

1 IN THE CIRCUIT COURT OF MONONGALIA COUNTY
WEST VIRGINIA

2 - - -
3 WEST VIRGINIA UNIVERSITY, BOARD OF)
GOVERNORS for and on behalf of)
WEST VIRGINIA UNIVERSITY,)
4)
Plaintiff,)
5) Civil Action
vs.) No. 07-C-851
6)
RICHARD RODRIGUEZ,)
7)
Defendant and)
8 Third Party Plaintiff)
))
9 vs.)
))
10 WEST VIRGINIA UNIVERSITY)
FOUNDATION, INC., a West Virginia)
11 corporation,)
))
12 Third Party Defendant.)

13 - - -
Deposition of ED PASTILONG
Friday, April 18, 2008
14 - - -

15 The deposition of ED PASTILONG, called as a
witness by the defendant and third party plaintiff,
pursuant to notice and the West Virginia Rules of
16 Civil Procedure pertaining to the taking of
depositions, taken before me, the undersigned,
17 Eugene C. Forcier, a Stenographer Commissioner in and
for the Commonwealth of Pennsylvania, at the offices
18 of Flaherty Sensabaugh & Bonasso, PLLC, 965 Hartman
Run Road, Suite 1105, Morgantown, West Virginia,
19 commencing at 8:47 o'clock a.m., the day and date
above set forth.

20 - - -
COMPUTER-AIDED TRANSCRIPTION BY
21 MORSE, GANTVERG & HODGE, INC.
PITTSBURGH, PENNSYLVANIA
22 412-281-0189
- - -

23 ALSO RECORDED VIA VIDEOTAPE
24

25 - - -

1 APPEARANCES:

2 On behalf of the Plaintiff and Deponent:

3 Flaherty Sensabaugh & Bonasso, PLLC:
4 Thomas V. Flaherty, Esquire
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8 Charleston, West Virginia 25338

9 Fitzsimmons Law Offices:
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14 Alexander Macia, Esquire
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17 Counsel
18 Office of the President
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21 Morgantown, West Virginia 26506

22 On behalf of the Defendant and Third Party
23 Plaintiff:

24 Barkan & Robon, Ltd.:
25 Marvin A. Robon, Esquire
1701 Woodlands Drive, Suite 100
Maumee, Ohio 43537

DiTrapano, Barrett & Di Piero, PLLC:
Sean P. McGinley, Esquire
604 Virginia Street, East
Charleston, West Virginia 25301

On behalf of the Third Party Defendant:

(No appearance.)

ALSO PRESENT:

John C. Taylor, Videographer

1 THE VIDEOGRAPHER: Will everyone be please
2 turn off all cell phones, Blackberries, pagers
3 and portable communication devices.

4 MR. ROBON: Boy, that's a great idea.

5 THE VIDEOGRAPHER: We are now on record in
6 the matter of WVU versus Rodriguez, Civil Action
7 No. 07-C-851.

8 My name is John Taylor, I am a legal video
9 specialist with Katz Consulting Group, LLC,
10 located at 820 Quarrier Street, Charleston, West
11 Virginia 25301.

12 I am not related to any parties to this
13 action, nor counsel of record, nor do I have a
14 financial interest in this action.

15 Today is April 18, 2008, the time is
16 8:47 a.m.

17 This deposition is taking place at
18 Flaherty, Sensabaugh & Bonasso, 965 Hartman Run
19 Road, Morgantown, West Virginia.

20 The deponent today is Ed Pastilong.

21 Will counsel please identify themselves for
22 the record.

23 MR. FLAHERTY: I am Tom Flaherty. I am
24 Tom Flaherty, counsel for the plaintiff, West
25 Virginia University Board of Governors for and on

1 behalf of West Virginia University.

2 MR. WAKEFIELD: Jeff Wakefield, also
3 representing the plaintiff, West Virginia
4 University Board of Governors.

5 MR. R. P. FITZSIMMONS: Bob Fitzsimmons on
6 behalf of West Virginia University.

7 MR. R. J. FITZSIMMONS: Robert J.
8 Fitzsimmons on behalf of West Virginia
9 University.

10 MR. MACIA: Alex Macia for West Virginia
11 University.

12 MR. ROBON: Marvin A. Robon, from Barkan &
13 Robon, Maumee, Ohio, representing
14 Richard Rodriguez.

15 MR. MCGINLEY: Sean McGinley for the
16 defendant.

17 MR. ROBON: Would you have the court
18 reporter also identify himself, please.

19 THE VIDEOGRAPHER: Would you identify
20 yourself, sir, and swear the witness.

21 THE REPORTER: My name is Gene Forcier with
22 Morse, Gantverg & Hodge.

23 Mr. Pastilong, would you raise your right
24 hand, please.

25 - - -

5

1 ED PASTILONG
2 called as a witness by the defendant and third party
3 plaintiff, having been first duly sworn, as
4 hereinafter certified, was deposed and said as
5 follows:

6 EXAMINATION

7 BY MR. ROBON:

8 Q Mr. Pastilong, you know who I am, correct;

9 why I am here?

10 A I assume I do.

11 Q Okay. I am here for a search for the
12 truth, protect Richard Rodriguez; you have been told
13 that?

14 A You are here for the truth.

15 Q Yes.

16 A And that's fine with me.

17 Q Okay.

18 Have you ever been deposed before?

19 A Yes.

20 Q How many times?

21 A One time.

22 Q Okay. In a litigation involving the
23 university?

24 A Yes.

25 Q And what was that litigation?

6

1 A A -- an assistant track coach.

2 Q Sued the university?

3 A I'm not sure if it was a suit, but there
4 was some question.

5 Q Improprieties?

6 MR. FLAHERTY: Object to the form of the
7 question.

8 Q Could you remember what it was about?

9 A This young lady had departed, and wanted
10 some additional moneys.

11 Q So it was a sex discrimination case?
12 MR. FLAHERTY: Object to the form of the
13 question.
14 A I don't believe it was sex discrimination.
15 Q Equal pay?
16 A I don't believe it was equal pay.
17 Q What happened to the case?
18 A Basically, it just went away.
19 Q Did she get some money?
20 A I don't believe so.
21 Q You are not on any medication, have a
22 hangover, or anything like that, so that whatever you
23 say today can be taken to the bank?
24 A I feel pretty comfortable.
25 Q Good.

7

1 My understanding is that you and
2 Richard Rodriguez were very close friends when he
3 first came to the university; is that true or false?
4 A We became good friends.
5 Q And how would you consider your
6 relationship today?
7 A Good friends.
8 Q You are still friends?
9 A Yes.
10 Q Do you find him to be a truthful
11 individual?
12 A I had no reason to question that, during

13 his term at West Virginia.

14 Q Do you question it, now that his term is
15 over at West Virginia?

16 A No.

17 Q Okay.

18 I just read an affidavit that was signed by
19 Larry Aschebrook.

20 Have you ever seen that affidavit?

21 A No.

22 Q Have you heard about it?

23 A Briefly, this morning.

24 Q Tell me the circumstances of why
25 Larry Aschebrook left West Virginia University.

8

1 A His comments to me were to return to his
2 home state, and to live in his house, in his home
3 state, of which he has been unable to sell, and for a
4 position back in his home state, that he and his wife
5 would prefer to be at.

6 Q Okay.

7 How many coaches are you in charge of as
8 the athletic director?

9 A Well, we have 17 sports.

10 Q Correct.

11 A And the head coaches, and the assistants.

12 Q A hundred people, would you estimate?

13 A It is less than a hundred coaches, but our
14 total department would probably be in the area of 200

15 people.

16 Q 200 people.

17 What kind of annual budget does the
18 university give the athletic department for those
19 roughly 200 people?

20 A Well, our athletic department budget is in
21 the area of \$48 million.

22 Q Okay.

23 And, of that \$48 million, how much comes
24 from the State of West Virginia, or does it all come
25 from the State of West Virginia?

9

1 A Well, portions of it come from the State of
2 West Virginia, and portions come from contributors,
3 foundation.

4 Q And, for the jury, give me a rough
5 approximation what percentage comes from the
6 university, and what percentage -- or the state, and
7 what percentage comes from the foundation?

8 A Well, I would say the majority comes from
9 the state, and then the second most would be from the
10 foundation, and there are moneys that come from our
11 particular conference via television revenues,
12 et cetera.

13 Q And out of the 48 million, what would be an
14 approximation that would come from the foundation; 10,
15 20 million, or something between those two numbers?

16 A Something between those two.

17 Q On an annual basis?

18 A On an annual basis.

19 Q And, you have roughly, you said, less than
20 a hundred coaches?

21 A Correct.

22 Q That's head coaches and assistant coaches?

23 Right?

24 A Correct.

25 Q And would you tell the jury how many

10

1 coaches have left in the last two years, two calendar
2 years, 2006, 2007? Just approximately.

3 A I'd say in the area of -- assistants and
4 head coaches?

5 Q Yes.

6 A This is a guess. 20.

7 Q An educated guess, though; right?

8 A Yes.

9 Q So approximately 20 percent?

10 A In that area.

11 Q Okay.

12 What does the average athletic department
13 have as a turnover ratio, for coaches and assistants?

14 A The average athletic department?

15 Q Yes.

16 A I'm not aware of a statistic on that
17 nature.

18 Q Tell me what you know about the

19 Calvin Magee case, involving Larry Aschebrook.

20 A I know that our university is looking into
21 that.

22 Beyond that, I don't know the particulars.

23 Q Who, within the university, is looking into
24 it?

25 A A lady by the name of Jennifer McIntosh,

11

1 who is in charge of social justice.

2 Q At the university?

3 A Yes.

4 Q Is she a lawyer?

5 A I don't know if she is a lawyer.

6 Q How long has she been at the university?

7 A A number of years.

8 Q Has he filed a civil rights complaint with
9 the United States Government, or the West Virginia
10 Civil Rights Commission?

11 MR. FLAHERTY: Who is "he"?

12 MR. ROBON: Calvin Magee.

13 A I don't know.

14 The best would be to ask him that, I would
15 think.

16 Q This affidavit, that was --

17 MR. ROBON: Well, let's mark this as
18 Exhibit A.

19 (Thereupon, Pastilong Exhibit A was marked
20 for identification.)

21 BY MR. ROBON:

22 Q Now, you indicated, you have not had a
23 chance to read that?

24 A I have not read this.

25 MR. ROBON: Let's go off tape for a moment,

12

1 so he can read that, or just skim it.

2 THE VIDEOGRAPHER: The time is 8:57 a.m.,
3 we are going off the record.

4 (Discussion off the record.)

5 THE VIDEOGRAPHER: The time is 09:06 a.m.,
6 we are back on the record.

7 Q While we were off the record,
8 Mr. Pastilong, we gave you the opportunity to read
9 this affidavit of Larry Aschebrook.

10 Correct?

11 A Yes.

12 Q Are the things he says in there, to your
13 knowledge, true or false?

14 MR. FLAHERTY: If you know.

15 A Sir, you would have to ask Larry. I cannot
16 speak for Larry, with regards to that affidavit.

17 Q Well, I understand that, but from your
18 personal knowledge, do you believe it's true or false,
19 or portions of it are true or portions of it are
20 false?

21 MR. FLAHERTY: Object to the form.

22 Q You can answer.

23 A Again, only Larry could answer that. I
24 mean, that's his affidavit.

25 I --

13

1 Q Well, let me ask this question: With
2 regard to his comments about Richard Rodriguez, do you
3 believe those are accurate quotes, something
4 Richard Rodriguez would say, or not say?

5 MR. FLAHERTY: Object to the form. I don't
6 think this man's belief is relevant, nor is it --

7 MR. ROBON: Well, he is experienced with
8 Mr. Rogriguez. He knows

9 MR. FLAHERTY: -- nor is it -- let me
10 finish my objection -- nor is it reasonably
11 calculated to lead to discovery of relevant
12 evidence.

13 Q You can answer.

14 MR. FLAHERTY: Answer if you can.

15 A Again, I don't feel it would be adequate
16 for me to assert what -- whether that is -- whether
17 Mr. Rodriguez's inferences there are -- they are his
18 feelings, you would have to ask Mr. Rodriguez, I can't
19 speak for him.

20 Q Okay.

21 Let me ask this question: Is it true that
22 in return for an affidavit like this, you helped
23 Mr. Aschebrook, or someone on your athletic
24 department, or at the university helped him get a

25 position at Arizona State?

14

1 A No, I did not assist Mr. Aschebrook in his
2 new position at Arizona State.

3 Q That wasn't my question.

4 Was it you, someone in the athletic
5 department, or someone at the university -- you said
6 it wasn't you; was it someone else?

7 If you know?

8 A I don't know of anybody who assisted him
9 with that particular new assignment.

10 Q Did you have any conversations with
11 anybody, about giving him a recommendation for his new
12 assignment?

13 A I did not, no.

14 Q Did you talk to Governor Manchin about it?

15 A No.

16 Q Have you talked to Governor Manchin at all,
17 about the Calvin McGee situation?

18 A I may have had some discussions with him,
19 but I don't recall any; I mean, any particulars.

20 Q Would you tell the jury how much involved
21 Governor Manchin is with the athletic program at West
22 Virginia University?

23 A Well, to begin with, the governor was a
24 student athlete here on the football team, and since
25 he's been in business, I mean, he has been a

1 participant in our Mountaineer Athletic Club, tickets,
2 and so on; in fact, the entire family has been, over
3 the years.

4 From time to time, we will be at social
5 gatherings where the governor is there, and so on.

6 But, his involvement is, I would say, like
7 a normal governor would be, in terms of any
8 institution, or -- and their athletic department.

9 Q Can you estimate, for the jury, the number
10 of phone calls you have had with him since
11 December 15th of '06, till now, which is what,
12 April 18th?

13 MR. WAKEFIELD: That's a year and a half.

14 MR. ROBON: No, that's --

15 MR. WAKEFIELD: You said '06.

16 MR. ROBON: I'm sorry.

17 Q 07?

18 A '07? What month?

19 Q December, make it 14th, '07, until today,
20 April 18th, '08.

21 MR. FLAHERTY: Are you limiting the scope
22 of your question to something relevant to this
23 case, or just any?

24 MR. ROBON: Any telephone calls. To for
25 from.

1 MR. FLAHERTY: Social or otherwise.

2 MR. ROBON: To or from the governor.

3 A The governor and I have been friends since
4 college. We were on the football team together, and
5 we are social friends. And I speak with him quite
6 often.

7 Q Does that mean once a day, once a week,
8 twice a day?

9 A Oh, sometimes once a week, sometimes two
10 weeks, sometimes three weeks.

11 Q And most of the time it deals with
12 athletics at the university?

13 A No.

14 Q What percentage of the time would you say
15 it deals with athletics at the university?

16 A Very little.

17 Q Okay.

18 Did he arrange the game between West
19 Virginia and Marshall, in football?

20 A He was quite active in it.

21 I would say he was the one that the --
22 person who had the most to do with that game being
23 played, yes.

24 Q And was that the first of three games?

25 A Well, there is -- there is a series of

1 games.

2 Q Right, between Marshall and West Virginia?

3 A West Virginia, yes.

4 Q Right.

5 Was the first one played in '07?

6 MR. FLAHERTY: The first ever?

7 A The first --

8 Q The first one that the governor arranged?

9 A I believe that was -- that was '06.

10 Q Okay. And West Virginia won?

11 A Yes.

12 Q And they won also in '07?

13 A Yes.

14 Q And they have one more game in '08?

15 A We have a game in '08, and there are games

16 nine, ten and 11.

17 Q Okay.

18 A And 12.

19 Q Okay.

20 Tell me about your conversation with the

21 governor on Friday, December 14th of 2007, relating to

22 Rodriguez.

23 MR. FLAHERTY: Object to the form of the

24 question. It assumes there was a call, or

25 conversation.

18

1 A I can't recall specifically that particular

2 day, as to whether I talked to the governor or not.

3 Q Well, when you --

4 A I may have, or I may not have. But I --

5 Q You don't recall asking the governor

6 whether or not you should honor the promises that
7 President Garrison made to Richard Rodriguez?

8 MR. FLAHERTY: Object to the form of the
9 question.

10 A I don't recall having that conversation
11 with those specifics, no.

12 Q You don't deny it; you just don't recall
13 it?

14 MR. FLAHERTY: Object to the form of the
15 question.

16 A I can't deny it, because I just don't
17 recall that that took place.

18 Q Okay.

19 Well, did it take place on December 15th,
20 on Saturday, as opposed to Friday, December 14th?

21 MR. FLAHERTY: Object to the form.

22 A I don't recall having a conversation with
23 the governor with those specifics that you are talking
24 about.

25 Q Well, do you recall Richard Rodriguez

19

1 meeting with you in mid December?

2 A What date?

3 Q In mid December?

4 A Mid December?

5 Q Yes, like the 14th or 15th?

6 A I met several times with Rich, during that
7 period.

8 Q And what's "several;" more than once?

9 A Yes, sir.

10 Q How many times; do you recall?

11 A In mid December, during -- a few times.

12 Q Well, let's go back for a moment.

13 He signed his addendum on August 24th of
14 '07, the second addendum to his employment contract;
15 correct?

16 A Yes.

17 Q Were you there when that was signed?

18 A No.

19 Q Okay.

20 Had you met with him before it was signed?
21 Immediately, like a week or two before?

22 A I had been with him at practice, but I did
23 not have a structured meeting, formal meeting,
24 et cetera.

25 Q Were you with him at the blessing, in early

20

1 August, of the field?

2 A Yes.

3 Q Okay.

4 Did you discuss his contract when you were
5 with him in early August at the blessing?

6 A Following the blessing, he had asked if I
7 would accompany him, with an -- some of his
8 accountants, attorneys, et cetera, to a meeting, and I
9 did.

10 Q Were the attorneys -- did he have an
11 attorney there; or you don't know?

12 A There were four, five gentlemen, and I
13 think one or two of them were attorneys, accountants,
14 et cetera.

15 Q Do you remember a name?

16 A The -- I remember a Mr. Wilcox.

17 Q Well, he is a financial advisor, not an
18 attorney.

19 A Okay.

20 Q And do you know who Mike Brown was?

21 A Mike Brown is an agent.

22 Q A sports agent?

23 A A sports agent.

24 Q He is not a lawyer, either, is he; as far
25 as you know?

21

1 A I don't know what he is.

2 Q And was David Hammond there, from the
3 William Baughn, B-a-u-g-h-n, Group, as a CPA?

4 A Following the blessing?

5 Q Yes.

6 A The other gentleman with Mr. Wilcox, I
7 don't -- I don't recall their names.

8 There were three, four of them.

9 Q Had they come down for the blessing, or had
10 they come down to work on his contract, or don't you
11 know?

12 A I don't know why they came down.

13 I mean, that was the particular day that
14 they were having our traditional blessing of the
15 field, and they appeared, and that's when Rich asked
16 me if I would stay around and meet with them.

17 Q Was it a scheduled meeting, as far as you
18 know, with you?

19 A With me, I don't believe it was a scheduled
20 meeting.

21 Q Did you have any other representatives of
22 the university with you?

23 A Well, at the blessing, there were several
24 people.

25 Q No, but I mean, when you sat and talked

22

1 with Mr. Rodriguez and his two or three people that
2 were with him?

3 A In the room was Mr. Wilcox, Rich, Rita,
4 Craig Walker and Mike Garrison.

5 I don't know if there had been discussions
6 with any of those people prearranging the meeting, or
7 if it was impromptu, but at the blessing Rich said,
8 "Could you sit with me afterwards," and I accommodated
9 that.

10 Q Okay.

11 It would be -- sounds like a scheduled
12 meeting with Craig Walker and President Garrison was
13 there; wasn't it? I mean, they wouldn't just

14 ordinarily be available on a whim; would they?

15 A I had asked them to be at the blessing, so

16 I don't know if they had been asked to be at that

17 scheduled meeting or not, I --

18 Q Did you ask them to come to the meeting?

19 A I don't believe I did.

20 Q Okay.

21 So, what conversations do you recall took
22 place at that meeting right after the blessing, in
23 early August of '07, with regard to Richard Rodriguez
24 and his contract, and/or promises or conditions that
25 were told to him, as best you can recollect?

23

1 A Rich did the majority of the talking, and I
2 do not recall any -- I don't recall promises coming.
3 It was pretty much a -- Rich mentioning some
4 situations to us, and that was about it.

5 Q What situations did he mention to you?

6 A He had made some general comparisons about
7 some of the things other schools were doing, some of
8 the things that he had collected from talking to other
9 head coaches, and so on.

10 Q Things that he wanted implemented in the
11 athletic program?

12 A There was not a -- I didn't look upon it as
13 a request. It was just comments that he was making,
14 in general.

15 Q Well, can you recall, for the jury, what

16 those comments were?

17 A They were very general, and for me to --

18 Q General. You know, were they about prices
19 of tickets, were they about free tickets for high
20 school coaches, were they about allowing the kids to
21 sell their books and retain the money at the end of a
22 semester?

23 I mean, tell me what you can recall.

24 A Well, there was a period in the fall where
25 some of the issues you just mentioned were brought to

24

1 my attention by Rich, but for them to have been
2 specifically brought up at that meeting, that meeting
3 was pretty general, in his comments.

4 Q Did -- tell me what President Garrison said
5 at that meeting at the blessing of the field in early
6 August of '07.

7 A The -- that meeting pretty much consisted
8 of Rich making comments to us.

9 Q That is not my question.

10 My question was: What did
11 President Garrison say, that you can recall?

12 A Following Rich's remarks,
13 President Garrison said very little, if anything; the
14 same way with Craig Walker and myself.

15 Q And Rich was just talking to the wall?

16 A He talked to us, and he -- and there were a
17 few occasions where Mr. Wilcox made some comments, and

18 Rita, and then we concluded the little session, and
19 went on to where the other people had gathered for
20 dinner, and where we were to meet them.

21 Q How long would you say this meeting, after
22 the blessing of the field, in early August lasted?
23 Half an hour, 45 minutes, an hour?

24 A I would say half hour to 45 minutes.

25 Q Okay.

25

1 And at any time did you, Mr. Walker, or
2 President Garrison, say, "No, Rich, we cannot do these
3 things you want?"

4 You can answer that yes or no.

5 A No.

6 Q Did you infer, at any time, or did
7 President Garrison or Craig Walker infer, at this
8 time, that you couldn't do some of the things Rich
9 wanted implemented?

10 MR. FLAHERTY: Object to the form of the
11 question. You can talk about -- you can get his
12 answer relative to his inference, but I don't --
13 I can't imagine how he can respond to that on
14 behalf of the others.

15 Go ahead and answer, if you can.

16 A There was not much of re -- it was pretty
17 much some comments from Rich to us, and we listened to
18 them, and then we departed.

19 There was not a specific request, nor was

20 there a specific response from us.

21 Q So, you are telling the jury there were no
22 promises made at that meeting right after the blessing
23 of the field; is that true or false?

24 A I don't recall any promises being made at
25 that meeting.

26

1 Q Do you recall President Garrison saying,
2 "Trust me," or words of similar nature, to
3 Richard Rodriguez?

4 A I do not recall that occurring at that
5 meeting, no.

6 Q Do you recall those words being used by
7 President Garrison at any other meeting, involving you
8 and Richard Rodriguez?

9 A No.

10 Q Have you heard President Garrison use that
11 phrase, since he has been president, "Trust me," or
12 words of similar import?

13 A No.

14 Q How many meetings have you had with
15 President Garrison, since he took office?

16 A I meet with him for sure every two weeks
17 among his management team, and once a week.

18 But for sure, at least every two weeks, I
19 sit with him.

20 Q Okay.

21 Now, let's go on from this meeting in early

22 August at the blessing of the field.

23 Did you talk to the governor about the
24 comments that Richard Rodriguez made at the blessing?

25 You can answer that yes or no.

27

1 A Yes.

2 Q And what was the governor's reaction to
3 those comments?

4 A I don't believe there was much.

5 Q Did he say, "No, we are not going to do
6 it," "It is a great idea"? What was your take on it,
7 from your perspective?

8 A There was no response, really.

9 Q You must have thought it was fairly
10 important, that you would bring it up to the governor
11 of the State of West Virginia, Rich's comment?

12 A Well, you know, as I mentioned earlier, I
13 have many occasions where I speak with the governor,
14 and where the governor calls me.

15 Q I understand that. But my question is --

16 A And I --

17 MR. FLAHERTY: Let him finish his answer,
18 please.

19 Go ahead.

20 Q Okay.

21 A And in those particular discussions, there
22 is various things discussed, and in that meeting that
23 took place, there were a lot of people at the

24 blessing, so I just felt it relevant that it be
25 mentioned.

28

1 Q Was the governor at the blessing?

2 A No.

3 Q How soon after the blessing did you call
4 the governor, and tell him about Rich's comments;
5 within hours, within days, or weeks?

6 MR. FLAHERTY: Object to the form. It
7 assumes he made a call.

8 A I did not, following that meeting, make a
9 call to discuss that specific meeting, no.

10 Q Well, how soon was that communicated to the
11 governor, as best you can recall?

12 A Oh, it could have been weeks after that.

13 I mean, it was no --

14 Q But it could have been hours, too; right?

15 A It wasn't hours, because we had a social
16 function to go to, which took the rest of the evening,
17 which Rich and Rita and Mona and I went to, several
18 other people were at.

19 Q Now, did you have any meetings with
20 Richard Rodriguez after the blessing in August of '07,
21 for the rest of the month of '07, August?

22 A I was with him. Whether we had a formal
23 meeting or not, I would always go over to practice,
24 and before practice talk with him, or go over to the
25 Puskar Center, go by the office and have discussions

1 with him.

2 Q Well, how many times would you say you had
3 a discussion with him between August 24th of '07 and
4 December 15th of '07?

5 He tells me it was two times.

6 A I'd say I talked with him weekly.

7 Q Face-to-face?

8 A Face-to-face, via telephone, traveling to
9 contests.

10 Q Football games?

11 A Yes.

12 Q Tell me which game in '07 that you went
13 with the football team on the plane to another field.

14 A Well, on away games?

15 Q Yes.

16 A I travel to all of the away games.

17 Q I understand you travel. I want to know
18 which games you went on the plane with the team and
19 Rich.

20 A Well --

21 Q There weren't any of them; were there?

22 A I think I did travel with the team.

23 Q Well, I want you to tell me which game you
24 went with the team.

25 A There was some occasions, when I traveled

1 with the president --

2 Q You are not answering my question.

3 A Yeah, I am trying --

4 Q I want to know which game, away game, in
5 the season of 2007, football, that you got on the
6 plane with the team and Coach Rodriguez, and went to
7 another facility, another stadium, with them; if any.

8 A I can't give you that particular specific
9 game, or games.

10 Q You can't recall going with them at all;
11 can you?

12 A Well, I will say this: Most of the time I
13 do travel with the team, and most of the time it's on
14 a charter.

15 There are occasions when the president may
16 be going to the game, and if there is a seat I would
17 travel likewise there, do that.

18 As we get to the game, or the hotel we are
19 staying, then I always extended a courtesy to
20 Mrs. Rodriguez to sit with me, and she did sit with me
21 in my particular suite at the games, so --

22 Q But you can't tell the jury specifically
23 any game that you flew with the team, during the '07
24 season, correct, even though they were rated in the
25 top five or ten in the country?

1 A If I were to have the time --

2 Q Answer yes or no.

3 MR. FLAHERTY: Let him finish his answer.

4 A If I were to have the time to go back, and
5 look at my travel, at those particular weekends, then
6 I could answer that specifically.

7 But, my response is that most generally I
8 travel with the team, and if there are occasions where
9 I have an opportunity to travel with the president, or
10 for a fund raising opportunity, via an important
11 contributor, who may be taking a chartered aircraft,
12 then I do that occasionally.

13 But, then, always, that courtesy is to
14 Mrs. Rodriguez to sit with me at the ball game, and on
15 all occasions in '07, that occurred.

16 Q By the way, tell me, tell the jury about
17 the pass that you finally got for her, where she could
18 go from one booth to another, that she couldn't do for
19 the first six years while she was the wife of the head
20 coach.

21 MR. FLAHERTY: Object to the form.

22 A I was instructed to issue this pass to her,
23 but it's my opinion that she had always had that pass,
24 via myself, and via our sports information office.

25 And, to be quite frank, I was a bit

1 surprised that that was requested, because that pass
2 had always been there.

3 And second to that, we sell suites, and
4 those people who lease those particular suites, that
5 becomes their particular area for games, so we have

6 areas within the stadium that is for the Mountaineer
7 Athletic Club, for the foundation, the other suites
8 are individuals' particular suites, so we do not issue
9 opportunities for members of the department and so on,
10 to go into those people's suites.

11 Q Who instructed you to issue the pass; the
12 governor, or President Garrison?

13 A Craig Walker.

14 Q Craig Walker.

15 And, did Craig Walker used to report to
16 you?

17 A Yes.

18 Q And now you report to him?

19 A Yes.

20 Q Were you at the August 24th meeting with
21 Mr. Rodriguez, and Craig Walker and President
22 Garrison, when he executed the second amendment to his
23 contract?

24 A No.

25 Q Can you tell us why you, as the athletic

33

1 director, were not at that meeting? Were you out of
2 town?

3 A No, I was in town.

4 But it -- the policy was that if a
5 particular representative for the coach was involved
6 in contractual discussions, then it would be discussed
7 by university's legal counsel, or the university's

8 representatives, other than myself.

9 So I did not feel that unusual that they
10 did not invite me to that particular signing.

11 Q Well, was it unusual that the president of
12 the university and Craig Walker would be at that
13 negotiation, or signing?

14 A I have not thought much of that one way or
15 the other. I mean --

16 Q Did you feel that you were being
17 sidestepped when Garrison and Walker took it upon
18 themselves to have the employment contract addendum
19 signed with Rodriguez, without you being involved?

20 A Not really.

21 MR. ROBON: Let's go off camera for a
22 second.

23 THE VIDEOGRAPHER: The time is 9:39 a.m.,
24 we are going off the record.

25 (Recess taken.)

34

1 (Thereupon, Pastilong Exhibits B and C were
2 marked for identification.)

3 THE VIDEOGRAPHER: The time is 9:42 a.m.,
4 we are back on the record.

5 BY MR. ROBON:

6 Q While we were on a break, Mr. Pastilong, I
7 handed you Exhibit B, which was the second addendum to
8 the employment contract for Richard Rodriguez;
9 correct?

10 A Yes, sir.

11 Q And you signed that on behalf of the
12 university, West Virginia University; did you not?

13 A Yes, sir.

14 Q And, did you sign it on the date that is on
15 the first page, August 24th of '07, or did you sign it
16 later?

17 A That date.

18 Q That date?

19 A That date, yes, sir.

20 Q Was it already signed by Richard Rodriguez
21 when you signed it, or did you sign it beforehand?

22 A It was already signed by Rich.

23 Q Okay.

24 And who handed you the contract to sign?

25 A Craig Walker.

35

1 Q Okay.

2 Did he come into your office with it?

3 A I went to Craig Walker's office.

4 Q Did he call you in, to come and sign it?

5 A He called me and asked me to come down
6 there, yes.

7 Q Okay.

8 Was this contract approved by the
9 Attorney General for the State of West Virginia, as
10 far as you know?

11 MR. FLAHERTY: Object to the form.

12 A You would have to ask our legal counsel in
13 that, I could not answer that.

14 Q You don't know?

15 A I don't know.

16 Q Had you seen this contract addendum prior
17 to your signing it?

18 A This particular one?

19 Q Yes.

20 A No.

21 Q Did you read it, before you signed it?

22 A I skimmed over it, yes.

23 Q Did you read it for content?

24 A Every detail?

25 Q Yes.

36

1 A No.

2 Q You were just told by Craig Walker to go
3 ahead and sign it; correct?

4 A Craig handed it to me, and I looked at the
5 areas other than the adjustments that Rich and our
6 attorneys were working out with regards to deferment,
7 and methods of payment, so the areas with regards to
8 improvements, renovations, and then the areas of --
9 those specific areas I did look at, yes.

10 Q Okay. Did you see prior drafts of the
11 second addendum of Exhibit B? You can answer that yes
12 or no.

13 A Yes.

14 Q Were you involved in the negotiations of
15 Exhibit B?

16 Or were they handled by Craig Walker and
17 Michael Garrison?

18 A Those particular -- in the August area, and
19 as they got closer to this, it was pretty much handled
20 by our office of legal affairs, Craig Walker, and so
21 on.

22 Q And what's Craig Walker's official
23 position, for the jury, so they know?

24 A Craig is chief of staff to the president.

25 Q Okay.

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1 And, both he and the president have law
2 degrees?

3 A Craig Walker does not.

4 Q He does not?

5 A No.

6 Q The president does?

7 A Yes.

8 Q Now, did Craig Walker or President Garrison
9 tell you on what condition Richard Rodriguez signed
10 Exhibit B?

11 A No.

12 Q Did he send you a memorandum of what you
13 needed to do in the athletic department, right after
14 this contract was signed?

15 A Craig sent me a memorandum, and it

16 contained some direction, but it contained areas
17 that -- for discussion.

18 Q You didn't take them as a directive, things
19 that you should implement?

20 A There was --

21 Q You can answer that yes or no, either you
22 took it as a directive, or you didn't.

23 MR. FLAHERTY: Let him finish his answer,
24 please.

25 A There was a couple of directives in there,

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1 and then there were areas for discussion that we would
2 meet on later on.

3 Q And which of the areas of discussion, or
4 directives, did you in fact implement, if any?

5 A There was one directive there to issue a
6 pass to Rita Rodriguez, which we did.

7 Q Okay.

8 A But as I said earlier, it was our feeling
9 in the athletic department, that that privilege had
10 already been acknowledged.

11 Q Right.

12 A And if it hadn't --

13 Q What other directives, or suggestions did
14 you implement, if any?

15 A The issuance of all sideline passes to
16 Coach Rodriguez to distribute.

17 I believe those were the two, that I can

18 recall.

19 Q Did you implement the request that he
20 wanted additional moneys for the assisting coaches?

21 A We had already done that.

22 Q When you say you had already done it, he
23 had requested an additional, I believe \$120,000; was
24 that money put up?

25 MR. FLAHERTY: Object to the form of the

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1 question.

2 A In months prior to that, he had requested
3 additional moneys for assistant coaches, and we had
4 implemented that into their salaries.

5 Q But not to the extent he wanted?

6 A To the extent, yes.

7 Q The amount he wanted?

8 A Yes.

9 Q You implemented them?

10 A Yes, sir.

11 Q Oh, that's interesting.

12 Now, did you implement not charging high
13 school coaches to come to games?

14 A Did not implement that.

15 Q Can you please tell me, what would be the
16 rationale of a big university like West Virginia, to
17 charge a high school coach, who might help with your
18 recruiting, and everything, not give him a free
19 ticket; I don't understand the logic of that.

20 A Well, years -- years ago, the practice was
21 that a high school coach would pay \$5, be issued a
22 ticket, and so on.

23 And that was prior to my becoming athletic
24 director, and I have been athletic director for a
25 number of years now.

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1 And we felt that it was a good practice, in
2 that the high school coach would come, identify
3 himself, sign, and make the payment of \$5, and we had
4 a means of recording who had come to the games.

5 And, he had asked for that, and we felt
6 that it was a good practice, and we would go ahead and
7 continue it.

8 Q What about giving the students, allowing
9 them to keep their textbooks at the end of the
10 semester?

11 A Rich had asked if we would do that.

12 We had discussion with regards to that, in
13 fact, the discussion is continuing.

14 I met with our compliance officer, to see
15 the -- if that policy could be implemented, and if it
16 was implemented, what the good features would be, what
17 the poor features would be, discovered that if you
18 were to issue these textbooks to a student athlete,
19 that the student athlete must keep the textbook in
20 their hands until the semester was completely over.

21 And in discussions with our compliance

22 coordinator, there was concern as to a student athlete
23 receiving the book in September, selling it in
24 September, and then us having a violation.

25 Second problem that the compliance officer

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1 indicated to me, was that if you implemented this with
2 student athletes, it must be implemented across the
3 board with the entire student body.

4 So, I was of the opinion that we should, at
5 that time, not do that, but at the very -- but
6 continue the discussion of it.

7 But, as a result of that discussion with my
8 compliance coordinator, I just -- I was hesitant to
9 suggest that.

10 Q And did you -- when did you tell Rich that
11 you weren't going to do that?

12 A I had a discussion with Rich, and indicated
13 those concerns.

14 Q No, my question is, when did you tell him
15 you weren't going to do it?

16 A Well, I had --

17 Q Just give me a date.

18 MR. FLAHERTY: Let him finish his answer,
19 Mr. Robon.

20 A I had a -- as a result of that memo that I
21 had received, I had set up a meeting with Mr. Walker,
22 President Garrison, and presented my position in terms
23 of my concerns.

24 Q Without Richard Rodriguez being there?

25 Correct?

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1 A I had attempted to have -- to set up a
2 meeting with the four of us, but his indications were
3 that he was rather busy, and so on.

4 So I went ahead and put the meeting
5 together with the three of us, so that I could share
6 with others my position, my concern, so that we could
7 continue to discuss that particular subject.

8 Q Isn't it true that you felt that
9 Craig Walker and President Garrison were impinging
10 upon your domain in the athletic department?

11 A That's incorrect.

12 Q That's not correct?

13 A No, it isn't.

14 Q Didn't you call the governor's office, and
15 tell the governor what Craig Walker and
16 President Garrison wanted?

17 A I don't believe I did that.

18 Q You didn't talk to the governor about it?

19 A About those particular issues we are
20 talking about?

21 Q Yes.

22 A I do not think I did that. I don't --

23 Q Isn't it true that -- well, let me ask this
24 question: Were you aware of the promises that
25 Michael Garrison and Craig Walker made to

1 Rich Rodriguez --

2 MR. FLAHERTY: Object to the form.

3 Q -- at the signing of the second addendum of
4 the contract?

5 MR. FLAHERTY: Same objection.

6 A I could not speak to that, I was not there.

7 Q Were you aware of it, though?

8 A I can't -- again, I can't speak to it.

9 I -- if I wasn't there, I --

10 Q Well, I understand. But do you know what
11 hearsay is? Did you hear about those promises?

12 MR. FLAHERTY: Object to the form.

13 A I did not hear of any promises.

14 Q Well, you got the memo from Craig Walker,
15 so you knew something was discussed; right?

16 A I got the memo, yes.

17 (Thereupon, Pastilong Exhibit D was marked
18 for identification.)

19 THE VIDEOGRAPHER: I need to change.

20 MR. ROBON: Yeah, go ahead and change.

21 Are you done with it, or --

22 THE VIDEOGRAPHER: The time is 9:56 a.m.,
23 we are going off the record, this concludes
24 tape 1.

25 (Discussion off the record.)

1 (Recess taken.)

2 THE VIDEOGRAPHER: The time is 10:07 a.m.,
3 we are back on the record, this begins tape 2.

4 BY MR. ROBON:

5 Q Mr. Pastilong, I have handed you Exhibit D,
6 which is a memorandum from Craig Walker, chief of
7 staff, to you, dated August 27th of '07. That's the
8 memo we were talking about previously; correct?

9 A Yes, sir.

10 Q And, you received this in the ordinary
11 course of your duties as athletic director?

12 A Yes.

13 Q And you indicated that you -- you gave the
14 pass to Rita Rodriguez.

15 Did you do any of these other things that
16 he has requested in this memorandum?

17 A I initiated the -- all of the field passes
18 to be administered by Rich.

19 I -- I prepared the review of the
20 regulations as requested here, regarding the seven
21 graduate assistant strength positions, and I prepared
22 that in -- I had my compliance person prepare that,
23 and he and I discussed that.

24 Q And you already talked about the student
25 athletes. What about page 2? You will arrange -- it

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1 says, "Arrange for seatings in the lower student
2 section for basketball games for football recruits."

3 Did you do that?

4 A That was done, but -- yes, we did that.

5 Q Okay.

6 A And then we did the pass to Rita.

7 Q It says, "During the month of September, I
8 will arrange" -- I being Craig Walker -- "a meeting
9 with President Garrison, Coach Rodriguez and you, to
10 discuss future football scheduling." Did that take
11 place?

12 A There was the meeting with -- as I
13 mentioned earlier, with President Garrison,
14 Craig Walker and myself, to discuss some of these
15 issues, but as I explained earlier, Rich was busy, and
16 could not attend.

17 However, the football scheduling we did not
18 discuss, and I might add here that Rich was
19 encouraged, by me, to take part in scheduling, and it
20 was encouraged.

21 Q Well, my next question for you is: How
22 many times, between the blessing of the field, in
23 early August of '07, and December 15th of '07, did you
24 physically have a meeting with Rich Rodriguez,
25 relating to the athletic department, and his being the

1 football coach?

2 MR. FLAHERTY: The question has been asked
3 and answered.

4 A You know, as I said earlier, I would have

5 talked to Rich pretty much weekly; whether I visited
6 with him, whether I phoned him, there was a continuous
7 communication.

8 Q So if there is four weeks in a month, and
9 there is four weeks in August, September, October,
10 November, that is 16 -- that 18 weeks; 18 times?

11 A Oh, I would say at least that, where he and
12 I had conversations.

13 Q And if he said it was only twice, he would
14 be wrong?

15 A Well, my feeling was, we met.

16 Q Tell me about the 1100 Club, and the
17 missing funds, approximately \$200,000.

18 A There are no funds missing, that I know of.
19 Our associate athletic director for finance
20 has a continuous reconciling -- reconciling of our
21 accounts, and that particular fund is handled
22 responsibly, and there are no missing funds.

23 Q Isn't it true that Rich Rodriguez set up
24 the 1100 Club with special donations from supporters?

25 A Well, he brought that --

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1 Q You can answer that yes or no.

2 MR. FLAHERTY: Let him answer it any way he
3 wants, please.

4 A He brought that particular concept to my
5 attention, and I found it to be a good idea.

6 I discussed it with my associate AD for

7 finance, and he said that it was doable, and I asked
8 him to set it up in the foundation, and he did such.

9 I talked with our Mountaineer Athletic Club
10 representatives, and then got back with Rich, and we
11 began that particular 1100 Club and, in cooperation
12 with Rich, all of us put that particular club
13 together, and it is quite successful.

14 I will say this, Rich has spearheaded that,
15 and he has been the person in front of that, and he
16 has done an exceptional job with regards to that.

17 Q Was there a specific purpose for the
18 1100 Club?

19 A The specific purpose was to assist our
20 football coaches in recruiting, so that they could get
21 to particular student athletes' areas more readily.

22 And this has been successful.

23 Q It was for air travel; correct?

24 A I'm sorry, yeah, it was to charter
25 aircraft.

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1 Q Apparently West Virginia University doesn't
2 have an airplane that is available to the coaches?

3 A The university charters aircraft, a
4 aircraft, but it is not exclusively for the football
5 coaches.

6 Q Well, does the university own an airplane?

7 A No.

8 Q Okay.

9 So, the money from the 1100 Club was going
10 to allow for charters, so the coaches could go to
11 various difficult places to get, in a private airport;
12 correct?

13 A That's correct.

14 Q And wasn't there about \$200,000 that was
15 taken out of the 1100 Club, for something other than
16 for flying?

17 A In discussions with Rich, and again our
18 associate athletic director for finance, it was felt
19 best if we were to put the parameters to the
20 1100 Club's spending, and entitle that "Recruiting,"
21 and some of those funds were used for recruiting
22 purposes; housing the recruits on campus.

23 But they all fell within the parameters of
24 what was described permissible under that 1100 Club.

25 Q Was there --

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1 A And that was in discussions, and Rich took
2 part in those discussions.

3 Q Was there a charter saying what the purpose
4 of the 1100 Club was?

5 A There is a -- there is guidelines as to how
6 the moneys are spent, regarding the 1100 Club.

7 Q Okay.

8 Take a look at Exhibit C.

9 Is this your employment agreement?

10 A Yes.

11 Q And you are the head of the athletic
12 department; right?

13 A Yes.

14 Q And in a corporate charter, you would have
15 the board of governors at the top, and then the
16 president, and then probably Craig Walker, and then
17 there would be another level, athletic director, dean
18 of students, things like that?

19 A I don't know about the dean of students,
20 but what you described, excluding the dean of
21 students, that would be fairly close.

22 Q Who would be on the same level with you?

23 A I would think like directors of the
24 department of public safety, those types of
25 departments, outside of the academic arena.

50

1 Q Academic area. Okay.

2 And, you have been with the university how
3 many years?

4 A 33 years.

5 Q Okay.

6 And, I notice in your contract, there is no
7 penalty if you decide to leave.

8 MR. FLAHERTY: Object to the form of the
9 question.

10 BY MR. ROBON:

11 Q Is that true?

12 A There --

13 MR. FLAHERTY: The contract speaks for
14 itself.

15 MR. ROBON: He can answer.

16 A There are no areas there for liquidated
17 damages.

18 Q Okay. If you left the university, wouldn't
19 it be difficult to replace you, a person of your
20 stature, running the place for 33 years, putting it on
21 the map?

22 A That would be best answered by the people I
23 report to.

24 Q Well, I want to know what your opinion is.

25 A Well, I would think that as in this

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1 particular contract, where I would give sufficient
2 notice, in this particular case, two years, so that
3 the president and those people in position to
4 reappoint another athletic director, if they had
5 sufficient time, I think that they would certainly do
6 that quite adequately.

7 Q Can you tell the jury how difficult it is
8 for a person in your position, as athletic director,
9 where you have an annualized salary of 225,000, plus
10 some bonuses, to supervise a basketball or a football
11 coach that makes a multiple of what you make?

12 A I have not found that to be difficult,
13 and --

14 Q It doesn't grind you sometimes?

15 A No.

16 Q Never thought about it?

17 A Never thought about it.

18 Q Tell me when liquidated damages, or penalty
19 provisions, first were implemented as a policy at West
20 Virginia University.

21 MR. FLAHERTY: Object to the form of the
22 question. The use of the word "penalty."

23 What are you asking him for? What are you
24 asking him for; whether there was -- liquidated
25 damages were implemented, or whether there is a

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1 penalty clause?

2 There is two different things.

3 MR. ROBON: Well, I refer to them as
4 simultaneous.

5 MR. FLAHERTY: We, we don't, and there is a
6 legal distinction between them, so you will have
7 to separate them in your question.

8 MR. ROBON: Well, we will separate it,

9 Mr. Flaherty.

10 BY MR. ROBON:

11 Q Tell the jury when West Virginia
12 University, for the very first time, put a damage
13 provision in an employment contract of a coach.

14 A This is to the best that I can recollect.

15 We were hiring Rich in 2000, and there was
16 a considerable amount of input as to the letter of

17 agreement, and that particular -- and I believe he had
18 an attorney by the name of Mr. Davis, and at his
19 suggestion, and at his writing that letter of
20 agreement, the liquidated damage clause was
21 implemented.

22 I believe that was the first time that we
23 had put together a form, where liquidated damages was
24 a part of the agreement.

25 Q Was that the lawyer from Boston?

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1 A His name was Davis. And he was -- I don't
2 know where he was from.

3 Q Okay.

4 Do you recall what the amount of liquidated
5 damage was, in the very first contract?

6 A It was -- I believe it was equal to the
7 salary times the number of years remaining on the
8 contract.

9 Q And did Mr. Davis indicate that he wanted
10 the liquidated damages provision in case the
11 university fired the coach?

12 A I -- I believe it was if the coach was
13 terminated, but I also believe there was the exchange
14 of conversations between Mr. Davis and WVU also, if
15 the coach had departed prior to that.

16 Q And, did you feel that the arrangement
17 being the coach's salary times the number of years
18 remaining on his contract was a fair method of

19 compensating the coach and the university, back in the
20 year 2000, when this was first implemented by West
21 Virginia University?

22 A Well, Mr. Davis introduced that idea to us.

23 Q I understand that.

24 A And his indications were, that this was
25 being done by -- throughout the country, and following

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1 that discussion, we went ahead and put that in the
2 particular agreement.

3 Q My question was: Did you, as the athletic
4 director, Mr. Pastilong, believe that the formula,
5 that was in the original contract in the year 2000,
6 which is, if he got terminated, the university would
7 pay him his salary times the years left on his
8 contract, did you believe that was fair?

9 A It seemed reasonable, and we accepted that,
10 all --

11 Q Okay.

12 A -- after discussions with our attorneys,
13 and everybody, and --

14 Q And likewise, if he left it was reasonable,
15 or you felt it was fair, the number of years left
16 times his salary?

17 A At that time, it seemed to be reasonable,
18 yes.

19 Q Did you then implement that policy with the
20 basketball coach?

21 A We hired a basketball coach following that,
22 and at the request of the basketball coach, we
23 implemented that policy, similar.

24 Q Are those the only two programs that have
25 those liquidated damages clauses, basketball and

55

1 football?

2 A There may be one other, in one of our
3 Olympic sports right now, but I cannot confirm that
4 right here.

5 Q Which one do you think it might be?

6 A It may be in the soccer and/or women's
7 basketball, but I cannot confirm that, I would have to
8 go back and just double check.

9 Q Okay.

10 How many different sports are here at West
11 Virginia University, both men's and women's?

12 A 17.

13 Q So at the most, three of the 17 have
14 liquidated damages provisions in their contract?

15 A That would be correct.

16 Q Now, you mentioned that you talked to
17 Coach Rodriguez weekly between the blessing of the
18 football field and December 15th of '07; correct?

19 A Approximation, yes.

20 Q Tell me what happened on December 15th,
21 that was a Saturday, with Mr. Rodriguez; did he come
22 to see you?

23 A December 15.

24 Q Of '07?

25 A Saturday.

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1 I went to his office.

2 Q Okay.

3 Did he call you to come to his office?

4 A Craig Walker and I called him, I believe,
5 and set up a meeting at his office.

6 Q Okay.

7 When did you call him; that day, or
8 earlier?

9 A I do not recall.

10 Q Did you meet with Craig Walker prior to the
11 time that you went over and met with Coach Rodriguez?

12 A A meeting?

13 Q Yes.

14 A I don't think we did. I just think we met
15 there.

16 Q Did you have a telephone conference, or
17 conversations with Craig Walker, before you had the
18 meeting with Coach Rodriguez?

19 A To the best that I can recollect, it was
20 called either his way, or my way, and "Let's go meet
21 with Rich."

22 There wasn't any meeting, discussion, or
23 set plans, or anything.

24 Q What was the purpose of the meeting; the

25 meeting with Mr. Rodriguez on December 15th of '07?

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1 A To encourage him to remain as our football
2 coach.

3 Q And how did you know that he might not
4 remain as the football coach?

5 A There had been reports, it was on
6 television.

7 Q Okay.

8 Where did this meeting take place?

9 A At Rich's office.

10 Q Okay.

11 And did he tell you what he needed, in
12 order to stay at West Virginia University?

13 A Not specifically.

14 I mean, he talked considerably, and Craig
15 and I listened, and -- and encouraged him to remain
16 with us.

17 Q Did you tell him anything would be
18 different, if he stayed?

19 A There was a general indication that we
20 would continue to work with him, and to continue to
21 strengthen the football program.

22 Q Did you feel personally, that the football
23 program and the autonomous nature of Coach Rodriguez,
24 was interfering with your duties as the athletic
25 director?

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1 A No.

2 Q Did he ask you whether or not, or did he
3 ask Craig Walker, either one of you, whether the
4 promises that were made to him on or about August 24th
5 of '07, would be kept?

6 MR. FLAHERTY: Object to the form of the
7 question, and the assumption contained in it.

8 BY MR. ROBON:

9 Q You can answer.

10 A Well, I do not recall that particular
11 question, or anything of that nature being,
12 specifically. It was general comments from Rich.

13 Q Well, tell the jury what those general
14 comments were, as best you can recall.

15 A He -- he brought up a little history about
16 how he had implemented some things in the program.

17 He indicated a couple of times the
18 difficulty of winning football games.

19 Those types of issues.

20 And, there was not a specific set number of
21 items that he indicated to us at that meeting.

22 Q Did he say to you, "Are you going to change
23 things?"

24 A I don't think he -- I don't think he said
25 that.

1 Q Did he --

2 A I don't recall that, no.

3 Q Did he say -- or did Craig Walker, and/or
4 you say, "No, we are not going to implement certain
5 things"?

6 A At one point he indicated, he brought up
7 that there were some areas that he wanted us to
8 implement, and he wanted an answer right then.

9 And --

10 Q Right then, being on December 15th?

11 A Yes.

12 Q And what answer did you give him?

13 A That we would continue to work with him,
14 and that we very much wanted him to remain as our
15 coach, and that if he wanted a specific yes or no to
16 areas such as additional -- seven additional strength
17 coaches, the issuance of the textbooks, and so on,
18 that I could not give him a yes right then; that I
19 would continue to have those discussions with him, as
20 we had been, and that's how -- that's what -- that's
21 what the response was.

22 Q So the answer was, you couldn't make those
23 commitments?

24 MR. FLAHERTY: Object to the form. He just
25 answered, told you what the answer was.

60

1 A I told him I would continue to look,
2 continue to discuss, but if he wanted me to answer at
3 that point, right then, that I could not give him a
4 yes right then, at that very moment.

5 Q So you gave him a no at the moment?

6 MR. FLAHERTY: Object to the form.

7 A No, I did not give him a no.

8 Q Okay. You just said you couldn't do it
9 immediately?

10 A I said if he wanted me to at that point, he
11 said, "Tell me yes, you are going to do it, tell me
12 no, you are going to do it," my response was, "If you
13 are asking me to say yes, I am going to do this right
14 now, I am not" -- "I'm" -- "I will not give you the
15 response you want right now, I want to continue to
16 look and discuss, and work on these issues."

17 Q Did you feel, from his perspective, that
18 that was the deciding factor for him to leave West
19 Virginia University, that you would not make a
20 commitment that you would say yes on these issues that
21 he wanted?

22 MR. FLAHERTY: Object to the form, calls
23 for speculation.

24 A No.

25 Q He didn't ask for more money; did he?

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1 A At that point?

2 Q Yes.

3 A Specifically?

4 Q Yes.

5 A No.

6 Q Okay.

7 So his meeting with you didn't deal with
8 money, it dealt with other issues in the athletic
9 football program; correct?

10 A At that meeting, I do recall him talking
11 about other salaries at other schools, referring to
12 "Being paid similar to my peers," et cetera.

13 Q But he didn't ask you for a raise to stay,
14 and you didn't offer it?

15 A No.

16 Q What did Craig Walker say at that meeting
17 on December 15th of '07?

18 A It was pretty much Rich talking to Craig
19 and I.

20 And neither of us said much, other than we
21 would work with him, and our -- that we would continue
22 to make a strong commitment to the program, as in the
23 past, and that we wanted it -- him to continue with
24 us.

25 Q Did you tell him that you would put the

62

1 \$200,000, approximately, that was taken out of the
2 Mountaineer Club, and put it back in the air fare
3 category?

4 MR. FLAHERTY: Object to the form.

5 Object to the form.

6 What's the Mountaineer Club?

7 Q The 1100 Club?

8 A No.

9 Q Did he ask you to?
10 A No.
11 Q Did he ask Craig Walker to?
12 A I don't recall at that meeting, that being
13 discussed.
14 Q Was that at another meeting it was
15 discussed, prior to December 15th of '07?
16 A I don't recall it.
17 Q You don't ever recall him, him being
18 Rich Rodriguez, asking that the moneys that were spent
19 out of the 1100 Club be replenished, so that he and
20 his coaches could have charter air fare?
21 A I do recall a conversation with my
22 associate athletic director, for finance --
23 Q What was his name?
24 A Russ Sharp.
25 Q Okay.

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1 A -- and a confirmation, via he and I, and he
2 confirming that with Rich, that the purpose of the
3 1100 Club was for recruiting.
4 And as such, on occasion, funds could --
5 would be used for recruits on campuses, lodging,
6 meals, et cetera.
7 MR. ROBON: Let's mark this as E.
8 (Thereupon, Pastilong Exhibit E was marked
9 for identification.)
10 BY MR. ROBON:

11 Q I am going do hand you what we have marked
12 as Exhibit E, which is a memo to you from Russ Sharp,
13 dated August 27th of '07.

14 And ask if you can identify that document.

15 And does it deal with the 1100 Club?

16 A Okay.

17 Q The answer is yes, it does relate?

18 A Help me.

19 Q My question was: The memo from Russ Sharp,
20 dated August 27th, '07, does it relate to the
21 1100 Club, the last paragraph.

22 MR. FLAHERTY: Solely?

23 Q The last paragraph.

24 A The last paragraph?

25 Q Yes.

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1 A Yes.

2 Q And does this memo from Mr. Sharp, who was
3 your assistant --

4 A Associate.

5 Q -- associate, state that the funds in the
6 football enrichment fund, which were \$588,562, will be
7 used primarily to reimburse the department for costs
8 related to construction projects related to football,
9 as opposed to air travel expenses for the coaches?

10 A And you are correct. And those moneys,
11 Russ indicated to Rich that they were used for
12 football enrichment programs in a cash flow situation,

13 and that they would be replaced, and they were
14 replaced, and everyone knew that that was a function
15 that was taking place, it wasn't like it was
16 inappropriate.

17 Q You mean you borrowed the money from the
18 1100 Club to use it for a purpose other than what was
19 set forth in the charter of the 1100 Club; is that
20 what you are telling this jury?

21 A That's correct.

22 Q And tell the jury when you replaced the
23 moneys.

24 A I would have to check with Mr. Sharp on
25 that. But they are replaced.

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1 Q They were replaced after Rich complained
2 about it?

3 A No.

4 Q Before he complained about it?

5 A They were replaced as Mr. Sharp felt
6 sufficient funds were available.

7 Q And where did the funds come from, to
8 replace the funds that were taken out of the 1100 Club
9 account?

10 A I would have to have Mr. Sharp answer that.

11 Q Did they come from the foundation, or the
12 university; to your knowledge?

13 A I cannot confirm this, but it would be my
14 guesstimate that they came out of the foundation

15 funds, with regards to that enrichment account.

16 Q When you left this meeting on
17 December 15th with Mr. Walker and Mr. Rodriguez --
18 first of all, tell the jury how long that meeting
19 lasted.

20 A Less than an hour.

21 Q And when you walked out of that meeting,
22 what conclusion did you reach?

23 That Rich was going to stay or leave?

24 Or you didn't know?

25 A I did not know.

66

1 Q Did he tell you he would stay if these
2 promises, that were made to him, were implemented, and
3 not just you would continue to work on them?

4 A No.

5 Q Did he infer that?

6 A No.

7 Q Did you know he had an offer from Michigan
8 at that time?

9 A No.

10 Q He didn't tell you? I thought you said you
11 heard it on the radio, or in the newspaper?

12 A I don't believe he told me.

13 Q But you knew about it?

14 A Well, I mean, I had heard.

15 Q Okay.

16 A But I had no confirmation.

17 Q Would you say he was one of the most
18 successful coaches in West Virginia University
19 history, in the football program?

20 A He was a successful coach.

21 Q Okay.

22 Liked by the athletes?

23 A You would have to ask the athletes that.

24 Q Well, you are the athletic director, you
25 sure ought to know, if anybody would know.

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1 MR. FLAHERTY: Object to the form.

2 A There were some athletes that over the
3 years were upset with his methods.

4 Q His regimentation?

5 A And then there were some who liked to be
6 coached in his particular manner.

7 Q Well, let's -- let me ask this question, so
8 the jury has a better perception: On a scale of 1 to
9 10, with 10 being the best, how would you rate coach
10 Rodriguez's performance at West Virginia University,
11 in the last five years?

12 A I would say high.

13 Q More than 5?

14 A I would prefer to say high.

15 I mean, I don't -- I wouldn't want to be
16 quantitative.

17 Q Do you think he could have done better?

18 A He coached some exceptional games, and then

19 there were some games that he, himself, indicated that
20 he would have liked to have coached over.

21 Q Like the Pitt game?

22 A I'd say that's one of them.

23 Q Well, my question is: I'm assuming you and
24 Craig Walker did not want him to leave West Virginia
25 University; is that accurate or inaccurate?

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1 A That's accurate.

2 Q And would you say that at the time
3 West Virginia was rated in the top ten in the nation?

4 A Yes.

5 Q You had won the Big East Conference?

6 A Yes.

7 Q By the way, did you ever congratulate him
8 for doing that?

9 A Yes.

10 Q When?

11 A I spoke to him and congratulated him, and
12 complimented him, yes.

13 Q Do you remember when?

14 A That doesn't come to me right now, readily.

15 Q But -- and he got the West Virginia team
16 into a bowl game for a second time in a row?

17 A Yes.

18 Q Did you congratulate him for that?

19 A I congratulated him, but I don't know if I
20 went and said, "Congratulations for being in a bowl

21 gauge two years in a row," so --

22 Q Didn't you think, as athletic director --
23 and how many students are at West Virginia?

24 A 26, 27, 28 thousand, something like that.

25 Q Okay.

69

1 And does the school have a budget in excess
2 of a half a billion dollars; 500 million?

3 A People like Craig Walker and Narvel Weese,
4 they would -- I don't -- I couldn't talk in terms of
5 what the university's total budget is.

6 Q But you talked about the athletic budget
7 was what, 48 million?

8 A It is in that area, yes, sir.

9 Q With a budget of \$48 million, didn't you
10 feel that an individual who has broad honor and
11 respect, success, fame, recognition to this
12 university, that you would do whatever it took to keep
13 him?

14 MR. FLAHERTY: Object to the form of the
15 question.

16 Q Didn't you feel that way?

17 A Well, I told Rich straightforward, that we
18 wanted him to remain with us.

19 Q Did you talk to the governor the night
20 before you had that meeting with Rich Rodriguez and
21 Craig Walker?

22 MR. FLAHERTY: Which night, which meeting?

23 BY MR. ROBON:

24 Q The meeting on December 15th, which would
25 be the night you called the governor's office on the

70

1 14th, as your records show?

2 A And if -- and what did I -- you are asking,
3 what did I say to the governor?

4 Q Yes. What did the governor tell you to do?

5 A I don't recall any specific direction from
6 the governor.

7 Q Did you tell him you were meeting with
8 Mr. Rodriguez and Mr. Walker in the morning?

9 A I don't recall if we had that conversation.
10 I am not a hundred percent sure if Mr. Walker and I
11 didn't talk that morning, and put the meeting
12 together. I --

13 Q But the governor knew about the meeting
14 with you and Rich Rodriguez; right?

15 A I can't confirm that. I don't know.

16 Q Did you call the governor and seek approval
17 of your plan of action with Mr. Rodriguez?

18 A To have that meeting?

19 Q Yes.

20 A No.

21 Q Rich Rodriguez supported you in your --
22 when he first came here to the university; didn't he?

23 MR. FLAHERTY: Object to the form. Do you
24 want to define "support"?

25 Q Well, the former president was thinking

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1 about terminating you; was he not?

2 A He had not indicated that to me.

3 Q Mr. Hardesty, President Hardesty?

4 A He had not stated that to me, no.

5 Q Well, by actions, did you feel that perhaps
6 your job was in jeopardy, back in the year 2000-2001?

7 A The president had asked for a strategic
8 plan, and a presentation to he and the board of
9 governors with regard to the athletic department, and
10 I felt that went very, very well. And we followed
11 that plan, and I am pleased to say we have been quite
12 successful.

13 Q But you are not answering my question.

14 After Rich went 3 and 8 in his first year
15 here at West Virginia, didn't President Hardesty think
16 about removing him and you, in the athletic
17 department?

18 A Well, Rich's first year was 3 and 8. It
19 was a difficult year. And following that year, Rich
20 asked for an extension of his contract for recruiting
21 purposes, and to indicate a strong commitment from us.

22 I led that particular request, granted it,
23 I got permission from the president, and various
24 people, and went public because I felt that Rich had
25 potential, and that in order for him to be successful,

1 we needed to make a strong commitment both ways.

2 And so I extended that contract. Got some
3 criticism.

4 Q And you made the right decision, though;
5 didn't you?

6 A I was pleased.

7 Q Yeah, everybody was, after the fact.

8 But at the time, Rich stood behind you,
9 didn't he, and said, "Don't put the blame on the
10 athletic director"; correct?

11 A We stood beside each other.

12 Q And you were friendly in that regard;
13 right?

14 A Yes. And we remain friendly.

15 A And at the time, Joe Manchin was not
16 governor of the State of West Virginia; was he?

17 A That's correct.

18 Q And there was a time when Joe Manchin was
19 running for governor, and the president of the
20 university was supporting a different individual?

21 A I can't speak for the president, as to who
22 he was supporting.

23 Q Well, don't you remember President Hardesty
24 supporting the other candidate, and Joe Manchin said,
25 "I want you to come to a fund raiser;" do you remember

1 that?

2 A I remember him asking to be in attendance
3 at a fund raiser, yes.

4 Q Did you attend?

5 A No.

6 Q Rich attended; didn't he?

7 A Yes.

8 Q And he was being criticized by the
9 president, President Hardesty, for attending; correct?

10 A I can't confirm that, no.

11 Q Wasn't Rich kind of his own man, said,
12 "This has got nothing to do with the university, I
13 want to support Joe Manchin, I have known him all my
14 life, so I am going to go"?

15 Do you recall that?

16 A He -- I recall him going there, yes.

17 Q Did you know that Joe Manchin, the
18 governor, called Rich on more than one occasion, in
19 December of '07?

20 A I'm sure they did. I mean, they were
21 friends.

22 Q Did you know that he called him on
23 Christmas day?

24 A I don't know if he did.

25 Q Could you explain to me -- you know

74

1 Joe Manchin, right, the governor?

2 A Yeah.

3 Q Quite well; right?

4 A Yes.

5 Q Could you explain to me how he could call,
6 and be nice to an individual on Christmas day, and
7 then on December 27th, two days later, have the
8 university sue him?

9 MR. FLAHERTY: Object to the form of the
10 question. An assumption that the governor had
11 the university sue him.

12 A I can't speak to that.

13 Q Do you believe, Mr. Pastilong, that
14 Joe Manchin is the one who directed the lawsuit
15 against Rich Rodriguez? Yes or no.

16 A I can't speak to that.

17 Q Do you think Governor Manchin is
18 controlling this lawsuit?

19 A I can't speak to that.

20 Q Who do you think is making the final
21 decisions in this lawsuit?

22 A I can't speak to that either.

23 Q Do you know if it's the board of governors,
24 do you know if it's the president, do you know if it's
25 Mr. Manchin?

1 A I don't have the answer to that question.

2 Q Have you been involved in any of the
3 discussions of this lawsuit, other than for your
4 testimony?

5 A No.

6 Q So you have been on the outside, so to
7 speak, not part of the inner circle?

8 A Is that a question?

9 Q That's a question. You weren't part of the
10 inner circle?

11 MR. FLAHERTY: Do you want to define the
12 inner circle?

13 MR. ROBON: Inner circle dealing with this
14 litigation.

15 MR. FLAHERTY: If you know what that means,
16 go ahead and answer.

17 A That wouldn't be my area of responsibility.

18 Q Did you -- when you heard about the
19 promises that were made to Coach Rodriguez on
20 August 24th of '07, did you know that some of those
21 promises would not be immediately implemented?

22 MR. FLAHERTY: Object to the form of the
23 question, and the assumption of promises.

24 A I don't know if promises were made, I was
25 not there.

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1 Q Okay. Well, when you got these two memos,
2 these exhibits from Russ Sharp and Craig Walker, you
3 assumed there had to have been some discussion about
4 promises; correct?

5 MR. FLAHERTY: Object to the form.

6 A I am not going to assume.

7 Q Isn't it true that the governor even went

8 on public radio about Coach Rodriguez leaving?

9 A He made some comments, but I -- I can't
10 recall the specifics of them.

11 Q Did you listen to his comments on the radio
12 show, the interview?

13 A I don't think I heard that particular show.

14 Q Did you hear about it?

15 A I heard about it, I'm sure.

16 Q Why don't you tell the jury what you heard
17 about it?

18 MR. FLAHERTY: Object. It's hearsay.

19 Go ahead and answer.

20 A I don't know specifically what he said, I
21 did not -- did not hear it.

22 Q I just want to know what you heard about
23 it, what your perception was, what was said?

24 A That he made comments about it.

25 Q What were his comments?

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1 A I don't know what his comments were.

2 Q Didn't he say, "We are going to collect
3 every penny of that \$4 million"?

4 A I did not hear him say it.

5 Q Did you hear that someone else told you
6 that he said it?

7 A I heard that.

8 Q Okay.

9 As head of the athletic department, can you

10 explain to me -- and I consider myself a fairly
11 worldly person -- why in the world the governor would
12 get involved in the firing of a head coach?

13 MR. FLAHERTY: Object to the form and the
14 assumption.

15 Q Or the head coach leaving?

16 A I can't speak to that.

17 Q Okay.

18 Would you say the governor of this state
19 meddles in everything that he can, has control over?

20 A No.

21 Q No.

22 But he is involved in the athletic
23 department; correct?

24 MR. FLAHERTY: Object to the form. He has
25 already asked and answered that.

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1 A And I told you the involvement.

2 He was an athlete here.

3 Q Uh-huh. Well, you mentioned that.

4 A He was a big supporter.

5 Q Does he give money?

6 A He and his wife endowed a scholarship many
7 years ago, they instituted that, and they take part in
8 ticket purchases, those types of things, yes.

9 Q When the football team beat Connecticut in
10 '07, did you go in the locker room and congratulate
11 the coach and the team?

12 A No.

13 Q Did you call the coach on his cell phone?

14 A I don't think so.

15 Q Did you congratulate any of the assistant

16 coaches?

17 A That particular day?

18 Q Yes. Or within a couple of days

19 thereafter?

20 A Oh, if -- afterwards, I may have, I may not

21 have.

22 Q You don't recall?

23 A I don't recall.

24 Q Did you send any e-mails, about

25 congratulations, either to Coach Rodriguez, or to

79

1 assistant coaches?

2 A No.

3 Q Did you send them a note in the mail?

4 A No.

5 Q Did you think that Rich was one of the top

6 coaches in the country at the time?

7 A Yes.

8 Q Do you agree with Senator Rockefeller's

9 comments, when he publicly stated that Coach Rodriguez

10 wasn't that good of a coach anyway, after he found out

11 he was leaving?

12 A I can't speak to Senator Rockefeller's

13 comments, or opinions.

14 Q Well, do you have that opinion, or you
15 don't have an opinion?

16 A With regards to --

17 Q The coach's ability, after he left?

18 A When Rich was our coach, I felt he would be
19 a very good coach.

20 Q Tell me about the shredding incident.

21 Who leaked that to the West Virginia news
22 media?

23 MR. FLAHERTY: Object to the form.

24 A I don't know.

25 Q Did you investigate it, as head of the

80

1 athletic department?

2 A We asked the department of public safety to
3 look into that.

4 Q And, what was the result?

5 A We haven't gotten the results.

6 Q My goodness, it is three months, four
7 months later.

8 MR. WAKEFIELD: Is that a question?

9 MR. FLAHERTY: There is not a question
10 pending, you don't have to answer if there is not
11 a question pending.

12 MR. ROBON: I will rephrase the question.

13 BY MR. ROBON:

14 Q Have you talked to the head of the
15 department of public safety in the last three months,

16 about that shredding incident?

17 A No.

18 Q Did they interview you?

19 A No.

20 Q Did they interview any of your assistants,
21 or associate athletic directors?

22 A They spoke with members of our staff,
23 particularly those who work in the Puskar Center.

24 Q Did you believe that Rich Rodriguez
25 shredded important documents that belonged to the

81

1 university?

2 A I have no idea what was shredded.

3 Q Do you believe Rich Rodriguez shredded
4 documents that were important to the university? You
5 can answer that yes or No.

6 MR. FLAHERTY: He can answer it any way he
7 wants, and he just did.

8 A Yeah, I have no idea what was shredded.

9 Q My question is what you believe.

10 MR. FLAHERTY: Asked and answered.

11 A I don't have an opinion on that.

12 Q Okay.

13 So as far as you know, you don't know who
14 in the athletic department conjured up the shredding
15 incident?

16 MR. FLAHERTY: Object to the form.

17 A No.

18 Q Can you tell us why you didn't follow up
19 with the department of public safety about the
20 shredding incident, in the past three months?

21 A I didn't have any reason to. I didn't have
22 any reason to.

23 Q Who is Jimbo Fisher?

24 A Jimbo Fisher is the -- he is assistant
25 coach at Florida State, and --

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1 Q Did you speak with him?

2 MR. FLAHERTY: When?

3 BY MR. ROBON:

4 Q In the past several months?

5 A Yes.

6 Q Did you interview him for the replacement
7 of Mr. Rodriguez?

8 A Following Rich's official resignation, I
9 had telephone conversations with Jimbo Fisher, yes.

10 Q Did you tell Jimbo Fisher that you could
11 not increase the salary pool for the assistant
12 coaches, because it could hurt in the lawsuit
13 involving Rich? Or something very similar to that?

14 A I don't believe I said that.

15 Q What do you believe you said?

16 A I don't believe I said anything along those
17 lines.

18 Q You didn't talk about the salaries of
19 assistant coaches with Jimbo Fisher? Remember, you

20 are under oath.

21 MR. FLAHERTY: He is well aware of that.

22 A I don't recall having a discussion of

23 assistant coaches' salaries with Mr. Fisher.

24 Q But you don't deny it could have happened?

25 You just don't recall?

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1 MR. FLAHERTY: Asked and answered.

2 A I don't recall.

3 Q Did you make a comment to Larry Aschebrook,

4 that you are not going to let President Garrison run

5 the athletic department?

6 A No.

7 Q Did you make that comment to anybody?

8 A No.

9 Q Never?

10 A Never.

11 Q Did you make the comment you are not going

12 to let President Garrison interfere in the running of

13 the athletic department?

14 A No.

15 Q Did you use similar words, but not

16 identically as I have used?

17 A No.

18 Q Do you think the possibility exists, that

19 President Garrison did promise Coach Rodriguez --

20 MR. FLAHERTY: Object to the form of the

21 question, calls for speculation --

22 Q -- several --

23 MR. FLAHERTY: -- and it is completely
24 irrelevant.

25 A I can't speak for Mr. Garrison.

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1 MR. ROBON: We need to change tapes.

2 MR. ROBON: Yes, go ahead.

3 MR. FLAHERTY: The time is 11:08 a.m., we
4 are going off the record, this concludes tape 2.

5 (Recess taken.)

6 THE VIDEOGRAPHER: The time is 11:17 a.m.,
7 we are back on the record, this begins tape 3.

8 BY MR. ROBON:

9 Q Mr. Pastilong, can you tell this jury of
10 any particular document that you or anybody in the
11 athletic department, or anybody in the department of
12 public safety, thinks that Rich Rodriguez shredded?

13 A I would not have knowledge of that, because
14 I was not there.

15 Q Now, take a look at Rich's contract,
16 Exhibit B. And take a look at page 12. And you see
17 paragraph 11, where it talks about the Puskar,
18 P-u-s-k-a-r, Center renovations?

19 A Yes, sir.

20 Q Did you tell Rich that those were not going
21 to be made, sometime in the fall of 2007?

22 A No.

23 Q Did you tell him that they had been

24 delayed?

25 A No.

85

1 Q What did you tell him, regarding the
2 contributions, or the renovations?

3 A I asked Russ Sharp, again, my associate
4 athletic director for finance, to accompany me to
5 Rich's office, and -- and I mentioned to Rich that if
6 he could help us with regards to that particular
7 project, and that I was going to speak with our
8 Mountaineer Athletic Club personnel, and with the WVU
9 Foundation, and to members of the athletic department,
10 and myself, that I wanted to focus in on that
11 particular project.

12 That the sufficient amount of funds had not
13 been surfacing, and that as a team effort in the
14 department, if we could all refocus ourself on that.

15 Q So --

16 A And we did, and we were successful.

17 Q And do you recall about the time you and
18 Mr. Sharp met with Rich Rodriguez about that matter,
19 as far as a date?

20 A It was in the fall, and I might add that
21 Rich was very receptive to that meeting, and it was --
22 we left there with, "We are all going to roll our
23 sleeves up, and make sure we get this done."

24 Q But when that meeting occurred,
25 paragraph 11 had not been complied with; correct?

1 A That's incorrect. Paragraph 11, we were
2 still within the time frame of doing that.

3 Q But you told Rich you were having
4 difficulty?

5 A I was having concern, having difficulty,
6 and I wanted all of us to not lose focus on that
7 particular project.

8 He concurred, and again, we were
9 successful.

10 Q After the fact?

11 MR. FLAHERTY: After what fact?

12 MR. ROBON: After the meeting.

13 A Prior to the meeting, we had raised a
14 little bit of money, but it wasn't sufficient, it
15 wasn't enough.

16 Q Right.

17 A But after that meeting, yes.

18 Q Okay.

19 A He helped, I helped, MAC director helped,
20 everybody helped, and we completed that. It was a
21 good team effort.

22 Q Did you -- after that meeting, did you ever
23 tell Rich that you had raised enough money to complete
24 the Puskar Center renovations; and if you did, tell me
25 what date you did it.

1 A I can't recall that. I do know we

2 continued on with that project.

3 Q I understand.

4 But my question is: Did you communicate to
5 Rich, that you had actually raised the money to do it?
6 Yes or no.

7 MR. FLAHERTY: Answer any way --

8 A I can't recall.

9 Q Can you tell the jury your understanding of
10 why Rich Rodriguez did not sign his contract between
11 December of '06 and, you know, before August 24th of
12 '07?

13 A I cannot.

14 Q What was your understanding of the reason?
15 Or what was communicated to you?

16 A That was discussions taking place with the
17 university's legal counsel, and his team of experts.

18 Q That's all you --

19 A To work out the particulars.

20 Q That's all you knew?

21 A That's pretty much all I --

22 Q Between December of '06 and August of '07,
23 what did you do as the athletic director, to help get
24 that contract signed, if anything?

25 A Again, those discussions between his team

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1 of experts and our university's legal counsel, was
2 taking place.

3 My particular role in that, was not

4 required.

5 Q Would you say it's fair to tell the jury,
6 you had no role in getting that contract negotiated
7 and executed between December of '06 and August of
8 '07?

9 MR. FLAHERTY: Object to the form.

10 A Again, his team, our legal counsel, working
11 out the particulars, that was an area -- that was not
12 being handled by me.

13 Q Okay.

14 When did you first hear there was a
15 \$4 million liquidated damages clause in the contract?

16 MR. FLAHERTY: Are you talking about the
17 second amendment?

18 MR. ROBON: Yes.

19 MR. FLAHERTY: Or the term sheet?

20 MR. ROBON: Either way.

21 A With regards to the second amendment --
22 well, okay. The -- the preparation of the term sheet,
23 in discussions with Rich, his team of accountants,
24 attorneys, our departmental personnel, university's
25 legal counsel, and so on, that particular amount for

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1 that particular time was what all parties felt was the
2 amount suitable for the liquidated damages at that
3 time.

4 And then that carried over into the second
5 amendment.

6 Q Was there -- was Rich told, to your
7 knowledge, that certain large donors insisted that
8 there be a \$4 million liquidated damages provision,
9 since he had been approached by the University of
10 Alabama the year before?

11 A I had no knowledge of that, no.

12 Q Did any donor to the West Virginia
13 University Foundation, Inc., ever tell you that they
14 wanted a large dollar liquidated damages figure, to
15 keep Rodriguez?

16 A I don't recall a donor doing that.

17 Q Did you ever hear, by hearsay, of a donor
18 saying that?

19 A I don't recall that, no, sir.

20 Q Did you ever talk to Ken Kendrick about a
21 liquidated damages provision in Rich Rodriguez's
22 contract?

23 A Mr. Kendrick indicated his interest in Rich
24 remaining with us, and --

25 Q In Rich remaining with you?

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1 A Yeah. And had put together a significant
2 pledge, and he had discussions with Rich, and then our
3 Mountaineer athletic director, Whit Babcock, and as a
4 result that pledge was put together.

5 But, Mr. Kendrick, to my knowledge, did not
6 address liquidated damages to me.

7 Q Did he do it to Whit Babcock?

8 MR. FLAHERTY: If you know.

9 A He -- outside of the pledge, and
10 encouragement to keep Rich, I can't help you on that.

11 Q Can you explain to the jury what damages
12 the university could suffer by Rich Rodriguez leaving
13 the athletic -- damages of the athletic department, if
14 any?

15 MR. FLAHERTY: Object to the form of the
16 question.

17 Go ahead.

18 A Now, the -- at the time that we put the
19 various liquidated damages in the contract and
20 amendments, and with the discussion from his team of
21 experts, it was concluded that there could be damages
22 with regards to us terminating him for his personal
23 income, but there also could be liquidated damages to
24 us, in terms of recruiting, departure of players,
25 donors, ticket sales, image, and those damages could

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1 be quite steep.

2 Q As far as you know -- it's now been just a
3 little bit more than four months, since he resigned;
4 correct?

5 A Yes.

6 Q Okay.

7 -- have any of those concerns come to pass,
8 where the university has suffered any financial
9 damage, that you can quantify?

10 A Yes.

11 Q And would you tell us what that is?

12 A Two large donors come to mind immediately,
13 with large pledges. The departure of two very good
14 football players, who had eligibility remaining with
15 us.

16 Q And which two are those?

17 A Darius Reynaud, Steve Slaton.

18 Q Did they tell you it was because Rodriguez
19 left?

20 A There was a statement via the media with
21 regard to Slaton, indicating that was his -- had Rich
22 been here, he would not have departed.

23 Q But you don't know that of your personal
24 knowledge?

25 A It was in the media.

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1 No, he did not tell me that directly.

2 Q He didn't tell any of your assistants that,
3 either; did he?

4 A He stated, it was in the media, I don't
5 know how it got to the media.

6 Q Okay.

7 A I can't give you the details, the
8 particulars of that.

9 Q So we have two football players leaving.
10 What else occurred?

11 By the way, how many --

12 A The donors. The donors, that was a
13 considerable amount of money.

14 Q Let me go back.

15 MR. FLAHERTY: Let him finish his answer,
16 please.

17 Q So we keep the jury, we don't want to keep
18 them in suspicion, how many football players are on
19 the team, so the jury gets an idea of what two means,
20 in the picture of things?

21 A Well, we have 125 players, 22 are first
22 team, 11 at a time, but I will say, Steve Slaton, two
23 years ago, was first team All American, and
24 Darius Raynaud was All Conference.

25 I mean, they are two pretty good football

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1 players, very difficult to replace.

2 Q But they weren't this last year?

3 A They are pretty good.

4 Q But they didn't get All American?

5 A Darius Reynaud was All Big East, but Steve
6 Slaton did not make the first team All American, this
7 past year, that's correct.

8 Q So my question is: You lost two football
9 players. Now, are you talking about the contributions
10 from Don Reynolds and Ken Kendrick?

11 A That's correct.

12 Q Have contributions from other donors
13 increased, by millions of dollars?

14 A I don't believe so.
15 Q You don't believe so?
16 A By millions of dollars?
17 Q Yes.
18 A A individual person?
19 Q No, not an individual. I am talking about
20 a collective fund, donations?
21 A Well, we are still into our fundraising
22 right now. In fact, right now is a very active time
23 for us.
24 Q When is the fiscal year for the foundation?
25 A The foundation runs, I believe into the

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1 January. I don't -- their fiscal year doesn't end on
2 June 30th. I believe.
3 Q Would you say that the funds compared to
4 last year, are up or down, as far as donations?
5 MR. FLAHERTY: Are you speaking of the
6 foundation, or are you speaking of --
7 Q The foundation.
8 MR. FLAHERTY: If you know.
9 A It's too early to determine that right now.
10 I could not answer that.
11 Q Who runs the foundation?
12 A Well, the chief officer for that is
13 Mr. Wayne King. And then there is a board.
14 Q Okay. And does Mr. King work for the
15 university?

16 A He works for the foundation.
17 Q He doesn't work for the university?
18 A I do not believe so.
19 Q Is President Garrison involved in the
20 foundation?

21 A I don't know the particulars of his
22 association with the foundation, and just how he is
23 connected.

24 Q How many employees does the foundation
25 have, to your knowledge?

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1 A I don't know that answer.

2 Q Who is your contact with the foundation?

3 A We have a unit within our department, it's
4 called Mountaineer Athletic Club.

5 We have an assistant athletic director, who
6 is the director of that particular unit.

7 Q And is that part of the foundation?

8 A That is part of the foundation, yes. We
9 supervise it, and it is co-existent with the athletic
10 department and the foundation.

11 MR. ROBON: Would you put a tab right
12 there, so I can find that easy.

13 All right.

14 Q So, how many people in this unit that are
15 paid by the university's athletic department, actually
16 work for the foundation, and the Mountaineer Club?

17 A Well, the director of that works for the

18 foundation, he is paid via the foundation, from our
19 particular Mountaineer Athletic Club account.

20 Q And how do you -- how do you break down the
21 Mountaineer account, from the foundation account?

22 A The foundation handles the private funds
23 for the university, whether it be the Medical Center,
24 or the various schools on campus, various colleges on
25 campus, and then they manage our moneys also.

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1 We deposit our moneys there, they manage
2 them for us.

3 Q So if Mr. Kendrick donated a million
4 dollars to the Mountaineer Club, it would come to the
5 athletic department, but would be put into the
6 foundation's coffers?

7 A Yes, in our particular -- that's correct.

8 Q But you would have control over the use of
9 the money, the athletic department would?

10 A That's correct.

11 Q And how many people -- you didn't tell me
12 how many people, in a unit, in the athletic
13 department, work on the Mountaineer Club?

14 A Mountaineer Athletic Club?

15 Q Yes.

16 A There are about seven or eight people.

17 Q Full time?

18 A Yes.

19 Q So they are working for the athletic

20 department, soliciting funds for the foundation,
21 basically?

22 A Yes.

23 Q Going out, taking people to dinner, lunch,
24 asking for money?

25 A Yes.

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1 Q And do you supervise that?

2 A Yes.

3 Q And is it fair to say that the only reason
4 the moneys go to the foundation, is so that they can
5 stay within the confines of the athletic department,
6 since if they went into the general funds of the
7 university, they could be spent for other purposes?

8 A You need to make that more clear for me. I
9 apologize.

10 Q I will rephrase the question.

11 If the foundation didn't exist, and the
12 athletic department solicited contributions, if those
13 moneys came in, they would go into the university's
14 general fund, and the athletic department would lose
15 control of those funds; correct? If the foundation --

16 A If they went into the general university's
17 state fund, we would still manage those, under the
18 supervision of the university's state accounts.

19 Q Right.

20 A If they go over to the foundation, then we
21 still supervise these under the auspices of the

22 foundation, and under their supervision, guidelines.

23 Q But isn't it, in effect, that the athletic
24 department is more autonomous, and has more control
25 over the contributions, if they are in the foundation

1 coffers?

2 A Not necessarily.

3 As we make expenditures, we follow the
4 state policies, procedures, and then if we make
5 expenditures out of the foundation, we follow their
6 policies, their procedures.

7 Q Okay.

8 Who is Dusty Rutledge?

9 A Dusty is -- or was, our video coordinator
10 for football.

11 Q And, was he at President Garrison's house
12 when Rich Rodriguez was there, on the evening of
13 December 15th, the Saturday night, 2007?

14 MR. FLAHERTY: If you know.

15 A I -- I heard he was. I -- I did not see
16 him there, since I wasn't there, so I can't confirm
17 that.

18 Q Okay.

19 Is he employed by the athletic department?

20 A He was, yes.

21 Q Was he fired on the following Monday, after
22 he heard President Garrison indicate to
23 Coach Rodriguez that he would not fulfill the promises

24 that were made on August 24th of '07?

25 MR. FLAHERTY: Object to the form of the

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1 question, and the assumptions contained in it.

2 A He was never fired.

3 Q He wasn't fired?

4 A No.

5 Q Was he removed from his office?

6 A He was removed from his office, and -- yes.

7 Q And was it that following Monday morning,

8 which would have been December 17th?

9 A If I miss it by a day, but I think it was
10 the 17th, that he was asked to relocate into the
11 coliseum.

12 Q And can you tell me why that occurred, and
13 who directed that that occur?

14 A It was felt that he would better serve the
15 department in a different capacity.

16 Q Who made that decision?

17 A Well, that was --

18 Q Governor Manchin?

19 A No.

20 Q Or President Garrison?

21 MR. FLAHERTY: Or someone else.

22 Object to the form.

23 A Well, that was a discussion -- first of
24 all, Governor Manchin did not make that, and it was a
25 decision, after some discussion with our department,

1 and some other people within the university, just felt
2 it would be best for him, for everybody, if he was
3 relocated in the coliseum, worked into another
4 assignment, that type of thing.

5 Q When were those discussions held; on that
6 Monday, or prior thereto; the Monday the 17th, or the
7 16th -- I guess it would be the 16th. Yeah, it would
8 be -- no, the 17th.

9 A Sunday, Monday, in that area.

10 Q Okay.

11 So they weren't held a week before?

12 A No.

13 Q And, did President Garrison tell you to
14 implement those decisions?

15 A No.

16 Q Did Craig Walker tell you to implement
17 those decisions?

18 A He was part of that discussion.

19 Q He was a part. Okay.

20 And why would Craig Walker be involved in a
21 decision to remove somebody from an office in the
22 Puskar Stadium?

23 A There were -- he just was.

24 Q So he made that decision, not you?

25 A It was a consensus that it would be better

1 for Mr. Rutledge to relocate, not only for -- even for
2 Mr. Rutledge's concern, also.

3 Q Well, did -- who initiated that thought;
4 you, Craig Walker, or somebody else?

5 A I can't recall who initiated that.

6 Q You really didn't make the decision, then?

7 A That was a part of the discussion.

8 Q But you did not make the decision?

9 A Not 100 percent.

10 Q Well, not even 50 percent?

11 A I was a part of the discussion.

12 Q You were told what to do; right?

13 A Not necessarily.

14 I mean, it was a discussion. And it
15 resulted from that discussion.

16 Q Well, wasn't it fact that Craig Walker
17 said, "Fire his ass," or "Get his ass out of here," or
18 something of those kind of words?

19 A Not really.

20 Q Well, can you tell me what words he used?

21 A There were several people involved in that,
22 and I just --

23 Q Tell me the words Craig Walker used.

24 A I don't recall.

25 Q Do you believe he was removed because he

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1 was loyal to Coach Rodriguez?

2 A It was felt that it would -- again, to

3 repeat myself, it was felt it would be better if he
4 wasn't in that setting. And --

5 Q Did you know that he overheard the
6 conversation between President Garrison and
7 Coach Rodriguez on September 15th, 2007?

8 MR. FLAHERTY: Object to the form of the
9 question.

10 A No.

11 Q A year ago, when Coach Rodriguez was
12 approached by the University of Alabama, did you make
13 any effort to keep him as the coach at West Virginia
14 University?

15 A Yes.

16 Q What did you do?

17 A The first person I talked to was Rich. And
18 I asked Rich, I said, "Rich, do you want to remain
19 here? And if so, I'm going to make every effort to
20 make it possible for you to remain here."

21 And I spent about five straight days with
22 him. One time I drove to Bridgeport, met him at the
23 airport.

24 But he said, that he replied "Yes," and I
25 made that effort to keep him.

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1 Q Isn't it true --

2 A And we were successful.

3 Q Isn't it true that Whit Babcock was more
4 actively involved in keeping Rich, than you were?

5 A That would be a matter of opinion.

6 Q Isn't it true, that when Mal, M-a-l, Moore,
7 M-o-o-r-e, called from Alabama, you thought it was a
8 prank call?

9 A No.

10 Q No. You didn't think it was real that he
11 was being courted by Alabama; did you?

12 A I thought he was being courted by Alabama.

13 Q Not in the beginning, though?

14 A I never -- I don't -- Mal Moore called me
15 from New York City, very late in this situation, and
16 left a phone message.

17 He did not talk to me directly.

18 I phoned his office and asked to speak to
19 him, but I never did receive a call back.

20 Q Did Rich Rodriguez ever get his web site?

21 A No.

22 Q Do you know if he was promised one?

23 A No.

24 Q Did he tell you he was promised one?

25 A No.

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1 Q Did he ask you for one?

2 A Yes.

3 Q And what did you say?

4 A That I would look into it.

5 Q And can you tell the jury what you did, by
6 looking into it?

7 A I explored it, and I checked with another
8 university who had a similar web site, and found it to
9 be not conducive to the athletic department, and for
10 various reasons, and I went back and talked to Rich
11 with regards to that, gave him my reasons.

12 He seemed to accept that.

13 Q Which university did you talk to?

14 A I talked to Virginia Tech.

15 Q And did they indicate that it gave the
16 coach too much power?

17 A Their reasons for not being very positive
18 about it, was the disgruntled media, inopportunities
19 for the total media to receive materials that could be
20 shared to the general public; that it was becoming too
21 exclusive for those people who would pay the high
22 premium to get the information prior to the others,
23 and that they were getting a great deal of criticism.

24 Secondly, there was information that at
25 times wasn't professionally distributed via the sports

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1 information office, trained professional people.

2 And I discussed that with Rich, and it was
3 my opinion that that was not a good avenue for us to
4 do.

5 I might add that I did not realize that
6 Texas A&M had that same web site, it was very
7 destructive to their athletic department, and to their
8 head coach.

9 Q You mean Bobby Knight?

10 A No, the football coach.

11 Q Oh.

12 A Who was dismissed, and that web site had
13 something to do with it.

14 So I mean, when I discussed it with Rich
15 that I did not think it was a good idea, I did not
16 think it was a good idea for our fans, for our alums,
17 for our department, or university, I didn't think it
18 was a good idea for Rich, and I shared that opinion
19 with him.

20 Q Let's go back to Alabama for a minute.

21 Didn't certain board members call you, and tell you
22 that you better do whatever you need to keep him, or
23 words of similar import?

24 A No.

25 Q Did you talk to any board members about

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1 keeping Rich, when Alabama came to town in December of
2 '06?

3 A I may have, but I don't recall.

4 Q Did you talk to any large donors, in
5 December of '06, about keeping Rich?

6 A I am sure I did, yes.

7 Q They encouraged you to do whatever it took
8 to keep him; right?

9 A There was a sense, that with -- let's keep
10 Rich, let's keep it -- let's do our very best.

11 There were no ultimatums.

12 But it was an effort, that going back to

13 when I asked Rich, you know, "If you want to stay, we

14 will work, we will do our very best to keep you."

15 Q Okay.

16 A And that was the theme of it.

17 Q Now, when we talked about damages that the

18 university suffered, you said they lost two football

19 players.

20 What other damages would there be?

21 A Well, we lost some donors.

22 Q Kendrick and Reynolds?

23 A Those were significant pledges.

24 Q They are going to come back in the saddle,

25 are they not?

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1 A That's up to them. I don't know if they

2 are.

3 Q But overall, the donations, you can't tell

4 the jury donations are down or up?

5 A When liquidated damages were determined, by

6 the university and by Rich's people who advise him, at

7 that time it was determined that those damages could

8 be, and possibly could be significant, and that's how

9 a determination was to put a amount in there.

10 Q Oh, I understand that.

11 A Now, as it unfolds, it is yet to be

12 determined.

13 Q But in fact, your new coach is making a
14 fraction of what Rich Rodriguez made, right;
15 Bill Stewart, 800,000?

16 A Yes.

17 Q So, that didn't cost you any money; right?

18 A It cost us 800,000.

19 Q Well, I know, but you were paying more than
20 that to Mr. Rodriguez?

21 A That's correct.

22 Q Okay.

23 So there has been no study, to your
24 knowledge, done, to calculate damages that West
25 Virginia University may have suffered?

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1 A At the time that we incorporated the
2 liquidated damage clause, there was -- there were
3 guesstimates as to what it possibly could cost us, and
4 they were well above what is in the particular second
5 amendment.

6 Q Okay.

7 The 4 million, or the million and a half?

8 A The 4 million.

9 Q Okay.

10 Has there been any study done, since he
11 left in December of '07, showing what, any damages the
12 university has financially incurred?

13 A No.

14 Q Is there any study under way, to determine

15 that?

16 A No.

17 Q And who would be the person to know how to
18 calculate that?

19 A That person doesn't come to mind.

20 Q It wouldn't be your financial assistant? I
21 think, what was his name, Parsons?

22 A He could be part of it. Foundation
23 personnel. But --

24 Q But what -- so the foundation personnel,
25 would be -- they would have to be involved, in order

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1 to calculate what damages the university suffered?

2 A Possibly.

3 MR. ROBON: Make a note on that, too.

4 Q And why would they be involved?

5 A Our Mountaineer Athletic Club works with
6 the foundation.

7 Q Hand in hand; right?

8 A They work together.

9 Q Yes.

10 Well, it is hand in hand?

11 MR. FLAHERTY: He has answered the
12 question, Mr. Robon.

13 Q When did you know that Mike Garrison was
14 going to be the next president?

15 A When he was announced.

16 I don't know what that -- I forget what the

17 date was.

18 Q Okay. That was some time last spring?

19 A I believe it was.

20 Q Okay.

21 Did you know that certain board members
22 told Rich Rodriguez six to eight months before that,
23 that Mr. Garrison would be the new president?

24 A I can't speak to that.

25 Q My understanding is the faculty at the

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1 university doesn't really like, or approve of -- I
2 shouldn't say like, it is the wrong word -- doesn't
3 approve of Mr. Garrison as president, since he doesn't
4 have an academic background.

5 Would you say that is true or false?

6 MR. FLAHERTY: If you know.

7 Q To your knowledge?

8 A I -- I -- I couldn't answer that.

9 Q Were you aware that Coach Rodriguez was
10 told that once Mike Garrison would be in office, there
11 would be a lot of changes in the athletic department,
12 to make his life easier?

13 A I was not aware of that.

14 Q Mike Parsons is still at the university?

15 A Yes.

16 Q And he is still in the same position he was
17 in a year ago?

18 A Yes.

19 Q And as far as the chain of command, he is
20 directly under you?

21 A Yes.

22 Q Do people blame Mike Parsons for
23 Bobby Huggins leaving?

24 MR. FLAHERTY: Bobby Huggins leaving?

25 MR. WAKEFIELD: Bobby Huggins is the coach.

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1 Q Attempt to leave?

2 A Oh, Bobby is our coach now, and I don't
3 know of any attempts for him wanting to leave.

4 Q Okay.

5 Would you agree with me that when Alabama
6 came around in December of '06, and the \$4 million
7 figure was put out there, that there wasn't any study
8 done to figure out what damages the university would
9 really suffer, if Rodriguez left?

10 A I don't agree with you on that.

11 MR. ROBON: Okay. Could you get me copies
12 of any studies that were done?

13 MR. FLAHERTY: They have been produced.

14 MR. ROBON: They have been produced.

15 Q Who did the one that said it was
16 \$7 million?

17 A That was done with Mike Parsons, he
18 conferred with other people.

19 Q So he is the one that came up with that
20 number?

21 A Not him alone. I mean --

22 Q Did you have input in it?

23 A Yes.

24 Q And if I divided up -- how many people had
25 input in it?

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1 A I can't give you a number, I'd -- people
2 within our department.

3 Q Okay. Well, would you explain to the jury,
4 Mr. Pastilong, you have been athletics director for
5 33 years, and only in the last year and a half that a
6 \$4 million penalty clause, or liquidated damages
7 clause ever came into existence, why wasn't there
8 something in the first 30 years?

9 MR. FLAHERTY: Object to the form. Use of
10 the word "penalty."

11 A For a large number of those years we had
12 coaches there who, for a long -- for a long number of
13 years, and upon their retirement, and as we replaced
14 them, it was requested by the particular replacements,
15 initiated by Rich's team of experts, that that would
16 be included.

17 Q If Rich's --

18 A So that was our first discussion, with
19 regards to having liquidated damages.

20 Q If --

21 MR. WAKEFIELD: Let him finish.

22 Q Go ahead.

23 A And we, upon receiving in writing from that
24 team of experts the reasoning, we had discussion here,
25 and it was at that time felt that we would go ahead

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1 and institute that.

2 Q Can you explain the rationale, in his
3 contract, that says if he left before August 1 of '08
4 he pays 4 million, but if he leaves after -- I'm
5 sorry, August 31 of '08, it is only 2 million, if he
6 leaves after that?

7 A Well, that was again from discussion among
8 the WVU people, and his people of experts, and some of
9 the reasoning was that if there was a termination that
10 quick, it would be serious damage to him.

11 But, on our end, it was felt that a quick
12 departure would result in very serious damage to us,
13 because we wouldn't have an opportunity to prepare.

14 So, it was a benefit both ways, to have it
15 at that level early, and then to decrease it
16 accordingly.

17 Q Do you believe in Rich's mind, he felt he
18 had to leave the university because of promises made
19 to him by Craig Walker and Mike Garrison, that weren't
20 kept?

21 A I can't put myself into Rich's position, so
22 I can't answer that.

23 Q Did he tell you that?

24 A No.

25 Q Did he infer that?

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1 A No.

2 Q He never discussed the promises that were
3 made --

4 MR. FLAHERTY: Object to the form.

5 Q -- by Garrison, or Walker?

6 MR. FLAHERTY: Same objection.

7 A No.

8 Q What would you have done, as athletic
9 director, if he hadn't signed his contract on
10 August 24th of 07?

11 MR. FLAHERTY: Objection.

12 Q The addendum?

13 MR. FLAHERTY: Objection, calls for
14 speculation.

15 A I would have continued.

16 I can't answer that. I -- I can't speak to
17 that.

18 Q He was already being paid his raised
19 salary; correct?

20 A Correct.

21 Q Did you threaten to reduce his salary back
22 to what it was?

23 A No.

24 Q Did Mike Garrison do that?

25 A Not to my knowledge.

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1 Q So, if he didn't threaten to reduce his
2 salary, what would be the logic that Coach Rodriguez
3 would sign the addendum?

4 A It would be a benefit to him to have the
5 specifics in there, and to us.

6 Q Wasn't Coach Rodriguez angry, when he found
7 out that the boosters, or the donors hadn't demanded
8 the \$4 million buyout?

9 A I don't know. I can't speak for him.

10 Q Did you see him angry about it?

11 A No.

12 Q I understand Bill Stewart doesn't have a
13 signed contract.

14 A He has a term sheet, he does not have a
15 contract.

16 Q And so there is no liquidated damages
17 provision in his contract; right?

18 A That's correct.

19 Q Is there liquidated damages in his term
20 sheet?

21 A First of all, he doesn't have a contract.

22 Q You said he has a term sheet.

23 A A term sheet.

24 Q Right. Do you consider a term sheet a
25 contract?

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1 A Yes, I think it's binding, yes. Both ways.

2 Q Is there a liquidated damages provision in

3 Bill Stewart's term sheet?

4 A No.

5 Q Did the university ask for one?

6 A No.

7 Q Were you involved in John Beilein's
8 settlement with the university?

9 A Yes.

10 Q And can you explain to the jury why you
11 took substantially less than what the contract called
12 for as far as liquidated damages?

13 MR. FLAHERTY: Object to --

14 Q With Mr. Beilein?

15 MR. FLAHERTY: Object to the line of
16 questioning, on relevancy.

17 A At that time there was discussion among the
18 university, and Mr. Beilein --

19 MR. FLAHERTY: I don't want you to go into
20 attorney-client discussions, that you had on
21 that. To the extent that there is things beyond
22 attorney-client, that you can get into.

23 But you should not divulge any
24 attorney-client privilege that existed.

25 THE WITNESS: Okay.

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1 MR. FLAHERTY: Between you and university's
2 counsel, on the Beilein issue.

3 Beyond that, go ahead and answer.

4 A Ask me the question again.

5 Q Can you explain to the jury why you took
6 substantially less money from John Beilein, than was
7 called for in his contract as liquidated damages, to
8 resolve the dispute with him?

9 MR. FLAHERTY: Object again on relevancy.

10 A At the time that was the result of the
11 discussions between Mr. Beilein and the university,
12 and that's how it concluded.

13 Q It was just negotiations?

14 A There was discussions back and forth, and
15 it was concluded as such.

16 Q Was that public knowledge, that
17 Coach Rodriguez would have known about?

18 A The result?

19 Q Yes.

20 A Yes.

21 Q Do you believe that Coach Rodriguez could
22 have relied upon that as a precedent, if he signed a
23 large buyout provision?

24 MR. FLAHERTY: Object to the form, calls
25 for speculation. Irrelevant.

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1 A I can't speak for Mr. Rod -- for Rich.

2 Q Okay. Was the Beilein settlement in April
3 of 2000 -- I'm sorry -- yes, April of 2007, three
4 months before Rodriguez signed the addendum on
5 August 24th of '07?

6 A Was that the date?

7 Q You signed it. I mean, do you recall
8 signing it?

9 A I don't recall the date.

10 Q But -- well, if I told you the document's
11 dated, I think it is April 24th, something like that,
12 I forgot the exact, but it is in April, you don't
13 dispute that?

14 A All right. I don't dispute that.

15 Q Did you hear rumors, or any comments that
16 Mike Garrison may have said to Coach Rodriguez, "If
17 you want to leave, we will never hold you to the
18 4 million, we will work it out, and the lawyers will
19 work it out, like we did with Beilein"?

20 A No.

21 Q Does Bobby Huggins have a penalty, or a
22 liquidated damage provision in his contract?

23 A Yes.

24 Q And what's the amount, currently?

25 MR. FLAHERTY: Object, on relevance. To

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1 the extent it is public knowledge, I think you
2 can answer that, and to the extent it invades the
3 privacy rights of the employee, I don't think you
4 can.

5 MR. ROBON: Well, that's a public record,
6 public document.

7 MR. FLAHERTY: I said to the extent it is
8 public, you can do that.

9 A I don't recall what that amount is.

10 Q Is it less than 4 million?

11 A Yes.

12 Q Is it 800,000?

13 A It -- do you have it there?

14 Q I don't have it.

15 A Well, I don't recall what it is.

16 Q How long would it take you to get it, to
17 find out?

18 Over the lunch hour, you could make a phone
19 call, and find out?

20 A Yes.

21 Q Would you do that for me?

22 A Yes.

23 Q Okay.

24 Was Rita Rodriguez ever involved in any of
25 these negotiations with Rich, to your knowledge, that

1 you attended?

2 A The discussions early on, with regards to
3 the letter of agreement, and the contract, yes, she
4 was present.

5 Q Was the web site, that Coach Rodriguez
6 wanted, to raise money for his assistant coaches?

7 A That's what he stated, yes.

8 Q Do you know who Tony Cardi is, C-a-r-d-i?

9 A Yes.

10 Q Is he the spokesman for your football team?

11 A He works for Metro News, and we contract
12 him to work for Mountaineer Sports Network.

13 Q They announce the games on radio?

14 A That's correct.

15 Q Didn't he indicate, during one of the
16 games, that Rodriguez was going to Alabama?

17 A I don't believe so. But --

18 Q Publicly, on radio?

19 A Not to my knowledge.

20 Q If he did, would you have terminated the
21 contract with the radio station, or the network?

22 MR. FLAHERTY: Calls for speculation;
23 objection.

24 A I can't speak to that.

25 Q You don't recall him -- you don't recall

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1 hearing that?

2 A Tony Cardi. No.

3 Q You never talked to him about that
4 incident?

5 A No.

6 Q What's the salary pool for Stewart's staff
7 now?

8 MR. FLAHERTY: Objection, on relevancy.

9 A It's -- I mean, it's good, it is adequate.

10 Q How much is it, a dollar figure?

11 A I don't have that figure.

12 Q Can you call and get that also?

13 A I will get you that.

14 Q What was it under Rodriguez's guidelines,
15 contract?

16 A I can get you that also.

17 Q Okay.

18 Is it fair to say that under Bill Stewart,
19 it is more now than it was under Rodriguez?

20 A For the assistants?

21 Q Yes.

22 A Yes.

23 Q Did Rodriguez ask for more money for his
24 assistants on December 15th, when he met with you and
25 Craig Walker?

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1 A I don't believe that was a part of the
2 discussion, because we had already honored that
3 particular request.

4 Q The request that was in the contract. But
5 didn't he ask for more?

6 A In the term sheet -- in the term sheet, we
7 had asked -- there was additional moneys, and we had
8 already honored that.

9 Q Did he ask for more money beyond that,
10 beyond what was in the contract and the term sheet?

11 A December 15th?

12 Q Yes.

13 A I don't believe so.

14 Q Did he ask for it any other time, in the

15 fall of 2007?

16 A I don't believe so. Since we had already
17 honored the request.

18 Q Did Governor Manchin select Bill Stewart as
19 the coach?

20 A No.

21 Q Did he have influence on the selection of
22 Bill Stewart as the coach?

23 A No.

24 Q Did you select Bill Stewart as the coach?

25 A I was a part of several people, who

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1 selected him.

2 Q Was he selected right after the win at the
3 bowl game?

4 A Yes.

5 Q Was it an emotional selection, where the
6 governor said, "Let's hire him"?

7 A There was emotion involved in that, yes.

8 Q And the governor said, "Let's hire him;"
9 right? Yes?

10 MR. FLAHERTY: Let him answer the question,
11 Mr. Robon.

12 A I said, I made the recommendation to hire
13 Bill; Bill Stewart.

14 Q Right. But did the governor say, "Let's
15 hire him"?

16 A I don't recall that.

17 Q Did the governor take a position on it?

18 A After I made the recommendation to
19 President Garrison and Chief of Staff Walker, and we
20 had a discussion, and I believe that
21 President Garrison may have conferred with a board
22 member or two, I conferred with some of my immediate
23 staff, and we chose that direction.

24 Now, the governor was out there, that was
25 shared with him, but he was not a part of that

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1 selection discussion.

2 Q But he gave his approval?

3 MR. FLAHERTY: Object to your --

4 A We --

5 MR. FLAHERTY: Object to the form.

6 A It was -- we notified him of that.

7 Q But if he would have said, "No, don't do
8 it," you wouldn't have done it; correct?

9 MR. FLAHERTY: Object to the form.

10 A I can't speak to that.

11 THE VIDEOGRAPHER: We are running out of
12 tape.

13 MR. ROBON: Yes, let's take a break.

14 THE VIDEOGRAPHER: The time is 12:19 p.m.,
15 this concludes tape 3, we are going off the
16 record.

17 (Recess taken.)

18 THE VIDEOGRAPHER: The time is 12:54 p.m.,

19 we are back on the record, this begins tape 4.

20 BY MR. ROBON:

21 Q Mr. Pastilong, did you have a chance,
22 during the lunch hour, to find out about those
23 questions that I asked you about previously?

24 A Yes.

25 Q And the answers are?

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1 A The liquidated damages for Huggins,
2 1 million.

3 Q Okay.

4 A And the assistant coaches salary pool for
5 Rich, 1,230,000, and the assistant coaches salary pool
6 for Billy Stewart, 1,975,000.

7 Q So, 645 -- 745,000 more.

8 A Correct.

9 Q Correct.

10 So, more than 50 percent increase? Right?

11 A Right.

12 Q Now, do you know who leaked the fact that
13 Coach Rodriguez was in Toledo, Ohio, meeting with, or
14 at least not necessarily meeting with, but with his
15 representatives with the University of Michigan
16 president there?

17 A No.

18 Q What about the fact, who leaked information
19 that the coach returned to Morgantown from Toledo,
20 after meeting with somebody from Michigan?

21 A I don't know anything about that.
22 Q You didn't make any of those calls?
23 A No.
24 Q The phone records indicate you made three
25 calls to the governor on December 14th, of '07,

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1 32 minutes. It is a long conversation.

2 A He and I talk quite a bit, but --
3 (Thereupon, Pastilong Exhibit F was marked
4 for identification.)

5 BY MR. ROBON:

6 Q I am going to hand you what we have marked
7 as Exhibit F. Is this the calculation that
8 Mike Parsons made, about your estimate of damages?

9 A That's correct.

10 Q Okay.
11 Did anybody else assist him, to your
12 knowledge?

13 A I believe that he spoke with some of our
14 MAC, Mountaineer Athletic Club people, and I believe
15 he spoke with Russ Sharp, our associate athletic
16 director for finances, and beyond that, I don't know.

17 (Thereupon, Pastilong Exhibit H was marked
18 for identification.)

19 Q I am going to hand you what we have marked
20 as Exhibit H. This is a copy of a document that you
21 supplemented this morning.

22 MR. ROBON: Do you just want to stipulate

23 that is additional production, things that he can
24 identify?

25 MR. WAKEFIELD: G or --

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1 MR. ROBON: G, I got H, I'm sorry, I will
2 do G on the next one.

3 MR. WAKEFIELD: This is the response to the
4 deposition notice duces tecum, that requested
5 that the deponent bring certain records to the
6 deposition.

7 MR. ROBON: Okay.

8 Q You look puzzled, Mr. Pastilong.

9 A Go ahead, I am going to --

10 Q Do you want to look at those, or just
11 counsel will stipulate --

12 MR. WAKEFIELD: That's what they are.

13 MR. FLAHERTY: What we just told you.

14 MR. WAKEFIELD: The top sheet is the
15 privilege log that accompanies those.

16 MR. ROBON: That's fine.

17 (Thereupon, Pastilong Exhibit G was marked
18 for identification.)

19 BY MR. ROBON:

20 Q I am going to hand you what we have marked
21 as Exhibit G, and ask if you could identify what that
22 document is?

23 MR. R. P. FITZSIMMONS: Is there a
24 collective, a couple of documents to that?

25

MR. WAKEFIELD: Yeah, these are two

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1 different documents, one bears Bates No. WB43,
2 and the other is WB44.

3 MR. ROBON: So they don't go together?

4 MR. WAKEFIELD: I don't know. They are --

5 MR. ROBON: They are sequential, that's why
6 I was wondering.

7 BY MR. ROBON:

8 Q Well, the first page of Exhibit G is what?
9 Can you tell?

10 A I'm sorry.

11 Q What document are you looking at?

12 A The front cover, with the Tony Hylton?

13 Q Yes. Who is Tony Hylton?

14 MR. ROBON: Hylton is H-y-l-t-o-n.

15 A He is a -- I believe an alum. Beyond that,
16 I --

17 Q Well, did you get a copy -- it shows a copy
18 here sent to you, from Whit Babcock. It looks like it
19 was -- must have been a letter to Whit, that was
20 forwarded on to you, and to Parsons, and to
21 Stephen Douglas.

22 A If I am on there, then I would have gotten
23 a copy, yes.

24 Q Okay.

25 When you got this, did you do anything

1 about it?

2 A No.

3 Q And take a look at page 2. It says at the
4 very top, "For your information from Alumni Rep
5 Below.....I do not plan to respond."

6 Was that from Whit Babcock?

7 A Yes.

8 Well, let me back -- it was not from me.

9 Q Okay. But you are copied with it?

10 A Yes.

11 Q Now, when the bowl announcement came out in
12 2007, that you are going to go to the Fiesta Bowl, how
13 did you find out about that?

14 A Our conference commissioner notified
15 us. And then --

16 Q When you say "us" --

17 A West Virginia University.

18 Q But who, in particular?

19 A Me.

20 Q You.

21 Okay. And can you tell the jury about when
22 you received that notification, what day, and what
23 time of day?

24 A I don't recall that. The specifics on
25 that.

1 Q Can you tell the jury how many hours it was

2 before you informed Coach Rodriguez about the bowl
3 invitation bid?

4 It was the next day; wasn't it?

5 A He would -- I would notify him rapidly.

6 Q Well, was it the next day?

7 A I don't believe that. I don't believe so.
8 I believe I would have notified him immediately.

9 Q Is that your testimony?

10 A To the best of my recollection, yes.

11 Q How would you have notified him? E-mail,
12 telephone call, voice?

13 A Phone call.

14 Q Do you recall talking to him about it?

15 A I don't recall that, no.

16 Q Okay.

17 So is it safe to say it wasn't by phone?

18 Safe to say, you bumped into him the next day, and
19 said, "By the way, we are going to the Fiesta Bowl"?

20 A I don't -- I do not recall how that --

21 Q Did you want to play Marshall in football?

22 MR. FLAHERTY: Object to relevancy. But go
23 ahead.

24 A I think that's a good series.

25 Q That's not my question.

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1 Did you want to play Marshall?

2 A Under certain conditions, yes.

3 Q Isn't it true that Governor Manchin is the

4 one who orchestrated the meetings between the two
5 teams?

6 MR. FLAHERTY: Asked and answered. He has
7 already answered that, hours ago.

8 A He was active in putting that series
9 together, yes.

10 Q I don't recall your answering my question,
11 Mr. Pastilong, if Mr. Rodriguez had not signed the
12 second addendum, what the repercussions would have
13 been to him.

14 MR. FLAHERTY: He did answer that question,
15 the record will reflect it.

16 Q I guess -- well, maybe, I think you did, I
17 think you said the -- there would be no safety for
18 him, or safety for the university; is that the essence
19 of it?

20 MR. FLAHERTY: No, that's not what he said.

21 That's not all that he said.

22 Q Well, can you recall? Because I just
23 didn't give myself a note on it.

24 A I believe that I said that it would be the
25 benefit to him, and to us, if the particulars were in

1 a contract.

2 Q Was the first game before or after -- first
3 football game before of after August 24th last year?
4 Football game?

5 A After.

6 Q After.

7 Was there a banner being flown around the
8 stadium, "No Contract, Get a New Coach"?

9 A I don't know.

10 Q Were you at the game?

11 A Yes.

12 Q Did you see a relationship deterioration,
13 between Richard Rodriguez and the athletic department?

14 A No.

15 Q Were you shocked when he came into your
16 office on December 15th, or you went into his office
17 with Mr. Walker, that he had an offer from Michigan?

18 A No.

19 Q Did you anticipate that he would have
20 offers from other universities?

21 A Yes. But I felt comfortable that he was
22 going to be with us for a long time, as he stated when
23 he turned down the Alabama job.

24 Q Do you think that he left because there was
25 more money, or he left because of other reasons?

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1 A He would have to answer that.

2 Q I want to know what your opinion is.

3 A I --

4 MR. FLAHERTY: He doesn't have to have an
5 opinion.

6 A I don't have an opinion to that. I can't
7 speak for him.

8 Q Was Butch Jones interviewed for the head
9 coaching position?

10 A Yes.

11 Q Did you call the governor's office, when
12 Butch Jones was there being interviewed?

13 A I don't think so.

14 Q You didn't place Butch Jones on the phone
15 with the governor, putting them in contact with each
16 other?

17 A I don't recall that.

18 Q You are not going to deny it, though?

19 MR. FLAHERTY: Asked -- the question has
20 been answered, he had said he didn't recall.

21 A I don't recall that.

22 Q Do you recall how soon after Rodriguez
23 left, that you interviewed Butch Jones?

24 A I believe it was within the week.

25 Q Didn't the governor publicly state that he

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1 was not involved in the search for the new head coach?

2 A I don't know if he stated that or not.

3 Q That wouldn't be true, though; would it?
4 He was involved in the selection of the new coach?

5 A No.

6 Q You sought his approval before you hired
7 Bill Stewart?

8 A We notified him.

9 Q Well, you sought his approval. You didn't

10 need to notify him; did you?

11 A It was the appropriate and courteous thing
12 to do.

13 Q Did you notify him before or after you had
14 made the offer to Bill Stewart?

15 A Before.

16 Q Before.

17 And you said, "We want to hire
18 Bill Stewart," and he said, "Okay." Correct?

19 A I don't recall what he said.

20 We --

21 Q How often do you normally meet with your
22 head coaches?

23 A It depends, whether we are traveling a lot,
24 conference meetings.

25 If they are in town, I'm in town. It would

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1 be every week, every couple of weeks, every three
2 weeks, dependent.

3 MR. ROBON: Go off camera for a moment.

4 THE VIDEOGRAPHER: The time is 1:12 p.m.,
5 we are going off the record.

6 (Discussion off the record.)

7 (Thereupon, Pastilong Exhibit I was marked
8 for identification.)

9 THE VIDEOGRAPHER: The time is 1:25 p.m.,
10 we are back on the record.

11 BY MR. ROBON:

12 Q Mr. Pastilong, during the break I asked you
13 to take a look at your calendar, to see how many
14 meetings that you had with Richard Rodriguez from
15 August 1st until December 15th of 2007.

16 And you have had an opportunity to look at
17 that; correct?

18 A Yes.

19 Q And can you tell the jury what dates that
20 you met with Mr. Rodriguez, according to your
21 calendar?

22 A Do you want me to go through and count
23 these, is that what you are asking?

24 Q Give me the dates.

25 A August 9.

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1 Q What day of the week was that?

2 A Thursday.

3 Q And you met with him. Can you tell me
4 where?

5 A There was a presentation at the Touchdown
6 Terrace, athletes --

7 Q A presentation where?

8 A At the Touchdown --

9 MR. FLAHERTY: Terrace.

10 A -- Terrace.

11 Q Touchdown Terrace.

12 A Where athletes made a presentation.

13 Q But that wasn't really a meeting with him;

14 was it?

15 A He was just there.

16 Q He was there. But not a meeting with him?

17 A No.

18 Q Okay. So no meeting. Okay?

19 MR. FLAHERTY: Well, wait a minute.

20 What do you mean by "meeting?" You asked
21 him when he met with him between August and
22 December, they were there together the same time
23 and same place. Isn't that a meeting, what you
24 are referring to?

25 MR. ROBON: No, what -- I will clarify it

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1 so there is no misunderstanding.

2 BY MR. ROBON:

3 Q You saw him on August 9, but you didn't
4 discuss any issues with him; correct?

5 A I mean, we talked, but there were --

6 Q Did you talk about anything about his
7 contract, or any of the things that he was wanting in
8 the athletic department, for the football program?

9 MR. FLAHERTY: Well, that's a different
10 question than you asked him.

11 Q That's what I am asking.

12 A No.

13 Q Okay. When's the next meeting?

14 A I believe we met on August the 14th, at his
15 office.

16 Q And what was discussed there?
17 A There were no discussions with regards to
18 his contract.
19 Q Can you remember what was discussed?
20 A No.
21 Q Do you remember who else was there?
22 A Yes. A Mr. Stan Hostler.
23 Q H-a --
24 A H-o-s-t-l-e-r.
25 Q And who is he?

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1 A He is a donor.
2 Q And he just wanted to meet the coach?
3 A Yes.
4 Q Okay. So it was a perfunctory meeting?
5 A Yes.
6 Q Next?
7 A But I might say that those meetings are
8 important with regards to donors, and backing to the
9 athletic department and football program.
10 Q Well, they get to see, feel and touch the
11 wealthy, I understand that. Or the rich and famous.
12 A So, those are important meetings.
13 Q I understand that.
14 When's the third one?
15 A August 16. And I had -- I met with Rich
16 and a prospective student athlete's family, and there
17 was some issues that they were concerned about, so we

18 had a meeting in his office to make sure that everyone
19 was up to date as to what their concerns were.

20 Q But nothing about his promises, or contract
21 negotiations?

22 A His contract did not come up at that time.

23 That meeting was to -- called at my
24 request, to discuss a prospective student athlete's
25 parents were concerned about some issues, and I wanted

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1 to hear the coach address them, with them in the room.

2 Q What were the issues?

3 A The manner in which he was being recruited.

4 Q Were you satisfied, or unsatisfied?

5 A We got the situation resolved.

6 Q Were you unhappy with what the coach did?

7 A Well, I was wanting to make sure that the
8 parents of that particular student athlete, that was
9 coming to our campus, was satisfied with what we were
10 doing at our end.

11 Q Okay.

12 Were you satisfied?

13 A At the end of that, yes.

14 Q Okay.

15 The next meeting was --

16 A We had a NCAA certification --

17 THE WITNESS: You see, that is blacked

18 out. What date is that? That is blacked out

19 here.

20 MR. FLAHERTY: Is this the first of the
21 week?

22 THE WITNESS: Yeah.

23 MR. FLAHERTY: It is the 22nd.

24 A Okay. The 22nd.

25 Q Of August?

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1 A Yes.

2 Q '07?

3 A Yes. I believe that's a Wednesday. NCAA
4 staff certification meeting.

5 Q And that's all there was discussed at that
6 meeting?

7 A Yes.

8 Q Anybody else there?

9 A There would be other people there, yes.

10 Q And no contract discussions?

11 A No contract discussions.

12 Q Yes.

13 A Okay. Then on August the -- I think
14 August 23rd, again at Touchdown Terrace, a gathering,
15 Rich Rodriguez, some people from the president's
16 office, and so on.

17 Q No contract?

18 A No contract.

19 Q Okay.

20 Next?

21 THE WITNESS: What do we have here, Thomas?

22 It is all blanked out at the top.
23 MR. FLAHERTY: Looks like the 31st.
24 A August 31.
25 Again, at the president's house, a

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1 gathering.
2 Q Social event?
3 A Social.
4 Q No contract talks?
5 A Not that I recall.
6 Q Okay.
7 Next?
8 A Okay. Wednesday evening.
9 Q September --
10 A Let's see, September 5. To Clarksburg, for
11 a fund raiser type event.
12 Q Did you drive with him?
13 A I did not drive with him, no.
14 Q You went separately?
15 A Yes.
16 Q Why didn't you drive together?
17 A Well, I don't recall.
18 Q How far is Clarksburg, from --
19 A Oh, about 45 minutes.
20 Q Okay.
21 Next?
22 By the way, did you drive a university car
23 to Clarksburg?

24 A A courtesy car.

25 Q University car?

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1 A Yes.

2 Q Did he have one, too?

3 A Yes, he has one.

4 Q Did you ever ride together, any place, with
5 him?

6 A There were times, yes.

7 Q But not in the last six, eight months,
8 before he left?

9 A If we did, I do not recall that.

10 Q Okay.

11 A Okay. Here is one I left out, on
12 September 7th I was with him that evening, prior to
13 the Marshall game.

14 Q And for what purpose?

15 A Gathering. Reception.

16 Q A group of people?

17 A Yes.

18 Q No contract discussion?

19 A Not that I recall.

20 Q And when I say "contract discussions," so
21 I'm clear, I am talking about any of the things that
22 he wanted to do with regard to the Mountaineer Club,
23 coaches, raises, student books, high school coaches
24 not having to pay; I am talking about those kinds of
25 things.

1 A I am with you.

2 Q Okay.

3 The next one?

4 A Okay. September 19, practice, attended

5 practice, met with him.

6 Q And what, with the athletes, or what?

7 A Football practice.

8 Q You just went there?

9 A Went there.

10 Q Did he see you?

11 A I talked to him. And I took Mike Puskar

12 with me.

13 Q Puskar?

14 A Puskar, P-u-s-k-a-r.

15 Q That's who the center was named after, his

16 father?

17 MR. FLAHERTY: It was named after him.

18 MR. ROBON: Oh, after him?

19 A Named after him.

20 I would usually take him over.

21 There are times, during this particular

22 sequence, that I would say, for sure, once every two

23 weeks in the fall, Mr. Puskar and I would attend

24 practice, spend some time with Rich, some of the other

25 coaches. And he enjoyed that. I enjoyed that.

1 And so, I -- but those dates aren't on

2 here, I didn't necessarily say, "Okay. I am going to
3 do practice," mark it on my calendar. If, all of a
4 sudden, there was a couple of hours open in the
5 afternoon, I would call Mr. Puskar, we would go over
6 to practice.

7 Or sometimes I would --

8 Q He lives in Morgantown?

9 A Yes, sir.

10 And then on the September 22, prior to the
11 East Carolina game, there was a sports hall of fame
12 ceremony, Rich and I gathered there for a few minutes.

13 Q But no business was discussed?

14 A No.

15 October 13, a meeting with Rich and our
16 compliance coordinator.

17 Q And who was that?

18 A Brad Cox.

19 Q And what was that meeting about?

20 A Well, that was to discuss coaching limits,
21 personnel that were involved with practice. It was a
22 preventive type meeting, to make sure that we did not
23 have graduate assistants, people that were not
24 accountable with regards to the nine coaches, and two
25 assistants, that are permitted to coach, to make sure

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1 that we didn't make an error, to protect us, to
2 protect Rich.

3 Q But no contract negotiations, or

4 discussions?

5 A No.

6 Q Okay.

7 A That was strictly a compliance meeting.

8 Okay.

9 Then on October the 16th, in the coliseum,
10 we had a gathering of our head coaches, again, to
11 discuss compliance issues, reminders, prevent any
12 violations occurring, those types of things.

13 Q And no contract type discussions?

14 A We did not discuss his contract.

15 Okay.

16 And then on October 8th -- wait. I can't
17 get the -- I can't get it here.

18 MR. FLAHERTY: It is Thursday the -- it is
19 the 8th. It is the 8th.

20 A Okay. October 8th, we had two --

21 MR. FLAHERTY: Wait a minute, Ed. Maybe
22 the -- the 18th, yes.

23 A Is that the 18th?

24 We had two gatherings, I had a luncheon at
25 the coliseum for athletic department people, get

1 acquainted, just gather, a little lunch.

2 And then that evening there was a reception
3 at the Puskar Center, put on by the president.

4 Q But nothing discussed about the issues?

5 A About his salary, and so on?

6 Q Right.

7 A No, he didn't.

8 And then I met with he and Rita on the
9 October 27, prior to the Rutgers game away.

10 And then --

11 Q Was this in New Jersey?

12 A Yes.

13 And then took Rita on up to my suite for
14 the ball game.

15 Q But nothing was discussed, about --

16 A About his salary.

17 Q Salary, coaches, bonus, nothing in
18 business?

19 A No. That was prior to the game, yeah.

20 Q Just went into the game?

21 A Yes.

22 And then October the -- the November 1, we
23 had a meeting with our football coaches, and our --
24 that morning.

25 Again, to review compliance issues,

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1 preventive type meetings, to make sure that we didn't
2 have violations, and so on.

3 I sat with Rich during the junior varsity
4 football game, West Virginia versus Hargrave, and that
5 would have been November the -- I believe it is
6 November 9.

7 Q That was in the afternoon?

8 A Yes.

9 Q And nothing was discussed?

10 A Oh, we talked about various things, but for
11 me to say that his salary came up, I can't reflect
12 about that.

13 Q Well, when I am saying salary, we are
14 talking about, you know, the assistant coaches, and
15 the \$5 for the --

16 A The web site and all of that, I can't say
17 whether that came up or not.

18 Q Okay.

19 Next?

20 A Then on November the -- November, I believe
21 13, we have our once per semester, a select group of
22 students who speak to the junior highs around
23 mon County, and then they make a presentation to the
24 athletic staff, we call it "Student Athletes Speak
25 Out," and Rich and I were together there, at the

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1 coliseum.

2 And then on November the --

3 Q And again, no discussions about anything
4 that he was looking for in the program?

5 A No more on his salary, those issues.

6 Q Right.

7 A And then November 17, at the Cincinnati
8 away game, met with him a little bit before the game,
9 talked to him a little bit on the field there, pregame

10 warm ups, accompanied Rita up to the area where they
11 had me seated in the box.

12 Q But nothing about anything that he was
13 asking, no status reports?

14 A No. We pretty much talked about the game
15 that was coming up that day.

16 Met with him during the week of December 9,
17 on the -- again these are blackened out up here, so I
18 can't tell you what --

19 MR. FLAHERTY: That's the 8th.

20 THE WITNESS: Is that the 8th? Okay.

21 A Okay. Met with him in a social gathering.

22 MR. FLAHERTY: This is on the 7th.

23 A On the 7th, and then sat with him at the
24 Touchdown Club Banquet on December 9.

25 Q At any -- and that was the last one, before

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1 the 14th?

2 A December 10 there was a Fiesta reception at
3 the Touchdown Terrace Lounge, where representatives
4 from the Fiesta Bowl came and made a formal request of
5 us to come to their bowl; football staff.

6 Q So a social gathering?

7 A A social gathering, yes. And that's it.

8 Q So, out of all of these meetings that you
9 had -- or I shouldn't say meetings, occasions to be
10 with Rich, there was never any discussion with regard
11 to progress, as far as getting money for the assistant

12 football coaches, as far as the renovation money being
13 available for the Puskar Center, as far as the
14 football coaches being eliminated, the \$5 fee, as far
15 as the students being able to keep their books, none
16 of those things were ever discussed?

17 A A reminder, which I told you earlier, we
18 had incorporated the salary raise for the assistant
19 coaches back in December, so that was well on its
20 way.

21 Rich had asked for that for June 30 of the
22 coming year, and we took it upon ourselves to initiate
23 it the first part of January.

24 So we did it six months prior to his
25 request.

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1 Our reasoning was, to -- morale for them, a
2 kind gesture to Rich.

3 And on the \$5 charge per coach, as you just
4 mentioned, and as you just mentioned the books, I had
5 made that to Rich on one or two occasions, with
6 regards to how I was concerned about doing the
7 issuance of the books, and allowing them to sell them.

8 I had on -- and then I met with
9 Craig Walker and President Garrison to explain my
10 thinking on that, was open for continuous discussions.
11 However, Rich had gotten busy in the fall, and just
12 couldn't find the time to get together, to discuss
13 those with a normal meeting.

14 But I just felt, that since he couldn't get
15 with us, that I needed to address that memo, and I did
16 such.

17 Q Do you know how to use e-mail?

18 A Yes.

19 Q Do you use e-mail?

20 A On occasion, yes.

21 Q Do you have Rich's e-mail address?

22 A Yes.

23 Q Have you -- any time during this period of
24 time from August 1st until December 15th of '07, did
25 you e-mail Rich?

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1 A No. Rich -- Rich is not one that works in
2 e-mail that much. And when I did work with him, it
3 would be phone him, or visit with him, that type of
4 thing.

5 Q And how far is your office from his?
6 During this time period?

7 A About a mile.

8 Q About a mile?

9 A Yeah.

10 Q He is not in the athletic center, or you
11 are not?

12 MR. FLAHERTY: The athletic center? What
13 do you mean, the athletic center?

14 MR. ROBON: Well, normally coaches and
15 athletic directors' offices are in the same

16 facility.

17 A Well, we have a coliseum which houses our
18 basketball and our volleyball, and then beside that is
19 our auditorium, and beside that is our baseball
20 complex, and it is over in one part of our campus, and
21 then about a mile away is our Puskar Stadium, at
22 Mountaineer Field, which houses the football staff.

23 Q I see.

24 So they are segregated?

25 A So, they are two separate buildings.

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1 Q I see.

2 (Thereupon, Pastilong Exhibit K was marked
3 for identification.)

4 BY MR. ROBON:

5 Q I am going to hand you what we have marked
6 as Exhibit K.

7 This is the letter that Coach Rodriguez
8 wrote to you on January 10.

9 Do you recognize that letter?

10 A Yes.

11 Q Did you agree with his comments in that
12 letter, or not?

13 MR. FLAHERTY: Object to the form of the
14 question. It is overly brague -- vague and
15 broad. Pardon me, overly vague and overly broad.

16 Q You have read this letter, obviously,
17 several times before?

18 A Yeah.

19 Q Let's take a look at the second paragraph,
20 subparagraph a), where it says, "Mike Garrison stated
21 he did not believe in buyouts and that if I wanted to
22 leave 'the buyout would be reduced to 2 million or
23 eliminated altogether.'"

24 Do you think that's a true statement, or a
25 false statement?

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1 A I can't speak for President Garrison.

2 Q Okay.

3 No, I mean, do you think it is a truthful
4 statement from Rich, saying that, that Garrison said
5 it?

6 MR. FLAHERTY: He just answered the
7 question.

8 A I cannot speak for someone else.

9 Q Have you heard President Garrison make
10 promises to other coaches? Verbal promises?

11 A No.

12 Q Did you ever respond to this letter, and
13 say, "Rich, I have investigated these issues," or ever
14 respond to this letter at all?

15 A I turned this letter over to our legal
16 department, since it was January 10, and he had
17 already departed, and I just didn't feel it would be
18 appropriate for me to respond.

19 Q Okay.

20 Did you have anybody investigate the
21 allegations contained in that letter?

22 MR. WAKEFIELD: To the extent that question
23 tends to invade the attorney-client privilege, we
24 object to it, and instruct you not to answer in
25 regard to any communications with the university

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1 attorneys, including me, Mr. Wakefield and
2 Mr. Fitzsimmons, and the other Mr. Fitzsimmons.

3 Q I will rephrase the question.

4 Did you discuss this letter with anybody in
5 the athletic department?

6 A I discussed this letter with, yes, several
7 of my people.

8 Q You showed them a copy of the letter?

9 A I asked them about various issues here, to
10 make sure that I was thinking along the lines, in the
11 event that I was asked to share my thoughts with our
12 legal department.

13 Q Okay.

14 Did you discuss this letter with
15 President Garrison?

16 A I did not.

17 Q Did you discuss it with Craig Walker?

18 A Generally, yes.

19 Q Okay.

20 And what were the subject -- what were the
21 substance of those discussions? Did you ask him, "Did

22 President Garrison make these statements?"

23 A No, I did not ask him.

24 Q Did he tell you that Garrison made the
25 statements?

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1 A No.

2 Q Did you discuss this letter with
3 Governor Manchin?

4 A No.

5 Q Did you tell Governor Manchin about the
6 letter?

7 A No.

8 Q When was the first time you found out about
9 the lawsuit being filed against Rich Rodriguez?

10 MR. FLAHERTY: To the extent that invades
11 the attorney-client privilege, and the
12 communication between you and I, I instruct you
13 not to answer that.

14 MR. ROBON: Well, if it is public
15 knowledge, you just can't -- anything that is
16 privileged comes from him, that is not public
17 knowledge.

18 MR. FLAHERTY: You may want to rephrase
19 your question.

20 MR. ROBON: I will rephrase the question.

21 Q When did you just first hear about the
22 lawsuit, what day?

23 A I do not recall the day. I can't recall

24 that date.

25 Q Was it after the fact, after the lawsuit

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1 was filed?

2 A No. I was informed that there was -- this
3 may take place.

4 Q Did you -- were you involved in discussions
5 whether a lawsuit should be filed?

6 A Not to a serious extent, no.

7 Q Were those discussions with
8 President Garrison, or Craig Walker?

9 A I don't recall.

10 Q Were they with Governor Manchin?

11 A No.

12 Q Were they with members, any members of the
13 board of governors?

14 A No.

15 Q Were there discussions with anybody, other
16 than the university's legal counsel?

17 A I can't recall, but I believe, to the best
18 of my recollection, it would have been with
19 Craig Walker.

20 Q Did you approve --

21 A I can't confirm that, but I think.

22 Q Did you approve, or disapprove, or not have
23 an opinion as to whether a lawsuit should be filed?

24 A I did not have an opinion.

25 Q So you didn't approve the lawsuit?

1 MR. FLAHERTY: Object to the question. He
2 has answered it the way you asked it.

3 A I cannot --

4 Q I will rephrase the question.

5 Did you approve or disapprove of the
6 lawsuit?

7 A I did not have an opinion on it.

8 Q Did you think it was a mistake on the
9 university's part, to bring a lawsuit?

10 A I would rely upon our general counsel,
11 to --

12 Q Okay.

13 Did you have any pressure from any donors,
14 to bring a lawsuit against Rich?

15 A Myself?

16 Q Yes.

17 A No.

18 Q Did other people in the administration have
19 pressure by donors to bring a lawsuit against Rich?

20 A Not that I know of.

21 Q Was there pressure from the governor, to
22 bring a lawsuit against Rich?

23 A Not that I know of.

24 Q Do you know who authorized the bringing of
25 the lawsuit against Rich, within the university?

1 A No.

2 Q Did you talk to any member of the board of
3 governors, about bringing the lawsuit?

4 A No.

5 (Thereupon, Pastilong Exhibit J was marked
6 for identification.)

7 BY MR. ROBON:

8 Q I am going to hand you what we have marked
9 as Exhibit J, which is an article from the Charleston
10 Daily newspaper. It talks about you.

11 A Okay.

12 MR. MCGINLEY: What does he have?

13 MR. FLAHERTY: Just the front page.

14 MR. ROBON: Well, we want to give him both
15 pages here. This is page 2.

16 For some reason page 1 didn't show up.

17 Let's don't staple them, until we -- let's go off
18 camera.

19 THE VIDEOGRAPHER: The time is 1:58 p.m.,
20 we are going off the record.

21 This concludes tape 4.

22 (Recess taken.)

23 THE VIDEOGRAPHER: The time is 2:08 p.m.,
24 we are back on the record.

25 This begins tape 5.

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1 BY MR. ROBON:

2 Q I am going to hand you what we have marked

3 as Exhibit J, it is an article on the Charleston Daily
4 Mail, Tuesday, February 26, 2008, and it says,
5 "Pastilong talks about highs and lows in athletic
6 director tenure."

7 Do you recall that article?

8 A Yes, sir.

9 Q The third paragraph from the bottom, would
10 you read that out loud?

11 A "Rich Rodriguez had resigned angrily and
12 abruptly for the head coaching job at Michigan, and
13 would eventually take all of his assistant coaches
14 except Jeff Casteel and Bill Kirelawich along with his
15 successor, Bill Stewart."

16 Q Now, my question to you is: Did you inform
17 the news media, that wrote that article, that
18 Coach Rodriguez was angry when he left?

19 A No.

20 Q Did you believe he was angry when he left?

21 A I do not know that.

22 I will say this: My association with Rich,
23 prior to his departure, I felt was very good.

24 Q We are not questioning your association.

25 We are questioning the people that made the promises

1 to him.

2 So, did you feel that --

3 MR. FLAHERTY: Let me object to the form of
4 the question, the assumption contained in it.

5 MR. ROBON: I will rephrase the question.

6 BY MR. ROBON:

7 Q Mr. Pastilong, Rich Rodriguez is not saying
8 that you made promises to him. He is saying that
9 Craig Walker and President Garrison made promises to
10 him.

11 So my question to you is: When the word
12 "angry" was used, did that depict what you saw in
13 Rich Rodriguez, that he was angry that he was leaving?

14 A Only Rich could answer that question.

15 Q No, but did you see anger in his voice, in
16 his face?

17 A No.

18 Q So you don't know how the press got the
19 word "angrily"?

20 A No.

21 Q Were you aware that he never stated that
22 you made promises to him?

23 A No.

24 Q Okay.

25 Did you feel you were being accused of

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1 making promises you didn't keep?

2 A No.

3 Q Were you aware that the promises that were
4 made, were made by President Garrison and/or
5 Craig Walker?

6 MR. FLAHERTY: Object to the form. You are

7 referring to the alleged promises.

8 Q Alleged?

9 A I cannot speak to that.

10 Q If you were in his position,
11 Mr. Rodriguez's position, and were made promises that
12 aren't carried out, would you be angry?

13 MR. FLAHERTY: Object to the form, calls
14 for speculation.

15 A I can't answer that.

16 Q Is it true that the president,
17 President Garrison, is taking much more of an active
18 role in the athletic area of the university, than any
19 other president that you had to deal with in 33 years?

20 A President Garrison has a great deal of
21 interest in athletics, and I would refer to that as
22 constructive interest, realizing the importance of a
23 strong athletic department, is how I would answer
24 that.

25 Q But would you say he is more noticeable of

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1 the athletic department than any other president you
2 served under in the past 33 years?

3 A I would not want to say more, but he is
4 around athletics. But I would not want to compare him
5 with another president.

6 And again, I would reaffirm the fact that
7 it's involvement for positive and constructive
8 purposes.

9 Q Is he negotiating the contract with
10 Bill Stewart, or are you doing it?

11 MR. FLAHERTY: Beyond the term sheet, is
12 that what you are talking about?

13 MR. ROBON: The contract. The term sheet
14 is already signed.

15 MR. FLAHERTY: I understand that, that's
16 what I am --

17 MR. ROBON: Yeah.

18 A That has been turned over to our legal
19 department, and they are negotiating that.

20 Q Are they taking directives from
21 President Garrison, or from you?

22 A It would be -- I would think, as to
23 conclude it, and get it ready for final signatures,
24 that they would discuss it with me.

25 Now, how much they discuss it with the

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1 president, I would not know that.

2 Q When was the last time you had any
3 discussions with a representative from the university?
4 Now, don't tell me what they were. But just when were
5 there any discussions with university counsel, or any
6 representative of the university, regarding
7 Bill Stewart's contract?

8 A University counsel?

9 Q Yes. Where they asked for your input?

10 A Oh, it's been some time.

11 Q A couple of months?

12 A I'd say -- I couldn't say two months, but
13 several weeks, maybe a month, something like that.

14 Q And in the meantime, there are negotiations
15 going on, as far as you know?

16 A As far as I know, yes.

17 Q So you assume Garrison, or Craig Walker,
18 are handling those, I assume?

19 A The legal department would be doing
20 such. Whatever involvement that department would have
21 with Mr. Walker or Mr. Garrison, I do not know that.

22 Q You haven't given any directives to the
23 legal department, on Bill Stewart's contract?

24 A No.

25 Q Okay.

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1 Is it true that with Coach Rodriguez's
2 contract, basically the same thing happened, it was
3 basically again out of your hands by the
4 administration, or by the legal department of the
5 university, the finalization of the contract?

6 A The finalization would be with the
7 university's legal department, and not with -- yes.

8 Q Did Mike Garrison or Craig Walker ever
9 indicate that they wanted a cultural change to take
10 place in the athletic department here at West Virginia
11 University? Or words of a similar import?

12 A No.

13 Q Did they ever talk to you about it?

14 A No.

15 Q Did you feel that your position as athletic

16 director was in jeopardy, at any point in time, with

17 President Garrison coming into office?

18 A No.

19 Q Were you classmates with Governor Manchin?

20 A He was a freshman, when I was a senior.

21 So --

22 Q Okay.

23 Were you roommates?

24 A No.

25 Q Were you in the same fraternity?

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1 A No.

2 Q How did you meet Governor Manchin, when you

3 were in college?

4 A We were both football players. We were on

5 the football team.

6 Q What position did he play?

7 A Quarterback.

8 Q And you were a tight end?

9 A No, I was a quarterback.

10 Q You were a quarterback, too. Okay.

11 I bet you were a drop back quarterback,

12 too.

13 A Pretty slow.

14 Q Were there any meetings between you and

15 Russ Sharp in the fall of 2007, where Aschebrook
16 brought up verbal promises made by Garrison and
17 Walker, about Coach Rodriguez?

18 A No.

19 Q Were there meetings between Russ Sharp,
20 yourself and Larry Aschebrook, in the fall of 2007?

21 A Yes.

22 Q And what were those meetings about?

23 A It was important for Russ and myself, and
24 Larry, to make sure that we continued focus on various
25 projects, and to prioritize them, and to make sure

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1 that Larry realized the areas that we wanted him to
2 emphasize, when he had opportunities to do such.

3 Russ needed to share with Larry where we
4 were on various projects.

5 For example, if we needed some immediacy on
6 an engineering or architectural part of a project, and
7 then it was important also for Larry to know where we
8 were on the designs, where we were, so he could relay
9 that to prospective donors.

10 So that's something that the three of us
11 did, I don't want to say quite often, but often.

12 Q And, during the fall of 2007, were some of
13 those things that you were you talking about
14 coordinating, were they really dealing with some of
15 the promises that were made to Rich Rodriguez, and you
16 were looking at implementing them?

17 MR. FLAHERTY: Object to form.

18 Q Like the renovations to the Puskar Center?

19 MR. FLAHERTY: Object to the form.

20 A The locker room project is very expensive.

21 And Russ, Larry and I wanted to make sure that we had

22 the proper funding for that, we wanted to make sure

23 that we stayed on track in terms of the engineering,

24 the design, and so on, so that once sufficient funds

25 were there, we would be ready to begin the project.

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1 That is a project that has to be done when

2 the football players are out of the locker room, and

3 is the least disruptive to the Puskar Center.

4 So that's one that the three of us kept our

5 eye on, and to use the word, focused in on, and it was

6 an important project.

7 And I might add, that all projections are,

8 we will complete it on time.

9 Q How often would you say you stayed at the
10 governor's mansion?

11 A Oh, every couple of months, maybe. Maybe
12 every three months, something like that.

13 Q Governor Manchin has an all access pass to
14 the university here at West Virginia?

15 A To athletic events?

16 Q Yes.

17 A We have not issued him a pass.

18 I mean, he has tickets, and he comes to the

19 events, and there is always somebody that would allow
20 him to sit beside him. But there is not a pass,
21 per se.

22 Q Well, nobody would -- he doesn't need a
23 pass, because he is the governor, right; he just walks
24 in?

25 A I would say he has admittance, when he

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1 shows up.

2 Q Right. Okay.

3 Does he go around with a motorcade, with
4 the highway patrol, too?

5 A Usually, when he comes to the contests, it
6 is he, his wife and he will have a trooper there.

7 I mean, that's -- and I might add that
8 prior to his being the governor, he attended the
9 majority of our contests.

10 I mean, he is a pretty good fan.

11 Q Does he ride with the team, or private
12 planes, when you have away games?

13 A He has not traveled with the team on the
14 team charters, that type of thing, no.

15 Q Has he gone with the president on a charter
16 plane, like to when you played Connecticut, or
17 Rutgers?

18 A I don't know of any instances that that
19 would have occurred.

20 Q Did you see him at those games?

21 A You mentioned Connecticut and Rutgers. I
22 do not recall him being at that game.

23 There was other games, Marshall, I think he
24 went to the Louisville game.

25 I just can't name them off.

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1 But, it wouldn't be unusual for him to be
2 at the majority of the home games, and some of the
3 away games.

4 Q We had the meeting at the blessing of the
5 field, when Rodriguez was there with Garrison, Walker
6 and his wife, and Mike Wilcox, and the governor was
7 there; right?

8 A No, he was not there.

9 Q He wasn't there. Okay.

10 A No.

11 Q How would the governor know that Rich
12 hadn't signed his contract by that date?

13 Would you have told him?

14 A If he would have asked me, but I do not
15 recall him ever asking me that particular question.

16 Q Well, Rich is going to testify that the
17 governor called him the next day, and asked him why he
18 didn't sign the contract.

19 I am just wondering how the governor knew
20 about it?

21 A I don't -- I can't -- I can't help you
22 there.

23 Q Okay.

24 Who was on the selection committee for the
25 replacement coach, for Rodriguez?

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1 A Rodriguez?

2 President Garrison, Chief of Staff Craig
3 Walker, Chairman of the Board Steve Goodwin, myself,
4 Mike Parsons.

5 I think that's it.

6 Q And did everybody have an equal vote?

7 That's an unfair question. I don't want
8 you to answer that.

9 A That's okay.

10 Q That is an unfair question.

11 Would you agree with me that
12 President Garrison would have more, for example,
13 influence, than Mike Parsons?

14 A Yes.

15 Q Would you agree with me that
16 Governor Manchin would have more influence than
17 Mike Parsons?

18 MR. FLAHERTY: Object to the form of the
19 question. He just told you that Governor Manchin
20 wasn't on the committee.

21 A We -- I can't answer that properly.

22 Q Okay.

23 Would you agree with me that
24 Governor Manchin could influence the committee?

25 A With respect to his positions, we would, as

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1 we did, inform him of the direction we were going. He
2 did not, to my recollection, make any attempt to
3 influence our selection.

4 Q Okay.

5 In October of '07, did you tell Rodriguez,
6 in his office, that the planned locker room
7 renovations could not start until 2008, because the
8 funds were not totally raised?

9 A I took Russ Sharp, my associate athletic
10 director for finance, and went to Rich's office, and I
11 told Rich, I said, "Rich, I'm concerned about funds
12 coming in for this project."

13 And I said, "I'm prioritizing this above
14 everything. We need your help. We will go to
15 Larry Aschebrook, and have him focus in on his MAC
16 unit, focus on this locker room.

17 "And I am going, myself, to the foundation,
18 and I am going to make all out efforts, and let's" --
19 and as I mentioned earlier, "let's roll our sleeves
20 up, and let's pull this project off."

21 And, we did such.

22 And Rich was very enthusiastic about it, he
23 was very receptive, he appreciated the fact that we
24 were sitting there with him, and that we were all
25 going to do this, and there was a lot of energy on his

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1 part.

2 And I compliment him, I compliment
3 Larry Aschebrook, he showed a great deal enthusiasm on
4 that, and we pulled it off.

5 Q But, when you told him, you weren't
6 absolutely sure the funds could be raised, right; you
7 were hopeful?

8 A Well --

9 Q That's true; right?

10 A I told him where we were.

11 Q Okay.

12 A But you also -- I mean, Rich is a football
13 coach, and we are in athletics, so we took that
14 upon -- we put some energy into that.

15 We were going to get it done.

16 Q Were you angry at Rodriguez after he signed
17 the contract amendment, because it was done with
18 Garrison and Walker, and not with you?

19 A No.

20 Q Were you angry --

21 A I was pleased that it was signed.

22 Q Were you angry with him the Monday after
23 the Pitt game, where he lost, because you couldn't go
24 to the Big East meeting, and have your chest out, that
25 you won undefeated?

1 A I was not angry at Rich.

2 Q Were you just angry in general?

3 A I would like to have won that football
4 game, but I was not angry at anyone.

5 Q Were you disappointed?

6 A Yes.

7 Q Okay.

8 Were you called by Goodwin, or Farmer, back
9 in December, or early December of '06, about raising
10 funds to keep the coach from buying Alabama?

11 A I don't recall that occurring.

12 Q Have you done a comparison of buyouts, or
13 liquidated damages with other Division 1A -- or
14 Division 1, I should say, athletic departments?

15 A We share information. We, athletic
16 directors, informally, and with regards to those
17 issues, that type of information is sometimes
18 difficult to get, and then the legitimacy of it is
19 sometimes difficult to compile, because each
20 institution sometimes puts their complete salary
21 together in different manners.

22 Q Were you aware that West Virginia
23 University's \$4 million buyout was double of anybody
24 else's in the conference?

25 MR. FLAHERTY: Object to the form of the

1 question.

2 Q In the conference?

3 A I'm not sure that's -- I'm not going to
4 confirm here that that is absolutely accurate.

5 Q Well, let's go down the list.

6 Louisville is in your conference; right?

7 A Yes.

8 Q And, a guy named Kragthorpe, Kragthorpe,
9 got a \$2 million buyout.

10 Have you been told that?

11 A I have access to some of that, but may I go
12 back to what I said?

13 Sometimes, when you receive that, the
14 accuracies of some of those aren't 100 percent,
15 depending upon where you receive the information,
16 whether it be from a university administrator, or a
17 representative, and so on.

18 Q Is Rutgers in your league?

19 A Yes.

20 Q There Schiano's buyout is a million. You
21 don't know that?

22 A First, again, I have access to that.

23 Q Right. But you don't know if the figures
24 are accurate, that's what you are telling me?

25 A Yes.

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1 Q Maryland, are they in your league?

2 A No.

3 Q What about, Connecticut is; right?

4 A Connecticut, yes, sir

5 Q And Edsall has a \$750,000 buyout. You
6 can't confirm the accuracy of that?

7 A I can't confirm the accuracy.

8 But I would make a comment here, that our
9 football program, at this particular stage of it, is
10 rather unique, and as we determined that particular
11 liquidated damage area, we felt that we were in such a
12 position, at this time, with our football program,
13 that that would be of benefit to the coach, and to us,
14 particularly in an early transition, if that occurred.

15 Q What other teams are in your league, that I
16 didn't mention?

17 A Pitt.

18 Q Okay.

19 A South Florida.

20 Q Okay. South Florida, Leavitt got a \$50,000
21 buyout; are you aware of that?

22 A Again, I mean, I have to repeat myself,
23 who --

24 Q Okay.

25 What else, what other teams in the

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1 conference?

2 A We have Cincinnati.

3 Q And what's their buyout?

4 A I have access to it, I don't remember it
5 right here in front of me.

6 Q Who else is in the league?

7 A You have got --

8 MR. FLAHERTY: You are restricting this to

9 football?

10 MR. ROBON: Yes.

11 A We have got Pitt, Rutgers, South Florida.

12 Q Connecticut?

13 A Connecticut.

14 Q Rutgers, Louisville?

15 A Louisville.

16 And Syracuse.

17 Is that eight? That's seven, and we are
18 the eighth.

19 Q You are the eighth?

20 A Yeah, we are the eighth.

21 Q But you are No. 1?

22 A Well, today we are.

23 Q Would you agree with me that the \$4 million
24 buyout that was put in the term sheet in 2006, was
25 really there to make certain that Rodriguez would not

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1 leave under any circumstances?

2 A I believe it was put there for the benefit
3 of him, and the benefit of us, and to show a very
4 strong commitment both ways.

5 And secondly, if there was a departure, to
6 assist with the damages that would incur to him,
7 and/or to us, depending upon who departed.

8 Q Had you ever done a study about the impact
9 of a liquidated damages provision on a coach?

10 A No. But I did experience it when we had a

11 departure of a football coach.

12 Q John Beilein?

13 A He was a baseball coach.

14 Don Nehlen.

15 Q Oh, Don Nehlen?

16 A He had been with us a long time, and even
17 though, when you have a departure of a head football
18 coach, immediately you have two staffs that you are
19 paying salaries to, immediately it affects your
20 recruiting, which could affect your competitiveness
21 for the first year, second year, third year, right on
22 down the line.

23 And also, there are donors that have an
24 affinity to that particular coach, and there is
25 possibility that you can lose their moneys.

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1 And there are players that depart because
2 of their allegiance, affinity to the particular coach
3 that recruited them.

4 When a coach recruits a prospective student
5 athlete, he emphasizes to them that -- and to their
6 parents, that he is going to coach them.

7 And that departure is dramatic.

8 Q Oh, I understand that.

9 A And also, there is instances it would
10 affect your ticket sales, your priority seating, and
11 so -- and those things do occur.

12 Q Well, let me ask this question: If

13 Rich Rodriguez would fall over dead tomorrow from a
14 heart attack, hit by a car, do you think it would be
15 fair for West Virginia University to enforce the
16 \$4 million penalty on him?

17 MR. FLAHERTY: Don't answer that question.
18 I instruct you not to answer.

19 MR. WAKEFIELD: First of all, it is not
20 even what the contract says.

21 MR. FLAHERTY: It is an improper question,
22 and you know it.

23 MR. ROBON: It is a what?

24 MR. FLAHERTY: It is an improper question,
25 and you know it.

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1 MR. ROBON: Well, I will rephrase the
2 question.

3 BY MR. ROBON:

4 Q Had you, or anybody at West Virginia
5 University, taken into consideration that if there is
6 such a liquidated damages provision in a coach's
7 contract, and he does leave, he could become disabled,
8 he could die, he could get fired at his new position;
9 were those ever taken into account, when you made the
10 \$4 million provision in Rich Rodriguez's contract?

11 MR. FLAHERTY: Object to the form of the
12 question.

13 Q You can answer.

14 A I don't know. Half of the liquidated

15 damages is to assist the coach, if he is let go.

16 And, you mentioned on your third
17 illustration, that if he were to be let go at
18 Michigan, I read where the liquidated damages are
19 \$4 million there, so it -- that particular
20 illustration further describes the fact that that
21 portion of the liquidated damages is to assist both
22 parties, if a departure takes place.

23 Q Well, my question is: Did you think about
24 disability of a coach, after he might resign? Was
25 that a factor? Yes or no.

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1 MR. FLAHERTY: Answer it any way you want.

2 A I would rather not conjecture into that.

3 Q No, just was it a factor.

4 I want to know, Mr. Pastilong, did you
5 ever -- did that ever -- did you ever think about it,
6 or did anybody in your department, you know, or
7 anybody at the university ever say, "Wait a minute,
8 what happens if this guy has a coronary, or a stroke,
9 or has a terrible car accident, and he can't work any
10 more;" did anybody ever think of that situation, in
11 connection with a liquidated damages paragraph?

12 MR. FLAHERTY: Object to the form of the
13 question.

14 A I don't think I could speak to that.

15 Q Okay.

16 Did anybody ever talk about death of a

17 coach, after he would terminate?

18 The possibility of death, and the
19 enforcement of a liquidated damages provision; was
20 that ever discussed with anybody, or with you, or did
21 you ever think about it?

22 A Again, I can't speak to that particular
23 question. I --

24 Q Okay.

25 Well, let me ask you this question: Since

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1 you never thought about it, if there was a liquidated
2 damages provision in the coach's contract, and you
3 were the athletic director, and the coach resigned,
4 and the next day he gets hit by a car and gets killed,
5 would you seek to enforce the liquidated damage
6 provision against his estate?

7 MR. FLAHERTY: Object to the form of the
8 question. Particularly, since it is provided for
9 in the contract.

10 A I can't speak to that.

11 MR. ROBON: It is not provided for in the
12 contract, it is provided for beforehand, but not
13 after he quits.

14 BY MR. ROBON:

15 Q Would you disagree that Whit Babcock will
16 testify that the \$4 million was named as a number so
17 high that it would prevent Rich from leaving the
18 University of West Virginia?

19 A Ask me that again now.

20 Q Yes.

21 Would you deny that Whit Babcock is willing
22 to testify, under oath, that the \$4 million buyout was
23 intended to be such a huge liquidated damage number,
24 or penalty, it would be impossible for Rodriguez to
25 leave while it was in effect?

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1 MR. FLAHERTY: If you know.

2 A I can't speak for Whit Babcock.

3 Q Well, Whit Babcock was here when the
4 \$4 million figure was arrived at; was he not?

5 A That's correct.

6 Q Was he terminated?

7 A No.

8 Q He left on his own?

9 A Yes.

10 Q Did he leave before or after
11 President Garrison took office?

12 A Before.

13 Q Do you agree with me, that part of
14 Coach Rodriguez's compensation came from the West
15 Virginia University Foundation, Inc.?

16 His overall package, compensation?

17 A Part of his compensation, yes.

18 Q Was there ever a reserve in the
19 university's budget, or in the foundation's budget,
20 for \$4 million, in the event the university terminated

21 Rodriguez?

22 A There is not a line item account designated
23 for that specific situation, if it were to occur.

24 Q Did you see a resolution from the board of
25 governors, before you signed the second amendment

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1 addendum to the contract with Rodriguez?

2 A Did I see --

3 Q A resolution from the board of governors,
4 authorizing you to sign it?

5 A No.

6 Q Who told you to sign the contract?

7 A I was asked to go to -- to come down to
8 Craig Walker's office, which I did, and talked with
9 Craig Walker, President Garrison, and he presented the
10 contract, that he had just come from the Puskar
11 Center, Rich and Rita signed, and I signed it.

12 Q Can you indicate to the jury why you were
13 not at that August 24th meeting with Rich and Rita,
14 with President Garrison, with Chief of Staff Craig
15 Walker, with Mike Wilcox, and Mike Brown?

16 MR. FLAHERTY: Asked and answered.

17 A No.

18 Q Were you disappointed that you weren't
19 asked to be there, or invited there?

20 MR. FLAHERTY: Again, asked and answered,
21 same objection.

22 A No.

23 I will say, I was pleased that the contract
24 was signed.

25 Q I understand that.

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1 In your 33 years of being an athletic
2 director, was this the first time you were not present
3 when a coach signed a contract?

4 A A football, basketball coach?

5 Q Right.

6 A Yes.

7 Q Can you explain to me why the athletic
8 department hasn't rescinded, or renounced the
9 shredding incident, and say, "We have no evidence of
10 any shredding"?

11 MR. FLAHERTY: Object to the form of the
12 question.

13 A No.

14 MR. WAKEFIELD: Let me interrupt you for a
15 second, it is about 10 to 3:00, what about
16 Craig Walker?

17 MR. ROBON: I would never get through him
18 today.

19 Let's take five minutes then, and give him
20 a call.

21 THE VIDEOGRAPHER: The time is 2:50 p.m.,
22 we are going off the record.

23 (Recess taken.)

24 THE VIDEOGRAPHER: The time is 3:13 p.m.,

25 we are back on the record.

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1 BY MR. ROBON:

2 Q Mr. Pastilong, did you remember that there
3 was a term sheet that was handwritten, that was
4 executed in December of '06, with Coach Rodriguez?

5 A A handwritten, on one page?

6 Q Two pages.

7 A The entire thing was handwritten?

8 Q Yes.

9 A Yes.

10 However, that sheet was -- I believe that
11 sheet was independent of the university.

12 Q And how do you mean that?

13 A If I had the sheet -- do you have the sheet
14 here?

15 Q He is bringing copies.

16 A Well, I want to make sure this is the one,
17 the same one that I had seen on occasion.

18 Q We will defer that until he brings it
19 back.

20 A Is that okay?

21 Q That's okay.

22 Do you think Bill Stewart is going to be as
23 good a coach as Rodriguez?

24 MR. FLAHERTY: I object to the relevancy of
25 that.

1 Go ahead and answer.

2 A Well, Rich was a good coach, and
3 Coach Stewart demonstrated his abilities at the Fiesta
4 Bowl, and I feel very confident that he will do a good
5 job, I think we made a very good selection.

6 Q Do you believe that Rodriguez, in any
7 fashion, breached his employment agreement?

8 MR. FLAHERTY: Beyond leaving, you mean?

9 MR. ROBON: Beyond leaving, yes.

10 A The departure, breached --

11 Q Other than the departure?

12 A Not that I know of.

13 Q I want you to tell me about what
14 information was given to you, that you seen, that you
15 have heard about, or that you are aware of, in
16 connection with Rich's claim that West Virginia
17 University breached his employment contract.

18 A Ask me that one more time.

19 Q Okay.

20 I want you to tell me what information you
21 have, information that was given to you, documents
22 that you saw, information provided to you by word of
23 mouth, information from your superiors, or information
24 you derived on your own, relating to Rich Rodriguez's
25 claim that the West Virginia University breached his

1 employment contract.

2 MR. FLAHERTY: Let me object to the form of
3 that, to the extent it invades any
4 attorney-client privilege.

5 BY MR. ROBON:

6 Q Excluding what the lawyers told you.

7 A I don't believe that, to the -- all of the
8 knowledge I know, that we did not breach the contract.

9 Q All right.

10 Have you done an independent investigation,
11 as athletic director, to determine whether or not any
12 of the allegations by Rich Rodriguez are true?

13 A No.

14 Q Okay.

15 Did you appoint a committee of outsiders,
16 or insiders, within the university, to do an
17 investigation as to whether or not the allegations
18 Rich Rodriguez has made, are true?

19 A No.

20 Q Did you hire an investigative firm, like a
21 private detective agency, to investigate the
22 allegations that Mr. Rodriguez made?

23 A No.

24 Q How many meetings did you have with
25 Mike Brown, that you can recall, during the year 2007,

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1 who was Rodriguez's agent?

2 A If any, one or two at the most, if that.

3 Q And that would have been early in the year

4 2007?

5 A As the best that I can recollect.

6 Q Okay.

7 Did Mr. Brown, who was Mr. Rodriguez's
8 agent, tell you that he felt the \$4 million figure was
9 unwarranted, or unfair to Coach Rodriguez?

10 A I don't recall having a formal discussion,
11 on the liquidated damages, with Mr. Brown.

12 Q How many meetings did you have with
13 Michael Wilcox, Coach Rodriguez's financial advisor,
14 during the year 2007, that you can recall?

15 A One.

16 Q And when was that?

17 A That was following the --

18 Q Blessing?

19 A -- blessing of the field.

20 Q And what was discussed at that meeting?

21 A That -- well, at that meeting, Rich made
22 some general statements; that was pretty -- pretty
23 much it.

24 Q Rich made some general statements?

25 A Just commented at that --

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1 Q Can you remember what those comments were,
2 for the jury?

3 MR. FLAHERTY: Asked and answered.

4 A No, I couldn't go into the specifics.

5 Q Did Wilcox indicate to you that he felt the

6 \$4 million figure was unwarranted, and unfair?

7 A No.

8 Q Did you know that the \$4 million figure was
9 holding up the execution of the employment contract of
10 Coach Rodriguez?

11 A No.

12 Q Between December of '06 and July of '07,
13 did you know the reason that a contract was not being
14 executed by Coach Rodriguez?

15 A Give me the dates again.

16 Q Between December of '06 and end of July
17 '07, did you know the reason that there was no
18 contract executed?

19 MR. FLAHERTY: Beyond the term sheet.

20 Q Other than the term sheet?

21 A No.

22 Q Did you ask anybody why the contract was
23 not being signed?

24 A No.

25 Q Isn't it true, Mr. Pastilong, that the

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1 negotiations of the contract were taken out of your
2 hands by President Garrison and Chief of Staff Walker?

3 A We had a policy at the university, that if
4 Rich and I were discussing terms, et cetera, that
5 would be such.

6 If the attorneys, agents, et cetera, were
7 discussing terms, then that would be his expert team

8 discussing it with our legal counsel, our chief of
9 staff, those types of people. And that's just the
10 policy we have --

11 Q Yes, I understand that.

12 A -- conducted.

13 Q You indicated that before, Mr. Pastilong.

14 But I wanted to know how that policy was
15 modified by the fact that President Garrison and
16 Craig Walker stepped into the negotiations, in
17 supposedly your shoes.

18 We weren't dealing with legal terms, we are
19 dealing with financial terms.

20 I want to know how that happened in this
21 case.

22 Was it -- and let me ask it this way: You
23 didn't have any control over that; did you?

24 A That's correct.

25 Q President Garrison just did it; right?

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1 A You would have to ask President Garrison,
2 or Craig Walker that particular question, I --

3 Q Right. But to your knowledge, they just
4 stepped in and did it?

5 A Yes.

6 Q Did Rich Rodriguez ever disobey any
7 directive you issued as athletic director, in the last
8 couple of years?

9 A Not that I know of.

10 Q Would you say that he was an outstanding
11 coach, an outstanding employee at the university?

12 A Yes.

13 Q How are you involved with the West Virginia
14 University Foundation, Inc.? Are you on the board, or
15 an advisor, or officer; anything like that?

16 A No.

17 Q Do you attend their meetings?

18 A No.

19 Q Do you send an emissary from the athletic
20 department to their meetings?

21 A No.

22 Q Who in your athletic department is the
23 liaison with the foundation; Mike Parsons?

24 A At times it would be me, Russ Sharp,
25 Larry Aschebrook, and could be Mike Parsons, depending

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1 upon what the particular situation is.

2 Q Did you have any discussion with any
3 member, employee, officer or board member of the
4 foundation, with regard to the Rodriguez lawsuit?

5 A I don't believe so.

6 Q What oral promises did you hear about,
7 either from Coach Rodriguez, through the news media,
8 through written documents, or were told to you, that
9 were given to him; not by you, but by either President
10 Garrison, or Craig Walker?

11 MR. FLAHERTY: Object to the form of the

12 question, and the assumptions contained in it.

13 A None.

14 Q Were you aware that there were oral
15 promises made to coach Rodriguez?

16 MR. FLAHERTY: Same objection.

17 A No.

18 Q If President Garrison said something to you
19 verbally, would you have any reason to believe that he
20 would not honor his word?

21 A I believe he would honor his word.

22 Q How do you categorize Richard Rodriguez
23 now? You indicated he was a friend years ago. Is he
24 a friend, an acquaintance, a former friend, jilted
25 friend? How would you describe your relationship now

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1 to the jury?

2 A I'm still his friend. I can't answer on
3 his behalf.

4 Q Okay.

5 How long have you known President Garrison?

6 A I knew him as a student. He was student
7 body president.

8 And, he was a member of the athletic
9 council.

10 Following that, there was -- when he left
11 the university, went out in private practice, and then
12 most recently, the last couple of years, when he
13 returned to the Morgantown area, and got involved in

14 various university functions.

15 Q Did he --

16 A So I say three or four years, something
17 like that.

18 Q Did he come from, was he practicing in
19 Charleston, Wheeling; where was he practicing?

20 A I think he was practicing in -- I'm not
21 sure. It might have been Charleston and Morgantown.
22 I don't know the answer to that.

23 Q Did he leave private practice to come back
24 to Morgantown and work at the university? Or did he
25 just --

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1 A You mean to be president?

2 Q Before he became president.

3 A I don't know the particulars to that.

4 I think he taught -- he taught a class at
5 the law school, I did know that.

6 He was involved in the Higher Education
7 Policy Commission.

8 But I think he was retaining his law
9 practice, while all of that was going on.

10 Q And --

11 A To the best of my knowledge.

12 Q -- who chose him to be the president;
13 Governor Manchin?

14 A The board of governors.

15 Q Which is controlled by -- they are

16 appointed by Governor Manchin; are they not?

17 A Their appointments are by the governors.

18 Q Right.

19 A The governor, governors over the years.

20 Q Do they have a term, a couple of years?

21 A There have terms, I don't know the

22 specifics.

23 Q Are all of the people that are on the board

24 of governors now, appointed by Governor Manchin?

25 A I don't know that.

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1 Q When we talk about liquidated damages,
2 would you indicate to the jury your understanding of
3 what that term means?

4 MR. FLAHERTY: Objection. Already asked
5 and answered.

6 Go ahead.

7 Calls for a legal conclusion, also.

8 MR. ROBON: I just want to know what his
9 understanding is.

10 MR. FLAHERTY: Go ahead.

11 He has already given you that a couple of
12 times.

13 But go ahead.

14 A The liquidated damages would be estimates
15 at the time that they are incorporated, by both
16 parties, so that they could be of benefit to the party
17 who is not departing, so that they can get through a

18 transition period, so that they can recover from
19 losses that may be incurred.

20 Q Do you believe -- are you done?

21 A Yeah.

22 Q Okay.

23 Do you believe that in this case, you could
24 calculate, or someone could calculate the actual
25 damages that West Virginia University may have

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1 suffered?

2 MR. FLAHERTY: Objection. Asked and
3 answered; irrelevant.

4 Go ahead.

5 A Yeah, I believe someone could do that, yes.

6 Q Now, I am going to hand you --

7 MR. ROBON: Let's mark this as an exhibit
8 here.

9 (Thereupon, Pastilong Exhibit L was marked
10 for identification.)

11 BY MR. ROBON:

12 Q I am going to hand you Exhibit L, which is
13 the handwritten sheet that I mentioned earlier.

14 Can you tell whose handwriting this is?

15 A Well, I cannot tell the handwriting.

16 Q Can you tell who signed at the bottom, on
17 page 2?

18 A I recognize Rich's signature.

19 The witness, I have no idea who that is.

20 Q Do you see on page 1, it says, "Liquidated
21 Damages - Same As Current Contract."

22 A Yes.

23 Q And it says on the top, "Head Coach
24 Compensation"?

25 A Yes.

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1 Q What is MEC Construction, Inc., Bridgeport,
2 West Virginia? That's the letterhead on this
3 document. What do you know about that company?

4 A I don't know who that is.

5 Q You don't know who that is.

6 THE VIDEOGRAPHER: We need to change tapes.

7 MR. ROBON: Okay. Go ahead.

8 THE VIDEOGRAPHER: The time is 3:33 p.m.,
9 we are going off the record.

10 This concludes tape 5.

11 (Discussion off the record.)

12 THE VIDEOGRAPHER: The time is 3:35 p.m.,
13 we are back on the record, this begins tape 6.

14 BY MR. ROBON:

15 Q Mr. Pastilong, this Exhibit L was is in
16 your file. Do you know how it got there?

17 A Yes.

18 Q Okay. Can you tell me?

19 A A Mr. David Alvarez gave that to me.

20 Q And who is David Alvarez?

21 A He is a donor, and attends our contests,

22 friend of Rich's.

23 Q And is this his handwriting, you believe?

24 A I don't know.

25 Q Does he own MEC Construction, Inc.?

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1 A I don't know.

2 Q How did you know it came from

3 David Alvarez?

4 A I am pretty sure he handed it to me.

5 Q And what did he tell you, when he handed

6 Exhibit L to you?

7 A He just gave it to me.

8 Q Did he say that, "This is what I think a

9 fair compensation for Coach Rodriguez would be"?

10 A I don't think there was an explanation to

11 it.

12 Q He just walked up and handed it to you?

13 A Well, at some point he delivered it to me.

14 Q Had you and he talked about what fair

15 compensation to Coach Rodriguez would be?

16 A No.

17 Q How often do you visit with him?

18 A Oh, I see him once a month, something like

19 that.

20 Q Was this like an outline, for you to

21 negotiate?

22 A I don't know what the purpose of it was.

23 Q Well, do you think he negotiated with

24 Rich Rodriguez, since Rich signed this on page 2?

25 A I can't answer that.

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1 Q You see page 2, it says, "Puskar Center
2 Renovations - Academic Center," can you read the next
3 few words there?

4 A Yes.

5 Q What do they say?

6 A "Begin by Spring of '07."

7 Q Okay.

8 And locker room construction to be done by
9 spring '08?

10 A Yes.

11 Q Do you think that Mr. Alvarez met with
12 Coach Rodriguez, to come up with this term sheet?

13 A I don't know.

14 Q Is Mr. --

15 A I was not there.

16 Q Does Mr. Alvarez have any affiliation with
17 the athletic department, other than being a donor?

18 A He is a donor, ticket holder to many of our
19 events.

20 Q Okay.

21 I want you to pull out Exhibit F, which is
22 right here, which you indicated that Mike Parsons
23 prepared.

24 Is that correct?

25 A That's correct.

1 Q And the heading at the top, it says,
2 "Football Potential Damages," can you tell me when
3 Mr. Parsons prepared this?

4 A No.

5 Q In item 13, it says, "Potential buyout new
6 coach's contract." Well, that wouldn't be necessary,
7 because you hired Bill Stewart; right?

8 MR. FLAHERTY: The potential wouldn't be
9 necessary?

10 MR. ROBON: Right. Well, because there is
11 no --

12 MR. FLAHERTY: I object to the form.

13 BY MR. ROBON:

14 Q Do you see where I am referring?

15 A Yes.

16 Q So this obviously must have been done
17 before you hired Bill Stewart?

18 A Yes.

19 Q Okay.

20 And then 14, it says, "Potential increase
21 in coaches salaries, 500,000," and I think you
22 indicated it was what, \$475,000 you increased the
23 assistant coaches?

24 A Yes.

25 Q And what kind of financial background does

1 Mr. Parsons have?

2 A He is -- he is responsible for our external
3 affairs, promotions, marketing.

4 Q Is he a CPA?

5 A He is not a CPA.

6 Q Is he an accountant?

7 A No.

8 Q So he just came up with some items, and put
9 them down on a piece of paper?

10 A As I had indicated earlier, he conferred
11 with our people in our department, who are finance
12 people, our athletic club, our contributors, and so
13 on, our ticket personnel.

14 Q Have you seen a -- have you sent out your
15 season tickets yet for football?

16 A Yes, our applications.

17 Q Yes.

18 Have you seen any noticeable decline?

19 A It's too early right now, to --

20 MR. ROBON: Would you follow up in 60 days,
21 and tell us?

22 MR. FLAHERTY: You send me the request, I
23 will.

24 BY MR. ROBON:

25 Q What does it cost to get a ticket on the

1 50 yard line now?

2 A Well, you need to -- we have priority
3 seating, and dependent upon --

4 Q How much donation you make?

5 A Your donation.

6 Q What's the number?

7 A Well, the number would be -- you would need
8 to be a member of the Directors Club, Gold Coat
9 Directors Club, would be in the area of 3,500.

10 Q Per seat, or per person?

11 A Per person. And then they can buy an
12 allotment of tickets.

13 Those moneys fund the scholarships.

14 Q And it says in here, "Potential loss of
15 bowl revenue."

16 That assumes that the team next year would
17 make a bowl appearance, if Rodriguez was here; right?

18 A That's taking into consideration if your
19 competitiveness lessened, because of players
20 departing, your recruiting class being disrupted, the
21 transition of new players, getting used to new
22 coaches, all of those issues.

23 Q But you agree with me, that no professional
24 was engaged to make these calculations, outside of the
25 university?

1 A Well, I consider Mike Parsons, and
2 Russ Sharp, and Larry Aschebrook, those -- and my
3 ticket manager, Debby Travinski, I mean, I consider
4 them experts in their field, very knowledgeable.

5 Q I agree with that, I'm saying, outside of

6 the university?

7 A To go outside and hire an accountant?

8 Q You didn't?

9 A We did not do that, no.

10 Q Okay.

11 And how accurate do you think the
12 predictions would be, within 5 or 10 percent, within a
13 year, you could make those calculations of what the
14 actual damages were?

15 A These particular calculations, if things
16 were to be seriously disrupted, could be low.

17 Q No, I understand.

18 But what I am asking you, Mr. Pastilong, is
19 if we are sitting here at the end of the football
20 season, after the bowl season is over, it's early
21 2009, and we are doing a look back at 2008, and
22 comparing it with 2007, do you think that your people,
23 in your department, using this chart, could come
24 within a 5 or 10 percent accuracy figure of what the
25 university really suffered in damages, if anything?

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1 I mean, you might win a national
2 championship, I don't know.

3 A Well, when you assemble these, you don't
4 know what the future is going to be. And so, you are
5 making a prediction, if certain things occur, that
6 disrupts your program.

7 And so I think it would be pretty much

8 impossible to say yes or no, to your question.

9 Q But I'm saying, if we go until January of
10 '09, you will have the numbers for '08, you would be
11 able to come within a 5 or 10 percent factor of what
12 damages, if any, the university suffered?

13 MR. FLAHERTY: He just answered that
14 question, he said he thought that would be
15 impossible.

16 MR. ROBON: No, it was -- I think he
17 misunderstood me.

18 MR. FLAHERTY: No, I think he understood
19 you perfectly.

20 MR. ROBON: Well, let's clarify that.

21 Q Did you understand, we are looking back
22 after the fact?

23 A Yeah.

24 Q In other words, I am looking a year from
25 now, we will be able to -- you will be able to tell

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1 what damages were suffered in 2008; would you not?

2 A Well, I think the damages could go beyond
3 that, particularly if you have a bad year the
4 following year, and then that affects your recruiting,
5 your donors, your ticket sales, your reputation, and
6 there are a lot of things that could be damaged with a
7 change.

8 Q Okay.

9 Or there could be no damage? Right?

10 A I tell you, whenever there is a change,
11 there is a disruption.

12 Q No, but my question is, isn't it feasible
13 that Coach Stewart could go 10 and 2, 11 and 1, and
14 there would be no damage?

15 MR. FLAHERTY: Object to the form of the
16 question.

17 A I think that's difficult to answer.

18 As I stated earlier, we lost two very good
19 football players from our starting lineup, and I had
20 mentioned one of them was a first team All American
21 two years ago, the other than one was All Big East.

22 But they are very difficult to replace when
23 they are seniors, after you have coached them for
24 three years into being mature, competitive type
25 players, who are the ones who step up to win the

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1 games.

2 And when you start over again, with
3 freshmen, your -- your chances of losing are
4 increasing dramatically.

5 And, so I just think there are a lot of
6 consequential situations that can occur, with regards
7 to a transition, a change.

8 Q But there could be a situation where there
9 is no financial damage; you agree with that?

10 MR. FLAHERTY: Asked and answered.

11 A I think it would be difficult to answer

12 that.

13 MR. ROBON: Let's go off the record for a
14 moment.

15 THE VIDEOGRAPHER: The time is 3:48 p.m.,
16 we are going off the record.

17 (Recess taken.)

18 THE VIDEOGRAPHER: The time is 3:55 p.m.,
19 we are back on the record.

20 BY MR. ROBON:

21 Q Mr. Pastilong, one thing that we didn't --
22 I just don't have clear in my mind, is when the term
23 sheet was executed back in December of '06, who was
24 there?

25 A We were at the president's house.

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1 Q That was --

2 A President Hardesty, he was there. Board of
3 governors chair, Steve Goodwin.

4 Chief of staff, Jennifer Fisher.

5 Associate athletic director, Mike Parsons.

6 And myself.

7 Q And who came up with the \$4 million number?

8 Was it Goodwin or Farmer?

9 MR. FLAHERTY: He said Farmer wasn't there.

10 Q I thought you said Farmer was there?

11 A Steve Goodwin.

12 Q Steve Goodwin, I'm sorry. Goodwin, and who
13 was the other person?

14 A Let me start again. President Hardesty.
15 Q Right.
16 A And then Steve Goodwin, who is the chair of
17 the board of governors.
18 Q Right.
19 A And then Jen Fisher, who was the chief of
20 staff.
21 Mike Parsons, who was the associate
22 athletic director.
23 And then myself.
24 Q And who was there from the coach's side?
25 A No one.

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1 Q Wilcox or Brown were not there?
2 A No.
3 Q The coach was not there?
4 A No.
5 Q So this term sheet was just arbitrarily set
6 out by the West Virginia University, without any
7 negotiations with Coach Rodriguez, or his team?
8 A Well, I called Coach Rodriguez and asked if
9 he could meet with me, and he left his office, he and
10 Rita, and they met at my house.
11 Q This is after you had the meeting with
12 these other people we just talked about?
13 A This is, yeah, after we had the meeting.
14 Q Okay.
15 A And prior to that, there was input as to

16 the salary that he was wanting, and prior to that
17 there were about three days in a row where he and I
18 had met, Rich and I, to discuss his particular salary
19 requests, his requests with regards to the assistant
20 coaches, his wanting the various renovations at the
21 Puskar Center.

22 So, did he have input in that particular
23 term sheet? Yes.

24 We assembled it.

25 The main reason we were assembling this,

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1 was to see if we were going to get up to the salary
2 that he was requesting, and how we were going to do
3 that.

4 And, like I said, now, that was a series of
5 meetings with Rich and I.

6 One time I had to go to Bridgeport to meet
7 him, when he was departing in an airplane, and every
8 day I went over to his office, every morning, and he
9 and I sat and went through this discussion, and I
10 might add they were good, solid, amicable discussions.

11 And at the end of all of this I felt very
12 comfortable with the terms that he and I had put
13 together.

14 And then with this group here, it was
15 discussed.

16 I called him up, he -- again, he and Rita
17 came, we met at my house, the reason being, my house

18 is close to the stadium, close to the president's
19 house, the four of us sat there, he looked at the
20 sheet, he and his wife discussed it, and then he was
21 going to go -- he and Rita went back to the office,
22 and then asked if I would come over there in a couple
23 of hours, an hour and a half, whatever it was, and
24 that he would say yea or nay.

25 So I waited, and went over there at the

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1 time that he asked me to be there, and he and I and
2 Rita sat there and discussed it, and I believe there
3 was a lengthy phone call between he and Mike Brown.

4 And then at the end of that, he looked at
5 Rita and said, "Is this what you want?"

6 And she said, "Yes," and he signed it, and
7 she signed it, and I signed it, and I went, departed.

8 Q So you would agree with me, that during
9 these discussions, he did not have legal counsel
10 present, or on the phone, relative to the 2006 term
11 sheet?

12 A I don't know if he discussed the terms with
13 his legal counsel, or his agent during that week that
14 he and I were discussing the terms, or not. Only he
15 could answer that.

16 Q Right.

17 But I am saying, you are not aware of any
18 discussion with any lawyers; correct?

19 A I'm not aware of who he discussed this.

20 Q Okay.

21 My next question is: Who -- whether it be
22 Jen Fisher, President Hardesty, yourself,
23 Steve Goodwin, or Mike Parsons, who came up with the
24 \$4 million figure?

25 A I don't recall. It was there, it came up,

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1 and that was --

2 Q Did Coach Rodriguez say he thought that
3 \$4 million figure might be too high?

4 A When we went to my house, he did not state
5 it, we were sitting there, the four of us, I mean,
6 that was a very comfortable, happy meeting type thing.
7 When I went to his office a couple of hours
8 later, to get his final yes or no, whether he was
9 going to stay or not, I just was sitting there while
10 he and his wife had had a discussion about the
11 particulars, and again, he had had a lengthy
12 discussion with his agent on the phone.

13 So that's all I know of that.

14 Q And Jen Fisher, she never met with him, she
15 met with just your group?

16 A That's correct.

17 Q So she was giving your group legal advice?

18 A She was chief of staff.

19 Q Right.

20 A She was just there.

21 Q But she is a lawyer?

22 A I don't -- I don't know if she is a lawyer.

23 Q Hardesty wasn't a lawyer; was he?

24 A Hardesty is a lawyer.

25 Q Oh, he is a lawyer?

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1 A Yes, sir.

2 Q So we got two presidents in a row, that are
3 lawyers.

4 Okay.

5 I think I want to move down here, I might
6 get a job.

7 MR. FLAHERTY: I wouldn't count on it.

8 BY MR. ROBON:

9 Q Is it fair to say you are not the one who
10 recommended the \$4 million figure?

11 A I say it came out of collective discussion.

12 Q But did you bring it up, or did someone
13 else bring it up, initially?

14 A I do not recall who brought that up.

15 Q Was there another number, higher than
16 4 million, originally brought up, or lower?

17 A I don't recall.

18 Q But that number wasn't really negotiated
19 with Coach Rodriguez; correct? It was kind of a take
20 it or leave it?

21 A During the week, he was aware of that
22 particular number.

23 That particular time that I met with him at

24 my house -- now, keep in mind that by 5:00 o'clock
25 that day, he was going to make an announcement whether

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1 he was going to stay or go, so it was getting to the
2 point that things were getting pretty well finalized.

3 Q Was there a reason your committee raised
4 the buyout number from 1.5 million to 4 million?
5 Because it was 1.5, under his existing contract.

6 MR. FLAHERTY: It was higher than that.

7 THE WITNESS: The other one was.

8 MR. ROBON: I am are pretty sure it is 1.5.

9 MR. R. P. FITZSIMMONS: 2 million.

10 MR. WAKEFIELD: I think it was 2.

11 MR. ROBON: Well, whether it is 1.5 --

12 MR. FLAHERTY: Paragraph 5, Section Roman
13 numeral V (d), it is 2 million.

14 MR. ROBON: It is 2 million.

15 MR. FLAHERTY: Under the first amendment.

16 MR. ROBON: Okay.

17 A It was felt that our program had gotten to
18 the stature that a departure by the coach would result
19 in damages, significant, and the salary was going from
20 under a million to a million 750,000, and the things
21 associated with those damages, the image of the
22 university, someone departing, the effects it has upon
23 the overall image right then, and for the future of
24 the department, that particular liquidated damage
25 would be reasonable for that particular situation at

1 that particular time.

2 Q Okay.

3 Can you explain to the jury, if it was
4 \$4 million during the year 2007, and it's reduced in
5 August of 2008 back to 2 million, how does that
6 \$2 million figure factor in whether he stays one year
7 or two years?

8 A Well, the -- an immediate departure would
9 have more significant damage than if -- on him also,
10 if we were to let him go, it would be a dramatic --
11 and then -- damage to him.

12 And if, the time -- as the time elapsed,
13 and we had further time, both ways, to adjust, if
14 there was going to be a departure, the departure would
15 have a less significant damage upon either party.

16 Q Would you agree with me, that his being
17 terminated by West Virginia University never was
18 discussed at this meeting of your committee, with
19 President Hardesty, Jennifer Fisher, Mike Parsons,
20 yourself and Steve Goodwin?

21 It wasn't even a discussion, was it,
22 that --

23 MR. FLAHERTY: Object to form.

24 Q -- you would terminate him?

25 MR. FLAHERTY: Object to the form of the

1 question.

2 A I can't recall the particulars of the
3 discussion.

4 However, it would not be inconceivable for
5 a situation, for a program to get in a situation, that
6 you would terminate a coach.

7 Q Oh, I understand that.

8 But with his record of getting better and
9 better every year, it would be highly unlikely;
10 correct?

11 MR. FLAHERTY: Object to the form of the
12 question.

13 A Programs -- if you lose Pat White during
14 spring practice, our won-loss record is going to be
15 affected.

16 If a couple of players depart, for reasons
17 other than football, your program is going to be
18 affected.

19 So, it may be unlikely that we were going
20 to have a poor season, but it could occur.

21 Q But the likelihood of your terminating him,
22 even if he had one poor season, is unlikely; correct?

23 A We have got a good tradition of, if a coach
24 makes a strong commitment to us, we in turn make a
25 strong commitment to that coach, and that's been our

1 tradition.

2 Q Okay.

3 MR. ROBON: Well, I have no further
4 questions at the present time.

5 We will recess this deposition.

6 MR. FLAHERTY: No.

7 MR. ROBON: I only intend to recall him
8 if --

9 MR. FLAHERTY: We won't recess it. You
10 either --

11 MR. ROBON: Let me finish.

12 I only intend to recall him if some new
13 evidence comes up from somebody else, or some new
14 documents, we reserve the right to call him in
15 those events.

16 MR. FLAHERTY: We object to your right to
17 recall him. This man is here to be deposed
18 today, you told him it was going to take two
19 hours, he has been here now about eight.

20 We are prepared to continue to go the rest
21 of the evening, until you exhaust your questions.

22 MR. ROBON: Well, your privilege log, for
23 example, we don't know what the judge may or may
24 not allow us to look at.

25 So -- do you want to waive signature?

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1 MR. FLAHERTY: We do not, we will read and
2 sign.

3 THE VIDEOGRAPHER: Are we done?

4 MR. FLAHERTY: We are done.

5 THE VIDEOGRAPHER: The time is 4:10 p.m.,
6 this concludes tape 6 of this deposition.

7 - - -

8 (Thereupon, at 3:13 o'clock p.m., the
9 deposition was adjourned.)

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1 SIGNATURE PAGE

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Ed Pastilong

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Subscribed and sworn to before me this

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_____ day of _____, 2008

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Notary Public

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CERTIFICATE

2 COMMONWEALTH OF PENNSYLVANIA,)
3 COUNTY OF ALLEGHENY.) SS:

4 I, Eugene C. Forcier, do hereby certify that
5 before me, a Stenographer-Commissioner in and for the
6 Commonwealth aforesaid, personally appeared
7 ED PASTILONG, who then was by me first duly cautioned
8 and sworn to testify the truth, the whole truth, and
nothing but the truth in the taking of his oral
deposition in the cause aforesaid; that the testimony
then given by him as above set forth was by me reduced
to stenotypy in the presence of said witness, and
afterwards transcribed by means of computer-aided

9 transcription.

10 I do further certify that this deposition was
11 taken at the time and place in the foregoing caption
12 specified.

12 I do further certify that I am not a relative,
13 counsel or attorney of either party, or otherwise
14 interested in the event of this action.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 and affixed my seal of office at Pittsburgh,
16 Pennsylvania, on this _____ day of _____,
17 2008.

18 _____
19 Eugene C. Forcier
20 Stenographer-Commissioner

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1 I-N-D-E-X

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