

IN RE: CRANDALL CANYON
MINE INVESTIGATION INTERVIEWS

INTERVIEW
OF
RICHARD STICKLER

INTERVIEWERS:
JOE PAVLOVICH, ERNEST TEASTER

DATE:
NOVEMBER 9, 2007

1 BY MR. PAVLOVICH:

2 Q. All of our interviews so far with why Ernie and I are here. You know, we're
3 both retired from MSHA and we were asked to come back and do this independent
4 review. There was obviously issues that came up and other people said that MSHA
5 needs to do these independently, so we were asked to come back and do this. Also
6 the fact that you and Kevin both were at the site and at the mine during the second
7 accident, I guess, that prompted a lot of this. So that's kind of why we're here and
8 these folks that are with us graciously accepted our offer to participate and help us on
9 this, and I think we've got a wonderful team. I mean, they've done a very good job so
10 far. They're very knowledgeable in what we do and we appreciate the fact that MSHA
11 loaned them to us to do this, and I think it's working out well.

12 I got just a brief statement here to inform you of and then we can start with the
13 interview. The secretary has assigned this group the task of evaluating MSHA's
14 performance during the period preceding the August 6th, 2007 coal bounce at the
15 Crandall Canyon Mine and the subsequent rescue effort. We will also be evaluating
16 issues that were raised during this time period regarding Bob Murray and his
17 interaction with MSHA. This is not an investigation and review of any individual
18 person. It's an administrative review of MSHA's actions as an agency. This evaluation
19 will be presented to the secretary in the near future and it is intended that the results of
20 the evaluation will be made public.

21 The interview is being conducted to gather information for this assignment.
22 We also intend to interview a number of other MSHA employees. So that we may
23 obtain unbiased information from all persons to be interviewed, we ask that you not
24 discuss this interview with anyone until all the interviews have been completed. And
25 obviously, you're not a bargaining-unit person, so you're not entitled to a

1 representative.

2 OFF RECORD DISCUSSION

3 BY MR. PAVLOVICH:

4 Q. Richard, would you state your full name for us, please?

5 A. Richard E. Stickler.

6 Q. Would you tell us what your present position is with MSHA?

7 A. Assistant Secretary.

8 Q. How long have you been the assistant secretary?

9 A. Since late October of last year.

10 Q. So just over a year then. What was your position prior to becoming assistant
11 secretary with MSHA?

12 A. I had no position with MSHA. I started in late June as an advisor to the
13 Secretary Department of Labor, and I was there in that position until I think it was
14 October the 19th that I was appointed to assistant secretary. I had no --- during that
15 time I had no direct contact with ---. Well, let me rephrase that. I did not go to the
16 MSHA headquarters, I did not contact any people within MSHA. Dave Dye when he
17 was over at the Department of Labor stopped in a few times and visited with me, and
18 that was more like what's going on with my nomination, that kind of stuff. But I didn't
19 get involved in any decisions when I was an advisor to the secretary. I didn't get
20 involved in any decisions with MSHA. I advised the people in the Department of
21 Labor, which was Howard Radzely, Chris Iverson and the secretary on anything that
22 they wanted to get my opinion on.

23 Q. Prior to being an advisor what did you do?

24 A. Well, I was retired about three years. I was just telling Ernie I have 5 kids and
25 11 grandkids, and I was everything from financial planner to plumber. I would --- I

1 have a daughter in England. I'd check my toolbox on the airplane and go over to put in
2 replacement windows or whatever, but I would basically ---. I was having a good time
3 helping my kids, and I did not plan to go to work. I didn't apply for this job, I didn't ask
4 anybody for it. I think somewhere they sift me out. Probably Governor Ridge was in
5 charge of Pennsylvania's Governor when I became Director of Mine Safety up there,
6 and his involvement in the administration is probably how they tracked me down. But
7 when I was asked to consider the job I wasn't looking for a job, but I felt my
8 grandfather was an underground miner, my dad was an underground miner. I started
9 as a laborer in the mines, I've worked with thousands of miners and if I said no, I don't
10 want to come and help or I won't come and help I felt that that would bother me. So
11 I'm here doing what I can, and the day comes that they say, we don't want you here,
12 I'm going to say, thank you. I'm happy to go back to retirement.

13 Q. How and when did you first hear about the accident on August 6th at Crandall
14 Canyon?

15 A. Well, I was still at my apartment and I got a phone call, and it's just like when
16 you get those phone calls after hours you know there's a problem. And that's when I
17 was advised that we had the problem. I went into the office immediately after that, and
18 we got together in the conference --- assistant secretary's conference room. Bob
19 Friend and Kevin and just whoever was around there to start assessing the situation.

20 Q. Who was it that first called you, Richard, do you remember?

21 A. I don't --- I wouldn't want to guarantee you. I would --- normally Bill Crocco
22 calls me, but I don't know who that was at that time. It probably wasn't important to
23 me.

24 Q. What did they tell you initially that they thought happened?

25 A. Well, they just said that there'd been an accident up in Utah, and they had

1 miners unaccounted for.

2 Q. So you set up a conference room in the assistant secretary's office ---

3 A. Right.

4 Q. --- for a briefing then when you got to the office?

5 A. Yeah.

6 Q. Who was in that office with you?

7 A. Well, there was so many people in and out, certainly Bob Friend and Kevin
8 Stricklin. And I wouldn't want to guarantee you ---

9 Q. Well, that's ---.

10 A. --- every person that was there or not there, but ---.

11 Q. I understand. Generally it was your top staff?

12 A. Yeah, and people from Kohl. People from Kohl came down to the assistant
13 secretary's office. We worked together there as a team. We had phone
14 communication with Al Davis, and Jeff Kravitz, people in tech support trying to get
15 every --- the initial activity was to try to get all the resources mobilized because Al
16 Davis was six, seven hours away and we tried to get the resources from our Pittsburgh
17 and Beckley emergency response group. During that time we made arrangements
18 with the Air Force to fly some of the equipment from Pittsburgh out and --- well, I guess
19 I should let you ask the questions. Okay.

20 Q. When did you decide to go to the mine?

21 A. Well, it was on the first day of the accident and we tried to get flights out and
22 weren't able to get any flights until the next morning.

23 Q. So you --- what prompted that discussion that you said we should go to the
24 mine or somebody said you should go to the mine?

25 A. I think Bob Friend and Matt Lathrop (phonetic) I think was one of the people

1 that said that he felt that I should get there as soon as possible.

2 Q. Who said that?

3 A. Matt Lathrop. Matt was chief of staff. He's since left MSHA.

4 Q. Oh, okay. He was your chief of staff at the time?

5 A. Chief of staff. Right. And Bob Friend was the other person I remember that
6 felt that I should --- I think as soon as it starts sinking in of the potential seriousness of
7 the situation is when Bob Friend and Matt advised me to go.

8 Q. Do you know why they did that? I mean ---.

9 A. I never asked. I don't know why.

10 Q. Would that normally be the role of the assistant secretary, you think, to
11 respond on site to a mine accident?

12 A. I don't --- I know that when I was at QueCreek the administrator for Kohl was
13 there and the assistant secretary, David Risky was at QueCreek when I was there, so
14 thinking back in my past fortunately I worked 40 years in the industry. And I never
15 managed or never worked in a mine that had a multiple fatality, so I was blessed that I
16 haven't had that firsthand experience. The only time that I --- well, during the six-and-
17 a-half years I was at Pennsylvania we had no multiple fatalities, but QueCreek had the
18 potential, so I guess that was the involvement I had.

19 I had responded to assisting other companies when --- this goes way back in
20 my career. When I was captain of the mine and rescue team I worked for Bethlehem
21 Steel and when other companies would have problems. I know I was working at a
22 mine adjacent to Farmington when it blew up. I worked at the Barrackville Mine and
23 was captain of the mine and rescue team, but I really don't know what the past history
24 is. The only thing that I can recall is Risky being involved at the QueCreek situation,
25 so I don't know what assistant secretaries did in the past.

1 Q. When you arrived at the mine site --- and I guess you flew there on the 7th of
2 August; is that correct?

3 A. Yeah, we flew out. Kevin and Bill Crocco and myself and Dirk Fillpot who was
4 a public affairs person.

5 Q. What did you do when you first got to the mine site?

6 A. I got there late in the afternoon on Tuesday. It was interesting. The Governor
7 of Utah thought he was going to help us, so he arranged an airplane but somehow we
8 lost Crocco and he ended up in a rental car. So the time we go to the Governor's
9 hangar they put us in one plane. It wasn't big enough. They took us all out, figured
10 out the next plane didn't have enough fuel so they had to find a fuel truck to put fuel in
11 it. And then they flew us to --- I guess it was Price, and then we got on a helicopter.
12 Make a long story short, Crocco beat us there. You know, our plan was to rent a car,
13 but we didn't want to tell the Governor, we'll just get a rental car. So here we are,
14 we're in Huntington now. We don't have any rental car, so that --- I guess that's ---.

15 Q. How did the Governor know you were coming?

16 A. I don't know.

17 Q. Really?

18 A. I don't know how that ---.

19 Q. So you just showed up at the airport and
20 they ---?

21 A. No, I got off of the plane in Utah and there was a page on the system to call
22 such and such number. You know how they page you at the airport?

23 Q. Yes.

24 A. So I called the number and they said, hey, there's going to be a state trooper
25 meeting you people and he'll be transporting you over to the Governor's hangar to fly

1 you down to Price. But how that got initiated is ---.

2 Q. I mean, you didn't call and notify the Governor and talk to him prior to leaving?

3 A. No, I didn't, but I would guess --- and, you know, I probably shouldn't be
4 guessing here. So maybe there's a reason, maybe guess, but I suspect the
5 Secretary's office. I know in Sago I was told that the chief of staff or the Secretary and
6 the Governor's office was in very frequent communication. I suspect that that's --- and
7 I know that when we had the accident at Tri Star the Secretary asked me to call the
8 Governor of Maryland, which I did.

9 Q. So when you first got to the mine then what initially happened?

10 A. We had a briefing, an update on the status of what was occurring at the mine
11 and the conditions.

12 Q. Do you remember most of the people or some of the people in that briefing?

13 A. I'm pretty sure that was the first day I arrived there was when we got the
14 briefing, and I think that was the one that the Governor of Utah was there. I think he
15 was already there, and Senator Bennett and Murray and all of his top management
16 people, and Kevin Stricklin and MSHA's top people, the district manager, Al Davis, and
17 more people than what could fit in the room. I remember that part of it.

18 Q. So Murray was in there?

19 A. Yeah.

20 Q. Why does the Governor and Senator come to an event like this?

21 A. Well ---.

22 Q. Do you know? I mean, it's opinion I guess unless they told you here's why
23 we're here, but ---.

24 A. I don't know how you keep them away.

25 Q. Well, I understand, but why would ---?

1 A. How do you keep a politician away from a camera. Somebody told me ---.

2 Q. That answers that. The camera was the big thing, not the assistance?

3 A. Well, no, I don't want to say that. Really that would not be fair. I was just
4 trying to have a little humor. Somebody said, how's a politician and a camera similar
5 to a dog and a fire hydrant or something like that, but it's --- but, no, there's no doubt.
6 Governor Huntsman was sincere in trying to do anything he could help --- do to help.
7 Unfortunately they don't have any mining knowledge.

8 Q. Right.

9 A. They have no people in their agency that --- they have an oil and gas division.
10 They have some people that helped us with some issues about drilling, whether we
11 were using the right bits and whether we could have had a different drill and those kind
12 of things. They helped fly in cameras and I know the Governor arranged for a C-130
13 or whatever to fly some equipment in, and the Governor and the congressional
14 members that showed up, Hatch Bennett, Matheson, they were sincere in wanting to
15 try to help. I think that's --- and just a little humor implied that anything else strike that
16 from the record.

17 Q. Do you think when all those people show up do they truly help or do they
18 detract from your ability to concentrate on what you were doing because of having to
19 spend time with them?

20 A. Well, I spent time with them and I think Kevin spent a little time with them, but
21 for the most part the people running the day-to-day activity, the rescue, I think they
22 were shielded from these other areas. For the most part, the family and the press and
23 the congressional delegation, local politics that --- for the most part the people at the
24 mine site were shielded and were not distracted. Now, I would say that, to fully answer
25 your question, I've seen --- for example, at QueCreek Governor Schweiker, he

1 basically took over there. And I think MSHA was a little late getting there. I think the
2 administrator and I think assistant secretaries maybe a day into it, but Schweiker
3 basically took over. And the good part about it was he said to me, you do whatever
4 you have to do, whatever resources you need.

5 We had a small operator, that didn't have any money. We had maybe 30
6 people that worked at this mine and he --- you know, his foreman ran out of gas,
7 physically. And I was on the phone calling for fuel equipment and pumps out of Texas,
8 and we weren't worrying about purchase orders or who was going to pay for it. And to
9 be honest with you most of the people that we dealt with never even asked, but at the
10 end of the day when it was all done the Governor --- I think it was about \$10,000,000,
11 and he saw that everybody got paid.

12 There were over 700 people that participated in that rescue effort in some way
13 that we were able to identify. And in those 700 people that spent any money the
14 Governor reimbursed them for the money they spent. Now, the good thing about that
15 was that we were able to get all the resources and everything there quickly, didn't have
16 to do any paperwork and the Governor would do things with the state trooper.

17 Whenever a piece of equipment was coming in from New York he shut the
18 turnpike down ahead of the vehicles and cleared the highway, the turnpike, and he had
19 those trucks 90 miles an hour coming down the highway because of the way he had
20 the clearance made. He had probably eight or nine helicopters that were serving us,
21 flying in parts and making arrangements anticipating that we were going to find miners
22 alive and set up medical facilities and had doctors on site, on standby. So the
23 Governor really added a lot.

24 Q. If we didn't have a Governor who assumed that role or got that interested
25 would MSHA have the ability to do that, Richard?

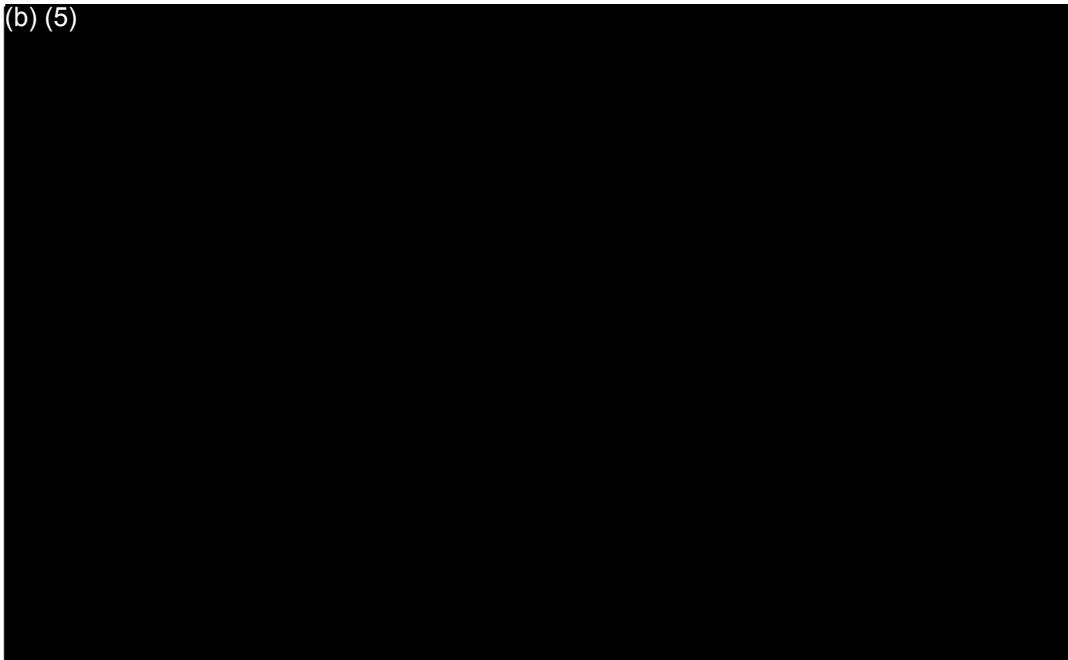
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A. No.

Q. They wouldn't?

A. Too slow.

Q. So if we needed drills they would want to go through the purchase order process?



operation. Well, for MSHA to try to get that done would be a disaster because the ball would just drop and stop until --- it took me days to get the paperwork to get the technical team in there to advise me on the ground control. And nobody in Department of Labor could figure out how to do it. Finally NIOSH suggested to us a way to do it, to get the paperwork done.

We didn't have communications. Cell phones wouldn't work out there. I had a satellite phone that I brought out of my office, but with one satellite phone and trying to keep it charged the Department of Labor found us some satellite phones and sent them out. We messed around with them. I charged mine at the car and then two days later after getting on people about why we can't make them work we found out they

1 were for a satellite that was dead or something. They brought these things out of
2 storage, and there is no emergency measures set up for MSHA to take charge and
3 have the resources and do that just through a verbal process. Anything you do in
4 federal government you've got to have the paperwork done, but --- and that was one of
5 the things that fortunately we had a mine operator at Crandall Canyon that had the
6 resources there.

7 But the State of Utah they helped in some ways, but there was --- for the most
8 part. I mean, it was sort of irritating to me that they couldn't take more than a couple of
9 days on the site. One guy gives you a card and he's there for a couple of days, and
10 he's got to go back to Utah. And somebody comes in, you got a new face to figure out
11 who that guy is. Every two or three days they had someone new on the site, but I think
12 the Governor was certainly sincere in wanting to help but didn't --- he wasn't a take
13 charge kind of Governor like Schweiker. I've heard stories about Manchin and I wasn't
14 at Sago or Aracoma. I think Manchin took charge of things. I was even told that he
15 had the MSHA people locked up at Aracoma somewhere and put the state trooper to
16 the door and told him, don't you let anyone in and out of this room, not to go to the
17 bathroom or whatever.

18 Q. Just when we were making an exploration that we thought we might find
19 someone?

20 A. Yeah.

21 Q. Because I was in the command center for the state, and we made a push into
22 an area where we thought we might find someone. I thought, well, I'll just use the
23 restroom while we're waiting for the team to call back. And I open the door and there
24 was a state trooper just blocking the door. I mean, when I opened it, there he was.
25 And I said --- he said, where the hell are you going? I'm going to the bathroom. He

1 said, not now, you're on lockdown. I said I'm in the command center. He said, nobody
2 leaves, nobody comes in until after you get that call from the team. Okay. So, you
3 know, ---

4 A. Yeah. Well, ---.

5 Q. --- that was a little drastic I thought, but I understand their concerns after Sago.
6 So I guess they wanted to make sure there was no misinformation.

7 A. My approach has always been to try to build teamwork when you're involved in
8 these things. And I know at QueCreek I worked hard to build a team there with all the
9 players that were involved from the county and the state and MSHA. I tried to do the
10 same thing at Crandall Canyon. I mean, we had some great people there, the county
11 sheriff did an outstanding job. Now, he seemed to have plenty resources and did a
12 very good job of controlling the rescue area and also the area where we had the
13 families, and set up security, didn't let anybody in or out that wasn't supposed to go in
14 or out that didn't have approval.

15 Q. Richard, what was your involvement or role in the command center and in the
16 decision-making process or plan-approval process at Crandall Canyon?

17 A. Well, I was consulted at times. I was in and out of the command center. My
18 typical day started out with first trip I would make would be to the mine site and get an
19 update and a briefing. I did that so that I would have accurate information to meet with
20 the family. We had at least two family meetings, sometimes three family meetings a
21 day. And I would go to the first family meeting in the morning after I had gotten an
22 update from the people there at the mine site. I got an update from MSHA's folks, I
23 checked notes with the mine operator. Most of the time it was Rob Moore, the vice-
24 president for Murray Energy, to make sure that we had consistent information. From
25 there I would go to the family meeting, which was at the junior high initially. Later we

1 transferred to a local church because school was starting. I would spend anywhere
2 from probably an hour and a half to three hours, some of the family meetings would go
3 three hours, to give a formal presentation to the family members. And I tried to stay
4 there after the briefing to allow family members to ask questions. Some of them did
5 not feel comfortable asking a question in a group setting.

6 The group would change. During the weekdays you might have 40 people
7 and then on the weekend relatives would come in from distance. You might have 70
8 people there at the family meetings, so however much time it would take to answer all
9 their questions I would stay there with them. These people were --- they were starving
10 for any little piece of information they could get and trying to gain understanding.

11 Some of them were experienced miners, some of them were members of mine rescue
12 teams, so they had in some cases questions about the process of what we were doing.

13 But after I'd leave the family meeting I would go to a press briefing, and the first day
14 that I went --- let me just maybe back up and fill in some things.

15 The first family meeting that I attended was a very hostile meeting with the
16 families and the miner operator. What I saw transpiring was that when the family
17 member would ask the mine operator, Bob Murray, a question that sort of put him on
18 the defensive. Then he would react inappropriately, and I think part of it is his
19 personality. He's sort of a take charge kind of personality, authoritative personality,
20 and he would address a family member in what I would view as an aggressive
21 response trying to defend rather than just explain. After that meeting I told Bob Murray
22 that was unacceptable, that people don't really want to hear that kind of response.
23 They want to hear what we're trying to do, what we're trying to do to reach their loved
24 ones and so on.

25 So the first family meeting I got delayed from leaving there to go to the press

1 briefing, and I thought the press briefing when I got there is when it would start. Well, I
2 got surprised, when I got there it already started because Bob Murray had left and he
3 started the press briefing. Again, I told him, Bob, that's unacceptable, that in the future
4 MSHA will start the press briefing. It won't start until we arrive, we will start it, we will
5 give our statement. If you want to follow up with comments, statements you're
6 welcome to do that. And that's the way we operated in the future.

7 Now, I found out that that got miscommunicated to the public because we
8 would give our presentation, the news media wouldn't broadcast that, they'd wait until
9 Bob Murray got up there because he's more colorful. That's what they were showing
10 the public, so it looked like MSHA wasn't leading the press conference.

11 Q. It certainly did.

12 A. But after the first day that I was there every press conference after that I
13 started the press conference and gave a briefing prior to the mine operator. And I
14 stayed there during the time the mine operator was there in order to allow the press to
15 ask any questions. If they felt something the mine operator was telling them was
16 inaccurate or they wanted to get my view, which they did in some occasions, then I
17 would give them my position or my view on anything that the mine operator had
18 communicated.

19 Q. Richard ---?

20 A. Well, let me finish this.

21 Q. Oh, okay. Go ahead.

22 A. I'm trying to walk down my activity daily.

23 Q. Okay.

24 A. So from the family meeting to the press conference. After the press
25 conference I would go up to the mine site. Some days I went underground, some days

1 I would go to the drill facility, some days I would spend that gap that I would have
2 meeting with members of congressional delegation, senators, congressmen, their staff
3 and then late evening the process starts over again.

4 Just prior to going to the evening family briefing I would get the most recent
5 information from the MSHA people, I would meet with Rob Moore. We would compare
6 notes, we'd go down to the family briefing in the evening. Again, be there anywhere
7 from an hour to three hours depending on how many questions and the situation. And
8 from that family briefing then we would go to a press briefing. We tried to make sure
9 that we didn't tell the press anything that we had not communicated to the families, and
10 I think for the most part we were pretty much able to do that.

11 And after the press briefing which might be --- it might end at 8:30, 9:00, then
12 I'd go back up to the mine site, spend some time there with the folks, chat with them.
13 Most of the time --- that was pretty much my schedule. Later on we changed from a
14 daily --- from twice a day press briefings to once a day, or we would tell them when we
15 had some information we would update it.

16 A lot of the time either Kevin or Al Davis was with me during the family
17 briefings and the press conference, and when I was up at the mine site most of the
18 time the three of us was together. I think the first trip I went underground --- I can't
19 remember. I did make a trip underground that Kevin was somewhere else. I don't
20 know. And I know when I went up to the drill site Kevin and I traveled together there.
21 We tried to stay together as a team. We talked about concerns we had, we discussed
22 things so that we felt like that we were on the same page. And they tried to keep me
23 informed on the decisions that are being made. I guess that's all I have on that
24 question.

25 Q. Okay. So do you feel like when you were there that you were basically the

1 senior MSHA person in charge and you were in charge of running this whole
2 operation?

3 A. When I was on the site any decisions that got pushed up to me and I made the
4 decision on it I would say yes. Now, a lot of decisions were made that I was not
5 consulted on and I was not involved in. But just the things that got pushed up to me
6 then I would have to assume that that's why they came to me was for me to make the
7 decision.

8 Q. So how do you think that affects the flow of the operation if you have multiple
9 people making decisions on different things?

10 A. Well, I think the people that were --- I think the lower level people made the
11 decisions that they were comfortable with, but when they went to Al Davis or to Kevin
12 and then Kevin or Al came to me. I don't see a problem with how that worked there.

13 Q. Well, you acknowledged the fact and certainly said much of your time was
14 spent, first of all, being briefed by, I guess, MSHA and Rob Moore to make sure you
15 both had the same information.

16 A. Right.

17 Q. And so that's because, I guess, you had two command centers, one for
18 MSHA, one for the company and so you had to make sure the information that was
19 going to be given was the same from both?

20 A. And that changed at times. At times there was a common command center.
21 There were times that we had both MSHA and the mine operator in the same room
22 depending on what was going on. For example, whenever they had rescue teams and
23 they had people exploring I know at that time I was told that they had a joint command
24 center. I also am aware that there were meetings. Every morning and every evening
25 the MSHA people would get together with a mine operator, and there were

1 communication meetings, planning meetings. I was in and out of those sometimes
2 because they were in the Blue Goose and I was going into the Blue Goose to make a
3 phone call or whatever, but I didn't sit down and participate in those meetings.

4 Q. Then you spent --- so you had those briefings, then you spent the time with the
5 families and the time with the press, which obviously amounted to several hours by the
6 time you did both of those. And you said ---.

7 A. Probably 20 hours a day and then I drove 45 minutes to Price to try to lay
8 down for two or three hours.

9 Q. Then you said a lot of the time Kevin or Al was with you at the family briefings
10 and the press briefing, so who was running the rescue operation?

11 A. Well, Al would have somebody that he designated. Most of the time it was an
12 assistant district manager or somebody at that level. They brought in people from
13 outside of the --- I know at times I saw Carlos. What's Carlos' last name?

14 Q. Mosley (phonetic)?

15 A. Mosley, yeah. I saw Jack Kuzar, people from other districts. My
16 understanding is that Al Davis had a designated person three shifts a day that was in
17 charge of MSHA's command center, day-to-day operations there. And I know that
18 there were phone calls. I got phone calls in the few hours I was at the hotel. I still got
19 phone calls, somebody had a question on something and that generally came from
20 Kevin. So I would answer that by saying that that was --- when Al Davis was on site it
21 was Al or he delegated that to someone who would communicate with him by phone if
22 there was an issue or a concern or something they weren't comfortable with.

23 Q. Did you know Bob Murray before Crandall Canyon?

24 A. Right. I had ran into him when I was Director of Mine Safety for the State of
25 Pennsylvania. We had a fatality at the Maple Creek Mine, and I went over to go

1 underground to take a look at the conditions underground. And it was a rib roll that
2 came off and killed a miner at a belt-drive installation, and when I traveled beyond that
3 area into the section I saw several potential similar conditions. Bob Murray was at the
4 mine and I made a point to meet with him to tell him that, look, you know, you can't
5 depend on luck. If you're going to have conditions like this throughout the section it's
6 not a surprise that we've got a fatality here. We've got --- I checked the roof-bolting
7 machine and there's no slate bar on it. How do you expect people to pull down
8 material? So I had a pretty frank discussion with him on that, but it was a typical Bob
9 Murray meeting. I had to let him talk for 15 minutes before I could get around to
10 making my point, but prior to that I think I had ran into Bob Murray. I only remember
11 that one encounter the six-and-a-half years I was with the state. When I was in the
12 industry I think Bob Murray came and visited one of the longwall operations that I was
13 in charge of, but other than that I don't remember any other involvement with him.

14 Q. Did Murray ever ask you to change any inspectors with the state or to move
15 people ---

16 A. No.

17 Q. --- because he had any problems with them at all?

18 A. No, Bob never asked me that. I know Bob had problems with state inspectors,
19 but he never asked me to make any changes. I think that probably would have --- and
20 at my level I didn't get involved in inspector assignments. We had a division chief, one
21 for the bituminous area and one for the anthracite area. If inspectors got moved, that
22 was something that they made on whatever basis they decided to do that.

23 Q. Do you know if he ever asked any of those people to change inspectors
24 because ---?

25 A. I'm not aware. I'm not aware of that?

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MR. TEASTER:

Richard, I noticed in your notes if I remember correctly at your first meeting there at Crandall Canyon that Bob Murray had brought up the fact that the Mine Act was going to shut down the mines. Did you find that odd?

A. I was very irritated with Bob during that first meeting to the point where I was -- I kept saying, should I interrupt this guy and just say, look, I've heard enough of this crap? Let's get to the facts here. And it was embarrassing to me because we had a U.S. Senator and the Governor of the state, and basically Murray is sitting there mixing in politics really rather than getting to the point of briefing the Governor and the Senator of what was going on. That went on probably for a half hour. I had to sit there and listen to that for a half hour before we finally got around to anything that dealt specifically with the operation.

But one of the things I will say --- and I mentioned to you earlier. I tried to build teamwork and I knew that Bob Murray is a volatile individual, and if you piss him off then you don't know where he's going. He becomes irate, he becomes hostile, he becomes irrational. I heard stories about him before I came on the job with Pennsylvania about him spitting in the face of one of our state mine inspectors. You can turn him in to that personality, so my approach was to build cooperation and teamwork, so that's probably why I sat there for a half hour and listened to what ---. It was irritating me, but I figured now is not the time to embarrass him in front of the Governor and call him on the carpet.

Now, I called Bob Murray on the carpet several times privately about the first family briefing, about the first press conference. There was a later family briefing that he, again, was inappropriate and I asked the sheriff to --- I figured the sheriff had control over the family briefing because it was a private area. It was in a church at that

1 time, so the sheriff then advised Murray that he was not to attend any more family
2 briefings. I knew that that pissed him off and he was very upset, and he came to the
3 family briefing and he says, you know, I'm running this show, what do you mean I'm
4 not allowed in there? And the sheriff had to tell him, well, Mr. Stickler's asked that you
5 not be in attendance of any more family briefings.

6 But I would have liked to have done that at the press. And I talked to Kevin
7 about maybe we ought to have our own press conference, but then if I did that I knew
8 Bob Murray would be having his own because there were times that he'd get up at
9 three o'clock in the morning and met with like morning show or something back when
10 the east coast is two hours time difference. So I knew he's going to be off saying
11 whatever he's going to say. We're better off to do it jointly so we at least hear what
12 he's saying, and for something that the press wants a different opinion on we can be
13 there to do that.

14 But it was a challenge dealing with a personality like Bob Murray trying to build
15 teamwork, trying to build cooperation, trying to keep the thing from melting down
16 where we start fighting among ourselves or --- you know, I threatened Bob Murray with
17 a J Order at a couple occasions.

18 BY MR. PAVLOVICH:

19 Q. What did he say?

20 A. He talked to his lawyer about it.

21 Q. I mean, did he get mad about it?

22 A. Well, I would say that I never saw him really lose it, but I saw him irritated and
23 one point during the rescue operation he fired his mine manager. I talked to Bob about
24 that and it was just a matter of Bob losing his temper. The guy was trying to be
25 responsive in every way he could, and then Bob hired him back the next day because I

1 mean, we --- I mean, it was not a pretty kind of situation with his personality, trying to
2 work with him was a real challenge.

3 Q. Was he taking the lead role in the command center on decision making?

4 A. Not in the command center. I never saw him in any of the daily --- we had two
5 meetings, one in the morning, one in the afternoon. That was MSHA people, mine
6 operators, Laine Adair generally was the mine operator's representative and a guy
7 named Bruce Hill. I never saw Bob Murray around those.

8 Q. He wasn't in those planning meetings?

9 A. No, I never saw him in those.

10 MR. TEASTER:

11 Did you attend most of the meetings in the morning?

12 A. No. Which meeting, the ---?

13 MR. TEASTER:

14 The morning briefings ---

15 A. Communication?

16 MR. TEASTER:

17 --- you talked about between MSHA and ---?

18 A. No. No, I never attended those. I never sat down and attended those. That
19 was communication that went on between the lower level mine operating people and
20 the MSHA people, and I didn't see --- probably the highest person I saw in those
21 meetings was Bruce Hill. I think he was the president of the district and then Laine
22 Adair was the manager. And I --- the way I was --- that I saw that was my traffic in and
23 out. I mean, we were limited in resources there as far as facilities. We had probably
24 15 people trying to work out in the Blue Goose, and they would have their meeting in
25 the rear end of the Blue Goose. And I would come in and use the phone or use the

1 computer in the front end compartment of Blue Goose.

2 Now, there were some --- there were one, maybe two meetings where we got
3 together on ground control that I attended and Bob Murray attended. That was later in
4 the rescue effort. I don't know. Maybe the 14th or 15th. We were trying to find ways
5 to reinforce the ground control. We started out with pretty weak ground control. I think
6 the first day on the 6th they had a plan to put --- they were going to clean up Number
7 Four entry, and the plan was basically to put in additional roof supports any place that
8 was needed and to put standing timber in the crosscuts. Then when they changed
9 over on to Number One entry, which was the 7th or the 8th, start putting in the square
10 timber and the 40 ton water jacks every two feet, the chainlink fence. And then later
11 we tightened up on that, and that was the meeting that I remember attending that Bob
12 Murray was in, and it started out as a briefing.

13 We had tech support ground control people, Joe Zelanko, he gave sort of an
14 analysis of what he saw there condition-wise and there were multiple people there
15 from both MSHA and the mine operator. That was attended by Bob Murray, and we
16 talked about some --- one of the things I remember was going from one wire rope
17 cable to three wire rope cables in front of the water jacks and putting in some
18 restrictions on the exposure. The miner operator remote control and he was to stay ---
19 he was not to go inby the last water jack, and when the shuttle car operator got up to
20 the last water jack that's when they were shut down and extend their water jacks on
21 both sides and the wire mesh and the cables. And we talked about limiting the number
22 of people because I know when I was underground I saw --- in some cases there were
23 people there observing, and I asked that we limit that to one MSHA person and just the
24 minimum number of people engaged in setting the water jacks. If you're not actively
25 doing work then you don't need to be inby the last water jack because ---.

1 BY MR. PAVLOVICH:

2 Q. Why was that, Richard?

3 A. Well, I recognized that the additional activity that we were --- well, let me back
4 up. I think the general consensus of Joe Zelanko and others there was that the initial
5 event occurred and the stress got redistributed. They had start setting up some
6 monitoring stations and Joe was going underground every day and then I think he
7 started going in every other day. He and other people from tech support monitoring
8 the condition, mapping the ribs and so on to evaluate what was going on. But as we
9 continued to remove the rubble in the entry we would get rib outbursts in that
10 immediate area. And I think we figured out that what was happening is that the rubble
11 in the entry was providing lateral support to the ribs, and we took the rubble out. We
12 took away that support, so from the time that we removed the rubble until the time we
13 put the water jacks and the chain link fence in we were at risk. And any people we
14 exposed in that area was, in my view, elevated risk. Now, I felt confident that once we
15 put the water jacks in and the chain link fence and the steel cables that we had
16 secured the area and it was safe for people to be there.

17 There were multiple bumps and I'm not aware of any time prior to the 16th that
18 there was any movement on the water jacks and the support that had been put in the
19 ribs. The only time I know that there was any water jacks knocked out was when one
20 of the ram cars ran into two or three on the left-hand rib going in where you made your
21 turn going into the feeder breaker. A ram car ran into two or three and dislodged them,
22 and those were set immediately. But the continuing activity there, the support that was
23 put in with the water jacks and so on was secure and was providing, what I and I think
24 everybody else believed to be, a safe condition for people to be working in.

25 Q. If a ram car could knock one of those jacks out did you ever think that another

1 bump could knock one out?

2 A. Well, I felt that --- I never sat down and figured out, really thought about that at
3 the time.

4 Q. A ram car is not that powerful?

5 A. Well, it's pretty powerful. These are ---.

6 Q. Not when you saw what you saw here?

7 A. These are diesel operated --- I don't know what kind of payload. They
8 probably had seven or eight tons of material on them, so I would say that's pretty
9 forceful when it comes around. But I never did that analysis, never thought about it,
10 but my view and I think the consensus of the people there both our tech-support
11 people, our MSHA people, felt that the 40 ton water jacks and the support that was
12 being put in was adequate.

13 Comment is Richard Gates has told me that when the accident investigation
14 team went back in, which was, I don't know, probably a month after the 16th that all
15 that support was still standing and in place. And it's somewhat of a mystery to me
16 when we had the accident on the 16th what I was told that some of the water jacks on
17 the right-hand rib got knocked out. Whether those were set tight or I don't know any
18 facts about that, but I guess I would say to you that I was surprised that the jacks were
19 forced out by the rib coming off because they're set very close to the rib.

20 Q. Right. Did you know why the ---?

21 MR. TEASTER:

22 We had in the inspector's --- one of the inspector's notes that
23 one of those bumps had moved those jacks out on the top and the bottom. Were you -
24 --

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

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MR. TEASTER:

--- aware of that?

A. No.

BY MR. PAVLOVICH:

Q. Richard, do you know why they pulled out of the Number Four entry that first night? You said they were loading the Number Four entry with scoops and setting timbers in the crosscuts. Do you know, why did they not continue to go up Number Four?

A. The only discussion that I remember on that was concerns about ventilation. Number Four was the return and we knew that we had oxygen-deficient atmosphere. We were told early on that when the first bump occurred that the oxygen level clear out, like 120 Crosscut was 18 percent and we were told that the sealed area was one or two-percent oxygen. So the discussion that I recall was that if you continue advancing Number Four entry at some point in time you're going to have a ventilation problem because what you're trying to clear out ahead of you that's oxygen deficient is going to be coming back over the miner operator and the ram car and the people that's working in Number Four entry.

Q. Did they tell you they had a bump in Number Four that knocked one of the inspectors down and the other man and filled the entries back up?

A. No. I heard that there was a bump in Number One entry that disrupted ---.

Q. This was in Number Four though, ---

A. No.

Q. --- the night they were cleaning it up?

A. Yeah, I was aware that there was a bump in Number Four entry. I think that was the first day on the 6th that that occurred. I was told ---.

1 Q. Yeah, the morning of the 7th maybe early, but that night.

2 A. I was told about that, but I didn't hear that anybody was injured.

3 Q. I don't know if there were injuries. They were knocked down.

4 A. No.

5 Q. Did you ever analyze or look at any kind of charting or any information about
6 how many bumps was happening down where they were working between the 6th and
7 the 16th?

8 A. No. We had --- in the engineering office mine operator's engineers had a plot
9 that they were plotting out on graph paper, and they had on a screen on their computer
10 the seismic activity that the University of Utah was recording. And also the seismic
11 activity that Jeff Kravitz was recording --- I had ---.

12 Q. But did you ever look at that and ---

13 A. Oh, yeah.

14 Q. --- analyze it? What did you think about the number of bumps that were
15 continuing?

16 A. Well, basically what I was trying to determine if you could plot any kind of
17 increase or decrease and intensity or frequency, and we weren't able to recognize any
18 kind of trends in either of those. And I guess my view on that is that there's no way
19 that you could accurately predict the future by looking at what's happened in the past
20 on seismic activity. There are times that you've had very quiet periods with no seismic
21 activity and then you have an event, and you're probably most likely to have a larger
22 event if there's been no small events. So if you have a very quiet period it doesn't
23 indicate that there won't be a future event. And conversely if you have events you
24 can't necessarily predict that there's going to be continuing events.

25 I've read a lot of the work that NIOSH has done on this in trying to use seismic

1 monitoring in a way to give early warning, and everything that I have learned about that
2 has indicated that they just haven't been able to come up with that. And I guess we're
3 doing the same thing with tectonic seismic activity. We have people monitoring what's
4 going on in California, but you can't really predict when the next event is going to
5 happen or how severe it's going to be.

6 Q. With your mining experience have you ever been around bumps in mines
7 before?

8 A. I haven't been around the event where you have the coal outburst. I've been
9 around the floor heave and the events that take the roof bolts that are four feet away
10 and make them two feet away where we've lost entire sections, not where we've lost
11 people but where we've lost equipment.

12 Q. That was due to outbursts or squeeze, heaving?

13 A. If you want to call the squeeze, a bump, but ---.

14 Q. Would a bump be similar to a squeeze you think?

15 A. Yes, sometimes it affects the --- I guess it depends on what the softest
16 material is. If the roof is the softest material that's what's going to fail. If you have a
17 strong roof and the floor is soft it's the floor that fails. If you have a strong roof and a
18 strong floor then the coal pillars will fail, so it's a matter of which one is the weakest
19 member.

20 Q. Had you ever seen a bump like this or outburst where the entries were
21 completely filled with coal from the ribs?

22 A. I have not, and I'm not sure that all that material --- see they have bottom coal
23 in this area, and I suspect some of this material came from the bottom because the
24 rubble --- the top of the rubble looked like this, close to the roof in the center with gaps
25 on the sides. And I think that some of this bottom coal came up at the same time, and

1 for the bottom coal to come up then it has to move laterally; right, for like a squeeze
2 situation on the bottom coal? So I think it was --- in my view it was a combination of
3 material coming out of the bottom and off the ribs at the same time.

4 MR. TEASTER:

5 Do you know how much coal bottom they were leaving?

6 A. Well, I think it was irregular, and when we were trying to figure out where to
7 put the --- I think it was the fifth or the sixth bore hole we had a discussion with an
8 individual that was the foreman on the previous shift. We were trying to figure out
9 where the mining was occurring and he made the comment that they had been mining
10 bottom coal in Number One entry, which surprised me. And I asked him, I says, well,
11 how much bottom coal were you mining? And he says, oh, four or five feet, which
12 again surprised me that they had four or five feet of bottom coal there. And I think
13 that's a key factor when you get into this accident investigation.

14 When you design a pillar if the engineers assume you have eight feet of height
15 and that's what you put in your calculations and then you come along, you mine four or
16 five feet of bottom coal now that's not an 8-foot pillar, it's a 12-foot pillar. So your
17 calculations are going to be off when you calculate your stability factors and so on, so I
18 think that's a key issue that we need to learn more about as far as where this event
19 initiated.

20 Originally I was of the opinion that it probably initiated out under the maximum
21 cover and then migrated as one block failed it sheds its load to an adjacent block and
22 then that causes those blocks to fail. But I'm not --- after I learned about the mining of
23 bottom coal and then ---. And I think there's been some confusion about how many
24 blocks they were supposed to leave in this area. I think the ventilation plan showed
25 that they could mine these three blocks between Number One and Two entry and the

1 roof-control plan said that they couldn't. You know, had these blocks been mined then
2 you're not going to get much of a cave. You're not going to relieve the stress. That
3 would have put the stress on adjacent pillars, so if you were to ask me today I think I'd
4 probably lean more toward perhaps it initiated up in this area, but I don't have enough
5 information to conclude that.

6 BY MR. PAVLOVICH:

7 Q. We talked about the number of bumps and Ernie brought up an issue, but we
8 were able to go through the command center logs and put together a list of, I guess,
9 bumps that had occurred. And that's pretty much it, but when you looked through this
10 there are many, many bumps that are of a pretty good magnitude as we were able to
11 correlate them to the University of Utah numbers. And you can see there --- of course
12 the one that happened on the 6th, one on the 7th shows a 2.2 magnitude. Bounce
13 occurs, men moving back, we'll take a head count, bounce knocked out ventilation, two
14 people knocked down, number (sic) entry filled back up with coal, can't let anyone go
15 back in the area of the bounce to do vent work, head count taken, bumps being heavy.
16 See there's a 1.6 at 243, at 1542, 1.7. The 8th and 9th there's nothing recorded.
17 Then the 10th you have some bounce ---.

18 MR. TEASTER:

19 Just to note there on that, Richard, there wasn't much mining
20 or removal of that rubble during this time period. That's when they were moving from
21 Number Four and setting up over there, so I don't know. There may be some
22 correlation with removal of that and this bump activity.

23 BY MR. PAVLOVICH:

24 Q. And on the 11th there's some bounces, bumps recorded but it's 2106 had a
25 big bounce, everyone's okay, everyone accounted for, come out in miner operator help

1 were Gary Jensen was ones in the area, right rib loose. 2254 bounce killed power on
2 the miner, 1730 bounce where it was centered at, 1940 bump north corner, everyone
3 accounted for, some material on the miner. Asked about when miners pulled out the
4 face to be able to set props as far as they can.

5 Here's August 13th, a bump deep hole from loose coal, floor broken up, wow,
6 10 to 11 feet of height. I'm not sure what that meant, but they're from Mike Gauna's
7 note. So it's obviously something that surprised Mike, and he's one of the experts.

8 The 14th there's no time but Gauna says he takes a lot of pictures, he sees
9 mesh ripped away, red burn, deformed bolts. It's an explosive shift of the south
10 barrier.

11 On the 15th --- and I guess this is what Ernie referenced earlier at 2:26.
12 Bounce occurred in cleaning area, lots of dust but everyone accounted for. Bounce
13 was significant as reported by Barry Grosely, blew out a couple of Kennedy panels and
14 curtain across panels at 1:25. Stopped mining, rib sloughage across miner, miner was
15 107 feet inby. 1:25 when bounce occurred, atmosphere black with dust, appears rock
16 props had been moved out, tops and bottom. Question rock props ability to support,
17 continuous miner partially covered on the right side, curtain's blown out, Kennedy
18 panels, both cutter motor shafts on the miner were sheared as a result of the bounce.

19 Then continues on, more bumps coming regularly every 15 minutes. MSHA
20 going underground to review, Zelanko is on his way in, small bump, timbers knocked
21 out, three bounces occurred, bump at face, all okay. 1845, 1820, had a bump bigger
22 than the last one, everybody okay. A few more bumps do damage or injuries. Nine
23 o'clock, small bumps. 10:02 bump covered right side of miner and affected ventilation
24 controls. 10:05 bump at the miner, covered the body of the miner, they backed the
25 miner out and they're cleaning up barrier held, bump reported by Peter Saint and

1 Rodney Adamson. More bumps listed and then of course the bump at 1842. Were
2 you aware, Richard, that all those bumps and those kind of activities were occurring
3 and that damage was being done and the miner was being covered up, the miner was
4 damaged?

5 A. I was aware of some of it. Sure. During the process I could go back and
6 summarize, but ---.

7 Q. Do you think it would have been good if MSHA had had someone that was
8 doing that and looking at it and say, you know, where do we keep going here and ---?

9 A. Well, I --- the people recording it in the command center logbook.

10 Q. True.

11 A. I mean, obviously. And I would assume that other people looked at that
12 command center logbook. I know I did, I reviewed it and I read some of what you have
13 here. But I think the consensus of the people involved in the rescue operation was
14 that, yeah, there was risks and we were worried and concerned about the risks inby
15 the water jacks. And that's where most of this damage to the --- continuous mining
16 machine damaged the cable, coal in the continuous mining machine, that's where we
17 were seeing the activity that indicated that there was a high-level risk was the area
18 inby the water jacks.

19 And I think people were confident that the area where we had the ground
20 supports installed that there was not an imminent danger there for any of the workers.
21 I think that was a consensus of the people. I never had anyone come to me and make
22 any comments that they felt like there was imminent danger or there was unacceptable
23 risk in that area where we had the support in. But I think we all recognized and that's
24 why we wanted the miner operator to always remain outby the last supports, and when
25 the shuttle car operator got to that last support they would shut down and that's when

1 they'd advanced the supports. And they would limit the number of people that were
2 exposed while they were setting the ground support.

3 Q. So no MSHA person, inspectors or otherwise or anybody else there came to
4 you and said, Richard, I'm really worried about this, ---

5 A. No.

6 Q. --- I'm really worried about being ---? Nobody said anything?

7 A. No.

8 Q. Nobody expressed any kind of concern for their safety underground?

9 A. No.

10 Q. When you were underground did you feel any bumps or observe any bumps?

11 A. I heard bumps when I was underground and I'm trying to recall. I don't think I
12 was --- I don't recall any --- the times that I was underground that a bump occurred that
13 broke the cutter shaft on the miner and covered the miner up.

14 Q. Did you ever see any coal propelled off the ribs?

15 A. I saw coal that had been propelled off, but I wasn't there when it actually
16 happened.

17 Q. Were you concerned for the ---

18 A. But I heard ---.

19 Q. --- safety of the people?

20 A. Absolutely I'm concerned for the safety of the people, but I think that in my
21 heart I believe that the process we were using was providing protection that was
22 adequate. And it wasn't until the 16th that I believed otherwise, then at that point that's
23 when my view changed and I felt that we could not continue the underground
24 operation. But no one came to me and I know we had MSHA people up in the work
25 area and part of their responsibility was if they felt there was an imminent danger you

1 don't allow people to expose themselves to an imminent danger. You would withdraw
2 them and take the appropriate action.

3 Q. Did you ever hear about any miners that withdrew themselves or ---?

4 A. Well, I heard conflicting stories on that. I never followed up to know what the
5 facts are. I think that came up at a press conference. As I recall Bob Murray's answer
6 to that was there had been miners that requested a transfer from the underground
7 rehabilitation work, and it was unclear to me whether it was a safety issue. The way I
8 understood Bob Murray to explain that some people were tired, some people were
9 wore out, some people were emotional, and I'm not sure how much of that was what.
10 And I never ---.

11 Q. Did anybody ---?

12 A. I'm sure I asked.

13 Q. Did you ever ask anybody to check into it?

14 A. I didn't hear your question.

15 Q. Did you ever ask anyone to check into it, any of your other people there, the
16 subordinates to say, somebody check with these miners and see what their real
17 concerns were?

18 A. I think that was --- I don't remember the date of that. I think that was late. I
19 think that was --- I can't remember the date of it, but, no, I never ---.

20 Q. Do you know if anybody ever did?

21 A. I think I did. Matter of fact, I did. I asked --- I remember now I did ask Al Davis
22 about that.

23 Q. What did Al ---?

24 A. He said he was not aware of it. That's right. I remember specifically asking Al,
25 you know, were you aware of any miners that have requested to be transferred

1 because of safety reasons? And Al said, no, he hadn't heard that.

2 Q. But he said --- you asked him if he knew of any and he said, no, he hadn't
3 heard of it, but no one asked --- go check with these guys and see?

4 A. I don't know if somebody --- if Al did or Kevin or somebody else did, I'm not
5 aware of that. I would have to believe that somebody there probably was asking that
6 question.

7 Q. Richard, was there any other support methods considered during this process
8 other than the water props and mesh?

9 A. I know we talked about tunnel liners.

10 Q. Was there any decisions made yea or nay concerning tunnel liners?

11 A. Well, what I recall there was some discussion of tunnel liners being designed
12 to hold a vertical load because of the way they're formed, but if you had something
13 coming in from the bottom or if you had floor heave then that wouldn't be adequate.
14 Plus the time that it would take to install tunnel liners, the ones that I've been familiar
15 with are the type that, I don't know, they may be 18-inches wide and 3-feet long. And
16 you bolt them together, and if you don't keep the base exactly plumb and horizontal
17 first thing you know it gets cattywhompus and then the bolt holds won't --- I've used
18 those to go in to retrieve a continuous miner machine that was buried under a pillar
19 fall. But to use like that kind of support system you probably would have taken months
20 to ever get back.

21 Q. So it's too slow of a process?

22 A. Yeah, I think it would have probably negated any hope of finding the miners
23 alive if that's the only way that you can contact.

24 Q. You already mentioned that you had obviously a lot of dealings with the
25 families. I mean, two to three times a day, spent quite a bit of time with them. How

1 much pressure was there exerted from the families to continue with this operation?

2 A. Well, I don't think there was any discussion about whether to --- until we
3 stopped it, I don't recall any discussion about whether to continue or not continue.

4 Q. So it was always deemed that we're fast forward as fast as we can?

5 A. Well, all the discussion was you're not going fast enough, you're not using the
6 right tools, you don't have the right bit on the drill, you don't --- you're not advancing
7 fast enough underground, why aren't you advancing faster? Those were the kind of
8 questions that we dealt with.

9 Q. So was that causing stress and influence on you as a decision maker and
10 Kevin and Al to do those things?

11 A. Well, I think everyone wanted to --- everyone wanted to reach the miners as
12 soon as possible. Either through the drilling program we were doing whatever we
13 could to speed up the drilling, get the roads built ahead of time, to get the engineering
14 surveys in ahead of time. Underground we looked at ways to --- we were using the
15 scoop to bring material in and I know I heard about the discussion of using the ram
16 cars to bring the material in when it came in with a load, came in empty, bring the
17 water jacks and material in. And then you load the ram car and it goes out, next trip in
18 you bring in some more material because that was faster than bringing the scoop in.
19 So I think everybody there that was --- that I was in communication with was trying to
20 do everything we could as fast as we could and at the same time provide adequate
21 protection to reach the miners. I think time was certainly our enemy whenever you
22 have people trapped and no food, no water and not knowing what their condition is.

23 Q. Richard, were you aware of when the two incher, the Number One bore hole
24 went through of the gas readings that were retrieved there?

25 A. Right.

1 Q. I guess they were originally reported as being fresh air, 20.5 or 6 percent
2 oxygen?

3 A. Right.

4 Q. And then about a few hours later when the hole was purged with water the
5 pipe was purged with water they drew more samples and found it to be seven-percent
6 oxygen?

7 A. No, I didn't know they purged the pipe with water. I was told that they figured
8 out that it took that long to purge the air that was in the pipe. Now, they told me that
9 they calculated how long it was going to take ---

10 Q. They did.

11 A. --- to purge the pipe and that that was the time period they waited before they
12 reported the readings. That's the first time I heard they used the water.

13 Q. What they calculated was the length of time it would take to purge that two
14 inch or inch and a half, whatever, the shaft --- you know, the drill shaft was. And they
15 were still getting fresh air, but they didn't believe that in their readings, so they
16 disconnected the vacuum pump and when they did they found they created a vacuum
17 inside that pipe. So they asked the driller to pull the pipe up from the bottom and
18 apparently the four little holes in the drill bit were plugged where they dropped it into
19 the bottom, and they flushed the pipe with water. Then they reran their vacuum pump
20 for another 30 minutes and the first sample they got was 7.2 percent or something, so I
21 think the guys that were there had calculated it properly. It's just they didn't realize that
22 that drill bit would be buried in deep enough to plug the holes. But anyway that was
23 first reported, I guess, around midnight or so that it was 20-percent oxygen. I guess
24 that was told to the families and yet --- and then about two o'clock they found the
25 seven-percent oxygen and there were samples that were collected then, they were

1 taken to Price to be run on the chromatograph. And I guess in the morning briefing
2 then it was reported to the families the oxygen is really 7.2.

3 A. Right.

4 Q. So I guess I've explained to you why the delay in that was and you would
5 know. Did anyone call you when you first ---?

6 A. It had been explained to me, but they explained it differently because I didn't
7 know they used water to --- but they did explain to me that the drill bit was on the
8 bottom. And, in fact, what they believed was happening was that they were sucking in
9 and they were leaking fresh air somewhere. So they run the vacuum pump long
10 enough to purge the volume of air inside of it and they continued to run it. And then
11 that's when they start taking the samples that they thought were accurate, but then
12 once they realized that the bit was on the bottom and it was blocking the hose and
13 they were pulling in fresh air from somewhere else that's when they realized that the
14 air samples that they had reported was inaccurate. But I had ---.

15 Q. Basically ---.

16 A. What I had commented on was I was unaware that they used water to produce
17 ---.

18 Q. I think they just flushed enough down the hole to clean the holes out. That's
19 all.

20 A. Yeah. I have not heard that part of the story.

21 Q. But did anyone call you and notify you at 2:00 or 3:00 a.m. that we really got
22 low oxygen in there? Do you know?

23 A. I can't remember where I got --- how I got that. I know I had it before the
24 family briefing that morning, and I can't recall if Jeff Kravitz communicated that to me at
25 the family --- Jeff sometimes would come down to the family briefing and he would

1 brief me before we'd go into the family briefing, and I can't remember how that
2 happened. He may have called me or he may have come there, and I just can't
3 remember the ---.

4 Q. But you knew the night before, I guess, probably before you left the miners
5 sometime that they had --- the first samples out of that hole were 20-percent oxygen?

6 A. I knew the first ones were ---

7 Q. Fresh air basically?

8 A. --- fresh air.

9 Q. Yeah.

10 A. Right. And then later I learned that they were not.

11 Q. What did you think then, Richard?

12 A. Well, I think that's bad news. That was not something that we wanted to
13 happen.

14 Q. Right.

15 A. And we tried to --- we thought we had a process to keep that from happening
16 by making sure that we ran the vacuum pump, we engineered how long it would take
17 and so forth and so on. People assured me that ---.

18 Q. Well, it was a bad process that we possibly gave erroneous information to the
19 families that night, but corrected it the next morning as to what we really found?

20 A. Right.

21 Q. But what was your feeling then when you had been in the mine, you'd seen the
22 extent of the bump, you'd seen the compaction of the material in the entries, you saw
23 the damage that was done and now you found low oxygen at the area you thought the
24 miners would have been?

25 A. Well ---.

1 Q. Did you think there was much chance of survivability at that time?

2 A. Yeah, I still had hope that they were alive, and that's when our thinking started
3 going up here because we --- maybe we'll learn some day, but I don't know today
4 whether this oxygen-deficient air came out of the sealed area to the north or to the
5 south, but I believe it would have come out --- it came out under force because it
6 traveled outby to Crosscut 120. That was the most outby reading that I heard about
7 and I was told there's like 18-percent oxygen, but we knew that it blew stoppings out
8 even out by Crosscut 120. If somebody would have taken those readings they
9 probably would have found lower oxygen there, too. I'm not aware of that, so my view
10 was that when this area came out under force that it moves in all directions.

11 Q. Sure.

12 A. So as it moves in this direction and you look at this area being surrounded with
13 solid coal that it was trapped fresh air in this area, so I felt that if the miners would have
14 put their self-rescuers on and traveled in this direction --- they probably couldn't travel
15 this way because it was blocked. If they traveled in this direction there could be in a
16 pocket of fresh air and they very well could have barricaded themselves, and that's
17 when we decided to drill Number Three hole. I forget the right place on the map. We
18 decided to drill Number Three hole in this area, and, in fact, we did find conditions
19 there that you would have survived in. It was over 16-percent oxygen and I think the
20 mining height was 6 feet or something close to that, and even ---.

21 Q. After hole --- oxygen was being pumped down the other holes, though?

22 A. Yeah. I don't remember when we started pumping that air in there. I think
23 you'll find that answer rather than me trying to give it off the top of my head.

24 Q. I think they had been pumping air into those holes ---

25 A. Right.

1 Q. --- for pretty early right after the samples kind of were taken.

2 A. But I think that area would probably travel in this direction as opposed to
3 compressing this air because there's no way for it to get out up here. It's trapped and
4 then we drop the camera in we found no sign of life at Number Three hole, then we
5 thought, well, where is it? Jeff Kravitz had indicated that he picked up some vibrations
6 on the seismic equipment that he could not explain, and there was some indication
7 that they could have been signaling for miners but we never said that. That was only a
8 possibility. We had an unexplained --- I think it was every second and a half or
9 something like that or every two seconds for about five minutes there was a spike on
10 his seismic activity. And it was so close together and such a consistency that there
11 was some possibility that could have been somebody hammering on a roof bolt.
12 That's when we decided to drill and according to his seismic equipment he felt it was
13 coming from this general area, so that's when we decided to drill Number Four hole at
14 Crosscut 143 I think it was.

15 Q. So at no time from the time you arrived there until the 16th when the second
16 accident occurred did you feel that the chance of survival of those six miners was so
17 low that it was no longer worth the risk of continuing to advance in Number One with
18 the bumping that was going on?

19 A. No. I had hoped that we would find miners alive.

20 Q. Well, I know you hoped that everybody --- but did you think it was realistic at
21 that time with what you knew at the time ---

22 A. I think the chances ---.

23 Q. --- with the amount of bump, with the oxygen levels and with the time that had
24 gone on? Do you think it was --- you hoped it, but did you think it was realistic?

25 A. I think the chances in my mind of finding someone alive was reduced when we

1 found the atmosphere at Number Two hole that we found. But the fact that it was
2 reduced I still felt that there was a possibility that we could find miners alive.

3 Q. So you felt even with that --- there was enough possibility of finding miners
4 alive to continue with the rescue effort ---

5 A. Absolutely.

6 Q. --- even with the bumps that were occurring?

7 A. Right.

8 Q. Okay.

9 A. And I don't know of anyone on the site that expressed a different view. I never
10 heard that from anybody. I think everybody was focused on trying to do everything we
11 could.

12 Q. Do you think your meetings and influences with the families affected your
13 thought process on that or not?

14 A. I think everything that you know in life affects what you think, and I would have
15 to say, sure, I was --- but I would ---. On the other side of that I would say had I not
16 met with the families or I had no communication with them it wouldn't have --- I
17 wouldn't have done anything any different.

18 Q. You don't think you would have?

19 A. No.

20 MR. TEASTER:

21 Richard, we've had some reports that Bob Murray after one of
22 the press briefings had been completed, this is like the third or fourth day sometime
23 early on in the process, was saying off the record that --- I don't know the exact words
24 but something to the effect that these miners are dead, there's no way they could have
25 survived. Did you ever hear of Bob Murray making a statement like that?

1 A. No, I didn't. I heard him make the statement that he didn't know whether they
2 were dead or alive, but I never heard ---.

3 BY MR. PAVLOVICH:

4 Q. He said that the very first day, I think.

5 A. I never heard him say ---.

6 Q. He said many times to the media ---.

7 A. I never heard him say that he believed that they were dead.

8 Q. Richard, when you saw what the readings were that came out of the sealed
9 area, I'm going to approximate, seven percent and also seven percent up there I think
10 you mentioned before that I told you there would be probably communication from one
11 of the gobs; is that true?

12 A. No, I don't think it was whenever I saw the readings here.

13 Q. Okay. That ---.

14 A. I think it was really --- I don't think I'd even left Washington when I had the view
15 because I asked for a map and that was one of the things that I was looking at was
16 these sealed areas.

17 Q. So you thought when it bumped there already may have been communication
18 from a sealed area?

19 A. I think on the 6th I concluded in my mind that we breached a seal either on the
20 north or the south.

21 Q. Even before you knew of any ---?

22 A. I should say --- not a seal. I should say the barrier.

23 Q. Okay.

24 A. I felt that we had to either breach this barrier or this barrier. I think --- I believe
25 on the 6th before I left Washington.

1 Q. So then you --- when you saw those seven-percent readings you felt that
2 confirmed that?

3 A. I'm sure, yeah.

4 Q. That the barrier was breached?

5 A. Yeah.

6 Q. Did you make a statement one time to the media about the fact that there was
7 --- was it positive pressure on these seals that were in-gassing?

8 MR. TEASTER:

9 They were in-gassing.

10 BY MR. PAVLOVICH:

11 Q. That because these seals were in-gassing the barrier could not have been
12 breached and there was no communication.

13 A. No.

14 Q. Do you remember that?

15 A. No, I don't ---.

16 MR. TEASTER:

17 That was at a family briefing.

18 MR. PAVLOVICH:

19 At a family briefing.

20 A. I don't believe that and I would never have said that because I've ---.

21 BY MR. PAVLOVICH:

22 Q. Is there a note on the ---?

23 MR. TEASTER:

24 There's a note to that effect, but it wasn't your note. It was a
25 note someone had quoted you, I mean, writing down what you'd said and they said

1 basically that you had stated that since the Number One seal was in-gassing that that
2 probably meant that there was no communication between the Number One bore hole.

3 A. No, absolutely not. What I talked about was we had a plan at one point. We
4 were going to put in some tracer gas at this hole, and we were going to monitor down
5 here to show --- see if it showed up. At that time the seal was out-gassing. The time
6 we got to the tracer gas on the property this started in-gassing. So once that started
7 in-gassing there was no reason --- we couldn't use the tracer gas to determine whether
8 or not there was communication. But I would not conclude that because this was in-
9 gassing that that meant that the oxygen-deficient air did not come out of here because
10 I don't think one could conclude that because this bump occurred with force. There
11 could be a gap between the roof and the pillar that pushed this air out, but it could still
12 be sealed tight enough that the barometric pressure and the temperature could be
13 affecting what's going on down here.

14 MR. PAVLOVICH:

15 Sure. Why don't we take about a ten-minute break, Richard?

16 SHORT BREAK TAKEN

17 BY MR. PAVLOVICH:

18 Q. Before the break you said you had looked at the maps while you were still at
19 headquarters, ---

20 A. Right.

21 Q. --- obviously. I guess they electronically sent you all some maps for you.

22 A. I don't know how they got it. I just know I had a map.

23 Q. And I guess the maps that you looked at pretty much showed a lot of this
24 area?

25 A. Right.

1 Q. It was more than just that; right?

2 A. Right.

3 Q. So you knew there was all these gob panels to the south?

4 A. Right.

5 Q. All the gob panels to the right?

6 A. Right.

7 Q. The west mains had already been mined, the north barrier had been partially
8 mined and mining was developed and started to be retreated in the south barrier.

9 What did you think when you saw that and knowing that there's 2,000 foot of cover
10 there?

11 A. What did I think? I don't remember what I thought on August the 6th other
12 than the fact that we had a serious problem and that we need to get busy and mobilize
13 our assets as quickly as possible.

14 Q. So you didn't look at that and say, who would be mining that anyway?

15 A. No.

16 Q. The main focus was on ---

17 A. Yeah, I never ---.

18 Q. --- the issue at hand, not ---

19 A. No.

20 Q. --- not on evaluating ---?

21 A. No, I never thought about why they were pillaring there, what are they doing in
22 there. No.

23 Q. After the accident --- I mean, during the ten days from the 6th to the 16th you
24 always believed regardless of what you found that there was still some chance, but
25 after the 16th we quit the operation. Now, why was that?

1 A. Well, I --- we believed or I believed and everybody that I communicated with I
2 think believed that the support we were putting in was providing a protection. When I
3 was underground I didn't feel that I was exposed to imminent danger, something I was
4 worried about. I didn't feel that the workers were, but after you had the accident and
5 what I was told was that the jacks got pushed out with the --- I don't know if it was a
6 combination of floor moving that caused the bottom of the jacks to come up. How
7 much was floor, how much was rib, I don't know. I don't know how tight the jacks
8 were, but I just felt that in my view that --- and it wasn't ---. I don't think it was just my
9 view, I think it was a consensus. You know, I don't view that I was running this rescue
10 operation as an individual. Everything that I tried to provide input to was in a
11 consensus matter. You know, anything that Kevin had to say, they would come to me
12 with a question and I'd say, well, what do you think about it? And I tried to --- most of
13 the decisions that went on here I think were people at lower level or Al Davis handling
14 without asking even me or asking Kevin, I would imagine. But the things that did come
15 to me I felt it was consensus decisions that we were trying to make. And if I felt any
16 sense that they were trying to lead me in a different direction then I would try to seek
17 that out. I'd try to find out what their view is, what their opinion was before I would give
18 them my opinion. I hope that they have that mutual feeling about how we operated
19 there, tried to operate as a team and reaching consensus on the decisions that were
20 made.

21 Q. But I guess my question is, you know, you still thought there was enough hope
22 of finding the six miners alive to continue with that operation up until the 16th?

23 A. Right.

24 Q. At that time you just said there's no more hope so we're quitting the operation?

25 A. No, I think what we said that the risk was unacceptable.

1 Q. So the risk at that time became unacceptable?

2 A. Right. Even at that point I had not given up hope on finding miners. I think as
3 long as we continued drilling ---. We weren't drilling looking for bodies, we were trying
4 to drill to see what we could learn about finding miners.

5 Q. Then why did we stop drilling after the seventh hole?

6 A. I think that's when I reached the point where I felt like there's no place else to
7 drill. We're not going to learn anything more that we don't already know. The last
8 couple of holes basically told us what we already knew. We didn't learn anything new
9 or different, and then we have this ---.

10 Q. So after the seventh hole you came to the realization there's no chance?

11 A. No, I --- that's right.

12 Q. There was a group of people, and you touched on it earlier, that were brought
13 in after the accident on the 16th of so-called experts that were from, I guess, NIOSH
14 and universities, other areas. Can you tell us what prompted that, to bring those
15 people on site?

16 A. Well, we wanted to see if there --- if anyone had any ideas on how we could do
17 anything different. My understanding when we were proceeding in Number One entry
18 we had our experts there from tech support. They told me that they were in
19 communication with this Keith Heasley at WVU and people back in Pittsburgh tech
20 support and NIOSH. I think they talked to Barzack at NIOSH and different people to
21 find out --- my understanding is we reviewed with them the support we were putting in
22 and asked them if they felt there was anything we could do different, better or what we
23 were doing was adequate. And what I got was the consensus was that we were
24 putting in the maximum support that anybody thought was practical to put in, and that
25 they ---that was adequate. I think in those discussions with --- that I had with what I

1 heard Joe Zelanko say I didn't have any firsthand contact with anyone at NIOSH
2 before they showed up there. I had an e-mail from Jerry Finfinger, but no verbal
3 communication. But Joe Zelanko in communication with West Virginia University,
4 NIOSH, people in tech support the consensus was that the protection we were putting
5 in on the ground support was adequate and that there was no ideas on how to do any
6 better because we kept reaching out to try to get that information.

7 But I think whenever the event happened on the 16th we concluded that
8 there's got to be something different or we can't go on. So we brought this team in to
9 appraise the situation, give us some advice on whether or not there's any ideas they
10 had that we could continue the rescue effort. And well, you know the rest of the story.
11 They concluded that there were no ideas they had that you could safely go into this
12 area to try to reach the miners.

13 Q. And they concluded that by not even going in?

14 A. Right.

15 Q. Was there any thought to bringing any of those people on site prior to the
16 16th?

17 A. Well, I think we had communications with some of them through Joe Zelanko,
18 with NIOSH and I think some of the people that end up coming in on this team he had
19 them doing computer models and looking at this remotely, so I think they were involved
20 without being on site.

21 Q. Was the extent of that --- and I guess everyone we've talked to has never seen
22 a bump to the extent of this one. Do you think it's even possible that you could explain
23 that to anybody on the phone?

24 A. Well, yeah, I think so because some of these people have seen these things in
25 the past. Some of the people that Joe Zelanko was talking to, I'm sure, have seen ---.

1 Q. They've seen bumps to that extent?

2 A. Well, I don't know to that extent or how you measure that, but I would say
3 significant situations like this.

4 Q. Do you know of anybody ever having attempted to clean up a bump like this?

5 A. No, I have no firsthand knowledge of that.

6 MR. TEASTER:

7 Richard, to get back to that blue ribbon media that was
8 brought in after the 16th. I think their conclusion was that there's an overwhelming
9 proponents of data to indicate that that west main is just structurally unsafe, can't be --
10 - nothing you can do to go in there safely because it's structurally unsound. Do you
11 think that's a fair assessment of their findings?

12 A. Yeah.

13 MR. TEASTER:

14 And the data that they reviewed was it some of the data that
15 we identified here, some of the bumps that was taking place, let's say, from the 6th on
16 up until the 16th?

17 A. I didn't participate with that team and Joe Zelanko or somebody like that did
18 could tell you that. I don't know exactly what they looked at and what they analyzed.

19 MR. TEASTER:

20 You don't know what data they looked at to come to that
21 conclusion?

22 A. No.

23 MR. TEASTER:

24 Do you know --- it comes to us ---. Now, we're looking at it
25 Monday morning and it --- Joe and I come into this thing other than what we saw on

1 television, at least from my standpoint, I think it's pretty much a joke. But when you
2 start looking at this, like the bump that they had at the Number Four entry I think it was
3 early hours on the morning of the 7th, it measured like 2.2 on the Richter scale. It
4 knocked a couple of people down, it filled the entry back up because they had cleaned
5 up --- I think initially started cleaning number four with no systematic support system
6 going up along the ribs. They was just putting supports wherever they deem
7 appropriate, but I meant systematically ---.

8 A. They did crosscut. They were required in the crosscuts.

9 MR. TEASTER:

10 Okay. But when this bump occurred, it filled that entry back
11 up with coal. So I mean, that's a significant bump and that could be considered based
12 on you look at the coal and on the Richter scale that that was a much more significant
13 or I'll say more significant than the one that occurred on the 16th. We had others in
14 there that measured 2.0, 1.2, 1.6, but the ones that was breaking the shafts on the
15 motors they were just as significant if not in some cases more significant than the one
16 on the 16th. And if you just look at that the only reason we do not have an accident is
17 because nobody is in that area. If you look --- it looks to us like this support system
18 was supposed to be able to withstand any kind of pressures that was going to be
19 exerted from them rib bumps.

20 A. That was my belief. I think other people there at the site that was the
21 consensus belief I would say.

22 MR. TEASTER:

23 When we look through at the shuttle cars knocking them out --
24 - I know that the shuttle cars exert a certain amount of force when they hit that. They
25 threw the large load, but did anyone ever think about or come up with how much

1 energy was being released from a bump or the magnitude that would fill that entry up
2 and compare that to what those jacks would withstand as far as containing that
3 material from behind this?

4 A. I can't tell if they did or they didn't. I don't know. Joe Zelanko, the tech-
5 support people there how thorough their analysis was I can't answer that.

6 BY MR. PAVLOVICH:

7 Q. Would it be fair to say, Richard, that you and Kevin and Al and the decision
8 makers on site were mostly relying then on technical support people, Zelanko and
9 Gauna?

10 A. Oh, I don't know if I'd use the word mostly. You know, I think everybody --- Al
11 Davis has worked out in that western district and I forget the name of the mining
12 company. He was telling me about some of his experience.

13 Q. Mid Continent maybe?

14 A. Mid Continent. With mountain bumps and his knowledge, so I would probably
15 phrase it to more the collective knowledge of the people there.

16 Q. But as far as the strength what these jacks could take laterally, were we mostly
17 relying on what Gauna and Zelanko provided?

18 A. I don't know that anybody else there would have been looking at that other
19 than them.

20 Q. Because that was primarily what everybody was counting on, lateral support
21 that the jacks would provide?

22 MR. TEASTER:

23 Richard, do you know ---?

24 A. Uh-huh (yes). And I'm not sure how much --- when he talked to people at
25 NIOSH how detailed those discussions got, whether there was calculations done.

1 Have you talked to Joe Zelanko?

2 BY MR. PAVLOVICH:

3 Q. Not yet.

4 A. Yeah. Well ---.

5 Q. Of course he's on the accident investigation, so we'll have to kind of squeeze
6 him in when he's off of that.

7 A. Okay.

8 Q. But we'll get to talk to Joe and Mike both. They've committed to that.

9 A. I think ---

10 MR. TEASTER:

11 Richard, do you know if ---?

12 A. --- the supervisor was out there, too. Cybulski?

13 BY MR. PAVLOVICH:

14 Q. Cybulski (corrects pronunciation)?

15 A. Cybulski? Is that the way you pronounce it? I think he was the one standing
16 out there also.

17 MR. TEASTER:

18 Do you know whose idea it was initially to use those rock
19 props?

20 A. I can't tell you that. You know, ideas flow from different directions.

21 MR. TEASTER:

22 But I know that that company uses those at their Aberdeen
23 mine out there, systematically to some extent along ---

24 A. Right.

25 MR. TEASTER:

1 --- the head gates, so I didn't know who initiated it and said
2 that these supports were probably adequate to support that.

3 A. I don't know that.

4 BY MR. PAVLOVICH:

5 Q. Richard, are you familiar with a program policy letter that MSHA brought out
6 concerning family liaisons and primary communicators as per implementation of
7 Section Seven of the MINER Act?

8 A. Right.

9 Q. So you understand that there's a very detailed policy concerning the
10 assignment of family liaisons. There's also a detail concerning assignment of primary
11 communicators and that in the accident investigation handbook there's a list of what
12 the family liaison should do and also what the primary communicator would do. And
13 there's also primary communicator protocol with the Department of Labor Office of
14 Public Affairs that we should notify. In your opinion was all this done according to the
15 guidelines, instructions in the policy?

16 A. I think so. We had family communicators on site as soon as possible around
17 the shift, around the clock, three shifts a day. They were at the family center. They
18 took hourly calls from the command center, they posted that information on a white
19 board, they were there and answered questions from the families 24 hours a day, 7
20 days a week.

21 Q. Well, in regard to that when you read this do you feel that the primary role of
22 the family liaison is to do the briefings, to brief the families?

23 A. Well, they did. Like I said, they briefed the families around the clock. As
24 families would have questions and as the family liaison got information from the
25 command center they briefed him by posting it on the white board, so I think they

1 played that role. I think it was supplemented with Al Davis initially and then after I got
2 there Kevin and I supplemented what our around the clock family liaisons did.

3 Q. Well, primarily you were --- Kevin or whoever was there at the time sounds to
4 me like you were doing the primary briefings and the family liaisons were basically
5 supplementing by being there the rest of the day?

6 A. Yeah, you could put it that way. Right.

7 Q. Do you think that the intent of all this was that the senior MSHA officials on site
8 who were also running the operation and controlling the activities are also intended to
9 be the chief communicator with the families and the chief communicator with the media
10 and to assume the same --- all three of those roles?

11 A. I think it was certainly expected of me to play the role that I played with the
12 families and the press.

13 Q. By who?

14 A. By the Department of Labor.

15 Q. So you think the Department of Labor expected you to perform those roles?

16 A. Absolutely.

17 Q. And also serve as the senior official on site in the decision making, which
18 basically acknowledged by all the MSHA people there that you were in charge? You
19 think that's realistic to expect of someone?

20 A. Well, I wouldn't say that --- I was not in charge all the time.

21 Q. We realize because you couldn't be there all the time.

22 A. I wasn't there all the time, but you figure that six hours a day with the families
23 and a couple of hours with the press and so forth and so on, but I was --- I don't
24 consider myself as the guy that was in charge of the rescue operation. I provided
25 advice when decisions got kicked up to me. I would make those decisions that were

1 asked of me to make, but I would think that it was more of an MSHA team.

2 Q. Do you think ---?

3 A. And when Al Davis was there, Al Davis, I think, signed most of the plans and
4 he was involved in those details as opposed to me.

5 Q. Do you think that other MSHA subordinate people on site believed that you
6 were in charge of the operation?

7 A. I can't guess at what they believed. I would
8 --- you know, Kevin and Al Davis and I and the communications we had there were
9 things that I recall saying to them, well, you folks decide and you do this. You know, I
10 deferred decisions back to them in some cases, so I don't know that they would tell
11 you that I took over their job. I don't know how they would feel. I haven't asked them.

12 Q. You said --- do you think the Secretary's office expected you to be the primary
13 communicator and also, I guess, the chief family liaison with providing information to
14 the families. Why do you say that? Were you instructed to do that?

15 A. I had discussions with people in the Department of Labor particularly in the ---
16 what they were seeing on the press as far as how to try to get control and that and
17 maybe instruction is not the right word, discussion about how we could go about trying
18 to pipe down Mr. Murray.

19 Q. That was primarily because of Murray's actions?

20 A. Yeah.

21 Q. Was there any time that we considered when Murray got up and waved this
22 paper that said, I've got proof that this is an earthquake and it's nothing we done --- or
23 we did other than an act of God that it was an earthquake of setting the record straight
24 and saying, we know it was a bump or when Murray got up and said, we were not
25 doing retreat mining or pillar mining here and anybody that knows anything at all about

1 mining can look at that and say that's retreat mining?

2 A. I was asked those questions by the press and I answered those questions
3 that, yes, there had been retreat mining being done prior to the accident. At the time of
4 the accident it was not clear whether or not they were retreat mining or where they
5 were in the process. I explained at one of the press conferences that they had retreat
6 mined this area, skipped blocks and was in the process of coming back and starting
7 another pillar line. So I addressed that in the press and with issue on the earthquake
8 was another question that I addressed in the press. And the answer I gave them then
9 is that analysis should be made by the experts. The seismologist and our accident
10 investigation will determine which came first, whether it was an earthquake before the
11 ground failure in the mine or whether it was just simply ground failure. Certainly when
12 the ground failed that was the 3.9 seismic activity, but whether there was seismic
13 activity --- from what I understand on these mountain bumps it could be pressure
14 bumps or shock bumps. Pressure bump is a result of the load of the pillars of the
15 overburden. A shock bump can be created by seismic activity either below the coal
16 seam, above the coal seam or adjacent to it. And I don't think until our accident
17 investigation is completed we're going to have all those answers.

18 Q. Were you ever told anything about the bump that occurred in the north barrier
19 that stopped mining there?

20 A. No. I know I was up in the engineering office one day to get to the bathroom.
21 There was only one bathroom on the property. You had to go up through the
22 engineering office, and I was standing there looking at the wall map and I asked the
23 chief engineer there, I says, how come you folks stopped retreat mining in the north
24 barrier? And his answer was that conditions had deteriorated, and it never ---

25 Q. He told you it was a bump?

1 A. --- went beyond that. And something about MSHA was requiring them to go
2 back and check the bleeder, and they felt that it wasn't safe to go back and make the
3 bleeder check. And they wanted to move the bleeder evaluation point up, but MSHA
4 wouldn't let them so they decided to pull out of the area.

5 Q. Nobody from MSHA ever mentioned to you during the operation that there was
6 a bump in the north barrier?

7 A. No. And I would say after the --- anything I've heard from MSHA after the
8 rescue operation has ceased and nothing indicates that they had --- that it was
9 reported to MSHA officially that there was a bump or that there was verbal reports to
10 MSHA that MSHA interpreted that required reporting. You know, that's another issue
11 that our accident investigation team is going to look into with a great amount of detail,
12 and I think they will provide us a good answer on that. But to this day until I get that
13 answer from them I don't --- I'm not sure where I'm going to come out on that.

14 MR. TEASTER:

15 Did you read any of those Agapito analyses for that mining up
16 in the south barrier and north barrier?

17 A. After I got back to Washington. I never --- I wasn't aware of any of that while I
18 was in Utah.

19 MR. TEASTER:

20 There was a report generated by Agapito in April and
21 submitted to MSHA, I think, in May that fully addressed that bump that occurred in the
22 north barrier. And I think this may have been submitted about the same time that a
23 request to retreat in the south barrier, a plan to retreat that area was submitted in
24 there. But if I'm not mistaken that Agapito report explained in detail the severity of that
25 which clearly would indicate that that's why they left that area up in the north mains ---

1 or north barrier to start development of the south barrier.

2 A. I'm not sure that I got that. You say clearly indicated. I'm not sure that it's that
3 clear.

4 BY MR. PAVLOVICH:

5 Q. Richard, do you know the last time that MSHA managers were trained in
6 MERD exercises or managing rescue operations?

7 A. I don't recall.

8 Q. Well, we know that, you know, the MINER Act, MINER Act Two or whatever is
9 certainly emphasizing in increased presence and activity from mine-rescue teams.
10 Don't you think it would be imperative that we should have as much or equal training
11 and knowledge for MSHA managers who are there to manage these type operations?

12 A. Well, I'm a firm believer in training and I know that when I was in Pennsylvania
13 as Director of Mine Safety we annually --- we had MERDs. We had two. We had one
14 at Lake Glen and one up at Burston (phonetic), and those were always done jointly
15 with MSHA. So that was a way of providing that training for not only the Bureau of
16 Deep Mine Safety people but also the MSHA people that participated in that. And I
17 required that our deep mine safety supervisors participate in those training exercises,
18 and I would hope that across the country MSHA continues to participate. I read where
19 Kentucky had something not long ago and MSHA people were down there
20 participating, but I think that's ---.

21 Q. Should MSHA leave that up to the states to initiate?

22 A. No, I think it should be whoever has the initiative. I don't care who does it, but
23 I hope it's being done. And whether it's something coal, or metal, non-metal, monitors
24 to see whether their people are getting that exposure is something I can't answer at
25 this time.

1 Q. You're certainly aware of the requirements of the MINER Act in regards to
2 seals, breathable air, SCSRs, emergency response and all those other things. BRIEF

3 INTERRUPTION

4 OFF RECORD DISCUSSION

5 BY MR. PAVLOVICH:

6 Q. Do you need to take that? Are most of those requirements in the MINER Act --
7 - they kind of deal with things after the fact of an explosion or an emergency as
8 opposed to prevention of an emergency?

9 A. They sure do.

10 Q. How do you feel about that?

11 A. Well, I certainly support putting in all the protections we can for people after
12 you've had a serious accident, but I think we need more focus on how we prevent
13 them. And I don't see anything in this legislation that does much in that area. Now,
14 you might argue that the seal rule is a preventative measure, but that's one of the
15 things I've been talking to our people about it seems like we're in the mode. We're
16 fighting yesterday's fire and so many of our resources are dealing with yesterday's fire.
17 You're providing all these documents and so forth and so on, and we're not getting out
18 ahead and doing risk analysis. I've asked Jeff --- I asked him like five or six months
19 ago to develop a risk analysis training program for MSHA officials so that at every level
20 whether you're field office supervisor or district manager or administrator for coal or
21 metal you need to be looking at what are the high risk in your area of responsibility?
22 What are the high potential risks? Identify those and start thinking ahead of time what
23 kind of measures can we be taking to mitigate those risks that we can identify.
24 Because they keep jumping up after the fact. QueCreek is another example. Had we
25 done a risk analysis at that mine I think we would have prevented that accident.

1 Q. So do you think then with all the effort --- and I can assume, I'm not being
2 directly involved in it, but I've talked to people and read a lot, tried to stay involved.
3 With all the effort and resources that MSHA has expended over the last two years
4 because of the MINER Act with we had to do all these things, which basically delved in
5 after the accident-type events that we have not been able to do the things that we
6 need to do to prevent accidents like this?

7 A. I know it's taken away from us today. What happened before I arrived on the
8 scene I can only guess, but I know today coal --- people in coal particularly are just
9 swamped with all this investigations and the MINER Act implementation and so forth.

10 Q. How about programs and all these other things that they're required to do as
11 opposed --- in addition to their EO1 inspections, does that take away from their time?

12 A. You're talking about inspectors?

13 Q. I'm talking about --- no, not inspections, but special projects, special programs,
14 special emphasis, compliance assistance.

15 MR. PAVLOVICH:

16 You name them Ex. (b)(6) and Ex. you know them.

17 A. I don't ---.

18 BY MR. PAVLOVICH:

19 Q. I mean, can people really do the job of inspecting when they're spending that
20 much time doing paperwork and accounting for things as opposed to being in the
21 mine?

22 A. One of the things that I've ran into after I came on this job was the inspection-
23 tracking system they had. I was out to the districts and some of the inspectors raised
24 the issue with me, so I went back and I asked for coal. So they gave me a stack of
25 papers this thick, so the inspector pulls up on his screen. He puts in a piece of

1 information, he punches a button, he waits, another screen comes up, he puts in two
2 pieces of information, punches a button.

3 Q. He waits.

4 A. I says, what kind of bologna is this? And I directed that they scrap that
5 program and come up with something --- now, I'm a believer in checklists, but I
6 wouldn't have a problem with the old fashioned paper and pencil. Back when I worked
7 for Bethlehem Steel we had a checklist for everything. We had a checklist for fire
8 extinguishers, a belt driver, continuous miner, shuttle car. You know, a fire
9 extinguisher is a pretty simple thing but we had a paper checklist. When you check
10 the hose see if it's cracked or broken, check the nozzle to see if it's plugged, so forth
11 and so on. Every so often we had a schedule. You had to go in, ask the first line of
12 supervisor, shift foreman, fill this checklist out. Deficiencies got turned into higher
13 management, they got corrected. But I really think we can help our inspectors if they
14 used checklists.

15 Now, we have writing. The first time I got on the internet after Sago I saw
16 these inspection inspector notes. I thought what in the world does this inspector do
17 besides write notes? Probably not much.

18 UNIDENTIFIED SPEAKER:

19 That's exactly right.

20 A. I mean, and you're in the mine and you're crawling around on your hands and
21 knees, take your gloves off, get your pad out, pencil and you write a while. But then
22 we have these audits we've got people that sit for hours reading all these notes trying
23 to figure out did he inspect this, this and this and what did he miss in that inspection?
24 If you had a simple checklist --- and we used to carry these old aluminum ---. You've
25 seen the aluminum clipboards, you know, that open up and you check it off, you close

1 it down and put it under your arm and you take off. You go to the next thing, and you
2 pull it out and you check some things off. But all of this writing we're doing is just
3 taking away our --- and it's forcing people to do things that they're not really ---. I
4 mean, if our people were best paper pencil people they would have become lawyers or
5 something, but they didn't, they become coal miners. But now we're pushing them to
6 computers and writing and note taking. And the whole system is sort of ---.

7 BY MR. PAVLOVICH:

8 Q. Do you think that hurts morale among the inspection force?

9 A. It hurts everything. It hurts our efficiency, it hurts morale. Some people don't
10 like to write particularly because I've seen it. When you go out to the district you hear
11 from them, but I don't know how you change this process because a lot of it is driven
12 by the lawyers whenever you have a violation that gets contested they're going to have
13 all this paper. We're in this pattern of violation now and we're looking, the lawyers are
14 saying, that's not really SNS, we can't support that, you got to take that out. Well,
15 you're going to lose that case, you take that out. The end of the day what do we have
16 left? So it's pushed by our system of contesting the violations and it's pushed by these
17 --- you get the internal reviews. They're a bunch of paper punchers, looking at the
18 same thing in the office-inspector journal and they come back and some inspector
19 didn't have something in there, they ding us. We ding ourselves. So we're driving the
20 process even further in the wrong direction.

21 I tell people the more I learn about MSHA the more I appreciate deep-mine
22 safety in Pennsylvania. We have this little thick logbook about a half inch thick, what,
23 three by six. That was the law. It was very general, very broad, but we had district
24 mine inspectors. Every district if it was a big mine one mine was your district. If it's a
25 little mine you might have three or four districts. By law you had to live in that district

1 and you had to have an office in that district, and you were the man. You certified the
2 miners, the machine runners, the shot fires, mine officials and if they didn't want to do
3 what --- you knew them and they knew you. They knew what you expected because
4 you were at that mine. You might spend your whole career right there in that district,
5 so you take away the certification or I think I --- Ernie and I were reminiscing about
6 when I was 30 years old when I became superintendent manager of Mine 60. We had
7 a guy named John Funk. You remember John?

8 MR. TEASTER:

9 I don't remember John.

10 A. John was --- he was our district inspector there. We had the old belt trolley
11 guarding or the yellow trolley guarding, it's sort of flimsy, John never liked it. He
12 wanted the rubber belting and the steel hangers. Stronger does a better job and he
13 kept onto me about changing that trolley guarding. I says, John, we got 14 miles of
14 haulage in this mine. I can't change all this out, and he kept on it. The first thing you
15 know he gets the long haul belt shut down and we fix that. Next day he's got the track
16 going into the rotary dump shut down. I went in the mine and we had some things we
17 needed to fix. He says, well, call me up when you get done. So two shifts later the
18 longwall's down, the whole mine is down. He came out, he looked at it and says, it
19 looks all right. He says, you know what a twitch is? I says, yeah, I guess it's when
20 your muscle jumps. He says, no, no. He says, years ago we had mules to mine. He
21 said, they were stubborn. He said, we had --- I forget what it was. They put it on their
22 lower lip and you just give the mule a twitch and it just goes right in the direction ---.
23 He says, I hope you know you just got your twitch. I says, all right, John, we'll just start
24 changing that trolley guarding out of the mine.

25 Six-and-a-half years, never went to court. We didn't have all this stuff, going to

1 court and lawyers and depositions and contesting anything because the mine
2 inspector dealt with it right there. You know, he'd shut it down or he'd take the papers,
3 and people learn to try to give him what he wanted to the best of his ability. But the
4 MSHA system I don't know how to reverse the system in federal government, but it
5 certainly has some drawbacks and we're out there trying to get the best thing for
6 safety.

7 Now, you mention compliance assistance. I have not talked to any of our
8 people about pushing compliance assistance. What I talk about is education and
9 training and I tell our people, everyone needs to participate in that. If you're a mine
10 inspector and you find a violation of the law, you write the paper, you get it corrected
11 but take the time to explain to the miners and the supervisor what the law requires.
12 And if they don't know how to comply ask them and see if you can suggest what they
13 could do to comply with the law. To me that's my style of compliance assistance is
14 education and training at all areas, what we do here at the academy and what that
15 mine inspector does at the working face. I talk about compliance assistance with
16 technology. If a mine inspector sees a condition or something that the operator can
17 prove safety by applying some technology we want our mine inspectors to share that
18 information and get tech support to come in and assist operators in applying that
19 technology. But some of this other crap that people talk about, compliance assistance
20 I don't know --- they say, well, that replaces enforcement. Not in my book it doesn't
21 replace enforcement.

22 Q. Although I believe you're still filling out a weekly compliance assistance letter.

23 MR. PAVLOVICH:

24 Is that right

25 UNIDENTIFIED SPEAKER

1 Yes.

2 BY MR. PAVLOVICH:

3 Q. I mean, every district is still reporting to headquarters what they have to do
4 every week regarding compliance assistance.

5 A. I mean, here I've never seen one of the reports, so I don't ---.

6 Q. Well, you ---.

7 A. I don't know what value they are. I don't know where they're going or what
8 they're doing with it.

9 Q. Unfortunately that's the kind of problem. Once something gets started,
10 Richard, it never gets quit, you know. It just ---.

11 A. Well, I can stop that.

12 Q. I just thought I'd throw that in there.

13 A. You never know what you learn. That's a weekly report.

14 MR. PAVLOVICH:

15 Is that weekly. Ex. (b)(6) and Ex. (b)(7)(C)

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

17 Ex. (b)(6) and Ex. (b)(7)(C) what is that special assignment or special
18 accomplishment report that's filled and sent to headquarters?

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

20 You got to submit an activities' report and you got to ---.

21 A. Oh, now, that's a different thing. Significant activities that's not --- yeah, I don't
22 have a problem with that.

23 MR. PAVLOVICH:

24 Do you have one that says something about compliance
25 assistant?

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UNIDENTIFIED SPEAKER:

Compliance assistant.

MR. PAVLOVICH:

Oh, you don't do that one anymore. It's significant activities now.

UNIDENTIFIED SPEAKER:

Yes.

MR. PAVLOVICH:

Okay.

A. You know, the other thing you mentioned was some of these special-emphasis programs, but I think that's justified. You know, you have the Tri Star accident and we had a special emphasis on checking highwalls. You know, we got the NIOSH report out on these hot spots on pneumoconiosis and we did some special emphasis on going out and checking these mines in the areas where the hot spots occurred to make sure they're following their ventilation, dust control plans. And we took dust samples, we had a retreat mining accident in southern West Virginia. We did a special emphasis on that, so I support --- it's hard with special-emphasis inspections, but to me at the same time I expect us to get our regular inspections done. But as we sit here today 49 percent of our inspectors are not certified to inspect coal mines. Since July of last year we've hired 273 mine inspectors and that represents 49 percent of our work force. We've had a net gain of 177, so at the same time we've hired 273, we've lost about 100.

BY MR. PAVLOVICH:

Q. Right.

A. Because everything above gets filled if you have a supervisor, assistant district

1 manager. It all trickles down to the mine inspectors, so we're having a heck of a time
2 now trying to meet the basic requirement of inspecting mines when about half of our
3 people aren't certified to inspect mines. It's going to take a year to get well, but it's a
4 shame that we're in that situation today, but at least we've recognized that we got a
5 way to get out of it and we're working on making that happen.

6 Q. Richard, you're aware of the Aracoma internal review, obviously. You've
7 mentioned it a couple of times.

8 A. Yeah, I beat those poor guys up. You were on Aracoma?

9 UNIDENTIFIED SPEAKER:

10 We survived.

11 A. Huh?

12 UNIDENTIFIED SPEAKER:

13 Yeah.

14 BY MR. PAVLOVICH:

15 Q. I think --- well, you tell me. Did MSHA or MSHA's lack of inspection activities
16 or good activities contribute at all to that accident?

17 A. I believe they did. And at least contributed to the severity of the accident.

18 Q. And so now there are regulations and other things that they're talking about,
19 belt air, they're talking about as opposed that there's a contributing factor in Aracoma.
20 But isn't it true that if those inspectors and supervisors had just done their job probably
21 that accident wouldn't have happened.

22 A. I don't know if I can say the accident wouldn't have happened.

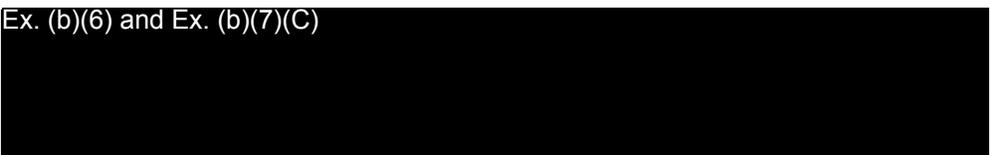
23 Q. Okay.

24 A. I think the accident may have still happened, but if the fire hose was screwed
25 on the fire outlet then I think they probably would have been able to put it out.

1 Q. If the stopping was in ---.

2 A. If the stopping was in the guys up in that inby section their escape way
3 wouldn't be full of black smoke. If the sprinklers had been on the belt drive takeup
4 then possibly it would have put it out, but as far as the fire actually starting I think there
5 was a mechanical drive --- mechanical problem on the takeup dolly. You know, it
6 could have maybe still --- even if our people were doing the best job they could have
7 they may have had the fire, but I don't think anybody would have died.

8 Q. Plus the coal accumulations that contributed to the fire. But with that all said,
9 was anybody from MSHA reprimanded, or punished or terminated because of their
10 lack of activity or lack of action?

11 A. Ex. (b)(6) and Ex. (b)(7)(C)
12 -. 

13 Q. How long ago was Aracoma?

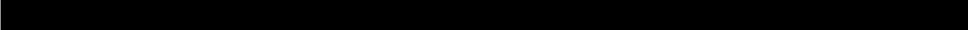
14 A. Well, that was January of '06.

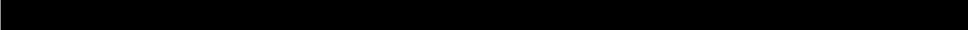
15 Q. So almost two years?

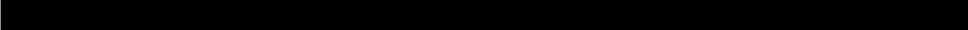
16 A. Right.

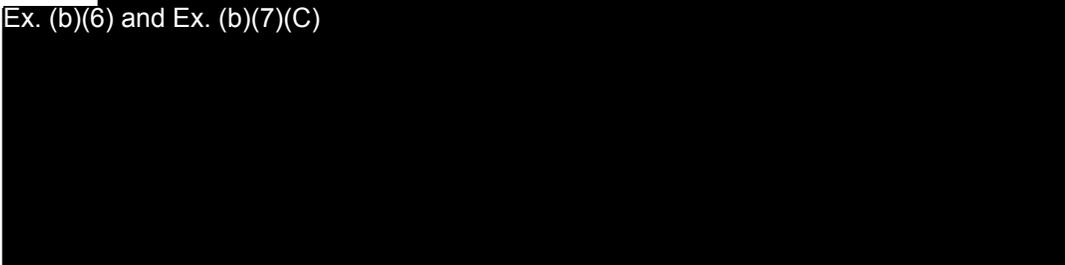
17 Q. Where are those two mine inspectors now?

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

19 Q. 

20 A. 

21 Q. 

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

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Q. Well, is that --- what kind of message does that send to ---? I mean, I think most of the people in MSHA and probably 95 to 99 percent want to come out here and do a good job every day.

7

A. Absolutely.

8

Q. And do the best job they can. They may not be doing things right, but they think they're doing them right.

9

10

A. Yep.

11

Q. But then when you got a few bad apples like this what kind of message does it send to the other guys?

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A. It's demoralizing.

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

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A. Well, he probably knows. I defer to correct Kevin because he's more of an expert on that than me, but ---.

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Q. But how does that affect the rest of the workforce and MSHA when they can see two guys that ---?

20

21

A. It's just like everywhere else and that's --- when I was in industry we had the same ---. Every organization I've been a part of 99 percent of the people are honest, hardworking, dedicated people trying to do the right thing. But I don't care where you go you're going to have a small percentage of the people they either don't want to do their job, they don't know how to do their job or they can't do their job. And I've always

25

1 been aggressive in dealing with these people, and that's why I have such a good fan
2 club.

3 When I managed Union Mines and you have somebody that don't want to
4 come to work, or they want to come to work drunk or whatever, then I would be very
5 aggressive in dealing with them. And, you know, the United Mine Workers has never
6 liked my approach, but 98 percent of the people that work at that mine a lot of them
7 have told me over the years, Richard, we really respect what you're doing here. We
8 appreciate it. Everybody knows this guy was coming to work drunk or wasn't doing his
9 job or, you know, whatever. So the majority of the people it becomes a positive
10 motivation for them when they see management stepping up and holding people
11 accountable.

12 Q. Right.

13 A. And that's true within MSHA's ranks or wherever I've been within various
14 industries and same thing in the State of Pennsylvania.

15 Q. Well, aside from that someone in MSHA instituted reporting and recording and
16 documentation requirements of showing where you made everything through these
17 records you were talking about before that was so time-consuming because of guys
18 like the ones at Aracoma that weren't doing their job. So now ---.

19 A. That's the way they fix the problem, created ---

20 Q. Now everybody else suffers.

21 A. --- another computer program. You got to document this. That's how they fix
22 the problem.

23 Q. And that's another thing.

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

1 Q. So how do we fix that?

2 A. I don't know because it's being driven by these office Inspector General
3 reports. They're doing an investigation right now on MSHA's inspection of mines, coal
4 mines, and I met with them the other day and I told them. I says, you know what? I
5 says, you're driving this thing based on paper. If you really want to know what kind of
6 job our people are doing you ought to find some people with coal-mining experience to
7 go in the mine, look at the conditions, compare those conditions with paper that's been
8 written. If we have weak paper and unsafe numerous violations then we got a
9 problem, but just to go through all of this paper and find out, well, there's no
10 documentation for this so therefore you didn't do it. That's their view. If there's no
11 documentation, it was not done. He didn't check this because they went through all ---
12 I don't know how they read these notes. Half of them I can't read, but if it's not in the
13 notes then they didn't do it. That's their report, so what's that going to do? That's
14 going to drive the process, it's going to reinforce a bad process that we already have. I
15 don't know how you change that.

16 Q. And make it more time-consuming and everything. What happened to the
17 Ex. (b)(6) and Ex. (b)(7)(C) that were over there at Aracoma Mine and the Ex. (b)(6)
18 Ex. (b)(7)(C) and Ex. (b)(7)(C) from District
19 Four?

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

20 Q. [Redacted]

21 A. Well, that was --- I don't know how that happened. I think --- my opinion is ---.

22 Ex. (b)(6) and Ex. (b)(7)(C)
23 [Redacted]
24 [Redacted]
25 [Redacted]

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

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OFF RECORD DISCUSSION

BY MR. PAVLOVICH:

Q. There's a question and I need to ask my team. Okay. The question says in your notes you mention the situation was bleak. Do you remember when that was in the notes? Do you remember writing that in your notes at all, Richard?

A. No, I don't. I don't know why I wrote it in my notes, but you probably can't read my notes either.

Q. Well, we can read some of them. I just --- I remember when they showed me that and I see the question there, and I think it was during some --- maybe a family briefing after you found the seven percent ---.

A. I never used that term at the family briefing I'm pretty sure. I don't think I would word that to the family.

Q. Well, I wouldn't think so either way.

MR. PAVLOVICH:

Ex. (b)(6) and Ex. (b)(7)(C) do you have a question while Ex. (b)(6) and I look --- are you looking for it? Oh, you found it? Ex. (b)(7)

MR. TEASTER:

No.

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MR. PAVLOVICH:

Ex. (b)
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Ex. (b)
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Why don't you give this to and if you have any questions

why don't you ---.

MR. TEASTER:

Okay.

MR. PAVLOVICH:

Because I know you do.

MR. TEASTER:

Richard, when you were having your meetings to compare notes with the company and then going to the briefings, family briefings and the press briefings, was Al Davis accompanying you during those times, most of the time?

A. Sometimes. No, I wouldn't say most of the time. When I went to the family briefing sometimes Al went, but I don't know how to say --- I don't think I would say most of the time, but I know that he went some of the time. And, you know, I wasn't trying to pay attention to who was with me or what somebody else was doing. Have you interviewed Al?

MR. TEASTER:

Not yet.

A. Yeah, I'll defer to whatever Al tells you on that as being more accurate than what I can tell you.

MR. TEASTER:

Okay. How did it come about for the media to go underground during the emergency?

A. That started --- it started with the mine operator wanting to take pictures underground to show to the family members. And I think it was on the 7th of August

1 that the K Order was modified to allow the mine operators to take pictures
2 underground. And the K Order basically stated that it was for the purpose of briefing
3 the families. So the mine operator, from what I understand, did try to take pictures
4 underground and they didn't turn out because of his equipment. The next step was to
5 hire an outside photographer to go in and take pictures. The photographer showed up
6 there and he didn't have the right lighting.

7 I didn't know all this until after the fact. I get confronted at a press briefing
8 when Bob Murray turned to the press and says, hey, look, you know, I want to take
9 these pictures underground to show to the families what we're doing but I don't have
10 the right lights. Will some of you loan your lights? And someone in the press says, oh,
11 yeah, we got the equipment but we got to go in to take the pictures. And then Bob
12 Murray asked me if it'd be okay for them to do that. And I says, well, you've got
13 approval to take the pictures, I guess it don't make a whole lot of difference who takes
14 these pictures. And I told him that I didn't have a problem with that.

15 Now, this occurred at a time when the families were very distraught. They
16 didn't feel that MSHA was doing enough, they didn't feel the mine operator was doing
17 enough, fast enough, and I think those pictures, in my opinion, were worth a thousand
18 words to at least take away the anxiety and the pain that the families were suffering
19 because they didn't believe that the right processes or the rescue workers weren't
20 working hard enough or fast enough or whatever. So taking the pictures for the
21 purpose of relieving that stress with the families I think was a good thing. I don't think
22 that the photographers were exposed to an area where their safety was at risk, and I
23 put that similar to, you know, we have photographers going into Iraq and into Kuwait
24 with the military. They're embedded to take pictures to show the rest of the people
25 what the conditions are and what we're up against.

1 I think it was something that was done to be responsive to the families. It was
2 not done to assist the press. Now, the fact that we had the pictures and I don't see
3 anything wrong with the press showing them to the public, but the primary motivation in
4 my --- from what I saw was for the pictures not only underground but also up on the
5 mountain at the drill site to try to relieve some of the anxiety that the families were
6 having and their distrust and lack of confidence in what was being done. I don't think
7 that that's something that I would condone in other situations. If you had a case where
8 you had a mine explosion and possible secondary explosion I certainly would not
9 condone that, but in the situation at Crandall Canyon I think it did serve a useful
10 purpose.

11 MR. TEASTER:

12 I'm sure you're familiar with the quadrants of 103(k), which just
13 allows those people that are necessary to do whatever it is during the recovery
14 process. Do you think allowing those members of the press to go underground was in
15 violation of 103(k)?

16 A. No, I don't because 103(k) was also modified before I even arrived on the
17 property to allow the mine operator to take pictures underground.

18 MR. TEASTER:

19 Well, that was to take pictures, but that was not to allow any
20 additional persons underground. It could have been the mine operator himself taking
21 the picture?

22 A. Well, it could be or it could be the operator --- he first tried to contract that with
23 a professional photographer and that photographer didn't have the proper lighting. So
24 you can interpret that to mean whether it's a professional photographer or the mine
25 operator running the camera or somebody from CNN running the camera is the way I

1 would interpret it.

2 MR. TEASTER:

3 Did you ever hear of any of the press members going
4 underground making a comment that he'd been to Iraq and that this was more scary
5 than being in Iraq?

6 A. No, I'm not aware of that, but that may be his opinion.

7 MR. TEASTER:

8 Did anyone from MSHA try to stop the press from going in that
9 you're aware of?

10 A. Not that I'm aware of. I know that evening there was a question raised about
11 it. Kevin and I were going back up to the mine site, and I don't remember --- I think it
12 was ---. Who's the district manager at District Three now? What's his name?

13 MR. PAVLOVICH:

14 Bob Cornett?

15 A. Bob Cornett. I think Bob Cornett was coming down to check with Kevin to see
16 whether or not we were approving that, but I didn't hear anyone say that they felt that
17 these individuals was exposed to a dangerous condition, or it was unsafe or anything
18 like that. I never heard any comments on that. I heard that ---

19 MR. TEASTER:

20 Did you ever ---?

21 A. --- Bob Cornett asked Kevin whether or not we were going to allow it, and
22 Kevin told him, yes, we were.

23 MR. TEASTER:

24 Do you recall any discussions with supervisor, Ted Farmer ---

25 A. No.

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MR. TEASTER:

--- concerning that?

BY MR. PAVLOVICH:

Q. Or Gary Jensen?

A. No. The discussion --- it may have been Ted, and I'm not ---. We were in the parking lot outside and it was dark at night, and I can't tell you who all was there. It may have been Ted, it may not have, but I remember having a discussion with him to reinforce that we want to monitor these folks very closely, where they go. Don't let them get into any area where there's a hazard. I think I used the word it's like herd and catch. You know, you may think that they're here and you've got to watch them very closely because one of them will go someplace where they shouldn't go. That's what I tried to impress on them the importance of monitoring them very closely.

Q. Did any of the other MSHA officials on site think it was a good idea or express any concern about it?

A. No one told me they felt that it would be unsafe for the press to go in the mine.

MR. TEASTER:

Do you think it set a precedence?

A. I don't think so. I think every case is different. It will not influence any decision I make in the future. I think I would --- if it was me making the decision in the future I'll look at the situation and make that decision based on what exists at that time.

BY MR. PAVLOVICH:

Q. Where would MSHA have been, Richard, if any of those reporters had been injured by a bounce?

A. Well, I'm sure that it would be --- we'd be criticized. I mean, it's like any situation when you come back and the unexpected happens and you learn something

1 different.

2 Q. So what ---?

3 A. But I think I was underground three, four hours before the press went
4 underground, and the area that I was told that they were going to be traveling --- they
5 were not to go up in the area where the continuous miner was working. They were to
6 remain in the area where we had resupported.

7 MR. TEASTER:

8 Do you know if the order, the 103K Order, was modified to
9 permit those limitations or was that just verbally shared with people? How did that
10 come about?

11 A. The only modification in the K Order that I remember in that regard was on the
12 7th. Prior to me arriving there MSHA modified the K Order to allow the mine operator
13 to take pictures for the purpose of informing the families.

14 BY MR. PAVLOVICH:

15 Q. Well, were the families driving this?

16 A. I think the sense to try to be responsive to them, to try to communicate to them
17 that certainly would influence taking the pictures. The purpose of the pictures was to
18 communicate to the families to try to relieve some of their distress that they were
19 suffering thinking that MSHA was just dragging their feet, we didn't really --- the rescue
20 workers weren't working hard, we should have been going faster.

21 Q. How did the pictures show that?

22 A. I think it showed the conditions that existed.

23 Q. Well, they couldn't go to the face, so ---?

24 A. Well, they ---.

25 Q. All they showed was the rock props. That's ---.

1 A. Well, it shows how long it takes to set those props, the amount of supports to
2 have them be put in. That takes time to do that.

3 Q. That couldn't have been shown to them somewhere else?

4 A. I thought it showed them the --- I'm pretty sure it showed pictures of the rubble
5 in the entry.

6 Q. Well, if they couldn't go up to where the miner was and they couldn't show ---
7 well, how did they show that?

8 A. Well, it's just ---.

9 Q. Or did they go up to where the rubble was?

10 A. It's just like how they showed the pictures at the family meetings. They stood
11 on top of their car 200 yards away and it was like they were standing right beside the
12 family members outside of the school there at the junior high. They have --- I would
13 assume, on their lens that they could zoom in, but I was told that they didn't go in by
14 Crosscut 120 is what I've been told. I don't know what ---.

15 Q. Did you know there was some issues underground with the reporter shining
16 lights in the shuttle car operator's eyes and ---?

17 A. No, I'm not aware of that. They were only underground one time; right?

18 Q. Yes.

19 A. So I don't --- I guess if those issues would have come up ---. As I recall we
20 were requested a second time and denied taking pictures underground. Whether that
21 was part of --- you know, maybe they talked to Kevin or Al Davis. I don't know.

22 Q. Did you ever see any of the pictures that Mike Gauna was taking
23 underground?

24 A. No, I didn't.

25 MR. TEASTER:

1 Richard, before we leave this, what about the family members
2 going underground? How did that come about?

3 A. Well, there were two family members. One was a very experienced miner,
4 member of a mine rescue team. Well, they were both experienced miners, and the
5 idea there was that it would build some trust with the families by having the family
6 members go underground, go to the drill site and participate in communication with the
7 family members to try to alleviate some of the hostility and distrust that the family
8 members had when they were able to hear it from these experienced miners.

9 MR. TEASTER:

10 You don't think that there was trust in MSHA when we was
11 telling them what was going on?

12 A. They absolutely didn't trust us. There was hostility. We were being accused
13 of slowing down the rescue operation. I don't know who was telling the family
14 members that, but, you know, they certainly confronted me with those allegations that
15 MSHA was holding the mine operator back, not allowing the mine operator to go as
16 fast as the operator felt they could go if MSHA wasn't getting in the way.

17 MR. TEASTER:

18 How often did these family members go underground?

19 A. Probably a couple trips that I'm ---.

20 MR. TEASTER:

21 A day or just total?

22 A. No, a total. A couple of trips that I can recall.

23 MR. TEASTER:

24 Did that instill more confidence as to what was ---

25 A. It did.

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MR. TEASTER:

--- taking place?

A. It absolutely did.

MR. TEASTER:

Did that improve MSHA's reporting to them confidence that they were getting accurate reports?

A. I'm sure it did. You know, as time went on we started building some trust with the family members, and I think that was part of it, our willingness to be open and share information, providing the pictures, having the family members participate in the briefing. I think that started building some trust with the families, and, you know, it's a lot easier dealing with them whenever you have people with a little bit of understanding rather than just screaming and yelling and crying and making all kind of false accusations. The first couple days that I --- the worst day that I had with the families was the first day. You know, it was rough and it was maybe the third day that we had some pictures and things started coming around as we --- and I think Gates complimented since he went out and took over. He said, he's never seen the kind of good relationship that MSHA had with the families in previous cases. And at Sago I ran into it when I went to give the final report. Those families have a terrible, terrible view of MSHA, and, you know, right during the presentation of the report they were accusing us of taking bribes and kickbacks. And a lady says, we can't tell where MSHA ends and mine operator begins. You're all in it together. But that's part of the -- - and I guess that went on throughout the Sago and continues today because we've never built any kind of trust or confidence with the families, but Gates said that what he seen there is the best relationship that he's ever ran into with the families. And I've been back out since Gates has started his investigation. I've met with the family again,

1 and they've been very respectful and appreciative. Family members would come up
2 and hug me and cry on my shoulder and thank me for what we were doing, you know,
3 as we moved through the process. But we certainly didn't have that the first couple of
4 days.

5 MR. TEASTER:

6 Richard --- and we've got the similar feelings from other
7 people that we had a pretty good rapport with the family and with family liaisons and
8 your briefings. But that being said how do you account for what those miners
9 appeared in front of the house oversight committees, their comments toward the family
10 briefings and MSHA's relationship was certainly not anywhere close to that
11 assessment.

12 A. Well, some of them have apologized to me since that hearing and one of them
13 in particular told me that the UMWA wrote their statement that they gave. The Ex. (b)(6) and
Ex. (b)(7)(C)
14 family came in and met with me the night before the hearing Ex. (b)(6) and
Ex. (b)(7)(C) and the one
15 Ex. (b)(6) and Ex. (b)(7)(C) they were accompanied by a staff person from Congressman
16 Matheson's office, and I could tell that they were a little uneasy. And the staffer had
17 got a phone call and left the office, and they had some private time with me. And they
18 told me that they were very upset, that they were misled, that they thought that they
19 were coming to Washington to lobby for improving mine safety and now it was
20 apparent to them that they were coming to be a political pawn for political agendas.
21 And they asked me what they should do, and I told them you have to do whatever your
22 conscience tells you to do, whatever you decide to do is fine with me. And what they
23 ended up doing was Ex. (b)(6)
and Ex. (b)(7)(C) sat at the witness table, but he never ---. He refused
24 to make any comments and nobody asked him any questions unfortunately. I would
25 have liked to have heard him answer some questions, and I was told that Ex. (b)(6) and Ex.
(b)(7)(C)

1 got up and walked out during the hearing because she was so emotionally upset about
2 how they've taken Ex. (b)(6) and Ex. (b)(7)(C) death and turned it into a political charade rather
3 than really focusing on mine safety.

4 MR. TEASTER:

5 What kind of interaction did you have with the families?

6 Because I know there was no entrapment and no extended period of time, but what
7 kind of relationship was established with the family members for those three fatalities
8 on the 16th?

9 A. Well, after that fatality on the 16th I attended the funeral for Gary Jensen and
10 Mr. Black, and I met with the families. I had met with Ex. (b)(6) and Ex. (b)(7)(C) before the funeral and
11 she was wanting to come and address the family members of the six miners that were
12 trapped, and we had some discussion about that. We didn't have as much contact
13 with the three families --- the other miner that was killed in the rescue effort, I think he
14 had a closed funeral was what my understanding was. I did not attend that funeral.
15 The other two I did and I met with them prior to the funeral, I met with them after the
16 funeral. The Ex. (b)(6) and Ex. (b)(7)(C) had a meal and I spent some time with them after the burial, and
17 like I said I'm not with them in Washington. But we didn't have as much contact with
18 them as we did with the --- I went out to the memorial service on September the 9th or
19 whatever it was. I addressed the families at that memorial service and gave a eulogy
20 for Gary Jensen and had some contact with them there. I would say we probably built
21 a better relationship with --- other than the Jensen family, with the six trapped miners
22 because of the amount of time that we spent with them. It was tough with the Mexican
23 families because some of them did not understand any English. Everything had to go
24 through a translator. I was having a problem with the Mexican consulate who was on
25 site, and Ex. (b)(6) and Ex. (b)(7)(C) MSHA wasn't

1 doing enough and he was wanting to bring in people from Mexico to do the rescue
2 work because he felt they could do a better job faster. And that was planned out with
3 the families because that's what he was telling them, which was contradicting with
4 what I was trying to tell them.

5 MR. TEASTER:

6 Go back to what you were saying.

7 A. Did you ever find that note?

8 UNIDENTIFIED SPEAKER:

9 Here are your notes for that day. And the way we read it, it
10 says, bleak situation, will be better if not low O2, seven percent or something like that.
11 And a phone number above it, we were just wondering what exactly did you mean by
12 that?

13 A. Well, I think what that is is that's probably --- that was probably my update to
14 the secretary's office, probably specifically to Howard Radzely who is the acting ---.
15 Howard Radzely is the acting deputy secretary. He's like number two person in the
16 Department of Labor, and I called him and I think that's probably what I told him as it's
17 a bleak situation and the rest of the notes there.

18 UNIDENTIFIED SPEAKER:

19 I guess what we was trying to get out of that, was there any
20 time that anybody considered before the 16th that because of the results in which you
21 was getting the low O2 and massive ground flow and everything you mentioned up
22 there, that there were no survivors, that the miners did not survive? Were you still
23 continuing ---?

24 A. No. I mentioned earlier that I never reached that conclusion, and what I was
25 trying to do here was tell Howard Radzely that, look, it's a bleak situation. I can't even

1 read my own writing. Better chances if not seven and a half percent oxygen. I
2 explained to him the massive ground failure, underground work is very challenging, so
3 I told him we were providing the best known protection for the workers. Surface area
4 is difficult because of the mountain terrain, the topography. The mountains were from
5 vertical to 30 percent, slow dangerous work on the side of the mountain. There was
6 times up there when it rained. Even four wheel drive vehicles wouldn't --- instead of
7 trying to go up the mountain they wanted to go sideways. So we didn't want to go far
8 on the roads, we curved down the side of the mountain because the cliffs were pretty
9 treacherous.

10 BY MR. PAVLOVICH:

11 Q. This is that Agapito report and I just highlighted that --- we just highlighted that
12 yellow area to bring attention, which was a lot more discussion throughout that report
13 about that bump that occurred in March in the north barrier. And that was submitted to
14 the agency in May of this year.

15 A. Where they're talking about the damage, the heavy damage, inby from
16 Crosscut 133 to 139. Where did they pull outby to?

17 Q. He said he ceased mining in favor of going to the south barrier.

18 A. Yeah, but they were mining between 130, they were moving face outby
19 skipping pillars between 135 and 138, so they came out to 135. And then it says, 134,
20 135, so it sounds like most of the damage was from 133 to 139 which would have
21 been inby where they ---.

22 Q. That's where they were mining at the time.

23 MR. TEASTER:

24 Where they were mining.

25 MR. PAVLOVICH:

1 enough to be reported or they didn't believe it was serious enough to be reported. I
2 think there's conflicting information on that, and I'm not trying to sort that out. I will
3 defer that to Richard Gates and it's his team.

4 Q. There was --- are you familiar with any of the BLM reports that deal with that
5 particular area.

6 A. I read those after I came back to Washington.

7 Q. Some of those reports dealt extensively with that bump on the 16th.

8 A. Right.

9 Q. And it --- they have a lot of pictures for one thing, but ---.

10 A. I don't recall seeing any pictures.

11 Q. I don't think there were with that BLM report, but they did take some pictures, I
12 think, that later were acquired maybe by the ---.

13 A. Yeah, I didn't see any pictures.

14 Q. But there was a lot of interaction. I don't know. The process with BLM is they
15 own this coal and you got to get permit from them to mine, and then when you don't
16 mine something you have to go back and explain to them why you can't mine it
17 because they want the royalty and they will follow up with an investigation. The report
18 goes back to 2004, I believe, when that Andalex owned that mine. And they
19 determined that that area of the mine was not safe to mine, so they notified BLM that
20 this area is not safe to mine. And BLM goes in and makes an investigation, and their
21 findings fully supported the company's allegations and he went into a lot of ---.

22 A. Which area are you referring to?

23 Q. Area of the west mains, up where the accident occurred.

24 A. In the barrier pillar or in the main entrance?

25 Q. Well, it was the west mains area.

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MR. TEASTER:

The west main is developing. That wasn't none of the barriers in that.

BY MR. PAVLOVICH:

Q. Right.

A. That would have been before Murray took over.

Q. Yeah, this was 2004.

MR. TEASTER:

2004.

BY MR. PAVLOVICH:

Q. I'm just saying this to get to the point that the company said it was unsafe to mine up in that west mains area of the mine.

MR. TEASTER:

Andalex did, yeah.

MR. PAVLOVICH:

Yeah, the company at that time.

BY MR. PAVLOVICH:

Q. And BLM supported it and then would change ownership and they decide that they --- but none of that information was communicated to MSHA. There was no interaction between BLM, the company didn't share any of that because there was no need because they wasn't going to mine it, didn't plan to do that. But it just --- and the best we can determine now that there's very little, if any, interaction between BLM and MSHA. I just wondered what's your thoughts on trying to --- maybe MSHA getting BLM to start sharing some information.

A. Well, we're working on an MOU. I have a draft letter to the assistant secretary

1 that's in charge of BLM for this area. I have a draft letter, a draft MOU, and that's
2 being vetted. You probably know what I'm talking about. You know it circles around
3 MSHA for about a month, then it goes over to Department of Labor. It circles around
4 and then they make edits, and then we edit the edits and someday I'm going to get that
5 letter out, I think.

6 Q. Have you had any communications directly with BLM? I mean, like we've got
7 an agreement we just now got to follow up with a paper trail?

8 A. No, we don't have an agreement yet. The memorandum of understanding is
9 still within the Department of Labor. It hasn't gone to --- I haven't gotten clearance yet
10 to send anything to BLM, and ---

11 MR. TEASTER:

12 You know, we kind of ---.

13 A. --- we were talking about a phone call, but they want to send the letter along
14 with the draft MOU and that's what we're going to do. But I would hope that anyone
15 out there in the world that goes in a coal mine know, or even doesn't go in a coal mine,
16 knows about a dangerous condition reports that to MSHA through our hazardous
17 complaint process. Pick up the telephone or, you know, whatever. Now, I think there's
18 other things that you probably want to consider in this is, if you got an operator trying to
19 get excuses to keep from mining an area it may not be economical to mine it, it may
20 not be the production it needs to make its cost so they blow smoke about being unsafe
21 in order to convince BLM to give information to leave the coal. So how much of that
22 dynamics takes place is --- I just raise that as a flag for you to look at. I'm not looking
23 at it.

24 BY MR. PAVLOVICH:

25 Q. I think if you get an opportunity I would suggest that you take a look at those

1 BLM reports that goes back to that time because that individual pretty much predicted
2 what would happen, if you mined those areas what would happen happened. That
3 might be an over characterization, but I think it's a --- this guy that made that inspection
4 was very knowledgeable in bumps and those kinds of things. And I don't think that
5 that area --- if he felt it would have been safe to mine he would have just checked off
6 and said, okay, company, you're right. I think you gave it a good look and you agreed
7 with him, but I think he wrote down his justifications for it.

8 A. When you ask me about did I see the BLM reports, what I saw was for the
9 north barrier. I don't recall seeing anything for the mains here.

10 MR. TEASTER:

11 That goes back to 2004. Richard, the other thing ---.

12 A. And I would say to you, I trust you folks are going to do that, so I'm not going
13 to --- either you're going to do it, you're going to come up with your analysis and I'm
14 going to trust your analysis.

15 BY MR. PAVLOVICH:

16 Q. We're kind of wondering if somewhere along the line there's already not some
17 kind of an agreement in place because on their inspection form there's a block to
18 check that says, was this discussed with MSHA?

19 A. Really?

20 Q. Yes.

21 A. I never saw it.

22 Q. And the guy always --- it says, yes or no and the guys always checked no. But
23 if there's never been an agreement or any kind of --- why would they even have that on
24 their form?

25 A. That's a mystery; isn't it?

1 Q. Well, it seems strange. I mean, you know, we wouldn't have it on our
2 inspection form because this inspection discussed would be ---.

3 A. You would think there would --- somewhere there had been some policy.

4 Q. There has to be.

5 A. Why would it be on the form, yes or no?

6 Q. There has to be something out there already or some kind of an agreement
7 that's been made somewhere for that to be --- it's printed on the form. It's not like he
8 handwrote it. It's actually a part of the form, so that may be something that's already
9 there without going through the effort you're going through.

10 A. You're going to follow that up; right?

11 Q. Yes, we will.

12 MR. PAVLOVICH:

13 Do you have one of those, Ex. (b)(6) and Ex. (b)(7)(C)

14 A. I appreciate ---.

15 MR. PAVLOVICH:

16 Do you have one of those with you?

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

18 I have it up on the screen. We can print it out.

19 A. Rather than me go dig for that answer I don't think there would be anything ---
20 I'd appreciate if you'd share that answer with me.

21 BY MR. PAVLOVICH:

22 Q. We will.

23 A. Because that might influence where I'm going with this memorandum of
24 understanding.

25 Q. You might be wasting ---.

1 A. If you're already on that trail then I don't want to go plow ground that you're
2 already plowing.

3 Q. Okay.

4 UNIDENTIFIED SPEAKER:

5 That's all I have.

6 MR. PAVLOVICH:

7 Ex. (b)(6) and Ex. (b)(7)(C) you got anything?

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

9 I just have one thing, Joe. You may have touched on this
10 already. I don't know. Now, there seems like there were a lot of efforts made at the
11 mine in dealing with the families and you said the first press conference Bob Murray
12 kind of got ahead of you, you know, because you were still answering family questions.
13 But then you kind of made it clear to him that from now on here's how's it going to be.
14 I'm going to speak first and then you come on camera. Even though CNN chose to
15 show Murray because I guess he was kind of animated, but one thing that seemed odd
16 when we watched the hearings was the comments the Governor made in Utah that it
17 just seemed like MSHA didn't drop down out of the sky and take over the operation.
18 Do you know why he made those comments at all?

19 A. Well, he was probably influenced by the arena that he was in, but I will tell you
20 that the interaction I had with the Governor while I was in Utah he never gave me any
21 constructive criticism. I asked him specifically what we could do about Murray, to pipe
22 down Murray at the press conference, and he shook his head and ---. I says, you
23 know, can we arrest him? Can your state troopers do anything? You know, what can
24 we do? He says --- he didn't know anything that we could do different than what we
25 were doing. He attended some of the family meetings, and everything that I got from

1 Governor Huntsman, Senator Hatch, Senator Bennett, Congressman Matheson, all of
2 them set in on some part of one or more family meetings and one or more press
3 conferences. I never got any criticism. I got praise for all those individuals on what we
4 were doing and how we were doing it. I never got any indication that anyone was
5 unhappy with what we were doing, the people that were on site there. Now, where he
6 come up with this statement about he thought MSHA was going to drop in like
7 paratroopers out of the
8 C-130 or something, I think is just his lack of understanding of --- see he did not
9 participate in anything beyond the sheriff's trailer other than that one briefing that he
10 attended that Murray provided. And that was a briefing for all of us, so he didn't know
11 what was going on at the mine site, underground at the drill site. He didn't see that
12 interaction, and like I mentioned earlier I think the best way to approach these things --
13 - and I was asked this question at one of the hearings I testified, whether or not MSHA
14 would be better off if we had overall authority and implemented the J Order and the
15 way I answered that as I recall is that my experience has been that when you have
16 these emergencies you have representatives from the state, from the mine operator,
17 from the union if it's a represented mine and MSHA, and I think the best response is
18 the collaboration of those groups working together, ideas coming from all the
19 participants at the table and decisions being made through a consensus with MSHA
20 having the authority to reject anything that they felt is unsafe, which is basically how
21 we operate under a K Order. And that's the way I saw it playing out there at Crandall
22 Canyon is input from various levels of MSHA and the mine operator particularly at the
23 meetings they had in the morning and the afternoon between MSHA and the company
24 people, ideas, discussions. I think that was a good process and I wouldn't want to
25 project anyone at MSHA has a patent all the best ideas. I think they can come from all

1 the players involved at the site, and I think the best approach to try to take is a
2 cooperative teamwork, everyone pulling together. Anybody that has a concern can
3 raise it and it gets discussed and aired, and at the end of the day there's a consensus
4 on what we're going to do. That's the way I saw it working at Crandall Canyon, that's
5 the way I think it should work. I think that's the best way to do it, and I --- what MSHA
6 has explained to me on how a J Order works with us coming out of the 130 and
7 dropping in and just saying, we're the boss and, you know, we're running this show, I
8 don't think that's the best approach to take.

9 Now, we were handicapped at Crandall Canyon because we didn't have a
10 participant from the state and we didn't have a participant from the United Mine
11 Workers. So I think that in a way --- maybe there had been some ideas from
12 somebody else would have helped us, but we went with what we had there. Joe
13 mentioned to me that the perception, I guess, that people told you is that I was running
14 the whole show. I don't see it that way. I've tried to get ideas to flow to come up from
15 tech support, from the district people and whatever and I stayed out of the decision
16 making process unless somebody came to me and asked me. When I was asked a
17 question then I would take the question. On the other hand at the end of the day I will
18 take responsibility for any decision that was made that I knew that even someone else
19 was making because if I knew somebody else was making the decision and if I kept
20 my mouth shut and didn't intervene, then I'm still responsible. So anything that I knew
21 about that was happening there whether I initiated it or it was my idea or I gave the
22 order I will take responsibility for it.

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

24 Yeah. We assumed, I guess, that some of those comments
25 were politically driven like you had mentioned earlier, some of the family members. Of

1 course we knew also that the governor didn't have that mining knowledge, so this may
2 have been his first exposure to anything like this. It seemed kind of odd that you
3 hadn't heard anything prior to that, then he comes out in public and makes these
4 statements. So ---.

5 A. Yeah, I mean, his --- he had staff there all the time, not up at the mine, but at
6 the press conference and family meetings. There was staff from Hatch and Bennett
7 and Matheson and the Governor sitting in on those meetings. And for the most part
8 they sit in with their hands in their pockets. I mean, they didn't pull their hands out of
9 their pockets to try to help, and they didn't hesitate to go back to Salt Lake and get
10 rest, and the rest of us were there. I was there 17 days in a row, 20 hours a day. We
11 didn't get much help, and if they had any ideas and they sat on their ideas, then shame
12 on them.

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

14 Exactly.

15 BY MR. PAVLOVICH:

16 Q. Richard, do you know how long the Governor was actually at the mine site or if
17 he ever was?

18 A. He was --- the only time he was at the mine site was that first day with the
19 briefing and that probably went on ---. You know, Murray rambled on for, I don't know,
20 maybe half hour, 45 minutes and I would say maybe total of meeting time an hour and
21 a half.

22 Q. The rest of his meetings as far as you know were off of mine property down
23 toward the family center, ---

24 A. Right.

25 Q. --- then the press release?

1 A. You know, they pull in there with their million dollar motor home, double slide
2 wide out, big easy chairs, recliners, TVs, two other trailers that they brought on site.
3 They were just across the road from the school, and I told our people you know they
4 picked some of these trailers from FEMA for just the cost of paperwork. FEMA has
5 thousands of these trailers left over from Katrina. We tried --- I told Bob Friend to try to
6 get us some of those because I mean we were up there with Blue Goose. That's all
7 we had. We had 50 some people on site, and sometimes you're tripping over top of
8 each other coming and out of the Blue Goose, trying to use the telephone or whatever.
9 That was the other thing. We lost phone service there. Somebody decided to change
10 our service provider right in the middle of Crandall Canyon accident, so we didn't have
11 any phone service for periods of time in the command center. Like if I wanted to call
12 the secretary or whatever I had no phone service. Cell phones wouldn't work there.

13 UNIDENTIFIED SPEAKER:

14 And satellite phones were very helpful it sounds like.

15 A. Well, we only had one that I'm aware of. I brought it there and I gave it to the
16 guys on the mountain to use, and they couldn't use their satellite phone up there
17 without getting in the vehicle and driving to a hot spot. Then they can communicate,
18 but then they'd have to drive back to the drill site. The same thing there at the mine
19 site, you couldn't use your cell phone. We found one place just out a few hundred
20 yards from the mine that we could get --- I guess it was looking up the valley of the
21 canyon and get spotty reception, it would come and go. I forget now what got me
22 started down this road. What was the question? I don't know if I answered your
23 question.

24 UNIDENTIFIED SPEAKER:

25 Talking about, I guess, the representatives from the

1 Governor's office.

2 A. Oh, yeah. I mean, they came in there with big easy chairs, and that's where
3 they sit, down there at the Governor's trailer, watching television in their recliners.

4 UNIDENTIFIED SPEAKER:

5 It doesn't seem right.

6 A. Yeah, if I had to lay down I had to drive 45 minutes back to Price, Utah to the
7 Budget Host Inn and Campground. When you walk in the door it smelled like urine,
8 and then the room is full of flies. Well, we got that here at the academy. I don't know
9 what's going on with these black flies, but they're still in my room here at the cabin.
10 First thing I do is take my bath towel and I beat the flies down, and then I didn't want
11 them crawling in my ears or nose while I was trying to sleep. But I'd wake up in the
12 morning, I'd look around, there's as many flies as there was before I went to sleep.

13 UNIDENTIFIED SPEAKER:

14 There's a Holiday Inn ---.

15 A. But it's 45 minutes, you know, to drive down there and 45 minutes back, so
16 that was an hour and a half out of my day every day to try to get a couple hour's rest.

17 UNIDENTIFIED SPEAKER:

18 What roadblocks did you guys hit trying to get a trailer like that
19 or I guess --- I'm assuming somebody checked into it?

20 A. Well, we were so busy there that I think it was toward the end, I don't know,
21 probably the 17th or something we ended up --- we got like an office trailer brought in.
22 But I think it was maybe the 18th, somewhere like that before we made that happen.

23 UNIDENTIFIED SPEAKER:

24 That's all I have.

25 MR. PAVLOVICH:

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

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

3 I always have a question. Somewhere along the way you said
4 something like during these family briefings you asked the sheriff if he could keep
5 Murray away. Did he stay away after that?

6 A. Oh, yeah. I mean, he showed up at the next meeting and the sheriff wouldn't
7 let him in, and I don't think he tried to come back anymore after that.

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

9 The sheriff actually stopped him from coming in?

10 A. You know, I told Bob Murray several times, Bob, you got people here that have
11 the skills that can handle the press and the families. Why don't you delegate that to
12 them? Because part of the problem --- you know, I have to say that I saw Bob Murray
13 cry, I saw him so emotionally upset that he was throwing up, I saw him tremble and
14 shake and I know in his heart he was trying to do the right thing. But he didn't have the
15 training or the personality or the control with himself. There was times that maybe he
16 was not physically or mentally able to do what he was trying to do, but his boss type
17 personality was not good with the families. And you saw what you saw in the press, so
18 I don't need to tell you about that. But everyone I talked to had no better ideas on how
19 to control the press any better than what we did. And I think it's unfortunate that the
20 press --- they only picked --- I mean, maybe the press conference lasted an hour and a
21 half. They maybe picked three minutes of what they're going to show. They always
22 liked to pick Mr. Murray for whatever reason. I guess news has to --- they probably
23 thought I was too boring and factual, I don't know. But I --- Rob Moore who you
24 probably saw in some of the press briefings did a very compassionate job of
25 interacting with the families, but Bob Murray just wouldn't always let him do it. And

1 nobody there would --- a lot of people who work for Murray just wouldn't step and tell
2 him. I would tell him to his face. I gave him constructive criticism, but a lot of his
3 employees there, his vice president and his lawyers --- he probably had a half dozen
4 lawyers there on the property. Now, finally they brought in the guy that was on the
5 board of directors. Someone told me that Bob Murray would listen to him, but I didn't
6 see that. I don't think he listened to him, I don't think he listened to anybody.

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

8 If they spoke up he would fire them probably.

9 A. Well, it's --- I don't know what to say about that.

10 BY MR. PAVLOVICH:

11 Q. Richard, did you have any private communications with Murray, phone calls or
12 anything concerning drilling of additional holes?

13 A. After I left ---

14 Q. Well, either before or after.

15 A. --- Utah I did. I didn't have any --- the only private meeting I recall with Bob
16 Murray, you know, unless we were going in the one bathroom we passed each other in
17 the parking lot and we stopped and chatted. But when he got pissed off and irate with
18 his mine manager and fired him, I went in privately with Bob and I advised him that
19 that's not good in the middle of this rescue operation. He needs to pipe down, clamp it
20 down a little bit Ex. (b)(6) and Ex. (b)(7)(C) is the guy's name. Ex. (b)(6) and Ex. (b)(7)(C) was helpful Ex. (b)(6) and Ex. (b)(7)(C) s --- he
21 never left the mine. He was sleeping in the bathroom. That's the only place they had
22 a cot, and they would take turns going in the bathroom and sleeping. You go in there
23 and take a leak and there's somebody on the cot trying to sleep. You think, should I
24 flush or shouldn't I flush? This poor guy's trying to get an hour of sleep. But I did talk
25 to Bob privately about that. Some of the constructive coaching that I did with him --- I

1 mean, it wasn't like a private meeting. You know, it might be in the parking lot down at
2 the family meeting, it might be in the sheriff's trailer down at the press conference. It
3 was, I would say, informal conversations that I had with him about what he was doing
4 and how he was doing it. But Bob was not a fan of these bore holes and really after
5 the second bore hole he was --- he did not have an appetite for drilling anymore bore
6 holes.

7 Q. Why?

8 A. You'll have to ask him that.

9 Q. Is it because of money? Did he ever express to you how much it was costing
10 him?

11 A. Well, you know, he --- I heard him make the statement, now, money has
12 nothing to do with this.

13 MR. TEASTER:

14 Was that right after he told you the cost of it?

15 A. Yeah. Now, money has nothing to do with this he'd say, but, you know, I don't
16 want to try to get inside of Bob Murray's head. But he never came out and said, hey,
17 I'm not drilling anymore bore holes because it's costing too much money. He'd say,
18 you know, this bore hole cost half a million dollars, yack, yack, yack and --- but it don't
19 have anything to do with money now, you know, whatever. But I was able to --- I
20 guess I would --- and even after he went to the press which pissed me off during the
21 drilling of the sixth hole and announced that that's the last hole. There will be no more
22 holes. Well, he ended up drilling a seventh hole, and those were through
23 conversations I had with Bob before and after I left Utah. I talked to Bob after I left
24 Utah on the phone, and that was basically the extent of our discussion was about the
25 drilling operation. Once I made the decision that the rescue effort had ended I never

1 had any more phone --- I haven't talked to Bob Murray since that decision's been
2 made. But I think through --- and if you want to call it leadership, whatever you want
3 to call it, I tried to use leadership to lead Bob Murray where we wanted to go rather
4 than try to force him or threaten him or ---. You know, I did use the threat of the J
5 Order a couple of times, but for the most part I tried to do it without starting a war. I
6 mean, he had, like I said, four or five lawyers on the property and I didn't want to turn it
7 into, we'll see you in court.

8 BY MR. PAVLOVICH:

9 Q. Even with the J Order he could still talk to the news media any time he wants
10 to.

11 A. Absolutely.

12 Q. So ---.

13 A. I told --- at one of the hearings I told Senator Harkin --- I says, hey, if you figure
14 out a way for me to control who's allowed to talk to the press and what they're allowed
15 to say, I said, let me know. I don't know how to do it. And my experience has been if
16 you don't try to do a good job of giving them --- I refer to it as feeding the beast. If you
17 don't feed the beast it's going to go somewhere else. It'll go down to the local tavern or
18 --- well, they still ---. Even with us giving them all the information that we had, you
19 know, they call up the so called safety experts sitting in their easy chair at home
20 somewhere and get their opinion on it. I can't control that. That's just the way it is.

21 MR. PAVLOVICH:

22 Ex. (b)(6) and Ex. (b)(7)(C) do you got any more?

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

24 Do you know if the Crandall Canyon Mine had ever used rock
25 props or any other support for bump prevention?

1 A. I don't know. I never heard the name Crandall Canyon before the accident. I
2 didn't know that mine existed and I don't know anything about it. What I know about
3 Crandall Canyon I learned after August the 6th.

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

5 MSHA used to maintain a list of contact persons from different
6 manufacturers of accident investigation at one time. Do you know if we contacted any
7 manufacturers for their input on support? Were they brought into the picture in any
8 way?

9 A. I would defer that to Joe and the tech support people. I know that they were
10 reaching out. What I got from them was they were reaching out to everyone they could
11 to get information on how we can do anything different, or better or safer than what we
12 were doing. But I didn't --- I don't want to speak for what they did. I know we were
13 reaching out to --- I was involved in some discussions about getting robots modified.
14 We started that the first day, maybe the second day trying to get robots there. It took
15 several days before we were able to get anything on the property. There were other
16 people there like Jeff Kravitz and his people and the tech support people, and I would
17 defer to their answers better than mine.

18 SHORT BREAK TAKEN

19 MR. PAVLOVICH:

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

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

22 When you assembled the team of experts about the 18th or
23 19th they came in to evaluate the --- whether we can proceed underground at Crandall
24 Canyon, were they asked to put anything in writing or did they put anything in writing?

25 A. Yes, they were asked and they did. And we should have copied that. I'm sure

1 --- because I recognize this.

2 UNIDENTIFIED SPEAKER:

3 I never saw it.

4 MR. PAVLOVICH:

5 It's in Mr. Stickler's notes.

6 A. Yeah, it was pretty artfully written. To really gave us --- and, you know, the
7 other thing that that did was once we had to make a decision that we were going to
8 discontinue the rescue work underground we had to sell that to the family, we had to
9 sell it to the American public and that was helpful in doing that.

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

11 There's so much information it's in there somewhere probably.

12 MR. PAVLOVICH:

13 Well, I think that that first day we had raised the ponderance of
14 the data overwhelmingly says that that area is unstable. And that's pretty much the
15 report.

16 A. Because I didn't want to be in a situation where we were pulling the plug on
17 the underground rescue and you've got the whole world out there.

18 UNIDENTIFIED SPEAKER:

19 I guess this is the full report?

20 MR. PAVLOVICH:

21 No. No, I gave you the ---.

22 UNIDENTIFIED SPEAKER:

23 Oh, you gave me the full report.

24 UNIDENTIFIED SPEAKER:

25 It looks like some of it is photographs.

1 A. You got the families out there and you got the Mexican ---

2 MR. PAVLOVICH:

3 That goes on top. That's just a member of who was there.

4 A. --- the Mexican government, a consulate from Mexico, and the families, and
5 the press all pushing and clamoring. Well, then you know who starts reacting? The
6 politicians, and you can get overwhelmed, you could be doing the right thing but you
7 can create so much political backlash that's --- now, the right thing isn't being done, but
8 it's the public opinion and the politicians that's going to drive the whole thing. And, you
9 know, that was one of the things that was in my thought process and bringing in these
10 experts to sort of provide credibility to the consensus opinion that the people
11 underground there at Crandall Canyon was at --- we didn't want to continue anymore
12 underground work, but without that credibility we could have lost the world. If it would
13 have gotten snowballed and then you get the politicians and senators and
14 congressmen all fighting this because you got the families screaming, you got the
15 Mexican government screaming, you got the press out there leading this thing and I
16 guess was ---. The families are still concerned about recovering the bodies. I mean,
17 they're still pushing for that, and I think the way that played out we didn't get beat up
18 too bad when we announced that decision. I think for the most part people were
19 convinced that we had done as much as we could do.

20 UNIDENTIFIED SPEAKER:

21 Okay. I got a couple more. This is back to when the press
22 went underground. Did you receive any communication or guidance from main labor
23 about the press going underground?

24 A. No.

25 UNIDENTIFIED SPEAKER:

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UNIDENTIFIED SPEAKER:

I have not.

A. But it should be in the documents. I know we've been provided copies of e-mails, but Larry said something to me to the point that he had a lot of respect for me and --- but he is concerned about letting the press go underground to take pictures and he recommends they not do that. Then he puts in his e-mail that this is confidential, I'm not talking to anyone else about that. He said something to the federal government. My policy and the way I try to operate is I don't say or do anything that I would not want to be on the front page of the newspaper tomorrow because the chances are that's where it'll end up. But I think he thought he was advising me confidentially and respectfully, but I was not aware of that e-mail until I get back to Washington and going through my e-mail I found that.

MR. PAVLOVICH:

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

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

Most of my questions have been answered. I just got one kind of thing to ask about and it's concerning the drilling. If we had results of bore holes five and four before the 16th, how do you think that would have affected the underground operations?

A. Between bore hole and five --- what was the other, five and ---?

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

Four and five.

A. Four and five.

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

Uh-huh (yes).

1 A. I haven't thought about that.

2

UNIDENTIFIED SPEAKER

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

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I mean, you just mentioned --- I didn't mean to interrupt. You mentioned earlier that after bore hole seven was drilled that you had all the information that you could get from underground. I guess I'm getting at, what if we had more drills to have got that information sooner?

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A. Well, we talked about trying to get more drills on the mountains and we had to build 8,000 feet of access road from the end of what was just a service road, which wasn't much of a road. The drills that we had up there --- and we had two at one time, the helicopter drill that was brought in with a helicopter, that was the first drill for Number One hole. And then five eighth or seven eighth inch hole. What I was told was that the supply train to get the water --- we had to have water trucks hauling water up to the drill rig constantly back and forth. The other supplies that had to go up and down that road that if we put another drill up there on the mountain that we wouldn't be able to supply it. Plus we were trying to pre-prepare for the next hole. It was taking roughly two days, two and a half days to drill a hole. While we're drilling that hole we're building road and engineering surveying, building road, getting ready for the next hole. Then we would have taken more support services, but I think the deciding factor was that they didn't feel that they had the supply train to support anymore than what they had on the mountain.

21

UNIDENTIFIED SPEAKER

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

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This problem should have reduced --- might have been impossible, but if you had those results before the 16th what do you think that would have done to the underground operations?

A. Like I said, I haven't thought about that. Bore hole Number Four and bore hole

1 Number Five you're asking about.

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

3 Bore hole Four was in the area where they thought the ---

4 A. Yeah.

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

6 --- was coming from.

7 A. It could have influenced our thinking. You know, I think we come back to the
8 consensus of myself and others that I communicated with was that we had elevated
9 risks up where the miner was working. With that area outby we felt pretty confident.
10 Now, it's easy to come back after the fact and see something different. Certainly if I
11 had known everything I know today I would have pushed things in a different direction,
12 but you got to look at what we knew at the time we made the decision and what was in
13 our head, what we believed at the time we made those decisions.

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

15 The only question I have left was concerning the charting of
16 the bump frequency and intensity. Did I understand you to say that that information
17 you saw in the company engineering office, Is that where you became aware of it?

18 A. I saw some at the company engineering office. I had asked the folks there to
19 try to graph it and plot it to see if there's any trends and they --- we tried doing that, we
20 couldn't ---. You know, it was just up and down and stop and start. There was nothing
21 there that you could put any kind of trend line on to make any analysis, no. I've been
22 advised since I left Utah that, well, you were barking up a dead tree anyway because
23 they've done a lot of work --- NIOSH has done a lot of work on that over the years in
24 research and they've already determined that you can't trend line seismic activity with
25 any reliability to forecast what's going to happen in the future. But at the time I was in

1 Utah I thought maybe there was a chance that we could and we were trying, but we
2 couldn't, couldn't make any sense out of it.

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

4 Were our guys, Gauna, Zelanko, were they doing that in
5 conjunction with the company or were there two different ---?

6 A. No, this was --- the company engineers and also Jeff Kravitz was doing some
7 of that with his seismic equipment. It's different seismic equipment from what
8 University of Utah had.

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

10 Okay.

11 MR. TEASTER

12 Richard, you said something a while back that you had
13 stopped the rescue effort. Is that --- the way you look at it that MSHA stopped the
14 rescue effort?

15 A. You're talking about totally stopped, everything, the surface, ---

16 MR. TEASTER

17 Right.

18 A. --- when we finally said no more, nothing? I guess I would say that I was not
19 encouraging the operator to do any more, and I advised the deputy assistant --- deputy
20 secretary from Department of Labor that I didn't think there was any value. We could
21 drill more holes, we're just going to learn more about what we had already found and I
22 would view it that once I made that announcement and I went public with that
23 announcement that that would be interpreted as MSHA made that decision. So I
24 would say, yes, in that sense I made that decision.

25 MR. TEASTER:

1 Did you get any resistance when you stopped the
2 underground operation from the mine operator, Bob Murray or any of his people?

3 A. No. There was consensus agreements there. I never heard anyone on the
4 ground whether it was MSHA or Murray Energy that said, oh, maybe that's no a good
5 idea or we shouldn't do that. It seems like we came together and there was a
6 consensus agreement.

7 MR. TEASTER:

8 So is it fair to say that on the drilling of the bore holes which
9 was a sensitive continuation of the rescue effort on the surface, that the operator, Bob
10 Murray, would have stopped drilling the bore holes after bore hole three or four? And
11 had you encouraged him for additional, but he was willing to stop everything at that
12 point?

13 A. Right. Not everything. He was willing to stop the drilling at that point.

14 MR. TEASTER:

15 What else was there?

16 A. Well, the underground activity --- he made the public statement several times,
17 we're going to reach these miners from underground. That's the way we're going to
18 find them. We're not going to find them through these bore holes or whatever, so,
19 yeah, he was pushing to continue the underground work at the same time that he
20 didn't want to drill any more bore holes.

21 MR. TEASTER:

22 So bore hole Number Three was the last hole to be started
23 and completed prior to the ceasing of underground operations. So he did not want to
24 drill, I understand, three on through seven that he only done that through
25 encouragement by MSHA?

1 A. Right.

2 MR. TEASTER:

3 Was there any desire to go in and get that equipment that was
4 left in that mine after everything had decided to terminate the rescue effort?

5 A. Yeah. Bob Murray approached Kevin and I and he wanted to go in and get all
6 the equipment, and the decision that Kevin and I gave him was that he could not go
7 inby --- I think it was 107. That any equipment which was all the equipment, the diesel,
8 haulers and miner and everything that we would not allow the company to go inby
9 Crosscut 107.

10 MR. TEASTER:

11 Did you get much objection from Bob Murray?

12 A. How you measure much --- he didn't like it, but ---.

13 MR. TEASTER:

14 He felt it was safe to go on an inby and get the equipment?

15 A. I never asked him that. I just know he wanted to go get it. I think the fact that
16 we, Kevin and I, felt that it wasn't safe we felt it was an unacceptable risk. It was one
17 thing to take risks to save somebody that you think is alive, it's another thing to go
18 recover a piece of equipment.

19 BY MR. PAVLOVICH:

20 Q. Where did that number 107 come from, Richard? Was that something that ---?

21 A. That came from this panel of experts.

22 Q. Oh, the panel of experts said that. Okay.

23 A. What they said was they didn't feel it was safe to go inby 107 for any reason --

24 -

25 Q. For any reason.

1 A. --- at that point, so that's where we drew the line as far as the equipment.

2 MR. TEASTER:

3 When you do one of these reviews you're basically doing the
4 Monday morning stuff and you mentioned earlier you're making decisions. And we
5 understand that, but we're going to try to come up with something that's going to help
6 us make better decisions, more informed decisions if we can. If there's something that
7 we can determine based on the actions that were taken. A lot of the people that we ---
8 when they see that, and I think that was pretty evident at some of those hearings,
9 when miners or anybody looks at that area between those mined out areas it's a first.
10 They've never seen mining under those conditions particularly in those seam --- I
11 mean having that much overboard. We had a bump of a severity that nobody that
12 we've talked to yet has ever seen one of that magnitude. This is the first one that
13 we've been able to determine to this point --- now, we've got a long way to go, that's
14 ever tried to clean up one of those and go in there and rescue people. So I mean,
15 there's a lot of firsts here and so you just got to make your best decision on information
16 you have at that time and we realize that, so anything that we come up with even
17 though it's the Monday morning quarterback it's not to be critical of any decisions that
18 were made. It's to come up with some recommendations that might be helpful in the
19 future should we encounter some of these similar type conditions. I hope it's accepted
20 in that light. It's not to be critical as it is to be helpful down the road somewhere.

21 A. Well, sure. I understand that, and even my own self I've gone back through
22 this thing a thousand times. And I've searched my mind what could we or should we
23 have done differently? And knowing what I know today certainly we could have and
24 should have done some things different, but then when I put that back into the
25 framework of what we knew --- like you said, we were dealing with a lot of firsts here,

1 and you don't have the advantage of seeing the future. If we could have seen the
2 future we would have done some things different starting clear back at the plan
3 approval, I'm sure, if we could have seen that future. But the people that were dealing
4 with that at the time --- Billy Owens, I've never met Billy, but they tell me he worked for
5 the U.S. Bureau of Mines, he's a certified professional engineer, he has years of
6 experience in the Rocky Mountains.

7 MR. TEASTER:

8 Did you ever question why he was never at the mine site?

9 A. No, I never had time to think about it. I guess it'd been because of the people
10 we had there, tech support out of Pittsburgh and Billy Price still has work to do in the
11 Denver office. That work doesn't stop when you have an emergency. That's why we
12 didn't make some of our inspections out there in fourth quarter fiscal year '07 is we had
13 people there at Crandall Canyon that couldn't get to the other mines, but I don't --- that
14 was Al Davis' ---. I never questioned him or asked why he did it. But, you know, when
15 I look at people like Billy Owens that worked for the Bureau of Mines and the
16 knowledge and experience, and Al Davis that worked in these conditions in Utah and
17 Colorado, I have to trust that and I have to believe that in their heart they were
18 convinced that what they were doing was the right thing based on what they knew, the
19 information they had and the process that they used. Now, there may be something
20 wrong with the process that we can fix and that's where I'm headed really of trying to
21 come up with some more better guidelines for our roof control specialist. So if they
22 want to deviate from the study that Chris Mark did I wouldn't shut the door on him, but
23 I'd put some hurdles in there that they're going to have to get over some hurdles to
24 approve a retreat mining plan with --- this ended up with a stability factor of what four?
25 Is that what they ended up with, .4, something like that?

1 be assured that they are --- making sure their analysis is detailed as possible to try to
2 prevent a similar accident. So yeah, I understand that your job is to identify new things
3 that we can do different in the future. If we've made mistakes that's your job. I would
4 only ask that you --- when you look at what was done look at what these people knew,
5 the tools they had, the situation they were in at the time and give them the benefit of
6 consideration.

7 Like I said, in my heart I believe that Al Davis and Billy Owens and the people
8 that were doing this analysis believed that they were doing the right thing. But I think
9 there's something wrong with the process that needs fixed. I think they need better
10 tools. The other thing I found out is all of our district offices didn't have the latest
11 software and some of them that had the software didn't know how to use it. So I've
12 had Peter do a survey of all our districts identify where we're deficient in the software,
13 the model, the ARPs, the ALPs, the other one is the rock science and we're out buying
14 all this --- NIOSH we get it for free. The rock science we got to buy that software. Do
15 they have the proper CAD system for inputting their maps? Have they had the
16 training? So I've already started implementing things to make sure our people have
17 the tools and have the training.

18 The next thing that I want to get started on is some guidance, and I need a
19 little more time and input from other people before I formulate that guidance on the
20 plan approval process. But I would only ask that you consider these people as the
21 situation they were in at the time. I don't know what Billy Owens' workload is. I don't
22 know how
23 --- that's another consideration. How many plans did they have to look at? How much
24 time did they --- do these plans take? Do they have the manpower resources?

25 In federal government you're feast or famine, right now we're in the famine.

1 We're on continued resolution based on last year's appropriation minus the \$26 million
2 they gave us to buy the --- to hire the 170 additional enforcement people. Now, we've
3 hired the 170 people. We don't have the money to pay them. In the meantime I'm
4 trying to go out and buy stuff for our ground control experts. Now, once the budget
5 gets approved they've coupled --- Congress has coupled the budget for Department of
6 Labor in some military appropriations thinking the budget --- the President is going to
7 bite on. The President's already said he's not biting, he's going to veto it. So if he
8 vetoes that budget that's passed by Congress then they're going to go back and forth,
9 so we may be in this continuing resolution for a few months and that makes it tough,
10 you know. I put a cap on credit cards, I've got a hiring freeze on the entire agency
11 except for enforcement people right now, I've had to postpone the employees'
12 performance awards. It's some hard decisions, things that you don't like to do, but
13 that's the world you operate in. So I guess what I'm saying is keep in mind the world
14 that these people are operating in when you provide constructive criticism of what they
15 did, but ---.

16 MR. TEASTER:

17 We've been in similar positions, so we know what --- you
18 know, Joe and I as well as these guys. You know, we've been in those decision
19 making ---

20 A. Yeah.

21 MR. TEASTER:

22 --- and doing those types of things.

23 A. But like --- I searched my soul a thousand times, sometimes laying in bed at
24 night and certainly knowing what I know today we would have done some things
25 different going clear back to the plan approval. But when I put myself in other people's

1 shoes and put myself in the shoes that I was in I can't say that I would have done
2 anything different than what I've done. I tried to make the best decision with the
3 information I had and the situation that I was in.

4 MR. TEASTER:

5 That's all I have, Joe.

6 BY MR. PAVLOVICH:

7 Q. Well, Richard, I certainly appreciate you coming down and talking to us on
8 short notice like we did, and just appreciate you coming at all to talk to us. Maybe this
9 is also a first and unprecedented. I don't know if assistant secretary has ever been
10 interviewed by a review team like this. But you've been very gracious to come down
11 and talk to us and to answer all of our questions, and we certainly appreciate your
12 involvement and your candidness in answering any of the questions. You didn't ask
13 any of us if we had just walked in, so I guess we come out ahead of [REDACTED] then
14 because he ---.

15 A. Well, I thoroughly understand the job that you have to do and, you know, on
16 the other hand I would have to admit to you that when you look at the job that MSHA
17 did with the internal reviews at Sago, and Darby and Aracoma, I think our people did
18 an outstanding job.

19 Q. Oh, we agree.

20 A. They were not bashful about identifying the root cause, the problems and the
21 issues and the secretary decided to do this to --- we've got a lot of people out there ---
22 well, there's a Bill. They want to take us out of the accident investigation. They want
23 the chemical board to do MSHA's accident investigations, and ---.

24 Q. We understand.

25 A. I think it's important to have people that know enough to know what questions

1 to ask, and I respect your knowledge and background. I'm confident you know enough
2 to --- but even though the secretary selected you outside of the agency she's still
3 getting criticism about MSHA investigating themselves. How can they investigate
4 themselves?

5 Q. And we're still considered as --- although we're retired as part of MSHA,
6 because we're former MSHA, but like I said we did a lot of these and I think that
7 everyone I've ever known of has always been above board. And I don't know how
8 critical it was to bring in other than the fact that hopefully that would squelch some of
9 the complaints. But ---.

10 A. It doesn't appear to have done that.

11 Q. No, it doesn't. It doesn't.

12 MR. TEASTER:

13 Richard, there's one thing that that I meant to mention to
14 Kevin and I didn't do it. Maybe you can share this with me. Inspector Scott Johnson,
15 he went back in after that accident on the 16th and he --- there was a lot of low oxygen
16 up there and he was very quick about identifying the problem and getting ventilation up
17 there. That could have contributed to saving those other people's lives in there, so I
18 don't know if you may consider an award or some recognition or something for that
19 guy because ---.

20 A. You said you did mention that to Kevin?

21 MR. TEASTER:

22 I did not. I meant to do that. I failed to do that, but I think it's
23 something that --- at least look into what all he done immediately ---. He was
24 underground, but I think some recognition may be in order for that gentleman.

25 A. I'll make a note of it because at my age if I don't write it down I'll forget it. I'm

1 glad y'all interviewed me as soon as you did. If you waited another month or two, you
2 know, I'd be like Regan. You know what Regan said. Huh? No, I don't remember
3 that. The truth of the matter is he probably didn't. I guess he was suffering from
4 Alzheimer's when ---.

5 MR. TEASTER:

6 I want to ditto what Joe said, but also wish you the best in
7 whatever time you have left. You sound like you got some handle on a lot of the
8 issues and I hope you get time to address them and get them resolved. But I want to
9 wish you the best.

10 A. I appreciate that. My attitude is I'll come here, I'll do what I can, as much as I
11 can for however long they want me here and when they don't want me here then I will
12 be happy to go back to retirement, but when I leave I feel my conscience is going to be
13 clear. I did what I could do to --- you know, I wonder. Throughout my career, Don
14 Huntley, Alex Zarorick (phonetic), people that were like --- you know, they were models
15 for me in their knowledge and their expertise and what I thought of MSHA. And I come
16 in to this situation and inherit some things that are difficult, and I start seeing the
17 deficiencies we have. And I'm wondering has MSHA changed that much or is it
18 because I was an outsider looking in? And I don't know the answer to that question,
19 but I certainly see a lot of deficiencies that we have in trying to get our inspections
20 done and half the inspectors not get through the training. You know, how could we be
21 effective out there inspecting the mines? I know we've lost a lot of talent, people that
22 have retired like Joe and Ernie and my goal is to do everything I can to make MSHA as
23 strong and effective, try to make it the shining star that I thought it was, not to paint a
24 bleak picture for the people that we have that are out there every day doing the best
25 they can. But if only half our inspectors --- you know, I can't be critical of the

1 inspectors that are out there, but I can't expect them to do the impossible either. If we
2 only have half a team, the other half of the team is still in training. So I hope that I can
3 help the folks in any way I can to build a stronger, more effective MSHA.

4 You still read in the paper where we get criticized about we're not enforcing
5 the law, and I just got some year end reports from fiscal year '07. We've written more
6 violations than we have in the history of the agency. Our violations for inspector is
7 higher than it's ever been. We've written more elevated enforcement with I Orders and
8 so on than anytime in the past. We've doubled the penalties, last year '07 compared to
9 '06 has doubled in penalties. We're doing a lot. The facts show that we're doing a lot
10 to step up enforcement even though we have half a team of inspectors, so I think the
11 agency deserves a lot of credit for what we're doing to try to get the job done. I mean,
12 we're into this MSHA bashing where it's like a popular thing to do. You talked about
13 the Governor. Well, he was in an environment there where the popular thing was to
14 bash MSHA, and it's --- one of the guys from the IG office ---. You know, when I came
15 in I changed the --- I put in place the review team to review these accidents, fatalities
16 that are not chargeable because of heart attacks or whatever, and I picked out people
17 like Ed Clair for the solicitor's office in tech support, people outside the enforcement
18 agency. Well, now the inspector general is in doing an audit and they're pointing their
19 finger. They looked at 100 and some fatalities on mine property. They have not found
20 one decision that they're critical of the decision MSHA made, but they've got 14
21 recommendations. We got to change the process, we got to go outside of the agency,
22 we got to go outside the Department of Labor to bring people in on these review teams
23 so we can get it right. Well, hello, we've already been getting it right, but the popular
24 thing for them to do --- that's what Congress wants to hear is --- you know, beat up on
25 MSHA. And that hurts the people. We've got a lot of hard working people, some of

1 them probably teetering. Well, do I want to work, do I want to retire? And they say,
2 I've had enough of this. How long can we keep our people feeling good about coming
3 to work every day and have pride in the agency and pride in the job they're doing when
4 the whole dang nation seems to be jumping on MSHA? Like I said, it's a few cases, a
5 few people who are not doing their job. I admit that, but let's deal with them, let's find
6 another career for them, but let's not paint all the people in MSHA that's trying to do a
7 good job with the same black brush. That hurts. I think it hurts all of us.

8 MR. PAVLOVICH:

9 Okay, Richard. Well, that's all the questions we have at this
10 time.

11 A. You guys have a nice weekend.

12 MR. PAVLOVICH:

13 If we think of anything else we'll get in touch with you. Okay?

14 A. I want to help in any way I can.

15 MR. PAVLOVICH:

16 Okay.

17 A. I appreciate what you're doing.
18
19