

IN THE CIRCUIT COURT
OF MONONGALIA COUNTY, WEST VIRGINIA

WEST VIRGINIA UNIVERSITY :
BOARD OF GOVERNORS for and :
on behalf of WEST VIRGINIA :
UNIVERSITY :
Plaintiff :

v : CIVIL ACTION NO.

RICHARD RODRIGUEZ : 07-C-851
Defendant :

* * *

Videotape Deposition
of Steve Farmer

Tuesday, June 10, 2008

* * *

a witness herein, taken on behalf of the
Defendant in the above-entitled cause of action
pursuant to notice and the West Virginia Rules of
Civil Procedure by and before Debra A. Volk,
Notary Public within and for the State of West
Virginia at the law offices of Flaherty,
Sensabaugh & Bonasso, PLLC, 965 Hartman Run Road,
Suite 1105, Morgantown, West Virginia 26505,
commencing at 2:44 p.m.

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15 Signed by: Thomas V. Flaherty, Esquire

16 On behalf of the Plaintiff, 6-10-08

17

18 Signed by: Marvin A. Robon, Esquire

19 On behalf of the Defendant, 6-10-08

20

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12 ALSO PRESENT:

13 John C. Taylor, Videographer

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P R O C E E D I N G S

* * *

VIDEOGRAPHER: We're now on the record in the matter of WVU versus Rodriguez, Civil action number 07-C-851. My name is John Taylor. I'm a legal video specialist from Katz Consulting Group, LLC, located at 820 Quarrier Street, Charleston, West Virginia, 25301. I'm not related to any parties to this action or to counsel of record, nor do I have a financial interest in this action. Today is June 10, 2008. The time is 2:44 p.m. This deposition is taking place at Flaherty, Sensabaugh & Bonasso, PLLC, 965 Hartman Run Road, Morgantown, West Virginia. The deponent today is Steve Farmer. Will counsel please identify themselves for the record?

COURT REPORTER: I am Debra Volk, Court Reporter, here on behalf of Streski Reporting and Video.

MR. ROBON: I am Marvin A. Robon from Barkan & Robon representing Rich Rodriguez.

1 MR. MCGINLEY: Sean McGinley,
2 for the Defendant.

3 MR. FITZSIMMONS: Robert J.
4 Fitzsimmons on behalf of West Virginia
5 University.

6 MR. MACIA: Alex Macia with
7 West Virginia University.

8 MR. FITZSIMMONS: Bob
9 Fitzsimmons on behalf of West Virginia
10 University.

11 MR. FLAHERTY: And I'm Tom
12 Flaherty on behalf of the Plaintiff, West
13 Virginia University, et al.

14 .

15 VIDEOGRAPHER: Would the
16 Court Reporter please swear in the witness?

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1 * * *

2 STEVE FARMER

3 being first duly sworn, was examined and deposed
4 as follows:

5 * * *

6 E X A M I N A T I O N

7 BY MR. ROBON:

8 Q. Would you state your name and your
9 business address, please?

10 A. My name is Steven, middle initial B,
11 Farmer. My business address is PO Box 3842,
12 Charleston, West Virginia.

13 Q. And I understand you're a practicing
14 lawyer?

15 A. I am.

16 Q. Specializing in?

17 A. All forms of litigation, our practice
18 is limited to litigation.

19 Q. Defense or plaintiff?

20 A. Both.

21 Q. And how big a firm are you with?

22 A. Right now our firm has 11 lawyers.

23 Q. In one office or more offices?

24 A. We have two offices but our

1 predominant office is in Charleston. We have a
2 second office in Beckley, West Virginia.

3 Q. And how long have you been a lawyer?

4 A. Since May of 1984, May the 16th
5 exactly.

6 Q. So 23 years?

7 A. That's about right.

8 Q. Did you go to West Virginia
9 University Law School?

10 A. I did.

11 Q. And did you start practicing right
12 after that?

13 A. I did.

14 Q. In Charleston?

15 A. In Charleston.

16 Q. With a different firm?

17 A. I started my career with the firm
18 known as Jackson Kelly in Charleston, West
19 Virginia.

20 Q. And you're familiar with the Canons
21 of Ethics?

22 A. I am.

23 Q. I'm going to ask you some questions.
24 I don't know if you've ever been deposed before.

1 A. I have.

2 Q. You have, in litigation matters?

3 A. Yes.

4 Q. That your firm was involved with?

5 A. You know, I can't really remember. I
6 think I've been deposed as a witness in case, in
7 a criminal case actually where I was actually
8 counsel, but there was an issue, a Castagar issue
9 where I was -- my deposition was taken and I also
10 testified in court, I believe and a hearing.

11 Q. And you know if you need a break or a
12 drink of water, just speak up.

13 A. Yes, sir.

14 Q. And if you don't understand anything
15 I'm saying, make sure we communicate.

16 A. Agreed.

17 Q. Okay.

18 How long have you been on the Board
19 of Governors?

20 A. It will be four years approximately
21 the first of July this year. I mean I don't know
22 if I went on the first but it was July of what,
23 that would have been 2004.

24 Q. I know lawyers always hedge, so --

1 A. I don't mean to be difficult, but it
2 was about, my term ends at the end of this month.

3 Q. Okay.

4 Are you going to be reappointed?

5 A. I have no idea.

6 Q. Governor Manchin would have to
7 reappoint you?

8 A. Yes.

9 Q. How many members are there on the
10 Board of Governors now?

11 A. 18 (eighteen).

12 Q. And how many members are active?

13 A. Active in what sense?

14 Q. Active in the sense that they're
15 familiar with all the ongoing things at the
16 university on a daily or weekly basis.

17 A. As far as I know every member of the
18 board is active by that definition. I mean if
19 there are some that aren't I'm not aware that.

20 Q. Are there certain board members who
21 assume more responsibility than others?

22 A. Well, I think there are -- our
23 chairman for instance --

24 Q. Steve --

1 A. Steve, well right now it's Steve
2 Goodwin, by definition he is more, I mean by his
3 job description has a more day-to-day
4 involvement. Other than that I would say I don't
5 know. I mean --

6 Q. When did you first meet Rich
7 Rodriguez?

8 A. The first time I met Rich Rodriguez
9 was at a MAC event, a Mountaineer Athletic Club
10 event very shortly after he was hired.

11 Q. Which would have been 2000?

12 A. I don't recall. I mean that era, a
13 fellow named Will Armistead, what I remember a
14 fellow named Will Armistead was at that time
15 working for the Mountaineer Athletic Club and
16 I've known Will for, we grew up together here in
17 Morgantown and he called me. They were having
18 some event in Charleston and he called me and
19 asked me to get people out for the event and I
20 remember it was at Edgewood Country Club. I
21 remember meeting Coach Rodriguez that evening in
22 passing, you know.

23 Q. How frequently do you get to
24 Morgantown?

1 A. That depends. I don't mean to be
2 difficult.

3 Q. On average?

4 A. Before I -- I mean I have family in
5 Morgantown, I have some business in Morgantown, I
6 would say I'm in Morgantown monthly as a rule and
7 that has ebbed and flowed over the years
8 depending on my responsibilities and the age of
9 my family and things like that, but in recent
10 years probably monthly.

11 Q. And how did you get appointed to the
12 Board of Governors?

13 A. I was appointed by Governor Wise.

14 Q. And why did he do that?

15 A. I know what he explained to me as to
16 why he did it, there was a legal matter that
17 involved the state and it involved video lottery.
18 There was a video lottery law passed and the
19 first time it was passed it was successfully
20 defeated in court, and then it was --

21 Q. It was unconstitutional or --?

22 A. Part, yeah, yeah, it had
23 constitutional infirmities, what, I can't
24 remember right now. They -- the Legislature

1 passed it again and it was a -- an initiative of
2 the Governor's, it was important to him, and I
3 had done nothing other than kind of keep up with
4 it and had an idea of how a strategy of how the
5 Governor's office could be successful in
6 defeating a challenge on the second time around.
7 And if I recall correctly Alex Macia was counsel
8 for the Governor at that time. I did not know
9 Alex and I had heard his name. I called him up, I
10 had an idea, I went down, he saw me, he liked my
11 idea, we -- I got involved and we were successful
12 in defeating the challenge and the Governor told
13 me that based on that episode, that engagement,
14 he would like me to get more involved in
15 governmental affairs and asked me if I would be
16 involved, be willing to take an appointment to
17 the Board of Governors.

18 Q. Were you paid for your defeating the
19 challenge?

20 A. I was retained by the City of
21 Charleston, if I recall correctly, the City of
22 Charleston, the City of Huntington, and Ohio
23 County. Ohio County had a Cabela's initiative.

24 Q. So you didn't -- the question is,

1 were you paid?

2 A. I think I was. I don't remember but I
3 think I was. I'm telling you who I represented so
4 if we need to get that information.

5 Q. And -- so this was a reward from the
6 Governor's office?

7 A. I didn't perceive it as a reward at
8 all.

9 Q. A commendation?

10 A. No, I didn't perceive it as that
11 either. I perceived it as he got to know me, he
12 thought that I had abilities that could be
13 utilized in government and he asked me to get
14 involved. It was not presented to me as a reward.

15 Q. Do you think you would have been
16 appointed had you lost?

17 A. I have no idea.

18 Q. It never entered your mind?

19 A. No.

20 Q. And what role have you played on the
21 Board of Governors since your appointment?

22 A. I have participated as a board
23 member.

24 Q. Have you been on any special

1 committees?

2 A. No, I have not.

3 Q. Are there special committees?

4 A. Well, there's an audit committee and
5 the board -- in the beginning if I recall, have
6 been some other committees but I've never -- to
7 me the main committee now is the audit committee
8 and I have not participated on it.

9 Q. How did you perceive Rich Rodriguez
10 over the past several years when he was the head
11 football coach?

12 A. How did I perceive him?

13 Q. Yes.

14 A. I enjoyed, I was pleased that he was
15 our head football coach and I've supported him as
16 I could.

17 Q. Did you see him as an attribute to
18 the University of West Virginia?

19 A. I did. I thought he did a fine job.

20 Q. Were you sad to see him leave?

21 A. I was.

22 Q. Did you understand why he left?

23 A. No, I don't.

24 Q. I'm going to hand you what we've

1 marked as Exhibit AA, I want you to look at it,
2 and ask if you've ever seen this document
3 explaining the reasons for his leaving the
4 university.

5 A. No, sir.

6 Q. Did anybody ever tell you the
7 contents of that resignation letter of January 10
8 of 2008?

9 A. The contents of this letter? No, not
10 that I recall.

11 Q. Were there any meetings discussing
12 Mr. Rodriguez's leaving the university with the
13 Board of Governors?

14 A. The Board of Governors?

15 Q. Yes.

16 A. I -- you know, I've got to, I must
17 say that I am very confident in the course of
18 business that there have been conversations
19 regarding Coach Rodriguez's leaving, this
20 litigation, reports from the administration as to
21 status and things like that, the predominant,
22 predominantly that would be an executive session,
23 but I'm also confident that there were public
24 reports just that Coach Rodriguez has resigned

1 and we needed to, you know, --

2 Q. How did you feel about that?

3 A. What, that Coach Rodriguez had
4 resigned?

5 Q. Yes.

6 A. I didn't -- I was saddened by the
7 fact that Coach Rodriguez resigned. I did not
8 think it was good for West Virginia University.

9 Q. Did you think it was good for the
10 university to penalize him for leaving the state?

11 MR. FLAHERTY: Object to the
12 form of the question.

13 A. I don't think that's ever occurred.

14 BY MR. ROBON:

15 Q. You don't believe the bringing of a
16 \$4 million lawsuit is penalizing him?

17 A. Absolutely not.

18 Q. What do you believe the bringing of
19 the 4 million-dollar lawsuit is doing?

20 A. I believe it would -- brought a 4
21 million-dollar lawsuit to assert and protect the
22 rights of West Virginia University under the
23 contract that Coach Rodriguez entered into with
24 West Virginia University. I mean that's clearly

1 what I believe it to be.

2 Q. Did you know about the lawsuit before
3 it was going to be filed?

4 A. I knew that I felt a lawsuit should
5 be filed before it was filed, but I don't know
6 that I knew that it was actually filed before it
7 was filed.

8 Q. How did you know that you knew a
9 lawsuit should be filed?

10 A. I recommended that a lawsuit should
11 be filed.

12 Q. Did you ever see the terms of his
13 contract?

14 A. The terms of his contract?

15 Q. Yes.

16 A. I saw the terms of his term sheet. I
17 don't know that I ever read his contract.

18 Q. I'm going to hand you what we've
19 marked as Exhibit DD.

20 * * *

21 (Whereupon, Defense Exhibit
22 DD marked for purposes of identification).

23 * * *

24 BY MR. ROBON:

1 Q. Is this the term sheet that you are
2 making reference to?

3 A. No.

4 Q. Which term sheet are you --

5 A. It's a little bit longer story than
6 that. It's the same terms and conditions, I
7 believe.

8 Q. Uh-huh (yes).

9 A. But in December of '06 I worked with
10 Whit Babcock and I worked with Coach Rodriguez to
11 bring those fellows -- as kind of a facilitator
12 to bring those fellows together on the terms of
13 this. I don't believe I ever saw the terms --
14 this particular document after that fact, but
15 what I did do was I spoke with Whit Babcock, I
16 wrote down a list of the terms, I spoke with
17 Coach Rodriguez and we spoke about the same terms
18 and agreed to them. Then I passed it off to
19 Director Pastilong.

20 Q. Okay.

21 And was Whit Babcock at the time the
22 assistant athletic director?

23 A. He was in the athletic department; I
24 don't know his title.

1 Q. So when the term sheet was negotiated
2 in December of '06, you took an active role?

3 A. I took a role as a facilitator. I
4 mean you can describe it as active or inactive, I
5 can tell you what I did and you can describe it.

6 Q. Okay.

7 Did you come up with the 4
8 million-dollar figure as far as liquidated
9 damages?

10 A. I was involved in that damage figure,
11 yes.

12 Q. And can you tell the Jury how you
13 were involved?

14 A. Yes. When I was asked to help
15 communicate between the athletic department and
16 Coach Rodriguez, I got from Whit Babcock,
17 eventually I got from Whit Babcock over the
18 telephone terms and conditions that I believed
19 that I took him telling me were the things that
20 Rich wanted and that Rich would agree to. I then
21 spoke with Coach Rodriguez and we went over those
22 together. I told him that I felt that if we were
23 going to redo this contract and given the
24 situation where we were, the program had come so

1 far that the buyout provision needed to be -- or
2 the liquidated damage provision needed to be \$4
3 million instead of, I think it was \$2 million
4 under the old agreement. Coach Rodriguez and I
5 discussed that and as part of that discussion the
6 liquidated damage clause was actually decelerated
7 from \$4 million through the course of the
8 agreement down to \$1 million towards the end. And
9 I felt that that was necessary in order to
10 adequately protect the university's interest,
11 investing in Coach Rodriguez and given where the
12 program would be if in fact, and we had been, you
13 know, at the end of seasons renegotiating with
14 Coach Rodriguez and I was concerned that if a
15 season down the road or two seasons down the
16 road, if he left early that the university would
17 sustain at least that much damage and it was
18 appropriate to discuss a liquidated damage
19 clause.

20 Q. Did Rich Rodriguez have a lawyer when
21 you discussed the 4 million-dollar figure with
22 him?

23 A. I do not know.

24 Q. You didn't talk to any lawyers --

1 A. I spoke with him on the phone. I
2 spoke directly with Coach Rodriguez on the phone.

3 He --

4 Q. Well my question was, did you speak
5 with a lawyer representing Rodriguez?

6 A. Not -- I'm -- you asked me if he had
7 a lawyer and I don't know, I did not speak with a
8 lawyer. I spoke with Coach Rodriguez.

9 Q. Thank you.

10 Now my question to you is, where did
11 the 4 million-dollar figure come from? Did you
12 want it as a dollar figure high enough that it
13 would keep him here?

14 A. That was not my concern. My concern
15 was, in fact, over the tenure he had had
16 tremendous success by West Virginia standards and
17 we were doing, I thought, great things. I thought
18 it was very important that Rich stay here. I also
19 knew that the athletic department had invested in
20 the program and had invested in facilities and
21 had vested, invested in the football program,
22 that we were generating more revenue, for
23 instance, at that time than we had in previous
24 years. And I felt that that was in large part, if

1 not solely, based on Rich -- Coach Rodriguez's
2 success and the fact that he was in essence
3 becoming a brand. I mean, and he was, you know,
4 beginning to become a coach that was mentioned in
5 top ten circles. When you would see SportsCenter
6 on Sunday or Saturday, you know, it wouldn't be
7 unusual to hear about Coach Rodriguez.

8 Q. And his success?

9 A. And his success at West Virginia. And
10 I felt like if he were to leave early, I mean we
11 were standing there in the throes of about to
12 lose him to Alabama and I felt that going
13 forward, if we were to lose him before this
14 contract was up that there would be demonstrable
15 damage to the university and the athletic
16 department and the program that would be or could
17 be difficult to actually prove, and that's what
18 would make a liquidated damage clause
19 appropriate.

20 Q. And what type of demonstrable damages
21 as a trial lawyer do you think the university
22 would suffer?

23 A. Oh, I think we were, I think that we
24 would suffer damages in revenues in a number of

1 forms, marketing revenues, television revenues,
2 probably conference revenues, maybe souvenir and
3 merchandising revenues, all of which had grown,
4 season ticket sales have under Coach Rodriguez
5 gone up and I thought could go up more. So it's
6 those types of things and I didn't feel that if
7 Coach Rodriguez left that it would be, hopefully
8 we would avoid any sort of litigation if we would
9 agree to a liquidated, an appropriate liquidated
10 damage clause up front.

11 Q. Okay.

12 Now my next question to you is; in
13 the term sheet on Exhibit DD, it starts out if he
14 leaves in 2007, early 2008 it's \$4 million --

15 A. Right.

16 Q. But if he leaves in 2009 it's \$2
17 million?

18 A. Right.

19 Q. Can you explain to the Jury the
20 rationale that your liquidated damages would be
21 half as much had he stayed and been successful
22 two more years?

23 A. Yes. My thought process on that, and
24 it started out 4 million all the way across and

1 these were conversations that Coach Rodriguez and
2 I had and I agreed that, and we talked about
3 reducing this, and here's my thought, is that if
4 he -- if he performs the entire contract, seven
5 years, okay, and at the end of seven years he
6 leaves there's no liquidated damages, although it
7 might harm the program. The point is that he has
8 performed the contract, and what I felt was that
9 was fair was throughout, as he goes through the
10 contract he is performing year after year after
11 year after year, so in the fifth year while the
12 university might be harmed it would -- he had
13 performed substantially under the contract.

14 Q. Well, this would be the third year.
15 It wouldn't be the fifth year.

16 A. Well, I've used that by example. And
17 for instance --

18 Q. I'm talking about actually what's in
19 the term sheet.

20 A. Okay. For instance, if you look at
21 the second year it's still \$4 million but payable
22 over two years. That was my sense of fairness. I
23 mean I just thought that was fair and he thought
24 it was fair. And then the third year, same thing,

1 payable over two years, and then it goes down to
2 \$2 million.

3 Q. Okay.

4 A. That's what we thought was fair.
5 That's what we discussed.

6 Q. So you're saying that if he would
7 have resigned instead of in 2007, in 2009, that
8 the \$2 million would be fair as opposed to 4
9 million; correct?

10 A. Yes, on the basis, not necessarily of
11 the damage that would have been sustained but on
12 the basis of that he would have performed into
13 the contract, the same rationale that at the end
14 of seven years he doesn't have to pay anything.

15 Q. Okay.

16 As a facilitator you were
17 representing the university as a member of the
18 Board of Governors?

19 A. I was, yes, sir.

20 Q. Okay.

21 Were you asked --

22 A. I don't want to slice this too thin.
23 I didn't take it as official board action; I was
24 contacted probably because I was on the Board of

1 Governors.

2 Q. By whom?

3 A. I was contacted by Ralph Ballard.

4 Q. He's a board member?

5 A. No, he's not.

6 Q. Oh, he's not?

7 A. No, he's not.

8 Q. He's a contributor?

9 A. He is a friend and a friend of
10 Rich's, somebody who I knew well and somebody who
11 was close to Rich and he asked me to communicate
12 --

13 Q. To intercede?

14 A. Yes.

15 Q. Okay.

16 But your loyalty during that
17 negotiation was to the university?

18 A. Absolutely.

19 Q. And during all these negotiations
20 there was no attorney involved for Rich?

21 A. I have no idea.

22 Q. Was his agent involved?

23 A. I have no idea.

24 Q. You never spoke with Mike Brown, his

1 agent?

2 A. I spoke only with Rich Rodriguez in
3 December of '06.

4 Q. Okay.

5 I understand you were involved with
6 the Bobby Huggins matter?

7 A. Was -- I mean I know Bob Huggins
8 quite well. Involved in what matter?

9 Q. Didn't he just get a contract with
10 the West Virginia University?

11 A. Well, he came last year. I was
12 involved in bringing him home, yes.

13 Q. Right.

14 Did you negotiate the terms of his
15 contract like you did with Rich Rodriguez?

16 A. Did not.

17 Q. Were you not involved at all?

18 A. When he came home?

19 Q. Yes.

20 A. Or his recent --

21 Q. No, in his -- when he came home.

22 A. When he came home? I was not involved
23 in his contract negotiations at all.

24 Q. Okay.

1 Were you involved in his contract
2 negotiations in the last six months?

3 A. No, other than I on one or two
4 occasions spoke in essence as a facilitator
5 between Richard Katz, his lawyer, and the
6 university.

7 Q. Mediator --

8 A. Pardon me?

9 Q. As a mediator?

10 MR. FLAHERTY: He said as a
11 facilitator.

12 A. No, a facilitator, same sort of
13 thing. I know Richard Katz, I know Bob Huggins
14 and I knew Mike Garrison and his folks and, you
15 know, --

16 BY MR. ROBON:

17 Q. Did you use your lawyerly skills?

18 A. No, sir.

19 Q. You don't think you have lawyerly
20 skills to do that?

21 A. I didn't -- I was not performing any
22 lawyerly function. These are friendships.

23 Q. But as a facilitator you learn how
24 to do that as a lawyer, don't you?

1 A. Well, I was just passing -- passing
2 numbers.

3 Q. You think someone else without your
4 experience and background and being a litigator
5 would be able to accomplish what you did?

6 A. I don't know.

7 Q. So you used your lawyerly skills, you
8 had to.

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

11 A. Perhaps.

12 BY MR. ROBON:

13 Q. What kind of penalty was in the Bobby
14 Huggins contract?

15 A. I'm unaware of there being any
16 penalty in Bobby Huggins' contract.

17 Q. If he left?

18 A. I'm unaware of any penalty if he
19 left. I don't know what you --

20 Q. Liquidated damages.

21 A. Okay. Which contract?

22 Q. The one that's in effect now.

23 A. The one that's in effect now? I only
24 know by reading in the paper it's a \$4 million

1 liquidated damage clause. I don't know the
2 particulars of it.

3 Q. And how many contract year terms --
4 what's the term of the contract?

5 A. Well, it was portrayed as a lifetime
6 deal. I guess that's a function of his age. I'd
7 have to look at the contract, it's 10 years or
8 something, I mean, I know that it, it's a
9 long-term contract.

10 Q. \$22 million total contract?

11 A. I don't know and I think that that
12 might be an oversimplification because there are,
13 I know one of the things is that he's got to be
14 paid, or I think one of the provisions is
15 although I've not seen the contract, that his
16 salary has to be at the mean of the Big East and
17 I don't know if you can quantify that to \$22
18 million.

19 Q. You aren't his agent?

20 A. I was not his agent.

21 Q. But you're a good friend?

22 A. I am a good friend. I consider myself
23 a close friend of his.

24 Q. Now, let's get back to the Rodriguez

1 contract. You were involved in facilitating the
2 term sheet; how was Ed Pastilong involved in that
3 in December of '06 or wasn't he?

4 A. After I spoke with Rich Rodriguez and
5 my best recollection is it's the day that there
6 was a press conference, I know it was the same
7 day that Rich held a press conference saying he
8 was staying. I don't know that date as I sit
9 here, but that morning I spoke with Rich, Rich
10 agreed to the provisions, to the terms that we
11 spoke about, I called Director Pastilong, my
12 recollection is that he was either at home, but
13 it may be more accurate he was on his way, he was
14 in his car and I got him on his cell phone and we
15 agreed that he would go home, that's my best
16 recollection, but he may have already been home.
17 I read -- I said get your pen out and I gave it
18 to him the same way that Rich and I discussed the
19 terms and I said to him, Coach Rodriguez, I think
20 I said to him, Coach Rodriguez is expecting your
21 call.

22 Q. So is it fair to say you exclusively
23 on behalf of the university came up with a \$4
24 million figure; it wasn't a committee or anybody

1 else?

2 A. It was not me exclusively. I'm
3 confident that I would not have -- I would have
4 been in regular contact with our chairman, the
5 Board of Governors, I would not have purported to
6 act without his authority.

7 Q. Well, who else -- that was Mr.
8 Goodwin and you came up with the 4 million?

9 A. No, I mean actually in the end the
10 administration came up with it because if it
11 hadn't been all right with them, they could have
12 said no, but -- yeah, that's fair enough.

13 Q. Okay.

14 My question is; who originated the
15 thought and the answer is you?

16 A. I would say me, yeah.

17 Q. Okay.

18 And my question to you is; did you
19 have any marketing experience with regard to
20 athletic programs for major universities, yes or
21 no?

22 A. Other than just -- I mean nothing
23 particular --

24 Q. So the answer is no, right?

1 A. None other than just having a head on
2 my shoulders and having access to information as
3 a board member and things like that.

4 Q. My next question to you is; did you
5 discuss with any other university administration
6 from other universities other than West Virginia
7 or any other athletic directors the cost that
8 might be incurred if a major coach left?

9 A. Did not.

10 Q. Okay.

11 Did you read any treatises or
12 articles about damages that would accrue to a
13 university football program or basketball program
14 if a major coach left?

15 A. I did not.

16 Q. Did you do any research yourself?

17 A. I did not.

18 Q. Did you discuss it in your law firm
19 or did you just --

20 A. I did not. It was not a matter that
21 pertained to my law firm.

22 Q. So the figure could have been 6
23 million?

24 A. Could have been.

1 Q. Or it could have been one million?

2 A. I don't think that would have under
3 any circumstances been reasonable or adequate.

4 Q. Isn't it true, Mr. Farmer, that the
5 \$4 million was put in the contract so that there
6 wouldn't be another situation with an Alabama
7 knocking at his door to give him more money to
8 leave the institution and go to work someplace
9 else?

10 A. No, I told you why -- what my
11 thinking was at the time and that was the
12 liquidated damages clause.

13 Q. My question to you is if it's one of
14 the other reasons, to prevent any other
15 institution from trying to hire him away from
16 West Virginia?

17 A. You'd have to ask others what they
18 thought. I told you what my thought process was.

19 Q. Did you with your lawyerly skills
20 think of a covenant not to compete as opposed to
21 a liquidated damages provision?

22 A. Did not.

23 Q. Do you know what a covenant not to
24 compete is?

1 A. I do.

2 Q. Have you litigated those?

3 A. I have, and they can be very
4 problematic.

5 Q. But you never thought about that?

6 A. No.

7 Q. Tell me the next part of your
8 involvement after this term sheet was issued, if
9 you had any involvement?

10 A. Involvement with?

11 Q. Involvement with Coach Rodriguez and
12 his contract.

13 A. You know, from that point forward I
14 could -- and you can ask me whatever you like, I
15 remember running into Coach Rodriguez three,
16 maybe three to five times, each time it was, you
17 know, a hotel lobby or in a restaurant, I
18 probably ran into him at the football field, at a
19 function, each time it was kind of like, hi
20 Coach, how are you, hey Steve, how are you,
21 Coach, everything going well, yeah, you know,
22 we're just fighting it and you know, we're doing
23 the best we can, well, if there's anything I can
24 do for you, you let me know, I mean, it was

1 nothing substantive other than greetings and, you
2 know, general expressions of support.

3 Q. Did you ever read the second
4 amendment to his employment contract?

5 A. I did not.

6 Q. Have you ever seen it?

7 A. I have not.

8 Q. Did you ever ask the administration
9 for it?

10 A. Did not.

11 Q. Did you ever ask the athletic
12 director for it?

13 A. Did not.

14 Q. Did you know that in December of 2006
15 until August of 2007 no contract was signed?

16 A. I was aware of that.

17 Q. And did you know the reason for that?

18 A. Do not.

19 Q. Did you investigate or inquire about
20 the reasoning for that?

21 A. No, I was aware that as a board, our
22 chairman in particular wanted to get the contract
23 done. Other than that I wasn't very concerned
24 about it for a number of reasons.

1 Q. Your lack of concern was that Michael
2 Garrison was going to be named president?

3 A. My lack of concern was that there was
4 a term sheet signed and WVU was performing under
5 the term sheet and I felt that that was a binding
6 contract on both parties. That was my lack of
7 concern.

8 Q. So you were giving legal advice to
9 the university?

10 A. No, I didn't give anybody that
11 advice. You ask me why I was not concerned and I
12 explained to you why I was not concerned. I felt
13 that since West Virginia, since there was a
14 signed term sheet, which would be a written
15 amendment to the contract that dealt with
16 compensation issues and that West Virginia had
17 performed under the contract that the term sheet
18 was binding. That was --

19 Q. So you were using your lawyerly
20 skills again?

21 A. I'm thinking. That's what I'm
22 thinking.

23 Q. What you were trained to do --

24 A. Yes, sir.

1 Q. Use your lawyerly skills.

2 Did you tell Rich Rodríguez the term
3 sheet would be binding upon him?

4 A. Did not. I don't think we had that
5 conversation.

6 Q. So in August when there was no
7 contract signed; what did Steve Goodwin indicate
8 to you? You said he wanted --

9 A. I recall him and it wasn't
10 necessarily that one time. I recall him on a
11 regular course asking for the status of the
12 coach's contracts and asking the administration
13 to get the contracts completed.

14 Q. Did you know that President Garrison
15 had a meeting on August 24 of '07 with Rich and
16 others?

17 A. Only what I've read in the paper.

18 Q. Okay.
19 Did you ever question Mr. Garrison
20 about it?

21 A. No, sir.

22 Q. Did any member of the Board of
23 Governors ever question him about it?

24 A. I don't know.

1 Q. Were you aware that he indicated to
2 Rich Rodriguez that he didn't believe in buyouts?

3 A. I'm not aware that he -- no, I mean,
4 that doesn't ring a bell with me that he said
5 that to Coach Rodriguez.

6 Q. Do you believe that would be -- he'd
7 be likely to say that or not likely to say that
8 or you have no opinion?

9 A. I don't have an opinion.

10 Q. Okay.

11 A. But I mean I really don't know. My
12 belief is that Rich and President Garrison met
13 more than once, that they had a relationship,
14 that's just my belief, but I don't know the ins
15 and outs and I don't know what they discussed.

16 Q. Okay.

17 How many members of the Board of
18 Governors have a law degree?

19 A. I don't know.

20 Q. At least half?

21 A. I don't know. I honestly don't know.
22 If you show me the list I can make my way through
23 it with you.

24 Q. Well, don't you meet with them on a

1 regular basis; you know who's on the board?

2 A. Yes.

3 Q. Okay.

4 A. But I mean I'd have to think my way
5 around the table and I mean if you want to show
6 me a list I'll tell you who's --

7 Q. Let's start out --

8 A. Well, you've got Goodwin, you've got
9 Farmer, --

10 Q. Okay.

11 A. Who else are lawyers? Ellen
12 Cappellanti is a lawyer and that may be it.

13 Q. Okay.

14 A. I think that may be it.

15 Q. Okay.

16 And in the administration you have
17 President Garrison; correct?

18 A. Yes, sir.

19 Q. You have Alex Macia?

20 A. Yes, sir.

21 Q. You have Craig Walker?

22 MR. FLAHERTY: Are you asking
23 if they're members of the administration or if
24 they're lawyers?

1 A. If Craig is a lawyer, I'm unaware of
2 it. That's not my understanding of his
3 background.

4 BY MR. ROBON:

5 Q. He's just Chief of Staff without a
6 law degree?

7 A. I don't know. I mean I don't -- if he
8 is a lawyer, I'm unaware of it.

9 Q. Okay.

10 So during this eight-month hiatus
11 between December of '06 and August of '07 you
12 never heard of any attorneys contacting the
13 administration or the Board of Governors about
14 the contract that was to be signed on behalf of
15 Rich Rodriguez; right?

16 A. You know --

17 Q. You can answer that yes or no.

18 MR. FLAHERTY: He can answer
19 that anyway he wants to.

20 A. I'm not sure that I can, I want to
21 tell you what it prompts me to say and that's --
22 I'll be responsive. I recall and I don't know
23 where it came from but I have a sense that at one
24 point somebody said that the hold up, the delay

1 in signing the contract was Rich was getting tax
2 advice and that there was some deferred
3 compensation issues, whether that necessarily
4 meant that he had a lawyer, I assume that he was
5 getting legal advice but I don't know.

6 BY MR. ROBON:

7 Q. Was that after President Hardesty
8 resigned or was terminated, I'm not sure which it
9 was --

10 A. Retired, I think would be the right
11 word.

12 Q. Retired, was there a special
13 resolution adopted by the Board of Governors
14 giving authority to President Garrison or is it
15 just a chain of command that continues?

16 A. Oh, I believe the resolution was in
17 place before President Hardesty retired and that
18 --

19 Q. Giving Garrison authority?

20 A. Giving the president and the
21 administration authority regardless of who's
22 sitting in the chair.

23 Q. Okay.

24 And how would we get a copy of that?

1 A. I suppose you would ask either the
2 chairman or the secretary of the board would be
3 one place, you might be able to get it from the
4 administration, I don't know.

5 Q. Okay.

6 Would President Garrison under that
7 authority have the authority to make promises to
8 Rich Rodriguez that he would negotiate or not
9 enforce a buyout provision in the contract?

10 A. I believe that that provision would
11 entitle and permit President Garrison to carry on
12 the business of the university. I don't know that
13 that provision would entitle anyone to say you
14 don't have to honor the written terms of a
15 contract that you have with this university.

16 Q. Would you say that that would be an
17 ultra vires act on his part if he did that?

18 A. You'd have to figure that out. I
19 would think that nobody within the university, as
20 I understand university governance would have the
21 ability to tell or to abrogate the provisions of
22 a written agreement without replacing it with
23 another written agreement. I mean it's not like
24 going down to your neighborhood tailor and

1 negotiating something. This is written contracts
2 and governance of state matters.

3 Q. Let's go back to the \$4 million.

4 A. Yes, sir.

5 Q. Were there any donors from the
6 Foundation that were demanding a large sum to
7 keep Rich from thinking about leaving after the
8 Alabama offer came up?

9 A. Not that I know of.

10 Q. So you never heard about any donors
11 demanding that there be a large --

12 A. No, as a matter of fact I have read
13 that in the papers since this has become an issue
14 and I can say to you in December of '06 I did not
15 know Ken Kendrick or know who he was, nor did I
16 know Bob Reynolds or know who he was. So anything
17 that -- I simply don't know anything about that
18 at all. I since met both of those gentlemen on
19 later occasions, but I didn't know of their
20 involvement, I didn't know who they were, I
21 didn't know anything about them.

22 Q. Do you know if Rich was told that he
23 had to have the \$4 million figure in his contract
24 to satisfy certain donors?

1 A. He was not told that by me, nor did
2 he ever tell me that he was told that by anybody
3 else and other than that I would have no
4 knowledge because I just spoke with Rich about
5 it.

6 Q. Did you ever talk to Mr. Goodwin
7 about it?

8 A. About those donors?

9 Q. Yes.

10 A. Absolutely -- no. I didn't even know
11 that they were involved or know who they were.

12 Q. What about President Garrison?

13 A. No, sir.

14 Q. What about Whit Babcock?

15 A. I dealt with Whit Babcock.

16 Q. What would he have known about the
17 donors?

18 A. I assume when I spoke with Whit and
19 it's an assumption, Whit's job was to raise money
20 and this was a lot of money and I felt like Whit
21 had raised the money, I mean this is --

22 Q. Whit may have talked --

23 A. -- not coming out of state funds, but
24 I didn't ask him where he got it, none of it

1 mattered to me. So I didn't speak with him about
2 Bob Reynolds or Ken Kendrick or liquidated
3 damages clauses, or what donors wanted.

4 Q. So is it fair to say that part of the
5 compensation being paid to Coach Rodriguez under
6 the term sheet, Exhibit DD, was coming from the
7 West Virginia University Foundation?

8 A. I didn't know that but I imagined
9 that that was true. I mean these kinds of numbers
10 are not generated on state salaries and through
11 tax dollars.

12 Q. Right.

13 A. I mean that was my belief.

14 Q. And that's still your belief today?

15 A. Yes, sir.

16 Q. What involvement did you have in the
17 summer of 2007 in getting the contract signed, if
18 any involvement at all?

19 A. None.

20 Q. Did you talk to Rich Rodriguez at all
21 about it?

22 A. Did not.

23 Q. Did you talk to President Garrison
24 about it?

1 A. Other than knowing that it was an
2 outstanding issue, I don't recall any specific
3 conversation with President Garrison, but it's
4 possible that in passing it would be, you know,
5 how's the contract coming, that sort of thing.

6 Q. What about with Craig Walker?

7 A. Unlikely, but possible and it
8 would've been nothing more than a general
9 inquiry.

10 Q. And what about with the athletic
11 director, Ed Pastilong?

12 A. Unlikely.

13 Q. You didn't talk with him much?

14 A. I spoke with the Director regularly
15 when I would see him, but not -- I don't recall
16 ever discussing this with him because it was
17 never germane at any time when I saw him.

18 Q. Was Craig Walker being geared to
19 succeed Ed Pastilong as the athletic director?

20 A. Not by me.

21 Q. Did you know about that?

22 A. No, sir. I know his background is in
23 athletics but I didn't know that until after he
24 even took this job, so I mean --

1 Q. After he took which job?

2 A. This chief of staff job. He went from
3 athletics, I knew that he was employed at the
4 Foundation, but I didn't know him at all, and I
5 mean when he took the chief of staff job I became
6 acquainted with him because of our interaction,
7 but I don't know anything about him being groomed
8 to be the -- did you say the athletic director's
9 job?

10 Q. Right.

11 A. I don't know anything about that.

12 Q. When did you first know that Mike
13 Garrison was going to be the new president?

14 A. The day that the Board of Governors
15 voted on it and approved him.

16 Q. Did you indicate to Rich Rodriguez
17 several months before then, be patient, when
18 Garrison becomes president your problems will be
19 solved?

20 A. Categorically, no.

21 Q. You didn't say anything like that?

22 A. No, we had a conversation as part of
23 these phone calls in December of '06 where Rich
24 raised a specific complaint about Mike Parsons

1 and I told him that that was not something --
2 that he knew already I was generally sympathetic
3 to his point of view with respect to Mike
4 Parsons. But I told him that was not something
5 that we could discuss at that time as part of
6 this, but that as he was aware President Hardesty
7 had retired and there would be a new
8 administration, and that I felt like there were
9 members of the Board of Governors that were
10 sympathetic on that point and that it would be
11 reasonable to think that that the next
12 administration would have a heightened view of
13 that. But I -- I mean I didn't even, Mike
14 Garrison never entered into that. We were
15 obviously embarking on a new administration.

16 Q. Did you believe that since Garrison
17 had been the head of -- what is the group that's
18 the head of the Board of Governors?

19 A. Higher Education Policy Commission.

20 Q. Wasn't he chairman of that?

21 A. He was.

22 Q. Wouldn't that give him an insight,
23 leadership role into being president?

24 A. Actually, no, and I learned a lot

1 about presidential searches in this process.
2 Actually, Mr. Garrison was a nonacademic who was
3 a non-traditional candidate and there were board
4 members, search committee members and university
5 folks that felt very strongly that he should not
6 be hired as the president. And he fared very well
7 through the search process, he acquitted himself
8 very well and I think convinced the board that he
9 should, in fact, be hired as -- well, I know he
10 convinced the board that he should be hired for
11 the job, but going into it, no, I wouldn't have
12 perceived him as having any special
13 consideration. Now, there was talk, articles
14 written in newspaper, that sort of thing because
15 that's what, you know, people do, they talk, but
16 no, I didn't perceive it that way.

17 Q. You never indicated that wait until
18 the new administration with Michael Garrison
19 comes in and solve your problems?

20 A. No, sir, now I told him there's going
21 to be a new administration; that you'll be
22 dealing with a new administration.

23 Q. Did you infer that it would be
24 Michael Garrison?

1 A. Absolutely not.

2 Q. Did you infer that to Rita?

3 A. Absolutely not.

4 Q. Did you talk to Rita when you talked
5 to Rich?

6 A. When?

7 Q. Any time.

8 A. I met Rita after the December
9 timeframe, you know, through the spring of '07
10 and the summer of '07.

11 Q. You never had met her before?

12 A. I don't believe so. I don't believe
13 so. Now I don't want to slight her in any way, it
14 may have been at a function where we met, but I
15 met Rita and when I saw Rita we would exchange
16 pleasantries, my wife would exchange pleasantries
17 with Rita, but I never discussed anything
18 substantive about coach's contracts or university
19 business with Rita. I would see her at football
20 games in the suites, I would see her at maybe an
21 athletic function or two.

22 Q. Well, she didn't even have an all
23 area pass.

24 A. That's what I hear, but I would see

1 her in the suites, so she was in some area, I
2 mean I could take you -- she was in the
3 president's box in that area, that sort of place,
4 I would see her --

5 Q. Did that shock you by the way that
6 she didn't have an all area pass?

7 MR. FLAHERTY: Let me
8 object.

9 A. Did it shock me? You know, I would
10 like -- I mean if she should have an all area
11 pass, she should have an all area pass.

12 MR. ROBON:

13 Q. Were you surprised that she didn't
14 have one?

15 A. I guess -- I don't want to slice it
16 too thin, that I never really thought about it
17 enough to be surprised. I mean this is not
18 something that was on my plate and so, you know,
19 I would have thought that, I mean, if she would
20 have asked me knowing nothing different I would
21 say here, here's a pass. Now, if there's some
22 reason for her not to have one that the
23 administration knows about, that I don't know
24 about, I can't deal with that.

1 Q. Well, can you tell me for six years
2 why the university administration didn't give her
3 a pass?

4 A. I have no idea, didn't know it was an
5 issue.

6 Q. My understanding is that President
7 Garrison is not leaving the university; is that
8 correct?

9 A. I don't know. He's resigned as
10 president.

11 Q. Did he indicate to the Board of
12 Governors that he's resigning as an employee?

13 A. He's resigned as president as of
14 September first.

15 Q. Right.

16 A. I don't know any more than that.

17 Q. So you don't know if he's resigned as
18 an employee or not?

19 A. I don't, no, I just told you what I
20 know, that he announced he is resigning as
21 president as of September the first.

22 Q. Did he announce that at a board
23 meeting?

24 A. He did last Friday.

1 Q. Okay.

2 And did he put it in writing?

3 A. If he has I'm not aware of it.

4 Q. And what is your understanding; is he
5 going to stay on as an employee or not stay on as
6 an employee?

7 A. I don't have an understanding. I told
8 you what -- and I'm not being a smart Alec or
9 wiseacre, I was at a board meeting last Friday,
10 he announced that he's leaving as president as of
11 September the first.

12 Q. Okay.

13 Well, with your lawyerly skills and
14 being a trial lawyer, don't you think that would
15 have been an appropriate question for you to ask,
16 are you leaving as an employee or are you still
17 on the payroll?

18 A. No.

19 Q. You don't think so?

20 A. No. That will sort itself out.

21 Q. How is that going to happen?

22 A. I don't -- I mean I did not terminate
23 Mike Garrison, I would not have voted for his
24 termination, okay, he has announced his intention

1 to leave as president September the first, I'm
2 really not concerned about the rest of it for the
3 moment.

4 Q. So --

5 A. I'm concerned about governance of the
6 university.

7 Q. So if he continues to draw a salary
8 after September 1st, as a member of the Board of
9 Governors that's okay with you?

10 A. Under the appropriate circumstances.

11 Q. And what would those be?

12 A. I don't know. It's hypothetical;
13 we'll have to deal with that as we come to it.

14 Q. What other positions do you believe
15 he could fulfill in the university?

16 A. I have not thought about it. I
17 wouldn't hire him as the football coach.

18 Q. I bit my tongue. I was going to ask
19 you another one but I'm not going to do it.

20 Has there been to your knowledge as a
21 member of the Board of Governors any damage to
22 date incurred by West Virginia University since
23 Coach Rodriguez announced his resignation
24 effective December 19 of '06, '07, I'm sorry?

1 MR. FLAHERTY: Object --
2 object to the form of the question and the
3 relevance. Go ahead and answer.

4 A. Yeah.

5 Q. And be specific.

6 A. Well, I don't know how specific I can
7 be because I've not opened books up and, you
8 know, read ledger lines and looked at that sort
9 of thing, but believe me, I believe that the
10 things Rich Rodriguez has said about West
11 Virginia University have damaged the university,
12 I believe that the way that he has --

13 BY MR. ROBON:

14 Q. What did he -- what do you believe
15 he's said that's damaged the university? Let's
16 start there.

17 A. That he was treated badly here, that
18 the way he has portrayed us, the way that the
19 Calvin McGhee scenario, which I don't believe.

20 Q. Well, what's Calvin McGhee got to do
21 with Rich Rodriguez?

22 A. Well, maybe that was unfair but he
23 left with Rich. I mean that, that whole thing
24 leaving, I believe --

1 Q. Well, let's back up a minute. Let's
2 talk about that. You believe that the fact that
3 Calvin McGhee said he should not apply for a head
4 coaching position here because of the color of
5 his skin had something to do with Rich Rodriguez?

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

8 A. I just told you I thought that might
9 be unfair and I'll -- I mean it either did or
10 didn't, according to some it did; according to
11 some it didn't.

12 Q. Well, what do you think?

13 A. I don't know. Okay? But yeah, do I
14 believe --

15 Q. How would that damage --

16 MR. FLAHERTY: Let him finish
17 his question, or his answer, please.

18 A. Do I believe that Rich's departure
19 has damaged West Virginia University? Yes.

20 BY MR. ROBON:

21 Q. Okay.

22 And you started to say his comments,
23 I want to know what comments did he make --

24 A. Well, the fact the way that he has

1 portrayed us publicly and said that, you know,
2 that he was treated badly here, that we didn't
3 support the program and we didn't do the things
4 that -- that we didn't honor his contract, he has
5 claimed publicly that we breached his contract. I
6 don't believe that that's true. Rich Rodriguez is
7 by evidence that Michigan would hire him a top
8 echelon coach and we lost top echelon coach. And
9 it is incomprehensible to me that anyone that
10 follows university business or NCAA sports could
11 argue that we are better off today than we were
12 when Rich Rodriguez was our coach and that is
13 damage. Now, how that plays out as far as the
14 dollars and cents on a day-to-day basis, I have
15 not researched that. But yes, I think that we
16 have been damaged by Rich leaving and I would
17 have preferred that he stayed.

18 Q. Were you aware of the lawsuit that
19 was going to be filed on December 27 of '07
20 against him before it was filed?

21 A. This lawsuit?

22 Q. Yes.

23 A. My knowledge about that is is that I
24 recommended that it appeared as though Rich had

1 no intention when he left town of honoring his
2 agreement to us.

3 Q. Tell me why you thought that?

4 A. Because it certainly appeared --
5 because there were no conversations about I know
6 that I -- I know I've got to take care of this
7 obligation, I know that that under this agreement
8 or can we sit down and talk about how we can take
9 care of this obligation. It appeared as though he
10 was at Michigan and that he had no intention. Now
11 maybe I was wrong, maybe he intended to send us a
12 check the next day, but it hasn't played out that
13 way.

14 Q. Well, it wouldn't have been the next
15 day; it would have been three weeks later.

16 A. You're right, you're right; the first
17 check would have been three weeks later.

18 Q. So you agree with me that the
19 university fired a salvo by suing three weeks
20 before anything was due?

21 A. Oh, I felt like we needed to protect
22 our -- I mean I've supported that, I felt that we
23 needed to act to protect what ever rights we had.

24 Q. And as a lawyer using your lawyerly

1 skills, can you indicate for the Jury what legal
2 basis did the university have to sue him before
3 the monies were due, even before there was a
4 demand letter?

5 MR. FLAHERTY: The complaint
6 did not seek money, Mr. Robon, and you know that
7 very well. The complaint was a declaratory
8 judgment action, not a suit for breach of
9 contract.

10 MR. ROBON: Let the witness
11 answer the question.

12 MR. FLAHERTY: Well, you're
13 misleading the witness with your question.

14 MR. ROBON: He's a brilliant
15 lawyer. He doesn't need to be told by you what to
16 say.

17 MR. FLAHERTY: Nor does he
18 have to be led by you down -- with a question
19 that's improper and misstates what was happening.

20 THE WITNESS: Mr. Robon, you
21 know, you've been practicing longer than I have
22 and --

23 MR. ROBON: I've got more
24 grays --

1 THE WITNESS: And you know --
2 although I'm catching up, you know that there are
3 a number of ways that parties in this kind of
4 situation in contract matters can project,
5 utilize the court system to simply protect their
6 rights and that's what I was advocating.

7 BY MR. ROBON:

8 Q. So the purpose of the lawsuit was to
9 make sure there was jurisdiction here in West
10 Virginia?

11 A. Sir, I just said the purpose that I
12 envisioned in a lawsuit was for West Virginia
13 University, which is where my obligation's lie,
14 do what is necessary to protect every interest we
15 had under that agreement.

16 Q. Do you acknowledge that there was
17 never a demand letter sent to Rich asking about
18 his intentions?

19 A. No, because I don't know.

20 Q. I'm going to hand you what's been
21 marked as Exhibit AA.

22 A. I have it.

23 Q. You have it?

24 A. Yes, sir.

1 Q. Now you indicated before you hadn't
2 seen that letter?

3 A. That's true.

4 Q. Did you have an opportunity to skim
5 that letter now?

6 A. Do you want me to read it?

7 Q. Well, let's go off camera for a
8 minute while he reads that.

9 A. Okay.

10 VIDEOGRAPHER: The time is
11 3:42 p.m., we're going off the record. This
12 concludes tape one.

13 * * *

14 (Short break taken)

15 * * *

16 VIDEOGRAPHER: The time is
17 3:57 p.m.; this begins tape two, we're back on
18 the record.

19 BY MR. ROBON:

20 Q. While we were taking a break, Mr.
21 Farmer, did you have an opportunity to review
22 Exhibit AA?

23 A. Yes, sir.

24 Q. And is that the first time you've

1 seen that exhibit?

2 A. That I recall, yes.

3 Q. It states with fairly well-written
4 specificity the reasons that Coach Rodriguez left
5 the university; correct?

6 A. I don't know. He says this is why I
7 left or that these reasons -- the factors include
8 and he lists A through G.

9 Q. Okay.

10 Have you ever been poled by anyone in
11 the administration about factors A through D?

12 A. If so I don't remember. I can tell
13 you what I --

14 Q. Actually G not E.

15 A. I'm sorry, I said G. the only thing I
16 remember about the subjects, the best of my
17 recollection this was generally discussed with me
18 in a conversation with Ralph Ballard about the
19 time that Coach left. But I don't know anything
20 about it.

21 Q. Do you have any reason to believe
22 that anything that he says in Exhibit AA is
23 false?

24 A. Wait a minute. Can I add one thing? I

1 don't want to --

2 Q. You mean to your prior answer?

3 A. Yes, to my prior answer.

4 Q. Go ahead.

5 A. There's a mention in here of a web
6 site, I remember and I was not directly involved
7 in it, I remember there being some conversations
8 about a web site and I remember specifically Drew
9 Payne, one of our other board members, consulting
10 with a lawyer who had purported expertise in NCAA
11 compliance matters about the web site, to try to
12 see whether that could be done for Rich and I
13 wasn't involved in it but it was reported back to
14 me that this lawyer thought that it would be a
15 very bad idea and could cause NCAA compliance
16 issues. That's the --

17 Q. You're hearing it secondhand?

18 A. That's right. I would add that but
19 you asked me if I had ever heard about any of
20 these things. I didn't hear much about five
21 dollar tickets, I remember there being some -- I
22 wasn't involved in it but hearing about this web
23 site, they were trying to figure out whether they
24 could do it for him.

1 Q. Do you believe that the letter that
2 Rich Rodriguez authored on January 10, 2008 is
3 false in any fashion?

4 A. I wouldn't have direct knowledge one
5 way or the other.

6 Q. Now we talked about the \$4 million
7 liquidated damages provision and you started
8 giving me a list of various things that could
9 cause damage and you didn't have any expertise in
10 any of those areas, and the last, just before the
11 tape ended, you said Rich Rodriguez was making
12 negative comments about the university; can you
13 tell me as best you can recollect where he made
14 negative comments about the university as opposed
15 to the university administration, which is
16 totally different because he has no bones to pick
17 with the fans or the institution itself, just Mr.
18 Garrison.

19 MR. FLAHERTY: I'm going to
20 object and move to strike the latter portion of
21 your speech.

22 MR. ROBON: Let's go - .

23 MR. FLAHERTY: Whoa, whoa,
24 you aren't going to interrupt me. I'm going to

1 move to strike the latter portion of your speech
2 because that's not even a question and as to him
3 not liking fans or whatever, we'll let Mr.
4 Rodriguez speak for himself and he's already
5 spoken at deposition, so --

6 THE WITNESS: Well, I've
7 taken Mr. Rodriguez's public comments, Coach
8 Rodriguez's public comments to be directed at the
9 university, WVU, the brand, West Virginia
10 University breached its contract with him,
11 allegations that we didn't support the football
12 program, that he just couldn't do what he wanted
13 to do, that sort of thing. So I don't know how he
14 wants to slice it or how you'd like to slice it,
15 when he talks about West Virginia University and
16 WVU, I take it to mean the university and the
17 university community, and the athletic department
18 and the football program.

19 BY MR. ROBON:

20 Q. So that's your perception?

21 A. Yes, sir.

22 Q. Okay.

23 So if his intention was to direct it
24 towards the administration; it's been

1 misinterpreted by you and many others?

2 A. Or he's missed the target.

3 Q. That's a lawyerly comment.

4 Tell me, you said he made comments;
5 what derogatory comments do you believe have been
6 made against the university? Simply that the
7 administration didn't keep its word to him?

8 A. Didn't keep its word, that we're not
9 the kind of -- I mean, I could go back and I
10 guess if I had to pick the particular content,
11 the overall theme of his comments is that he's
12 right and that we're wrong, that he did
13 everything perfectly and that we didn't do that
14 we were supposed to do, and that's the kind of an
15 institution that we are, so he had to go to an
16 institution that would do the right thing, not
17 the wrong thing, that sort of thing. And I think
18 that mis-portrays my perception of West Virginia
19 University and how it treated Rich Rodriguez.

20 Q. So is it a fair perception from my
21 view that you've taken his remarks personally
22 since you're a member of the Board of Governors?

23 A. No, sir. I've taken his remarks
24 directed at the university, which A, I love,

1 which B, I'm devoted to, which C, I serve, which
2 D, I support, not directed -- I don't think he's
3 directed anything at me personally other than the
4 allegation that I told him that President
5 Garrison was going to be president before he was,
6 which is completely false.

7 Q. Well, what specific comment -- you've
8 indicated that he's made comments that are
9 negative; what specifically, did he say they were
10 -- the university was a liar, did he say the
11 university was bad, what --?

12 A. I can't tell you today what specific
13 comments have been in the press that have gone
14 back from the beginning. I'm telling you that
15 it's my impression that the theme and the tenor
16 of his position, his public position has --
17 excuse me, been as I described.

18 Q. Negative?

19 A. Yes, sir.

20 Q. Okay.

21 Didn't he at times say he loved that
22 university, he coached there, he went to school
23 there, he was a quarterback here, --

24 MR. FLAHERTY: He wasn't a

1 quarterback. He's never said that.

2 A. I don't know what he always said. I
3 told you -- look, look I hope Rich Rodriguez has
4 success in whatever he does. I appreciate his
5 time here and I don't wish him any ill. All I can
6 say is that I have been disappointed that since
7 he has left that at times, and I can't tell you
8 the specific sentences, if you want me to go find
9 them and come report back I will bring them to
10 you, but --

11 Q. I would like you to do that.

12 A. Okay. But my specific -- my
13 impression of his public stance has been damaging
14 to West Virginia University.

15 Q. Well, --

16 A. And that's been his intent and I'm
17 disappointed in that.

18 Q. Well, is his stance in issuing this
19 letter, Exhibit AA, is that damaging to the
20 university by telling the truth?

21 MR. FLAHERTY: Object to the
22 form of the question, it's argumentative and who
23 says it's the truth?

24 A. I have no idea whether it's the

1 truth. I do know this, that if you look at
2 Exhibit DD, you have a term sheet that is -- that
3 governs the terms and conditions between the
4 university and Coach Rodriguez and it's my belief
5 that West Virginia University honored the terms
6 and conditions of this term sheet.

7 BY MR. ROBON:

8 Q. Okay.

9 My question to you is; by issuing the
10 letter, January 10 of '08, Exhibit AA, does that
11 somehow cast a negative impact at the university
12 in your opinion?

13 A. No.

14 Q. Okay.

15 A. I don't care about this.

16 Q. Now, let's get back to and you can't
17 recall any specific comments that he's made, you
18 will find them for me you've indicated if there
19 are some?

20 A. If you want me to go back and
21 research it, I will. I'm just telling you that my
22 impression of what his public position has been,
23 the way I've interpreted it has been intended to
24 or at least has -- is harming the university and

1 that's my impression.

2 Q. And you will find the comments that
3 you're talking about?

4 A. Sure, sure.

5 Q. And I'm assuming you're talking about
6 articles in the news media?

7 A. News media, whether it be in print or
8 on television, whatever.

9 Q. Okay.

10 Now let's go back to the -- you
11 talked about the damages that the university
12 would suffer upon his leaving and you said ticket
13 sales, you said marketing, television, bowl
14 games; what else specifically can you think that
15 the university might suffer damages?

16 A. Well, I think I mentioned
17 merchandising, one of the things that you run a
18 major risk of is when you get a -- now this is
19 just from my experience and as you pointed out I
20 have not researched it from coach to coach, but
21 from my simple experience when you have a donor
22 base that is, that is mobilized and supporting of
23 a coach and a program, and that coach develops
24 significant relationships with those donors those

1 assets can be at risk going forward too, when a
2 coach leaves and you would have to have a
3 situation where the program could re-energize or
4 create new relationships.

5 Q. Okay.

6 But wouldn't the Foundation where
7 these donors make their contributions suffer and
8 not necessarily the university?

9 A. Well, the Foundation does not utilize
10 those funds, they manage those funds but the
11 program, if you need \$4 million to build a locker
12 room, you don't give it to the Foundation and
13 have somebody look after it down there and they
14 do it. The money gets to the locker room. If you
15 need scholarships --

16 Q. But doesn't it go through the
17 Foundation?

18 A. Oh, sure, sure, sure.

19 Q. The money filters through the
20 Foundation?

21 A. The money is donated to and managed
22 by the Foundation for the benefit of the
23 university.

24 Q. All right.

1 So the Foundation is intricately
2 involved with the university; correct?

3 A. I don't know what you mean by the
4 word intricately. I can explain to you my
5 understanding of the relationship and you can
6 decide whether it's intricate.

7 Q. Let me ask this question; the
8 Foundation's sole purpose is to provide a tax
9 shelter or deduction for donors to give money to
10 the university's various programs; correct?

11 A. I don't believe that that's true.

12 Q. Okay.

13 What is not true about that?

14 A. It's certainly not their sole
15 purpose.

16 Q. Well, what else -- what other
17 purposes are there?

18 A. They have many people there who are
19 very skilled in the investment and management of
20 large sums of money. In other words, it's not
21 just --

22 Q. An endowment fund?

23 A. Many different funds.

24 Q. All right.

1 A. Many different funds. I mean you have
2 chairs, you have endowed chairs, you have program
3 funds, you have all sorts of different, different
4 programs that are managed. Not only is the money
5 managed but the program itself is managed.

6 Scholarship programs, I mean there are a lot of
7 moving parts to the Foundation and activities
8 that they participate in other than just
9 providing, I think you said tax shelters for
10 donors.

11 Q. No, but I'm saying all of those
12 monies are directed for one purpose, for the
13 university of West Virginia, West Virginia
14 University; correct?

15 A. In the generic sense, yes.

16 Q. Yeah --

17 A. Many different, many different
18 purposes, yes, sir.

19 Q. They're all -- they're not for any
20 other university?

21 A. Well, that's not true.

22 Q. That's not true?

23 A. I can tell you of a scholarship fund
24 that I am aware of that is managed by the WVU

1 Foundation and it's for West Virginia exceptional
2 students from West Virginia. If you are awarded
3 one of the scholarships you can choose to take
4 that award and go to school, if you want to go to
5 Harvard and that's -- there are very few
6 absolutes and I don't want to overstate. I am
7 familiar with that program.

8 Q. Okay.

9 But 95 percent or more would be
10 directed for the West Virginia University?

11 A. I would guess, I would say that
12 that's probably true.

13 Q. Okay.

14 Now, so West Virginia Foundation
15 might suffer damages if the coach left?

16 A. No.

17 Q. In the form of donations? You talked
18 about donors --

19 A. Well, they don't benefit from
20 donations. The Foundation does not benefit from
21 donations.

22 Q. No, but the Foundation is a
23 pass-through for the university?

24 A. The Foundation manages funds for the

1 university --

2 Q. Right, the Foundation --

3 MR. FLAHERTY: Let him finish
4 his answer.

5 A. But the foundation would not suffer
6 damage, if I made a \$1 million pledge to the
7 university, which parenthetically is not
8 possible, but if I pledged \$1 million to the new
9 basketball practice facility, that would go
10 through the Foundation. If I decided not to make
11 that contribution and changed my mind the
12 Foundation would not suffer damage.

13 Q. But --

14 A. Because they're not a stakeholder in
15 the money.

16 Q. Right.

17 But your pledge would be to the
18 Foundation?

19 A. Yes, sir.

20 Q. Not to the university?

21 A. Yeah, my only quarrel with what you
22 said is that they would be damaged if you didn't
23 -- the Foundation would not be damaged if
24 donations dried up.

1 Q. So the Foundation would have less
2 funds to distribute?

3 A. You're looking at it from the wrong
4 end. The university would be harmed because it
5 doesn't get the program funds that it would
6 otherwise get. The Foundation does not have a
7 vested interest in those funds in the sense that
8 they benefit from them.

9 Q. Well does the Foundation -- is it ?
10 self-sustaining? Does it pay its own faculty in
11 fundraisers?

12 A. Not faculty, I believe it pays its
13 own staff.

14 Q. Right.

15 So it's an independent organization
16 --

17 A. It is.

18 Q. -- that functions for the sole
19 purpose of betterment of West Virginia
20 University?

21 A. Primary purpose.

22 Q. Primary purpose, all right.

23 What other damages would be -- could
24 be suffered? You've talked about merchandising,

1 but you have no expertise in merchandising;
2 correct?

3 A. True.

4 Q. And you don't have a degree in
5 merchandising?

6 A. I do not.

7 Q. What's your undergraduate degree in?

8 A. Marketing and finance. It's a
9 business administration degree in marketing and
10 finance.

11 Q. Have you used that since you became a
12 lawyer?

13 A. Probably.

14 Q. But not frequently?

15 A. Not frequently -- I mean it's not
16 what I get up and do every day.

17 Q. Right, it's not your expertise.

18 A. It, it, no, I'm sure it affects the
19 way I view situations and things but it's not, I
20 do not do marketing for people or anything like
21 that.

22 Q. Okay.

23 What other damages would the
24 university suffer by the coach leaving?

1 A. Well, and I don't know but certainly
2 the potential for shoe and apparel contracts.

3 Q. Well, we talked about merchandising.

4 A. Well, that's different.

5 Q. Okay.

6 A. Merchandising is the flying WV on
7 everything from license plates to hats, to
8 shirts, to trinkets, to whatever you want. I'm
9 talking about, you know, over the years the
10 relationship with the shoe manufacturers like
11 Reebok, Nike, Adidas has changed. It used to be
12 very coach oriented. Now it's school oriented.
13 However, there are upper echelon coaches, for
14 instance, with Nike that get better, their
15 schools get different deals, better arrangements
16 and that can be a possibility of a missed
17 opportunity, and that can be, you know,
18 everything from uniforms and shoes and equipment
19 to cash, you know, to whatever and --

20 Q. Have you handled any contracts like
21 that?

22 A. I have not.

23 Q. So you have --

24 A. I've seen some but I have not -- when

1 you say handled them, I mean, you know, I have
2 not represented anybody in negotiating something
3 like that.

4 Q. So you don't know what West Virginia
5 would get from a Nike, someone wearing a Nike
6 emblem?

7 A. Well, for instance, I do -- I know
8 that our basketball program under Coach Huggins
9 is on a different level with Nike than we were on
10 under Coach Beilein. That's -- I mean that's just
11 the truth, that he is a top coach in his
12 relationships with Nike and so we get their
13 highest end uniforms, we get, I don't know what
14 all we get but we get treated differently and
15 that's -- somebody else can speak to the
16 specifics of that. As far as other damage, you
17 know, we are in a small media market and we don't
18 have people, I think typically breaking down our
19 doors unless we are in the top 20, unless we are
20 a program that has a branded coach, unless we
21 have -- and I can't tell you specifically,
22 putting a pen and pencil to it but I know that
23 just common sense tells me that we will have
24 challenges going forward on TV revenue and

1 broadcast rights and the value of them, and I
2 think that can be a very large number. And I
3 think that if you look at the history of when
4 Coach Rodriguez came to us versus when he left
5 there was, you know, the budget and, the revenue
6 side of the athletic department budget went up
7 dramatically, but I can't tell you the numbers.
8 But a lot of that had to do with the profit
9 centers that I'm talking about.

10 Q. Well, but isn't it true that from the
11 year 2000 to 2007 more and more games are being
12 televised, college games are being televised
13 nationally?

14 A. Absolutely.

15 Q. Right.

16 A. Remember the old Game of the Week?

17 Q. Yes.

18 A. I mean in the 70's there was one game
19 on Saturday and it was on one network and yeah,
20 it's a much, much different world.

21 Q. Right.

22 Now I understand Huggins contract has
23 a \$4 million liquidated damages clause also?

24 A. That's my understanding. I've not

1 seen the contract.

2 Q. Are you suggesting that the
3 basketball program could lose as much as the
4 football program if Mr. Huggins left as compared
5 with Rich Rodriguez leaving?

6 A. Yeah, and I'll tell you why. I
7 understand that -- I'm not crazy, I understand
8 that the economics of football and basketball are
9 different. I also believe that we have never won
10 in basketball a Big East title, we've never won a
11 Big East tournament. We have not been a
12 perennial; we have pulled a rabbit out of a hat
13 and had successful seasons but our basketball
14 program, my personal view is has been a sleeping
15 giant and, you know, you have football schools
16 and you have basketball schools. And one of the
17 things that we were very, very poised I thought
18 to have was a unique circumstance and that was a
19 football school and a basketball school. I
20 believe that Bob Huggins will bring West Virginia
21 University basketball to a perennial top 10
22 program and if he accomplishes that, yes, if he
23 were to leave then we would, we could not replace
24 him in the sense that we could avoid sustaining

1 that kind of potential damage.

2 Q. Do you believe Bill Stewart will have
3 the same success as Coach Rodriguez?

4 A. I certainly hope so.

5 Q. Were you involved in his hiring?

6 A. Not at all.

7 Q. Was the Governor involved in his
8 hiring?

9 A. I have no idea.

10 Q. Did you know that an offer was going
11 to be made to him?

12 A. Did not. I was on vacation.

13 Q. It wasn't discussed with you?

14 A. Bill Stewart was not discussed with
15 me.

16 Q. Was there a search committee to find
17 a new coach?

18 A. I think so.

19 Q. And were you on it?

20 A. I was not.

21 Q. Were you consulted?

22 A. Was not. Well, I was not consulted. I
23 was consulting, I was -- I was supporting Doc
24 Holliday for the job.

1 Q. Uh-huh (yes).

2 A. And I let that be known that I
3 thought he would be a good hire for the job.

4 Q. Better than Stewart?

5 A. I didn't know Bill Stewart. I didn't
6 even know who he was. So, no, it wasn't -- I mean
7 I've known Doc Holliday my whole life and he came
8 from a very large and successful program at
9 Florida, who had just won the national
10 championship. I felt that he had the background
11 and the tools to be successful at this job and I
12 just made those comments and it wasn't him versus
13 over somebody else or anything like that.

14 Q. Did any coach call you about Doc
15 Holliday?

16 A. Did any coach call me?

17 Q. Yeah, Bobby Bowden?

18 A. Bobby Bowden called me, no, Bobby
19 Bowden called me about Terry Bowden.

20 Q. About Terry Bowden, and suggested
21 him?

22 A. Yes. Now see, that's not unusual
23 because I grew up with the Bowden's here in
24 Morgantown and I knew Coach Bowden when he was

1 here and I grew up with those boys.

2 Q. Okay.

3 A. So I mean he wasn't completely -- I
4 hadn't spoken to him for a long time but it was
5 not off the charts for him to call me. He was
6 familiar with me and my family.

7 Q. How about Jimbo Fisher, did he call
8 you?

9 A. I don't know Jimbo Fisher or know
10 anything about him. Urban Meyer spoke to me on
11 behalf of Doc Holliday.

12 Q. Urban Meyer is a Florida coach?

13 A. Yes, sir.

14 Q. And did he suggest he would be a good
15 candidate?

16 A. He did.

17 Q. So he recommended him?

18 A. He did.

19 Q. Did you suggest that to Mr. Pastilong
20 and Mr. Garrison?

21 A. I'm sure that I passed that -- I'm
22 sure, I know Doc Holliday was interviewed by
23 whoever was on that committee. I'm sure that I,
24 somewhere along the line and it was a short

1 period of time told either Mike Garrison or Ed
2 Pastilong that Urban Meyer had spoken to me on
3 Doc's behalf. I'm sure that I did that but I have
4 no recollection of it. That's the kind of
5 information I would have passed on.

6 Q. Now you're familiar with the Beilein
7 liquidated damages settlement?

8 A. Passingly.

9 Q. That he's paying \$300,000 a year for
10 five years?

11 A. I can't really remember exactly what
12 he's paying but I mean I knew that there was a
13 liquidated damages issue and I was not directly
14 involved in it. I did get a call one time from
15 Mr. Fitzsimmons and we spoke briefly about it. He
16 was representing Coach Beilein. I don't even
17 really remember the substance of that
18 conversation. I do know that the matter was
19 resolved.

20 Q. Okay.

21 Well, let's assume that it's -- did
22 you recommend that Beilein be sued?

23 A. No, I don't think it ever even got to
24 that. I think that -- I think that that was

1 settled before he ever left town.

2 Q. Would you have recommended that he be
3 sued?

4 A. If he intended to not honor his
5 liquidated damages clause, yes.

6 Q. Yes?

7 A. Yes.

8 Q. Okay.

9 Well, let's assume that he's paying
10 \$300,000 a year for five years, it's \$1,500,000.

11 As a member of the Board of Governors, can you
12 tell me what dollar figure West Virginia has
13 suffered as a result of John Beilein leaving?

14 A. Never looked at it.

15 Q. So no study was done?

16 A. If there -- no. Steve Farmer never
17 looked at it. I don't know whether a study was
18 done by the athletic department, the
19 administration or anybody else, that I don't
20 know.

21 Q. But the Board of Governors never
22 suggested that one be done?

23 A. I don't believe so.

24 Q. Okay.

1 Do you know why the Board of
2 Governors and a member of the Board of Governors,
3 the administration settled for less than 100
4 cents on the dollar?

5 A. I know my impression, what my
6 understanding of it was, two reasons, number one,
7 John Beilein expressed that he had a family
8 situation, now he didn't express this to me so it
9 may not be true. But my understanding was that he
10 expressed that he had a family situation, that
11 his family was unhappy in Morgantown and that he
12 really needed to move on. And he had been unhappy
13 for several years, and his liquidated damages
14 clause, if I recall correctly, was about to go
15 down and it was a de-escalating clause and it was
16 about to go down in value. I don't remember the
17 amount but it was in a short period of time,
18 maybe 30 days after he left. And I think that the
19 request was made to reduce that amount and to let
20 him make a contribution -- make him pay it to the
21 foundation so that he -- we weren't taking a
22 position so that he could have an argument that
23 it was a charitable contribution and he could
24 argue with the IRS about its tax status. That

1 seemed very reasonable to me. I mean, I didn't
2 vote on it. I didn't make the decision. I was not
3 involved in the decision but portrayed to me that
4 way; that seemed like a very reasonable
5 resolution that adequately compensated the
6 university, fairly treated him and avoided
7 litigation.

8 Q. So my question was, what damages did
9 the university suffer by John Beilein leaving, if
10 anything?

11 A. And I told you that I had not done
12 any study on that, I don't know.

13 Q. So you don't know?

14 A. No, that's often why you have
15 liquidated damages clauses so that both sides can
16 avoid the necessity of proving damages.

17 Q. So it's your position that the
18 university on John Beilein's contract was
19 entitled \$1.5 million worth if they suffered
20 damages or not; correct?

21 A. Yes, whether they suffered provable
22 damages or not. And I think, you know, you'll
23 find that about anywhere as a standard.

24 Q. And you indicated before that you

1 didn't tell Rich Rodriguez that Mike Garrison was
2 going to be president. In February of '07,
3 weren't you at the Waterfront Hotel bar and told
4 Drew Payne that also?

5 A. No, I may have been at the Waterfront
6 Hotel but I never made that statement.

7 Q. That Mike Garrison was going to be
8 the next president?

9 A. Absolutely did not. And he claims
10 that Drew Payne was present for that also?

11 Q. Uh-huh (yes). Well, I'm just
12 suggesting it to you. We're not claiming
13 anything, we're asking you.

14 A. No, didn't happen.

15 Q. Did you read the report from the
16 independent investigators on the Heather Bresch
17 matter?

18 A. I did.

19 Q. And did it show that there was a
20 failure of process in the leadership of Mr.
21 Garrison?

22 A. I didn't think so. Not with respect
23 to Mr. Garrison.

24 Q. Well, who was it on behalf of?

1 A. Well, have you read the report?

2 Q. No, I just skimmed it.

3 A. Well, if you read --

4 Q. I figured you'd be more familiar with
5 it.

6 A. No, if you read the report you'd
7 understand that Mr. -- that, that when this
8 inquiry came to Stewart Hall that there were no
9 written procedures in place in the prior
10 administration to actually handle this. What Mr.
11 Garrison did and the report finds this, Mr.
12 Garrison turned it over to the provost, which
13 would be the academic side of the house, and he
14 then went to the business department, which is
15 where he should have gone to the leadership of
16 the business department and the decision to award
17 that degree was made by the dean of the business
18 department without the interference from Mr.
19 Garrison. Now, --

20 Q. So are you defending Mr. Garrison?

21 A. Yes, I don't think that Mr. Garrison
22 did anything improper in the Heather Bresch
23 matter.

24 Q. Tell me why did you accept his

1 resignation if you don't think he did anything
2 wrong?

3 A. Because he tendered it and because he
4 desired to resign.

5 Q. Did you suggest to him that he didn't
6 have to resign?

7 A. Absolutely.

8 Q. You did?

9 A. I did.

10 Q. Did other board members?

11 A. I think he enjoyed the support of the
12 board up through his resignation and I don't
13 think that anybody -- I didn't hear anybody on
14 the Board of Governors express a reservation
15 about him as president.

16 Q. So it's fair to say that had he not
17 resigned last Friday, the Board of Governors of
18 West Virginia University would not have
19 terminated him?

20 A. He'd be president today. If he hadn't
21 resigned Friday, he'd be president today in my
22 view. Now I respect what he -- I respect his
23 decision in that he decided that it had become so
24 cumbersome and difficult because of the clamor

1 and the mob that he step aside for the benefit of
2 the university. I respect that decision on his
3 part but I would not have mandated it.

4 Q. Who is the mob? The faculty at the
5 university?

6 A. Oh, the relentless, the relentless
7 press. The relentless daily press and what it was
8 doing to the university.

9 Q. So are you suggesting the press has a
10 mob mentality here in West Virginia?

11 A. No, not just in West Virginia, I mean
12 generally, I mean the Pittsburgh Post Gazette was
13 one of the leaders of this and there was a lot of
14 misinformation that was generated by the press
15 every day.

16 Q. Are you suggesting the information
17 was false?

18 A. Yeah. Anybody that would write an
19 article or appear on television and said that
20 that report implicated Mr. Garrison either didn't
21 read the report or chose to read it in an unfair
22 way, yes.

23 Q. So you're still supporting him?

24 A. Yeah, I support Mike Garrison.

1 Q. And you would say damned with the
2 authors of the Bresch report?

3 A. No, I would say the authors of the
4 Bresch report found that he did nothing wrong and
5 if you would read the report you would understand
6 that.

7 Q. And you're saying the media
8 misinterpreted that?

9 A. To the extent that anybody argued
10 that that report required President Garrison to
11 step aside misinterpreted it or intentionally
12 misread that report, yes.

13 Q. Did you as a member of the Board of
14 Governors issue any press releases or statement
15 that the Bresch report was being misinterpreted
16 by the media?

17 A. I consented to a newspaper interview
18 where I said precisely that, that anybody, if you
19 wanted to know Mr. Garrison's involvement or lack
20 of involvement in this, you needed to read the
21 report and the report did not support any
22 wrongdoing on his part, yes, I did.

23 Q. But it happened under his watch;
24 correct?

1 A. It happened -- certainly it happened
2 under his watch, maybe the first two weeks of his
3 presidency or something.

4 Q. So your position is he sacrificed
5 himself for the betterment of the university?

6 A. Yes, sir. That's precisely what he
7 did.

8 Q. And caused by the media?

9 A. In a large part.

10 Q. And would you say the printed media
11 or would you say the television media?

12 A. Add radio.

13 Q. All three?

14 A. Uh-huh (yes).

15 Q. Yes?

16 A. Yes, yes, sir.

17 Q. Has Mr. Walker tendered his
18 resignation?

19 A. I have no idea.

20 Q. Is he going to be asked to tender his
21 resignation?

22 A. I have no idea.

23 Q. Is he -- was he on the agenda to be
24 terminated?

1 A. He's not on my agenda. I have no
2 agenda for terminating people. I don't know.
3 You'd have to ask somebody else about that.

4 Q. Was that discussed at the last two
5 board meetings?

6 A. Was not.

7 Q. Was he asked to be at either of the
8 last two board meetings?

9 A. Who?

10 Q. Craig Walker.

11 A. I don't know. It would be standard
12 operating procedure for the Chief of Staff to be
13 at board meetings and my recollection is that I
14 saw him at both.

15 Q. He did not participate though?

16 A. I can't recall. In one of those
17 meetings I had a court appearance and had to
18 leave for about an hour, an hour and a half and
19 so -- I mean I came back but I missed a period of
20 time that he may have participated.

21 Q. Would you agree with me that with
22 respect to the Rodriguez contract and the Bobby
23 Huggins contract that Garrison took it upon
24 himself to handle the negotiations as opposed to

1 the athletic director?

2 A. I don't know. My impression -- I
3 don't know about handling the negotiations. I
4 believe that -- that it was his position that he
5 would be involved to try to help. I don't know if
6 he handled the negotiations or not. I was not
7 involved directly. I do -- I mean in fairness to
8 your question is my perception that he was more
9 involved in the coaches than perhaps David
10 Hardesty would have been in the past. Now that's
11 Steve Farmer's impression, it may be wrong.

12 Q. How often do you talk to Governor
13 Manchin?

14 A. Once a month, maybe.

15 Q. Did you talk to Governor Manchin on
16 or about December 14th or December 15th of '07
17 relating to Rich Rodriguez?

18 A. This past December, you mean?

19 Q. Yes.

20 A. My best recollection of that is that
21 Sunday afternoon, which would have been, would
22 that have been the 15th?

23 Q. That would have been the 15th.

24 A. That Sunday afternoon he and I and

1 about 100 other people were together at a
2 Christmas party, and I'm sure we discussed it
3 because it had just happened. You know, this was
4 an afternoon party about three o'clock in the
5 afternoon and my best memory is that Coach
6 Rodriguez quit around the noon hour or one
7 o'clock, something like that. I mean it was quite
8 the discussion at this holiday party.

9 Q. And did Rich have any conversations
10 with you before he resigned?

11 A. No. You mean that weekend?

12 Q. Yes.

13 A. No, he did not.

14 Q. Were you aware that he had
15 discussions with Craig Walker?

16 A. Let me tell you what I know and you
17 can tell -- there was a basketball game that
18 Saturday, I don't know who we played. I remember
19 hearing on the media --

20 Q. That would have been on the 14th or
21 13th?

22 A. Whatever the date -- the day before.
23 I mean that weekend.

24 Q. On a Saturday?

1 A. On Saturday there was a basketball
2 game. I remember traveling on Friday and hearing
3 media reports that Rich was talking to Michigan
4 and I quite frankly didn't think much of it, I
5 just because I, you know, he had just re-upped
6 with us. I arrived at the Coliseum and prior to
7 the game I remember speaking with David Alvarez.
8 I may have spoken with Craig Walker, I don't
9 remember if Craig was there. I spoke with
10 President Garrison who was there and I knew that
11 from one of those people that Rich had spoken
12 with quote the athletic department and maybe the
13 president's designee. Maybe I knew that Craig
14 Walker was part of that meeting that morning.

15 Q. That would have been December 14th.

16 A. The Saturday, that -- so that I'm
17 clear I'm at a basketball game in the afternoon,
18 my impression was that there was a meeting with
19 Coach Rodriguez, quote, the athletic department
20 and I believe that I thought Craig Walker was at
21 that meeting too. Although --

22 Q. Sounds right.

23 A. -- I don't know what was discussed. I
24 think that information was given to me but I

1 don't know what was discussed at that meeting.

2 Q. Did they indicate to you, they being
3 Craig Walker or Ed Pastilong that Rodriguez asked
4 them if they would honor the promise that they
5 made to him?

6 A. To be clear, if I saw Ed Pastilong at
7 that game, I don't remember. I mean I don't
8 remember having any conversation with him.

9 Q. What about Craig Walker?

10 A. I don't remember talking to Craig
11 substantively. I remember being told or thinking
12 that Craig was in a meeting, but Craig didn't
13 make any representations to me about what
14 happened at that meeting and I may not have seen
15 him at the game. I just can't remember. What I
16 remember most about it is talking to David
17 Alvarez because he had been at Rich's house and
18 had been talking to Rich.

19 Q. And David Alvarez is a contributor?

20 A. I'm sure he's a contributor. He's a
21 supporter and a friend.

22 Q. Of Rodriguez?

23 A. Of Rodriguez, I consider him a friend
24 of mine and a friend of certainly the university.

1 Q. Would you say he's a facilitator to a
2 certain extent?

3 A. I would say, my impression is that
4 he's very close to Rich, closer to Rich than I am
5 and a supporter.

6 Q. Of Rich and the university?

7 A. Of Rich and the university, that's my
8 -- as of December whatever that day was, yeah,
9 sure.

10 Q. So it was your impression that even
11 though there were news reports about Rodriguez
12 with Michigan, that would never happen?

13 A. I didn't take that seriously on
14 Friday. I took it seriously on Saturday.

15 Q. Uh-huh (yes).

16 A. On Friday I just thought, well, you
17 know, Rich is talking to them because he likes to
18 be considered for the job and then he goes back
19 to work. I mean that's generally what I thought.

20 Q. When you say you took it seriously
21 Saturday, what did you do about it, if anything?

22 A. Well, I did several -- well, I took
23 it seriously in that David told me that Rich was
24 not in a good --

1 Q. David Alvarez?

2 A. Yeah. I mean I don't want to put
3 words in his mouth but from talking to David, he
4 had been with Rich, I also saw Larry Aschebrook
5 and they both described Rich as kind of out of
6 it, kind of distraught and to give you context, I
7 had seen Rich I think the prior weekend, which is
8 the first time I had seen him after the Pitt
9 game. I saw him at the Waterfront Hotel during
10 the breakfast hour. He had some recruits in and
11 I went up and talked to him and embraced him and
12 asked him how he was doing because I knew he had
13 taken the Pitt loss hard. And he told me, he says
14 well, I've been on suicide watch and I said,
15 well, I am too but you know we'll get through
16 this together, everything's cool, you've got
17 support, we embraced and that was the end of it.
18 I then saw him again that same day at the lunch
19 hour at, what's the -- Damon's, I was in meetings
20 that day and our group went to eat at Damon's,
21 saw him again and exchanged pleasantries again,
22 but it was obvious to me that Rich was not by
23 demeanor the Rich that I had known earlier. He
24 was very distraught, I thought about the Pitt

1 loss and his feelings about it.

2 Q. Well, how do you know it was the Pitt
3 loss and not the breach of the promises that were
4 made to him by the university?

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

7 THE WITNESS: I can answer.

8 MR. FLAHERTY: Now wait a
9 minute, it misstates your own case and his own
10 testimony that says it wasn't a breach until the
11 15th. So, I mean, so you --

12 MR. ROBON: Let me ask my
13 question.

14 MR. FLAHERTY: I'm going to
15 object to you, you are misstating the evidence
16 and you are misstating your own client's
17 testimony. I object to the question.

18 MR. ROBON: I'll rephrase the
19 question.

20 BY MR. ROBON:

21 Q. You don't know that he was distraught
22 over the Pitt game or he was distraught because
23 certain promises were not kept by West Virginia
24 University to him; correct?

1 A. He was distraught that day, that was
2 the first -- he was distraught that day because
3 he had lost the Pitt Game and lost the
4 opportunity to play for a national championship
5 and that was the single -- didn't talk about it
6 in depth, but that's the conversation that we had
7 at the Waterfront Hotel at breakfast when I gave
8 him a hug and said don't worry about it, you have
9 our support, we'll get through this.

10 Q. And what about the second time you
11 saw him?

12 A. The second time I introduced him to
13 some people at my table and he just looked and
14 seemed down, we didn't discuss it further, we
15 said hang in there Coach and he went -- he had a
16 table full of recruits and he went to be with
17 them. And I mean, to understand that, not to give
18 a speech but to understand that, I mean not only
19 did we lose out on playing for a national
20 championship, which is if you're in West Virginia
21 probably once-in-a-lifetime deal although we've
22 done it before, but to have Pitt take it away
23 from you --

24 Q. Arch rival?

1 A. I know that was very hard on Rich
2 because he is a West Virginia guy and he kind of
3 felt like that would always be a footnote, you
4 know, in his -- and I was trying to communicate
5 to him that, you know, he's our guy, we'll be
6 supportive, anyway I didn't mean to get so far
7 around the barn, bringing that forward a week
8 when David Alvarez and Larry Aschebrook are
9 telling me --

10 Q. And this is on December 14th?

11 A. Right, that Rich is kind of out of
12 it, he's not making sense, I mean that's the type
13 of things they were saying. I was referring back
14 to the earlier week and that's what I was
15 envisioning, that he was still, you know, out of
16 it over that and just really troubled by that
17 loss. Now, --

18 Q. What did you do when you thought he
19 was serious about leaving and going up to --

20 A. Okay, I did -- I got in the car and,
21 well, before I ever got in the car, during the
22 game I called Ralph Ballard --

23 Q. During the basketball game?

24 A. During the basketball game I called

1 Ralph Ballard or spoke with Ralph Ballard several
2 times. And my purpose on that was if Rich was
3 looking for solutions, if Rich was looking for
4 help, if Rich was looking for advice, if he was
5 trying to find a way, if he had issues and he was
6 trying to find a way to make it work, Ralph is
7 the guy that has his confidence and has the
8 relationships and in the past had been the go to
9 guy for Rich. So I started calling Ralph, saying
10 Ralph, I'm up here, I didn't think much of this
11 yesterday, this has a bad feel to it today, they
12 tell me that Rich is not corresponding, he's not,
13 you know, he's kind of out of it, you need to
14 reach out to Rich and tell me, you know, get this
15 done and Ralph, I think, had already been trying
16 to call him but continued to try to call him. So
17 the game ends and I started heading back to
18 Charleston, which is --

19 Q. You called on your cell phone?

20 A. Cell phone, yeah.

21 Q. And where is Ballard at, in
22 Charleston?

23 A. He's in Charleston, yeah. He's at
24 home in Charleston and I would say driving down

1 the road, of course it was wintertime so it got
2 dark early, driving down the road I probably
3 talked, I'm guessing, with Ralph five or six
4 times between Morgantown and Charleston. And
5 Ralph couldn't get to Rich, couldn't get to Rich,
6 Rich wouldn't take his calls, Rich wouldn't take
7 his calls.

8 Q. Well, you don't know that. Rich
9 could've been busy or --

10 A. Well, he's not answering the phone
11 and he's not calling him back. That's the status.

12 Q. Well, maybe his phone was turned off.

13 A. Maybe --

14 Q. You're just making assumptions.

15 A. Maybe he threw his phone in the
16 river, but Ralph is calling his phone, he's not
17 answering his phone and he's not calling Ralph
18 back. That's my information, which was unusual. I
19 mean I took it as unusual, and the further I got
20 down the road the further this escalated. I
21 started believing if Rich is not talking to Ralph
22 then Rich is leaving West Virginia University.

23 Q. Did you think about turning your car
24 around and driving back and talking to Rich

1 yourself?

2 A. No, I didn't, for -- I didn't and I
3 wouldn't have known where Rich lived, number one,
4 and number two, I would have thought that had
5 been very presumptuous on my part based on my
6 relationship with Rich. I mean if Rich wanted to
7 call me, if Rich wanted to reach out to me, if
8 Rich wanted to see me, I would have been happy to
9 meet him anywhere. But I would have thought,
10 just, you know, how you have different
11 relationships with people, that would've been
12 very inappropriate for me to visit myself, impose
13 myself on Rich during that time.

14 Q. Uh-huh (yes).

15 A. Now, I knew that or I thought that
16 Alvarez and Larry Aschebrook were in and around
17 him.

18 Q. So you thought that he may leave
19 Michigan but you didn't know really any reasons
20 to leave for Michigan?

21 A. Right. Yeah right, I got concerned
22 coming down the road and the further I got down
23 the road and the more he's not talking to Ralph,
24 I asked Ralph, I remember asking Ralph do you

1 know if he's talking to Ike Morris because
2 there's two guys that fix things and take care of
3 things and help Rich and advise Rich and that's
4 Ralph and Ike, and he said he didn't know.

5 Q. Okay.

6 I'm going to hand you what we've
7 marked as Exhibit CC and it's a listing of phone
8 calls and it has your phone number here; is that
9 you're correct cell phone?

10 * * *

11 (Whereupon, Defense Exhibit
12 CC marked for purposes of identification).

13 * * *

14 A. Where -- let me see.

15 Q. At the bottom, bottom of page 1.

16 A. I'm just having a hard time reading.

17 Q. Do you want my reading glasses here?

18 A. Yes, please. Whose number -- is this
19 Rich Rodríguez's? Where?

20 Q. At the bottom of the page.

21 MR. FLAHERTY: Mr. Robon, you
22 are going to tell me whose --

23 MR. ROBON: It says Steve
24 Farmer.

1 THE WITNESS: Oh, that's
2 mine, 304-741-2700 is my cell phone, but I didn't
3 see it on the list here. Is it on the list here?

4 BY MR. ROBON:

5 Q. And is the number above it the
6 Governor's number?

7 A. Do you know that would be -- I could
8 be wrong, I would think that 558-2000 is the main
9 line to the Governor's office. I don't know
10 anything about any exchanges.

11 Q. Okay.

12 And Steve Goodwin's number is there;
13 is that his cell number?

14 A. I don't know.

15 Q. You don't -- you've never called him?

16 A. Oh, I call him all the time.

17 Q. Well, isn't it programmed in your
18 phone?

19 A. Yeah, but I had to turn my phone off
20 for the --

21 Q. Well, let's go off tape while he
22 checks that.

23 VIDEOGRAPHER: The time is
24 4:46 p.m., we are going off the record.

1 * * *

2 (Short break taken)

3 * * *

4 VIDEOGRAPHER: The time is

5 4:47 p.m., we are back on the record.

6 BY MR. ROBON:

7 Q. While we were off camera you checked
8 the phone number of Steve Goodwin programmed in
9 your phone?

10 A. And the number I reach him at on my
11 phone is 541-3663, which is the number you have
12 written here.

13 Q. Okay.

14 On Exhibit CC. Now you made a comment
15 about suicide watch with Rich Rodriguez?

16 A. Yeah, and --

17 Q. And you're not suggesting that he was
18 having mental problems or anything, are you?

19 A. No.

20 Q. Okay.

21 A. I felt that that was his way of
22 telling me that he was down and that, you know,
23 that I did not take it literally at any level.

24 Q. All right.

1 A. No. It was two men talking and him
2 going, man, it's been tough.

3 Q. Okay.

4 So it was an expression?

5 A. Yes, sir.

6 Q. All right.

7 A. And if I lead you to believe
8 otherwise, I --

9 Q. I just want to clarify it for the
10 record.

11 A. No, no, no.

12 Q. So it wouldn't surprise you that he
13 went to see President Garrison then on the
14 evening of December 14th, would it?

15 A. I'll tell you about that, what I know
16 about that.

17 Q. Well, no, I'm asking yes or no; would
18 it surprise you that he did?

19 A. No, because as Ralph and I spoke
20 coming down the road, Ralph asked me, Ralph
21 finally just said, look, I think that I've known
22 Rich a long time and I don't have access to him
23 but I just think if those two guys will sit down
24 in a room, you know, they'd get this thing, you

1 know, worked out in a minute because we don't
2 even know what Rich is upset about.

3 Q. Uh-huh (yes).

4 A. I said or he asked me, he said do you
5 think --

6 Q. He being Ballard?

7 A. Ralph Ballard asked me do you think
8 the president would see him, I said sure, let me
9 find out and I called the President, I don't know
10 if I called him on the cell phone number or on
11 his number at Blaney House. It was late in the
12 evening now, I'm guessing, oh, nine or 10
13 o'clock, and --

14 Q. That's late on a Saturday night here
15 in West Virginia?

16 A. Well, to call somebody, you know, I
17 mean to call somebody, maybe it's not late, but I
18 told the president of my conversations with Ralph
19 --

20 Q. So you had spoken with President
21 Garrison?

22 A. I did, I did, and I told him of my
23 conversation with Ralph and told him, asked him,
24 you know, if Rich came ever to see him would he

1 be willing to see him and he said sure. I called
2 Ralph back and I told him that I talked to him,
3 that he was home, and that if Rich wanted to go
4 see him, he'd be happy to see him.

5 Q. So Ballard must have communicated
6 with Rich?

7 A. I don't think so. I --

8 Q. Rich just went there on his own?

9 A. No, no, no, no, no. I never knew
10 Dusty, I don't know who Dusty is but I remember
11 him mentioning the name Dusty and it's my
12 impression that that's somebody that worked with
13 Rich, maybe one of the assistants and I think he
14 was able to get a hold of Dusty.

15 Q. Ralph Ballard was?

16 A. I think that's what Ralph told me.

17 Q. Okay.

18 So you felt and you're suggesting
19 that you felt that if the two of them got
20 together everything would be fine?

21 A. That's what Ralph -- what Ralph said
22 to me.

23 Q. And what did you think?

24 A. I didn't see any reason why that

1 would hurt.

2 Q. But you assume because there was a \$4
3 million penalty, there was no way he would take
4 the Michigan job?

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

7 A. No, I've told you by that point down
8 the highway, if he's not taking Ralph's calls, I
9 thought he -- my impression was that I got very
10 concerned that he had already decided that he was
11 taking the Michigan job, otherwise he would talk
12 to Ralph.

13 BY MR. ROBON:

14 Q. Okay.

15 Is it your perception that he had
16 already accepted the Michigan job before he came
17 back for that weekend here to West Virginia?

18 A. I have no impression.

19 Q. You don't have any -- you don't
20 believe that then?

21 A. I don't know one way or the other. He
22 could have, he could not have; I don't have any
23 basis to know.

24 Q. Did you call the Governor on that

1 weekend?

2 A. You know, honestly, if I did I can't
3 remember.

4 Q. Would you have called the Governor
5 and talked about Rich Rodriguez leaving?

6 A. Would I have called the Governor and
7 talked about Rich Rodriguez leaving?

8 Q. You called Ralph Ballard --

9 A. You know, I might have and my intent
10 would have been to see if the Governor could get
11 involved in keeping it from happening, but if I
12 did that I don't remember.

13 Q. Uh-huh (yes).

14 A. What I do remember is talking to the
15 Governor at this holiday party the next
16 afternoon. But that doesn't mean, I mean if the
17 phone records demonstrate that he and I talked
18 then I would -- I mean I don't have any --

19 Q. You won't deny it?

20 A. Yeah, and I don't have any
21 recollection of it. I might have reached out to
22 him to let him know what was going on because he
23 had a relationship with Rich and I would have
24 thought that he could have helped us.

1 Q. Why would the Governor be so much
2 involved in West Virginia University athletics?

3 A. I don't know that he is.

4 Q. Well, wasn't he the one who selected
5 Bill Stewart as the coach?

6 A. I don't know.

7 Q. Have you --

8 A. I've never heard that.

9 Q. You haven't heard that?

10 A. No.

11 Q. Doesn't he take an active interest in
12 athletics here?

13 A. Oh, this -- an active interest in
14 athletics? Well, sure, I take an active interest
15 in athletics.

16 Q. Didn't he arrange the game between
17 West Virginia and Marshall?

18 A. He did.

19 Q. So he takes an active interest in
20 athletics?

21 A. Well, I think that was a little bit
22 different, I mean that was not running WVU or
23 Marshall, that was doing something that the
24 Governor thought was a good economic development

1 and an initiative for the state and good for both
2 communities.

3 Q. How do you know that that's what he
4 thought?

5 A. Because he told me.

6 Q. So you talked about it?

7 A. Oh, after the fact, I mean yeah.

8 Q. Okay.

9 MR. FLAHERTY: It's also the
10 state of the State address.

11 A. As we were losing the game to
12 Marshall, yeah, I was like what did you think you
13 were doing, I'm just kidding now.

14 Q. But you won, didn't you?

15 A. We did, with the second-half.

16 Q. That's what I thought.

17 Ready for the tape end?

18 VIDEOGRAPHER: Yeah.

19 MR. ROBON: Okay. Let's take
20 five minutes.

21 VIDEOGRAPHER: The time is
22 4:53 p.m., we're going off the record.

23 * * *

24 (Short break taken)

1 * * *

2 VIDEOGRAPHER: The time is
3 5:07 p.m., we are back on the record. This begins
4 tape three.

5 BY MR. ROBON:

6 Q. You talked about the holiday party
7 with the Governor on Sunday, December 15th; do
8 you recall that?

9 A. And 100 or so others.

10 Q. Right.

11 What was the party for?

12 A. A holiday party, just a Christmas,
13 you know, an afternoon, you know --

14 Q. Who was the sponsor?

15 A. Oh, I'm sorry. You said what was it
16 for; it was Mark Carbone and Ellen Cappellanti.

17 Q. Who are donors?

18 A. No. They are just Charleston
19 citizens, Ellen is on the Board of Governors, but
20 they're just -- they live in Charleston, they
21 have an annual holiday get-together and it
22 happened to be that afternoon this year.

23 Q. I see.

24 What role did you play in the

1 Governor's press release about Rodriguez leaving
2 that afternoon?

3 A. What do you mean, what role? I mean
4 --

5 Q. Well, did you help him write the --

6 A. No, I don't write press releases.

7 Q. Did you suggest what should be in it?

8 A. I did not.

9 Q. Did you talk to him about it?

10 A. I did.

11 Q. Okay.

12 What did you tell him?

13 A. I didn't -- he didn't seek -- I don't
14 remember advising him, he told me what he was
15 going to say and he can say whatever he likes.

16 Q. And you mentioned earlier that you
17 thought Rodriguez was distraught after the Pitt
18 loss; when you say distraught what evidence of
19 distraught did you --

20 A. His demeanor, he seemed down, he --

21 Q. Well, what do you mean down?

22 A. Well, his body language, his body
23 language, he didn't, he didn't appear as -- when
24 I saw him that Saturday that I spoke about he

1 didn't appear as the get up and going, active
2 Rich Rodriguez, the body language and demeanor,
3 which is very positive and very, you know, can-do
4 kind of, his demeanor that day was I would
5 describe him as drawn. I mean his shoulders were
6 down, he was wearing an overcoat and he told me
7 that he was down. And I mean and he --

8 Q. Well, he was disappointed.

9 A. Of course. I fully understand. I'm
10 not being critical of him.

11 Q. Well, there's a difference between
12 being disappointed and distraught.

13 A. Well, I felt that he was -- I felt
14 that he was distraught and that's how I describe
15 it.

16 Q. And how do you define distraught for
17 the Jury?

18 A. Well, someone who is not himself, who
19 obviously appears under stress, who appears
20 distressed, and who tells you that he's on
21 suicide watch. Now I didn't take him to mean that
22 he was literally on suicide watch, but I took him
23 to mean that he was very distraught and upset
24 about the circumstance.

1 Q. You said he had an overcoat on?

2 A. Yeah.

3 Q. You saw him outside?

4 A. No, I saw him inside.

5 Q. Why was he wearing an overcoat
6 inside?

7 A. I don't know. He was wearing it on
8 both occasions, both in the Waterfront Hotel and
9 in Damon's.

10 Q. So you saw him coming or going?

11 A. I saw him, okay, I was having
12 breakfast, we saw a whole lot of recruits come
13 in, they're obvious because they're so big, you
14 know, and they were going into the back room, saw
15 a coaching staff with them that I didn't
16 recognize and then saw Coach Rodriguez, I didn't
17 see him come in, I saw him standing, if you -- I
18 don't know if you've ever been to the Waterfront
19 Place, okay, you know the restaurant --

20 Q. Uh-huh (yes).

21 A. And in the back of the restaurant
22 there's a private room where they can have
23 private dinners, that's where they were -- set up
24 back there and he was in the area, I looked

1 across and saw him in the area right, I would
2 call it the miniature lobby back there --

3 Q. So you observed him for what, 45
4 seconds?

5 A. A couple minutes, yeah, before I got
6 up and went over and talked to him.

7 Q. Okay.

8 And you talked to him for how long?

9 A. Oh, it wasn't long at all, maybe 30
10 seconds.

11 Q. All right.

12 So in --

13 A. Yeah, I just said exactly the
14 conversation that we just described.

15 Q. So you made all these observations in
16 that two and a half minutes?

17 A. Yes, sir.

18 Q. And what did he have on under the
19 overcoat?

20 A. As I remember he had like a
21 collarless shirt, you know, a --

22 Q. He didn't have pajamas on or
23 something that would show that he was really
24 distraught?

1 A. No, sir, and I don't mean to say that
2 he was horribly inappropriate. I'm giving you an
3 honest description of what he looked like and
4 what he said to me that morning and I don't mean
5 to be making fun, and I don't mean to be a smart
6 Alec. You asked me these questions and I'm giving
7 you my honest recollection.

8 Q. He wasn't disheveled?

9 A. No, I mean his hair was combed, --

10 Q. Right.

11 A. Well, of course he has very short
12 hair, no, I mean he had a bunch of recruits
13 there.

14 Q. Was he shaved?

15 A. I believe so. I mean if he wasn't it
16 didn't make an impression on me.

17 Q. Okay.

18 A. No, I don't want to give the
19 impression that I -- I mean --

20 Q. Well, I think of somebody distraught
21 ready for the mental institution.

22 A. Well, I don't mean it that way. I
23 mean a guy that had seemed to have the weight of
24 the world on his shoulders. I think that's what

1 he was communicating to me, that he was in a very
2 difficult circumstance as a result of that loss,
3 and I could only imagine as a football coach, you
4 have a chance to play for the national
5 championship and you are a 28 point favorite and
6 you and your team lay an egg on national
7 television. I can understand why he was
8 distraught and why he was -- he was feeling down.

9 Q. What, hundreds of thousands of fans?

10 A. Oh, we all -- and that's when I
11 embraced him and I hugged him and I said it will
12 be fine, we're with you, you got our support, it
13 will be fine, we'll get through this. That's what
14 I said to him.

15 Q. But made an assumption that the
16 following week or two that he was still
17 distraught?

18 A. Yes.

19 Q. But you didn't see him?

20 A. Didn't see him, didn't talk to him.

21 Q. You have no objective way of telling
22 whether he was still distraught?

23 A. The only reason I shared my other
24 circumstance with you is because as they were

1 describing him that weekend I thought back to the
2 prior weekend and I thought that's what he was
3 struggling with.

4 Q. I see.

5 And if they told him no to the
6 various requests that he had made and he expected
7 those things, a normal person would be
8 distraught, wouldn't they?

9 MR. FLAHERTY: Object to the
10 form.

11 A. These things?

12 Q. Yeah. You're looking at Exhibit AA.

13 A. Double AA, I don't know. A man in
14 Rich Rodriguez's circumstance, I mean I don't
15 know that I would be distraught over that. He
16 would know that, not me.

17 Q. All right.

18 Now you started talking before about
19 -- we got off the subject of damages because
20 that's what this lawsuit is all about.

21 MR. FLAHERTY: Object to the
22 form.

23 BY MR. ROBON:

24 Q. Do you agree with me that this

1 lawsuit is about damages?

2 A. I thought this lawsuit was about the
3 enforcement of liquidated damages provision in a
4 contract.

5 Q. Damages.

6 MR. FLAHERTY: Liquidated
7 damages, he said.

8 BY MR. ROBON:

9 Q. Are you -- it's your attorney's
10 opinion that this is just about liquidated
11 damages, not real damages?

12 A. I've not given an attorney's opinion,
13 I've been asked to come here as a witness in this
14 case. I've not rendered any opinions --

15 Q. I understand that, but what's your
16 personal opinion?

17 A. I don't have one. I'm here as a
18 witness.

19 Q. You mentioned the loss of broadcast
20 media revenue --

21 A. Possible loss of broadcast media
22 revenue. Q. Doesn't the Mountaineer; don't they
23 have their own network?

24 A. Mountaineer Sports Network.

1 Q. Yeah.

2 Don't they get revenue from that?

3 A. Sure.

4 Q. Don't they sell rates to CBS and NBC?

5 A. I'm sure that they do, yeah.

6 Q. But you don't know how that works?

7 A. No, what I'm speaking of --

8 Q. Do you know how it works?

9 A. Not precisely.

10 Q. Okay.

11 You don't know what the income is

12 from it, right?

13 A. No. Well, I've seen numbers over the

14 years but I don't know who --

15 Q. You don't know if they make 10,000 a
16 year or a hundred thousand a year, or a million a
17 year on it; correct?

18 A. I would think it would be more like a
19 million than 10 or 100,000.

20 Q. But you don't know?

21 A. I don't know.

22 Q. It could be 5 million and you
23 wouldn't know?

24 A. Right.

1 Q. You had never done any inquiries;
2 never saw any of the books?

3 A. That's not true. That's not true.

4 Q. Are you on the audit committee?

5 A. I am not on the audit committee, but
6 I have made inquiry over the years about MSN and
7 whether or not we ought to do different things
8 with MSN.

9 Q. When is the last time you made an
10 inquiry of MSN?

11 A. Oh, I make MSN inquiries regularly.

12 Q. When is the last time?

13 A. Oh, probably as recently as our last
14 board meeting.

15 Q. Last Friday?

16 A. Probably. I don't recall exactly.

17 Q. Who would you have inquired of?

18 A. I would have discussions with board
19 members.

20 Q. Well, who runs MSN?

21 A. The athletic department runs MSN.

22 Q. Is that Parsons or Pastilong?

23 A. I think Mike Parsons is predominantly
24 responsible for MSN.

1 Q. Did you talk to him?

2 A. Oh, no, huh-uh (no).

3 Q. When is the last time that you spoke
4 with Mike Parsons?

5 A. Mike Parsons; probably greeted him in
6 passing at the NCAA Sweet 16.

7 Q. When did you last talk about the
8 Mountaineer Sports Network?

9 A. With?

10 Q. With Mike Parsons.

11 A. I probably never have.

12 Q. Never have?

13 A. I've asked him -- I've asked the
14 athletic department for financial information
15 relating to that over the years.

16 Q. Have they provided it?

17 A. Uh-huh (yes).

18 Q. Where would it be?

19 A. Where would I have it?

20 Q. Yeah, where would the information be?

21 A. Oh, I mean I'm talking about over the
22 last three or four years, I haven't kept it.

23 Q. So you don't know where those are?

24 A. Not precisely, no.

1 Q. And you haven't been told that next
2 year there will be less - ?

3 A. No.

4 Q. -- games televised or less games on
5 radio?

6 A. No. I simply identified that as a
7 potential.

8 Q. You haven't been told Nike or any
9 other people are going to withdraw sponsorships?

10 A. I have not. No.

11 Q. When you came up with this \$4 million
12 dollar figure I was always under the -- and you
13 did come up with that figure, right?

14 A. I believe so.

15 Q. I always thought Whit Babcock came up
16 with that number?

17 A. I never discussed that -- if I
18 discussed that with Whit Babcock it was simply
19 only to tell him, he provided me the other
20 information, --

21 Q. The other information on the term
22 sheet?

23 A. On the term sheet that the coach
24 wanted and I told him that, well, we need to do

1 something about this buyout and I probably, I
2 probably told him what I had in mind.

3 Q. I see.

4 A. But he did not tell me anything about
5 it.

6 Q. So you're taking credit for the \$4
7 million figure?

8 A. I'm taking responsibility for it.

9 Q. Right, okay.

10 And then we started talking and we
11 got interrupted by Counsel and you mentioned
12 there were negative things being said and you
13 mentioned Calvin McGhee and was that shortly
14 after the loss that was filed by West Virginia or
15 several weeks after?

16 A. I don't recall. I mean to be candid
17 with you; I don't know what day the lawsuit was
18 filed.

19 Q. December 27th.

20 A. Okay. And I don't know where in line
21 that all came.

22 Q. What did you do as a member of the
23 Board of Governors about the allegations that
24 Rich Rodriguez shredded information vital to the

1 athletic department at West Virginia?

2 A. What did I do?

3 Q. Yeah.

4 A. Nothing.

5 Q. Did you call security and ask for an
6 investigation?

7 A. I did not.

8 Q. Were you aware that if there was an
9 investigation?

10 A. I was told in the most general sense
11 that they were trying to get to the bottom of it
12 -- the administration was trying to get to the
13 bottom of it.

14 Q. Did you ever get a report?

15 A. I don't believe so.

16 Q. So there was no --

17 A. But I simply can't recall.

18 Q. There was no witnesses, no
19 documentation of any wrongdoing?

20 A. I don't know how that whole thing
21 came about, I don't know what actually happened,
22 what didn't happen, whether it was proper or
23 improper, I would leave that to those that were
24 on the front line.

1 Q. But you opted not to follow up on it;
2 correct?

3 A. Well, that's really not -- I mean I
4 don't know if you understand governance and
5 division of responsibility but that would be an
6 administrative function. I'm --

7 Q. You're an overseer of the
8 administration?

9 A. Exactly right.

10 Q. You're a fiduciary to the university?

11 A. Exactly right, and I have more
12 general responsibilities. The management,
13 function of the university in that instance would
14 be with the administration and the athletic
15 department and I would expect them as their job
16 to, if they thought there was a problem to get to
17 the bottom of it.

18 Q. But you didn't follow up to make sure
19 they did?

20 A. I don't know that it's not still
21 ongoing, I don't know how that matter has been
22 resolved.

23 Q. Have you ever talk to the chief of
24 security of the university about it?

1 A. I have not.

2 Q. Ever talk to Garrison about it?

3 A. Not in any substance.

4 Q. You didn't ask him about it last
5 weekend, last Friday?

6 A. No.

7 Q. Did Garrison want to fire Pastilong?

8 A. We just gave him a new contract.

9 Q. My question is did he want to fire
10 him?

11 A. I don't -- if he did he never told me
12 that. No, I don't believe so.

13 Q. What about Mike Parsons?

14 A. Oh, I have counseled the athletic
15 director that I think Mike Parsons should be
16 fired; I've counseled the president that I think
17 Mike Parsons should be fired. I don't know that
18 either one of them have ever said that to me,
19 I've said that to them.

20 Q. And your opinion is based upon what
21 information?

22 A. I don't think he's good for the
23 athletic department.

24 Q. In what sense?

1 A. In the way in which he operates his
2 responsibilities within the athletic department.

3 Q. And for instance?

4 A. For instance, what I would describe
5 as what I have described as the culture of no. I
6 mean if there's a question, the answer from Mike
7 Parsons is no. It's not, well, what do we need to
8 do to figure that out or is that a good idea, or
9 a bad idea, is no. And I just don't think that
10 he's -- I think we could have somebody in that
11 position in the athletic department that would be
12 better for the athletic department.

13 Q. Be more creative?

14 A. Yes, sir.

15 Q. What did Garrison tell you about the
16 meeting that he had with Rodriguez on a night of,
17 Saturday night, December 14 of '07?

18 A. He told me that he thought that he
19 gave Coach Rodriguez five to six opportunities in
20 which the way he garnered the discussion to agree
21 to stay and that Rich on none of those occasions
22 took that but said that he would advise him the
23 next day.

24 Q. Five or six opportunities in that

1 short meeting they had?

2 A. I don't know how long the meeting
3 was.

4 Q. Okay.

5 A. I mean are you saying a short
6 meeting? I don't know how long the meeting was. I
7 heard from him afterward that he gave him, that
8 he encouraged him to stay and gave him the
9 opportunity to stay, that's what I understood him
10 to say and had four or five or six or whatever
11 areas in the conversation where he put it out to
12 him and expected Rich to take it and he didn't,
13 and he told me that Rich was not -- I mean I
14 think that he had the same impression that I had
15 described earlier that Rich was not himself, that
16 he was kind of distraught, but I'd leave that to
17 the President to describe that. But that's my
18 impression of that meeting from what he said.

19 Q. How would you feel if people make
20 promises to you and you found out they weren't
21 keeping them; would you be distraught?

22 A. That would depend, wouldn't it?

23 Q. Well, you can understand that
24 position, couldn't you?

1 A. If they were honoring my contract and
2 doing what they could to do to help the program,
3 I would not be distraught. I would be looking at
4 it as programatic issues that I would like to
5 have attention and keep working towards getting
6 it fixed.

7 Q. Well, if Garrison said we've done
8 everything we can, we're not going to change
9 anything; would that be something that would be
10 positive or negative?

11 A. It probably would be negative, but
12 that doesn't mean that it was arbitrary. For
13 instance, the web site, I would like to support
14 Rich on a web site, if that's what he wants I'd
15 like to see him have it. If it's, you know, I
16 mean -- but if it's not good for West Virginia
17 University and the NCAA, it's a problem, I'm
18 going to say no, I'm sorry, we can't really do
19 the web site. But if that's the case I would not
20 expect the coach to be distraught or upset or
21 leave or violate and leave his contract because
22 we couldn't do something that would not be a good
23 idea, you know what I mean?

24 Q. Well, you indicated one person from

1 Texas A&M had a bad experience with --

2 A. No, I didn't. I never said that. I've
3 never heard of that.

4 Q. Oh, I thought you said it was --

5 A. No, I said --

6 Q. A lawyer --

7 A. I said Mr. Payne consulted an NCAA
8 lawyer with NCAA expertise and he counseled
9 against it.

10 Q. Okay.

11 He didn't give any reasons for it?

12 A. I didn't talk to him.

13 Q. So you don't know the reasons?

14 A. But he said it was a bad idea and
15 would cause us problems with the NCAA. I don't
16 think that would be in the best interest -- I
17 mean, just from my vantage point if you're going
18 to do something that's going to cause you
19 problems and cause, cause problems with the NCAA,
20 I don't think that would be in the best interest
21 of the university and we need to find a different
22 approach.

23 Q. Did Drew Payne -- he's a board
24 member, right?

1 A. He is.

2 Q. Did the board authorize him to hire
3 this lawyer?

4 A. Oh, I don't think it was -- I don't
5 think it was that formal.

6 Q. So it was just a freebie, what do you
7 think?

8 A. You'd have to ask him exactly.

9 Q. You and I know as lawyers free advice
10 is normally terrible, isn't it?

11 A. No. I don't think so.

12 Q. You don't think so? The advice you
13 give at parties --

14 A. I've given a lot of free advice --
15 well, they didn't get it at a party. He called
16 him at his office, he was sitting behind his desk
17 and asked him a serious question and received a
18 serious response.

19 Q. Now how do you know he was sitting
20 behind his desk?

21 A. I'm -- that's my impression. You'll
22 have to ask Mr. Payne. I mean, in other words, I
23 don't think he called him at a cocktail party.
24 That was not my impression and maybe he did.

1 Q. He could have been on his car phone?

2 A. He could have been.

3 Q. You don't know?

4 A. Could have been. My point was that my
5 impression of the conversation was it was a
6 professional conversation in a professional
7 context and he rendered legal advice, whether we
8 paid for it or not.

9 Q. Uh-huh (yes).

10 Now, you made a comment earlier when
11 we talked about John Beilein, that his family was
12 having a problem; they didn't like Morgantown?

13 A. That's what I had been told, not by
14 him.

15 Q. Not by him? Okay.

16 And that was one of the reasons that
17 there was justification for taking less money on
18 his buyout?

19 A. I didn't say that.

20 Q. That's not correct?

21 A. No, I described what I thought the
22 justifications for taking less money on the
23 buyout were, number one, the buyout was about to
24 go down, my recollection or my impression is in

1 about 30 days, a very short period of time --

2 Q. Uh-huh (yes).

3 A. -- and that it would be fair under
4 those circumstances to go ahead and give him that
5 reduction.

6 Q. Uh-huh (yes).

7 But you also mentioned he had a
8 problem with his family not liking Morgantown?

9 A. I had heard that, yes.

10 Q. Was that -- would that impact you in
11 any way?

12 A. Well, you know in this sense, I mean
13 you're describing a situation if a fellow has
14 been unhappy in the job and he's going to
15 continue to be unhappy in the job and I don't
16 know that you are staking out, either side
17 staking out a very positive future. And at some
18 point if he's an honorable person and you're an
19 honorable institution and he is communicating
20 with you the fact that for reasons that are
21 personal, he needs to go to another place, then I
22 think it is appropriate to sit down and realize
23 that, you know, even if you could make him stay
24 five or six years, it's not going to be in his

1 best interest and under those circumstances
2 probably would not be in the institution's best
3 interest and so I think, yeah, if there are
4 personal issues, family issues, that I wasn't
5 involved in the decision but I wouldn't object to
6 who the decision-makers taking that into context
7 in this sit -- or taking that into account in the
8 context I just mentioned.

9 Q. Did you ever think about from
10 Rodriguez's position with the administration on
11 one end doing one thing and the athletic
12 department doing another that he was kind of
13 caught in the middle?

14 A. Oh --

15 Q. And by -- let me --

16 A. You're telling me things, I mean I
17 never looked, I thought, Rich told me in December
18 of '06 that he intended to stay coach here the
19 rest of his life.

20 Q. And I think he did.

21 A. One year later he's coaching at
22 Michigan. I don't know how we got from -- I mean,
23 when we talked about the buyout he first told me,
24 I don't want a \$4 million buyout and you don't

1 need it, Steve, because you have my word, I'm
2 staying here for life. I said, well, then if I
3 have your word and you're going to stay here then
4 you don't need to be concerned about it. That's
5 the way I thought -- I mean he's got a job, he
6 works for an athletic department and a
7 university, there are a lot of moving parts,
8 okay, there are a lot of people, there are a lot
9 of personalities in every institution, and is
10 every day perfect? I'm sure it's not and
11 sometimes you've got to struggle for the things
12 you want and he had been -- by the way good and
13 successful at doing that. One of the things I
14 liked about him was I thought he had been a good
15 advocate for the program. He had gotten --

16 Q. The athletic program?

17 A. Yes, he had gotten the athletic
18 department to invest money in facilities and
19 plant and I thought he was a good advocate for
20 the program. And I thought he would continue to
21 advocate for the program, some days you win and
22 some days you lose, and in a state like West
23 Virginia sometimes you have the money to do what
24 you want to do and sometimes you've just got to

1 tough it out and find the money and those sorts
2 of things. So I thought we had done -- I thought
3 we had made a big commitment to Rich and we had
4 honored it and, you know, I was surprised that he
5 would leave us.

6 Q. Well, let's assume that Garrison and
7 Walker made certain representations to him back
8 in August of 2007 and that Garrison and Walker
9 wrote memos to the athletic department to
10 implement these and either Pastilong or Parsons,
11 who you wanted to fire, said no, no, no, which is
12 your comment about Parsons, no, we're not going
13 to do those things. The individual who has made
14 these promises is stuck in the middle between an
15 athletic department that doesn't want to do
16 anything and an administration that made promises
17 and then the governor gets involved because he's
18 a friend of Pastilong's and said I have to back
19 Pastilong because he's the athletic director and
20 he's my friend; now would that change your mind?

21 MR. FLAHERTY: Object to the
22 form of the question and the hypothetical that is
23 contained in it.

24 A. No. And I'll tell you why I wouldn't

1 change my mind. None of that had anything to do
2 with his employment contract. His employment
3 contract started with this term sheet that he and
4 I agreed to in December of '06. We honored it and
5 he needed to honor it. Now, on a day to day basis
6 if he had called me and said, Steve, I need a web
7 site, I would have said, well, that on its face
8 sounds reasonable, let's talk about it and we'll
9 see what we can do to get it. That's either a
10 good idea or it isn't. That's what I would
11 expect. And if he needs five dollar fees paid by
12 high school coaches, he wants that waived, well,
13 you know, if there is a reason to waive that and
14 not a counterbalancing reason to keep it, I would
15 expect him to get the benefit of the doubt on
16 that.

17 Q. Did you know that Pitt waives it?

18 A. I didn't -- I don't know anything
19 about it.

20 Q. Do you know that Pitt doesn't charge
21 high school coaches?

22 A. I don't know anything about it.

23 Q. You don't know that?

24 A. No. I just said I don't know. What

1 I'm saying is that, you know, that's a
2 frustration, you know, that doesn't have anything
3 to do with his employment contract. If he doesn't
4 get it done he's frustrated. Well, let's keep
5 trying to get it done. If it makes sense let's
6 try to get it done. That's my attitude on it.

7 Q. Now let me ask this question; do you
8 believe that the job at Michigan or Ohio State is
9 a better job than the job at West Virginia?

10 A. I have no idea, because, and I'm not
11 being a smart Alec, the reason is is that I mean
12 there are many different components to every job.
13 He may -- he may start that job and find out
14 that, I mean I thought he had the best job in the
15 country here, but that's Steve Farmer, that's not
16 my job. But I'll tell you what, he could have had
17 four or five losing seasons here and he'd have
18 still been our coach. And I don't know, he may go
19 to Michigan and he may lose for three years in a
20 row, I hope he doesn't, and they may terminate
21 him and then, I mean, which was the better job? I
22 don't know. There are a whole a lot of different
23 things that one takes into account. He obviously
24 decided that it was a better job, but I can't

1 speak to it.

2 Q. Do you have the belief that
3 Rockefeller and some of the others, even Governor
4 Manchin I read some articles that, you know, if
5 you're educated here and you leave you should pay
6 your money back, how dare you leave the State of
7 West Virginia?

8 A. I don't have any -- what do you mean?

9 Q. Do you have those beliefs?

10 A. No, here's what I believe. If you're
11 a grown up and you enter into a written contract
12 --

13 Q. No, no don't --

14 MR. FLAHERTY: No, let him
15 answer the question.

16 MR. ROBON: Answer the
17 question.

18 MR. FLAHERTY: Yes, he is
19 answering question.

20 MR. ROBON: I'll rephrase the
21 question.

22 MR. FLAHERTY: What his
23 belief was. Answer the question; let him finish.

24 THE WITNESS: Well, I think

1 if you're a grown up and you enter into a written
2 employment agreement, you should honor that
3 agreement, that's what I believe. I don't care
4 where you're from.

5 BY MR. ROBON:

6 Q. That's not what my question was, my
7 question was; do you believe a person has a right
8 to leave the State of West Virginia and seek
9 employment elsewhere?

10 A. Of course.

11 Q. Okay.

12 And they shouldn't be penalized just
13 for doing that aside from anything else?

14 A. No, that they should honor their
15 contracts and do what they're supposed to do,
16 they're free, this is America. He's free to go
17 coach wherever he wants or if he wants to get in
18 the life insurance business he ought to do that.

19 Q. Do you believe what the Governor
20 said, the state troopers, if they are educated
21 here in West Virginia they shouldn't be allowed
22 to take a job outside the state without paying
23 for their training?

24 A. I've never heard that, nor have I

1 ever considered it. I don't know, I don't know
2 anything about that.

3 Q. What about the Rockefeller comment
4 that he was a traitor for leaving the state; do
5 you believe that? It was in a news article --

6 A. Rockefeller comment, my father would
7 be proud to say that I've disagreed with a lot of
8 what Senator Rockefeller has said over the years.
9 I'm unfamiliar with the comment and I don't look
10 at it in any way other than, you know, we had an
11 agreement that if you leave after a year, you pay
12 \$4 million and I just think on behalf of West
13 Virginia University he should honor that
14 agreement. I don't call him a traitor, I don't
15 call him anything else, I just think that we all
16 need to honor our responsibilities.

17 Q. Did you speak with Rich after he had
18 announced his resignation?

19 A. No.

20 Q. You never called to congratulate him?

21 A. I don't believe.

22 Q. Never wrote him a note? I wish you
23 success in your new job?

24 A. I don't believe so.

1 Q. Did your wife call Rita?

2 A. I don't believe so, you'd have to ask
3 her but I don't believe so.

4 Q. So you were upset that he left?

5 A. Yes, and from the time that he left
6 until about January the -- I have to get a
7 calendar out but January the 5th or 6th we were
8 on vacation and had, you know, little, you know I
9 didn't run to Morgantown and work on this. We had
10 a previously scheduled family vacation and we
11 went on it.

12 Q. Did you have any calls with the
13 administration while you were gone on vacation?

14 A. I recall there were several, I'll use
15 several, I don't remember how many there were,
16 there were phone conferences with the board and
17 the administration, I don't know if I
18 participated in every one. I remember
19 participating in some, excuse me, separately with
20 the administration, I can't recall.

21 Q. You mentioned Doc Holliday was a
22 candidate for the job.

23 A. He was.

24 Q. He's an assistant now?

1 A. He is.

2 Q. The highest-paid assistant you ever
3 had here at West Virginia?

4 A. Probably so.

5 Q. Higher than what Coach Rodriguez paid
6 his assistants?

7 A. I believe so. I mean I'm familiar
8 with Doc's, passingly familiar with Coach
9 Holliday's compensation. I don't know about the
10 others.

11 Q. He's over 400 a year, isn't he,
12 thousand?

13 A. I don't know that he's over 400, I
14 think that's a number that, I think that's
15 probably where he is is 400, but I don't know the
16 particulars.

17 Q. Well, then Calvin McGhee who was the
18 head offensive coordinator and orchestrated the
19 spread offense making less than 200?

20 A. I have no idea.

21 Q. Did you ever investigate that?

22 A. No.

23 Q. Who authorized the \$400,000 for Doc
24 Holliday?

1 A. I would assume it was our athletic
2 director or -- and I don't know whether the
3 administration was involved or not, or Coach
4 Stewart, I mean I don't know.

5 Q. Do you believe the comments about
6 McGhee?

7 MR. FLAHERTY: What comments?

8 A. Which comments?

9 Q. The comment that he indicated he
10 didn't interview because of the color of his
11 skin?

12 A. No, I don't.

13 Q. You don't believe that was said?

14 A. I don't believe that was said to him.

15 Q. By Larry Aschebrook?

16 A. By Larry Aschebrook or anybody else.

17 Q. What kind of deal was made with Larry
18 Aschebrook?

19 A. What do you mean?

20 Q. When he left here?

21 A. None that I'm aware of.

22 Q. There's no written agreements?

23 A. If there is I'm unaware of them. I
24 think he just left to take a better job.

1 Q. There was no severance agreement?

2 A. I don't believe so. I mean I'm
3 unaware of any.

4 Q. Why did Aschebrook give an affidavit
5 to your human resources department?

6 A. I don't know firsthand, I know this,
7 that the human resources department was charged,
8 or the civil justice department was charged with
9 doing an investigation and that as a result of
10 the allegations, and I know that Jen MacIntosh
11 conducted an investigation. Where the affidavit
12 came in I only know from what I've read in the
13 newspapers and discussed with Dean Hartley.

14 Q. What was the recommendation of the
15 human resources department?

16 A. That there was no indication, I
17 mean --

18 Q. Calvin didn't respond or Coach McGhee
19 didn't respond for a long time, I'm aware of
20 that. But I believe that the conclusion of the
21 civil justice investigation, there was no
22 indication that it had happened or no finding
23 that it had occurred, or that anybody needed to
24 be disciplined for it. I believe that's right.

1 Q. If Bill Stewart is not successful, is
2 Doc Holliday the next coach?

3 A. I have no idea.

4 Q. Would you recommend it?

5 A. That would have to be based on the
6 circumstances at the time. I mean if I thought
7 there were a better candidate, by the way I don't
8 know that anybody listens to me so put that in
9 your pipe, but if I thought there were a better
10 candidate at the time, I would recommend a better
11 candidate. I mean I just -- whoever's best.

12 Q. Would you say you or Governor Manchin
13 is more involved with the athletic department
14 here at West Virginia?

15 A. I have no idea. I have explained to
16 you my involvement and I'm unaware -- unaware of
17 his involvement.

18 Q. Someone told me that Mr. Macia's
19 position has been changed; is that accurate?

20 A. I believe -- yes, I believe that his
21 position has -- he had more, he was wearing more
22 than one hat.

23 Q. What was his position?

24 A. He was vice president and general

1 counsel --

2 Q. And what is he now?

3 A. He may actually still be that title
4 but some of his -- some of his areas that he was
5 responsible for I think have been delegated. The
6 record would reflect that.

7 Q. With Garrison resigning, who within
8 the university, is it going to be the Board of
9 Governors or Governor Manchin or an interim
10 president will be giving direction in this
11 lawsuit?

12 A. Well, it certainly would not be
13 Governor Manchin because it would come -- the
14 ultimate authority is the Board of Governors.
15 Now, President Garrison is going to be our
16 president until September the first. We are in
17 unexplored waters as to what we will be doing
18 about an interim and the like. The ultimate
19 authority for handling the lawsuit is with the
20 Board of Governors; the Board of Governors can
21 delegate it to our attorneys --

22 Q. Right, I understand that.

23 A. -- can delegate it to the
24 administration to oversee, but right now there's

1 been no change.

2 Q. Well, let's -- my question is after
3 September 1, if I wanted to communicate
4 something, who would I communicate it to?

5 MR. FLAHERTY: Me.

6 MR. ROBON: No, I understand
7 that.

8 THE WITNESS: That would be
9 Tom Flaherty and Bob Fitzsimmons.

10 BY MR. ROBON:

11 Q. Who would Bob Fitzsimmons and Tom
12 Flaherty or Jeff Wakefield, who would they
13 communicate to that would make a decision?

14 A. Whoever they're directed to --

15 Q. By you?

16 A. By the client contact, yes. Whoever
17 would be designated as the client contact.

18 Q. Okay.

19 And you don't know who that's going
20 to be?

21 A. I do not; stay tuned.

22 Q. When you discussed with Rodriguez
23 back in December of '06 and shortly thereafter
24 you indicated that once Garrison had been in

1 office things would be better?

2 A. Absolutely not, and that's an
3 intentional -- no. I've explained that and you
4 know better.

5 Q. Did you indicate to Garrison or Craig
6 Walker that you wanted the coach's contract
7 signed in August of '07?

8 A. I did not.

9 Q. Never talked about it?

10 A. I told you I wasn't concerned about
11 it personally.

12 Q. Because you looked at the term sheet?

13 A. Right, and that we had been
14 performing under the term sheet.

15 Q. Were there other board members that
16 were insisting that the contract be executed?

17 A. I remember it being an issue raised
18 by our chairman, more of a status and saying, you
19 know, we need to get this done. I don't remember
20 it being a priority, you know, something that was
21 discussed by others.

22 Q. Is it fair to say that Ed Pastilong
23 now is more of a figurehead and that Parsons
24 really runs the athletic department on a

1 day-to-day basis?

2 A. I don't think so. I don't -- you'd
3 have to ask them how it operates day to day.

4 Q. Ed doesn't take a nap every
5 afternoon?

6 A. I don't sleep with Ed in the
7 afternoon, I don't know. I'm in Charleston.

8 Q. I would hope you wouldn't.

9 A. No, I mean I'm serious when I say
10 that, you'd have to ask him about his habits and
11 how -- I mean I'm two and a half hours away doing
12 what I'm supposed to be doing.

13 Q. Would you say that the mentality of
14 Michael Garrison is an A plus personality?

15 A. What does that mean?

16 Q. On a scale of A to F, he's tops,
17 aggressive, assertive, commanding, successful?

18 A. I would agree that he is those
19 things. I don't know what A plus means but I
20 would agree with those characteristics that he is
21 a very talented -- I view him as a talented
22 person.

23 Q. And had you seen him exercise his
24 authority as president in such a fashion to get

1 things accomplished?

2 A. In some -- in a one year timeframe, I
3 come from a different neighborhood where, it's
4 kind of like where you work, you can walk down
5 the hall and say do this, and they got to do it,
6 you know, and things happen quicker in private,
7 but I think that he wrestled a lot of issues and
8 problems and was doing a very respectable job of
9 working his way through them and he's
10 accomplished a lot in the first year.

11 Q. Did Pastilong ever tell you that he
12 didn't have to do what Garrison wanted because he
13 was friends with the Governor?

14 A. No.

15 Q. Did you ever assume that?

16 A. I knew he was friends with the
17 Governor, but I -- no, I never assumed that. I
18 assumed the chain of command at West Virginia
19 University is the Board of Governors, president
20 and athletic director. That doesn't mean Eddie
21 didn't push back.

22 Q. What about Eddie firing Mike Parsons;
23 did you ever suggest that to him?

24 A. I did.

1 Q. And his reaction was?

2 A. He disagreed with me.

3 Q. And did he tell you why?

4 A. He told me that Mike was
5 misunderstood, that he was a very effective
6 number two guy and he was well regarded here and
7 there and everywhere else. I mean he and I just
8 had a major disagreement on that point.

9 Q. You and Eddie?

10 A. Yes, sir. And he's the athletic
11 director and I'm not.

12 Q. Okay.

13 Let's take a short break.

14 VIDEOGRAPHER: The time is
15 5:50 p.m., we are going off the record.

16 * * *

17 (Short break taken)

18 * * *

19 VIDEOGRAPHER: the time is
20 6:07 p.m., we are back on the record.

21 BY MR. ROBON:

22 Q. Did you know that Mike Garrison was a
23 lobbyist, a registered lobbyist?

24 A. Yes.

1 Q. Did he ever lobby for any of your
2 clients?

3 A. No, not that I know of.

4 Q. We talked about damages and you
5 talked about the \$4 million and you gave me a
6 number of instances where you thought the
7 university might suffer damages with regard to
8 media, merchandise, marketing, ticket sales; is
9 there any other category, any other damages that
10 you can think of right now that the university
11 might suffer by Rodriguez's leaving?

12 A. No.

13 MR. ROBON: No further
14 questions.

15 MR. FLAHERTY: We have no
16 questions.

17 VIDEOGRAPHER: The time is
18 6:08. This concludes tape three and this
19 deposition.

20 MR. FLAHERTY: You'll read
21 and sign.

22 * * *

23 (Whereupon, this deposition
24 was concluded at 6:08 p.m.)

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(Whereupon signature was
not waived by the witness).

* * *

1 THE STATE OF :
 WEST VIRGINIA :
 2 : SS: C E R T I F I C A T E
 COUNTY OF OHIO :

3
 4 I, DEBRA A. VOLK, Court Reporter and
 Notary Public within and for the State of West
 5 Virginia duly commissioned and qualified, do
 hereby certify that the within-named witness,
 STEVE FARMER, was by me first duly sworn to
 6 testify to the truth, the whole truth and nothing
 but the truth in the cause aforesaid; and the
 7 testimony then given by the witness was by me
 reduced to stenotype in the presence of the
 8 witness; afterwards reduced to Computer Aided
 Transcription under my direction and control;
 9 that the foregoing is a true and correct
 transcription of the testimony given by said
 10 witness.

11
 12 I do further certify that this
 testimony was taken at the time and place in the
 13 foregoing caption specified, and was completed
 without adjournment.

14
 15 I do further certify that I am not a
 relative, counsel or attorney of either party, or
 16 otherwise interested in the event of this action.

17 IN WITNESS THEREOF, I have hereunto set
 my hand and affixed my seal of office at
 18 Wheeling, West Virginia, on the _____ day of
 _____, 2008.

19
 20
 21 _____
 DEBRA A. VOLK, Court Reporter
 22 Notary Public within and for
 the State of West Virginia

23
 24 My commission expires July 25, 2015
 (DAV)