want the evaluation point back as far as we can get it.

14 Q. Okay. So that was your intent. We still wanted to keep it up as far as it could  
15 be and not let them move it back and that's okay, it answers that question of what  
16 difference would it make because that's an easy question to ask when you look at a  
17 floating point and why not move it back here?

18 A. They asked the question, and we said no.

19 Q. Okay. You know, Kevin provided testimony at the Congressional hearings  
20 and when they asked him --- this, of course, is recent, you know, after the accident,  
21 and they asked him about the bump in the north barrier and why mining was stopped  
22 there and I guess he repeated to congress, it was because they couldn't travel that  
23 entry.

24 And I guess where did he get --- he had to get that information from someone  
25 out here, but with this statement that was in the Agapito report in April '07 that said

1 large bump occurred resulting in heavy damage, why wasn't that information provided  
2 to him? I mean, that's, in essence, why they stopped, it was kind of a bogus thing  
3 about this bleeder and we want to move the point back and the bump; do you know?

4 A. I don't know.

5 Q. All right. So you were going by what --- the information you provided to him  
6 was what had been told to you at the time?

7 A. Right.

8 Q. Not what was ---?

9 A. Nothing had been told to me about what was in the ---.

10 Q. When did you first hear about this statement in the Agapito report that says a  
11 heavy bounce occurred or a heavy large bump occurred at this point?

12 A. Maybe a week, ten days into the rescue effort.

13 Q. Okay. And was that when you found out that there had been a bump or is that  
14 when you found this statement was in the report?

15 A. That's when I saw the report.

16 Q. Okay. That's when you saw the report, okay. So you had heard when you got  
17 to the mine, I guess, about a bump, you got a call or something --- you had heard  
18 about a bump?

19 A. Well, I heard about the bump way back when I was at the manager's.

20 Q. Okay. When you talked about the seals?

21 A. Even when I was there at the recovery and everything, I had no concept that it  
22 was the kind of bump that you showed me pictures of.

23 Q. Okay.

24 MR. TEASTER:

25 AI, going back to the plan, a lot of stuff comes in on a plan

1 that's just routine stuff, it's not something that needs to be brought to your attention, it  
2 requires your signature, but it's fairly routine. Have you given any instructions to your  
3 specialist staff that anything that's unusual, out of the ordinary, should need to be  
4 brought your attention and kept abreast as you go through the process?

5 A. You know, I don't know that it was stated like that as a procedure, but I really  
6 thought that was the working process that we had here, but that was never written  
7 down as a procedure.

8 MR. TEASTER:

9 Have you ever had the occasion, maybe other than here,  
10 where you've been surprised by something that really should have been something  
11 brought to your attention that the specialist didn't bring to your attention, you learned  
12 after some problem may have developed after the ---?

13 A. Not really anything on this magnitude at all really. That's why I thought that  
14 information was covered because we have talked about many, many things.

15 MR. PAVLOVICH:

16 Do you have any more questions on these plans, Ernie,  
17 before we get into the accident?

18 MR. TEASTER:

19 I just got a couple from yesterday. Just one of them ---.

20 MR. PAVLOVICH:

21 Go ahead.

22 MR. TEASTER:

23 When you had the meeting with Bruce Hill that was just you,  
24 was there some reason why you didn't include your ADMs or other staff, why it would  
25 just be you and Bruce?

1 A. No particular reason, just Bruce said he wanted to come over and talk with  
2 me.

MR. TEASTER:

3 And the other one was about --- we talked about when there's  
4 differences of opinion between the operator and the staff and what a plan should look  
5 like. You said you normally come and you meet and you resolve it out, you said, by a  
6 compromise. What about a situation where the operator says this is what I want, I'm  
7 not going to change it, no compromising and your staff says we're not going to budge  
8 either, there's no compromise here and that comes to you. Do you get many of  
9 those?

10 A. No.

MR. TEASTER:

11 Never had one?

12 A. I don't recall one where it was just absolutely at loggerheads.

MR. TEASTER:

13 Yeah.

14 A. There's been cases where there's been resistance and we usually talk before  
15 the meeting and make it clear some point during the discussion that, you know, certain  
16 issues that we're not going to, you know, relax on. But then we always break the  
17 meeting and have a discussion before we ---.

MR. TEASTER:

18 I'm not talking about where you got a meeting, I'm just talking  
19 about the plan, the operators and the specialists have worked things and they can't  
20 resolve anything, there's no meeting and the specialist comes to you and says this is  
21 what they want to do, this is what I want to do and it's basically up to you to decide  
22 which way we want to go.  
23  
24  
25

1 A. Well, I guess we've had those kinds of discussions and we decide how we're  
2 going to write a letter back to them and say we're not going to accept what you're  
3 offering.

4 MR. TEASTER:

5 So then you would agree with the specialist. Is there times  
6 when you haven't agreed with the specialist and said we'll go ahead and send  
7 approval?

8 A. Probably have, yeah.

9 MR. TEASTER:

10 Okay.

11 BY MR. PAVLOVICH:

12 Q. Al, when were you first notified of the accident on the 6th, and how on August  
13 6th?

14 A. I got a phone call from Bill Denning around 4:00-something, 3:30, 4:00, 4:30,  
15 somewhere in there in the middle of the night.

16 Q. And what did Bill tell you specifically; do you remember?

17 A. Well, this was the first of two calls. He said that he had to call, they had a  
18 bounce and he didn't have everybody accounted for yet and he was going to be calling  
19 back and he'd get back to me. It wasn't much later when I got the call back and he  
20 said that at that point they still weren't positive, but it didn't sound good to him. By this  
21 time it's around 4:30 I think, so I just got dressed at that point and came in here to the  
22 office.

23 Q. I mean, you've experienced bumps, you're knowledgeable, you've  
24 investigated bumps and you heard we've had a bump, six people are unaccounted for  
25 and were you assuming like any minute they're going to walk out or people are going

1 to go in and find them?

2 A. Well, my first assumption was that this was coming from the outside person  
3 who might not know.

4 Q. Sure.

5 A. We've had other calls where they're not sure what's going on and we get  
6 information pretty quickly that everything is okay.

7 Q. But then you got to the office, you drove into the office and what was the  
8 status that you found out then?

9 A. I guess by the time I got in here, we had information that they were definitely  
10 not accounted for.

11 Q. They were trapped somewhere, inby?

12 A. Trapped, yeah.

13 Q. People couldn't get to them?

14 A. Yeah, they're in exploration by that point in time by at least one individual that  
15 said they could not get through.

16 Q. So what did you do to mobilize your team to get things going?

17 A. I called headquarters right away and I called --- I talked to tech support, John  
18 Urosek. We talked several calls back and forth about what kind of response we  
19 needed, what should we be sending. And I remember calls --- I can't keep the time  
20 frames exactly straight in my mind, but early that morning we decided to send the  
21 seismic truck also. And we decided to send gas chromatograph, which in the end we  
22 didn't really use much, but we put the --- got a hold of the mine rescue team, Eastern  
23 Mine Rescue Team.

24 Now, by this time he had gotten a hold of Larry Ramey to start getting our  
25 people mobilized and over there and our rescue team.

1 Q. And who did you have onsite quickly, I mean, how did they get there?

2 A. We had the inspector up there by about five o'clock. Denning had contacted  
3 Ted Farmer and he had --- or Taylor, excuse me. And he and Taylor had gone into  
4 the office and I think he got to the office by the time the inspector had already headed  
5 up. Taylor got there sometime after 5:00.

6 Q. So by the time you got here at the office, you had people onsite, Bill Taylor  
7 and Ted, maybe, and at least an inspector or two?

8 A. Yeah.

9 Q. And so what was --- what facilitated your decision to leave and go over?

10 A. What facilitated it?

11 Q. Yeah.

12 A. The whole disaster facilitated it.

13 Q. So you just said I need to go?

14 A. Yeah.

15 Q. And it wasn't headquarters said, Al, you should go over or anything like that?

16 A. No.

17 Q. You knew you needed to go and so you took Bob with you and you also had  
18 Denning and Don Gibson, I guess, about the same time leave with you?

19 A. They left probably about the same time.

20 Q. And so what time did you --- when you first got to Price, did you go straight to  
21 the mine?

22 A. Yeah.

23 Q. You knew where the mine was?

24 A. Yeah.

25 Q. And what was the first thing when you got there, I mean, what was happening?

1 A. Well, I went into the MEO vehicle, Ted had taken that up to the mine. Ted  
2 was there before the MEO, Ted brought the MEO vehicle up. By that time, they had it  
3 up and running, we got inside there, got a briefing. Of course we had 50 or 60 phone  
4 calls, cell phones, on the way over here so we knew ---.

5 Q. Who was that from, Al?

6 A. Well, we were talking to --- usually to Phil.

7 Q. So you were talking to your people onsite?

8 A. Right.

9 Q. Did you get any phone calls from headquarters wanting information?

10 A. Oh, yeah, 30 or 40. I don't know the number, but that's one reason I couldn't  
11 get out of here early enough.

12 Q. So what time was it you actually got out of here?

13 A. We didn't actually leave here until 8:30, nine o'clock in the morning.

14 Q. Okay. And it was because they kept calling you and wanting information?

15 A. Yeah, there was a lot of calls.

16 Q. Is it not more critical to get your key people onsite than it is to sit there and  
17 answer phone calls from headquarters? What's your opinion on that? I guess maybe  
18 that wasn't a good question and more of a statement. What's your opinion on that?

19 A. I wanted to leave as quickly as I could. We were arranging a lot of things that  
20 I wanted to make sure were in place.

21 Q. Okay.

22 A. I wouldn't necessarily lay the whole blame on the quest for information.

23 Q. Okay. So it was through your ---?

24 A. Because I continued to talk to them on the cell phone.

25 Q. Sure. And you were trying to contact the emergency units and what else you

1 felt you needed. Did you call Crocco or Kevin or who did you call in headquarters  
2 from your initial ---?

3 A. You know, I don't remember exactly who I did talk to first.

4 Q. I'm just wondering how that is now ---.

5 A. More than likely it might have been Crocco right at first.

6 Q. Usually I think we would call Crocco because that's kind of --- and I thought  
7 Crocco would take it to say okay, I'll contact Urosek, I'll contact Kravitz, but you were  
8 having to do that?

9 A. No, not necessarily. I wasn't getting calls from them.

10 Q. Okay. So they were calling you saying what do you need?

11 A. Yeah.

12 Q. Crocco had probably told them already we got an emergency, see what AI  
13 needs and get things lined up?

14 A. Yeah.

15 Q. Okay. So when you got there, I imagine you assumed --- being the highest  
16 ranking MSHA person there, you assumed control of the operation? And when I say  
17 the operation, the MSHA side of the operation.

18 A. Right.

19 Q. I'm sure you didn't tell the company people get out of here, I'll take over, but I  
20 mean, there was a relationship. And how were you briefed on what was happening?

21 A. Well, I got the first briefing from Taylor --- well, primarily from Taylor, Ted was  
22 there.

23 Q. Okay.

24 A. Hear what they knew about it.

25 Q. Did you have people underground when you got there?

1 A. I don't know exactly where the inspector was when I first got there, but he  
2 wasn't outside that I saw. So I assumed he was underground. And then very shortly  
3 after talking to my folks, then I went upstairs into their conference room and sat down,  
4 talked to the folks at the mine.

5 Q. So did you kind of sit down with the company people and organize then a  
6 command center?

7 A. We talked about what efforts had already taken place, what was going on the  
8 time, the necessity of making sure that we discussed everything in terms of being a  
9 plan before they proceed with any changes.

10 Q. So you explained to them then the procedures of plan submittals?

11 A. Right.

12 Q. That MSHA would approve the plan after consultation agreement or whatever  
13 and then the work could be done, that they just weren't going to be going in there  
14 doing work?

15 A. Absolutely.

16 Q. And that was one of the first meetings you had with them to explain that?

17 A. (Indicates yes.)

18 Q. How did you set up, Al, as far as who had the authority to approve plans?

19 A. I guess we really basically --- the first day I was there, I was there like 20  
20 hours and so I was there all the time if anything came to issue.

21 Q. Okay.

22 A. And then before I left, we had an idea of what was going to go on during the  
23 night. And typically I was there for any submittal or any discussion.

24 Q. So primarily then you were the one that was going to approve the plans?

25 A. Primarily, but there's possibility that there's other signatures on plans that I

1 was probably involved in prior conversations of it.

2 Q. So you might have looked at the plan and reviewed it, discussed it with  
3 somebody and then told Bill Taylor or something go ahead and approve it, Bill, I'm in  
4 agreement with it?

5 A. Yeah. Or it would have been phone conversations if I was ---.

6 Q. Okay. So how about like Bob Cornett on the evening shift or Tommy Hooker  
7 on the midnight shift, did they have the authority to approve a plan?

8 A. They would have the authority to do it, but we would discuss it.

9 Q. Okay, but not without consultation with you first?

10 A. I think that was the basic understanding.

11 Q. So they understood that --- I mean, it was clear enough, you didn't have to ---  
12 or did you iterate to them, look, before you approve something, let me know about it  
13 and we'll discuss it?

14 A. I think that was the understanding and it was pretty casual.

15 Q. Okay. When Stickler and Kevin got there, were you still in charge of the  
16 rescue operation?

17 A. Well, of course when they arrived there, they're ranking MSHA officials, they  
18 joined in all the discussions, but I still continued to approve the plans, but I discussed  
19 things with them, too.

20 Q. So in essence, they became the ---?

21 A. I don't know that you'd say that I was pushed to the side and they took over.

22 Q. Okay.

23 A. Not in that context, no. But they were --- the team just got bigger, if you will.

24 Q. How did that affect the operation when they arrived?

25 A. The effects of the operation, well, I think the effects of the ongoing rescue

1 activities, it didn't really have any effect on that. We didn't make any immediate  
2 changes or anything, we continued on with the plan we had. As issues developed and  
3 everything, we talked about them as a group. From the outside, I would say that it  
4 looked different because then Stickler became the spokesperson, I only performed  
5 that role for about a day and a half.

6 Q. Did they tell you why they came to the mine?

7 A. I don't remember a discussion on that particular topic. I thought --- I assumed  
8 it was obvious.

9 Q. They just showed up?

10 A. Yeah. Well, I mean they didn't just show up, I knew they were coming, yeah.

11 Q. You knew they were coming, but ---. I guess is --- with what you've seen in  
12 the last few years, is it kind of standard procedure now you have in the mine  
13 emergency of this extent that the system secretary and administrator come out onsite  
14 and kind of take over?

15 A. I'll tell you ---.

16 Q. Okay,. It sounds like something you want to tell me, I'm glad I asked it.

17 A. From my observation, the operation headquarters has changed dramatically  
18 from what it was back 20 years ago. I don't think the assistant secretary would have  
19 come 20 years ago. But honestly, I think most of the --- a lot of the decisions and a lot  
20 of the responsibilities of the administrator have been shifted over towards the assistant  
21 secretary, and it's perceived that if the assistant secretary isn't involved in these  
22 day-to-day issues that he's not doing his job. That's my personal perception.

23 Q. Is there some way they don't trust the district managers to do this work?

24 A. That would be a better question for them, but I would think the feeling is ---.

25 Q. How does it make you and the other managers feel that when an event

1 happened, they come in? Which if I'm sitting there as a district manager, I'm probably  
2 going to say have at it, boss, you know you want it, you got it, it makes it easier on  
3 me.

4 A. Well, ---.

5 Q. Is that what the intent --- I mean, I guess what evolved? You've been here the  
6 whole time, how did that evolve?

7 A. In talking with Kevin, I don't think that was the intent.

8 Q. Okay.

9 A. And I think Kevin felt that, and I assume Strickler the same, that if they  
10 weren't there that they'd be criticized for not being there.

11 MR. TEASTER:

12 Want to take about a five-minute break?

13 SHORT BREAK TAKEN

14 BY MR. PAVLOVICH:

15 Q. We were discussing the command center, I guess. How did you have the  
16 command center and chain of command set up when you got there?

17 A. I didn't have it set up when I got there.

18 Q. Okay. I mean, well you had some kind of command center; right?

19 A. We had the MEO vehicle.

20 Q. So your command center was an MEO vehicle. Was it a joint command with  
21 you and the company?

22 A. We would get together when there was exploration. We'd get together  
23 upstairs in their facility when we had any kind of exploration activities going on, but we  
24 didn't keep the command center when we were just in the routine mining business and  
25 loading out material.

1 Q. So would you have regular meetings any time with them?

2 A. Oh, yeah.

3 Q. When were those?

4 A. We had a setup time for meetings in the morning and in the afternoon, but we  
5 had lots of other meetings as issues came up during the day.

6 Q. So that was kind of the setup you established or it was maybe already  
7 established when you got there and you just went along with it?

8 A. We established that. It wasn't totally set up when I got there.

9 Q. So you did that. You established those times and formal meetings and other  
10 things?

11 A. We discussed it all. And for instance, the morning meeting happened the very  
12 first thing and sometimes the evening meeting towards the end of the whole time. I  
13 might not have been there when that meeting happened.

14 Q. Was this, I guess, kind of like a separate command center, MSHA's  
15 command, company command? Was that by design or was that just because of  
16 space allowance?

17 A. The facilities were such that their conference room wasn't a third as big as  
18 this, maybe a fourth. It just wasn't the place to have everybody stay and work all the  
19 time. And like I said, we would get together upstairs when there was exploration  
20 activities. We had a mine phone installed in our vehicle, so we could talk to people  
21 underground and we could talk to people in the office.

22 Q. They also had the same phone system?

23 A. Yeah.

24 Q. So if a call came from underground, both parties could listen in?

25 A. Yeah.

1 Q. How was the (k) order process used, AI?

2 A. We billed everything on the initial (k) and we would modify that when we had  
3 a new plan that we approved.

4 Q. We saw like the initial (k) and then modifications to it as plans were approved  
5 to allow certain things, but then there came a point when the (k) order was modified to  
6 say something to the effect that from now on all plans submitted by the operator will  
7 be approved by MSHA and incorporated as part of the (k)), and then you didn't modify  
8 after that.

9 A. We did. Yeah.

10 Q. Who started that process?

11 A. We had discussions about that. It might have been after Kevin was there.

12 Q. So you think Kevin kind of ---

13 A. What they had done ---.

14 Q. --- suggested to do that. Had you known about that before? That system.

15 A. I don't think so.

16 Q. Is that a lot less cumbersome system to do it that way than modification all the  
17 time?

18 A. Well, it is. It seems like you work out a plan and then the next thing you have  
19 to track down somebody that's going to ---.

20 Q. So you feel that's probably something that should have been conveyed to all  
21 managers if you have an event, you can use this type system. Nobody ever really told  
22 you about it until Kevin got there? Well, if they didn't, they didn't.

23 A. I don't remember it that way.

24 Q. Okay. Was there ever plans that were rejected, AI?

25 A. Oh, yeah. I mean, the plans were talked through and then the plans were put

1 to paper. Then they were marked up and then revised and then --- I don't think that all  
2 that kind of stuff was recorded. What was recorded was the final plan.

3 Q. Well, there's no plan rejections in the file?

4 A. Oh, no. We didn't do like official rejections. We called them down there and  
5 everybody was there. We'd sit down and say you've got to add more precautions.

6 Q. So the company would discuss something, a thought, with you and then they'd  
7 write it up and then they'd come to meet. Then you kind of go through it. If there was  
8 items in there that you said, well, we don't like this or we need stronger things here,  
9 they'd just take it and change it?

10 A. They'd dash out the door and they'd be back a little later with another.

11 Q. So you weren't really saying here's one to look at and then you'd sign rejected  
12 and pass it back and then they'd submit another one?

13 A. No.

14 Q. So there's no file anywhere of those plans?

15 A. No.

16 Q. So it appears from the file that everything they gave you, you approved.

17 Although, I know that's not the case.

18 A. Well, because all you're seeing is the final version. Yeah.

19 MR. TEASTER:

20 Were you aware of any plan that was ever rejected and then  
21 later approved? There was a plan that was submitted to Bob Cornett and Ted Farmer  
22 and they rejected the plan, but they didn't do anything with it as far as saying this is  
23 rejected or something. They rejected the plan, wouldn't approve it. And then the next  
24 morning the plan was brought to you and it was approved.

25 A. I'd have to see that to --- I don't recall those.

1 BY MR. PAVLOVICH:

2 Q. Well, that's the problem. It's word of mouth because there's no record of any  
3 rejections. So I guess the question we asked them was did AI approve the same plan  
4 you rejected and they said yes. There's no document there because when they  
5 rejected it, they just said no, so they say.

6 A. Well, ---.

7 Q. Nobody ever told you --- did Bob or anybody ever tell you, AI, we disapproved  
8 that plan last night, that you recall?

9 A. I don't know that I can recall that, but every time --- we talked about all those  
10 plans.

11 Q. Okay. All right. What type of outby work was allowed to be done during the  
12 operation, AI? The rescue operation.

13 A. Well, there was constantly supplies moving in, machinery. So they would do  
14 upkeep out there in terms of rock dust. I wasn't ---.

15 Q. So were those things pretty much just allowed verbally? I mean, I don't read  
16 in the plan. If you looked at the logs of personnel, there's a lot of times 70 people in  
17 the mine. Yet when I read the plan that was in effect at the time, it certainly doesn't  
18 justify using 70 people.

19 A. Well, no. There were lots of people that were doing ancillary things that we  
20 kept --- we wanted the absolute minimum people up at the face.

21 Q. So there was no approval process going on for backup work?

22 A. No.

23 Q. Cleaning belts, rock dusting, ---.

24 A. Well, we were knew they were cleaning the belts. We were running the belts.  
25 This thing lasted 26 days.

1 Q. Well, you weren't loading a whole lot of coal. I mean, if you spilled all that you  
2 loaded --- I don't know. I'm just saying you have 10 or 15 people up at the face  
3 including your people, I guess; right? You minimized some of that in the plans; right?

4 A. Right.

5 Q. But there's 70 people in the mine. Was the plan approved to allow them to do  
6 all this work and be in there? Was there?

7 A. It was standard thing.

8 Q. Or was that just the standard thing, anything needed outby is acceptable?

9 A. Right.

10 Q. I wonder why was that concept taken as opposed to the plan process?

11 A. It wasn't work that was subject to a plan.

12 Q. Well, I guess ---.

13 A. Most of the people were on the belt lines or water roadways or hauling  
14 materials, stacking materials, moving materials.

15 Q. So it felt like that wasn't subject to any kind of plan. That's just normal work  
16 that needed to be done?

17 A. Not that needed to be addressed in the (k) order.

18 Q. So you didn't think it needed to be addressed in the (k) order?

19 A. It won't be addressed ---.

20 Q. Did the (k) order have the whole mine shut down or just that area?

21 A. I'd have to look back at the wording. We did allow other work that was  
22 necessary.

23 Q. If the (k) order basically shut the mine down because you had an accident, six  
24 people were unaccounted for, then I would look at it and say any work being done in  
25 that mine needs to be approved under the (k) in some way, and now, it could be

1 general and say allow all outby work to proceed, but ---.

2 A. I don't know that we addressed that incident.

3 Q. Okay. All right. You didn't think that was necessary in your opinion. You  
4 didn't think those people were exposed to any of the hazards that were ---?

5 A. No.

6 Q. How about people that were, I guess, trying to do roof supports around  
7 110/111?

8 A. That was addressed.

9 Q. You got that in the plans?

10 A. That's in the plan about installing support.

11 Q. Basically anything else that they felt they needed to do, if it was pump water  
12 or clean the belt or do whatever, was okay to be done without a plan; right?

13 A. We did some more support work and a lot of CONSPEC work up in this area  
14 (indicating) because we were trying to monitor the air coming out of these west mains.  
15 And there was --- our guys were in there. The tech support roof control fellows were  
16 up looking at this periodically.

17 Q. Actually here (indicating); right?

18 A. Yeah, there's the seals. Yeah. Okay. I'm sorry.

19 Q. Yeah. You're outby there. It's actually right in here (indicating).

20 A. Up in here (indicating), yeah.

21 Q. Yeah. I'll tell you what we can do. That map probably would be easier to talk  
22 from now than the one we're ---.

23 A. Okay.

24 Q. So the area you were referring to is this area 10-whatever that is, 108 to 117,  
25 or something. Actually we're doing work in here?

1 A. Yeah.

2 Q. Okay. And you had a plan to cover that. Was it kind of like anything in mile  
3 108 ---

4 A. Well, the plan ---.

5 Q. --- was required to be done under a plan?

6 A. I think generally we addressed that work that was up here related to the  
7 monitoring in the sealed area under a plan and definitely the work that was done down  
8 here in the number one entry to start working from inby going outby putting supports  
9 in.

10 Q. So you think you had that all covered by plans?

11 A. Yes.

12 Q. Did MSHA have any control over check in/check out?

13 A. We required them to give us check in/check out sheets every day for every  
14 shift.

15 Q. Where were those being generated from?

16 A. They were being generated up in their CONSPEC room.

17 Q. Was there anywhere else they had to check in/check out at?

18 A. Up at the portal. At first, we had that done at the portal. After that, we used  
19 their normal check in/check out process, but we would ask for a record every portal  
20 shift.

21 Q. So were you aware then the record was still being kept at the portal?

22 A. I don't know at what point that was discontinued. I don't think that ---.

23 Q. Yeah. I mean, I think we've seen that continued through the second accident.

24 A. Yeah.

25 Q. I mean, we have ---.

1 UNIDENTIFIED SPEAKER:

2 We have some records that are labeled check in/check out.

3 We don't know where we obtained that at?

4 A. Well, I know we had somebody up in the portal at first.

5 BY MR. PAVLOVICH:

6 Q. MSHA did?

7 A. No, we required the company to be keeping track of the portal. I don't think  
8 our --- that we stationed --- we might have had somebody there from time to time, but  
9 not around the clock 24 hours a day.

10 Q. These are logs that are even dated 8/16/07 crews leaving mine site. You can  
11 see how many people were in the mine on the 16th. That's a lot of people for a rescue  
12 operation. I mean, I realize there's some outby work that needed to be done, but they  
13 had like 80 people in the mine or something. Were you aware of that?

14 A. I didn't know the number was 80. That's how many were in there every shift?

15 Q. Well, it seems like it got more and more and more all the time.

16 A. He, at one point, brought 15 people out from back east. All his managers  
17 from other mines back east.

18 Q. Well, I know, but they surely weren't doing hand work.

19 A. There was a lot of mechanical work done on all this equipment that was  
20 brought in. I mean, there was truck after truck after truck after truck coming up there  
21 with stuff on it and equipment and materials. It was all going in the mine.

22 Q. I guess just while I have this out, Al, I'm curious about this one notation. You  
23 got two guys here that sign in on the 9th at 7:40 a.m., Ex. (b)(6) and Ex. (b)(7)(C) (phonetic) it looks  
24 like and a Ex. (b)(6) and Ex. (b)(7)(C) They signed in as visitor number one and visitor number two.  
25 Who in the hell is that?

1 A. I don't know the individuals.

2 Q. I mean, did you ever remember anything like that?

3 A. No, I can't answer that.

4 Q. I just wondered if somebody that you happened to know that was there for a  
5 particular reason, some kind of expert or consultant.

6 A. Well, we brought experts up there, you know, at one point in this operation.  
7 Those don't sound like the names I remember.

8 Q. I don't know who they are. Why would you identify yourself as visitor one and  
9 two? I don't know. Did you feel you had a pretty good hand on who was going in and  
10 out of the mine then or were there problems with that?

11 A. I remember there was a lot of issues about getting the sheets on time from the  
12 CONSPEC people.

13 Q. In this log book, it looks like you got one book that says who's everybody  
14 going in the mine and then you got another book that says here's everybody coming  
15 out of the mine. And there's 70 names here and there's names here, but how the hell  
16 were they comparing them? I mean, who went through line by line on the ones in and  
17 who came out? Hell, guys were coming in and out all day long. I mean, I just wonder  
18 how it was --- how was everybody being accounted for?

19 A. We were depending on our people up in the command center to be tracking  
20 them.

21 Q. I guess if there was nobody at the portal from MSHA, the company could send  
22 anybody they may have wanted to.

23 A. We did not station anybody at the portal.

24 Q. Do you think maybe that would have been a good idea or did it not matter?

25 A. It might have been. I don't know that it had a big difference on the outcome.

1 Q. Did you ever have times when company people were working down there and  
2 you didn't have any MSHA people underground that you know of?

3 A. We should not have had that.

4 Q. Were you aware of the difficulty with the inspectors being able to get in and  
5 out of the mine?

6 A. Not any great difficulty.

7 Q. So nobody ever told you, Al, you know, we have to try and catch a ride  
8 sometime to get in and to get out, we just hit or miss grab somebody? So like at the  
9 end of their shift, if there was a ride going out they'd catch it before anybody else  
10 came in? Did you ever hear of that or become aware of that?

11 A. I know that they were --- I'd see sometimes the fellows on the afternoon shift  
12 waiting for a ride to get in, but we had people underground at the time. It's not like  
13 there was no one. We had several people underground.

14 Q. Well, we had guys tell us that they would talk to each other on the circuits, that  
15 they didn't hot seat it underground because they couldn't get a ride that way  
16 sometimes.

17 A. I wasn't aware of that.

18 Q. Nobody identified to you there's a major problem with getting people in and  
19 out? You assumed it was being done okay?

20 A. Yeah.

21 Q. Did you ever consider having an MSHA supervisor underground on each  
22 shift?

23 A. We never talked about that, that it was something we should do.

24 Q. Do you know why? I mean, would it have been good to have somebody in  
25 authority there underground as opposed to four peers or three peers working?

- 1 A. We didn't perceive that as something we needed to do.
- 2 Q. Were the inspectors underground given authority to make decisions?
- 3 A. Yeah.
- 4 Q. How? How would they make that decision?
- 5 A. I had the plan in effect. Following the plan.
- 6 Q. Well, you had the plan, but if the plan wasn't being followed exactly, they can  
7 make that decision?
- 8 A. Right.
- 9 Q. Who was making the decision on whether it was safe to continue working?
- 10 A. That was a discussion that was held, many discussions held, and based on  
11 input from our two fellows from tech support, Joe Zelanko and ---
- 12 Q. Mike Gauna.
- 13 A. --- Mike Gauna. They had done an exhaustive effort of contacting various  
14 people about the support system that we were using. We talked about that as a group  
15 of MSHA people and the company.
- 16 Q. Did they ever tell you who they contacted? When you say they did an  
17 exhaustive ---?
- 18 A. They said a name, but I didn't write it down.
- 19 Q. When you say they did an exhaustive ---?
- 20 A. Well, that's the way it came across to me that they had called a number of  
21 people that they considered to be experts in the field of roof support.
- 22 Q. This was between the 6th and the 16th ---
- 23 A. Yeah.
- 24 Q. --- they told you that?
- 25 A. Yeah.

1 Q. Did they talk to you at all about who they talked to?

2 A. They mentioned some names. I didn't write them down.

3 Q. They weren't people you knew or names you ever heard of?

4 A. No.

5 Q. So it wasn't like I know him, I can remember that name. Okay.

6 A. When that whole group of experts --- of course that was after the fact.

7 MR. TEASTER:

8 AI, going back to that problem getting in and out of the mine,  
9 that seemed to be, based on our discussion with the folks, that was a big problem for  
10 our people getting in and out of the mine. Is that something that should have been  
11 kicked up to you and corrected? I mean, there was some efforts by some to try to  
12 correct it, but it never did get corrected. Do you know why they wouldn't tell you about  
13 that so you can get it fixed?

14 A. Don't know why. Nobody came to me.

15 MR. TEASTER:

16 Do you think the atmosphere, the environment there, was  
17 conducive to them coming up to you and saying we've got a problem?

18 A. I don't know why it wouldn't have been. I was right there talking to those  
19 people every day.

20 MR. TEASTER:

21 Did you ever know of an inspector taking a truck and taking a  
22 load of people in the mine?

23 A. Our man driving the truck?

24 BY MR. PAVLOVICH:

25 Q. Yeah, because the company said there's the truck but we don't have a driver

1 for you, so they went. You never heard of that?

2 A. I didn't know that happened. Nobody came and reported that to me.

3 Q. Did you know of any time Mr. Stickler had any private meetings with Murray  
4 while you were there?

5 A. Yeah.

6 Q. If it was private, I guess, you don't know what it was about then, do you?

7 A. It was private, yes.

8 Q. Do you know what they were about, Al?

9 A. I have a general understanding. He met with him more than once trying to get  
10 him to back out of the spotlight and to back away from the family meetings. And then  
11 later on, he had discussions, Kevin might have been in on them, but I wasn't, about  
12 drilling more --- additional holes.

13 Q. More holes. Okay. So the private meeting was primarily about the family  
14 briefings and his involvement in those and with maybe drilling more holes at a later  
15 time?

16 A. Right. Not just the family briefings but also the press release.

17 Q. Press. Okay. Al, were you aware of the reporting requirement for the  
18 inspectors underground as to what they were to report? What kind of information was  
19 coming out on a regular basis?

20 A. When I got there, when it was coming out as to footage, how far they've  
21 moved, what the conditions were like, those sorts of reports.

22 Q. How often was that to be called out? Were you aware of that?

23 A. As I recall, talked to them about every hour, maybe two hours.

24 Q. So that was every hour.

25 A. About that, yeah.

1 Q. So every hour ---?

2 A. We had these calls coming from headquarters. They'd set those up at certain  
3 times because they had to be briefed. So sometimes they'd delay --- rearrange the  
4 schedule so now have calls at the same time.

5 Q. So your people underground were required to measure distance and was that  
6 ---?

7 A. Well, sometimes they'd estimate it. I mean, they would not carry the tape  
8 right up to the face necessarily.

9 Q. They did? Was that ever changed?

10 A. What's that?

11 Q. The estimating of distance. Was that ever changed, that it no longer could be  
12 estimated and it had to be measured exactly?

13 A. I don't remember a conversation about that.

14 Q. You don't remember that?

15 A. About having to measure it exactly --- we had a lot of discussion about how ---  
16 what to tie the measurement to. We had all this confusion whether it was the inby  
17 corner or the outby corner or the center. That was presenting a lot of confusion. Bill  
18 Taylor worked that out to where we got consistent.

19 Q. So in your opinion that some of these measurements could be estimated or  
20 measured exactly, it wasn't that critical; right?

21 A. In my opinion, probably some of them were estimates, yeah.

22 Q. How about the distance on the rock crops? Was that estimated how far they  
23 were?

24 A. Oh, they probably measured those, but not necessarily the last rock crop up at  
25 the face area though.

1 Q. Of course air readings were needed to be called out and gas readings; right,  
2 on an hourly basis? Well, you're saying you're not sure. It could have been. Okay.

3 A. That's all in the logbook, yeah. I mean, we'd get that information.

4 Q. What was being done with those readings?

5 A. Put in the log book.

6 Q. There were in the log book. Were they reported anywhere else?

7 A. Reported to headquarters.

8 Q. How often were they reported to headquarters?

9 A. Well, it varied. It changed as time went on. So I can't tell you a number. It  
10 was much more frequent early on than much later on.

11 Q. Were they reporting, you think, every hour to headquarters, too?

12 A. Probably at first. In there, yeah.

13 Q. Did you ever wonder why you were reporting to headquarters every hour when  
14 Stickler and Kevin are sitting right here looking at it?

15 A. It didn't surprise me a damn bit so I didn't wonder about it. It seemed like a  
16 nuisance but I ---.

17 Q. Did you ever sit there in the command center and watch Bill Taylor and his log  
18 man try and get this information from the boreholes hourly, from the underground  
19 hourly and then report all that hourly to headquarters?

20 A. Yeah.

21 Q. Is that primarily what Bill's job was? Because he sure didn't have much time  
22 to do anything else.

23 A. That's an oversimplification and he did certainly do other things, but, yeah, he  
24 would normally, on shift that he was there, make the reports to headquarters.

25 Q. Were they also giving reports there to the district?

1 A. Not every hour, but we did keep the district updated periodically.

2 Q. Was there any discussion with Stickler or Kevin about that? I mean, what was  
3 going on here.

4 A. Not a discussion in terms of changing it.

5 Q. Was Stickler pretty concerned about the rate of advancement, the footage?

6 A. Yeah, everybody was.

7 Q. Was that pretty much his primary concern?

8 A. I wouldn't put it that way.

9 Q. How would you put it?

10 A. He was concerned about the fact that we just couldn't seem to move very fast.

11 Q. Did you ever hear him threaten to remove anybody from the operation if they  
12 couldn't get those numbers in the book right and those measurements right?

13 A. I know he was concerned that there was some numbers that were  
14 inconsistent, but I know ---.

15 Q. Concerned and threatening to fire people are two different things. Okay. You  
16 ever hear him specifically tell somebody ---?

17 A. No. That's what I was trying to say. No. I heard ---

18 Q. You never heard him say that?

19 A. --- him voice a concern about it, but I never heard him say anything about  
20 firing anybody.

21 Q. You never heard him tell Ex. (b)(6) and Ex. (b)(7)(C) if you can't get this right, your  
22 replacement will, we don't need you in MSHA or anything like that?

23 A. No, I didn't hear that.

24 Q. How about Ex. (b)(6) and Ex. (b)(7)(C) Was it Ex. (b)(6) and Ex. (b)(7)(C)? You ever heard anything like that?

25 A. No. I must not have been in the room if he said that.

1 Q. Ex. (b)(6) and Ex. (b)(7)(C) Did he ever tell you and Kevin if you guys can't get these  
2 numbers right, somebody else will, like in the parking lot before one of the family  
3 briefings?

4 A. No, I did not hear that.

5 Q. So you never heard him be harsh or any of that with anybody?

6 A. No, not in terms of firing anybody, but I know he got perturbed at times when  
7 they weren't right. No, I never heard him say anything about he was going to fire  
8 somebody.

9 Q. Did any of your people ever mention that to you afterward or during that as  
10 Mr. Stickler threatened to fire me?

11 A. I don't remember that.

12 Q. Nobody said that? Was Murray pretty involved in the command center, AI?

13 A. He was involved in a lot of the planning meetings. I can't give you the number  
14 of times he was, but not all of them.

15 Q. So the ones he was in was he very dominating? Was he ---?

16 A. Oh, yeah.

17 Q. He was. We're going to do this and I don't care what the hell you do or  
18 something like that?

19 A. He would --- no. No, he never said anything quite like that, but he would  
20 ramble on and on and on and it was obvious that his people were definitely in fear of  
21 the man.

22 Q. You say that's the first time you ever met him.

23 A. Yeah, it was.

24 Q. What did you think about him?

25 A. You know, I think --- I don't think he was or is callous. I think that he's used to

1 being the focus of attention no matter where he is.

2 Q. So he wanted that same role here as far as thriving on that same role and  
3 being ---?

4 A. I talked to Bruce Hill about issues with Murray at the press meetings and the  
5 family the way he was coming across. He expressed to me on more than one  
6 occasion about, you know, we keep telling him but he won't listen. Then one day he  
7 came to me and he said we're bringing out this fellow I don't remember his name but  
8 he said he's on the board. He's the only guy that Murray will listen to. It was after that  
9 guy came out there --- he was in the meetings too, but he was always just standing on  
10 the wall never contributing in the meetings. It was after that that Murray started to  
11 step back a little bit.

12 Q. Al, you talked earlier about when you got to the mine is really when you first  
13 kind of heard about the severity of that bounce that occurred in the north barrier. Was  
14 that in a meeting with Laine Adair and maybe the tech people where Laine went  
15 through this lengthy discussion of that whole scenario and what happened? Do you  
16 remember that?

17 A. It was with Laine Adair, but, you know, I don't think it was in a meeting.

18 Q. It was just you and him talking somewhere?

19 A. Yeah.

20 Q. Did he explain it to you pretty thoroughly then?

21 A. No.

22 Q. Still not like this?

23 A. Oh, no. I never had dreamed of anything like what I saw in those pictures  
24 until yesterday.

25 Q. Did you know that the guys from tech support, I think, sat down with Laine

1 maybe the 8th, something like that, 9th, and had a very long detailed discussion about  
2 the whole history of this mine and the very detailed scenario of that bounce in the  
3 north? Then they repeated it I think the next day in the phone conversation with ---.

4 UNIDENTIFIED SPEAKER:

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

6 BY MR. PAVLOVICH:

7 Q. Yeah Ex. (b)(6) and Ex. (b)(7) from WVU?

8 A. No.

9 Q. Laine went through this whole thing and they said that's kind of the first time  
10 they ever really heard anything about this. Did you know that went on?

11 A. I wasn't in that meeting, no.

12 Q. So you weren't at that meeting. You didn't know that meeting was even ---?

13 A. There were a lot of people there. A lot of things going on all at the same time.  
14 No, I wasn't at that meeting.

15 MR. TEASTER:

16 Were you in the meeting --- the meeting, I think, as I  
17 remember was on the 11th. This was a meeting of all the principle people there from  
18 the company and from MSHA, and that's when that discussion came in to place a little  
19 bit about the bump. That's how Zelanko and ---

20 MR. PAVLOVICH:

21 Gauna.

22 MR. TEASTER:

23 --- Gauna first learned about it. Adair shared something in  
24 that meeting and then later on, as Joe referenced, they got on a phone call and then  
25 Laine Adair was more ---.

1 A. I was in the meeting. They had finally brought up a big office trailer where  
2 enough people could get in the same room.

3 MR. TEASTER:

4 Right.

5 A. I was in the meeting where Zelanko and Gauna were there and they talked  
6 about what they had seen. Laine did talk about that bounce and he talked about it  
7 blew some material off the ribs. But never did I get from his conversation a picture in  
8 my mind that I saw right there.

9 MR. TEASTER:

10 I think you're right, and neither did Zelanko and Gauna until  
11 they got in to a phone conversation later when Laine Adair and [REDACTED] were  
12 explaining exactly what happened. That's the way I remember it.

13 BY MR. PAVLOVICH:

14 Q. Al, how were your people or the rescue people, the people you were  
15 considering as working as rescuers, I guess, because you had a lot of outby work  
16 going on and then you had rescuers; right?

17 A. Right.

18 Q. How was the plan information disseminated to them? How were they briefed?

19 A. The company. Those were company briefings that they had with the men.

20 Q. Did you ever sit in on any of them?

21 A. Early on, but not routinely as things progressed. Probably the first day or two.

22 Q. How about your people? How were they being briefed as to ---?

23 A. Just in our MEO vehicle when they'd come on shift.

24 Q. Who was doing those briefings?

25 A. We'd pull out the plans and do it right there. Whoever --- whether it be Bob

1 or ---.

2 Q. So whoever happened to be in there?

3 A. Yeah. Or if I was ---.

4 Q. Was that something that was pretty much done religiously? I mean, every  
5 day there was a good briefing of ---?

6 A. I don't know if it was done every day. A lot of these things didn't change every  
7 day.

8 Q. How about being debriefed? Was there any debriefings of company people or  
9 MSHA people after the end of their shift as far as what happened, any concerns, any  
10 problems, or anything like that?

11 A. No, not at an official setup.

12 Q. Do you think they should have been?

13 A. It probably would have been better.

14 Q. If they had been given a debriefing, how would that information have gotten to  
15 the decision making people like you and Richard and Kevin? Was there any kind of  
16 format? Well, if they weren't being debriefed, I guess there was no format to get  
17 information to. So you weren't really hearing about debriefings of what happened  
18 underground?

19 A. I was getting information of special observations and things that were relayed  
20 back to the shift supervisor.

21 Q. Was a lot of that out of the log book? Did you pick up the log book and read  
22 it?

23 A. They would record it in the log book, but I would get it from the guy who was  
24 talking to the inspector.

25 Q. You don't know --- I mean, there was probably not a formal structure for

1 debriefing the MSHA people and I would imagine the company people coming out  
2 probably weren't being debriefed either to anything. I mean, you didn't know of any of  
3 that going on; right?

4 A. No, not official debriefing.

5 Q. Did you ever hear that Dale Black told Ted Farmer he didn't even have a  
6 written plan of what was going on for four days and he was down there kind of running  
7 things underground?

8 A. I never heard that.

9 Q. If that was true, then they weren't getting much of a briefing, were they?

10 A. It doesn't sound like it, does it?

11 Q. Were you aware of any phone communication problems during this exercise,  
12 AI?

13 A. Any phone communication problem?

14 Q. Yeah.

15 A. Yeah, I think there were.

16 Q. That's not even a fair question, is it? Were you aware that the first day or two  
17 underground, when the guys were working underground, they didn't have  
18 communication from the forward fresh air base?

19 A. I don't remember that being a condition that existed very long.

20 Q. It was like a day and a half or something I think they said before they got it  
21 straightened out. Sometime on the evening of the 7th is when they finally got that  
22 fixed. Of course we heard of all the phone communication problems from the  
23 mountain. That was difficult as I understand it. Did anybody from MSHA ever  
24 express any concern to you about their safety or the safety of the rescue workers while  
25 they were underground?

1 A. I never had --- I had reports, you know, that it bumped pretty hard today.  
2 They'd call out and say that was a pretty hard bump, but I never had anybody come up  
3 to me with a real concern about the viability of we consider safe.

4 Q. So you never had anybody come up and volunteer that information to you.  
5 Did you ever go and ask people?

6 A. Oh, I talked to a lot of the inspectors.

7 Q. I realize you talked to them, but did you specifically ask them do you have any  
8 concerns?

9 A. No.

10 Q. I mean, are you scared down there, what's your feelings for it? Did you  
11 assume if they were, they would have told you?

12 A. Probably more of that. I don't recall asking somebody right straight out, do  
13 you have concerns for your safety down there.

14 Q. Do you know if Stickler or Kevin ever did that?

15 A. I don't know that they did.

16 Q. Not in your presence did they ever go and --- did they talk to the inspectors  
17 much?

18 A. Yeah.

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

20

21

22 A. Yeah.

23 Q. What was your understanding of that, AI?

24 A. My understanding of it was that Ex. (b)(6) and Ex. (b)(7)(C)

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

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

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Q. So other people came to you, too, and talked to you about it?

A. Yes. Ex. (b)(6) and Ex. (b)(7)(C) came to me. They relayed it to other people who were really, really upset about it.

Q. Did you ever discuss that with Ex. (b)(6) and Ex. (b)(7)(C)

A. I had Ex. (b)(6) and Ex. (b)(7)(C)

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

A. Yes.

Q. So did you kind of tell Ex. (b)(6) and Ex. (b)(7)(C)

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

A. I had Ex. (b)(6) and Ex. (b)(7)(C)

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

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

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

A. I don't know.

Q. You don't know? Okay. So you know Ex. (b)(6) and Ex. (b)(7)(C)

A. Yes.

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

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

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

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A. Yeah.

Q. Were people mad about that?

A. Some people were.

Q. Did you ever talk to Ex. (b)(6) and Ex. (b)(7)(C)

A. At one point I talked to him about it, yes.

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

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

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

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Q.

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Q.

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

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

A. That's right.

MR. TEASTER:

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

A. Yeah.

MR. TEASTER:

Would that have been Gary Peacock?

A. It could have been. I know that Ex. (b)(6) and Ex. (b)(7)(C)

BY MR. PAVLOVICH:

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

A. Yeah.

MR. TEASTER:

What was the gist of that conversation?

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

MR. TEASTER:

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

BY MR. PAVLOVICH:

Q. Did you ever hear about Ex. (b)(6) and Ex. (b)(7)(C)

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

A. Not up there, Ex. (b)(6) and Ex. (b)(7)(C)

Q. But you didn't hear about it there?

A. I don't recall it being an issue.

1 Q. Was [REDACTED] Ex. (b)(6) and Ex. (b)(7)(C)

2 A. You know, I just don't remember that being associated with Crandall Canyon  
3 but it wouldn't surprise me if it did.

4 Q. Al, were the expirations made over top of the rubble material?

5 A. Yeah.

6 Q. How many do you remember being made?

7 A. Initially I think somebody --- about the time things were being reported as  
8 there was one of the mine people going back in as far as he could get.

9 Q. So this was the first day?

10 A. This was the very first day. First hour or so.

11 Q. Was there some of your guys that went in?

12 A. No. We weren't even there yet. This was while I was still getting out of bed.  
13 It's all right after the incident.

14 Q. So some of the miners tried to go back in?

15 A. Yeah.

16 Q. What was your understanding of that excursion? What happened?

17 A. They only got about a crosscut or so going back through the V-shaped void  
18 where they felt that they couldn't get any further.

19 Q. Subsequently ---.

20 A. Then after rescue teams were onsite and they went in with apparatus but not  
21 under apparatus because the air and quality was --- they were checking it as they went  
22 and reported bad atmosphere. That's when they got up to between 25 and 26.

23 Q. Do you remember what entry they went in or did they ---?

24 A. They zigzagged.

25 Q. They zigzagged around?

1 A. Yes. There was a --- they had to go like that. I think they started in number  
2 three. That was what in my mind was always kind of the official, as far as you could  
3 get, formation that we had. That, I understood, was the Deer Creak team.

4 Q. The what now?

5 A. Deer Creak Team. Gary Christiansen.

6 Q. The team actually went out?

7 A. Yeah. After that we approved one or two more excursions because there was  
8 this feeling that the progress we had made that maybe there was a possibility that we  
9 could build on that and get further. We had it set up with communications. We had  
10 one attempt where we lost communications and had to pull it back. Then they came  
11 up with a better antenna system for the permissible radios and tried it again. So in my  
12 mind, there's about four or five excursions.

13 Now, there was another one that I heard about afterwards. It was an unofficial  
14 excursion, by one of our inspectors. I heard that he did go back in two and a half  
15 crosscuts up in the number three or number four entries. Then we had a discussion  
16 with him not to ---.

17 Q. He what?

18 A. We had a discussion with him not to do that kind of thing again. If we were  
19 going to do that, we'd have a plan. He was probably, I think, a company man. It  
20 might have been Gary Peacock.

21 Q. So your understanding was Peacock and Peter Saint made an excursion  
22 kind of on their own at the number four entry and you told him don't do that again or  
23 we'll send you home?

24 A. No, I didn't say I'd send him home.

25 Q. Oh, you didn't say --- okay. Just don't do it again?

1 A. Yeah.

2 Q. What was the results of his excursion? Did he brief you on what he found?

3 A. Yeah. He said he found intersections largely unaffected but the entries ribs  
4 blown in from both sides leaving a V-shaped opening which the further you went the  
5 smaller it got. Normally when you come out into the intersection you could get back  
6 up on your feet.

7 Q. What stopped him?

8 A. The V-shaped void got too small.

9 Q. Is that what he told you? That it got so tight that he couldn't go any more? Or  
10 was it some wire mesh torn down from the roof?

11 A. Oh, yeah. I'm sorry. I forgot about that.

12 Q. I just made that up, Al. I didn't know that.

13 A. Well, there was an issue about wire mesh hanging down because we ran into  
14 that all the time. The roof was meshed the whole way. At times when they'd pull off  
15 the side, it'd knock that --- it'd strip that mesh off the bolt that was hanging there.

16 Q. Did Peter say that if he had some wire cutters, he could have cut through that  
17 wire mesh and continued on? Did he tell you that?

18 A. He might have, yeah.

19 Q. What was your opinion about attempting that?

20 A. We talked about the feasibility of doing that. We didn't take another excursion  
21 until ---.

22 Q. When you say we talked, who was the we?

23 A. There was a whole lot of people in the room.

24 Q. Was Richard there? Was Kevin there? Was company people there?

25 A. I think there was discussion with at least Kevin.

1 Q. Did anybody say, well, let's give him some wire cutters and see how far he  
2 can get?

3 A. No.

4 Q. Why not?

5 A. Because he had gotten as far as some of the other excursions had gotten.

6 Q. How far did he tell you he got to?

7 A. I don't remember exactly what he said. I remember it not being as far as the  
8 other excursion. We later tried again and didn't get any further.

9 Q. Did you later try again in number four or number one? Were they both done  
10 about the same time?

11 A. I don't remember the span of time between the two, but they started at  
12 number one.

13 Q. It was our understanding that you got a plan that approves to do an excursion  
14 in number one and to go as far as they could until their phone communication failed.  
15 So they went a certain distance and their radios wouldn't carry anymore. So that's  
16 what stopped it. Not the conditions, but the radio. Is there any consideration given to  
17 extending that excursion any further with say some kind of a Remtech system or some  
18 phone system?

19 A. I thought we did --- well, we did come up with a better communication.

20 Q. Was it ever used after that excursion? I guess that's my ---.

21 A. I remember there being two excursions on radio after --- I mean, way after the  
22 initial --- we didn't have teams standing by anymore.

23 Q. Do you know who --- the one we heard of ---?

24 MR. PAVLOVICH:

25 Who made that in number one?

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UNIDENTIFIED SPEAKER:

That was Barry Grosely and the one that ---. When they did it with the radio it was on the 18th and it was Barry Grosely and one of the company men. You have a plan there of the teams that were doing that.

BY MR. PAVLOVICH:

Q. Yeah. There's a plan that covers that one and I guess the notes from that excursion were that they basically ran out of communication and so they stopped. Not that they were physically stopped, just because the radio didn't work anymore. The order was in the plan when you loose your communication, you stop.

A. Yeah.

Q. So they stopped. I mean, I guess what we were wondering is if they were ever briefed to say, you know, how much further could you think you could have gone ---?

A. Yes. Hell, yeah. That report was not too rosy to where we thought, you know, we'd need to regroup and go in again. That's my recollection of things.

Q. So you discounted any further attempts to negotiate over the material as opposed to continue loading it out?

A. At that point, yeah.

Q. Which would have been the 11th or 12th? Something like that I guess. The 11th, 10th?

MR. TEASTER:

10th.

UNIDENTIFIED SPEAKER:

There was two things done on the 10th. That's when Barry Grosely and one of the company guys, I can't remember the name, were in number one and Peter Saint and Mike Gauna and Peacock were up in number four,

1 zigzagged, I guess, all the way through.

2 BY MR. PAVLOVICH:

3 Q. In your opinion from what you heard about those, there was no --- the decision  
4 was we're not going to make any more of these attempts?

5 A. There was a lot of discussion about what they saw and there was never any  
6 feeling like we were just about to the point where you just get on through there.

7 Q. So even if they got to 126 or wherever they got to, they weren't basically much  
8 further than where you were anyway; right?

9 A. Right. Than the initial, this area here (indicating).

10 Q. So you knew at least to that point the entries were still primarily packed full of  
11 coal?

12 A. Yes. That was our understanding.

13 Q. I guess there was an issue that comes up in the notes at the family briefing  
14 about using rescue dogs, Al. That was discussed a couple times and then discounted.  
15 Do you remember why that was discounted?

16 A. Well, the way I understood it, the suggestion was to put a rescue dog down  
17 the borehole. The Humane Society would probably kill us if nobody else would.

18 Q. So it was to lower one down the borehole and not to go over the rubble?

19 A. Oh, yeah. Lower him down the borehole.

20 MR. TEASTER:

21 Poor dog.

22 BY MR. PAVLOVICH:

23 Q. It wasn't ---?

24 A. They were talking about monkeys too, but ---.

25 Q. We assumed the rescue dog was to try and go over the rubble where a man

1 couldn't go. That wasn't the discussion?

2 A. That was a never discussion I had about that.

3 Q. Was that ever thought about?

4 A. There was some discussion and it was held with the sheriff. He was the one  
5 that advised us against this whole dog theory. He said if you couldn't get him back out  
6 alive, he said the problem is false positives and he was afraid it was going to cause  
7 more disruption with the families.

8 Q. So he recommended against anything like that?

9 A. Yeah.

10 Q. You mentioned Kent Norton earlier. I guess Fred Sanchez and Kent Norton  
11 spent several days there underground?

12 A. Yes.

13 Q. What was their assignment from you? I mean, what were they doing as part  
14 of the rescue operation?

15 A. They were talking to the crews, doing much the same as our people were in  
16 terms of working around the conditions.

17 Q. So they had specific instructions from you to do the measurements and do  
18 that. Were they doing that?

19 A. Yes.

20 Q. How did they come up on coming to the mine? Did you request their  
21 assistance?

22 A. We did request Fred to help us interpret so we could talk to some of the ---.

23 Q. As an interpreter?

24 A. As an interpreter.

25 Q. He went from interpreter to ---?

1 A. Well, Kent was up there just helping decide at times too just because of the  
2 people and staffing problems in the station.

3 Q. So they were just helping any way they could?

4 A. Yeah.

5 Q. I guess you were aware that on the 6th, I guess, maybe one of these  
6 excursions or somebody that went in on the 6th came out and said there was 18  
7 percent oxygen in the number four entry?

8 A. Yeah.

9 Q. What was your feeling about that, Al, where this low oxygen came from?

10 A. We had a lot of talk about that, but is it possible --- the gobs do --- the oxygen  
11 goes down with the ceiling level. Was that a result of so much fresh coal oxidizing  
12 quickly or were we communicating with a gob? We never could answer that question  
13 with any concrete evidence without any concern. Always was a concern that we would  
14 communicate with a gob.

15 Q. So you thought that was a possibility although you couldn't verify it?

16 A. Yeah.

17 Q. I guess you went in and looked at this; didn't you, Al?

18 A. Yeah.

19 Q. You ever see a bounce like that?

20 A. I've seen the entries that full, but I never saw it come off the rib. It's always  
21 the floor coming up.

22 Q. So this was pretty much coal from the rib that packed it full?

23 A. Yeah.

24 Q. I guess the barrier, swelling of the barrier and other things.

25 A. Yeah. There has to be some conversions, but I think the conversions was

1 inches or less than inches but the shock of it just ejected all that loose coal off there.

2 Q. So would you say that was quite a bit of force?

3 A. Yeah. I would say, yeah.

4 Q. When you punched that number one borehole in, the first reading you got  
5 oxygen-wise was 20 percent; right?

6 A. That's what came down off the belt, yeah.

7 Q. Then a couple hours later it actually was reported 7.4 or something. Seven  
8 percent.

9 A. Yeah. It was a two-hour time.

10 Q. Did you find out what caused that? Why they had the ---?

11 A. I got the theory. I was on up on top the mountain and talked to those fellows.  
12 Their theory was that they --- when the first reading was taken, what they had done  
13 was, after they got in there, they set the drill bit on the bottom of the mine floor. The  
14 only openings were in the bottom of the bit. So they were actually in essence just  
15 creating a vacuum when the drilling started.

16 Q. Then when they flushed that pipe out, ---?

17 A. They pulled it up, flushed it out, took it, pumped it for adequate time, you  
18 know, to clear the pipe and then they got that second one.

19 Q. Having seen what you saw as far as the magnitude of this bounce and the  
20 force that had to be exerted and also the fact that you now got seven percent oxygen  
21 out of that borehole, what did you think of the chances of survivability of those miners  
22 was?

23 A. In my mind, our chances of success dropped way down on a scale, but we  
24 tried to maintain a positive attitude and look for other possibilities.

25 Q. Did you discuss those feelings with Richard or Kevin?

1 A. Yeah, we talked about it.

2 Q. What did they say?

3 A. They had the same concerns.

4 Q. So they both admitted to you that there's probably little chance of survival?

5 A. We talked about it at length because we find out this here was particle  
6 atmosphere. What is it like almost three days or so into the ---.

7 Q. Yeah, I think it was the 9th, AI, that the hole went through at 2200 hours on the  
8 9th. So you got almost four days, three days.

9 A. What we didn't know was did that low oxygen atmosphere come on that  
10 instantaneously or was that a slow process through a small opening in to one of those  
11 gobs, because we looked at those readings and they compared very similarly to the  
12 readings we were getting out of the sealed north. So our thoughts were we couldn't  
13 say that that was right now ---.

14 Q. Of course, on the 6th you were getting 18 percent oxygen in number four  
15 entry. So, I mean, you'd think well, that didn't come on real slow if you already got 18  
16 percent down there; right?

17 A. Well, we didn't know where the breach might be if there was a breach. We  
18 thought that the possibility is that, number one, of course their ventilation was cut off  
19 immediately. So there wasn't fresh air being swept in nor was there anything  
20 sweeping the bad air out. Was it possible? And we surmised that it was a possibility  
21 that they had their wits about them, if they weren't injured or killed in the initial shock,  
22 that they went back into the back and barricaded the --- did some calculations and  
23 thought that they could survive for a number of days back in that area if they could  
24 stop the bad air from coming in to there. We did think if there was a breach, it would  
25 be back in that area.

1 Q. Have you ever been in one of these bounces, Al?

2 A. Yes.

3 Q. Is there quite a bit of dust generated?

4 A. Yeah.

5 Q. If you were in there with no ventilation and that bounce occurred with all that  
6 dust, would you even be able to orient yourself as to ---?

7 A. Not for a while.

8 Q. How long would it take for it settle out?

9 A. I would say the bounce, it was a 3.4, I think, on the Richter scale, and I was in  
10 the headgate corner. We walked all the way out to the mains, a distance of about  
11 4,000 to 5,000 feet, we were dust the whole way, but we were able to see a reflection  
12 off of a brand new aluminum pipe that was on the roof. We knew where we were and  
13 that's what he followed. I would say the amount of dust that they would have had in  
14 there, it would've been potentially hours maybe before you could see.

15 Q. Been awful disoriented that's for sure.

16 A. Oh, yeah.

17 Q. Especially if you got knocked down, which they probably certainly would have  
18 been knocked down.

19 A. Oh, yeah.

20 Q. I mean, there were reports, I guess, about the guy that left in the pick up.

21 A. Yeah.

22 Q. His truck was actually somewhat turned sideways or something by the forces;  
23 is that true?

24 A. I never heard that about a truck. I heard that he was --- you know, he felt it  
25 real hard. I never heard anything about a truck being knocked sideways.

1 Q. Well, we heard that somewhere. If the force didn't severely injure or kill them  
2 immediately, they would have been subjected to probably choking dust I guess.  
3 You've been in it so you know. I've never been in it, but you could certainly explain  
4 that and the fact that you were disoriented and you couldn't see anything for who  
5 knows how long because you have no ventilation.

6 A. That's a fact.

7 Q. You had ventilation, or wherever you were in this bump you had ventilation?

8 A. No. No, not in that bump. It blew out all the overcasts and about ---.

9 Q. Oh, it didn't. So it shortcircuited all your air, too. Okay.

10 A. Yeah.

11 Q. So it would have been pretty hard to even find your way up in to that entry,  
12 number four entry where ---?

13 A. Yeah. No doubt about it.

14 Q. So I guess when ---.

15 A. Let me set one thing straight here.

16 Q. Okay.

17 A. We weren't looking for ways to stop the rescue. We were looking for ways is  
18 there some feasible way that these fellows could still be alive.

19 Q. Okay.

20 MR. TEASTER:

21 Al, was you aware that the forces from this bounce shook the  
22 bathhouse out there?

23 A. I never heard about the bathhouse. Honestly, I don't remember any report  
24 about it being felt outside. I don't recall hearing that.

25 BY MR. PAVLOVICH:

1 Q. Al, when you were underground, did you fell any bounces occurring?

2 A. Yeah, small ones.

3 Q. Small ones. Okay. Did you ever hear about any company workers that  
4 elected to withdraw themselves from the working area?

5 A. Yeah, I certainly did.

6 Q. What did you hear about that?

7 A. The company offered to let them go out outby and work out there so they'd  
8 still get paid.

9 Q. Did you personally talk to any of those people that withdrew?

10 A. I didn't know who they were.

11 Q. Then nobody told you and you didn't ask who they were?

12 A. I understood --- I was told that several of them withdrew because of pressure.

13 Q. Who told you that?

14 A. That was somebody at the company.

15 Q. Did you verify it with any of the mine?

16 A. No.

17 Q. Well, one of the big issues that came up here, and I think maybe even you  
18 were involved in because some of the people said they went to you, was somewhere  
19 along the line --- you had to let several guys from the east that were out here with  
20 MSHA on the rescue team.

21 A. Yeah.

22 Q. Somewhere along the line, I think, there was a decision made maybe that, you  
23 know, had enough of those guys and some of your guys needed get back to the mine.  
24 So they were kind of pulled off for a shift and maybe somebody came and expressed  
25 concern to you about that that they wanted those local guys in there because they

1 were very knowledgeable on bumps and so you put them back in?

2 A. Ted Farmer.

3 Q. Ted came to you and told you that?

4 A. Yeah.

5 Q. So there was an interest that we need these local guys here because of their  
6 knowledge and experience in bumps/bounces?

7 A. We thought that they'd be better, they'd know better how to ---.

8 Q. I agree with that. I mean, I think everybody would agree with that. I guess  
9 that leads to my next question. If you have miners here, and I would assume they  
10 were using experienced miners up here on this critical area and they're probably pretty  
11 familiar with bumps, too, but yet they were so scared, they asked to be withdrawn.  
12 Would that not be something you might want to talk to them about and say if it's that  
13 bad and you guys want out maybe we don't need to keep doing this?

14 A. We were all aware of it at the time. I think Kevin and Richard was. I guess we  
15 just kind of understood that there'd be some people that were just more scared than  
16 others.

17 Q. That's probably true, but why? I mean, was it valid concern?

18 A. Well, we all knew why.

19 Q. Sure it was valid. Maybe it was a valid concern.

20 A. We talked about it and talked about it about whether or not we should stay in  
21 there and keep doing it. We came to the decision that we were not going to stop.

22 Q. You came to the decision you were not going to stop?

23 A. Yeah. Yeah, we talked --- I mean, this was almost a continual conversation.  
24 Numerous times a day we said, was it safe ---?

25 Q. You talked to Richard about that?

1 A. Yeah, we talked about it. We talked and talked about the feasibility of it.

2 Q. Was there ever a chance that we said we're having all these bumps, all these  
3 guys withdrew, we don't --- we're ten days into this. There's bad air up there, there's  
4 tremendous forces and we're picking up no signals. I mean, the risk for our rescuers  
5 based on what value we might get may not be weighed correctly anymore.

6 A. There was discussion about that. It's not like we were just ignorant of the  
7 possibilities, but it was a conscious decision that we press on.

8 MR. TEASTER:

9 What was you considering? You know, when you were talking  
10 about this, you're obviously weighing one thing against the other. Exactly what was  
11 you taking into consideration and just saying, okay, we've considered this and now it's  
12 safe to go on?

13 A. Basically it was all hinging on the capability of the support and roofing strength  
14 that we were putting in that would contain material if it bounced again. The material  
15 came off the ribs. We were not fearing collapse of the roof and that never did happen.  
16 But could we contain --- would any material that would be ejected upon a bounce be  
17 contained and not have happen what had happened earlier.

18 TEASTER:

19 And were you looking at bounce severity and seeing if this  
20 one --- that we could probably contain that one or just how did that go about? What  
21 were you really looking at?

22 A. These repeated discussions with tech support is this --- is what we're doing  
23 enough. We refined that. I think as time went on, it was basically these rock crops.  
24 The roof, we were using some wood in that program that we soon got rid of the wood  
25 because we didn't think it was as good as the rock crops. We increased the number of

1 ropes that we were putting in to contain them and making sure that we had those  
2 anchored off. We had no certainty about anything. Just the desire to try to find  
3 somebody alive.

4 BY MR. PAVLOVICH:

5 Q. AI, was anybody analyzing the bumps that were occurring underground?

6 A. Fellows from tech support were --- they were looking into all of that.

7 Q. How do you know that?

8 A. Talking to them.

9 Q. So they did an analysis of bumps?

10 A. They were underground every couple of days, more often at first.

11 Q. So you were kind of counting on, I guess, that if they think it's really too bad  
12 they're going to come and tell us pull the plug on this?

13 A. We had those kinds of conversations.

14 Q. You literally told them that, you guys tell us when it's time ---.

15 A. How do you feel about this.

16 Q. Do you think they felt that was their role?

17 A. They did.

18 Q. Well, they didn't.

19 A. They didn't? What'd they think they were doing there?

20 Q. An advisor.

21 A. Well, I can't explain that.

22 Q. I mean, we get that impression, too, that ---.

23 A. They gave us technical advice, but we're basing a decision on it. They say  
24 well, we're just advisors so we're not responsible, but I guess you come down to  
25 somebody like me and say he's responsible for that. I can only do what I can based

1 on the information I have.

2 Q. I'm just trying to clarify. From your opinion and your feelings there as you  
3 feel, you know, these guys were the technical experts, they're underground regularly  
4 evaluating everything that's going on and if they think it's too bad they're going to  
5 come out and tell us we need to pull the plug. We're going to stop or do something  
6 else. Was that kind of how you were feeling?

7 A. That was how I was feeling.

8 Q. Was that how Kevin was feeling and Richard was feeling?

9 A. I think so.

10 Q. I mean, you guys were the three decision makers. Let's face it.

11 A. Yeah.

12 Q. Regardless of anything else and probably Richard the top one. Were you  
13 feeling that that was what was going to happen?

14 A. I think we were all feeling --- we were relying on their input because they were  
15 getting seismic information. I don't know how well you could correlate it to what's  
16 going on at the mine. They put in some of their own instrumentation outby. I don't  
17 know how well that tells you what's going on at the face. We didn't have perfect data  
18 to work with, but they would observe. They were down there.

19 Q. Did anybody show you any kind of, I guess, a record of bumps, a bump log,  
20 and say, you know, this day we had four bumps at such, such, such? This shift we  
21 had two bumps at this time. Did anybody compile anything like that that ---?

22 A. I never saw any record.

23 Q. You never saw anything like that. Was there any instructions given to the  
24 inspectors underground as to report a bounce or a bump and to report one that's a  
25 certain magnitude? I mean, does it do certain things? I realize everybody ---.

1 A. Which magnitude would you have said?

2 Q. I don't know. I don't know anything about it.

3 A. Well, we couldn't do that either. When there was a significant bounce, they  
4 would call us outside and we kept a record there.

5 Q. You told them that when there's a significant bounce. I realize you have guys  
6 out there who know what that would be.

7 A. Yeah.

8 Q. Maybe not so much the guys from the east ---.

9 A. That's why we thought we ought to have the guys from the west down there.

10 Q. Right. That was a good choice I think, keeping those guys. Before we take a  
11 quick break, Al, let me just let you look at --- I don't know how accurate --- we went  
12 through the log and this is your log from the command center. Okay? So it's a  
13 command center log and we took out all measurements and anything and the only  
14 thing we put in was starting on the 6th, the bumps or bounces that were reported by  
15 our people underground. MSHA people underground. These were just some things  
16 from University of Utah on the 3rd they had 1.5 and the 5th they had a 1.6 and 1.8.

17 Of course then the big one on the 6th was 3.9, according to them. We know  
18 what happened there. Okay? Sometime around 1702 this is the bounce that occurred  
19 when the rescue team went in to the seal and came out.

20 A. Oh. Yeah.

21 Q. It bounced behind the seal. It actually blew the curtain out in the fresh air  
22 base and some bad air out on the new fresh air base. I guess you weren't aware of  
23 that.

24 A. No.

25 Q. That was a 1.9. On the 7th, when the number four entry blew again and filled

1 back up, where they were loading out of four, this is the one I think --- we'll get to that.

2 There was one at 1:13 that was a 2.2 magnitude. We see Terry Henderson's notes  
3 say bounce occurs. Men will be back until it clears out. We'll take head count. Here's  
4 Ron Paletta's notes. Was standing in front of the feeder when the bounce hit. Took  
5 out ventilation suspended air. Could not see the lifeline. Knocked out ventilation.  
6 Two people knocked out including him.

7 A. Yeah, I remember that.

8 Q. So that's pretty significant. I guess what we tried to do is say, you know, who  
9 says this? If it's me saying it bounced, that may not mean much, but I guess Paletta  
10 and Donnie Durant and those guys --- if a bounce happened, they know it's a bounce.

11 A. Yeah. Well, this of course is what sparked the whole concern. It changed the  
12 whole plan.

13 Q. So at 2:43 that same day, there was another one from University of Utah that  
14 was a 1.6. Probably people were outside because after this big one at four, I don't  
15 know what was continuing to go. There's some mild bouncing, bouncing still  
16 occurring, bouncing still occurring, needs to be evaluated. It appears that bumping of  
17 pillars has been ongoing Fillpot stated that entries were being developed that bump  
18 was heavy. That's Billy (sic) Durant. Here's Durant, pillar showing signs of shilling. I  
19 don't know what shilling is, but he knows.

20 A. Sloughing I think.

21 Q. It continues on. Here's 1:15:42 1.7 magnitude. Some more. Then kind of the  
22 8th and 9th there's nothing reported in that book about any bounces. We don't know  
23 why and nobody else knows why.

24 A. It was a quiet period.

25 Q. Then again on the 10th, bounce occurred. Cracking. Small bump, small

1 bump, small bump. This is 1:19 number four entry no damage. I'm assuming that if  
2 somebody went to the point and said there was no damage, it must have been  
3 something he felt pretty good. Here's a bounce by the power center and Ron Paletta.

4 Of course, Hixson calls it a big bump. More bounces. Two small bumps.  
5 Bump at the miner. Roof bolt working. 2106 just had a big bounce. Everyone is  
6 okay. It's real dusty. Everyone accounted for. Seam operator helper, Gary Jensen is  
7 the only way. Usually if they say everyone accounted for, that indicates there was a  
8 pretty good event.

9 A. Yeah. Yeah. They're concerned about that.

10 Q. Here's one. Quit mining. Bounce was a lot louder. Put up some channels.  
11 22:54 bounce killed power of the miner. Everyone accounted for okay. Dusted up the  
12 entries. Loosening wrecked rib from previous bump. Small bump. Small bounce.  
13 Bounce appears at center at 1:22. Everyone accounted for. 1940 bump. Everyone  
14 accounted for. Material on the miner. Here's one from Gauna that talks about when  
15 he went in and looked at a bump and he even says bump area 58 feet deep hole from  
16 loose call, floor broken up, wow. Ten to 11 feet high removing floor rubble.  
17 Something happened pretty significant there.

18 More bumps. Bump. Bump. Bump. Bumps. Here's 2:26 on the 15th,  
19 bounce occurred and lots of dust. Everyone accounted for. Bounce was significant.  
20 Blew out a couple kennedys. Atmosphere black. This says Grosby but it's Grosely.  
21 Appear rock crops have moved out tops and bottom. Question rock crops ability to  
22 support. Miner partially covered on the right side. Curtain's blown out and kennedy  
23 panels. Both cutter shafts on the miner shear.

24 Here's bumps coming more regularly over 15 minutes. Small bump. MSHA  
25 going underground to review roof conditions. Small bump. Small bump. Three

1 bounces. Here's on 18:20 you had a bump bigger than the last one. Everyone okay.  
2 No damage. The 16th, a few more bumps. Bump. Bump. Bump. Bump. Bump.  
3 Bump covered right side of miner. That was a 1.5. Bump at miner in number one  
4 entry covered the body of the miner. Backed the miner out and cleaning up.

5 Peter Saint and Rodney Adams. Good bump on chain pillar. Bounce number  
6 one entry. Bump in face. Small bump. Small bump. Pretty much all day long bump,  
7 bump, bump. Here's four bumps until you get to the one at 1842. I guess did anybody  
8 do anything like this? It seems to me like maybe an analysis like that --- if you go to a  
9 mine fire, you're looking at gas analysis. If you go to an explosion, you're looking at  
10 CO levels or something. If you go to something like this, I don't know if there's any  
11 precedence, but I guess the only thing that I could think of that would be an analysis of  
12 what would be important would be looking at the bumps that are occurring. Did you  
13 feel someone was doing something like this, AI, or did you tell anybody to do anything  
14 like that?

15 A. I didn't direct anybody to do an analysis of the bumps. We were all aware that  
16 they were coming. I don't know how you quantify it.

17 Q. I don't mean --- I mean, would it have been something that was helpful for  
18 you?

19 A. Had the gas --- you can verify it, but he bumps --- one bump doesn't  
20 necessarily tell you what the next bump's going to do.

21 Q. No, it doesn't, but would something like that have been advantageous to you?

22 A. Sure. We can look back now and analyze all sorts of things if we would have  
23 known better.

24 Q. To your knowledge, nobody was doing that onsite?

25 A. To my knowledge, Gauna and Zelanko were looking at the bumping that was

1 going on, but I never got from them any idea that they could put some kind of  
2 correlation to things other than everybody's concern.

3 Q. I don't know if they could. You felt they were kind of analyzing this what was  
4 happening. Since they didn't come out and recommend to you that you needed to  
5 stop or anything else, you figured what was going on in there was kind of okay?

6 A. I figured we'd have bumping the whole time getting in there.

7 Q. Sure. Okay. Want to take a break?

8 A. Yeah.

9 Q. Okay.

10 TEASTER:

11 AI, did you say you figured you would have bumping the  
12 whole time?

13 A. Sure. I would expect it.

14 TEASTER:

15 Okay.

16 SHORT BREAK TAKEN

17 BY MR. PAVLOVICH :

18 Q. AI, were there ever any argumentative issues between the headquarters  
19 people and the field staff at MSHA?

20 A. Nothing stands in mind. You know, Richard was perturbed over some times  
21 of measurements of the footage. That always came up because of the family briefing.  
22 Because he'd be going down there and getting information from us and then I guess  
23 once or twice the company's talking to the families and they got different numbers. So  
24 that was --- he didn't want that embarrassment. He wanted to know for sure what the  
25 numbers were. But you know, the company didn't always stay with our guy and agree

1 underground on what the numbers were. So I guess that was kind of inevitable that  
2 might happen sometimes.

3 Q. When the second accident happened on the 16th, there was a decision made,  
4 I guess, to bring in this group of experts.

5 A. Yeah.

6 Q. I mean, you mentioned before there were --- several came in. You might  
7 have known one of them or something.

8 A. I knew one guy that was from Utah.

9 Q. What was the purpose of bringing them in?

10 A. We halted everything right after that happened.

11 Q. Right.

12 A. We went down, you know, to the next briefing with the family to tell them what  
13 happened. Of course their questions are, well, what are you going to do next? We  
14 told them we don't know what we're going to do next, that we don't think what we've  
15 been doing can safely be resumed. So when we came back from that meeting, we  
16 thought down the road this isn't going to wash unless we do something to make some  
17 real effort at making an informed decision about ending the rescue. Because quite  
18 frankly, the drilling didn't hold a whole lot of promise. And so that was a lot of  
19 discussion back and forth. Not everybody all at the same time, but in the next ensuing  
20 hours. The decision was to come up with this kind of a special committee.

21 Q. Was it really to justify stopping the effort?

22 A. I think it was probably to not just the justification for stopping, but to make  
23 sure we were making the right decision. Ultimately, we were sure that our decision to  
24 stop the underground rescue would come into question and it had come into question  
25 right away.

1 Q. These experts, they were --- I mean, they're not rescue experts. They're  
2 primarily ground experts; right?

3 A. If there had been any rescue ground people, we would ask them to come.

4 Q. So when you say --- were they --- as far as responding to should you continue  
5 with the operation, they were not making an evaluation as to whether there was a  
6 chance of survival here or not or whether these guys were still waiting. That was  
7 strictly based on can you advance through here with any means?

8 A. That's right. Exactly.

9 Q. So the fact of ---?

10 A. The sky was the limit as to what means we could use, but there was no --- the  
11 assumption was that there may still be live people in there.

12 Q. They did not evaluate any of is there a chance of survival, no chance or  
13 survival, what are we risking for that?

14 A. No.

15 Q. They weren't involved in that at all?

16 A. That wasn't part of the ---.

17 Q. So it was strictly ground control?

18 A. Right.

19 Q. And what happened when you brought those people onsite?

20 A. There were briefings for those people about what happened, what we knew  
21 about what had happened, what had been happening and then --- in fact, we even  
22 brought another special trailer in for those people to be sequestered in. Then we took  
23 a hands-off approach and let them deliberate themselves all day long.

24 Q. Did they go underground?

25 A. I'm sure they did.

- 1 Q. No, they didn't.
- 2 A. I don't know. I think ---.
- 3 Q. They refused to go underground.
- 4 A. They did?
- 5 Q. Right.
- 6 A. Oh, I --- yeah. Now that you say that, I remember they said they didn't ---  
7 after the briefings they didn't see where they needed to go underground. I thought that  
8 was a little amusing.
- 9 Q. I mean, that's somewhat suspect in itself.
- 10 A. Maybe.
- 11 Q. So they convened and then rather quickly the next day or something after  
12 much deliberation with ---?
- 13 A. Well, they were given the instructions that we needed --- we needed timely.  
14 This wasn't a research project. We had to make a ---.
- 15 Q. Okay. All right. So you told them we need an answer by X?
- 16 A. We had to have a go or no-go decision.
- 17 Q. Did they provide that decision?
- 18 A. Yes.
- 19 Q. And it was?
- 20 A. No go.
- 21 Q. That was in writing?
- 22 A. To my knowledge, it --- I don't know that I --- I don't remember seeing it. Just  
23 hearing that they said there was nothing they could identify that they could tell us that  
24 we could go down there safely.
- 25 Q. I think they wrote a brief paragraph or something?

1 A. It's about a paragraph. There was lots of questions from the press, well, when  
2 are we going to get to see this report and everything and there never was a report.

3 Q. There was no report. Okay. So who finally made the decision then that all  
4 underground activities to try and facilitate a rescue should cease?

5 A. Well, I'd say it was mutually discussed.

6 Q. Was it really hard to make any decision at all after those experts said don't do  
7 any more?

8 A. Well, I mean, that --- there was a whole lot of discussion while they were in  
9 the room --- in the trailer working, and there was never any feeling that we'd override  
10 that decision. Quite frankly, there was ---.

11 BRIEF INTERRUPTION

12 A. For the record, I guess Laine Adair called back and he said that University of  
13 Utah has downgraded it from a 3.1 to a 2.4. They'd been getting 2.4s all week.

14 BY MR. PAVLOVICH:

15 Q. Where was it at?

16 A. Well, they felt this earthquake in the mine office at West Ridge. They call  
17 underground and the people underground say, what are you talking about? We didn't  
18 feel anything. This has happened three or four times this week. When he got on this  
19 one that happened just when he came in here, that had just happened, and they called  
20 up to the University of Utah and they said it was 3.1. Well, that was 3.1 compared to  
21 2.1 and 2.0.

22 Q. Which would be significantly greater.

23 A. Yeah.

24 Q. Then it was downgraded to 2.4, which is a little higher, but not as much.

25 A. But I don't know what that means. He thinks one explanation is that the long

1 walls come out past the ridge that has this castlegate sandstone, good forming  
2 sandstone out there. He thinks that the cave's getting up higher and starting to ---  
3 some big breaks in that sandstone.

4 Q. Eventually that'll be all high plains over there.

5 A. If we selectively mine underneath all the high spots and drop that down to a  
6 valley floor, yeah.

7 Q. I just had one more question before we get into roof support, Al. I think these  
8 guys maybe have some questions about we were talking about. There was an  
9 occasion where we had an inspector say that he --- it was actually the bounce that  
10 occurred the morning of the 16th. There was one at 10:02 or something I think.  
11 Apparently it was pretty significant. He called out and said we had this bounce and it  
12 looks to me like it's loading up in there. I guess the supervisor asked are you going to  
13 make the call to pull the plug on this? And the inspector said, well, let me go talk to  
14 the other guys. So he talked to them and said, no, we don't feel we have that kind of  
15 clout, I guess. Have you ever heard anything like that? I mean, is that kind of how ---  
16 ?

17 A. Well, not in the sense, you said that we don't feel we have that kind of clout. I  
18 mean, what the supervisor was asking for was, what do you think is the point where  
19 you might want to stop?

20 Q. He kind of took it as the supervisor was throwing it back on him. From the  
21 tone of voice was are you the one going to make this call? That kind of thing. You  
22 never heard of any situation like that where somebody reported to you that, Al, these  
23 guys called and said they're thinking about pulling the plug?

24 A. I never heard of that. No.

25 MR. PAVLOVICH:

1 Allen, did you have some questions in that area? We've not  
2 got into roof support yet and the liaisons and press. I guess not. [REDACTED] do you have ---  
3 ?

4 UNIDENTIFIED SPEAKER:

5 Sorry, Joe. I was just --- I guess one question. It may have  
6 been asked in a different way, Joe. If it has, I'll take my ---.

7 MR. PAVLOVICH:

8 Okay. You'll get it too.

9 UNIDENTIFIED SPEAKER:

10 Allyn, it seems like you mentioned that you guys had a lot of  
11 ongoing discussions about the bumps and the roof support and things like that.

12 A. Yeah.

13 UNIDENTIFIED SPEAKER:

14 Did you guys ever actually sit down with everybody as a  
15 group? You know, you've got all this practical experience from Utah, your guys in  
16 Utah, tech support coming out, guys from the company. Did you guys ever sit down  
17 and have some roundtable discussions, let's lay everything out on the table, what  
18 concerns we have about where we're going, the bumps that are happening, or was it  
19 just kind of an ongoing ---?

20 A. It was more ongoing. I mean, we sat down with Joe and Mike talking to them.  
21 I mean, I can remember we had kind of a little picnic table. It was warm weather out  
22 front over an awning, and we sat there and talked about it. Not at one time can I think  
23 that we drew the company, tech support and us in like an official kind of meeting to  
24 have that discussion.

25 BY MR. PAVLOVICH:

1 Q. Did the company have any experts out there kind of like the equivalent of  
2 Gauna and Zelanko?

3 A. Not until that ---.

4 Q. Not until that team came out?

5 A. Yeah.

6 Q. They didn't have any ---?

7 A. They were picked --- I got the sense they were recommended largely by  
8 Gauna and Zelanko. I know that Murray wanted to hire Zelanko.

9 Q. He did?

10 A. Yeah.

11 Q. Did they ever think about bringing those experts onsite between the 6th and  
12 the 16th there?

13 A. I kind of wondered why they didn't call --- why we didn't see Agapito.

14 Q. That was next. You never did see Agapito did you?

15 A. Well, I don't know all those people now. If they were there, came up and --- I  
16 mean, cars coming and going in the mine yard all the time. If they were there, I wasn't  
17 aware of it but I don't think so.

18 Q. We've asked that question of everybody, was Agapito ever onsite? And  
19 everybody's told us not that we know of.

20 A. I got to think they were talking to him on the phone anyway.

21 Q. You would think.

22 A. They never referred to any ongoing dialogue with Agapito.

23 Q. They didn't.

24 MR. TEASTER:

25 AI, do you know data --- this high-powered group that was

1 brought in after the 16th, what data they considered? The determination, as I recall it,  
2 that basically that this mountain is just structurally unsound and there's no way you  
3 can continue.

4 A. That's my understanding of it. I didn't see the data that was presented to  
5 them, but I know Zelanko and Gauna gave them some information that they'd  
6 accumulated, probably all these reports from the University of Utah. They were  
7 briefed on what we were seeing in terms of ongoing bumping underground and that.  
8 Beyond that, I was never in their trailer with them to see what they were looking at.

9 BY MR. PAVLOVICH:

10 Q. I think one of those guys said, Al, that when they tried to rerun LAMODEL or  
11 ARMPS or one of them, that when they plugged in the information they felt they had, it  
12 showed a total failure of the whole area. When they plugged in the numbers that  
13 Agapito used, it showed that there's still no failure.

14 MR. PAVLOVICH:

15 Was that fairly accurate, Bill? I mean, you understand that  
16 better than I did.

17 UNIDENTIFIED SPEAKER:

18 I think when they used the default --- this is in LAMODEL.

19 MR. PAVLOVICH:

20 The default.

21 UNIDENTIFIED SPEAKER:

22 When they used the default values, it all failed automatically.

23 Then when they looked at the Agapito numbers, I think there was some --- I don't  
24 know if it all failed again, but that's what they were looking at when they were out there  
25 and talking to Heasely about running stuff. They were trying to find out exactly what

1 the failure point was. I think the one thing there, Joe, was the cover and that's why  
2 they had to go to Heasely. When they tried to do Agapito's numbers with the input  
3 parameters, they couldn't duplicate the cover that Agapito used. So that's what they  
4 had to turn to Heasely for. You're right. When they just used a cover number in  
5 general it all failed. It was only when they got in to fine tuning the cover incrementally  
6 that they could find some point where it didn't fail.

7 MR. PAVLOVICH:

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

9 UNIDENTIFIED SPEAKER:

10 Yeah, I've got a couple. A couple of mine are from yesterday  
11 maybe just to follow up just to clear some things up in my mind. You mentioned that,  
12 you know, hearing some of the conversations where --- talking about Donnie Durrant  
13 and everything like that. Had you ever had any conversations like that with any other  
14 operator before Murray came out here that hey, you can send over inspectors on their  
15 property with information or anything like that?

16 A. No, never.

17 UNIDENTIFIED SPEAKER:

18 Did you explain to Bruce Hill what the Mine Act says or  
19 anything like that?

20 A. Tell him what the Mine Act says. I told him that I wouldn't --- there's no way  
21 that I was going to honor that request.

22 UNIDENTIFIED SPEAKER:

23 No other operator --- this never even been a thought?

24 A. I don't know of any other operator. With that temperament, though, you would  
25 try to ask it.

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UNIDENTIFIED SPEAKER:

Back to the Price field office, did you ever hear anything about notes disappearing from the Price field office? Inspection report notes.

A. Yeah. You know, I've heard something about that, but I don't think it has anything to do with Crandall. Complaints about guys going back into the files and the information wasn't there that they knew it was there at one time.

UNIDENTIFIED SPEAKER:

Did you do any follow up on it and find out what was going on?

A. Well, I talked to the supervisors and they --- at one point we put locks up on the files. They couldn't explain it. They didn't know who was doing it. There was some suspicion of one inspector. He was in the office for a time, you know, off duty.

UNIDENTIFIED SPEAKER:

Why would that be? Why would somebody take notes out of the ---?

A. It never did make any sense to me. I'm not sure what --- that I remember what the notes were in reference to. Just the whole idea of somebody else grabbing the file, there was no reason to do it was the concern.

UNIDENTIFIED SPEAKER:

Earlier Joe was asking you about the check in/check out system. Were you ever aware that at times it was found out that there were people that were back at the hotel that were still checked in at the mine?

A. We knew that there were problems. In fact, we identified problems in light of the second accident. Couldn't rationalize people that were coming out of the mine with the check in/check out system. There was discrepancies.

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UNIDENTIFIED SPEAKER:

Was it your MSHA people that was involved in the discrepancy? Was it company people?

A. It was some of each I think.

UNIDENTIFIED SPEAKER:

Some of each. One last thing. You talked earlier and other might have, just to get it clearer in my mind, you said that you thought it would be bumping all the time.

A. Yes.

UNIDENTIFIED SPEAKER:

Why would you think that?

A. Well, because it'd be normal. We've got this tremendous change in the stress distribution. From my own working underground for a dozen years in deep cover, that thumping and bumping comes on all the time. In fact, we talked about that list of bumps you had. It was in that couple of days that things were quiet that we were all concerned. In my mind that's worse than hearing the repetitive small bumps.

UNIDENTIFIED SPEAKER:

I don't know a lot about bumps where I'm from. But things that we've heard that when you have a bump that releases the stress. You obviously had a major bump here. Wouldn't you think that that would relieve the stress and that it should be okay?

A. No. My experience is that there's always a lot of bumping. When you have a major, major bump that really moves things around, there's a lot of noise after it. It's like earthquakes and then aftershocks. If you have a big major earthquake and not have any aftershocks, it's probably an indication you may have another major

1 earthquake.

2 UNIDENTIFIED SPEAKER:

3 In those days when it wasn't doing nothing and that was  
4 worrying you, what did you guys think about doing?

5 A. We didn't know what to do. Just proceed cautiously. What else could we do?

6 MR. PAVLOVICH:

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

8 UNIDENTIFIED SPEAKER:

9 This is getting back to yesterday when we was talking about  
10 the plans. Have you ever had the occasion when an operator bypassed you, went to  
11 Arlington and then Arlington personnel called you and said we think you ought to  
12 approve this plan?

13 A. Not on a plan approval. I don't remember that.

14 BY MR. PAVLOVICH:

15 Q. How about on the enforcement action? Do you ever remember that?

16 A. No, not a --- well, an enforcement issue but not an action.

17 Q. Okay.

18 A. We had one instance where we were --- we cited --- get it straight in my mind.

19 Oh. We told the operator that if they took a bolter into a place and it had been more  
20 than 20 minutes since the miner pulled out, they'd had their gas check, that they had  
21 to use an extensible probe to reach up and get a reading by the face. They said, well,  
22 we disagree. We think that the rule allows us to just use a 16-foot probe ahead of the  
23 bolter as it goes in. We got back to them and said that's not the way we read the rule.

24 There still has to be an exam at the face. They wrote to headquarters and we were  
25 informed to accept the 16-foot probe at the head of the bolter.



1 real recent. I think as time has worn on, we had a follow up ---.

2 UNIDENTIFIED SPEAKER:

3 If you could find that, I'd like to have a copy.

4 A. Okay.

5 UNIDENTIFIED SPEAKER:

6 When we was talking about the people getting the personal  
7 protective, including a vest, shin guards and you said you have some order. Now, in  
8 the past, has anybody requisitioned that and was disapproved?

9 A. Not to my knowledge. Not that I ever recall that I was involved with  
10 disapproving that.

11 UNIDENTIFIED SPEAKER:

12 When Joe was asking about the first reading, the first  
13 borehole, the O2 reading, who provided you with that information?

14 A. Well, it came down off the hill. It was from whoever was staffing the hill at  
15 that time. It was an MSHA person. Which particular MSHA person, I don't remember.

16 UNIDENTIFIED SPEAKER:

17 Somebody called it in by telephone?

18 A. Obviously there was --- I mean, everybody was waiting on this reading, and  
19 we got guys up there that are waiting to take it. So it was all staged, but I can't  
20 remember the players at that point in time.

21 UNIDENTIFIED SPEAKER:

22 It wasn't somebody in person showed up?

23 A. Oh, no. It's a two-hour drive.

24 UNIDENTIFIED SPEAKER:

25 It was telephone?

1 A. Yeah. Telephone or --- either a cell phone or ---.

2 UNIDENTIFIED SPEAKER:

3 Then when did you find out that it was an erroneous reading?

4 A. I was thinking it was more like an hour later, but Joe informed me two hours  
5 later.

6 UNIDENTIFIED SPEAKER:

7 Was that another phone call from Kravitz or anybody like that  
8 in person feeding you this information, or was it just from the top of the hill?

9 A. I don't remember getting that information in person for the first time from  
10 anybody. I think it was called down. It might have been called down to --- and one of  
11 those guys took the call and never told us.

12 BY MR. PAVLOVICH:

13 Q. Al, would have you been there? The hole went through at like 11 o'clock at  
14 night. They drew this sample right off of it pretty quick.

15 A. I cannot honestly remember ---.

16 Q. You may have stayed there knowing the hole was going to go through. I don't  
17 know, but it was 11 o'clock they got the sample and it come back 20.7 or something.  
18 The guy said that didn't seem right, but someone up there was making their hourly  
19 call. They said, what'd you get? And they said, well, it's 20.7. So the guy called it  
20 down. That's kind of what you guys got. Maybe even you were there and you went  
21 and told the families that it was Richard or something. Do you remember that? Then  
22 like about two o'clock in the morning ---.

23 A. I know the families got the bogus number.

24 Q. Yeah. They called them in, I think, to give them this information, the best I  
25 can tell from the log.

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MR. TEASTER:

Yeah, they was given that information. You're right.

BY MR. PAVLOVICH:

Q. Then I guess like about one or two o'clock the real information came out after these --- I guess Jeff Waggett and ---

UNIDENTIFIED SPEAKER:

Kim Diederich.

BY MR. PAVLOVICH:

Q. --- Kim Diederich were up there. Do you know those guys, Waggett and Diederich?

A. I know Kim.

Q. I guess then they said this doesn't look right. Let's flush that hole because we're getting nothing but a vacuum here. They were looking at their vacuum gauge and it was up to so many ---.

A. That's the exact story I got from Kim in talking to him later. I said, how did you tell that that reading was no good? He said as soon as he came by it and he saw the inches of water gauge that he had on that vacuum pump, he knew something was wrong.

Q. So I guess then at maybe one o'clock or --- it was a couple hours, I think, because he gave us his list of readings and it was 20, 20, 20, 20. Then after they flushed it, it was like one o'clock in the morning, and then it was seven percent.

A. Yeah.

MR. PAVLOVICH:

Is that what you're asking Ex. (b)(6) and Ex. (b)(7) How did AI find out about that?

1 BY MR. PAVLOVICH:

2 Q. Wouldn't you have left after the ---?

3 A. It runs together, especially those first several days. I have no recollection of  
4 having been sitting in the MEO when that number came in. I knew about it at some  
5 point. I'm not sure I was even there.

6 UNIDENTIFIED SPEAKER:

7 In the Blue Goose there do they have the computers hooked  
8 up? Were they online?

9 A. Yeah. Yeah, we had computers hooked up. We had wires all over the place.

10 UNIDENTIFIED SPEAKER:

11 I'm just wondering why are you calling every hour when it  
12 looks like you could put some of this information on a spreadsheet and they could  
13 read it every hour ---

14 A. Arlington wanted us to call every hour.

15 UNIDENTIFIED SPEAKER:

16 --- instead of making all the phone calls.

17 A. I never tried to direct their workforce. I found that that generally is never very  
18 accepted.

19 UNIDENTIFIED SPEAKER:

20 You had the capability they could have put it right in a  
21 spreadsheet and they could have read it whenever they wanted to read it?

22 A. We did send some more voluminous information to them from time to time  
23 electronically. They wanted these calls. If we were late on the call, they were calling  
24 us.

25 UNIDENTIFIED SPEAKER:

1 Last one. Kravitz blew out his big truck and he drilled the  
2 holes, loaded the holes, was ready, had the station set up. Why didn't we use them?

3 A. There was a lot of resistance from the company. I think mainly coming from  
4 Murray. He's the one that voiced it all the time. His word was generally law to his  
5 people. He thought it was a waste of time and that we'd have to shut down everything  
6 because you have to have total silence when you do it. So we just didn't move ahead  
7 at that time. The time came when it seemed to make sense that we did shoot the  
8 holes.

9 UNIDENTIFIED SPEAKER:

10 And you pretty much had to unload ---?

11 A. Well, we'd have shot them ---.

12 UNIDENTIFIED SPEAKER:

13 Shoot them and unload?

14 A. Yeah, anyway when we left. But no, we did use them in the end. Once one of  
15 the drill holes --- when we were banging on the steel, we were getting this --- I guess it  
16 was noise, but it was very consistent. We thought the possibility of somebody banging  
17 on it.

18 UNIDENTIFIED SPEAKER:

19 What was your thought? Murray made it clear he didn't put  
20 any faith in it.

21 A. Well, all along we're being coached that this is working at its absolute  
22 maximum and has a minimal chance of success. I wasn't adamant that we ought to  
23 take --- stop and take the time to do it because nobody told me it was going to be  
24 successful.

25 UNIDENTIFIED SPEAKER:



1 up out of Price. Bob and I really didn't stop and say well, we need certain technical  
2 expertise to come to the mine right away. I don't really think we even considered it at  
3 the time. I can't remember considering it and discounting it.

4 UNIDENTIFIED SPEAKER:

5 Later on, I guess, in your answer there, I think you mentioned  
6 that you made numerous calls to Billy; is that fair?

7 A. Yeah.

8 UNIDENTIFIED SPEAKER:

9 Were they related to the rescue?

10 A. I'm sure they were. Trying to think of what some of them might have been.

11 UNIDENTIFIED SPEAKER:

12 I guess I'm just looking for any example that you might have  
13 called back to pick his brain on the supports or anything at all that you might have  
14 called, something registered that you felt you needed to talk to him.

15 A. Are you talking about in the first few hours?

16 UNIDENTIFIED SPEAKER:

17 Any point. I don't know. Maybe I'm wrong, but I don't ever  
18 remember anybody saying to us before, in all the people that we talked to, that they  
19 knew that Billy was contacted back here.

20 A. Well, I talked to him a number of times over the course of days. I talked to  
21 him about the plan. It seemed like a couple days to me before we actually had a plan  
22 out there at the mine to take a look at. I don't remember when the first time would  
23 have been. We talked again about what he had seen when he was in there. Just  
24 general conversation about what might have caused it.

25 UNIDENTIFIED SPEAKER:

1 I got a couple questions on the meetings. You mentioned the,  
2 regular meetings I believe was how you phrased it, regular meetings with the company  
3 every day. I don't know that I ever heard when those were scheduled, and were they  
4 regular to the extent that you had them every day at the same time?

5 A. We tried to --- we had a morning meeting that we scheduled and then we  
6 moved the time because of the conflict with the company's shift change. That was  
7 around six o'clock or 6:30 in the morning so that we'd get all the --- to debrief them  
8 about what they learned during the night from their perspective. Then we had another  
9 meeting with them in the afternoon usually close to supper. I guess right around six  
10 o'clock.

11 UNIDENTIFIED SPEAKER:

12 You were always able to attend these or did they ---?

13 A. I didn't necessarily get to all these morning meetings. Often I went straight to  
14 the family briefing.

15 UNIDENTIFIED SPEAKER:

16 Still on the meetings, I guess, going to the tech support  
17 meetings, or I'll call them that, where you met with Gauna and Zelanko and kind of got  
18 their feedback on things, was this just you, Kevin, Mr. Stickler? Were there field office  
19 people there or anybody else?

20 A. When you call it a meeting --- it's more of a discussion, and it was usually in  
21 the MEO and there was usually a lot of people there. It wasn't like we had a specific  
22 group that would come at a certain time and talk to us. We had lots of these  
23 conversations, myself and with Kevin, with guys from the field office.

24 UNIDENTIFIED SPEAKER:

25 I have a couple for you. Following up on one thing that Ex. (b)(6) and Ex. (b)(7)(C)

1 asked you. When you were answering his question about Billy Owens, you talked a  
2 little bit --- you said we didn't approach it as --- I can't remember what you said, but  
3 you ---.

4 A. As a ---.

5 UNIDENTIFIED SPEAKER:

6 Right. In your discussion about whether or not to bring Billy.  
7 Then you kind of switched back and said, you know, I made that decision. I just  
8 wanted to clarify. Was that decision not to bring Billy, was that a decision that  
9 involved anybody else? I know you said for Ex. (b)(6) and Ex. (b)(7)(C) it was. Did you discuss it with  
10 anybody else?

11 A. I kept Bill here at first because I just didn't want to take everybody out of the  
12 office.

13 UNIDENTIFIED SPEAKER:

14 Sure.

15 A. That decision not to bring Bill at a later date was ---.

16 UNIDENTIFIED SPEAKER:

17 Ex. (b)(6) and Ex. (b)(7)(C) I'm talking about Billy Owens.

18 A. Billy ---.

19 UNIDENTIFIED SPEAKER:

20 I just wanted to clarify that there wasn't a request to keep him  
21 here as well.

22 A. No, no.

23 UNIDENTIFIED SPEAKER:

24 That was just a decision that you made ---?

25 A. No, absolutely not. I just didn't even consider having Billy come over right

1 away. Then within hours of that first morning, Billy spent his time 100 percent  
2 responding to stuff from headquarters. He was so engaged in that and he couldn't  
3 have done it from over there. Then we didn't really see the need to discontinue what  
4 he was doing here to bring him over there. It's the only way I can answer.

5 UNIDENTIFIED SPEAKER:

6 Switching gears a little bit. You talked a little bit about what  
7 your thoughts were after you received the low O2 readings. I guess when we talked to  
8 some of the inspectors, a lot of them --- well, that might be an overstatement. You  
9 guys tell me if it is. Many of them felt maybe that it was a recovery definitely at some  
10 point before the 16th with at least a few of them saying maybe even right from the  
11 beginning a recovery. Nobody seemed to want to discuss that or to say anything to  
12 management about it. Do you have any idea why? It just seemed like --- I had the  
13 impression that people didn't feel like their opinions or their thoughts would be given  
14 any credit.

15 A. I don't know why they felt that way.

16 UNIDENTIFIED SPEAKER:

17 That's just my perception, but people, you know, they said  
18 they discussed it amongst themselves but they would never bring it to the attention of  
19 the supervisors.

20 A. Maybe they didn't feel that strongly about it. I don't know. There was nothing  
21 that prevented them from talking to anybody.

22 UNIDENTIFIED SPEAKER:

23 Do you think they felt comfortable though? You can't think of  
24 any reason why they wouldn't have felt comfortable coming to you or to Kevin or  
25 Richard with their thoughts? It sounds like they weren't being --- since their opinions

1 weren't solicited, it seems like they didn't feel comfortable providing those opinions.

2 There's kind of this void there where communication is not ---.

3 A. Well, we certainly never called people in and said, what's your opinion?

4 Should we stop this or not? We continued to try to rescue the miners. We worked

5 toward that end. That's just what we did. The chances of anybody being alive

6 dropped from pretty good maybe, or pretty hopeful, to not very much hope at all after

7 we got that 7.1 percent oxygen reading, in my mind. I think lots of other people felt

8 the same way. I didn't feel we should give up.

9 BY MR. TEASTER:

10 Q. I just have a couple, AI, before we get back into the roof support. Was you

11 aware that Billy Owens had never conducted a LAMODEL analysis?

12 A. Not until after this accident. I don't know what day I found that out, but

13 possibly not even until the whole thing was over and I was back here to Denver.

14 Q. You indicated you had all the confidence in the world in Billy and his ability to

15 deal with these things. But knowing that he had no experience at all with LAMODEL,

16 would that have changed any of that?

17 A. I don't think it would have changed it.

18 Q. AI, can you ever recall where you just outright rejected a plan that was

19 submitted by the operator?

20 A. Sent out lots of rejection letters, yeah. Is that what you're asking?

21 Q. Yes.

22 A. Yes.

23 Q. There's one other one. Was any thought given why there was no GS13 or 13

24 underground with a little over 12 inspectors and rescue workers?

25 A. You mean on a regular scheduled basis?

1 Q. Yeah.

2 A. Because there were 13s underground from time to time.

3 Q. Let me rephrase. Who was in charge underground?

4 A. Well, we had inspectors underground with each crew. In charge --- I don't  
5 quite know how to answer that.

6 Q. Let me just go this way. You had inspectors that was required to more or less  
7 monitor the operations. You had some that were assigned to gather some  
8 measurements, some gathered to get the air measurements and things of that nature.  
9 Who decided which one of them would do what?

10 A. That was decided outside before they went in.

11 Q. Who decided that?

12 A. I was involved in it and Ted and Bill. Don on the off shift. Bob had input to  
13 those sorts of things. In terms of --- I mean, people went under with certain  
14 assignments.

15 MR. PAVLOVICH:

16 Well, you sent three guys in --- or four. Sometimes it  
17 changed. I don't think you specifically said <sup>Ex. (b)(6) and E</sup> I want you to take the air readings  
18 today. <sup>Ex. (b)(6) a</sup> I want you to take the measurements. They knew they were supposed to  
19 take measurements, air readings or whatever. They did what they wanted to. They  
20 worked it out themselves; right?

21 A. We didn't necessarily say one of you guys stays at the face all day and the  
22 others outby ---.

23 MR. PAVLOVICH:

24 Right. Because you knew they were taking turns.

25 A. Right.

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MR. PAVLOVICH:

I guess what Ernie's saying is out of the three inspectors underground, was there a lead person, a decision maker? Was there a supervisor? Was there somebody that would be in charge of the underground people?

A. No, there wasn't. We were always just pick up the phone and call. I mean, there were phones right nearby.

MR. TEASTER:

That's all I have.

BY MR. PAVLOVICH:

Q. He asked you about the LAMODEL, I guess, in the district. You made a comment earlier you didn't even have the software to run it.

A. We never used it.

Q. Did anybody ever request of you to buy the --- I guess the LAMODEL program is kind of like the ARMPS, it's free; right? The only thing you need is a version of AutoCAD. And I guess the only one that has that version here is Dario. So even if Billy could run it, he'd have to go and get on Dario's machine there to do that; right? Did they ever ask you, Al, could we buy another version or get ---?

A. Yes.

Q. What happened with that request?

A. We never got the authorization to buy it.

Q. So you requested it of headquarters and headquarters refused your request?

A. Yeah.

Q. That was in writing?

A. I knew that was going to be the next question and I'm not sure.

Q. You remember doing that, though?

- 1 A. Right.
- 2 Q. Would it have been through George Fesick's shop?
- 3 A. No. We never changed our ---.
- 4 Q. Who would it have been through? Coal?
- 5 A. Coal.
- 6 Q. Through Jimmy. Okay.
- 7 A. We never got straight to the yards for anything.
- 8 Q. So it would have been through Jimmy?
- 9 A. Yeah.
- 10 Q. Al, what was your --- I guess early on the plan said we're going to set some six  
11 by six post or six by eights or something along the rib line. Pretty quickly it was  
12 decided to use the rock props.
- 13 A. Right.
- 14 Q. How was that decision made to go with those rock props, chain link, wire rope  
15 combination?
- 16 A. Discussions with the operator, and we based it on history of success using that  
17 system over at the Aberdeen Mine. We also had Joe Zelanko and Mike Gauna take a  
18 look at the system. They contacted somebody at --- I thought it was the University of  
19 Kentucky who's supposed to be a roof to floor support guru. I don't know the name of  
20 the individual. They told me that that fellow was in agreement that for the purpose of  
21 what we were doing, that that was the best he could --- he concurred that that was the  
22 best we could do.
- 23 Q. So primarily the company suggested it?
- 24 A. Yeah.
- 25 Q. They said we've used this at Aberdeen and it's been successful?

1 A. Right.

2 Q. Had anybody ever told you or said, we've seen rock props blow down at  
3 Aberdeen?

4 A. We know that they --- yeah, that they had, but that was the purpose of the  
5 cables to try to spread some of the load in hopes that it would not blow the whole  
6 thing.

7 Q. How were the cables utilized at Aberdeen when the rock props were installed?  
8 Did the company explain that to you?

9 A. They didn't use as --- we used more cables here than they did over there.

10 Q. But how were they anchored? Were they wrapped around the pillar?

11 A. In some applications they were.

12 Q. How were you using them here?

13 A. Well, we didn't have a pillar to wrap around, so we were anchoring them every  
14 so many rock props.

15 Q. So they were primarily just tied off on the last one and clamped?

16 A. Yeah.

17 Q. So there was no way to anchor the last one similar to how they were used at  
18 Aberdeen? I mean, if you wrapped a pillar ---.

19 A. They weren't all used like that at Aberdeen to wrap pillars because they've  
20 used them where at times it was the panel that didn't have crosscuts in them.

21 Q. People did tell you we've seen them blown out?

22 A. Yeah.

23 Q. Did that still make you feel confident that ---?

24 A. We made the decision that we thought that was the best we could do and that  
25 it had a good likelihood of being successful. We knew that there wasn't any absolute

1 answer. There are no guarantees.

2 Q. So you knew that --- I mean, it wasn't bulletproof. You knew if you had a big  
3 enough bump, it could take those out? There was no ---?

4 A. I don't think there was anybody that thought that couldn't happen.

5 Q. Was there ever any other suggestions made on means of alternate support?

6 A. There were suggestions that circled around from people that --- you know,  
7 what about tunnel liner? We didn't see any feasible way to deploy tunnel liner, plus  
8 you lose your ability to see, and we didn't think that was advisable. There were some  
9 really crazy ideas. Pour concrete and then bore through it. Well, not on a rescue, you  
10 know. We didn't hear anything else we thought was plausible or was any better than  
11 what was used.

12 Q. Was tech support --- I guess were those guys consulted on the decision to use  
13 the rock props prior to the plan being approved that you know of or was that plan  
14 pretty much already in effect?

15 A. No, I think we probably were already using rock props before we had them  
16 start looking into them to see if ---.

17 Q. So you already had a plan in place that something was going on?

18 A. Yeah. Our question to them was, was there something better? And if there is,  
19 let us know.

20 Q. Was there ever any --- you were aware that rock props were knocked out by  
21 shuttle cars in the mine?

22 A. In one place where they were making a turn.

23 Q. About 30 foot of props knocked out?

24 A. I don't remember it being 30 feet.

25 Q. Well, the log says that. I just wondered if you read that in the logs. I didn't

1 mention ---.

2 A. I knew that they had trouble on a shuttle car corner.

3 Q. I guess the shuttle car's pretty stout, but it's probably not as stout as what  
4 these bumps can be.

5 A. Uh-huh (yes).

6 Q. Did anybody ever talk to you about the system that was used at San Juan  
7 Mine, and you may have even approved it in the plan, utilizing a rock prop that was  
8 straight and one on an angle on a platform with ---?

9 A. I heard about that for the first time, I think, a couple of weeks ago. But I never  
10 remember hearing that being part of our discussion up there.

11 Q. So nobody ever brought that up to you or Mr. Stickler or Kevin to your  
12 knowledge?

13 A. Not to my knowledge.

14 Q. Did you hear that San Juan had called the company and offered assistance  
15 and even to have a plane on the runway ready to bring these things in, but the  
16 company never called them back?

17 A. It's the first I've heard of that.

18 Q. Al, we mentioned that seismic thing. I guess there was one time there  
19 somewhere along through that there was a ---.

20 A. If I could say one other thing about that bracket thing.

21 Q. Okay.

22 A. I remember now that I heard about that in concert with mining resuming at  
23 Aberdeen, making the breakthrough at West Ridge where we're going to break into a  
24 preexisting gate road with a start line and the specs higher than --- well, there's a zone  
25 you go through right around the mine opening, and it's an area of concern. I'm trying

1 to think who I got that piece of information from, but I know I sent them over to the  
2 mine and asked them to evaluate it.

3 Q. Is that approved in the San Juan plan; do you know?

4 A. I wouldn't say it's not, but I don't know that it is.

5 Q. Have you ever seen that picture of ---?

6 A. No.

7 MR. PAVLOVICH:

8 I have it up here, (b) (6) Would you help me find it, please?

9 UNIDENTIFIED SPEAKER:

10 Okay.

11 BY MR. PAVLOVICH:

12 Q. Apparently this is the base. I don't think we have any photographs of what  
13 goes on top. I guess they've had some local machine shop that kind of makes those  
14 for them, and supposedly with the bit configuration on the bottom and this stuff, they  
15 must have a cap with some kind of stabilizing surface on the top that does the same  
16 thing. You don't remember seeing something like in the plan or anybody talking to you  
17 about it?

18 A. No, not at all.

19 Q. We mentioned there was one time a seismic report. I don't remember if we  
20 talked about it much yesterday or not. There was this repetitive signal of some kind.  
21 Do you remember that? I don't know the date of it.

22 MR. TEASTER:

23 It was when the third borehole was ---.

24 A. Oh, that. Yeah. Not a seismic report from the University of Utah?

25 BY MR. PAVLOVICH:

- 1 Q. No, no, no. This is from Jeff's seismic ---.
- 2 A. Jeff. Oh, yeah. I remember seeing a printout that ---.
- 3 Q. Fifty (50).
- 4 A. Stick with that.
- 5 Q. How was that report brought to you and explained to you when you first got it?
- 6 Do you remember?
- 7 A. I was in the MEO. Somebody had heard that he picked up some kind of
- 8 noise. They said he was bringing down --- he was coming off the hill and he was
- 9 bringing down this printout.
- 10 Q. Was this Urosek that was bringing it down?
- 11 A. No, I think Jeff brought it down.
- 12 Q. You think Jeff brought it?
- 13 A. I thought so.
- 14 Q. Or did Urosek come down in the helicopter?
- 15 A. Maybe. I know Jeff was --- maybe Jeff came down. He was driving down and
- 16 he got down afterwards and talked about it, but maybe Urosek had the printout and
- 17 brought it quicker in the helicopter.
- 18 Q. So what did John tell you about it when he showed it to you?
- 19 A. That it looked like the possibility of somebody beating on the ---.
- 20 Q. So he gave you the indication that this looks pretty positive that there's a
- 21 possibility someone's down there tapping?
- 22 A. That was the feeling we had.
- 23 Q. You got that feeling from John; right?
- 24 A. Yeah, I guess so.
- 25 Q. Were you familiar with what that ---?

1 A. I never seen one of those printouts like that before in my life.

2 Q. So somebody could say here, Al, and you would have said, well, so what, but  
3 John kind of explained it that way is there's a possibility that this is someone tapping?

4 A. Yeah. I mean, it looked too perfect to be somebody tapping, but you couldn't  
5 discount it.

6 Q. Was that shared with the families?

7 A. You know, I think at some point it was, but I don't think it was done  
8 immediately.

9 Q. When was it determined and by whom that there was no possibility that that  
10 was tapping?

11 A. When was it determined and by whom?

12 Q. Yeah. Was it ever determined that it basically was some kind of echo or  
13 something? I'm not sure.

14 MR. TEASTER:

15 Sympathetic oscillation.

16 A. A what?

17 BY MR. PAVLOVICH:

18 Q. Sympathetic oscillation is what we were told.

19 A. That's a post-Crandall term as far as I know.

20 Q. You never heard that?

21 MR. TEASTER:

22 We got that from Dr. Kravitz.

23 A. Oh. Well, I think that we didn't completely discount it until after getting  
24 another one of those logs like that, and it was similar but not nearly as dramatic as the  
25 first one. Kravitz right away was talking about he thinks this it's just noise from the

1 drill.

2 BY MR. PAVLOVICH:

3 Q. When you had the second one or right away on the first one?

4 A. No. No, on the second one is the way I remember.

5 Q. So right away on the first one Kravitz didn't then come down and say I  
6 discount that as ---?

7 A. No. No, in fact ---.

8 Q. He was encouraging that it was something? Jeff was or John was or both?

9 A. Well, I think both of them said that it could be. I do believe that that was one  
10 of the reasons where we drilled the next hole that we drilled.

11 Q. You think it was your logic for moving that hole?

12 A. Right.

13 Q. So you don't really remember if it was one or the other or John said this  
14 looked positive and Jeff came down and said it was sympathetic or something?

15 A. He definitely didn't. I didn't hear that term sympathetic ---

16 MR. TEASTER:

17 Oscillation.

18 A. --- oscillation at Crandall Canyon. I remember more of a positive feeling  
19 coming from Urosek than I do Jeff. Jeff is just like this, you know?

20 BY MR. PAVLOVICH:

21 Q. He wasn't really ---?

22 A. Just kind of waffling, if you will.

23 Q. Al, what's your impression of the role of the family liaison? What are their  
24 duties?

25 A. They're supposed to stay with the families when they're gathered and they're

1 supposed to try to answer questions, deal with their concerns while they're there and to  
2 give them information that's available to them.

3 Q. Do you feel that they're supposed to mean that from this --- I guess, you've  
4 seen this program policy letter about family liaisons; right? Do you feel that they're to  
5 be basically the primary communicator with the families?

6 A. Not the primary communicator. That was not my perception of it.

7 Q. So you kind of feel like they're supposed to be there all the time to answer any  
8 questions and facilitate any needs that the families have with whatever's possible?

9 A. Right. Yeah. They would also --- if there was questions that they didn't know  
10 the answer to, they'd call us up to see if we could give them an answer.

11 Q. This policy, I guess, actually implements two positions. One is family liaison  
12 and one is primary communicator. The primary communicator one says a separate  
13 MSHA official. Okay. So you've got the family liaison first that discusses what they  
14 should be. Then primary communicator says a separate MSHA official, and in  
15 parenthesis senior MSHA official onsite and/or media specialist will serve as the  
16 primary communicator with the mine operator, miners' reps, media and general public  
17 during such mine accidents. What does that mean?

18 A. Well, that's not the way we did it at Crandall.

19 Q. So you're saying you varied from the policy?

20 A. Yes, we did. I don't think that policy will ever work the way it's written because  
21 I don't think these people ---

22 Q. So you think there's some flaws in this policy?

23 A. --- these people would have stayed content not having Mr. Stickler when he  
24 was speaking to the press about the company speaking to them.

25 Q. So you think --- when you first arrived there, did you feel like it was your

1 responsibility as the most senior MSHA person onsite to meet with the families, to  
2 meet with the media and to manage the operation of all three?

3 A. That was what I had in mind, yes.

4 Q. So you had that in mind of doing that?

5 A. I did it for a day and a half.

6 Q. Then Stickler and Kevin came and that basically continued to go that way?

7 A. Yes.

8 Q. So how would that play out, Al? I mean, you kind of said earlier that a lot of  
9 times you guys would just leave in the morning and go straight to the family and do  
10 the family briefing. About what time would that ---?

11 A. That briefing was usually, I think, at seven o'clock.

12 Q. The family briefing was as 7:00?

13 A. Yeah, I think. I always briefed the family and then ---.

14 Q. So you're leaving the hotel. How did you get your information of what you  
15 were going to brief the family on?

16 A. Well, number one, it was a day and a half. I was doing it, but I was already up  
17 at the mine on those days.

18 Q. Let's go to the days when --- I think while you were there, you probably did,  
19 what, one or two family briefings?

20 A. I did about three.

21 Q. You were involved with them.

22 A. Yeah.

23 Q. And you were involved with how many press briefings?

24 A. I'd say probably about three.

25 Q. Two or three?

1 A. Yeah, maybe two.

2 Q. I think I saw you twice. Would you say on those meetings that you were the  
3 primary communicator with the media or was Murray the primary communicator with  
4 them? Don't mislead me now, Al.

5 A. There's no doubt from what the perception is that Murray was the primary  
6 communicator. I wouldn't argue that for ---. His own people **Ex. (b)(6) and Ex. (b)(7)(C)**  
7 and they couldn't get him to stop. When I went to the briefing, I was there, I answered  
8 every question that was put to me by the press. I don't know what more you could do  
9 short of legal action on the sheriff's part I guess to remove the guy. Plus I didn't ever  
10 have the feeling --- I mean, it says be a primary communicator, but it didn't give us a  
11 gag order to put on the mine operator. I mean, he had a right to talk to anybody and  
12 he did.

13 Q. That policy says that. The policy says nothing in this policy shall prohibit the  
14 mine operator from establishing communication with the families or public.

15 A. I have to give Richard a lot of credit for working towards getting that turned  
16 around, but it took a while. It was just a very difficult situation.

17 Q. Was there ever any consideration given when Murray jumped up there  
18 waiving that report and said this was an earthquake, it's not a bounce, not a bump but  
19 an earthquake and it's an act of God and nothing we did? Then he comes around and  
20 says we weren't doing retreat mining here?

21 A. Did you see my interview after that? I bet you it never got on the air.

22 Q. Well, they cut you off.

23 A. Yeah. I answered the question directly to them that this was retreat mining,  
24 but you probably never saw that one.

25 Q. No.

1 A. I think Richard was exactly right when he stood in front of Congress and told  
2 them if you can tell me how to manage the media, then we can accomplish this.

3 Q. Basically with what this policy says, it's kind of not worth the paper it's written  
4 on because ---?

5 A. It's got no enforcement power. It's a policy. Yeah.

6 MR. TEASTER:

7 You clarified retreat mining, but did you address the  
8 earthquake issue?

9 A. At one point I was asked the question do I think it was an earthquake and I  
10 said that I'd been underground and it looked to me like a bump.

11 BY MR. PAVLOVICH:

12 Q. In fact, I think I remember the first press briefing when Murray was talking  
13 about how many years he'd been in the coal industry and our importance of the coal  
14 and the American public was. Do you remember that one?

15 A. Oh, yeah.

16 Q. I'm sure you do. You were kind of standing with him. Then he said, after he  
17 went through his thing, now Mr. Davis is going to say it. You kind of got up and one of  
18 the first things you said was last night at two o'clock, we had a second bounce in the  
19 number four entry that ran us out. I thought Murray was going to knock you off the  
20 microphone.

21 A. Oh, yeah? I couldn't see him.

22 Q. I mean, he just said wait let me clarify that. We didn't ---.

23 A. I don't remember that part of it. Well, did you see me sidestep him very  
24 slowly away from him when he launched into the diatribe about Davitt being Ex (b)(6) and Ex  
25 Ex (b)(6) and What do you do when you're standing there right on national TV and the guy's

1 calling the former assistant secretary Ex. (b)(6) and Ex. (b)(7)(C)

2 Q. Let's put all that stuff aside because I don't know what we can do. It's a  
3 problem and it certainly turned into a problem for you and Richard and Kevin, I'm  
4 sure, as to what to do with this situation, how to get information to the families  
5 factually and to the media factually. The media probably didn't want to hear facts.  
6 They like the showmanship of Mr. Murray.

7 A. Sure.

8 Q. In fact, several times they cut Stickler off when Murray got done talking  
9 because we're going to go to something else more interesting.

10 A. Commercial, yeah.

11 Q. So you already said you kind of assumed when you got there that you were  
12 pretty much going to be the primary briefer of the family, primary briefer of press for  
13 MSHA's side, not that it was Murray's but for MSHA's side, and also you're directing  
14 the operation. We said you usually got to the family briefings at seven o'clock.  
15 Where would you get your information? Would you call Bill Taylor or whoever was at  
16 the mine and find out the latest numbers and ---?

17 A. I talked to them on the phone either before I left the motel or on the cell phone  
18 on the drive over.

19 Q. So you would formulate your information. I guess you and Richard and Kevin  
20 would ---?

21 A. Let me clarify. When I go on to these briefings with not having been at the  
22 mine, I'm not talking. I'm just going and I'm there if there's any questions that I can  
23 answer.

24 Q. Who was talking?

25 A. Richard.

1 Q. So how did Richard get his information when he was ---?

2 A. He called and talked to the mine. That was part of his thing that had him  
3 ticked off was not getting the correct information in the morning. He was very  
4 emphatic about by such and such a time you need to have this information for me.

5 Q. So you might call the mine too, but you were getting the information on the  
6 phone and you weren't planning on talking about it?

7 A. No.

8 Q. Every time you did a briefing, you had been at the mine and got the  
9 information firsthand?

10 A. Yeah. Yeah.

11 Q. So now Richard was getting his information on the phone?

12 A. Right.

13 Q. Then the three of you would go to the family briefing. Yes?

14 A. Yes.

15 Q. Brief the families along with whoever company person, whether it's Murray or  
16 Rob Moore, and then would stay after and answer questions?

17 A. Some days there were questions afterwards and some days there weren't.

18 Q. Then after you finished that briefing, what was your next order of business?

19 A. I went up to the mine. I often didn't stay there the longest. Richard stayed  
20 there. We had traveled in separate cars.

21 Q. So you might leave before Richard did?

22 A. Typically I did.

23 Q. Then would you ever go to the press briefing?

24 A. I kind of quit going after a couple of days to the press briefing.

25 Q. You didn't go with Richard anymore after that?

1 A. A few times, but not all the time. Number one, he'd come on and now he was  
2 the face of MSHA. If I went down there, those people already knew me and they were  
3 always tugging me to the side wanting me to answer questions.

4 Q. The press?

5 A. The press. So I --- it was really just simpler not to go down. But after several  
6 days, I went down some more times. By that time the focus on me was over and they  
7 ---.

8 Q. They forgot you.

9 A. Yeah, they forgot me.

10 Q. So after a couple days, you started going back then?

11 A. Yeah, but I was kind of hit and miss on the press meetings.

12 Q. Then you'd be at the mine for a while and then what time would the evening  
13 briefings start?

14 A. I think that family briefing was at five o'clock.

15 Q. So you kind of go through the same scenario again? Gather information ---?

16 A. Well, we'd all be there, get all the information at the mine --- and I still didn't  
17 go to all the family briefings, but I went to many, many.

18 Q. I think there was two or three that you're not listed in the log book. For the  
19 most part, you're in most of them.

20 A. Yeah.

21 Q. Then would you then go to the evening press briefing after that?

22 A. Sometimes yes. Sometimes no. Sometimes I'd just get up there and there'd  
23 be a throng and I'd just drive on past.

24 Q. After that was pretty much the shift over or would you go back to the mine?

25 A. No, I'd go on up to the mine. I usually stayed until about dark. Eight o'clock.

1 Q. So maybe about seven o'clock you'd go back up?

2 A. Well, if I went to the --- yeah. Yeah. I don't recall ever just leaving from the  
3 press briefing and going home.

4 Q. You'd usually go back up to the mine for a while?

5 A. Yeah.

6 Q. I guess, Al, between the three of you, you and Richard and Kevin, you  
7 attended most of the family briefings with him and a lot of the press briefings, although  
8 several you didn't go to, how many hours a day would you have been spending  
9 preparing for the briefings, conducting the briefings, answering questions, going to the  
10 press and then repeating that again in the afternoon?

11 A. Well, I think the actual preparation for the briefings was not significant.

12 Q. Well, you'd kind of meet with the company people, though, wouldn't you  
13 before to see what they were going to say? In the parking lot or ---?

14 A. No.

15 Q. You didn't?

16 A. No.

17 Q. So you never knew what the company was going to say ---?

18 A. Even if you met with them, you wouldn't know what the hell Murray was going  
19 to say. So we just discontinued that part of it.

20 Q. So you really didn't know what the company was going to say when they even  
21 talked to the family?

22 A. Not in the latter stages.

23 Q. In the early stages would you have?

24 A. The latter stages of Murray being at the family meetings. Then after that,  
25 when Rob Moore was doing them, we had a pretty good idea.

1 Q. Would you discuss that with Rob prior to? I mean, you'd kind of count on what  
2 he'd want to say or not?

3 A. I didn't. Maybe Richard did, but I didn't.

4 Q. Well, even with that said, how many hours a day would you have been  
5 involved in that?

6 A. All of that or just the briefing?

7 Q. All of it.

8 A. All of it. That'd probably consume about five hours. Right at first there was  
9 more that went on with the press briefings and later on, that kind of waned after a  
10 while.

11 Q. So even five hours ---. Primarily, who was in charge of running the operation  
12 when you guys were spending this five hours down there?

13 A. Well, it would have been in the evenings, ---

14 Q. Bob on the evening shift, but ---

15 A. --- Bob Cornett.

16 Q. --- what about on the dayshift?

17 A. It would have been Bill Taylor. Now, we had good communication in those  
18 days. So if there was anything that happened, I mean, they would call us on the  
19 phone.

20 Q. Well, for example what kind of things would he call you about?

21 A. Well, we just didn't get many calls. I mean, there wasn't things were changing  
22 minute by minute, you know. I mean, we spent day after day after day doing the same  
23 thing.

24 Q. It appears that way because it's almost like the advancement in number one is  
25 somewhat at a snail's pace. But yet there's a hell of a lot going on. If you're looking at

1 footage, the footage is rather slow. Would you say Stickler's main thing here was  
2 looking at footage?

3 A. It was one of his main concerns primarily ---.

4 Q. Probably his primary concern?

5 A. Well, I'm not going to say his primary concern, but I don't know.

6 Q. Did you hear him talk about other things?

7 A. Yeah. We talked about boreholes, where we going to drill the next borehole, a  
8 whole lot of things.

9 Q. So he wasn't focused primarily on why is our footage so slow and ---?

10 A. He was concerned about it. I'm sure he hated to go down and tell the people  
11 we only made five feet since this morning. Sometimes that was the report. I think  
12 that is why these comments that I read in the press were very discouraging about their  
13 assessment about how we treated it.

14 Q. You mean the press or the families?

15 A. The families. I couldn't believe --- I mean, after getting to know a few of these  
16 people from talking to them, I couldn't believe that the words were coming out of their  
17 mouths because we never had that kind of relationship when this was going on.  
18 Afterwards, we were no good SOB's. We just come down twice a day and kicked  
19 them in the teeth. We came down twice a day and gave them an honest report of  
20 what was going on. So they knew that it was never good news. I could see why they  
21 would say we kicked them in the teeth, but we didn't come down and lie to them  
22 either.

23 Q. Do you think maybe there was more hope given to them in those briefings  
24 than was realistic?

25 A. Hope was kept alive. I don't think that we tried to generate more hope than

1 there was. I'm sure most of the hope was on their side of the fence than there was on  
2 our side. We didn't say things to these people that are out there crying that, you know,  
3 we think you might as well just give up. We have to tell them ---.

4 Q. You didn't say that?

5 A. No.

6 Q. So you basically left them every day, and I'm not saying you specifically but  
7 you with Richard and Kevin and whoever, left them with the feeling that there's still  
8 hope and we're still proceeding in the matter?

9 A. We didn't come down there to say things to give them hope. We came down  
10 there and told them what we were doing, what we were going to be doing, that we  
11 hadn't stopped and we weren't going to stop. I think Richard gave them very factual  
12 information. I mean, many, many days it was real hard information to hear, but he  
13 was factual.

14 Q. Al, I think you said that it was a pretty emotional event being down there and  
15 these people were crying. I mean, it tugs at your heart strings.

16 A. Yeah.

17 Q. I guess unless you've actually had a loved one missing in the mine, you  
18 wouldn't know how they feel, but you sure could feel close to it by being there?

19 A. Yeah.

20 Q. With those dealings twice a day and being subjected to that heartache and  
21 those families and the crying and trying to be as sympathetic and helpful as possible,  
22 is it possible then to go back to the mine and make objective decisions about do we  
23 need to stop this for the safety of our people, do we need to continue on? Are you  
24 influenced by that when you make a decision?

25 A. I think we separated the two, but I wouldn't claim that there couldn't be some

1 effect.

2 Q. I'd like to think that we all could separate that. I mean, I don't think I could. I  
3 mean, I don't think I could come to a mine fire or something to make objective  
4 decisions about, no, I'm going to pull the plug here or no, I'm going to do this when I've  
5 just been meeting with these sobbing families. Maybe there's people that are strong  
6 enough to do that. I don't know.

7 A. I don't think that you could separate that even if you're not meeting with  
8 families when you're dealing with a situation where there's miners still underground.  
9 Not in my mind.

10 Q. I mean, that's your opinion.

11 A. Yeah.

12 Q. Then you don't feel that there's any extra pressure exerted by families or  
13 media or anybody else to continue on when maybe you thought we shouldn't continue  
14 on?

15 A. I'm not saying that because ---.

16 Q. Well, let me ask you that then. Is there pressure ---?

17 A. Absolutely.

18 Q. Was there extra pressure exerted by the family briefings and the media  
19 briefings?

20 A. There was pressure exerted.

21 Q. Do you really think that the people that are managing the operation and  
22 decision makers on what to go on, should they also be the people that do the press  
23 briefings and the family briefing, or is that too much to almost ask of somebody?

24 A. It was a big job, but that's what I perceived the job to be. I never in my mind  
25 had the notion that the MSHA person that's talking to the press would not talk to the

1 families. I mean, that never crossed my mind. I don't --- I kind of lost my train of  
2 thought where I'm going with this. What was your question again?

3 Q. Should that also be the job of the person who's managing the rescue operation  
4 to also be the person who's the press communicator and family communicator?

5 A. I think it'd be better if it wasn't, probably.

6 Q. If you devoted your efforts to one thing it might be --- I'm not saying any of it's  
7 going to be any easier, but you could stay focused on the one task at hand as opposed  
8 to trying to do all three? Would that be better in your opinion?

9 A. I think it would be better, yeah.

10 Q. Let's face it. There's a lot of distractions in there.

11 A. That was never the instruction that was out there. I remember after Aracoma  
12 hearing, you know, what a good job Jesse did talking to the press. Headquarters folks  
13 seemed to think that that went really well. So in my mind that was the way this was  
14 supposed to go.

15 Q. Was Jesse managing the operation?

16 A. From Colorado I thought he was, but maybe it was different there in Aracoma.  
17 I don't know.

18 Q. So based on your understanding of this policy, you assumed that was your  
19 responsibility?

20 A. I assumed that, yes.

21 Q. And really ---.

22 A. I don't think there was any mechanism built into the policy that gave the family  
23 liaison person all this information or gave him instructions to get the information to  
24 brief the families. Maybe I've been reading it wrong.

25 Q. I can't argue with you, Al, except if I read what's in the portion here that's

1 attached to it that says accident in this handbook. It kind of gives the impression that  
2 these people were almost the ones to give the briefing. It doesn't specifically say, but  
3 it says the liaison will establish a scheduled to brief family members on new and  
4 emerging information. Well, you could read that and say establish a scheduled for  
5 him to brief them or her to brief them, or he's only going to establish a schedule and  
6 somebody else comes.

7 A. Yeah.

8 Q. That's kind of ---.

9 A. Let me say this. My understanding of how it had been done in the past where  
10 there had been a family liaison sent, and I think it's only been once or twice, ---.

11 Q. I think this is maybe the first. I'm not real sure. I think maybe families were  
12 being briefed like at Aracoma or Sago, but I don't think you had a liaison that was  
13 there 24 hours a day like this. This was the inception of that program. To be honest  
14 with you, you know, every comment we had from the people was Bill Denning and  
15 Carla Marcum did an outstanding job. Outstanding.

16 A. Yeah.

17 Q. You mentioned earlier you don't know how some of the people could have  
18 said some of the things they did.

19 A. Yeah.

20 Q. Let me tell you some of the things maybe that we've heard. First of all, these  
21 people are family members, not miners. Some of them may have been, but a lot of  
22 them didn't even understand what MSHA meant. So if you would stand up and say  
23 I'm Joe Pavlovich and I'm from MSHA and I'm here to do this, they didn't have the  
24 slightest idea. People told us when Stickler and Murray walked in the room and  
25 Murray started, they thought Stickler worked for him. They didn't come for him. He's

1 the assistant secretary of MSHA. Even though I'm sure it was told to them, they may  
2 not know MSHA, they don't understand those terms. And, first of all, you're in a state  
3 of grief. It doesn't mean anything to them.

4 They're just looking at him together and say here's Murray and here's Richard  
5 right by his side all the time. That happened for several days. Some of them didn't  
6 even know that the family liaisons worked form MSHA, no identifying anything. They  
7 said we never met a family liaison. I said how about Bill Denning or Carla Marcum?  
8 Oh, yeah. We loved them. We didn't know they worked for MSHA.

9 And I realize from your respect when you look at it and say, how could  
10 anybody say it? But you have to look at it from their perspective. Maybe we need  
11 something. Maybe we need identification. Maybe we need some means of something  
12 else that there's no question in their mind of who you are and what you're authority is  
13 or what you're trying to do. So when you --- from this side and from this side it's two  
14 different things. If you look at the whole thing, it kind of comes together a little bit.  
15 Maybe you can see that.

16 MR. TEASTER:

17 There was a lot of people and a lot of different organizations  
18 there. It wasn't just like MSHA and the company. You know better than I, that there's  
19 a lot of different organizations.

20 A. Yeah. We had a lot of volunteer folks that were coming in and helping out. I  
21 didn't know who they were either, but we had local church leaders. There was a whole  
22 bunch of them.

23 BY MR. PAVLOVICH:

24 Q. I guess there was an issue with the Hispanic family. The first several days  
25 Murray would come in and give a briefing. He had a preacher and his wife, I guess,

1 spoke fluent Spanish. When Murray's giving his briefing, he doesn't say a sentence  
2 and allow them to translate. He's going on and on and on. They're trying to whisper  
3 and then make notes so they can talk to him later. That's no way to --- to do  
4 international work you --- in order to talk somebody, you say a sentence and the  
5 translator translates. There's no feedback for them. There's ---.

6 A. That was addressed as soon I understood that it was a problem. I mean,  
7 when you stand in front of the audience you don't know who speaks English or who  
8 doesn't because not everybody that looked Spanish doesn't speak English.

9 Q. No. That's true. How would we go about correcting that in the future, AI?  
10 Would we just have to take a survey or a poll of who speaks English, who only speaks  
11 Spanish?

12 A. Well, I can make an educated guess that if there's problem anywhere out  
13 there in the ---.

14 Q. I think that problem was identified pretty quick at least by the family members.

15 A. Even when I was doing my first briefing, I remember that that lady was  
16 translating it. If he did that, what you're saying, it happened then before I got there to  
17 the evening briefing on the first day.

18 Q. If who did what?

19 A. Murray. Talked to people without letting it be translated.

20 Q. Oh, it goes on that way, AI, until ---

21 MR. TEASTER:

22 9th. They had a meeting on Wednesday.

23 BY MR. PAVLOVICH:

24 Q. --- 9th or something. I mean, it's right out of the family liaison log that this is  
25 repetitive until I think the 9th there's an argument with Murray gets angry because one

1 of the ladies screams at him that the preacher or his wife that was trying to translate  
2 he's not giving her a chance. Then I think you or Stickler and Kevin maybe got in but  
3 Murray stomped out. Then you guys got in a meeting outside and said we need to  
4 give these people an opportunity to translate. Do you remember any of that?

5 A. I don't remember that --- I'm not sure I was there when that particular thing  
6 happened. Maybe I was. I remember when I was briefing right from the start that that  
7 lady was there. Or the preacher himself and they both did it. I wouldn't deny that  
8 didn't happen. I don't know what else I could tell you.

9 Q. We're not arguing about it. I mean, all I can do is ask you what your  
10 remembrance of that is and ---.

11 A. I remember that there was concern that there was Spanish speaking families  
12 there didn't understand what was going on or what was being said.

13 Q. You were aware somewhere along the line of that?

14 A. Yeah. I swear I'm thinking that the fellow that --- maybe it was the second day  
15 that he showed up, but it was pretty quick.

16 UNIDENTIFIED SPEAKER:

17 Joe, did you mention about the one, why it's not really known  
18 the identities?

19 MR. PAVLOVICH:

20 No, not yet. Go ahead.

21 UNIDENTIFIED SPEAKER:

22 I'm sorry.

23 MR. PAVLOVICH:

24 I'm looking at this. No, go ahead.

25 UNIDENTIFIED SPEAKER:

1 We interviewed one of the family members, Al, and it kind of  
2 shocked us as well. She was Hispanic and spoke broken English. She could  
3 understand English but couldn't speak it real well. I mean, we could sit there and have  
4 a conversation. So she spoke good enough English to carry on a conversation. She  
5 told us she didn't know for three days that her husband was one of the missing miners.  
6 This came straight from her. She said no one from the company came and told her  
7 your husband's missing. She knew they had an accident at the mine, so she actually  
8 went to the family center and she assumed her husband was one of the trapped  
9 miners because he didn't come home.

10 MR. TEASTER:

11 She thought he might be a rescue worker.

12 UNIDENTIFIED SPEAKER:

13 I know you don't get in to all those details when you have a lot  
14 going on, but ---

15 A. Yeah.

16 UNIDENTIFIED SPEAKER:

17 --- she told us that from her own experience. And it was kind  
18 of shocking.

19 Q. Yeah. Well, that would be, but I never heard that until just now.

20 BY MR. PAVLOVICH:

21 Q. You may have not have been there on this day, but Denny makes notes. He  
22 says Murray put down the lady Ex. (b)(6) and Ex. (b)(7)(C) who I think is lady you're saying was doing  
23 the translation.

24 A. Yeah, okay. Yeah.

25 Q. Ex. (b)(6) and Ex. (b)(7)(C) would be the preacher's wife?

1 A. Yeah.

2 Q. Who said he is taking away hope. Murray abruptly left. Governor Huntsman  
3 arrived. Tense meeting between Murray, Stickler, Huntsman and others --- I don't  
4 know if you'd be one of the others or not.

5 A. I remember that statement about taking away hope.

6 Q. Finally Murray agreed to delegate meetings and will let **Ex. (b)(6) and Ex. (b)(7)(C)** do  
7 Spanish interpretation for Hispanics. This is the first time, and this is the evening of  
8 the 8th I think, that Murray says I'll finally slow down enough and we'll do it sentence  
9 by sentence to let your husband do the translation. So that's the third day.

10 A. Okay.

11 Q. Then Murray announced that he'd take **Ex. (b)(6) and Ex. (b)(7)(C)**  
12 to the drill site and into the mine. How did that come about?

13 A. I don't know how he originally talked to those guys. I don't know, but he said  
14 he was going to take them to the drill site and that's fine and dandy. He did talk to us  
15 before he took them underground. They both had been miners and we agreed to let  
16 them go under. I think that they made several trips underground, and I think it did  
17 help the trust situation down there with the families quiet a bit.

18 Q. Well, why would the families not be trusting what was being told? Why did it  
19 take family members for them to trust what was happening?

20 A. Human nature is the only thing I can figure.

21 Q. No particular reason that you could tell from being there?

22 A. Well, they got a guy that's a big loud mouth company executive/owner and  
23 you have the government so who do you trust? You trust one of the guys that's sitting  
24 in the audience that has a brother in the mine.

25 Q. Good point. Al, were these briefings pretty thorough in that you got up and

1 showed them on the map, showed them here's how the coal's packed in, here's what  
2 we're trying to do, here's ---?

3 A. There were at times pictures taken down shown up on screen, a map was put  
4 up, ---.

5 Q. Was that pretty early on?

6 A. Not immediately, but it was fairly early on. It might have been three days into  
7 it or so.

8 Q. Some of these family members when these two guys come, that's the first  
9 time we really heard any details about what it was really like down there.

10 A. I guess that's there version.

11 Q. How did it come about that --- did you think that --- what did you do with the  
12 family members going as far as the K order or plans or anything? Were they going in  
13 to do work to relieve the ---?

14 A. No, they were not.

15 Q. So how did they fit into the realm of K order?

16 A. They fit into the realm of the whole picture of trying to help us with our  
17 problem with the families.

18 Q. Was there a plan submitted or something to take them in?

19 A. There was discussion about it before they went in. It was agreed since they  
20 both were experienced miners, that they could go down to look and they had to have  
21 the requisite training before they went underground.

22 Q. So you didn't feel there was a need to modify the K in any way or submit a  
23 plan for that?

24 A. We never did.

25 Q. I'm asking did you feel there was a need to do it?

1 A. No.

2 Q. Did they go in the mine several times?

3 A. At least three times to my recollection.

4 Q. How about the press? How did that come about where the press was taken in  
5 the mine?

6 A. That was one press briefing that I was at. The original plan was Murray had  
7 this employee who was going to go down and take video. He promised the families  
8 that he was going to do this and he'd bring this video back to help explain what they  
9 were having trouble to understanding what things looked like. Unbeknownst to me,  
10 there's an issue with his equipment. So I'm over on the sideline and the briefing is  
11 essentially over. Then Murray says we're going to go in and take some video  
12 underground, but we've got a problem. Our light source is not powerful enough.

13 He says if one of you will loan us a light source, then you'll be the first one that  
14 we'll share this video with. There was silence with the press. Then all of a sudden  
15 one guy blurts out you can use my light source if I can go with you. Murray turns on  
16 his heels and looks at Richard Stickler and says what do you say to that? Well, the  
17 cameras are rolling. So Richard looked around at Kevin and me. I know I gave him  
18 pretty much a blank stare. Then Richard finally said I won't stop it.

19 Q. I won't stop it?

20 A. Yeah.

21 Q. Which means it's okay, I guess?

22 A. Yeah.

23 Q. Was there any problems --- did you feel that met the requirements of the K  
24 order or the restrictions of the K?

25 A. It's irregular.

1 Q. Did you ever hear about any confrontations between any of your inspectors or  
2 supervisors and Mr. Stickler concerning those press people going in?

3 A. [REDACTED] had had some issues earlier on when the company wanted to take  
4 some pictures. He felt that they're only wanting to take pictures because of some  
5 citations that we had issued about rock dust and that they were just wanting to  
6 document that to build a case against us. And we had said no to doing that. He might  
7 have said something that, you know, this isn't consistent with the stand we took on  
8 that, but I don't remember an actual confrontation between any of my people and Mr.  
9 Stickler.

10 Q. Did you ever hear any comment about Ted Farmer and Gary Jensen stopping  
11 the press and telling them they couldn't go in the mine and Stickler coming up and  
12 saying it's okay?

13 A. No.

14 Q. Jensen actually getting angry and Ted putting his hand over his mouth and  
15 telling him to shut up? You ever heard that?

16 A. No.

17 Q. Nobody ever came to you and asked you, Al, what in the hell are we doing?  
18 Why are we letting these people in?

19 A. There was some discussion that evening. All this was happening pretty fast. I  
20 don't remember who it was with, and it might have been Ted. At that point, I knew  
21 Richard agreed to it so I wasn't trying to countermand.

22 Q. Did you ever talk to Richard after that and tell him how are we going to do  
23 that? You didn't? Did you think he wouldn't want to hear what you had to say about it?

24 A. No, I didn't talk to him about it.

25 Q. You didn't talk to him?

1 A. No, I didn't.

2 Q. There's a modification on the K order, AI, dated 8/7/07 written by Barry  
3 Grosely that says something about it's modified to permit the operator to use a camera  
4 underground in accordance with their currently approved photography plan.

5 A. Yeah.

6 Q. I guess there was no photography plan, but ---

7 A. In the end there was.

8 Q. --- aside from --- there was. Okay. It says the use of the camera will be  
9 limited to photographs depicting underground conditions for the purpose of informing  
10 family members or members of the media the current underground conditions in the  
11 mine and the equipment used in the recovery. That was not the instance of the media  
12 going in.

13 A. Yeah.

14 Q. This is on the 7th.

15 A. That's on the 7th?

16 Q. Yeah. Then it says any other usage of photography equipment will require a  
17 specific approval by MSHA. Those media went in --- what day was it? The 9th? Was  
18 there any approval given by MSHA in writing?

19 A. Not in writing, I don't believe, not to my knowledge.

20 Q. So Richard's agreement that you will go --- was there any inspectors ever  
21 came to you and said they disrupted the operation underground with those cameras?

22 A. There were some people that were unhappy about it, inspectors that didn't  
23 think it should have been done.

24 Q. So they conveyed that to you?

25 A. I heard those rumblings there.

1 Q. They didn't come specifically to you and tell you though, Al?

2 A. Not before it happened.

3 Q. No, I mean, it would have been --- they wouldn't have known it was going to  
4 be disruptive until after it happened. Did they ever come and say they were shining  
5 the light in the shuttle car operator's eyes and Murray threatened to fire the guy  
6 because he couldn't run a car and Gary Jensen shined his lights in the reporters eyes  
7 or something and said see how do you like that? Had you ever heard any of this?

8 A. I heard about lights being shined in the shuttle car driver's eyes, but I didn't  
9 hear about Jensen shining his lights in the reporter's eyes.

10 Q. Did you mention that to Richard that that may have disrupted the operation  
11 underground?

12 A. I don't know when I ---.

13 Q. Or were you kind of afraid to, Al?

14 A. Well, he had okayed it, and I didn't try to derail it.

15 MR. TEASTER:

16 Al, was you aware that they went all the way up to the area  
17 where they were loading?

18 A. My understanding was that they were not to be up there, that they were  
19 supposed to look just at the areas where they could see on the outby end, the entries  
20 that were loaded with coal that we had loaded out of.

21 MR. TEASTER:

22 You say outby?

23 A. Well, we only took number one in. So two, three and four had the same thing  
24 to look at available way outby ---.

25 MR. TEASTER:



1 A. I don't remember him voicing it. Well, maybe just a little bit. I mean, he  
2 wasn't adamant about anything to me.

3 Q. He wasn't?

4 A. Not that I recall.

5 MR. TEASTER:

6 AI, did you ever hear of anything that Mr. Stickler may have  
7 gotten some direction from Washington or somewhere up in that direction to allow the  
8 press to go underground?

9 A. I never heard that. I don't see how he could have, though. I mean, the way I  
10 saw it come down there was no opportunity. Unless he made a call after that but  
11 before they went underground just to make sure. I wasn't with him the whole time.

12 BY MR. PAVLOVICH:

13 Q. How would you describe Murray's interaction with the families, AI?

14 A. I think he had good intentions, but he's a loud guy. He's used to getting his  
15 way and not being questioned about anything. I don't think he could ever get past that  
16 in his personal dealings with the families and so that came across to them. The more  
17 excited he got, the louder he got. I can remember times just cringing at some of the  
18 things he said. He was talking one day about we're going to get those men out of  
19 there. Then the next thing he said, we'll be in there to get the bodies. I'm like whoa,  
20 wait a minute. One sentence we're bringing live people out, and the next sentence it's  
21 bodies. I figured that might be an uproar, but nothing happened right at that time.  
22 Maybe there was a lot of discontent about that later, but I didn't hear of it.

23 Q. So he was rather harsh with them, I guess, at times?

24 A. At times he was really heartfelt and emotional and tearing up and that, but that  
25 wasn't always the case. Other times --- one of the worst ones I thought was when ---

1 right at first, you know, they weren't in the high school. They were in the legion.

2 Q. Senior Citizens.

3 A. Senior Citizens, yeah. The press had more accessibility to him then and  
4 some of the people had talked to the press. After that happened, I guess it was the  
5 next day, he launched into a lecture about his people don't need to be talking to the  
6 press and telling them if they did the press would be hounding them all the time and if  
7 they wanted to talk to the press that he didn't need them down there. This is tough  
8 talk here. I'm sure that set him off. I was in and I was out so I wasn't around all day  
9 long to hear the ---.

10 Q. We have reports he was talking down to them. Like somebody asked a  
11 question and he said I'm not even going to explain that to you because you wouldn't  
12 understand it anyway. Things like that.

13 A. I wouldn't doubt he said that, but I don't recall that exact statement.

14 Q. How would you say --- what was Stickler's role in dealing with the families?

15 A. I think Stickler --- he'd come down there and give everybody a factual account  
16 of what went on. He's kind of a --- he's a pretty steady line. He was not emotional.  
17 He was just factual. He didn't always have the opportunity to give the whole report  
18 because Rob Moore would be there. Moore would give a pretty factual report. In a  
19 way I felt bad for Richard because the company was always stealing some of his  
20 thunder. I mean, he wanted to have the credit of fully informing the families.

21 Q. So they would go first?

22 A. So he would always --- yeah, they always went first. He always had  
23 something to add, but I never saw him express hope like Murray would at times that I  
24 thought was extravagant maybe.

25 Q. Do you think that kind of stuff from Murray expressing hope one day and

1 getting bodies the next day would put those families kind of on a roller coaster?

2 A. I wouldn't doubt it.

3 Q. Highs and lows?

4 A. That's why eventually we did get him out of the picture.

5 Q. But it took several days.

6 MR. TEASTER:

7 AI, one of the perceptions that we've gotten from family  
8 members is the briefings that were conducted by the company and MSHA would just  
9 confirm basically what they said. They really wasn't really involved in the briefing  
10 process. How do you ---?

11 A. I could see where they'd say that because of the fact that Murray's people  
12 spoke first. That was what I was saying a minute ago. It didn't leave a lot of the  
13 reporting left for Richard to give. Richard just kind of filled in some more --- fleshed  
14 things out a little more, if you will, talking to people.

15 MR. TEASTER:

16 So when there was a questioning session at the end of the  
17 briefings, maybe some folks come up and ask some questions of Mr. Stickler, but they  
18 might be all from the same family or they may be some that's kind of distant family,  
19 not immediate family. So the family members, let's just go with a widow, they don't ---  
20 I mean, that's her perception is the company's doing all of it. They're not asking  
21 questions so there'd be really no involvement from MSHA from their perspective.

22 A. Could be. It could have happened. When I went down there, there was one  
23 family that would come to me with some questions. After they had done that a few  
24 times, I talked to them even if it was just a shoulder, you know. I don't think I had any  
25 of the other families come to me with a question. Once you come down and drop that

1 load on them, what else are you going to stick around to tell them?

2 BY MR. PAVLOVICH:

3 Q. There wasn't much good to tell them.

4 A. There never was. There was never anything good.

5 BY MR. TEASTER:

6 Q. Do you know who was the closest kin from each of the family members down  
7 there?

8 A. It took me a long time to kind of get a feel. Never did have a hundred percent  
9 feeling, especially with the Hispanic families. The whole thing got out of hand. I'm  
10 sure you know this. At one point in time that crowd had swelled to nearly 100 people.  
11 We talked to the sheriff about that. He came up with this program of issuing cards, so  
12 many to each family and they could decide --- the senior family people could decide  
13 who else amongst their family would get the other cards and keep all these other  
14 people that are either distance relatives or at times just people who knew it was  
15 happening and were just coming in there to --- you know, looky-loos off the street.  
16 And even one time a reporter was in the office.

17 So that was changed and then they put the guards up at the school gates to  
18 the school there. I'm assuming they always checked those cards. Of course I didn't  
19 have a card and they always knew who I was and I went through. That reigned things  
20 in. After that, the crowd was much smaller. It got to the point that new people were  
21 coming in and then they were asking questions that were historical at that point in  
22 time. To go back through all that stuff with everybody in the audience, it just wasn't  
23 working well to answer everybody's questions when somebody who's arriving on day  
24 five is asking about something that happened much earlier.

25 Q. AI, another point. You indicated that the company at times was giving more

1 hope and ---?

2 A. Murray. Not Rob Moore, but Murray himself, I think, at times tried to,  
3 especially early on, tried to bolster peoples' hopes. He made statements like we're  
4 going to get those men out. He did say dead or alive.

5 Q. The family members --- we haven't talked to all of them, but there's a lot of  
6 them out there that believe that they were given a lot of hope that those miners were  
7 alive and they'd be rescued. Then when they got down to the end even after the  
8 rescue underground operation had stopped, they still had some hope. It wasn't until  
9 after they seen near the end when it was announced or getting close to that  
10 announcement that they started having these visions that their loved ones were down  
11 there in the cold, starved, couldn't get their medicine but they were sitting down there  
12 waiting for us to rescue them and now we were just going to stop all hope because ---.

13 A. We hoped that that wasn't the picture that they were getting. We had been  
14 delivering them nothing but bad news from the get go. I remember when the end  
15 came because that's when all of a sudden the family briefing fell back to me again,  
16 and I delivered those last two briefings. In my notes you probably see some of my --- I  
17 got my thoughts together before I went down there on what I was going to say. I didn't  
18 know until the last day when I talked with Richard over the phone that --- I said, what  
19 are we going to do beyond here? Are we going to press for another hole or not? He  
20 finally made the decision --- he said, I don't think so.

21 He asked me what I thought, but --- I didn't think another hole was going to do  
22 us anything. All the time these families would be out there to ask questions and they  
23 just would totally overlook the fact that we had seven percent oxygen. This is 20  
24 some days later. Even the best we got oxygen up to was like in the 17's.

25 Q. AI, I think, again this is just talking from their side, they were kind of led to

1 believe seven percent don't mean nothing. Don't give up hope. It don't mean nothing.

2 They could have got over here in a barricade. There could have been a pocket of  
3 good air.

4 A. We said that, yes.

5 Q. They hung on to that. So it wasn't like there's very little hope now of  
6 surviving. It was like don't give up. There might have been a pocket over here we  
7 could have got into. I know it's a fine line balancing act to say no hope versus hope.  
8 You don't necessarily go in and say there's no hope when there's a possibility of it. At  
9 the same time, when you got that seven percent, you really felt, you indicated earlier,  
10 that chances are almost none. Yet they were led to believe don't really take that that  
11 there's no hope. There's some more possibilities.

12 Of course, when you got a loved one trapped like that, I would imagine that  
13 you just look for something to cling to. They apparently attached themselves to that  
14 hope. Then when they got that little bit of ring over there that we referred to it as  
15 sympathetic oscillation, that was some pounding and they got that information, you  
16 could just see that they had that hope. That seemed to be the thing that really  
17 bothered them and then all of a sudden there's no hope. Then they find out after it's  
18 all over with there was really no hope all along, and these people just misled us  
19 through the process here.

20 A. I could see where they might say that now, but they would have never said  
21 that to us back then. You have to deal with the moment you're in, not where you're  
22 going to be 20 days from now. That's the only way I can defend what we did. I think  
23 to this day we would be criticized if we didn't explore those avenues of possible  
24 chance that people were either barricaded in or that somehow or another there was  
25 somebody down there pounding on the pipe. They knew we got those results and we

1 were listening with the seismic and everything. We got them and we said it can't be.  
2 Just forget it. How do you deal with that?

3 Q. I hope you didn't accept what I said as criticism. It wasn't a criticism, certainly  
4 on my part. I'm just saying that when that --- the seven percent for example. Instead  
5 of saying that there probably was a little hope, probably no chance and there's very  
6 little chance, but we're going to do some other things, they got the belief that there  
7 was more hope and we're going to do some other things.

8 A. I don't doubt that a bit, but I don't --- people remember what they grabbed on  
9 to at the time and they don't remember some of the other things that were said that  
10 they didn't want to hear. I don't know how many times it was reiterated how long can a  
11 person survive at seven percent and they were told a matter of a minute or two, a few  
12 breaths.

13 BY MR. PAVLOVICH:

14 Q. Al, is this family briefing kind of a no-win situation in your opinion?

15 A. Only if it gets survivors out of the mine. That's the only way.

16 Q. That's the only way.

17 A. If you're not going to get survivors it's a ---.

18 Q. I don't see how any time you go through an exercise like this and families  
19 come up to you and say that was great. It ain't going to happen. I don't care how  
20 good --- I mean, just to follow Ernie's point here, this I think is a note from --- these are  
21 Denning's notes. Denning took pretty good notes in with the family. I think this is the  
22 10th. It says Rob Moore opens it up and then Richard talks about the number one  
23 hole breaking through. Richard explained about the samples changing and need to  
24 survey hole through the drill seal.

25 Oxygen early this morning was 20.4 to 20.6. At 1:45 a.m. they found 7.2

1 percent. Sealed area was close to 7.5 when the mine rescue team went into the  
2 sealed area. He's kind of indicating there may be communication, but I don't know if  
3 anybody said there's communication. Then he says don't lose hope. Too many things  
4 unknown. You can't survive very long in 7.5 percent O2.

5 A. That was a little exaggerated.

6 Q. It's kind of a conflict of --- then on 8/11 there's somebody named Ex. (b)(6) and Ex. that  
7 says, we'll try to speed up the underground work. We'll try to explore further and see  
8 how far we can get in. I don't know what that means, but this is one of the family  
9 members isn't it?

10 A. Yeah. Yeah, it is.

11 Q. Then Murray says 7.5 O2 may not mean anything. We just have to get to  
12 them quickly. There have been a couple of close calls for rescuers. You can sit there  
13 and say --- not you but somebody could sit there and say 7.5 is bad, but then Murray  
14 gets up there and says it probably doesn't mean anything.

15 A. How do you un-ring that bell, you know? I don't know how we could have  
16 been dealt a worse hand than to have this at a Murray mine.

17 Q. Did you ever meet Governor Huntsman?

18 A. Oh, yeah.

19 Q. Why do you think Governor Huntsman said in the congressional meetings that  
20 I showed up there and everything was chaos and I knew MSHA was coming and  
21 MSHA got there and I just knew they were going to take control and everything was  
22 going to be smooth, but it never got any better? It just stayed chaotic the whole time.

23 A. Everybody's got an opinion.

24 Q. So you have no idea why he would say that? It didn't appear to be chaotic to  
25 you?

1 A. No.

2 Q. In your opinion, did you think you had pretty good structure and organization  
3 onsite?

4 A. I think so. I don't things were out of control. There was a heck of a lot going  
5 on. I don't know how organized one of these kinds of efforts would look to somebody  
6 that knows absolutely nothing about it.

7 Q. Al, how did they survey that number one borehole to figure out where to  
8 actually get to mine?

9 A. Dropped a survey tool down and inside it was bent.

10 Q. So they were able to tell --- they started drilling it, I guess, in the intersection  
11 of number three entry that drifted into the intersection of number two?

12 A. By the grace of God. I couldn't believe it got into a void. Weatherhead was  
13 the oil well outfit that was on the mountain. It was their directional drilling tools. Of  
14 course, all the other holes, they had directional drill heads on them that would give  
15 readouts and they could always tell you where the bit was. But that first hole was a  
16 very small rig that could be lifted by a helicopter. It sat down and it had no control  
17 whatsoever.

18 Q. I'm assuming the purpose of the boreholes was to hope to find some sign of  
19 life. So that was started pretty quickly then?

20 A. Quickly as we could get it started.

21 Q. So you were involved in the decision, let's quickly start drilling some holes?

22 A. I talked with Urosek on the phone that morning at nine o'clock. That was one  
23 of my calls. I recall talking to somebody --- it might have been Bruce Hill saying that  
24 you need to be taking steps to get a drill rig there as quickly as possible. I think it was  
25 Bruce. It might have been.

1 Q. Tell us for the record, Al, why the escape capsule hole was never drilled and  
2 used?

3 A. We never found a location where we thought there was the likelihood of life.  
4 Even in the most favorable one that we got back in that bleeder entry in the back, we  
5 got no response from the tapping. We got no response from the microphone and the  
6 listening device. Of course many of those holes found coal.

7 Q. Packed up?

8 A. Packed up. That first hole that drifted so bad, found seven percent. There  
9 was never a target for it.

10 Q. Did the families keep suggesting, why don't you drill a capsule and lower guys  
11 down to look?

12 A. We took a lot of heat over not doing that because they wanted ---.

13 Q. In your opinion it wasn't feasible to drill that hole nor drop a capsule in and  
14 think you're going to lower people down there to start looking around?

15 A. We made the decision right up early on that we were not going to drill a  
16 capsule hole for the purpose of exploration. If we ever drilled that hole, it would be for  
17 the recovery of people that we knew were down there alive.

18 Q. So you made that decision early?

19 A. Yeah. We had to fight back with the families and the press.

20 Q. Sure. Because everybody saw ---.

21 A. They said why don't you drop somebody in there and he can go trample  
22 around and find out where they are.

23 Q. You put video down some of the holes?

24 A. Quite a few of them.

25 Q. Video cameras?

1 A. Yeah.

2 Q. Did you ever think about --- I'm sure you discussed it. What were the  
3 discussions of if you drop this video camera down and get the tape back and it shows  
4 bodies, what are you going to do?

5 A. That might have been a way to bring closure, not that anybody wanted to see  
6 bodies. I think we would have been very happy to see some kind of something of a  
7 conclusion.

8 Q. You would have had to show that video to the family?

9 A. Probably.

10 Q. The families told us that when they showed us the video, we just cringed at  
11 the thought that what if there's a gap in the footage, like you cut a piece out where a  
12 body was or something.

13 A. Well, once you saw the first video, the expectation of getting video that would  
14 have a recognizable body was pretty minimal.

15 Q. It wasn't good quality was it?

16 A. Even if you did, I mean the truth is the truth. I would think they would call that  
17 one family aside and do that. We never had to discuss how we would present it a  
18 certain way.

19 Q. Was there some discussion about how far you thought this compacted  
20 material extended?

21 A. Yeah.

22 Q. What was your thoughts on that, AI?

23 A. We looked at the outby extent and we looked at the cover. We had some  
24 hope that by the time you got down to the same general amount of cover, that it would  
25 be outby where the miners were.

1 Q. So if this was our maximum cover at 129 and the material was extended ---  
2 that was actually there was pretty good amount of stuff in 118/117, but it wasn't filled  
3 up?

4 A. Yeah.

5 Q. And so that's 11 crosscuts. Eleven (11) crosscuts is 140 inby where the  
6 miners were.

7 A. Those discussions are also coming after we had the information from the first  
8 boreholes that did find void. Actually, it was the first holes that were the best in terms  
9 of ---

10 Q. The rest of them were worse.

11 A. --- oxygen.

12 Q. Other than the one up here?

13 A. Yeah.

14 Q. There's still material. You got an eight-foot entry and there's a four-foot void  
15 meaning you got four foot of material. That's quite a bit of stuff to come off; right?

16 A. Oh, yeah.

17 Q. I was at ---

18 A. Well, there was the concern if you were inby.

19 Q. --- Harlan Cumberland, C2 and two guys were killed in a bump and there was  
20 almost no material on the floor.

21 A. Yeah. Yeah. Still, I mean, we didn't know exactly how the bump manifested  
22 itself back there.

23 Q. Was there any discussion that when the bump occurred in the north barrier  
24 and the pillars were skipped and they started back on pillars that it precipitated the  
25 bump. And therefore when these pillars were skipped and they started back on pillars,

1 that that precipitated the bump?

2 A. There was concern about the skipped pillars after reading what was in the  
3 Agapito report. It had not been our experience in the past that that in itself  
4 precipitated the bump. What did come in to question was a little piece of information  
5 that we were never able to run to ground, but maybe the investigation has at this point  
6 and I'm not even aware of it, but there was a statement by the shift foreman that they  
7 were taking bottom coal and he had told --- when I was in the room, I heard him say  
8 that they were at 140, which is already in the area that was supposed to be left, and  
9 the general indication was possibly mining towards 141 in the number one entry.

10 Q. So he's taking bottom coal out between 140 and 141?

11 A. Right. I asked Laine Adair about that, and he said we always took bottom  
12 coal. I called Billy Owens and I said, what's this bottom coal business going on here? I  
13 can't read the words bottom coal in that plan anywhere. He said, it's not allowed in the  
14 plan. I said, Laine says that they took bottom coal. Billy says, I'm not denying it. I  
15 asked Ted Farmer, did you see him take bottom coal? He said he never has. How we  
16 would miss that, I don't know, if it was a routine thing. Maybe in places they took  
17 bottom coal. I don't know. In my mind, taking bottom coal in this place is a ticklish  
18 thing.

19 Q. So Laine admitted to you they took bottom coal?

20 A. Yeah, he did. I passed that onto Kevin and we talked about it. The decision  
21 was that's subject for the investigation. We weren't going to pursue it.

22 Q. Al, I guess one of the things that --- no inspector ever saw them pulling pillars  
23 in the north barrier and basically in the south barrier I think ---

24 MR. TEASTER:

25 Grosely.

1 BY MR. PAVLOVICH:

2 Q. --- Grosely maybe saw him taking the first pillar. Then nobody ever was back  
3 in there again. It's almost like we were afraid to be in there.

4 A. Well, you might draw that conclusion, but keep in mind now this is the quarter  
5 when we're struggling to make our EO1s. So I don't know where he stood on what he  
6 did that particular day, you know, but we didn't hang around anywhere once we got ---  
7 in fact, we were telling people get out there and get the damn job done and move on  
8 to the next mine. We had mines that weren't even started yet and we were baring  
9 down on the last ones for the quarter.

10 MR. PAVLOVICH:

11 Let's take a short break and we'll finish up.

12 SHORT BREAK TAKEN

13 BY MR. PAVLOVICH:

14 Q. We've got a copy of the log there, but I don't know if we need to get it out.  
15 And I think I asked you a little bit about this earlier, but we're talking about the footage,  
16 the measurements and how critical those measurements were and how critical they  
17 were to be called out every hour and recorded in a particular manner in that book  
18 where they had the footage and it was blocked off and then highlighted. I mean, what  
19 is all that about?

20 A. It was about the --- in desperation the way we came up with to make sure that  
21 we had everybody reporting the same thing. Because we had some guys that say that  
22 15 feet inby the crosscut. We didn't know whether they referring to the inby rib or the  
23 outby rib. It was bad.

24 Q. Okay.

25 A. And we had a lot of trouble over that. And then Richard got some bad

1 numbers a few times, and we had to solve a way to make sure we didn't give any bad  
2 information.

3 Q. We heard, you know, there were several people onsite that were --- Richard  
4 primarily threatened to fire and a lot of it was over numbers, over these numbers.

5 A. Well, you know, I can't say that didn't happen but I --- it didn't happen in front  
6 of me.

7 Q. Okay. With that attitude and that --- let's face it some of these guys ---.

8 A. Maybe it did happen.

9 Q. Oh, you think now it did?

10 A. Well, I might have heard something to the effect that --- with him talking  
11 (b)(6) & (b)(7)(C) take it right, or I don't need you up here  
12 or something like that. I don't know --- I didn't hear the word fire.

13 Q. Okay. Well, I don't need you any more, it could have been something like  
14 that.

15 A. You can take that about as far as you want to.

16 Q. If it was me being told that by the assistant secretary, I would say he  
17 threatened to fire me?

18 A. Yeah.

19 Q. Okay. And so I guess, you know, if you tell that to one person, pretty much  
20 everybody on site knows it by the end of the shift. Right?

21 A. I wouldn't be surprised.

22 Q. Okay. Do you think then with that kind of attitude from Richard that your  
23 people out there would have been real, really encouraged to go up and talk to him and  
24 give him information or were they kind of intimidated by him? And I mean, we have  
25 people said I wouldn't tell that guy nothing.

1 A. I think that's very possible. I think a lot of people are intimidated by him, just  
2 by his quiet nature where he's not a backslapper and a BS'er and a lot of people I think  
3 probably have the perception that he's kind of a cold fish.

4 Q. And so if he's not going out there asking people their opinion and trying to  
5 acquire information, you think people aren't just going to come up to him and offer it?

6 A. It's very possible. I could see people feeling that way.

7 Q. And how does work in a rescue operation like this where you really need  
8 everybody's feedback and everybody's help?

9 A. Obviously that's not an optimal situation.

10 Q. Yeah, you weren't getting it there, were you?

11 A. Well, keep in mind now my relationship with him has got to be different than  
12 what a lot of the inspectors are perceiving because he is talking to me, but even at  
13 times, you know, I kind of wonder what, you know, what's he thinking 'cause he's not  
14 --- you know, he sits around in a very pensive concerned look on his face, and he's  
15 not talking and you're just kind of wondering, you know, what's going to happened  
16 here? And from a guy, the distance of being an inspector, I could see where they  
17 might feel that. And that I may not --- my idea of the man may be totally different than  
18 ---.

19 Q. I understand. Al, when's the last time you had any training from MSHA on  
20 managing, coordinating a mine emergency?

21 A. I can't say that I have had any.

22 Q. Okay. You don't remember having any ---?

23 A. It's an osmosis of being ---.

24 Q. So firsthand?

25 A. Yeah.

1 Q. Did you ever sit in on any of the MERDS they used to have years ago?

2 A. I was never at any of those MERDS.

3 Q. And even if --- they hadn't one in years; right?

4 A. I can't remember the last ---.

5 Q. Okay. So I guess what you're saying is the events you've had pretty much  
6 since you've been out here or what you may have been to while you were in  
7 headquarters or your first duty here is what training you had, right or wrong?

8 A. Yeah.

9 Q. And do you think we need training for our managers, and our supervisors, and  
10 our inspectors on how these operations need to go?

11 A. Sure.

12 Q. Do you have any reason why MSHA doesn't do that anymore?

13 A. It's like a lot of things that just don't happen because of other pressing  
14 matters, I guess.

15 Q. You know, you made a statement earlier about the difficulty you had in  
16 accomplishing your inspections and yet you said, you know, you've got quite a few  
17 inspectors for the number of mines you've got.

18 A. We will have when I get these new guys ---

19 Q. You will have?

20 A. --- from AR.

21 Q. Okay. But you didn't have prior to?

22 A. No.

23 Q. And was a lot of the initiatives and programs and other things was that taken  
24 away from a lot your time and ability to be able to complete E01s and regular  
25 inspections, mandatory inspection?

1 A. The real wave of initiatives happened under Laresky, and back in those days  
2 we still turned in numbers in the high 90's.

3 Q. So what made it ---?

4 A. We had to get it done.

5 Q. So you think you had more initiatives under Laresky than you had since  
6 Laresky?

7 A. Yeah, I think so.

8 Q. So there was more prior to 2000 to 2004 than there was in 2004 to present.

9 A. I think so.

10 Q. Okay.

11 A. There was a period of time that everybody in headquarters that had a good  
12 idea, it turned into an initiative and we were on the march.

13 Q. Is it still kind of not that way?

14 A. Not that way?

15 Q. Is it still that way or is it not that way anymore?

16 A. I don't think it's that way anymore. I think they've taken a much more  
17 concerned look at what the effect of all that is.

18 Q. When did that change, Al?

19 A. It trailed off. It didn't just immediately stop when Laresky left, but it trailed off  
20 when ---.

21 Q. Did it trail off after Ray McKinney left administrator?

22 A. We've had very few since Ray left.

23 Q. Okay.

24 A. We always have winter alert, it just comes up, but we've not had so many  
25 walk and talks that we want to kick off on this certain day so we can have a press

1 release and all that, the way that it was done for a few years.

2 Q. When you have to do initiatives like that, does it cost you a lot of man hours  
3 because of your remoteness of offices and other things?

4 A. Well, there's more travel time for us if we're running around trying to pop in  
5 and pop here and there and hit all the mines. But quite frankly, we never  
6 accomplished what was laid out in those things in terms of timing to begin with  
7 because it was just impossible.

8 Q. Okay.

9 A. And I mean, they'd say that, you know, on this day we want everybody out of  
10 the district office out there, you know, for this day. For us that's three days, that's not  
11 one day, you know. We'd just do the best we could.

12 Q. Okay. When you said that, you know, back when you felt like there was more  
13 initiatives, you were getting 90 some percent of your inspections ---

14 A. Yeah, that's right.

15 Q. --- but now you're getting 70 percent, but there's less of initiatives. What's  
16 keeping you from getting them now?

17 A. The 70 percent, I think it was 70-something.

18 Q. Okay.

19 A. Seventy-four (74) or 75.

20 Q. But it's less than what you were getting before?

21 A. That's happened one quarter and that was the quarter that this happened and  
22 there's just no way in the world that we could absorb the mine that's a 26 day mine  
23 disaster and get our E01s done.

24 Q. Okay.

25 A. And we managed --- but we were in trouble before that just getting by with the

1 skin of our teeth.

2 Q. Okay.

3 A. And we had adopted the plan that if we were going to miss anything, it was  
4 going to be surface mine, and we got caught up in that. We had a fatal in a mine that  
5 had been nearly 20 months since we'd been there down in Texas. So every action  
6 has reaction in a moment but we tried to stay focused on where the most risk was and  
7 that's the undergrounds. But as we get --- let me say this, this whole job of inspecting  
8 coal mines doesn't get easier, it gets harder. And as it gets harder it gets longer. And  
9 every group at headquarters that comes down and talks to us at manager's meetings,  
10 they look at their own little world and they want a hundred percent of this, and hundred  
11 percent of that, do all this sampling and do this and dust and noise. And then accident  
12 investigations after the last IG, I think at Aracoma and Sago, all of a sudden that's just  
13 about the most important thing we can do was investigate. When I say accident, I  
14 meant complaint investigations. Drop everything as soon as somebody calls and  
15 mentions anything on the phone. So we've had to do that. And if somebody calls  
16 from North Dakota, you know, it burns up a lot of time.

17 Q. Okay. So even though you say well, we still were pretty good, we got 95  
18 percent of our inspections, does the quality of those hurt now because --- I mean, I  
19 know I can get an inspection, I can get a number, but did I really allow my guys the  
20 time they needed to really be there to take care of problems they see at the mine, or  
21 are they just rushing through that mine to get it done to get those numbers because of  
22 all these other things that you're saying you have to do because of headquarters?

23 A. Little bit of both, I think. We are --- certainly this last quarter we rushed  
24 through and the name of the game was get in, get the job done and get onto the next  
25 one.

1 Q. Okay.

2 A. And I'm sure if you interviewed my people they'd say that has a negative  
3 effect on their ability to do the inspection. But for a long time I've also had the  
4 concern that we've, over a period of time, and probably in reaction to lots of different  
5 issues like, you know, they don't question the inspector's judgment, he was the person  
6 that's there and that sort of thing. We more or less acquiesced the whole notion of  
7 managing to the inspector and so he gets a mine assignment and when he gets done,  
8 it's done. And I'm trying to push our people into getting some accountability in there to  
9 see what he got done on a particular day. Because I have gotten reports back from  
10 people who traveled from here and have gone with an inspector to the field with  
11 comments like now we don't want to get this done too fast.

12 Q. Then you give me more work.

13 A. Well, that's the thing because the guys that are done, we gather them up and  
14 send them to Texas or send them to Wyoming or some place and the people see that  
15 happen so we just kind of set the pace so you don't have to leave town. And how do  
16 you deal with it? It's a touch issue.

17 MR. PAVLOVICH:

18 Okay.

19 BY MR. TEASTER:

20 Q. Al, going back to that issue of recording stuff in the books on footage and the  
21 log. Do you recall any conversation that was directed toward you and Kevin by Mr.  
22 Stickler in the parking lot one morning when you were preparing for a morning briefing  
23 where he said, I want this stuff recorded in there in such a fashion?

24 A. Yeah.

25 Q. Can you tell us how you received that and how that was given to you?

1 A. I don't know exactly what went wrong but I think he got some bum information  
2 from the previous day and he was pretty upset about it and he said he wanted --- I  
3 remember now that you mention that, that he did say that he wanted it recorded in a  
4 certain way so that he knew exactly --- he could depend on the number.

5 Q. Did he indicate what might happen if it wasn't recorded in that fashion to you?

6 A. Honestly I don't remember. Now, if he did, he did but I can't --- I don't want to  
7 say that if ---

8 Q. Okay.

9 A. --- it may not be true.

10 Q. Okay. Do you know if the use of two drills on the mountain up there to drill  
11 board hole simultaneously was ---?

12 A. Only the first two holes.

13 Q. Right. And that's cause you got the little one up there, it was helicoptered in  
14 or whatever. But I meant after that so that you could be simultaneously drilling a  
15 couple holes down.

16 A. There was a lot of concern on our part that may be done, but we never got it  
17 accomplished.

18 Q. Okay.

19 MR. PAVLOVICH:

20 Was that because of Murray wouldn't do it or ---?

21 A. Basically.

22 MR. PAVLOVICH:

23 Basically Murray said I'm not taking another drill up there?

24 A. Pretty much. I mean, you know, this is a tight rope you walk in one of those  
25 things because --- especially when you got loose canon like Murray, you know.

1 Because I think more than once we got the signals about, you know, maybe I'll just  
2 walk away from this thing. And he never said that, I mean, don't say that, but I think  
3 the signal was that don't push me too hard here or ---

4 MR. PAVLOVICH:

5 I'll just close it up like I said.

6 A. --- or I'll shut down.

7 MR. PAVLOVICH:

8 Take all my people and go home.

9 A. Especially as time went on and things were really diminishing returns for a  
10 moment and there was a lot of this --- I think that definitely the last hole and maybe  
11 the next to the last hole never would have even happened without Stickler having ---.

12 BY MR. TEASTER:

13 Q. After which one?

14 A. Well, definitely the last hole, I think it's number seven.

15 Q. Right.

16 A. And maybe number six. But he might have come around on hole number six,  
17 but definitely number seven he didn't want to drill. And we were, Stickler was talking  
18 about an eighth hole but the results were --- so we didn't drill an eight hole.

19 Q. Al, you indicated earlier that Aberdeen had successfully used these rock props  
20 in the configuration that they used. Do you know if those things that you observed in  
21 there whether that behind the fence, between the fence and the rib, whether that was  
22 from sloughage or just would it just have blown off and contained or do you know how  
23 ---?

24 A. Nothing that I ever saw looked to me like it was lowing off at the stop because  
25 I think it would have been more filled up than what I observed.

1 Q. So the primary sloughage ---?

2 A. Yeah, but sloughage probably caused by milder bounces.

3 Q. Right. Okay. And you indicated in your interview with Richard that you had  
4 never seen where this had ever been compromised, the use of these supports at  
5 Aberdeen had been compromised.

6 A. I had not seen that myself.

7 Q. Do you recall any conversation that you had with the supervisors in Price or  
8 any of the inspectors that go to those mines on a regular basis or Billy about the use of  
9 those rock props?

10 A. I talked to Billy about it. And I'm sure that I talked to Ted about it.

11 Q. And did they indicate that they'd experienced failures with it?

12 A. I don't remember whether they expressed that they've seen them fail in the  
13 past.

14 Q. Going back to the ---.

15 A. Now, we had a conversation with the company, where the company admitted  
16 that they had failures with them.

17 Q. They did admit they had failures?

18 A. Right. And that was one reason they wanted more cables and try to spread  
19 the load because individual ones had failed and blown out the back.

20 Q. Well, I get the feeling that, and that's been said by some, that they anticipated  
21 maybe bounces occurring. But if it did occur, we had this protection here that was  
22 going to withstand any bounce that we were going to encounter. And they put all their  
23 eggs in that basket. And yet there was a lot of knowledge that was shared during our  
24 interviews where this system had failed and even cans, they had talked about cans  
25 and I've never seen one but I've --- with these cans they said they've seen these

1 bumps, bounces that would dislodge these cans. So I mean, basically what they've  
2 said, there's not much that you can really rely on that's going to contain a significant  
3 bounce from dislodging this stuff. And I just wondered if we got all the input into this  
4 process, when a company developed this plan, who was consulted from MSHA so to  
5 speak, to find out whether this plan would work as far as providing the protection?

6 A. We talked at length about the system and the rock props, the cables and the  
7 chain link, and there was admittedly, you know on the company's part, that it's not a  
8 hundred percent. That yeah, there's been places where they had rock props knocked  
9 out where the cans had been. But I guess there was some expectation we'd get  
10 through this without that severe of a bounce and we'd be able to get these things to  
11 perform. I don't that anybody thought that this was absolutely without problems, I  
12 mean, you know, without some possibility.

13 Q. Well, know if you go back to the bounce that occurred the first night, it was  
14 actually the next day but like 1:13 in the morning, field number four entry back up, it  
15 registered like 2.2 on the Richter scale. Now, I don't know where the exact epicenter  
16 of that was. But it almost completely filled that entry back up similar to what it was  
17 after the bounce on the sixth. And there was a lot of --- as Joe shared that log with  
18 you, there was a lot significant bounces that occurred all throughout the recovery  
19 process. None of course up there in that area. But if you look at it, I mean, it was just  
20 as a significant as the one on the 16th. It just wasn't in the right location. Do you  
21 recall any discussion with --- you said with Ted Farmer, you had some discussion?

22 A. Well, I think Ted and I talked about the props. And I know I talked about it  
23 with Joe Zelanko and Mike Guana. Joe for certain. And I remember him telling me  
24 specifically, he says it's the best thing you can use. So we were going with what we  
25 felt was the best thing.

1 Q. Now, the plan was approved before Zelanko went in the mine?

2 A. Well, but we had lots of other conversations after that ---

3 Q. After ---?

4 A. --- to continue on or not.

5 Q. This was the best system that we had that we knew about --- was the best  
6 system we had.

7 A. Yeah, he agreed with what we were doing.

8 Q. But did we have confidence that it was going to withstand?

9 A. I don't think anybody would say that they confidence that it would have  
10 withstood what happened.

11 Q. Okay. You also indicated in your discussion with Richard that you talked ---  
12 after the sixth accident on the 16th, you talked to the shift foreman and questioned  
13 him on where the trapped miners were working at the time of his last presence on the  
14 section. Is that something that maybe you should have asked him earlier on or why  
15 after as opposed to before?

16 A. I didn't --- I was in the meeting when that question was asked. It wasn't me  
17 that asked the question. But the meeting was held to try to determine the location of  
18 the borehole. And so we were trying to find out --- we decided at this point in time we  
19 wanted to drill right down onto the miner. And the meeting was to establish where the  
20 miner most likely would have been, and that's when that question was posed him, and  
21 I think actually the question got posed by one of the Murray's ---. It might have been  
22 Murray himself. He launched into that long-winded answer in which he divulged that  
23 they were mining bottom coal earlier when he was there. And he supposed that they  
24 had by finished that went back, just outby 130.

25 MR. TEASTER:

1 That's all I have.

2 UNIDENTIFIED SPEAKER:

3 I guess I got two questions. The first one is, sounds like that's  
4 the best support we had, as far as drilling the thing down. What seems odd is talking  
5 to the guys that were in the command center all the time and keeping the log. It  
6 seemed like nobody ever really questioned him about the bumps that were going on  
7 underground or severity in talking with Mr. Stickler. We asked them what was the  
8 main item that then you would pay attention to and record and it was footage. And  
9 that had to be highlighted and actually transcribed in a certain way but nothing was  
10 ever talked about the bumps being highlighted or anything like that.

11 A. No, not being highlighted. The footage was a personal issue with Richard,  
12 and the bumps were being reported and recorded but there was never anything said to  
13 highlight that information.

14 UNIDENTIFIED SPEAKER:

15 Do you think he was looking at that at all, AI?

16 A. He was aware of it, yeah.

17 UNIDENTIFIED SPEAKER:

18 What do you think was his driving ---?

19 A. He used to come in and sit down and read the log.

20 UNIDENTIFIED SPEAKER:

21 What do you think was his driving force about the footage?

22 A. Being a hundred percent accurate when talking to the family and friends.

23 UNIDENTIFIED SPEAKER:

24 You guys were talking earlier, AI, when you had an  
25 emergency like this, you have no --- seems like our duties are expanded and you

1 come over and took care of some issues with families and friends, but now it's more at  
2 the forefront. Joe mentioned earlier that he had ---- when you running an operation or  
3 whether it's an investigation or a rescue that all your decisions have to be objective.  
4 And your first priority is always the safety of the rescue team or the rescuers and of  
5 the objective. You know, you make all your decisions based on fact. And our  
6 concerns were that when your emotions start sliding over into the decision makers,  
7 that it's hard to separate that 'cause we're all human beings and you have a heart and  
8 it's hard to --- I know when you're the senior person on the site, you know there's  
9 families involved, but you don't know them personally. You remove yourself and then  
10 you really know it's serious, you're doing everything you can to get to the missing  
11 people but you don't have enough personal attention.

12                   And I was just reading through the NTSB testimony when they  
13 testified before the Senate, and they said that when they took on the additional duties  
14 of briefing the families, they decided that they would maintain a separation, they  
15 actually called it a fire wall. Anyone dealing with the families there would be a fire wall  
16 between those folks and the investigation of the accident, which if you think in our  
17 case it would almost be more critical because you're in danger and rescue, not just  
18 doing an investigation. But you're actually trying to rescue people and trying to  
19 manage, too.

20                   Do you think that's something that MSHA should maybe look  
21 to maybe to, knowing that --- which you mentioned earlier that the families, whoever  
22 they see on TV, that's who they want talking to them as well, and that's totally  
23 understandable. But maybe that person shouldn't be at the scene of decision making.  
24 Do you have any suggestions on that or ways MSHA should maybe improve what you  
25 went through?

1 A. I could certainly see the merit of doing that. It would be a lot easier on, you  
2 know, the recovery and rescue efforts. You know it could be done. I got a feeling  
3 we'd probably get criticized even if we did that. One thing about this accident. It's so  
4 different than any of the others. I mean, if you look back at the explosion and fires,  
5 you're talking about this activity going on for three or four days probably. It's different.

6 UNIDENTIFIED SPEAKER:

7 Let me ask you this, Al. Did you --- if I worked in District 9, I  
8 would look at you as being the senior decision maker for the district, you know. I  
9 mean, who knows and those kind of things better than you at MSHA. If we think about  
10 all the stuff you went through. Did you feel obligated to stay with Mr. Stickler?  
11 Because that's unusual for the assistant secretary to come on your turf. Did you feel  
12 an obligation to kind of stay with him instead of staying at the command center?

13 A. I wrestled with that but I never got a ---.

14 UNIDENTIFIED SPEAKER:

15 Because you don't get much feedback from him.

16 A. No.

17 UNIDENTIFIED SPEAKER:

18 So you're trying to guess.

19 A. And I was kind of waiting for that, but I really never got it. And I talked to  
20 Kevin a few times about it and he says, if you want to come on down, come on down.  
21 So it was never any clear direction, and that's why I kind of waffled some days back  
22 and forth whether I went to those briefings or not. But then also, you know, some days  
23 you knew there wasn't going to be much of a briefing because there hadn't been much  
24 change.

25 UNIDENTIFIED SPEAKER:



1 and I guess everybody said there was never any doubt when Stickler came on site, he  
2 was running the show except maybe you. And that's not being critical, Al, it's just, you  
3 know, from the people's perception.

4 A. I would dispute that that's what they would see.

5 Q. Okay.

6 A. But from my perspective, I know he did talk about a lot things with them and --  
7 - but I certainly never got the signal, you know, I'm just here to take care of the press  
8 and we're running the show.

9 Q. And you knew things, he didn't tell you that? In other words, he let it ---?

10 A. My assumption was, you know, if ran down to crunch time, you know, he ---.

11 Q. He was going to make the decision kind of like he did with the press; right?

12 A. But certainly that I couldn't make it in a vacuum. I'd have to talk to him.

13 Q. And you said I guess you did talk to him quite a bit just by nature of the fact  
14 you were together and riding a lot together or riding a lot together or together a lot.  
15 Right?

16 A. Yeah, same ---.

17 Q. But do you think the other people on site talked to him much?

18 A. I saw people talking ---.

19 Q. Other than you and Kevin?

20 A. He talked to some of the inspectors coming or leaving on shift.

21 Q. Al, was there an issue about these lines being mislocated, these elevation  
22 cover lines? You ever heard about that?

23 A. Yeah. Let me think. There was something about the way that --- the plotter,  
24 the way they plotted them. One line was an assumption, and I don't think there was a  
25 --- I don't remember the issue being with these two line but may with this one.

1 Q. So the highest cover line --- or initially was showing like a crosscut 127 and  
2 then when it was corrected it was actually in by 129.

3 A. Yeah, because it --- to draw that, the program had to make some kind of  
4 assumption because it wasn't unlimited contour lines. And there was a contour line  
5 that kind of went around an offset ridge or something, so was there more high cover  
6 over here. Rather than draw the line in the middle like a program would assume, like  
7 it was this shape, it was more this shape over here.

8 Q. So you guys kind of thought you were almost at the point of highest cover and  
9 then all of a sudden you're 250 feet away from it?

10 A. Yeah.

11 Q. I guess we talked about those explorations, and I'm still not sure why those  
12 never were pursued any further, okay. I guess the one that --- what information we got  
13 from the guys that explored number one, they stopped because of communication not  
14 'cause of blockage. Peter Saint stopped because of wire mesh, but he said I could  
15 see over and if I could have cut that mesh, I could have went along way further. Was  
16 there any consideration given to minimizing the material moved and progressing over  
17 this fallen stuff? Why wasn't it done, Al? I mean you guys were slugging away in one,  
18 and it was hard. I mean, you weren't getting very much and the guys were beating  
19 themselves to death up there and working bouncing because of removing the material  
20 obviously that was somewhat supporting the pillars.

21 A. That's why we did those other two explorations.

22 Q. Okay.

23 A. And on the second one, I distinctively remember being told that they couldn't  
24 get any further.

25 Q. Okay. So on one of them someone told you we went as far as we could go.

1 A. Yeah.

2 Q. It was packed full again.

3 A. And we were hoping for another opportunity ---

4 Q. Oh, okay.

5 A. --- to maybe this next crosscut to do that. There was a lot of discussion about  
6 had been seen earlier in by probably the area where Pete was working ---

7 Q. Okay.

8 A. --- from one of the initial explorations, and we didn't to expose people into this  
9 little bitty volume that's left any more than necessary, and there were a lot of people  
10 who didn't think that we ought to even do this exploration.

11 Q. So there were some people against that?

12 A. Correct.

13 Q. And who would have that been?

14 A. Bill Taylor was worried about if let people back into, if we had a bump, it's very  
15 possible that even if the guy wasn't crushed, he might be blocked off from getting  
16 back. There was a lot of what if about it.

17 Q. Was the bumping continuing in that area because of the material being  
18 removed out of one in your opinion, or would it have kept bumping even if you weren't  
19 doing anything in one?

20 A. It would have for a period of time.

21 Q. You think it would have continued to bump somewhat?

22 A. But I'm sure removal of the material had to have some effect on it.

23 Q. If it's almost roofed or even if you've got avoid that much, there's probably not  
24 much more going to come off and hit you?

25 A. Yeah. I don't know if anybody knows that and can say that and can say this is

1 for a fact that's not likely to happen to you while you crawl back and slither back into  
2 little space.

3 UNIDENTIFIED SPEAKER:

4 Here's the thing just to kind explain. Agent Block was a case.  
5 Gray are the ones who assigned to Gary although not all of them were investigated by  
6 him. The numbers are not case numbers they're tracking for the K&W.

7 MR. PAVLOVICH:

8 So all these one highlighted would have been ones that ---?

9 UNIDENTIFIED SPEAKER:

10 They were assigned to him but he didn't investigate all of  
11 them. I've broke them out, these are the Murray mines, those are all other mines.

12

13 MR. PAVLOVICH:

14 What was all this?

15 UNIDENTIFIED SPEAKER:

16 That's one case but there were six violations involved in one  
17 case.

18 MR. PAVLOVICH:

19 Okay. So these were 110s?

20 UNIDENTIFIED SPEAKER:

21 Yes, these are all 110s and there were --- he'd got two 105s  
22 and none of them at the ---.

23 MR. PAVLOVICH:

24 So he wasn't doing any 105s at Murray?

25 UNIDENTIFIED SPEAKER:

1 Not at Murray.

2 MR. PAVLOVICH:

3 Okay. Thank you.

4 UNIDENTIFIED SPEAKER:

5 Sorry.

6 MR. PAVLOVICH:

7 Appreciate it.

8 BY MR. PAVLOVICH:

9 Q. I'm sorry, Al, blame it on (b)(6) fire him later. No. So you know as far --- I  
10 guess the minimum amount of material that could be disturbed, I'm thinking, is  
11 probably going to minimize your chances of additional bounces. Maybe that's not  
12 true. You know more about that than I do, but I'm sure --- was it considered?

13 A. It was considered as being a hazard.

14 Q. Okay. So it did felt that was more unsafe than what you were doing? If said  
15 I'm going to take five guys in number four with shovels and anywhere it's too low, I'm  
16 going to break it off and the areas I can go through like the crosscuts, I'm going to go,  
17 and I'm going to go all the way up here to see if I can find those men.

18 A. We considered that really too risky.

19 Q. Okay. And it was because of the bumps and the low oxygen or both, either  
20 one.

21 A. We had low oxygen issues after we started getting pretty far into that number  
22 one.

23 Q. Okay.

24 A. And there would be no reason since it was intake if you would that ---.

25 Q. You think number four would be worse?

1 A. Yeah, to clear out a fair amount of space for a guy with an apparatus.

2 Q. Yeah, it'd have to be about twice the size at least to be crawling in.

3 MR. PAVLOVICH:

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

5 UNIDENTIFIED SPEAKER:

6 To follow up on a question, Ernie was talking about the drills  
7 and boreholes and stuff. What effect do you think if borehole number five or six had  
8 drilled first? Well, not first but if it'd been drilled before the 16th? What effect do you  
9 think it would have had on the operation? And it would have been one of the holes in  
10 the number one entry, the ---.

11 MR. PAVLOVICH:

12 Here's six.

13 A. There's six.

14 MR. PAVLOVICH:

15 There's seven. Here's five. And I think they all pretty much  
16 showed no void.

17 UNIDENTIFIED SPEAKER:

18 No void. 'Cause you're cleaning up number one entry going  
19 that way. And I know there's been conversation about that maybe if we can get to this  
20 high point of cover after this, you know, maybe it wouldn't be --- if you drilled one  
21 those holes in the side, was there any talk about what effect that would have on the  
22 underground operation?

23 A. It could well had a different affect on the operation if those holes had been,  
24 say, three and four. But I don't know that it would have convinced us that it was all  
25 over. You know, explored into the --- drilled into the bleeder. And I don't know that it

1 would have stopped any attempts underground.

2 UNIDENTIFIED SPEAKER:

3 Was it discussed, though? I mean, you wasn't going very  
4 fast. I mean, you're gaining from what, 120th to 126th, and you had to go from 126 to  
5 roughly 139, I believe was where the miner was supposed to have been at. You know,  
6 that was over twice farther than MSHA had already traveled. Was there any  
7 discussion that ---?

8 A. There was discussion about every hole and where should we drill next. And I  
9 know that Richard wanted to drill that one, number five sooner than we did it. But a lot  
10 of the discussion about number five came about based on Gary Peacock, the mine  
11 safety director. He kept saying time and time again that he knows that crew, and if  
12 they're anywhere, he said you'll find them dead at number one trying to dig their way  
13 out. And this conversation about where would the tow on this thing be, where is it  
14 likely to be that at least enough room over top that they would get that far out ---. It's  
15 still a guess, but that was the reason for drilling number three. But that got trumped by  
16 other considerations so that hole didn't get drilled until the ---.

17 MR. PAVLOVICH:

18 Well after the 19th to 22nd.

19 A. Yeah, yeah.

20 MR. PAVLOVICH:

21 Well after the second accident.

22 BY MR. PAVLOVICH:

23 Q. Three probably gave more hope than anything.

24 A. Yeah.

25 Q. It had what 11, 12 percent? No, 16 percent.

1 A. Yeah, so it had almost livable oxygen.

2 Q. And it had a void.

3 A. We felt that there might be people down there dazed if they were there, once  
4 we found out the oxygen, there's a possibility that life exists, but we'd have got no  
5 response.

6 Q. All right.

7 A. But then that's when we got this sympathetic oscillation.

8 UNIDENTIFIED SPEAKER:

9 I didn't ask the question about the bottom coal. Do you  
10 usually have something like that put in your plan? If it's not in your plan, is it legal or  
11 illegal to mine bottom coal? Do you have to have any in your plan?

12 A. When I asked Billy that question, he said that they can't --- in his mind, they  
13 can't mine it unless it was addressed in the plan. And it's more critical in the deep  
14 mines than it is others that are shallow.

15 MR. PAVLOVICH:

16 Would you consider that second mining?

17 A. Yeah, I think it's always been considered second mining in this district even if  
18 they don't --- some places don't attack a pillar until the whole bottom falls. And some  
19 of these things were actually 20 feet thick. Some people will go after that bottom coal.

20 UNIDENTIFIED SPEAKER:

21 Does your other plans or does the other mines that do that do  
22 they have it in their plan that --- you know, to make legal or something like that?

23 A. I can't tell you which plan, but I could certainly have a sequence of bottom  
24 coal for --- but we don't have many mines that do it.

25 UNIDENTIFIED SPEAKER:

1 One more question and I'll try to phrase this the right way.

2 You mentioned, I think you did, that you said that no one really had complete  
3 confidence that that support system would hold if a bump happened. Well, I mean, is  
4 that a fair statement?

5 A. Nobody had --- I don't think. Now, this is my opinion of course. I didn't ask  
6 everybody to give me a written statement. I don't think everybody thought it was a  
7 hundred percent foolproof.

8 UNIDENTIFIED SPEAKER:

9 Well, saying that, what were --- I mean, were you just waiting  
10 on the bumps and knock them out and just hoping that nobody was going to be in the  
11 area if it did happen?

12 A. You know, I think it was back in people's minds that it'd be something, some  
13 indication that wasn't as drastic. That it was not satisfactory. In the end I'm not so  
14 sure it was actually the support that ---.

15 BY MR. PAVLOVICH:

16 Q. You think what, Al?

17 A. Flying rock props.

18 Q. Oh, I mean, yeah, that's a --- all that mess sure contributed to it I would think.  
19 You know that's a lot of stuff to hit you.

20 A. Yeah.

21 Q. But it had to take a lot of force to blow that out, too, I would think.

22 A. Yeah, I would too, that's just a guess.

23 Q. You know, I guess, Al, the first night you had two or three scoops, some  
24 inspectors and other people working up in number four cleaning that area. And they  
25 weren't setting anything, maybe some timbers in the crosscut or something, but in

1 essence they weren't setting anything on the ribs. They were just hitting the coal and  
2 loading it down. It just so happened that both those scoops or three scoops were out  
3 of there when that thing bumped pretty darn violently, knocked Paletta and some other  
4 guys down and probably if those scoops had been in there, there's a good chance  
5 you'd have had a guy dead there. Would have that ended it?

6 A. I don't know. We talked about that and talked about it when that --- and that's  
7 when we came up with this plan to put the rock props in and try to maintain that. And  
8 there was a lot of discussion about, well, we've had some pretty hard bumping over at  
9 the Aberdeen mine and those things have contained..

10 Q. You saw that back in number four fill back up, did you?

11 A. Yeah.

12 Q. Would have rock props held that? And I realize that's an opinion. I mean,  
13 there's a lot of coal back in there. Now, how much force it came, maybe it just rolled  
14 off. But you know it's a lot of stuff to come off for, I guess, about four crosscut  
15 lengths. And you know it's almost like, you know, if I looked at that, can I say, hell I  
16 don't know if a rock prop would have held that. It's pretty violent.

17 A. Yeah, it was.

18 Q. And so if that had happened and then somebody said, well, let's use rock  
19 props, and then I'd say, the same thing happens in one that happened in four, what  
20 good is it? I mean, you guys discussed that, I guess.

21 A. There was a lot of discussion whether what was feasible.

22 Q. You know, Al, there's a lot of notes in this family log that people were taking.  
23 In fact, Denning says he bought the log book after he heard Stickler threaten, you  
24 know, maybe if those numbers aren't right, you and Kevin don't need to be there or  
25 something. So he ran out and bought a log book. Prior to the 16th, I don't read any

1 comments where anybody ever says we're evaluating the risk factor, kind of doing a  
2 risk analysis for our people that are rescuers, how dangerous it is for them and all this.  
3 It's never documented in the briefings. Now, I'm not saying you weren't talking about  
4 it.

5 And then after the 16th, all of a sudden, there's about six entries that always  
6 talk about this risk factor, and we're not going to risk this because we don't know for  
7 sure. We're not going to risk and there's a lot of this. What changed? I mean, I  
8 realize you had the accident, but why was the risk factor not being talked about before  
9 the accident as opposed to after?

10 A. I don't know. I mean, it was considered, but I guess it wasn't voiced with the  
11 families.

12 Q. Okay. So maybe you guys were talking about it among yourselves.

13 A. Yeah.

14 Q. Were you ever discussing that with the company?

15 A. Oh, yeah.

16 Q. Okay. But it just wasn't discussed with the families, you think.

17 A. No.

18 Q. You think maybe that's where they get some of this stuff, that they were given  
19 false hope, kind of every briefing says don't give up hope, you know, there's still a  
20 chance, the low oxygen doesn't mean anything, this doesn't mean --- an entry packed  
21 full doesn't mean anything, I mean ---.

22 A. Well, they weren't hearing that message from us, that the low oxygen doesn't  
23 mean anything. I never ---.

24 Q. I mean, there's a little quote in there from Denning and I realize those are  
25 Denning's notes from the briefing, but it's Richard Stickler says don't, you know, give

1 up hope about seven percent oxygen. There's still a lot of unknowns. Well, that's  
2 Richard ---.

3 A. Right. Okay. But that was Richard and questions about whether --- that we  
4 didn't know whether that seven percent oxygen was everywhere.

5 Q. Okay. I mean, that's valid. If you look at, it does appear there's a lot of  
6 documentation in there and notes that say, and whether it be a company or Richard or  
7 you or whoever, it's like a lot of stuff that don't give up hope. In fact, there's that one  
8 disagreement where the lady gets so mad because --- at Murray because you're taking  
9 away hope and he storms out. And then you guys have a pretty heated discussion  
10 with the governor. I guess maybe you weren't there, but so you know. I guess was  
11 that a repetitive issue until after the 16th and then basically there is no hope? Nothing  
12 much happened different to these guys after the 16th; right? I mean, there wasn't  
13 much difference for the six trapped miners after six o'clock in the evening on the 16th  
14 then there was for them before six o'clock in the evening on the 16th? I mean, does  
15 that make sense? The only difference was we had a bump here at 127 ---

16 A. Right.

17 Q. --- that maybe wasn't much bigger than a lot of the other bumps you had in the  
18 ten days you were working. It just happened they were in the wrong place at the  
19 wrong time and blew those props out and killed three men and injured six more. I  
20 mean, we're all sorry about that, and I can't express it enough. But nothing that  
21 happened there changed anything for these guys. Did it?

22 A. Nothing improved their possibilities.

23 Q. It what?

24 A. Nothing improved their possibilities.

25 Q. You can't prove --- I'm sorry I didn't ---?

1 A. Nothing improved their ---.

2 Q. No nothing improved it, but yet nothing made it any worse either.

3 A. Unless there were effects of that same bump that hit the rescuers.

4 Q. Well, I mean --- yeah, but you'd been having them all along, you know, the  
5 2.2, 1.9, 1. ---. This was a 1.6 the best that we can correlate, which there was several  
6 of those 1.9, 1.8, 1.7. So I mean, it probably didn't. What bounced here probably  
7 didn't affect anything here any more. So what made it different?

8 A. I don't know that I'd say that anything made it different.

9 Q. The only thing that made it different was the risk to our rescuers.

10 A. Yeah, that's why we discontinued the underground efforts but maintained the  
11 effort on ---.

12 Q. But was there still not that risk that was going on prior to that? There just  
13 didn't happen to be anybody in right place at the right time.

14 A. It was a risky operation. I don't think there's anybody up there that would have  
15 told you there was no risk.

16 Q. Okay. But I guess that's my point. And on those notes, it's never mentioned  
17 about the risk we're taking for these people based on this. But all of a sudden after  
18 the 16th that risk factor --- risk versus value kind of became a big issue.

19 A. I had to explain the decision not the pursue with the underground ---.

20 Q. So it was just ---?

21 A. We weren't explaining why ---.

22 Q. You guys really want to continue anymore.

23 A. Not underground.

24 Q. Okay.

25 A. Nobody wanted to.

1 Q. Okay. So that accident was the determining factor, I mean, that --- not  
2 anything that happened here ---.

3 A. There was nobody on the property that thought we could continue. That was  
4 demonstration enough that that was not viable to put more of our people in there.

5 MR. PAVLOVICH:

6 Okay.

7 UNIDENTIFIED SPEAKER:

8 Hey, Al, in your notes on one of the first pages, where you  
9 were notified that there was a bounce, and there was a rescue team on the way,  
10 families notified. Do you remember who told you that the families were notified?

11 A. What's the time frame?

12 UNIDENTIFIED SPEAKER:

13 This must be your first page of notes. Number and you got  
14 min probably at 139 as one of the bullets.

15 A. Gary Peacock.

16 UNIDENTIFIED SPEAKER:

17 One of the things we heard from one of the family members,  
18 there was a lady that her husband didn't come home, went over to the mine ---.

19 UNIDENTIFIED SPEAKER:

20 Did you ask that already?

21 A. First time I ever heard that. Because my assumption all from the get go was  
22 that every family member ---.

23 UNIDENTIFIED SPEAKER:

24 So Peacock had told you that he'd got hold of everybody?

25 A. He did, yeah. We certainly didn't try to repeat that operation of calling all

1 those people. And she was down there in the room, you know. Here's this lady that's -  
2 -- I don't know what her last name was or which lady she was. But she's in the room  
3 and I don't think any MSHA people were aware that she doesn't even know that her  
4 husband is one of the missing.

5 UNIDENTIFIED SPEAKER:

6 And somewhere in one of these sets of notes, you was talking  
7 about --- you had wrote down the BON and the boreholes. Did BON have anything to  
8 do with borehole location? Did they have any input or would that be getting an  
9 approval from them to drill a borehole or were they part of the picture?

10 A. Oh, yeah, they were part of the picture but nobody thought we needed  
11 approval, so ---.

12 UNIDENTIFIED SPEAKER:

13 So they didn't ---?

14 A. No.

15 UNIDENTIFIED SPEAKER:

16 It was all after the fact? So they had no input at all on any  
17 selection location?

18 A. No. Come to find out that when they did get into the picture, they were only  
19 worried about hole number --- holes number three and four. They said they didn't care  
20 about the others 'cause they were on forest service property, just three and four, yeah.

21 UNIDENTIFIED SPEAKER:

22 And the last one, we found one of the plans under the K order,  
23 August the 7th, in evening, and was one that specified, we're going to set rock props  
24 and two and half inch center. In fact they were crawling up and signed off on before  
25 the tech support people got there. Did you talked to Billy Owens about that?

1 A. As I recall I did, but I can't be certain.

2 UNIDENTIFIED SPEAKER:

3 Do you remember talking about how you were going to anchor  
4 the ropes to the ---?

5 A. I don't remember that --- having that conversation.

6 UNIDENTIFIED SPEAKER:

7 Because he indicated to us that he seen these used before,  
8 ropes had even been wrapped around the pillar and they've been terminated with the  
9 roof bolt on the roof. That he'd never seen them just add to one of the standing  
10 supports that was ---.

11 A. Yeah,.

12 UNIDENTIFIED SPEAKER:

13 It was like tying it to yourself. Do you remember hearing any  
14 of that using a roof bolter at any place to anchor the rope?

15 A. No, I remember the part about the rope, it's successful in running the rope all  
16 the way around the pillar, but not to a roof bolt.

17 MR. PAVLOVICH:

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

19 UNIDENTIFIED SPEAKER:

20 I guess the only one I really had Allen kind of asked, and I'll  
21 just follow up a little bit on it. And that's basically that Richard and Kevin didn't give  
22 you any explicit instructions whether or not they expected you to accompany them at  
23 the family briefing and press briefing, kind of left you hanging is how I was interpreting  
24 it.

25 A. Yeah.

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UNIDENTIFIED SPEAKER:

Did you feel that you had enough time to direct the operation with what you did? I mean, going some of them, some of them not?

A. I try to use my own judgment. And that had something to do with the days that I would skip the family briefing in the morning. Usually by the end of the day, being on the property all day, I didn't feel so worried about taking time to go down to the family briefing.

UNIDENTIFIED SPEAKER:

Was there ever a time when you heard something after the fact that you felt like maybe you missed out on something that did have enough time or you know ---?

A. No, I can't say that.

UNIDENTIFIED SPEAKER:

I don't really have anything. I was going to talk little a bit about ---.

MR. PAVLOVICH:

A solicitor without questions?

UNIDENTIFIED SPEAKER:

Short of that abrupt ending on the 16th with the death, I mean, you and Joe talked about it for a couple days, inasmuch death is --- you know needs to be discussed. But short of that, I mean, it seems to me that you all had some discussion about when this would happen to it. I mean, there is some --- was it serious injury because like Joe said that bumping, heavy bumping had been going on that entire ten days. And you know I'm not being critical. I'm just trying to figure out how do you know when to pull the plug on that short of three people being killed?

1 A. I don't think we knew when to pull the plug. We were feeling our way, and we  
2 didn't see this event coming.

3 BY MR. PAVOLVICH:

4 Q. AI, let me ask you this, I guess put that in a different perspective. If that bump  
5 had occurred on the 16th, the crosscut 127 and blew out all those jacks and rock props  
6 and mesh, but no men would have been in there, would you have still went on?

7 A. I'd have to say that we would not have.

8 Q. Okay. So you think that maybe that --- the fact that those were blown out in  
9 that manner might have ---

10 A. I don't think we were ---.

11 Q. --- might have been a determining factor to stop?

12 A. Yeah, that would have shown us ---

13 Q. They weren't capable of holding ---.

14 A. --- a failure of the system.

15 Q. And that may have been something you would have went to the families with  
16 and the media and said we can't control this anymore?

17 A. Yeah. Of course it didn't happen that way.

18 MR. PAVLOVICH:

19 No. Ex. (b)(6) and Ex. (b)(7) did I interrupt you or before you finished?

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

21 No, I'm done.

22 MR. PAVLOVICH:

23 Okay. AI, it's been a long day for you today and yesterday,  
24 but I'm sure that is nothing compared to what you been through on this. And I want to  
25 say I appreciate your bearing with us. I hope that you understand that, you know, a lot

1 of the questions maybe we had to ask you and the phraseology we put them in may  
2 not necessarily be our opinions, but it's things that we have to get an answer on. And  
3 we appreciate you giving your answers and your opinions to the best of your ability  
4 and the best of your remembrance, and that's the best we can hope for and ask for.

5 I think you've been very sincere and honest with us. And for  
6 the rest of the team, I commend you on what work you tried to do here. I realize this  
7 is certainly a very difficult, difficult situation and to lose Gary --- and you know, I knew  
8 Gary. You probably knew him better than I did, but I knew him from when I was out  
9 here and I --- we're all sorry about that and sorry about the whole general accident.  
10 And that --- you know, your people did some real hard work in here and really tried  
11 everything they could and I commend you and your people for that. Ex. (b)(6) and Ex. (b)(7)(C)

12 UNIDENTIFIED SPEAKER:

13 You just reminded me of something that was mentioned while  
14 we were here and it was about Gary's funeral and some of the people being sent by  
15 back home and not being --- I guess they were allowed to go to his funeral, if they  
16 wanted to bare the costs on their own. Do you know how that decision was made or  
17 why? It seems a little insensitive to people who work with them and with colleagues  
18 and were there when he died.

19 A. We made the decision that we would give people a day's leave to do that. I  
20 didn't feel I had the authority to give people pay. The issue, of course, was people  
21 were wanting per diem, they wanted travel, motel and all that. I didn't feel I had the  
22 authority to grant that to people to come. But if they felt that strongly, we would give  
23 them administrative leave the day of the funeral. And if people really wanted to come,  
24 and a number did, they did that on their own time. I don't ever recall MSHA paying  
25 travel for people to go to a funeral. Maybe that has happened I don't know. But I was



1 But it is difficult to find yourself explaining every thought you had or every move you  
2 made over such a long period of time. And I think that our people over there did  
3 things that they thought were the best we could do at the time. And there was nobody  
4 that wanted to give up. And nobody out there wanted to walk away as just a quitter.

5 MR. PAVLOVICH:

6 Thanks again.

7 MR. TEASTER:

8 Thanks again.

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