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5 EXECUTIVE SESSION

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7 COMMITTEE ON EDUCATION AND LABOR,
8 U.S. HOUSE OF REPRESENTATIVES,
9 WASHINGTON, D.C.

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13 DEPOSITION OF: ALLYN C. DAVIS

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17 Friday, February 15, 2008

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19 Washington, D.C.

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22 The deposition in the above matter was held in Room
23 B-345A, Rayburn House Office Building, commencing at 1:20
24 p.m.

25

1 Appearances:

2

3 For COMMITTEE ON EDUCATION AND LABOR

4 BRIAN KENNEDY, GENERAL COUNSEL

5 MICHAEL ZOLA, CHIEF INVESTIGATIVE COUNSEL

6 PATRICK FINDLAY, INVESTIGATIVE COUNSEL

7 ROBERT BORDEN, MINORITY GENERAL COUNSEL

8 JAMES A. PARETTI, JR., MINORITY WORKFORCE POLICY COUNSEL

9

10 For UNITED STATES DEPARTMENT OF LABOR

11 MARK R. MALECKI, ESQ.

12

13 Other staff present for the Education and Labor
14 Committee: Sarah Dyson, Investigative Associate; Ed Gilroy,
15 Minority Director of Workforce Policy; Loren Sweatt, Minority
16 Professional Staff Member; and Richard Hoar, Minority
17 Professional Staff Member.

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1 THEREUPON,

2 ALLYN C. DAVIS,

3 A witness, was called for examination, and after having
4 been first duly sworn, was examined and testified as follows:

5 Mr. Findlay. This deposition is being conducted by
6 staff of the Committee on Education and Labor of the United
7 States House of Representatives at the direction of the
8 Chairman of the committee. Specifically, this deposition is
9 being conducted pursuant to House Resolution 836 from the
10 110th Congress and under the committee's deposition rule.

11 The committee sought this deposition to further the
12 committee's investigation of the deaths that occurred in
13 August of last year at the Crandall Canyon mine in Utah.

14 Thank you for being here today. Mr. Davis, please state
15 and spell your full name for the record.

16 The Witness. Allyn, spelled A-L-L-Y-N, Curtis,
17 C-U-R-T-I-S, Davis, D-A-V-I-S.

18 Mr. Findlay. Okay, and we will now go through and
19 introduce everybody in the room, and then I will describe how
20 we will proceed.

21 My name, as you know, is Patrick Findlay, and I am
22 investigative counsel for the Committee on Education and
23 Labor.

24 With me, representing the majority side of the
25 committee, is Michael Zola, our chief investigative counsel,

1 and Brian Kennedy, general counsel for Labor. We will be
2 assisted by Sarah Dyson, behind me, whose position is
3 investigative associate.

4 Also present is the official reporter, transcribing the
5 proceedings. In addition, various individuals are in the
6 room from the minority side of our committee.

7 Rob, would you introduce your folks?

8 Mr. Borden. I'm Rob Borden. I'm the general counsel
9 for the Republican staff.

10 Mr. Paretti. Jim Paretti, workforce policy counsel for
11 the Republican staff of the committee.

12 Ms. Sweatt. Loren Sweatt for the Republican staff. I'm
13 a professional staff member.

14 Mr. Gilroy. Edward Gilroy, Republican staff.

15 Mr. Findlay. And we also have counsel here today on
16 behalf of the Department of Labor.

17 Would you please state your names?

18 Mr. Malecki. Good afternoon. I am Mark Malecki, Office
19 of the Solicitor, U.S. Department of Labor.

20 Mr. Findlay. And, Mr. Davis, I see that you don't have
21 any other counsel here. Are you aware that our committee
22 rule would have allowed you to bring personal counsel?

23 The Witness. Yes, I am aware of that.

24 Mr. Findlay. You chose not to.

25 The Witness. Yes.

1 Mr. Findlay. Questioning this morning, or this
2 afternoon, will go as follows. I will ask questions for up
3 to an hour or so. We will probably take a short break every
4 hour. If you need to take a break at any other time, just
5 let us know, and we will take a break.

6 I would ask if there's a question pending, that you
7 answer it before we break. Is that okay?

8 The Witness. Okay.

9 Mr. Findlay. When I'm finished with my questions,
10 minority counsel may ask questions each hour or may wait till
11 the end. Otherwise, the procedure will be the same.

12 The reporter will be taking down everything we say and
13 make a written record of the deposition. To make this record
14 clear, I ask that you give verbal answers, for example, a
15 clear "yes" instead of "yeah" when answering affirmatively.
16 Please remember that nods and gestures do not make it into
17 the record.

18 Is that clear?

19 The Witness. Yes.

20 Mr. Findlay. Also, in order for the record to be clear,
21 I will do my best to wait to ask my next question until you
22 have finished answering the previous question. I ask you to
23 wait to begin answering any question until I have gotten the
24 entire question out, is that okay?

25 The Witness. Yes.

1 Mr. Findlay. If you don't hear a question or don't
2 understand a question, please say so. This is very
3 important. If you don't speak up to tell us otherwise, we
4 will assume that you heard the question and understood it.
5 Okay?

6 The Witness. Fine.

7 Mr. Findlay. Because you have been placed under oath,
8 your testimony here today has the same force and effect as if
9 you were testifying before the full committee at a public
10 hearing. If you knowingly provide false testimony, you can
11 be subject to a criminal prosecution for perjury, making
12 false statements or other related offenses. Do you
13 understand that?

14 The Witness. Yes, I understand it.

15 Mr. Findlay. You have the right to refuse to answer any
16 question, if answering that question would tend to
17 incriminate you. Do you understand that?

18 The Witness. Yes, I do.

19 Mr. Findlay. Are you suffering from any condition that
20 might prevent you from giving me your full attention this
21 afternoon?

22 The Witness. No, I am not.

23 Mr. Findlay. Is there any reason why you may be unable
24 to provide a truthful answer during today's deposition?

25 The Witness. No.

1 A Yes.

2 Mr. Malecki. I'm going to -- well, that's answered, so
3 I will hold off for now.

4 BY MR. FINDLAY:

5 Q Yes. And other than interviews that you may have
6 given to the Gates Commission, the MSHA incidence
7 investigation team, have you given any interviews?

8 Mr. Malecki. May I just clarify that?

9 Mr. Findlay. Sure.

10 Mr. Malecki. What he is asking you is whether or not
11 you been interviewed by Richard Gates' investigation or the
12 internal investigation. And we have raised an objection that
13 to disclose that information at this time would impair the
14 investigative privilege, and therefore I would request that
15 you not answer that question.

16 Mr. Findlay. Well, and, actually, other than that?

17 Mr. Malecki. Oh, but other than that. Right.

18 BY MR. FINDLAY:

19 Q Obviously, you gave us an interview, that sort of
20 thing. Have you given any other interviews other than to the
21 Gates folks?

22 Mr. Malecki. And the internal investigation?

23 Mr. Findlay. Yes.

24 The Witness. Other than that, to the Senate committee
25 and to the IG investigation.

1 BY MR. FINDLAY:

2 Q And to us back in --

3 A Well, yes.

4 Q -- back in September.

5 I know we went over some of this back in September, but
6 I will ask it again for the record here.

7 Please run us through your post-high school education.

8 A Well, my degree is in geological engineering from
9 the Colorado School of Mines in Golden, Colorado. And after
10 obtaining my degree, I've worked in the mining industry my
11 entire life. My first position was with an exploration
12 company working in southern Nevada. And then, after -- that
13 was about 3 to 4 years' time.

14 Q What year did you graduate?

15 A I graduated in January of 1971. I've worked for a
16 short time with the Government, the USGS, in 1974. But in
17 1975, I left the USGS and went to work for a coal company in
18 Wyoming. I worked for that company in Wyoming -- that mine
19 closed, and I transferred to their operations in Colorado and
20 worked there. That whole employment was a total of about
21 12 years. And so, in 1987 is when I started to work for the
22 Mine Safety and Health Administration.

23 Q Please run us through from 1987 through today, what
24 roles you've had there.

25 A From 1987 into 1989, I worked for District 9 in

1 Denver, Colorado. Then I was transferred to our headquarters
2 here in Arlington, Virginia, where I worked for the next
3 12 years. And then I was transferred back to District 9 in
4 2001, and I've been in the position of the district manager
5 of District 9 since 2001.

6 Q Please run through your responsibilities as
7 district manager in District 9.

8 A Well, I supervise the workings of our district. We
9 have approximately 85 people employed at District 9, and we
10 have a staff in Denver that is our technical staff that
11 reviews mining plans. There's quite a number of different
12 plans that we review, but primarily they're roof control
13 plans and ventilation plans and ground control plans for
14 surface mines.

15 And then the rest of our staff is in seven separate
16 field offices throughout the western U.S. Each of those is
17 staffed with a supervisor and a small staff of inspectors.

18 Q And who do you directly supervise? Who are your
19 direct reports?

20 A Directly reporting to me is an assistant district
21 manager for technical engineering. Do you want names?

22 Q Yes, please.

23 A That's William Knepp, K-N-E-P-P.

24 The assistant district manager for enforcement, that
25 position is vacant right now. It was Bob Cornett at the time

1 that this incident in Utah occurred.

2 Q You mean in August of last year.

3 A In August of '06. I mean, yes, '06. Yes. '07.
4 I'm sorry. But he has been promoted to the district
5 manager's position in northern West Virginia since this time.

6 Q When was that, roughly?

7 A October. October or November.

8 Q The fall?

9 A Yes, of last year.

10 I have a staff assistant, William Denning, and a
11 conferencing officer, Ned Zanarippa, Z-A-N-A-R-I-P-P-A. He
12 conferences citations and orders with the various coal
13 companies that want to contest our actions.

14 And the special investigator, Dan Vetter is his name.
15 And he does investigations into either knowing and willful
16 conduct involved in a citation order and in the mines or
17 discrimination cases for miners.

18 Then I have a secretary and an office assistant.

19 Q Now, William Knepp, does he go by Bill Knepp?

20 A Yes.

21 Q Bill Knepp, I think you said, is assistant district
22 manager for technical engineering?

23 A Right.

24 Q What is his role?

25 A All of the plans work that comes through the

1 district, the supervisors in each of those plan groups work
2 directly for him. So, for instance, Mr. Reitze, who was here
3 this morning, worked for Mr. Knepp. And so, as plans come
4 from his staff to Bill Reitze, then Bill Knepp looks at them
5 before they come on to me.

6 Q Can you run through the sub groups or the parts of
7 Bill Knepp's group?

8 A The ventilation division? So they handle a number
9 of separate required plans that come under the basic heading
10 of ventilation. And under health, that group looks at
11 methane -- I mean, excuse me, respirable dust control issues
12 and other types of health issues, but primarily respirable
13 dust and noise exposure in the mines.

14 And then there are components parts of those. Plans
15 about health are contained in the ventilation plan. But we
16 handle them separately with separate supervisors. David
17 Elkins is the supervisor of that group.

18 Then the roof control group was headed by Billy Owens,
19 on August 6th. Billy retired at the first of the year, and
20 we have not filled that position yet.

21 Q If you know, was he expecting, had he relayed to
22 you his intent to retire before?

23 A He had made, at least a year before August 6th
24 occurred, he had been talking about retiring.

25 Then there's the electrical group. James Kirk, K-I-R-K,

1 is the supervisor of that group.

2 So those are the technical groups under Mr. Knepp.

3 Q And to whom do you report?

4 A I report to the deputy administrator. Right now
5 that position is still an acting position. Terry Bentley is
6 the person who is acting in that position.

7 Q And did you report to him back in August of last
8 year?

9 A Yes.

10 Q And did you report to him -- I guess all of last
11 year, did you report to him?

12 A The fellow who was in that position was John
13 Lankton, and he retired, I thought, during the year. I can't
14 remember exactly when John retired, but he was gone by August
15 6th.

16 Q Okay. Now I'd like to focus a little more
17 specifically on Crandall Canyon Mine, which I assume you're
18 familiar with?

19 A Yes.

20 Q Do you recall when the first time you came across a
21 Crandall Canyon roof control plan may have been?

22 A The specific Crandall Canyon roof control plan
23 involved?

24 Q No, just your first dealings with Crandall Canyon
25 roof control plans.

1 A No, I can't recall when it was.

2 Q Is it fair to say it would have been more than 5
3 years ago?

4 A It could have been any time after September
5 of 2001, when I was transferred to District 9. Because of
6 the routine review of those plans, I mean, it would've come
7 across my desk.

8 Q Were you familiar with any long-wall mining going
9 on at Crandall Canyon Mine in the early part of the decade?

10 A Yes. There were a number of long-wall panels
11 extracted in Crandall Canyon Mine.

12 Q Can you run us through -- and we have a map. If
13 you do want to go to it, we can. But maybe more generally,
14 just run us through the history, so far as you know it, of
15 the mine in the last 10, 15 years.

16 Mr. Paretti. Objection. That is very broad. Can you
17 focus that question?

18 Mr. Findlay. I don't want to lead him.

19 Mr. Paretti. The history of the mine.

20 Mr. Malecki. May I make a suggestion?

21 Mr. Findlay. Sure.

22 Mr. Malecki. Probably the best way to ask him something
23 would be to just say -- ask him his understanding of how he
24 knows where they mined, from place to place in historic
25 sequence, if he knows. That's a way to say it.

1 Mr. Findlay. Let's --

2 The Witness. It would be a lot easier to do it with the
3 map.

4 Mr. Findlay. -- go to the map. We'll ask the court
5 reporter to mark this map as Exhibit 1.

6 [Davis Exhibit No. 1
7 was marked for identification.]

8 BY MR. FINDLAY:

9 Q Mr. Davis, I am going to give you a Sharpie. Feel
10 free to write on that.

11 Mr. Paretti. Can we -- I mean, not at this moment,
12 unless it becomes necessary -- can we get sized-down copies
13 of that map?

14 Mr. Findlay. We can give you one right now, if you
15 want.

16 Mr. Paretti. Yes, thank you.

17 BY MR. FINDLAY:

18 Q When you refer to a specific section, if you could
19 just mark it A, B, C, just right on the map there, and say it
20 out loud.

21 A Certainly a lot of this mining occurred when I was
22 not in District 9.

23 Q Right. Let's take it from your involvement in
24 District 9 on forward.

25 A Well, can I look at it a little closer? Because

1 some of these things are very small.

2 Okay. All the panels are numbered sequentially, so
3 that's easy to look at the map, but those numbers are on the
4 map. And mining in the mine started back over in this area.

5 Q And you're pointing to panels 1 and 2?

6 A One, 2, 3, 4, 5, 6. This panel was skipped,
7 because there is a stream on the surface above the mine.

8 Q Could you mark that panel, just put an A next to
9 the panel you're talking about?

10 A Right here?

11 Q Yeah. Thank you.

12 A So that was not long-walled. And then they drove
13 advanced mains out this direction, turned and went up the
14 hill to the property line, and drove panels 7, 8, 9, 10, 11,
15 12. Actually, they had driven all the way out to here.

16 Q Can you mark that B where they had driven all the
17 way out to?

18 A That is the extreme western edge of the mine, and
19 it's bounded by a substantial geologic fault, and so it could
20 go no further. The fault just ended it, and it was solid
21 rock ahead of them. So they backed up.

22 And these were pre-existing. This is what we call the
23 south mains.

24 Q Could you mark that?

25 A With a C. These are the south mains. They were

1 pre-existing because they service these panels. And so they
2 developed a set of -- well, panels 13, 14, 15, 16, 17 and 18
3 in this area of the mine.

4 And right here is September of '01.

5 Q So you're pointing to a date. Are all of the dates
6 that are represented on that map the date that that panel was
7 mined?

8 A The way these dates are located on the map on the
9 long-wall panels, that would indicate the mining that
10 happened during September of '01, from this line to the end
11 of the panel. So that is 1 month's worth of mining.

12 Q Wherever it says panel, does that mean it was
13 long-wall?

14 A It means long-walled panel.

15 Q When you said they drove out to point B there, what
16 is that area?

17 A This is the west mains of the mine.

18 Q What's a main?

19 A The main set of entries that provide access to the
20 mine and the ventilation. The ventilation is coursed through
21 those entries.

22 Q Is that room in pillar mining?

23 A No. Well, the main entries are developed as Roman
24 pillars. And that's required for access. But it's not to be
25 confused with what we call pillar mining, which is actually

1 secondary mining or the removal of the pillars. This is
2 development mining, which results in the pillars, but they
3 are left in place.

4 Q And when would that take us through, then?

5 A Well, that brought us up to September, '01, when I
6 came on board.

7 Then they mined panel 17, panel 18. Then they started
8 to jump about. Panel 19 was back over here on the eastern
9 side of the mine. It was a short panel. It was abbreviated
10 because of this stream channel, which they were not allowed
11 to subside the ground underneath this stream.

12 Q And that is where you have marked A?

13 A Yes. This thing travels all up through here. So
14 they could not long-wall under that; they could not extract
15 pillars under that. They had to leave the pillars in place.

16 So from panel 19 you can see they have jumped back
17 further east again. Short panel 20, short panel 21, and then
18 jumped up here to panel 22 on the other side of the main
19 entries of the mine.

20 Q Is there any significance to a short panel versus
21 one of the other panels?

22 A Well, a short panel, nobody wants to drive a short
23 panel. There's a lot of development and a lot of set-up.
24 You want a panel to be as long as possible. But they are
25 constrained in this side of the mine by coal quality and coal

1 height. It's not ideal. They are constrained on the west
2 side of the mine by this Joe's Valley Fault.

3 Q When you say coal height, you mean the depth of the
4 seam, or what exactly do you mean?

5 A The thickness of the seam. The thickness of the
6 seam. They couldn't come up further to the north up here
7 because the thickness had decreased and the long-wall
8 equipment is designed for a certain height. And, you know,
9 it's millions of dollars to buy a set of long-wall equipment,
10 and they didn't want to buy new equipment to mine a thinner
11 seam.

12 Q Now, just to be clear, when you say they, you're
13 referring to the operators?

14 A The operators. GENWAL, at the time.

15 Q Can you run us through, to the extent you know --
16 GENWAL is the operator. Were they owned by someone else?

17 A A Scottish family. I don't know much about their
18 corporate structure.

19 Q Fair enough.

20 A But there was a Scottish family that had a great
21 deal of financial interest in the mine. I'm not positive
22 they had 100 percent ownership, but they seemed to have
23 substantially more than half. I never heard of another
24 entity.

25 Q What period of time was that, that they had the

1 substantial ownership?

2 A Well, it would've, I think, been throughout the
3 life of the mine until Murray Energy got involved and
4 purchased the mine.

5 Q And does Andalex Resources mean anything to you?

6 A Yes.

7 Q Who are they, or what are they?

8 A Well, it's the same group of people, and they
9 operated -- Andalex and GENWAL, as far as I was concerned,
10 was always the same people, but they operated under two
11 different names. And I can't explain exactly why, why they
12 did.

13 But the mines were on the east and on the west side of
14 the Price Utah Valley, and the Andalex mines were on the east
15 side. The Andalex mines -- the mines on the east side of the
16 Price Valley, which is -- the Price Valley was a breached
17 anticline, geologically speaking, and so the coal kind of
18 dips off from either side. And in the middle of this big,
19 broad valley, it had all been eroded, and there was no coal
20 at all. So the coal is up against the mountains on both
21 sides of this big, broad valley.

22 The mines on the east side of the valley are gassy coal
23 mines, and the mines on the west side are not.

24 Q When you say gassy coal mines --

25 A Means that they have methane issues in the mines.

1 There's a significant amount of methane associated in the
2 coal. But there was not that case on the west side, where
3 the Crandall Canyon and the South Crandall Canyon Mines are
4 located.

5 Q So Crandall Canyon and South Crandall Canyon
6 were --

7 A On the west side of the Price Valley.

8 Q Which other mines were on that side?

9 A Energy West operated a number of mines there over
10 the years. The one that was still operating last August was
11 the Deer Creek Mine. There's another mine over there that is
12 called the Co-Op Mine.

13 Q So the only mines that were on that side were owned
14 by GENWAL or Andalex?

15 A Just those two, Crandall and South Crandall.

16 Q And which were the mines on the other side?

17 A That was -- operating at the time, in August, was
18 the West Ridge and the Aberdeen Mine. But they also had the
19 Pinnacle and the Apex Mine.

20 Q Who is they?

21 A Well, they were both the former owners and then the
22 Murray ownership. They bought the whole group of mines. But
23 Murray never operated Pinnacle. And Apex I think had been
24 closed for years before Murray got there. They weren't doing
25 much. The former owners were not doing much at all in

1 Pinnacle at the time. But I think Murray, under his
2 ownership, they removed the remaining equipment out of
3 Pinnacle.

4 Q Just to place it in time, when you say when Murray
5 got there -- and we'll talk about this more later -- but that
6 was August of last year? I take that back -- August of 2006?

7 A To my recollection. I can't recall the exact
8 dates.

9 Q Okay. So now we've gone through a good chunk of
10 the history of Crandall Canyon Mine. And now, focused on
11 Crandall, when was the first time anyone from the mine told
12 you they might be interested in mining the barrier pillars?

13 Mr. Paretti. Objection.

14 You can answer, if you can answer.

15 Mr. Findlay. What's the objection?

16 Mr. Paretti. You're assuming that someone from the
17 Crandall Canyon Mine asked him about mining the barriers.

18 Mr. Findlay. Fair enough.

19 BY MR. FINDLAY:

20 Q Did anyone at the Crandall Canyon Mine ever
21 indicate to you that they might want to mine the barriers?

22 A When I remember entering that discussion, it
23 occurred in a meeting in our offices where Laine Adair was
24 present, David Canning and David Hibbs, I believe. There
25 might have been some others, but those are the three

1 principals that I can remember.

2 And the meeting was to discuss -- the reason they came
3 was they wanted to talk about some ventilation issues that
4 were ongoing in the Aberdeen Mine. And I sat in on the
5 meeting discussing the Aberdeen issues.

6 At the end of that meeting, then Laine Adair rolled out
7 on the table and said, "As long as we're here, I want to talk
8 about Crandall and where we want to go." And he indicated,
9 at that time, mining over in the west side, which would be
10 over by the west mains.

11 But at that point in time, I left the meeting, and he
12 was going to talk about projections with Billy Owens. And so
13 that is about the sum total of my contact with the operator,
14 in terms of when they were going to mine on the western side.

15 Q Do you remember when that meeting was, roughly?

16 A No. I wouldn't want to speculate. I can't
17 remember when the meeting happened.

18 Q Like a season? I mean, was it before Murray got
19 involved, as we have been referring to?

20 A No, it was after Murray, because David Canning was
21 a Murray employee who came from the east to help them with
22 ventilation issues in the west.

23 Q That was my next question. So those three
24 gentlemen you mentioned, do you know what roles they played
25 or what roles did they present themselves as playing?

1 A Oh, yeah. Laine Adair is the general manager of
2 the properties. He was the general manager for the prior
3 owner, too; he stayed on.

4 Sam Quigley was the vice president, I guess, in charge
5 of all the previous owner's operations. As soon as Murray's
6 ownership became official, he left the company. But Laine
7 Adair stayed on, as did many of the other engineering folks
8 that we dealt with.

9 David Hibbs was a new engineer who had worked with
10 Murray in the east. I don't know how long he did, but he
11 came on board when Murray bought the properties.

12 Q You say Laine Adair managed or supervised -- I
13 forgot what the word was -- the properties. What do you mean
14 by the properties?

15 A All those mines -- Aberdeen, West Ridge, Pinnacle,
16 Apex, Crandall Canyon, South Crandall Canyon.

17 Q So including Crandall Canyon, then.

18 A Yes.

19 Q So after that first you heard of wanting to pull
20 the barriers, when was the next time, or was there a next
21 time, that idea was presented to you?

22 Mr. Paretti. Objection. I don't know that you
23 established that that conversation -- that this witness had
24 any discussion about barriers. I believe he testified that
25 he left the room after -- my notes indicate Mr. Adair raised

1 Crandall and wanted to talk projections with Billy Owens, and
2 I believe he testified that he left.

3 BY MR. FINDLAY:

4 Q At that meeting, and I think the meeting with Laine
5 Adair and Mr. Hibbs, did anybody ever raise the issue of
6 removing barrier pillars?

7 A No, not while I was in the room. All I saw was
8 kind of a broad brush, you know, we want to do some mining
9 over here. So Billy stayed on to talk to him about what he
10 would need in terms of plans. But I wasn't there when that
11 conversation occurred.

12 Q So what led you to believe -- or were you led to
13 believe that barrier pillars were discussed at that meeting?

14 A Well, I can remember a statement by Billy Owens,
15 basically, to the effect that we were going to need to take
16 -- for you to have your rock mechanics people take a look at
17 this.

18 Q When Billy told you that, was that the first
19 time --

20 A That was the first time.

21 Q Do you remember when Billy would have told you
22 that?

23 A Well, it was just before I left the room, when he
24 said we wanted to mine on that side of the mine. They didn't
25 use the term "barrier pillars" or anything. But the map is

1 over on that part of the table and Billy is over there, and
2 he said, well, we're going to need you to have your rock
3 mechanics people take a look at this. Those might not be the
4 exact words, but --

5 Q And when were the -- strike that. Did anyone from
6 the mine raise with you pulling barrier pillars?

7 A No, not directly with me.

8 Q At any point?

9 A No, not at any point.

10 Q And when you learned from Billy about this meeting,
11 what was your reaction to their desire to pull barrier
12 pillars?

13 Mr. Malecki. I object, because he said he left the
14 room.

15 Mr. Findlay. And let me clarify then.

16 BY MR. FINDLAY:

17 Q Did you ever talk about pulling barrier pillars
18 with Billy Owens after that meeting?

19 A Not until actually the plan had been worked out,
20 and it was some time much later in time.

21 Q Do you remember when that was?

22 A No, I do not.

23 Q You say after the plan was worked out. Do you mean
24 after you saw a submitted plan?

25 A After a submitted plan had worked its way through

1 the approval process.

2 Q By working its way through the approval process --

3 A That means that Billy Owens had received a plan
4 submittal and had worked back and forth with the company on
5 the telephone about various aspects of it, and they reached
6 an agreement on the pages to be submitted.

7 Mr. Findlay. I will ask the court reporter to mark
8 Exhibit 2.

9 [Davis Exhibit No. 2
10 was marked for identification.]

11 Mr. Findlay. I will ask you to just flip through that
12 real quick.

13 Mr. Paretti. Patrick, can I ask who produced this
14 document? And do we have it?

15 Mr. Findlay. You have it. I believe this version is
16 off of the MSHA Web site.

17 Mr. Paretti. Was it produced by MSHA to you, or
18 something you pulled off MSHA?

19 Mr. Findlay. Oh, well, this may or may not be on the
20 MSHA Web site. This was actually attached to an e-mail that
21 was produced to us by the Department of Labor.
22 Unfortunately, it's not Bates-stamped. You then do have it.

23 Mr. Paretti. I should've asked and I failed to: The
24 map, who produced that?

25 Mr. Findlay. That was also produced to us by the

1 Department of Labor. It was produced as a PDF file. We
2 printed that.

3 Mr. Paretti. Okay.

4 [Discussion off the record.]

5 Mr. Paretti. Just for the record, I want to preserve an
6 objection to Exhibit 2 insofar as it's an attachment to an
7 e-mail rather than the whole document. I think, under the
8 rules of evidence, if you produce part of a document, I am
9 entitled to the whole document. I am not going to press that
10 objection at this point, but I reserve it for the record.

11 Mr. Findlay. And I'd just like to point out that,
12 whatever it is, you have the whole document. You're entitled
13 to whatever you like, but you have the document.

14 Mr. Paretti. I know, but I think insofar as the
15 document is an e-mail with an attachment, if I get the
16 attachment, I think I am entitled to the e-mail. And I
17 reserve the objection.

18 Mr. Findlay. You have you the e-mail.

19 BY MR. FINDLAY:

20 Q Mr. Davis, have you had a chance to look through
21 what has been marked Exhibit 2. Do you recognize this
22 document?

23 A I have seen it before.

24 Q In what context have you seen it before?

25 A I first saw it after August 6th.

1 Q And how was it delivered to you? Was it an e-mail?

2 Mr. Malecki. Again, I would like to just instruct the
3 witness, if this is something that came to your attention
4 through any kind of an interview or accident investigation
5 process, do not disclose that. But if you discovered it from
6 some other source, you can say.

7 The Witness. I saw this during the rescue operation.

8 BY MR. FINDLAY:

9 Q Okay. And how did you come across it?

10 A I believe a copy of it was sent to us by Billy
11 Owens.

12 Q Did he tell you if he had ever seen it before he
13 sent it to you?

14 A Yes, he had seen it.

15 Q And did he tell you when he had seen it?

16 A No. No, I can't answer that. I don't know.

17 Q Now, correct me if I'm wrong. Is it true that the
18 first time you had heard from the company about their plans
19 to mine the barrier, it was when they submitted a formal plan
20 to your office?

21 Mr. Paretti. Objection. Didn't you ask him about that
22 earlier?

23 Mr. Findlay. I'm just trying to -- what is the
24 objection? Asked and answered?

25 Mr. Paretti. Yeah, asked and answered, and

1 characterizing it, "isn't it true." That is all leading.
2 It's a highly leading question, when he has offered up
3 testimony as to what it was, to come back and say, "isn't it
4 true that," and then I think, to me, you didn't accurately
5 restate his testimony in asking your question. That's my
6 objection.

7 BY MR. FINDLAY:

8 Q Is this the document to which you referred as the
9 plan documents that were submitted to you?

10 A I don't know when Billy Owens got this, in the
11 process of working through the roof control plan for the
12 north barrier.

13 Mr. Findlay. I will ask the court reporter to mark this
14 Exhibit 3.

15 [Davis Exhibit No. 3
16 was marked for identification.]

17 Mr. Findlay. If you would, take a moment to peruse this
18 document.

19 Mr. Paretti. I note that these were Bates-stamped.
20 Were these produced by MSHA or the Department of Labor?

21 Mr. Findlay. Yes. S1.2 and following were Department
22 of Labor productions. Now, there were a number of Department
23 of Labor documents that were double Bates-stamped. I don't
24 know --

25 Mr. Paretti. Okay.

1 Mr. Findlay. I mean, it is what it is. This was
2 produced by the Department of Labor.

3 Mr. Paretti. Okay.

4 BY MR. FINDLAY:

5 Q Do you recognize this document?

6 A No.

7 Q You don't think, in looking through this, that you
8 have ever seen it before?

9 A This is an e-mail from Leo Gilbride, who works at
10 Agapito, to Laine Adair, and I've never seen this.

11 Q Fair enough.

12 Now I'd like to turn our attention to the period of time
13 that we've been referring to as when Murray took over.

14 Mr. Findlay. I will ask the Court Reporter to mark this
15 as 4, please.

16 [Davis Exhibit No. 4
17 was marked for identification.]

18 BY MR. FINDLAY:

19 Q If you would, take a look. And to give a little
20 context, this document does not have a Bates stamp. We
21 couldn't find a Bates-stamped copy of it. It was produced by
22 the Department of Labor as an electronic-mail file, and we
23 printed it. This is Exhibit 4.

24 When you're done, I'd ask you, do you remember receiving
25 this e-mail?

1 A Yeah, I've seen it before.

2 Q You've seen it before recently or --

3 A No, no. It was sent to me.

4 Q Who is Ted Farmer?

5 A Ted Farmer is the supervisor of one of the work
6 groups in the Price field office.

7 Q Which work group?

8 A Price 01 is what we call it.

9 Q To back up, what are the work groups?

10 A Well, that is my only field office that has as
11 large a number of mines as it does, so it has two supervisors
12 and two groups of inspectors.

13 Q Did you follow up with Mr. Farmer on this e-mail at
14 all by phone or return e-mail?

15 A That I'm not as clear on. I remember Bob Cornett
16 and I talked about this. We didn't know really what it was
17 all about, his statement he's out for blood, to make an
18 example of the two supervisors.

19 Q Did you have any idea who the person who left him
20 that message was?

21 A Where he says he doesn't recognize the voice?

22 Q Right.

23 A No. I have no idea.

24 Q Do you know if they ultimately did cancel the
25 meeting?

1 A I don't think that this particular meeting was
2 held. I know that there were other occasions, at least one
3 that I'm sure that Ted told me about, where he talked to Mr.
4 Murray. But I don't think it was this particular meeting
5 that was asked for.

6 Mr. Findlay. I would ask the court reporter to mark
7 this Exhibit Number 5.

8 [Davis Exhibit No. 5
9 was marked for identification.]

10 BY MR. FINDLAY:

11 Q And I'll ask you to take a look at this document.
12 I will also note again for the record this was produced as an
13 e-mail file and Bates-stamped. I believe the minority also
14 got a copy.

15 If it helps, I believe all of these un-Bates-stamped
16 e-mails were produced in the 10/19/07 production by the
17 Department. So they were all on one or two CD-ROMs or
18 DVD-ROMs. So, again, this is one we've actually printed.

19 My first question is: Do you remember composing and
20 sending this e-mail?

21 A Yes, I do.

22 Q Who is -- you may have already answered, but who is
23 John Lankton?

24 A John Lankton was my supervisor at the time. He was
25 the deputy administrator.

1 Q At the time; you mean during September of '06?

2 A The date on this e-mail, September 1 of '06.

3 Q And who is Melinda Pon?

4 A Melinda Pon is the staff assistant, the special
5 assistant I guess is the correct term, to the administrator.
6 So, at this point in time, she works for Kevin Stricklin.

7 Q At this point in time, being September of 2006?

8 A No, I'm sorry; right now, today.

9 Mr. Paretti. I'm going to object, and I'm going to
10 object to this line of questioning unless counsel can proffer
11 to me what the scope of this investigation is, the death and
12 the accidents relating at Crandall Canyon. I mean, I know
13 relevancy is a broad standard in depositions, but we're still
14 constrained by the scope of the investigation.

15 What, if any, bearing does this e-mail have?

16 Mr. Findlay. If you're going to make an objection,
17 again, I'd point you to Rule 24 of our committee rules. And
18 I'm quoting, "Any objection made during a deposition must be
19 stated concisely and --

20 Mr. Paretti. I'm objecting, and I'm asking -- that's
21 my concise -- this is the objection. I object; this goes
22 beyond the scope of the investigation. And I will instruct
23 the witness not to answer further questions about this
24 document unless you give me an answer.

25 Mr. Findlay. Mr. Paretti, do you represent the witness?

1 Mr. Paretti. No.

2 Mr. Findlay. Under what authority would you direct the
3 witness --

4 Mr. Paretti. Under the authority granted the minority
5 of this committee. If you don't agree with my instruction,
6 if you want to force it, call the Chairman. I'm not trying
7 to be a jerk. It is my right as much as yours to instruct
8 the witness to answer or not answer.

9 Mr. Findlay. And I don't think I have the right to
10 instruct the witness not to answer.

11 Mr. Paretti. Okay. I believe that I do. And like I
12 said, if you want to take a break for 5, 10 minutes, come
13 back, we can talk on the record about it. I just do not see
14 any -- I mean, this, to me, just has no bearing on what --
15 this committee was given deposition authority pursuant to a
16 resolution of the House. This doesn't seem to have any
17 bearing on --

18 Mr. Findlay. And we know that now, or do we want to
19 wait until we've --

20 Mr. Paretti. In terms of allowing examination into
21 things wholly outside the scope, yeah, I'm willing to stop.
22 Unless you want to proffer an explanation as to how this is
23 in some way relevant.

24 Mr. Findlay. This is an investigative deposition.

25 Mr. Paretti. Patrick, you can explain to me six times

1 what it is. I'm telling you what I'm telling you. I'm
2 instructing the witness not to answer that question based
3 about this document. If you want to raise the issue to the
4 Chairman, get the Chairman on the phone and we'll have the
5 discussion. I don't think I'm outside of my right in doing
6 so.

7 Or, as I said, let's take a break for 10 minutes, come
8 back, and if you want to explain to me why you think this is
9 relevant or likely to lead to relevant, we can revisit the
10 issue. Until then, yes, that is what I'm doing.

11 Mr. Findlay. Is your position stated now?

12 Mr. Paretti. Yes.

13 Mr. Findlay. May I continue now?

14 Mr. Paretti. You may.

15 Mr. Findlay. Does the Department have a position on
16 this?

17 Mr. Malecki. Our concern is that this, to some extent,
18 involves a personnel matter and a complaint by a private
19 employee of a mine operator of a sensitive nature. Our big
20 concern is that this is kind of getting into, I think, a
21 fairly side dispute -- we say that's true. It refers to the
22 alleged victim and their name, and then the person named
23 [REDACTED], who may or may not have been subject to some
24 sort of corrective action as a result of this. And you can
25 see how this could end up being a matter of privacy and

1 personal issue.

2 That's our main concern. We could tell you, if you
3 wanted to, how we handled this situation. But to do so, I
4 think we should be sensitive about how this comes out and how
5 these people would be affected. Because it was a dispute
6 between two employees, and their privacy should be respected.
7 And that's our main concern here.

8 Mr. Findlay. You're not directing the witness not to
9 answer?

10 Mr. Malecki. I forgot what the question was. If we
11 could go back to the exact question that has been proffered.
12 That has been a while ago. Could we go back?

13 Mr. Findlay. Would the reporter read back the question?

14 [The reporter read the record back as requested.]

15 [Discussion off the record.]

16 Mr. Findlay. That question was answered. I believe Mr.
17 Paretto made his objection when there was no question
18 pending.

19 Mr. Paretto. My objection is to the line of
20 questioning, counsel. I was reading the exhibit that was put
21 in front of me.

22 Mr. Findlay. So is your objection to the introduction
23 of the document?

24 Mr. Paretto. Yes, I object to the introduction of the
25 document, and I object to the line of questioning based on

1 the document.

2 Mr. Findlay. Okay, so there is no question -- you
3 directed him not to answer. What did you direct him not to
4 answer?

5 Mr. Paretti. I am directing not to answer any questions
6 about this document.

7 Mr. Findlay. So you're directing him to not answer
8 questions not yet proffered?

9 Mr. Paretti. Yes.

10 Mr. Findlay. Okay. Let's go off the record.

11 [Discussion off the record.]

12 Mr. Findlay. Let's do a 15-minute break.

13 [Recess.]

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1 RPTS [REDACTED]

2 DCMN [REDACTED]

3 [3:02 p.m.]

4 Mr. Findlay. We're back on the record. Mr. Davis has
5 joined us again in the deposition room. I will ask
6 Mr. Paretto to address his previous objection.

7 Mr. Paretti. Minority staff had objected to the
8 introduction of a document that they previously introduced,
9 Davis Exhibit 5, and any line of questioning relating to that
10 document, and had instructed the witness not to answer. Upon
11 an agreement reached separately by counsel and memorialized
12 in a separate transcript, the document has been withdrawn and
13 reintroduced as a redacted version.

14 On that I am reserving fully the right to object to the
15 substance at a later time. I am withdrawing my instruction
16 to the witness to not answer and proceed in this in a normal
17 course.

18 BY MR. FINDLAY:

19 Q Okay. Now this is going to -- and I apologize --
20 be a little awkward because we're going to attempt not to use
21 the names that are blacked out here. So for everybody I ask
22 your forbearance. This will be -- my first question related
23 to this is who is the individual. And I don't mean his or
24 her name. The position of the individual.

25 And I'm just going to read from the e-mail: Continue to

1 push the sexual harassment issue involving blank.

2 Who is that individual? What position does he or she --
3 what role does he or she play?

4 A The individual is one of my coal mine inspectors.

5 Q And where is that individual located?

6 A He works out of our Price, Utah field office.

7 Q And was he responsible for inspecting the Crandall
8 Canyon Mine?

9 A He had been making inspections there, yes.

10 Q When was your first interaction with Bruce Hill?

11 A I would guess within several months of the Murray
12 Energy Corporation purchasing the mine.

13 Q So now, looking back to the date of this one,
14 September 1, this e-mail, September 1, 2006, is it possible
15 that this was your first interaction with Bruce Hill or this
16 relates to your first interaction with Bruce Hill?

17 A It's possible. I'm not positive of that, but it's
18 possible.

19 Q Do you think it's probable that this was your first
20 interaction?

21 A Probably.

22 Q Okay. Now in the e-mail you go on to say, they
23 claim -- and I'm quoting now in the second sentence, "They
24 claim they have more information but thus far have only given
25 us the investigative report done by Laine Adair and Garth

1 Nielson," N-I-E-L-S-O-N, "under the previous ownership."

2 First off I'll ask, who is Garth Nielson?

3 A Garth Nielson was the mine foreman.

4 Q And he was the mine foreman in 2006?

5 A Yes.

6 Q Do you know what his role is now?

7 A He has no role. He is no longer employed by the
8 company.

9 Q And did you review the investigation report done by
10 Mr. Adair and Mr. Nielson?

11 A Yes, I saw a copy of that.

12 Q What did you mean when you said "continue to push"?
13 And it's the first sentence I'm reading from, "continue to
14 push sexual harassment issue involving the inspector"?

15 A Well, I had thought that it might have just kind of
16 gone its course. And then it seemed to come back to the
17 forefront after the ownership changed in the company.

18 Q So when you say "gone its course," did this
19 incident or this investigation take place before the Murray
20 acquisition?

21 A The incident took place before. And yes, the
22 investigation, my investigation of it, took place before.

23 Q And what led you to believe that it had been all
24 finished up?

25 A Just I hadn't heard much in terms of complaints

1 from the company.

2 Q So were you surprised when Mr. Murray and Mr. Hill
3 raised the issue?

4 A A little surprised.

5 Q In what context did they raise the issue?

6 A Well, I guess in the context of it being an
7 incident of sexual harassment.

8 Q Right. Was it a phone call or did you have a
9 meeting with them?

10 A Oh, no. It wasn't a meeting. It was a phone call.

11 Q With Mr. Murray and Mr. Hill directly?

12 A No, not with Mr. Murray; with Mr. Hill.

13 Q Okay. But is your understanding that it was at
14 Mr. Murray's request?

15 A I don't understand that, no.

16 Q Okay. Well, I guess my question is how come you
17 wrote Bob Murray, in the second command, Bruce Hill continued
18 to push instead of just Bruce Hill continues to push?

19 A Oh. I guess I just inferred that Mr. Murray was
20 behind them.

21 Q And what led you to infer that?

22 A His reputation.

23 Q And what was his reputation?

24 A His reputation is -- of trying to -- to confound
25 inspection activities at any of these mines throughout the

1 country.

2 Q And how did you come to hear of his reputation?

3 A With discussions with other district managers in
4 our quarterly meetings from the districts where his mines
5 were, in the eastern U.S.

6 Q And to your knowledge, was his acquisition of the
7 Crandall Canyon and the other mines he acquired from the
8 Scottish family his first foray into western mines?

9 A I thought it was. But during the -- during the
10 rescue operation when he was president at the mine and, you
11 know, many just conversations with folks during that period
12 of time, I come -- came to find out that he had owned a
13 number of the properties that are still actively mining coal
14 in Utah, back in the sixties. When I say he "owned," he did
15 not personally own them. He was still an employee of a
16 larger coal company back in those days. But he -- he had
17 some management involvement in those mines and that came as a
18 big surprise to me.

19 Q How come it came as a surprise?

20 A I just always thought he was an eastern coal
21 operator.

22 Q And going back to the complaint that you talk about
23 or write about in this e-mail, did you come to a conclusion
24 as to whether the sexual harassment complaint had merit or
25 not?

1 A I did. And it was after consultation with our MSHA
2 human resources people in our region, which is handled out of
3 Dallas, Texas, and then also with discussions with our --
4 both our own MSHA HR people in Arlington, Virginia.

5 Q And what were your conclusions?

6 A That it was definitely not an incident of sexual
7 harassment but that it was, in fact, an issue of
8 inappropriate conversation or maybe inappropriate conduct.
9 Conversational conduct, not physical contact, that sort of
10 thing.

11 Q Right. Then in the last sentence of the first
12 paragraph you write, "Murray and his people are making wild
13 statements and things are getting out of control right now."
14 What did you mean by that?

15 A What I knew secondhand. And that being a statement
16 that Mr. Murray made that if -- if my inspector in question
17 here came back on his property, that he was going to call the
18 sheriff and have him arrested.

19 Q And so that's the wild statement to which you
20 referred?

21 A Yes.

22 Q Did you relay your findings, and I guess MSHA's
23 findings, to the company, the mine?

24 A I did. But I had not done so at the point in time
25 that this e-mail was sent.

1 Q Do you remember when you did it?

2 A At some point after that. And I'm really foggy on
3 the dates. I can't say accurately.

4 Q It's fair enough. I think we're done with
5 Exhibit 5.

6 Did any other issues arise at the Crandall Canyon Mine
7 or the other mines that Mr. Murray acquired that, in your
8 mind, were brought on by his acquisition of those mines?

9 Mr. Paretti. Objection. Vague. Could you just clarify
10 that? Clarify the question. The witness can answer the
11 question if he understands it.

12 The Witness. There were not issues directly involving
13 MSHA and our enforcement. But I was aware of his -- I was
14 made aware by my supervisors in the field office, their price
15 -- that when he came on the property to meet with his people
16 the first time and called them all together in a meeting,
17 that he -- there were a couple of the miners who didn't seem
18 to be paying attention and he fired them on the spot, and
19 then after the meeting he hired them back. And they were
20 telling me that this is an example of how he -- how he
21 operates and how he makes certain that his employees know
22 that he's in charge.

23 BY MR. FINDLAY:

24 Q And which supervisors were these?

25 A This would be Ted Farmer and Bill Taylor.

1 Q And they had been in these meetings?

2 A You know, I couldn't say that they were actually in
3 that meeting, but I -- word passes around pretty quickly.

4 [Davis Exhibit No. 6
5 was marked for identification.]

6 BY MR. FINDLAY:

7 Q I will ask you to take a look at this document. I
8 will note that this version came off of the MSHA Web site. I
9 believe there were parts redacted. It looks like there were
10 parts redacted by MSHA. But I don't anticipate that to be
11 relevant.

12 Once you have had a chance to look, let me know if
13 you've ever seen these documents or this compilation of
14 documents before.

15 A Yes, I've seen them.

16 Q And what is it?

17 A This is our approval of their request for an
18 amendment to their roof control plan that would permit them
19 to develop -- mine the north barrier.

20 Q And by their plan, you mean the Crandall Canyon
21 Mine operator's plan?

22 A Plan that they submitted to us, yes.

23 Q Were you aware of a plan to develop and put pillars
24 in the north section of main west in the Crandall Canyon
25 Mine?

1 A Yes.

2 Q And do you know why that entire proposal wasn't put
3 forth in this particular document?

4 A Yes.

5 Q Can you run us through that whole process?

6 A This -- this was from general discussions with
7 Billy Owens, our roof control supervisor, and with Bill
8 Knepp, his supervisor, my assistant district manager, about
9 concerns about taking this -- this development and retreat
10 mining in this area of the mine, but kind of in a
11 step-by-step phase rather than -- they could have well
12 submitted a plan to develop and retreat both the north and
13 the south barriers as one, but we would not do that.

14 Q You say we would not do that. Was that Billy
15 Owens's recommendation?

16 A It was his recommendation that I agreed with. And
17 so did Bill Knepp.

18 Q And in lieu of that, what did you recommend that
19 they -- did he say "step by step" -- what did you mean by
20 that?

21 A Well, in this plan, we have only granted them
22 permission to drive the entries and associated cross-cuts in
23 the north barrier so it could give us time to evaluate how
24 that mining progressed before we would enter them into any
25 approval to retreat mine that.

1 Q So driving the entries and all of that is what is
2 meant by development?

3 A Yes.

4 Q So this was the result of, for lack of a better
5 term, a negotiation between MSHA and the company?

6 A Well, it's the result of our routine planned
7 approval process.

8 Q Once they submitted it -- and now I'm looking at
9 the second page of this -- it looks like they submitted it
10 maybe on the 11th and it finally got to you, based on the
11 received stamp, on the 13th.

12 What went on with this document between the 13th and
13 when it appears you approved it on the 21st?

14 A This -- this would have been with Billy Owens, and
15 he would have been looking at all of the aspects of basically
16 the prudence of approving this plan.

17 Q And it notes here, it's got -- I'm looking at the
18 first page now, 4 slash 5, William P. Knepp, I assume on
19 behalf of you, Allyn C. Davis. Is that the normal practice?

20 A Well it's the normal practice if I'm out and about
21 in the district doing something else.

22 Q So I take it you were out and about on the 21st of
23 November?

24 A Yes. I can't tell you where I was, but I was out
25 and about. And so Bill signed in my absence.

1 Q Fair enough. You may not know, since you were
2 gone, but did Mr. Owens relay to you any thoughts about this
3 particular plan?

4 A Well, we had talked previously. And that was what
5 I'd mentioned earlier, that this needed to be done in a
6 systematic fashion so that we could take a look at how the
7 development mining went, and if we saw real problems with
8 that, then we wouldn't approve retreating.

9 Q Why did you feel the need to take a look at how the
10 development went?

11 A Well, just because these were relatively narrow
12 barriers between -- in the long-walled gob district.

13 Q And what's the import of having relatively narrow
14 barriers?

15 A Just -- this would be the final mining in that
16 area, and then removing a substantial amount of the coal in
17 that area, support in that area.

18 Q Okay. Would it have been roof control issues that
19 would --

20 A Yes. That's the general concern, yes.

21 Q What was the next stage in the progression of this?

22 A The next thing that happened, really, was Billy
23 Owens traveling to the Crandall Canyon Mine to look at how
24 this development was progressing. It wasn't totally
25 finished, but they had mined substantial -- substantially

1 most of that north barrier on the initial development mining.

2 Q I'm going to ask the court reporter to mark
3 Exhibit 7. And I will ask you to take a look at this
4 compilation of documents.

5 [Davis Exhibit No. 7
6 was marked for identification.]

7 BY MR. FINDLAY:

8 Q I will note this was introduced by UtahAmerican
9 Energy and/or Murray. Okay. And now it doesn't appear --
10 correct me if I'm wrong -- that you received this copy. You
11 don't seem to be a recipient.

12 A No.

13 Q So then turning to the next page, do you recall
14 ever receiving or reviewing the rest of this exhibit? Which
15 I'll note for the record ends in Bates stamp 914 through 916.

16 A Yes. I'm aware of it.

17 Q And would you have received it around January 10?

18 A Yes. Often these would be electronically sent to
19 us and then the hard copy put in the mail the same day.

20 Q Now looking at page 914.

21 A Okay.

22 Q I guess I'd ask you to explain, if you know, what
23 exactly 914 and 915 and its attachment are requesting that
24 you do at that point.

25 A This is as a consequence of Billy Owens traveling

1 to the mine and looking at the north barrier. And he made a
2 suggestion, or he told them that while he was there, that
3 the -- that they need to leave some roof coal and not mine
4 the coal all up against the normal rock roof in the mine.

5 Q And you know this because Billy Owens told you he
6 told them?

7 A I'm trying to think at the time. I'm not exactly
8 sure just exactly when Billy told me that he asked that. But
9 I did -- I mean, we've talked about that at some point in
10 time.

11 Q Okay. And what is the significance of leaving roof
12 coal?

13 A Often in a mine where there's problems with the
14 immediate roof rock if it's not real competent, if you leave
15 some coal against the roof it improves the ability to keep
16 the roof up.

17 Q And by "competent," what do you mean?

18 A Well, rock that's not as strong as you would like
19 to have in the immediate roof.

20 Q Was it your understanding that this was ultimately
21 approved?

22 A Yes.

23 Mr. Findlay. Can I ask the court reporter to mark this
24 Exhibit 8 please?

25

[Davis Exhibit No. 8

1 normal.

2 Mr. Paretti. Okay. Thank you.

3 Mr. Findlay. I'll ask the court reporter to mark this
4 Exhibit 9, please.

5 [Davis Exhibit No. 9
6 was marked for identification.]

7 BY MR. FINDLAY:

8 Q Take a look at it and let me know if you recognize
9 this document.

10 A Yes, I recognize it.

11 Q I will just note for the record we also received
12 this -- this copy of it was printed off of the MSHA Web site
13 and it appears there's minor redactions. Again, I don't
14 anticipate those being material today.

15 If you wouldn't mind running us through this, which --
16 where were we in the overall development plan, what did this
17 set of documents mean to you?

18 A This gives the approval permission to do the
19 initial mining or the development mining in the south
20 barrier.

21 Q Is this the same type of development that was done
22 in the north barrier?

23 A Basically the same type. The pillar dimensions
24 were different in the south barrier.

25 Q Were the -- when this was proposed and approved,

1 were the recommended pillar --

2 A Not at this -- now, when I look at this, not at
3 this point in time. This was a submittal that showed the
4 same size pillars as in the north barrier.

5 Q But it's your understanding that it was
6 subsequently modified?

7 A Yes.

8 Q Okay.

9 A The length and the pillars.

10 Q And did you have any discussions with Billy Owens
11 about this particular set of documents?

12 A Not -- no, not specific to this, this particular
13 set of documents.

14 Q But this was consistent with your overarching plan
15 that you discussed with him?

16 A Yes.

17 Q You said the size of the pillars was ultimately
18 changed. Why was that, if you --

19 A Well, there was a -- our plan is not -- does not
20 limit the size of the -- or specifically dictate the size of
21 the pillars. But subsequent to this, they came to us with
22 another plan that did, in fact, show longer pillars. But it
23 didn't -- it doesn't require a change in the plan to lengthen
24 the pillars.

25 Q Do you know what caused them to submit that other

1 plan?

2 Mr. Paretti. Objection. You're asking for him to
3 speculate as to why.

4 Mr. Findlay. I'm asking if he knows.

5 BY MR. FINDLAY:

6 Q Did they give you any reason?

7 A I didn't know at the time why they submitted the
8 pillar -- the change in the pillar length.

9 Q Were you aware of conversations that may have taken
10 place between folks from the mine and Bill Reitze in March of
11 last year regarding bumps or bounces at the Crandall Canyon
12 Mine?

13 A I was aware that there had been conversations.

14 Q And how did you become aware of those
15 conversations?

16 A Because I got a telephone call from Bill Reitze. I
17 know it was the week of March 12, because I was in the -- at
18 the academy, at one of our quarterly managers meetings during
19 that week.

20 Q And where is that?

21 A Beckley, West Virginia.

22 Q Did you hear of the bump, or of a purported bump,
23 from anyone else on your staff that week?

24 A No. No, I did not.

25 Q And then what did Mr. Reitze relay to you about the

1 bump?

2 A Just that the bump had occurred and he had got --
3 the company had gotten in touch with him and they wanted to
4 move their MPL, which stands for the measuring point
5 location. It's a requirement under the regulation that that
6 point be examined to ensure that there's sufficient
7 ventilation to ventilate the entire section of the mine. And
8 we don't have the authority to move that point and not
9 require that the entire portion of the mine be ventilated.
10 And that when he had told the company that no, we would not
11 approve -- approve that, they wanted -- they wanted to move
12 the location so they could resume mining. And we said no,
13 you can't do that. You're going to have to continue to mine
14 back there. I mean, examine back there. And he said that
15 they've decided to seal the area.

16 But at that -- at that juncture of time, we were in the
17 midst of this change in our requirements for mine seal
18 construction. And it was -- it was a very difficult year or
19 so, because every mine operator had to submit and get new
20 seal plans approved. And this operator did not have a plan
21 approved to build a seal in Crandall Canyon Mine.

22 Q Okay.

23 Mr. Paretti. Patrick, are you about to introduce other
24 documents to your --

25 Mr. Findlay. Yeah. Do you want to take a break?

1 Mr. Paretti. Yeah. We'll take a short one.

2 [Recess.]

3 Mr. Findlay. We're back on the record. I will ask the
4 court reporter mark the next exhibit, Exhibit 10.

5 [Davis Exhibit No. 10
6 was marked for identification.]

7 BY MR. FINDLAY:

8 Q Mr. Davis, I will ask you to take a look at it.
9 Let me know if you remember receiving it. Meanwhile, let me
10 note for the record, this doesn't have a Bates stamp. This
11 is another one of those e-mails that was produced to us by
12 the Department as an e-mail file and we printed it. So it
13 might have looked a little different when you received it, of
14 course, but --

15 A I remember the e-mail.

16 Q Okay. Now, the subject of this e-mail is
17 construction of seals at Crandall mine. Did you understand
18 the subject to be referring to the mine company's desire to
19 seal the north barrier after you -- or after your folks told
20 them they couldn't move the MLP?

21 A MPL.

22 Q MPL.

23 A Yes. Yes. It was very specific to that one
24 section of the mine. That's all it extended to.

25 Q And now I'm looking at, again, the first sentence

1 towards the end, "Crandall Canyon Mine has experienced a
2 bounce and has an urgent need to construct seals."

3 First I guess I'll ask you, were you in --

4 A I was at Beckley, West Virginia, and so was
5 Mr. Fredland.

6 Q And you have access to e-mail there, or it was on a
7 BlackBerry or --

8 A Well, yes. I had my own laptop there. But you
9 know, I'd ask him when he made a decision on my request to
10 send it to me and to Bill Reitze. He was really the one that
11 acted on it back in the district.

12 Q And now this refers to the phone call you had with
13 Mr. Fredland, I guess it was obviously at some point earlier
14 that day. What was the discussion that y'all had?

15 A Well, it was based on my conversation with Bill
16 Reitze who had told me that they -- that the experience --
17 quite frankly, I remembered saying it had some bouncing -- a
18 bounce. At any rate, you know, that they wanted to move the
19 MPL. We wouldn't let them do it and they said, well, if we
20 can't move that, then we just want to seal the area and move
21 out.

22 And that, to us, is -- I mean, it's not a problem.
23 People can stop retreat mining anytime they want and pull out
24 of a section. But we told them that they couldn't pull out
25 of there unless they sealed it because that MPL has to be

1 examined every week. So within 7 days, or whenever they last
2 did it, they would then be in violation of that standard.

3 Q So that's why the --

4 A The urgency.

5 Q Perfect. And now without too much detail, what are
6 Minova pumpable seals? And that's M-I-N-O-V-A pumpable
7 seals.

8 A Mine seals are made out of generally kind of a
9 sedimentitious-type product and they mix it in a machine and
10 then pump it into a form. And this is a particular brand
11 this manufacturer has applied with their design in terms of
12 the thickness of the seal, the strength of the cement mix
13 they use, and any steel rebar that might be in it or that
14 might not be in it. To meet the 120 -- no. At this time it
15 was a 50 PSI requirement.

16 Q That was MSHA's seal requirement?

17 A Yes.

18 Q And did Mr. -- strike that. I'm going to ask the
19 court reporter to mark Exhibit 11, please.

20 [Davis Exhibit No. 11

21 was marked for identification.]

22 BY MR. FINDLAY:

23 Q And I'll note that -- please take a look at it.
24 But I'll note that this was produced to us by the Department
25 of Labor. First question relating to this exhibit is whether

1 the south barrier, the main west entries. And I hope you
2 understand when I say removing the pillars, that doesn't --
3 I'm not saying totally removing them. It's just reducing
4 them in size. That's how second mining is done. You
5 couldn't possibly take them all.

6 Q And you would -- maybe explain that in a little
7 more detail, how that process works.

8 A Well, you still have to maintain some -- some
9 amount of support that will temporarily support the roof.
10 But generally what you want -- it's a very, very critical
11 relationship there because you want the roof to cave, but you
12 don't want it to cave too soon. You don't want it to cave
13 right where you are. You want to be able to reduce the
14 pillars in size, taking a critical amount of coal out of
15 them. And then the support from the area you're working from
16 is such that, you know, the people are under supported roof,
17 but as that -- that line that you're working, the pillars
18 moves back, and the roof starts to cave behind you.

19 Q And that's what's referred to as gob?

20 A It creates what we call gob.

21 Q That's G-O-B?

22 A G-O-B.

23 Q All right. Now did you discuss this document with
24 anyone?

25 A Just a casual discussion with Billy Owens.

1 Q And what was the content of those discussions?

2 A Well, I just knew that the -- that they'd submitted
3 for this approval and that -- I don't remember the dates yet
4 -- whether Billy had been to the mine at this point and
5 looked at the development work that went on in the south
6 barrier yet or not.

7 Q But at some point it's your understanding that he
8 did?

9 A Yes.

10 Q Before the plan was approved?

11 A Yes.

12 Mr. Findlay. I will ask the court reporter to mark this
13 Exhibit 13.

14 [Davis Exhibit No. 13
15 was marked for identification.]

16 BY MR. FINDLAY:

17 Q I'm sorry if this is a little redundant. The
18 second, third and fourth pages of this document are actually
19 the same as the previous exhibit. Let's focus on the first
20 page.

21 Is this the ultimate approval of the exhibit we just
22 discussed?

23 A Yes, it is.

24 Q So it's your understanding that sometime between
25 receipt of the first document, ending with Bates 76, and the

1 approval of the plan, Billy Owens --

2 A Yes. That's -- there's almost exactly a month
3 between the dates. And before this document, Billy Owens had
4 been to the mine.

5 Q And what did he tell you about his visit to the
6 mine?

7 A He said that the development in the south barrier
8 actually went better than the development in the north
9 barrier; that the roof was behaving much better in the south
10 and that he observed no real problem.

11 Q Did he tell you whether he was able to see where
12 they'd been pulling pillars in the north?

13 A No. He never -- never saw the area in the north
14 after the pillar -- pillaring started in the north.

15 Q As far as you understand, it was because they were
16 sealed up by the time you got there?

17 A I think that's the reason.

18 Q And he would have told you that, Billy Owens?

19 A Would have told me what?

20 Q Well I mean, it was -- I guess -- why do you think
21 that he wasn't able to go into the north?

22 A Well, I suspect it was because it was already
23 sealed. But I'm not positive.

24 Q But he told you he wasn't able to go up to the
25 north?

1 A Well, I just remember that he wasn't in the north.

2 Q Well, I mean, that's fair. That's fair.

3 A After pillaring was done.

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1 RPTS [REDACTED]

2 DCMN [REDACTED]

3 [3:58 p.m.]

4 Mr. Findlay. I will ask the Court Reporter to mark
5 Exhibit 14. I will also note for the record that this also
6 was produced by UtahAmerican.

7 [Davis Exhibit No. 14
8 was marked for identification.]

9 BY MR. FINDLAY:

10 Q Do you recall ever seeing this document?

11 I think, I haven't done a word-for-word, but I think
12 everything but the first page are identical, with the
13 exception of those received stamps.

14 A That is what is confusing to me right now.

15 Q You may not be able to help. But I am just
16 wondering if they sent this to you twice.

17 A This one is not stamped in as "received." I
18 couldn't say for certain that I saw this.

19 Q Do you recall whether you saw two versions
20 essentially of the same request?

21 A No, I can't say that I recall seeing two versions
22 essentially the same.

23 Q If you have any other thoughts, feel free to share
24 them. Otherwise, we will move on.

25 A I don't right now see the significance of the two

1 submittals. I was looking for maybe some small change or
2 something that Billy had asked after receiving this one that
3 would have shown up on this one.

4 Q Billy never told you he was going to make any
5 changes, did he?

6 A Billy did make a change, but it looks like it's
7 already on the first one, about the number of pillars that
8 would be left in place around this point at about crosscut
9 number one, between 140 and 141 where there was a projection.

10 Q Would you highlight that, please, on the exhibit?

11 A Where there's a projection of what was a sump, an
12 area for water to collect in, when these west mains were
13 developed several years before.

14 Mr. Malecki. Excuse me a second. The witness was
15 drawing on Exhibit 13.

16 Mr. Findlay. Yes.

17 Yes, thank you.

18 The Witness. I can put it on both.

19 Mr. Findlay. We will stick with 13.

20 BY MR. FINDLAY:

21 Q Did Billy tell you why he told them?

22 A Yes. Yes, he did. Because an earlier submittal,
23 which may not still exist in any final approved document
24 because we were back and forth, back and forth, doing the
25 changes necessary to get an approvable document, but

1 originally when they submitted, they indicated that they were
2 going to leave five pillars in place and actually pull this
3 row of three between entries one and two, actually remove
4 parts of those pillars. And Billy said that he was not going
5 to allow them to do that because it would narrow the pillar
6 line so much that it would concentrate forces on those
7 corners and likely cause ground control problems. He wanted
8 them to stop pillaring in a straight line, move out, and
9 start pillaring a straight line. It's a common practice in
10 the industry.

11 Q Straight lines are stronger?

12 A Straight lines are stronger and safer.

13 Mr. Findlay. If the Court Reporter would mark this
14 Exhibit 15.

15 [Davis Exhibit No. 15
16 was marked for identification.]

17 BY MR. FINDLAY:

18 Q I ask you to take a look at this document. I also
19 note that this was produced by UtahAmerican.

20 Do you remember ever receiving this document and the
21 attachments?

22 A Yes. Yes, I know I received it.

23 Q Could you describe what this document is; what it
24 means to you?

25 A This document pertains to the ventilation necessary

1 to set up retreat mining in the west mains area.

2 Q Is this a ventilation plan that you requested?

3 A Well, it's a ventilation plan that was required
4 because they had to change the existing ventilation. In
5 order to do that, they have to submit a plan.

6 Q Do you know -- why did they have to change the
7 existing ventilation plan, if you know?

8 A Because you have to have a bleeder system when you
9 retreat mine, and you don't have to have a bleeder system on
10 development. And so that system wasn't in place yet.

11 Q Could you just describe briefly what a bleeder
12 system is?

13 A Well, okay, a bleeder system, as you retreat back
14 and you get caving, or partial caving, there's a potential
15 issue of accumulation of harmful gasses in that area. So you
16 want to ensure that there is still air coursing in through
17 there and sweeping the area and getting to the back
18 furthestmost point of it and then coming out an unobstructed
19 entry we call the bleeder entry.

20 That NPL that I mentioned earlier is actually that point
21 at which you go back, this unobstructed entry that is
22 maintained safe for travel; then at that point you make sure
23 that there is air movement back there and that the air
24 quality is satisfactory. In other words, not too much
25 methane and enough oxygen.

1 Q I know you said this time, and I guess we are
2 talking July 23rd there, it's your understanding there was
3 not a bleeder system in that mine?

4 A In that section. This also pertains to out in
5 front of the section. And I know we had some difficulties
6 getting all of that, the way they were going to course the
7 air in the out-pipe portion of this area.

8 Q Could you mark that section with a highlighter?

9 A Get it ironed out.

10 Q I'd just note for the record you're highlighting
11 Exhibit 15.

12 I'm sorry; so what was the nature of the problem or the
13 issue out there?

14 A In their submittals they hadn't clearly defined how
15 this area was going to be ventilated, and when they changed
16 to retreat mining, to prove to us that this area was going to
17 be adequately ventilated while they were actually pillar
18 mining back in here, off the map.

19 Q Could you draw an arrow just to indicate where they
20 were pillar mining? Thank you.

21 So it's your understanding that they were not going to
22 start retreat mining until this plan?

23 A This would have to be in place before they could
24 pillar mine.

25 Q Did you discuss this plan with Bill Reitze?

1 A I knew that Bill had talked to me about it, and he
2 was having trouble getting some of this ventilation squared
3 away out-by, in this area that I have drawn the highlight
4 around. This actually shows eventually there's some plates
5 in here that would cover pillaring out-by in an area they
6 never did get to.

7 Q Would you read the last four digits of the Bates
8 number on that plate?

9 A 2194.

10 Q When you say --

11 A You know, this might have been -- the more I think
12 about it, this is targeted at giving them permission to
13 pillar out in the area that they never did get a chance to
14 get to. Not the south mains, or that portion that I drew the
15 area to, would be on these maps. So this is approval to do
16 some mining that would have come after the successful
17 completion of the south mains. So they couldn't start that
18 mining without this approval.

19 I'm sorry; I made a mistake.

20 Q No problem. So as far as you're concerned, once
21 they had the approval, the roof control plan that we
22 discussed earlier, they were okay to mine that particular
23 section?

24 A Yes, yes.

25 Q This would not have held them up?

1 Q I will have you mark -- not on there, but on the
2 Exhibit 1, just mark that area that they never got to. Maybe
3 highlight it.

4 A They intended -- this is the seal line in the
5 north, this is the seals that had been in place on the west
6 mains for some long time. When this map was drawn, this was
7 eventually completed. It shows as a projection here. So the
8 date and time that this was prepared was not exactly final.
9 But the area of these last two plans, the ventilation and the
10 roof control addressed removing the pillars, this whole area
11 of the mine.

12 Q Let the record reflect it's the area of the mine
13 that is enclosed with the yellow highlighter on the
14 Exhibit 1.

15 When the plan to develop south mines was approved, was
16 the area you just enclosed with the highlighter included in
17 the development?

18 A No. That area is all developed, except this one
19 small portion that is shown -- when it's very light, when the
20 pillar block squares -- it's actually dash lines, if you can
21 see the map closely. That would have been driven -- when
22 they came back to here, they would drive this and then start
23 a straight pillar line and pull that back. So there was a
24 small portion that was going to be developed there.

25 Q Is it safe to say that this plan was never

1 approved?

2 A We never acted on it.

3 Q Let me take just a quick break and go off the
4 record.

5 [Recess.]

6 Mr. Findlay. We will go back on the record.

7 BY MR. FINDLAY:

8 Q I apologize for beating a dead horse, or about to
9 beat a dead horse. I want to go back to the March bump or
10 bumps, and the bumps in March of 2007.

11 A Okay.

12 Q As you sit here now, do you know whether or, in
13 fact, it was a bump or bumps in mid-March 2007?

14 A I have learned more since at the time of the
15 accident.

16 Q Without telling us how you have learned it, what
17 have you learned since?

18 A That there was considerable damage done in the
19 north barrier, which I did not know at the time. And as I
20 recall, hearing about the bumps in the north barrier startled
21 me, and I do believe I heard about it in one of the family
22 briefings during the rescue activities. At first, I never
23 even associated it with the conversation with Bill Reitze
24 that led to the sealing of the north.

25 Q And that is because the conversation didn't lead

1 you to believe it was a major event?

2 A That is exactly right. Crandall Canyon is a mine
3 that has always experienced mild bumping. Other mines in the
4 area had already experienced much more significant bumps. In
5 my 12- or 13-year career working in the mines, I worked in a
6 mine that bumped more violently than most of the mines in
7 Utah. Mine bumps are a daily thing that happens, and it's
8 because the pressures of the earth are readjusting. When
9 these bumps are mild, sometimes no more than a noise that you
10 hear, sometimes you will feel it in your feet, and nothing
11 happens. But somewhere, rock is cracking, because we're
12 mining out what is holding it up.

13 And so in my experience when I was a mine
14 superintendent, I got real worried if it stopped bumping. I
15 liked to hear the bumps, because that meant it was relieving
16 the pressures. In fact, I was in one serious event where
17 bumping had not occurred for a while, then we did have more
18 significant bumps. So that has been my experience.

19 It's my knowledge from traveling in the mines in Utah
20 since I have worked for MSHA, that bumps occur there. When
21 you're on the working section and it bumps and jars, you can
22 feel it; miners don't miss a beat. They just keep on going
23 because that is just part of the life experience of mining
24 coal.

25 Q So is part of the reason you were surprised to

1 learn more about this bump --

2 A Or about the severity of the bump.

3 Q -- the severity of the bump, because you would have
4 expected Bill Reitze to have -- had he known, he would have
5 told you how severe the bump was?

6 A No doubt in my mind, he would have.

7 Q So knowing what you know about Mr. Reitze, you
8 don't think he did know about the severity.

9 A No, no. It was all characterized to me that
10 bumping had occurred, and there was roof issues with walking
11 back this single entry to the MPL. At the time, I would
12 guesstimate that that distance you had to walk back to that
13 MPL to be somewhere in the neighborhood of a half a mile.
14 That is half a mile back into a place that is one way in and
15 one way out. And when they -- because leaving the coal in
16 the roof, and the bumps that occurred, had caused some of
17 that coal to break loose, and it was hanging in the
18 chain-link wire mesh that was bolted to the roof. And it
19 didn't look safe, as I understand it, to their examiner.

20 Q You understand that because it was relayed to you
21 by Bill Reitze?

22 A That was -- yeah, that they had had bumping and
23 that they were concerned about access back there, is why they
24 were asking for us to move that MPL all the way out to
25 basically where they were at the time, because the roof was

1 not good.

2 Q Did you discuss the March bump or bumps with Billy
3 Owens, at the time, contemporaneous with?

4 A No, no. I did not have any discussion with Billy
5 at that time.

6 Q When was the first time you did discuss it with
7 him?

8 A I would have to say that the first time I talked to
9 him about it was after the accident.

10 Q What did he tell you then?

11 A That his understanding was very much what I had;
12 that there was concern about the roof.

13 Q You understood that he gathered that
14 understanding -- let me rephrase it. He told you he had
15 heard that from --

16 Mr. Paretti. Objection. I'm confused by that.

17 The Witness. I don't know where he heard it. I really
18 don't.

19 BY MR. FINDLAY:

20 Q Did you ever -- strike that.

21 In the course of executing your duties, do you have
22 conversations or discussions with Bureau of Land Management
23 folks?

24 A I'd have to say that in the course of my duties,
25 that after I became district manager, that I never even met

1 the Bureau of Land Management folks until after the accident.

2 Q Which BLM folks did you meet after the accident?

3 A You're asking for names, and I can't give you
4 names. But I know the fellow's position was that he was the
5 head of the BLM organization in the State of Utah. He came
6 to the mine very close to the end of the rescue operation.
7 There was another fellow from the Bureau of Land Management.
8 Somehow or another, he works for the Bureau and for the
9 Forest Service. They're both on his business card. I don't
10 know how you can do that. They are both on his business
11 card. But he was a fellow who used to be an engineer at one
12 of the other mines, so I knew him from kind of his previous
13 life, if you would. He did come up earlier on in the rescue
14 activities.

15 Q With either of these folks, or any other BLM
16 person, did you discuss the March bump or bumps?

17 A No, no. Any discussion with them about -- that I
18 had with the bumps was, I think, subsequent to the end of the
19 rescue activity. Their discussion with me was that they were
20 concerned if there was any need to drill any more holes to
21 try to rescue these men, because of the disturbance on the
22 surface.

23 Q That is because they have to approve --

24 A They were very upset because -- the mine led me to
25 believe they had already gotten approval from the Forest

1 Service and the Bureau of Land Management to do this drilling
2 on the surface. But in fact later I heard, or I knew, that
3 they did not get that.

4 Q Who at the mine led you to believe they had already
5 received approval?

6 A Bruce Hill.

7 Q And do you remember when?

8 A It was an assumption on my part from a conversation
9 that wasn't as direct as saying that we have got approval. I
10 just kind of felt like those bases had been touched.

11 Q What led you, if you remember, what led you to
12 believe that within the conversation?

13 A I can't remember the specifics, but I remember
14 having that feeling. Quite frankly, I didn't worry much
15 about it because that is between the coal operator and the
16 Bureau. We don't get involved with them.

17 Q Obviously, you had other things on your mind at
18 that time, too.

19 A Yes.

20 I guess I shouldn't digress, but it really surprised me
21 that they were only worried about two of those drilled holes,
22 because the property line came right through that area and
23 the other holes belong to the Forest Service, and they didn't
24 care what happened to the Forest Service ground, only their
25 ground.

1 Q Now, you say you were at a family meeting where you
2 learned of the severity --

3 A That is the way I remember. One of the family
4 members said something about the bumps in March. I can't
5 tell you which meeting it was or what day it was. But as I
6 recall, that is where I first heard about that.

7 Q Do you remember which family member?

8 A Oh, no. There was, at times, a hundred-some people
9 in that room. It was just somebody that stood up and said
10 something.

11 Q By family meetings, you mean the regularly
12 scheduled meetings during the rescue phase?

13 A Those meetings we had in the morning and the
14 evening.

15 Q These were the meetings that were there at the
16 church there in Price?

17 A They were at the high school for the bulk of this
18 time, but it ran so late into August, that they were going
19 back to school, so they moved into a church.

20 Q Do you feel now that you have a handle on the
21 severity of it?

22 A Not really. I've never had any firsthand
23 information, really, about it.

24 Q When you say you were surprised to learn how severe
25 it was, why was that relevant to you? Or was it relevant to

1 you?

2 Mr. Paretti. Objection. What are you asking him
3 exactly?

4 Mr. Findlay. Why the bump mattered. Why the severity
5 of the bump in March mattered. He is certainly an expert.

6 Mr. Paretti. He's not testifying as an expert.
7 Relevant or mattered to what?

8 Mr. Findlay. Fair enough.

9 BY MR. FINDLAY:

10 Q You say you were surprised. Was this surprise
11 something you didn't care about or --

12 A Not that I didn't care about it; it's that after I
13 heard something about the bumps at these family meetings, as
14 I recall, I talked to some of the people at the mine about
15 it. Of course, the rescue effort is still ongoing and none
16 of those conversations led me to have any idea of the
17 significance of the bounce. The only way I have any notion
18 of the significance of the bounce was the pictures that I saw
19 in another one of the investigations. That was only 3 weeks
20 ago.

21 Q And who at the company in the subsequent
22 conversations did you talk about the March bump with?

23 A As I recall, it was Laine Adair.

24 Q Based on the photos you have seen since, do you
25 think he was telling you the truth?

1 A The photos that I saw and the description I got
2 from Laine Adair don't match.

3 Mr. Findlay. I will ask that the Court Reporter mark
4 this Exhibit 17.

5 [Davis Exhibit No. 17
6 was marked for identification.]

7 BY MR. FINDLAY:

8 Q Mr. Davis, I will ask you to take a look at this.
9 Once you have had a chance to, let us know whether you
10 remember receiving this e-mail.

11 A Oh, yes.

12 Q I guess we will start with who is [REDACTED]?

13 A He is one of my inspectors that works out of the
14 Delta, Colorado field office.

15 Q I take it from his e-mail he was part of the mine
16 rescue team.

17 A Yes, he was. He was on our mine rescue team we
18 have at District 9, and he was called to the accident there.

19 Q And now his e-mail, the first sentence is, "In
20 light of the fact that I was sent home from the Crandall
21 Canyon Mine emergency by District 9 management." Did you
22 send him home?

23 A I'd have to say I was instrumental in doing that,
24 but my assistant district manager, Bob Cornett, was the
25 actual person to send him home.

1 Q And why did you and your folks decide to send him
2 home?

3 A Well, there's a little bit of background here.
4 ██████████ is a young man who has a real problem with
5 authority, and he is an arrogant young man. I have had
6 problems before, I had a problem there at the accident, and I
7 have had problems since with his -- I'd have to call it abuse
8 of authority in the way he talks to the mine operators, and
9 even the miners.

10 At the time at Crandall Canyon he had been underground
11 and made statements to some of the local Price area
12 inspectors, disparaging statements about the quality of the
13 coal miners at Crandall Canyon Mine; that they weren't
14 organized and they weren't good coal miners and he didn't
15 like the looks of the mine. Just a number of different
16 statements like that that were relayed to me.

17 I wasn't there at the time. I didn't hear this
18 directly. But I was confronted by a couple of other -- one
19 of the field supervisors, Ted Farmer, and another MSHA
20 person, Kent Norton.

21 Q Who's Kent Norton?

22 A Kent Norton is actually an MSHA educational field
23 services employee. He was just kind of helping us up there.
24 He was spending time underground and keeping tabs on things
25 underground, along with our inspectors. But he had angered

1 both Ted and Kent and several of my inspectors, who didn't
2 come to me personally. I think they went through Ted; to
3 tell Ted to tell me.

4 Things were about to come to fisticuffs over his
5 behavior, and I had the whole weight of the world on my
6 shoulders at that time, and I said I have got enough
7 problems. And I thought that was a hard lesson that young
8 man needed to learn, and I sent him home. I had Bob Cornett
9 do it, so the chain of command was there.

10 Q The second paragraph of this e-mail, he writes,
11 "District 9 management was more than willing to send me to an
12 irrespirable atmosphere and hazardous area to explore
13 possible alternate routes to reach trapped miners." What
14 does he mean by that?

15 A That is what the mine rescue team did. They put
16 their apparatus on and they went into some of the areas that
17 for a while there were below 19-1/2 percent oxygen. The
18 whole rescue team did that. That is what they do. So he has
19 reacted to this situation the same way he has reacted every
20 other time we have tried to discipline him.

21 Mr. Malecki. I would just ask that the witness narrow
22 the incidents with this particular person to this, just as a
23 caution.

24 BY MR. FINDLAY:

25 Q Still looking at Exhibit 17, he says in the third

1 paragraph, "I feel that I can no longer be part of the MSHA
2 mine rescue team." Do you understand him to be referring
3 specifically to the Crandall rescue effort?

4 A No. He resigned from our rescue team.

5 Q I hand you Exhibit 18, which is another e-mail and
6 attachment produced by the Department. No Bates stamp.

7 It doesn't look like you were -- I take that back. Do
8 you remember receiving this e-mail and attachment?

9 A Yes. I was CC'd on the e-mail.

10 Q If we flip to the next page, this memorandum
11 discusses having a Step 1 meeting with the grievance.

12 A Yes.

13 Q Did that ever take place?

14 A Yes.

15 Q Were you there?

16 A No.

17 Q Do you have any idea what took place there at the
18 meeting?

19 A Just discussions about the incidents, as far as I
20 would know.

21 Q Do you remember, going back towards the rescue
22 period, and maybe even after the rescue period, whether there
23 were any issues in designating a miner representative, or
24 representative for the miners. Could you run us through what
25 those issues were?

1 A It was my understanding that the United Mine
2 Workers wanted to become designated as miners' representative
3 so that would give them the right to be in on some of the
4 rescue activity planning.

5 Q Do you remember when that was?

6 A I can just say it was somewhere around halfway
7 through the rescue.

8 Q The rescue hadn't yet completed?

9 A No.

10 Q Or been called off.

11 Take a look at Exhibit 19. I will ask you to take a
12 look at that. Once you're ready, let me know whether you
13 remember receiving it. I will note while you're looking, for
14 the record, that this is another non-Bates stamped
15 DOL-produced document.

16 A Yes. Yes, I saw this. This was after the rescue
17 effort had concluded.

18 Q Now it's a chain of e-mails, but the e-mail on the
19 lower half of the first page, the very last paragraph on the
20 first page, it appears to be this was written, I presume, by
21 Danny Vetter. Who is Mr. Vetter?

22 A He is my special investigator.

23 Q You mentioned him before.

24 A Yes.

25 Q And who is Jerald Feingold?

1 A He is an attorney in MSHA's group of solicitors.

2 Q Now back to the last paragraph on the page, Mr.
3 Vetter writes, "I was concerned when I saw the letter stating
4 these people were selected and it was on company letterhead.
5 I told Allyn Davis about it and he suggested they be
6 declined."

7 What is he talking about there? Can you shed a little
8 light on it?

9 A We do not accept designations as a representative
10 of the miner from the company. They are supposed to be
11 selected by at least two of the miners at the mine. So when
12 we get something in on company letterhead, it looks
13 suspicious, as if they are selecting the people they want to
14 be the representatives. And so we have made it a policy not
15 to accept those designations that way.

16 Q And then the next sentence is, "Then we discovered
17 an e-mail from Ed Claire saying it looked fine to him and to
18 proceed." So far as you remember, Ed Claire's e-mail was in
19 response to those company letterhead?

20 A Apparently it was.

21 Q And then what ultimately happened? Do you recall?

22 A I am a little bit foggy how this ever worked out.
23 But it was my understanding that the union had the required
24 two miners to ask for them to represent them, and I was told
25 that that had occurred; that Kevin Stricklin knew who they

1 were, and that Kevin told me that they would be getting the
2 names to me, and I needed to verify they were in fact
3 employed at the mine.

4 But the names were not being written down, and we were
5 going to accept this thing where those names weren't
6 disclosed to the company. So I was to get this information
7 verbally from the area representative for the UMWA. But it
8 never happened. Never came to me with those names.

9 Q Whose idea was it to keep the names from the
10 company?

11 A That resulted from discussions that I am not
12 familiar with at our headquarters.

13 Q But either way, to your knowledge, it never
14 happened anyway?

15 A To my knowledge, it never happened. Then there was
16 the issue of the family saying they wanted individuals to
17 represent their missing miners. But there's an issue there,
18 once they were declared dead. Then they can't do that. So
19 nothing ever came of that, to my knowledge, either.

20 Q Do you remember having discussions with any family
21 members at any of the meetings or elsewhere?

22 A No, no. Never did. Nobody ever came to me about
23 that.

24 Mr. Findlay. Could the Court Reporter mark that Exhibit
25 20.

1 [Davis Exhibit No. 20
2 was marked for identification.]

3 BY MR. FINDLAY:

4 Q I ask you to take a look at that, and once you have
5 had a chance, let me know if you remember receiving this
6 e-mail, and I note this one was produced with a Bates stamp
7 by the Department.

8 A You know, I am sure that at some point in time I
9 read this e-mail, but the date August 8th is just 2 days into
10 the rescue effort, and I am sure I didn't read it on that
11 date.

12 Q You don't have any reason to believe that you
13 didn't receive this e-mail at some point?

14 A Oh, I am sure it was on my machine and I got to it
15 at some point, but I can't remember when.

16 Q Just a few quick questions. What is an SCSR?

17 A Self-contained self-rescuer.

18 Q What is the T drive?

19 A That is one of the computer drives that we utilize
20 in our district office.

21 Q Is the T referring to the network designation on
22 the drive?

23 A Yes.

24 Q So it's not a physical drive or anything like that?

25 A No.

1 underground to take video.

2 Q In rereading 3, 4, 5, 6.

3 A This was my explanation that -- yes, it's my
4 explanation of how the whole episode came about.

5 Q Now you sent this to Matthew Faraci, F-A-R-A-C-I.
6 Who's he?

7 A He is also in our public information.

8 Q He goes by Matt?

9 A Matt.

10 Q You carbon-copied it to Richard Stickler, Kevin
11 Stricklin, and some others. Do you recall receiving any
12 feedback on this from Mr. Stickler?

13 A No, not from Mr. Stickler.

14 Q From anyone else, other than --

15 A There was a lot more discussion with Matt.

16 Q And what did you all talk about?

17 A Well, I think he was getting questions about why
18 and how we allowed this photographer to go underground.

19 Q And in general you just reiterated these points?

20 A Yes.

21 Q Do you know whether Mr. Stickler knew that the
22 K-order was going to be modified?

23 Mr. Paretti. Objection. You're asking whether he
24 knows. You're asking him to testify as to what Mr. Stickler
25 knew or didn't know.

1 Mr. Findlay. I am asking him whether he knows, his
2 knowledge; then I will ask him how he knows it, if he does.

3 The Witness. Restate it again.

4 BY MR. FINDLAY:

5 Q Do you know or believe whether Mr. Stickler knew
6 that the K-order had to be modified to allow this? At the
7 time.

8 A At the time, I am not positive that Mr. Stickler
9 would be aware of that.

10 Mr. Findlay. That is it. We will pass the witness to
11 the minority.

12 Mr. Paretti. Can we take a 5-minute break?

13 [Recess.]

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1 particular allegations that had been made against one --
2 against one of your inspectors. Is that a fair
3 characterization?

4 A That's true.

5 Q Do you recall the date of the incident on which the
6 behaviors that led to this complaint were made?

7 A No, I don't remember the date.

8 Q Would you -- was it -- this letter is dated -- the
9 document is dated, the e-mail, Friday September 1, 2006. Can
10 you tell me, was the behavior in question more than a year
11 before September 1, 2006?

12 A I don't think it was more than a year, no.

13 Q Was it less than a year before September 1, 2006?

14 A Yeah. In my recollection. I hope I'm not wrong.

15 Q Sure. I'm just trying to get a sense.

16 A Because it occurred before the transfer of
17 ownership.

18 Q Okay. Do you think it -- do you have testimony --
19 can you tell us, to the best of your recollection, how long
20 before the transfer of ownership? If you have a
21 recollection.

22 A Only a matter of maybe a month or two, in my
23 recollection.

24 Q Okay. A month or two before. I think also if I
25 characterize -- if I'm characterizing your testimony

1 correctly, one of your subordinates relayed to you words to
2 the effect that Mr. Murray, Bob Murray, had said to him "If
3 that inspector is sent back to this mine, I'll have him
4 arrested." Is that a fair characterization?

5 A Yes. Yes.

6 Q Did you, in fact, send the inspector in question,
7 whose name has been redacted, back to the mine?

8 A Yes.

9 Q On how many occasions subsequent to September 1,
10 2006 would you estimate?

11 A Well, I know that he went back on another
12 inspection to do the long-wall portion of the mine's
13 inspection. How many days he was actually there on that, I
14 don't know.

15 Q And to your knowledge, the man was not arrested?

16 A No. No.

17 Mr. Paretti: Okay. I have nothing further.

18 Mr. Findlay. We've got nothing further. You are
19 dismissed. Thank you very much.

20 [Whereupon, at 5:00 p.m., the deposition was
21 concluded.]

22

23

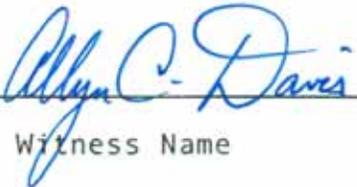
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Certificate of Deponent/Interviewee

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I have read the foregoing 94 pages, which contain the correct transcript of the answers made by me to the questions therein recorded.



Witness Name

1 CERTIFICATE OF COURT REPORTER

2
3 UNITED STATES OF AMERICA)

4 DISTRICT OF COLUMBIA)

5
6
7 I, [REDACTED], Official Reporter, U.S. House of
8 Representatives and Notary Public in the District of
9 Columbia, certify that the witness appeared before me; that
10 the witness was duly sworn; that I was authorized to and did
11 stenographically report the proceedings in the above
12 transcript; and that the transcript is a true and complete
13 record of my stenographic notes.

14 I further certify that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor am I a
16 relative or employee of any of the parties' attorneys or
17 counsel connected with the action to my knowledge, nor am I
18 financially interested in the action.

19
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 Notary Public in and for the District of Columbia

24 My commission expires: 03/14/2012
25

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
IN RE: CRANDALL CANYON MINE

AFFIDAVIT OF ALLYN C. DAVIS

I hereby declare as follows under the penalty of perjury that the following is true and correct to the best of my knowledge:

I have reviewed the photographs you have provided me, identified as UEICONG000020829 to UEICONG000020851, relating to the bounce in the North Barrier of Crandall Canyon in March, 2007. I did not see all of these photographs until well after the August, 2007 accident. To the best of my knowledge, I saw photographs UEICONG2000020830 and UEICONG000020842 in January, 2008 and had them in mind when I testified at pages 80-81 and 92 of the transcript. These two photographs are attached as Exhibits 1 and 2, respectively, to this Affidavit.

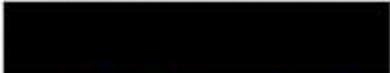
FURTHER DECLARANT SAYETH NOT.



Allyn Davis

Date: 3/13/2008

Subscribed and sworn before me this
13th day of March, 2008


Notary Public 10

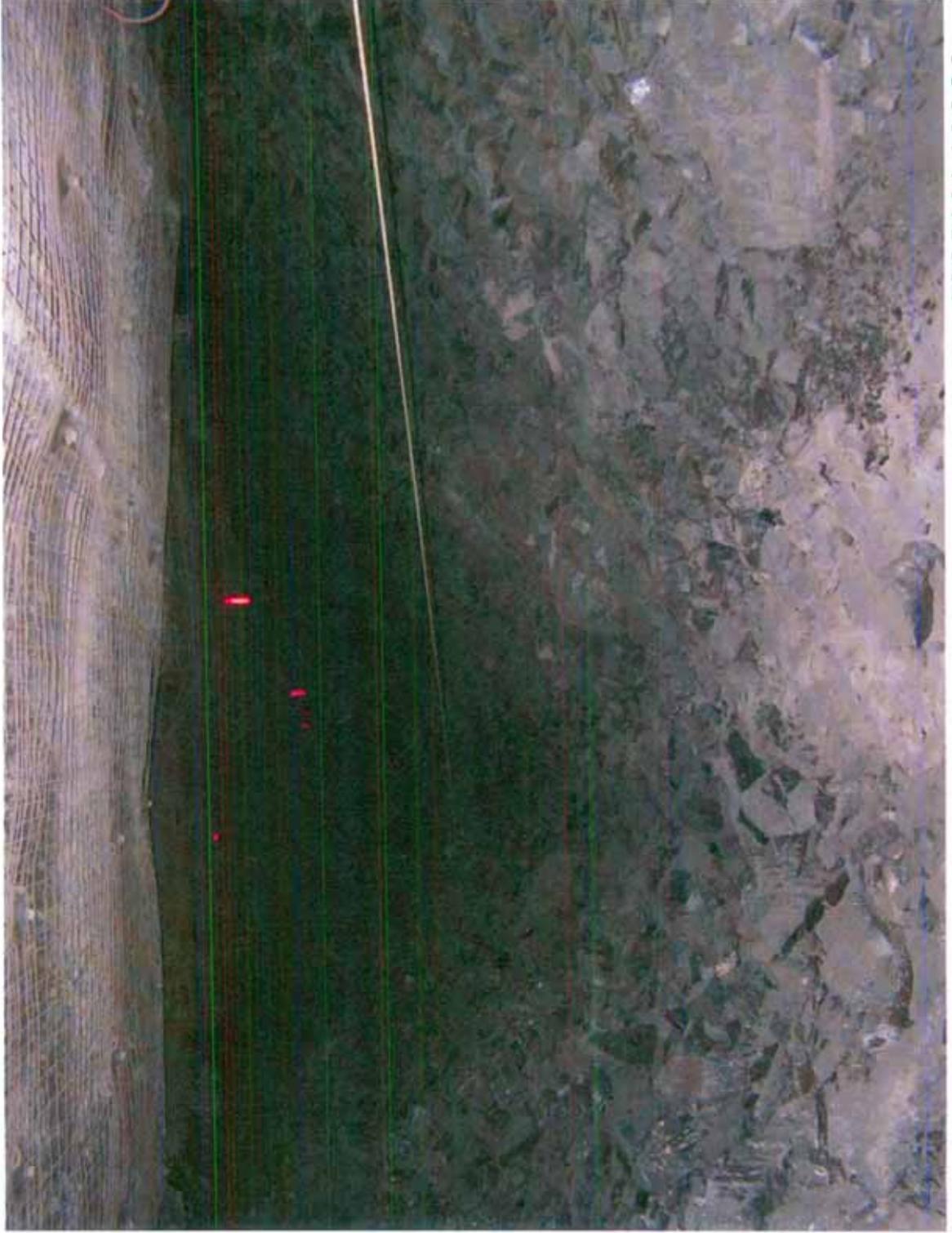
My commission expires: October 30, 2011



2MSHA13371

Alym Davis

UEICONG000020830



2MSHA13383

Allyn Davis

UEICONG000020842