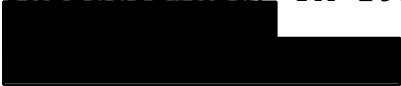


APPEARANCES:

On Behalf of Mr. Nichols:

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P-R-O-C-E-E-D-I-N-G-S

MR. FRIGO: Okay. Good morning. My name is Ryan Frigo, and I am the investigator in charge for NTSB for this accident.

We are here today on September 8th at the National Railroad Passenger Corporation, Amtrak's headquarters in Philadelphia, Pennsylvania, to conduct an interview with Mr. David Nichols, who works for the National Railroad Passenger Corporation, or Amtrak.

This interview is in conjunction with NTSB's investigation of the collision of Amtrak Train 89 with workers and equipment on April 3, 2016 near Chester, Pennsylvania on the Northeast Corridor. The NTSB accident reference number is DCA16FR007.

Before we begin our interview and questions, let's go around the table and introduce ourselves. Please spell your last name and please identify who you are representing and your title. I would remind everybody to speak clearly so we can get an accurate recording.

I'll lead off and then pass to my left. Again, my name is Ryan Frigo. The spelling of my last name is F-R-I-G-O. I am the investigator in charge for the NTSB on this accident.

MS. IMPASTATO: Theresa Impastato. The

1 spelling of my last name is I-M-P-A-S-T-A-T-O. I'm the
2 Deputy Chief Safety Officer for Amtrak.

3 MR. HOEPF: I'm Mike (phonetic) Hoepf. My
4 last name is H-O-E-P-F, and I'm the second officer of
5 the NTSB here observing today.

6 MR. HOLDCROFT: Forrest Holdcroft, H-O-L-D-
7 C-R-O-F-T. I'm the with the NTSB as a summer intern,
8 and I'm just observing today.

9 MR. WALKER: Fran Walker, W-A-L-K-E-R. I'm
10 an FRA Track Safety Inspector.

11 MR. HILL: Don Hill, Safety Task Force with
12 the BLET.

13 MR. FRIGO: Spelling?

14 MR. HILL: Oh, H-I-L-L. Sorry.

15 MR. BEATON: Bob Beaton, B-E-A-T-O-N. I'm
16 with the NTSB.

17 MR. HIPSKIND: Good morning, everybody. My
18 name is Dick (phonetic) Hipskind. The spelling of my
19 last name is H-I-P-S-K-I-N-D, and I am the Track and
20 Engineering Group Chairman for this accident.

21 MR. NICHOLS: Again, I'm David Nichols,
22 currently Chief Transportation Officer for Amtrak. My
23 railroad career started -- N-I-C-H-O-L-S, sorry. I
24 should know that by now.

25 MR. FRIGO: Okay, thank you. Do we have

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1 your permission to record this interview today?

2 MR. NICHOLS: Absolutely, yes.

3 MR. FRIGO: All right. Do you wish to have
4 a representative with you today?

5 MR. NICHOLS: I do.

6 MR. BONVENTRE: My name is John Bonventre,
7 spelling B-O-N-V-E-N-T-R-E. I'm attorney at the law
8 firm of Landman Corsi Ballaine & Ford, and I'm here
9 representing Mr. Nichols.

10 MR. FRIGO: All right. And Mr. Nichols, do
11 you, are you okay if we proceed on a first name basis?

12 MR. NICHOLS: Absolutely.

13 MR. FRIGO: Great. Dave (phonetic), thank
14 you, and if you don't mind, can, we interrupted you
15 before, but if you could --

16 MR. NICHOLS: That's all right.

17 MR. FRIGO: -- you know, give us, give us a
18 little bit of background, you know, about yourself,
19 your experience with the railroad, when you came to
20 Amtrak, and if you could take us from the beginning up
21 until today, that would be great.

22 MR. NICHOLS: You got it. Previous to
23 Amtrak, one summer I worked for the Penn Central on a
24 production tie gang, the summer of 1970. They hired
25 college students and I'm an old man. I'm old. They

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1 hired college students to supplement the gang, about 20
2 of us.

3 We did the grunt work. We're laborers. I
4 operated a machine that lifted up the rail so you could
5 put tie plates under it. Made \$3.27 an hour. I was
6 living. Did that for about four months.

7 Went back to school. It was a summer job.
8 Had a career in college after I got out. Couldn't find
9 a job so I went back to the old fashion way, asked dad
10 to get me one.

11 So in June of 1979, I hired as a block
12 operator for Amtrak on the Philadelphia division. I
13 did that, worked an extra list for seven years in the
14 blocks, then was promoted to train dispatcher. Did
15 that for two years on the extra list, then I went into
16 special duty rules instruction.

17 I was grabbed by the rules department where
18 I taught, originally AMT 1, but then NORAC. I taught
19 the first NORAC class in the mid-Atlantic division. I
20 then, I did that for a year.

21 Then an opportunity came, the Operations
22 Center, which was located in Washington, was moving to
23 Philadelphia, and they had to fill seven management
24 jobs of people who did not come. I got one of them.

25 So for two years, I worked in the Space and

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1 Equipment Control, the car desk for the Northeast
2 Corridor up on the eight floor here.

3 I then, after just shy of two years, applied
4 and got a rules examiner job with the mid-Atlantic
5 division. I had that for about seven or eight months.

6 Then I got promoted to the, God, what was
7 the title? The boss of the rules department in Philly.
8 I got, I got that job when the guy that hired me moved
9 on. Had that for about six months, then I became a,
10 was hired as MTO.

11 Worked MO there more than the MTO. That's
12 Manager of Operations. I was given charge of all the
13 block towers on the mid-Atlantic division, which was
14 basically, gosh, back then about 20 of them. So it was
15 the old Division Operator's job.

16 So I did that for quite a while. I was in
17 charge of all the block operators and the towers. I
18 then sort of morphed into, there was a labor issue. I
19 was asked to become the chief train dispatcher for a
20 short period of time, which I did, then I was hired.

21 I got the assistant transportation
22 superintendent job for train movement, running CTEC
23 here on the eight floor. I did that for about four or
24 five years or job change, job title change as many
25 times due to changes in management and leadership in

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1 this company, which we're about to undergo again. I
2 did that for quite a while.

3 Then in 2004, they created a system, so
4 operating practices group based in Wilmington, I took
5 that job. I decided to go work for the system because
6 I was 24/7/365 most of my career. I was getting tired
7 of that, so I moved to Wilmington.

8 But didn't move, I moved my office to
9 Wilmington, became a Director of Operating Practices.
10 This was a new position where all the rules guys, we
11 called them, the senior analysts throughout the
12 country, plus some special duty people reported to me.
13 I did the recurring rules training and block training
14 nationwide. I did that for three or four or five
15 years.

16 Then I got, my boss went onto something
17 else, I got his job as Senior Director of the same
18 thing. Did that for two or three years.

19 I had another job in between that. Another
20 managers job, which was the head rules guy of the
21 company. They invented that job for me too. Then
22 moved onto Senior Director. Then in the buyout of
23 2011, Steve Strachan, whom I met with you once --

24 MR. FRIGO: Yes.

25 MR. NICHOLS: We met once. I still keep in

1 touch with him. Had lunch with him last week.
2 Retired, and I applied for his job as Chief
3 Transportation Officer, which Mr. Stadtler hired me.
4 That was the summer of 2012, and I've held that
5 position since then. Well under the --

6 MR. FRIGO: A lot of experience then.

7 MR. NICHOLS: Well under the time limit.

8 MR. FRIGO: I think, I think that, you know,
9 hearing your experience, you know, not only as a block
10 operator, but also as a rules examiner, and that you
11 know, sitting in as a, as a chief dispatcher and, you
12 know, again, with operating practices, I think we've
13 got the perfect individual sitting in the seat that, to
14 help us understand some of, some of our questions that
15 we have here today.

16 So you know, again, thank you for being
17 here, and I think your experience will lend itself to
18 some thoughtful conversation this morning.

19 So if we can, if we can just begin with, you
20 know, explain to us, with your experience, and again,
21 you know, just having, you know, been all over the
22 railroad, especially on the operations side, how can we
23 understand how operations and maintenance work
24 together?

25 MR. NICHOLS: Well, they're really part of

1 the same team. Operating is mechanical,
2 transportation, and the engineering department, they're
3 all three separate branches of operations.

4 To me, transportation and, is the center of
5 the circle to me because we run trains, people on the
6 trains, that's our business. Everybody else is a
7 support group. What I do now is a support group.

8 I don't run the field operations, but my
9 folks train all the engineers, they train all the
10 assistant conductors, train all the block operators,
11 and train dispatchers.

12 We set the standards on the 240, 242 stuff,
13 the curriculum. We work with Mr. Hill's group for our
14 engineer training crew program. We've got a very close
15 relationship with them.

16 We're working with the SMART TD to do the
17 same thing, to write, or model and, Don, after your
18 Appendix K, we're in the process of doing that. So we
19 have the actual union folks buying in and helping us
20 design the program.

21 So that's mostly what I do. I also got the
22 host railroad group, the people that negotiate
23 contracts and all that sort of thing. I didn't know
24 what to do with them at the re-org and I got them. So,
25 lucky me.

1 MR. FRIGO: So is it, is it fair to say that
2 it's challenging though to strike that balance between
3 maintaining infrastructure and the movement, you know,
4 as you said, the primary function?

5 MR. NICHOLS: Yes.

6 MR. FRIGO: The movement of trains?

7 MR. NICHOLS: Oh, absolutely. I used to do,
8 one of my things I did was I was assistant, and I did
9 the track tracking such for the division. So it was a
10 big bargaining session.

11 You know, we need this much time, and if you
12 give the wrong combination of track set and you shut
13 the railroad down at night, so yes, you had to be
14 careful when you do what you do.

15 But it was a negotiating process with the
16 engine, the guy that did it for engineering, which
17 would, whatever his position was. But we would bargain
18 each day and the work has to be done. I know that.

19 The trains got to, the trains got to run and
20 they're not going to run if the track's not fixed. So
21 the combination of just making sure that the timing's
22 right when they come out.

23 If you have 24 hour outages like the big
24 machines, the TLM, you have the cutters, all that kind
25 of stuff. That's a whole different ball game.

1 You have to take that into account when you
2 do the local stuff, when somebody wants to come out and
3 change something else with this, do some spot surfacing
4 or something like that.

5 Then you also have to keep track of the
6 speed restrictions. We used to have a standard, three
7 northbound, three southbound was the max, then we
8 started losing trains.

9 So yes, it is, it's a, it's a big dance,
10 negotiating to get the work done while you're still
11 running a lot of trains. That's why most track work's
12 done at night, obviously.

13 MR. FRIGO: Dave, can you just elaborate a
14 little bit more on the, on the process for obtaining
15 track usage, and also you mentioned the speed
16 restrictions, the, that, is it a, that's a maximum,
17 three northbound, three southbound, or --

18 MR. NICHOLS: I don't, I can't tell you
19 right what it is anymore, but that's what it was when
20 I, when I did it.

21 MR. FRIGO: Okay.

22 MR. NICHOLS: You just have to make sure.
23 You might have some long, these are temporary
24 restrictions, we call them. The surfacing guy who goes
25 to put a 60 on for 24 hours, 10 trains, whatever it is.

1 Then it goes away. Then the next night, you start all
2 over again.

3 Unless you have a track defect that's going
4 to take a little while longer. So you've got to
5 calculate that whole thing.

6 So you do the bargaining. That's done
7 during the daytime or the afternoon, then it gets
8 printed up, the track usage. The engineering guys
9 print it up. They give it to an assistant chief.

10 This is how it worked in Philadelphia and
11 Wilmington. I'm sure it worked the same way in New
12 York and Boston. Each dispatcher gets a track usage
13 knowing that somebody's going to come out and ask for
14 that track, and that it's been authorized to give it to
15 them.

16 MR. FRIGO: So who in the, who in the
17 transportation department would, is responsible for
18 being the negotiator of that usage?

19 MR. NICHOLS: It's usually the assistant
20 superintendent that runs the movement office.

21 MR. FRIGO: Okay.

22 MR. NICHOLS: For just his, that division.

23 MR. FRIGO: Okay. And just to get a better
24 understanding of the process that takes place, is there
25 a weekly meeting, or is it a --

1 MR. NICHOLS: They used to do, I don't know
2 if they still do it, again, it's been a long time since
3 I did it. We had a weekly track usage for the big
4 things you knew were coming up.

5 Basically, most of the time, that went in
6 the garbage can as soon as you started the daily, so,
7 because maybe they don't get out one night, so it's
8 behind a day or something like that.

9 There's all kinds of it. Or it's raining or
10 snowing or something and nobody goes out. You just
11 can't do it. Or you got late trains because you had
12 some screw up and the train dispatcher can't get the
13 track up or he's not going to be able to run trains.
14 So the daily was the thing.

15 MR. FRIGO: And to, and to get on the daily
16 sheet, you would, would you have to be on the weekly
17 plan, or --

18 MR. NICHOLS: No, no, no. Not necessarily.
19 Not necessarily. If something comes up, you get a
20 complaint about a rough ride, the track guy goes out,
21 yes, we need to do some surfacing here, that might be
22 something that just came up during the day. So they'll
23 put that in to fix it that night.

24 MR. FRIGO: Okay. So it's almost a, it
25 sounds to me like there was almost a two-tiered

1 approach. One being the, maybe a longer term outage
2 that was needed, or something that required heavier
3 machinery versus the, you know, getting hits on a, you
4 know, accelerometer and needing to, you know,
5 troubleshoot and then --

6 MR. NICHOLS: Right.

7 MR. FRIGO: You take them in and immediately
8 relay.

9 MR. NICHOLS: You've got to improvise.
10 There's also, at the beginning of the year, I'm sure
11 they still, in fact, I know they do. Those, the
12 engineering department, okay, here's our big stuff. We
13 need the TLM to be here, or here, or here, or here.

14 They figure out what goes where, when, and
15 with the transportation guys. That's sort of done at a
16 higher level by the bigger guys, then that sort of
17 rolls downhill as the year goes on.

18 And you always adjust it. But you want to
19 know what the big production guys are doing, because
20 that's going to, that's going to limit how you can
21 operate during the day.

22 MR. FRIGO: And we spoke with John Pielli,
23 who gave us great information on the production gangs
24 and the progress that's been made. And he also spoke
25 about some of the challenges in progressing the work,

1 and still meeting the needs of the operation. Is that
2 something, maybe from your perspective, that you could,
3 you could touch on? You know --

4 MR. NICHOLS: Again, you need to get the
5 work done. Some of the projects, you don't like to do
6 them because you might be shutting down a track or
7 creating a block this long or a single track and, but
8 there are places, the way the railroad's configured,
9 you have to do that.

10 Like down south, you get around Bush and
11 Edgewood and those places, you got two tracks. The way
12 the railroad's configured, you just take the hit.

13 What they do now, which I don't, they didn't
14 do back then, is they'll adjust the schedules for the
15 trains. So if you know you have so many outages,
16 they'll just lengthen the freaking schedule so you
17 don't have a late train, which is great.

18 We never did that. We were not good enough
19 to do that before. We don't even have the paper
20 timetable anymore because it changes so constantly,
21 which is, which is a good thing.

22 It's hard to keep up with the schedule
23 sometimes if you're trying to figure out when the
24 train's going, but that helped facilitate, also gives
25 the track guys more time, more leeway, because we don't

1 lose a train, that it's become, because it's tardy.

2 MR. FRIGO: That's interesting. No, that's,
3 you know, I'm especially interested in what you said,
4 how they're, you know, you don't, you don't print the
5 paper timetable anymore because of the --

6 MR. NICHOLS: Yes. The man that does system
7 timetable, they just quit printing it because it,
8 couple weeks, it's useless. I mean, just wasting
9 money.

10 MR. FRIGO: I guess that's the realities of
11 --

12 MR. NICHOLS: Yes.

13 MR. FRIGO: -- modern day --

14 MR. NICHOLS: That's fairly recent. I never
15 knew of them doing it. It just, it just happened.

16 MR. FRIGO: You know, so again, going back
17 to that, to that juggling act, it, you know, between
18 maintaining the railroad and operations, it, what kind
19 of pressure does that put on a dispatcher?

20 MR. NICHOLS: I, when I dispatched, and most
21 guys, once you get used to it and you're not new
22 anymore, you got on a piece of paper saying this track
23 goes out at this time and it should come back on
24 service this time.

25 You're covered. You know, unless you do

1 something stupid like give the wrong track out.

2 You're, there's really no pressure at all.

3 Somebody might, you might start getting
4 antsy, the guy's not clearing up, the guy's not
5 clearing up. But still, if the guy doesn't, it's not
6 his problem. The track guy's going to have to explain
7 it.

8 So he's covered as long as he's doing
9 everything properly. There's no pressure other than
10 protecting the guys with blocking and all that. That's
11 where the pressure is, and once you've done that,
12 you're good to go.

13 But as far as the track going out and what
14 it means to the operation of the trains on-time
15 performance, that's been agreed upon previously by the
16 transportation guys and the, and the engineering guys.
17 That's, you've got to fix the railroad. That's how you
18 do it.

19 MR. FRIGO: So it's almost a, should I think
20 of it as the, as the transportation guys and the
21 engineering guys, they set the plan, and then the
22 dispatcher essentially works the plan?

23 MR. NICHOLS: Correct. And the local
24 foreman, they, they're on the other end. They got the
25 plan too, so they come out, okay, I'm supposed to take

1 3 track at 11:00 after train 67 or some train. There
2 he goes. I'll call the train dispatcher, 67's by, want
3 to take 3 up, blah, blah, blah, whatever it is. And
4 then they do their part. So they're just working the
5 other end from the plan.

6 MR. FRIGO: And just, I want to just switch
7 the questions just up a little bit, but still sticking
8 with this, you know, the experience of the dispatcher
9 and the role of the dispatcher, and also going back to
10 your experience, you know, in OP and, you know, as a
11 rules examiner and whatnot.

12 Yes, how do we know that the dispatcher's
13 doing what the dispatcher needs to do? Is there a
14 testing program? Is there a, is there a check and
15 balance that exists?

16 MR. NICHOLS: The supervisors, the MTOs are
17 charged with, when I first came around, we had a chief
18 train dispatcher, who was a union guy by the way, and
19 he was management, but he was from the union,
20 appointed. He was a management person when he came
21 from the ranks of the union.

22 And you had a division operator who went out
23 to the towers, and you had assistants, you didn't have
24 anybody else. That was it.

25 Over time, we have shifts, that's probably

1 hard to believe now if you came in the railroad now.
2 But you've got a management guy on duty 24 hours a day.
3 His job is to keep watch on what's going on out there
4 through efficiency testing, listening to the radio, and
5 all that kind of stuff, making sure they're doing what
6 they're supposed to be doing.

7 MR. FRIGO: And how does, how does the, how
8 does the efficiency test program work for dispatchers?

9 MR. NICHOLS: We have the big book. There's
10 a whole section. You've probably seen it. The test
11 program, which is our 217.9 program. There's a section
12 for train dispatchers, different functions they permit.

13 Not necessarily rules. We changed it over
14 many years ago, so it's jobs and things that you do
15 that may cover many rules. And they're charged with
16 doing so many a month.

17 We have system levels, but practically all
18 the divisions have a higher number they want done of
19 certain types of, you know, I'm sure there's a mandate.
20 There was when I was around, to listen, we store all
21 the voice tapes for months. I think they store them
22 forever now. It used to be a month.

23 They're charged with listening through these
24 things, getting the train sheets out or block sheets,
25 whatever they are, and making sure people are blocking

1 when they say they were blocking, because it's all
2 recorded by the computer now.

3 So that's their job. Listening to the
4 radio, make sure it matches up with the, what's going
5 on. They had a violation in New York the other night
6 and the MTO took it, so --

7 MR. FRIGO: So you mentioned, you mentioned
8 the blocking, the BDA, the blocking device application,
9 as one of those items that would be tested.

10 MR. NICHOLS: Absolutely, yes.

11 MR. FRIGO: Is the issuance and foul time
12 another item that --

13 MR. NICHOLS: Absolutely.

14 MR. FRIGO: Can you elaborate more on what
15 those tests might include, or how --

16 MR. NICHOLS: Well, the big thing is
17 listening to the conversation, make sure that everybody
18 is saying everything right, then the clue is, you block
19 up first before you give the foul. Naturally, that's
20 the way it's done. You make sure that happened that
21 way.

22 You don't have to write it down, but back in
23 the old days you had to write it down in red. That's
24 all, everything is recorded by the computer now.

25 You just have to figure out how to read the

1 program for the guy watching it, and plus you can't
2 fudge it. It's there. It's there. You can't move it.

3 Then the opposite is when the guy says, he
4 clears up first and everything's off the track, then
5 you take the blocks down after you understand
6 everything's clear.

7 That's the same with the track out of
8 service, if somebody's going to take a track out by a
9 Form D, do the work. That's usually when we know we're
10 going to be doing the heavy duty work, they've got to
11 clear up first, give the speed restriction if there's
12 going to be one.

13 Train dispatcher will put that up first or
14 protect it or keep a stop signal up, then after all
15 that's done, he takes the train, the blocking devices
16 off.

17 MR. FRIGO: Is there any, is there any test
18 or any part of that test that looks at whether or not a
19 supplemental shunt device was applied?

20 MR. NICHOLS: For the train dispatchers, I
21 don't believe so. That's for the engineering
22 department.

23 MR. FRIGO: Okay.

24 MR. NICHOLS: It's not really a train
25 dispatcher function.

1 MR. FRIGO: Okay. And I think we're going
2 to, we're going to come back to that as we progress on,
3 but that's all that I have. Theresa?

4 MS. IMPASTATO: No thanks.

5 MR. WALKER: Fran Walker. I've got a
6 question regarding special instruction rule 716S2
7 regarding use of personal cell phones to communicate
8 for mandatory directives. How long has that rule been
9 in effect? Do you have any idea?

10 MR. NICHOLS: That, probably six, seven,
11 eight years, I'm pretty sure. When, it might be a
12 little longer than that. I can't remember.

13 MR. WALKER: Okay. Is there an efficiency
14 test where there's actions to ensure they're complying
15 with that rule about accepting conversations or using
16 phones?

17 MR. NICHOLS: Personal cell phones?

18 MR. WALKER: Yes.

19 MR. NICHOLS: Yes. I don't know if we have
20 a specific number for it, but if there, we got a guy,
21 we've had guys taken out of service for using their
22 cell phones. I know that.

23 MR. WALKER: Is that track tracking or
24 dispatchers were accepting calls? When you say --

25 MR. NICHOLS: On their personal cell phone

1 or their work line?

2 MR. WALKER: You say you had people taken
3 out of service for --

4 MR. NICHOLS: Using their personal cell
5 phones while they are working. Yes.

6 MR. WALKER: Okay. So --

7 MR. NICHOLS: No operating person can use a
8 personal cell phone while they're working.

9 MR. WALKER: Okay. All right.

10 MR. NICHOLS: They can't.

11 MR. WALKER: Have operating people ever been
12 disciplined for accepting a cell phone call from
13 somebody?

14 MR. NICHOLS: Well, I don't know. First
15 you'd have to know that somebody's calling you on a
16 cell phone. I'm not quite sure how you would do that.

17 MR. WALKER: Well, the phone lines are
18 recorded. You're saying that you've had dispatchers
19 that are monitored by, I guess you'd say people or --

20 MR. NICHOLS: Well, the people in my
21 experience didn't ordinarily say, I'm calling you up on
22 my personal cell phone. They call, they dial, they
23 call you and you'd get a phone call. Could be his
24 company cell phone, it could be his phone at home.

25 MR. WALKER: Doesn't the rule say, and it

1 doesn't have to be their personal cell phone, so it's
2 usually a phone. Correct?

3 MR. NICHOLS: No, we issue company cell
4 phones for business purposes which can be used under
5 the right circumstances.

6 MR. WALKER: Well --

7 MR. NICHOLS: Personal cell phones are
8 forbidden, unless there's an emergency situation.

9 MR. WALKER: Right. All right. So before
10 the accident in Chester, would you say it was common
11 practice to dispatchers and track people, telephones
12 are used to obtain the dispatch orders?

13 MR. NICHOLS: Personal cell phones or --

14 MR. WALKER: No.

15 MR. NICHOLS: -- the company issued?

16 MR. WALKER: No.

17 MR. NICHOLS: It depends where you are. Our
18 radio communication unfortunately, certain areas of
19 this railroad are not very good. And after it becomes
20 frustrating, you can't talk on the radio anymore, then
21 you, then the cell phones come out from the track guys.
22 They're company issued cell phones.

23 MR. WALKER: Would say since the accident
24 that the compliance with that rule, 716S2, that it has
25 changed?

1 MR. NICHOLS: That you can't use personal
2 cell phones?

3 MR. WALKER: Well, I would say before it was
4 more common that the track guy would maybe use a Amtrak
5 issued phone to get the track --

6 MR. NICHOLS: Okay, the company cell phone
7 you're talking about.

8 MR. WALKER: Company cell phone.

9 MR. NICHOLS: I don't know. I would think
10 it would, but I don't know. I'd have to look at the
11 stats. I think the guys doing the testing would
12 probably have to check that.

13 MR. WALKER: I have no more questions.

14 MR. HILL: Okay, good morning, Dave. How
15 are you?

16 MR. NICHOLS: Don, how are you?

17 MR. HILL: Doing fine. Let's say, it was a
18 couple crossing through, Dave, tagging off of the cell
19 phone conversation that you had with Mr. Walker, is
20 there a difference between a personal call made by a
21 person or a business call on a regular phone?

22 MR. NICHOLS: I'm not, the big difference to
23 me is the personal cell phone. Our instructions are
24 nobody in this company, operating employee, uses a
25 personal cell phone. It's turned off and it's kept out

1 of sight. Not keeping out of site, it's put in your
2 grip. We just changed that.

3 If you get caught with it, you're going to
4 do at least 30 days and we'll probably fire you. Now,
5 if you're telling me, do people make personal calls on
6 their company cell phone? I think I would have to say
7 yes, because it'd be, you know --

8 MR. HILL: Right. And you say the company
9 does have a rule --

10 MR. NICHOLS: People being what they are --

11 MR. HILL: -- which, that speaks to that.

12 MR. NICHOLS: I'm sorry?

13 MR. HILL: The company does have a rule that
14 speaks to that.

15 MR. NICHOLS: Well, yes, it's not so much a
16 cell phone. Well, unless you're doing it while you're
17 doing some safety sensitive function, it's you're doing
18 personal business on company time.

19 It's not necessarily safety oriented. We
20 got OBS people that do that. They get in trouble too
21 because they're wasting company resources.

22 MR. HILL: Okay. On the SSD, let's make
23 sure that I'm clear with this. From the dispatcher's
24 standpoint, when he's looking at his computer screen,
25 if there's anything on the track, wouldn't it show,

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1 wouldn't there be a certain light on the computer
2 screen that would correspond to the track being
3 occupied or the track, what was currently --

4 MR. NICHOLS: The SSD is simply showing,
5 it's mimicking the train, right?

6 MR. HILL: Oh.

7 MR. NICHOLS: It's a short-circuited track.
8 So if there's one out there working properly, it would
9 shunt the track. Yes.

10 MR. HILL: Yes. But an SSD would look like
11 a train as well. Isn't that correct?

12 MR. NICHOLS: Well --

13 MR. HILL: It's the same, it would be the
14 same --

15 MR. NICHOLS: It would be the same light,
16 but a train advances down the road. The SSD is just
17 lit. Just like a regular TOL if you have a broken bond
18 line or something.

19 MR. HILL: Exactly. So that's what I was
20 trying to get from you is that, from the dispatcher's
21 standpoint, if an SSD is out there, he wouldn't know
22 unless someone told him. Is that correct?

23 MR. NICHOLS: Right. It's, they, how it's
24 supposed to work, if you're going to put one up, you're
25 supposed to verify it either by signal, looking at the

1 automatic signals, or if you had the block up, right,
2 or he could tell you, or a train dispatcher, hey, I put
3 this thing up. I got a shunt on this block between
4 automatic 8.4 and 9.4.

5 MR. HILL: Correct. So --

6 MR. NICHOLS: Or something like that.

7 MR. HILL: If we would walk up into CNOC
8 right now and look at it --

9 MR. NICHOLS: CTEC. Don't call them CNOC.
10 Sorry.

11 MR. HILL: If you opted to, trains stop
12 habitually, dispatchers are seeing currently, then you
13 know that it, the track right now, you saw, I mean, you
14 would code it as red for track occupied light.

15 MR. NICHOLS: Correct.

16 MR. HILL: Correct? So if you saw that a
17 track was red right now, you wouldn't know if that was
18 a train or an SSD. Is that correct?

19 MR. NICHOLS: Well, if the system's working
20 properly, it should have a label on it if it's a train
21 that says --

22 MR. HILL: That's right.

23 MR. NICHOLS: -- 2160 or something like
24 that.

25 MR. HILL: Right.

1 MR. NICHOLS: Or also, it would just have
2 some mumbo jumbo number there because the computer has
3 to assign a number to it. But trains are all
4 identified, track cars are, oh, the dispatcher has the
5 ability to put that, input that.

6 MR. HILL: Oh, okay. Thank you. Thank you
7 for clearing that. Thanks, Dave.

8 MR. NICHOLS: You're welcome, Don.

9 MR. BEATON: All done?

10 MR. HILL: I'm done.

11 MR. BEATON: Okay. Good morning, Dave.
12 Good to see you again.

13 MR. NICHOLS: Yes, it's been a while.

14 MR. BEATON: It's been a while. Certainly
15 appreciate your help and cooperation with that Merriam
16 Nevada deal that we --

17 MR. NICHOLS: Yes, I was trying to remember.
18 That's, and I remember Steve (phonetic) and I coming
19 down there and --

20 MR. BEATON: Yes.

21 MR. NICHOLS: Yes. And that's exactly what
22 it was.

23 MR. BEATON: Well, Dave, we're here to talk
24 about Chester, and before I get started on that, let me
25 just get educated a little bit better on your job

1 today. Chief transportation officer. What is the
2 scope of your concern as chief transportation officer?
3 What do you do?

4 MR. NICHOLS: There's a few things. One is
5 education and producing quality locomotive engineers,
6 assistant conductors.

7 MR. BEATON: Okay.

8 MR. NICHOLS: Train dispatchers and block
9 operators. That's one part of it. One is making sure
10 our programs comply with the regulations, 240 and 242,
11 and soon we'll be training dispatchers as well.

12 MR. BEATON: Okay.

13 MR. NICHOLS: A big concern is going to be
14 243, which we're in the midst of now, that's going to
15 be huge. In fact, the engineers program just got
16 accepted --

17 MR. BEATON: Okay.

18 MR. NICHOLS: -- as 243 because it's a, so
19 well done. Then the other part is enforcing standards,
20 making sure the regulations are followed.

21 We do the rules, not in a vacuum of course.
22 All the mandatory directives, like bulletin orders.
23 They come from people that work for me. The
24 timetables, on Amtrak property, track property.

25 MR. BEATON: Yes.

1 MR. NICHOLS: We have limited power of
2 those. We can issue a, we call them general orders
3 that instruct our crews, like our cell phone policy, in
4 off-corridor on an NS railroad is ours and effects our
5 crews. It's probably just as restrictive or more
6 restrictive as the NS, but that's how we enforce it
7 systemwide.

8 Let's see, what else, what else, what else?
9 The test system rolls up to me or to people in my
10 organization make sure that that's going correctly. It
11 needs, when it needs to be adjusted.

12 We just did, we had some problems, we did
13 some adjustments, previous to 89. But it needs to be
14 looked at and updated. So that's a huge thing. You've
15 got to get that stuff from the field too. You can't
16 work in a vacuum.

17 We have a section for T&E basically. T&E
18 rules. You have dispatchers, then you have mechanical
19 and you have engineers.

20 And our big challenge and one of the things
21 we try to do is if we're going to do mechanical tests,
22 update that, we've got to get the mechanical guys
23 involved. Or engineering tests, Theresa's department
24 gets involved or some of the engineering department.

25 MR. BEATON: Okay. So let's just take one

1 of those activities. The training, let's say, for the
2 mechanical guys. You get feedback from the field, you
3 might update it, and then is that delivered to you?

4 MR. NICHOLS: Okay. Let me, for, the only,
5 the only training we give non-transportation people is
6 operating rules.

7 MR. BEATON: Okay.

8 MR. NICHOLS: We give that to everyone.

9 MR. BEATON: Okay.

10 MR. NICHOLS: And test training, we will
11 give to some of their supervisors. Yes.

12 MR. BEATON: Okay.

13 MR. NICHOLS: And they will come and ask us
14 for that.

15 MR. BEATON: Okay.

16 MR. NICHOLS: But no, I didn't mean to, the
17 other training, mechanical, blue flag, all that stuff
18 is done internally by the mechanical department or,
19 actually we're switching over --

20 MR. BEATON: Okay.

21 MR. NICHOLS: EHC was doing it. Same with
22 engineering now, the engineering department.

23 MR. BEATON: Okay.

24 MR. NICHOLS: They're sort of using
25 transportation as a model. We've pretty much done all

1 the training for the operating people except for
2 assistant conductors, which Mr. Boardman instructed us
3 to take over three years ago, and we sort of --

4 MR. BEATON: Yes.

5 MR. NICHOLS: -- beefed up the program, made
6 it a little longer, added a bunch of stuff to it.

7 MR. BEATON: Okay.

8 MR. NICHOLS: So, but rules stuff, we're the
9 people that purvey operating rules.

10 MR. BEATON: Seems to me that we started out
11 with the wrong example. Let me ask the same question
12 about a T&E crew member.

13 MR. NICHOLS: Okay.

14 MR. BEATON: Let's say an engineer. You
15 need to update the training for the, for the engineer.
16 You get feedback from that engineer, comes into your
17 office or your staff. They'll evaluate that feedback
18 and, take me through the process for that. How do you
19 work out the --

20 MR. NICHOLS: Okay. We, we'll get, most of
21 the stuff we'll get are rules questions.

22 MR. BEATON: Okay.

23 MR. NICHOLS: Engineers are not shy, as Don
24 can tell you. They're cheap but they're not shy.

25 (Simultaneous speaking)

1 MR. NICHOLS: But they'll call, they'll call
2 the rules guy. They'll call the local guy or they'll
3 Terry Spratt. They don't know him that well, but Tim
4 Howie (phonetic), who'd had the job before was around
5 40 some years. We'll get a phone call from the local
6 union guy down there.

7 MR. BEATON: Okay.

8 MR. NICHOLS: As far as instruction in the
9 program, we meet with the BLET at least twice a year to
10 go over the program, the testing, every aspect of it.
11 Mark Kenny often comes to them, the General Chair, but
12 he has folks assigned to it. We are in lock step with
13 them. Everything that we do and is changed has been
14 approved by the BLET. Oh, yes, or input from them.

15 MR. BEATON: All right. So there's a joint
16 process of managing labor.

17 MR. NICHOLS: Absolutely. And it's worked,
18 I would like to say that we just had it evaluated by
19 one of your, a formal colleague of the FRA, Ted Bundy
20 (phonetic), and said it's probably the most challenging
21 in the world, certainly in the United States.

22 So that's one of the reasons we were given
23 the assistant conductor's program as well to make it
24 the same way. So --

25 MR. BEATON: Okay.

1 MR. NICHOLS: We've been working on it.
2 Still a few things we've got to do, but --

3 MR. BEATON: So you get some, agreed upon
4 some changes, you revise the material, and then who
5 delivers that revised training?

6 MR. NICHOLS: For the new hire training,
7 it's all done at Wilmington. Every new hire operating
8 employee comes to Wilmington. Every new hire employee
9 that works for Amtrak comes to Wilmington.

10 MR. BEATON: Okay.

11 MR. NICHOLS: It's eight to 10 week course
12 done, I forget, for new hire engineers, depending where
13 you come from. We have the challenge, the whole
14 country, different equipment.

15 Assistant conductors I think we're up to, we
16 wanted to get it up to eight. It was six. We bumped
17 it up to seven.

18 We just built a bunch of training stations
19 around the, I found some money, built switch stands and
20 all that stuff down at the training center. And
21 dispatchers, operators, we do them at Wilmington as
22 well. There's not as many of them. There's just not
23 as big a population.

24 MR. BEATON: You have a manager that has a
25 title of manager of training and development. A young

1 lady. Does she work in your department?

2 MR. NICHOLS: Now all the, all my trainers
3 are going to be called, whether they're out in the
4 field as, in the field office as doing recurring
5 training, or in Wilmington, are called senior, I'm
6 sorry, which I think we're senior analysts. We were
7 technical trainers. What are we, that's what we call
8 them now, Theresa?

9 MR. BEATON: Okay.

10 MR. NICHOLS: And this is fairly recent.
11 That they're all technical trainers.

12 MR. BEATON: And thank you for that, and
13 just so I understand where in the Amtrak organization
14 you sit, who do you report to?

15 MR. NICHOLS: To the vice president, well,
16 until yesterday, two days ago, the vice president of
17 operations, DJ Stadtler. But since Mr. Moreland --

18 MR. BEATON: Two days ago?

19 MR. NICHOLS: Mr. Moreland came in and said,
20 oh, he has too many direct reports than Mr. Stadtler
21 does, so now I report to a Scot Naparstek, he reports
22 to. They just, they snatched a couple, five or six of
23 DJ's direct reports, gave them to Scot.

24 MR. BEATON: Okay.

25 MR. NICHOLS: This is temporary until they

1 figure out what they want to do. We were told
2 effectively, it really has no different chain.

3 MR. BEATON: Okay.

4 MR. NICHOLS: No change. But --

5 MR. BEATON: And Scot, at least today,
6 reports to --

7 MR. NICHOLS: DJ

8 MR. BEATON: DJ. Okay. And who reports to
9 you? How many people do you have?

10 MR. NICHOLS: I have five direct reports. I
11 got an assistant. I got the system general road
12 foreman, system general training master, director of
13 operating practices, and the assistant chief of host
14 railroad affairs --

15 MR. BEATON: Okay.

16 MR. NICHOLS: -- who is sort of a whole
17 different ball game from the rest of them.

18 MR. BEATON: Okay. The, by the host
19 railroads, these are external to Amtrak? These are --

20 (Simultaneous speaking)

21 MR. NICHOLS: Right. One of our challenges
22 is a lot of our trains run on other peoples' railroads,
23 and --

24 MR. BEATON: Okay.

25 MR. NICHOLS: There's all kinds of

1 contractual stuff. It's --

2 MR. BEATON: Okay.

3 MR. NICHOLS: It's a whole different world.
4 Whole different world.

5 MR. BEATON: On the, on the day of the
6 Chester accident, you were in this position as chief
7 transportation officer?

8 MR. NICHOLS: Correct.

9 MR. BEATON: And were you notified of the
10 accident?

11 MR. NICHOLS: Yes, I got on the pager. I
12 saw it was bad. I started calling to see how bad it
13 was. Then I, my, I, after I had enough information
14 where I could at least talk about it, I called, my
15 first call is usually to Georgetta Gregory to tell her
16 what's going on and tip her off.

17 MR. BEATON: Okay.

18 MR. NICHOLS: I can't remember if she knew
19 about it or not. And then I usually try to keep in
20 contact with her and feed her information I have.

21 MR. BEATON: Yes.

22 MR. NICHOLS: Then I talked to the guys at
23 the scene. I did not go down.

24 MR. BEATON: Okay.

25 MR. NICHOLS: They had enough people there.

1 They didn't need me.

2 MR. BEATON: So let's just talk a little bit
3 about what your impressions and understandings of the
4 Chester accident were.

5 I mean, we got a train coming through a work
6 area, runs into equipment that's foul on the track.
7 There's shift changeover taking place, so we have day
8 shift and night shift. Can you, can you give me a,
9 your view on how that all unfolded?

10 MR. NICHOLS: Yes, I think it's pretty
11 simple actually. The guy who cleared up the track,
12 didn't clear up the track when he gave it back to the
13 train dispatcher.

14 MR. BEATON: Okay. So that's the nighttime
15 foreman didn't clear up the track but he gave back his
16 fouls?

17 MR. NICHOLS: Correct.

18 MR. BEATON: Okay. And in that scenario, is
19 that an unusual scenario? I mean, the --

20 MR. NICHOLS: Yes. Or we'd have a lot more
21 problems than we have now. It was just, my
22 understanding was it didn't sound like a good turnover
23 between the daylight guy, and I know, I used to give
24 these guys, I didn't know the third train guy. He's
25 fairly new. Pete Adamovich, I knew him. I worked with

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1 him. I used to give him track in Paoli when I was a
2 block operator. Who was the, who was the daylight guy?
3 I'm sorry, I can't remember his name.

4 MR. FRIGO: Yaeger (phonetic).

5 MR. NICHOLS: Yeager. I used to give him
6 track. I hadn't seen these guys for years because I
7 wasn't doing that stuff. The third train guy, I didn't
8 know him. Those guys, I knew. I think they, when you,
9 I think they just took things for granted and got
10 sloppy. That's --

11 MR. BEATON: It sounds, it sounds like
12 you're comfortable looking at this accident through the
13 lens of a dispatcher.

14 MR. NICHOLS: I'm sorry?

15 MR. BEATON: But, it sounds like you're
16 comfortable looking at this accident through the, from
17 the perspective of the dispatcher?

18 MR. NICHOLS: Well, I hope I'm looking at it
19 from a, from a manager. A dispatcher's going to look
20 at it a certain way. I'm familiar with that one --

21 MR. BEATON: Yes.

22 MR. NICHOLS: -- because I used to do that
23 stuff. That was a long time ago. But I try to look at
24 all sides of it.

25 MR. BEATON: Yes. And I wasn't trying to

1 paint you into a corner. I just --

2 MR. NICHOLS: No, I get it.

3 MR. BEATON: -- wanted to learn a little bit
4 from the point of a view of a dispatcher.

5 And looking at this situation, what would
6 constitute a dispatcher that was doing his or her job
7 well? A dispatcher who's got their head in the game.

8 I mean, what, can you describe for me a
9 dispatcher that may be dealing with these crews,
10 setting up blocks or releasing track, what should they
11 be taking into account?

12 MR. NICHOLS: Well, hopefully, once you give
13 it to them, you don't even talk to them until they want
14 something. They call, they call you, if I need a foul
15 or something.

16 MR. BEATON: Okay.

17 MR. NICHOLS: I gather 2 was out of service
18 and 3 and 4 were being fouled, if I remember correctly.

19 MR. BEATON: Yes.

20 MR. NICHOLS: And if you don't have any
21 trains, unless they're, something's, hunting for
22 something extraordinary, your job is sort of done. You
23 just don't touch anything.

24 MR. BEATON: Okay.

25 MR. NICHOLS: You've got to keep the radio

1 open, make sure you're listening for these guys if they
2 want you because that's your job to support them and
3 protect them.

4 But if the guy's asking for something, he
5 better be listening closely, make sure he understands
6 it, repeats it, and makes sure the proper procedure is
7 followed.

8 That is your clear first, and whatever you
9 had fouling is off, whether it was men, women,
10 machines, Burro cranes that are swaying, whatever it
11 was.

12 That's, the train dispatcher has to hear
13 that from the train foreman. I'm clear, I don't got
14 anything.

15 MR. BEATON: That dispatcher who's doing
16 their job with their head in the game has got some
17 sense, maybe not of all the details, but certainly
18 knows that the process is being followed that tracks
19 are either taken out of service or there's foul time on
20 them or they're clear, and has got a kind of tight grip
21 on ground situation.

22 MR. NICHOLS: Well, yes. Yes, know what's
23 out of service, what's being fouled, and what's in
24 service.

25 MR. BEATON: Okay. Would the, would it be

1 fair for the dispatcher to ever question the ground
2 crew in terms of, you know, if they want foul time or
3 they want to release the foul times or any follow-up
4 questions?

5 MR. NICHOLS: Well, usually when you ask for
6 a foul, especially during daylight, they give you to a
7 certain time and say, I need you clear by so and so, so
8 I can run 177, whatever the heck's going on.

9 He's going to start getting antsy if he
10 doesn't hear from the guy. He's not going to take the
11 block off, but he's going to go after the, hey, you
12 got, you got, about ready to clear up? Give me a
13 minute, I'll be clear.

14 MR. BEATON: Okay.

15 MR. NICHOLS: But you don't clear up until
16 you hear the guy, and this has happened, he goes home
17 and forgets to clear up. That block stays on and the
18 train stands.

19 MR. BEATON: Okay.

20 MR. NICHOLS: That has happened more than
21 once.

22 MR. BEATON: Okay. So it's not unusual for
23 somebody to forget to clear up and --

24 MR. NICHOLS: Well, it happens. I wouldn't
25 say it's --

1 MR. BEATON: It happens.

2 MR. NICHOLS: If you did it too often, you
3 probably wouldn't be working that job too long.

4 MR. BEATON: Okay.

5 MR. NICHOLS: Don's sitting out there
6 waiting for **00:43:05.

7 (Simultaneous speaking)

8 MR. BEATON: I appreciate that. I don't
9 want to --

10 MR. NICHOLS: No, but it has happened. It
11 has happened.

12 MR. BEATON: Yes.

13 MR. NICHOLS: Maybe it's radio failure. But
14 it's happened times, a guy has gone home and forgot.
15 So --

16 MR. BEATON: I mean, it's kind of to be
17 expected in the sense that we've got a lot of person to
18 person interaction that's going on here, and people
19 sometimes get busy or distracted and forget to --

20 MR. NICHOLS: That's --

21 MR. BEATON: -- close the loop. These are -
22 -

23 MR. NICHOLS: Absolutely.

24 MR. BEATON: -- normal sort of human
25 failures along the way, and so, it sounds like this

1 dispatcher, it's okay to reach out to the crew and say,
2 hey, are you going to clear up? You know, your time,
3 you're reaching the end of your time. How far, you
4 know, how much more do you need? That's not an unusual
5 process.

6 MR. NICHOLS: No. If the guy doesn't clear
7 up, most of them are pretty good. A lot of them work
8 together day after day, as you mentioned, and first of
9 all, if you take a track and say you're going to give
10 it back and don't, you're not going to have a very good
11 rapport with that train dispatcher.

12 MR. BEATON: Right.

13 MR. NICHOLS: And you are going to have a
14 lot of trouble. That guy's not going to want to
15 cooperate with you. Hey, you screwed me last night,
16 buddy. Why don't you go to the 7-Eleven and then come
17 back later. That's what's going to happen. So these
18 guys know that stuff. And --

19 MR. BEATON: They kind of know that. Yes.

20 MR. NICHOLS: When I gave track, I knew all
21 those guys, and they could, and you knew what you did,
22 you just had to make sure you did it step by step, but
23 there's a rapport that builds with them.

24 If you, you've got to work together or the
25 work's not going to get done. And if you screw me, I'm

1 sorry for the language, but --

2 MR. BEATON: No, I understand.

3 MR. NICHOLS: You know, paybacks are hell.

4 MR. BEATON: Yes, all right. I understand.

5 MR. NICHOLS: I was asked by an engineer
6 once, Don, when I was qualifying as a train dispatcher,
7 he says, is it true there's a big book like this up
8 there of engineers that you don't trust? And there
9 isn't, but I said, yes.

10 (Simultaneous speaking)

11 MR. NICHOLS: But you know, people know what
12 other people do once you work with them, and what their
13 capabilities are.

14 MR. BEATON: And a dispatcher probably has
15 enough of an understanding of railroad activities in
16 his or her territory that he probably knows that, you
17 know, when a shift change occurs, he's probably going
18 to be talking to two different foreman, and that
19 they're going to be asking for fouls or, I take it, sub
20 --

21 MR. NICHOLS: Correct. Yes, a different guy
22 obviously has got to get abreast, yes.

23 MR. BEATON: So Chester accident, have you,
24 have you looked at the dispatcher's management of that
25 situation? And we know that fouls were released.

1 MR. NICHOLS: I listened to the tapes.

2 MR. BEATON: Yes.

3 MR. NICHOLS: If that's what you mean. Yes.
4 Because I was part of the team that was --

5 MR. BEATON: Yes. And do you have any
6 thoughts there in terms of how that dispatcher managed
7 that transition?

8 MR. NICHOLS: As far as what he did, I take
9 no exception to him. The track, the foreman said, I'm
10 clear. I'm going home. I don't know if he said that,
11 but that's what he was doing.

12 MR. BEATON: Yes.

13 MR. NICHOLS: I'm releasing the foul on you
14 on the, 3, what was it, 3 track. Because he's got a
15 train that he knows is coming, so he's releasing the
16 foul.

17 The guy says he released the foul. He
18 releases the foul. That's the contract you two make
19 with each other.

20 MR. BEATON: You think it --

21 MR. NICHOLS: I can't tell you if you're
22 clear, you've got to tell me.

23 MR. BEATON: Do you think that dispatcher
24 knew that the daytime foreman was going to call and
25 get, request foul?

1 MR. NICHOLS: I would think he probably
2 would. Yes. He knows if they're going to keep on
3 working.

4 MR. BEATON: He knows that they're going to
5 keep on working, so --

6 MR. NICHOLS: Somebody's going to come along
7 and ask for a foul so they can go back to work if they
8 still want to work on 2 track or 3 track. It's going
9 to become increasingly difficult because now it's
10 daylight and trains are going to come, so they're not
11 going to get big blocks of time.

12 MR. BEATON: All right. So I just want to
13 stay with this for a little bit. I just have a few
14 more questions. You've got a dispatcher whose got his
15 head in the game, he's talking to the nighttime
16 foreman, he knows that the foreman released.

17 He's anticipating getting maybe a call from
18 the daytime foreman because he knows that there's still
19 a crew out there. In the meantime, he sends a train
20 through number 2 track at, I think --

21 MR. NICHOLS: 3. 3 track.

22 MR. BEATON: 3. Excuse me. Thank you. At
23 full speed. Is that reasonable or is it --

24 MR. NICHOLS: If he said he cleared the
25 railroad and as long as there's no restrictions and

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1 it's not an undercutter, where by rule we have to have
2 an 80 mile, or not an undercutter, it's EOM, the 80
3 mile per hour or slower. We've been doing it for a
4 million years.

5 MR. BEATON: Yes, I know we've been doing
6 it. I'm just --

7 MR. NICHOLS: I used to be on the other end
8 of that when I was working and watching E44s and GG1s
9 come whipping by.

10 MR. BEATON: Yes.

11 MR. NICHOLS: Once you cleared the track,
12 you clear the track. That's your part of the bargain.

13 MR. BEATON: And I understand that, you
14 know, the rules say that when you clear the track, the
15 track's clear and you shouldn't be in service unless
16 you put up a restriction line somewhere. I'm trying,
17 I'm trying to learn a comparison here.

18 And so let me, let me walk you through a
19 little scenario, and just tell me where I'm wrong,
20 because I'm obviously wrong in my understanding of
21 this.

22 You and I want to go down the shore for the
23 weekend, right? So you hop in my car and we're
24 chatting it up, talking about old times, going down the
25 shore and they're doing a lot of road work this time of

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1 year, bridge work.

2 We see the cones up, says, you know, left
3 lane closed a mile ahead, merge right, and we got
4 positive, got guidance with the cones. We see the
5 lights flashing, we see the work up there on the
6 bridge, and we got a clear lane, and highway speed 65
7 miles an hour.

8 Do we go through that construction zone 65
9 miles an hour?

10 MR. NICHOLS: Unless, in my experience,
11 because I just drove back from Harrisburg last week
12 where they're doing construction all over the Turnpike,
13 they have speed limit signs, early flashing signs, and
14 that's what they do.

15 MR. BEATON: Don't slow down, or --

16 MR. NICHOLS: I do if it's, speed out
17 there's 65. If it's 55, I do 55.

18 MR. BEATON: Fifty-five.

19 MR. NICHOLS: If that's what they deem as
20 safe.

21 MR. BEATON: Have you seen people slow down
22 through construction zones?

23 MR. NICHOLS: I've seen some. I've seen
24 others that completely ignore them.

25 MR. BEATON: I know. There's idiots out

1 there. I drive with them in D.C. every day.

2 MR. NICHOLS: I drive as little as possible.

3 MR. BEATON: What, I mean, my sense is that
4 I slow down on, and let me just share with you why, and
5 tell me why this doesn't apply to the Chester scenario.

6 I see the roadway, I see the workers. I've
7 got some scepticism that those workers are going to
8 stay on their side of the cones.

9 I see this big bucket moving around. I've
10 got some scepticism that that operator may slip and
11 that bucket may come over in my lane.

12 I want to be prepared. I want to be
13 cautious going through that work zone in case something
14 unexpected happens. Not that I couldn't run at speed
15 through there, but I wouldn't feel that that would be
16 prudent from a safety point of view.

17 Why can't I apply that analogy to this
18 situation in Chester?

19 MR. NICHOLS: Well, I --

20 MR. BEATON: Where am I going wrong?

21 MR. NICHOLS: Well, first of all, you don't
22 have any steering wheels on the cars and you don't have
23 people on cell phones and playing --

24 MR. BEATON: Okay.

25 MR. NICHOLS: You don't have them on

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1 locomotives. I wouldn't trust anybody. You could take
2 a drive today, you'll see every other person texting --

3 MR. BEATON: Yes.

4 MR. NICHOLS: Or buying in the way of
5 something.

6 MR. BEATON: Putting on their makeup. I
7 mean, that's what I'm saying.

8 MR. NICHOLS: Trains go straight.

9 MR. BEATON: I saw somebody going down the
10 street driving and shaking.

11 MR. NICHOLS: I saw a guy with an iPad on
12 his steering wheel. I don't drive. I stay away from
13 them.

14 Trains are on rails. The engineer is
15 usually very focused. He ain't on his cell phone.
16 He'll be gone in a minute if he is.

17 The contract has been, we stay in the clear.
18 It's been that way for a long, long time. It's been
19 very successful. How many 89s have we had because
20 somebody failed to clear? Just this one.

21 It has worked. Do you change the system
22 because of a failure of one or two people that has
23 worked for years? I tell you, in 1970, probably about
24 the same speed as the Marcus Hook, there's only been
25 100 down there. Is it, Don, or --

1 MR. HILL: That's right.

2 MR. NICHOLS: Yes, I think it is. But
3 they're doing their 70, 80 in those GG1s and we're
4 standing there between the tracks, and when they were
5 gone, we went back to work once the watchman said we're
6 good to go and the foreman said we're all clear.

7 To me, it's a different environment. It's a
8 dangerous environment, and you've got to be careful,
9 but that is what you sign on for when you do that side.

10 MR. BEATON: Okay.

11 MR. NICHOLS: Unfortunately, when people
12 screw up, whether it's an engineer or --

13 MR. BEATON: So it doesn't sound to me like
14 you're telling me that I'm wrong from a safety point of
15 view. You're telling me that it's a different
16 environment. It's always been done this way. We
17 haven't had a lot of accidents, so there's really no
18 need to change it.

19 MR. NICHOLS: I think it's a different
20 environment. The training is different. People drive
21 in cars. Any idiot can get a license.

22 I'm pretty confident that locomotive
23 engineers, Don, I'll look at you, most of them are
24 pretty sharp, 95 percent of them even, they know what
25 they're doing and they're interested in doing a good

1 job and being on time, not speeding and all that stuff.
2 They are.

3 MR. BEATON: Yes.

4 MR. NICHOLS: Track guys. I did that. You
5 know you better be careful out there. That's part of
6 it. You can't forget it because as Mr. Strachan once
7 said, everything on the railroad is big, made of metal,
8 and dirty, and if it hits you, there's going to be
9 problems. And that's something you learn right away.

10 MR. BEATON: Yes.

11 MR. NICHOLS: And I've seen a couple, I've
12 never seen anybody get hit. I've seen a couple people
13 almost get hit, and it just scared, every now and then
14 maybe we need that little refresher, bring yourself
15 back.

16 But I know the training we give
17 transportation people, but track guys, they get it
18 pounded into their head, when you're told to clear, you
19 clear and you stay in the clear. And if that wasn't
20 the case, we'd have a lot more problems. You know,
21 we're having practically no problems.

22 This is, but I just think the training and
23 the environment is completely different from a highway
24 than a railroad. That's what I think.

25 MR. BEATON: Well, thanks for your education

1 on that. I appreciate your perspectives. Just one
2 more question. With all that that you just added out
3 there, the perspectives, the understandings, for the
4 track guy, there's a backhoe operator with a supervisor
5 and a worker that were still foul on the track.

6 They had some understanding of a shift
7 change. They had all the education, or should've had
8 all the awareness of what happens, what it means to be
9 foul on the track, and what happens at a, at a shift
10 change. Do you, do you have some perspective on their
11 role in this accident?

12 MR. NICHOLS: Well, I thought the supervisor
13 wasn't fouling, he was working, which I don't know why
14 a supervisor is working. He should be supervising.

15 That's my opinion. He shouldn't, he
16 shouldn't have been doing that. He's supposed to be
17 keeping an eye on everybody else.

18 MR. BEATON: Okay.

19 MR. NICHOLS: I believe he was on the side,
20 either 1 track side or, perhaps, or 2, and got hit by
21 the equipment. So he wasn't fouling.

22 MR. BEATON: Okay.

23 MR. NICHOLS: The backhoe guy clearly was,
24 obviously. Why he was fouling, my guess is either he
25 didn't know or the foreman thought that he told him and

1 didn't tell him, or, that part I don't know, why he was
2 still there.

3 MR. BEATON: If the backhoe operator hadn't
4 been fouling, this accident wouldn't have happened.

5 MR. NICHOLS: I believe that's absolutely
6 correct. I don't know of anybody else that was
7 fouling. It was just him.

8 MR. BEATON: If the supervisor was
9 supervising, maybe the supervisor would've communicated
10 with the backhoe operator and had him clear up.

11 MR. NICHOLS: Or had been aware of what's
12 supposed to have been happening, knowing that there's a
13 shift change and he's got EICs working for him, that he
14 should've been on top of that game and maybe the
15 foreman should've cleared up the backhoe operator. But
16 --

17 MR. BEATON: Right.

18 MR. NICHOLS: I would hope that the
19 supervisor would've cleared it up if he knew that --

20 MR. BEATON: Yes.

21 MR. NICHOLS: -- and saw the guy working.

22 MR. BEATON: So it sounds like there's some
23 other factors here other than somebody releasing their
24 fouls too soon and not clearing up the track. I mean,
25 there are other stakeholders in that failure.

1 MR. NICHOLS: Yes. Well, we all have a good
2 faith challenge, and I don't know how many people were
3 down there. But every one of them had the right to
4 question what was going on, and not one did. So, that
5 I know of, that I know of.

6 MR. BEATON: Okay.

7 MR. NICHOLS: To me, that's upsetting.

8 MR. BEATON: So nobody's questioning.
9 There's no peer to peer. There's nobody challenging
10 authority.

11 Do you have some insight into why that might
12 be the case? I mean, railroaders, in my experience,
13 aren't shy, even polite people, necessarily. And I
14 don't mean that in an inferior way. But you know, they
15 know what, they know how to behave.

16 MR. NICHOLS: Did you ever work in a
17 movement office?

18 MR. BEATON: They know how to behave in
19 public. So they can take care of themselves. Why are
20 they not talking to one another?

21 MR. NICHOLS: My guess, and I have found out
22 that people, if they're being watched and know they're
23 being watched by a supervisor or for have, whatever
24 level is front line, they will do what they're supposed
25 to do.

1 And if people are doing that consistently,
2 they will do what they're supposed to be doing
3 consistently.

4 To me, and again, I don't know, to me, it
5 leads me to speculate that nobody was watching and, I'm
6 not going to say it happened every day, but if the
7 supervisors there are not supervising, it probably
8 ain't the first time that happened.

9 That's all I can speculate. I, to me,
10 that's the key. That's --

11 MR. BEATON: I just have one other question.
12 I've heard, I've heard the comments about cardinal
13 rules, and cardinal rules may have an oppressive
14 influence on workers because they're afraid to violate
15 a cardinal rule because if they break it, they get
16 fired.

17 And managers, if they don't fire them,
18 managers get fired for not applying that, the
19 discipline. Do you have some thoughts about that?

20 MR. NICHOLS: You're talking to the right
21 guy, because I am one of the cardinal rules overseers.

22 MR. BEATON: Okay.

23 MR. NICHOLS: And you're talking about,
24 there's 10 of them. Like cheating, tampering with
25 equipment, willfully not putting up blue flag

1 protection, operating, Don, operate down the railroad
2 150 miles an hour with a cell phone, you're done and
3 there ain't anybody that's going to say that's wrong.

4 We've had, so, to date, since March 15th,
5 because I and Mr. Logue, the Vice President of Safety,
6 the Chief Safety Officer, every one of them comes to us
7 for appeal after we go through. That's why I know the
8 numbers.

9 There's been 25 that have been considered
10 cardinals, 15 have been termination, and 10 have not
11 been termination.

12 MR. BEATON: Okay.

13 MR. NICHOLS: And it's not, it's 10 major
14 rules, many of which we could've fired you before the
15 cardinal rule, came off tampering with equipment,
16 you're done. I don't need a cardinal rule. We're just
17 trying to put that in --

18 MR. BEATON: Okay.

19 MR. NICHOLS: -- perspective. So if you're
20 doing your job and you're not talking on the cell phone
21 while you're working and stuff like that, you're going
22 to be fine. Maybe you'll get some discipline because
23 you screw up, because that's what, here, I'll give you
24 an example.

25 A roadway worker that puts, makes no attempt

1 to protect themselves with a foul. He just goes out to
2 try to do a quick job.

3 Or a roadway worker we had that gets all the
4 protection in the world, gets up on the train
5 dispatcher, then goes and fouls the wrong track. He
6 didn't get fired. He got heavy discipline. He just
7 had a mental fart.

8 That's why stop signals aren't on there.
9 Nobody runs by a stop signal. Some reason, that
10 engineer was distracted, lost attention, so you, we'll
11 file with a regulation 240 on that, but we're not going
12 to fire you.

13 But if you willfully do not try to protect
14 yourself in certain situations, and blue flag and RWP
15 are the big ones, then we're going to take a hard look
16 at it.

17 So we actually had a guy, got all the
18 protection. It was up east of here. Asked for a foul
19 on the wrong track. Train came down, hit a jack, and
20 that was a cardinal rule, but he did not get fired
21 because he just screwed up what he asked.

22 The guy lost, the guy, I don't know what his
23 penalty was. We don't get into that. He suffered some
24 time, but we didn't fire him because he attempted to do
25 the right thing and had all the intentions of doing it.

1 He just screwed up.

2 MR. BEATON: And has there been a program to
3 communicate the spirit of these rules to laborer and
4 clearer in an unambiguous fashion?

5 MR. NICHOLS: Yes. When, before we came
6 out, we had a big, we had a 9, 10 page pamphlet that
7 came out that was circulated.

8 All the union membership meet in this room
9 regularly with us, and it was presented to them, and we
10 had reset. Mr. Stadtler set a reset, I think last
11 month or the month before, fairly recent. This is what
12 we're trying to do.

13 MR. BEATON: Okay. Is there any, is there
14 any sort of executive management-level incentive for
15 ensuring that folks are complying with the cardinal
16 rules?

17 Or do you have any program in place that you
18 can monitor and tell that you got some continuous
19 quality improvement going on with the cardinal rules?

20 MR. NICHOLS: Anything like that is done, a
21 lot of people, we have goals for operating rule
22 violations, major operating rule violations, which
23 aren't necessarily cardinal rules, but we measure
24 ourselves by that way.

25 And we don't specifically, but we got a goal

1 for the fiscal year of 100 and, now we're supposed to,
2 excuse me, 110 was last year, for 90 major operating
3 rule violations this year. We're not, we're not going
4 to make it real hard, 103 or 104. And the month isn't
5 over yet.

6 Now as far as incentives, I think at the
7 local level you'd have to talk to a train master, a
8 road foreman, an MTO, their boss might say, hey, we're
9 getting all these guys, maybe there's a little
10 continuity here doing the same thing. Maybe you'd
11 better bump up your game and do a few more efficiency
12 tests and, or some radar, whatever you're doing,
13 although speeding's almost a nonissue now since we got
14 access.

15 But it's done at a local level. Not
16 necessarily, although we set goals at a higher level
17 for the corporation. It's done more by assistant
18 superintendents and superintendents.

19 MR. BEATON: Okay. Dave, thanks for the
20 education. I appreciate it. I'll follow up with a few
21 others the second time around the table.

22 MR. HIPSKIND: Dave, are you still good to
23 go? We're about an hour into this.

24 MR. NICHOLS: Yes, I am.

25 MR. HIPSKIND: Okay. All right.

1 MR. NICHOLS: Actually good.

2 MR. HIPSKIND: I want to bounce around.

3 There's about four different things I want to talk
4 about.

5 I want to try and connect the dots on track
6 usage and the maintenance gangs out there, and I want
7 to talk, I want to have a pretty good discussion with
8 you about mandatory directives.

9 And what I'm after there is, that
10 communication that occurs during the mandatory
11 directive, and maybe the third thing I want to, I want
12 to double back to the SSDs, the supplemental shunting
13 devices.

14 And I want some more clarity there,
15 especially as it pertains to the dispatcher and the
16 foreman, that communication.

17 So let me start with track usage. In our,
18 some of our previous interviews, what I've learned is,
19 and you alluded to it, you described it to us here
20 earlier this morning. Track usage.

21 If I want, if I'm a foreman, an engineering
22 program project out there, and I want trains passing by
23 my location at a reduced speed, that's something I
24 don't, I don't do that that morning. I have to set
25 that up with people the night before. Correct? Or am

1 I not using the right --

2 MR. NICHOLS: Slow bys, we only have slow
3 bys for very specific instances. I think the TLM, the
4 track laying machine, if you ever seen that, it's so
5 noisy that we go by it. I think undercutters we might
6 have them. I can't remember the detail anymore.

7 So if you're going to ask for a slow by, you
8 better have a pretty good reason if it's not one of
9 those two reasons.

10 MR. HIPSKIND: Major, not minor work, right?

11 MR. NICHOLS: TLM and undercutter.

12 MR. HIPSKIND: But those are the big ones,
13 right?

14 MR. NICHOLS: Yes.

15 MR. HIPSKIND: A lot of, a lot of equipment
16 spread out over a large geographic area. Maybe even
17 hundreds of people out there supporting that.

18 MR. NICHOLS: It could be.

19 MR. HIPSKIND: A major, a major effort's
20 what I would call it. But when you talk about this
21 bargaining and planning, the pre-planning, when we're
22 talking about track laying machines and undercutters,
23 that's all going to be planned out, and the slow bys
24 are going to be by those big gangs. Okay?

25 MR. NICHOLS: Correct.

1 MR. HIPSKIND: All right.

2 MR. NICHOLS: That's via special
3 instruction.

4 MR. HIPSKIND: Okay. But if I'm, if I'm a
5 line maintenance gang and I'm doing some minor
6 undercutting, or I'm out there with a fat train or I'm
7 working a location for an extended number of hours, can
8 I call operations and say, because of my particular
9 geographic, my particular circumstances where I'm
10 working, I want trains to slow down when they go by me
11 today from 8:00 to 4:00?

12 MR. NICHOLS: If you call up a train
13 dispatcher and ask for that, we'll go tell you to pound
14 sand or something like that. I'm not trying to flip it
15 --

16 MR. HIPSKIND: Okay. And --

17 MR. NICHOLS: -- here, but they'll say why,
18 there's nothing, what's the reason? That would be,
19 have to be thought out beforehand.

20 You'd have to have a good reason that you
21 need a slow by because once you're clear, you're clear.
22 It should not matter what the train is.

23 With the big machines, it's the noise factor
24 that makes the difference because it's so darn noisy,
25 we have problems with people hearing commands and all

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1 that.

2 MR. HIPSKIND: Okay. Well, I, let me pin
3 you down a little bit on, it's not that we, it's not
4 that Amtrak can't do it, it's, you want to, you want to
5 rely on, you guys can get in the clear.

6 MR. NICHOLS: Right.

7 MR. HIPSKIND: Report in the clear, and
8 here's the big one, stay in the clear. And we're going
9 to run these trains by you at authorized speed.

10 MR. NICHOLS: Correct.

11 MR. HIPSKIND: We are in the people moving
12 business.

13 MR. NICHOLS: Correct.

14 MR. HIPSKIND: Okay. So when somebody says,
15 when we, when we think, not the large gangs, but the
16 smaller gangs, the stuff that comes up overnight.
17 Something breaks, somebody has to go out surface track
18 or replace ties or whatever.

19 Those smaller jobs, I should not think of,
20 that they have the option of calling somebody in
21 operations and saying, hey, tomorrow I've got to
22 address these three defective conditions. I'm going to
23 have a lot of men and equipment out there, and oh, by
24 the way, I want trains to slow down going by me.

25 MR. NICHOLS: If he did that, he would have

1 to get his boss, probably his boss's boss to go to
2 somebody in transportation at a higher level and
3 convince him that is, that is necessary to do. Why do
4 you need to do that?

5 MR. HIPSKIND: All right. And --

6 MR. NICHOLS: Shall I have the proper
7 watchmen, well, you're not out there working if you
8 don't have the watchmen.

9 MR. HIPSKIND: Okay.

10 MR. NICHOLS: If they are following the RWP
11 regulations, they are protected.

12 MR. HIPSKIND: All right. And just, that
13 scenario I just laid out, if somebody did slow the
14 trains down and I was able, that is the, far away the
15 exception. That's not the norm.

16 The norm is, I would call somebody, tell
17 them I'm out here and I've got to do the work, but in
18 that conversation with the dispatcher, it, we're going
19 back to this business of, well, when I've got to run
20 trains, you need to be in the clear and you need to
21 stay in the clear.

22 MR. NICHOLS: Correct.

23 MR. HIPSKIND: Okay. All right. I'm --

24 MR. NICHOLS: When you say you're clear,
25 that's exactly what it means to a train dispatcher or a

1 block operator. You are clear.

2 MR. HIPSKIND: Yes. And the other part of
3 it is, the, on the track side of this thing, I'm not
4 talking about the operations anymore, but on the track
5 side of this thing, they have their duties and
6 responsibilities too.

7 MR. NICHOLS: Absolutely.

8 MR. HIPSKIND: So watchmen and supervision
9 and a foreman and the job briefing and communicating
10 all of that.

11 MR. NICHOLS: Correct.

12 MR. HIPSKIND: And everybody should be on
13 the same page.

14 MR. NICHOLS: Correct.

15 MR. HIPSKIND: Hey, we're working on 2
16 track, but they're going to be running trains on 3
17 track, and I'm not slowing them down, and they're
18 coming by us at track speed. Those are items that are
19 covered in the job briefing. Is that your
20 understanding?

21 MR. NICHOLS: Absolutely.

22 MR. HIPSKIND: Absolutely. Okay. All
23 right. We're done with that one.

24 MR. NICHOLS: They're supposed to be. Let's
25 put it that way.

1 MR. HIPSKIND: Oh, yes. And I, yes, we're
2 talking about how it's supposed to be. All right.
3 Let's talk about a mandatory directive. Tell me, what
4 is a mandatory directive, and maybe give me an example.

5 MR. NICHOLS: Around here, it's probably a
6 Form D or a bulletin order. We have different kinds.
7 We have a timetable, special instructions, which
8 everybody has, every operating employee has.

9 Then we modify it weekly by, around here,
10 again, it's different off corridor because we're
11 governed by the railroads, obviously.

12 You have a weekly bulletin order that comes
13 out that adds to that timetable, and once a month they
14 summarize that until we can come up with a new
15 timetable.

16 MR. HIPSKIND: Okay.

17 MR. NICHOLS: Then for day to day stuff, a
18 foreman wants to work, he has to get a Form D. That's
19 our mandatory directive. That's in this part for
20 NORAC. We're governed by NORAC operating rules. The
21 Form D is what you have also.

22 The other one, every morning is issued a
23 TSRB, temporary speed restriction summary bulletin,
24 goes into effect at 5:00. That's a mandatory
25 directory.

1 Every engineer, conductor, track guy, should
2 have that piece of paper, and he knows he's supposed to
3 have it by rule, and he's supposed to check the time,
4 make sure, that gives you all of the temporary speed
5 restrictions for certain areas of track.

6 MR. HIPSKIND: Okay. And let's say
7 something comes up, and let, you choose whatever
8 scenario you want to choose. But here's where I want
9 to go with this discussion.

10 I want to talk about the conversation
11 between a dispatcher and maintenance away, or a
12 dispatcher and a train crew going through a mandatory
13 directive communication.

14 Can you describe that for me? How would
15 that occur? What would be the things that they would
16 say?

17 MR. NICHOLS: Okay. For a track guy, it's
18 probably a Form D, taking a track out of service.
19 He'll call him up, Mr. So and so, I've got the track
20 usage, it's all, it's all ready listed.

21 Maybe there's a train involved and he's
22 trying to get a little earlier. That doesn't matter.
23 And the dispatcher will say, okay, what are you going
24 to have?

25 If he has to move, he'll give him verbal

1 permission by signals from that stuff, we'll get some
2 kind of account, what they've got.

3 But also, okay, where do you want, from
4 interlocking to interlocking is how they generally do
5 it. How long you want it, there going to be any speed
6 restrictions on it, when you leave, what time you're
7 getting up, getting out.

8 This is all for pre-planning for the TSRB in
9 the morning and all that kind of stuff. Then the train
10 dispatcher will block up according to what the guy
11 wants, then he'll call him back and get a hold of him.

12 Okay, you ready to take the track out? Yes,
13 go ahead. He reads him the Form D, withholds the name.
14 I never heard a foreman that had the train orders, so
15 I'm --

16 MR. HIPSKIND: Okay.

17 MR. NICHOLS: Withholds the name, the guy
18 repeats it back correctly. If he doesn't, say well,
19 can you give me that again? And Form Ds are pretty
20 easy because most of it, it's just fill in the blank.

21 Then once he repeats it back correctly,
22 gives him the time, that track man, that track foreman
23 owns that track.

24 That train dispatcher doesn't exist, as far
25 as he's concerned after that. He can't do anything on

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1 it because the foreman whose name is on that piece of
2 paper owns it.

3 MR. HIPSKIND: Okay. Now, that was an
4 example of a conversation between a, and it doesn't
5 really make any difference who initiates it, but in
6 that conversation, if the foreman called the dispatcher
7 or the dispatcher, and they're doing this conversation,
8 this communication about this track out of service,
9 here's my takeaway from your description.

10 There has to be precision in that
11 communication on the dispatcher's end and on the
12 foreman's end.

13 So if the dispatcher goes first and he lays
14 out his thoughts about this mandatory directive, what
15 that dispatcher, you correct me if I'm wrong, what he's
16 waiting for is, I just told this guy something. I'm
17 going to see if he heard me correctly and he's going to
18 have to repeat it back correctly to me. Right?

19 MR. NICHOLS: Correct.

20 MR. HIPSKIND: Correct?

21 MR. NICHOLS: Correct.

22 MR. HIPSKIND: Okay. Why do we do it that
23 way?

24 MR. NICHOLS: To make sure that everybody is
25 talking about the same thing.

1 MR. HIPSKIND: Okay.

2 MR. NICHOLS: If you're going to take a
3 track out of service and have people out there, to
4 protect them, the dispatcher has to be sure which track
5 it is so he can block up correctly.

6 MR. HIPSKIND: But when they have, when they
7 have done that, he, the dispatcher says what he wants
8 to say about the details of whatever the request is.
9 It's a mandatory directive.

10 And he hears back from that foreman, the guy
11 repeats it back correctly, and you've already stated,
12 if he doesn't, that dispatcher's going to challenge him
13 and when he repeats it back, and then the final part of
14 that as I understand it, is that dispatcher then
15 assigns his name and a time and says, that's correct.
16 And they close that out.

17 MR. NICHOLS: That's not his track anymore.

18 MR. HIPSKIND: And I've always thought of
19 that as, that's a handshake. And you've used the term
20 before, but that's the bargain.

21 MR. NICHOLS: That's the bargain.

22 MR. HIPSKIND: That's the cardinal.

23 MR. NICHOLS: Yes.

24 MR. HIPSKIND: That's the contract. Okay.

25 Have I, am I understanding this correctly?

1 MR. NICHOLS: I think so, unless I'm
2 misunderstanding what you're saying.

3 MR. HIPSKIND: No. No, no.

4 MR. NICHOLS: You got it.

5 MR. HIPSKIND: I think you and I are on the
6 same page. Okay. So here we used an example of a
7 dispatcher and a foreman, and they were taking a track
8 out of service, and you're calling that a Form D.
9 Okay?

10 MR. NICHOLS: That's how you do it.

11 MR. HIPSKIND: All right. Let's talk about
12 foul time. And I'm going to guess if I ask you, is
13 foul time a mandatory, is it the same kind of thing
14 like a mandatory directive, like when we were talking
15 about track out of service, a Form D. I'm guessing
16 you're going to tell me, no Dick, that's not a
17 mandatory directive.

18 MR. NICHOLS: Mandatory directive, if you
19 use FRA parlance, is usually stuff you'll write down.
20 The only thing really written down on the foul time,
21 the dispatcher keeps a record of foul just so he knows
22 how the time, the guy wants it, or he gave it away to
23 him and that'll either have the time he wants him to
24 clear or if he's a, however you, they, whatever.

25 Then he finally, when the guy gives it back,

1 that'll have his clearance times and then it'll have
2 the removal of the blocking.

3 I don't know technically if it's a mandatory
4 directive. I think we're just getting into semantics
5 of it.

6 MR. HIPSKIND: Okay. Yes. And that's fine,
7 and I'm not, I'm not trying to trick you here on this.
8 But here's the way I think about it.

9 In the example we used about a dispatcher
10 and a foreman in a communication that has to be precise
11 and has to be okayed and the handshake and the
12 contract, what's the difference, I'm going to ask you,
13 what's the difference in that scenario where I took a
14 track out of service, and then a foul time?

15 I don't mean this five minute stuff. A foul
16 time where I've got men and equipment out there, and
17 I've taken 1 track, 3 track, 4 track, I've got fouls on
18 them.

19 And I'm thinking that what happens on the
20 dispatcher's end is very similar to the track out of
21 service. In other words, we talked, he listened, I
22 heard what he said, and he indicated to me he was
23 putting up blocks at one interlocking and blocks at
24 another interlocking.

25 So my question is, how much difference is

1 there in me getting three foul times and that Form D?

2 MR. NICHOLS: The only difference is, in a
3 foul you're not disturbing the track. So if I say I
4 need that track back immediately, you have to give it
5 back immediately.

6 MR. HIPSKIND: Okay.

7 MR. NICHOLS: And so I'd say, no, I've got
8 to fix this, I've got to fix that. If you do that,
9 you're working on the track, then you need to take it
10 out of service.

11 MR. HIPSKIND: So on a, as far as the
12 dispatcher's concerned, if you're going to be doing
13 something, when you request three fouls, 1, 3, and 4,
14 that foreman needs to tell me whether he's going to
15 disable that track.

16 MR. NICHOLS: He can't disable the track
17 because by rule he cannot do that in a foul. You have
18 to take it out of service.

19 MR. HIPSKIND: Okay. All right. I'm clear
20 on that. So at some point in time, and again, I'm
21 drawing on some other interviews, we've talked to them,
22 others, about the training and the supplemental
23 shunting device rule used to be in the roadway worker
24 manual. And it used to be, I think, ingrained in, it's
25 part of the training.

1 And at some point in time, it's my
2 understanding that the SSD, supplemental shunting
3 device, that that rule, that process procedure got
4 moved, and it, and they tell me now that it's over, not
5 in the NORAC rules, but it is in the timetable special
6 instructions. Is that true?

7 MR. NICHOLS: It's been there for years.

8 That --

9 MR. HIPSKIND: Been there for years.

10 MR. NICHOLS: That special instruction,
11 Sheldon Boggs wrote that, and I think he died in 2004.

12 MR. HIPSKIND: Okay.

13 MR. NICHOLS: That thing has been there for
14 a long time.

15 MR. HIPSKIND: Okay. But you're in
16 agreement that at one time it was over in the training
17 and that years ago it got moved over into the timetable
18 special instructions?

19 MR. NICHOLS: It wasn't, it did not exist
20 until Sheldon Boggs wrote that, as far as I know. It
21 was not something that the engineering department came
22 up with.

23 It was a requirement that I guess heads were
24 put together, Sheldon didn't write this in a vacuum.
25 He obviously talked to people.

1 But that was initiated in the special
2 instructions, which govern every operating employee on
3 the railroad.

4 MR. HIPSKIND: Okay.

5 MR. NICHOLS: MW, T&E, train dispatchers.

6 MR. HIPSKIND: Yes, but the, train and
7 engine people, they would never use a supplemental
8 shunting device.

9 MR. NICHOLS: No, we don't teach, obviously
10 we don't teach it to that group.

11 MR. HIPSKIND: It's primarily something
12 that, it's a tool, it's a shunting device that's used
13 by engineering folks.

14 MR. NICHOLS: Correct.

15 MR. HIPSKIND: Like --

16 MR. NICHOLS: That's how we get that across
17 to people is in a special instruction.

18 MR. HIPSKIND: Okay.

19 MR. NICHOLS: Because the NORAC rule is, as
20 you know, is 20, 30, 40 railroads. If they're not
21 interested in supplemental shunting devices, that's
22 fine.

23 But if we want them in effect, which we did
24 many, many years ago, then we put it on a special
25 instruction which modifies the rule. That's the whole

1 purpose of the timetable.

2 MR. HIPSKIND: Okay. But on Amtrak, it is
3 in the Amtrak timetables. And if I --

4 MR. NICHOLS: It's on the Northeast Corridor
5 timetable.

6 MR. HIPSKIND: Northeast Corridor timetable.
7 Okay. Thanks for specifying that. Okay. So is the
8 process, the procedure about an SSD, is that an
9 operating rule?

10 MR. NICHOLS: It's a special instruction.

11 MR. HIPSKIND: Okay.

12 MR. NICHOLS: We teach it in rules class, if
13 that helps you any. The senior, the technical trainers
14 in Philadelphia and New York, Washington, Boston,
15 wherever they are, when they teach MW rules, they
16 instruct that in part of the rules class.

17 MR. HIPSKIND: Do, from your position,
18 thinking about safety and whatnot, is, I want to see if
19 this SSD, if that is just a focus in the engineering
20 department, or is that something that's being taught to
21 people in operating practices? Dispatchers, block
22 operators, are they being taught that too?

23 MR. NICHOLS: I don't know if it's in the
24 lesson plan. I know they're responsible for it because
25 they're part of the bargain.

1 They know that the big part of it is if
2 someone wants to verify that the supplemental shunting
3 device is working, they have to, one of the ways to do
4 it, not all of them, is to have somebody look to see if
5 there's a shunt applied.

6 So if you're in your, if you're in a tower
7 and you're fairly close, because there's big swatches
8 of railroad where, in block operating territory that
9 aren't monitored by anybody.

10 So then they have to go look at the signal.
11 The guy says, yes, got one down in Wayne. I see a, I
12 just got a bell, light went on, yes.

13 Or if you're in CTEC and they ask you, do I
14 got a shunt up there? Yes. Where you got it? And he
15 tells him where it is. He says, yes, you're good.

16 MR. HIPSKIND: All right. Well, what are,
17 so every, I mean, it's not just something that it's
18 being taught just in the engineering, it, everybody
19 else knows about it too. If you're a dispatcher, you
20 know about supplemental shunting devices.

21 MR. NICHOLS: Oh, absolutely. Yes.

22 MR. HIPSKIND: If you're a block operator,
23 you know about it, right?

24 MR. NICHOLS: Correct.

25 MR. HIPSKIND: And I don't know if you're,

1 we haven't talked about whether they're tested on it or
2 not, but we've already talked about, that, when people
3 go through these rules classes, if they have a
4 question, there's somebody that they can ask about it.

5 MR. NICHOLS: Absolutely.

6 MR. HIPSKIND: Right?

7 MR. NICHOLS: That's the whole purpose of
8 the rules class.

9 MR. HIPSKIND: Okay. So what are your
10 thoughts about engineering people going out and, they
11 need to get a foul time. We're not talking about this
12 five minute stuff. Hurry out there, do something, get
13 out of the way.

14 And we're talking about having men and
15 equipment in the foul. It's not readily going to get
16 out of the way, and they may, probably are disturbing
17 the track. And the, and the foreman reaches out, and
18 I'd say this happens probably on --

19 MR. NICHOLS: If they're disturbing the
20 track, they better take the track out of service.

21 MR. HIPSKIND: Right. And I'm going to say
22 these requests that I'm talking about for foul time
23 occur all the time, day after day after day.

24 Not the big gangs, but just the need to go
25 out there and address, things got broke, things need to

1 be fixed or whatever.

2 MR. NICHOLS: Happens all day long.

3 MR. HIPSKIND: Constant communication
4 between a foreman out there requesting foul times from
5 dispatchers.

6 So what are your thoughts, as those guys go
7 through that communication process, foreman contacts
8 the dispatcher, requests a foul time, dispatcher takes
9 a look at his board, takes a look at the movement of
10 trains, tells him, no, you can't do it now. Wait for
11 two southbounds. But eventually they establish that
12 they're going to go through this foul time procedure.

13 And what I'm trying to get at is, from the
14 dispatcher's perspective, I want you to comment on
15 that.

16 So the foreman makes the request to the
17 dispatcher. They go through that almost mandatory-
18 like, mandatory directive-like communication.

19 Part of that procedure talks about
20 establish, actually applying the shunt, and then
21 there's a responsibility for the, as I understand it,
22 for the engineering guy in the field to then question
23 the dispatcher and say, do you see a track occupancy
24 light, a TOL?

25 MR. NICHOLS: The person asking for the

1 foul, if he wants to put up, if he's requesting, if he
2 wants to use SSDs, he should use them.

3 He should tell the train dispatcher, I'm
4 going to use it, and if he needs it verified, he should
5 get it verified. It's not the dispatcher's decision to
6 tell this guy what to do.

7 MR. HIPSKIND: No, that, well, that's the
8 conversation I want to have, because what I'm, what I'm
9 trying to understand is, should there be
10 responsibility, if both the dispatcher block operators
11 and the engineering people are taught the same thing
12 about this procedure, and then I'm kind of painting out
13 a scenario where the foreman goes out there, he makes
14 these requests for fouls, multiple tracks, or a single
15 track.

16 They go through this mandatory-like,
17 mandatory directive-like communication. They're
18 establishing that that track from A to B, interlocking
19 to interlocking, is going to be, I'm not going to run
20 trains. But neither of them elects to go through this
21 track occupancy light thing.

22 MR. NICHOLS: Well, the dispatcher doesn't
23 elect to go through it. That is the prerogative and
24 the job of the EIC, whoever's asking for the foul to do
25 that.

1 MR. HIPSKIND: Okay.

2 MR. NICHOLS: He's, the special instructions
3 are very specific. When you have to do it and when you
4 don't have to do it. But if you want to do it, go
5 ahead and do it. That's your prerogative.

6 MR. HIPSKIND: Is, well, that, we're hitting
7 on some new territory here. Am I to understand that as
8 a foreman, me applying a SSD is optional?

9 MR. NICHOLS: Not under certain, some
10 certain conditions yes, other conditions no.

11 MR. HIPSKIND: Well, how --

12 MR. NICHOLS: If you're fouling with
13 equipment for more than five minutes, you must ask for
14 one.

15 If you're just having men working and you
16 would feel more comfortable, no equipment at all, you
17 don't have to ask for one, but you can ask for one. Or
18 you can do it. You don't have to ask for it, say I'm
19 putting the SSDs up. Putting on the shunt.

20 MR. HIPSKIND: Okay. And in the field, as a
21 foreman, whether I need to or not, if I do apply one, I
22 should have, that end part of that process procedure, I
23 should engage that dispatcher.

24 MR. NICHOLS: He has to verify, he/she has
25 to verify that it's working. One of the ways to do

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1 that, depending where you are, is ask if you have a
2 shunt.

3 MR. HIPSKIND: Okay. But as a dispatcher,
4 shouldn't I be curious as to whether that guy's --

5 MR. NICHOLS: They probably do the guys --

6 MR. HIPSKIND: -- should or should not be
7 using it?

8 MR. NICHOLS: No. I'm not going there. No.
9 It's not your job to tell him what he needs to do.
10 That's his job to tell them to do. If he wants it, he
11 gets it. I'll give it to you.

12 If you start having them inquiring
13 everything they want to do, it's just, it's going to
14 become unwieldy, to me. It is.

15 The responsibility lies upon the person
16 asking for the protection. If he needs it and there's
17 certain times he has to have it, he has to do it, the
18 shunt has to be verified.

19 However that's done, the easiest way would
20 be to ask a train dispatcher, if you can. If not, you
21 might have to go out, if he's out on the Harrisburg
22 line, walk two miles to look at a signal and make sure
23 that it's stop and proceed.

24 If he wants it because that's what he wants
25 to do because he fears a, he has every right to ask for

1 it.

2 MR. HIPSKIND: Okay.

3 MR. NICHOLS: And then the train dispatcher,
4 train dispatcher has no say in it. If the guy wants
5 it, he can have it.

6 MR. HIPSKIND: So in the communication --

7 MR. NICHOLS: As long as he can clear up
8 with a reasonable amount of time. They have to come to
9 that agreement when they clear up.

10 MR. HIPSKIND: Okay. So when --

11 MR. NICHOLS: If the guy says, I'm, it's
12 going to take me half an hour to, I'm sorry, to clean
13 up, to clear up, there would probably be a problem
14 there unless it's the middle of the night.

15 MR. HIPSKIND: My apologies. Sorry for
16 interrupting there.

17 MR. NICHOLS: Sorry to interrupt.

18 MR. HIPSKIND: So in this communication, the
19 responsibility, the engagement for a TOL and applying
20 the shunt, that has to occur, that has to be initiated
21 by the engineering people.

22 MR. NICHOLS: Absolutely. Yes.

23 MR. HIPSKIND: Or if it's somebody other
24 than, whoever's applying that shunt, they have to
25 finish out that part of the process.

1 MR. NICHOLS: Yes, I don't know who else
2 would do it other than engineering department though.

3 MR. HIPSKIND: Okay. Okay. But from an
4 efficiency testing or from somebody monitoring a
5 dispatcher, you guys wouldn't take any exception to a
6 dispatcher not challenging or talking about whether a
7 track occupancy light was established or a shunt was
8 put down in these conversations that occur.

9 MR. NICHOLS: Unless one appeared, then that
10 would be efficiency testing. But we would want to know
11 the reason it's up there, presumably to have that
12 conversation.

13 MR. HIPSKIND: Okay. All right. All right.
14 Well, let's talk about something different than track
15 and shunts and all that. It, at your level, safety
16 matters at Amtrak, right? It does? It does.

17 MR. NICHOLS: I would quit if it didn't.

18 MR. HIPSKIND: Okay. I get that.

19 MR. NICHOLS: My boss would fire me if I --

20 MR. HIPSKIND: Give me some understanding or
21 some characterization of where you're involved with
22 some level of safety initiatives or a safety committee.

23 We've been talking to, Dave, we've been
24 talking to people about where they fit into all these
25 different safety initiatives. You know, supervisory

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1 level, at the ground level and up.

2 How about, talk about where you see safety,
3 and where you engage people at your level and what that
4 looks like.

5 MR. NICHOLS: Part of it, people that work
6 for me, in fact we're doing it right now at
7 (inaudible), we're going over it. It's to make sure
8 people are doing what they're supposed to be doing, by
9 the rule.

10 MR. HIPSKIND: Okay.

11 MR. NICHOLS: That's one of the ways we do
12 it. When I go walk around, I keep my eyes open. I'm
13 not shy about telling Don Hill that he should have his
14 cell phone turned off and, I'm just saying, he, I've
15 never caught him with a cell phone. He's too smart. I
16 don't turn a blind eye to that.

17 We do safe to safer observations. That's
18 all personal safety stuff, although I try to mix in, I
19 do, just to keep myself fresh, I like to get out of the
20 office.

21 I'll go visit the block stations. That's
22 where I came from. I like to go out there, see how
23 they've changed. But I got an eye open all the time
24 with that.

25 I'm pretty heavily involved in close call,

1 C3RS, I think that's a pretty good system and I've been
2 with that from the beginning.

3 MR. HIPSKIND: Okay. And do you have a
4 regular group of people at a higher level that you meet
5 with on a routine basis and --

6 MR. NICHOLS: Every, once a month the
7 fourth, last Monday of each month, the Executive Safety
8 Council gets together and meets, a lot of times in this
9 room, and that's all the heads of the departments and
10 other folks as invited.

11 MR. HIPSKIND: And what, and what are some
12 of the main topics that are, that you go over?

13 MR. NICHOLS: Any current of events, the
14 cardinal rules were hatched there, for instance. Took
15 a long time, but that's where they first came up.

16 The cameras we're putting in on Amtrak
17 vehicles. That was hatched there. Talk about personal
18 safety.

19 Sometimes I'll bring operating safety up,
20 since that's my alley, linking, if I want something
21 new, that's a good way to reach a lot of people because
22 you have a lot of, from various departments.

23 MR. HIPSKIND: And when you say various
24 departments, it, across the board, are all of the
25 departments represented in that group?

1 MR. NICHOLS: Most of the time. Most of the
2 time. I can't guarantee everybody shows up or gets on
3 the phone every time.

4 MR. HIPSKIND: Okay. All right. Dave, it's
5 been a pleasure. I'll toss it back to you, Ryan.

6 MR. FRIGO: Are you still good to go, or do
7 you want to take a --

8 MR. NICHOLS: I think I got a couple more
9 minutes left in me.

10 MR. FRIGO: Well, I actually, I don't have
11 any further questions. I think --

12 MS. IMPASTATO: Nothing further.

13 MR. WALKER: I have a couple more. Fran
14 Walker. You mentioned today, 10 years ago, that Amtrak
15 implemented that rule 716S2 regarding telephones must
16 not be used.

17 MR. NICHOLS: The special instruction
18 modifying --

19 MR. WALKER: Yes. Yes.

20 MR. NICHOLS: Yes.

21 MR. WALKER: Now, most of these are sitting
22 on a rule because something happened. Are you aware of
23 any incidents that Amtrak had so many years ago that
24 caused them to implement that rule?

25 MR. NICHOLS: Again, this is a, there's

1 three special instructions. Could you read it to me
2 again to make sure I got the right one?

3 MR. WALKER: All right, 716S2. It says,
4 telephones must not be used in lieu of radio
5 communications to obtain or release main track
6 authority or to copy mandatory directives.

7 When radio communications is not possible, a
8 telephone may be used to obtain or release the main
9 track authorities or to copy directives.

10 MR. NICHOLS: Okay. Yes, there have clearly
11 be instances. We wanted people, to me, because I've
12 seen it happen several times, where, and a foul is a
13 perfect example. I've heard this happen.

14 A guy gives a foul to a track guy. He's
15 asking for one thing, the dispatcher gives him the
16 other thing, repeats it back wrongly, here comes a
17 freight train or a train up the road.

18 Here is what I said. The track ain't clear,
19 I'm coming up here. That's precisely because it was
20 said over the radio. So that's the genesis of this
21 rule.

22 We've even had, and I hate to say this, but
23 there are certain host railroads a couple years ago
24 where the dispatchers were actually using cell phones,
25 they wouldn't talk on the radio.

1 They made our guys call them to get track
2 authorities or to clear up track authorities. Maybe I
3 should go and, I'm not going to say anything. But we
4 emphasized it then.

5 I think that might've come, I think it was
6 probably a series of incidents. We just wanted to get
7 it clear that the preferred method is radio because the
8 more people that know what's going on, the more likely
9 it is that somebody will hear something if it's bad and
10 have a chance to stop it. I don't know if there's any
11 particular incident or not.

12 MR. WALKER: Okay. I just had a
13 conversation with the dispatcher from 7:00 when he came
14 on duty, highlighting there were issues where
15 communication was not possible.

16 Should the dispatcher, in compliance with
17 that rule, have told the foreman when he called the
18 cell phone to call me on the radio, I don't want to
19 accept this --

20 MR. NICHOLS: To me, if you're a good
21 dispatcher, that's exactly what you would do.

22 MR. WALKER: Okay.

23 MR. NICHOLS: Unless there's some kind of
24 radio problem.

25 MR. WALKER: Okay. And one other thing.

1 Naturally, the time goes, but I heard the dispatcher,
2 the daylight dispatcher having a conversation with
3 either his wife or his girlfriend while otherwise he
4 should've been monitoring the radio.

5 Is that in compliance with your rules with
6 issues, conducting personal business on a company line?

7 MR. NICHOLS: Yes. I'm not good at telling
8 somebody that doesn't have a telephone, as long as it's
9 not their cell phone, that I'm crazy enough to think
10 that they're not going to talk to their wife or
11 something.

12 I would prefer that you, that happened when
13 you're not doing anything else, but we have no rules
14 saying you can't use your desk phone, which is tied
15 into the radio system, to do that. If you use your
16 cell phone, that's a different story.

17 But also, and I'm not so sure how the radio
18 system work. At one time, when you were on the phone,
19 our old system up on the eighth floor here, you could
20 not hear the radio calling. Somebody else would have
21 to tell you, because it drowned out. I think the new
22 system, you can hear both.

23 So it's, if I'm a dispatcher and someone is
24 calling me, I'm going to end the phone call and take
25 care of business.

1 MR. WALKER: All right.

2 MR. NICHOLS: But there's no rules saying
3 that your wife can't call you at work, as long as she's
4 not calling you on your cell phone. That, we take
5 great exception to.

6 MR. WALKER: Okay. Thank you. I have
7 nothing else.

8 MR. HILL: I just want a, just want a couple
9 of clear ups, Dave.

10 MR. NICHOLS: Is that why engineers are
11 always getting me to explain?

12 MR. HILL: And I want to preface this
13 question for, or statement that's, before I say it, by
14 stating this. That in speaking with Mark Kenny, I
15 would attest that the relationship that I seem to see
16 between Mark Kenny and the Amtrak seems, from my
17 perspective, just to be very good.

18 MR. NICHOLS: I concur. He has his issues.
19 We always will. But as far as, I talk to Mark all the
20 time. He calls me if he's got something. He talks to
21 John Hines, the system general road foreman even more.

22 It's huge. You don't know how important it
23 is to have, and you probably do, to have your training
24 program with them, that it, involved in it and
25 overseeing it and just looking at it every now and

1 then.

2 MR. HILL: And that's exactly who I'm
3 speaking to.

4 MR. NICHOLS: Yes.

5 MR. HILL: He just stated --

6 MR. NICHOLS: No, that works, it's great.

7 MR. HILL: In conversations that I've had
8 with Mr. Kenny, he stated that the relationship he had
9 with Amtrak is a very, very good one. He has great,
10 and we both know the training program, he speaks
11 highly.

12 And in fact, I spoke to not just Mark or
13 above guys, that he's becoming the CPRS program, he
14 just, he learned. Thank you.

15 And certain other programs that we have at
16 Amtrak. What I'd like to try and see if you could
17 answer, I don't know if you can, Ms. Theresa might be
18 able to answer it.

19 But why do you believe or why, is, do you
20 see the relationship with the other unions the same as
21 it is with the BLET?

22 MR. NICHOLS: I can speak for the
23 transportation unions, because that's the one I know.
24 I, all the stuff I hear, and everybody's aware of the
25 BMW and all that. It's obviously not the same

1 relationship. It's always adversarial.

2 We have our differences with the SMART TD
3 and the BLET, the TCU, and the ATDA, but I know all
4 those guys on a first name basis. If they got a
5 problem, they come to me or somebody that works for me,
6 and either we work it out or that's the way it is.
7 That's life. Life goes on. And there's other means to
8 address that.

9 From my impression, it does not appear to me
10 that the engineering unions have the same relationship
11 with the engineering leadership.

12 MR. HILL: Okay.

13 MR. NICHOLS: That's --

14 MR. HILL: Thank you, Dave.

15 MR. NICHOLS: I'm not personally involved in
16 that, but I hear like everybody else does.

17 MR. HILL: Thank you. And that's the sense
18 that I've seen, again, as well, and would you not agree
19 that having a good relationship with Mark Kenny and the
20 UTU, it was very productive?

21 MR. NICHOLS: Oh, absolutely. I can, when
22 we have cell phone problems, we had a crew base with a,
23 with Dirk Sampson's people.

24 Dirk, I know very well as, we just called
25 him up. I said, you got, well, they're calling us.

1 Oh, they're taking these people, I said, well they've
2 got to quit doing this.

3 We get them, they issue their instructions,
4 they travel at their union meetings, say, you can't do
5 this, it's clear you can't do it, quit doing it.
6 That's invaluable. You know, listening to the local
7 union guys.

8 So we have the relationship, we can do that.
9 And they, as I say, we, they call anytime. Night or,
10 night or day.

11 MR. HILL: Thanks. Appreciate it. That's
12 all.

13 MR. BEATON: Dave, just a follow-up. A few
14 points about some of the things that happened on the
15 ground there at Chester the day of the accident.

16 When there's a shift change and we have, you
17 know, continuing work, what is the expectation for the
18 outgoing crew? Are they obligated under rules or
19 general expectations to clear up entirely before the
20 new shift takes over?

21 MR. NICHOLS: I don't think there's any, for
22 tracks that remain out of service, some are out
23 continuously.

24 But if you have a new foreman come on duty
25 and it's more than an eight hour outage or just a

1 single outage, then the system, you can't, if you can't
2 put the track back in service, you've got to keep it
3 out.

4 So the new foreman has to come take it out.
5 After he takes it out, that same hunk of railroad, then
6 the previous foreman can annul his Form D.

7 Now, the expectation with fouling is, since
8 you're only fouling and you're not disturbing the
9 track, you clear up when the new guy comes on, wants to
10 foul, he asks for the foul.

11 MR. BEATON: Okay. So, you know, and I'm
12 motivated here and focused on the events at Chester.
13 So we had, we had the night crew and he cleared up, or
14 he released his foul, but there was still a backhoe
15 fouling. So, how should that have worked? I mean,
16 what would've made that a smooth transition?

17 MR. NICHOLS: He should've made sure
18 everybody was clear that railroad before he said, I'm
19 giving up my foul.

20 MR. BEATON: I mean, could he have given up
21 his fouls with the backhoe still fouling --

22 MR. NICHOLS: No.

23 MR. BEATON: -- and the new, the daytime
24 supervisor immediately call and get fouls? I mean, is
25 there an obligation for that backhoe --

1 MR. NICHOLS: Yes, if --

2 MR. BEATON: -- to get off the track?

3 MR. NICHOLS: Before he takes that blocking
4 device off, he better be off the track, and that's what
5 clear means. To a train dispatcher, a block operator,
6 I'm clear, it means everything is clear.

7 MR. BEATON: Okay.

8 MR. NICHOLS: That's --

9 MR. BEATON: So the fact that the backhoe
10 didn't get off the track, was there, do we have reason
11 to believe that there was a failure to direct the
12 backhoe operator to get off the track?

13 MR. NICHOLS: I guess it was either that or
14 the backhoe operator said, I'm not doing it, which I
15 can't imagine in a million years he would do.

16 So my, I don't know, but my supposition is
17 that the foreman either didn't know this guy was still
18 fouling, or he failed to ensure he was clear, or he
19 thought he told him, or, I don't know.

20 MR. BEATON: That backhoe operator, probably
21 this is not his first time on the railroad. I mean, if
22 you're a backhoe operator working around rails, you
23 know what happens at a shift change, and you would have
24 an expectation to get off, get clear.

25 MR. NICHOLS: I would have the expectation

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1 that the EIC would come and tell me that we're doing
2 shift change here and I'm giving my fouls back. So you
3 need to get off the railroad.

4 MR. BEATON: Yes.

5 MR. NICHOLS: Or get in the clear.

6 MR. BEATON: Do you have an opinion about
7 the backhoe operator continuing to stay on the, on the
8 rails because his supervisor was also still engaged or
9 standing nearby?

10 MR. NICHOLS: I don't know. He clearly,
11 nobody, I don't know if somebody told him and he forgot
12 or not. But he clearly was not worried about it.

13 And anybody with that position knows he
14 should worry, so I can't believe that he didn't think
15 he was still okay to foul.

16 MR. BEATON: Okay.

17 MR. NICHOLS: That may have been, but I
18 don't want to, to me that seems logical, but I don't
19 know.

20 MR. BEATON: Yes.

21 MR. NICHOLS: But again --

22 MR. BEATON: And we may never know.

23 MR. NICHOLS: Oh, yes, absolutely. It would
24 be nice to know, but I don't think we will.

25 MR. BEATON: You haven't heard any back

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1 stories or hallway conversation about this --

2 MR. NICHOLS: No.

3 MR. BEATON: -- role of the supervisor and
4 the backhoe operator?

5 MR. NICHOLS: Just the fact that the guy was
6 doing work and not supervising is, to me, you're a
7 supervisor. Especially at a time like this, you're
8 supposed to, and Pete was, I knew the guy very well,
9 believe me.

10 He should've been supervising, not digging
11 with whatever he had. If, I guess he had a ballast
12 fork. I don't know.

13 MR. BEATON: Okay. You're familiar with the
14 concept, I guess it's talked about in different ways,
15 margin of safety or layered protection, just in
16 general, those concepts? Those aren't new concepts?

17 MR. NICHOLS: Secondary protection?

18 MR. BEATON: Yes.

19 MR. NICHOLS: Okay, yes, I --

20 MR. BEATON: Yes. You know, Form D provides
21 kind of a layered protection when they take a track out
22 of service, it sort of formalizes the conversation,
23 establishes a contract.

24 There's some explicit communications that
25 have to take place. Dispatchers are going to read to

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1 me, I've got to state it back to the dispatcher,
2 otherwise we go back to ground zero and start over
3 again.

4 So the, we've got these checks and balances
5 and these, to create a margin of safety, all right?
6 Where is my margin of safety when I release foul time?

7 MR. NICHOLS: You have the same sort of
8 thing. Maybe it's not a Form D, but he's got his
9 fouling sheet.

10 The guy on the ground is supposed to be
11 keeping track of the one he fouls and doesn't foul. We
12 give them forms to do that.

13 So it's just not, it's not as formalized as
14 a Form D, but basically the process is the same thing.
15 It's just like we used to write down, when I came
16 around, permission by a stop signal.

17 You got a long car, Form C if you were, you
18 guys are probably not old enough. Maybe you'd
19 remember, Don, Form C, big, long piece of paper, green
20 paper, that you filled in the blanks, gave the guy, the
21 engineer permission by a stop signal.

22 And then when everything was radio recorded,
23 what do you need that piece of paper for? So you still
24 have the same level of protection.

25 Once a guy is gone, he's gone, you don't

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1 need it to remind you that you gave the guy permission
2 by the stop signal.

3 So I see the same protection. It's just
4 not, the Form D has more information because it's a
5 piece of paper you can give to somebody else.

6 Here, look at this. This is what we're
7 doing. Or, because a lot of it, there's nine or, nine
8 or ten things on a Form D as well. You got speed
9 restrictions on there, you've got MBS stuff, you've got
10 all kinds of movement authorities on it, you have a
11 line where you put in anything you want.

12 So it's more formal in that aspect, but the
13 protection, the main protection is people protect
14 themselves. They ask the train dispatcher for
15 protection. He does his job.

16 The secondary protection, if he needs it, is
17 the supplemental shunting device. That's considered a
18 secondary protection. The main protection are these
19 blocking devices.

20 Because if I, what if he did have
21 supplemental shunting devices? I have no guarantee.
22 This foreman, you took them down too. Say, no, okay,
23 I'm clear. And the backhoe's still down there. It
24 wouldn't have changed a thing.

25 To me, that was no guarantee that that

1 would've prevented this accident, because he was just
2 as likely to do that. I guess he was paying no
3 attention to the guy down on the backhoe on the south
4 end. I don't know.

5 MR. BEATON: Okay.

6 MR. NICHOLS: But I have no guarantee that,
7 the main guarantee is, this guy's blocked up. That is
8 the train dispatcher. The foreman says, I'm clear, you
9 don't have to block anymore. That's it.

10 MR. BEATON: The act though of releasing
11 that foul time required that the nighttime foreman to
12 get on the radio and talk to the dispatcher and say,
13 I'm clear to go.

14 Is there a failsafe or something other, is
15 there anything to protect a failure in that
16 communication?

17 MR. NICHOLS: Do you mean he wasn't clear?

18 MR. BEATON: He wasn't clear. So we have --

19 MR. NICHOLS: Not unless he had a piece of
20 equipment that was shunting. You know, that's
21 possible.

22 MR. BEATON: So we have a --

23 MR. NICHOLS: I guess if the supplemental
24 shunting device was up and he forgot, he didn't take
25 that down and clear it up, the dispatcher probably

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1 would've started yelling at him, hey, you left that TOL
2 up there. What am I supposed to do with that?

3 MR. BEATON: Yes. Yes.

4 MR. NICHOLS: And maybe that would've solved
5 the problem.

6 MR. BEATON: But we didn't have that. So we
7 had a single point of failure in this case.

8 MR. NICHOLS: Yes.

9 MR. BEATON: Is there anything that Amtrak
10 is, has done or is thinking of doing with regard to the
11 single point of failure? I mean, did we learn anything
12 from Chester? Was Chester worth anything to Amtrak?

13 MR. NICHOLS: To me, what it is worth, and I
14 will tell you this, in my opinion, but I think a lot of
15 people's shared it.

16 It's a failure of supervisors to supervise.
17 It's a failure for people to write, out there writing
18 efficiency tests that are meaningful and actually mean
19 something.

20 MR. BEATON: Okay.

21 MR. NICHOLS: That's what it's a failure to
22 me.

23 MR. BEATON: And by --

24 MR. NICHOLS: If those guys are doing their
25 job, and again, I don't want to speculate, but I'm

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1 pretty sure everybody believes it.

2 The night before, they were probably doing
3 the same damn thing. And that gang, I don't know how
4 widespread it is, but this just didn't happen once.
5 It's probably a sign of supervisors --

6 MR. BEATON: That's how it's always done.

7 MR. NICHOLS: Yes, supervisors not doing
8 their job. To me, that's where the failure is.

9 MR. BEATON: And you're saying supervisor,
10 you mean supervisor, not foreman?

11 MR. NICHOLS: Well, I think it's a
12 combination. They're --

13 MR. BEATON: Okay.

14 MR. NICHOLS: Foreman's a supervisor. He
15 might not be considered supervisor in your chart, but
16 he's a supervisor of his people that are working for
17 him.

18 MR. BEATON: Okay. So it's --

19 MR. NICHOLS: He clearly didn't do his job.
20 But the guy's out there, what, why did nobody say, why
21 don't we have a supplemental shunting device up? It's
22 clear from what that backhoe is doing, that, it sounds
23 clear now that they needed one.

24 MR. BEATON: Yes.

25 MR. NICHOLS: Why didn't one person say that

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1 should've been there?

2 MR. BEATON: Okay. Good. Thank you, Dave,
3 for those perspectives. I think that's all that I
4 have.

5 MR. HIPSKIND: Okay, just a quick follow-up,
6 Dave. I have asked, and I've been repeatedly told that
7 Amtrak, in its engineering training and its rules and
8 procedures, as well as the operating rules and
9 procedures, there is nothing that would allow,
10 currently, there is nothing that would allow two
11 foreman to talk with a dispatcher, and in this
12 particular thing, like for an incoming or an outgoing
13 foreman in a transfer, to talk with the dispatcher and
14 hand the foul times or whatever over to an incoming
15 foreman. Okay?

16 And so help me out. What is, what are the
17 challenges, and what, why would something like that,
18 why would that be unsafe?

19 MR. NICHOLS: I'm not sure I got that.

20 MR. HIPSKIND: Okay. Let me, let me try
21 again. We talked about it, if you don't understand.

22 So I've been told that currently there is no
23 process or procedure for two foreman to transfer their
24 foul times, communicating that with the dispatcher.

25 So they get on the radio and the outgoing

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1 foreman says, hey, this is foreman Jones. I'm out
2 here. Foreman Smith has showed, he reported to work.
3 And I want to transfer and give my fouls from foreman
4 Jones to foreman Smith.

5 A transfer. And they're both talking to the
6 dispatcher. The dispatcher knows both of them are on
7 the line listening. They're having a three-way
8 communication.

9 And I understand there's no process or
10 procedure. And all I'm asking is, what are the
11 challenges if there was something developed like that,
12 and is it unsafe?

13 MR. NICHOLS: What you described, I guess,
14 or what you're hoping for, it, I don't, I frankly don't
15 see why it couldn't be done. But you have to get both
16 guys on one radio.

17 This guy's not going to give another guy a
18 foul unless the other guy's ensured he's done fouling.
19 So that's why it's done the way it is now.

20 I'm done, okay, now I'm starting. I don't
21 know if you call it a transfer, but some kind of
22 verification.

23 MR. HIPSKIND: Yes.

24 MR. NICHOLS: I can envision that happening.
25 You got both of them, then you're talking, you're

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1 probably on a phone maybe. I don't know.

2 It's very difficult to do, how to get two
3 guys talking to one guy in a remote location saying,
4 we're together. He's going to take up a foul. Put me
5 down as fouling right now. And just don't remove the
6 blocks.

7 In fact, it's not uncommon if they know
8 somebody's going to come, if, it's not an official
9 procedure, if you know in a job like this somebody's
10 going to be coming along and fouling, you don't have
11 anything around, you're probably not going to take your
12 blocks down because it's a pain in the ass to take
13 blocks down and put them back up. Just leave them
14 there. That's your prerogative to do that.

15 Then the new guy comes, well, then you write
16 down the piece of paper.

17 MR. HIPSKIND: Yes, Dave, my thought is
18 that, just thinking about, I've never been a, spent a
19 day as a dispatcher in my life, but it would seem to me
20 that it would, as a dispatcher, I would enjoy some kind
21 of efficiency, because I don't have to take one down
22 and then put one back up.

23 I might be able to just sit there, and if
24 I'm comfortable and I, I'm not saying I have thought
25 this thing out to the nth degree.

1 There has to be a process, a procedure
2 that's well thought out, agreed upon. But it does have
3 an error of simplicity to it.

4 MR. NICHOLS: I see what you're saying.

5 MR. HIPSKIND: I'm foreman A, I want to give
6 it to foreman B. We're talking with dispatcher C. He
7 understands everything we want to do, and on his end,
8 he's good with it.

9 If dispatcher C, if he says, well, I'd like
10 to do that, but I got trains to run. So give them up,
11 neither one of you are going to have them. Foreman A,
12 you need to give your stuff up. Foreman B, talk to me
13 afterward, whatever.

14 So just in the communication from the field
15 to the dispatcher, I, they're all on the same page.
16 And if there's something unsafe about that, you know,
17 I'm sure you guys will talk about it.

18 MR. NICHOLS: The only, the variable that
19 you have to assure the dispatcher. He needs assurance
20 from both guys, what's going on.

21 MR. HIPSKIND: Oh, absolutely.

22 MR. NICHOLS: That's why the procedure is
23 what it is now.

24 MR. HIPSKIND: Absolutely.

25 MR. NICHOLS: You're clear? Okay, good. Go

1 away. Here's the new guy. Okay, I want it, you got
2 it.

3 MR. HIPSKIND: And there is an absoluteness
4 to the way it's run now. I get that. I get that.

5 MR. NICHOLS: Right. And I don't think what
6 you're proposing, that probably wouldn't have had,
7 because I think it was pretty clear, the third trick
8 guy said, yes, Yaeger is going to be calling you, or
9 once Yaeger got the track out of service before the
10 other guy gave it back, he said, yes, yes, he'll be
11 giving everything back, and then I'll be coming and
12 getting it.

13 So that conversation was had. So this
14 instance, I don't know if that would've applied.

15 MR. HIPSKIND: Well, and I'm not proposing
16 that it was a solution to something that's already
17 happened.

18 MR. NICHOLS: I can see it happening under
19 certain circumstances.

20 MR. HIPSKIND: Okay.

21 MR. NICHOLS: You've just got to be smart
22 about it, and make sure you got all your ducks lined up
23 correctly.

24 MR. HIPSKIND: The way I look at it, Dave,
25 it's just an additional tool.

1 MR. NICHOLS: No, I see.

2 MR. HIPSKIND: If it fits in a particular
3 set of circumstances and all that. So as one person
4 who, his first day started out on a tie gang, to
5 another person who started his first day on a tie gang
6 --

7 MR. NICHOLS: We're still alive.

8 MR. HIPSKIND: We're still alive, and I'll
9 venture to say, neither of us knew what we would be
10 doing 40 years later, did we?

11 MR. NICHOLS: If you think I would've
12 thought I was in this job, Dick --

13 MR. HIPSKIND: I --

14 MR. NICHOLS: Five years ago, I couldn't
15 have --

16 MR. HIPSKIND: I totally get that.

17 MR. NICHOLS: I'm living a dream.

18 MR. HIPSKIND: And I totally get that, Dave.
19 Ryan, do you have any business with John?

20 MR. FRIGO: Yes, John, do you have any
21 clarification or anything that you'd like to add for
22 us?

23 MR. BONVENTRE: I do not.

24 MR. FRIGO: Great.

25 MR. HIPSKIND: Do you have some questions?

1 MR. FRIGO: And with that, I'll, Dave, thank
2 you for your time, and as we discussed before, we just
3 have a few more questions for you. Is there anything
4 you would like to add or change?

5 MR. NICHOLS: I don't believe so. I think I
6 understood you. You guys are pretty good. Didn't try
7 to confuse me too much for an old man. No, that, it
8 was pretty straightforward. I appreciate it.

9 MR. FRIGO: Are there any questions we
10 should have asked but did not?

11 MR. NICHOLS: I would never tell you. No.
12 No, I honestly cannot think of any.

13 MR. FRIGO: Do you --

14 MR. NICHOLS: I'm a train dispatcher.
15 You've got to help me think.

16 MR. FRIGO: Do you have any suggestions for
17 preventing a reoccurrence?

18 MR. NICHOLS: In my opinion, I told you what
19 I thought. I thought it was a supervisory failure, and
20 you've got to get on top of that. There's no margin
21 for error. We all know.

22 Anybody that's worked on the railroad for
23 five minutes knows that, and it's just, it's very
24 upsetting how the whole thing went down, but I believe
25 it's incumbent on us to make sure that it doesn't

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1 happen. So --

2 MR. FRIGO: Is there anyone else that we
3 should interview?

4 MR. NICHOLS: I think you should interview
5 Theresa.

6 (Simultaneous speaking)

7 MR. NICHOLS: That's why I suggested her.

8 MR. FRIGO: Dave, thanks a lot.

9 MR. NICHOLS: Thank you, guys.

10 MR. FRIGO: Thanks again.

11 MR. NICHOLS: I appreciate it. I hope I was
12 helpful.

13 MR. HOEPF: All helpful. No harm.

14 (Whereupon, the above-entitled matter went
15 off the record at an undisclosed time.)

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C E R T I F I C A T E

MATTER: Accident Involving AMTRAK Train #89
April 3, 2016
NTSB Accident No. DCA16FR007
Interview of David Nichols

DATE: 09-08-16

I hereby certify that the attached transcription of page 1 to 116 inclusive are to the best of my professional ability a true, accurate, and complete record of the above referenced proceedings as contained on the provided audio recording; further that I am neither counsel for, nor related to, nor employed by any of the parties to this action in which this proceeding has taken place; and further that I am not financially nor otherwise interested in the outcome of the action.

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