

NATIONAL TRANSPORTATION SAFETY BOARD

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IN RE: :
  
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THE ACCIDENT INVOLVING : NTSB Accident No.
  
AMTRAK TRAIN #89 AND MOW : DCA16FR007
  
EQUIPMENT AND EMPLOYEES :
  
NEAR CHESTER, PENNSYLVANIA :
  
ON APRIL 3, 2016 :
  
:
  
-----:

INTERVIEW OF: JOHN YAEGER

Tuesday,
April 5, 2016

Sheraton Four Points
Philadelphia, Pennsylvania

BEFORE:

- RICHARD HIPSKIND, NTSB
- DAVID KANNENBERG, FRA
- STEVE STEARN, BMW
- MICHAEL TRAINA, AMTRAK
- ANDREW KEEFE, AMTRAK
- MATTHEW PORTO, AMTRAK
- LOU TOMASSONE, FRA
- WILLIAM MANNING, BMW
- TERRY SPRATT, AMTRAK

This transcript was produced from audio
provided by the National Transportation Safety Board.

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

1  
2 MR. HIPSKIND: Good morning everybody. My  
3 name is Richard Hipskind, and I am the Track and  
4 Engineering Group Chairman for NTSB for this accident.  
5 We are here today on April 5th, 2016 at the Sheraton  
6 Four Points Hotel in Philadelphia, Pennsylvania, to  
7 conduct an interview with Mr. John Yaeger, who works  
8 for the National Railroad Passenger Corporation or  
9 Amtrak.

10 This interview is in conjunction with NTSB's  
11 investigation of a collision of Amtrak Train 89 and  
12 maintenance-of-way equipment and employees on April  
13 3rd, 2016 at Mile Post 15.7 on Amtrak's PW Line near  
14 Chester, Pennsylvania in Delaware County.

15 The NTSB accident reference number is  
16 DCA16FR007. Before we begin our interview and  
17 questions, let's go around the table and introduce  
18 ourselves. Please spell your last name and please  
19 identify who you are representing and your title. I  
20 would remind everybody to speak clearly so we can get  
21 an accurate recording. I'll lead off and then pass off  
22 to my right.

23 Again, my name is Richard Hipskind. The  
24 spelling of my last name is H-I-P-S-K-I-N-D. I am the  
25 Track and Engineering Group chairman for NTSB for this

1 accident.

2 MR. KANNENBERG: Good morning, David  
3 Kannenberg, K-A-N-N-E-N-B-E-R-G, Deputy Regional  
4 Administrator Region II, Federal Railroad  
5 Administration.

6 MR. STEARN: My name is Steve Stearn, S-T-E-A-  
7 R-N. I'm a vice chairman with the Brotherhood of  
8 Maintenance of Way Employees and party spokesman for  
9 the BMW.

10 MR. TRAINA: Michael Traina, T-R-A-I-N-A,  
11 (inaudible) supervisor Amtrak Railroad.

12 MR. KEEFE: Andrew Keefe, Deputy Chief  
13 Engineer for Maintenance with Amtrak. K-E-E-F-E.

14 MR. PORTO: Matthew Porto, P-O-R-T-O, Director  
15 of Safety with Amtrak.

16 MR. TOMASSONE: Lou Tomassone, T-O-M-A-S-S-O-  
17 N-E. I'm the Region II Track Inspector and  
18 Investigator in Charge for the FRA.

19 MR. HIPSKIND: And John, would you please  
20 introduce yourself?

21 MR. YAEGER: John Yaeger, Track Maintenance  
22 Foreman, Amtrak.

23 MR. HIPSKIND: Okay, and John do you wish to  
24 have a representative with you here today?

25 MR. YAEGER: I have Bill Manning here.

1 MR. HIPSKIND: And Bill, would you please  
2 introduce yourself?

3 MR. MANNING: Bill Manning, Vice Chairman,  
4 Pennsylvania Federation, Brotherhood of Maintenance Way  
5 Employees.

6 MR. HIPSKIND: Okay, and one more question,  
7 John do you mind if we proceed on a first name basis?

8 MR. YAEGER: That's okay.

9 MR. HIPSKIND: Okay. I would prefer that.  
10 Thank you for allowing us to do that, and do we have  
11 your permission to record our discussion, our interview  
12 with you today?

13 MR. YAEGER: Yes.

14 MR. HIPSKIND: All right. Thank you very  
15 much. Let's proceed. John, if you can kind of give us  
16 a synopsis of your work experience. Just kind of take  
17 us back to how long you've been doing this, maybe some  
18 of the highlights, the jobs you've held, and take us up  
19 to your current position please?

20 MR. YAEGER: I started in March '77. I made -  
21 - I was a track man for three years. I got to be  
22 foreman in July of 1980. I held inspectors jobs, track  
23 inspectors jobs, switch inspectors jobs, maintenance  
24 gang foreman, surfacing gang foreman, contract  
25 protection foreman gangs.

1           A short period of time maybe on some tie gangs  
2 and I guess I did night work, day work, middle trick.  
3 I worked all different shifts, and that's all I have.

4           MR. HIPSKIND: Okay, and John so are -- your  
5 current position and title now is what?

6           MR. YAEGER: Track foreman, Wilmington  
7 Maintenance Gang.

8           MR. HIPSKIND: Okay. So headquartered out of  
9 Wilmington. You start, pretty much start and stop  
10 there every day?

11          MR. YAEGER: Wilmington yes.

12          MR. HIPSKIND: Okay. So what are your duties  
13 and responsibilities? How do you know what you're  
14 going to do from day to day?

15          MR. YAEGER: I talk with the track supervisor  
16 and he'll tell us what we're doing.

17          MR. HIPSKIND: Okay, and part of our knowledge  
18 about this incident is that there was some kind of a  
19 long duration, a 55-hour type outage. Why don't you  
20 take us through some of how you came to know about that  
21 and got involved in it, and just kind of take some time  
22 and talk and tell us about the project in general, and  
23 some of the specifics as well.

24          MR. YAEGER: Okay. Well you said it was a 55-  
25 hour outage job, which means it goes from Friday night

1 through Sunday morning. This particular job was to use  
2 the Railvac machine to vac out, vacuum out dirt and mud  
3 and stone at different locations where trains would get  
4 a rough ride, trying to get as much of the dirt out so  
5 we could drop new stone and resurface it and alleviate  
6 the problems for (inaudible) car hits. They call them  
7 (inaudible) car runs.

8           It's usually set up by the foreman. The  
9 machine came out of Philadelphia this weekend. It was  
10 stationed in Philadelphia last week. The foreman  
11 bought the machine down from Philadelphia, worked it  
12 Friday night into Saturday morning.

13           I worked Saturday morning to Saturday night,  
14 and then another foreman came in Saturday night and  
15 worked it until Sunday morning, and I was there Sunday  
16 morning until Sunday night, depending on how far we got  
17 with different locations.

18           I wasn't sure if I was taking the machine back  
19 to Philadelphia or not. Someone might come down. But  
20 also Pete and I talked about dragging the ballast  
21 Sunday night before the surfacing gang came down there.  
22 So my job that day I just was going to be doing  
23 different locations with the vac machine and then  
24 either take it to Philly, dropping it off with someone  
25 else, and then dropping ballast at the spots that we

1 did over the course of the weekend.

2 MR. HIPSKIND: Okay, and although we haven't  
3 talked about it yet, John kind of paint the picture  
4 for, you know, what's the landscape look like? Are we  
5 talking about multiple track territory and talk a  
6 little bit about the operating speeds, if you would.

7 MR. YAEGER: It's four track territory. It  
8 goes from the block that we were working where the  
9 outage was going to occur was between Baldwin and Hook  
10 (phonetic) Interlockings. The work was going to be on  
11 two track and that was -- the whole weekend was for two  
12 track and there's various mud spots all through there,  
13 different spots.

14 Some spots you have -- it's on a straightaway.  
15 You see very far; some spots are -- might have been on  
16 curves, bridge approaches right next to bridges. I  
17 don't know all Pete's locations, but I did know the  
18 15.7 was the main job, because that was about a 200  
19 foot spot maybe, maybe a little more. I don't know  
20 exactly how long it was.

21 MR. HIPSKIND: Okay, and in -- you're not  
22 doing all this work by yourself. Why don't you kind of  
23 lay out maybe what kinds of machinery was out there and  
24 what kind of personnel was out there that were all part  
25 of this project?

1 MR. YAEGER: The Friday night crew it was a  
2 foreman, a driver, a track man and a backhoe operator.  
3 Saturday day light crew was a foreman, driver and a  
4 track man. Saturday night was a foreman, driver, track  
5 and backhoe, and Sunday was just a foreman, driver, a  
6 track man. Backhoe is used to help loosen up the mud  
7 in the third under the ties. We tend to use that at  
8 night because there's less trains running.

9 We get more track time, that being on the  
10 track, more time for that to be on the track and doing  
11 the work, and then the other like daylight I just --  
12 whatever I could get in the machine, I get.

13 MR. HIPSKIND: And when you say "get in the  
14 machine," you're talking about this ballast cleaner,  
15 this vacuum-type thing?

16 MR. YAEGER: Right, right, right. The Railvac  
17 is a big machine with a big nozzle on the front of it,  
18 and it just sucks up just about everything that will  
19 fit through the tube.

20 MR. HIPSKIND: Well, let me try and connect a  
21 couple of things. So four main track territory?

22 MR. YAEGER: Correct.

23 MR. HIPSKIND: 1, 2, 3 and 4 track?

24 MR. YAEGER: Yes.

25 MR. HIPSKIND: And you're working on main



1 track 2?

2 MR. YAEGER: Two.

3 MR. HIPSKIND: And if the backhoe is -- if  
4 part of his stuff, the reason he's out there is to  
5 loosen up, tell me how -- I mean is he outside all the  
6 main tracks and then when you get the go-ahead, he does  
7 what?

8 MR. YAEGER: On that particular job when the  
9 foreman would get the go-ahead, he could -- he would  
10 request foul time and he'd get the backhoe from off to  
11 the side.

12 Whether the backhoe is going to work from 1  
13 track or 3 track I don't know, because I wasn't on  
14 those shifts. So he -- if he was coming from 4 track  
15 side, you'd have to get a foul (phonetic) on 3 and 4  
16 tracks, in order to get the backhoe next to 3 track.

17 And whenever they would have to clear a foul,  
18 he would have to just drive the machine over to 2  
19 tracks and get them all.

20 MR. HIPSKIND: So if the foreman wants to get  
21 foul time and have the backhoe come up, that backhoe is  
22 going to set up -- he's going to set up and stabilize  
23 on 3 track, right?

24 MR. YAEGER: Correct.

25 MR. HIPSKIND: And he's got like what, the

1 back end of the backhoe he's got like a cribbing  
2 bucket?

3 MR. YAEGER: Correct.

4 MR. HIPSKIND: So when he sits there, then he  
5 swings that boom over and starts loosening up between  
6 the concrete ties?

7 MR. YAEGER: Correct, on 2 track.

8 MR. HIPSKIND: And when he needs to move, he  
9 picks up his stabilizers and goes forward, backward to  
10 get the next series of ties and where the mud's at?

11 MR. YAEGER: Yes.

12 MR. HIPSKIND: Okay, all right, and I think I  
13 remember you saying that they use the backhoe more at  
14 night. That's simply because of less trains and more  
15 productivity, more time to be on 3 track for him to do  
16 his work?

17 MR. YAEGER: Yes.

18 MR. HIPSKIND: Okay. Now this is -- is this  
19 the first time that you guys have been involved with  
20 this kind of a process, or is this something --

21 MR. YAEGER: No, no. It's been done many  
22 times before.

23 MR. HIPSKIND: Throughout your years at  
24 Amtrak?

25 MR. YAEGER: Uh-huh, yes.

1 MR. HIPSKIND: Okay. Well kind of --

2 MR. YAEGER: Well, I guess Railvac, Railvac  
3 machine has been in the picture maybe -- when I say  
4 "picture," been working Railvac for maybe three years  
5 now. We didn't have it way back when. It's just  
6 something somewhat new.

7 MR. HIPSKIND: Okay. Should -- I'm a track  
8 guy from way back and all this and that, and it sounds  
9 to me a little bit like what you're trying to achieve  
10 is where there may be some foul ballast or something  
11 that's causing some geometry, some track flexing that  
12 the geometry car is picking up, that you're out there  
13 in a preventative way, you know, reballasting these  
14 certain sections or pretty much that?

15 MR. YAEGER: That's correct.

16 MR. HIPSKIND: Okay, and I'm kind of from the  
17 freight railroad side of things. So I think of this  
18 somewhat you're doing as undercutting, but that's not  
19 really what you're doing is it?

20 MR. YAEGER: It's not with that machine. It  
21 doesn't really undercut. It just gets everything in  
22 between the ties, nothing -- it cannot get anything  
23 under the ties.

24 MR. HIPSKIND: Okay.

25 MR. YAEGER: So it just goes down, and

1 depending on how the mud tends to get very hard, very  
2 like almost like concrete. So it gets very hard to  
3 vacuum out. You just can't suck it out because it  
4 seems like it's concrete under there.

5 MR. HIPSKIND: Okay. But as you've gone  
6 through a stretch of track, it may look like you have  
7 undercut the track. It has that swing, the sag to it  
8 before you reballast it and before you resurface it?

9 MR. YAEGER: That's only because there was an  
10 existing sag in there.

11 MR. HIPSKIND: Okay, all right.

12 MR. YAEGER: This will not lower. This is --  
13 it's not a machine to lower the track.

14 MR. HIPSKIND: Okay.

15 MR. YAEGER: You get everything around it, you  
16 get everything two, three, six inches deeper, but it  
17 can't get underneath.

18 MR. HIPSKIND: Okay, and so part of the plan  
19 when you're restabilizing the track is to feed clean  
20 ballast back in, and then what? You bring --

21 MR. YAEGER: Drag new ballast, drop new  
22 ballast in the area and then the surfacing gang comes  
23 in on Sunday night to resurface everything.

24 MR. HIPSKIND: And essentially to put it back  
25 up into level track and better geometry than it was

1 before you got there?

2 MR. YAEGER: Correct, yes.

3 MR. HIPSKIND: Okay. All right. One of the  
4 things you talked about was that you worked the day  
5 shift.

6 MR. YAEGER: Right.

7 MR. HIPSKIND: So let's talk a little bit  
8 about how do you coordinate between the night shift and  
9 the day shift, and kind of give me some reference on  
10 the hours you work and let's talk a little bit about  
11 the communication or transfer from night shift to day  
12 shift, if that's something that goes on.

13 MR. YAEGER: I don't -- we don't talk too much  
14 to each foreman between the shifts too much about -- we  
15 know what we're doing as far as vacuuming out the  
16 spots. It's a transfer.

17 We have to get the track out of service in our  
18 name. So we transfer the tracks out in our names and  
19 maybe just how far -- but you can see how far they  
20 worked. It's plain to see what they do when you get  
21 there.

22 So there's really not too much to talk about  
23 in what they do. Saturday when I got there, there was  
24 just the machine on the track. There was nobody else.

25 MR. HIPSKIND: The ballast cleaner?

1 MR. YAEGER: Yeah, and when I left Saturday  
2 night, there was nobody there but the ballast cleaner  
3 on the track. What I did is what they call put the  
4 track in a hold, and with that you call the dispatcher.  
5 You tell them where the machine is, what the condition  
6 of the track is as far as barricades and stuff, and you  
7 cancel your Form D.

8 Then when the next foreman comes in to get the  
9 track out, dispatcher tells them the location of  
10 everything and he gets the track out and does his work.

11 MR. HIPSKIND: Okay, and the fact that you've  
12 got this machine on 2 track, I don't want to assume but  
13 when you say Form D, I'm a little bit familiar with  
14 that. You're basically telling me that you've taken  
15 the track out of service with the dispatcher?

16 MR. YAEGER: Correct.

17 MR. HIPSKIND: From your outline pulled to --

18 MR. YAEGER: Interlockings.

19 MR. HIPSKIND: Okay, from interlockings?

20 MR. YAEGER: Yes.

21 MR. HIPSKIND: And he's going to put up some  
22 kind of blocking device and he's not going to let  
23 trains in on there?

24 MR. YAEGER: Right.

25 MR. HIPSKIND: Until a foreman calls him and

1 gives that, says the machine's off the track. You put  
2 it in the clear and you can have your track back?

3 MR. YAEGER: Correct.

4 MR. HIPSKIND: But in this project, none of  
5 that was ever going to happen until you spread the  
6 ballast and brought the surfacing gang in and all that  
7 kind of stuff?

8 MR. YAEGER: Right. That wasn't happening  
9 until Sunday morning.

10 MR. HIPSKIND: Okay. I gotcha, I gotcha. But  
11 one of the other things we also talked about and you  
12 brought up was foul time.

13 MR. YAEGER: Right.

14 MR. HIPSKIND: And my notion of that was that  
15 if you needed a track other than the main track 2, like  
16 to put that backhoe up there.

17 MR. YAEGER: Right.

18 MR. HIPSKIND: If you came in from main track  
19 1 side, you'd have 1 and 2 out, right?

20 MR. YAEGER: Right.

21 MR. HIPSKIND: If that's how they wanted to do  
22 it. But if you came in from the 4 and 3 side, you'd  
23 have to have both of those out?

24 MR. YAEGER: Correct.

25 MR. HIPSKIND: And I'm going to guess. If you

1 already have 2 out and you want to ask for 3 and 4,  
2 that's why that gets to be a little bit more  
3 complicated for the dispatcher maybe?

4 MR. YAEGER: I guess. It's more tracks that  
5 he has to give the guy foul time on. I don't know how  
6 much more complicated it is. I don't know how and what  
7 they exactly do up in the (inaudible) area, but yeah,  
8 the more tracks are foul, I guess the more it would get  
9 complicated.

10 MR. HIPSKIND: Okay. What -- whether it's the  
11 other foreman or you during your shift out there, if  
12 you elect to put that backhoe up on 3 track and have 3  
13 and 4 out and you want this foul time, take me through  
14 that process. I know you want to loosen up some of the  
15 ballast on 2, take me through that process so I better  
16 understand that.

17 MR. YAEGER: Call them on the radio to get --  
18 request a foul. Well in this case, they always give us  
19 between interlockings, (inaudible) in this case. You  
20 want 3 track and 4 track. You tell them we need -- it  
21 depends on what exactly how hard it is for them to move  
22 around. You tell them you want like two minutes to  
23 clear, two minutes' notice, five minutes notice. It  
24 depends on different jobs.

25 Like in this case, it's usually like one



1 minute to two minutes to pick up the outriggers, pick  
2 up the bucket and drive it cross 2 tracks to get off.  
3 So when you ask for -- when you ask for the foul, they  
4 always want to know how long it takes to clear, so  
5 whenever they're scheduling a train they could give you  
6 the advance notice to get it off out the way, and that  
7 way there's no delays for the train.

8 MR. HIPSKIND: Okay. Well let's -- well, when  
9 you talk about the Form D in 2 track, that's out of  
10 service. That's your --

11 MR. YAEGER: Yeah, correct.

12 MR. HIPSKIND: But when we're talking about  
13 foul time and you talk to the dispatcher, those tracks  
14 aren't yours. I mean like in the same sense.

15 MR. YAEGER: It's not in the same sense as a  
16 Form D, no, no. It's a foul. He's not supposed to  
17 putting any trains. He's supposed to put flattening  
18 devices I guess. I don't know. I couldn't really tell  
19 you what they do up in there, but he has to block the  
20 tracks where you're requesting the fouls, and you can't  
21 put a train down there until you talk to him and say  
22 I'm clear of 3 track. I'm clear of 4 track and you get  
23 a time, and he knows you're clear.

24 MR. HIPSKIND: All right. Now don't take this  
25 the wrong way, but any time there's communication back

1 and forth, there's always a chance for something, ball  
2 to get dropped. Have you had close calls because maybe  
3 a dispatcher forgot and, you know, like you talked  
4 about the --

5 MR. YAEGER: Yeah. I mean in my case I never  
6 came across that problem. I try to make sure that -- I  
7 make sure it's partially clear that, you know, how  
8 we're doing it, what we're doing and we just, you know.  
9 I haven't had someone send a train down on me when I  
10 had foul time.

11 MR. HIPSKIND: Well I mean let me tell you  
12 where I'm coming from. NTSB investigated an accident,  
13 I think it was Woburn, Massachusetts. It's not the  
14 same setup as what we're talking about, but one of the  
15 things is kind of the dispatcher forgot something and  
16 routed a train in on top of a crew, and it had some  
17 tragic results.

18 But the reason I bring that up John is that  
19 one of the things that recommended out of that, one of  
20 the things that was kind of brought into the industry  
21 was this business of people can forget. So some of the  
22 discussion led to a recommendation where a shunt was  
23 required to be put on the track, and the thinking was  
24 well, that would put up a red signal.

25 A red signal would catch the dispatcher's

1 attention. He would be able to route trains, and so it  
2 was kind of an added level of protection. Should I  
3 think of foul time in what you do?

4 MR. YAEGER: In this with -- when you're  
5 fouling with equipment on the tracks, and in this case  
6 a backhoe on 3 track, a foreman is supposed to put a  
7 shunt strap on it. That would cause a TOL.

8 MR. HIPSKIND: And tell me what that is?

9 MR. YAEGER: Track occupancy light, which  
10 means I guess he cannot give a green signal to a train  
11 into that area, where the --

12 MR. HIPSKIND: It lights up his board?

13 MR. YAEGER: It actually should light up what  
14 we call a block, and a block may be in between  
15 automatic signal, in between two interlocks or it may  
16 be three automatic signals. It will show I guess on  
17 his board there's something on the tracks, and then the  
18 automatic signals are supposed to drop down to stop.

19 So the train, even if it came in, is supposed  
20 to stop I guess. But that is when you're using on  
21 track equipment, the shunt straps. If you're  
22 inspecting track during foul time, you don't put the  
23 shunt straps on there. There are certain guidelines  
24 when to use them and when not to use them.

25 MR. HIPSKIND: Okay. Let me parse some more

1 with you here. I was actively listening, and it  
2 sounded like one of the operative words in your  
3 explanation was on track equipment?

4 MR. YAEGER: Correct.

5 MR. HIPSKIND: Am I learning this now or --

6 MR. YAEGER: Yes.

7 MR. HIPSKIND: Okay, and so the difference  
8 between on track, which is steel wheels and you can't  
9 readily remove it, but the difference between that and  
10 backhoe is this whole idea of --

11 MR. YAEGER: Backhoe is a piece of equipment  
12 on the tracks.

13 MR. HIPSKIND: You drive it?

14 MR. YAEGER: You drive it over onto the track,  
15 it's on the track. It's on track equipment. It's not  
16 a piece of machinery that rides up and down the rail.  
17 It doesn't have to be. That would then involve getting  
18 a different -- you've got to get a Form D if you have  
19 machines that are on the rails, that drive on the  
20 rails, that don't go on the road.

21 They have to get a Form D. Whether it's line  
22 4, which means -- a line 4 means it's out of service,  
23 or line 2, which means you're traveling from one spot  
24 to another. That has to be in a Form D. A backhoe,  
25 maybe an excavator or some other rubber tire type of

1 bulldozer, whatever way you want to look at it. It's  
2 also considered on track. For fouling, it's considered  
3 on track equipment.

4 MR. HIPSKIND: Okay. But some of it we talked  
5 about earlier too was that a foreman would call the  
6 dispatcher, and you'd have this dialogue about he would  
7 ask you how much lead time do you need for me to call  
8 you, to get out of the way. I was just thinking the  
9 rubber tire thing, and picking up his stabilizers and  
10 moving out of the way and in the clear was a -- maybe  
11 would only take a minute or two or whatever.

12 MR. YAEGER: Sure, right.

13 MR. HIPSKIND: My thought was well the  
14 dispatcher would be more agreeable to that because he  
15 can contact you. He doesn't have the red light on his  
16 board or whatever. But now hear me now, in what you  
17 just said it sounds like when the backhoe does get up  
18 on 3 track, you're treating that like a piece of on  
19 track equipment. He's on the track.

20 MR. YAEGER: Correct.

21 MR. HIPSKIND: So should I think about shunts  
22 being applied?

23 MR. YAEGER: Yes.

24 MR. HIPSKIND: So when you have been out  
25 there, again on the day shift, did you have to put the

1 backhoe up there?

2 MR. YAEGER: No.

3 MR. HIPSKIND: Well now --

4 MR. YAEGER: The backhoe was working the night  
5 shift.

6 MR. HIPSKIND: Okay. So primarily in the day  
7 shift, you weren't having solved the little bit of the  
8 backhoe being up on 3 track?

9 MR. YAEGER: What was that again?

10 MR. HIPSKIND: I mean let me slow down. As I  
11 understand it now, you weren't have to call the  
12 dispatcher to request foul time to put the backhoe up  
13 on the track. You were doing more vacuuming of the  
14 ballast?

15 MR. YAEGER: I would be doing vacuuming, yes.  
16 I know my job had no backhoe in my shift, my 6:00 a.m.  
17 to 6:00 p.m. The 6:00 a.m. to 6:00 p.m. shift it was  
18 just me, a truck driver and a track man. There's no  
19 backhoe.

20 MR. HIPSKIND: In the way that you've  
21 described putting piece of equipment up on a main  
22 track, and you've probably done this dozens if not  
23 hundreds of times?

24 MR. YAEGER: Lots of times, yes.

25 MR. HIPSKIND: How should I think about

1 whether you put a shunt out or not? Do you do it all  
2 the time or does it depend?

3 MR. YAEGER: If you're fouling with equipment  
4 you should be putting -- and I've done. I've done mud  
5 spots before without a Railvac machine, just a backhoe,  
6 just go in there and dig out some the dirt, and casting  
7 it outside of all the tracks and then getting new  
8 valves and putting it in, and that was always involved  
9 when you get the foul.

10 You do get a shunt strap and you put the shunt  
11 strap on. When you clear the foul, you take -- tell  
12 the backhoe to get off the track, unhook the shunt  
13 strap, get your foul back.

14 MR. HIPSKIND: John, does it make a difference  
15 for the track that you're going to have like a backhoe  
16 sit on? Let's just say it's like three tracks. Does  
17 it make a difference where you put the shunt on, shunt  
18 strap?

19 MR. YAEGER: The shunt strap should be very  
20 close to where you're working because you don't want to  
21 take time to walk five minutes to where a shunt strap  
22 is or something like that. It's always in and around  
23 the work area.

24 MR. HIPSKIND: And if it's close the work area  
25 or it's fair away from the work area, it sends the same

1 signal to the dispatcher? It's indicating the track  
2 occupancy.

3 MR. YAEGER: Yes.

4 MR. HIPSKIND: And he needs to think and talk  
5 to you before he sends a train in?

6 MR. YAEGER: Correct.

7 MR. HIPSKIND: That's the whole idea of the  
8 shunt strap?

9 MR. YAEGER: Yes, it is.

10 MR. HIPSKIND: Okay. So on the day of the  
11 incident, what's your on duty time or what's the time  
12 that you report to relieve the outgoing guy?

13 MR. YAEGER: I report to Wilmington at six,  
14 and I get my stuff together and I drive up the  
15 location. That day I must have got there a little bit  
16 after seven. I called the dispatcher to request the  
17 track, 2 track being put out in my name, Form D in my  
18 name.

19 So the night foreman that was there before me  
20 could get his name off the track and he could leave, go  
21 home. He's the one that had the backhoe out there.  
22 He's the one that got foul time. How he did it, what  
23 he did, I couldn't tell you because when I showed up, I  
24 just talked to him briefly.

25 I said I've got 2 track out in my name. You



1 can get 2 track back. I did notice the backhoe down  
2 the tracks. I wasn't at the location where the backhoe  
3 was when I pulled up. I was about 500 feet north or it  
4 or south of it, I'm sorry.

5 I see the backhoe on the tracks. I asked him,  
6 I said you have foul on any tracks? He said I have  
7 foul on all the tracks. So that means he had a foul on  
8 1, 3 and 4 tracks.

9 MR. HIPSKIND: And he didn't need to have --  
10 because 2 was out?

11 MR. YAEGER: 2 was out.

12 MR. HIPSKIND: Okay, go ahead. I'm sorry to  
13 interrupt.

14 MR. YAEGER: So I said okay. I said when  
15 you're done with all your fouls, don't bother calling  
16 again. I'll get the fouls after that for the rest of  
17 the day, because he would be leaving. I got my hard  
18 hat and gear together, radio, clipboards, stuff like  
19 that. Walked over to 2 track, the out of service track  
20 (inaudible) and walked down to where the job was.

21 The backhoe was on 3 track and so I just  
22 figured I would wait until the other foreman clears the  
23 foul, gets the backhoe off the tracks and then find out  
24 exactly what the supervisor had planned for the rest of  
25 the day at this spot.

1 MR. HIPSKIND: Let's slow down there, because  
2 I just want to back up. Did you and foreman Robinson,  
3 were you in close proximity to each other?

4 MR. YAEGER: Right next to each other.

5 MR. HIPSKIND: So you had a communication and  
6 should I think of that as some kind of transfer from --

7 MR. YAEGER: He was right next to me when I  
8 pulled up.

9 MR. HIPSKIND: Okay. But really he's starting  
10 to close out his work and he's handing it over to you.  
11 Is that fair to say or --

12 MR. YAEGER: That would be fair to say, yeah,  
13 because at that time I did not know what he did, what  
14 he got accomplished or anything like that.

15 MR. HIPSKIND: Okay. Did you understand that  
16 he still had foul time, in other words, protection for  
17 all four tracks?

18 MR. YAEGER: Yes. Not 2 track. 2 track was -  
19 - 2 track was put out in my name. I believe it was  
20 7:26.

21 MR. HIPSKIND: Okay, and that's a  
22 communication you had with the dispatcher?

23 MR. YAEGER: Correct.

24 MR. HIPSKIND: Radio or telephone or radio or  
25 cell phone?

1 MR. YAEGER: That was cell phone.

2 MR. HIPSKIND: Is that a normal way of --

3 MR. YAEGER: To get track out?

4 MR. HIPSKIND: Well, I mean just  
5 communication.

6 MR. YAEGER: We do -- we do talk via phone for  
7 track out sometimes, yes. That's -- we do that.

8 MR. HIPSKIND: Is it fair to say that  
9 communication with the dispatcher is either -- it's got  
10 to be either radio or cell phone?

11 MR. YAEGER: Correct, yes.

12 MR. HIPSKIND: Is it 50-50 or is it cell phone  
13 a lot of times or what?

14 MR. YAEGER: I'm --

15 MR. HIPSKIND: Just your best guess.

16 MR. YAEGER: I'm going to say I would lean  
17 more towards maybe cell phone for that.

18 MR. HIPSKIND: You know, here's my takeaway.  
19 It's normal to do it one way or the other and there's  
20 really no exception to radio or cell phone?

21 MR. YAEGER: For track out, no.

22 MR. HIPSKIND: Okay. Everything's being  
23 recorded?

24 MR. YAEGER: Right, right.

25 MR. HIPSKIND: Okay, all right. Okay. So

1 let's go back to you and Foreman Robinson talk, and do  
2 you think there was any misunderstanding at that  
3 particular point in time?

4 MR. YAEGER: As far as the track out or the  
5 foul track?

6 MR. HIPSKIND: Tracks out.

7 MR. YAEGER: Is there a misunderstanding?

8 Well --

9 MR. HIPSKIND: Really about foul.

10 MR. YAEGER: The foul, he had the fouls on the  
11 track. I cannot foul a track when he has a foul. Two  
12 foreman cannot foul the same track. Normally, and I  
13 mean normally, I mean just about all the time, you  
14 always foul with a radio communication. So --

15 MR. HIPSKIND: But for what -- is there a  
16 reason for that?

17 MR. YAEGER: The reasoning would be if you --  
18 operators, all the operators could hear.

19 MR. HIPSKIND: It broadcasts information.

20 MR. YAEGER: It broadcasts information. You  
21 can have people foul in different spots, a couple of  
22 cap holes (phonetic) away, 500 feet away different, you  
23 know. That way everyone knows you're clearing a foul.

24 This is like if you're in a surfacing gang or  
25 a whatever. You have multiple track equipment,

1 different areas, and you get fouls on track. That's  
2 why we always did it on the radio. We always did it on  
3 the radio.

4 MR. HIPSKIND: Without directly engaging a lot  
5 of other people. At least on their radios they can  
6 hear what somebody else is doing?

7 MR. YAEGER: Yes.

8 MR. HIPSKIND: Okay, all right. So did you  
9 and Foreman Robinson have any kind of an agreement  
10 about releasing foul time?

11 MR. YAEGER: All I told him was when you are  
12 clear of all your fouls, don't bother getting any more  
13 fouls. I'll get them for the rest of the day, because  
14 he would be going home.

15 MR. HIPSKIND: But let's complete that  
16 thought.

17 MR. YAEGER: Okay.

18 MR. HIPSKIND: You were out there to vac, and  
19 you probably wouldn't be using the backhoe?

20 MR. YAEGER: No.

21 MR. HIPSKIND: Right?

22 MR. YAEGER: No.

23 MR. HIPSKIND: Okay. Now where's -- was the  
24 backhoe and the backhoe operator, was he normally part  
25 of your gang when you came on the day shift?

1 MR. YAEGER: No, no. He was there from  
2 Saturday night to Sunday morning.

3 MR. HIPSKIND: Should I think of him, the  
4 backhoe operator and that piece of equipment more of  
5 Foreman Robinson's crew?

6 MR. YAEGER: Correct, yes.

7 MR. HIPSKIND: And is that the way it had been  
8 throughout this 55 hour thing?

9 MR. YAEGER: Yes, yep. The guy that was  
10 Friday night, it was his responsibility to backhoe.

11 MR. HIPSKIND: Okay, for all the reasons you  
12 talked about, that less trains, more latitude with  
13 track outage foul time?

14 MR. YAEGER: Right.

15 MR. HIPSKIND: And more availability to get  
16 the backhoe up there and kind of in a production manner  
17 loosen up a great number of fouled ballast?

18 MR. YAEGER: Right.

19 MR. HIPSKIND: Right?

20 MR. YAEGER: Right.

21 MR. HIPSKIND: Okay. So what do you think  
22 happened?

23 MR. YAEGER: I think at some point Mr.  
24 Robinson gave the foul back and did not tell the  
25 backhoe operator to get off the track, he was giving

1 the foul back. I had my portable radio.

2 As I walked up to where the job site, I had my  
3 portable radio on. I'm sure Joe in the backhoe, he had  
4 his radio on. Anybody that has trucks that were parked  
5 in the area had radios. The Railvac machine has a  
6 radio for Amtrak channel.

7 So I -- last I talked to Mr. Robinson, he had  
8 a foul on all three tracks. I assumed everything was  
9 still fouled because I didn't hear nothing. Nobody  
10 heard anything on the radio.

11 MR. HIPSKIND: Yeah but one -- we don't know  
12 yet, but one explanation could be he called the  
13 dispatch on his cell phone?

14 MR. YAEGER: Like I said, I talked to -- after  
15 I got done talking to him about getting the track out,  
16 I have it in my name, he knew that. I asked about the  
17 fouls. That's when I got my gear, went over to 2 track  
18 and walked down to where the machine is. I did not see  
19 him again until after the accident.

20 MR. HIPSKIND: Okay. When you walked down  
21 there and I'm going to say you're pretty close to where  
22 the backhoe and the ballast?

23 MR. YAEGER: I parked about 500 feet south.

24 MR. HIPSKIND: Okay, all right. But you moved  
25 closer to that area of where the work was at, right?

1 MR. YAEGER: I walked up.

2 MR. HIPSKIND: Okay. I'm curious John. You  
3 went out there with a crew. I know where you're at,  
4 but where is everybody else right now?

5 MR. YAEGER: My two guys that came on with me  
6 at six drove up to the job site and they were already  
7 out there working. So I'm taking a desk. They signed  
8 on. They talked to Mr. Robinson and he was there. I  
9 wasn't there. When I pulled up, they were out there  
10 working, my two guys.

11 MR. HIPSKIND: All right. When you guys go  
12 through this switch, like from night shift to day  
13 shift, do you normally do like a new job briefing or  
14 your own job briefing?

15 MR. YAEGER: I would do my own on track  
16 briefing once I have everybody in place, and when I  
17 mean everybody in place, the Railvac crew, they get  
18 relieved. They switch. The ET personnel with the  
19 overhead wires, they switch. Dispatchers switch at  
20 seven o'clock. So usually, and this was on Saturday,  
21 there was -- like I said on Saturday morning there was  
22 nobody working, the machine was on the side. I talked  
23 to the foreman, we switched tracks and everything.

24 In this particular case, the backhoe was  
25 already out there when I got there, before I even got



1 down there. So I'm assuming -- I mean I can't put, say  
2 why, whatever. I don't know what time he got fouls. I  
3 don't know what he did, but I mean he was there  
4 working. That was his particular spot with the  
5 backhoe.

6 MR. HIPSKIND: Do you -- before the incident  
7 happened, do you recall how many times you had a  
8 conversation with the dispatcher?

9 MR. YAEGER: I called him once a little bit  
10 after seven when I got there. He said call me back,  
11 we're changing shifts. I called him back to get the  
12 track out, and that was like 7:26 when we completed the  
13 order, and after that, I did not talk to the dispatcher  
14 until the train went -- until the train came.

15 MR. HIPSKIND: Okay, all right. Listen, we've  
16 had a great conversation. But let me draw in some of  
17 my co-workers here. Still good to go?

18 MR. YAEGER: Yeah.

19 MR. HIPSKIND: All right. Mr. Kannenberg.

20 MR. KANNENBERG: All right. Dave, you can  
21 call me Dave. I've got a similar background to yours.  
22 I've run a lot of these gangs and stuff too, so I  
23 suppose a lot of us do and I'm just trying square. I  
24 have some background questions, but let me start kind  
25 of where he stopped, and I'm trying to square it in my

1 mind.

2           So you come up to the work site and you've got  
3 the track, Track 2, the Form D in your name at that  
4 point?

5           MR. YAEGER: No, no.

6           MR. KANNENBERG: Oh you got that while you  
7 were there?

8           MR. YAEGER: Yes.

9           MR. KANNENBERG: Okay. Did Robinson know you  
10 had that?

11          MR. YAEGER: Robinson was right next to me  
12 when I got it.

13          MR. KANNENBERG: When you say right -- in the  
14 truck with you?

15          MR. YAEGER: His truck was next to mine. So  
16 when I pulled in, you know, my truck, that's when I got  
17 to like the job location. Not to the exact area,  
18 because I couldn't drive right up next to where it is.  
19 Where I parked, I mean that's about 500 feet south of  
20 where it was.

21          MR. KANNENBERG: So he was in the truck next  
22 to you when you got your Form D?

23          MR. YAEGER: He pulled up next to me, yes.

24          MR. KANNENBERG: Okay. Did you have a  
25 conversation? Did you say hey, I got Track 2?

1 MR. YAEGER: No. I talked to him. I said I  
2 called the dispatcher. He said they were changing  
3 shifts, call him back, get the track out. So I told  
4 him I'll let you know when I get the track out in my  
5 name.

6 MR. KANNENBERG: Okay. Did you ever tell him  
7 you have the track out in your name?

8 MR. YAEGER: Oh yes I did.

9 MR. KANNENBERG: Okay, and did you -- was  
10 there a conversation of any kind about what was going  
11 to happen with the backhoe, how long he would be there  
12 and who was going to take, protect him on those tracks  
13 or anything like that?

14 MR. YAEGER: Well after I got the track out I  
15 talked to him. I said I got the track out, and I did  
16 ask him -- because I noticed the backhoe was down  
17 there.

18 MR. KANNENBERG: Right.

19 MR. YAEGER: Yesterday the backhoe -- oh, I'm  
20 sorry not yesterday but Saturday, the day before, the  
21 backhoe was parked on the side, the access road off of  
22 the 4 track side. I did not know that the backhoe  
23 operator's time was switched from six o'clock at night  
24 to come in at eleven. So that means he was staying a  
25 little bit later on Sunday morning, instead of being --

1           His original shift was six to six. I didn't  
2 know anything about that until I got to the job.  
3 That's something between him and Pete, I guess, the  
4 supervisor. They must have talked and, you know, I  
5 talked to Pete in the morning at Wilmington. He didn't  
6 say anything about that.

7           But I mean when I got there, Robinson had --  
8 he was working with the backhoe. So that's why I asked  
9 if he had a foul. He said he had a foul on all the  
10 tracks, and then my response to him was well after you  
11 give your foul up, you know, I'll get the fouls. Which  
12 in that case you would sit there and say well, CTech 4  
13 or Foreman Robinson, I need you to clear 4 track, 3  
14 track, whatever the case.

15           Take your machine off, clear the foul, clear  
16 all your fouls and then you go home and then Foreman  
17 Yaeger will take over after that.

18           MR. KANNENBERG: Certainly. So you're saying  
19 the expectation would be before he gave back his foul  
20 time, he would make sure all men and equipment were  
21 clear of the track and in a safe location?

22           MR. YAEGER: You would absolutely think that.

23           MR. KANNENBERG: Okay. Did you ever see or  
24 have you ever worked off of somebody else's foul time?

25           MR. YAEGER: Yes.

1 MR. KANNENBERG: And when I mean that, what I  
2 mean by that, not under somebody else's foul time, but  
3 using somebody else's foul time as if it were your own.  
4 In other words, keeping somebody who is going off  
5 shift, keeping his foul time and using that?

6 MR. YAEGER: No, no. Foul time, you cannot  
7 foul -- two persons cannot foul the track at the same  
8 time. The dispatch will say call Foreman Robinson. He  
9 has a foul on the track. So then it's up to --

10 MR. KANNENBERG: But what I'm talking about is  
11 the foreman that would be going home for the night,  
12 have you ever seen or have you ever used an outgoing  
13 foreman's foul time even though he was gone?

14 MR. YAEGER: Oh, I never gave another  
15 foreman's time back.

16 MR. KANNENBERG: Okay. That's essentially  
17 what I'm asking you.

18 MR. YAEGER: No, no. You just don't do that.

19 MR. KANNENBERG: Does anybody do that?

20 MR. YAEGER: Not that I know of.

21 MR. KANNENBERG: Okay, and that's the right  
22 answer, thank you. That's the exact right answer.

23 MR. YAEGER: Right.

24 MR. KANNENBERG: Okay, so you get there, and  
25 I'm just working this through my mind too and it's -- I

1 know all this stuff is going on simultaneously. You  
2 said your guys got there before you did?

3 MR. YAEGER: Yes.

4 MR. KANNENBERG: So they would have had to  
5 been briefed by Robinson?

6 MR. YAEGER: Correct.

7 MR. KANNENBERG: Okay. I don't know if you've  
8 talked to your guys between then and now and asked them  
9 if they had been briefed. We haven't talked to them  
10 yet.

11 MR. YAEGER: Right.

12 MR. KANNENBERG: Do you -- out of curiosity,  
13 do you know if they did attend a briefing with  
14 Robinson?

15 MR. YAEGER: I don't know. I couldn't say for  
16 sure for those guys if they talked to Mr. Robinson  
17 about his particular job briefing or not. I don't  
18 know.

19 MR. KANNENBERG: Before they got on the track  
20 (inaudible)?

21 MR. YAEGER: Yeah. Like I said they were at -  
22 - one guy was watching, the other guy was on the track  
23 working.

24 MALE SPEAKER: Okay. A lot of the background  
25 stuff, and I've got to go through it now because Dave

1 was very thorough on his line of questioning, and  
2 you've answered a lot of these, actually almost all of  
3 these. So had you held an on track safety briefing  
4 that morning at all?

5 MR. YAEGER: I didn't do that until I was  
6 going to wait for the ET crew. Like I said, I wait for  
7 all the crews to -- the night crew from the (inaudible)  
8 people to leave, the day crew come in, the ET. So we  
9 are the people that are going to be there the rest of  
10 the day.

11 I feel it's better that way, instead of having  
12 people come at different times during the -- especially  
13 when we're all in or around the same time being there,  
14 within 15-20 minutes, something like that.

15 MALE SPEAKER: Sure. So you're -- I don't  
16 want to put words in your mouth. Essentially, you were  
17 waiting for the other crew to finish up all their work.

18 MR. YAEGER: I was waiting for the other crew  
19 to get off. I was waiting on the new crew for ET to  
20 show up and I knew they were like close, because  
21 everything was done the day before like eight o'clock.

22 So I knew I wasn't bothering with anything  
23 until that was in place, the foul times were given  
24 back, everything was off. I didn't have to worry  
25 about, you know, involving Foreman Robinson has a foul

1 right now on this track or that track. I'd be getting  
2 the fouls.

3 MALE SPEAKER: Right, okay. So you had no --  
4 there was no need for you to have a job safety briefing  
5 up to that point, because you had not taken over?

6 MR. YAEGER: No.

7 MALE SPEAKER: Okay. I understand that.

8 MR. YAEGER: I mean I had the track out in my  
9 name, and that's all I had.

10 MALE SPEAKER: I understand. But he also had  
11 the Form D simultaneously, because you can have two  
12 people with a Form D, and that's the way you have to  
13 have that. You have to have that lap, because you  
14 can't even for a second have the track unprotected.

15 MR. YAEGER: Right, or like I said, you put it  
16 in a hold.

17 MALE SPEAKER: Okay. So was Foreman Robinson,  
18 he was there throughout this entire --

19 MR. YAEGER: I'm assuming he was there the  
20 whole night.

21 MALE SPEAKER: And then after you got there  
22 and after the train came down into the location, he was  
23 there after that also?

24 MR. YAEGER: After I talked to him, I didn't  
25 see him again.



1 MR. KANNENBERG: Okay. So how much time  
2 between when you talked to him, you pulled up next to  
3 him in the truck and you had that conversation with  
4 him, how long between then and the train coming?

5 MR. YAEGER: Maybe 15 minutes.

6 MR. KANNENBERG: And you don't know where  
7 Robinson was during that 15 minutes?

8 MR. YAEGER: (No audible response.)

9 MR. KANNENBERG: Okay. That's what I was  
10 really wondering. Where did you expect Robinson to be  
11 during that time?

12 MR. YAEGER: I would expect him to be in the  
13 area. I would expect him once he clears his foul to  
14 make sure everyone's clear.

15 MR. KANNENBERG: Agreed. I notice that you  
16 guys were using watchman lookouts, even though foul  
17 time and Form Ds were in place.

18 MR. YAEGER: Uh-huh.

19 MR. KANNENBERG: Can you tell me why you were  
20 also using watchman lookouts?

21 MR. YAEGER: I use a watchman lookout because  
22 if you only have a foul on one track, just a  
23 precautionary -- it was really just precautionary  
24 because you've got to cross all the tracks, that's all.  
25 If one of the contractors had to get off the machine or

1 something like that, that's all they're there for, just  
2 a precautionary -- to have them there, just to whistle  
3 when the trains came.

4 MR. KANNENBERG: Okay. So again, not putting  
5 words in your mouth. So after you had -- the previous  
6 days, after you had given up foul time, the watchman  
7 lookout would be there in case somebody had --

8 MR. YAEGER: The watchman was there every  
9 minute of the day. When you get -- even if you have a  
10 foul, he's still there.

11 MR. KANNENBERG: So why would you use -- my  
12 question, I guess, why would you use a watchman lookout  
13 when you have foul time in place?

14 MR. YAEGER: Because if one of -- if I had a  
15 foul on 3 track and somebody got off the machine on the  
16 1 track side --

17 MR. KANNENBERG: And it didn't have a foul on  
18 it?

19 MR. YAEGER: I didn't have a foul, or got off  
20 the machine and wanted to cross all four tracks to get  
21 over to their vehicle, just to have someone there.

22 MR. KANNENBERG: Okay, okay. I think I got  
23 that. I have -- we're going to go over -- I think Mr.  
24 Hipskind told you we're going to go around again. I  
25 have a couple more questions that would probably be

1 better for the final round. Nothing specific.

2 MR. HIPSKIND: Steve, you want to come on  
3 around here and sit down? If you need or want a break,  
4 you know.

5 MR. YAEGER: I'm good.

6 MR. MANNING: You all right?

7 MR. YAEGER: Yes.

8 MR. STEARN: Hi John, Steve Stearn. We know  
9 each other and thank you for coming in. These two  
10 gentlemen hit pretty much all the hot points here in  
11 what interested me or what questions were left in my  
12 mind, except for a couple.

13 When you arrived, when you initially arrived  
14 at the work location, you said you parked about, you  
15 know, several hundred feet away from where the actual  
16 work was being performed, and you at some point did  
17 notice that there was backhoe work. Was the vac train  
18 working as well?

19 MR. YAEGER: There was not.

20 MR. STEARN: Were there operators on the vac  
21 train?

22 MR. YAEGER: The shift that was the night  
23 shift, but they were on there.

24 MR. STEARN: So the contractor employees with  
25 the vac train were still there?

1 MR. YAEGER: Yes.

2 MR. STEARN: But they were soon to be replaced  
3 by other?

4 MR. YAEGER: Right, two new ones, yes.

5 MR. STEARN: Okay, and then you had said that  
6 your guys, and when you leave Wilmington it's typical  
7 to be you, a truck driver and a track man watchman, or  
8 maybe the truck driver's going to watch and the track  
9 man will do track man duties.

10 MR. YAEGER: Correct. Or no. They were --  
11 basically they're just to take turns watching. That's  
12 all they do.

13 MR. STEARN: But you said there was a track  
14 man who was actually working?

15 MR. YAEGER: That was when I first got there,  
16 yes, that day. That's because Pete, the supervisor, is  
17 in the gauge working with the other guy that showed up.  
18 He made them do work.

19 MR. STEARN: As Pete would?

20 MR. YAEGER: As Pete would, yes. Guys, I  
21 don't know, you know, don't know Pete but he's a --  
22 he's a worker, and you know, you actually say he's like  
23 your best track man really sometimes. But we do tend  
24 to disagree on the manpower situation, because he  
25 feels you don't need it and he'll go, he'll jump in

1 there and do the work, and that's typical of him.

2 He shot out of Wilmington that morning. He  
3 said I'm going to get up there, I want to see what they  
4 have done, and so I'm sure he was up there by probably  
5 6:30.

6 MR. STEARN: So when Pete, who's not afraid to  
7 get his hands dirty and another track man would be  
8 working with this backhoe and this vac train, what type  
9 of work would they be doing? What are they doing?

10 MR. YAEGER: Well, Pete in his wisdom wanted  
11 to use what you call scrapers. Scrapers are like a  
12 metal rod maybe two inches by a quarter inch with a  
13 bend on it, an L on the end of it, maybe six inches, a  
14 bend, something like that. We use those tools for what  
15 we call winterization, when we go before winter storms  
16 come up.

17 We'll go out and pre-winterize we call the  
18 interlock. We'll pull all the stones from underneath  
19 where rods are, just make sure -- and we use that to  
20 pull everything out. It's a lot easier. You can get  
21 that in a lot easier and pull things out, and he wanted  
22 to use those to pull the dirt from underneath the  
23 concrete ties.

24 Any extra dirt that you get out from under the  
25 ties that the vacuum could vac up, that was his little

1 wanted to do.

2 MR. STEARN: So Pete's trying to get the most  
3 of this vac train and the best possible results from  
4 the work being performed?

5 MR. YAEGER: Yes, yes.

6 MR. STEARN: And that's fantastic.

7 MR. YAEGER: Absolutely. There's nothing, you  
8 know. He's very good -- he was very good with that.

9 MR. STEARN: So this ballast cleaning, we know  
10 that it was going on around the Booth Street Bridge at  
11 that time, but where did that work start?

12 MR. YAEGER: I think Friday night they did  
13 work inside Hook Interlocking. I don't know where, but  
14 I note it did say started somewhere else Friday night  
15 and then ended up over the course of Friday  
16 night/Saturday, they were at Booth Street. And then  
17 when I came in, we worked Booth Street area all day  
18 because there was a lot -- there was a lot to take out.

19 MR. STEARN: And at your -- at that Booth  
20 Street area, how is your daytime visibility there both  
21 ways?

22 MR. YAEGER: Excellent, excellent.

23 MR. STEARN: You had been with this vac train  
24 months before?

25 MR. YAEGER: Numerous times before, yes.

1 MR. STEARN: But this was a pretty regular  
2 weekend gig for you?

3 MR. YAEGER: This was occasionally a -- yes.  
4 Occasionally we do 55 hour outages with the vac train.  
5 I mean usually they run it at night only for an eight  
6 hour shift, and so but that was in Philly. It wasn't  
7 down there. We haven't used it in Wilmington, I don't  
8 know, for months.

9 MR. STEARN: Do you know the direction of  
10 work, was that north or south?

11 MR. YAEGER: Direction. Direction of work,  
12 Pete and I we discussed that, you know, like Friday  
13 morning. We actually Thursday. We decided to make the  
14 direction of work south to north so we can move the vac  
15 train out of our way.

16 The vac train will not go over the tracks that  
17 we -- when we pull all the dirt and everything out of  
18 there with the backhoe, the operators of the vac train  
19 will not go over that section because it's not stable.

20 So we decided to go south to north, because  
21 the machine was going to go north to Philadelphia, and  
22 we just felt everything going that way, get it out of  
23 the way quicker, we get our ballast train in quicker.

24 MR. STEARN: So if the direction of work on 2  
25 track there about Booth Street was north, in a northern

1 direction, then the backhoe would have been positioned  
2 to the rear of the vac train?

3 MR. YAEGER: When you say "rear of the vac  
4 train" --

5 MR. STEARN: To the south, to the south side  
6 of the vac train.

7 MR. YAEGER: It was south of vac train. The  
8 vac train was facing south, because that's where the  
9 vac is, and the backhoe was south of that, yes.

10 MR. STEARN: And the backhoe then would have  
11 been occupying 3 track and actually broadside to the  
12 track, or would it have been in line with the 3 track?

13 MR. YAEGER: In line, in line with the track.

14 MR. STEARN: And as the backhoe was cribbing  
15 out, he would have just deposited his material --

16 MR. YAEGER: He pulls as much, everything he  
17 pulls towards him to the track he's on.

18 MR. STEARN: So in getting foul and giving up  
19 foul, you had said that you much preferred to use a  
20 radio because everyone can hear?

21 MR. YAEGER: Like I said, I never heard it on  
22 a phone. They always say radio.

23 MR. STEARN: Had you ever had problems using a  
24 radio, trying to get or relinquish foul in that area?

25 MR. YAEGER: In that area? No, it was okay



1 with the radio. Radio to me, radio communications  
2 fine. Just about everywhere I don't have a problem  
3 with it.

4 MR. STEARN: And you had said that the new ET  
5 guys were about on the scene, about to arrive shortly?

6 MR. YAEGER: They were. I think they were  
7 right there.

8 MR. STEARN: Were there ET personnel there  
9 still left over from the night before?

10 MR. YAEGER: Shift before? I couldn't tell  
11 you that. I don't know.

12 MR. STEARN: The night shift foreman was in  
13 his own vehicle, another truck, another Amtrak truck?

14 MR. YAEGER: Yes, another Amtrak truck.

15 MR. STEARN: And so that when you pulled up,  
16 you guys were beside each other talking through the  
17 window I guess?

18 MR. YAEGER: Well yes.

19 MR. STEARN: And after you had received your  
20 Form D getting two track in your name, you didn't see  
21 him again?

22 MR. YAEGER: No, no. I don't know exactly --  
23 I don't know where he went.

24 MR. STEARN: John, right now that's all the  
25 questions I would have. We'll probably go around again

1 and there may be other questions that I come up with.  
2 I want to thank you for coming in, and I'm so sorry for  
3 this recent circumstances. Thank you.

4 MR. HIPSKIND: Thanks Steve. Mike, do you  
5 want to slip down here? Want me to get you some more  
6 water? I could get it.

7 MR. YAEGER: I could get it.

8 MR. HIPSKIND: Okay, get it.

9 MALE SPEAKER: Stretch your legs, John.

10 MR. YAEGER: I'm good.

11 MR. TRAINA: I'm Mike Traina. I'm Electric  
12 Traction Supervisor from the (inaudible) division and  
13 the ARSA (phonetic) president. I've just got a couple  
14 of questions.

15 MR. YAEGER: Okay.

16 MR. TRAINA: I mean these guys pretty much hit  
17 everything that I was looking at. But when you --  
18 after you arrived on scene, you were parked truck to  
19 truck with the other foreman, Mr. Robinson. You guys  
20 had that conversation. Did he drive away or -- that  
21 you know of?

22 MR. YAEGER: I don't know if he moved farther  
23 south, you know, in the area. I mean like I said, I  
24 didn't pay attention to what he was really doing. I  
25 got all my stuff together and then I started walking up

1 to where -- because I wanted to see what was done too.

2 MR. TRAINA: And where were you parked, under  
3 Gray Bridge there?

4 MR. YAEGER: No. I was parked about two cap  
5 poles south of the location on 4 track side.

6 MR. TRAINA: Okay, on the 4 track side. Okay.  
7 You said you came with two men. The two men, they  
8 drove in their own vehicle?

9 MR. YAEGER: Two men drove in a van.

10 MR. TRAINA: In a van, okay, and you also said  
11 that at one point after you had the conversation, you  
12 looked up, they already had relieved the night?

13 MR. YAEGER: They were out up there, yes.

14 MR. TRAINA: They were and you --

15 MR. YAEGER: I did not see any other night  
16 people.

17 MR. TRAINA: Okay. So we don't know if they  
18 signed a briefing or not?

19 MR. YAEGER: Who?

20 MR. TRAINA: Your guys going on track.

21 MR. YAEGER: I don't know exactly. I didn't  
22 ask them.

23 MR. TRAINA: All right. Now the backhoe was  
24 next to the (inaudible) working, digging at the time if  
25 you recall?

1 MR. YAEGER: No, just sitting there.

2 MR. TRAINA: Just sitting there with the  
3 operator in it?

4 MR. YAEGER: Yes.

5 MR. TRAINA: Okay. All right now, I want to  
6 touch on the supervisor. He was -- you said he was in  
7 the gauge of the track working. At some point you  
8 noticed him. He was there before you arrived?

9 MR. YAEGER: Yes.

10 MR. TRAINA: Okay. I believe his first name  
11 is Pete?

12 MR. YAEGER: Peter, uh-huh.

13 MR. TRAINA: Okay. The night assistant  
14 supervisor Kyle Schneider?

15 MR. YAEGER: Kyle, I didn't see him there.

16 MR. TRAINA: He wasn't there. So we can  
17 assume maybe they had a turnover?

18 MR. YAEGER: I'm assuming Pete told him to  
19 leave.

20 MR. TRAINA: Okay.

21 MR. YAEGER: When he got there.

22 MR. TRAINA: Okay. So you didn't see him at  
23 all?

24 MR. YAEGER: No.

25 MR. TRAINA: As far as the manpower, now who

1 would set that job up? Would it be the supervisor or a  
2 manager?

3 MR. YAEGER: Pete would be setting up the  
4 manpower for that.

5 MR. TRAINA: Okay. So he ran the whole show?

6 MR. YAEGER: Pete sets up the manpower, like I  
7 said. So we sometimes talked to each other about what  
8 we need personnel-wise, but ultimately he's the one  
9 that decides how many, Pete.

10 MR. TRAINA: Was there any discrepancy about  
11 the manpower between you and --

12 MR. YAEGER: No, no, no. I think we were on  
13 the same page as far as, you know, two guys is all we  
14 really needed, take times watching.

15 MR. TRAINA: You felt comfortable?

16 MR. YAEGER: Yep.

17 MR. TRAINA: I don't really have any more  
18 questions. I think we touched everything. Thank you  
19 very much, and again I'm sorry.

20 MR. HIPSKIND: That's okay, Mike. Good job  
21 and we are going to go around for a second round, if  
22 there's something that comes up.

23 MR. TRAINA: Thank you.

24 MR. HIPSKIND: Matt, how about it's your turn?

25 MR. PORTO: Certainly thank you. Again Matt

1 Porto, Director of Safety. Thank you for coming in to  
2 help us. A lot of questions that I had were already  
3 asked. I'll ask a couple here. When you had that  
4 discussion with Robinson about when he clears his fouls  
5 don't worry, was there any other discussion about  
6 there, or was it just pretty much that?

7 MR. YAEGER: It was pretty much that.

8 MR. PORTO: Okay.

9 MR. YAEGER: Yeah.

10 MR. PORTO: And when you received Track No. 2,  
11 the Form D, you mentioned that to him, to Robinson that  
12 you received that?

13 MR. YAEGER: Yes. I got out of my truck and  
14 went to his truck and told him I had 2 track out in my  
15 name. So you could dispatch or get 2 track out of your  
16 name, which is one Form D that he has to finish before  
17 he leaves.

18 MR. PORTO: Did he do that immediately?

19 MR. YAEGER: I don't know. I don't know.

20 MR. PORTO: Do you know if he ever did call?

21 MR. YAEGER: I would think he did, yes. I  
22 mean I heard he did. I didn't talk to him personally,  
23 but I heard a couple of minutes later.

24 MR. PORTO: Okay. So you don't know for  
25 certain if he did call?

1 MR. YAEGER: I didn't -- I wasn't next to him  
2 when he called or anything like that, no.

3 MR. PORTO: Okay. With the backhoe and the  
4 work that it was performing that morning, did it have  
5 to be on 3 track, or is the work -- was it able to be  
6 done with that backhoe sitting on one track?

7 MR. YAEGER: That, in that particular case I  
8 think it was better for 3 track because 1 track was --  
9 the height of 1 track was higher. So the backhoe was  
10 more level with 2. Level-wise you get more underneath.  
11 That would be the easier way.

12 MR. PORTO: And Sunday was the last schedule  
13 for the outage?

14 MR. YAEGER: Sunday was six to six shift was  
15 the last shift. There was I don't know what time the  
16 surfacing crew was to set the sign up. I talked with  
17 Pete. I think the work thing with the ballast cars was  
18 maybe two o'clock, three o'clock they were supposed to  
19 sign on, and make their way down to the little casing.

20 I knew it was going to be longer day with him  
21 that day only because I know he wanted me to drop the  
22 valves after I got rid of the vac train, and yeah.

23 MR. PORTO: How was the backhoe getting back  
24 to the headquarters?

25 MR. YAEGER: I would assume that was going to

1 stay there that day and then maybe Monday, Tuesday,  
2 Wednesday or whatever they would drive it back.

3 MR. PORTO: All right. That's all my  
4 questions.

5 MR. HIPSKIND: Thank you, Matt. Lou, have you  
6 got something to add here too?

7 MR. TOMASSONE: Yeah. I have a couple of  
8 questions. Thanks for coming in John. The first  
9 question is you mentioned ballast cleaner and the vac  
10 train. They're the same thing, correct?

11 MR. YAEGER: Vac train is different than the -  
12 - their ballast cleaners are different. Loram's  
13 (phonetic) ballast cleaners are different than a vac  
14 train. They're two different things. Vac train's a  
15 vac train; ballast cleaner is a ballast cleaner. It  
16 has big wheels from the side and --

17 MR. TOMASSONE: Okay. I just -- I thought I  
18 overheard --

19 MR. YAEGER: They tend to scoop all the  
20 ballast up, put it through a bunch of conveyor belts  
21 and then drop the cleaner ballast afterwards.

22 MR. TOMASSONE: Okay. So this was --

23 MR. YAEGER: This was taken -- everything it  
24 took out stayed out. Never went back in.

25 MR. TOMASSONE: And this was the vac train



1 that was being used?

2 MR. YAEGER: Yes.

3 MR. TOMASSONE: As far as the conversation you  
4 had with the Foreman Robinson, did he mention any  
5 supplemental shoveling devices?

6 MR. YAEGER: No, no.

7 MR. TOMASSONE: He didn't say anything about  
8 that, okay. And do you know if there was a  
9 supplemental shoveling device on the job site or are  
10 they -- where would they traditionally be?

11 MR. YAEGER: I don't know.

12 MR. TOMASSONE: Okay. The Friday night  
13 foreman was not the same as the Saturday night foreman;  
14 is that correct?

15 MR. YAEGER: No, correct.

16 MR. TOMASSONE: And who gives the instruction  
17 on the turnover for the gangs? Like basically who  
18 tells you that the protocol is going to be everyone  
19 comes off the track, give the job briefing and then you  
20 go back on and start your new?

21 MR. YAEGER: In that case, the protocol would  
22 have been me to pull everyone off the track and give  
23 the job briefing.

24 MR. TOMASSONE: And where would you have  
25 learned to do that?

1 MR. YAEGER: Where would I have learned?

2 MR. TOMASSONE: Yeah. Did Amtrak teach you to  
3 do it that way or is that something you picked up?

4 MR. YAEGER: It's just like common sense to  
5 have -- once the -- the people that are going to be  
6 working with you the whole entire day, ET, the vac  
7 train people, get them all together, get them all on  
8 the same page. I have to talk to ET.

9 I want to know where brown sticks are just in  
10 case someone else comes around, and we've just go to  
11 get on the same page. I want to know how far the power  
12 is, when we're moving a machine farther north, where  
13 we're working, stuff like that. So just a brief  
14 briefing there in the morning and, you know.

15 MR. TOMASSONE: So is it unusual for members  
16 of your gang to jump into the night gang's work?

17 MR. YAEGER: As long as they sign -- as long  
18 as somebody comes up, they say can I sign, you know, do  
19 the job briefing. And that's, like I said, you get  
20 people come throughout the day. If I had someone come  
21 six hours later, they would have -- I'd have to give  
22 them the job briefing and they would sign on the paper.

23 MR. TOMASSONE: Okay, and as far as the  
24 vehicle orientation, you guys both backed in, you and  
25 Foreman Robinson when you were doing the exchange of

1 Form Ds?

2 MR. YAEGER: I pulled in. I pulled in right  
3 behind all the other trucks that were in line going  
4 down.

5 MR. TOMASSONE: Do you know if you backed in  
6 or pulled in?

7 MR. YAEGER: I pulled straight in.

8 MR. TOMASSONE: Pulled straight in, and he was  
9 also pulled straight in. So you were --

10 MR. YAEGER: He was pulled straight in to the  
11 right of me.

12 MR. TOMASSONE: Okay, and you said you didn't  
13 see him after that because you got out of your vehicle  
14 and walked to the job site, and that was the last you  
15 saw of him?

16 MR. YAEGER: Uh-huh.

17 MR. TOMASSONE: And for the two guys in your  
18 gang that were working, one was a watchman and one was  
19 working with Pete, with the scrapers?

20 MR. YAEGER: Right, right.

21 MR. TOMASSONE: Where exactly was the watchman  
22 posted?

23 MR. YAEGER: Right to the next of the backhoe.

24 MR. TOMASSONE: So in line with the backhoe?

25 MR. YAEGER: In line with the backhoe. In

1 line where the workers were.

2 MR. TOMASSONE: Okay.

3 MR. YAEGER: On 4 track side.

4 MR. TOMASSONE: Okay, and the only other  
5 question I had was have you ever worked with Foreman  
6 Robinson prior to this?

7 MR. YAEGER: I worked with him when he was  
8 like maybe a truck driver or a welder, but never as a -  
9 -

10 MR. TOMASSONE: So you've never had to hand  
11 off a job to him?

12 MR. YAEGER: No.

13 MR. TOMASSONE: And you've handed jobs off to  
14 other foremen prior to this? You have experience with  
15 that?

16 MR. YAEGER: Sure.

17 MR. TOMASSONE: Okay. That's all I have.  
18 Thank you.

19 MR. HIPSKIND: Thanks, Lou. Still good.  
20 We'll go for a second round.

21 MR. YAEGER: Can I take a little break?

22 MALE SPEAKER: Speed round.

23 MR. HIPSKIND: It's not going to be a speed  
24 round per se.

25 MR. YAEGER: It's not a speed round?

1 MR. HIPSKIND: Well it will go --

2 MR. YAEGER: I'm the boss.

3 (Laughter.)

4 MR. HIPSKIND: All right. Good point, good  
5 point. John, there's just a couple of things I want to  
6 clarify in my mind and just a couple of other topics.  
7 You've been an employee at Amtrak for 20 plus years,  
8 right?

9 MR. YAEGER: Forty.

10 MR. HIPSKIND: Forty. I only missed it by  
11 half. So what do you think about the training that  
12 you've received over the years?

13 MR. YAEGER: Seen lots of it.

14 MR. HIPSKIND: Seen lots of it.

15 MR. YAEGER: Seen lots of programs come and  
16 go.

17 MR. HIPSKIND: Okay.

18 MR. YAEGER: I think -- I would guess the  
19 training programs are about, you know, I can't really  
20 say they're bad. I think they're okay, you know. I  
21 think all the -- I think basically the safeguards are  
22 okay. It's just my problem may be is guys maybe not  
23 having enough experience, you know, newer guys.

24 MR. HIPSKIND: All right. Well, kind of where  
25 I was going with this is do you feel comfortable with

1 the level of training that you had and how you apply  
2 it?

3 MR. YAEGER: I'm comfortable with my training,  
4 but then again, I've been around a long, long time and  
5 you know, just --

6 MR. HIPSKIND: If you want to take some time,  
7 we'll do a time out.

8 (Pause.)

9 MR. YAEGER: I just think some of these guys  
10 get put in bad spots. They just don't know everything,  
11 and maybe just assume too much, I don't know.

12 MR. HIPSKIND: You want to take a break?  
13 Let's take a break.

14 (Off the record.)

15 MR. HIPSKIND: Okay. This is Dick Hipkind.  
16 We're off our break and we're back on the record, and  
17 John, where we kind of left off was some discussion  
18 about training, and all I was trying to get at there is  
19 that -- do you go to training on a periodic basis, an  
20 annual basis or how should I understand your roadway  
21 worker training protection frequency?

22 MR. YAEGER: That's yearly, yearly classes.

23 MR. HIPSKIND: Okay. You've probably taken it  
24 dozens of times, right?

25 MR. YAEGER: Yes.

1 MR. HIPSKIND: Okay. Do you know how to -- do  
2 you know and understand the principles of it and you  
3 don't have any problem applying the training, the  
4 principles in the field?

5 MR. YAEGER: No.

6 MR. HIPSKIND: Okay. I want to touch on job  
7 briefing for a little bit. It just -- it's something  
8 that I am closely tied to. It's a communication piece  
9 between the crews and what-not. What do you perceive  
10 as some of the challenges when you as a foreman, when  
11 you hold a job briefing?

12 MR. YAEGER: I guess maybe I don't know.  
13 Maybe the people don't pay attention enough. Maybe  
14 groups are too big when they do a job briefing. Some  
15 of it I feel is not needed on the job brief. Some of  
16 the things are maybe not needed, but like I said, you  
17 want to try to cover all the bases on different things,  
18 of aspects of different jobs.

19 MR. HIPSKIND: Is it --

20 MR. YAEGER: I think sometimes, I think it's  
21 almost sometimes now just like people say here, let me  
22 sign the paper, you know, let me sign the paper and  
23 they don't pay attention to -- maybe they don't pay  
24 attention to something. I always try to tell them --  
25 to me the critical parts to pay attention to on the

1 thing, which would be maybe what kind of safety  
2 precautions.

3 Don't necessarily care too much about, you  
4 know, if you don't -- like we never need fall  
5 protection or confined space or anything like that.  
6 But just as long as they understand the key parts on  
7 how to -- on what we're doing and how we're going to do  
8 it, without actually getting hit by a train.

9 But I mean people will fall in holes, people  
10 will fall over rails doing stuff. To me, these  
11 briefings aren't going to stop those type of injuries.  
12 So that's all I have for that right now.

13 MR. HIPSKIND: So is some of what we're  
14 talking about here, is it about the quality of  
15 engagement from the people receiving the job briefing?  
16 Is it maybe a comment on participation or lack thereof?

17 MR. YAEGER: It's probably a lack of paying  
18 attention on a lot of people. They just -- they -- I  
19 don't know how to say. Maybe they're bored with it  
20 maybe. I don't know. They just don't pay attention.  
21 They just feel, you know, let me sign the paper and  
22 what are we doing today and where do we got to go.

23 MR. HIPSKIND: Do you ever get any challenges  
24 from anybody?

25 MR. YAEGER: No, no. You know what? You



1 don't -- you don't -- I don't get any challenges really  
2 from anyone because, I don't know, maybe my experience  
3 about these people. They don't have that much time and  
4 they do not sound to me on any particular thing. So  
5 really I don't get challenged on anything, on how I say  
6 we do it, whatever way we do it.

7 MR. HIPSKIND: Okay. I want to switch gears a  
8 little bit. I understand that for the people that were  
9 out there, at least one person, maybe two people were  
10 placed in the position of watchmen, and I think for a  
11 lot of people they may not understand that term and how  
12 you were using it that day.

13 When I listen to you explain it, what I got  
14 out of it was it was more for personal protection of  
15 the employees in that area, as they would cross tracks  
16 and what-not.

17 MR. YAEGER: Right.

18 MR. HIPSKIND: Okay. But I want to ask you,  
19 the notion of having the watchman out there wasn't to  
20 protect the backhoe, right?

21 MR. YAEGER: Correct.

22 MR. HIPSKIND: That was under foul time and --

23 MR. YAEGER: Yes.

24 MR. HIPSKIND: There was never an expectation  
25 of traffic coming down 3 track?

1 MR. YAEGER: There was no -- there was no -- I  
2 mean there was no, I didn't have any clue anything  
3 would be coming down.

4 MR. HIPSKIND: But more importantly, neither  
5 did the watchman?

6 MR. YAEGER: More or less yes, yes. They're  
7 not -- they're supposed to watch no matter what; so but  
8 they're not expecting a train either. So but they're  
9 supposed to watch no matter what.

10 MR. HIPSKIND: Okay and then --

11 MR. YAEGER: Because we don't have to tell  
12 them when we clear fouls. They don't know that.

13 MR. HIPSKIND: Okay, and then the other thing,  
14 the whole calculus about train speed, whether we're  
15 talking 90 mile an hour or 110 mile an hour and the  
16 sight-vision, the clear distance being like almost 24-  
17 26 hundred feet, and the positioning of the watchman  
18 lookout or the watchman. That -- should I think that  
19 that came to play in this, what you had set up out  
20 there or it just -- they're two different things?

21 MR. YAEGER: Repeat that again?

22 MR. HIPSKIND: Well, I know I kind of got  
23 jumbled up there. I was just trying to make the point  
24 that the -- where the watchman were at was for the  
25 specific purpose of if people ended up crossing a

1 track?

2 MR. YAEGER: Correct.

3 MR. HIPSKIND: Okay, and it's not like you'd  
4 have two and three watchman out in advance for -- to  
5 protect against the speed of traffic, because you were  
6 doing some other kind of work?

7 MR. YAEGER: Right, uh-huh.

8 MR. HIPSKIND: So one of the things that we've  
9 struggled with in trying to understand this incident is  
10 what -- you've done this so many times and you've had  
11 transfers from so many different other projects, and  
12 essentially in high speed territory.

13 So what do you think was different about this  
14 day than all the rest of the days when nothing ever  
15 happens? Have you thought about it? Have you put your  
16 finger on what was different as far as the jobs? You  
17 mean --

18 MR. YAEGER: Different in terms of the job or  
19 in terms of a breakdown or something?

20 MR. HIPSKIND: It's like we're struggling to  
21 figure out what to fix John.

22 MR. YAEGER: I understand. I think it just  
23 comes down to the foul time and not telling the guys  
24 that are fouling that you're clearing the foul. I  
25 think that's just -- that's the whole problem there.

1 MR. HIPSKIND: Would it be better if that was  
2 more formalized?

3 MR. YAEGER: I mean I don't know how you can  
4 get it more formalized, you know. But I -- you just  
5 always -- you always talk to the people and let them  
6 know that you're clearing the foul and they know that  
7 and they let you know that they're clear before you  
8 give it back.

9 You know, I just -- I just couldn't believe.  
10 I mean somebody, you know, that happened that way.

11 MR. HIPSKIND: Okay. So I forgive me. I've  
12 got to ask you some like just prior to the incident,  
13 were you aware of where everybody was at? I mean do  
14 you have a visual of this person was here and that  
15 person was --

16 MR. YAEGER: When I walked from my truck up  
17 the job location, Pete and Jerry Moore were on 2 track  
18 digging out the dirt. The backhoe was on 3. The  
19 watchman was on -- the outside of 4 track, right next  
20 to the backhoe. The three operators were on the vac  
21 machine and that was it. That was the only people on  
22 the ground.

23 MR. HIPSKIND: Okay, and I think you answered  
24 this earlier, but I just want to add just a little more  
25 paint to the picture here. You said that the backhoe

1 was on 3 in line with 3.

2 MR. YAEGER: Yes.

3 MR. HIPSKIND: And his bucket was or the front  
4 end of the machine was facing south, right?

5 MR. YAEGER: Yes.

6 MR. HIPSKIND: Do you have a recollection of  
7 the back end of his backhoe, the privy part, what it  
8 looks like?

9 MR. YAEGER: The operators, one was on the  
10 field side of 3. The other one I guess might have been  
11 on the other side -- the other outside rail. The  
12 cribbing bucket was basically in the gauge of 3 track.  
13 He wasn't, you know, doing anything. It was just  
14 sitting there.

15 MR. HIPSKIND: Is that maybe an indication  
16 that he was in a transition and going to move one way  
17 or the other?

18 MR. YAEGER: No, he was more just waiting to  
19 maybe dig out more, waiting for the vac train to come  
20 up and vac out the dirt he moved. I don't know if he  
21 was going to scrape more underneath. I don't know how  
22 they were going about it over the course of the night,  
23 because I know they couldn't go too far away from the  
24 machine because then the machine won't be able to reach  
25 where it was digging.

1           You know, he was just sitting there and he --  
2 the whole time I was there, he didn't move anything on  
3 it. You know, it's like he wasn't doing any work. He  
4 was just sitting there.

5           MR. HIPSKIND: Okay, and just to -- I know  
6 you've already said this but I just want to be clear.  
7 You were monitoring your radio. No problems with your  
8 radio?

9           MR. YAEGER: No.

10          MR. HIPSKIND: And no problems with you  
11 getting on your radio and talking with the dispatcher?

12          MR. YAEGER: No.

13          MR. HIPSKIND: Is that because you have a good  
14 radio or you were in a good place?

15          MR. YAEGER: You know what? I don't know to  
16 tell you the truth. I had the radio now for a few  
17 years and I really hardly rarely find any spots that  
18 are bad. Even when I was in Philly doing work, I  
19 didn't find any problems with it. So no. I mean --

20          MR. HIPSKIND: Well what I'm getting at is I'm  
21 trying to eliminate something here. Had Foreman  
22 Robinson been on the radio and given back the foul  
23 time, likely you would have heard it?

24          MR. YAEGER: I would have.

25          MR. HIPSKIND: You would have heard it, okay.

1 So the bottom line is --

2 MR. YAEGER: Maybe I'll put it this way.  
3 Maybe I wouldn't have heard Mr. Robinson per se, or  
4 maybe I would have heard CTech 4 repeat, you know,  
5 clearing the foul, you know.

6 Sometimes you don't pick up all the portable  
7 radios, but I definitely would have picked up CTech 4  
8 relaying the message, you know, clear time, you know,  
9 clear fouling, 3 track hooked to Baldwin at this time.  
10 I would have heard that from CTech 4.

11 MR. HIPSKIND: Okay. When -- so you and  
12 Foreman Robinson have met. You get out of your truck.  
13 You start walking down towards where the machinery is  
14 at and I'm going to guess this. Before you got there,  
15 this train arrived?

16 MR. YAEGER: No. I got to the job location, I  
17 looked everything they were doing. I talked to Pete  
18 briefly. I said Pete, you've got a lot of crooked ties  
19 from the backhoe, trying to scrape the dirt out and  
20 moved a lot of concrete ties. They're crooked.  
21 They're not like -- everybody's not in line.

22 So I knew there was a lot of ties to sort of  
23 straighten up and, you know, Pete said oh, just trying  
24 to get a little farther so the transits and, which is  
25 the runoff going to the bridge is a little bit lower.

1 Then that's how I ended up inside of the cab of the  
2 equipment, the lower end. I went up inside there.

3 MR. HIPSKIND: Is that where you were at? Is  
4 that where you were at?

5 MR. YAEGER: That is where I was at when the  
6 train hit the backhoe. I got up in the cab, because  
7 that's where I keep my foul time paper, and I was  
8 getting all that paper work together. I wasn't looking  
9 out in front of the machine or anything. I mean I  
10 heard the bang and then I looked up and the big cloud  
11 of smoke, and I could see the train, the back half of  
12 the train going by the location.

13 MR. HIPSKIND: Well let me back up a little  
14 bit. I appreciate understanding that. But here's  
15 where I'm going with this is where do you think Foreman  
16 Robinson is after you departed, where he was at and --

17 MR. YAEGER: Maybe he backed up a little bit  
18 farther somewhere else. You know, I didn't look for  
19 him. I got my stuff together and then walked over to  
20 my 2 track (inaudible) sort of checked and walked up  
21 where the machine was.

22 MR. HIPSKIND: So bottom line is you can't  
23 account for his location?

24 MR. YAEGER: No.

25 MR. HIPSKIND: Okay. But obviously the



1 backhoe is in 3 track in the entire time?

2 MR. YAEGER: And I'm -- and I'm just, you  
3 know. It's bad to assume and you know, I'm just  
4 assuming. You said he had the foul on all the tracks.  
5 If he cleared it up, he has to clear the tracks. You  
6 can't have -- can't clear the track and have a machine  
7 on there.

8 MR. HIPSKIND: We get that, we get that.

9 MR. YAEGER: So and I just thought. I mean it  
10 was probably from the time I left my truck maybe -- I'm  
11 going to say it was probably 25 of eight. I don't  
12 know, somewhere in that time frame when I walked up.  
13 So I was only up there five minutes before the train  
14 came at the location, something like that.

15 MR. HIPSKIND: Okay. Saturday, you didn't  
16 work the job Friday because the job started Friday  
17 night. But you came in Saturday morning, and there was  
18 another foreman other than Robinson running that Friday  
19 night thing?

20 MR. YAEGER: Right.

21 MR. HIPSKIND: I'm curious. When you got  
22 there, was the backhoe up in 3 track, 4 track or was  
23 the backhoe clear?

24 MR. YAEGER: The backhoe was clear, parked on  
25 the side.

1 MR. HIPSKIND: Okay.

2 MR. YAEGER: 4 track side, out of the way.

3 MR. HIPSKIND: Okay. But on Sunday, he's  
4 still up there?

5 MR. YAEGER: On Sunday he's still up there.

6 MR. HIPSKIND: Do you have any idea about the  
7 change of hours that the backhoe operator was working,  
8 or had that been discussed with you?

9 MR. YAEGER: I did not know that until I got  
10 to job location.

11 MR. HIPSKIND: And what, did you have a  
12 conversation with the backhoe operator about it?

13 MR. YAEGER: No. Who did I talk to? I think  
14 Kyle Snyder the supervisor before, he did call me and  
15 said you know what? No, he didn't call me and tell me  
16 Joe was a different time. He just said, you know, to  
17 get up there and change the track out, which is normal.  
18 Put the track in your name.

19 I think it was after the incident that I  
20 talked to Kyle, and at some point he said they talked.  
21 He must have talked Saturday (inaudible) to change the  
22 time for him.

23 MR. HIPSKIND: But we are going to talk to  
24 Kyle if he's agreeable to everything.

25 MR. YAEGER: I don't even know if he really

1 knew. I guess he found out when Joe came in at eleven  
2 o'clock that night, Saturday night or he might have  
3 called Joe why he wasn't there at six. I don't know.

4 MR. HIPSKIND: If the backhoe operator had  
5 come in at eleven, do you think maybe some of the plan  
6 was for him to work until eleven that day?

7 MR. YAEGER: I think that's absolutely Pete's  
8 thought process was that.

9 MR. HIPSKIND: Well, is this one of the things  
10 that was different on the date of the incident than  
11 maybe --

12 MR. YAEGER: That I knew? Yes, yeah. I  
13 didn't know nothing about that when I left Wilmington  
14 to go out there.

15 MR. HIPSKIND: Well I mean do you see that as  
16 something that was different in reflection?

17 MR. YAEGER: I see that as being -- only  
18 because to get him there, that's why you need 3 and 4  
19 track and it's just so much harder to get a  
20 combination, to get both those tracks at foul time at  
21 the same time, with more trains starting to run during  
22 the daylight. I did know why -- I really don't know  
23 why he changed that. I don't know what he was trying  
24 to accomplish out of it is what I'm trying to say.

25 I just think he could have done more between

1 nine and eleven o'clock at night than in between eight  
2 and ten o'clock in the morning. It's just -- but  
3 that's the supervisor's call.

4 MR. HIPSKIND: We have a human performance  
5 investigator who generally participates in this, so let  
6 me just ask you a couple of quick questions. Do you --  
7 were you in a normal work rest cycle?

8 MR. YAEGER: Yes. I got out of there like six  
9 o'clock the night before, Saturday night, and I mean --

10 MR. HIPSKIND: And did you have ample rest  
11 before reporting?

12 MR. YAEGER: Oh yeah, uh-huh.

13 MR. HIPSKIND: Is that just kind of a normal  
14 daily routine with the work that you do?

15 MR. YAEGER: Well, a 55 hour outage, you sort  
16 of expect, you know, 12 hour shifts and maybe a couple  
17 of hours travel time. But you know, you just -- it's  
18 not uncommon.

19 MR. HIPSKIND: Okay. Again, forgive me for  
20 asking. Do you have any medical issues that we need to  
21 know about?

22 MR. YAEGER: No.

23 MR. HIPSKIND: And no kind of prescription  
24 medication that would be --

25 MR. YAEGER: No.

1 MR. HIPSKIND: Okay, all right. Thank you. I  
2 had to ask those. Dave, let me hand it off to you.

3 MR. KANNENBERG: All right. I've got a few  
4 follows. I'm want to try to be brief, because I know  
5 it's going to be tough remembering everything from a  
6 couple of days ago, especially with everything that's  
7 been going on and I get that.

8 Just a little bit ago you said when we were  
9 talking about the watchman lookout, you said we don't  
10 have to tell them when we clear fouls. What did -- I  
11 just wanted you to clarify that. Who are you talking  
12 about?

13 MR. YAEGER: Because they're watching for  
14 trains, we usually -- I mean I don't make a point of  
15 going over to tell them I have a foul on the track  
16 because I don't want him to -- want him to get  
17 comfortable and feeling that there's no trains coming,  
18 when if I give a foul back and I'm not near him, I  
19 can't let him know.

20 Then I want to make sure he's always looking  
21 for a train. I mean I think that's -- I think that's  
22 wrong to tell, you know, a watchman that there's foul  
23 time because I think they just get relaxed and they're  
24 not looking as they should. They're probably just more  
25 -- they'll probably sit there more look at the job than

1 even look for trains at all.

2 MR. KANNENBERG: So that's just for the  
3 watchman lookout?

4 MR. YAEGER: Yes, yes.

5 MR. KANNENBERG: Okay just -- and that's why I  
6 was asking, to clear it up. That wasn't clear before,  
7 so you don't have to tell the watchman lookout when you  
8 clear.

9 MR. YAEGER: No, no.

10 MR. KANNENBERG: Everybody else, let's follow  
11 the track. You --

12 MR. YAEGER: The people that you have to move  
13 out of the way, such as the backhoe, such as maybe they  
14 have jacks, jacking the rails up, stuff like that,  
15 those people you have to tell, you know, you cleared  
16 the foul. Get out of the way. I've got to clear the  
17 foul.

18 MR. KANNENBERG: Any roadway workers on the  
19 ground other than the watchman lookouts?

20 MR. YAEGER: They are there for -- the  
21 watchmen are there to blow the horn, that someone's in  
22 the middle 2 track and he can't see because a machine's  
23 in your way. They don't want to step out in front of a  
24 train like that.

25 MR. KANNENBERG: But no. My question is more

1 to so the guy, the roadway worker on the ground that  
2 might be working the jack or might be shoveling or  
3 scooping, those guys would have to be notified or would  
4 not have to be notified before you gave back foul time?  
5 The roadway workers that are working on the track. Not  
6 the watchmen lookouts themselves, but the people that  
7 are --

8 MR. YAEGER: They would know, because I would  
9 tell them I had to clear the foul. Let's drop the  
10 jacks, let's move out of the way, whatever we're doing  
11 at the time, yeah.

12 MR. KANNENBERG: So in other words, you would  
13 tell them before you gave up a foul time?

14 MR. YAEGER: Yeah, yeah.

15 MR. KANNENBERG: The only people that you  
16 would maybe not tell would be the watchmen lookouts?

17 MR. YAEGER: I wouldn't, yeah.

18 MR. KANNENBERG: Okay. But everybody else you  
19 would tell?

20 MR. YAEGER: Yeah.

21 MR. KANNENBERG: So okay, perfect. That's  
22 exactly what I needed to hear. You said you were on  
23 the vacuum truck when the strike occurred?

24 MR. YAEGER: Yes.

25 MR. KANNENBERG: Who did you have an on track

1 safety briefing with prior to getting onto the vac  
2 truck?

3 MR. YAEGER: As I was waiting to get the track  
4 out in my name, I filled out the job briefing papers in  
5 my truck. Before I walked up there, the second Loram  
6 crew came in, drove in in their truck.

7 So I talked to them a little bit and they  
8 signed the job briefing, and then I walked up to the  
9 track, to the machine and I had the other Loram people  
10 sign the job briefing. I didn't have -- I didn't talk  
11 to Joe or anything like that.

12 MR. KANNENBERG: That was actually my next  
13 question. What I was asking is how did you establish  
14 that on track protection was in place before you got  
15 onto the Loram truck or train or whatever you want to  
16 call it?

17 MR. YAEGER: I had foul time on all three  
18 tracks. I had foul time on all the tracks.

19 MR. KANNENBERG: You told Robinson?

20 MR. YAEGER: Robinson had foul time on all the  
21 tracks.

22 MR. KANNENBERG: In other words he briefed  
23 you?

24 MR. YAEGER: Well, he just told me he had foul  
25 time on all the tracks.



1 MR. KANNENBERG: Okay. That would sort of an  
2 abbreviated job briefing form? In other words, you  
3 can't foul a track until you've had an on-track safety  
4 briefing. I'm just trying to determine, and look, I'm  
5 not playing gotcha; I'm just trying to establish.

6 MR. YAEGER: Yeah, yeah. He said I have foul  
7 on all -- I have a foul on all the tracks, period.

8 MR. KANNENBERG: I haven't looked at all the  
9 on-track safety briefing forms and stuff.

10 MR. YAEGER: Right, right.

11 MR. KANNENBERG: Do you remember if you  
12 initialed his?

13 MR. YAEGER: No. I didn't even look at his,  
14 no.

15 MR. KANNENBERG: Okay.

16 MR. YAEGER: He didn't show it to me. He  
17 didn't show it to me or nothing.

18 MR. KANNENBERG: It was just verbal then?

19 MR. YAEGER: That he had foul?

20 MR. KANNENBERG: Yeah.

21 MR. YAEGER: Yeah, uh-huh.

22 MR. KANNENBERG: And then you knew you had  
23 two?

24 MR. YAEGER: Yep.

25 MR. KANNENBERG: Okay. In your opinion, do

1 you think that a watchman lookout would have been  
2 adequate protection for tracks 1 and 4 with the backhoe  
3 operating and the vac truck operating, keeping in mind  
4 -- I know there was a single, I believe there was a  
5 single watchman lookout on either end, right? On the 4  
6 side and on the 1 side, I believe there was a single  
7 watchman lookout with a horn and a paddle; correct?

8 MR. YAEGER: Just one watchman on four tracks.

9 MR. KANNENBERG: And you think that was  
10 adequate given the noise and site --

11 MR. YAEGER: Yes, uh-huh.

12 MR. KANNENBERG: Okay.

13 MR. YAEGER: Yep.

14 MR. KANNENBERG: Of course part of the  
15 watchman lookout is you have to be able to hear a  
16 warning. Was the vacuum truck, with a combination of  
17 vacuum truck and backhoe loud enough so you wouldn't  
18 hear one of the airhorns?

19 MR. YAEGER: I think they would have heard the  
20 horn. You know, he was right there. They were loud,  
21 they were loud. Again, it's something that their -- if  
22 you're on the out of service track, you don't  
23 necessarily -- when you hear the horn you know you're  
24 on the out of service track. So you know you're good,  
25 so you really don't stop so much and --

1 MR. KANNENBERG: Of course with Pete on the  
2 ground that was -- then you have roadway workers on the  
3 ground. That brings in a lot of other stuff. But they  
4 should have had -- or at this point, you thought that  
5 all the tracks had foul time. So none of this even  
6 comes into play.

7 MR. YAEGER: Yes.

8 MR. KANNENBERG: So your on-track safety  
9 briefing, the one that you filled out, who all signed  
10 that?

11 MR. YAEGER: I believe it's five guys from the  
12 Loram Company, Jerry Moore. He was the driver that  
13 came out with me, and I believe Ritchie signed it too.

14 MR. KANNENBERG: Who is Ritchie?

15 MR. YAEGER: The watchman.

16 MR. KANNENBERG: And he was the watchman with  
17 you?

18 MR. YAEGER: Yeah.

19 MR. KANNENBERG: And when did the driver --  
20 well, when did the driver sign it, when did the  
21 watchman sign it, and when did the 5 Loram people sign  
22 it?

23 MR. YAEGER: The two Loram people signed it  
24 before I walked up, because they pulled up into their  
25 truck, and everyone else signed it when I walked out to

1 the equipment.

2 MR. KANNENBERG: When you walked up to the  
3 Loram equipment?

4 MR. YAEGER: Yeah, uh-huh.

5 MR. KANNENBERG: So you essentially held an on  
6 track safety briefing at the equipment?

7 MR. YAEGER: I didn't have the on track  
8 because like I said in the beginning, I was waiting for  
9 my ET people to show up. Really, the second crew was  
10 coming in, and I know they were like changing the  
11 power. I wanted to get the Loram people that were on  
12 there the night before off the machine on the 4 track  
13 side.

14 So they were out of the picture and so I was  
15 really waiting to do the real on track job briefing  
16 then, when I had all that. Once all the fouls got  
17 cleared up is when I would have had a few on track.

18 MR. KANNENBERG: So the one that's filled out,  
19 and help me understand this, would this be a  
20 preliminary? Is this -- that's the one there. Yeah,  
21 there's you. Would this be preliminary or I'm not, I  
22 don't know --

23 MR. YAEGER: No. They would have -- this is  
24 the one I would have read off to them, and that would  
25 have been -- the ET guys would have signed on this and

1 --

2 MR. KANNENBERG: I'm sure you can always add  
3 people to an on track safety briefing?

4 MR. YAEGER: Yeah, yeah, yeah.

5 MR. KANNENBERG: But by looking at this, it  
6 makes me believe that you had an on track safety  
7 briefing?

8 MR. YAEGER: I understand. At the time, the  
9 time I did it is when like I said I was in my truck  
10 waiting to get my track out, and that's why it's 7:15.  
11 So I mean I don't know if the time on the top is the  
12 most critical thing. I don't think it is, because you  
13 get people to come down the line, coming at all  
14 different times. So they sign at different times.

15 So I was waiting, like I said, for my ET guys,  
16 waiting for all the foul time to get cleared up by  
17 Robinson to do the job briefing.

18 MR. KANNENBERG: And again, I'm not playing  
19 gotcha. I'm just trying to square this in my brain.  
20 So this is -- these are two of your guys and then the  
21 Loram guys right here? That's your driver, your  
22 watchman and the Loram folks; correct?

23 MR. YAEGER: One, two, three. Yeah, yeah.

24 MR. KANNENBERG: Okay. So in the eyes of the  
25 -- in light of this, I would say that these people had

1 an on-track safety briefing to you?

2 MR. YAEGER: I understand, yes, yes.

3 MR. KANNENBERG: But you're saying that you  
4 didn't really have one?

5 MR. YAEGER: I didn't have it, no, no.

6 MR. KANNENBERG: Okay. So tell me what this  
7 is, and I'm not trying to trick you? I'm not trying to  
8 get at you. I just need to know what this is?

9 MR. YAEGER: It's a job briefing that tells  
10 you what kind of protection you're using and what we're  
11 doing, I guess.

12 MR. KANNENBERG: That's almost what -- that's  
13 pretty much what an on track safety briefing is so --

14 MR. YAEGER: Yes, yes.

15 MR. KANNENBERG: So it is an on-track safety  
16 briefing, if you went through these things with  
17 everybody?

18 MR. YAEGER: Exactly.

19 MR. KANNENBERG: And did you go through  
20 everything with them?

21 MR. YAEGER: No, no.

22 MR. KANNENBERG: So this was --

23 MR. YAEGER: Like I said, like a preliminary.

24 MR. KANNENBERG: Okay. But if they've signed  
25 it and everything, it makes us believe that it was --

1 okay.

2 MR. YAEGER: I understand that, yes. It's --  
3 and like I said people tend to want to -- people tend  
4 to want to just sign to sign.

5 MR. KANNENBERG: Yeah.

6 MR. YAEGER: If I had to have a backhoe there,  
7 then I probably would have had to change the whole on  
8 track briefing. If the backhoe was staying there, yeah  
9 maybe I'd have to change the whole thing, because now  
10 I've got to redo some of it.

11 MR. KANNENBERG: Okay, and you're actually  
12 going the direction I was going with that. People are  
13 just signing it to be signing it, and it looks like  
14 that's probably what was going to be happening here.

15 MR. YAEGER: Yeah.

16 MR. KANNENBERG: I'm not putting words in your  
17 mouth. You said it. So people are just saying let me  
18 sign your paper and here you go, so now you're done for  
19 the day and you just verbally let them go or rebrief or  
20 holler up at them as things change during the day, or  
21 would you rebrief during the day --

22 MR. YAEGER: Well, if the circumstances  
23 change, then you're supposed to redo the briefing.  
24 Whether you change locations, whether you know, you're  
25 doing something totally different.

1 MR. KANNENBERG: Okay. Then I want to get  
2 back to just one more thing, and I'm going to let it  
3 go, because we hit some tough ones there. I appreciate  
4 it. This happens everyday. You know it happens  
5 everyday. You know it's --

6 MR. YAEGER: Like I said, it's not --

7 MR. KANNENBERG: You know it's not probably  
8 the way it's supposed to be done.

9 MR. YAEGER: It's somewhat good and --

10 MR. KANNENBERG: It's not even a little bit  
11 good.

12 MR. YAEGER: It's what we have, and you know,  
13 it's for the people who sign it, it's what they take  
14 out of it I think, and some of them really don't --  
15 they just sign it to sign it.

16 MR. KANNENBERG: I'll get on a soapbox in a  
17 minute about that. Three members of FAMES (phonetic)  
18 here. Have you heard of the FAMES Committee? We've  
19 looked at every fatality over the last 20 years or so,  
20 and looking for commonalities and improper job  
21 briefings sticks out more than any other cause of  
22 fatality, and this fatality is dead in that area.

23 MR. YAEGER: Absolutely.

24 MR. KANNENBERG: But this does go kind of  
25 towards a different area I want to touch on briefly,



1 and I don't want to drag this out.

2           While I was there Sunday, I noticed three  
3 pretty good-sized rule, or pretty good rules  
4 violations, you know. People talking to watchmen  
5 lookouts, watchmen lookout thinking a track was live  
6 when it wasn't, things of that nature. Is that -- and  
7 that's going more -- that's not specific to you and  
8 it's not specific to your group.

9           MR. YAEGER: Right.

10           MR. KANNENBERG: This is Amtrak as a whole.  
11 How common is it to see a guy out there, instead of  
12 wearing safety shoes he's wearing tennis shoes, not  
13 having his side shields, on his cell phone when he  
14 shouldn't, talking to watchmen lookouts? You know, and  
15 some people may call these minor rules violations. Is  
16 that common?

17           MR. YAEGER: I wouldn't say it's that common,  
18 no, no. People have their boots on. They wear safety  
19 glasses. I'm not going to say 100 percent of the  
20 time, but they tend to wear them when they have to have  
21 them definitely on, whether something's flying up.

22           The watchmen, they tend to be by themselves.  
23 They don't, you know, I don't really see people talking  
24 to the watchmen while you're out there working. I mean  
25 they know not to be -- and I don't see that as too

1 common anymore.

2 MR. KANNENBERG: I saw a lot on Sunday. Maybe  
3 that was just because of the situation, but it was  
4 alarming to me how people would overlook some of the --  
5 and when I say "smaller," I don't mean smaller that  
6 they're not important because every rule is important.

7 MR. YAEGER: Right, right.

8 MR. KANNENBERG: But again, people without  
9 side shields, people without safety gear. Maybe it was  
10 because it was Sunday, I don't know. But it was a  
11 little bit alarming to me and that's why I bring it up.  
12 Last thing I want to ask you again, we've got three  
13 guys on the FAMES Committee here. We take this stuff  
14 real serious, as I know you do. We're all  
15 professionals in here.

16 Can you give is anything to bring back to the  
17 Committee as far as recommendations or any advice on  
18 how we eliminate roadway worker fatalities?

19 MR. YAEGER: That's a tough one.

20 MR. KANNENBERG: Anything's open. Anything in  
21 the world.

22 MR. YAEGER: You know, I don't know anything -  
23 - I can't think of anything that could be improved much  
24 upon. Maybe -- right now I can't, you know. I mean,  
25 maybe you could say better radios or whatever the case

1 may be. But I don't know.

2 MR. KANNENBERG: If you ever think of  
3 anything, please let us know.

4 MR. YAEGER: Okay.

5 MR. KANNENBERG: Mr. Porto is on there, Mr.  
6 Keefe is on there, I'm on there. You can call me any  
7 time too if you're not comfortable talking with them,  
8 and that's all I've got. Thank you very much. It's  
9 been a tremendous help.

10 MR. HIPSKIND: Thank you, Dave. Steve, do you  
11 have some stuff you want to add?

12 MR. STEARN: Thank you again John. Steve  
13 Stearn. John, you talked about how Robinson been on  
14 the radio and given back foul time over the radio, you  
15 would have heard it. Or maybe not heard it, because it  
16 may have been a portable. But at least you would have  
17 heard CTech's response.

18 MR. YAEGER: Yes.

19 MR. STEARN: Generally that's a "Roger  
20 Robinson, I'm showing you clear at a tie."

21 MR. YAEGER: Right, uh-huh.

22 MR. STEARN: Others would have heard that  
23 conversation as well?

24 MR. YAEGER: I would expect Andrew, who is the  
25 -- I guess you might want to call him the crew chief of

1 the Loram group, you know. He's been on our railroad  
2 many, many times. He would have heard that. He would  
3 have known what it was meant to be, and he's not even  
4 an Amtrak person, and I would think Joe would have  
5 heard it, especially since he wasn't really doing any  
6 work at the time. He was just sitting there waiting.  
7 So he should have --

8 I don't know Mr. Robinson and Joe transfer,  
9 letting each other know, how the foul time was back and  
10 forth, whether he went out and told Joe in person and  
11 get the backhoe off the tracks. I don't know how all  
12 that went over the course of the night. But I'm sure  
13 Joe would have -- his radio was good on the backhoe  
14 too.

15 MR. STEARN: At a working radio at the Loram?

16 MR. YAEGER: Yeah, uh-huh. It's a good  
17 working radio in the Loram.

18 MR. STEARN: Was Pete known to carry a  
19 portable as well?

20 MR. YAEGER: He doesn't carry a portable, no.

21 MR. STEARN: You reported at Wilmington Track  
22 Office at 6:00 a.m. to begin your shift?

23 MR. YAEGER: Uh-huh.

24 MR. STEARN: And met Pete there?

25 MR. YAEGER: I seen Pete there, yes.

1 MR. STEARN: At that time, did you know or  
2 understand that Pete was just then arriving at  
3 Wilmington, or had Pete been out on the job site  
4 earlier in the evening?

5 MR. YAEGER: Pete was just leaving to head to  
6 the job site.

7 MR. STEARN: So he hadn't been in the work  
8 location previous to the 6:00 a.m.?

9 MR. YAEGER: No, no, no, no.

10 MR. STEARN: Okay, but we don't know why there  
11 was a change in the shift work for the backhoe?

12 MR. YAEGER: I would call it like the overall  
13 scope of how everything was done, why it was done.  
14 That was between Pete and Joe.

15 MR. STEARN: Why Joe was brought in earlier,  
16 Joe the backhoe.

17 MR. YAEGER: Joe was brought in later.

18 MR. STEARN: I mean later.

19 MR. YAEGER: Yeah.

20 MR. STEARN: Okay. All right. I have nothing  
21 else.

22 MR. HIPSKIND: Thank you, Steve. Mike,  
23 anything?

24 MR. TRAINA: Yeah, just a couple.

25 MR. HIPSKIND: All right. Come on down.

1 MR. TRAINA: John, Mike Traina again. Just a  
2 couple of quick questions for you. You said you walked  
3 up to the job site. These guys said they signed on  
4 that briefing?

5 MR. YAEGER: Yes.

6 MR. TRAINA: Pretty much parallel to the work  
7 area where the Loram was working? Or was this --

8 MR. YAEGER: Yeah, right.

9 MR. TRAINA: --on the 4 track? It's the  
10 outside of 4 track. Okay.

11 MR. YAEGER: Uh-huh, except for the first two.  
12 They were off in a truck on the side.

13 MR. TRAINA: Okay. When you walked, you  
14 climbed into the Loram cab, was it in working mode?

15 MR. YAEGER: Uh-huh.

16 MR. TRAINA: All right.

17 MR. HIPSKIND: Like John, you have to say yes.

18 MR. YAEGER: Oh yes, sorry.

19 MR. HIPSKIND: Thank you.

20 MR. YAEGER: Yes. So there two guys in the  
21 front cab and one guy in the front on a little platform  
22 that they have built onto it, and he's the one that  
23 holds the controls for the vac.

24 MR. TRAINA: Okay. Now at the time of impact,  
25 the Loram was working. Was the backhoe working?

1 MR. YAEGER: No.

2 MR. TRAINA: The operator was just sitting  
3 idle in the backhoe, outriggers out?

4 MR. YAEGER: (No audible response.)

5 MR. TRAINA: Okay. So it's safe to assume  
6 that you were waiting for him to get back clear and get  
7 back to foul and --

8 MR. YAEGER: Uh-huh.

9 MR. TRAINA: Okay, and that backhoe would have  
10 been done for the day?

11 MR. YAEGER: I wouldn't necessarily say he  
12 would have been done for the day. I would have had to  
13 sit there and talk with Pete, because now, you know,  
14 what his idea was I don't know, you know. He sometimes  
15 changes things midstream and decides to go this is what  
16 I want to do; I want to run the backhoe for another two  
17 more hours before Joe's time is up.

18 MR. TRAINA: I got you.

19 MR. YAEGER: I fully expected that, for him to  
20 say that. But you know, I would have just had to redo  
21 everything because that wasn't part of my plan at all  
22 when I showed up.

23 MR. TRAINA: The previous day when you were  
24 working?

25 MR. YAEGER: Yeah, that wasn't there.

1 MR. TRAINA: Done, gone, operator gone?

2 MR. YAEGER: Done, gone, everybody out of the  
3 way.

4 MR. TRAINA: Your crew and you're ready to go  
5 do your job the way you had it planned?

6 MR. YAEGER: Yeah, right, uh-huh.

7 MR. TRAINA: So when you started that day,  
8 when you saw Pete at the headquarters Sunday?

9 MR. YAEGER: Uh-huh.

10 MR. TRAINA: He didn't convey to you a change  
11 or anything. It was the nod, the shake hands, whatever  
12 it was and --

13 MR. YAEGER: No. He was more I want to head  
14 up to see what they did.

15 MR. TRAINA: Okay. So went up there with  
16 hey, I'm going to do the same job I did?

17 MR. YAEGER: I didn't think anything was  
18 changing.

19 MR. TRAINA: Again, I'm going to touch on the  
20 time of impact. Was Pete working? Do you recall?

21 MR. YAEGER: Pete was in 2 track right next to  
22 the backhoe.

23 MR. TRAINA: Standing idle?

24 MR. YAEGER: No, he was digging and when I  
25 walked by, I might talk to him for a little bit. Like



1 I said, I told him that the ties were all crooked, you  
2 know, stuff like that. That had to be straightened  
3 out, but now he was busy digging the dirt underneath  
4 the ties.

5 MR. TRAINA: Okay. After the collision, did  
6 you see Robinson again?

7 MR. YAEGER: An hour later, two hours later.

8 MR. TRAINA: So after, right after -- I mean  
9 obviously it was total chaos and --

10 MR. YAEGER: I believed they called him and  
11 told him to come back I guess.

12 MR. TRAINA: And it took him about two hours  
13 to come back?

14 MR. YAEGER: I don't recall what time he  
15 showed up really. I mean I wasn't really --

16 MR. TRAINA: I understand, I understand. So  
17 basically you were the sole --

18 MR. YAEGER: The sole leader.

19 MR. TRAINA: Yeah, the guy holding it down  
20 until --

21 MR. YAEGER: Yeah, yeah. Pete was -- Pete was  
22 --

23 MR. TRAINA: Yeah, I understand. You know, I  
24 understand that. But you did a good job and you're not  
25 listening to -- you know, you held it together and you

1 did what you had to do. That's it. That's all I have.  
2 Thank you.

3 MR. HIPSKIND: Thanks, Mike. Matt.

4 MR. PORTO: Sure, I have something for you  
5 here. Again, Matt Porto.

6 MR. YAEGER: That morning, Joe's shift  
7 changed. So he was working until -- you said he  
8 started at eleven?

9 MR. PORTO: That's what they say, yeah.

10 MR. YAEGER: Okay. So he was going to be  
11 working up until eleven?

12 MR. PORTO: Eleven, ten, I don't know what  
13 time.

14 MR. YAEGER: Okay. The board on the  
15 Wilmington Track Office still had 6P to 6:00 a.m. for  
16 those three, that shift.

17 MR. PORTO: Did you think that Robinson would  
18 be there the whole time until --

19 MR. YAEGER: I thought Robinson would be there  
20 the whole time until he cleared his fouls. Once he --

21 MR. PORTO: Until he cleared his fouls. Not  
22 necessarily --

23 MR. YAEGER: Once he cleared his fouls and he  
24 already, you know, cleared -- gave the track back, you  
25 know, cancelled his Form D then, you know, I wouldn't

1 expect him to stay there any longer, and that's when  
2 things -- I had to do different ways, different things.

3 MR. PORTO: Do you know for certain that  
4 Robinson didn't reach out to anybody else in the gang,  
5 to let them know that he cleared the fouls?

6 MR. YAEGER: No I don't. No, I don't know.

7 MR. PORTO: And when you mentioned you said  
8 you went into the Loram cab, because that's where you  
9 keep your foul time log and --

10 MR. YAEGER: That's where I keep the paper  
11 work, yeah, yeah.

12 MR. PORTO: Were you going there to prepare --

13 MR. YAEGER: I was kind of getting -- sort of  
14 getting ready, you know, preparing to have that up  
15 there. I like to keep it up there because if this  
16 breaks down, I can go up into the cab and call, you  
17 know. If he can't hear me on my portable, I could hear  
18 him and he can't hear me, then I at least I can go up  
19 there and talk, use their radio.

20 MR. PORTO: Was that your intention, to go in  
21 there to fill out the foul time log eventually?

22 MR. YAEGER: Yeah, uh-huh.

23 MR. PORTO: Okay, and real quick. So you  
24 mentioned Andrew as one of the Loram people in the cab?

25 MR. YAEGER: Andrew is the crew chief, yes.

1 MR. PORTO: Okay. Do you recall the other  
2 names? How many people were there for the night --

3 MR. YAEGER: I believe it's Andrew, Matt and  
4 Cory were the three night time crew guys, and Dan and  
5 Brad were the daylight guys that were going to work  
6 with me. They worked with me on Saturday too, Dan and  
7 Brad.

8 MR. PORTO: Okay, and your normal tour of  
9 duty, I know this was overtime on the weekend. Normal  
10 tour of duty, is it 7:00 to 3:30P?

11 MR. YAEGER: Yes.

12 MR. PORTO: Okay. Make sure (inaudible). I  
13 don't have any other questions. Nope, that was it.  
14 Thank you.

15 MR. HIPSKIND: Thank you Matt, and Lou?

16 MR. TOMASSONE: Lou Tomassone. Just to follow  
17 up on that 7:00 to 3:00, Monday through Friday?

18 MR. YAEGER: Uh-huh, yes.

19 MR. TOMASSONE: That would be your normal tour  
20 of duty. Okay.

21 MR. YAEGER: Yes.

22 MR. TOMASSONE: You may have answered these  
23 already; forgive me if I didn't catch it, but when you  
24 pulled in, Foreman Robinson was already in his vehicle  
25 parked there, or did he pull up?

1 MR. YAEGER: He pulled up next to me.

2 MR. TOMASSONE: He pulled up next to you. Did  
3 you see --

4 MR. YAEGER: I don't know if he backed down  
5 from the location or --

6 MR. TOMASSONE: But you focused on something  
7 else --

8 MR. YAEGER: --come up from behind me. I  
9 wasn't paying attention. I was more getting my Form D  
10 ready and calling the dispatcher and --

11 MR. TOMASSONE: Okay, and the work. You said  
12 that your watchmen and track men were already there.  
13 Where were the third watchmen and track men at that  
14 time, when you walked up to the --

15 MR. YAEGER: They weren't there.

16 MR. TOMASSONE: They weren't there, and you  
17 didn't see them where you were parked initially?

18 MR. YAEGER: No, I didn't see them at all.

19 MR. TOMASSONE: Okay. Do you have any idea  
20 where they were?

21 MR. YAEGER: Taking a guess, when my two guys  
22 showed up, they said "see you later and I'm going."

23 MR. TOMASSONE: Okay. The backhoe when you  
24 walked up to it, was the cab completely enclosed? Were  
25 any of the windows open?

1 MR. YAEGER: I don't know for sure. I'm going  
2 to say probably everything was -- doors and windows  
3 were closed I guess.

4 MR. TOMASSONE: Okay, and that was -- the  
5 front bucket was facing north?

6 MR. YAEGER: The front bucket was facing  
7 south.

8 MR. TOMASSONE: Was facing south, okay,  
9 towards Hook Interlock?

10 MR. YAEGER: Yes.

11 MR. TOMASSONE: And did you know about the --  
12 I know you said you didn't know about the backhoe shift  
13 change. When you got there and started filling out  
14 your job briefing sheet, you still didn't know that the  
15 --

16 MR. YAEGER: No.

17 MR. TOMASSONE: Okay. A few more here. You  
18 said Foreman Robinson returned two hours later after --  
19 well.

20 MR. YAEGER: It could have been an hour. I  
21 don't know for sure. I mean --

22 MR. TOMASSONE: Okay.

23 MR. YAEGER: After that, I really didn't even  
24 pay attention to the time.

25 MR. TOMASSONE: Okay. But he did show up at

1 some point?

2 MR. YAEGER: He did come back, yes.

3 MR. TOMASSONE: Okay. Did you guys have any  
4 conversations or talk?

5 MR. YAEGER: You know what? I don't recall.  
6 You know what? I really didn't want to talk to him.

7 MR. TOMASSONE: Okay, okay, and then the last  
8 ones are have you seen any FRA inspectors or Amtrak  
9 officials come out during your normal duty and just  
10 evaluate the type of protection you were providing for  
11 your employees?

12 MR. YAEGER: Could you clarify that a little  
13 bit?

14 MR. TOMASSONE: Sure. So while you were  
15 working, doing your normal routine --

16 MR. YAEGER: Or any time?

17 MR. TOMASSONE: Or any time. Have you ever  
18 seen any FRA or Amtrak officials out just observing,  
19 observing your work?

20 MR. YAEGER: Not that I can remember, no.

21 MR. TOMASSONE: Okay, and has Amtrak or the  
22 FRA ever gone over any rules violations with anyone --  
23 let me rephrase that. Have the FRA or any Amtrak  
24 officials discussed with you violations of -- any rule  
25 violations in general, not particular to you or your

1 gang?

2 MR. YAEGER: The only time I ever really dealt  
3 with the FRA guy was -- this would be when I was an  
4 inspector and we would be inspected, and it's not so  
5 much rule violations, more as track conditions and  
6 stuff.

7 MR. TOMASSONE: Okay. That's all I have.

8 MR. HIPSKIND: Thank you, Lou. This is Dick  
9 Hipskind. I've got a couple of pieces of housekeeping  
10 to do, and I've got a couple of quick questions for  
11 clarification after I talk with you Bill, and then I  
12 want to do the closeout questions I need to ask you  
13 John.

14 So first of all, we've had a gentlemen with us  
15 who has been posting the meeting, and sir would you  
16 please identify yourself, spell your last name and who  
17 you are representing?

18 MR. SPRATT: My name is Terry Spratt, S-P-R-A-  
19 T-T. I'm the Director of Operating Practices for  
20 Amtrak, and I am representing Amtrak Transportation.

21 MR. HIPSKIND: And your purpose?

22 MR. SPRATT: I'm simply an observer. I'm not  
23 an active questioner or participant/interviewer.

24 MR. HIPSKIND: Okay. Thank you sir, and Bill,  
25 I promised you an opportunity to reflect on everything



1 we talked about here. Do you have anything that you  
2 want to clarify or add at this time?

3 MR. MANNING: No. I just think a lot of the  
4 questions were asked, and people wanted more clarity, I  
5 think, than John could give at this time, after the  
6 impact. I mean I think you have to understand when  
7 you're asking your questions what he just experienced,  
8 and you know.

9 So if something seems a little vague or wasn't  
10 answered right, he probably doesn't recall. I mean it  
11 went nuts, and if somebody came out on a job site, no  
12 one would know what time he came back or if he even  
13 left at that point. And so no, I have nothing else to  
14 clear up.

15 MR. HIPSKIND: Okay, thank you. There was a  
16 phrase brought up toward the last of our discussion  
17 here about "cleared his fouls," and I just -- I want to  
18 dissect that just a little bit.

19 When we talk about a person, a foreman who has  
20 foul time, and he's talked to the dispatcher, and when  
21 we talk about him or her clearing their fouls, I just  
22 want to ask you, John, what goes through your head  
23 prior to you clearing your fouls or foul, as the case  
24 may be, with the dispatcher? What's that checklist  
25 that you go down prior to doing that?

1 MR. YAEGER: The checklist is why was the  
2 foul, who was it for, and getting in contact with him  
3 to let him know I've got to clear the foul. Getting,  
4 making sure we are dead on that he's clear of wherever,  
5 you know, he's found, he's cleared the track. I get  
6 all that first before I talk to the dispatcher. So I  
7 want to make sure whoever's fouling is definitely out  
8 of the way.

9 MR. HIPSKIND: Okay, and part of the process  
10 you just described, is that eyes on?

11 MR. YAEGER: In this particular case, it's  
12 eyes on because he's right there. But other times when  
13 you're with a surfacing gang, they have a regulator,  
14 they have a wing out foul in the track adjacent to  
15 them. They could be a mile and a half down the road,  
16 you know. But they usually operate or call and they  
17 ask for a foul on 3. You get the foul, you call back  
18 the operator, we've got a foul on 3 and then they  
19 continue to work.

20 We have a dispatcher wants it back, you call  
21 the regulator operator and make sure he clears his  
22 fall, and he'll call you back and say I'm clear of foul  
23 and then you clear the foul with the dispatcher.

24 MR. HIPSKIND: But I think what I hear you say  
25 is that you want a very strong level of assurance?

1 MR. YAEGER: I don't want, I don't want oh,  
2 did he say he was clear? I don't want to hear anything  
3 did he say he was clear? I want to make sure, you  
4 know, make sure that you're clear. I want to make sure  
5 we have an understanding that we're clear.

6 MR. HIPSKIND: So either eyes on or you have  
7 talked with somebody and they have affirmed to you I am  
8 in the clear?

9 MR. YAEGER: Yeah, yeah, uh-huh.

10 MR. HIPSKIND: Okay. Let me put my glasses  
11 on, and I want to read you some questions. Is there  
12 anything that you would like to add or change to our  
13 discussion here today?

14 MR. YAEGER: No.

15 MR. HIPSKIND: Okay. Are there any questions  
16 we should have asked but did not? Other areas or  
17 things about safety that you wish we would have talked  
18 about.

19 MR. YAEGER: No, I don't think so.

20 MR. HIPSKIND: Okay, and I know Dave covered  
21 this, so I have a suggestion after I read this  
22 question. Do you have any suggestions for preventing a  
23 reoccurrence, and I know where you're at with this.

24 But what I would suggest is take some time,  
25 John, and if something comes to mind, reach out to

1 either anybody at Amtrak. You have my card. You can  
2 call me, day or night, weekend. I don't care, okay?  
3 Is there anyone else we should interview?

4 MR. YAEGER: I'm sure at some point you  
5 interviewed that were at the job, I mean people that  
6 were there. Other than people that weren't there, I  
7 couldn't say.

8 MR. HIPSKIND: Okay, all right.

9 MR. YAEGER: I'm sure the dispatcher will get  
10 interviewed and the engineer. But I mean I'm not  
11 blaming the engineer. He had -- that train had no  
12 clue.

13 MR. HIPSKIND: I think everybody that you just  
14 listed, we plan to reach out and get more of the story.  
15 Any other final comments from anybody?

16 MR. PORTO: Could I just clarify or ask,  
17 elaborate on one of the questions?

18 MR. HIPSKIND: Sure.

19 MR. PORTO: The one question you asked about  
20 with (inaudible), FRA or Amtrak officials. I just want  
21 to elaborate on that, because a lot of times we don't  
22 use the term "Amtrak officials." But do you recall or  
23 have you seen any safety liaisons --

24 MR. YAEGER: I have seen safety liaisons.  
25 They ask me if there's any problems, anything you know,

1 and basically you don't get, you know. You ask for  
2 something and you usually get it. You ask for -- need  
3 a barricade? Okay. They sign the paper, you go get a  
4 barricade or you go get a whistleboard. You don't get  
5 "you don't need it, you don't need it," you know. I  
6 can say, you know, you get what you ask for. I'll give  
7 them that, you know, and so --

8 MR. PORTO: Do you see them frequently,  
9 liaisons or safety officers --

10 MR. YAEGER: I talk to some of them  
11 frequently. Do I see them? Hmm, not so much. No.  
12 They do come out occasionally where I'm working but  
13 nothing like I remember way back in the day where you  
14 had a group of green hats come out. That's back. You  
15 don't see that. I don't see that. They were safety  
16 people that come out, but you don't see that anymore.

17 MR. PORTO: Very good. That's exactly what  
18 I'm --

19 MR. HIPSKIND: Okay, all right. Well on  
20 behalf of the Track and Engineering Group, John we were  
21 in a hole, because we couldn't see this thing. I know  
22 that our conversation was lengthy today, but I think  
23 you've pulled us out of the hole. I think you got us  
24 on the right track, and you can reach out to any of us  
25 at any time with any kind of followup. So with that, I

1 will conclude the interview, and you have all of our  
2 personal thanks. Thank you very much.

3 (Whereupon, the above-entitled matter went off  
4 the record.)

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C E R T I F I C A T E

MATTER: Amtrak Train 89 Accident  
April 3, 2016 near Chester, PA  
Accident No. DC16FR007  
Interview of John Yaeger

DATE: 04-05-16

I hereby certify that the attached transcription of page 1 to 110 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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