

IN RE: CRANDALL CANYON
MINE INVESTIGATION INTERVIEWS

INTERVIEW
OF
DON GIBSON

INTERVIEWERS:
JOE PAVLOVICH, ERNEST TEASTER

DATE:
JANUARY 22, 2008

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MR. PAVLOVICH:

Don, you know that we're doing an independent review concerning MSHA's actions at the Crandall Canyon Mine?

A. Yes.

MR. PAVLOVICH:

Both before the accident, after the first accident and the plan approval process and throughout the second accident. The way Ernie and I got involved, you know, we're both retired from MSHA. Because Mr. Stickler and Kevin Stricklin were both onsite throughout most of the rescue operation, they didn't feel it was appropriate to put someone that was one of their subordinates heading up the --- what would normally be an internal review. So they asked us to come back out of retirement to do what's called an independent review, since we no longer work for MSHA. And then two of us couldn't do it ourselves, so we asked the people that you see here behind me. I'm sure you've met them all and probably know most of them to assist us in this. They've graciously agreed to do that.

Let me read a brief statement for you. Don, we are taping the interviews. Is that okay with you? Those are primarily for our use to --- when we write the report, if we have to go back and check on what somebody said or we have disagreement on what was someone's testimony, we can check that off the tape and make sure that we have it. So it's up to you; is that okay?

A. That's fine.

MR. PAVLOVICH:

Okay. The Secretary of Labor has assigned this group the task of evaluating MSHA's performance during the period preceding the August 6th, 2007 coal bounce at the Crandall Canyon Mine and the subsequent rescue effort. We

1 will also be evaluating issues that were raised during this time period regarding Bob
2 Murray and his interaction with MSHA. This is not an investigation or review of any
3 individual person. It's an administrative review of MSHA's actions as an agency.

4 This evaluation will be presented to the secretary in the near
5 future, and it is intended that the results of the evaluation will be made public. The
6 interview is being conducted to gather information for this assignment. We also intend
7 to interview a number of other MSHA employees, so that we may obtain unbiased
8 information from all persons to be interviewed. We ask that you not discuss this
9 interview with anyone until the interviews are completed.

10 A. Okay.

11 MR. PAVLOVICH:

12 And you are a management person, so you're not entitled to a
13 union representation. Okay?

14 A. Okay.

15 BY MR. PAVLOVICH:

16 Q. Would you please state your full name, Don?

17 A. Donald Eugene Gibson.

18 Q. What is your present job title, Don?

19 A. Acting Assistant District Manager, Inspection Program.

20 Q. How long have you been doing that?

21 A. Since the last week of October, 2007.

22 Q. Prior to that, what was your job, or what is actually your permanent job with
23 MSHA right now?

24 A. Coal Mine Inspector/Supervisor of Gillette, Wyoming Field Office.

25 Q. How long have you been in Gillette?

1 A. I went to Gillette in July of 2004 on a detail. In December of 2004, I was
2 asked to remain there as the permanent supervisor, which I did.

3 Q. How many years do you have with MSHA, Don?

4 A. Twenty (20) years.

5 Q. Twenty (20) years?

6 A. Yes.

7 Q. Okay. Where did you start your inspection career?

8 A. Orangeville, Utah, 1987.

9 Q. So have you had quite a bit of experience throughout the District Nine Area?

10 A. Yes.

11 Q. How many years would have that been, all 20?

12 A. No, not all 20. June of 2000, I was reassigned to the academy as an
13 instructor. I was there for 32 months. I left in January of 2003. I came back to the
14 district.

15 Q. You came back here? So the rest of the time, other than what you were at the
16 academy, is experience in District Nine?

17 A. Yes, sir.

18 Q. Have you ever met Bob Murray before the August 6th accident, Don?

19 A. No.

20 Q. Never have?

21 A. No.

22 Q. Had you ever heard of any requests from Murray or anyone to move
23 inspectors or change work positions because of any controversy at the mines?

24 A. Yes.

25 Q. Could you explain that a little bit to us?

1 A. I don't know the exact time frame, but I called Al about the matter, and I don't
2 even remember what that was. We discussed that, and then Al said --- Al Davis ---
3 wanted to know if I knew what was going on in Price. I said, well, I heard that Murray
4 was coming to town. Al said no, Murray is in town. Al said at that time that Murray
5 didn't want certain inspectors at the mine.

6 Q. So do you know as a result of Murray's complaints about inspectors or the fact
7 that he didn't want inspectors, were inspectors subsequently moved from the mine?

8 A. It's my understanding that the Murray mines were reassigned to the Price
9 Work Group 02. They were under Work Group 01. So they rotated some mines
10 around.

11 Q. So they reassigned those to the other work group?

12 A. Yes, sir.

13 Q. And you feel that that was primarily because of pressure from Murray?

14 A. I don't know for sure.

15 Q. Okay. You never heard?

16 A. I never heard, no.

17 Q. When you said you told Al that you heard Murray was coming to town, had
18 you heard of Murray before?

19 A. Yes, sir.

20 Q. In what circumstances had you heard of ---? I mean, was it something that
21 was positive, or was it negative?

22 A. No, nothing is ever positive. No.

23 Q. What kind of negatives had you heard?

24 A. All kinds of negative stuff, overbearing, would fly off the handle, fire his whole
25 management team one minute and hire them back the next, a lot of intimidation.

1 Q. So you actually heard that before he came out here?

2 A. Yes.

3 Q. Who did you hear that from? How did you know that? Was it general
4 information through MSHA, or did somebody tell you that from the east?

5 A. From the east, people that had worked for him or had interviewed for a
6 position with him.

7 Q. Were you ever instructed not to continue with enforcement actions or anything
8 in any Murray mines?

9 A. No, sir.

10 Q. You never inspected any Murray mines or been supervisor over any Murray
11 mines; have you, or were you?

12 A. I haven't supervised any Murray mines. I have inspected some of the Murray
13 Mines.

14 Q. You have?

15 A. Yes.

16 Q. Is that here in ---?

17 A. Here in District Nine.

18 Q. After Murray took over?

19 A. After Murray took over.

20 Q. What mines did you inspect?

21 A. West Ridge, Aberdeen. Those are the two I can remember. It was our
22 conveyor belt initiative.

23 Q. Do you remember when that was, Don?

24 A. I'm going to guess, and I have memos that have the exact time frame when
25 we were there. But I'm going to guess it was ---.

1 Q. Would it have been sometime before the accident?

2 A. Oh, it was. Yeah, it was. It was sometime early in '06, I'm going to guess.

3 Q. '06, okay. Murray had already taken over the mines by then; right?

4 A. Yes. Let me --- he came in the summer of '06. So it would either have been
5 late '06, early '07. I don't remember for sure, Joe.

6 Q. But he was already in charge of the mine?

7 A. Yes.

8 Q. Can you tell us, how did you find those belts to be? Were they compliant,
9 were they out of compliance, were they ---?

10 A. They were out of compliance.

11 Q. Out of compliance. In what regard, Don? What was wrong with them?

12 A. Well, accumulations. The belt flight that I was on --- I wasn't on all the belts,
13 because the work group --- we split the mine up. I went one way, and whoever was
14 with me took another section belt. But the one belt that I was on, let's see, one of the
15 alarms didn't work. They had built a stopping across the belt entry and had a dead air
16 space. You know, we issued a violation for that. Again, I could find the memos and --
17 -.

18 Q. We can look up those. Those were done as part of a belt initiative?

19 A. The belt interests were part of our belt initiative, but they were done in
20 conjunction with the EO-1 regular inspection.

21 Q. Okay. Did you have a team that went with you ---

22 A. Yes.

23 Q. --- to do the mines?

24 A. Yes.

25 Q. Who was on that team; do you remember?

1 A. Initially, Donnie Durrant, Randy Gunderson, Mark Brewer, Larry Neil. That
2 was the initial team. We had done I'm going to guess eight mines, and we rotated the
3 team members. So the second group was Frank Markosek, Barry Grosley, Danny
4 Cerise, Peter Saint.

5 Q. So do you remember which team was with you at West Ridge in Aberdeen?
6 Would it have been Durrant/Gunderson team?

7 A. I don't believe. I think it was Markosek and Grosley.

8 Q. Okay. So you don't think it was those guys?

9 A. I don't believe it was.

10 Q. About how long did that belt initiative last? How long were these guys pulled
11 off their inspection work for that initiative; do you remember? I mean, pulled off their
12 regular inspection work. I realize they were inspecting at the time.

13 A. Well, our initiative is still ongoing. We just put it on hold for a little while.

14 Q. Okay.

15 A. What we would try to do is do two or three mines in that particular area, so a
16 week, week-and-a-half.

17 Q. So it wouldn't be like two months period or something?

18 A. No.

19 Q. It might be a week, and you'd go out and hit a couple mines?

20 A. Right.

21 Q. Then the next quarter or something, do another week or two?

22 A. Right.

23 Q. Were you pretty much heading up that initiative for the district as the lead
24 supervisor on it?

25 A. Yes, sir.

1 Q. Did you ever have any problem with Murray while you were there at those
2 mines?

3 A. I never dealt with Mr. Murray.

4 Q. Did you ever meet him? Never met him.

5 A. Never met him.

6 Q. How about his mine management, Laine Adair, or any of those people? Did
7 you have any problems or any controversy while you were making those belt
8 inspections?

9 A. No, sir.

10 Q. Did you shut the belts down at all, Don; do you remember?

11 A. Yes, sir.

12 Q. With D orders or imminent danger orders, do you remember?

13 A. I don't remember the action, specifically.

14 Q. Okay. But you know they were shut down for a period of time?

15 A. Yes, sir.

16 Q. You never had any repercussions about it, or did you?

17 A. None that I heard about.

18 Q. So no one ever called you in and said, Don, why are you shutting these mines
19 down, or did Al ever talk to you about that?

20 A. Nope.

21 Q. Did you ever go to Crandall Canyon?

22 A. Nope. It was on the list, but we didn't make it there.

23 Q. Oh, okay. So you didn't get there. The bump occurred first?

24 A. Well, just we didn't get there. And you're right. The bump did occur, and the
25 mine shut down.

1 Q. Did you ever hear about some kind of a bonus system at these mines that
2 Murray owned?

3 A. No.

4 Q. Had you ever been at Aberdeen or West Ridge prior to those belt inspections
5 or prior to Murray taking over?

6 A. I was at the --- I want to say the Aberdeen Mine back probably ---. I didn't go
7 in the mine. The last phase of the diesel reg that occurred in 1996 ---

8 Q. Okay.

9 A. --- we did some onsite demonstrations, looked at some diesel equipment.
10 That could've been '97, '98, in that range.

11 Q. So you can't really compare the compliance record prior to Murray and after
12 Murray at those mines, or could you?

13 A. No.

14 Q. Were those mines operating when you worked in Price?

15 A. Yes.

16 Q. But you never did inspect them at that time?

17 A. No. The only mine that we had --- well, two mines up at Huntington Canyon
18 was Deer Creek and the Co-op Mine. The Crandall Canyon Mine was inspected out of
19 Price.

20 Q. So out of Orangeville, you were inspecting Deer Creek and Co-op?

21 A. Yes.

22 Q. Were you still there when those two offices were merged?

23 A. Castle Dale and Price?

24 Q. Yes.

25 A. No.

1 Q. You'd already left and were working somewhere else in the district?

2 A. Aztec, maybe. Yeah, I don't know when they merged even.

3 Q. Do you have many dealings with the district CLR?

4 A. No.

5 Q. And the field office supervisor?

6 A. Not many dealings, no.

7 Q. How are you notified of health and safety conferences that are going to be
8 done on violations that your inspectors have issued?

9 A. They have a form letter thing, cover page, that the conference has been
10 requested. Sometimes the operator's position is provided to us to refute or think
11 about.

12 Q. Okay.

13 A. Then we put the packet together and send it back.

14 Q. So sometimes you get the operator's position prior to the conference?

15 A. Yes, sir.

16 Q. Is that pretty much standard, or is it just once in awhile?

17 A. That's pretty much standard. The way the CLR has it set up, he wants specific
18 information, what the operator's position is about the violation, what their concerns
19 are.

20 Q. Then your inspector and yourself, you provide comments back to the CLR
21 about that position or about the violation?

22 A. Yes, sir.

23 Q. Are you kind of contacted prior to changes being made?

24 A. No.

25 Q. So changes are just made after you send back your comments or whatever,

1 and you're not aware until sometime after the conference that changes were made?

2 A. That's correct.

3 Q. How are you notified of those changes?

4 A. A memo to the inspector through me.

5 Q. So the inspector receives a memo?

6 A. Yes.

7 Q. Do you ever disagree with the changes made?

8 A. I have at times, yes.

9 Q. What happens if you disagree? I mean, do you get to ---?

10 A. You get over it and move on.

11 Q. Do you get to ever talk about it, or do you talk to AI about it?

12 A. Well, I have talked to AI about it, and I've written a memo or two when I've,
13 you know, felt the need. I mean, I try to be open-minded. What's the rationale for the
14 change? As a supervisor, I mean I've stressed it several times with AI and Bob
15 Cornett when he was the ADM, is I can't be an effective supervisor if I don't have all
16 the facts. I mean, I do try to be cognizant of prevailing court cases. I started going to
17 the review commission myself and looking at prevailing court cases.

18 Q. So do you feel sometimes that those violations were changed without proper
19 justification?

20 A. Sometimes I think so, yes.

21 Q. When you went to AI, did you have any --- did you get any recourse from him?

22 I mean, did you get any satisfaction that, you know, things might be different or
23 changes could be different?

24 A. I don't know how to answer that. One of the things that I know as a result of
25 the Jim Walter's internal review was the CLR was to come to the field offices and do

1 training, which he did do that. He came to Aztec when I was in Aztec. I don't know
2 that he's been to Gillette since I've been in Gillette. I think that was --- the gist was,
3 you know, that CLR would come and provide training, kind of sharpen our wits about
4 doing business.

5 Q. So what was that training to entail, to instruct the inspectors to write better
6 violations that wouldn't be changed or to explain to them this is how we're going to do
7 the program?

8 A. What I can recall from Aztec was in the CLR's opinion, common errors made
9 by maybe not necessarily that particular work group in Aztec, but inspectors as a
10 whole across the district, lack of documentation, not using good judgment, people
11 affected, abatement times could have been excessive. You know, I don't recall all the
12 particulars.

13 Q. Okay. So it was those issues about violations, trying to improve on the
14 violation-writing process?

15 A. Yes.

16 Q. Do you think that was beneficial?

17 A. I did. I really felt that when changes were made, that better justification
18 could've been provided.

19 Q. So you don't feel that the changes were entirely justified in the written
20 document you received back?

21 A. I don't, no.

22 Q. Did it have a justification on the document you received? I guess you had
23 some kind of document; right?

24 A. There was justification on there, yes.

25 Q. There was something on there.

1 A. Something.

2 Q. It said, here's why I changed this because of?

3 A. Yes.

4 Q. Was it usually an operator's opinion or something that was provided?

5 A. Well, it seemed that some of the violations --- I know early on when it got to
6 Aztec, seemed to favor the operator's position over the inspector's position.

7 Q. Okay.

8 A. I mean, I pulled out --- I mean, this stuff was already in the works when I got
9 there. I started looking at their documentation and what was written. It looked like a
10 violation to me. Reading his justification for change, I started searching the Review
11 Commission to see what the opinion of the courts was and found out that the CLR was
12 correct in vacating the violations that were vacated at that particular time.

13 Q. Were you ever ordered or instructed to vacate a violation or an order?

14 A. No.

15 Q. By anybody in the district at all?

16 A. No.

17 Q. Never?

18 A. Time out.

19 Q. Okay.

20 A. Yes, I was, actually, just here not too long ago.

21 Q. Recently?

22 A. Recently. It was the first week in December of last year.

23 Q. So that's two months ago, primarily?

24 A. Yes.

25 Q. Do you remember the circumstances of why you were instructed to vacate

1 that?

2 A. Yes, I do.

3 Q. Could you elaborate a little bit on that?

4 A. I'm not going to make it easy, Joe. I mean, if you want it, you got to ask.

5 Q. I understand that, and I will.

6 A. No doubts about that.

7 MR. TEASTER:

8 He has.

9 A. He has. It was Twentymile Foidel Creek Mine. I was doing inspection work,
10 helping out with the EO-1. There was some documentation in the weekly book about
11 a seal that was out-gassing, and the methane concentration was four-and-a-half, five
12 percent. The oxygen was 11 percent, 12 percent, in that range. There was no
13 documentation by the rule that they took any additional samples, two additional
14 samples at one-hour intervals. I issued them a citation for that and went to check the
15 seal.

16 There was an explosive mixture behind the seal, and it was out-gassing. So I
17 issued an imminent-danger order. I don't know what was going on with the seal,
18 'cause one time it was out-gassing; the next time it was in-gassing. So we pulled a
19 sample. I called the district and let them know to get ready for a phone call, 'cause it's
20 coming. I did that before I went underground. Actually, I called Al, and talked to him
21 that there's a potential problem.

22 So I went underground and did what I did. When I came outside, I issued the
23 imminent danger order, withdrew the mine. The affected area was the entire mine,
24 based on where the seal was located. They were evacuating the miners, and I got
25 another phone call from Al saying to vacate the imminent danger order. That it had

1 been determined by Arlington that we shouldn't have pulled the sample behind the
2 seal if it was in-gassing. So I vacated the imminent danger order. That's the only
3 one.

4 BY MR. PAVLOVICH:

5 Q. Okay. Is Twentymile a pretty big mine here?

6 A. Yes, sir.

7 Q. High production mine?

8 A. I don't know. They try to do about 12 million a year.

9 Q. That's pretty high for underground.

10 A. Yes.

11 Q. What company owns Twentymile?

12 A. Peabody.

13 Q. Have you had the experience with Peabody before as far as calling the district
14 or complaining about enforcement activities?

15 A. I don't know that Peabody called the district. I was just letting Al know that
16 there would be a potential that he would get a phone call from them. Now if it was
17 corporate people that called headquarters or what, I don't know anything about that.

18 Q. Okay. So you were just called by Al and said vacate --- had you already
19 written the violation?

20 A. Oh, yeah.

21 Q. So it was already on paper ---

22 A. Already on paper.

23 Q. --- so you actually vacated it?

24 A. Yeah. Served to them.

25 Q. And you had methane out by the seal?

- 1 A. No.
- 2 Q. An explosive mixture outby the seal?
- 3 A. No, inby.
- 4 Q. Just inby the seal?
- 5 A. Right, inby the seal.
- 6 Q. Did you agree with that change?
- 7 A. No.
- 8 Q. Who was it that called you and told you to vacate it?
- 9 A. Al.
- 10 Q. Al, himself. Did he mention in headquarters who had said that was incorrect
11 measurement?
- 12 A. Not that I recall.
- 13 Q. Had the policy been or your instructions been prior to examine those seals for
14 explosive mixtures?
- 15 A. Well, yes. Since the seal rule had come into being, there's been a lot of back
16 and forth --- the right protocol to take a sample from behind the seal. I didn't have the
17 equipment that I needed to take the correct sample according to our protocol. That's
18 why, in my estimation, I was instructed to vacate the imminent danger order.
- 19 Q. Is there any confusion among you or your inspectors or the inspectors in this
20 district that you know of concerning the sampling of seals and the seal rules and that
21 sampling protocol and all that stuff that has to be done pertaining to seals?
- 22 A. Would you repeat that?
- 23 Q. Is there any confusion or misconception or difference of guidance or opinion
24 on sampling protocol with seals and how seals are to be handled, treated?
- 25 A. No, not since the last PIB came out.

1 Q. You think it's fairly clear now, and everybody's doing the same thing?

2 A. Everybody's doing the same thing as far as I know.

3 Q. Was it always that way from the time it first started, or was there a lot of
4 confusion about it?

5 A. There was some confusion, when to take the sample, how to take the sample.

6 Q. When you say you didn't have the proper equipment, do they now have the
7 proper equipment, Don?

8 A. Yes.

9 Q. They now do have ---

10 A. Yes.

11 Q. --- the proper equipment. So you have a pump or something?

12 A. We have a pump and a 620.

13 Q. At that time, you didn't have that?

14 A. I didn't have that.

15 Q. Do you think there's any favoritism shown to certain companies here, either
16 through the CLR program or the district concerning enforcement?

17 A. I don't think from the district. I mean, I've had some exposure last year for the
18 120-day detail. I know there wasn't any that I saw during that time. I haven't been
19 back since the last of October of last year. I haven't seen any favoritism. When I was
20 a supervisor in Aztec, I thought the CLR showed favoritism to one particular mine over
21 the rest of them.

22 Q. Okay. Why did you think that?

23 A. Well, he'd come down there and hold the conferences onsite at that one
24 particular operation and none of the other mines.

25 Q. Did they seem to get a lot changed ---

- 1 A. Oh, absolutely.
- 2 Q. --- more than the other mines?
- 3 A. More than the other mines, yes.
- 4 Q. Can you tell us what mine that was?
- 5 A. Lee Ranch.
- 6 Q. Lee Ranch Mine. Who owns Lee Ranch now?
- 7 A. Peabody.
- 8 Q. Peabody. It seems like Peabody keeps coming up.
- 9 A. Well, we didn't treat them any different. We just ---.
- 10 Q. That was the field people; right, just the inspector?
- 11 A. Right.
- 12 Q. But you thought maybe they got some different treatment by the CLR?
- 13 A. Yes, sir.
- 14 Q. How does that affect the attitude of your work group, if that perception is out
15 there? If you had it, I imagine your inspectors had it.
- 16 A. Well, I try to keep a positive attitude. Again, I looked in the Review
17 Commission, researched, gave them those court decisions, prevailing court decisions.
18 All right. If you're going to write this violation, here's what we have to prove. This is
19 what you have to find and document. I did hands-on training with them. We started
20 practicing in our documentation, in the body of the violation, documenting the
21 standard that was being violated, the hazard posed by the condition, the exposure, the
22 type of injury to be expected, and the operator's negligence. We got better. We
23 made it very difficult for people to make changes to what was going on. It took a lot of
24 effort.
- 25 Q. Does that kind of hurt the inspector's morale and attitude when they feel

1 they're doing a good job writing violations, and then they get changed in conference,
2 or they're told to change a violation?

3 A. Well, I think it does. I think it does have an impact on the way they're going to
4 look at things. I've heard inspectors make that comment. I'll know how to write these
5 the next time I see them. Well, that's the wrong attitude to have.

6 Q. Right.

7 A. You got to get better at what you do.

8 Q. How about as far as not maybe writing as many violations after that or more
9 difficulty in encouraging them to enforce the law because of disappointment in things
10 being changed; have you ever seen that happen?

11 A. Again, the attitude, having been in Aztec and in Gillette --- I mean, Gillette,
12 when those conference requests would come in, the inspectors didn't know that they
13 could comment to it. I found that to be remarkable that they didn't understand that you
14 have an opportunity now to provide additional information. When I inquired about it,
15 the answer I got was they've never seen those requests before. That the prior
16 supervisor and office assistant would gather the notes and would copy the citation and
17 send the information back. They didn't have an opportunity to comment.

18 Q. So they would take it just as an instruction to gather the information and send
19 it without any comments?

20 A. True.

21 Q. So the inspectors were getting no chance to comment, didn't even know their
22 violations were being conferenced, I guess?

23 A. Didn't know they were being conferenced. Didn't know they were being
24 vacated.

25 Q. So did you see that a lot were being vacated up there in Gillette?

1 A. Well, the prior supervisor vacated a lot of violations on his own, before it ever
2 went to conference. You talked about favoritism?

3 Q. Yeah.

4 A. The prior supervisor had favorites up there. That's what's been hard for me.
5 The only favorite I got is working next-door there.

6 Q. So certain mines in the Gillette area received preferential treatment, in your
7 opinion, with the prior supervisor?

8 A. With the prior supervisor, yes.

9 Q. Was that pertaining to enforcement activities?

10 A. Enforcement activity, yes.

11 Q. So you saw a lot of violations that at certain mines were vacated or changed
12 or reduced, while at other mines they weren't?

13 A. Yes, sir.

14 Q. Do you remember what mines those would've been or what companies that
15 would've been that received the preferential treatment?

16 A. No, not offhand.

17 Q. Did those operators ever come to you after you came up there and tried to do
18 things equally and say --- make any comments about what are you doing to us?

19 A. Oh, they made those comments, yeah. They brought up some prior
20 agreements that they had with the prior supervisor. I just referred them to the Mine
21 Act 30 CFR. That's the only agreement I have.

22 Q. Prior agreements?

23 A. Yeah.

24 Q. What kind of agreements did they have?

25 A. Well, one that we kind of squelched was non-certified people doing workplace

1 examinations. Supposedly, they'd been told by the prior supervisor that these people
2 could do examinations of portions of like the prep plant or the shop and then report to
3 a certified person. Then the certified person would fill the book out.

4 Q. Okay.

5 A. So we issued several violations to kind of correct their wicked ways.

6 Q. So that problem's now been corrected?

7 A. Yes, sir.

8 Q. What did the inspectors think? Were they aware of those agreements?

9 A. No, they weren't aware of that. It came as a shock to them as well when we
10 started finding that that practice was ongoing. They would bring back --- I mean, they
11 would write the violation and bring back the comments. Again, we just told them to
12 stay focused on what the rule requires. I don't have that authority. The district
13 manager doesn't have the authority to tell them to do something different than what's
14 required. They need a 101C petition.

15 Q. Now what year was that you went to Gillette?

16 A. 2004, July.

17 Q. So prior to 2004, these events were still occurring with favoritism amongst
18 certain operators in Gillette, to your knowledge?

19 A. That's my understanding, yes.

20 Q. Operators have actually expressed that to you as we used to be able to do this
21 or do that, and now you're here, and we can't do it anymore?

22 A. That's basically what they had to say about it.

23 Q. Was there any district involvement at that, or were you able to just handle that
24 yourself?

25 A. Well, when I went up there, Al and Bob Cornett told me --- well, when they

1 asked me to go, they asked me to go in April. They knew that the former supervisor
2 was retiring in June of 2004. So they asked me to go up there. They felt that there
3 was problems in the basin, and they wanted me to go fix the problem.

4 Q. So they indicated to you that there were problems?

5 A. Yes, sir.

6 Q. Did they indicate it was concerning enforcement?

7 A. Yes, sir.

8 Q. They wanted you to fix those problems?

9 A. Yes, sir.

10 Q. In what way?

11 A. Well one, analyze what the full problem was. Was it with the inspectors not
12 understanding, realizing what kind of guidance they needed? So again, the first thing I
13 did was start looking at inspection reports. I mean, you're talking like the Black
14 Thunder Mine, the largest surface mine in North America. I could be wrong about my
15 numbers, eight to twelve violations. I mean, you're talking a mine that's got a
16 thousand employees, 1,200 employees, five drag lines.

17 Q. Eight violations a year?

18 A. A quarter.

19 Q. Or a half, I guess.

20 A. A half, yeah.

21 Q. So per inspection, about eight violations?

22 A. Yeah. So I just told the workgroup I found that remarkable.

23 Q. Had you ever been out at the mine?

24 A. No. I was just going by what documentation I was seeing and looking at the --

25 -.

1 Q. So the other mines up there had more violations?

2 A. No.

3 Q. They all had about that many?

4 A. All had about the same, yeah. All about the same.

5 Q. Exemplary mines then; aren't they?

6 A. That's what I said.

7 Q. Did that prove to be the case once you finally went to the mines?

8 A. No. No, I've traded tactics with the mine or changed the way we did business.

9 When I got there, there was two journeymen inspectors, the electrical specialist who
10 works for the electrical supervisor here in the district and a trainee. That was the
11 workgroup. So what I did was instead of one person going to the larger mines, I took
12 them all. Let's go see how good they are. We went in different directions. I took the
13 trainee with me. When we regrouped at the end of the day, lo and behold, they
14 weren't as good as some thought.

15 Q. It wasn't a fact the inspectors didn't know?

16 A. No.

17 Q. They just weren't writing violations?

18 A. That was there instruction.

19 Q. They were instructed not to write violations?

20 A. Well, I've been told that from the prior supervisor --- got after them for writing
21 a lot of violations.

22 Q. Don, you've worked in several offices in District Nine, Orangeville, Aztec,
23 Gillette. Have you seen similar occurrences in other offices?

24 A. No.

25 Q. Of a lack of enforcement attitude or discouraging inspectors to enforce laws or

1 certain areas or at certain operators, did you ever see that in the Price area when you
2 were out there?

3 A. No.

4 Q. When you first came in?

5 A. Well, let me back up again. Early in my career, being in Orangeville and the
6 office moved to Castle Dale, some of the mines that we had jurisdiction over, our field
7 office, some of those folks would visit some of the mines in the Price area. They were
8 kind enough to let me know that things weren't the same, that their mine was held to a
9 higher standard than some of the mines that they visited in the Price area. I don't
10 know that to be factual, 'cause I didn't inspect the Price Mine. I looked forward to that
11 opportunity, but it never did come my way.

12 Q. Were you considered to be a heavy hitter when you were in Price as an
13 inspector?

14 A. I didn't take prisoners, and I don't take them today.

15 Q. I guess that's a yes?

16 A. Yes.

17 Q. So you think maybe that's the reason you weren't sent to some of these other
18 mines?

19 A. I believe that, yes.

20 Q. Do you have any role in the plan-approval process, Don, as far as plans for
21 the mines that you supervised. Do you get to look at any of those plans prior to
22 approval and comment on them?

23 A. When I was in Aztec, yes.

24 Q. All the time?

25 A. Well, not all the time. That wasn't your question.

- 1 Q. Okay. Did you ever have any?
- 2 A. Yes.
- 3 Q. In Aztec?
- 4 A. In Aztec, yes.
- 5 Q. Never in Gillette?
- 6 A. No.
- 7 Q. In Aztec --- and I guess that would've been your last duty station with,
- 8 primarily, underground mines.
- 9 A. Well, I have an underground mine ---
- 10 Q. You do?
- 11 A. --- in Gillette.
- 12 Q. Okay. So the roof control plan, the vent plan, respirable dust control plan, in
- 13 Gillette, do you ever get a chance to comment on those prior to the plans being
- 14 approved or see what is being submitted?
- 15 A. No.
- 16 Q. Never do? In Aztec, you said you did.
- 17 A. Yes, the San Juan Mine.
- 18 Q. At the San Juan Mine?
- 19 A. Yes.
- 20 Q. Would that be for specific plans or pretty much generally all submittals?
- 21 A. Primarily the ventilation.
- 22 Q. Primarily the vent plan. Addendums?
- 23 A. Addendums.
- 24 Q. How would you get that opportunity? Was the plan mailed to you or faxed to
- 25 you to look at?

1 A. Faxed, e-mailed. Bill Reitze and Sid Hansen --- Sid had the mine, and we
2 worked real close together.

3 Q. So you would have an opportunity to comment on what vent changes were
4 being made?

5 A. Right.

6 Q. Do you think it was pretty standard procedure throughout the district?

7 A. I couldn't say.

8 Q. How about roof control plans; did you ever see any of those prior to ---

9 A. No.

10 Q. --- approval? So you never got a roof control plan, it was vent plans?

11 A. Just vent plans.

12 Q. Okay. How about your inspectors? Did you consult with them if you got one
13 of those plans about what was going on at the mine, and did they think it was
14 something that would be appropriate or not?

15 A. Well, in Aztec there was only one underground inspector at that time. He and
16 I did share. We communicated real close about the San Juan Mine, methane, H2S
17 concerns.

18 Q. What other underground mine did you have, other than San Juan, out of
19 Aztec?

20 A. King Coal.

21 Q. Okay. So you just had the two underground mines?

22 A. Yes.

23 Q. Primarily, most of these comments were with San Juan?

24 A. Yes.

25 Q. How about King, did you get anything on them?

1 A. No.

2 Q. Did you ever recognize any inconsistencies between roof control and vent
3 plans or had problems with something that was approved in one of the plans?

4 A. Would you repeat that question?

5 Q. Have you ever noticed any inconsistencies between a roof control plan, like ---
6 and a vent plan? Like the roof plan may say no standing water in returns, but the vent
7 plan may say you can examine to the toe of the water or something. Have you ever
8 noticed anything like that?

9 A. Not that I recall.

10 Q. Not that you recall. Did you ever see anything in the plan that was approved,
11 and when you looked at it and said well I don't necessarily agree with this?

12 A. Yes.

13 Q. What avenue did you have to argue at that point or bring that to someone's
14 attention that you didn't agree with it?

15 A. Well, it was generally too late once it was approved.

16 Q. Okay.

17 A. I mean, now you've got to find the problem with the way the plan's written,
18 document that. Either they're in violation or they're not. Then put it on the correct
19 form and send it back up here for comment.

20 Q. Would that be the 204 form?

21 A. Yes.

22 Q. So your inspectors and you, with your, obviously, consultation as a field office
23 supervisor would document on that form that you had concerns or problems with a
24 particular plant?

25 A. Yes.

1 Q. Did you receive any comments back or any satisfaction on those written forms
2 that you sent in?

3 A. Through the years, yes, I have.

4 Q. Was that pretty regular or not?

5 A. Not.

6 Q. Not regular?

7 A. Not regular.

8 Q. So if I told you there was 30-some comments on roof control plans, and none
9 were ever responded to, and there was 40-some on vent plans, and two were
10 responded to, would that surprise you, or would you think that's pretty standard?

11 A. I would have to take your word for it, if you told me that.

12 Q. You would not be surprised that there was such a minimum number of
13 comments; is that true, or responses back?

14 A. Well, I would like to think that we've gotten better at responding to comments.
15 Is that the case? I don't know, 'cause I don't see those.

16 Q. So in the field office you would have sent those forms in several times with
17 deficiencies listed, but you don't remember many responses back from the district
18 saying we've addressed your concerns?

19 A. Well, the ones in Aztec and in Gillette, I have received or did receive
20 comments back in memo form from the district manager about my concerns.

21 Q. So some of them you did receive?

22 A. Yes, sir.

23 Q. Some of them you did, not all of them.

24 A. Yes. Maybe not. It could've been trifle to me, or big to me and trifle to them.
25 I don't know. It's all perception.

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MR. PAVLOVICH:

We don't have any of our plans and all that stuff; right,

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

'cause the box didn't come in?

UNIDENTIFIED SPEAKER:

We don't have nothing, Joe.

BY MR. PAVLOVICH:

Q. Have you ever seen any floating bleeder evaluation points approved in this district, Don?

A. Pardon me?

Q. Floating bleeder evaluation point, it is where retreat mining is done. The evaluation is approved as a floating point, say, to the toe of the water that's being built up or anything like that?

A. I have seen those, yes.

Q. You have? How do you feel about those?

A. I don't like it.

Q. You think the bleeder should be examined in its entirety and maintained free of water?

A. Yes, sir.

Q. But you have seen floating evaluations?

A. Yes.

Q. Have you ever commented to about those to anyone?

A. Once or twice.

Q. What was the response?

A. I can't be for sure what that was.

Q. So after you commented once or twice, you continued to see those being

1 approved?

2 A. Yes.

3 Q. So your comments fell on deaf ears, so to speak?

4 A. In my opinion, yes, they did.

5 Q. Did you ever have any trouble --- you or your inspectors have any trouble
6 understanding and enforcing plans due to the number of addendums that are
7 attached?

8 A. Yes, sir.

9 Q. Is that anything that the district ever tries to work on is to consolidate those on
10 a regular basis, to your knowledge, or do they just let them build up for a long period
11 of time?

12 A. I don't know.

13 Q. You don't know. Have you ever complained to anybody about, hey, you got
14 so many addendums here, we can't follow what we got?

15 A. Well the only complaint I made was to the mine operator. One section of coal
16 mining, you've got a vent plan in two books. I told him this ain't going to cut it. He did
17 revise his plan.

18 Q. So he consolidated?

19 A. He did it on his own, yeah.

20 Q. But not because the district asked him to?

21 A. Not that I'm aware of.

22 Q. Let's go back to, I guess, Crandall Canyon. You're familiar with the map of
23 the Crandall Canyon Mine after the accident on the 6th when you were out there?

24 A. I'd have to see it, but yeah, I think so.

25 Q. Well, you knew there was longwall gobs to the north, longwall gobs to the

1 south. Main west entries were driven, and then the barrier pillars, both north and
2 south of main west entries were being mined, developed and then retreated?

3 A. Yes, sir.

4 Q. Had you ever seen that kind of retreat mining on barrier pillars before in your
5 experience here in District Nine, especially where you had deep cover?

6 A. No.

7 Q. What did you think of your first observation of looking at that map and seeing
8 that those barrier pillars were being developed with room and cross cut or entry and
9 crosscuts, and then the pillars were being pulled out?

10 A. What was my thoughts?

11 Q. Yes.

12 A. I didn't think that was the prudent thing to do.

13 Q. Because of your prior experience with mines in deep cover or just something
14 that struck you as being unusual?

15 A. Being unusual, you know. Again, having inspected in the Price area for as
16 long as I did --- again, not the most prudent thing to be doing.

17 Q. Okay. You had never seen that done before, it wasn't a common practice out
18 of Price?

19 A. No.

20 Q. Can you tell me a little bit about your experience with bumps, Don, and your
21 knowledge of bumps? Had you ever seen a bump before you came in with MSHA into
22 Price?

23 A. No. Thirty (30) inches of coal, you don't get much bumping going on with your
24 head against the top, you know?

25 Q. So I'm assuming your prior history was in low coal?

1 A. Low coal, yes.

2 Q. So when you came to Price, you experienced or heard about your first bump
3 activity or bounce activity?

4 A. Yes.

5 Q. And it's okay if we use that term interchangeably, I guess?

6 A. Well, if you're meaning it the same way, a bump and a bounce as being one in
7 the same, then that's fine.

8 Q. How do you feel they are? Do you feel they're different? Is there a different
9 definition for a bump and a bounce?

10 A. Definitely.

11 Q. What's your opinion of them?

12 A. Well, a bump is just things settling in. A bounce is you've got outbursts of the
13 coal ribs, faces and stuff.

14 Q. So your definition of a bounce would be that you actually had a dislodgement
15 of coal at some velocity from the ribs?

16 A. Yes.

17 Q. A bump would be just more of a vibration, but you didn't really have the coal
18 fly off the ribs like a bounce would?

19 A. That's correct.

20 Q. Is that pretty much a standard definition of what you would hear in the Price
21 area among the miners and mine management and the inspectors, or is that
22 something that you just would think up on your own?

23 A. I guess it's all --- some of those folks over in the Price area that did their
24 mining there for 20-plus years and maybe now they're working with MSHA, may or
25 may not agree with my analogy.

1 Q. Okay. That's fine.

2 A. But I kind of think we're going to be pretty close to what I just said.

3 Q. Just as long as we --- you know, I don't want to be using bump and bounce,
4 and you thinking I'm asking something else. So we'll try and stick with bounce when
5 we talk about a more of an explosive force off the rib lines; okay?

6 A. Okay.

7 Q. Have you ever been in a bounce while you were inspecting or anytime during
8 your career?

9 A. No.

10 Q. Had you ever investigated a bounce?

11 A. Yes.

12 Q. Do you think it was common practice in the mines over in the Price area to
13 report all bounces?

14 A. Would you repeat that?

15 Q. Was it common practice for the mines in the Price area to report to MSHA all
16 bounces that occurred?

17 A. I don't believe.

18 Q. You don't think so?

19 A. No.

20 Q. So you think they reported the ones where equipment was damaged or ---?

21 A. Disrupted ventilations, something like that.

22 Q. You think they reported those?

23 A. Yeah.

24 Q. They were required by law?

25 A. Right.

1 Q. Were they ever recorded on the mine maps, like roof falls would be?

2 A. Not that I recall, no.

3 Q. You never went to a mine and saw a roof fall map that had roof falls and
4 bounce areas recorded or shown?

5 A. Just the falls but not the bounces.

6 Q. Would you be aware now that the law says that you shall record roof falls and
7 bursts?

8 A. If that's what's required, I would expect to see that, yes.

9 Q. The regulation does say that.

10 A. Right.

11 Q. So you would expect to see then areas where bursts would have occurred.
12 Would a burst be similar to a bounce?

13 A. Yes.

14 Q. Did you ever see any photos or hear any information about the bounce that
15 occurred in the north barrier in March of 2007?

16 A. Did I see photos?

17 Q. Uh-huh (yes).

18 A. No.

19 Q. Did you ever hear anything about it while you were at Crandall Canyon Mine?

20 A. Yes.

21 Q. Did you hear anything about the extent of how big a bounce that was?

22 A. I did hear some comments.

23 Q. And what were they?

24 A. Well, on the north barrier they had developed that and started retreating and
25 had something occur. If I remember correctly, they pulled out by some 10, 12, 17, 20

1 --- I forget what the number was.

2 Q. Like two rows of pillars?

3 A. Well, it's several rows of pillars, 10, 12 rows of pillars, and started mining
4 again.

5 Q. So that was your understanding?

6 A. That was my understanding.

7 Q. That they pulled back 10 rows of pillars or some distance ---

8 A. Some number.

9 Q. --- some significant distance ---

10 A. Yes.

11 Q. --- and started mining again?

12 A. Yeah.

13 Q. When that mining resumed, what happened?

14 A. I think they had another occurrence, and then they got out of there.

15 Q. So that's when a bounce occurred, when they pulled back and started mining
16 again?

17 A. Yes.

18 Q. Okay.

19 MR. PAVLOVICH:

20 Why don't we take about a ten-minute break? That okay with
21 you guys?

22 A. It works for me.

23 SHORT BREAK TAKEN

24 MR. PAVLOVICH:

25 Ernie, you got a couple questions?

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MR. TEASTER:

Yeah, just before we get into that other area.

BY MR. TEASTER:

Q. Don, whose responsibility is it to consolidate these plans where you've got excessive addendums?

A. I would think it'd be the field office supervisor initiating whatever needed to happen to make it happen.

Q. But is there any written SOP on that, or what do you do when --- you said that you didn't like it? You'd seen some of them. What did you do about it?

A. I would speak to primarily the ventilation plant. I'd speak to the ventilation supervisor and see if the next review they couldn't consolidate some of those addendums.

Q. Did they usually get ---?

A. Some of them were. But by the time the plan would be approved, you'd have four or five addendums, it seemed like, that wouldn't be made part of the new vent plan.

Q. As a supervisor, did you experience any occasion where the mine operator would get approved addendums before the field office received them?

A. Yes, sir.

Q. Did you do it more than once? I mean, was it something that frequently had happened?

A. Frequently happened, yes.

Q. Do you know why that happened?

A. No, I don't know why.

Q. How did you learn about it?

1 A. Usually from the mine, that they'd gotten an addendum and were ready to
2 take some action. Well we've got an addendum to our plan. Well we don't have it.

3 Q. So the inspector, maybe, was going to initiate some enforcement action, and
4 they pulled this plan out?

5 A. Yes.

6 Q. Did you ever voice that concern to anyone?

7 A. Yes, sir.

8 Q. Did it get any better?

9 A. At times it would. It did get better, but then there would be ---.

10 Q. Still a problem?

11 A. Still a problem.

12 Q. This previous supervisor that you mentioned in Gillette --- did he, in fact, retire
13 in June as was anticipated?

14 A. Yes, sir.

15 Q. From what you said, the district was aware that there was some problems in
16 that office with enforcement through that supervisor. Do you know if there's any
17 actions or anything to take to improve enforcement actions other than waiting until he
18 retired and put you up there?

19 A. I don't know.

20 Q. You're not aware of any?

21 A. I don't know of any. I'm not aware of anything. It wasn't discussed with me.

22 Q. This citation, or imminent danger order, was that condition behind the seal
23 corrected, to your knowledge?

24 A. I don't know. I would think --- there was a storm coming through that probably
25 when it passed, the O2 dropped below the 10 percent.

1 Q. Are you aware of anything that happened at Sago Mine? Did they determine
2 if that was an explosion mixture in behind those seals?

3 A. Well, the internal review seems to think that something went on behind the
4 seal. Methane built up and lightening is my understanding.

5 Q. So then there probably is some evidence that we had explosions that resulted
6 from explosion mixtures behind sealed areas?

7 A. Yes, sir.

8 Q. You indicated that you were at Twentymile helping out on an EO-1?

9 A. Yes, sir.

10 Q. As a supervisor, do you do a lot of inspecting?

11 A. Yes, sir.

12 Q. Why is that?

13 A. Lack of manpower.

14 Q. Do you feel that you can conduct your responsibilities as a field office
15 supervisor when you're required to make inspections?

16 A. It takes more of my time to get all the paperwork done and shuffled and
17 moved through the system.

18 Q. Do you have a feel for the percentage of the time that you, say, in the last two
19 quarters that you were supervisor, before coming as the acting ADM --- a feel for what
20 percentage of your time was devoted to EO-1s?

21 A. I don't have a feel for that, no.

22 Q. Was the district made aware that you needed people to conduct your
23 inspections?

24 A. Well as I mentioned, when I got to Gillette in 2004, I had two journeymen
25 inspectors and a trainee. We did these group inspections. I primarily had the trainee

1 with me. After he got his AR card, then we continued to utilize that same inspection
2 technique. We found that very beneficial. I didn't have an underground inspector, so I
3 was doing the underground inspections at the Bull Mountain Mine in Montana myself.
4 September of '04 was the last --- let me back up. September of '04, the electrical
5 specialist assisted with the inspection. It might've been the first quarter of October
6 through December of '04 I got assistance from Aztec. But from then on, I did the
7 inspections myself.

8 Q. Did you ever feel that the quality of our inspections suffered as a result of
9 being short of inspectors and trying to hurry through our inspections?

10 A. Yes, sir. But that has since been rectified. We've been able to hire some
11 folks, and I have two additional ARs now and two more trainees. I picked up a health
12 specialist, who came from metal/non-metal, that's being cross-trained right now.
13 Actually, he's at the academy taking some classes.

14 Q. So once you get everyone up and running, you feel you are adequately staffed
15 to make your mandated inspections, make them in a good quality fashion?

16 A. Will be, yes, sir.

17 Q. When do you think you'll have your two trainees up and running?

18 A. One of them just started, so they won't finish until next year. But as far as the
19 quality goes with what we have --- and again, we utilize that team concept. There'll be
20 two or three or whatever is needed at the mine. The quality won't suffer.

21 Q. So you figure you've got enough now that you can do your inspections and do
22 them the way they should be conducted?

23 A. Well I think so, yes.

24 Q. You stated earlier to Joe that you believe that the CLR's sometimes takes the
25 word of the operator over the inspector. Is that something that you think is just in the

1 field offices that you have, or is that prevalent throughout the district?

2 A. I think it's throughout the district, probably throughout the nation.

3 Q. Do you have any experience outside the district with that issue?

4 A. When I was an instructor at the academy and those folks would be coming
5 back for their next module, some of them got their AR cards. They would come back
6 and express their views that some actions that the CLR had taken that --- is this a
7 violation or not? Based on what they were telling me, I thought it was a violation. But
8 the CLR had a different opinion. He was vacating violations.

9 Q. Well, I can see differences of opinion, but if you're taking the word ---. In
10 other words, if I said I saw something, and Joe comes in as an operator and says he
11 didn't see that or he saw something different, he would take Joe's word over my word.
12 I mean if Joe's got documentation and something to prove that I was wrong, but just
13 taking ---. I mean, I have always thought that we would give the inspector the benefit
14 of the doubt if it was my word against your word, not so much ---. If he come up with
15 some proof and documentation --- we all make mistakes. So I mean, I think the CLR
16 is going to correct some of those. But if it's I said I saw it, and Joe said he didn't --- it
17 wasn't there, and he believed Joe, I mean, that's a different story than just believing,
18 yeah, I think that was a violation.

19 A. Oh, I agree with you, but that's not the way it is. The way it is ---.

20 Q. Do you think that they're believing the operator over the inspector when
21 there's no evidence, no anything? Just --- it's I'll take his word?

22 A. Yes, sir.

23 Q. Okay. Going back to West Ridge and Aberdeen when you went up there on a
24 belt inspection, how did Aberdeen and West Ridge, based on your memory, compare
25 with other mines in the district on the belts?

1 A. They were about average as far as if you're referring to the number of
2 violations issued. Some of what we thought would've been the better mines --- they
3 had some real problems. I mean, it's all the same common violations were being
4 issued from the first four inspectors that I had and the second four inspectors, hosing,
5 stoppings, fire-suppression systems not working, alarms or signals not working,
6 accumulation, misalignment of the belts. They were all common, but I would think
7 they fell right in there with medium-range ---. I can't remember total numbers, but I do
8 know that there was a couple of the first mines that we did that had a significant
9 amount of violations issued.

10 Q. You indicated that you found some mines in worse shape than what you had
11 anticipated. Would that have been either West Ridge or Aberdeen, or did you find
12 about what you expected at those mines?

13 A. Well, we didn't expect to find anything at any of the mines, because prior to
14 the group being formed, the district manager sent every underground mine operator a
15 letter re-emphasizing the occurrences that had happened back east, Sago and Darby
16 especially, and he encouraged them to --- and he had them itemized. There was, I
17 don't know, 10, 12, 13 things that he wanted them to go look at and be assured that
18 you don't have these things going on in your mine. He let them know that the district
19 would be following up to see about these things.

20 So when we showed up, they acted surprised. But I said he told you he was
21 going to have follow-up, so here it is. But to go in and find what we found, they didn't
22 do such a hot job. Some of them may have thought that he was kidding. I don't know.

23 Q. Well you know, if you ever get a program that works, where you can just send
24 out and say here's 13 items you need to make sure they don't exist in your mine, and
25 they work, I'd give them another 13 and go out and make sure they worked. We'd

1 eventually get them all in.

2 MR. TEASTER:

3 That's all I have.

4 BY MR. PAVLOVICH:

5 Q. Don, how were you notified of the accident that occurred at Crandall Canyon
6 on August the 6th?

7 A. I'd been in Price the week and a half before that, the latter part of July , on a
8 belt initiative. We had done the Deer Creek Mine and the Horizon Mine. I came back
9 here. We were going to New Mexico to do the San Juan Mine the first week of
10 August. One of the team members called me. I had to actually come here to the
11 Fayette Center to get my GOV. That's where I park it when I'm not using it, when I'm
12 in town. Had gone back home to get my stuff to go to New Mexico.

13 He called and wanted to know if Dan Cerise was the inspector, if we were still
14 going to New Mexico. I said, well, as far as I know. Why? He said, well, they've
15 deployed the mine rescue team. Pete Saint was going to be part of the team to do the
16 San Juan Mine. Based on the amount of belts they had, three people would've been
17 enough to get the job done. So he --- Dan told me that there'd been an accident at
18 Crandall Canyon.

19 Q. And Dan's an inspector in ---?

20 A. Delta.

21 Q. Delta. Okay.

22 A. So I called Cornett to see what was going on. Bob wasn't here. He had gone
23 to pack to go to Utah. So I talked to Al. Al wanted to know where I was, and I told him
24 where I was and where I was headed. He told me no, to come back here. He needed
25 me to go to Utah.

1 Q. So Al, basically then, when you got ahold of Al, Al told you to come on over to
2 Crandall?

3 A. Well, he told me to come here.

4 Q. Oh, come here? Okay.

5 A. Come here, 'cause I was in town. He wanted me to go to Crandall Canyon.

6 Q. Was Al still here when you got here?

7 A. Yes.

8 Q. Bob Cornett, you say, had already left going to Utah?

9 A. No, Bob had left --- had gone home to get some clothes.

10 Q. Okay.

11 A. We left at the same time.

12 Q. So all the three of you left at the same time going to Crandall Canyon?

13 A. Well, Bob and Al was in one vehicle. Bill Denning and myself was in my
14 vehicle.

15 Q. Do you remember about what time you got to the mine? That was on the 6th
16 that you left?

17 A. Yes.

18 Q. The day of the accident?

19 A. The day of the accident. Let me see. We went to --- 'cause Bill Denning is
20 the liaison, family liaison, we stopped by the building where the families were initially
21 and introduced ourselves to those folks at the building. Oh, what's his name? Jim
22 Poulson was the safety guy. He was at that building. We kind of got briefed there.
23 Bill let them know what his position was. Then we went to the mine.

24 I'm going to guess we got at the mine somewhere around 6:00, but I'm
25 guessing at that. So we were at the mine. Al and Bob were already at the mine when

1 we got there.

2 Q. Okay. Go ahead.

3 A. Well, we got briefed what was going on. I went back or took Denning back to
4 where the families were. I went back to Price, 'cause I was working graveyard shift,
5 and they wanted me back at the mine that night.

6 Q. So when you say you got briefed, who briefed you?

7 A. Well, Bill Taylor was there, but it was basically Al and Bob.

8 Q. So Al and Bob briefed you, and then told you to come back out on midnight
9 shift?

10 A. Midnight shift, right.

11 Q. Okay. So you went back to Price?

12 A. I went back to Price, checked in a hotel.

13 Q. Did they give you any assignment as to what your duties would be on the
14 midnight shift?

15 A. I would be working with Tommy Hooker. Tommy would be the senior MSHA
16 person onsite and basically to maintain calmness, if you will, and rationale with the
17 inspectors.

18 Q. Calmness with the inspectors?

19 A. Yeah.

20 Q. What does that mean? Were they excited?

21 A. Well, no, and I don't mean it that way. It was a rescue effort. I don't want to
22 say not to enforce the law, but to use sound judgment in any kind of enforcement
23 actions, I guess, is a better way to put that instead of calmness.

24 Q. Okay, so that was one of your instructions --- was to make sure that we
25 approach this in the right way as far as enforcement activity?

1 A. Yes.

2 Q. We're not here to make an inspection.

3 A. Right.

4 Q. Why do you think that instruction was given to you?

5 A. Well, we'd gone through a longwall recovery at West Elk back in '05 maybe or
6 '06. It was '05. We had some folks over there that --- again, they were trying to
7 recover the longwall. They had a fire ongoing. Some sound judgment, as far as
8 enforcement, wasn't being displayed, if you will.

9 Q. So there had been a previous history of this?

10 A. Yes.

11 Q. Where inspectors were taking enforcement actions or demanding certain
12 things be fixed and corrected that maybe didn't relate to the recovery or rescue
13 process?

14 A. Yes.

15 Q. In your opinion?

16 A. In my opinion, right.

17 Q. And apparently, in someone else's opinion if you were instructed to do that.

18 A. Well, they just didn't want things to get out of hand. It's a rescue operation.

19 Q. Who told you that?

20 A. I don't remember exactly who said that, but general discussions.

21 Q. Would AI have been involved in those discussions?

22 A. AI, Cornett and Hooker. We were all there.

23 Q. Was it clear who was in charge for MSHA when you got there?

24 A. On my shift?

25 Q. Well, for the operation as a whole?

- 1 A. In my opinion, it was Al.
- 2 Q. So Al was in charge when you got there?
- 3 A. When I got there, yes.
- 4 Q. Was that based on he was the senior official there?
- 5 A. Yes, sir.
- 6 Q. On your shift who would've it been?
- 7 A. Tommy Hooker.
- 8 Q. Hooker would've been the senior official?
- 9 A. Yes, sir.
- 10 Q. Were you ever there when Mr. Stickler or Kevin Stricklin arrived?
- 11 A. Was I ever there when they arrived?
- 12 Q. Well, I mean you were there at the mine when they ---. Sometime when they
- 13 arrived you knew they were now onsite; right?
- 14 A. When I came --- whatever day that was ---
- 15 Q. The next day?
- 16 A. --- that they showed up. Whenever they showed up, I knew that they were
- 17 there.
- 18 Q. In your opinion, who was then in charge? Did that chain of command,
- 19 organizational structure change any when they arrived?
- 20 A. Well, you know, I worked graveyard. They would show up during the morning.
- 21 Sometimes they would be there before I would leave the mine.
- 22 Q. Was it clear who was making the decisions to you?
- 23 A. I always thought it was Al, but it could've been somebody else.
- 24 Q. So even though Stickler and Kevin were there, you kind of felt Al was making
- 25 the decisions?

1 A. Well, his name was on all the plans that were approved.

2 Q. Well, Cornett signed some of them?

3 A. Yeah, Cornett signed the ones on the afternoon, that's correct.

4 Q. Okay.

5 A. But it was either Al or Bob's name.

6 Q. Did you or Hooker ever sign any plans?

7 A. I can't remember.

8 Q. Were you ever presented any plans during the nightshift of changes to be
9 made on the operation?

10 A. We were told occasionally that they were going to bring a plan down. They
11 had their meetings. I'm going to guess it was like 6:30 in the a.m., the dayshift
12 meeting. I know Bill Taylor, the supervisor, would go to those meetings occasionally.
13 On the afternoons it might've been 6:00, 6:30 p.m., when Cornett and whoever would
14 meet. Laine Adair, usually, I think. Those are the names that I would see on the
15 plans. Occasionally, Bob Cornett would say they're going to bring down another plan,
16 and they never showed up with it.

17 Q. So you guys never really were presented with here's a plan, Don; you need to
18 review it and approve it?

19 A. No.

20 Q. To your knowledge?

21 A. Not that I can remember.

22 Q. And you say at 6:30 or 5:30 in the morning whenever Bill Taylor would be
23 there to go in to a meeting with the company?

24 A. Yes.

25 Q. That was still overlapping on your shift; right?

- 1 A. Yes.
- 2 Q. But you guys weren't invited to the meeting?
- 3 A. I wasn't. Tommy Hooker went occasionally, but I wasn't ---.
- 4 Q. Tommy went sometimes?
- 5 A. Yeah, I wasn't invited.
- 6 Q. Did Tommy go like one time?
- 7 A. I think he went twice that I can remember. Twice is all I can remember.
- 8 Q. All right. So primarily, when you say there was an MSHA command center
9 and then a company command center, or were they joined?
- 10 A. No, they weren't joined.
- 11 Q. So you guys were situated in the Blue Goose?
- 12 A. In the Goose, yeah.
- 13 Q. The company was somewhere else?
- 14 A. Somewhere else, right.
- 15 Q. The only interaction then would be these morning or evening meetings, unless
16 something special came up to your knowledge?
- 17 A. To my knowledge, right.
- 18 Q. Did they ever come down during the nightshift when you and Tommy were
19 there and discuss the evolution of these plans or things that they wanted to do?
- 20 A. No.
- 21 Q. So primarily, you guys were getting all your information and what was going
22 on from the phone calls underground?
- 23 A. Yes.
- 24 Q. Okay.
- 25 A. You know, they would come in through the night, wanted to know the drill

1 depths, but they were getting that information as we were getting that information,
2 'cause they had people at the drill site like we had people at the drill site. So they
3 were just, I guess, comparing what they heard and what we heard.

4 Q. So what did you feel was the organizational structure of MSHA during this
5 operation?

6 A. In my opinion, once Mr. Stickler and Mr. Stricklin arrived on sight, they were
7 the two ranking folks, then Al, on days, Cornett on afternoons, Hooker on midnight
8 shift.

9 Q. You think most of the decision making was being done, primarily, on the
10 dayshift?

11 A. Yes, sir.

12 Q. Which is when Stickler and Stricklin and Al would've been present?

13 A. Yes.

14 Q. How were the inspectors on your shift briefed before going underground, Don?

15 A. Usually, they'd come into the Goose, and we'd go over any plan that had been
16 approved, that this is the way. This is the latest and the greatest. This is what we
17 need to be looking at. This is what they can do, this is what they can't do. But they
18 would come into the Goose.

19 Q. Were they mostly just given a copy of the plans?

20 A. A copy of a plan and we'd go over it. They'd read it. They'd ask questions.

21 Q. Usually, who would that be? Would it be a lead person, or would it be the
22 whole team of inspectors that were out there?

23 A. It'd be the whole team of inspectors.

24 Q. So what would you have, three or four guys, maybe?

25 A. Had one tech support person, sometimes two. Actually, there was two tech

1 support people and two inspectors. Now the tech support --- I say tech support.

2 They're mine rescue people.

3 Q. Okay. So you had two mine rescue people and two inspectors on your shift
4 every night?

5 A. Right. Every night.

6 Q. Would they come out about the same time you did?

7 A. Would they show up at ---?

8 Q. Yeah, what time was your starting time, 11:00 or so?

9 A. My starting was 11:00, and I was usually there by 10:00.

10 Q. How about their starting time?

11 A. Theirs was at 11:00.

12 Q. What time would they go underground?

13 A. Shortly after that, 11:30-ish. Now the mine was working 7:00 to 7:00.

14 Q. The miners were.

15 A. Right.

16 Q. The company people and the miners?

17 A. Right, the miners were.

18 Q. But the inspectors were pretty much working three standard eight-hour shifts?

19 A. Yes, three standard eight-hour shifts.

20 Q. Were they hot-seating it underground, the inspectors, or were you just ---?

21 A. Sometimes, yes.

22 Q. Sometimes, but not all the time?

23 A. No.

24 Q. Okay. So there was times the evening shift would come out, and your guys
25 were just going in?

1 A. Yes.

2 Q. So there would be times when maybe there would not be an inspector
3 underground at the rescue operation site?

4 A. Yes.

5 Q. And you were aware of that?

6 A. Yes.

7 Q. Was there difficulty with transportation?

8 A. Yes, sir.

9 Q. In what regard? Did the inspectors ever complain about it to you?

10 A. Well, they did.

11 Q. Okay. I started to ask you what was your impression of what the difficulty
12 was?

13 A. I think it was the company moreso than anything. It was getting our folks in
14 and out of the mine. Because they were working that 7:00 to 7:00 shift, making
15 special arrangements, if you will, in their eyes, to get us in and out of the coal mine.

16 Q. So getting you in and out wasn't a top priority with the company? They didn't
17 have a guy waiting there saying, okay, your man trip's ready to go?

18 A. No. Actually, we had some conversations with one of their guys. He called
19 our --- he called MSHA everything but a child of God.

20 Q. Is that right?

21 A. Oh, yeah. Ex. (b)(6) and Ex. (b)(7)(C)
22 out of the mine. So once we let him know how things were going to be, his attitude
23 changed.

24 Q. Who was that? Do you remember?

25 A. You know, I don't remember that guy's name. Really, I don't.

1 Q. Was he a management person or laborer?

2 A. Oh, he was a manager ---.

3 Q. He was the manager of some sort?

4 A. Yes. I mean, we told him up front. You know, yes, this is a rescue operation,
5 but you don't have the right to do what this guy's doing. There will be consequences if
6 it doesn't stop.

7 Q. Was that pretty much the corrective action that was taken then? It wasn't that
8 there was always a ride there for inspectors at some time, it remained difficult
9 throughout?

10 A. It remained difficult throughout.

11 Q. How about when the guys came out of the mine, were they debriefed?

12 A. Yes.

13 Q. In what way, Don?

14 A. They would come into the Goose. Generally, all of them would come into the
15 Goose and talk about what was going on, the conditions underground, any concerns
16 that they might have.

17 Q. Would this be the full team of the three people that were underground at the
18 time?

19 A. Usually, yes.

20 Q. Who would do that debriefing? Would you be doing it, or would Hooker be
21 doing it?

22 A. Primarily, they would talk to me.

23 Q. Do you remember any of the guys names that would talk to you about that?

24 A. Yes.

25 Q. Who would they be?

- 1 A. Gary Jensen.
- 2 Q. What shift would Gary be working in?
- 3 A. Afternoons.
- 4 Q. Okay. Pat Boyack, were you going to say?
- 5 A. Pat Boyack.
- 6 Q. He would also been on afternoons?
- 7 A. Yes. Mike Shumway, afternoons.
- 8 Q. You felt those guys --- did you think ---?
- 9 A. Scott Johnson was another afternoon person.
- 10 Q. So you would kind of ---?
- 11 A. Markosek.
- 12 Q. Frank Markosek?
- 13 A. Uh-huh (yes).
- 14 Q. So you would show up at 10:00?
- 15 A. Yes, sir.
- 16 Q. You would find out what happened, if there was any plans that would be
- 17 approved; is that true?
- 18 A. Yes.
- 19 Q. Then when the guys from the evening shift came out, they would debrief you?
- 20 A. Yes.
- 21 Q. Or you would debrief them?
- 22 A. Yes.
- 23 Q. Did you feel they had a good understanding that they were being debriefed?
- 24 A. I made an assumption that that's what it was. Maybe I erred.
- 25 Q. But you felt like you were debriefing them?

1 A. Oh, yeah.

2 Q. Okay. What were you doing with the information that you were getting from
3 them?

4 A. Most of the information was already recorded in the book. They were just
5 reiterating.

6 Q. So they were telling you we advanced so far, we set so many jacks, we did
7 this, that? I mean, what kind of information were you getting from them on these
8 debriefings?

9 A. That the bumps were getting louder.

10 Q. They actually told you that?

11 A. Yes.

12 Q. The bumps were getting louder?

13 A. Yes.

14 Q. More severe?

15 A. More severe.

16 Q. More numerous?

17 A. I don't know that numerous ever came up.

18 Q. So it was mostly louder and more severe?

19 A. Louder and more severe.

20 Q. Were you concerned about that?

21 A. Yes.

22 Q. Who did you express those concerns to?

23 A. I passed that information along to Bill Taylor on the dayshift.

24 Q. To Bill Taylor.

25 A. Well, he was the one that was in the meetings with the plans.

1 Q. So what did Bill Taylor say when you ---?

2 A. Well I just shared that information. It was like --- Bill's an inquisitive type of
3 guy. I mean, he wants to know, probably rightly so, more than I wanted to know. I
4 mean, he can talk two hours about a hammer and never make it to the handle. You
5 know, so ---.

6 Q. So Bill would ask you questions about what ---?

7 A. Oh, yeah. And I didn't know what the guys meant. I mean, I wasn't there, I
8 didn't go underground. Maybe hindsight's 20/20 and I should have.

9 Q. Okay. So you never did go underground? Okay.

10 A. One of the guys talked about one of the bounces. It was Ron Paletta talked
11 about one of the --- he was on the graveyard shift. I do believe that occurred on the
12 graveyard shift. That it bounced hard or bumped hard, and it almost knocked him
13 down. Then the next time I heard him tell that conversation, it did knock him down.
14 So which is the right story, I don't know. I heard two different ones.

15 Q. Was that the bounce that occurred that kind of refilled the Number Four entry
16 with coal?

17 A. It may have been.

18 Q. It was like the morning of the 7th, early morning of the 7th?

19 A. It could've been.

20 Q. 1:05?

21 A. On a Sunday or whatever day it was. I don't know.

22 Q. It would've been Tuesday morning, maybe?

23 A. It could've been.

24 Q. Okay. It'd probably been your first shift there that first night?

25 A. It may have been.

- 1 Q. Were they cleaning up in number four, do you remember?
- 2 A. No.
- 3 Q. Your first shift, they weren't cleaning in number four?
- 4 A. No.
- 5 Q. What were they doing, do you remember?
- 6 A. They were getting ready to go. So number one, two, three, four --- I think they
- 7 started in number four sometime through the day, and they got run out of there. They
- 8 went up to number one.
- 9 Q. So they got run out before you got there you think?
- 10 A. Yeah, I believe.
- 11 Q. All right. To the best of your memory. So you were aware of bumps that were
- 12 occurring while they were cleaning up Number One entry?
- 13 A. Yes.
- 14 Q. Throughout the rescue operation, right?
- 15 A. Yes.
- 16 Q. How long were you there, Don? How many days did you stay there?
- 17 A. I got there on the 6th, and I left on the 21st.
- 18 Q. So you stayed throughout the operation ---
- 19 A. Right.
- 20 Q. --- including you were there when the second bump ---?
- 21 A. Yes.
- 22 Q. You maybe were not onsite when it happened, but your duties were still at the
- 23 mine throughout that time?
- 24 A. Yes. It could've been the 20th that I didn't have to go back.
- 25 Q. All right. Were you situated, I guess, in the Blue Goose? You were there with

1 Tommy Hooker. There was someone there that was maintaining the log book, or were
2 you maintaining the log book?

3 A. Someone was maintaining it. Occasionally, I would make documentations in
4 the book if they'd stepped out.

5 Q. That was usually a trainee or one of the inspectors?

6 A. Initially, it was one of the inspectors and then the trainee.

7 Q. What were the instructions they were given on how to document things in the
8 log book?

9 A. Well, there came a time that Mr. Stickler wanted the documentation a certain
10 way. He didn't want to have to read all through the book. He wanted certain things
11 documented that he could look and find exactly what he wanted documented, the
12 advancement or the clean up and where the props were and what some air readings
13 note to. He wanted all that in a format that he could identify with rather quickly.

14 Q. So those specific things that he wanted to identify quickly, would that have
15 been the advancement of the miner in the Number One entry?

16 A. Yes.

17 Q. The footage?

18 A. Footage.

19 Q. Also the footage where the last prop was located, would that have been one of
20 the things?

21 A. Yes.

22 Q. Would he have also asked you about bumps that had occurred on that shift;
23 was that to be highlighted?

24 A. Yes, significant stuff. Yes.

25 Q. So you were highlighting that?

1 A. As far as I know.

2 Q. Or was it mostly footage?

3 A. I think we highlighted significant occurrences. I think. I don't know. I haven't
4 seen that book ---.

5 Q. But you know the footage for sure?

6 A. I know the footage for sure. Yeah, that message came loud and clear.

7 Q. Who gave you that message?

8 A. Bill --- well, let me back up. Initially, it was Bob Cornett said this is the way it
9 has to be. Then the next morning when Bill Taylor showed up, he reiterated Mr.
10 Stickler's instructions.

11 Q. Had you ever heard anything about --- like somebody saying if this isn't
12 entered right in the book, you or your replacement will be entering it right, or you'll be
13 fired and somebody else will enter it?

14 A. I heard that, yeah.

15 Q. You did?

16 A. Yeah.

17 Q. So people were specifically threatened to be fired or replaced?

18 A. It sounded like it.

19 Q. Were you ever threatened to be replaced because of ---?

20 A. No.

21 Q. So it was from people on other shifts?

22 A. Yes, sir.

23 Q. Who made that threat?

24 A. It's my understanding Mr. Stickler made that pretty clear.

25 Q. So you heard that from other people that Mr. Stickler threatened to fire me or

1 someone else?

2 A. Fire us all. It wasn't just me. It was fire us all and get more players, if we
3 couldn't get it in that book the way he wanted it.

4 Q. That was primarily footage?

5 A. Well, whatever it was he wanted documented. So it could've changed. I don't
6 know. But it was footage, primarily.

7 Q. Were the inspectors underground given specific instructions on how to
8 measure footage?

9 A. Yes.

10 Q. So that it would be identical throughout?

11 A. Consistent.

12 Q. Consistent. Where were they measuring to, Don, do you remember, on the
13 bumper of the miner or the discharge boom of the miner?

14 A. The tail boom of the miner, plus the length of the miner.

15 Q. So they were measuring to the tail boom of the miner, and then you were
16 adding the length?

17 A. For the cleanup.

18 Q. Okay. For the cleanup. Where were they measuring for the jack?

19 A. To the tail boom of the miner, 'cause they weren't allowed inby.

20 Q. So they were measuring to the last jack, though; right?

21 A. Yes.

22 Q. So they weren't allowed inby the last jack?

23 A. That's correct.

24 Q. Did anybody tell you ever they were measuring to the bumper of the mine?

25 A. Not that I recall.

1 Q. What would you say was the bumper of the miner?

2 A. It's not the tail boom of the miner. The bumper's the mainframe of the
3 machine.

4 Q. So that would be the mainframe?

5 A. Right.

6 Q. Not the tail boom?

7 A. Not the tail boom.

8 Q. You think that was real clear to the guys that you measure to the tail boom,
9 the discharge end of the swing tail?

10 A. As far as I know, that was everybody's understanding.

11 Q. Was anybody doing an evaluation of bounces or bumps that were occurring,
12 based on what was reported in the book? I mean, were you recording it on a separate
13 log or a chart or anything as far as severity and number that were happening?

14 A. No, not that I know of.

15 Q. So you weren't doing it on your shift?

16 A. No.

17 Q. Was anybody doing it that you know of? I don't know about tech support guys.
18 Did they ever ---?

19 A. I don't know. The tech support guys, they primarily were on days or whatever
20 shift they worked. I didn't see them too often.

21 Q. Did anybody ever come in when these discussions you had after the end of
22 the shift, your opinion of debriefings, and say, Don, we're worried or we're concerned
23 or we're scared about what's going on?

24 A. Well, some of the inspectors would make comments that, again, the bumps
25 were being more frequent and higher up, heavier, if that's a good term.

1 Q. Do you remember specifically who may have told you that?

2 A. Gary Jensen was one person. Paletta may have said something to that
3 effect. Donnie Durrant may have made a comment that he thought, you know, things
4 were changing.

5 Q. I guess you know Jensen and Durrant and Paletta fairly well from your
6 experience here in the district; is that true?

7 A. Yes.

8 Q. Would you think they were pretty knowledgeable on bump activity and
9 bumps? If they were giving you that kind of information, would that be reliable
10 information?

11 A. Yes.

12 Q. So you were taking it to heart when they told you that?

13 A. Yes.

14 Q. And you were passing that on to Bill Taylor and assuming Bill was discussing
15 it with the decision-making people on dayshift; right?

16 A. That's correct.

17 Q. Did Bill ever tell you that? I'm going to tell this to Al ---

18 A. No.

19 Q. --- or Mr. Stickler? Did you ever express it to Al or Mr. Stickler or anybody?

20 A. No.

21 Q. Did you ever hear about any inspectors being pulled off the rescue effort?

22 A. Yes.

23 Q. Do you know why they were pulled off?

24 A. Yes.

25 Q. Would you like to tell me why?

1 A. We had an inspector that was going underground --- I guess some comments
2 that he made, from what I heard, were inappropriate comments. Some of our other
3 inspectors had to restrain one of the mine supervisors from a physical altercation with
4 this inspector making these inappropriate comments. Actually, one inspector and an
5 EFS guy approached me and told me if they didn't get that inspector away from the
6 rescue efforts, they were going to wait for him at the foot of the hill.

7 Q. They were?

8 A. They were.

9 Q. Or the miners were?

10 A. No, they were.

11 Q. Okay. So the inspector and the EFS person were personally going to wait for
12 this inspector at the foot of the hill?

13 A. Yes.

14 Q. Was it to kind of pat him on the back and say thanks?

15 A. Oh, he was going to pat him on the back all right.

16 Q. So it was threatening with physical violence ---

17 A. Yes.

18 Q. --- I assume is how you took that?

19 A. Yes.

20 Q. Did you report that to anyone?

21 A. Yes, I did.

22 Q. Who did you report that to?

23 A. Al Davis.

24 Q. Who was that inspector that was threatened; do you know?

25 A. Pardon me?

- 1 Q. Who was the inspector that was threatened?
- 2 A. Oh, I don't know that he was threatened.
- 3 Q. No, I mean that these guys said they wanted him removed or else.
- 4 A. [REDACTED]
- 5 Q. [REDACTED], okay. Was [REDACTED] subsequently removed?
- 6 A. Yes.
- 7 Q. Did you know any of the circumstances of how he was removed or ---?
- 8 A. No.
- 9 Q. You just passed that on to Al, ---?
- 10 A. I just passed that on.
- 11 Q. --- that these two guys said that they'll wait for him at the bottom of the hill?
- 12 A. Well, there was some inappropriate comments that [REDACTED] had made.
- 13 Q. Not that you heard but these guys reported?
- 14 A. Reported to me.
- 15 Q. How about anybody else? Did you ever hear of anyone else being sent home
- 16 or ---?
- 17 A. No. What had happened was some of the ARs, who had been onsite from the
- 18 get go that first week, --- there was no EO-1 work being accomplished, because all of
- 19 our resources were tied up with the rescue efforts. Some of those guys were given a
- 20 day or two off away from the mine to do some EO-1 work. That's what I understood it
- 21 to be.
- 22 Q. So they literally took some of the local inspectors and said you need to go and
- 23 do some EO-1 work?
- 24 A. Yes.
- 25 Q. And left, primarily, mine rescue guys from the east there?

1 A. Yes.

2 Q. How did you feel about that?

3 A. Well, you know, again, I'm not in the decision-making role, but the guys that
4 were on the graveyard shift expressed concern about that to me. That would've been
5 Mike --- what's Mike's last name?

6 MR. TEASTER:

7 Shumway?

8 A. No.

9 UNIDENTIFIED SPEAKER:

10 Shumate.

11 A. Shumate.

12 BY MR. PAVLOVICH:

13 Q. Mike Shumate. Okay.

14 A. Ron Hixson.

15 Q. Okay. Guys from the east that were rescue team members?

16 A. Yeah, but they didn't think it was right that, not being familiar with all of the
17 plans, the mines, that they would be there by themselves without a local enforcement
18 person. So again, I shared that information with folks. Lo and behold, they showed
19 back up.

20 Q. All right. So they were gone for like a day or something?

21 A. Yes.

22 Q. When these guys brought it to someone's ---

23 A. One day.

24 Q. --- attention that there was a concern about not having local people there,
25 because of their experience and knowledge ---

1 A. Right.

2 Q. --- then they showed back up?

3 A. Yes.

4 Q. Somebody brought them back up. Did you have any communication with Bob
5 Murray while you were there, Don?

6 A. Yes, I did.

7 Q. Can you explain that to us or tell us about it?

8 A. I don't recall --- we were waiting on something that they were supposed to
9 provide to us, and I can't remember what that was. I went looking for the information.
10 Bob Murray was in a meeting with --- and I don't know, attorneys or who all those
11 people were. I was looking for the one person that I knew about the information. Mr.
12 Murray introduced himself to me. That's the first time I had met him.

13 Q. Did you have any discussion with him then, or was it just an introduction?

14 A. Well, he just talked about equipment that he was having brought in from the
15 Midwest to the mine. That's basically all I can remember.

16 Q. So there was no --- I mean, what did you think of his attitude at that time?

17 A. Well, he seemed sincere enough about allocating the resources in the rescue
18 effort.

19 Q. Did you have any communications with the family members at all, other than
20 that first day when you and Bill Denning stopped down there?

21 A. No.

22 Q. So after that, you didn't talk to them, you didn't go back down to the family
23 briefings or any of that?

24 A. No.

25 Q. How about when family members came underground, were you aware of that?

1 A. I found out about it.

2 Q. What was your impression of that when you found out?

3 A. I didn't think that was the most prudent thing that could have happened.

4 Q. Why was that, Don?

5 A. Well, it's a stressful time for everybody involved, the MSHA folks, the
6 rescuers, the mine personnel and rescuers. To have a family member under a
7 stressful situation anyway --- I mean, they could've gone berserk and done some
8 crazy, foolish things, in my estimation.

9 Q. So you think it was somewhat disruptive to the operation and the people
10 working down there to have those family members come in?

11 A. I do.

12 Q. Did you think that bringing family members in would meet with the
13 requirements of a K Order, as far as coming in to assist with correcting the condition
14 or the rescue operation?

15 A. No, it didn't.

16 Q. So you didn't think that would ---?

17 A. No.

18 Q. But I'm sure you think the press coming in would help; right?

19 A. No, I didn't think that at all.

20 Q. All right. You did hear about the press came underground?

21 A. Yeah, I saw it on the news.

22 Q. What was your impression of that? Was that appropriate or inappropriate in
23 your opinion?

24 A. I thought it was inappropriate.

25 Q. In regard to what?

- 1 A. Them being allowed in the mine.
- 2 Q. So you don't even think they should've been allowed in?
- 3 A. No.
- 4 Q. Was there any discussion about that on your shift, or did anybody tell you how
5 did they --- did they sneak in? How did they get in?
- 6 A. Oh, no, they didn't sneak in. Mr. Murray took them in.
- 7 Q. So was Murray kind of running the operation then?
- 8 A. Oh, I don't know. I was, again --- I wasn't there when it went on.
- 9 Q. You think somebody from MSHA gave permission?
- 10 A. I think so, yes, sir.
- 11 Q. Do you know who that was?
- 12 A. I heard something to that effect, who it might have been.
- 13 Q. What did you hear, Don?
- 14 A. I heard that it was Richard Stickler that allowed the press to go in the mine.
- 15 Q. Okay. You talked to Gary Jensen rather frequently, I guess, debriefing him?
- 16 A. Yes.
- 17 Q. Did Gary ever express any disapproval about that or say that he got into any
18 confrontation with Mr. Stickler about taking the press in?
- 19 A. He didn't mention anything --- any disagreement with Stickler to me.
- 20 Q. Ex. (b)(6) and Ex. (b)(7)(C)
- 21 A. Ex. (b)(6) and Ex. (b)(7)
(C)
- 22 Q. Ex. (b)(6) and Ex. (b)(7)(C)
- 23 A. Ex. (b)(6) and Ex. (b)(7)(C)
- 24 Q. He was.
- 25 A. Yeah.

- 1 Q. Do you remember what it was that he said really upset him about that?
- 2 A. That they were allowed to go in the mine.
- 3 Q. Okay. Just taking them in the mine?
- 4 A. Just taking them in the mine, period. He was really upset about it. He wasn't
- 5 going to let the ^{Ex. (b)(6) and Ex. (b)(7)(C)} out of his sight.
- 6 Q. Meaning ^(C)
- 7 A. ^{Ex. (b)(6) and Ex. (b)(7)(C)}
- 8 Q. ^{Ex. (b)(6) and Ex. (b)(7)(C)}
- 9 A. ^{Ex. (b)(6) and Ex. (b)(7)(C)}
- 10 Q. And the press.
- 11 A. --- the press.
- 12 Q. Okay.
- 13 A. That's my understanding.
- 14 Q. ^{Ex. (b)(6) and Ex. (b)(7)(C)}
- 15 A. Yes, sir.
- 16 Q. Angry about it?
- 17 A. Angry, yes, sir.
- 18 Q. Was there normally an MSHA supervisor underground during the shift when
- 19 the inspectors would be down there; do you know?
- 20 A. I don't know.
- 21 Q. On your shift, would there have been?
- 22 A. No.
- 23 Q. After the second accident occurred, Don, what's your understanding of why
- 24 the rescue effort was stopped?
- 25 A. Well, three confirmed deaths --- that was ---.

1 Q. You think that was the primary thing?

2 A. That was the primary, in my opinion.

3 Q. In your opinion, that was the number one thing?

4 A. That was number one.

5 Q. If those deaths hadn't have happened ---?

6 A. Pardon me?

7 Q. If there had been injuries or accidents on one of the prior bumps that you
8 discussed that was being reported outside, do you think it would've been stopped
9 then?

10 A. Well, I know our tech support folks were onsite. They had gone to the rescue
11 site. They had gone over towards the north barrier looking at some seals that were
12 put in, looking at the condition of the ribs and stuff. Now, they were doing calculations
13 based on their best guesses, I guess, at that time on the information that they had on
14 the right way to do things.

15 Q. So did you think that MSHA was kind of relying on tech support to be the
16 decision makers as far as is this getting too bad, or is it still okay to continue?

17 A. Again, I wasn't involved in any of those conversations with those folks. So I
18 can't say, Joe.

19 Q. Did you ever have any instruction from anyone as, Don, if you think it gets too
20 bad or you think there's too much danger for the rescuers down there, pull them out?

21 A. Yes, sir.

22 Q. You did get that instruction?

23 A. I did get that instruction. I passed that instruction on to the inspectors.

24 Q. Who gave you that instruction?

25 A. Al and Bob.

1 Q. You passed it on to the inspectors, and what did they say?

2 A. Well, they didn't say anything that I can recall. We were clear on, okay, yeah,
3 they've got an approved plan. So what if they're following it. If you think that there's
4 something going on that we don't need to have people there, don't be afraid to issue
5 an imminent danger order and withdraw the people.

6 Q. Okay. But no one ever did anything like that, did they? Did they ever discuss
7 it, to your knowledge?

8 A. No.

9 Q. Did you ever hear about miners who withdrew themselves? I mean, company
10 miners that asked to be withdrawn for their safety?

11 A. I heard about it, read it in the newspaper, saw it on the news.

12 Q. So you heard about the miners that were concerned, but no one in MSHA ever
13 expressed any concern, to your knowledge?

14 A. Not that I know of.

15 Q. Did anybody ever follow up with those miners to ask them?

16 A. Not that I know of.

17 Q. So you never did?

18 A. I didn't even know who the miners were.

19 Q. So there was a rumor that went around that some miners withdrew?

20 A. Or asked to be ---

21 Q. Asked to be moved ---

22 A. --- moved, right.

23 Q. --- from the face, because do you know why? What was the rumor, I mean,
24 that they were concerned?

25 A. Well, the rumor was that they didn't think it was safe.

1 Q. Okay.

2 A. One thing that I got out of the gist of what was going on was a lot of the
3 miners that were being used had a year to a year-and-a-half of experience and wasn't
4 accustomed to the conditions that they're now having to work in.

5 Q. Why would've that been? Why would you be using your least-experienced
6 miners on an operation like that, Don? Did anybody ever ask that?

7 A. I don't know.

8 Q. Would you not think you would want your most-experienced miners?

9 A. I would think that.

10 Q. Did you think Aberdeen and West Ridge and Crandall Canyon had a lot of
11 experienced miners that were familiar with bumps?

12 A. I don't know.

13 Q. Well, you would assume that; right?

14 A. I would assume that.

15 Q. I mean, everybody there isn't new.

16 A. True.

17 Q. But yet the guys that were withdrawing themselves were relatively new miners
18 who were working in that area?

19 A. Yes, that's my understanding.

20 Q. Were you aware of the low oxygen readings obtained from the number one
21 bore hole, Don, on the day it went through?

22 A. Yes, sir.

23 Q. I guess, would've that been on your shift when it went through?

24 A. Yes, I believe it was.

25 Q. So were you aware that the first report that came in like at 11:00, 11:30, was

1 that there was 20 percent oxygen at that hole, but then a couple hours later, the report
2 was that it was seven percent oxygen?

3 A. Yes.

4 Q. Do you remember that?

5 A. Yes.

6 Q. Do you remember what was done with that information? How was that
7 conveyed to the families?

8 A. I don't know.

9 Q. You don't know. You guys received the information in the command center;
10 right?

11 A. And we had instructions what to do with the information.

12 Q. What was your instructions?

13 A. We were told, Tommy Hooker and myself, by Jeff Kravitz that that information
14 was to be given to Mr. Stickler or Kevin Stricklin personally and no one else, is what
15 we were told.

16 Q. The seven-percent oxygen?

17 A. Yeah.

18 Q. It was to be specifically given only to Kevin Stricklin or Richard Stickler?

19 A. That's true.

20 Q. No one else, even AI? Those were the only two that was told to you?

21 A. Well, that was told to me, or to us, I should say.

22 Q. So was Stickler and Stricklin there?

23 A. Onsite?

24 Q. Yeah.

25 A. No.

- 1 Q. So did you call them at their hotel and give that to them?
- 2 A. Yes.
- 3 Q. You did?
- 4 A. Yes.
- 5 Q. So you called from the command center when you got that information. Who
- 6 did you call?
- 7 A. Tommy Hooker called.
- 8 Q. Who did Tommy call?
- 9 A. I think he called Mr. Stickler.
- 10 Q. And gave him that information.
- 11 A. Gave him that information.
- 12 Q. Then what was the instructions given back to Tommy?
- 13 A. I don't know.
- 14 Q. Tommy didn't discuss the call with you at all?
- 15 A. Nope.
- 16 Q. You were there when he called, though?
- 17 A. I was there when he called.
- 18 Q. So he basically got no further instruction, to your knowledge?
- 19 A. To my knowledge, no.
- 20 Q. Do you know why that was the order was to just give it to one of those two
- 21 gentlemen?
- 22 A. No.
- 23 Q. Do you know what was done with it after that?
- 24 A. No.
- 25 Q. You guys did nothing further with it?

1 A. No.

2 Q. When you arrived and were briefed, and you've had some experience with
3 bumps and investigating bumps, had you ever seen a bump to the magnitude or
4 extent of this one, Don?

5 A. Which one?

6 Q. Of the one that occurred on the 6th. When someone showed you a map and
7 said it's bumped to Crosscut 120, and you know mining was going on at 139 or 140,
8 had you ever seen a bump of that extent?

9 A. No.

10 Q. Had you ever seen one that filled the entries, basically full?

11 A. No.

12 Q. Did you understand when you got there and were briefed that all four entries
13 were pretty much packed full and that all these pillars bounced?

14 A. Well, I don't think anyone knew for sure. The rescue team ---.

15 Q. Well, you knew it was starting at 119 or 120?

16 A. Well ---.

17 Q. You didn't know how far it went?

18 A. Didn't know how far it went. The rescue team could only get so far. So from
19 118 to 120, I knew there was a problem. I can assume that that problem extended a
20 little further than those two crosscuts.

21 Q. Especially when you heard the entries were packed full?

22 A. Right.

23 Q. Had you ever seen that before in the bump?

24 A. No.

25 Q. Mostly, what would you see, some material out in the bottom?

1 A. Well, no. I've seen it where it filled up the longwall conveyor pan and into the
2 shields and buried people chest deep.

3 Q. So you'd seen where the longwall face had bumped or the tailgate had
4 bumped or some pillars had bumped?

5 A. Right.

6 Q. But never, like, 50 pillars?

7 A. No.

8 Q. Had you ever seen somebody clean one up like this, Don, actually go in and
9 load the material out of the entries that was roofed?

10 A. No.

11 Q. I asked you earlier about tech support's responsibility. I guess just again, do
12 you think that people were relying on them as the decision-makers to say this is
13 enough? I think we talked about, you know, you got instruction, but what was the
14 instruction given to tech support, do you know?

15 A. I don't know.

16 Q. Did you ever talk to those guys? Did you ever talk to Joe --- let me mention
17 names, 'cause that might ---? Mike Gauna, Joe Zelanko?

18 A. I talked to those two. Joe's primary thing was not being involved in the
19 development of the mine, per se. It put them in an awkward situation. Not knowing
20 the strength of the coal and all that other stuff that goes into the ---.

21 Q. So there was a lot of variables there that they expressed they weren't real
22 familiar with?

23 A. True.

24 Q. So you felt like --- did they feel like they were more in an advisory role, or they
25 were more in a decision-making role?

- 1 A. The impression I got that they were more of an advisory.
- 2 Q. That was their feeling?
- 3 A. Their feeling.
- 4 Q. What do you think MSHA thought?
- 5 A. I don't know.
- 6 Q. That they're the decision-makers? You think they thought they were decision-
- 7 making persons?
- 8 A. No. I think based on the information they had and all the calculations --- I
- 9 mean, everybody in the country seemed to be running these calculations. I say the
- 10 country --- Morgantown, WVU. Pittsburgh Tech Support was doing some stuff based
- 11 on the numbers these guys were ---.
- 12 Q. Okay. So you heard that there was some other people running some
- 13 calculations ---
- 14 A. Right.
- 15 Q. --- for them?
- 16 A. For them, right.
- 17 Q. Had you ever seen rock props used for support like this?
- 18 A. Well, to hold the roof, yes.
- 19 Q. So they're primarily designed as a roof support, not a rib support?
- 20 A. That's true.
- 21 Q. Have you ever seen them used as rib support anywhere?
- 22 A. No.
- 23 Q. You said you've seen longwall faces bump coal its own end of the shields in
- 24 the pan line. You ever see a shear damaged or broken?
- 25 A. A sheer, no. The shields, yes.

1 Q. So you've seen shields damaged and broken from a bump?

2 A. Yes.

3 Q. Or a bounce?

4 A. Well, they called it an overriding gob cave. I don't know what it would be. It
5 took out seven shields. I do know that.

6 Q. Okay. When you saw the plan of support that was used, what was your
7 opinion of it, Don? Did you think it would be adequate to hold a bounce, or did you
8 have questions about it?

9 A. Well, I didn't question what they were doing. Again, they were relying on tech
10 support for their input, and that's what they came up with.

11 Q. Did you know who suggested that plan? Did you think tech support did, or did
12 you think Laine Adair and the company did?

13 A. I don't know who ---.

14 Q. You didn't know where it originated from ---

15 A. No.

16 Q. --- you just had it. Did you ever think from looking at the, I guess, the extent,
17 what you knew about the extent of the bounce, the original bounce on the 6th, and
18 also looking at the low oxygen readings at the number one bore hole, did you ever feel
19 those miners may not have survived the original bounce?

20 A. Would you repeat your question one more time, please?

21 Q. Okay. When you looked at and were briefed on the extent of the bounce that
22 occurred on the 6th, to the best of your knowledge --- you didn't know how far it went,
23 but you assumed --- and also the entries being full and then combine that with the low
24 oxygen readings that you received as far as seven-percent oxygen in the number one
25 bore hole, did that make you feel or did you feel then that there was a probability that

1 the miners, the six miners, did not survive the original bounce?

2 A. I thought that. After the oxygen reading, I didn't think they made it through the
3 initial ---.

4 Q. You didn't think there was a chance of survival?

5 A. No.

6 Q. Did you and Tommy Hooker ever discuss that?

7 A. Occasionally.

8 Q. Did you discuss it with anybody else?

9 A. Nope.

10 Q. Can you tell me why?

11 A. Well, being smart, intelligent folks, I thought they would've come to the same
12 conclusion that I had come to.

13 Q. Did you think then that, rather than this being a rescue operation, that we were
14 more in a recovery operation?

15 A. That's what I thought.

16 Q. Did you ever consider the amount of risk that was being taken being
17 commensurate with recovery, or was it commensurate with rescue, or was there little
18 or no risk, in your opinion?

19 A. No, there was risk, whether it was a rescue operation or a recovery operation.
20 Until it was officially called a recovery operation, everybody was still ---. It wasn't my
21 call to make that decision, whether it's rescue or recovery. That was somebody else's
22 decision.

23 Q. So in your opinion, it was not a team decision where people sat down as a
24 group and said, Don, what do you think? It was more you formulated your own opinion
25 and kept it to yourself and assumed somebody else had opinion, the people that were

1 in charge of making the decisions?

2 A. Well, the people in charge were the people in charge.

3 Q. Did you feel they didn't want to hear your opinion?

4 A. I don't know that they didn't want to hear it. They did listen to some of the
5 things that I did talk to them about.

6 Q. But you never talked to them about this?

7 A. No.

8 Q. Why?

9 A. I just didn't.

10 Q. Don, what kind of training had you ever received on mine emergencies,
11 rescue, recovery activities, that sort of thing?

12 A. I took one of the emergency classes through the academy, way back
13 whenever that was. I don't remember.

14 Q. Several years ago?

15 A. Yeah.

16 Q. Had you ever been involved in MERD activities? I mean, like, MERD
17 exercises on a regular basis, annually, or ---?

18 A. No.

19 Q. Never. Had anybody ever sit down and instructed you on managing a
20 command center, managing how operations like this should be run?

21 A. No.

22 Q. In your opinion, did you feel that this was well organized and well run, or did
23 you feel there was something to be desired as far as the organization process?

24 A. Well, as far as being organized, it appeared to be organized.

25 Q. From your perspective?

1 A. From my perspective, right. We had top management people onsite. The
2 shift I was on, we had our instructions what to do. We carried those instructions out. I
3 can't speak for the other two shifts, 'cause I didn't work those.

4 Q. On those other shifts --- I mean, I guess, really on the graveyard shift you and
5 Tommy Hooker were pretty much in charge?

6 A. Yes, sir.

7 Q. If someone had called from underground and said, Don, it's too dangerous
8 down here, we quit, you guys felt like you had the authority to pull everybody out of
9 the mine and say we're stopping the operation for right now until we re-evaluate or do
10 something different?

11 A. I felt that we had that authority, yes.

12 Q. You did feel like you ---. But you guys were there for the full shift?

13 A. Yes.

14 Q. Listening to everything that went on?

15 A. Yes, sir.

16 Q. Do you think the decision-makers on the other shifts were doing that same
17 thing?

18 A. I don't know.

19 Q. You don't know where they were going or what they were doing?

20 A. No.

21 Q. You had no idea once you left the property?

22 A. Once I left the property, they had their thing to do.

23 Q. Okay.

24 MR. PAVLOVICH:

25 You've got some questions, Ernie?

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MR. TEASTER:

Yeah, let me get to them before you get into that next thing.

MR. PAVLOVICH:

Go ahead.

BY MR. TEASTER:

Q. Don, the Governor of Utah made a statement at those oversight hearings. I don't know if you had the opportunity to see them or not. He made a statement up there at the oversight hearings --- I think it was the House conducted. He felt things were not organized very well at all, and he felt MSHA would come there and take a hold and get a hold of things and get them organized, but they never did. You felt, based on what you saw, that everything was pretty well organized. Do you have any thoughts of what the Governor may be referencing when he felt ---?

A. Politician pointing fingers. I mean, everybody seemed to have an opinion on what MSHA didn't do or should've done. I mean, I don't know what MSHA's role would've been. I mean, I guess we could've issued a J Order instead of a K Order. Then we would've had more direct control of the coal mine.

Q. Do you know if that was ever considered?

A. I don't know that, no.

Q. So based on what you saw there, other than a political statement, you don't have anything the Governor --- you're not aware of anything that would give the Governor that idea?

A. I don't know.

Q. Joe was talking about your thoughts that maybe this was a recovery operation, and you never shared that with anybody. You and Tommy talked about it. Do you think the atmosphere was such that it was conducive to solicit in your --- if you had a

1 concern, you felt you could take that to somebody like Al or Richard Stickler and say I
2 think we're having too many bumps, we need to stop this operation. I think that this
3 support system is not adequate, that we need to back up. Would you have felt
4 comfortable doing that if that was your thoughts?

5 A. If I felt that the supports weren't adequate, or again, that the bumps were more
6 violent, I would've gone to whoever and let them know that.

7 Q. Well, to go back to the one thing about it. And Joe explained, you know, when
8 you're in a rescue effort, you're willing to take more risk if you think that there's some
9 people up there that you can rescue?

10 A. Yes, sir.

11 Q. Once you think that there's nobody that you're going to rescue, other than
12 maybe just get bodies out, then you're probably not willing to take as much risk as you
13 would take knowing that there's a high probability or a good probability that someone
14 can be rescued?

15 A. Yes, sir.

16 Q. If you felt that this was a recovery, then you may not be willing to take as
17 many risks. Would you have felt comfortable kicking that up the line?

18 A. Well, again, hindsight is 20/20. Maybe I should've shared my thoughts with
19 some other folks, other than Tom --- who Tommy shared the thoughts with.

20 Q. No, I'm not saying that from a critical standpoint at all. I just want to know if
21 the environment there was such that it would solicit ---?

22 MR. PAVLOVICH:

23 Would people encourage that kind of comment?

24 BY MR. TEASTER:

25 Q. Encourage you to comment on that kind of stuff?

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MR. PAVLOVICH:

Or basically, was it discouraged?

A. I don't know if it was discussed, so ---. I don't want to ---.

BY MR. PAVLOVICH:

Q. It's not like if I walked in every evening and said, Don, any problems you got, any concerns you got, tell me. We're trying to evaluate all this. Or, was it mostly they came in and said what's the footage?

A. That's what they wanted to know, what the footage was.

Q. Footage?

A. Yeah.

Q. They didn't want to know about your concerns?

A. No.

Q. I guess, to use Ernie, it wasn't an open forum, ---

A. Yeah. No, it wasn't.

Q. --- just tell me your concerns, Don?

A. No, I never was asked that question, what my concerns were. You know, the well-being of the inspectors and the miners was a concern of mine.

Q. That was your concern?

A. That was my concern.

Q. But nobody ever asked you ---

A. Nobody asked me nothing.

Q. --- express your concerns to me, Don; tell me if you have any ---?

A. I told you about the incident with the inspector. That was a concern of some of the inspectors that we needed to do something with one particular individual. I shared that information with the people that could make that happen. The other thing,

1 concern, that they had was not having the inspector onsite with the mine rescue team.

2 So I let that be known, and they showed back up. But if they had asked me my
3 concern, I would've told them, and cards would've been on the table, I guess.

4 Q. Okay. It wasn't that kind of atmosphere that you felt comfortable doing that?

5 A. No.

6 BY MR. TEASTER:

7 Q. Don, you may have answered this when you was talking to Joe about tech
8 support's role there. Your personal feeling, what was tech support's role there?

9 A. I thought they were there, you know, primarily to evaluate the roof and the
10 pillars to see if the activity that we were doing was sound, stable enough to continue
11 the rescue efforts.

12 Q. So they were, in effect, the decision-makers of such? They would determine
13 that it was not safe to continue based on what was transpiring, and then they should
14 relay that information on to, let's say, Mr. Stickler or someone in charge there that this
15 operation should be stopped, it's no longer safe to continue the rescue effort?

16 A. Again, I wasn't privy to their discussions with whoever. Again, they were
17 doing calculations. They were going underground, measuring this or that, looking at
18 the effects on the other pillars. I don't know who all was involved with that. I don't
19 have a clue. I would think that if tech support said it's not safe, I honestly believe that
20 we'd have paid attention to that. I don't know if they ever made that statement. I don't
21 have a clue --- that it's not safe to do this, or it's not safe to do that. I don't know that.

22 Q. You indicated earlier that you've had some dealings with the San Juan Mine.
23 Have you been underground there?

24 A. Oh, yes, sir. Lots of times.

25 Q. Have you ever been privy to see --- they have a --- I think we have some

1 pictures of it. But a thing they said in conjunction with these rock props where it's got
2 an angled rock prop. It's got a bottom and a top that will allow those rock props to
3 provide more lateral support.

4 MR. PAVLOVICH:

5 I think they use them on the longwall, Don, when they're
6 pulling the shields. Have you ever seen those?

7 A. Yes.

8 MR. PAVLOVICH:

9 I mean, they've got a bottom plate with a ---?

10 A. A base.

11 MR. PAVLOVICH:

12 With a base that, say, you put one rock prop this way and one
13 kind of on the 45. Then these got bearing surfaces on them.

14 A. No, they must have started using those after I left.

15 MR. PAVLOVICH:

16 Okay, you never saw those then?

17 A. No.

18 BY MR. TEASTER:

19 Q. When was you there last then?

20 A. It would've been June of 2003.

21 Q. So it's been a while?

22 A. Yes, sir.

23 Q. Are you aware of work that was being done in the outby areas there at
24 Crandall Canyon on your shift?

25 A. Yes.

1 Q. Was there any work that was being done that was not essential to the rescue
2 effort, like cleaning belts?

3 A. Well, yeah, there was.

4 Q. Do you know why that work was being done?

5 A. No, I don't.

6 Q. Do you know who permitted it?

7 A. No, I don't.

8 Q. Do you know if MSHA had anybody stationed at the portal to check people in
9 and out, see who was going in and out of the ground, underground?

10 A. No, we didn't have anybody stationed at the portal. We got a listing of people
11 who were in the mine.

12 Q. Right. But if somebody just wanted to come in and go in the mines, could that
13 have happened, people just walk in and out of the mines without ---?

14 A. Could that have happened?

15 Q. Yes.

16 A. Yes, sir.

17 Q. Is it normal to have someone from MSHA at the portals for an event such as
18 we had here?

19 A. I don't know, to be honest about it. I know we had the sheriff's department at
20 the foot of the canyon, the mouth of the canyon there, that stopped everybody coming
21 in and out. One night --- it may have been after. It might've been after the second
22 bounce. They had an individual that ran the barricade and ended up at the portal.

23 Q. The sheriff removed him from the property?

24 A. Yes.

25 Q. Well, the company --- was there any control at all that you were aware of, of

1 company people going underground, or could they just come and go freely as they so
2 chose to do? If they wanted to go to other areas of the mine I'm talking about --- I'm
3 not speaking just to that area up there where that rescue effort was primarily being
4 conducted.

5 A. I would imagine they could've gone where they wanted to.

6 Q. Do you think the K Order allowed that?

7 A. No, it didn't.

8 Q. What do you know about explorations that were conducted on top of this
9 material that was thrown out into the entries? Are you aware of any explorations that
10 went in on top of those?

11 A. I heard that there might have been some of that.

12 Q. What did you hear?

13 A. Well, I heard that one of the mine rescue, MSHA mine rescue folks, went up
14 Number Four entry. They wanted a sample, a bottle sample taken, or some kind of a
15 sample taken. He explored inby 120 Crosscut.

16 Q. Do you know what they found?

17 A. No.

18 Q. Is this something that you would've been told in a briefing?

19 A. I would hope I would've been told that.

20 MR. PAVLOVICH:

21 But were you told that in a briefing?

22 A. No.

23 MR. PAVLOVICH:

24 So it was word of mouth that somebody went in?

25 A. Yes.

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MR. PAVLOVICH:

Peter Saint, maybe, was who it was?

A. Peter Saint. And actually, it was Peter Saint that was telling me.

MR. PAVLOVICH:

So Pete told you that?

A. Yes.

BY MR. TEASTER:

Q. It just wasn't part of a briefing, it was just some information that was being shared. Since Peter probably was the guy that done that, he was telling you about it?

A. Yes, sir, Pete was telling me about it.

Q. Well, these briefings that were conducted --- was that primarily just this is the plan? This is what you're allowed to do? It was not like Peter went up there and went so far in Number Four entry and encountered this, low oxygen, or encountered some wire, couldn't go any further?

A. It was just, primarily, here's the plan. Here's what's going to go on. They may be bringing something back down later on for you to approve.

Q. When Pete told you about this excursion, did he give you the impression he felt like he could go further if he had wire cutters or anything like that?

A. Yeah.

Q. He did?

A. He did.

Q. If he had a red cape, he would've been there?

A. He had what?

Q. If he had a red cape, he would've been there? So do you know, was that information also passed on to Mr. Sticker and Kevin Stricklin and AI?

1 A. What information?

2 Q. That Pete says I got so far, and I could've went further if you give me wire
3 cutters?

4 A. That's my understanding.

5 Q. So was there another excursion ever done or anything?

6 A. I don't know.

7 Q. Not to your knowledge?

8 A. It wasn't talked about like Pete's first excursion was talked about. If there was
9 another one, if Pete did another excursion, he didn't talk about it.

10 MR. PAVLOVICH:

11 So to your knowledge, nobody else ever did another one?

12 A. No.

13 MR. PAVLOVICH:

14 That was --- you heard about that one?

15 A. Yes.

16 BY MR. TEASTER:

17 Q. When you were in the command center, did you have instructions to report to
18 headquarters on an hourly or semi-hourly basis or anything like that, even on the
19 nightshift?

20 A. Yes, sir.

21 Q. How often was that you had to call?

22 A. It was hourly for a long time, every hour.

23 BY MR. PAVLOVICH:

24 Q. Every hour? At 1:00 in the morning, at 2:00 in the morning, at 3:00?

25 A. Yes, sir.

1 Q. What was the criticality of that since Mr. Stickler and Kevin Stricklin were on
2 board? Did anybody explain that to you?

3 A. I give up. Don't have a clue. Inquiring minds wanted to know. You know, it
4 pissed me off, to be quite honest about it. Those two top officials that needed to know
5 were there.

6 Q. So you felt like my inspectors underground or your crew underground were
7 having to make hourly measurements and take hourly air readings and gas readings,
8 call these outside to you, and every hour you have to call somebody in headquarters
9 and report that? What's being done with that?

10 A. Pardon me?

11 Q. What was being done with that information?

12 A. Shit if I know. Pardon my French, but it was just aggravating.

13 Q. Was that disruptive, Don, I mean as far as focusing on the operation at hand?

14 A. Well, it was. It truly was. Every hour or every two hours, and if you wasn't on
15 the horn to them, they were on the horn to you. Then it got changed to ---.

16 Q. So this was going on even on the nightshift when it's usually pretty peaceful at
17 an operation. What do you think the dayshift was going through?

18 A. Oh, shit. I'm just glad I was on graveyard shift.

19 Q. You think it was even more disruptive then?

20 A. I do.

21 Q. With all that disruption and all that information that was being passed on, was
22 anybody really evaluating what the hell was happening?

23 A. I couldn't tell you, Joe. I don't know. I don't have a clue.

24 Q. What kind of information would you mostly be giving headquarters on an
25 hourly basis, footage?

1 A. How far the drill hole was down, footage, cleanup and support, O2 readings,
2 air readings.

3 Q. Did they ever ask you, Don, did you have any significant bumps here in the
4 last hour or so?

5 A. Yeah.

6 Q. They did?

7 A. They did ask that question.

8 Q. What did they do with it?

9 A. I give up.

10 Q. You don't know?

11 A. Don't know.

12 Q. Nobody ever explained here's why we need this, Don, because ---. You think it
13 was for their personal knowledge and satisfaction?

14 A. Mine wasn't to question why. Mine was to do or die.

15 Q. They weren't calling back to Price and letting Mr. Stickler know at night on an
16 hourly basis?

17 A. I don't know what they were doing.

18 BY MR. TEASTER:

19 Q. Don, were you aware of Mr. Murray taking a crew underground about 3:00 in
20 the morning with a large camera to video things underground?

21 A. 3:00 in the morning? No. What morning?

22 Q. I don't remember the specific date, but somewhere around the 8th or 9th?

23 A. Not at 3:00 in the morning, no.

24 MR. PAVLOVICH:

25 Sometime during your shift would it have been, 6:00, 5:00?

1 You don't remember?

2 A. I don't remember that.

3 BY MR. TEASTER:

4 Q. Who was the recorder on your shift?

5 A. The first week was Terry Anderson. The next week was Tain Curtis. I think
6 those were the two.

7 Q. Did they ever have any problems with recording this information the way that
8 it was assembled?

9 A. Once we got straightened out on how it was to be, that's the way it was.

10 Q. Was that information on footage and distance, was that all like blocked in so it
11 could be very easily identifiable?

12 A. Very distinguishable.

13 Q. Was it also highlighted?

14 A. Yes, sir.

15 Q. It was boxed and highlighted?

16 A. Yes, sir. They didn't want individuals to have problems identifying what they
17 wanted to know.

18 Q. So is it fair to say that the most important information that was retrieved from
19 that log was on the advancement footage props?

20 A. Would you repeat your question?

21 Q. It seemed to be the most important information that people was wanting to
22 gather from that log was how far they had advanced, how far the supports had been
23 installed?

24 A. That's a fair assessment, yes, sir.

25 Q. Are you aware of anything that came close to drawing the attention from that

1 log that the footage and the rock props --- the distance they had been set?

2 A. I didn't understand your question.

3 Q. It seemed to be the prime importance from that log was the footage and the
4 rock props, how far they had been set up?

5 A. Yes, sir.

6 Q. Was there anything else of interest that was put in that log that seemed to
7 draw near that much attention?

8 A. No.

9 Q. Bumps?

10 A. No.

11 BY MR. PAVLOVICH:

12 Q. Did you feel like, Don, that the decision-makers there onsite should've been
13 more concerned about other things than that footage?

14 A. You put me in a bad spot here, Joe.

15 Q. I know you'll give me an honest answer.

16 A. Well, we all have our own priorities; okay?

17 Q. So what would your priority have been?

18 A. Well, it wouldn't have been concern so much about advancing. It'd have been
19 some other things.

20 Q. For example, what?

21 A. Bumps and bounces.

22 Q. So the conditions that were ---

23 A. Right.

24 Q. --- going on down there, as opposed to footage?

25 A. Yeah.

1 Q. What do you think generated such a dramatic interest in footage?

2 A. Shoot, I don't have a clue.

3 Q. Do you think the families had anything to do with that?

4 A. I don't know.

5 Q. You don't know why, and you sure didn't ask?

6 A. No, I didn't ask. If they wanted me to know, they'd let me know, I guess. If
7 they'd wanted my opinion, they'd of told me what it was.

8 BY MR. TEASTER:

9 Q. Do you know if they asked the opinions of anybody as far as soliciting input
10 into plans prior to being approved --- from you being part of the management team or
11 from the inspectors being underground? Are you aware of any of that?

12 A. No.

13 MR. PAVLOVICH:

14 So you never were asked what you think of this plan, Don; do
15 you think we should approve it?

16 A. No. No, they were already approved when our shift started.

17 MR. PAVLOVICH:

18 They were approved.

19 A. They were approved.

20 MR. PAVLOVICH:

21 So you just followed them to the best of your ability?

22 A. Yes, sir.

23 BY MR. TEASTER:

24 Q. Don, you mentioned earlier that there was some enforcement concerns that
25 was raised at West Elk during that incident that they had over there. Do you know

1 who was involved in those enforcement issues?

2 A. I don't know the extent of what had happened prior to me getting there. I got a
3 phone call that said we want you to come to West Elk, again, to help bring calm to
4 whatever had happened. I don't know who was there prior to me getting there. I was
5 told to work the graveyard shift. This is what time you need to be here. What kind of
6 enforcement actions had gone on, don't have a clue. But again, some of the guys
7 were, you know, focused more on doing more inspection work than overseeing the
8 recovery of longwall that someone didn't get injured while recovering the longwall.

9 Q. Was Ex. (b)(6) and Ex. (b) (7)(C) involved in that effort?

10 A. Yes, he was.

11 Q. Do you know if any of his activities caused or raised concerns about
12 enforcement issues as opposed to rescue efforts?

13 A. There could've been an occasion or two, yes.

14 Q. That Ex. (b)(6) and Ex. (b)(7)(C) was involved with?

15 A. Yes.

16 Q. Do you know specifically if he was involved in any of those issues?

17 A. There may have been one occasion where his name came up pretty
18 boisterous that he was creating some havoc.

19 Q. Did you hear of any similar issues over at Crandall Canyon that he was
20 involved with raising some enforcement issues underground?

21 A. Yes, sir.

22 Q. What were they?

23 A. Well, some of his comments was no wonder this happened or something to
24 that effect. I didn't hear him personally. It was just comments that some of the other
25 inspectors had overheard Ex. (b)(6) and Ex. (b)(7)(C) make in regards to conditions in the mine.

1 Q. Did I understand you correctly earlier when you said that there was some
2 company official or miner that had raised concerns about some things that [REDACTED] had
3 said, or was that just the MSHA people?

4 A. No, it was a management person at the mine raised concerns about [REDACTED]
5 comments and actually had to be restrained to keep from, I guess, assaulting [REDACTED]

6 Q. Do you know what those alleged comments were?

7 A. No, I don't.

8 Q. Are you aware that he wanted them to put down additional rock dust? He
9 wanted them to put water on the roadways to allay the dust? He wanted them to take
10 some corrective action on the scoop because it was, in his opinion, smoking
11 excessively?

12 A. I don't know what the reasonings were. He was on dayshift, and I was on
13 graveyard. He was coming on. I was leaving.

14 Q. Do you recall what time you folks left the office here in Denver en route to ---?
15 You said something about after you'd stopped by with Denning for a while, you
16 proceeded onto the mine and got there about 6:00. Do you have an estimated time
17 that you left the office here?

18 A. I'm going to guess somewhere around noon-ish, in that neighborhood. It
19 might've been a little before. 10:30, 11:00, somewhere in that neighborhood.

20 Q. Just one more, Don. You identified some concerns with travel of our
21 inspectors in and out of the mine?

22 A. Yes, sir.

23 Q. Was that ever discussed with Al or anybody, any senior officials?

24 A. No, not that I'm aware of. I took it up with mine management is who I took it
25 up with about getting in and out of the mine. I could've mentioned it to Cornett, you

1 know. I just --- I don't recall.

2 Q. But you didn't kick it up to Al or somebody else?

3 A. No.

4 Q. It didn't get any better, you say, after you took the action you took?

5 A. Well, yeah, after the one guy who ---. And again, I wish I could think of his
6 name.

7 Q. Was he a senior official there at Crandall Canyon; do you recall?

8 A. I don't recall, no. I don't know. I don't remember what his title was. He
9 might've been an outby foreman or somebody. I can't remember his name. After we
10 let the folks --- let them in on our game plan of enforcement, what was going to
11 happen to that fellow if things didn't change.

12 Q. Was there ever any concerns ---. I said one more, but I thought of another.
13 Was there ever any concerns about not leaving an inspector underground at all times
14 with those people underground?

15 A. Yes, there was. When we realized that that had happened, we made a
16 conscious decision that that wouldn't happen again. There would be an inspector on
17 the ground. I mean, it was just unfortunate. I think it was just one time that that
18 happened. It may have been like an hour turnaround time between our guys coming -
19 -- the graveyard shift coming out and the dayshift going in.

20 MR. PAVLOVICH:

21 Do you know if that ever happened on dayshift and evening
22 shift, too?

23 A. No, I don't know.

24 MR. PAVLOVICH:

25 Just you know on your shift?

1 A. I know on our shift it happened.

2 MR. PAVLOVICH:

3 Then you made an effort to correct that by overlapping the
4 shift?

5 A. Right.

6 BY MR. TEASTER:

7 Q. Is that something that you would share with the oncoming shift to make sure
8 that that didn't happen, it was hot-seating it?

9 A. Yeah. We could talk to Taylor about that, that they were going to stay
10 underground until relieved. That was the instructions that we gave the graveyard
11 crew, my crew, that you stay underground until you're relieved.

12 Q. Okay.

13 A. I know there was a --- for instance, with one of the inspectors that --- 'cause he
14 came in fired up the next morning. I guess they'd gotten after him about staying
15 behind. He was the dayshift guy, and he stayed behind. Somebody got after him
16 about why are you still in the mine? It seems as though he wanted to chat with the
17 tech support people and missed his ride out of the coal mine.

18 Q. Someone was upset about that?

19 A. Oh, he was fired up. He was ready to quit. He'd called somebody about a
20 job. They were coming there to the mine to interview him.

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

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

23 Q. Well, I'd rather you tell me.

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

25 Q. Okay.

1 A. Yeah, he was fired up. I didn't know what was going on, but when I inquired,
2 that's what had happened. He'd lingered behind.

3 Q. Somebody was mad 'cause they had to wait on him, or he just shouldn't have
4 been there?

5 A. The gist I got out of it was, yeah, that they had to wait a little longer because
6 of what Ex. (b)(6) and Ex. (b)(7)(C) did than normally they would have.

7 MR. TEASTER:

8 Are you aware of any MSHA people driving the truck, MSHA
9 people ---?

10 A. Driving the truck?

11 MR. TEASTER:

12 Yeah, taking a load of MSHA people in themselves driving the
13 truck?

14 A. No, I'm not aware of that

15 BY MR. PAVLOVICH:

16 Q. Don, you talked earlier about having to make inspections as a supervisor,
17 having to do regular EO-1 inspections?

18 A. Yes.

19 Q. The reason for that was short of manpower?

20 A. Yes.

21 Q. Apparently, a shortage of manpower doesn't happen overnight. I mean, you
22 have a person leave. You request more people; right? When we can look at the
23 staffing here in the district, and we can see that the number of inspectors has
24 decreased over the last number of years. You, as a supervisor, did you ever request
25 replacements for people that left or request additional manpower based on workload?

- 1 A. Yes.
- 2 Q. What were the results of those requests?
- 3 A. Close your eyes, and what do you see?
- 4 Q. I'm not sure I understand that.
- 5 A. Close your eyes. Go ahead; close your eyes.
- 6 Q. All right.
- 7 A. Now what do you see?
- 8 Q. Darkness. Nothing.
- 9 A. Nothing. Nothing was ever done.
- 10 Q. So they fell on deaf ears, also. They just said no, we can't get anybody.
- 11 A. No, I don't say that they fell on deaf ears. I do know that the district put
12 together a staffing request of needs. The deaf ears are in Arlington.
- 13 Q. Okay. I mean, that's okay. Somewhere along the line there was not
14 replacements where needed or additional inspectors where needed, in your opinion?
- 15 A. An observation that I had was it seemed that other districts were able and are
16 able today to get folks. District Nine is the bastard child, in my opinion, of some folks
17 with stocks. Now maybe that's changed.
- 18 Q. Why do you think that?
- 19 A. I give up. I don't know.
- 20 Q. Well, having said all that, and not having enough people to do the mandatory
21 inspections in the manner that it should be done --- because obviously, field office
22 supervisors have a job to do, and that's not making inspections; right?
- 23 A. I agree with that.
- 24 Q. What was the influence on you and your inspection group when additional
25 initiatives were assigned to be done, such as this belt initiative and all these other

1 things that came out, seals, SCSRs, plus, you know, stay out/stay alive, winter alert?

2 How does that affect your ability to do your mandatory inspections?

3 A. Well, it has an impact.

4 Q. In what way?

5 A. Well ---.

6 Q. Is it a positive impact or a negative impact?

7 A. It's a negative impact, Joe.

8 Q. So you think that a lot of the emphasis on doing those initiatives takes away
9 from the inspector's ability to protect the miners through thorough inspections and
10 enforcement activity?

11 A. We had an Assistant Secretary not too long ago that was --- redirected our
12 focus a little bit.

13 Q. In what way?

14 A. Well, a lot of these initiatives. I mean, I can remember being in Aztec. It
15 seemed like we had a winter alert, and we had smoking or whatever it was, high walls.
16 It seemed like there was three back to back to back initiatives. Actually, I was at the
17 mine, one of their surface mines down there, and happened to be looking at their
18 bulletin board. There was an interesting thing that I read, that MSHA's initiatives cost
19 them \$40,000. Pissed me off.

20 Q. Cost the mine \$40,000?

21 A. Cost the mine \$40,000.

22 Q. Because of initiatives?

23 A. Because of initiatives. So I asked what that meant. You know, what does that
24 mean? Well, what price are you putting on safety? I know what they were doing. I
25 mean, they were showing the cost. We're holding their crews up to do these 15-

1 minute talks. Oh, 15 minutes isn't long, but it is if you've got two miles to go or eight
2 miles to go, or like up in the basin, 17 miles to go.

3 Q. Or if it's every day.

4 A. Every day. I mean, back to back to back. It just killed us.

5 Q. So it killed your opportunity to make thorough, adequate inspections for doing
6 all these other things?

7 A. Right. And they wanted all three shifts covered. You know, you got four
8 different crews.

9 Q. So you really didn't have the manpower to do that?

10 A. No.

11 Q. And to do all the inspections, too?

12 A. No.

13 Q. Has any of that been alleviated lately?

14 A. The initiatives?

15 Q. Yeah.

16 A. Yes. They've slowed down.

17 Q. They've slowed down. Are you still required to do a lot of reporting and a lot
18 of other things that takes a lot of your time and your inspector's time?

19 A. Yes, sir. ITS is one of them.

20 Q. Do you think that's something that's really necessary, in your opinion?

21 A. It must be. IG felt it was.

22 MR. PAVLOVICH:

23 Let's just take five minutes and finish up.

24 SHORT BREAK TAKEN

25 MR. PAVLOVICH:

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

you got any questions for Don?

UNIDENTIFIED SPEAKER:

I have two or three here. You mentioned earlier on, Don, in your interview that when you talked to Al Davis on the phone, he mentioned something about Murray didn't want certain people at his mines. Did he mention any specific names?

A. Yes, he did.

UNIDENTIFIED SPEAKER:

Can you tell us who they are?

A. Well, the only name that he mentioned was Ex. (b)(6) and Ex. (b)(7)(C)

UNIDENTIFIED SPEAKER:

Ex. (b)(6) and Ex. (b)(7)(C) He didn't say why?

A. No.

UNIDENTIFIED SPEAKER:

But Ex. (b)(6) and Ex. (b)(7)(C) was mentioned by name?

A. Yes.

UNIDENTIFIED SPEAKER:

You also mentioned in your review that someone from the Ex. (b)(6) and Ex. (b)(7)(C) had EFS had gotten one of the inspectors from Price to come out and tell you had said, whatever comments. What was this guy doing underground? What was his assignment?

A. I don't know.

UNIDENTIFIED SPEAKER:

Do you know who it was?

A. Yes, I do.

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UNIDENTIFIED SPEAKER:

Who was it?

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

A.

UNIDENTIFIED SPEAKER:

Did anybody give him an assignment or something to do?

A. I don't know if he's underground. It might've been a comment --- I don't know how that all transpired.

UNIDENTIFIED SPEAKER:

But you or Tom didn't say or do anything?

A. He wasn't on our shift. He was on dayshift. It takes a special breed to work graveyard.

UNIDENTIFIED SPEAKER:

Did anyone ever tell you or have you ever seen or known that the rock props or beams were being knocked out because of bumps?

A. I don't recall, no.

UNIDENTIFIED SPEAKER:

Did anybody mention during the recovery operation that they know the times that it happened?

A. Not that I overheard anything.

Q. Fair enough.

BY MR. PAVLOVICH:

Q. Did you ever hear of them being knocked out by ram cars or shuttle cars, Don?

A. Yeah.

Q. Did you feel like the ram car would have more power than an outward bounce

1 or an outburst would?

2 A. Well, usually the ram car's going to hit it straight on. You know, I don't know
3 that lateral convergence was ever considered. I don't know, Joe.

4 MR. PAVLOVICH:

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

6 UNIDENTIFIED SPEAKER:

7 I just have a couple. When you said there was a --- you wrote
8 an A Order on the seal at Twentymile Mine ---

9 A. Yes.

10 UNIDENTIFIED SPEAKER:

11 --- and you were told to vacate it ---

12 A. Yes, sir.

13 UNIDENTIFIED SPEAKER:

14 When you sampled the seal, did you say it was in-gassing out
15 of the sample?

16 A. Yes.

17 UNIDENTIFIED SPEAKER:

18 It was in-gassing?

19 A. Yes.

20 UNIDENTIFIED SPEAKER:

21 There was a storm coming through?

22 A. Yes. Should be an out-gassing, granted, but storm coming through. It was in-
23 gassing.

24 UNIDENTIFIED SPEAKER:

25 It was in-gassing when you sampled it.

1 A. And I didn't collect the sample correctly, so ---.

2 UNIDENTIFIED SPEAKER:

3 So that was the only discussion from AI was vacate the order
4 because the sample was ---?

5 A. Correct.

6 BY MR. TEASTER:

7 Q. How was the safety of miners accomplished there, Don? I mean, I think you
8 said in the book it said outby the seal you had 5-percent methane, 11-percent oxygen?

9 A. No.

10 Q. Where did those numbers come from?

11 A. Inby the seal, in the sealed area.

12 Q. Oh, in the sealed area was 5-percent and 11 percent?

13 A. Yeah.

14 Q. Not outby?

15 A. No.

16 Q. Never outby?

17 A. Never outby.

18 Q. Okay.

19 A. So don't walk out of here with that other ---.

20 Q. No, I was thinking you had said that was reported that the guys were finding
21 that outby the seal.

22 A. No.

23 Q. But it wasn't. It was all inby. Good.

24 UNIDENTIFIED SPEAKER:

25 Don, when you and Tommy Hooker was on midnight shift in

1 the Goose, and someone called from underground and said we had a bump and we're
2 counting heads, would you know how many heads you needed to count?

3 A. Yes.

4 UNIDENTIFIED SPEAKER:

5 How did you have that information?

6 A. We were provided a list of all the miners underground after ---. They started
7 at 7:00 p.m., 7:00 p.m. to 7:00 a.m., 7:00 a.m. to 7:00 p.m. for miners. Our guys
8 started at 11:00. So after our guys, the midnight entry folks, would go underground,
9 the afternoon folks, MSHA folks, would come out of the mine. They would give us a
10 listing of who was in the mine. We had that. So we would know.

11 BY MR. PAVLOVICH:

12 Q. Was there like 70 people in the mine, Don?

13 A. No.

14 Q. Never?

15 A. Not on midnight shift, no.

16 Q. How many would you normally have underground on midnight shift?

17 A. Twenty-eight (28).

18 Q. Twenty-eight (28). You knew where they all were pretty much?

19 A. Yes.

20 Q. Twenty-eight (28) was the most you ever had, Don?

21 A. Pardon?

22 Q. Twenty-eight (28) was the most you ever had that you remember?

23 A. That's what I remember, yeah.

24 Q. That included the MSHA and company and miners?

25 A. Yes.

1 Q. Did you ever hear or when you showed up --- ever see where there was like
2 70 people in the mine on the other shifts?

3 A. No.

4 BY MR. TEASTER:

5 Q. Don, if you had a plan that said that no more than six people can be inby
6 setting forks at one time, would you think that would include everybody or just six
7 people setting jacks and anybody else that wanted to could go up there? How would
8 you interpret that?

9 A. If that's what the plan said, six people ---

10 Q. To set jacks.

11 A. To set jacks --- that's all there would be. That'd be my interpretation.

12 Q. What about if there was two MSHA people up there and two foremen?

13 A. Well, the MSHA people have the right to go where they want to go.

14 Q. So it wouldn't include MSHA people?

15 A. Well, I think we need to comply with the rule. But, you know, what they were
16 doing, I don't know.

17 Q. No, I'm just asking you if the plan did say that there couldn't be more than six
18 people up there setting jacks?

19 A. Yes, sir.

20 Q. Now, how do you interpret that, six people max or just six people setting jacks,
21 and you can have any more people you want?

22 A. Six people setting jacks.

23 Q. Would six be the maximum number of people allowed inby ---?

24 A. Well, yeah, I guess that's the way it would be. Yeah, six people maximum.

25 Q. That's in the plan. It's not a trick question.

1 A. No, I know.

2 Q. I'm just trying to get an understanding of what it was, 'cause there was nine
3 people up there when that accident happened on the ---.

4 MR. PAVLOVICH:

5 16th.

6 BY MR. TEASTER:

7 Q. On the 16th. The plan said six people. I'm just getting a clarification for what
8 your understanding was of your plan, since you guys were there enforcing that plan.

9 A. Well, the inspectors were enforcing the plan.

10 Q. Right.

11 A. One of the things that Frank Markosek talked to me about was having to tell
12 the Murray employees every move to make, you know, do this, do that, get this, get
13 that. He was upset that --- again, and I eluded to that earlier, the inexperience of the
14 people. I think that's what we attributed that to, them not knowing what to do and
15 when to do it. So yeah, unfortunately, we had two of our guys there.

16 Q. Thank you.

17 UNIDENTIFIED SPEAKER:

18 I have a couple more, Don. Just on the briefing, debriefing
19 you were doing. You talked a lot with Joe and Ernie about that. Were you ever
20 instructed by Al or Kevin or Stickler to do that, or was it just something that you and
21 Tommy took upon yourselves to start the briefing/debriefing process?

22 A. It's just something that Tommy and I did. The guys came out. I wanted to
23 know what was going on.

24 UNIDENTIFIED SPEAKER:

25 The other thing, I don't believe we touched upon this. You

1 mentioned a little bit about tech support, Ron and Zelanko and them not being familiar
2 with the area. I think you mentioned coal strength or something to make your point
3 there. Do you think Billy Owens' presence on the site would've helped them in the
4 general effort as well?

5 A. Maybe.

6 UNIDENTIFIED SPEAKER:

7 I guess one follow-up to that, when you were here in the
8 district the first day when you got word and Al and Bob Cornett and Bill Denning, any
9 mention at that point about Billy going with you?

10 A. Not that I heard, no.

11 UNIDENTIFIED SPEAKER:

12 No discussions you're aware of as far as ---?

13 A. No, not that I heard.

14 UNIDENTIFIED SPEAKER:

15 That's all I have.

16 UNIDENTIFIED SPEAKER:

17 I just have one. It's kind of a follow-up to Joe's question.

18 That is with the briefings --- you said nobody ever instructed you and Tommy to
19 specifically brief and debrief people underground. But did you in turn specifically give
20 instructions to the inspectors who were going underground that you wanted to see
21 them prior to their going underground and then once again on their way out?

22 A. Yes, ma'am.

23 UNIDENTIFIED SPEAKER:

24 You did?

25 A. Yes, ma'am.

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UNIDENTIFIED SPEAKER:

Do you know whether or not that was happening on other shifts?

A. No, ma'am.

UNIDENTIFIED SPEAKER:

That's all I have.

MR. PAVLOVICH:

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

UNIDENTIFIED SPEAKER:

Can I ask one follow-up question, I think to Ex. (b)(6) and Ex. (b)(7)(C) Did you take --- I know you took a sample from behind that seal. Did you get a bottle sample from behind the seal, or was it just on the spine?

A. Two bottle samples.

UNIDENTIFIED SPEAKER:

What did it show?

A. I didn't have them analyzed since I didn't collect them. I still have them at home. That's the truth. They're at the house. I looked at them this morning.

UNIDENTIFIED SPEAKER:

What do you think if you'd went ahead and sent them in and analyzed, and then they came back and said hey ---?

A. It wouldn't have made a difference. It came from high, and I did what I was told to do.

BY MR. TEASTER:

Q. How did you take it incorrectly?

A. I didn't have that pump to collect the sample. There's a procedure that's nine

1 pages long that we got to remember. Is that true? It's nine pages or whatever it is,
2 and you've got to let that pump run for three minutes based on how long it is and what
3 sized pipe it is. It could be up to five minutes. I didn't have the pump to do that with.
4 We were doing it by hand with an aspirator bulb, trying to draw a sample. We did
5 draw it. We did draw it. I mean, it put my meter in over range. It put the company's
6 meter in over range. I was comfortable, but I did it wrong.

7 Q. So the likelihood of you having trapped in that hose explosive mixture from
8 previous use was kind of highly unlikely; isn't it? So if you had anything in that bottle
9 that indicated explosive, it probably come through that aspiration and come out behind
10 that seal?

11 A. Brilliant deduction, Watson. I felt comfortable in the actions that I took. I'd
12 probably do it again today, faced with that same situation.

13 Q. Are you familiar with any ALJ decision or commission decision that said that
14 we --- our procedure for collecting samples was not adequate, that we needed to
15 revise it to do this nine-page thing that you're talking about?

16 A. Nope. I don't know where it came from. It doesn't have my name on it; I
17 know that. It's got somebody else's name on it. I've just got to live by it. Again, they
18 didn't ask my opinion.

19 MR. PAVLOVICH:

20 Who's next over here?

21 UNIDENTIFIED SPEAKER:

22 These guys have asked most of the questions that I had, but
23 you just said something just now. You said nobody asked my opinion. I know we're
24 talking about a different subject. Do you feel that that may have been the atmosphere
25 at Crandall Canyon in a round about way, that the decision-makers never really asked

1 for people's opinions? I mean, it sounds like you offered some opinions, and you guys
2 kind of improvised on your shift and scheduled briefings and debriefings. Was there
3 ever --- let's get all the experience we have at this mine from MSHA, all the MSHA
4 folks, all the experts that we had there, guys out west that dealt with this --- tech
5 support guys, and sit down and talk about what we're doing. Did you ever feel like
6 people wanted your opinion?

7 A. No, I felt they didn't want my opinion. Now did they ask others their opinion?
8 I don't know that to be a fact. I kind of think they asked occasionally, but I don't know
9 that for a fact.

10 UNIDENTIFIED SPEAKER:

11 It's just odd, I guess, to some of us that have been involved in
12 a lot of mine emergencies. One of the most critical things is briefing/debriefing of
13 people that are going in the mine. It almost seemed kind of random. If they stopped
14 by the Blue Goose on their way underground, you'd kind of tell them what to do. But
15 there were no specific instructions --- once you get your clothes on, you come, and
16 we're going to talk to you for 15 minutes; would that be a fair statement?

17 A. Well, you know, I don't know what went on on the afternoon shift, 'cause I
18 wasn't there. The dayshift, 'cause I was there, would come by the Goose, find out
19 what's going on, look at the plan. The graveyard shift came by the Goose to get
20 instructions. The afternoon crew would come by the Goose after their shift to ---.

21 UNIDENTIFIED SPEAKER:

22 Is it all three guys, Don, or just maybe one of them?

23 A. It was primarily the Price MSHA folks that would come by, like the mine
24 rescue members. They may go on to their vehicle and get their gear off, and they
25 may come back by the Goose and have a few comments to make. But primarily,

1 we're talking to like Gary Jensen ---.

2 UNIDENTIFIED SPEAKER:

3 The guys you knew and felt comfortable with. So there was
4 no really guidelines that says look, when you come out of the mine, I want all three of
5 you guys to come by, we want to talk to you?

6 A. No, not that I know of.

7 UNIDENTIFIED SPEAKER:

8 That's all I have.

9 UNIDENTIFIED SPEAKER:

10 Can I just ask one more?

11 MR. PAVLOVICH:

12 Yeah, Ex. (b)(6) and Ex. (b)(7)(C)

13 UNIDENTIFIED SPEAKER:

14 What do you think would've happened if you had provided
15 your unsolicited opinion or advice on anything? I know you discussed some things
16 with Tommy that you didn't feel comfortable discussing with other people. What do
17 you think would've happened?

18 A. It depends on who I had those discussions with. They might've told me to
19 catch the train, you know. I don't know. There's some folks that --- Al Davis being
20 one of them, Cornett, another one, Kevin Stricklin --- I don't know that I'd have gone
21 up to Mr. Stickler and told him a thing.

22 UNIDENTIFIED SPEAKER:

23 But you would've gone up to Al, Bob, and Kevin?

24 A. Yeah.

25 BY MR. PAVLOVICH:

1 Q. Why wouldn't you go to Mr. Stickler and tell him anything, Don?

2 A. The man wanted it in the book a certain way, Joe.

3 Q. I understand.

4 A. He was going to replace everybody that couldn't follow that direction.

5 Q. So in other words, he somewhat intimidated people not to provide suggestions
6 and opinions in that regard?

7 A. Well, I'm not going to answer that question. I'll keep my one thought to
8 myself.

9 Q. But you personally would not have gone to him with any concern?

10 A. No. Nope, no way.

11 MR. TEASTER:

12 Would you feel comfortable telling Kevin that you felt that you
13 was recording too much information on this footage?

14 A. Yes, I would have.

15 MR. TEASTER:

16 You would feel comfortable?

17 A. Yes.

18 BY MR. PAVLOVICH:

19 Q. But it didn't matter, he wasn't in charge?

20 A. I don't know.

21 Q. Who did you think was in charge?

22 A. Who I thought was in charge?

23 Q. Yeah.

24 A. The Assistant Secretary.

25 MR. PAVLOVICH:

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