



The underlined word below represents the change to appear.

I, Cuvas Ellis, have read the foregoing pages of a copy of my testimony given during an interview relating to the accident that occurred on June 10, 2017, near Queens Village, NY and these pages constitute a true and accurate transcription of same with the exception of the following amendments, additions, deletions or corrections:

<u>PAGE NO:</u>	<u>LINE NO:</u>	<u>CHANGE AND REASON FOR CHANGE</u>
5	16	<u>Cue</u> NOT <u>Cu</u> Name Correction
8	22	the interlocking NOT as <u>Clarity</u>
9	22	passed that on to the <u>foreman</u>
10	3	<u>We perform on a regular basis</u>
11	17	<u>that they need.</u>
11	23	<u>interlockings</u>
13	25	<u>Cue</u>

I declare that I have read my statements and that it is true and correct subject to any changes in the form or substance entered here.

Date: 10/24/2017

Witness: [Redacted]



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<u>PAGE NO:</u>	<u>LINE NO:</u>	<u>CHANGE AND REASON FOR CHANGE</u>
15	15	track patrol <u>cards</u>
18	3	Eric Ptarcini
19	22	<u>I understand</u> <u>of</u> <u>their</u> <u>operation</u> <u>is</u> from
28	17	<u>Cue</u> and I
28	19	<u>Cue</u> and I
28	21	under <u>Cue</u>

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PAGE NO:	LINE NO:	CHANGE AND REASON FOR CHANGE
29	13	Mike <u>Olleck</u>
29	14	Mike <u>Olleck</u>
29	18	Olleck not Ollek
29	22	was cause for a red alert
29	22	remove last word - regarding
31	20 and 21	Cue NOT Cu
32	5	Cue Not Cu

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37	17	push ups <u>NOT</u> pick up
38	20	drop ballast
39	4	on <u>NOT</u> from
39	19	frog <u>NOT</u> fork
40	5	actual <u>NOT</u> actually
40	19	Port Wash <u>NOT</u> port watch and then

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Date: 10/24/2017

Witness: [Redacted]

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

\* \* \* \* \*

Investigation of: \*

EMPLOYEE FATALITY \*

LONG ISLAND RAIL ROAD \* Accident No.: DCA17FR009

QUEENS VILLAGE, NEW YORK \*

JUNE 10, 2017 \*

\* \* \* \* \*

Interview of: CUVAS ELLIS

Long Island Rail Road Offices  
Jamaica, New York

Friday,  
September 15, 2017

## APPEARANCES:

JOE GORDON, Chairman, Track and Engineering Group  
National Transportation Safety Board

TOMAS TORRES, Rail Accident Investigator  
National Transportation Safety Board

DON WILSON, Track and Engineering  
Federal Railroad Administration

GLENN GREENBERG, Deputy Chief Engineer  
Engineering Department  
Long Island Rail Road

MARTY SACCENTE, Accident Investigations Manager  
Engineering Department  
Long Island Rail Road

WILLIAM BATES, National Transportation Safety Team  
SMART

DOMINIC AMENDOLARE, Transportation Safety Team  
SMART

DON HILL, Safety Task Force  
Brotherhood of Locomotive Engineers and Trainmen (BLET)

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MR. GORDON: My name is Joe Gordon and I am the NTSB Track and Engineering Group chairman for this accident. We are here today on Friday, September 15th, at the Long Island Rail Road Office in Jamaica, New York to conduct an interview with Mr. Cu Ellis, who works for the Long Island Rail Road.

This interview is in conjunction with NTSB's investigation of the June 10th, 2017 accident where a westbound passenger train operated by Long Island Rail Road struck a roadway worker in the Queens interlocking in Queens Village, New York. The NTSB accident reference number is DCA17FR009.

As we spoke before, the purpose of the investigation is to increase safety, not to assign fault, blame or liability.

Before we begin the interview and the questions, we will go around the room and introduce ourselves. Please spell your last name, who you are representing, and your title. I would like to remind everyone to speak clearly for the recording.

I'll start off, and then pass it off to my right. Again, my name is Joe Gordon. The spelling of the last name, G-o-r-d-o-n, and I am the NTSB Track and Engineering Group chairman.

MR. ELLIS: I'm Cu Ellis. The spelling of my last name is E-l-l-i-s. I'm the engineer of track with the Long Island Rail Road, Track Maintenance West.

MR. GORDON: Don?

MR. WILSON: Don Wilson, W-i-l-s-o-n, Acting Region 1 Track

1 Specialist, FRA.

2 MR. GREENBERG: Glenn Greenberg, G-r-e-e-n-b-e-r-g. I'm the  
3 deputy chief engineer of the Long Island Rail Road.

4 MR. BATES: William Bates, B-a-t-e-s, SMART National  
5 Transportation Safety Team.

6 MR. AMENDOLARE: Dominic Amendolare, A-m-e-n-d-o-l-a-r-e,  
7 SMART Transportation Safety Team.

8 MR. SACCENTE: Marty Saccente, Accident Investigations  
9 Engineering, Corporate Safety, Long Island Rail Road,  
10 S-a-c-c-e-n-t-e.

11 MR. HILL: Don Hill, H-i-l-l, BLET Safety Taskforce.

12 MR. TORRES: Tomas Torres, T-o-m-a-s, T-o-r-r-e-s, NTSB.

13 INTERVIEW OF Cu ELLIS

14 BY MR. GORDON:

15 Q. Okay. Mr. Ellis, I understand you go by -- or your first  
16 name Cu, <sup>e</sup> is it okay to call you Cu <sup>e</sup> for the interview?

17 A. Yes.

18 Q. Okay. Thank you. And do we have your permission to record  
19 our discussion today?

20 A. Yes.

21 Q. Okay. You understand that the transcript will be made part  
22 of a public docket and, as such, we can't guarantee any  
23 confidentiality?

24 A. Yes.

25 Q. And we discussed before that you have the right to have a

1 representative with you today. Do you have a representative with  
2 you?

3 A. I don't have a representative with me but I'm fine with going  
4 on with the interview.

5 Q. Okay. Thank you. Okay. So, before we get started with the  
6 questions surrounding -- you know, more focused on Queens  
7 interlocking, if you could just give us an idea of your  
8 background, when you came to work for Long Island Rail Road, and  
9 kind of your progression to the position that you're in today?

10 A. Okay. My date of service was August 30th, 1988. I entered  
11 on the Long Island Rail Road as a junior engineer. I went through  
12 that junior engineer program prior to being promoted to an  
13 assistant supervisor position. I served some time as assistant  
14 supervisor, then I moved into the structures department and  
15 operated as a structural designer. I was in the position of  
16 structural design, came back to the track department.

17 Prior to going to structures, I was a supervisor, and then I  
18 went to the structures department as a structural designer, came  
19 back to the track department as a supervisor. Then I had a time  
20 again where I was in project management, and then back again to  
21 the track department as a supervisor, and then became engineer of  
22 track. So it's kind of a broad base experience.

23 The junior engineer program had me circulating among the  
24 various engineering departments. And pretty much, that is my  
25 history. So as of August 30th of this year, I have 29 years.

1 Q. Okay. All right. And a lot of work in different areas on  
2 the railroad. So if you could just -- we'll go back to the way  
3 that the team -- you know, we understand from some of the work  
4 that we've been doing on this investigation that there were  
5 multiple work groups that were working in that Queens area, Queens  
6 interlocking area that morning.

7       Could you tell us how that group was assembled and how the  
8 people were identified as the people that would be working on June  
9 10th and, you know, kind of how those guys were notified?

10 A. Okay. As a regular part of our operations, when there is  
11 weekend work, because it is a union environment, it requires a  
12 canvassing of our employees to see who was eligible and interested  
13 in working. The work that came out of -- that took place that  
14 day, essentially part of it was, one, the protection of the  
15 Belmont racetrack events that were to take place that day. And  
16 protection involved making sure the switches were operational and  
17 functional and being able to be a immediate responder, if you  
18 will, to any problems that the Transportation Bureau 204 would  
19 report that day.

20       In conjunction with that, knowing that that work was going to  
21 be -- you know, that protection work was going to be going on, we  
22 also had a prior event where there was a failure because of the  
23 endpost in an IJ was missing and two rails came in contact on an  
24 insulated joint. So part of our endeavors was also to just  
25 walk -- the assignments that was provided to the men was to walk

1 the track in that area and just to check on the IJs.

2 Now, that interlocking had a prior history of IJs burning up,  
3 and so that was a preemptive inspection. It's a common inspection  
4 that we -- you know, in the normal course of the day would be  
5 done. Many of us all here are familiar with railroad operations,  
6 and part of, you know, daily operations is the inspection of  
7 track, you know, the track walkers walking and patrolling tracks  
8 and detecting defects and such. And essentially, that was the  
9 core of what that work was entailing and such.

10 No repairs could have been exacted unless, you know, the  
11 track was taken out of service and such. But it was a matter of  
12 identifying any problem areas before it became a critical  
13 situation.

14 Q. Okay. Okay. And the previous problem, so was that work  
15 known at the time that the work groups were -- that the roadway  
16 workers were notified that they were coming in to report to Queens  
17 interlocking, Queens Freight and --

18 A. I had received a call the day before reporting, you know, an  
19 incident, the incident that I had described with the endpost. And  
20 so, knowing that area was an area that we had prior issues with --  
21 you know, there was no existing condition at the point in time.  
22 It was a general assignment, hey, walk <sup>the interlocking</sup> as -- because the nature of  
23 the work is that there's nothing going on that says someone has to  
24 run out right away and, okay, we're going to change out an IJ,  
25 we're going to change out a piece of rail. It's strictly an

1 inspection walk, essentially. You had a group of men, sufficient  
2 guys that were there that they could just walk a track and say,  
3 okay, this IJ endpost needs cross-cutting, or everything is fine,  
4 one or the other. But definitely, it was essentially just an  
5 inspection walk that had to be done.

6 Q. Okay. Okay. Now did you speak with the -- how many roadway  
7 workers in charge were there working in that area, to your  
8 knowledge?

9 A. I know of two foremen being assigned. One was Mike Ollek,  
10 the fatality, and the other Pepe, Victor Pepe.

11 Q. Okay. And did you speak directly to the roadway worker in  
12 charge as far as what the work assignment would be -- or was there  
13 a manager between you and the roadway worker in charge that would  
14 have talked to them?

15 A. I had received a call mentioning the need to just check out  
16 our IJs, which is something which is a common thing that we should  
17 have been doing. During the warm temperature that would usually  
18 take place, because what happens, you have -- you know, the rails  
19 tend to contract in the winter, and in the warmer weather the  
20 rails start to run. And so we were going through that process.

21 I received a call regarding that and I passed that on to the  
22 supervisor, and the supervisor passed that on to the <sup>personnel</sup> ~~Sorensen~~ -- you know,  
23 as a part of the assignment of the guys that were going to work  
24 there. It didn't involve a long conversation or anything of the  
25 sort because it wasn't peculiar to our operations. This is

1 something that we commonly would do. It's a norm, essentially,  
2 during, you know, transition periods, and even on a regular track  
3 patrol that ~~we'll be performing a walk~~ <sup>we perform</sup> on a regular basis during  
4 the week.

5 You know, so it didn't require any elaboration or any details  
6 or anything of the such because it's a common practice that we  
7 have. You know, it's something that any track patrol or person  
8 walking interlock, going through a switch, you know, the common  
9 practice. You're looking for your cotter pins to make sure none  
10 are missing. You're looking that the bolts are tight. And, you  
11 know, it's not something that requires a whole lot of endeavor.  
12 It's pretty much an inspection.

13 Q. Okay. So when the supervisor calls to make that -- any work,  
14 you know, not specific to just this work, if the supervisor calls  
15 a roadway worker in charge or a track foreman to give them an  
16 assignment to work for the day, does that supervisor discuss the  
17 way that Long Island Rail Road would expect for them to protect  
18 themselves, or is that left up to the roadway worker in charge to  
19 make that determination?

20 A. You have a twofold situation. Both of those apply because,  
21 for example, if you see that there's a territory that has certain  
22 issues involved. Let's say I'll give you an example like Woodside  
23 curve where, as a supervisor, you're going to know, hey, they're  
24 going to need extra protection because it's on a curve, there's an  
25 over-jump which cuts your visibility and such, and so you may

1 supply them with a few extra guys just so that they would have  
2 sufficient men to position them.

3 The foreman that's out there in the field is, one, trained in  
4 the physical characteristics, should be aware of what he has  
5 there, and if there's something that he needs in addition, would  
6 be able to call and say, hey, I don't have enough men so I need  
7 more guys, or let's set this up on another day because I need two  
8 extra guys so I can put them farther out from where the work area  
9 is because my, you know, my sight line isn't sufficient.

10 Or in a situation like, for example, the Woodside curve where  
11 it's going into Harold, you would have -- you know, need more  
12 advanced protection because you have limiteds on a deep curve  
13 with, you know, a under-jump and such. So both of those come into  
14 -- one, you as a dispatcher, you're going to say, hey, I've got to  
15 put extra guys with that gang because what they have is sufficient  
16 to do the work but they're not enough to also add the additional  
17 protection that they ~~have~~ need.

18 In ~~that~~ <sup>that</sup> situation, those men were all familiar with the work  
19 area that they were going in. It didn't just arrive out of  
20 nowhere. It's been there for at least the 29 years that I've been  
21 here, the same work area and such, and those were all -- they  
22 weren't fledgling foremen. They've been around a while and that  
23 is one of the interlocks <sup>ings</sup> that receives major work, you know,  
24 regular work in their subdivision.

25 So, you know, those foremen were quite familiar with the work

1 area, what would be entailed and what was involved. And  
2 essentially, in that work area, if you had two flag persons you  
3 would have protection on both ends. And they had sufficient men  
4 for the work that was involved that they could have even  
5 distributed three if they wished. And, you know, that's my take  
6 on the situation.

7 Q. Okay. Okay. In your current position, do you do rules  
8 checks, sufficiency checks?

9 A. We have RWP training that's provided to the men. I know when  
10 I was on the -- when I was running as a supervisor to tie jobs and  
11 such, sometimes I would even collect the RWP cards, because  
12 particularly when I was running a rail job and tie job we had a  
13 lot of encounters where you have live track running next to you  
14 and we were constantly, for the full day, in track at the time.

15 So there is definitely a process. Each one of those foremen  
16 are required to get their yearly training and RWP.

17 I mean, is there a time when, you know, a guy might go 2 days  
18 over? Yeah, but we have an entire group that's pretty much on top  
19 of that training, and each one is provided that training, is given  
20 testing to, in a sense, record their comprehension of what's  
21 involved and such. And also, being that those guys are  
22 experienced men, they have had essentially learning by example,  
23 where you will -- where they have been involved as track workers  
24 and such and have ascended through the ranks. So they have  
25 exposure in that manner as well.

1 Q. Okay. But do you do what would be like an unannounced --  
2 like you've got a work group working, and would you ever go out  
3 and observe them?

4 A. Yes. Yes. You would go up and have them check their RWP  
5 cards. We have a group out of safety that oftentimes goes out and  
6 checks the RWP cards. We have SAFER inspections where we go out  
7 and, you know -- usually, like, you might have a whole group of --  
8 all the various engineering departments, right, would essentially  
9 descend upon the right-of-way performing inspections of their  
10 SAFER cards, truck inspection reports, and, you know, boom truck  
11 inspection reports and such.

12 Q. Okay.

13 A. So that's something that occurs pretty much on a regular  
14 basis, because every month there's some SAFER group, some form or  
15 the other ongoing.

16 Q. Okay. And I've got one more and then I'll pass it around the  
17 room. If you were out doing an observation of a work group doing  
18 similar type of work in Queens interlocking, would you take any  
19 exception to them using train approach warning for the type of  
20 work that they were doing?

21 A. No, I wouldn't.

22 MR. GORDON: Okay. Thank you.

23 I'll look to Mr. Wilson for questions.

24 BY MR. WILSON:

25 Q. Yeah, Don Wilson, W-i-l-s-o-n. Cu, thank you for that. So

1 anyways, you know, there's something I wonder about constantly in  
2 all of this, and I guess it's because the trains are running on  
3 the outside tracks. Well, I know they are frequently because  
4 they're going to be stopping at the platform stations that are on  
5 the outside, non-island stations, and so, I guess that's the  
6 reason. But it would seem to me, and I could be wrong, wouldn't  
7 this work be readily performed from the outside tracks and just  
8 walk into the insulated joints as opposed to walking the inside  
9 tracks and walk out? The insulated joints are on the outside  
10 track.

11 A. Could you restate, please?

12 Q. Okay. So it seems like frequently they walk the inside  
13 tracks, right, and then they walk the inside track back down.  
14 Like if that was 4, 2, 1, 3.

15 A. Okay.

16 Q. All right? And it seems, in conversation with all of the  
17 people that we've interviewed, that when they inspect in that  
18 interlock they inspect from the outside tracks.

19 A. Okay.

20 Q. And that then they stay in the inside tracks if there's an  
21 outside train at times. My question, I guess, is since they  
22 always say that they like to clear to the field side, wouldn't --  
23 couldn't that be effectively done from the field side if you were  
24 on the outside track?

25 A. I would like to think so. I mean, really, it seems logical.

1 The guys who walk -- I am not a person who has been a track  
2 patroller.

3 Q. Oh, okay.

4 A. And these individuals, they develop their own ways and means,  
5 if you will. And I guess, in their minds, it's been time tested  
6 that they say, well, I have to get off the track less if I'm  
7 walking down this particular track. I have never -- I have not  
8 interviewed any of those persons to gather that information.

9 Q. Sure.

10 A. You had, you know, in prior situations and such, because this  
11 was one of the, you know, unusual and sad situations where we find  
12 ourselves in that.

13 Q. Sure.

14 A. Yeah, it's reasonable because you're looking to access the  
15 adjacent tracks, and the way the track patrol cars<sup>cards</sup> are set up is  
16 usually the adjacent tracks going east or adjacent tracks going  
17 west. So, yes, it would be reasonable to say that, if I'm on 2, I  
18 can look at 4, but yeah, that means that if I'm on 4, I can look  
19 at 2. But part of the issues, also, is that in your FRA mandates  
20 you have that you're actually supposed to be on the track that  
21 you're inspecting, as well, actually walk that track.

22 Q. Agreed. Agreed.

23 A. So that could put an onus on them to be on that actual track.  
24 By rights, though, they should not stay in the track if there's a  
25 train coming. The safest route for them to do is to clear and

1 clear all the way. Or, in fact, take foul time if they're going  
2 to be on the track and they know to the next -- you know, after  
3 going out there for a number of years or a number of months or  
4 whatever the case may be, that from here to here I can get there,  
5 or from here to here I should take a foul time shot till I get to  
6 the next point where I can easily clear. I know that train is  
7 going to go by at that point in time because I know that routine,  
8 and then, you know, take it on again from that point.

9 But that's what I -- you know, that issue of the FRA saying  
10 that you got to walk this track, and yes, I could do an inspection  
11 on that track, but you're supposed to, in a sense, change up which  
12 track you're on so you can see the bar from the other side now  
13 instead of always from the same side. And to get that almost  
14 irregularity built in so that you don't get almost like, you know,  
15 seeing the same thing all at the same time that you ignore a  
16 defect or, you know, you see something different.

17 It's just like going down the street and you only see certain  
18 things when you always travel down the street in one direction and  
19 then the day you come from the other side you're seeing a whole  
20 different viewpoint, a different perspective. So I think that's  
21 where that comes from, you know.

22 But that's about the, you know, best response I could give to  
23 you why that occurs.

24 Q. Okay. Sure.

25 A. And that's partially coming from the FRA looking to have guys

1 not get caught up in where they're only looking at things from one  
2 perspective. And then if it's the bar on the outside, the field  
3 bar that's broken, but you would never see it if you're always  
4 walking on the same track.

5 MR. WILSON: Thank you.

6 BY MR. GREENBERG:

7 Q. Cu, just a couple of quick questions. Approximately how long  
8 have you been engineer of track maintenance west?

9 A. 2015, January 2015.

10 Q. And the supervisors, I'll say the supervisor and assistant  
11 supervisor, that's Ptarcinski and LaMendola, they've been the  
12 supervisor team pretty much your entire time in the West Division,  
13 right?

14 A. Yes. Yes. I believe they were there even before I had  
15 arrived. They're a very complementary team. You know, each one  
16 essentially feeds off the other's energy. And they know what  
17 they're doing, I have to tell you that.

18 Q. Have you ever had any concerns about how they deal with  
19 safety issues in their division?

20 A. No, I haven't.

21 MR. GREENBERG: That was it.

22 MR. BATES: No questions.

23 MR. AMENDOLARE: No questions.

24 MR. SACCENTE: No questions.

25 BY MR. HILL:

1 Q. Hill, Don Hill, H-i-l-l. Just a couple of questions. Who  
2 reports to you?

3 A. <sup>ERIC</sup> Erik Ptarcinski, who is the supervisor of track in  
4 Subdivision 2. You have Phil LaMendola, L-a-M-e-n-d-o-l-a,  
5 LaMendola, he's the assistant supervisor. And in Sub 1, which is  
6 the adjacent division, I have -- at the time in question when that  
7 event occurred, it was Frank Priolo, P-r-i-o-l-o, and Clayton  
8 Davis.

9 Q. Do you ever have any contact with the foremen in the field?

10 A. Yes. Mainly because I was also a supervisor. So they're no  
11 strangers to me and, you know, they know who I am and I know who  
12 they are.

13 MR. HILL: That's all I have. Thank you.

14 BY MR. TORRES:

15 Q. Tomas Torres. So this crew was called to work overtime for  
16 the purpose of what? What was their purpose?

17 A. We had the Belmont racetrack event going on, which in the  
18 last couple of years has been quite a big event. So we had a crew  
19 on standby there to make sure that there was no issues with any  
20 switches or such because of the crowd handling that was necessary,  
21 to make sure that, you know, we could effectively move the  
22 passengers out of that event safely and without incident.

23 So they were there for that, and then they were also there,  
24 being that we knew that when that event was going on, the level of  
25 urgency as far as for the protection that was needed, they were

1 also given the assignment to inspect the IJs that were through the  
2 interlocking.

3 Q. And you say that's routine inspection? That type of  
4 inspection is routine?

5 A. Yes, because a track patroller, under our FRA mandate, would  
6 have to walk that, walk any track. During a regular day, that's  
7 something that they would do. And that's a person that is just --  
8 that track patroller would be just himself and a flag person with  
9 him. And in this situation, you had an entire gang that was out  
10 there walking, and there was a second gang that was also available  
11 out there should anyone find a need for more personnel or  
12 assistance. But this was a visual inspection that was being  
13 performed. It wasn't a, you know, mechanical inspection or  
14 breaking apart of anything (indiscernible).

15 Q. That day, was there an increase of train traffic? Were there  
16 more trains running through there?

17 A. I wouldn't say that there was an increase in train traffic at  
18 that time. I don't know if the event -- I don't know from the  
19 time of the accident the event was, you know, was already -- the  
20 stadium was already filled or not to say what exactly the hours.

21 But I -- there is going to -- much of the train traffic, from  
22 what I understand <sup>of</sup> ~~how~~ <sup>their</sup> ~~they~~ operation ~~is~~ from prior history, would  
23 come from Jamaica and going into -- down main line number 4,  
24 essentially, or main line 2, because that's the route that they  
25 would have to take in order to get into Belmont.

1           So that's where you would -- from the little bit that I know,  
2 where, you know, the heavier traffic would be from, because you  
3 have to enter from the west end of Belmont in order to get in  
4 there, and the regular route for those trains would be traveling  
5 down main line number 4. So that's where the -- if there was any  
6 increase in traffic, if you will, that's the track that they  
7 would, you know, traverse.

8 Q.   Okay. So on that day -- I mean, do you guys do, like, a risk  
9 assessment, see what level risk exists, you know, what are the  
10 potential hazards?

11 A.   Yeah, it's just as I described. I mean, you're not  
12 necessarily familiar with all our physical characteristics, but  
13 that's what I tried to elaborate on with the description of  
14 Woodside curve, where we have a very large curve. It's a, you  
15 know, three -- it's essentially a mile-long curve, and you have  
16 over-jump, you know, tracks going over that, and it blocks your  
17 visibility.

18           So from your experience of dispatching men to work in a  
19 certain area you know that you want to have that track out if  
20 you're going to want to work there, have additional --  
21 essentially, an area like that takes, you know, four, at a  
22 minimum, flag persons. On a regular day you might just have one  
23 guy flagging or two persons flagging, and here is a situation when  
24 you would have four persons flagging.

25           That essentially is a description of a risk assessment, where

1 you know you need more people to get that work done in that area.  
2 You can't do it under -- not even foul time might be sufficient in  
3 that area because of where it is and clearing up and what you  
4 might be involved in. And you know once that train comes out that  
5 tunnel he's right on top of you, so you may need a guy up top and  
6 a guy farther down, and maybe even a guy sitting in Woodside  
7 calling on the radio, saying the train is leaving the station.  
8 You know, and that's a risk assessment, and things that we've done  
9 before where we're doing certain work.

10 Let's say even a spin on the foul time and you have a guy  
11 positioned inside, you know, standing on the platform to say, all  
12 right, the train is just leaving out now, and you're doing certain  
13 work and you know you have to get safe, be prepared to be safe,  
14 you know, in the clear at that point in time.

15 So it's not a formal, labeled checklist, but it's part of our  
16 assessment, if you will, of when you're dispatching the men in the  
17 morning of knowing, hey, I'm going in this area and this needs to  
18 be done. Or look, to tackle this work that we're going to do, you  
19 know, this guy is going to be here and he's going to sit in  
20 Woodside; if you see the train leaving, you call. And he's going  
21 to verify that the train is, you know, is leaving the station and,  
22 you know, be in the clear, that you know you got X amount of time  
23 before that train's going to be on top of you.

24 Q. Now, you've been out in the field. You said you were a  
25 supervisor at one time?

1 A. Yes.

2 Q. When they're doing that type of protection, a watchman  
3 lookout, are they allowed to be in live track as they're doing  
4 their inspection?

5 A. The watchman or the man himself?

6 Q. The man, the work group, everybody.

7 A. The work group, yes, because it's necessary. But the  
8 requirement is that you have X amount of warning based upon your  
9 sight distance. So at that point in time, they should have  
10 cleared the track, you know. And, you know, there's layers of  
11 protection that is available to them and that they can request.

12 You know, on prior occasions, I had put out even an email to  
13 our men regarding requesting foul time and to encourage them to  
14 request foul time. Because, again, if you're walking main line,  
15 there's areas where you're on curves and such that you would need  
16 foul time to traverse those areas.

17 And, you know, I think it was a -- what prompted me at that  
18 point in time, I think there was an FRA was riding the train and  
19 made mention that he saw track patrols on the track and whatnot,  
20 and he wasn't sure if they were aware that a train was coming.  
21 And that prompted me to say, hey, guys, make -- you know, try and  
22 remember that foul time is available to you if you want it.

23 But as I had mentioned before, is that various persons have,  
24 you know, different means between whether they stop in the tower  
25 and speak to the guy in the tower and such, and things like that,

1 in order to get the protection that they want. But yeah, the main  
2 course of action that the guys should have taken is that if they  
3 see a train, they should have cleared the track or know that they  
4 have foul time on that track.

5 Q. So while you've been employed with the Long Island Rail Road,  
6 have you ever known of a group, of a work group using a live track  
7 to clear as a safe zone?

8 A. No, because -- and the issue is just, as we all know, you  
9 have to expect a train from any direction at any time. And with  
10 that notion, and knowing the precarious place that you would be --  
11 because I've been on a bridge before and a train came around a  
12 curve and I went to jump, I think. And, you know, so with that  
13 experience, you know that you can't be sure. And these trains  
14 travel at some speed. And it's not unusual to have opposing  
15 trains passing at the same time in some stations like Bethpage,  
16 which is the only place where we have a lot of pedestrian accident  
17 events that occur.

18 So, once you're in the track, you have to understand that and  
19 know that, hey, the best move to get out of the track. Because  
20 there's no guarantee that there won't be another. You know, you  
21 might be in the middle and you're playing chicken, you know,  
22 Chicken Little in the middle of those tracks.

23 So, one, the flag protection should have been employed. You  
24 know, I'm more leery for Queens interlocking than even Harold, and  
25 Harold has more switches. But the speeds that are in Queens

1 interlocking requires that you have to, you know, you have to  
2 raise the level of alertness, of paying attention to what's going  
3 on and such.

4 Q. So you're saying they should have had flag protection?

5 A. Flag protection was there. The flag protection should have  
6 been on point. You've got to turn it up a notch when you know  
7 that -- and from my experience of being in -- I was in Sub 2 for  
8 some time. That's the place where the trains, you know, are  
9 there; it's not if they're there. And the guys should have been,  
10 you know, should have been alert.

11 It's just like if you're in the military and you're on watch.  
12 You've got to really -- you know, it's different than if you're in  
13 Kansas versus if you're in the middle of Afghanistan. It's a  
14 whole different ballgame and you're right there in the middle of  
15 it. And there was sufficient people that was there to offer the  
16 protection. Because you only need one person to do a visual  
17 inspection, and you had a whole crew.

18 Q. So, when you're referring to flagmen, you're still referring  
19 to watchmen lookout or --

20 A. I don't know if it's terminology that's at issue here. I  
21 think we may be, you know, using different terms to refer to the  
22 same thing. And I think, you know, and that may be where it is,  
23 you know, the misunderstanding, maybe.

24 Q. And train approach warning or -- are you familiar with the  
25 Long Island Rail Road's rules when it pertains to workman safety?

1 A. Yeah, I would like to think so. Yeah.

2 Q. So are you familiar with train approach warning?

3 A. Yes. Yes.

4 Q. And what does that entail? I mean, how does that apply? How  
5 do they employ that up here on the field?

6 A. Train approach is, one, you have flag persons that are set up  
7 at a certain distance, you know, sufficient to be able to give  
8 sufficient warning of a train approaching. All right? And there  
9 is a measured distance. It appears right on their RWP cards of  
10 how much time they would need to go -- how much time is available  
11 based upon the length of visibility that they have. And the  
12 minimum is 15 seconds that they should clear. But they're able  
13 to, you know, from that determine at what point how much time is  
14 available. Essentially, on the card, at X amount of speed you  
15 have this much distance and such.

16 Q. And how do they determine where the -- what takes place in  
17 the work group before they go out there?

18 A. A job briefing takes place with the road groups. That's just  
19 to essentially outline what the protections are going to be, the  
20 track they're going to be working on, what's the nature of the  
21 work that they're going to be performing, where they're going to  
22 clear should a train -- you know, should the watchman sound his  
23 horn or sound his alarm and such.

24 MR. TORRES: Thank you.

25 Joe?

1 BY MR. GORDON:

2 Q. Okay. And yeah, I think probably where the, you know, where  
3 the confusion -- sometimes we intermingle terms. You know, a  
4 flagman by FRA regulations would be someone who is equipped to  
5 stop a train, something that we don't normally use now. So under  
6 train approach warning, we would refer to that person as a  
7 watchman. I think, like you said, you were talking the same  
8 language, but the time that we were talking train approach warning  
9 and flagman and watchman were kind of being thrown around there.  
10 But yeah, just to clarify that.

11 So when you talked about the special areas that -- you know,  
12 just from your knowledge of the railroad characteristics, these  
13 special areas, mile-long curves, limited sight distance, do you  
14 guys maintain a list of those areas where additional watchmen  
15 would be required, meaning an advanced watchman, or is that just  
16 kind of known by the supervisors?

17 A. I would say that it's known by the supervisors because it  
18 ties into physical characteristics. Those persons, from my  
19 experience, that have essentially ascended into the supervisory  
20 positions, many of them come from being track workers, then track  
21 patrollers, to foremen and such. So it's acquired knowledge.

22 The subdivision in which they're in, they become -- a lot of  
23 guys become stationed, if you will, in those areas, if not for a  
24 year, maybe for several months. So they become familiar with the  
25 areas, and many of them are the persons -- in order to become

1 foreman, if you will, they have to qualify on the physical  
2 characteristics and, presently, they have to -- at this point in  
3 time they have to have physical characteristics for the entire  
4 railroad.

5 And that's not a simple thing. That requires them oftentimes  
6 doing paper study as well as riding, you know, riding the plant in  
7 order to learn the various signal positions, where the signals are  
8 and various other, you know, infrastructure characteristics to  
9 allow them to recognize where they are and such when they're  
10 traversing.

11 So it's harder for the college graduates who have ascended  
12 the position more so than the foremen, because, you know, the  
13 foremen do their training -- the requirement to pass the book of  
14 rules and the physical characteristics and such, have acquired  
15 that knowledge through, you know, a lot of experience.

16 Q. Just on-the-job training.

17 A. Yeah.

18 Q. Yeah. Yeah. Okay. Thank you for that. You doing good? Do  
19 you need a break or anything?

20 A. I'm all right.

21 Q. Okay. I think we're nearing the end.

22 So I know that you and Don spoke about the -- that you  
23 shouldn't -- that the workers shouldn't remain in the track when  
24 they're using train approach warning. Is it prohibited on Long  
25 Island Rail Road in the rules? Are they prohibited from remaining

1 in a live track when a train's passing on an adjacent track under  
2 train approach warning?

3 A. It's stated that you should clear, you should clear the  
4 tracks.

5 Q. Okay. Okay.

6 A. You know, and because I think in the rules it says that you  
7 cannot clear to a live track --

8 Q. Right.

9 A. -- you know, so I think that that captures the thought.

10 Q. Right. Okay. Thank you. And are you familiar with good-  
11 faith challenge, if the guys are working out there under a form of  
12 on-track safety that they're uncomfortable with?

13 A. I think the first good-faith challenge that ever occurred on  
14 this railroad, I was involved with it, so --

15 Q. Oh, okay.

16 A. So I'm familiar with it.

17 MR. GREENBERG: Yeah, <sup>Cue</sup> (Cu) and I --

18 MR. GORDON: I heard a response --

19 MR. GREENBERG: <sup>Cue</sup> (Cu) and I both were, actually.

20 MR. GORDON: Okay.

21 MR. GREENBERG: I was the assistant supervisor under <sup>Cue</sup> (Cu) at  
22 the time.

23 BY MR. GORDON:

24 Q. Okay, I heard a response from Glenn down there. So you are  
25 familiar with the good-faith challenge?

1 A. Yeah.

2 Q. Have any of the -- have you ever been approached by any of  
3 the members of the work groups that were out there on the day of  
4 this accident --

5 A. No.

6 Q. -- with a concern over using train approach warning in Queens  
7 interlocking?

8 A. No.

9 Q. Okay. Okay. And one last question from me: The foreman  
10 that -- you know, unfortunately the foreman that was struck in the  
11 interlocking that day, his compliance, as far as you know, prior  
12 to this accident?

13 A. I've never had an event with Mike Ollek as far as RWP are  
14 concerned. And I am familiar with Mike Ollek because he was a  
15 foreman with me on a number of occasions when he was based in West  
16 Side Yard. And I had no knowledge of any issues from the other  
17 supervisors that were underneath my supervision regarding Mike  
18 Ollek. Mike Ollek was a pretty good foreman.

19 Q. Okay.

20 A. You know, he had his quirks and such, but so many of the  
21 others have the same, but nothing that I had to say -- you know,  
22 ~~was~~ <sup>was cause for</sup> ~~start a red alert or anything like that regarding.~~

23 Q. Okay. And how about the employee that was working as the  
24 watchman and providing the train approach warning, had you seen  
25 him work in that position before as a watchman?

1 A. I haven't observed him, you know, during an ongoing day, a  
2 full day, or anything like that, working as a watchman. I really  
3 don't have a comment regarding, you know, his execution of that  
4 portion of work.

5 MR. GORDON: Okay. I'll look around the table again.

6 MR. WILSON: Yeah, if I could?

7 MR. GORDON: Yeah.

8 BY MR. WILSON:

9 Q. So you mentioned earlier the SAFER program. I think that's  
10 the one where there's a couple people on the safety department  
11 goes out and monitors RWP. Is that that program?

12 A. Yes.

13 Q. Okay. How has that been going, in your mind? I was  
14 wondering because I know there had been some issues.

15 A. Well, that particular SAFER, I think, is well received and is  
16 effective. And it's not just RWP but even inspections of trucks  
17 that are on the roadway and boom -- you know, see that the boom  
18 trucks are properly, you know, properly equipped and the reports  
19 filled out and such.

20 Q. Okay. And the one other thing, earlier on you were talking  
21 about the canvassing and seniority based, and I get that. I was a  
22 union guy myself for a lot of years. And is there ever any  
23 consideration of the fatigue worked into that? Like, I don't  
24 know, two shifts in a row and you can't get the next shift, or  
25 something like that, whatever mechanism? Is there any mechanism

1 to take into consideration how many shifts the person has worked?

2 A. That is a -- you know, that's something that's been a  
3 challenge here. The union rules don't necessarily allow us even  
4 as supervisors to put some of that in check. We've at times  
5 exercised our own initiative to try and adjust for that by  
6 overlapping start times on work and such. But the nature of the  
7 union rules and such gives us limited ability to deal with --

8 Q. No, I understand that. I thought it was contract  
9 negotiations and everything.

10 A. Yeah, with the -- you know, any concerns we singularly may  
11 have regarding, but we try and do our best with it underneath the  
12 circumstances. You know, and a lot of it is left to the judgment  
13 of the individual that's involved, you know, to say that I've had  
14 too much. Or, you know, even us as a supervisor, if we see a guy  
15 who, you know, he's not solid on his feet, to say, hey, you got to  
16 -- you know, I think it's best that you go home, and that refers  
17 to any situation, even a regular tour of duty. You know, but that  
18 is the prescription that we have to deal with.

19 MR. WILSON: Okay.

20 *Cue* MR. GREENBERG: Not so much a question for *Cue* Cu but just, Joe,  
21 you asked Cu -- and I know Cu *Cue* is probably not aware of it because  
22 it's not happening in your area, about whether we've identified  
23 areas that have sight distance issues or other obstructions that  
24 could cause problems with using train approach warning. We have  
25 actually begun a formal, using Amtrak's terminology, hot spot

1 registry. Okay, we have actually started that effort to identify  
2 those areas where additional protection beyond, say, a single  
3 watchman would be required. It's in particular regard to, say,  
4 the track inspectors.

5 I don't know if you were aware of that going on, <sup>Cue</sup> (Cu), that's  
6 why I thought I would just mention it.

7 MR. GORDON: Okay.

8 MR. GREENBERG: That additional protection would be required,  
9 either advanced watchman or foul time or main track out of  
10 service, or something a solo watchman is unable to see because of  
11 curves or other obstructions. So we are engaged in that effort.

12 MR. GORDON: Okay. Thank you.

13 MR. HILL: And just identify yourself.

14 MR. GREENBERG: What's that?

15 MR. HILL: Identify yourself.

16 MR. GREENBERG: Oh, Greenberg. I'm sorry.

17 BY MR. BATES:

18 Q. Bates. I just wanted to ask one question. Do you think you  
19 have enough personnel to handle your tasks safely?

20 A. Yes.

21 MR. BATES: Okay.

22 MR. HILL: I have no questions. Thanks.

23 BY MR. TORRES:

24 Q. Tomas Torres with the NTSB. It goes back to Mr. Bates here.  
25 So are you aware that there's a lot of overtime, employees that --

1 a lot of employees are working a lot of overtime?

2 A. Yes, because we have a lot of work to do. And I think the  
3 public demands of us to try and keep these train running so that  
4 they'll be able to safely get to work and wherever, the  
5 destination that they have.

6 Q. So you say they're sufficient, you have a sufficient  
7 workforce, but there's still a lot of overtime required?

8 A. The question I responded to him regards -- he asks if there  
9 was sufficient people to work safely. And that day, there were  
10 sufficient people for them to work, to perform their job safely.  
11 And the events of that day was an unusual event. As you can see,  
12 we don't have a lot of people suffering that -- you know, those  
13 circumstances every day.

14 Yeah, I would say that we'd always love to have more persons.  
15 That's not necessarily going to change our, you know, our  
16 operating environment, you know, the work environment, because the  
17 fact is that there are periods, as in any transportation  
18 operation, where you have rush hours, you have periods of high  
19 demand, and you want to work in those time slots that are not  
20 underneath such high demands. That is overtime.

21 We have a large number of projects that's now underway in our  
22 sector in this railroad. And in order to complete those projects,  
23 we are hiring. We are getting more people on board. Those people  
24 coming on board doesn't necessarily make it more safe because they  
25 require X amount of experience. So you could bring on 100, 200

1 guys, that doesn't necessarily make it more safe, because those  
2 persons don't necessarily have the experience. And from our RWP  
3 training, you see what comes forth is that a lot of guys who do  
4 get -- suffer fatalities are not necessarily the new guys but the  
5 more experienced guys.

6 So it doesn't necessarily work out totally logically as you  
7 would imagine. And just because you pull 200 guys -- I've had  
8 situations as a supervisor where I felt that there's too many guys  
9 on a job and that made it unsafe, because there's guys that were  
10 standing where they didn't need to stand because they couldn't  
11 find someplace to stand, or there's a boom truck that was swinging  
12 and here is three more guys that didn't need to be in the way, or  
13 I didn't see that guy, I didn't know where he came from. So it  
14 doesn't -- just pouring more on a project might not be necessary.

15 Does it help as far as the amount of hours worked? Yeah, I  
16 think we all would like that in certain situations, you would, but  
17 that's something that has to be addressed through the unions and,  
18 you know, further down the line. It's kind of out of the tools  
19 that we have to work with, you know.

20 Q. So you have your limitations as far as who can work so much  
21 overtime? Like some employees can work all the overtime they want  
22 basically, right? As it stands now, right?

23 A. It's a favor to whoever that employee is. I mean, there's  
24 guys that have the seniority and they're just not interested in  
25 working a lot of overtime for whatever reason. And then there's

1 guys that are junior that would love to work overtime but they  
2 can't get it because they don't have the seniority, you know.

3       Again, as I said, you know, sometimes the peer pressure  
4 oftentimes will help to address some of those conditions where  
5 there's a guy that's junior or a group of guys who may feel, hey  
6 guy, you know, you could give up a little bit for some of us  
7 little people, you know. And you will have that kind of social,  
8 you know, pressures placed on him from the men in his own union  
9 and such, which may be more effective than me -- I only have so  
10 much tools that are available to me to kind of check how many  
11 hours, you know, because of the union regulations, which we do  
12 have to give some level of respect to.

13 Q.   Okay. I've got one more question. It's just a standard  
14 question. What's your education?

15 A.   What is my education? I forget sometimes. I mean, I am a  
16 civil engineer. I went to Rutgers University, all right, and I am  
17 also a professional engineer. And throughout that whole period, I  
18 was a PE since 1997, and it requires certain continuing education  
19 and such, so, you know, you stack them on. I have a number of  
20 licenses and things like that.

21       MR. TORRES: Thank you.

22       BY MR. GORDON:

23 Q.   Thank you. So we're getting very close to the end and, you  
24 know, not to oversimplify the entire workforce manpower overtime,  
25 I know that's a complex issue, but, you know, you've already

1 stated that it's seniority based. So if the senior guy wants it,  
2 it's his, and that's -- there's really not a big way around that.  
3 I think to kind of what, some of what you were trying -- and I'm  
4 not trying to put any words in your mouth, but it seemed like some  
5 of what you were conveying with the manpower is there are a lot of  
6 men that are out here working, but at the same time, when it comes  
7 to overtime work, if this same group of people that always want to  
8 work the overtime want to work the overtime, then you can't  
9 utilize these fresh resources because it's being taken by these  
10 people that want the overtime?

11 A. Yes. And what I will also say is that there is times and  
12 occasions where we have entire weekend work that's involved.  
13 We're not looking for a guy that's intentionally positioning it as  
14 such. We try and do overlapping on the starting times, between  
15 the finishing a job and starting a job, to try and address and  
16 kind of alleviate some of those situations.

17 But it's not within the union rules and such that we could,  
18 you know, swear 100 percent of the time that we're going to be  
19 able to achieve that goal, you know. And there's times that we've  
20 structured it that, you know, the work is broken up and there's  
21 going to be shifts and whatnot, and we receive union pressure to  
22 go the other way. But it's not usually in a critical situation.

23 Like, for example, platforms. You know, we might have -- or,  
24 to be frank, even in this situation it was the guys are there, if  
25 something happens, you know, respond, which means -- it's just

1 like being in the fire department and the fire department they  
2 have guys on 24 hours, on a 24-hour shift. Why? Because they  
3 know they're not going to be working doing, you know, manual labor  
4 for that full 24 hours, but yet, on paper, it's quoted as a 24-  
5 hour shift. But are they physically performing physical labor for  
6 24 hours? Consider a fire department. If there's no fire,  
7 they're sitting around in the firehouse waiting and wishing  
8 something would happen to make it an exciting day.

9 So it's the same situation. You may look on paper and you  
10 see that, okay, this shift is 24 hours, but these 24 hours doing  
11 what? And what was necessary to be done that day might have taken  
12 an hour or 2 hours and then it's done. You know, you're not  
13 looking to go and do inspection of an endpost for 10 hours.  
14 You're traversing X amount of feet of track and it's over and done  
15 with. You know, it's not a matter of, okay, you're going to do  
16 200 curls on your right hand and then switch hands and do 200  
17 curls, and then <sup>push</sup> pick up<sup>s</sup> -- you know, and then rinse and repeat. 

18 You know, and it's a situation where they're there ready and  
19 able. If they got a call from 204, they would be responsive. But  
20 then in actuality, if there's no call on 204, let's be honest,  
21 what did they do all day? So on paper, it may look like, oh,  
22 these guys are for X amount of time, but when you actually -- if  
23 you were to start to clock every time they, you know, got up and  
24 performed work and when they stopped, it really is just like that  
25 firefighter that's sitting in the firehouse waiting for the fire.

1 Q. So you brought up a good point about they're working  
2 different shifts. Under the current construction of the union  
3 agreement, do you have the ability to set up different shifts and  
4 have a first shift group and a second shift group and, if needed,  
5 a third shift, to where -- as opposed to having the same person  
6 working first shift and, if seniority allows, also working second  
7 shift and third shift?

8 A. In many cases, we try and employ that setup. It's not always  
9 feasible, you know. Again, like what I just spoke to -- like say,  
10 for example, we'll have a first, second and third shift and we'll  
11 have overlaps of an hour so the guy in the first can't take the  
12 second, so he'll end up with a break. So he'll cover the first  
13 and the third shift, and the junior guys will be in the middle,  
14 for example.

15 But there's other situations, going back to like the  
16 firehouse thing, where you might have a guy who owns a particular  
17 machine. You guys are all railroad, so if I speak to surfacing,  
18 for example, a surfacing crew might come out for a switch.  
19 They're booked for 24 hours, but guess what? They have to drop  
20 the stone, drop <sup>ballast</sup> ~~pallets~~, lift up the head sticks or the head  
21 blocks a little bit before the tamper actually goes through there.  
22 That tamper could be sitting down there for 10 hours not doing any  
23 actual work, but when you do need him, you don't want to wait 3  
24 hours for the crew to come in and arrive. You know, so they may  
25 be on property, but they could be on property sitting on a machine

1 or sitting in the shanty, or laid back -- one guys got the  
2 backseat, the other one got the back of the truck, you know, that  
3 type of situation.

4 So if you look at the situation <sup>OK</sup> ~~from~~ paper, oh, the guy has  
5 been here for 18 hours and such, but he might have only actually  
6 started physical work and, you know, and could have had the time  
7 available to him. Now the general public wouldn't want to hear,  
8 oh, this guy's here getting paid and they were, you know, taking a  
9 nap for X amount of time.

10 But, you know, it's the same thing as a comparison like a  
11 firehouse. The guys are there and they're there on a 24-hour  
12 shift and they're going to get paid for those 24 hours shift, but  
13 unless there is a blaze someplace, they're not running out. The  
14 same thing with a surfacing crew. They could be booked, you know,  
15 to be ready and able that if this job, the guys finish their  
16 portion of work 2 hours early, they could go to work right then at  
17 that instance and assure that we're going to deliver the track  
18 back on time. But they might be sitting and waiting for some  
19 portion for a rail to get installed or a <sup>Sproy</sup> ~~fork~~ to get installed  
20 before they actually go to work.

21 And I take it that most in this room are familiar with the  
22 railroad work and you know a surfacing crew can be sitting there  
23 waiting for 5 hours, or a job ran over a certain time and they're  
24 sitting there waiting. They're not doing anything, any actual  
25 physical work that they could not be at ease, if you will, resting

1 and awaiting their turn to go.

2 And that, I think, is the circumstance because physically,  
3 you know, whether you want to think you're superman or not, you're  
4 not going to be able to function properly being on property for 36  
5 hours without some, you know, actually ~~downtime~~. ←

6 Q. Okay. Thank you.

7 Going back -- and I'm getting -- this is actually my last  
8 question. With the frequency of the trains across the territory,  
9 is it realistic that the guys could get foul time when they need  
10 it? I mean, I guess the question is, is train approach warning  
11 utilized sometimes when foul time would be available to the guys,  
12 or is train traffic so -- you know, the frequency of trains is so  
13 much that train approach warning is really the only option that  
14 they have to protect themselves?

15 A. I'd say that from my personal experience -- and I guess I  
16 have to speak to that because following from these accidents I got  
17 a mix of feedback, if you will. But I know that, for example, I  
18 was talking -- commonly, one of the hot areas, I think, that  
19 they've identified would be the <sup>Port Wash</sup> ~~port watch~~ and then single track.  
20 And I know that when I call Section A and I ask for foul time, you  
21 know, they might tell me let this train -- identify the train that  
22 goes by, and that train might be coming in 10 minutes or 5  
23 minutes, whatever, and then I can get foul time.

24 So I personally have never had a problem getting foul time.  
25 I don't know if it's because of, you know, who I am or the rank or

1 I'm lucky enough to get that guy who's familiar with me. Now,  
2 where I commonly would have, you know, been requesting foul time  
3 may be different from another area that has more traffic or a more  
4 difficult area. I had never gotten any feedback from anyone that  
5 said that, hey, you know, every time I call for foul time I can't  
6 get it.

7 I understand that, you know, that -- coming back to me now  
8 from this accident, hey, a lot of times I call, you know, they're  
9 not -- I'm not getting the foul time as I would. I can't swear  
10 that that's not occurring. I just know that in my personal  
11 experience when I was supervising and looking for track time a  
12 lot, I didn't have that problem. But, you know, the workforce has  
13 changed, so I don't know if the guys are not receiving the same  
14 respect as what they -- you know, what we had enjoyed before and  
15 such and that's the nature of the, you know, the nature of the  
16 problem. But they've been good, you know, they've been good with  
17 me.

18 I understand that, you know, in a lot of discussions that we  
19 have had internally and the follow-ups to a lot of things, we're  
20 trying to find out what is going on that some guys have mentioned  
21 that they've had difficulty getting foul time. I can't negate  
22 that statement.

23 MR. GORDON: All right. Thank you.

24 I'm going to look around the room one more time. Yep, we've  
25 got a few questions. I'll go this way.

1 BY MR. BATES:

2 Q. Bates, SMART. In your earlier statement you stated about --  
3 you talked about workers that might have been on duty for 24  
4 hours. Can you describe the conditions of that layover time or  
5 what type of environment they are under when they're not working?  
6 Do they have a quiet room, a place they can rest, lounge? What  
7 kind of conditions are the crew rooms in so that they can -- or  
8 let me ask you, is it conducive for rest in that 24 hour span of  
9 time?

10 A. Well, for instance, at this location, Queens interlocking,  
11 there's a Queens shanty that is available right downstairs from  
12 where the men work. So that is their regular headquarters and  
13 they would have a typical, you know, track headquarters, chairs to  
14 sit, a couch, et cetera.

15 Q. So they would have a couch or a La-Z-Boy or whatever to  
16 (indiscernible) --

17 A. You know, I can't -- I don't make it a real habit to, like,  
18 hang out in the track shanty, but essentially the men have, you  
19 know, set them up how -- you know, there is the Ritz-Carlton and  
20 there is the, you know, the hole in the wall, so to speak. And,  
21 you know, some guys will buy a nice, fancy couch and bring it in  
22 there because they know that this is where they are and they make  
23 it home, and other persons, they'll take two buckets and a chair  
24 and put it there.

25 I can't swear to how everyone -- or every single one. It's

1 not for us as the carrier to equip, you know, these locations.  
2 But I tell you, some of them that I've went into is like, you  
3 know, it is home.

4 Q. Okay. The only thing -- my question is, with you having  
5 employees that's working 24 hours straight, so is it your  
6 testimony that you don't have -- the company do not supply a place  
7 that is conducive to rest?

8 A. No, that's not my testimony. I mean, we have to respect what  
9 it is that we do. I mean, if you're a taxpayer, you don't want to  
10 hear that someone went to work and, you know, they had a waterbed  
11 that was set up. We're not delivering that kind of facilities to  
12 them, if you will. You know, the men that are there have ready  
13 access to bathroom facilities, welfare facilities, you know, if  
14 you will, and that is what we provide.

15 Now, we cannot, you know, diminish the fact that the men,  
16 when they've had enough, can say, listen, I only can work 16  
17 hours, I can work up to my limit. And they have to determine that  
18 limit and say that I've had enough, I have to go home, let the  
19 other guy, the next guy have some, all right? So that is a choice  
20 that that person, that individual has made, you know. And the  
21 same way they made that choice, they could decide to say, hey, you  
22 know, I'm going to go home because I want to take a shower, if you  
23 will, you know.

24 MR. BATES: All right. Thank you.

25 BY MR. HILL:

1 Q. Don Hill, H-i-l-l. I have a few questions and a couple of  
2 them might actually go back a minute. Earlier, you testified that  
3 you received a call the day prior about issues. Do you know who  
4 you received that call from?

5 A. It was a Friday and I received a call from John Swanson.

6 Q. And what's his title?

7 A. He is the principal engineer of track.

8 Q. The other question I have, it pertains to the block of  
9 questions Mr. Torres asked you with regards to risk assessment.  
10 As part of your risk assessment, do you take into account the  
11 number of train traffic that may be taking place at a particular  
12 location?

13 A. I would say nay, because what happens is that, whether it be  
14 1 or 1,000, you're still required those parameters of 15-second  
15 warning time to clear. So as far as -- and let me rephrase that.  
16 If I had men performing work, changing ties, and I know every 5  
17 seconds they have to get out of traffic because of the volume of  
18 trains that's moving, it's not going to be very productive. And  
19 so, therefore, that work would be scheduled on an overtime basis  
20 or a track outage basis so that that work could be performed so I  
21 get the biggest bang for my work as far as my manpower  
22 utilization.

23 And so if I have to -- I'm taking out timbers and I  
24 constantly have to stop, I'm not going to get much work done, and  
25 I'm paying a lot of money for having, you know, a bunch of guys

1 standing there and pretty much not getting anything done because  
2 they constantly have to get out of the traffic. So it does come  
3 into play.

4 Now, the actual function of flagging, you know, the guy's got  
5 to blow his horn whether it's 1 or 100 trains that's coming, but  
6 as far as productivity, that's where it comes in. Like I said,  
7 hey, it doesn't make any sense trying to do this, you know, during  
8 straight time and such. I've got to take the track out of  
9 service. I could get the greatest, you know, efficiency from my  
10 manpower and the moneys that we're spending.

11 MR. HILL: Thanks. That's all I have.

12 MR. GORDON: All right. Well, Mr. Ellis, we appreciate you  
13 coming in. We're going to go off of the record.

14 (Whereupon, the interview was concluded.)  
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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF:           EMPLOYEE FATALITY  
                                  LONG ISLAND RAIL ROAD  
                                  QUEENS VILLAGE, NEW YORK  
                                  JUNE 10, 2017  
                                  Interview of Cuvas Ellis

ACCIDENT NO.:               DCA17FR009

PLACE:                        Jamaica, New York

DATE:                         September 15, 2017

was held according to the record, and that this is the original,  
complete, true and accurate transcript which has been transcribed  
to the best of my skill and ability.

  
Lisa Fuerstenberg  
Transcriber 