

UNITED STATES DEPARTMENT OF LABOR  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND  
HEALTH

Washington, D.C.

Friday, September 12, 2008

1 PARTICIPANTS:

2 Employee Representatives:

3 THOMAS L. KAVICKY  
Chicago Regional Council of Carpenters

4

FRANK L. MIGLIACCIO, JR.  
5 International Association of Bridge, Structural,  
Ornamental & Reinforcing Iron

6

EMMETT M. RUSSELL  
7 International Union of Operating Engineers

8 Employer Representatives:

9 THOMAS R. SHANAHAN  
National Roofing Contractors Association

10

LINWOOD O. SMITH  
11 T.A. Loving Company

12 DANIEL D. ZARLETTI  
Kenny Construction Company

13

State Representatives:

14

KEVIN D. BEAUREGARD  
15 North Carolina Department of Labor

16 STEVEN D. HAWKINS  
Tennessee Occupational Safety and Health

17 Administration

18 Public Representatives:

19 JEWEL ELIZABETH ARIOTO  
Elizabeth Arioto Safety and Health Consulting  
20 Services

21 THOMAS A. BRODERICK  
Construction Safety Council  
22

BETA COURT REPORTING  
[www.betareporting.com](http://www.betareporting.com)  
(202) 464-2400 800-522-2382

1 PARTICIPANTS (CONT'D):

2 Federal Representative:

3 MATT GILLEN

CDC-NIOSH, Office of the Director

4

Designated Federal Official:

5

MICHAEL M.X. BUCHET

6 Office of Construction Services

United States Department of Labor

7

Committee Contact:

8

VENETTA CHATMON

9 Office of Communications

United States Department of Labor

10

Committee Solicitor Contact:

11

SARAH SHORTALL

12 Office of the Solicitor

United States Department of Labor

13

Other Participants:

14

MOHAMMAD AYUB

15 Director Office of Engineering Services

16 SCOTT JIN

17 TRAVIS PARSONS

Director Office of Construction Standards and

18 Guidance

19 DANEZZA QUINTERO

Federal Official

20

SCOTT SCHNEIDER

21 Laborers' Union

22 DAVE ZWOLAK

OSHA

BETA COURT REPORTING

[www.betareporting.com](http://www.betareporting.com)

(202) 464-2400 800-522-2382

1           P R O C E E D I N G S

2   (8:36 a.m.)

3           MR. SMITH: Let's take a seat, if  
4 you would, please. And I guess the first  
5 thing is, we need to call the meeting to  
6 order. And Miss Secretary needs to tell us  
7 whether we've got a quorum or not.

8           MS. SHORTALL: Yes, we do.

9           MR. SMITH: Okay. We do have a  
10 quorum. But we don't have a lot of people.  
11 So, you're pretty important. If anybody  
12 leaves, we've got to stop the meeting. So,  
13 please, you can't go to the bathroom, you  
14 can't go to the restroom, you can't take a  
15 break. We'll all take our breaks together.

16                                   (Laughter)

17           SPEAKER: One second.

18           SPEAKER: Define "together."

19 MR. SMITH: Yeah. If you need to  
20 go real quick, just raise your hand and we'll  
21 adjourn the meeting. That's all I know to  
22 do. So please stay with us. Okay.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1           MR. SHORTALL: As a housekeeping  
2 item, I would to report successful  
3 collaborations, OSHA cooperative programs in  
4 the construction industry received into the  
5 hearing -- excuse me, received into the  
6 record of this meeting as Exhibit 0016 of  
7 OSHA Docket OSHA 2008-0029.

8           MR. SMITH: Thank you. Okay, Tom,  
9 are you ready to do your report?

10          MR. BRODERICK: Actually, Michael  
11 has it and he's making copies as we speak.

12          MR. SMITH: Okay, okay. Okay, the  
13 only other item that we have is -- we get the  
14 right date this year is to talk about the  
15 Hazard Communication Standard, Global (off  
16 mike). You heard the presentation yesterday  
17 and, of course, what they're asking for is a  
18 recommendation from this committee.

19 I've not heard any negative  
20 comments about it in the hall, so to speak,  
21 so I assume most of you support it. But do  
22 you have any comments about it or

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

6

1 apprehensions or questions at this point?

2       The only question right now is, I

3 want to know if you had one.

4       MR. BRODERICK: Well, I guess I

5 sort of verbalized the concern yesterday when

6 we saw the "as it is now side-by-side with

7 "what it will be." And I had a, you know, a

8 little bit of a concern with the -- to bring

9 us into conformance. But it seemed like the

10 statement about carcinogenicity was not as

11 strong as our data sheet format. And it

12 seemed like there were a couple of other

13 hazards that we had associated with it.

14       Do you remember that, Matt?

15       MR. GILLEN: I think you were using

16 the example of can you (off mike)?

17       MR. SMITH: Right. There were

18 target organs. And I don't think there were

19 target organs mentioned in the --

20 SPEAKER: Yes, yes.

21 MR. SMITH: Well, yeah, there were.

22 What he's saying was, you know, no one says

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 causes cancer or this one says may cause  
2 cancer. And then below it, it says, causes  
3 liver and lung damage.

4 MR. BRODERICK: Okay.

5 MR. SMITH: Rather than may cause  
6 liver and lung damage.

7 MR. BRODERICK: Okay.

8 MR. SMITH: So, it's probably just  
9 as strong. It's just worded differently.

10 MR. BRODERICK: My concern is that,  
11 Michael, that we don't end up with something  
12 that is not as rigorous as what we have in  
13 place right now.

14 Because everybody has gotten  
15 comfortable and used to the system that we  
16 have. And --

17 MR. SMITH: Gosh. I have never  
18 been comfortable and used to it. I'd love to

19 see it standardized. I mean, you know, MSDS  
20 isn't -- labeling comes in all different  
21 flavors right now and I'd love to see some  
22 consistency. Really would.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 Consistency is, I think, the main  
2 thing they're trying to do.

3 MR. BRODERICK: Okay.

4 MR. SMITH: But that's -- Frank.

5 MR. MIGLIACCIO: Frank Migliaccio.

6 I took it to the training department this  
7 morning before I came here and they thought  
8 it was a great idea. I mean, they -- and  
9 they said they don't have any problems with  
10 the training part of it at all, so.

11 MR. SMITH: Yeah. Other comments?

12 Okay. You ready to -- and we'll vote on this  
13 later when everybody gets to the table.

14 We've got -- for some reason, Dan is standing  
15 in the back of the room there.

16 MR. ZARLETTI: I am not feeling  
17 well. I might head out.

18 MR. SMITH: Well, okay. We'll be

19 glad to have you when you decide to join us.

20 MR. ZARLETTI: Thank you.

21 MR. SMITH: Are you ready, Tom?

22 MR. BRODERICK: Yes, sir. The work

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 group on multilingual issues met on September  
2 10th. We did a little better with attendees  
3 this time. We had, I think, two or three on  
4 our first work group meeting back: Kevin  
5 Beauregard representing North Carolina;  
6 Michael Buchet, OSHA staff; Steven Hawkins,  
7 Tennessee OSHA; Vanezza Quintero, federal  
8 official; Scott Schneider with the Laborers'  
9 Union; and Dan Zarletti from Kenny  
10 Construction Company.

11 My -- I will say that we had noted,  
12 I believe, in a previous document that  
13 memorialized what we did last time that we  
14 wanted to have someone come from Steve Witt's  
15 shop to give us an update on what the  
16 National Hispanic OSHA -- OSHA Hispanic Task  
17 Force has been doing.

18 And, you know, some of the things

19 that they have done in the past and some work  
20 products that we might have that would help  
21 our work group. And I then followed up  
22 talking to Steve after the meeting, and he

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 assured me he would. And, for whatever  
2 reason, we were not able to have someone come  
3 down.

4 We had a person go down to that  
5 area and hopefully we will be able to -- and  
6 I will call Steve before our next ACCSH  
7 meeting and remind him.

8 Because I think that since our tax  
9 dollars are funding a very good idea, these  
10 regional administrators get together with  
11 their Hispanic coordinators and bring in  
12 other resources and have a couple of day  
13 meeting and they're doing really good stuff.

14 There are OSHA area offices around the  
15 country that are holding fiestas and so  
16 forth, where there's food involved and  
17 training and that sort of thing.

18 So, I will make an effort to have

19 them for our next meeting.

20 I had a handout that I will -- I

21 have not made copies of, but I will get a

22 copy to attach to this. And it showed that

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 there has been a steady downward trend from  
2 2001 through 2006 in terms of the rate of  
3 Hispanic fatalities. That was one thing that  
4 we had some trouble with is that we had a lot  
5 of raw numbers of how many Latino workers had  
6 been killed in the workplace, but unless you  
7 have the hours worked for a denominator, it's  
8 really hard to tell how well we're doing.

9 Verbalized that at the last  
10 meeting, and a graph was produced. I think  
11 Michael found it somewhere. So, the good  
12 news is that the rate is coming down.

13 And then, we had some discussion  
14 about what's going on in North Carolina.  
15 Kevin talked to us about the workforce and  
16 indicated that there is a rather large  
17 Hispanic workforce and the construction and  
18 agriculture employ many Latino workers.

19 They've had a significant reduction in the  
20 mortality and injury among those populations.  
21 They have their own Hispanic task force that  
22 emulates the federal task force, the national

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 task force. And Carolina OSHA brings  
2 together stakeholders that are interested in  
3 the safety and health of Hispanic workers.

4 They also have two full-time  
5 Hispanic training and outreach staff doing  
6 training sessions and other outreach  
7 opportunities, attended a large and supported  
8 a large annual fiesta. And borrowed 80  
9 percent of the training that they do in  
10 Spanish is delivered to Latino -- it should  
11 be construction workers.

12 North Carolina OSHA has 13 Latino  
13 staff, including compliance officers, and the  
14 2 outreach people that we mentioned earlier.

15 A new mobile training unit has been  
16 custom-designed and built to access workers  
17 at or near many of their places of employment  
18 to provide convenient training. And they've

19 gotten to many of Latino students this way in

20 North Carolina.

21 Vanezza Quintero is a real asset to

22 this work group. She is our designated

BETA COURT REPORTING

[www.betareporting.com](http://www.betareporting.com)

(202) 464-2400 800-522-2382



1 federal official.

2           And she suggested that we start  
3 collecting articles from Spanish newspapers.  
4 I know we have them in Chicago, and she's  
5 pulling them out of newspapers in this  
6 region. And she said that those are very  
7 effective because they -- if it's in the  
8 newspaper, the -- this population that we're  
9 trying to get to sees the information as  
10 being very credible.

11           And she also reported that she was  
12 a guest on a local Latino radio station where  
13 they -- it's kind of a talk radio. And she  
14 had told us about it before she went, and  
15 then as she reported back how it went. And  
16 she said one of the disappointing things is  
17 that of the calls that were made into  
18 question her about OSHA, they were all -- and

19 I think there were like several of them,  
20 three or four -- they were all pretty  
21 negative about OSHA. That OSHA, you know,  
22 it's disruptive and so forth. And she

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 really, you know -- we talked about it and I  
2 think that the negative attitude may have  
3 been reflecting what the employers thought.

4       And Steve Hawkins described some  
5 activities that are going on in Tennessee  
6 with Tennessee OSHA designed to make  
7 construction safer for the Latino workers.  
8 They're using a telephonic translation system  
9 for compliance personnel because it's very  
10 difficult when there's a fatality or trying  
11 to go out in the field and ask workers  
12 questions if you have a language barrier.  
13 And this telephone service allows the  
14 compliance people to dial a phone number for  
15 a translation service and then you have an  
16 online -- with the speaker phone translator  
17 that does real-time translation. So, that  
18 seems to be a pretty good asset.

19           And I believe there are a number of  
20 states that are trying to adopt this. Kevin  
21 Beauregard indicated North Carolina is  
22 looking at the technology right now.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400   800-522-2382

1           And, Steve, you know, kind of the  
2 -- towards the end of the meeting, brought up  
3 a really good question for all of us. It  
4 was, with the burgeoning Hispanic population,  
5 it's not going to be too long before we're  
6 going to be having companies that not only  
7 have Latino workers that are speaking  
8 Spanish, but they are going to be working in  
9 a place of employment that's owned by a  
10 Latino owner who speaks only Spanish. So,  
11 then the dynamics really start to change when  
12 you really don't have anyone within the  
13 company who can help out by translating.

14           Then we really have an education  
15 issue to make sure the owner of the company  
16 really does understand that there is an OSHA  
17 and what their responsibilities are and so  
18 forth.

19           And then the meeting adjourned at  
20 10 a.m. With no further business to conduct.  
21           MR. SMITH: Thank you. Questions  
22 or comments? Do we have a motion that we

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400   800-522-2382

1 accept the report? I have a motion, Frank,  
2 second by Tom.

3 Any more discussion? And you  
4 recommend continuing, right? With this task  
5 force?

6 MR. BRODERICK: Yes.

7 MR. SMITH: Okay. Any action we  
8 need to take today, other than receiving the  
9 report?

10 Mr. BRODERICK: Not that I think --  
11 not that I can think of. I -- again, I just  
12 hope we get some cooperation -- I guess it --  
13 well, one of the things we did find out from  
14 Vanezza -- because she came into the meeting  
15 a little late -- is that the task force  
16 really has not been meeting on a regular  
17 basis. So it could be they really didn't  
18 have anything to report.

19           And, in that case, then maybe we  
20   could be a helpful to help them get back on  
21   track.

22           MR. SMITH: Okay. Yes, sir.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400   800-522-2382



1 Frank.

2 MR. MIGLIACCIO: Frank Migliaccio.

3 Tom, what I'm going to do -- I'm going to

4 call my brother. He's the apprentice

5 coordinator here at the arts school here in

6 Washington, D.C. We have Spanish-speaking

7 instructors. And we also have -- where we

8 have a woman come in two nights a week to

9 teach the Spanish-speaking English classes.

10 But we -- I'd like to get a couple of those

11 opinions, the people that work at the local

12 are Spanish-speaking, bilingual, to come in

13 to your task force. I think they'd be a real

14 asset to him.

15 MR. SMITH: That'd be very good.

16 MR. MIGLIACCIO: I think it'd be

17 really helpful, so.

18 MR. SMITH: All in favor of

19 receiving this report, say aye.

20 SPEAKERS: Aye.

21 MR. SMITH: All opposed, likewise.

22 SPEAKER: Got to make sure I call.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 MR. SMITH: Okay. Let's --

2 MR. SHORTALL: Mr. Chair, at this  
3 point I'd like to mark the multilingual  
4 issues construction worksite group -- work  
5 group report from September 10 as Exhibit  
6 0017 in the previously mentioned docket. And  
7 reserve as Exhibit 0017.1 -- which I believe  
8 is the graph?

9 SPEAKER: Yes.

10 MS. SHORTALL: The graph of  
11 Hispanic construction worker fatalities,  
12 which Mr. Broderick will be giving to me.

13 MR. SMITH: Okay. So done. At  
14 this time, we'll finish the discussion on and  
15 vote on -- or floor will entertain the motion  
16 on global harmonitization.

17 Do we need the standards and data  
18 people in to answer any questions? If you

19 do, they're available and we'll ask them to

20 come into the room.

21 If not, we'll proceed on. It's up

22 to you. Does anybody desire them to come in?

BETA COURT REPORTING

[www.betareporting.com](http://www.betareporting.com)

(202) 464-2400 800-522-2382

1 At this point? Okay. What would be your  
2 pleasure? Frank?

3 MR. MIGLIACCIO: I make a motion to  
4 put this through to Fed OSHA that we agree  
5 with them.

6 MR. SMITH: Okay.

7 MS. SHORTALL: Is that -- should I  
8 take that motion to mean that you're  
9 recommending that ACCSH is recommending to  
10 the agency that they --

11 MR. SMITH: Proceed.

12 MS. SHORTALL: -- proceed with the  
13 rulemaking JHS? Thank you, so much.

14 MR. SMITH: Very eloquently put.

15 MS. SHORTALL: It was with the help  
16 of the chair.

17 MR. SMITH: Sounds right to me. Is  
18 there a second?

19 SPEAKER: Second.

20 MR. SMITH: Okay. We'll have a  
21 motion by Frank and seconded by Thomas.

22 SPEAKER: For a guidance.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 MR. SMITH: Who was it that made  
2 the great motion yesterday?

3 SPEAKER: Bob.

4 MR. SMITH: He's not even here.  
5 Help us with wording.

6 MR. KAVICKY: I wrote that down,  
7 Frank. I had a nice motion written down and  
8 --

9 MR. MIGLIACCIO: Oh, I'm sorry.

10 MR. SMITH: Okay. Any further  
11 discussion? Any further discussion?  
12 Anybody?

13 Okay. All in favor, say aye.

14 SPEAKERS: Aye.

15 MR. SMITH: All opposed, likewise.  
16 Motion carries. Thank you very much.

17 MR. RUSSELL: Mr. Chairman? If I  
18 can, I'd like to give the ROPS work group

19 report for the committee.

20 MR. SMITH: Please do. We already

21 have it entered into the record, so.

22 SPEAKER: Yes.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 MR. SMITH: Okay. And I think,  
2 Tom, according to what I heard Dan say  
3 yesterday, you have another motion you'd like  
4 to make. We're open for general business  
5 right now.

6 MR. BRODERICK: Okay. Actually  
7 Frank is going to make it.

8 MR. SMITH: Frank's going to make  
9 it, okay. I can't keep up with you guys, but  
10 that's fine.

11 MR. MIGLIACCIO: Frank Migliaccio.  
12 Yeah, we'd like the ACCSH Committee to  
13 recommend that the work group named Focused  
14 Inspection be renamed OSHA Enforcement with  
15 the group's charge broadened to include  
16 focused inspection, targeting, emphasis on --  
17 and any and all other matters encompassed  
18 under OSHA's Enforcement.

19 MR. SMITH: Okay, thank you.

20 MR. MIGLIACCIO: That way we feel

21 as thought we'll get maybe more people come

22 in and give us a better idea of what's

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 happening out there.

2 MR. SMITH: Okay.

3 MR. PARSONS: Second.

4 MR. SMITH: You have a motion and a  
5 second by Thomas. Read the motion one more  
6 time.

7 MR. MIGLIACCIO: ACCSH recommend  
8 that the work group named Focused Inspections  
9 be renamed OSHA Enforcement with the group's  
10 charge broadened to include focused  
11 inspections, targeting, emphasis, and any and  
12 all other matters encompassed under OSHA  
13 Enforcement.

14 MR. SMITH: Okay.

15 MR. BRODERICK: I'd like to make a  
16 motion to ACCSH that that be adopted.

17 MR. SMITH: Right. We have that  
18 motion and a second all right.

19 MR. BRODERICK: Okay.

20 MR. SMITH: So we have the motion

21 on the floor and second to go to ACCSH -- I

22 mean, to go to the agency.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1           Somebody yesterday offered to help  
2 with the name. I forget who that was. They  
3 were going to make a suggestion.

4           MR. SMITH: Ms. Arioto is going to  
5 be his proxy.

6           MS. ARIOTO: Liz Arioto. I'm  
7 talking on behalf of Dan Zarletti. He would  
8 like to name the work group Compliance  
9 Enforcement. Is that right?

10          MR. ZARLETTI: Regulatory  
11 Compliance.

12          MS. ARIOTO: Regulatory Compliance.

13          MR. ZARLETTI: I just think the  
14 OSHA Enforcement seems a little harsh.

15          MR. SMITH: Regulatory Compliance  
16 instead of OSHA Enforcement.

17          MR. MIGLIACCIO: Yes.

18          MR. ZARLETTI: (off mike) anything

19 no matter what comes in.

20 MS. ARIOTO: Okay.

21 MR. ZARLETTI: But that's just a

22 suggestion.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 MR. SMITH: Okay. That's a  
2 suggestion. Will the person that made the  
3 motion, which is Frank, and Thomas who  
4 seconded it, consider that name change?

5 MR. MIGLIACCIO: Yes.

6 MR. SMITH: Okay. Then I think we  
7 can do that by -- Sarah's left me. We can do  
8 that by acclimation and just by agreement and  
9 we'll change the motion without a formal  
10 amendment.

11 MR. KAVICKY: Okay. So we're  
12 naming it?

13 MR. SMITH: Regulatory compliance.  
14 Good idea, Dan. Sarah, can we change this  
15 motion without a formal amendment or do we  
16 need a --

17 MS. SHORTALL: No, if the maker of  
18 the motion will agree to the change.

19 MR. SMITH: He already has and the  
20 second has agreed. Okay, we've changed the  
21 name then. So Frank, read the motion one  
22 more time like it's now stated.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 MR. MIGLIACCIO: All right. ACCSH  
2 recommend that the work group named Focused  
3 Inspections be renamed Regulatory Compliance  
4 with the group's charge broadened to include  
5 focused inspections, targeting, emphasis, and  
6 any and all other matters encompassed under  
7 OSHA Enforcement.

8 MR. SMITH: Right. Okay. And that  
9 doesn't mean that they've got to work on all  
10 that at one time, but they can prioritize and  
11 work on it as desired. It gives them that  
12 option. That's the way I interpret the  
13 motion.

14 Yes, sir, Tom?

15 MR. BRODERICK: While we're still  
16 in the writing it down. Sarah?

17 MS. SHORTALL: Yes.

18 MR. BRODERICK: After the word

19 "emphasis," the word "programs" should be

20 added.

21 MS. SHORTALL: Thank you very much.

22 Even without the word "programs" it's an

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 eloquent -- totally eloquent motion. Thank  
2 you.

3 MR. MIGLIACCIO: I didn't do it.

4 (Laughter)

5 MS. SHORTALL: Whoever did it, it's  
6 totally eloquent.

7 MR. MIGLIACCIO: I (off mike)  
8 credit.

9 MS. SHORTALL: Thank you very much.

10 SPEAKER: In case there's anything  
11 wrong with it.

12 MR. SMITH: I think one of the  
13 reasons (off mike) here today.

14 SPEAKER: That's right.

15 MR. SMITH: Any discussion? All in  
16 favor of the motion say aye.

17 SPEAKERS: Aye.

18 MR. SMITH: All opposed? The

19 motion carries.

20 Anyone else have any items they'd

21 like to present?

22 MR. RUSSELL: If I may, I have one

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 more work group --

2 MR. SMITH: Sure, Emmett.

3 MR. RUSSELL: -- which is the (off

4 mike) work group. (off mike) work group.

5 SPEAKER: Emmett, can you pull the

6 microphone closer to you? We're having

7 trouble picking you up.

8 MR. RUSSELL: Emmett Russell. I'd

9 like to present to the committee the

10 Trenching Work Group report.

11 MR. SMITH: Thank you. And I think

12 we read that into the record yesterday.

13 Okay, we're still in the general

14 discussion, general business. Any member

15 wishing to make comments, now's the time to

16 do it. Do we have anyone from the public

17 wishing to speak today?

18 MR. KAVICKY: Mr. Chairman?

19 MR. SMITH: Yes, sir, Tom.

20 MR. KAVICKY: I would like to make

21 the comment and I don't know if it's

22 appropriate at this point in time or not, but

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 I would like to make the recommendation that  
2 we put together a work group on nail gun  
3 issues after the amount of discussion that we  
4 had yesterday with the full body, if that's  
5 to your liking.

6 MR. SMITH: Yes, sir, that seemed  
7 to be an area of agreement and that's an area  
8 of concern from the conversation.

9 MR. GILLEN: I would second that  
10 motion.

11 MR. SMITH: Okay, we have a motion  
12 and a second to go to the chair and also go  
13 to the agency that we create a task force on  
14 nail guns. And as Mike mentioned, I could do  
15 that by just, you know, assigning it and  
16 doing it, but I think a motion would be  
17 proper, too, if --

18 MR. BUCHET: I believe we had two

19 volunteer co-chairs.

20 MR. SMITH: Okay. Who volunteered

21 to be the co-chairs?

22 MR. BUCHET: Liz Arioto and Mr.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 Kavicky.

2 MR. KAVICKY: Liz and myself.

3 MR. SMITH: Liz and Thomas, okay.

4 Super. Let's do that then. We'll write that

5 into effect then and we will now have a task

6 force on nail guns.

7 MR. KAVICKY: Great. Thank you,

8 Mr. Chairman.

9 MR. SMITH: Right. Let's take the

10 vote just as a matter of formality. All in

11 favor say aye.

12 SPEAKERS: Aye.

13 MR. SMITH: All opposed likewise?

14 Thank you very much.

15 MR. BRODERICK: Mr. Chairman?

16 MR. SMITH: Yes, sir.

17 MR. BRODERICK: I'm sorry, I wasn't

18 really paying attention. Was that a motion

19 to create --

20 MR. SMITH: Create a task force on

21 nail guns, yes, sir.

22 MR. BRODERICK: Okay. I have some

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 documents that were provided to me by OSHA  
2 that -- I mean, by NIOSH that may be of  
3 interest to enter into the record as  
4 justification for why we're doing this right  
5 now: Increase in injuries, an article from  
6 the San Francisco Bee, "Nail Gun  
7 Manufacturers Were Warned in 2002 That Their  
8 Safety Efforts Fell Short"; "Nail Gun  
9 Injuries Treated in the Emergency Departments  
10 in the United States, 2001 Through 2005."

11 MR. SMITH: Okay. If you will hand  
12 those to Sarah, we will give them a number  
13 and read them into the record, and also let  
14 Thomas and Liz have those and they'll use  
15 them for the task force at the next meeting.

16 MS. SHORTALL: The good thing about  
17 getting them into the record is within a  
18 couple of days after they've been put into

19 the docket, you can just go on  
20 regulations.gov and pull all of it down for  
21 getting yourself prepared for the work group.  
22 MR. SMITH: Yeah. Pass those up

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 this way, Tom, if you would and we'll --

2 MR. BRODERICK: I'm sorry?

3 MR. SMITH: Pass those up this way

4 and we'll put a number on them and read them

5 into the record.

6 MR. BRODERICK: Okay. I just

7 noticed that in one of these there seems to

8 be a page missing.

9 MR. GILLEN: I'll be happy to

10 provide electronic copies of them.

11 MR. BRODERICK: Do you have them as

12 well?

13 MR. GILLEN: I don't have them with

14 me, but I'll be happy to follow up if there's

15 a page missing.

16 MR. BRODERICK: Okay.

17 MR. GILLEN: Provide it (off mike).

18 SPEAKER: (off mike) e-mail them.

19 MR. GILLEN: Sure.

20 MR. SMITH: Okay. We'll read those

21 into the record right here. Read those in

22 quick if you can.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 MS. SHORTALL: Okay. I've got to  
2 get the numbers. Okay.

3 Mr. Chair, then I'd like to mark an  
4 article entitled, "Nail Gun Makers Warned in  
5 2002 That Their Safety Efforts Fell Short,  
6 Documents Show," as Exhibit 0018; a CDC MMWR  
7 mortality report on nail gun injuries treated  
8 in the emergency departments as Exhibit  
9 0018.1; and an article entitled, "How Much  
10 Time is Safety Worth? A Comparison of  
11 Trigger Configurations of Pneumatic Nail Guns  
12 on Residential Framing," as Exhibit 0018.2.

13 Mr. Gillen, I have a question.  
14 This is from Public Health Reports. Do you  
15 happen to know if that's a copyrighted  
16 journal?

17 MR. GILLEN: I don't know. I'll  
18 check.

19 MS. SHORTALL: All right. Thank

20 you.

21 MR. SMITH: Okay, thank you. At

22 this time we will dispense with comments and

BETA COURT REPORTING

[www.betareporting.com](http://www.betareporting.com)

(202) 464-2400 800-522-2382



1 we will -- we've got one more presentation  
2 this morning. And after that presentation,  
3 we'll have some additional comments from the  
4 Board.

5       Mohammad, come on up. Construction  
6 safety update. I think he's going to give us  
7 an update on the investigation of crane  
8 accidents maybe.

9       MR. AYUB: Yeah. I think I just  
10 want to bring you up to date as to some of  
11 the recent construction failures that we are  
12 investigating. And I think it's been pointed  
13 (off mike) and perhaps three or four of them  
14 pertains to crane failures and the others  
15 pertain to the scaffold failures and (off  
16 mike) failures here.

17       The first one was the March 15,  
18 2008, crane collapse on (off mike) of the

19 51st Street East in Manhattan, New York. We  
20 are going to issue a press release today I  
21 believe which will indicate the findings of  
22 our (off mike) investigations. So unless the

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 press release is done I'm not privy to reveal  
2 to you the findings of the collapse, but it  
3 will be in the newspapers and everything.

4 We had focused here on the use of  
5 the 2-inch wide polyester slings, four of  
6 them, which was used to suspend the collar  
7 around the mast of the crane, the collar it  
8 used to tie the lateral tie beams which are  
9 supported on the building floors at one end  
10 and it is tied to the collar at the other  
11 end. And the purpose of the tie beam is to  
12 provide stability to the crane mast. The  
13 crane was already tied on the third floor and  
14 on the ninth floor. And on the day of the  
15 incident the ties were being placed on the  
16 18th floor.

17 As the very first tie was being  
18 placed into the pocket of the collar, the

19 entire collar dropped freely and it went on  
20 the ninth floor collar. Due to the impact of  
21 the weight of the collar dropping about 75  
22 feet, the collar on the 9th floor, the

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 connection failed with the tie beams. And  
2 now these two collars are now falling freely  
3 on the third floor collar and the third floor  
4 collar remained attached to the building.  
5 And by that time, the mast of the crane,  
6 about 250 feet, became like a freestanding  
7 column -- unstable. It leaned somewhat  
8 towards the north and then it fell on the  
9 south, hitting a building across the street.  
10 At the location where the mast hit the  
11 building it sheared off and then the crane  
12 superstructure, with the counterweight and  
13 with the boom, somersaulted and it fell about  
14 a block away and damaged three or four  
15 buildings. And six fatalities pertained to  
16 the construction employees and one was an  
17 employee who was -- one was a person who was  
18 in an apartment building about a block away.

19           So we focused on the investigation  
20 of the slings. And perhaps in our next  
21 meeting I will talk in detail about our  
22 findings and about the conclusions that we

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400   800-522-2382

1 have reached, which may lead you to recommend  
2 whether or not it is prudent to use polyester  
3 slings to hang such a heavy, rigid body like  
4 a collar.

5 A collar is a very rigid body.

6 It's not flexible. It does not twist. And  
7 these slings are such that they are, you  
8 know, prone to large elongations on the load.

9 And if one sling elongates more than the  
10 others, then there is a constant need to use  
11 come-alongs and to level them. And also, in  
12 case one sling fails, okay, out of the four,  
13 if one sling fails, then the opposite sling  
14 is also unloaded. So now you have only two  
15 slings supporting the entire weight. And we  
16 also had some discussion about the manner in  
17 which the slings were choked, it was, you  
18 know, rigged.

19           So I think the next ACCSH meeting  
20 we will give you some more definitive  
21 conclusions. And perhaps ACCSH may recommend  
22 to issue some directive against using the

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400   800-522-2382



1 polyester slings. Yes?

2 MR. BRODERICK: My understanding is  
3 that New York has taken action and is now  
4 forbidding the use of nylon slings for  
5 rigging in erecting and dismantling and  
6 jumping of tower cranes. Are you familiar  
7 with that?

8 MR. AYUB: We had known that they  
9 are meeting and they are considering it, but  
10 I have not heard that they have already  
11 issued a directive not to use them. That is  
12 not in our (off mike). But if it is, it must  
13 be -- it is in the right direction.

14 This is the picture (off mike) of  
15 that collar. It weighs about 12,000 pounds  
16 and it was suspended from the mast at 4  
17 collars.

18 These are the collars. The very

19 top collar was the collar which was suspended  
20 on the day of the incident, the middle collar  
21 was the one which was on the ninth floor, and  
22 the lowest collar was on the third floor.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1           This has some of the pictures. And  
2 essentially this is how the 2-inch wide  
3 polyester sling fractured. And we had  
4 retained a sling expert, who had examined it  
5 under a microscope and came to the conclusion  
6 that due to the heat generated in the manner  
7 in which it was choked, because it was seated  
8 in a V-shaped notch, and when you pull it, it  
9 created heat there and it failed.

10           We also retained Lehigh University  
11 to do some actual testing of the slings. And  
12 I think I will discuss it more in our next  
13 meeting here.

14           Moving along -- yes?

15           MR. ZWOLAK: Mohammad?

16           MR. AYUB: Yes.

17           MR. ZWOLAK: Please hold on.

18 Clarify for me just a sec, you said it was

19 the heat generated. And is that from the

20 friction of the sling rubbing against?

21 MR. AYUB: Okay. When you tie --

22 MR. ZWOLAK: What do you mean by

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 "heat generated?"

2 MR. AYUB: When you try to squeeze

3 a 2-inch wide sling into a narrow V-shape --

4 MR. ZWOLAK: I understand.

5 MR. AYUB: -- and then you pull it,

6 then that generates heat.

7 MR. ZWOLAK: Okay, it's from the

8 friction.

9 MR. AYUB: Yes.

10 MR. ZWOLAK: It's from the

11 friction, okay.

12 MR. AYUB: Yes, yes.

13 MR. ZWOLAK: Great, thank you.

14 Thank you.

15 MR. AYUB: The next crane we have

16 almost concluded the investigation. Here,

17 too, it was the March 25th crane collapsing,

18 Miami, Florida, that killed two of the

19 construction employees. This happened during  
20 the jumping of the crane. As the building is  
21 going up there is a need to raise the  
22 elevation of the crane. And as new sections

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 were being added, this incident took place.

2       There was a new section that was  
3 raised from the ground up and it was  
4 supported on a trolley beam. The crane  
5 employee decided not to proceed with the jump  
6 anymore. They wanted to go to lunch.

7       And after lunch, they will come  
8 back and then they wanted to proceed.

9       So they didn't want this new  
10 section hanging from the trolley beam. So  
11 they wanted to lower the new section. While  
12 they were trying to lower it, it became windy  
13 and it was kind of swinging in the wind. So  
14 they pulled the trolley beam closer to the  
15 crane mast and then they tried to lower the  
16 new section.

17       While they were lowering it, we  
18 suspect that it hit a pin of the crane mast.

19 Because the new section hit a pin, it became  
20 dislodged from the trolley beam. It became  
21 dislodged so much that it twisted and it came  
22 off the trolley beam and it fell over an

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 older building, which was being used as an  
2 office by the contractor. It was a  
3 one-story, timber, home-type of construction  
4 and that thing fell through the roof and it  
5 killed the two people there.

6 We are almost at the end of our  
7 investigations here, too.

8 MR. BRODERICK: Were the slings  
9 intact then?

10 MR. AYUB: There were no slings  
11 here. It was being suspended by a trolley  
12 beam. And the trolley beam had an A-frame in  
13 which there was a hook and it was attached.  
14 So when it came off the trolley beam it just  
15 tilted. It failed the A-frame off the  
16 trolley beam and it became completely  
17 dislodged. And there was no redundancy in  
18 the system, meaning if this new section comes

19 off the hook, it just drops down. There was

20 no other redundant support for this new

21 section here.

22 We also believe that the crane

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 erector did not really follow the  
2 recommendations of the crane manufacturer in  
3 this case. Yes?

4 MR. BUCHET: So it was the hooks on  
5 the attachments to the trolley beam, there  
6 were no safety latches.

7 MR. AYUB: There were no safety  
8 latches.

9 MR. BUCHET: And it was hooks, not  
10 shackles, so there was nothing -- after it  
11 rolled a certain amount there was nothing to  
12 hold it in place?

13 MR. AYUB: It was -- no, I take it  
14 back. I take it back. It was shackled  
15 actually. It was not on the hook. I'm  
16 sorry, it was not on the hook.

17 It was shackled. But that frame,  
18 it just rolled on the bottom flank of the

19 trolley beam.

20 MR. BUCHET: Did the trolley come

21 off?

22 MR. AYUB: The trolley did not come

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 off, but the A-frame, which was moving and,  
2 you know, rolling on the bottom flank of the  
3 trolley beam, that frame came off. That  
4 frame came off because when that hit the pin,  
5 it only hit the pin on one side. If it had  
6 hit the pin on both sides, it would have been  
7 okay. But since it hit the pin on one side,  
8 it became lopsided. Because it became  
9 lopsided, one end of the A-frame came off the  
10 trolley beam and then it fell off.

11 MR. BUCHET: And this is -- so the  
12 transition from the crane to the trolley beam  
13 had already taken place. The crane was  
14 disconnected.

15 MR. AYUB: That is correct. This  
16 is the same picture. This is the section  
17 which fell onto the house on the right side,  
18 you can see.

19           Again, we go back to New York.  
20   This is the May 30th crane collapse, one  
21   killed. Here there is a turntable at the  
22   top. That turntable on the left side, you

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400   800-522-2382

1 can see, that is the one that is going to

2 allow the rotation of the crane

3 superstructure here.

4 This (off mike) assembly of the

5 crane mast at the very top was not to be --

6 was determined New York crane inspectors

7 about, you know, one year ago that it should

8 not be used because they found certain cracks

9 in the rotation assembly. The contractor

10 fixed it by doing some in-house welding of

11 the ring. And by doing the in-house welding,

12 which we believe was not subjected to any

13 scan or any radiographic test, that weld

14 failed at that location.

15 And right now that ring is in the

16 Fritz lab at Lehigh University and we are

17 trying to have that ring examined

18 ultrasonically so that we can determine

19 whether there was any pre-existing cracks,  
20 whether there was any flaw in the weld, there  
21 was any cold joints there, whether there was  
22 any lack of fusion there. And the culprit at

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 this time seems to be the welding that was  
2 done at that location.

3 MR. RUSSELL: A question.

4 MR. AYUB: Yes.

5 MR. RUSSELL: On the ring, I've  
6 heard stories that the ring may have been an  
7 old ring or may have been a remanufactured  
8 ring. Did you get any indication as to the  
9 age of the actual ring itself?

10 MR. AYUB: Okay. The information  
11 is fairly hard to come by and we have not,  
12 you know, arrived at the bottom line on this  
13 issue as to whether -- as to where it was  
14 obtained from and about the age of the ring.  
15 We are not there yet. We are still obtaining  
16 information. Here are some of the pictures  
17 of the damage that was done here.

18 Little Rock, Arkansas. I think now

19 we are moving away from the cranes. There is  
20 a scaffold which is suspended from a bridge  
21 and the purpose of the scaffold was to let  
22 the employees hang a 30-inch diameter water

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 tube under the bridge. And the manner in  
2 which it was rigged was that from the two --  
3 between the two up-going and down the street  
4 there was a hole there and there they had  
5 suspended a steel plate. And here, if you  
6 can see this here, there was a (off mike)  
7 there which was supporting this entire  
8 scaffold.

9 And if you will go to the next one,  
10 here it is. This entire scaffold, which is  
11 about 43 feet long, was being supported by a  
12 point at this location there. And this is --

13 SPEAKER: There's a joint in the  
14 middle (off mike).

15 MR. AYUB: I think I am going back.  
16 What is happening here?

17 MR. BUCHET: It's not that fast, so  
18 don't punch too many buttons.

19 MR. AYUB: I want to go back there.

20 SPEAKER: (off mike) got to go

21 back.

22 MR. AYUB: Yes, yes. Okay. You

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 can see this mechanism here. This is a  
2 1/4-inch thick plate. In this hole there was  
3 a pin and the pin was supporting the load of  
4 the entire 43-foot long scaffold plus the  
5 weight and the equipment of all the employees  
6 who were working on it.

7 When we did our unistructural  
8 analysis we came to the conclusion that this  
9 plate was too thin. This plate instead of  
10 being a 1/4-inch thick, it should have been  
11 at least 1/2-inch thick here. And our finite  
12 element analysis shows that it just sheared  
13 off here at these two locations here.

14 It doesn't meet the OSHA standards.  
15 It does not meet the 4-to-1 requirements.  
16 And there were a series of violations here.  
17 It was not designed properly. And to support  
18 the entire weight of the scaffold at one

19 location without any other redundancy,  
20 without any other support, is not a good  
21 practice here.  
22 We are going to send this to the

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 lab just to make sure that this fracture  
2 analysis is done correctly. And we want to  
3 make sure that there is some fatigue loading  
4 on this one here. Because as the cars are  
5 moving on the highway, it tends to vibrate.  
6 And the more it will vibrate, the more  
7 tension, compression, tension, compression is  
8 going to be on this here. So we are going to  
9 have it tested in a lab and we will go from  
10 there.

11 MR. GILLEN: Can you comment  
12 whether there are engineer evaluations that  
13 have gone along with that design?

14 MR. AYUB: We could not -- we had  
15 made a request to the contractor for some  
16 engineering computations (off mike)  
17 evaluations and it was not forthcoming.

18 MR. BUCHET: Mohammad, can you stay

19 by the microphone so they can tape all this?

20 MR. AYUB: Yeah. And it was not

21 forthcoming. But it is not really unusable.

22 In many of the instances that we tried to

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 investigate they just bypass engineering and  
2 they just do it by their gut feeling as to  
3 this is how it should be. Yes, sir?

4 MR. RUSSELL: Was that component  
5 manufactured by the scaffold manufacturer or  
6 was that done by the contractor?

7 MR. AYUB: It was done by the  
8 contractor. It was done by the contractor.  
9 Yes?

10 MR. KAVICKY: Just out of  
11 curiosity, Mohammad, what was the thickness  
12 at the bottom radius of that pinhole?

13 MR. AYUB: Here?

14 MR. KAVICKY: Yeah. What was the  
15 dimension from the bottom of the pinhole to  
16 the bottom of the plate?

17 MR. AYUB: I believe it was no more  
18 than three-eighths of an inch.

19 MR. KAVICKY: Three-eighths.

20 MR. AYUB: Yeah.

21 MR. KAVICKY: That's what it looks

22 like, 3/8, a 1/2-inch maybe.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 MR. AYUB: Yes.

2 MR. ZARLETTI: (off mike) do it  
3 all. Mohammad, is there a reason that this  
4 particular scaffold would have required  
5 engineering before erection?

6 MR. AYUB: There was a reason  
7 because this scaffold is 43 feet long, it has  
8 got 5 or 6 employees on it. And the manner  
9 it was being suspended under a dynamic load  
10 of the road and the highway, there was (off  
11 mike) a need for some sound engineering. And  
12 it should not have been designed by the  
13 contractors offhand. It should have gone to  
14 some -- I mean, it would have only cost the  
15 contractor a couple of thousand of dollars to  
16 hire a structural engineer and have them  
17 design it properly. It would have been much  
18 more desirable. But this is not the first

19 time that we have seen it.

20 Yes?

21 MR. ZWOLAK: And Mohammad, this is

22 a temporary structure on the bridge, is that

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 correct?

2 MR. AYUB: That is correct. It is  
3 just to support the scaffold. It's just a  
4 temporary structure. After the water line  
5 will be erected, supported on the underside  
6 of the bridge, it will be removed. Perhaps  
7 they could use it just to maintain the pipes  
8 maybe in the future, but as the pipes are,  
9 you know, erected, it will be removed.

10 MR. ZWOLAK: So a follow-up  
11 question. So this contractor would have --  
12 when he was finished with this job, he would  
13 have taken this structure off this bridge and  
14 then gone on to the next job and used it  
15 someplace else?

16 MR. AYUB: Yeah, yeah, right.

17 MS. ARIOTO: Mohammad, how was this  
18 attached to the bridge?

19 MR. AYUB: Oh, there was a dolly.  
20 There was a dolly. It was like a gantry  
21 crane. There was a dolly on the bridge and  
22 the plate went between the tube, between the

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 up and the down streets. And if you want to  
2 move the scaffold, you just move the dolly.  
3 As you move the dolly, the whole scaffold is  
4 now moving.

5 MR. HAWKINS: I think one of your  
6 slides shows that, how it moves.

7 MR. AYUB: Yes, yes.

8 MR. HAWKINS: Go forward one slide.

9 MR. AYUB: Forward.

10 MR. HAWKINS: No, forward. Right  
11 there.

12 MR. AYUB: Right there.

13 MR. HAWKINS: Doesn't that show the  
14 trolley between the two (off mike)?

15 MR. AYUB: Yes, exactly. Exactly.

16 MR. BUCHET: No, the trolley's on  
17 the roof there.

18 SPEAKER: The trolley's up on top.

19 MR. AYUB: There is a dolly --

20 yeah.

21 MR. BUCHET: (off mike) and it

22 suspends that crane under the bridge.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 MR. HAWKINS: Yeah, right there,  
2 okay.

3 MR. AYUB: Right there. Yeah, on  
4 the very first one you can see that -- how it  
5 operates. Now --

6 MR. ZARLETTI: So this isn't really  
7 a scaffold collapse as much as it is the  
8 suspension of the scaffold that collapsed.

9 MR. AYUB: It's part of the  
10 scaffold. It's part of the scaffold, I mean,  
11 how the scaffold is supported at the top, so  
12 this whole assembly is a part of the  
13 scaffold.

14 MR. ZARLETTI: Yeah, (off mike)  
15 manufacturers at this point.

16 MR. AYUB: It was not by a  
17 manufacturer. It was kind of a homemade  
18 thing.

19 MR. HAWKINS: The whole thing was?

20 MR. AYUB: No, not the platform,

21 not the scaffold, but this entire plate and

22 how it was tied to the dolly and how the hole

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 was made.

2 MR. MIGLIACCIO: Mohammad?

3 MR. AYUB: Yes.

4 MR. MIGLIACCIO: Mohammad, Frank

5 Migliaccio. On this picture here, when Tom

6 Kavicky asked the distance of this point

7 right here, you said it was about

8 three-eighths of an inch.

9 MR. AYUB: Yes.

10 MR. MIGLIACCIO: If you look at

11 this picture here, there's no way that could

12 be three- eighths of an inch.

13 MR. AYUB: No, no, he was asking

14 from the bottom of the hole to the bottom of

15 the plate. Okay.

16 MR. KAVICKY: The bottom radius of

17 the hole --

18 MR. AYUB: Let me go back there.

19 MR. KAVICKY: -- to the bottom of

20 the --

21 MR. AYUB: Here.

22 MR. KAVICKY: -- stop itself (off

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 mike).

2 MR. AYUB: This is what he's

3 asking, exactly.

4 MR. KAVICKY: Okay, go to the next

5 picture.

6 MR. AYUB: Next picture.

7 MR. KAVICKY: Yeah. No, no, the

8 picture before.

9 MR. AYUB: Okay.

10 MR. MIGLIACCIO: You're saying this

11 right here, is from here to here, is

12 three-eighths of an inch?

13 MR. AYUB: Yes, that's what I'm

14 saying.

15 MR. MIGLIACCIO: How big is this

16 thing? If that's three-eighths of an inch,

17 this has got to be smaller than what we're

18 thinking.

19 SPEAKER: I think it's distortion.

20 MR. AYUB: It is just the manner in

21 which this picture was taken.

22 SPEAKER: (off mike)

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 MR. AYUB: Yeah, this is a better  
2 shot here. This is --

3 SPEAKER: (off mike) three-eighths  
4 and (off mike) quarters. That's (off mike).

5 MR. AYUB: Yeah. Is Dr. Jin here?  
6 No, he's not here.

7 MR. MIGLIACCIO: (off mike) maybe  
8 three- quarters, so you're looking (off  
9 mike).

10 MR. AYUB: Yeah, we will call --  
11 yeah, I'm going to call the --

12 SPEAKER: (off mike)

13 MR. MIGLIACCIO: That's what I'm  
14 saying, if you take that as a 1/4-inch stop  
15 --

16 SPEAKER: Right.

17 MR. MIGLIACCIO: -- quarter,  
18 quarter, quarter.

19 SPEAKER: Right, correct, it's (off

20 mike). Think about that.

21 MR. AYUB: We are going to call --

22 MR. ZWOLAK: It just seems pretty

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 thin to be hanging seven guys (off mike).

2 MR. AYUB: Okay. Your -- we are  
3 going to call Dr. Jin here and Dr. Jin is the  
4 one who's doing this investigation and  
5 perhaps he will -- he is going to shed more  
6 lights on it. Yes?

7 MR. ZWOLAK: Mohammad, Dave Zwolak,  
8 another question. Is this the first time  
9 this was used or had this been used for  
10 multiple years already?

11 MR. AYUB: No.

12 MR. ZWOLAK: How old was this  
13 assembly?

14 MR. AYUB: This, I cannot say  
15 exactly how old was this, but it was -- this  
16 was not the first time it was being used on  
17 this bridge. It was used earlier, too. But  
18 perhaps due to the fatigue and due to the

19 reversal of the stresses, it was on the verge  
20 of failure at that location. But then again,  
21 I don't know whether it was used earlier or  
22 not.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1           Okay. I think we will wait for Dr.  
2   Scott Jin and then I think he's going to  
3   elaborate on that. Or maybe there is  
4   something here that I can see. Can we, you  
5   know -- we are going to come back on it here.

6           MR. MIGLIACCIO: Mohammad, do you  
7   know the diameter of the pin on that one  
8   picture?

9           MR. AYUB: The diameter of the pin,  
10   I would rather have Dr. Scott Jin come over  
11   here and he's going to throw more light on  
12   it.

13           Okay, we are going to go back on  
14   that crane collapse again. Houston, Texas,  
15   July 18th of 2008, four killed and seven  
16   injured here. This was the longest, 420 feet  
17   long, boom. It had a boom and a mast, and it  
18   was being assembled only. There was a load

19 test and it passed the load test. And they  
20 were trying to add the counterweight to the  
21 mast boom.

22 The thing is that if you will --

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 let's go to the next picture. Okay. The  
2 boom on the left side is the main boom and  
3 the boom on the right side is the mast boom,  
4 okay? And here they were trying to attach  
5 the auxiliary counterweight to the mast boom.

6 Now, the characteristic of this  
7 boom is such in a clockwise direction the  
8 crane boom can move independent of the mast  
9 boom. But in a counterclockwise direction, I  
10 mean, the crane boom and the mast boom, they  
11 both have to move together.

12 Since they were trying to attach  
13 the counterweight to the mast boom, they  
14 found that the height of this attachment is  
15 too short. So they wanted to lower the mast  
16 boom further on the right side. While they  
17 were doing it, the main crane boom also went  
18 along and it became almost vertical. And

19 when they moved the crane boom further on the  
20 right, then that crane boom became completely  
21 unstable and it fell on the right-hand side.

22 There was a boom stop. There was a

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 crane boom stop and there was a mast boom  
2 stop. There was a crane boom stop and there  
3 was a boom mast stop, and both of these  
4 failed because they were only designed for a  
5 certain load. We are not there yet as to why  
6 they failed and why was there not any kind of  
7 a redundancy in this case here, but it  
8 failed. And we are still gathering  
9 information here and we may have to do some  
10 field tests and some lab work on the failure.

11 MR. BUCHET: Mohammad, Dr. Jin is  
12 here.

13 MR. AYUB: Okay.

14 MR. BUCHET: (off mike) to you.

15 MR. AYUB: Okay. Dr. Jin, come  
16 over here. I would just like to introduce to  
17 you Dr. Jin. His name is Dr. Scott Jin and  
18 he is the lead investigator on that collapse

19 here.

20           There was a question here about the  
21 thickness, and I want you to correct me and  
22 tell us as to where we are on this case here.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400   800-522-2382



1 MR. JIN: Sure.

2 MR. AYUB: Okay. Now, can you come

3 over here and describe as to what you're

4 finding right now?

5 MR. JIN: Okay. This is Scott Jin.

6 And I -- this we call a tom plate. It's the

7 bottom plate of the ballast. That is the one

8 that slides before. And the thickness

9 initially designed as 3/4-inch by a

10 structural engineer. And then because the

11 seam between the inbound and outbound bridges

12 is only one inch for the protection of that

13 existing bridge, they're reduced to

14 1/2-inch, .5-inch.

15 And, of course, when (off mike) we

16 can see the end distance from this hole to

17 the end of the tom plate, it's only one inch.

18 It is only one inch.

19 MR. HAWKINS: He said

20 seven-eighths.

21 MR. JIN: Right, right.

22 SPEAKER: One inch.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 MR. MIGLIACCIO: I don't know if he  
2 said quarter, but he said three-eighths.

3 MR. HAWKINS: No, you said  
4 seven-eighths.

5 MR. MIGLIACCIO: I said  
6 seven-eighths.

7 MR. AYUB: Yeah.

8 SPEAKER: So the plate is a  
9 1/2-inch thick and then that (off mike).

10 MR. AYUB: Yeah, I --

11 MR. BUCHET: I wasn't enough, you  
12 can tell that.

13 MR. MIGLIACCIO: Oh, it's not  
14 enough (off mike).

15 MR. AYUB: Yeah.

16 MR. MIGLIACCIO: What was the  
17 diameter of the pin?

18 MR. JIN: The diameter of the pin

19 is two inches.

20 MR. MIGLIACCIO: Because here the

21 hole (off mike).

22 MR. JIN: The diameter of the hole

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 is two inches. The bolt, the size of the  
2 highest (off mike) bolt of the (off mike) is  
3 1-1/2-inch. So it is a little oversized  
4 hole, yes.

5 MR. AYUB: Okay, I stand corrected.

6 MR. BUCHET: Mohammad, in the lab  
7 have you started to look at the impact load  
8 from the vibration?

9 MR. AYUB: Yeah, we are studying  
10 the vibrations of this. We have computed the  
11 natural frequency of vibration of the bridge  
12 and we would like to see as to what it does  
13 to this plate here. And every time there is  
14 a movement on the car, there is going to be  
15 some adverse impact in it here.

16 MR. JIN: Yeah. Maybe I may add  
17 here because I -- the witness statement from  
18 the foreman of this crew, he survived. He

19 said he can feel the passing by of the truck,  
20 so. And also, by the way, this -- the dolly  
21 upstairs is one side are southbound and the  
22 other side are northbound. This two bridges

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 is independently vibrated, so.

2 MR. MIGLIACCIO: One other  
3 question. Frank Migliaccio. On the -- with  
4 that having a 2-inch diameter hole and the  
5 inch and a half high- strength bolt you have  
6 in here, when it was initially designed did  
7 they have that much play in there, a 1/2-inch  
8 play, or was it a larger connecting piece?

9 MR. JIN: Okay. They were  
10 initially designed for, of course, 1/2-inch  
11 -- (off mike) reduced to 1/2-inch (off mike).  
12 The initial design is a 2-inch sized hole.  
13 However, when they pick up the swivel, they  
14 depend on the capacity of the swivel, that  
15 this 10 tons. So, but capacity of that  
16 swivel, the size of the high-stress (off  
17 mike), is 1-1/2-inch.

18 I call (off mike). They say that

19 for 1-1/2-inch high-stress bolt should be --

20 the oversize should be only (off mike) 16

21 over size.

22 MR. MIGLIACCIO: Thank you.

BETA COURT REPORTING

[www.betareporting.com](http://www.betareporting.com)

(202) 464-2400 800-522-2382



1 MR. AYUB: Yeah. Normally, in the  
2 steel framing, the size of the hole is only  
3 1/16-inch larger than the board. So, for  
4 example, if the Board is a 3//4-inch, then  
5 you have 13/16-inch hole.

6 Okay. Thank you, Dr. Jin.

7 MR. JIN: Sure.

8 MR. AYUB: This was -- it allows  
9 another crane collapsing, Quincy,  
10 Massachusetts. It was an old gantry crane in  
11 (off mike). It was kind of a factory where  
12 there were A frames at every so many feet and  
13 the gantry crane was about 150 feet wide.  
14 And they were trying to disassemble the  
15 gantry crane and the A frame and ship it to  
16 Romania for some upgrading it.

17 While the A frame was being  
18 disconnected and dismantled, the A frame, it

19 just slid on the floor and it killed one of  
20 the construction employees there. The block  
21 that was used to support the A frame, we are  
22 concentrating on that. And we are examining

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 whether or not the block that was used to  
2 prevent it from sliding was anchored properly  
3 on the floor or not. It is still in the very  
4 initial stages of our investigation.

5 MR. MIGLIACCIO: Mohammad?

6 MR. AYUB: Yes.

7 MR. MIGLIACCIO: Frank Migliaccio.

8 This is one of our people here and I've got  
9 pretty good firsthand knowledge on this.

10 MR. AYUB: Okay.

11 MR. MIGLIACCIO: When you're doing  
12 the investigation and you spoke to the people  
13 that worked in the crew, did anybody mention  
14 that they went from one length of dismantling  
15 and doubled the length and that's what caused  
16 the block not to slide?

17 MR. AYUB: Yeah. I do not have all  
18 the information yet. And we are -- as you

19 know, the incident occurred last month, so we  
20 are in our very initial stages of our  
21 investigation. The area offices and  
22 compliance offices are, you know,

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 interviewing people. And even get hold of  
2 all the statements. But we will cover that  
3 (off mike).

4 MR. MIGLIACCIO: Thank you.

5 MR. AYUB: You're welcome. You  
6 see, the Key West, Florida, the new airport  
7 (off mike). And this is the area that failed  
8 here. It is a very interesting case here, if  
9 I can go to the next one.

10 The contractor hired an engineer in  
11 order to design the form work. The -- yeah,  
12 you know, (off mike) designed the form work  
13 to support these very heavy 3 feet-by 3 feet  
14 beams. All these beams are the precast  
15 drafts, which are going in this direction.  
16 And the contractor had asked the structural  
17 engineer to design the form work only to  
18 support these beams. Only to support these

19 beams, not to support the drafts which were  
20 going to span between these two beams. So  
21 the contractor brought the precast drafts and  
22 he supported it on the scaffold, on the frame

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 from here to there, from here to there. And  
2 this whole thing collapsed.

3 So when we went to the site, I  
4 mean, when we went to interview the guy  
5 there, the contractor was saying that, look,  
6 we had the engineer to design the entire form  
7 work. We don't care whether he designs only  
8 the beams or also of the drafts. But to make  
9 a long story short, the ingenious contract  
10 said that he was only supposed to design the  
11 form work for the beams and not for the  
12 drafts here.

13 And you can see here this is what  
14 was designed by the engineer in order to  
15 support the beams here, and its whole ramp  
16 collapsed. And as a result of this  
17 investigation we found there was some other  
18 (off mike) parking garage which had the same

19 problem. He was -- all the drafts were not  
20 supported anywhere. It just went from one  
21 end of the beam to the other end of the beam.  
22 And thanks to the margin of safety and the

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 fact of safety that we have, and because of  
2 the fact that OSHA standard requires that all  
3 the scaffold components be designed with a  
4 margin of 4-to-1, in the other area it did  
5 not fail. In this area, they even exceeded  
6 4-to-1 and, therefore, it collapsed.

7       This is not something new that we  
8 see in all the shorings investigations that  
9 we have done. We always find that unless an  
10 (off mike) is given the whole package that  
11 you designed the form work for, everything,  
12 slab, beams, columns, all of it is an open  
13 area. There's always a loose end which has  
14 not been taken care of. So this is what we  
15 are finding here.

16       We had placed a sign of imminent  
17 danger at this Key West International Airport  
18 parking lot. And the contractor agreed that

19 he will hire an engineer to go over all the  
20 design of the form work, which he had done.  
21 And the work has now started back again.  
22 Now, there is an old pepper mill in

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 Connecticut. And some of the employees  
2 called the OSHA offices and said that there  
3 seems to be an imminent danger of collapse of  
4 this entire structure. It's steel framed.  
5 Because some of the steel members have now  
6 rotten, they have holes in the web, and the  
7 flanges due to corrosive damage are now  
8 reduced in about one-half the original  
9 thickness.

10 So we send an engineer from our  
11 national office here and we came to the  
12 conclusion that despite the fact that there  
13 are obvious corrosive damage of their -- the  
14 frame is not in imminent danger. So we asked  
15 the owner that, look, in order for you to  
16 proceed, you need to have this entire frame  
17 evaluated by a local engineer. Let him write  
18 to you the recommendation, which beams and

- 19 columns and foundations needs to be replaced.
- 20 Follow the recommendations. Send a copy of
- 21 the structural engineer's report to us for
- 22 our review and proceed (off mike). It seems

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 that the owner already had hired an engineer  
2 to do the review two years ago. But because  
3 of the fact that he didn't want to spend that  
4 much money, nothing was done. And I suspect  
5 that nothing may be done even now. But, you  
6 know, we will go back there in about six  
7 months and we will see. But this is one  
8 thing that, you know, that I like to point  
9 out to the chairman that when we go out  
10 there, despite the fact that some of the  
11 employees might complain, that it seems that  
12 there is a, you know, imminent danger of  
13 collapse. If you look deeper into it, you  
14 might find that there's no danger at all. It  
15 (off mike) one of the cases here.

16 This will include -- I think we  
17 gave you about seven investigations of the  
18 major collapses that we are engaged in. Are

19 there then these collapses we are also

20 engaged in some minor area of scaffold

21 collapse.

22 There was a building collapse south

BETA COURT REPORTING

[www.betareporting.com](http://www.betareporting.com)

(202) 464-2400 800-522-2382

1 of Richmond yesterday and I got a call from  
2 them. We are planning to help them out if  
3 they need help, even though it is a state  
4 OSHA plan. But there is a Memorandum of  
5 Understanding between the state plan and the  
6 federal plan, that if they need some  
7 technical help we should be able to provide  
8 that.

9 MR. SMITH: Okay. Thank you very  
10 much for that informative presentation,  
11 Mohammad.

12 MR. AYUB: Thank you so much.

13 MR. MIGLIACCIO: I have a question.

14 MR. SMITH: Yes.

15 MR. MIGLIACCIO: Frank Migliaccio.

16 All the accidents here, except for the one  
17 where you just did the investigation, were  
18 fatalities. I know you also checked --

19 looked into the near fatalities.

20 Is your office or do you know what

21 office is taking care of the accident that

22 occurred out in Houston, Texas, where the

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 beckett failed on a crane?

2 MR. AYUB: I believe that the area  
3 office is itself handling that. The national  
4 office is not handling that. See, I will  
5 just try to explain to you as to how we  
6 become involved.

7 If the area office makes a  
8 determination that this incident needs some  
9 engineering help, it needs some analysis, it  
10 needs from competition, it needs some finite  
11 element analysis. Then they call us and then  
12 we become involved.

13 In all the other incidents which  
14 they believe are fairly straight, they don't  
15 need an in- depth analysis, they know they  
16 don't need engineering assistance. Then we  
17 are not called. So some of those incidents  
18 have such -- the area office takes care of

19 them directly.

20 MR. MIGLIACCIO: So the area office

21 could do a metalology (sic) test on each?

22 MR. AYUB: Yes, yes. And if they

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 want us to write a scope of work for the lab  
2 as to what area they should concentrate on,  
3 then we will write a scope of work for the  
4 lad. And as you know, we have a small office  
5 here and a large number of incidents takes  
6 place. It will not be feasible for us to  
7 help each and every -- provide assistance in  
8 each and every incident. Yeah, I was just  
9 wondering about the beckett. I mean,  
10 becketts don't fail. They don't blow out  
11 like this one did and I was just trying to  
12 find out, you know, if you guys had had  
13 anything to do with that. Thank you.

14 MR. MIGLIACCIO: Okay, thank you.

15 MR. BUCHET: Mr. Ayub, are you  
16 still looking for another engineer?

17 MR. AYUB: We are, very, very  
18 actively. Just to give you a brief

19 background, last month that we had put the  
20 advertisement, we had reviewed the  
21 applications and we were not quite satisfied  
22 with applications that we had received. So

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 we are re-advertising it and we hope that  
2 this time we will have better luck. And we  
3 will have -- as you know, the structural  
4 engineers are in short supply. In some of  
5 the areas, they are being paid \$200 an hour  
6 in New York and in Chicago because of the  
7 increasing nuclear activity. And if the  
8 Congress is going to pass a budget for the  
9 infrastructure of the bridges, railroad  
10 bridges, highway bridges, roads, structural  
11 engineers will be in very short supply.

12 MR. ZWOLAK: And Mohammad, those  
13 announcements occur on USA Jobs.

14 MR. AYUB: Yes.

15 MR. ZWOLAK: Okay?

16 MR. AYUB: Yes.

17 MR. ZWOLAK: And again, a reminder,  
18 shortly we'll be looking for health and

19 safety specialists also on USA Jobs.

20 MR. AYUB: Yeah.

21 MR. BUCHET: Mr. Zarletti's got a

22 good (off mike).

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 MR. AYUB: Well, if the ACCSH can  
2 find a good structural engineer who would  
3 like to move to Washington, D.C., let me  
4 know.

5 MR. SMITH: Thank you very much.

6 MS. SHORTALL: Yes. I would like  
7 to enter into the record the hard (off mike)  
8 presentation on recent construction incidents  
9 under investigation by Mr. Mohammad Ayub as  
10 Exhibit 0019. And I'd also like to enter  
11 into the record a brochure entitled, "NIOSH  
12 Design Adjustable Roof (Safety Rail  
13 Assembly)," that was presented at the  
14 Residential Fall Protection Work Group, as  
15 Exhibit 0003.1.

16 MR. SMITH: Okay, thank you. Do we  
17 have anybody signed up for public comments?  
18 Okay, George and --

19 MR. BUCHET: Two people: Travis

20 Parsons and George (off mike).

21 MR. SMITH: Okay, Travis, why don't

22 you come on up first, if you would? Travis

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 Parsons.

2 MR. PARSONS: All right. Good  
3 morning, everybody. How you doing? We're in  
4 the home stretch here, right?

5 I've actually -- I think it was  
6 brought up yesterday. Unfortunately, I was  
7 not here. I had to go back to the office and  
8 take care of some stuff, but we are in the  
9 process of developing an ANSI standard on  
10 work zone safety. It's ANSI A-1047. Some  
11 people sitting here in the room are on the  
12 committee itself, the subcommittee, and also  
13 on ANSI Standards A-10 Standard-Setting  
14 Board.

15 Just for clarification in case  
16 there's somebody in the room who doesn't  
17 know, everybody know what ANSI is, right?  
18 But A-10 is for construction. As you know,

19 there's a whole lot of different ANSI  
20 standards out there, so that the A-10 group  
21 is specifically for the construction  
22 industry.

BETA COURT REPORTING  
[www.betareporting.com](http://www.betareporting.com)  
(202) 464-2400 800-522-2382

1           And we started developing --  
2   actually in this very room we had ANSI  
3   meetings 2005, and we started with a very  
4   simple outline and it has become a very  
5   complex standard. We've had a lot of input  
6   in the last year I would say and a lot more  
7   people have been getting involved.

8           The biggest thing is, you know,  
9   everybody that works on the roads, the bible  
10  of the roads when it comes to safety is the  
11  MUTCD. The Manual of Uniform Traffic Control  
12  Devices is what that is. And it is very  
13  cumbersome, very large, very hard to get  
14  through. When it comes to OSHA, there's not  
15  a whole lot of regulations in the roadway  
16  sector we feel when it comes to safety.  
17  There's some general recommendations and  
18  that's pretty much it.

19           So we feel A-10 felt that there  
20   need to be a best practices guide out there,  
21   especially with the new SAFETY-LU  
22   requirements from Federal Highway.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400   800-522-2382

1 SAFETY-LU came out about a year  
2 ago, I guess, and there's a lot more  
3 requirements now for supervisors on the jobs  
4 and also train personnel and just safety  
5 stuff in general, positive protection.

6 Internal traffic controls are new. Just so  
7 you're aware, everybody that's been involved  
8 on this from industry, government, labor,  
9 manufacturer, consultants, and associations  
10 are on this subcommittee. And it's been fun  
11 and it's getting funner.(sic)

12 As a timeline, it's going to  
13 probably -- I mean, Scott, my boss, Scott  
14 Snyder, who you all know well, wants it done  
15 yesterday, but it's going to go vote probably  
16 in a week or two. It's going to be submitted  
17 to ANSI for ballot. And once it goes through  
18 that process, anybody on the ANSI committee

19 -- and I don't know. Emmett, do you know how

20 many people are on the ANSI, the actual

21 official ANSI Committee?

22 MR. MIGLIACCIO: About 70.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1           MR. PARSONS: About 70, yeah. So  
2 anybody on that committee can submit comments  
3 after that. And we have to respond to every  
4 single comment good or bad. And then if --  
5 you know, there's a whole consensus setting  
6 process, if it passes it becomes a standard,  
7 and as long as we answer those questions and  
8 at least tell them why we agree or disagree.

9           I'm just basically telling you,  
10 wanted you to be aware of it, a lot of you  
11 are already aware of it. Actually a couple  
12 people in the room wanted me to bring it up.  
13 The biggest contention so far is the grand  
14 old should versus shall.

15           The best thing about ANSI standards  
16 in my personal opinion is they are voluntary.  
17 So I don't like to argue too much over should  
18 and shall, like you have to when you do OSHA

19 regulations, but a lot of people like to  
20 argue about that. So that's been the biggest  
21 problem when it comes to differences, when it  
22 comes down to the standard.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1           It is a best practices helping the  
2 industry. Its goal was to be a best practice  
3 and to kind of, you know, have better  
4 guidance out there for everyone, no matter  
5 where they come from, when it comes to  
6 roadwork.

7           I'd be happy, I don't have it with  
8 me today, but I'd be happy if submit for the  
9 record the scope and an outline. ANSI  
10 standards are copyrighted, so I can't just  
11 give you the whole standard. But I'm sure  
12 OSHA, if needed, can go get it. But OSHA's  
13 on the board themselves, they're on the  
14 committee. So I'd be happy to submit the  
15 scope and outline.

16           And if anybody in this room wants  
17 to get involved in a subcommittee, you're  
18 welcome. Just shoot me an e-mail and people

19 have my contact, I'll be happy to talk to you  
20 afterwards. We are welcoming anybody to get  
21 involved in this process.  
22 And another good thing about ANSI

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 standards is just because it gets voted on  
2 and goes to -- if it passes a year from now  
3 or so, doesn't mean it can't be changed if  
4 something comes up. So the ANSI A-10 meets  
5 twice a year officially, and anything can be  
6 changed in between those time periods, you  
7 know, as long as you get with the  
8 subcommittee chairs and it gets submitted and  
9 voted on again.

10       So basically that's it when it  
11 comes. I just wanted to introduce that to  
12 everybody in the room. And if there's any  
13 questions, I'd be happy to try to answer  
14 them.

15       MR. SMITH: Okay. Thank you very  
16 much, Travis. Any questions? Okay. We  
17 thank you very much for that update.

18       MR. PARSONS: Who do I e-mail the

19 scope and outline to? Mike? Okay. Yes,

20 Frank?

21 MS. SHORTALL: Excuse me, Mr.

22 Parsons? Were you intending by e-mailing the

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 scope and outline to have it entered into the  
2 record of the ACCSH meeting?

3 MR. PARSONS: That is fine, yes.

4 MS. SHORTALL: All right, thank  
5 you.

6 MR. PARSONS: Just -- yeah, since I  
7 talked about it, yeah.

8 MS. SHORTALL: All right. Then I'd  
9 like to mark that exhibit as 0020.

10 MR. SMITH: Okay, thank you very  
11 much. Okay. We're back to general business,  
12 general comments. Any of the people at the  
13 head table, I know Frank had asked me about  
14 bringing something up.

15 George was -- just thought he was  
16 signing in for a meeting, so he's decided not  
17 to speak.

18 MR. MIGLIACCIO: Frank Migliaccio.

19 I just want to try to get something figured  
20 out here. For this committee here we've got  
21 seven people that their terms have expired.  
22 And look at these seven people. I look at

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 them all as valued people of this committee.  
2 And I know that you were always looking for  
3 new people to come into the committee and so  
4 forth and work on the committees. But when  
5 they're chairs and co-chairs of  
6 subcommittees, it's kind of hard to keep  
7 something moving forward.

8 I mean, if you took just OTI, if  
9 Tom and I were to expire at the same time --  
10 which I think we may, I'm not sure -- yeah,  
11 we could expire at the same time and the OTI  
12 Committee could possibly bring in two new  
13 co-chairs. And it just seems like I  
14 understand some people want to take  
15 themselves off the committee and they have to  
16 be replaced, but not knowing when -- like it  
17 says, like, we'll take into -- Mike  
18 Thibodeaux. The term expired 7-3-08, serves

19 till replaced. Not knowing when he's going

20 to be replaced, it makes it kind of hard for

21 the rest of the committee.

22 And I'm just wondering is there a

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 way of -- I know there's -- the federal  
2 government has rules about you have a  
3 two-year commitment. I think it's written  
4 that way in one of the things where everybody  
5 serves two years and so forth like that. But  
6 it just seems like if a person didn't really  
7 want to come off the committee, it seems like  
8 you'd almost want to keep that knowledge. I  
9 mean, you know, if you look at it -- like, if  
10 you look at ironworkers or any trade or any  
11 trade -- I won't say -- or I'll say any  
12 trade, it's the older people out there on the  
13 jobs that have the knowledge from the past  
14 that keep things moving forward. And until  
15 they retire, you'd want to keep that person  
16 there.

17           So I was just wondering is there a  
18 way of -- you know, this two-year expiration

19 thing coming up, is there somehow we can

20 address this?

21 MR. SMITH: Thomas.

22 MR. KAVICKY: Mr. Chairman, I'd

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 like to comment on that, also. Tom Kavicky,  
2 Steve Hawkins, I, and Emmett Gillen were  
3 talking this morning actually about the  
4 progress that this committee has made over  
5 the last year and a half by meeting  
6 regularly, by having co-chairs move the work  
7 group committees along. It seems like we're  
8 doing some real valuable work and it's  
9 actually getting done for a change. And here  
10 we go again.

11 Like Frank says, you know, we're  
12 waiting for people to be replaced or people  
13 coming off the committee. And all of a  
14 sudden, we're going to hit that lull again.  
15 I hope not, but it's almost apparent that  
16 that's what's going to happen. So if there's  
17 anything that can be done, boy, it would be  
18 great.

19 MR. ZWOLAK: Let me just say a  
20 thought here. Dave Zwolak with OSHA. And  
21 Frank, forgive me, I stepped out briefly, so  
22 I didn't hear your full set of comments.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1           But yeah, we agree. And we're  
2 looking forward. In terms of the  
3 replacements, we're looking forward to move  
4 that forward more quickly and get the  
5 replacements in place. We're looking towards  
6 maintaining the meetings on a regular basis.

7           And the next time around, being  
8 more proactive about getting people --  
9 getting replacements identified and the names  
10 cleared and nominated as needed. So we're  
11 attentive to that and we hope to keep the  
12 momentum moving forward as we're going along.

13           Does that address the concern?

14           SPEAKER: No.

15           SPEAKER: I think it might.

16           MS. SHORTALL: May I add one issue  
17 in terms of the process, Mr. Migliaccio and  
18 Mr. Kavicky, that you raise? And that seems

19 to also be the issue of not wanting just  
20 continuity so that the meetings continue, but  
21 continuity in terms of the knowledge base the  
22 committee has.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1           Now, we have made in the last  
2 couple of years, thanks to Mr. Foulke, the  
3 nominations process very transparent. You  
4 see everything that's in the record. As part  
5 of the nominations process, persons can  
6 obtain recommendations, endorsements, et  
7 cetera.

8           And to the extent that one of your  
9 concerns is you hate to see a knowledge base  
10 built up and then be erased, that is  
11 something that the nominations and  
12 endorsements should specifically address to  
13 make sure that particular issue is brought to  
14 the forefront for those decision makers.

15           And to tell you the truth, I don't  
16 recall in the past seeing that particular  
17 argument or statement raised as to why a  
18 particular person is either reapplying, why

19 an organization is putting their names into  
20 nomination, or why any particular additional  
21 persons may be endorsing them. So I would  
22 recommend that you focus on that also in your

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 nominations process. And that will be on the  
2 record as well.

3 MR. MIGLIACCIO: Okay. This is  
4 Frank Migliaccio. I wasn't talking about  
5 nomination or anything like that. I'm  
6 looking at you've got Dale, Robert -- well, I  
7 know Robert, he needs -- he wants to be  
8 replaced. He has other things. He's working  
9 directly for their general president now and  
10 he's pulled away from here a lot.

11 Emmett just started. Emmett's been  
12 -- worked on our ROPS before he was even a  
13 committee member. And just say that if he  
14 was replaced because his termination --  
15 term's expired, sure, he could sit on the  
16 committee, but we lose his face here.

17 You look at Mike Thibodeaux,  
18 another person that's served on here and the

19 committees he chairs.

20 Linwood Smith. Linwood's our

21 chair. I mean, he keeps things moving and so

22 forth.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1           So, Dan Murphy, he's our only  
2 insurance person on here. I mean, I'm not  
3 saying there might not be another insurance  
4 person come forward. We've got Tom  
5 Broderick, you know. Tom, wealth of  
6 knowledge here.

7           And just say if every one of these  
8 people were replaced and Matt's -- his term  
9 -- the term never expires for the federal  
10 person there. But if every one of these  
11 people were replaced before the next meeting,  
12 it just seems like we're losing a wealth of  
13 knowledge to go forward with what we've  
14 worked on so far. And we're just trying to  
15 figure out is there a way of -- if the people  
16 don't want to be replaced or if they're  
17 really working at something good and we all  
18 feel as though they're really adding, you

19 know, a benefit to the committee, is there a  
20 way of getting around that?

21 MR. BUCHET: Let me not answer your  
22 question, but try to give you some sense of

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 what we went through. Way back in the winter  
2 of 2008, the end of the winter of 2007, we  
3 published a Federal Register Notice saying we  
4 were looking for nominations for people to  
5 fill in the spots that were going to expire.  
6 Remember, that was February, so they were  
7 going to expire in July.

8 We also in the Register described  
9 how to apply, how to send in a nomination,  
10 what to send in in the way of materials to  
11 aid the agency in evaluating the individuals.  
12 And if you read it carefully, we also noted  
13 that that was only part of the information  
14 that we might use to select people for the  
15 committee.

16 We received about -- is Joe in  
17 here? -- about 30 nominations this time  
18 around and went through the packets. And as

19 Mr. Foulke expressed, the material is now on  
20 its way to the Secretary. So it's been  
21 vetted inside OSHA and the Secretary's office  
22 is the one that's going to make the final

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 decisions.

2 Part of the process was to look at  
3 people who did not submit any nominations.  
4 Some people submitted "Don't Pick Me" in the  
5 case of Mr. Krul. If there were no  
6 materials submitted or if somebody indicated  
7 they didn't want to be on, I don't believe  
8 they were included in the materials sent to  
9 the Secretary.

10 In the case of people who are  
11 sitting on the committee, who did submit  
12 materials, they are being looked at for  
13 precisely that purpose, Mr. Migliaccio, to  
14 keep the brain trust going.

15 In the regulations governing ACCSH  
16 two- year terms can be removed at any time,  
17 at any point, for any reason at all by the  
18 Secretary. We are allowed to stagger terms

19 so that we end up with some sense of  
20 continuity. It is going to turn out to be  
21 the luck of the draw that one group sitting  
22 in this room has appointments running from

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 last November and another group will have  
2 appointments probably running from this  
3 October, November, or December, however long  
4 it takes the Secretary's office to make the  
5 appointments. We will then have  
6 approximately half the committee rolling over  
7 every other year and half the committee will  
8 keep the continuity going.

9         It's not the best deal. What it  
10 will ask for in the future is if the  
11 committee wants people to stay on here, make  
12 sure we get the material into the  
13 e-regulations.gov website. That's what we  
14 use.

15         That's the electronic portal for  
16 doing these nominations.

17         MR. SMITH: Is there any provision,  
18 Mike, where the committee can make

19 recommendations on sitting members if they  
20 wanted to? Could they get involved in the  
21 process? To my knowledge, we've never been  
22 involved in the process.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 MS. SHORTALL: There is nothing  
2 that prohibits them from expressing their  
3 recommendation on anything to the department  
4 at any time they wish to do so. In addition,  
5 this is a little bit different from our other  
6 committees. Our other committees don't  
7 necessarily have people continue on the  
8 committee after their terms expire, in which  
9 case the often have difficulty meeting.

10 This particular committee, because  
11 it has a special and unique function that  
12 none of the other committees have, which is  
13 to provide recommendations to the department  
14 on proposed rules affecting the construction  
15 industry before the department published  
16 those proposed rules, that's why we have the  
17 provision you continue even after your term  
18 expires so we always maintain the necessary

19 quorum so that you can perform that unique  
20 function, like you did so today. But there  
21 is nothing that prohibits ACCSH from doing  
22 anything.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1           And like I said before, there's  
2 nothing that prevents any of you from -- in  
3 your nominations or the organization that  
4 nominates you, to specifically say of you or  
5 other people who are on the committee, we  
6 want to have that brain trust continue, so  
7 please reappoint people who are interested in  
8 being reappointed.

9           MR. SMITH: Dan?

10          MR. ZARLETTI: Mr. Chair, I would  
11 like to ask if it's possible that anybody  
12 that's currently on the committee could be  
13 part of the vetting process for the people  
14 being nominated to the committee. Because of  
15 our networking, let's say, nationwide, there  
16 could be one -- there could be a list of the  
17 30 people that are being considered. All is  
18 set out and if it was shared with us, there

19 could be a red flag in there that we know  
20 something about, you don't, and that could be  
21 part of the process. And if not, then it's  
22 just a matter of another e-mail that you

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 delete when you don't need it.

2 MS. SHORTALL: Well, since all of

3 -- well, since the nominations have come in

4 are now part of a public record, to the

5 extent that any person feels that there is a

6 potential red herring, they certainly have

7 the right to contact the department in any

8 capacity and at any level to express, you

9 know, their concerns or express their opinion

10 on that issue. That is one of the values --

11 MR. ZARLETTI: I'm just not sure

12 (off mike).

13 MS. SHORTALL: That's one of the

14 values of the open and transparent

15 nominations process. As to the issue of

16 vetting, that is an internal policy decision.

17 You know, ACCSH can certainly recommend to

18 the department, that to the extent possible,

19 if ACCSH could be useful in the vetting  
20 process to do so. But that does remain a  
21 function exclusive to the department.

22 MR. SMITH: Okay. Tom and then

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 Frank.

2 MR. SHANAHAN: Tom Shanahan. Just

3 a little bit narrower point that I thought

4 (off mike) was making originally, and I

5 appreciate the larger conversation. But

6 like, for example, on the OTI work group, he

7 and I are co-chairs and our terms expire at

8 the same time. So there's the narrower issue

9 of that, if we both leave then there's nobody

10 with any institutional knowledge on that

11 committee.

12 And so my thought is is that maybe

13 what we can do is do our best to stagger

14 co-chairs, you know, since you've got an

15 older one with a newer one. And that way,

16 you know, if our terms are different, I would

17 carry over a year or he would, you know,

18 whatever. And I don't know if you can make

- 19 it as a part of the process, but if we could
- 20 just try to remember that, I think that would
- 21 at least try to bridge what I thought
- 22 originally you were asking.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 MR. SMITH: You know, and they say  
2 it's up to me. I've been a lame duck for the  
3 last two meetings, but it's up to me. You  
4 know, I'm limited as to where I'm at on this  
5 thing.

6 MR. BUCHET: The agency does not  
7 assign the co-chairs. The chair assigns the  
8 co-chairs.

9 MR. MIGLIACCIO: But a lot of time  
10 even though he assigns them, most of us  
11 volunteer for him where we have a particular  
12 interest or a particular knowledge of  
13 something is why -- that's how we get picked.

14 MR. BUCHET: We suggest that they  
15 be evenhanded. So you have labor, you have  
16 management.

17 I you have public, you have  
18 management. If you have (off mike) --

19           SPEAKER: You don't have two

20 co-chairs from the same (off mike).

21           MR. BUCHET: You don't have two

22 co-chairs from the same interest group.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400   800-522-2382

1 MR. MIGLIACCIO: Tom Kavicky and I  
2 couldn't chair the OTI group because we both  
3 come from labor.

4 MR. SMITH: Right.

5 MR. MIGLIACCIO: The other thing I  
6 was -- this is Frank Migliaccio again. The  
7 other thing I was talking about is, like,  
8 labor -- or employee reps, we have basically  
9 a little bit more benefit than I think the  
10 other organizations do because the labor reps  
11 come from the building trades. And the  
12 building trades, they know when things are  
13 coming down, so they're recommending off the  
14 Safety and Health Committee. Whereas, like,  
15 the employers, I don't think -- they don't  
16 have, like, a group, you know, pool, that  
17 they have one person saying, you know, okay,  
18 I want Dan and I want Elizabeth and I want

19 this one. And the states, I'm not sure even  
20 half the states -- do all the states get  
21 together, Steve and Kevin? Do all the  
22 states, 50 states, get together?

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1           MR. BUCHET: Let me tack on a  
2 little bit. In the case of the states, the  
3 agency goes to OSHBA and asks the  
4 organization of the state plan states to  
5 nominate numbers from within their membership  
6 to sit on ACCSH. In the case of Matt's  
7 position, we go to CDC and say send us a  
8 name. Traditionally they go to somebody in  
9 NIOSH and pick, and I guess the last year  
10 it's been the construction coordinator from  
11 NIOSH has come here.

12           In the case of the employer reps,  
13 generally speaking associations look at their  
14 Safety and Health Committee, National Safety  
15 and Health Committees. That doesn't mean it  
16 happens all the time, but it does happen.

17           MR. MIGLIACCIO: But you have a lot  
18 of us (off mike) employer associations (off

19 mike).

20 MR. BUCHET: Well, that's true.

21 MR. MIGLIACCIO: That's what I'm

22 saying. With Matt, you're going to one

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 organization. With the states, you're going  
2 to one organization. With the employees  
3 you're going to one organization. But when  
4 you're going to the employers, you could get  
5 most of your 30 people could come from there  
6 and then you're going to be picking and  
7 you're going to have a little bit harder time  
8 to pick, I would think.

9 MR. SMITH: This committee has  
10 started back and working and functioning, and  
11 we all, I think, are pleased where it is  
12 right now from last year, you know, a little  
13 over a year. We went one year we didn't  
14 meet, as most of you know. The second year  
15 of this term, they -- you know, thanks to  
16 Noah and Mike, we have accomplished a lot.  
17 All these pools are well-taken.

18 But when you look at it from a

19 standpoint of someone like me or Dan Murphy,  
20 who, you know, probably is not going to  
21 reappointed, then what you end up with is  
22 trying to plan a meeting and come to a

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 meeting that nobody could tell me for sure  
2 whether I'd even be here or not two weeks  
3 ago, you know. And that's hard to do. You  
4 know, most of us have all kinds of  
5 obligations and our schedules are full, our  
6 plates are full. It's really a little bit  
7 unfair to ask people to do things. And  
8 obviously we do the best we can, but, you  
9 know -- and when I said lame duck a while  
10 ago, all I simply meant was you can't get but  
11 so excited about being -- you know, trying to  
12 plan in between meetings when you probably --  
13 you don't know whether you're going to be  
14 there or not.

15 I mean, nobody could tell me for  
16 sure whether I'd even be here or not. I  
17 never got a -- and I asked several times. I  
18 asked several times because, you know -- but

19 I didn't, you know -- the only answer I got  
20 was, well, you're the chairman right now and  
21 you can do what you want to do, you know.  
22 And though I may not be at the meeting --

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 MR. BUCHET: What amazes me is all  
2 these construction folks sitting around the  
3 table going I don't know how to handle this  
4 last-minute decision- making. Is it raining  
5 on my job today or is -- where's the steel?  
6 Where's the concrete?

7 MR. SMITH: I don't think --

8 SPEAKER: Linwood, I support your  
9 (off mike).

10 MR. BUCHET: We do, but we  
11 understand and the committee understands that  
12 there are decision- making processes that are  
13 way outside the control of the people sitting  
14 around the table. And we do sympathize with  
15 you and we try to make it work as best  
16 possible.

17 MR. MIGLIACCIO: Then maybe the  
18 people that make those decisions should put

19 their face in front of this committee

20 sometime, so we could bring -- ask them the

21 same questions we've asked today.

22 MR. BUCHET: You asked Mr. Foulke

BETA COURT REPORTING

[www.betareporting.com](http://www.betareporting.com)

(202) 464-2400 800-522-2382

1 and he said it's on the way to the Secretary,  
2 and that's a packet with his recommendations.

3 MR. MIGLIACCIO: So he makes the  
4 decisions.

5 MR. BUCHET: Going to the  
6 Secretary.

7 MR. SMITH: Yes, sir?

8 MR. MIGLIACCIO: Then maybe she  
9 should come.

10 SPEAKER: There you go.

11 MR. SMITH: Kevin Beauregard has  
12 the floor.

13 MR. BEAUREGARD: I just wanted to  
14 kind of add on to this conversation. I've  
15 worked, I don't know, since probably '99/2000  
16 with this committee and I think the committee  
17 has done a lot of work. I had been in the  
18 positions that you all have been in where I

19 was the chair and in the next meeting nobody

20 that was on the committee was left on the

21 committee.

22 And all of a sudden, I was the

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 committee. And you have to bring everybody  
2 else up to speed on it.

3 Well, one thing that I would ask,  
4 and you may already do this, I just don't  
5 know, is to put together separate notebooks  
6 or folders that contain all the committee  
7 work, so when there is a new member that  
8 comes on the committee, they have something  
9 they can look at instead of kind of sitting  
10 there. Because the way I did it was I just  
11 kind of sat through a couple of committee  
12 meetings until I felt comfortable enough to  
13 know what was already discussed because I  
14 didn't want to be the one to bring something  
15 up and they say, yeah, we talked about that  
16 two years ago.

17 Some of these committees have the  
18 tendency to go on for quite a while. I

19 remember when Jim Ahearn was on the committee  
20 and we worked on the telecommunication tower  
21 standard. And that went on for years. And  
22 there were some other committees that went

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 on, and people came and people went. And I  
2 just think for continuity's sake, I do hear  
3 what everybody's saying and I agree with  
4 that, you want to keep the knowledge base  
5 that's here because, let's face it, it takes  
6 a little while to figure out how things run  
7 within the system. And then by that time,  
8 it's time to start over again.

9 MR. SMITH: Yeah, I think it -- and  
10 I don't know, you know, how you can change  
11 this, but it may be a good thought in the  
12 future to consider, looking at it, seeing if  
13 you can -- and I guess you re-charter every  
14 seven years anyway. Maybe a two- year term  
15 is not long enough, you know, for members to  
16 be appointed to begin with. I mean, it  
17 creates a lot of burden on the old farts  
18 having to go through the process every two

19 years.

20 MR. BUCHET: The Federal Advisory

21 Committee Act says two years. So you're

22 going to --

BETA COURT REPORTING

[www.betareporting.com](http://www.betareporting.com)

(202) 464-2400 800-522-2382

1 MR. SMITH: Yeah. I mean, that's  
2 not changeable.

3 MR. BUCHET: Well, you can get  
4 Congress and the President to change it.

5 MR. SMITH: Well, forget that.  
6 Yes, sir, Tom?

7 MR. BUCHET: The charter goes every  
8 two years and that we can't change either.

9 MS. SHORTALL: Well, the charter is  
10 every two years, but this is a statutorily  
11 created committee, which means it (off mike)  
12 indefinitely.

13 We renew the charter every two  
14 years to satisfy Government Services  
15 Administration requirements to re-charter.  
16 But it does not affect the life, the actual  
17 life, of this committee.

18 MR. SMITH: See, and part of the

19 problem, two years ago, the first year of  
20 this new term that the seven of us are going  
21 off, we were told we couldn't meet until we  
22 were appointed. And then this year, of

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 course, we've got the situation where you can  
2 meet indefinitely until somebody else is  
3 appointed. This is probably a better option  
4 as far as safety and health goes for, you  
5 know, helping protect workers. Neither  
6 option is a great option, but this is a  
7 better option than not having meetings, which  
8 we went through two years ago. Tom?

9 MR. BRODERICK: Well, I guess one  
10 of the things, too, is that there's nothing  
11 graceful about this whole process, that  
12 you're kind of, as been stated before, left  
13 in the dark until the thing -- the  
14 announcement happens in the Federal Register  
15 and you find out who's been re-upped. And I  
16 know that this is probably impossible, but it  
17 would really be neat if the outgoing members  
18 could attend the meeting that the incoming

19 members are starting at. Do you follow that?

20 So that if we have four people or

21 five people or six people that are rotating

22 off, allow them to come to the first meeting

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 of their replacements, not only to meet them  
2 and maybe share some, you know, words of  
3 wisdom about what they have done, the  
4 outgoing members have done, and some ideas,  
5 but I think it would also give the agency an  
6 opportunity to maybe give the people who are  
7 being rotated off a certificate, a thank you.  
8 And, you know, maybe we get some tables  
9 upstairs and all have lunch together. And  
10 just, you know, I don't want to make it too  
11 corny, but in corporate America, I mean, that  
12 sort of thing is done.

13 MR. SMITH: Yeah, well, here you've  
14 got -- of course you've got expenses  
15 involved, you know.

16 MR. BRODERICK: That's true.

17 MR. SMITH: Budgets and restraints  
18 and so on and so forth. But it's a good

19 thought. Good thought. Like I say, we will  
20 leave here today and we've already got -- is  
21 the meeting still the first week in December,  
22 Matt? As of right now, the meeting is

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 scheduled for the first week in December and  
2 we'll need to start planning another meeting.  
3 And, you know, we think, and I guess our best  
4 guess is that basically new members will be  
5 appointed before the next member meeting, but  
6 --

7 MR. BUCHET: I'm sure Mr. Foulke is  
8 hoping that will happen.

9 MR. SMITH: We're hoping that will  
10 happen, but -- so, you know, the folks going  
11 off need to help how they can up until the  
12 time that the new people are appointed. They  
13 may not be at the next meeting. Yes, sir?

14 MR. ZWOLAK: A comment. Perhaps in  
15 some ways the situation is what it is. There  
16 are certain constraints that we operate or  
17 certainly requirements that we operate is  
18 probably a better word. Some thoughts here.

19 I heard some good ideas around the table, one  
20 of which is a continuity book, okay, would be  
21 a good idea. Maybe this is something that we  
22 -- that in December, with the new committee

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 recognizing that we're meeting now on a  
2 regular basis, that the work groups are  
3 meeting on a regular basis. The continuity  
4 book, the one issue.

5 Another one I liked and, Frank, you  
6 brought it up, was in the work groups,  
7 alternate terms for the co-chairs. Or Tom?  
8 Tom, sorry, Tom Shanahan. Alternate terms is  
9 a great idea. Some of the outside  
10 organizations I deal with have a kind of  
11 concept they use is kind of a president and a  
12 president-elect, that the president-elect is  
13 kind of the person that's going to step into  
14 the slot two or three years down the road, so  
15 they're getting familiar.

16 So perhaps there are things that we  
17 can do to maintain the continuity. The other  
18 thing, with presumably a transition coming up

19 in December, yes, funding is an issue that  
20 perhaps we can't fund having the old members  
21 come to the next meeting. But perhaps what  
22 we can do is arrange a conference call where

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 the former members, we talk over some key  
2 issues, get folks on the telephone and at  
3 least exchange the ideas that way. Again,  
4 not an ideal solution, not a perfect  
5 solution, but at least some means of  
6 transferring that corporate knowledge.

7 MR. SMITH: Okay. That's probably  
8 a good summation right there of what we were  
9 talking about.

10 MR. MIGLIACCIO: Frank Migliaccio.  
11 Eight years, (off mike) eight years ago when  
12 I started, I probably would never have even  
13 brought this up because I wouldn't have had  
14 my voice yet. I would've been still a little  
15 afraid of you, but I'm not.

16 MR. SMITH: Good. Thank you.  
17 (Laughter) Thank you very much. Any other  
18 items to claim our attention?

19 MR. ZWOLAK: One final thing. It  
20 came to my attention that my staff that  
21 assists so ably with this has never been  
22 formally introduced to the committee. So let

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 me first off begin with Danezza.

2 Danezza Quintero works on a number  
3 of our work groups. Danezza's a staff member  
4 and will continue working with us as we look  
5 forward in the future.

6 Joe Hajdowicz is also a very active  
7 member. And, boy, I tried to get a hold of  
8 Joe this morning, but he zipped off on a  
9 couple of other tasks. You've seen Joe  
10 around.

11 John Franklin, you'll be seeing  
12 John more next time around.

13 So -- and of course, Mike Buchet.  
14 And I want to give Danezza a moment just to  
15 say a word or two and Mike. Mike almost  
16 needs no introduction. He's really been the  
17 wizard behind the curtain for this committee,  
18 really keeping things moving along.

19           And so I want to formally introduce

20   Mike if it hasn't already been done so.(sic)

21           MR. BUCHET: Thank you.

22           MR. ZWOLAK: But give each --

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400   800-522-2382

1 Danezza a moment or two to say a word and  
2 then Mike, also, please.

3 MS. QUINTERO: I know most of you  
4 for the last five or six years. To formally  
5 introduce myself, I'm Danezza Quintero. I  
6 work for the Office of Construction Service.  
7 I'm a civil engineer, have worked in the past  
8 for the private sector as a project manager  
9 for residential constructions; also as a  
10 designer. In addition to that I work as a  
11 civil engineer for the Forest Service in a  
12 couple of -- in the Caribbean National  
13 Service and in the Tallahassee Forest  
14 Service.

15 After that, in Tallahassee,  
16 basically from there I moved as a safety  
17 engineer to the Ft. Lauderdale area office.  
18 And I worked there for quite a few years.

19 And then from there, here I am.

20 So I'm the person a little bit

21 behind the scene for some of the things that

22 you see out there, like quick cards, fact

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 sheets, a lot of publications in English and  
2 Spanish, technical expert, and I represent  
3 the Office of Construction Service and a lot  
4 of alliance partnerships, VPP Audits and  
5 things like that. And if anything I can help  
6 you, just give me a call. Thank you.

7 MR. SMITH: Thank you very much.  
8 It's always nice to see your pretty smile  
9 around. Michael?

10 MR. BUCHET: Oh, geez. Thanks. I  
11 suppose you all know I'm a lawyer. Some of  
12 you probably know that I'm a carpenter. I've  
13 got 30 years in the union. A lot of you  
14 probably don't know that I used to carry an  
15 explosives use permit card. I started taking  
16 shotgun shells apart and making bombs out of  
17 them when I was a kid.

18 When I graduated out of high school

19 I went to work for Bear Creek Mining Company  
20 out of Spokane, Washington. My job was a  
21 geological field assistant, which meant I  
22 surveyed and staked claims and dug discovery

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 pits. But if you've ever dug a discovery  
2 pit, it's a lot of work. It's a lot easier  
3 to dig a little hole, pack a little  
4 fertilizer, a couple of sticks of dynamite,  
5 measure that fuse, break it off, print it.  
6 And I did a lot of work with explosives  
7 before I joined the Marine Corps.

8       Then I started playing with the  
9 stuff and they said, well, here's a card  
10 that'll help you estimate how to do that.  
11 And you look at the card and you go three  
12 times what that says is how you make it go  
13 bang better. So I've done some destructive  
14 construction work.

15       I also, after a little stint in  
16 Vietnam, I became a commercial diver, so I've  
17 done underwater commercial demolition for the  
18 Corps of Engineers and the Coast Guard and a

19 little demolition outside of that. And got  
20 invited by some treasure hunters to blow a  
21 propeller off a German submarine in the Long  
22 Island Sound, which I refused to do. I think

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 that's a monument.

2 Other than that, I have built some  
3 houses. I have worked on some light  
4 commercial work. I helped retrofit buildings  
5 in Los Angeles County. When I was going to  
6 law school, I went at night. I worked as a  
7 carpenter during the day. Seismic  
8 retrofitting, we called it. That's where you  
9 drill holes in them and put steel rods  
10 through the building to hold the brick  
11 together when it starts to shake.

12 Worked in the basement of the USC  
13 Medical Center. Interesting building, sits  
14 on Teflon pads.

15 Well, I also tied rebar. We steal  
16 everybody's work. Poured some pans. Did a  
17 lot of mats. You know, we helped the rod  
18 busters. They needed all the help they could

19 get. Did the same thing at the USC Medical

20 Center and said this is really starting to

21 hurt my body.

22 I got out of law school and guess

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 what. Desert Storm. Every law firm I ever  
2 thought of going to work for said you're a  
3 Marine Reservist now, aren't you? I said  
4 yeah. And they said, well, come see us when  
5 you get back.

6 The brotherhood hired me to be  
7 their work comp coordinator for the country.  
8 I also took on responsibility for their  
9 asbestos litigation program, so I got to work  
10 with CPWR and Bob Jorjane and some of that.  
11 And ended up with Joe Durst in the Health and  
12 Safety Fund teaching the people that you now  
13 know as those instructors. Bracco was one of  
14 the people we brought on board and taught.  
15 Went all over the country doing haz-waste,  
16 asbestos, lead abatement, all that sort of  
17 training. Policy on the policy side, EPA  
18 comments on the comments side.

19           And as organizations go, there was  
20 a political change of heart at the  
21 brotherhood. And since I came in with the  
22 last group, when the new group came in, I

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400   800-522-2382

1 went to the National Safety Council and sat  
2 on this committee. And then finally come to  
3 OSHA where I can exercise some of all that  
4 practical experience and some of my legal  
5 training.

6       And I'm more than willing to help  
7 and firmly believe we have to send people  
8 home safe every day. And I want to see  
9 workers in the building trades work  
10 successfully at the trade beyond 35. Because  
11 I think we're seeing an incredible cutoff  
12 from all sorts of injuries. We won't mention  
13 the word, but there used to be a  
14 Musculoskeletal Disorders Work Group here.  
15 You remember. We were on the committee  
16 together, which is a place where I think we  
17 can probably expend some effort and keep  
18 people working at the trades. Thank you.

19 MR. SMITH: Thank you, Mike. That  
20 was interesting. I didn't know all that  
21 about you.

22 MR. BUCHET: Oh, I've got more.

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

120

1           (Laughter) I worked in a plating  
2           factory. I can't hold a job.

3           MR. SMITH: We're going to take  
4           just another minute and then we're going to  
5           go. I know Liz has got to catch a plane.

6           Dave Zwolak, tell us a little bit  
7           about yourself. Give us your background.

8           MR. ZWOLAK: In the interest of  
9           getting out of here, let me -- well, 30+  
10          years in industrial hygiene and occupational  
11          safety. U.S. Government, starting with OSHA,  
12          then for the Navy, then for private industry,  
13          back again to OSHA.

14          Assistant area director in  
15          Philadelphia, Philadelphia area office. Saw  
16          a lot of construction. Always -- although I  
17          do industrial hygiene, construction always  
18          held an attraction for me, some of which we

19 saw on the screen today. Heavy equipment,  
20 big machines, potential -- great potentials  
21 to protect workers' safety and health. So  
22 construction has always had an attraction for

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382



1 me.

2 Heavy involvement with inspections.

3 I've done fatalities, both by myself and with

4 my compliance officers. We've done some

5 major construction inspections.

6 So I'm quite pleased to be here to

7 be working with this group. And I reiterate

8 what I said yesterday, is that you have my

9 admiration, all of you, for your

10 professionalism and personal dedication to

11 this effort. Very substantive discussion,

12 very positive discussion. I compliment you

13 for that.

14 One final word. Linwood, you held

15 on for another couple extra months in this

16 duty. You were in a challenging position.

17 And having sat beside you for two days, I

18 thank you for that and thank you for the

19 excellent job that you've done for us. And  
20 we do hope -- this is a small world and we do  
21 hope to be seeing you again as we go forward.  
22 MR. SMITH: Oh, thank you. And

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382

1 like I said, at least they didn't throw  
2 anything at me this time.

3 And with that, to show that I can  
4 make an executive decision, meeting  
5 adjourned.

6 (Whereupon, at 10:43 a.m., the  
7 PROCEEDINGS were adjourned.)

8 \* \* \* \* \*

9

10

11

12

13

14

15

16

17

18

19

20

21

22

BETA COURT REPORTING  
www.betareporting.com  
(202) 464-2400 800-522-2382