investigation (except in those cases where a confidential interview is given). Witnesses are advised of their option to make a confidential statement, which MSHA will protect from public disclosure to the extent allowed by law.

MSHA accepts relevant information from any source, public or confidential. Information obtained by others is considered on its merits but, as the fact finder and investigating authority, MSHA makes its own evaluation of the probative value of such information.

MSHA recognizes that many states have a responsibility for the investigation of mining accidents which occur in their jurisdiction. For this reason, MSHA cooperates extensively with state mining officials in conducting all phases of its accident investigations, including witness interviews.

The MSHA investigator considers the following factors when determining the appropriate procedures for conducting witness interviews:

1. The role of the mine operator, miners' representative, and the state mining agency;

2. Ground rules for the questioning of witnesses by parties other than MSHA;

3. The method for recording the interviews (e.g., tape recorder, stenographic reporter); and

4. The location of the interviews.

The procedures which are used depend upon the circumstances of each accident investigation, and the decisions are made by the investigator at the scene on a case-by-case basis. Witness interviews conducted with the participation of the mine operator, the representative of the miners, where the miners have representation, and the state inspection agency is the normal procedure. This multi-party format results in an investigation where the affected parties are afforded an opportunity to bring their viewpoints to the investigation and enhance the completeness of the report. Under current policy, MSHA may limit the participation and/or attendance of parties either directly or indirectly involved in the investigation during the witness interview phase. Additionally, the attendance of other persons, particularly persons not directly involved in the investigation, may also be restricted.

The MSHA Accident Investigation Manual lists five factors for the MSHA investigator to consider when determining who may be present for a witness interview. These factors are:

1. Public statements or disclosures from participants that may compromise the integrity of the investigation; 2. Behavior during interviews that could interfere with the effectiveness of the interview process;

3. Otherwise creating an atmosphere not conducive to MSHA's carrying out its investigatory responsibilities;

4. Indications of disruptive conduct as evidenced during the physical inspection of the mine; and

5. Requests by the witness for a private interview.

The existence of one or more of these factors may cause the accident investigator to conduct witness interviews in private; that is, with only federal and state mining officials present.

In all instances, however, each witness is afforded the opportunity to be accompanied by a personal representative of his or her choosing.

III. Court Decisions Which Have Affected the Procedure

For many years, MSHA and its predecessor agencies used the multiparty format for conducting accident investigations, including the witness interview process. Typically, the operator and the representative of the miners, if any, joined with MSHA and state mining officials in all aspects of the accident investigation process. The witness statements were voluntary and public hearings were normally not held. (The last public hearings in an accident investigation were held in 1976 and 1977 as part of MSHA's investigations of the Scotia mine explosions and the Tower City, Pennsylvania, inundation.)

In 1984 there was high media interest in the Wilberg Mine accident investigation. Twenty-seven miners lost their lives in a fire. Media representatives sued MSHA, seeking access to the witness interview sessions. In Society of Professional Journalists v. Secretary of Labor, 616 F.Supp. 569 (D.D.C. Utah, 1985), the Court ruled that while the government could conduct private questioning (excluding the media) solely by government officials, MSHA could not selectively permit some members of the public to attend a questioning session while excluding other members of the public, specifically, the media. The Court did not explicitly resolve the issue of exactly who was to be considered a member of the public. MSHA appealed the decision to the Tenth Circuit Court of Appeals. The Circuit Court directed that the judgment be vacated and dismissed the case on the ground that the issue was moot since MSHA's investigation was completed 832 F.2d. 1180 (10th Cir., 1987)

After that case, MSHA instituted an investigative process which provided

that the operator and the miners' representative be excluded as participants in the witness interview phase, except when either party was acting as the personal representative of an individual witness. Later, during an accident investigation at a unionaffiliated mine, the United Mine Workers of America (UMWA) filed a court challenge to change this process. In International Union, UMWA v. Martin, 785 F.Supp. 1025 (D.D.C., 1992), the Federal District Court for the District of Columbia upheld the right of the government to conduct completely private government questioning of witnesses. The practical effect of this legal decision was to create a witness interview procedure which neither the mine operator nor the miners' representative favored. MSHA then decided that it would give the Agency's accident investigators discretion to conduct interviews in a manner most conducive to a complete and accurate accident report. Revised procedures, issued in 1991, included this discretionary authority and are in effect today.

IV. Discussion of the Witness Interview Process

In the past, MSHA has successfully conducted joint interviews with the participation of the mine operator, the representative of the miners, and the state inspection agency, and has found that such procedures often result in the most complete account of an accident. However, MSHA is concerned that in some circumstances the presence of nongovernmental parties in the interviews can discourage witnesses from being candid and forthcoming. Therefore, in some investigations MSHA has conducted "government participants only" interviews, allowing only state enforcement personnel to be present along with MSHA.

In recent years, this issue has been raised in various circumstances. For example, MSHA investigators have had to determine whether a victim's family member and attorney should be permitted to attend witness interview sessions. In other instances, MSHA investigators have found reason to conduct interviews with only MSHA and state officials present, and the operator or the operator's attorney have requested to serve as the personal representative for employee witnesses. In similar situations, attorneys for the operator have requested to observe the witness interview sessions. The issue of "government participants only" interviews has also been raised when attorneys representing equipment manufacturers requested to participate