

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES

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4

5 CHATSWORTH METROLINK COLLISION )  
6 CASES )  
7 LEAD CASE: Magdaleno v. Southern ) Case Number:  
8 California Regional Rail Authority ) PC043703  
9 dba Metrolink )  
10 \_\_\_\_\_ )  
11 )  
12 THE DOCUMENT RELATES TO ALL CASES )  
13 \_\_\_\_\_ )

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11

12 VIDEOTAPED DEPOSITION OF RICHARD DAHL

13  
14

15 Date & Time: Wednesday, February 24, 2010  
16 10:06 a.m. - 5:59 p.m.

17 Location: 550 South Hope Street  
18 Suite 2300  
19 Los Angeles, California

20 Reporter: Lexann Christy, CSR  
21 Certificate No. 7932

22  
23  
24  
25



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1        LOS ANGELES, CALIFORNIA, WEDNESDAY, FEBRUARY 24, 2010

2                                    10:06 a.m. - 5:59 p.m.

3

4                    THE VIDEOGRAPHER: Good morning. My name is Terry  
5 Taylor, and I represent Maxene Weinberg Agency in  
6 Mission Viejo, California. I have no financial interest  
7 in this matter, nor am I a relative or employee of any of  
8 the parties or attorneys.

9                                    This is the videotaped deposition of Richard  
10:06:26 10 Dahl, taken at DLA Piper, 550 South Hope Street,  
11 Suite 2300, Los Angeles, California 90071, on Wednesday,  
12 February the 24th, 2010. The time is 10:06 a.m., in the  
13 matter of the Chatsworth Metrolink Collision Case,  
14 Case No. PC043703.

15                                    The court reporter today is Lexann Christy of  
10:06:57 16 Maxene Weinberg Agency, located at 27281 Las Ramblas,  
17 Suite 160, Mission Viejo, California 92691.

18                                    Would all persons present please identify  
19 themselves and who they represent, after which the court  
20 reporter will administer the oath to the witness.

21                                    MR. PFIESTER: Yes. My name is Edward Pfiester,  
22 P-f-i-e-s-t-e-r. I'm one of the co-lead Plaintiffs'

23 counsel and a member of the Plaintiffs' Steering  
Committee

24 (PSC).

25 MR. KIESEL: Good morning, Paul Kiesel, Plaintiffs'

8

1 liason counsel.

2 MR. PETERS: Good morning. Tom Peters, also co-lead  
3 counsel for the (PSC).

10:07:31 4 MS. BACON: Marilyn Bacon for Metrolink and SCRRA.

5 MR. GRAVES: Greg Graves with Metrolink.

6 MR. SHOHET: Jeffrey Shohet, DLA Piper, representing  
7 Connex Railroad, LLC, Veolia Transportation and the  
8 witness, Richard Dahl.

9 THE WITNESS: Richard Dahl, Veolia Transportation  
out  
10 of Escondido, California working for Sprinter.

11

12 RICHARD DAHL,

13 called as a witness by and on behalf of the Plaintiffs,  
14 and having been placed under oath by the Certified  
15 Shorthand Reporter, was examined and testified as

follows:

16

10:08:00 17 EXAMINATION

18 BY MR. PFIESTER:

19 Q Mr. Dahl, I've already identified myself. As

20 indicated, my name is Ed Pfiester. I'm one of the  
lawyers

21 who is going to be asking you questions today.

22 In what area do you reside, what city?

23 A I live in Fallbrook, California.

24 Q And have you had your deposition taken before?

25 A I have.

9

1 Q On how many different times?

10:08:29 2 A Twice.

3 Q What did they involve generally, the subject  
4 matter of the depositions?

5 A One was with Amtrak on a gray crossing. The  
6 other one was a trespasser fatality. I don't remember if  
7 it was a gray crossing or not.

8 Q But your deposition has never been taken while  
9 you've been working with Connex and Veolia?

10 A It has not.

11 Q Without going into details of what you were  
12 told, is it fair to say that Mr. Shohet explained to you  
10:08:59 13 what the deposition procedure is so you understand the  
14 basic rules?

15 A Yes, he did.

16 Q Let me go over a couple of them just so that we  
17 all are on the same page.

18 In the first place, you understand that you've  
19 taken an oath to tell the truth and it's the same kind of

20 oath with the same force and effect as if you were in the  
21 courtroom before a judge?

22 A I understand.

10:09:26 23 Q Also, we will -- I'll be asking you a series of  
24 questions and your obligation, of course, is to answer  
the  
25 questions. If I ask a question and you answer it, I'm

10

1 going to assume that you understood what the question  
was.

2 Is that fair?

3 A Yes.

4 Q Otherwise, if you don't understand it or you  
5 want some clarification, will you stop me and ask me?

6 A Yes.

7 Q Now, you have also given -- let me ask you  
this:

8 Have you given a statement or testimony before the -- any  
10:09:59 9 other body pertaining to this Chatsworth matter?

10 A I've given two interviews with the NTSB and  
11 testimony at the NTSB in Washington, D.C.

12 Q And the testimony in Washington, D.C., was that  
13 under oath, do you recall?

14 A I don't recall.

15 Q Do you recall whether the interviews were given  
16 under oath?

17 A The interviews were not.

18 Q But they were recorded, correct?

19 A Yes.

20 Q As was your testimony in Washington, D.C.?

10:10:29 21 A Yes.

22 Q Have you given any statements related to the  
23 Chatsworth train wreck, other than what you've just  
24 indicated to the NTSB? I'm not asking what you told your  
25 lawyer or what he told you, I'm talking about a written

11

1 statement or recorded statement.

2 A Whatever I gave to the corporation in  
3 investigation of the incident.

4 Q Be more specific, would you, in a description  
of  
5 whatever you gave to the corporation?

10:10:59 6 A You know, I honestly don't remember what forms  
7 or statement or anything that I gave them. It would have  
8 been in the file.

9 Q When you say "the corporation," you're  
referring  
10 to whom?

11 A To Veolia.

12 Q Did you give any statements, other than what is  
13 usually given when there is an accident?

14 A No.

10:11:29 15 Q What statements are usually given by someone in  
16 your capacity when there is an accident on the railroad?

17           A     There is an investigation package, which would  
18 include an Unusual Occurrence Report, an Injury Illness  
19 Statement. Um, it all -- there might be two or three  
10:12:00 20 other forms that I can't remember off the top of my head,  
21 and it wouldn't be just the manager -- you know, one of  
22 the managers. Any one of the managers working for Veolia  
23 could have possibly filled those out.

24           Q     Do you have a recollection of having filled out  
25 any such type report?

12

1           A     No, I do not.

2           Q     Do you know whether or not any other person  
3 working with Veolia and/or Connex filled out such a  
4 report?

10:12:28 5           A     No, I do not.

6           Q     Have you reviewed anything before coming here  
7 that refreshes your memory? And by review, I mean  
8 something you've looked at. I'm not going to ever ask  
you  
9 questions what your lawyer told you. You understand  
10 that's privileged?

11          A     Yes.

12          Q     But have you reviewed anything that --  
anything,  
13 any photographs, documents --

14          A     Yes.

15 Q -- at all before coming here?

16 A Yes.

10:12:58 17 Q What have you reviewed?

18 A I reviewed my two interviews with the NTSB, my  
19 statement or my interview or testimony at the NTSB in  
20 Washington, D.C. I reviewed a couple of the Connex cell  
21 phone policy documents and also three or four of

10:13:29 22 Mr. Sanchez's counseling letters that I went over prior  
to

23 September 12th with him.

24 Q Where are those documents now?

25 A The documents are in the property of my  
counsel.

13

1 MR. PFIESTER: May we see a copy of them, Counsel?

2 MR. SHOHET: Sure. Do you want to do that at a  
break

3 or do you want to take a break now and I can get them out  
4 of my bag?

5 MR. PFIESTER: Either way.

10:13:59 6 MR. PETERS: If you want to do it now, maybe Paul  
and

7 I can take a look through them.

10:19:48 8 MR. PFIESTER: Good idea. Let's take a break.

10:20:01 9 THE VIDEOGRAPHER: Off record 10:15.

10 (A recess was taken.)

11 (Whereupon, Mr. Hiepler joined the

12 proceedings.)

13 THE VIDEOGRAPHER: On record 10:20.

14 MR. PFIESTER: Mr. Dahl, I'm going to mark as an  
15 exhibit the notice of the deposition. It's just a formal  
16 thing here.

17 (Exhibit 14 was marked for identification.)

18 BY MR. PFIESTER:

19 Q Have you seen a copy of that notice?

20 A No, I have not.

21 Q I used the initials "MDE" for Master Depo  
10:20:29 22 Exhibit No. 14, which is the next in order.

23 I'll ask you in more detail, but did the  
24 documents that you went over and we've sent out to be  
25 copied, are those all of the documents that you reviewed

14

1 anytime recently that relate to this matter?

2 A Yes.

3 Q While we're waiting to get them copied, let me  
4 find out some background about you, please.

5 When did you first hire out for any railroad?

10:20:58 6 A I hired out in June of 1976 with Amtrak.

7 Q Where was that?

8 A In Seattle, Washington.

9 Q In what capacity did you hire out?

10 A As union positions, red cap, baggage.

11 Q So that's positions in the depot, basically,  
the

12 station?

13 A Yes.

14 Q And what is the extent of your education,  
formal

15 education?

16 A Graduated high school with some college.

10:21:31 17 Q What year did you graduate high school?

18 A 1977.

19 Q So you started out on Amtrak before you  
actually

20 graduated from high school?

21 A Yes.

22 Q What is the extent of your college, if you can  
23 summarize that, please?

24 A Shoreline Community College with business law  
25 classes.

15

10:21:58 1 Q When is that?

2 A That was in 1978.

3 Q Is that the extent of your formal education?

4 A Yes.

5 Q Did you get a degree after your high school  
6 degree?

7 A No.

8 Q So you hired out in June of '76 for Amtrak up  
in

9 Seattle and worked as a red cap, and so forth.

10                   That would be the Clerk's Union, probably; is  
11 that correct?

12           A     The TCU, I believe, is what it was called.

13           Q     Transportation Communications Union, correct?

14           A     I believe so.

10:22:27 15           Q     Do you still have your Union seniority?

16           A     No.

17           Q     How long did you work in Seattle for Amtrak?

18           A     Until 1989.

19           Q     Between '76 and '89 had you changed job  
20 capacities?

21           A     Yes. I worked ticket clerk. I worked in the  
10:22:57 22 commissary. I worked at 8th Street Yard. I worked for  
23 the Safety Department as a safety environmental control  
24 coordinator. And that was the last position I had before  
25 I left Seattle.

16

1           Q     And you said you worked at the 8th Street Yard?

2           A     Yes.

3           Q     Is that in Seattle?

4           A     King's Street Yard.

5           Q     There's an 8th Street Yard in L.A.

6           A     That's what I was thinking. It was King's  
7 Street Yard.

8           Q     You just misspoke, correct?

9 A Yes.

10 Q And if you do misspeak and want to correct any  
11 of your answers, you can do that. You understand that?

10:23:29 12 A Okay.

13 Q In fact, after the deposition is completed, it  
14 will be typed up in a little book and you'll be given an  
15 opportunity to change it -- excuse me, sign it and you  
can

16 make changes then, but if you do make changes at that  
17 point in time, they could prove embarrassing to you,  
18 depending on what kind of change you make.

19 Do you understand that?

20 A I understand.

21 Q Then what happened in 1989 by way of your  
10:23:58 22 career?

23 A I took a position in Los Angeles for Passenger  
24 Services, Train Provisioning Management Supervisor for  
the  
25 commissary.

17

1 Q Train Provisioning --

2 A Manager.

3 Q -- Manager for the commissary?

4 A Yes.

5 Q What does that mean?

6 A That was a supervisor of inventory control.

10:24:28 7 Q What kind of inventory were you a supervisor  
of?

8 A Food, supplies, linens, all the items that  
would

9 be stocked on an Amtrak train, maintain quantities,  
ensure

10 turnaround rate, ordering levels, and trying to  
coordinate

11 cost reductions by ordering massive amount but not

12 overstocking.

13 Q That was for the Amtrak trains that run in and  
10:24:58 14 out of Los Angeles; is that correct?

15 A Yes.

16 Q Did you have people working under you?

17 A Yes, I did.

18 Q How many, approximately?

19 A Three or four manager clerks and approximately  
20 five employees.

21 Q That was here in Los Angeles?

22 A Yes.

23 Q Were you involved in the movement of trains  
when

24 you were up in Seattle working for Amtrak?

25 A No.

18

1 Q Were you involved in the movement of the trains  
2 when you hired out in Los Angeles in 1989 as Provisional  
3 Manager Supervisor?

4 A No.

5 Q How long did you keep that position?

6 A Approximately, two years.

7 Q Then what did you do?

10:26:00 8 A I took a position as Safety & Environmental  
9 Control Engineer in '92 or '93 assigned to Metrolink.

10 Q What does or did at the time a Safety &  
11 Environmental Control Engineer do?

12 A Oversee the System Safety Plan, ensure  
13 regulatory compliance, ensure reporting capability,  
10:26:26 14 training, qualifying employees on injury/illness  
15 standards, OSHA, FRA compliance.

16 Q That involved working with the people to make  
17 the trains go from point A to point B, the people in  
Train  
18 Service or Engine Service; is that correct?

19 A That's correct.

20 Q Was that the first time you were involved in  
21 Engine Service or Train Service on the railroad?

22 A Yes.

23 Q When you went to work in '92 or '93, that was  
24 still with Amtrak, is that correct, or not?

25 A That's correct.

19

1 Q At that time Amtrak had a contract with  
2 Metrolink, did it?

3 A That's correct.

4 Q How long did you keep that position as  
5 Environmental Control Engineer?

6 A Approximately, five years.

7 Q Until about 1997 or so?

8 A Best of my recollection, yes.

10:27:28 9 Q In your capacity during that about five years  
10 while you were Environmental Control Engineer, how many  
11 people worked under you?

12 A None.

13 Q You were it?

14 A Yes.

15 Q And what was your territory geographically?

16 A All of Metrolink territory, along with I was  
17 assigned some assignments for the Amtrak Safety  
18 Department, which would have involved Oakland, Seattle,  
10:27:58 19 Portland, Tri-Cities, Montana.

20 Q And you said you were involved in training in  
21 that Safety Department; is that correct?

22 A That's correct.

23 Q What did that consist of?

24 A All kinds of safety training. Um, we worked  
25 with the Mechanical Department, and we would do all

20

1 their -- oversee all their lock-out, tag-out, hazardous  
10:28:25 2 material, Haz Com, training for all managers in

3 injury/illness reporting, training for regulatory  
4 compliance, hours of service, et cetera.

5 Q What do you mean by hours of service?

6 A Hours of service education.

7 Q And what is hours of service?

8 A Just to -- managers that didn't have hours of  
9 service requirements, to have them understand what the  
10 hours of service requirements are.

11 Q That's a federal requirement under certain  
12 employees of the railroad; is that correct?

13 A That's correct.

14 Q And it's enforced by the FRA, the federal  
10:28:59 15 government, correct?

16 A Correct, yes.

17 Q It's an important law for your employees to  
have

18 those accurately reported, the hours of service  
19 information, correct?

20 A Correct.

21 Q What did you do when the five years had expired  
10:29:29 22 in about 1997?

23 A Took a position as Train Master working out of  
24 San Bernardino for the Operations Department.

25 Q And that's a Train Master again employed by

21

1 Amtrak?

2 A Yes.

3 Q And working on Metrolink trains?

4 A Yes.

5 Q Out of San Bernardino?

6 A Yes.

7 Q Where about in San Bernardino were you?

8 A At the San Bernardino Metrolink Station.

9 Q And what was your geographical area that you  
10:29:58 10 were responsible for when you started in '97 as Train  
11 Master in San Bernardino?

12 A The trains that run in and out of San  
Bernardino

13 and Riverside to Los Angeles.

14 Q And how many people did you have working under  
15 you during the time when you became Train Master of  
16 San Bernardino, approximately?

17 A Approximately, 40, and I shared that  
18 responsibility with two other managers.

10:30:28 19 Q Were they also Train Masters?

20 A No. They were Transportation Managers.

21 Q What is the difference between a Transportation  
22 Manager and a Train Master?

23 A Grade, knowledge, experience and engine  
24 qualified.

25 Q Which is which, in which slot on the totem  
pole?

1 Do you understand me?

2 A No, I don't.

3 Q How does the actual responsibility of the Train  
10:31:00 4 Master differ from that of a Transportation Manager?

5 A In our structure, the Train Master would  
6 basically work for the Transportation Manager as an  
7 understudy.

8 Q So the Transportation Manager, would that  
person  
9 have a larger jurisdiction geographically or the same?

10 A The same.

11 Q And of the 40 people that worked under you,  
what  
12 were their job capacities?

13 A Engineers and conductors.

14 Q The people that run the trains to make it go  
10:31:28 15 from point A to point B?

16 A Yes.

17 Q How long did you stay as Train Master in  
18 San Bernardino, approximately?

19 A Approximately, another five years.

20 Q So we're up to about 2002?

21 A Yeah, 2000, maybe right around there, yeah.

22 Q Your best memory, sometime around 2000, 2002?

23 A 2000, 2002, yes.

24 Q What did you do at that time?

25 A I took a position as Transportation Manager on

1 the Ventura Sub, working out of the Moorpark and Montalvo  
2 crew base for Metrolink.

3 Q Working out of Montalvo and what?

4 A Moorpark crew base.

10:32:28 5 Q And how long have you kept that position?

6 A I kept that position with Amtrak until June of  
7 2005, and then Amtrak lost the -- or no longer had the  
8 contract. It was Veolia having the contract in June of  
9 2005, and I maintained that same position working for  
10 Veolia.

11 Q So what you did is you changed paychecks,  
12 basically, at that time; is that correct?

13 A Changed names on paychecks.

10:32:58 14 Q Names on paychecks, right.

15 When you first began working in 2000, 2002 on  
16 the Ventura Sub as Transportation Manager, how many  
people

17 worked under you?

18 A Approximately, 15.

19 Q 15?

20 A 15.

21 Q 1-5?

22 A Correct.

23 Q And what were their capacities?

24 A Engineers and conductors.

25 Q Total of 15 together?

1 A Yes.

2 Q Was there more than one Transportation Manager  
3 working on the Ventura Sub at that time?

10:33:25 4 A No.

5 Q Did the same number of employees continue up  
6 until June of 2005 when Connex and Veolia took over the  
7 operation?

8 A I believe so.

9 Q And then walk us forward. What is your next  
10:33:51 10 capacity?

11 A In, approximately, January of 2009 I started  
12 working as the Transportation Operations Testing Manager.  
13 I did that for approximately three months, and in March  
of  
14 2009 I accepted the Temporary Assistant General Manager's  
15 position at Metrolink, and then June 2009 I went to the  
16 General Manager's position for Sprinter Veolia working  
out  
17 of Escondido.

10:34:32 18 Q As General Manager for Sprinter?

19 A Yes.

20 Q And what is the name on the paycheck beginning  
21 in June of '09?

22 A Veolia --

23 Q Veolia --

24 A -- Transportation.

25 Q Veolia Transportation?

25

1 A Yes.

10:35:03 2 Q Is that what your current capacity is?

3 A Yes.

4 Q Tell us what the Sprinter is.

5 A Sprinter is a light rail DMU unit that operates  
6 between Escondido and Oceanside. We also dispatch the  
10:35:26 7 Escondido Sub. We dispatch the DMU units throughout the  
8 day, basically from 4:30 a.m. to 9:30 p.m. At that point  
9 we have temporal separation and we dispatch Watco Freight  
10 Train over that same territory.

11 Q How many employees do you have working under  
you  
12 at the present time, approximately?

13 A Approximately, 32.

14 Q In what capacity are they?

15 A Train Operators, Dispatchers, Transportation  
16 Managers, Safety Manager.

10:36:00 17 Q How much mileage is there of railroad track  
18 mileage, I'm talking approximately, that you are  
19 responsible for?

20 A 22 miles.

21 Q In January of '09 -- strike that.

22 In the 2000 or the 2002 period when you became  
23 Transportation Manager on the Ventura Sub, how much  
miles,

24 railroad miles, were you responsible for, approximately?

25 A Approximately, 70.

26

1 Q And up until the time you left being in a  
2 managerial position on the Ventura Sub, was it still  
about  
3 the same number of mileage, 70?

4 A Approximately, yes.

5 Q When you left -- when you changed jobs -- let  
me  
10:36:59 6 back up.

7 So at the time of this train wreck, September  
8 the 12th of '08, you were what?

9 A Transportation Manager on the Ventura Sub.

10 Q How many employees did you have working under  
11 you?

12 A Approximately, 15.

13 Q 15?

14 A Yes.

15 Q Engineers and conductors?

16 A Yes.

17 Q Any other job capacity work under you at the  
18 time?

19 A No.

20 Q How many total employees were there working on  
21 the Ventura Sub at that time?

10:37:30 22 A 15.  
23 Q A total of 15?  
24 A An estimate.  
25 Q I know. Best estimate?

27

1 A Yeah, best estimate. The extra boards would go  
2 down, it would go up, we'd have vacancies, but  
3 approximately 15.

4 Q How was that split between engineers and  
5 conductors again, approximately?

10:37:57 6 A It was, approximately, seven engineers and  
eight  
7 conductors.

8 Q You said there was about 70 miles of railroad  
9 territory you were responsible for, correct?

10 A Correct, yes.

11 Q That went from what point to what point?

12 A It went from Los Angeles to Moorpark. That's  
13 Metrolink Ventura Sub territory, and then from Moorpark  
to

10:38:29 14 Montalvo on the UP Santa Barbara Sub.

15 Q And what portion of those rail lines did  
16 Metrolink own?

17 A The portion between Moorpark and Los Angeles.

18 Q And who owned the line between Moorpark and  
19 Montalvo?

20 A Union Pacific.

21 Q So the Metrolink had joint trackage rights in  
22 that territory?

23 A Yes.

24 Q And it does with other railroads, does it not?

25 A Yes.

28

10:38:53 1 Q Like the BNSF, for example, in San Bernardino?

2 A Yes.

3 Q In the summer of 2008 how was -- you said there  
4 were about 15 people that worked under you, the engineers  
5 and conductors, correct?

6 A Correct.

7 Q And were there any other managerial personnel  
8 out in that area?

9 A No. Closest manager was stationed in  
10 Los Angeles.

11 Q Was that a Transportation Manager in  
12 Los Angeles?

10:39:30 13 A Yes.

14 Q So did your jurisdictions overlap?

15 A Yes.

16 Q To what extent did they overlap?

17 A Well, all the Transportation Managers are  
18 responsible for all the employees. The managers at the  
19 outlying points have the direct responsibility of their

on

20 own crew base, but they also oversaw any other employee  
21 any other location they have to be on as a secondary  
22 manager.

23 Q And did the crews report -- where did the crews  
24 report to duty?

25 A In the morning they reported to both Moorpark

29

1 and Montalvo. After their break in the afternoon, they  
2 reported back to Metrolink's Central Maintenance Facility  
3 at Taylor Yard.

4 Q How far apart are Moorpark and Montalvo,  
5 approximately?

6 A Approximately, 26 miles.

7 Q Did you have an office in that area, a physical  
8 office?

10:40:30 9 A Yes.

10 Q Where was it located?

11 A I had an office in Montalvo, which was the main  
12 office, and I also was able to do work in Moorpark.

13 Q There was a facility there you could use?

14 A Yes.

15 Q What was that facility?

16 A A trailer where the crews sign on and get their  
17 track warrants and bulletins.

18 Q At Moorpark?

19 A At Moorpark.

20 Q Was the end of the line of the track owned by  
10:41:00 21 Metrolink at that point?

22 A Yes.

23 Q Who did you report to in the summer of 2008?

24 A Gregg Konstanzer.

25 Q Who is Gregg Konstanzer?

30

10:41:31 1 A He is the Assistant General Manager for Connex  
2 Transportation.

3 MR. KIEGEL: Was that Assistant General Manager?

4 THE WITNESS: Yes.

5 BY MR. PFIESTER:

6 Q You said "is." Is that his current capacity?

7 A No.

8 Q He was asked to leave, was he?

9 A Yes, in March of 2009.

10 Q Do you know the circumstances of his being  
asked  
11 to leave Metrolink?

12 A Not exactly.

13 Q What have you heard?

10:41:58 14 A That it was in conjunction with the Chatsworth  
15 Metrolink Union Pacific collision.

16 Q And could you give me any more detail, please,  
17 about, quote, in connection with the Chatsworth Union

18 Pacific collision?

19 MR. SHOHET: Is the question what has he heard?

20 MR. PFIESTER: Yes.

21 MR. SHOHET: What has he heard, okay.

22 What have you heard, if anything?

23 MR. PFIESTER: Let me back up so the record is  
clear.

24 Q Mr. Konstanzer, he was asked to leave in March  
25 of 2009, correct?

31

1 A Correct, yes.

2 Q He was no longer after that the Assistant  
3 General Manager?

10:42:30 4 A That's correct.

5 Q Tell me what you have heard about the --  
6 factually heard about the underlying circumstances that  
7 resulted in that.

8 A That Metrolink had elected to not have him on  
9 the property and doing the role of the Assistant General  
10 Manager and, therefore, they have the right to accept or  
11 deny anybody and so, therefore, he was out of the  
12 position.

13 Q So it was Metrolink's decision to ask him not  
to  
10:42:59 14 be there?

15 A That's what I understand.

16 Q Or asked Veolia to ask him to leave; is that

17 correct?

18 A That's what I understand.

19 Q Do you know any other -- have you heard any  
20 other reasons, other than Metrolink asked him? In other  
21 words, why did they ask him, if you know or have heard?

22 A The only thing I have heard is it was in  
23 conjunction with the Metrolink Chatsworth collision.

24 Q No more specific details?

25 A No.

32

1 Q To whom did Mr. Konstanzer report in the summer  
2 of 2008?

3 A To Tommy McDonald, General Manager for Connex  
4 Transportation.

5 Q Mr. McDonald, he also left, did he?

6 A He left at the same time that Mr. Konstanzer  
had  
7 left.

8 Q He was asked by Metrolink to leave, as far as  
9 you know?

10 A As far as I know, yes.

11 Q Where did Mr. Konstanzer go in March of 2009  
12 after -- it was after the Washington, D.C. hearing,  
10:43:58 13 correct?

14 A Correct, yes.

correct?  
15

Q They were there and you were there too,

16 A Correct, yes.

17 Q Where did Mr. Konstanzer go, to your knowledge?

18 A He is working currently for Veolia

19 Transportation and on some special assignments under

20 business development.

21 Q Under business development?

22 A Yes.

10:44:29 23

Q Where is he working, if you know,

24 geographically?

25 A I believe, to the best of my knowledge, it's in

33

1 San Dimas.

2 Q And you say Veolia Transportation, is that

3 Veolia Transportation, Inc.?

4 MR. SHOHET: Excuse me.

5 MR. PFIESTER: If you know.

6 MR. SHOHET: What is the question? I'm sorry. Is

7 there a question?

8 MR. PFIESTER: I'll reask it.

9 MR. SHOHET: Thank you.

10 BY MR. PFIESTER:

10:44:57 11

Q You said as far as you know Mr. Konstanzer left

12  
Inc.

Metrolink and went to work for Veolia Transportation,

13 as a special business development person.

14           A     He left Connex, which was a division of Veolia  
15     and went to work for Veolia.

16           Q     Right. He was working for Connex at Metrolink,  
17     and then he left, is that correct, as far as you know?

18           A     Well, I don't quite understand the question,  
19     because he did leave -- his paycheck remained the same.

10:45:28 20     He wasn't employed on the Metrolink property or doing  
21     Metrolink work.

22           Q     Well, you said that he works for Veolia  
23     Transportation, Inc., as far as you know?

24           A     As far as I know, yes.

25           Q     Let me ask you the same question with regard to

34

1     Mr. McDonald. Where did he go, if you know, after March  
10:45:58 2     of 2009? When he was asked to leave?

3           A     I don't know what -- he's working special  
4     assignments for Veolia, and I don't know exactly what  
5     those special assignments are.

6           Q     Have you heard from anybody what those special  
7     assignments are that are being worked by Mr. McDonald?

8           A     He went to Austin to assist Austin with their  
10:46:29 9     operation. He also went to Tri-Rail in Miami to assist  
10     with their operation. He's also been back to Washington  
11     in conjunction with the NTSB hearings.

12           Q     Is that all you remember about what Mr.  
McDonald

13 has done after he left?

14 A Yeah, that's all -- yeah.

15 Q You say Austin, Texas. Veolia has a contract  
16 there, does it not?

17 A No, it does not anymore.

18 Q During what period did it have a contract,  
10:47:00 19 approximately?

20 A It had a contract up until mid-December of  
2009.

21 Q What was that contract? What did they do there  
22 in Austin, Texas?

23 A They were the operator and they assisted with  
24 the track infrastructures for Cap Metro.

25 Q What is Cap Metro?

35

1 A It's --

2 Q Commuter service?

3 A Yes.

10:47:27 4 Q Heavy rail?

5 A No. I believe they have DMU units, and they  
6 also have something similar to the Sprinter where they  
7 will dispatch freight trains.

8 Q And what about Tri-Rail, that's in Florida, you  
9 indicated?

10 A Yes.

11 Q What is that?

12 A That is heavy rail.

13 Q Heavy rail is the same rail there is at

14 Metrolink here, correct?

10:47:58 15 A Correct.

16 Q It's 4 feet 8-1/2-inch gauge, correct?

17 A If you say so. I don't know what the gauge is,

18 but I'm sure it's the same.

19 Q And where in Florida does Tri-Rail operate, if

20 you know?

21 A Out of Miami, and I don't know other than that.

22 Q Do you know how large an area it operates in?

23 A No, I don't.

24 Q It's a commuter service, too, or passenger

25 service; is that correct?

36

1 A Yes.

2 Q Do you know, do they have a separate  
contractor,

3 or do you know?

4 A I believe that it is -- they have a maintenance

5 contract with Bombardier.

6 Q You're talking about the Tri-Rail?

7 A Yes.

10:48:57 8 Q Which is a separate entity from Veolia,  
correct?

9 A Well, Tri-Rail, they work for the agency for  
the

10 State of Florida, and Veolia is the operator.

11 Q And by "operator," what do you mean?

12 A They have the engineers and conductors that  
13 operate the trains.

14 Q Basically the same thing that Veolia's Connex  
15 had here or still does actually?

16 MR. SHOHET: When you say "Veolia," you mean Connex  
17 Railroad, LLC, is that what you're referring to?

18 MR. PFIESTER: Yes.

10:49:34 19 Q You understand when I say "Connex," I'm talking  
20 about Connex, and I'm referring here -- in the Metrolink  
21 area I'm talking about Connex Railroad, LLC. You  
22 understand?

23 A I understand, yes.

24 Q Now, when you became General Manager, you  
25 basically replaced Mr. McDonald; is that correct,

37

1 temporary General Manager?

2 A No. I actually became Temporary Assistant  
3 General Manager.

4 Q Assistant, okay. Then you replaced  
5 Mr. Konstanzer?

6 A That's correct.

7 Q Who replaced Mr. McDonald, if you know?

8 A John Kerins.

9 Q Spell his last name, please.

10 A K-e-r-i-n-s.

11 Q Is he still with the Metrolink operation, as  
far  
12 as you know, or do you know?

13 A No.

10:50:29 14 Q Has he been replaced?

15 A He has.

16 Q Who replaced him, if you know?

17 A Mr. James Davis.

18 Q Is he the current General Manager, as far as  
you  
19 know?

20 A Yes.

21 Q Do you interact with these people, Mr. Kerins  
22 and Mr. Davis, as part of your job?

23 A Yes.

24 Q And in what capacity, in what way?

25 A We were just back in Chicago approximately a

38

1 week ago at a General Manager's meeting.

10:50:59 2 Q Who sponsored the meeting, if you will?

3 A Veolia.

4 Q Who all came to it? I don't mean individual  
5 names, I'm talking about people from where.

6 A All the General Managers, Business Development,  
7 Finance, Legal, Contracts.

8 Q You say "all the General Managers." Be more  
9 specific. Does that include General Managers from  
10 Tri-Rail, for example?

10:51:24 11 A Tri-Rail.

12 Q Where else?

13 A Boston Sprinter, Metrolink and Austin. We  
still  
14 have a General Manager there during their shutdown  
15 procedures.

16 Q By shutdown procedures, are you saying the  
17 railroad is shutting down or Veolia is leaving?

18 A Veolia is leaving.

19 Q Its contract was not extended; is that correct?

20 A The contract was terminated for convenience in  
21 December of 2009.

10:52:00 22 Q Whose convenience?

23 A Cap Metro.

24 Q What is your understanding about that  
25 convenience?

39

1 A I don't have a lot of information, just that  
2 they decided to go with a new operator.

3 Q And you mentioned a new area to us, the Boston  
4 area, the Boston Commuter Railroad, correct?

10:52:26 5 A Yes.

6 Q What is that?

are  
7 A That's heavy rail, passenger service. There  
8 several partners that actually oversee that, and I don't  
9 know all their names and, you know, what their portion  
is.  
10 And it's quite large, and I don't know their miles. I  
11 could look at a map and give you all the information.

10:53:01 12 Q Do you remember its complete name?

13 A MBCR.

14 Q Massachusetts Bay --

15 A Commuter Railroad.

16 Q And does Veolia still have an active contract  
17 with that MBCR?

18 A Yes.

19 Q Do you know how long it extends?

20 A I do not.

21 Q Do you know approximately when they first got -  
-  
22 strike that.

23 Do you know when Veolia first got a contract  
24 with the MBCR?

25 A I do not.

40

1 Q About how many, approximately, General Managers  
2 were at this meeting in Chicago that you just mentioned,  
3 approximately?

10:53:54 4 A Five.

5 Q While you were working at the Metrolink  
6 facility, were there any -- and before Mr. McDonald was  
7 replaced, were there any general managers other than him?

8 A Yes. There were other General Managers when  
9 Amtrak had the contract.

10:54:28 10 Q From June of 2005 up until Mr. McDonald was  
11 asked to leave, were there any other General Managers at  
12 the Metrolink Railroad?

13 A No.

14 Q Other than Mr. McDonald?

15 A No.

16 Q What about Assistant General Managers, during  
17 the period that Connex Railroad, LLC had that contract,  
18 which means up to the present time, has anyone been  
19 Assistant General Manager, other than initially  
20 Mr. Konstanzer and his replacement now?

10:54:59 21 A Up until he was released in March of 2009, yes.

22 Q Well --

23 A No other Assistant General Managers.

24 Q He's been the only Assistant General Manager  
25 there?

41

1 A Yes.

2 Q Approximately, how many Train Masters were  
there

10:55:34 3 working for Connex beginning in June of 2005?

4 A Approximately 12.

5 Q How many Transportation Managers were there in  
6 June of 2005?

7 A That total I gave you was both Transportation  
8 Managers and Train Masters.

9 Q Do they also have Road Foreman of Engines?

10 A Yes. And that number I gave you was the number  
10:55:59 11 of all managers.

12 Q So 12 managers, Road Foreman, Train Masters,  
13 Transportation Managers?

14 A Yes.

15 Q Are there any other titles or capacities which  
16 you're including in the word "managers"?

17 A No.

18 Q Now, how many transportation -- how many  
10:56:28 19 managers were there in March of 2000 -- strike that.

20 How many managers were there in September of  
21 2008 when the train wreck in Chatsworth occurred,  
22 approximately?

23 A Approximately, 12.

24 Q Do you know the names of any who have left  
there  
25 as a Transportation Manager?

42

1 A Left and left Connex?

2 Q We'll do it both, left --

3 A Or gone back running?

10:56:59 4 Q All of those. If you could just please tell me  
5 who did what, like somebody took his seniority back, and  
6 just explain, or somebody left and went to Timbuktu.

7 A All right. I left and went to the Sprinter.

8 Q That's one.

9 A Mike Hyman went back to operating a locomotive.

10 Q How do you spell "Hyman"?

11 A H-y-m-a-n.

10:57:28 12 Q What was he?

13 A Transportation Manager. Mark Challed left and  
14 went back running as Transportation Manager.

15 Q He was an engineer?

16 A He was an engineer, yes.

17 Q So when you say "went back running," he  
18 exercised his Union seniority and drives the trains or  
19 operates the trains, correct?

10:57:58 20 A That's correct. Ted Fritz retired.

21 Q When did that happen, approximately?

22 A That happened, approximately, September of  
2009.

23 Q What was his capacity when he retired?

24 A Transportation Manager.

25 Q Do you know where he is now?

43

1 A Oceanside, California.

2 Q He's retired because of his age, as far as you  
3 know?

10:58:30 4 A Yes.

5 Q Do you know if he's working for anybody else?

6 A I don't know what his current status is.

7 Q Are there any other managers, using the term  
8 that you used, that have left during the period that you  
9 were there?

10 A Not that I remember.

11 Q Did you know all the managers, all the  
12 approximately 12 managers?

10:58:59 13 A Yes.

14 Q Well?

15 A Yes.

16 Q You dealt with them on a regular basis?  
17 During the time you were there, did Veolia  
bring  
18 in anybody else from other Veolia entities, if you will,  
10:59:31 19 to work?

20 A Not that I remember.

21 Q I'm talking about as a manager, as a Train  
22 Master, as a Road Foreman, any as a supervisory person  
23 above the level of conductor or engineer?

24 A We promoted.

25 MR. SHOHET: Just so I'm clear, you're asking if

1 Veolia Transportation or Connex brought in any managers  
2 during the 2005 period forward, other than the ones he  
3 mentioned.

10:59:57 4 MR. PFIESTER: Yes. Thank you.

5 MR. SHOHET: I just wanted to make sure.

6 THE WITNESS: You mentioned from other agencies.  
7 That doesn't include engineers or conductors we have  
8 promoted from the rank up to manager level.

9 BY MR. PFIESTER:

10 Q Who would they be?

11 A There would be several. As each one of those  
12 managers that I described either went back running or  
11:00:26 13 retired or went elsewhere, there was replacement from  
14 within the ranks.

15 After I left and went to the Sprinter, they  
16 brought in a gentleman by the name of Ronnie Russell and  
17 made him the Assistant General Manager.

18 Q When was that, approximately?

19 A September of 2009.

11:00:58 20 Q Anybody else you can think of?

21 A Um, there were -- there's a -- currently  
there's  
22 a guy on special assignment that's assisting Metrolink  
23 that used to work out of Austin, but I haven't been up  
24 there -- anything after I left, you know, I'm not  
25 completely aware of.

1 Q Right. Well, to your knowledge, had anybody in  
2 a managerial capacity had prior experience? Let me back  
3 up.

11:01:30 4 Veolia has transportation services, provides  
5 them all over the world, correct?

minute 6 MR. SHOHET: Excuse me. Excuse me. Give me a  
7 to object.

8 When you say "Veolia," do you mean Veolia  
9 Transportation or any other Veolia entity? Which is it?

10 BY MR. PFIESTER:

11 Q Veolia, I don't mean just Veolia  
Transportation,

12 Inc. I'm talking about Veolia Environmental or any other  
13 Veolia-related organization, okay, when I ask you this  
14 question.

15 They provide transportation services throughout  
16 the world, correct?

11:01:59 17 A Correct.

in 18 Q And they provide rail transportation services  
19 a number of -- do you know how many countries,  
20 approximately?

21 A No.

22 Q Now, so my next question is, do you have a  
23 recollection of anybody having come to work for Metrolink  
24 here in L.A. who had had prior experience with some other  
25 Veolia Transportation entity?

11:02:28 1 A Yeah. We had a guest -- I don't know if he was  
2 actually employed by Metrolink, but we had a guest from  
3 the U.K. by the name of Fred Benson.

4 Q And what do you mean by "guest"?

5 A Well, I don't know if he was a Metrolink -- he  
6 was paid through Metrolink or if he was paid through  
7 Veolia as a guest on the property.

8 Q As a guest on the property, did he actually  
9 perform work at Metrolink?

10 A Yes.

11:02:59 11 Q What kind of work?

12 A It was a managerial kind of an overseer at  
13 Taylor Yard, and I don't know what his duties entailed.

14 Q Was it mechanical, operational, or do you  
15 recall?

16 A It was operational.

17 Q But you said a manager/overseer at the Taylor  
18 Yard?

19 A Yes.

20 Q Do you know what his duties encompassed?

21 A No.

22 Q Do you know how they were different from other  
11:03:29 23 managers?

24 A Yeah, he didn't have direct oversight of the  
25 movement of trains.

1 Q What did he have oversight of, as far as you  
2 know?

3 A I don't know exactly what his duties all were.

4 Q How long was he here, approximately?

5 A A year.

6 Q About a year or so?

7 A Yeah.

8 Q Okay. Do you know where he went?

11:03:59 9 A No.

10 Q Are there any other people whose name you would  
11 list in the answer to the question? Let me reask the  
12 question.

13 Are you aware of any other people who came from  
14 any other Veolia -- I'm talking about Veolia  
Environmental

15 all the way down -- to work at Metrolink here in  
16 Los Angeles, other than you mentioned Fred Benson? Is  
17 that what you said?

11:04:27 18 A Benson, yes. No, I don't recall anybody else.

19 Q Other than the individuals you've mentioned  
20 before who went to work for the various entities in  
Austin  
other  
21 and Tri-Rail and Boston, and so forth, are there any  
22 individuals who worked at Metrolink and have transferred  
23 over to one of those other Veolia entities, to your

24 knowledge, during the period from June of '05 to the  
25 present time?

48

1 A After I left, Mr. Bud McDaid went to Tri-Rail.

2 Q It's M-c-D-a-i-d?

3 A Yes.

11:05:01 4 Q What was he?

5 A Transportation Manager.

6 Q Transportation Manager for Metrolink?

7 A Yes.

8 Q Same as you?

9 A Yes.

10 Q Is there a difference in the Transportation  
11 Managers, other than one of jurisdiction, geographical  
12 jurisdiction?

13 A Um, there were -- there was only one other  
11:05:29 14 difference, which was my title. I had Senior  
15 Transportation Manager.

16 Q And how did that -- your responsibilities  
differ  
17 from anybody else's?

18 A I had some safety oversight, um, assisted with  
19 the testing and, um, also assisted at L.A. Union Station,  
20 Taylor Yard.

21 Q What do you mean assisted with testing?

11:05:53 22 A Kind of oversaw the testing and joint testing

23 programs for Metrolink and helped the Safety Operations  
24 Officer with the 2179 program, helped with the efficiency  
25 testing program and guide.

49

1 Q When you use the word "testing," you're talking  
2 about efficiency testing?

3 A Yes.

4 Q What is efficiency testing?

5 A Test and observations of employees in the work  
6 environment.

7 Q For what purpose?

11:06:29 8 A To ensure compliance of the rules.

9 Q Which rules are you talking about?

10 A General Code of Operating Rules, Timetable  
11 Special Instructions, Safety Rules, Connex Operational  
12 Notices, any of the other administrative-type rules that  
13 would apply to a testing environment.

11:07:00 14 Q And how did your job assisting in the testing,  
15 the efficiency testing, differ from that of other  
16 Transportation Managers?

17 A I worked directly with the Safety Manager to  
18 assist her with, again, the program, the testing guide,  
19 the testing database.

20 Q "Testing guide" is what you said?

21 A Yeah.

22 Q G-u-i-d-e?

23 A Yes.  
24 Q And database?  
25 A Database, which is the electronic documentation

50

1 of the test.

2 Q Of the efficiency testing?

3 A Yes.

4 Q And who is the Safety Manager you're referring  
5 to?

6 A Um, it's -- I believe it's still Brenda  
7 Lettengarver, although I understand she is going at some  
8 point over to Amtrak. I don't know if she has left yet

or

9 not.

10 Q Can you spell her last name?

11 A L-e-t-t-e-n-g-a-r-v-e-r.

12 Q Lettengarver?

13 A Uh-huh.

11:08:00 14 Q The other thing, you have to answer "yes" or  
15 "no" because "uh-huhs" are difficult for her to right  
16 down. You've done fine so far.

17 A Yes.

18 Q Was she or had she been the Safety Officer  
19 during the entire period, June of '05 up to the present?

20 A Yes.

11:08:29 21 Q Have you heard why she's going over to Amtrak?

22 A No.  
23 Q Has Amtrak -- strike that.  
24 Connex's contract is going to stop, correct?  
25 A Correct, yes.

51

1 Q And when is that?  
2 A June of 2010.  
3 Q Will the fact that it stops affect your  
4 employment, as far as you know?  
5 A My employment, personally?  
11:08:57 6 Q Yes.  
7 A No.  
8 Q Do you have a written contract or do you have  
9 just an oral contract?  
10 A I have a written contract.  
11 Q I'm not -- let me ask you this: For what  
period  
12 is it of time?  
13 A For the length of time that we will operate the  
14 Sprinter service in Escondido.  
15 Q What is that contract, that underlying  
contract,  
11:09:26 16 the period of time?  
17 A The current contract will expire in December of  
18 2012, and then there are some options for extension.  
19 Q But your written contract is if it's extended,

20 then you will maintain your same capacity?

21 A Until they choose to -- there's an exclusion on  
22 the contract that it can be terminated by either party at  
23 any time.

24 MR. SHOHET: When you get to a convenient point in  
25 your examination for maybe a short five-minute break --

52

1 MR. PFIESTER: Sure.

11:09:57 2 MR. SHOHET: Any time when it's convenient.

3 BY MR. PFIESTER:

4 Q Is Brenda Lettengarver related to someone else  
5 who works there?

6 A Brenda Lettengarver is married to an SCRRA  
7 employee by the name of Gary Lettengarver.

8 Q What does he do, his capacity, if you know?

9 A I'm not sure his current. I believe it's  
10 Director of Operations.

11 Q What does that mean by way of what kind of job  
11:10:29 12 function?

13 A Oversees the operations and the contractors,  
and

11:10:34 14 that's my guess.

15 MR. PFIESTER: We'll take a break now.

16 THE VIDEOGRAPHER: Off record 11:10.

17 (A recess was taken.)

11:21:29 18 THE VIDEOGRAPHER: On record 11:21.

19 MR. KIESEL: Just a quick thing I meant to say at  
the  
20 outset, and that was this: We received on Friday 2,200  
21 pages of material. We have done our best to look through  
22 these 2,200 pages of material plus the additional  
material  
23 we got today. It may be that based upon the pacing of  
24 this deposition, that it's not going to get completed  
25 today. It would be our hope with the majority of

53

1 depositions they take no more than one day under most  
2 circumstances, but it may be, though -- I can't say it's  
11:22:00 3 going to happen, but we may need to put the deposition  
4 over even if we finish early to have an opportunity to  
5 fully review the materials we have not yet had a chance  
to  
6 do. This would be the only deposition that will be an  
7 issue in because we are reviewing the materials today.  
So  
8 it may not happen, but it's a possibility

9 MR. SHOHET: Thanks.

10 BY MR. PFIESTER:

11 Q While we're doing housekeeping things, at the  
11:22:28 12 break, Mr. Dahl, your attorney was kind enough to make  
13 copies for us of these documents that you reviewed. I  
14 want to verify that, in fact, those are all of the  
11:22:38 15 documents that you reviewed before -- meaning, in the  
last

16 few days or anything that would refresh your memory to  
17 testify about. You have looked at a number of papers up  
18 to a tab.

11:23:26 19 A Yes. These Letters of Counseling are the ones  
I  
20 reviewed prior to this meeting, deposition. These Connex  
21 cell phone policies are the ones that I reviewed prior to  
22 this deposition.

23 Q You handed me Letters of Counseling, and I have  
24 one, two, three, four, five, six pages, correct? I have  
25 six pages. I put a little circle around the number.

54

11:23:58 1 A No, that's not correct.

2 Q It's not correct?

3 A Five pages. This one is a cell phone policy.

11:24:39 4 Q Thanks. So I've already marked as MDE 15 the  
5 counseling records.

6 (Exhibit 15 was marked for identification.)

7 MR. PFIESTER: MDE 15 are the five counseling letter  
11:24:54 8 pages.

9 Then I'm marking as MDE 16 the one page. What  
10 did you call it, Connex Metrolink electronic device  
11 policy?

12 A There's four pages of the electronic device  
13 policy.

14 Q You've now handed me all four?

15 A Correct.

16 MR. SHOHET: Are they the same policy or different?

17 You said they're four pages of the policy.

18 THE WITNESS: They're different versions of the  
19 policies over periods of time.

20 MR. SHOHET: Fine, thanks.

21 BY MR. PFIESTER:

11:25:30 22 Q Are they in chronological order, and I'm  
23 referring to MDE 16, which we just marked?

24 (Exhibit 16 was marked for identification.)

25 THE WITNESS: No, they're not.

55

1 BY MR. PFIESTER:

2 Q Could you put them in the correct chronological  
3 order and I'll re-number them. I should have asked you  
11:25:57 4 that before.

5 A That being that the one on top is Rule 1.10  
from

11:26:24 6 the General Code of Operating Rules.

7 Q I've marked as MDE No. 16 four pages of  
8 documents beginning, as you indicated, with 1.10, the  
9 General Code of Operating Rules document, correct?

10 A Correct.

11 Q What else do you have here that you haven't  
11:26:58 12 marked?

13 A I have my interview with the National

14 Transportation Safety Board on September 25th, 2008.

15 Q Do you have -- is there a tab there? That  
16 yellow tab, what is it?

17 A That's MDE 17.

11:27:31 18 MR. PFIESTE: I'm going to attach a copy of the NTSB  
19 interview of September the 25th, 2008.

20 (Exhibit 17 was marked for identification.)

21 BY MR. PFIESTER:

22 Q What else do you have?

23 A NTSB interview, Richard Dahl, of January 21st,  
24 2009.

25 MR. PFIESTER: I'm marking that MDE 18.

56

1 (Exhibit 18 was marked for identification.)

11:27:56 2 BY MR. PFIESTER:

3 Q Do you have anything else?

4 A Yes. This is the National Transportation  
Safety

5 Board, not an interview, it was --

6 Q Your testimony in Washington, D.C.?

7 A Testimony in Washington, D.C., yes.

8 Q That was --

9 A March 3rd of 2009.

10 Q Right. That was during the first day of the  
11 two-day public hearings they had there, correct?

12 A Yes.

13 Q And you were one of the witnesses who  
testified,

11:28:29 14 correct?

15 A Yes.

16 MR. PFIESTER: I'm marking that MDE -19.

17 (Exhibit 19 was marked for identification.)

18 BY MR. PFIESTER:

19 Q Now, other than these documents we've just  
20 marked, being numbers MDE -15 through MDE -19, are there  
21 any other matters whatsoever, photographs, anything, that  
22 you reviewed in the last few days to refresh your memory  
11:29:07 23 about any part of this?

24 A No.

25 Q You mentioned about working with the testing

57

1 database.

2 A Yes.

3 Q Efficiency testing database, as well as the  
4 Efficiency Testing Guide. Do you remember that before  
the  
5 break?

6 A Yes.

7 Q What is Efficiency Testing Guide or the testing  
11:29:31 8 guide?

9 A That's our program, Efficiency Testing Program,  
10 procedures, testing requirements we issue to our managers  
11 for instructional purposes and also have it available to

12 the FRA for inspection.

13 Q And is it something that the rank and file sees  
11:29:59 14 in the normal course of their business?

15 A I don't know. I don't think so.

16 Q In what form is it, like a paper?

17 A Paper and electronic.

18 Q Who is the author of it or who are the authors  
19 of it?

20 A I think the Director of Safety, Brenda  
21 Lettengarver, is the author of record.

22 Q Of all of the documents in the testing guide?

11:30:29 23 A Yes.

24 Q About how big is the paper portion of it,  
25 ballpark?

58

1 A 50 pages. It's just an estimate.

2 Q That's all -- you understand I've asked you  
3 estimates about years and pages --

4 A Right.

5 Q -- distances. You can give estimates about all  
6 sorts of things, as long as you tell us what that is,  
7 okay?

8 A Okay.

9 Q Now, what about the testing database, describe  
11:30:56 10 that.

11           A     That's an Access database program that's  
12     electronic that all of the efficiency testing managers  
13     have access to and can enter the data directly into the  
14     database, and you can pull reports and print paper  
reports  
15     and categorize and separate and basically pull all the  
16     information out and print it into paper.

17           Q     When you say "Access database," you're talking  
11:31:29 18     about the software program Access?

19           A     Yes.

20           Q     Do you know who created this testing database?

21           A     A gentleman by the name of Carl Parr, who is a  
22     Veolia employee.

23           Q     Spell his last name.

24           A     P-a-r-r.

25           Q     Where is he located?

59

1           A     Back East, and I don't know what city.

2           Q     Does he work with one of the railroads that  
3     Veolia operates, or do you know?

11:31:57 4           A     I believe he works in the corporate offices.

5           Q     Where are they located?

6           A     There are several, but there's one in Silver  
7     Springs, Maryland. There's one in Chicago. And I don't  
8     know which office he's out of.

9           Q     Does this program -- strike that. Is the

Program, 10 program you're referring to, the Testing Database  
11 valid for other than rail operations, or is it designed  
11:32:26 12 for rail operations?  
13 A It's designed for rail.  
14 Q And is it -- you said Mr. Parr, Carl Parr, was  
15 the one that authored it. It's a Veolia product, if you  
16 will; is that correct?  
17 A Yes.  
18 Q When we say "Veolia," do you know which Veolia  
19 entity, if you know?  
20 A I don't know. Veolia Transportation.  
21 Q Is that your guess or --  
22 A That's my guess.  
11:33:01 23 Q It's one of the Veolia entities, correct?  
24 A Yes.  
25 Q And you say all the managers have access to  
this

60

1 testing database?  
2 A Yes.  
3 Q All the managers in Metrolink, correct?  
4 A All the managers of Metrolink. They also use  
5 that program at other locations.  
6 Q Can the managers at Metrolink access the  
program  
7 at other places?

8 A I don't know. I believe you're set up for just  
11:33:30 9 one location.

10 Q How do the managers access the program at  
11 Metrolink?

12 A It's an online program that they would go in  
and  
13 enter a user name and password.

14 Q Internet connection?

15 A Internet, yes.

16 Q Did you, yourself, enter information on that  
17 database?

18 A Yes.

11:33:59 19 Q Does each manager, between the period June of  
did 20 2005 and the last time you were aware how it was used,  
21 each manager enter his own information or do they have a  
22 clerical-type person, or do you know?

23 A Each manager enters their own.

24 Q What kind of data can be obtained? You said  
25 it's a database that could be sorted different ways,

61

1 correct?

2 A All the testing numbers and rules that are in  
3 the testing guide.

11:34:28 4 Q Do those include all the rules in the Book of  
5 Rules, if you will?

6 A I don't know if it includes all the rules.

7 Q I use the term "Book of Rules." Are you  
8 familiar with that term or not?

9 A General Code of Operating Rules?

10 Q Yes. Some railroaders use the term "Book of  
11 Rules," correct?

12 A Yes.

13 Q We're talking about the same thing, the General  
14 Code of Operating Rules?

11:34:58 15 A Yes.

16 Q Did you watch the hearings, other than the one  
17 that you participated in, the NTSB hearings?

18 A I watched the most recent final findings most  
of  
19 the day, not all of it.

20 Q There are a number of rules -- in addition to  
21 the General Code of Operating Rules, there are a number  
of  
22 other rules that came into play in the Chatsworth case,  
11:35:29 23 correct?

24 A Yeah, meaning there's cell phone policies.  
25 They're also in the General Code.

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1 Q Right.

2 A Can you give me an example of the rules you're  
3 referring to?

4 Q Sure. I'm talking about the rules relating

5 to -- well, let me just back you up.

6 Here's my question: Does the database include  
7 information about each of these rules, the one about red  
8 signals?

11:35:58 9 A Yes.

10 Q And so if somebody -- if a manager wanted to  
11 find out how many times X employee had ran a red signal,  
12 he could put that information in and it would generate  
the

13 answer; is that correct?

14 A Yes.

15 Q By the same token, if someone wanted to ask how  
16 many red signal violations there were or red block  
17 violations there were, that could be put in and the  
answer

18 would be obtained; is that correct?

11:36:26 19 A Yes.

20 Q Now, is that true for the -- is there a rule  
21 about delayed in the block?

22 A Yes.

23 Q Is that one of the rules that is in that  
24 database?

25 A Yes.

63

1 Q And is that one of the rules that's tested?

2 A Yes.

3 Q When I say "tested," we're talking about

4 efficiency testing?

5 A Yes.

6 Q How about the rule requiring the engineer to  
7 call out the aspect or color of the signals?

11:36:59 8 A Yes.

9 Q When you say "yes," do you mean that yes, that  
10 information is in the database?

11 A Yes, that's correct.

12 Q And, yes, that's also one that is tested on,  
13 it's an important rule, correct?

14 A Correct, yes.

15 Q By the same token the delayed in the block is  
an

16 important rule -- let me back up.

17 It's true, is it not, the delayed in the block  
18 is an important rule which is why it's tested on?

11:37:30 19 A Yeah, that's correct.

20 Q How about the rule -- the various cell phone  
21 rules, are they contained in the database?

22 A I don't know if all of them are. The General  
23 Code Rule 1.10 is.

24 Q And if one of the -- there's more than one rule  
25 pertaining to the cell phone usage, correct?

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1 A Yes.

2 Q And if any of those were violated or allegedly

3 violated, would that be entered in the database or is it  
4 entered by subgroup?

5 A No. They would be entered as a Rule 1.10.

6 Q Regardless of whether it was an amendment or  
11:38:32 7 notice or bulletin or whatever it was, correct?

8 A Correct, yes.

9 Q There's a rule, is there not, about  
unauthorized  
10 persons being in certain places on the train, correct?

11 A Correct.

12 Q And where are unauthorized persons not supposed  
13 to be?

11:38:57 14 A In the control compartment of a cab car or  
15 locomotive.

16 Q Define unauthorized person as you use it with  
17 regard to the Head End Authorization rule that you just  
18 described.

19 A Without looking at the rule, my summary of it  
is  
20 a person that is not engaged in railroad business,  
doesn't  
21 have a responsibility or authorization to be up there or  
22 doesn't have the correct documentation or Head End letter  
11:39:29 23 to allow them to be up there.

24 Q That's even if they are an employee of Connex,  
25 unless they have one of those things you summarized,

1 they're not supposed to be there?

2 A Correct, yes.

3 Q Is that a rule that is found in the database?

4 A I'm not sure.

5 Q It is an important rule, though, needless to  
11:39:50 6 say?

7 A Very important.

8 Q Very important rule. Okay. Now, you've  
9 indicated -- let's go back to the period from June of '05  
11:40:25 10 up until you've changed position and work for Sprinter,  
11 okay.

12 You said that -- did you have a contract there  
13 as well on the Metrolink property, a written contract?

14 A Did I personally have a written contract?

15 Q Yes.

16 A No.

17 Q It was just an oral agreement between you and  
18 who?

19 A It was an offer and acceptance letter. It was  
20 issued by Connex Railroad.

21 Q And counsel asked something when we were using  
22 the word "Connex" back and forth.

11:40:58 23 When we talk about Connex within the  
24 metropolitan -- or within the Metrolink area, we're  
25 talking about Connex Railroad, LLC, correct?

1 A Correct.

2 Q Connex is a name that sometimes is used, or at  
3 least in the past, with other Veolia entities in other  
4 places, correct?

5 A Correct.

6 MR. SHOHET: And if you just allow me to make a  
7 clarification point for the record --

8 MR. PFIESTER: Of course.

9 MR. SHOHET: Connex Railroad, LLC is the contractor.  
11:41:29 10 Veolia is an owner -- is, I think, the sole owner of the  
11 LLC, so sometimes people refer to Veolia and Connex  
12 interchangeably, but Connex is the operator under the  
13 contract with Metrolink, and veolia is the managing  
14 member -- is the member of the LLC.

15 MR. PFIESTER: Thank you, Counsel.

16 MR. SHOHET: Okay.

17 BY MR. PFIESTER:

18 Q Is it true, is it not, Mr. Dahl, that people  
11:41:58 19 like yourself, when you talk about Veolia, the entities  
20 are sort of used interchangeably, for example, Mr. Parr  
21 works for some Veolia entity, but you're not sure which  
22 one, correct?

23 A Correct.

24 Q And that phenomena is common, that Veolia has a  
25 number of entities, correct?

1 A Correct.

2 Q And, in fact, do you know who Veolia  
Environment

3 is, correct?

4 A Yes.

11:42:29 5 Q Tell us who Veolia Environment is.

6 A Veolia Environment is the parent company to  
7 Veolia Transportation.

8 Q That's a company that's headquartered where?

9 A I believe it's in Paris.

11:43:00 10 Q Paris, France?

11 A Paris, France.

12 Q For example, let me show you Exhibit 16, page  
2,

13 down in the lower right-hand corner it says "Veolia  
14 Environment," correct?

15 A Yes, it does. It also has "Connex Railroad,  
11:43:23 16 LLC."

17 Q Correct. Then by the same token, let me show  
18 you an exhibit I'm going to mark MDE 20, which is two  
19 pages. I'm marking them 1 and 2. That's a letter dated  
20 September 15, 2008, and, again, on both the first and  
21 second page in the lower right-hand corner it uses the  
11:44:03 22 seal of "Veolia Environment," correct?

23 (Exhibit 20 was marked for identification.)

24 THE WITNESS: Yes. And it also references Connex  
25 Railroad, LLC.

1 MR. PFIESTER: Correct.

2 MR. SHOHET: When you -- these exhibits, other than  
3 the ones I gave you, are you going to have copies for me,  
4 as well?

11:44:29 5 MR. PFIESTER: Yes, I do.

6 MR. SHOHET: So this is 20. Is that the first --

7 MR. PFIESTER: That's the first page.

11:44:35 8 MR. SHOHET: Is this the first exhibit you marked  
9 other than the policies and stuff we gave you?

10 MR. PFIESTER: Yes.

11 BY MR. PFIESTER:

12 Q Referring to Exhibit 20, MDE 20 right in front  
13 of you, it does say "Connex Railroad, LLC," but it says  
14 "Connex" up at the very top, just "Connex," nothing else,  
15 correct?

16 A Correct.

17 Q Look at page 2 of Exhibit 20, Tommy McDonald,  
11:45:57 18 he's the General Manager we've spoken about, correct?

19 A Correct.

20 Q And who is Ron Hartman?

21 A Ron Hartman --

22 Q I'm referring to page 2.

23 A Yeah. Ron Hartman is, according to this on his  
24 title, and I don't know if his title has changed, but  
25 Executive Vice President for Rail.

1 Q And Executive Vice President of what, if you  
11:46:26 2 know?

3 A Veolia Transportation.

4 Q Do you know if he has any other capacities or  
5 wears any other hats in the Veolia entity group?

6 A I don't know.

7 Q Have you met him personally?

8 A Yes.

9 Q When did you first meet him, approximately?

10 A Um, probably -- approximately, sometime in  
2005.

11 Q After Veolia took over the Metrolink operation,  
11:46:59 12 correct?

13 A Yes.

14 Q And between then, that date, and the Chatsworth  
15 collision, the train wreck September 12, 2008, how often  
16 did you see him in person, approximately, if any?

17 A Oh, approximately seven, eight times.

18 Q And what was he doing or what was happening  
when  
11:47:30 19 you would see him?

20 A Usually when I'd see him, I would go to the  
21 Metrolink offices in Pomona, and he would be there with  
22 the General Manager, Tommy McDonald, or they would be out  
23 in the field at the Union Station, and I would run into  
24 him.

25 Q What is his railroad background, if any, if you

70

1 know?

2 A I don't know his background. He did work at  
3 Amtrak for a period of time.

11:47:59 4 Q Amtrak where, if you know?

5 A I don't know.

6 Q Where does he live, if you know?

7 A He works out of Silver Springs, Maryland.

8 Q That's one of the Veolia offices, is it?

9 A Yes.

10 Q Do you know if he has a title on the Veolia  
11 Environment entity?

12 A I don't know.

13 Q How about you see on that same page 2, Mark  
14 Joseph?

15 A Yes.

11:48:29 16 Q It says "Chief Executive Officer"?

17 A Yes.

18 Q What is that Chief Executive Officer of, if you  
19 know?

20 A I don't know.

21 Q Have you met Mr. Joseph?

22 A Yes.

23 Q Again, when did you first meet him,  
24 approximately?

25 A Oh, I've only met him, you know, once or twice

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1 on the Metrolink property and it was out in the field.

2 Q Was it before or after the Chatsworth  
collision?

3 A One time was before, and then he was actually  
in

4 Washington, D.C. during the NTSB hearing.

5 Q The 3rd and 4th of March of last year 2009?

6 A Yes.

7 Q Has he been out here, to your knowledge, after  
8 the Chatsworth collision?

11:49:28 9 A I haven't seen him. I've heard that he's been  
10 on the property, but I haven't run into him.

11 Q What were the circumstances of your meeting  
with  
12 him when you did see him the one or two times? And I  
13 don't mean -- well, just answer that question.

14 A A "hello" and a handshake.

15 Q You weren't involved in any specific work  
16 activity of his?

17 A No.

18 Q And he wasn't involved in any specific work  
11:50:02 19 activity of yours?

20 A No.

21 MR. SHOHET: Want to take a break now?

22 MR. PFIESTER: Sure. Let's go off the record,

11:50:10 23 please.

24 THE VIDEOGRAPHER: This is the end of tape and disk  
25 No. 1. Off record 11:50.

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1 ///

2 (Lunch recess was taken at 11:50 a.m.)

3 (Reconvening after lunch at 1:26 p.m.)

13:25:57 4 THE VIDEOGRAPHER: Good afternoon. This is the  
5 beginning of tape and disk No. 2 in the continuing video  
6 deposition of Richard Dahl. It's Wednesday, February 24,  
7 2010. On record 1:26.

8 BY MR. PFIESTER:

9 Q Mr. Dahl, before the noon break I asked you  
10 generally about whether you had a contract, and so forth.  
11 You remember that line of questioning?

12 A I do.

13 Q I didn't ask you, but I want to now to ask you,  
14 did you receive or were you entitled to receive any  
15 bonuses for your work at Metrolink?

13:26:30 16 A Yes.

17 Q And, first, what kind of bonuses?

18 A There was an annual bonus that was paid out in  
19 the month of September or October, and it was available  
to

20 all Metrolink employees -- excuse me, all Connex  
employees

21 from the General Manager all the way down to the last  
22 employee.

23 Q What was the basis -- strike that. You call  
24 this an annual bonus?

25 A It was an annual performance bonus.

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1 Q What was the tenets or elements of the  
2 performance which would entitle one to receive funds out  
3 of that bonus?

4 A I don't know all the components of it.

5 Q Was it discretionary or was it based on things  
6 which could be objectively measured?

7 A Again, I don't know the details of what the  
8 components of the bonus were.

9 Q Did you receive funds --

10 A Yes.

13:27:29 11 Q -- as part of the bonus?

12 A Yes.

13 Q I take it the managers received more than the  
14 craft workers?

15 A Yes.

16 Q What range bonus was it from low to high, if  
you  
17 know?

18 A 2- to \$3,000 was the actual take-home.

19 Q For?

20 A For a manager.

13:28:00 21 Q For a manager, okay. Now, were there any  
22 bonuses other than that, what you're calling an annual  
23 performance bonus?

24 A No.

25 Q Was there a thing or is this the thing that's

74

1 also referred to as the on-time bonus?

2 A I don't -- from what I understand is there was  
3 no on-time components of the bonus, that that actually  
4 went away with Amtrak but, again, I don't know all the  
5 components.

6 Q So there may have been an on-time bonus or you  
13:28:30 7 just don't know?

8 A I don't think so, but I don't know for sure.

9 Q Who would know? Would you expect Mr. McDonald  
10 to know?

11 A I would expect Mr. McDonald to know, yes.

12 Q And Mr. Konstanzer?

13 A Possibly.

14 Q Now, we also talked about the various written  
15 rules that the railroad has and you summarized where they  
16 may be found, do you remember, the General Code of  
13:28:59 17 Operating Rules?

18 A General Code of Operating Rules, Timetable  
19 Special Instructions, Safety Rules, Operational Notices.

20 MR. PFIESTER: I have marked Exhibit 21.

21 (Exhibit 21 was marked for identification.)

22 BY MR. PFIESTER:

23 Q That's the cover of the General Code of  
24 Operating Rules, correct?

25 A Correct.

75

1 Q It's in book form and contains a fairly large  
13:29:26 2 number of rules?

3 A Correct.

4 Q And whether it's in that form or in one of the  
5 other forms, a Connex Notice of Safety Rule, or whatever,  
6 they all had equal effect in that they had to be complied  
7 with?

8 A Well, yes. The railroad has a right to make  
one  
9 of the General Code of Operating Rules more strict by  
10 putting out Timetable Special Instructions.

11 Q Which is one of the types of publications you  
13:29:58 12 indicated?

13 A Correct.

14 Q And, in fact, Metrolink did do that, did it  
not?

15 A Yes.

16 Q Under your watch?

17 A Yes.

18 Q You have provided us, and we already marked as  
19 MDE 16 some of the items you reviewed, and page 1 is the  
20 General Code of Operating Rule 1.10. Do you see that?

13:30:27 21

A Yes.

22 Q Do you know when that piece of paper there that  
23 I have marked Exhibit 16 was promulgated?

24 A Well, it came out -- the most recent would be  
25 the Fifth Edition, effective April 3rd, 2005. I believe

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1 it was in earlier versions of the General Code, but I  
2 can't swear on that, and it was maybe not in its current  
3 form.

far

4 Q Is page 1 of Exhibit 16 its current form, as

13:30:56 5

as you know?

6 A Yes.

7 Q Was it the form that was in effect in the Code,  
8 General Code of Operating Rules, on September the 12th of  
9 2008?

10 A Yes.

11 Q Now, if someone -- strike that.

12 What may the company do by way of disciplining  
13 somebody if they violate one of the rules? What are the  
14 options available?

13:31:30 15

MR. SHOHET: Objection. The question is overbroad

16 and ambiguous.

17                   You can answer it if you can.  There's a lot of  
18 codes and a lot of rules.

19           MR. PFIESTER:  Yeah, I know.  I'm trying to cut to  
20 the chase.

21           THE WITNESS:  Depending on the rule, if it's a  
22 certification issue, if it is a Union issue, there is a  
23 very broad range of discipline.

24 BY MR. PFIESTER:

25           Q     Let me back up.  You're familiar with, as we

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are           1     discussed before the noon recess, about the rules that  
2     involved in this Chatsworth wreck, correct?

3           A     Yes.

4           Q     Like the red signal, running a red block, you  
5     remember those?

6           A     Yes.

7           Q     The cell phone rule?

8           A     Yes.

9           Q     The failure to call signals out by the  
10    locomotive engineer, correct?

11          A     Yes.

12          Q     The delayed-in-block rule?

13:32:26 13       A     Yes.

out          14       Q     The failure of Mr. -- the conductor to point

15    the obligations of Mr. -- of the engineer with regard to

16 calling out the signals if he didn't do it, Rule 1.47?

17 MR. SHOHET: I'm sorry, what's your question, is he  
18 familiar with those rules?

19 MR. PFIESTER: Yes.

20 THE WITNESS: Or are you saying how they relate to  
21 the Chatsworth incident? I'm familiar with the rules,  
22 yes.

23 BY MR. PFIESTER:

24 Q Right. And also that they relate to the  
25 Chatsworth incident is my question, as well.

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1 MR. SHOHET: Object. Overbroad, compound.

2 If you're asking if each of those rules is  
3 implicated in some way in the Chatsworth accident, that's  
4 asking him for an opinion on what caused the accident, so  
5 I think if you're going to do that, you have to do it by  
6 the rule.

7 You can answer it if you can, Mr. Dahl. Go  
8 ahead.

9 THE WITNESS: The conductor, reestablished by his  
10 statement, was in communication with the engineer per our  
11 rules of the Chatsworth station.

12 BY MR. PFEISTER:

13:33:29 13 Q What is the factual basis for that statement?

14 A That is actually his statement to me.

15 Q Mr. Heldenbrand?

16 A Correct.

17 Q Where was he when this happened, according to  
18 your understanding? Where was he at the station when  
this  
19 happened?

20 MR. SHOHET: Excuse me?

21 MR. PFIESTER: It's ambiguous.

22 MR. SHOHET: Where was he when he made the  
23 statement or where was he --

24 By MR. PFIESTER:

25 Q Where was Mr. Heldenbrand, the conductor, when

79

1 he supposedly made this statement?

2 A On the platform at Chatsworth before departing.

3 Q Where was the engineer when the statement was  
13:34:00 4 made to him?

5 A On the locomotive departing Chatsworth.

6 Q Did he say that the statement was made via  
7 radio?

8 A He didn't say, but I would assume so.

9 Q Why is that?

10 A The distance between the engineer and the  
11 conductor.

12 Q Right. The conductor is back with the  
13 passengers at the end of the train?

14 A Four cars back.

13:34:29 15 Q Yes. Have you listened to the radio tapes?

16 A I have not.

17 Q Do you have any other basis for making the  
18 statement that the conductor complied with 1.47, other  
19 than what Mr. Heldenbrand told you?

20 A I do not.

21 Q Where were you and where was he when he told  
you  
22 that?

23 A That was directly after the accident at the  
24 accident scene.

25 Q The accident happened at 4:22 in the afternoon,

80

1 correct?

13:34:59 2 A Correct.

3 Q Approximately, when was that statement made?

4 A Approximately, an hour and a half later.

5 Q Where was he and where were you?

6 A He was being treated for his injuries in the  
7 triage area of the accident scene, and I was interviewing  
8 him while he was being treated.

9 Q Was there anyone else present at that interview  
10 that you recall?

13:35:30 11 A I believe Mike Hyman was present.

12 Q He's the gentleman you mentioned before?

13 A Yes.

14 Q Anyone else?

15 A There were two other individuals. I don't  
know.

16 They were very close to Mr. Heldenbrand. I don't know if  
17 they overheard the statement or not. Mr. Dave Boswick of  
13:35:57 18 SCRRRA and an Amtrak employee that I don't know his name  
19 that works out of Oxnard.

20 Q Did you record on a tape or other recording  
21 device the interview at that point between yourself and  
22 Mr. Heldenbrand?

23 A No, I did not.

24 Q Did he sign a statement or was it just a casual  
25 conversation?

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1 A It was a verbal interview.

2 Q Verbal interview, okay. And did you report to  
3 anyone what he said in writing? Did you in writing  
report  
4 what he had said?

13:36:27 5 A No.

6 Q Now, we were listing the rules that are  
involved  
7 in the accident, and in addition to the ones I've already  
8 mentioned, there is a rule, the Head End Authority Rule,  
9 the rule that prohibits unauthorized people to ride in  
the  
10 cab car or area of the locomotive, correct?

11 A There is a rule, correct.

13:36:56 12 Q Now, focusing on those rules that we've just  
13 been talking about the last few minutes, what is the  
range  
14 of discipline, if you will, that may be given out for the  
15 violation of any of them?

16 A Well, the Head End Authorization --

17 MR. SHOHET: Excuse me, I'll object as compound. Go  
18 ahead.

19 THE WITNESS: The Head End Authorization does not  
20 have a factor, in my opinion, in the Chatsworth incident.

21 BY MR. PFEISTER:

22 Q Why is that?

13:37:29 23 A There were no unauthorized riders at the head  
24 end at the time.

25 Q Have you read the text, the substance of the

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1 text of the messages between Mr. Sanchez and his various  
2 friends while he was working the railroad?

3 A Supplied from the NTSB and the FRA, yes.

4 Q Did that substance include the fact in what you  
13:37:58 5 read that indicated that some teenagers, some people that  
6 were not certified locomotive engineers nor employees of  
7 Metrolink or Connex, had ridden in the past with him?

8 A Yes, that's what the text said.

9 Q That's Mr. Sanchez's text?

10 A Correct.

11 Q And by the same token, do you recall reading  
12 that some of the substance of the text said that he  
13 would -- they were anticipating that Mr. Sanchez was  
going  
14 to permit more unauthorized riding in the head end,  
15 correct?

13:38:29 16 A Correct.

17 Q Now, that communication occurred by text, text  
18 message, correct?

19 A Correct.

20 Q All right. And you're aware that the text  
21 message was actually sent right about the time that he  
ran  
22 through the red block? Were you aware of that?

23 A I don't know when the -- when it was actually  
24 sent. I did see a time frame that was fairly close to  
his  
25 departure out of Chatsworth.

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1 Q Well, if he sent a text message at four o'clock  
2 and 22 minutes and zero seconds but ran through the -- if  
3 he, I'm talking about if Mr. Sanchez sent a text message  
13:39:27 4 at four o'clock, 22 minutes and zero seconds on the  
5 coordinated clock and he ran through the stop, the red  
6 stop signal at CP Topanga, less than five seconds before

his

7 that, wouldn't that lead you to believe that, in fact,  
8 texting or -- in order to get somebody -- permit somebody  
9 to ride on the train had something to do with the  
10 accident?

11 MR. SHOHET: Objection. Calls for conclusion, vague  
12 and ambiguous, assumes facts not in evidence, incomplete  
13 hypothetical.

14 You can answer.

13:39:57

was

15 THE WITNESS: What I was told -- and I'm not a  
16 technical expert on the texting -- but what I was told  
17 that that was the time that it was actually received at  
18 the tower and that they didn't know exactly what time it  
19 was actually sent from the phone.

20 Again, you know, the fact that he allegedly was  
21 texting, there was not a violation of Head End  
22 Authorization at that time.

23 BY MR. PFIESTER:

24 Q Have you learned from any source that  
25 Mr. Sanchez, the engineer, was looking forward to having

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1 more than a platonic interest with this teenage boy or  
2 boys?

3 MR. SHOHET: Well, I'm going to object and instruct  
4 him not to answer. Those records are not public, and  
5 there's a big question as to whether the content of those

6 messages to the extent they involve minors will never be  
7 made public, so I'm going to object and instruct him not  
13:40:58 8 to answer.

9 MR. PFIESTER: What is the grounds?

10 MR. SHOHET: Well, number one, there's an objection  
11 on the relevance of the content themselves to any issue  
in  
12 the case. There's also about to be filed a motion for  
13 Protective Order to protect against that on relevance  
14 grounds but, also, I believe the parents of the minor  
15 children will be filing statements in intervention to  
16 block the production of the content of minor children  
with  
17 Sanchez.

13:41:30 18 Now, you're going to have another session of  
19 this deposition, so perhaps by then that issue will be  
20 resolved, perhaps not, but at this point I think it's  
21 appropriate for us to defer any examination on the  
22 contents of those messages until that issue is resolved.

23 MR. PFIESTER: Well, the -- and I accept that  
24 representation, thank you.

25 Does the Protective Order you're speaking to

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1 prevent the disclosure in a deposition, even a partially  
2 sealed deposition?

13:41:59 3 MR. SHOHET: Well, it doesn't address the mechanics

will

4 of how the content will be protected and from whom it  
5 be protected. If it's irrelevant, then it would be  
6 protected certainly from even discovery.

7 But I think the point is we're going to have a  
8 chance to decide that issue with the court and figure out  
9 to what extent the content of those messages becomes  
10 appropriate for use in the case and if so under what  
11 circumstances, and today we're really not in the position  
12 to know the answer to that, and you're going to have  
13:42:29 13 another chance at this, so I would just simply say -- I'm  
14 going to instruct him either way, but I would hope that  
15 you would agree with me that's not an inappropriate thing  
16 to do under these circumstances.

17 MR. HIEPLER: Do you have a hearing date?

18 MR. SHOHET: I'm not the one working on it.

19 MS. BACON: Let me ask for clarification.

20 Is the Protective Order that you're talking  
21 about that you think is going to be addressed in the  
22 context of the text messages the same Protective Order  
23 that has been circulating for the past approximately a  
24 week about general discovery?

25 MR. SHOHET: No. I think something is going to be

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1 filed this week. I think there's some papers being filed  
2 this week. Beyond that I don't want to misrepresent

being

3 anything. It's not my issue. I know the papers are  
4 filed. I think it's with respect -- maybe it's with  
5 respect to your discovery request or their discovery  
6 request.

7 MS. BACON: There's a Motion to Compel, though, of  
8 text messages pending.

9 MR. SHOHET: That may be the issue.

10 MR. KIESEL: Couple of things. First, it reminds me  
11 that March, whatever date it was for the status  
13:43:27 12 conference, is being moved. I think it was March 2nd or  
13 3rd was the status conference. It's being moved because  
14 Judge Johnson can't do it that date. They are moving it  
15 to March 11th at 8:30 in the morning, which is one hour  
16 before the Motion to Compel the phone records filed by  
the  
17 Gerardi office is set to be heard.

18 So at 8:30 we have the status conference, 9:30  
19 is going to be the Motion to Compel the production of the  
20 records. Maybe in that context that this issue is going  
21 to be addressed.

22 MR. SHOHET: Hopefully.

13:44:00 23 MR. KIESEL: That's fine.

24 MR. PFIESTER: He's instructed him not to answer.

25 MR. KIESEL: We'll move on, but recognize we'll get

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1 clarification from the court on that issue and depose him

2 at the second session.

3 MR. PFIESTER: You'll make him available?

4 MR. SHOHET: Of course. If the court orders that  
5 that's appropriate, then he'll be available. I think he  
6 has to be available at least one more day anyway, so  
we'll  
7 make sure it's after this issue is resolved.

8 BY MR. PFIESTER:

13:44:30 9 Q Continuing, with regard to running the red  
block

10 rule and its violation, what are the lowest and highest  
11 most serious discipline that may be imposed on an  
12 employee?

13 A If it's a certification violation, the lowest  
is

14 30 days off, suspension of certification. They can come  
13:44:57 15 back a little earlier to do training and awareness with  
16 fellow employees, but they can't operate. And then, of  
17 course, the most severe could be termination.

18 Q Who makes that determination, whether it should  
19 be the 30 days off or termination?

20 A Well, that is written in the CFR, but the  
21 General Manager will be the one to make the decision at  
22 the time.

23 Q That's Mr. McDonald?

24 A Mr. McDonald.

25 Q And with regard to the phone rules, the

1 telephone rules that -- those predating the Chatsworth  
2 collision, which are listed in Exhibit MDE 16, what is  
the  
3 range of punishment that can be meted out for violation  
of  
4 those?

5 A The current range?

6 Q As of -- no, as of --

7 A As of the time of the incident?

8 Q Yes, as of September the 12th, 2008 when the  
9 collision occurred.

10 A Well, that was strictly a company policy at  
that  
13:46:01 11 time, and Mr. McDonald would have that information. He  
12 would be the one that would make that decision.

13 Q Were you aware of anyone having been punished  
14 for violation of the cell phone rule before September the  
15 12th of 2008?

16 A Could I ask you to clarify "punished"?

17 Q Okay, certainly. I'll restate it. Thank you.

18 Were you aware of anyone being disciplined for  
19 violating the cell phone rule before September the 12th  
of  
13:46:28 20 2008?

21 A Yes.

22 Q How many people, approximately?

23 A Approximately, two to five or six.

24 Q And what's the basis of your statement of two  
to  
25 five or six were disciplined?

1           A     I was aware -- I was directly involved with one  
13:46:58 2     of them, and through discussions after Chatsworth, I did  
3     see some records right after the incident that identified  
4     a couple other people.

5                     And the day -- back in 2006 when the cell phone  
6     policies actually went into effect, there were three  
7     people that I was -- that I was aware of that actually  
got 8     disciplined.

9           Q     Were you involved in that disciplinary process?

13:47:29 10    A     I was involved with one of them.

11          Q     What was the nature of that violation?

12          A     The nature of the violation was a verbal  
13     warning, a failure into the test system and follow-up  
14     test.

15          Q     Was that person you're speaking about in 2006  
16     Mr. Sanchez?

17          A     It was.

18          Q     Do you remember when that occurred, what month  
13:47:59 19     or what season?

20          A     September, I believe, of 2006.

21          Q     What was the possible range, again, of  
potential

22     discipline for someone who violated the cell phone rule  
at

23     that time, verbal, verbal counseling?

24           A     That actual decision would be from Gregg  
25     Konstanzer.

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1           Q     What were the circumstances that you became  
13:48:32 2     aware that Mr. Sanchez had violated the cell phone rule  
in  
3     September of 2006?

4           A     That was directly after Connex put their cell  
5     phone policy out and we made all the employees aware of  
6     it. We did briefings, and then approximately a few weeks  
13:48:52 7     later we went out and actually tested for it.

8                     There was a group of managers, several Connex  
9     managers, Amtrak manager, UP manager, performed joint  
10    tests at downtown Burbank where we boarded trains, asked  
11    to see cell phones.

12                    Mr. Sanchez's situation was I boarded the  
train,  
13    one of my co-workers called his cell phone. It rang  
while  
14    I was talking to Mr. Sanchez.

15           Q     And by his cell phone, you mean his personal  
16    cell phone or his company cell phone?

13:49:28 17           A     Mr. Sanchez was not issued a company cell  
phone,  
18    so this would have been a personal cell phone.

19           Q     And how was his personal cell phone number  
20    obtained?

21           A     He has it on his employee notification that he  
22 submits to the corporation.

23           Q     And is that true of all the employees that were  
24 working in train and engine service at that time?

25           A     Not all of them would put a cell phone number

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1     down.

2           Q     But Mr. Sanchez did?

13:49:57 3           A     Yes.

4           Q     The testing is what you referred to when  
5 someone, one of the officers like yourself or managers,  
6 would actually call that number and see if it rang?

7           A     Yes.

8           Q     And it did in his case?

9           A     Yes.

10          Q     Was this testing continued as a program or  
11 individually after 2006?

12          A     No, it wasn't.

13          Q     Why not?

13:50:24 14          A     I'm not exactly sure. That may be a question  
15 for Mr. Konstanzer. I know at some point following the  
16 original testing in September up until sometime around  
the

17 Metrolink -- the Chatsworth incident, the FRA had  
18 discouraged actually the calling of cell phone numbers

due

19 to the fact that it was a distraction or could be a

20 distraction to an engineer who may be operating at the  
21 time.

22 Q Even though it was a violation of the rule?

23 A Yes.

24 Q And what is the basis for your information  
about  
25 the FRA discouraging such private telephone calls?

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1 A That was information given to me by  
2 Mr. Konstanzer.

3 Q Was it a written directive from the FRA, or do  
4 you recall?

5 A I don't recall.

6 Q Now, you said that Mr. Sanchez was verbally  
7 warned, right, in 2006?

8 A Correct.

9 Q And was he -- describe what verbally warned  
13:51:28 10 means.

11 A That he was given a verbal warning that he was  
12 in violation of the new Connex cell phone policy, that it  
13 must be turned off and stowed away. Although it was  
14 stowed away in his grip, it was not turned off.

15 He responded to me that he knows the rule and  
as  
16 he stowed his phone away in the morning, he just forgot  
to  
17 turn it off.

13:51:58 18 Q And was written note made or documentation made  
19 of that verbal -- that incident?

20 A Yes. That was entered into the efficiency  
21 testing database.

22 Q So if someone wanted to find it, they could  
just  
23 put in the information regarding cell phone usage and  
that  
24 incident would come up?

25 A Yes.

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1 Q Now, to your knowledge, were all of the  
2 incidences when someone violated the cell phone rule put  
3 into the database?

13:52:28 4 A I can't answer that. I don't know for sure.

5 Q Was it your practice to always put your verbal  
6 warnings about whatever rule violation into the database?

7 A No.

8 Q What would make you determine whether to enter  
9 verbal warnings into the database or not?

10 A If it was during an efficiency testing event.

11 Q If it was, then you would?

12 A Yes.

13:52:57 13 Q And are there matters entered in the testing  
14 efficiency database that are not -- that occur outside  
the

15 time of a field test or efficiency test?

16 MR. SHOHET: Excuse me, can you read that question  
17 back for me, please.

18 MR. PFIESTER: I can reask it.

19 MR. SHOHET: Please. I think you may have asked it  
20 wrong, but go ahead.

21 BY MR. PFIESTER:

22 Q Does the -- based on your experience here, does  
23 the database, the efficiency testing, the database,  
24 contain information about conduct which occurred other  
25 than when an official efficiency test was being  
conducted?

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includes 1 A Yes, because there are -- the test also  
2 tests and observations.

3 Q Correct. So if you noticed, for example,  
4 somebody using a cell phone, right, that would be an  
5 observation?

6 A Correct.

7 Q And was it your practice to put -- to note in  
13:54:00 8 the database all your notices of rule violations, or not?

9 MR. SHOHET: Excuse me. Notices of rule violations?  
10 You mean observed rule violations?

11 MR. PFIESTER: Yes. Let me back up. Thank you.

12 Q Was it your practice before September the 12th  
13 of 2008 to note in the database all observed violations  
of

14 rules?

15 MR. SHOHET: During efficiency tests, right?

16 MR. PFIESTER: Well, no.

17 Q Efficiency test -- I mean, you've already  
13:54:27 18 indicated that you can -- if you just happen to observe a  
19 violation, even though it wasn't during an official  
20 efficiency test, that that's something that may be noted  
21 in the database, correct?

22 A Correct.

23 Q And my question then following up is, was it  
24 your practice or not to enter into the database any time  
25 you noticed such a rule violation you observed, whether

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1 it's inside or outside of a test?

13:54:57 2 A If -- yes, it was my practice, although it  
3 wasn't done all the time because some of the rules we  
4 would observe may not be in the database.

5 Q Okay. But the ones we've talked about here  
6 today are all in the database, correct?

7 A Correct. Well, one except for -- I'm not sure  
8 of the unauthorized person on the head end. Since that  
9 doesn't have a General Code rule number, it may be  
13:55:30 10 underneath a Rule 1.1.3, Notices, and then maybe some  
11 comment in the comment section about Head End  
12 Authorization, but I don't know if that test, that rule,

13 is in the database.

14 Q As a manager, did you sometimes -- other than  
15 the Head End Authority Rule, did you -- was it your  
16 practice to always put rule violations in the database,  
17 regardless whether it was during an efficiency test or  
18 not?

13:55:58 19 A Not always, but as most as I can.

20 Q What made you decide not to put the observed  
21 rule violation into the database?

22 A Severity. Depends on if we were in a testing  
23 event or observation event or if I had other  
documentation  
24 that went to the office. It's kind of at discretion. It  
25 was normally my practice.

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1 Q And are you required or encouraged to enter X  
2 number of observations or X number of failures of the  
3 rules outside of -- let me back up.

4 You've already indicated that if you're  
5 conducting an efficiency test and there's a rule  
6 violation, it was your practice, was it not, to enter it  
7 into the database always?

8 A Yes.

9 Q Always, is that true?

13:57:00 10 A No. It was my practice as much as possible.

11 Q And what I don't quite understand, and maybe  
you

12 can clarify, what do you mean "as much as possible"?

13 A Again, there may not be a rule that actually  
14 falls underneath the exact number of the database, and it  
15 may be a verbal warning that didn't fall into that  
16 category. If it did, I tried as much as possible to  
enter  
17 it into the test system.

18 Q Other than the Head End Authority Rule, it's  
19 your testimony that you always tried to enter the other  
20 rule violations?

13:57:32 21 A Yes.

22 Q "Yes"? Now --

23 MR. SHOHET: I didn't have a chance to object. I  
24 wasn't sure what other rule violations you were referring  
25 to. I think you established some communication with the

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1 witness on this, but I'm not sure the record reflects it.

2 MR. PFIESTER: When I'm talking about that, I'm  
3 talking about the other ones we listed.

4 MR. SHOHET: Every rule you talked about?

5 MR. PFIESTER: No, the one's that we've listed, the  
6 red signal rule, the phone rule, the failure to call out  
7 the aspects, the delayed-in-block rule.

13:57:59 8 MR. SHOHET: Okay, those rules.

9 BY MR. PFIESTER:

10 Q Those rules, right?

11 A Yes.

12 Q Now, were you, as a manager, expected to  
conduct

13 a certain number of efficiency tests in any given period?

14 A Yes.

15 Q Describe that, please.

16 A Fifty tests, efficiency tests, by each manager  
13:58:30 17 should be accomplished each month, including a test on  
18 each employee per month, each active employee per month.

19 Q Okay. And would observing someone comply with  
work

20 the efficiency test -- if you saw a person working at  
21 and saw him -- did not see him or her violating a rule,  
22 would that qualify as one of your required number of  
23 tests?

24 A It could, depending on the rule. Example,  
25 blowing the whistle correctly at a crossing, yes, I would

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1 enter that as a complied.

2 Q So if somebody correctly blew a crossing, then  
3 your typical practice was to enter it as a complied?

4 A Yes.

5 Q How many times after September of '06 was  
6 Mr. Sanchez tested on the cell phone rule?

7 A I don't know.

13:59:27 8 Q Would that be entered into the database or

9 documented some other place?

10 A It would be -- if there was a failure, it would  
11 have been documented in the test system.

12 If there was an observation and a compliance,  
it  
13 may not be entered. It's kind of at the discretion.

14 Q Did anybody, other than you, conduct this  
15 testing about the cell phone on Mr. Sanchez after  
16 September of 2006?

13:59:58 17 A I don't know.

18 Q Do you know whether or not the other people  
that  
19 were involved in this joint testing effort did?

20 A I don't know.

21 Q Was it generally the obligation of the manager  
22 of the employee to follow up with testing of that  
23 railroad's employee?

24 A Usually.

25 Q Do you have a more specific date when you say

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1 this or you understood the FRA was discouraging the  
2 calling of private cell phones?

3 A No, I don't.

4 Q Whether it's 2007, 2008?

5 A I don't know when it was.

6 Q Was it before the Chatsworth collision?

7 A I don't --

8 MR. SHOHET: It being the FRA communicated  
9 discouragement about that?

10 MR. PFIESTER: Yes.

11 MR. SHOHET: I just wanted to make sure.

14:01:08 12 THE WITNESS: Yeah, I don't know when it was.

13 BY MR. PFIESTER:

14 Q Other than that, were you aware of other cell  
15 phone violations from 2006 up to the date of the  
accident,  
16 other than what you've already testified to?

14:01:26 17 A "Other" as in we had two or three that day --

18 Q Yes.

19 A -- and there were one or two. I have heard  
20 that, you know, probably happened, more than likely  
21 happened, but I wasn't involved with that on other lines  
22 with other managers.

23 Q And is it your testimony that you kept testing  
24 him, meaning Mr. Heldenbrand -- not Mr. Heldenbrand -- is  
25 it your testimony you kept testing Mr. Sanchez until you

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1 were instructed by Mr. Konstanzer that the FRA did not  
2 want private telephone numbers called?

3 A If I understand your question, we kept testing  
4 him. We did not dial his number after that initial  
5 blanket test.

his 6 Q So you didn't -- okay. Why did you not dial

14:02:26 7 number again as part of your testing procedure?

8 A Well, we did it in the very beginning to  
9 enforce -- you know, make sure everybody understood we  
10 were out testing. There was some conversation about the  
11 Unions were involved, that it was not a good practice,  
12 although that wouldn't make up my mind one way or the  
13 other, just I know there was some conversations, and we  
14 weren't instructed to go out and do any more of the phone  
14:02:57 15 calls and dials.

16 Q Instructed by whom?

17 A We were instructed by Mr. Konstanzer.

18 Q Was Mr. Konstanzer the one in charge of  
19 instructing about the conduct of efficiency tests, the  
20 specific kinds?

21 A He gave us some direction. Some of it is done  
14:03:25 22 in the field.

23 Q I take it that when you were on that joint  
24 testing and Mr. Sanchez had his cell phone on in  
violation

25 of the rule, that you actually saw his cell phone?

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1 A No, I did not.

2 Q You just heard it ring?

3 A Yes.

4 Q In your presence?

5 A Yes.

6 Q Did you ever see his cell phone?

7 A Yes.

8 Q When was that?

14:03:59 9 A I've seen his cell phone a couple times in the  
10 office, um, when he had shown up for work.

11 Q It was the kind of cell phone, was it not, that  
12 has a keyboard on it that makes it easy to text message  
or  
13 easier?

14 A The one I saw was, it had a keyboard.

14:04:28 15 Q At any of those times that you actually saw his  
16 cell phone before the Chatsworth collision, did you  
17 counsel him on being careful not to use -- violate the  
18 cell phone rule?

19 MR. SHOHET: Can I hear the question again, please.

14:05:00 20 I just want to hear the references. I'm not saying it's  
a  
21 bad question, I just want to understand.

22 (The record was read.)

23 THE WITNESS: No. No, I did not counsel him or tell  
24 him to be careful not to violate the cell phone rule.

25 That was in the office prior to coming on duty, and he  
was

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1 making a personal phone call.

14:05:27 2 BY MR. PFIESTER:

3 Q But you knew that he had already violated the  
4 rule at least once before in your presence, correct?

5 A Yes.

6 Q And you knew that it was a specific by  
September  
7 the 7th of 2006, and I refer to Exhibit 16, the company  
8 was officially on record saying that "The inappropriate  
14:05:59 9 use of electronic devices by employees on duty has been  
10 shown to be a contributing factor in personal injuries  
and  
11 rule violations. While you are working you are obligated  
12 to be completely focused on your job and the safe  
13 transportation of passengers," et cetera.

14 Do you remember that?

14:06:30 15 A Yes.

16 Q And you knew that -- did you have any  
17 information from any source before September the 8th --  
18 excuse me, before September the 12th, 2008 that  
19 Mr. Sanchez was using his cell phone in violation of the  
20 rules, other than the time in 2006 when he was caught by  
21 you?

14:07:00 22 A I had a report from his conductor,  
23 Mr. Heldenbrand, sometime in early August. As  
24 Mr. Heldenbrand was heading to his train in Montalvo in  
25 the morning, he had actually caught Mr. Sanchez either on

1 his phone or about to use his phone while the train was  
2 stopped at a station, and he didn't tell me what station.

3 Q And such usage by Mr. Sanchez would be a  
14:07:26 4 violation of the rule, correct?

5 A Yeah, if he was caught doing that, correct.

6 Q And where were you and where was Mr.  
Heldenbrand

7 when you had this conversation?

8 A We were outside the Montalvo crew base trailer.

9 Q Was Mr. Sanchez anywhere around, as far as you  
10 know, that morning?

11 A He was there earlier during the job briefing,  
12 but he had already departed to go inspect his train.

14:07:56 13 Q What did you do as a result of Mr.  
Heldenbrand's

14 report?

15 A I asked Mr. Heldenbrand what his actions were,  
16 and Mr. Heldenbrand told me that he had told Mr. Sanchez  
17 that he can't use the phone, that he's not supposed to.  
18 Mr. Sanchez, per Mr. Heldenbrand told him "Yeah, I know"  
19 and put the phone away.

14:08:29 20 So within the next either that day or the next  
21 morning after the train was pulling down to the Montalvo  
22 crew base or the Montalvo station, I walked on the train  
23 and actually had a discussion with Mr. Sanchez about  
24 Connex cell phone policy and, um, if he knew it and  
25 understood it.

1                   The train had just arrived as it shoved back  
14:08:59 2   into the station. Mr. Heldenbrand was on the locomotive.  
3   I walked into the cab car. Mr. Sanchez was sitting at  
the  
4   table behind the control compartment filling out his time  
5   slip.

6           Q    Is that within the Red Zone?

7           A    No.

8           Q    It's outside the -- you know what I'm talking  
9   about, the Red Ribbon Zone?

10          A    The Red Ribbon Zone was, I think, established  
11   after Chatsworth, but it was still outside the Red Zone  
12   area.

14:09:39 13        Q    Physically outside of it?

14          A    Yeah.

15          Q    Did you speak to Mr. Sanchez at that time  
16   about --

17          A    I did.

18          Q    Was there anyone else present?

19          A    No, there was not.

20          Q    You're talking up in the mezzanine area where  
21   the cab car engineer sits?

22          A    Yes.

14:09:58 23        Q    But at the table?

24          A    At the table, yes.

25          Q    And what did you tell him and what did he tell

1 you?

2 A Well, I asked Mr. Sanchez if he knows about the  
3 cell phone policy, if he had any questions about it, and  
I  
4 asked him -- he said, "yeah," kind of acknowledged me,  
5 yes, he understood.

6 So I asked him where his cell phone was. He  
14:10:27 7 pointed to his grip, which was on the other side of the  
8 control compartment, and then I asked him if it was off,  
9 he said, "Yes, it's off." We talked about some track  
10 warrants and bulletins for the day.

11 About that time, as I was getting ready to get  
12 off the train, it was time to leave, Mr. Heldenbrand came  
13 up, they had a quick briefing, and they departed.

14 Q Did they have a briefing in front of you?

15 A They had a briefing about time to go, he was  
16 going to make his announcements, head up to the head end  
14:10:59 17 of the train, just a standard conversation.

18 Q Did you, yourself, check Mr. Sanchez's cell  
19 phone to see if, in fact, it was off?

20 A No, I did not.

21 Q Why not?

22 A I was confident that he understood the policy  
23 and that -- you know, it wasn't really an issue. I  
didn't  
24 really feel I needed to check. My purpose was to make  
25 sure he understood the policy.

1 Q Well, was Mr. Heldenbrand the conductor, a  
14:11:28 2 person that would complain all the time about the  
3 engineers?

4 A No, I wouldn't say he would complain.  
5 Mr. Heldenbrand was fairly intense about his job, and he  
6 did, you know, a lot of the procedures, their enforcement  
7 and stuff, he would make sure he'd be very verbal on.

8 Q He wanted to follow the rules?

9 A Yes.

10 Q And he wanted other people to follow the rules  
11 too?

12 A Yes.

14:11:59 13 Q Is it true that he told you that Mr. Sanchez  
had

14 been abusing the phone rule for a period of time?

15 A He told me that morning or the morning before  
16 that he had caught him, and that's the only time I spoke  
17 with Mr. Heldenbrand about Mr. Sanchez's cell phone.

18 Q And to your recollection, had Mr. Heldenbrand  
19 turned in Mr. Sanchez about any other rule violation or  
14:12:30 20 alleged rule violation?

21 A Yeah. Mr. Sanchez had a little bit of an  
22 attendance policy [sic] and per our rules, if the  
engineer  
23 or conductor is more than five minutes late, they have a  
24 responsibility and a rule that they're supposed to notify

25 the manager that the engineer or conductor has not shown

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1 up for work so the manager can make arrangements either  
to  
2 take the train or bump somebody up to make sure we don't  
3 lose it.

14:12:59 4 And I believe we had an issue with that at  
5 Taylor Yard in the afternoon, but I'd have to check the  
6 records and actually let you know.

7 Q Do you remember what the facts were in that  
8 situation where you're saying that Mr. Heldenbrand  
9 reported Mr. Sanchez?

10 A No, I'd have to review the records. My  
11 recollection was that Mr. Sanchez was late coming back  
12 from break and Mr. Heldenbrand went to the manager at  
14:13:30 13 Taylor Yard to let him know that Mr. Sanchez was not back  
14 on duty as required by the rules.

15 Q Well, Mr. Sanchez was the engineer of the train  
16 that Mr. Heldenbrand acted as conductor in, correct?

17 A Correct.

18 Q So he couldn't do his job unless he was back at  
19 work, correct?

20 A Correct.

14:13:55 21 Q And what did you do about that situation?

22 A I believe, um -- and I'd have to look again at

23 the records because attendance is a progressive  
discipline  
24 policy, and based on the number of lates, the number of  
25 absences, they get different levels of discipline.

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1 Q Did you give some level of discipline to  
2 Mr. Heldenbrand -- strike that -- to Mr. Sanchez over  
3 this?

4 A Again, I don't remember at what level that was  
14:14:26 5 at that time.

6 Q Going back to the conversation you said you had  
7 in August of '08 with Mr. Sanchez after being reported by  
8 Mr. Heldenbrand as to him violating the cell phone rule,  
9 do you remember that?

10 A Yes.

11 Q Did you document that in any record of any sort  
12 with the company?

13 A No.

14 Q Why not?

15 A Again, it was a report from Mr. Heldenbrand.  
It

14:14:58 16 was not seen by us, by a manager. I was confident,  
again,

17 to -- that Mr. Sanchez was aware of the rules. I did  
some

18 follow-up observation on Mr. Sanchez over the next few  
19 weeks to see if he was in compliance with the rules and,  
20 again, there was no -- we observe several things every

21 day, and we don't document everything we observe.

22 Q Describe, if you would, factually what follow-  
up

14:15:29 23 you did with regard to Mr. Sanchez regarding and this  
cell

24 phone rule in August and September of '08.

25 A First observation I did is I got on the train  
in

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1 the morning at their stop in Oxnard. The train was cab  
2 car first and Mr. Sanchez, of course, the engineer.

3 I hopped on the train, wanted to ride. I  
walked

4 up to the mezzanine, head end level, and I looked in the  
14:15:59 5 window. I was looking for a couple things, one thing  
6 being the door being closed; the second thing being that  
7 Mr. Sanchez was there, you know, alert and attentive and  
8 not on his cell phone.

9 He didn't see me come up. I tapped on the  
10 window, waved at him, he acknowledged me. I got off the  
11 train, and the train departed.

12 Q You're talking about the window into the  
13 compartment where the locomotive engineer operates the  
cab

14:16:28 14 car when it's in push mode?

15 A Yes.

16 Q Let me show you an exhibit I've marked 22.

17 (Exhibit 22 was marked for identification.)

18 BY MR. PFIESTER:

19 Q Do you see that? Is that an example of the  
20 window in the compartment in which the locomotive  
engineer  
21 sits when he operates the train in cab car forward mode?

22 A Yeah, that is the inside of a cab car looking  
23 from the inside of the control compartment towards the  
24 window out.

25 Q With the person's hand on the shade on that

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1 window, correct?

2 A Correct.

3 Q Was the shade down when you approached  
4 Mr. Sanchez that morning?

5 A No.

6 Q Did you actually open the door or he open the  
7 door and you could speak to him about the cell phone?

8 A No.

9 Q Why is that?

14:17:29 10 A The train doesn't have a lot of time at Oxnard,  
11 and my purpose was to get on, do a quick observation, let  
12 Mr. Sanchez know that I kind of popped on, he  
acknowledged  
13 me, and then I got off the train, and the train departed.

14 Q By acknowledge you, what, he saw your face and  
15 you saw his, is that the sum total of it?

16 A Yeah, tapped on the window, acknowledged him,  
he

17 acknowledged me, and I got off the train.

18 Q Did you look for his cell phone anywhere?

19 A Yes.

20 Q Where did you look?

14:17:58 21 A On the control compartment and somewhere around  
22 him. He had both hands up on -- one hand on the throttle  
23 and one hand up near the automatic break.

24 And I can't say this for sure, but if I  
remember

25 right, and I've been trying to go over this, is he had  
his

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1 gloves on, but I can't -- that's not -- that's the way I  
2 kind of remember it, but I can't say for sure.

3 Q What kind of gloves were they?

4 A Leather gloves where he actually turned the  
heel

14:18:29 5 up a little bit.

6 Q And what color were they?

7 A They were brown.

8 Q Was it his practice to wear gloves, based on  
9 your observation?

10 A Some engineers do.

11 Q But I'm talking about Mr. Sanchez.

12 A He sometimes did, yes.

was 13 Q What percentage of the time when you saw him  
14 he wearing gloves, approximately, best estimate?  
15 A Probably half the time.  
seeing 16 Q You don't have a specific recollection of  
17 the gloves, is that correct, that day when you tapped on  
18 the window?  
14:18:59 19 A That's correct.  
20 Q And did you make any notation in writing or in  
21 the database or anywhere about this observation you made?  
22 A No.  
23 Q Why not?  
24 A Again, it was another observation. We look for  
25 several things every day. There was compliance and so we

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1 don't enter all the compliance numbers.  
2 Q What other observations were you making toward  
3 Mr. Sanchez that time you got on the train in Oxnard?  
4 A Well, on Mr. Sanchez I was looking for, like I  
14:19:29 5 said, about two or three different things. Number one,  
6 was the door closed, was there a cell phone in his  
7 presence. We also look for newspapers, although that's  
8 part of, you know, the observation, that he was at the  
9 controls and, you know, alert, attentive, ready to  
depart.  
look 10 At the same time there are several things I

train 11 for on the train when it arrives at Oxnard, that the  
12 was properly positioned, the doors open, the conductor  
14:20:00 13 stepped all the way out on the platform, all the signs  
14 read their final destination. There are several  
15 observations that I would do at each one of the station  
16 stops.

17 Now, Since there was no noncompliance of any of  
18 those, none of those were entered into the test system.

19 Q Had there been noncompliance with any of them,  
20 would you have entered that into the test system, that  
21 observation?

22 A Depends on what it was. If it was a sign that  
14:20:29 23 wasn't correctly identified, I probably would not. If  
the  
24 conductor failed to ensure the train was properly spotted  
25 and the doors opened and he stepped off and he failed to

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1 do that, I probably would.

2 Q When was this Oxnard observation in relation to  
3 when you heard from Mr. Heldenbrand that Mr. Sanchez had  
4 violated the phone rule, approximately?

5 A Approximately, a week or two.

6 Q How long was that after you actually spoke to  
14:20:57 7 Mr. Sanchez?

8 A A week or two.

9 Q Did you make any other observation or conduct  
10 any other test of Mr. Sanchez after that and before the  
11 September 12th --

12 A I did. I did.

13 Q How many more?

14 A Well, it was several observations at different  
15 locations. Any time that we would see the train there  
was  
16 things we would look for, and I can't tell you the days  
14:21:27 17 or, you know, what train it was.

18 I can tell you that the final one I did -- or I  
19 shouldn't say the final, but another one I did was one  
two  
20 to three days prior to September 12th, again at Oxnard.

21 I pulled up -- Oxnard is -- has a dwell time,  
so  
22 I'm able to actually get on the train. Most the other  
23 stations, unless there's a meet or something, there's not  
24 a dwell time.

25 Q Define dwell time for us.

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14:21:59 1 A Two to three minutes waiting for their time to  
2 depart.

3 Q Was it two or three minutes at Oxnard the other  
4 time you described to us and tapped on the window, it was  
5 there?

6 A Yes.

7 Q This two or three days before September 12,  
8 2008, you indicated you got on the train again in Oxnard?

9 A No, I didn't get on the train in Oxnard. I  
10 attempted to go and do another inspection. Mr. Sanchez  
14:22:33 11 saw me coming. His window was open and he was watching  
me  
12 walk up to the train.

13 Q Which window are you talking about?

14 A His window of the control compartment to the  
15 right side of his -- the operating stand.

16 Q And do we see that depicted, that window, in  
17 Exhibit 22?

18 A No. This would be to the left of the engineer.  
19 The window that I referred to is to the right of the  
14:22:58 20 engineer and is an exterior window.

21 Q Does it open?

22 A Yes, it does.

23 Q Okay. And did you speak to him?

24 A I did -- I believe I just said "good morning"  
to  
25 him. I walked over and talked to his conductor.

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1 Q Who was that at that time?

2 A That was Vince Covington.

3 Q Go ahead.

14:23:29 4 A And I spoke with Mr. Covington about, you know,  
5 any issues, you know. He was standing on the platform,

6 actually, between the mini-high ADA ramp and the train.

7 Q Where is that in relation to the locomotive.

8 That was the cab car, right?

9 A That is the second door of the cab car.

10 Q The rear door?

11 A Yes.

12 Q The one closest to the locomotive?

13 A Yes.

14:23:59 14 Q Okay. Go ahead.

15 A And I spoke with Mr. Covington about small  
talk,

16 just like operational, you know, "good morning," kind of

17 "how's it going." I try to stop whenever I can and be

18 seen at different locations so they see me out, not just

19 in an office. I want to be visible for them.

20 Q And did you speak to Mr. Covington before or

21 after you saw Mr. Sanchez?

22 A After.

14:24:30 23 Q You said you saw Mr. Sanchez in the window?

24 A Yes.

25 Q Did you speak to him?

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1 A I may have said "morning" to him.

2 Q Could you see the control stand from where you  
3 were standing?

4 A No.

5 Q You were standing outside?

6 A Yes.

7 Q So you did not ask him if he was complying with  
8 the cell phone rule?

14:24:57 9 A No.

10 Q Did you have any other communication with  
11 Mr. Sanchez about the cell phone rule or the issues  
12 regarding using the cell phone from then where you just  
13 described the stop or dwell time in Oxnard up until  
14 September the 12th of 2008?

15 A No, I did not talk to him about the cell phone  
16 rule, but I did talk to him about other rules.

14:25:30 17 Q All right. What other rules did you talk to  
him

18 about? Again, we're focusing on the period two to three  
19 days before September the 12th, correct?

20 MR. SHOHET: I thought you were talking about the  
21 period from after he had the discussion with Sanchez  
where  
22 he walked by the window until the accident.

23 MR. PFIESTER: I am.

24 Q That is two to three days before the accident,  
25 the collision, correct?

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1 A Yes.

2 Q All right. During that period what other

14:26:00 3 discussion did you have with him about any other rules?

4 A Besides sitting in with him on the morning  
5 briefings on the 11th and 12th, um, I don't think I had  
6 another discussion of operating rules with Mr. Sanchez.

7 Q Did you have any other discussions whatsoever  
8 with Mr. Sanchez that week?

9 A Yes.

10 Q Other than what we've already talked about?

11 A Yes.

12 Q Okay. And what other discussions were there?

13 First, how many, if you remember, and I'm not talking  
14:26:30 14 about the ones we already discussed.

15 A I mean, several casual conversations with  
16 Mr. Sanchez but, actually, on the 9th, 10th, I don't  
14:26:52 17 remember the exact day, it's actually in one of the  
18 counseling letters that I gave you earlier.

19 Q Is this page 2 of Exhibit 15 or is it another  
20 one?

21 A This is the counseling that I performed with  
22 Mr. Sanchez, and it was signed the 9th. The letter is  
23 dated September 4th, and I counseled him and he signed  
for  
24 it on the 9th.

25 Q And what was the rule that was violated as

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14:27:29 1 evidenced by Exhibit 15, page 2?

2           A     Rule of the General Code of Operating Rules,  
3     1.29.

4           Q     What does that rule state in --

5           A     "Crew members must operate trains and engines  
6     efficiently and effectively. All employees must avoid  
7     unnecessary delays."

8           Q     What were the facts giving rise to your writing  
14:28:01 9     that letter that we've got as page 2, Exhibit 15?

10          A     I received a notice from Mr. Konstanzer that on  
11     August 19th, I believe, there was a report of an  
12     unnecessary delay of Train No. 119 in Moorpark where the  
13     conductor had wrote down four-minute delay at Moorpark.

14                     It came up in the morning meeting, the morning  
15     of the 20th. Mr. Konstanzer contacted me and asked me to  
16     investigate what this delay was.

14:28:29 17          Q     How did he become aware of it, as far as you  
18     know?

19          A     He was told in the morning meeting, which would  
20     have been a conversation between SCRRA and their  
21     contractors.

22                     So I was asked to investigate, which I did. I  
23     gave Mr. Konstanzer my findings of what -- the  
24     statements from -- the verbal statements from both  
25     Mr. Sanchez and Mr. Heldenbrand. Mr. Konstanzer then

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1     issued that letter with instructions that I need to

2 counsel Mr. Sanchez on this delay.

3 Q What facts gave rise to that letter, as far as  
4 you know, specific facts?

5 A On the 19th Amtrak Train Coast Starlight had  
6 reported on the radio to Train No. 119 that their markers  
7 were not displayed, so --

8 Q Whose markers?

9 A 119's markers.

10 Q Go ahead, I'm sorry, I didn't mean to interrupt  
14:29:31 11 you.

12 A So at Moorpark, per both the engineer and the  
13 conductor's interview with me, they both said that --  
14 well, Mr. Heldenbrand said that he pulled into Moorpark,  
15 turned the breakers on for the markers, which he failed  
to

16 turn on in L.A. when they did their brake test, and was  
14:29:58 17 communicating to Mr. Sanchez that the markers were on,  
and

18 Mr. Sanchez -- Mr. Heldenbrand reported that he saw  
19 Mr. Sanchez get off the locomotive -- or, actually, walk  
20 to the back of the train and actually view the markers  
21 himself.

22 Q Is this on the cab car?

23 A He walked from the locomotive three cars back  
to  
24 the cab car.

25 MR. PFIESTER: Let me mark as the next in order

1 MDE 23 a photograph.

14:30:32 2 (Exhibit 23 was marked for identification.)

3 BY MR. PFIESTER:

4 Q What is depicted in No. 23?

5 A This is a picture of the tail end or head end,  
6 depending if it's a push or pull, of Cab Car 616, and it  
7 has -- it shows the engineer operating cab, the rear  
door,  
14:31:00 8 two marker lights, two headlights.

9 Q Here is a red pen. Can you circle the marker  
10 lights?

11 A (Witness complies.)

12 Q Write in the margin with an arrow "marker" and  
13 print it, if you would.

14 A (Witness complies.)

15 Q What else did you describe?

16 A Headlight.

17 Q Circle that, if you would.

14:31:27 18 A (Witness complies.)

19 Q You're circling it in red, it's above the door,  
20 correct? And over on the margin put a line and "HL" for  
21 "headlight," please.

22 A (Witness complies.)

23 Q What about ditch lights, does it have ditch  
24 lights?

25 A Ditch lights are below the marker lights.

1 Q Which are at the bottom side of each of the  
2 doors, correct?

3 A Correct.

4 Q On each side. And you put on Exhibit 23 the  
14:31:59 5 letters "DL," correct?

6 A Correct.

7 Q Now, what was the substance of your discussion  
8 with Mr. Sanchez on September the 9th with regard to his  
9 taking time to go check the markers?

14:32:25 10 A Well, the context of the counseling session  
with

11 Mr. Sanchez was teamwork and unnecessary delay in the  
12 train. We discussed the rules associated with this and  
13 General Code also in Connex's General Notice, that there  
14 is a section on teamwork.

15 I told him that it was unacceptable to take a  
16 delay to go back and look at markers when he could have  
14:32:58 17 done it over the radio and verified it. I handed him the  
18 Connex notice, I believe it was 17.08, with the teamwork  
19 section of it actually either highlighted or circled.

20 We discussed the rules. Along with that I gave  
21 him the entire package of rules, which 17.08 has, General  
22 Notice. I also had the General Code book open. I was  
23 doing some research on a Long Beach train.

24 I told Mr. Sanchez that all the rules we have  
25 here are for him. There's no trick rules. Everything is

1 in writing, if he has any questions about any of the  
2 rules, for him to talk to me about it. If he has any  
3 questions, there's other managers, you know, that he has  
4 to comply with all of the General Code Rules, Operating  
5 Rules and Operating Notices, Safety Rules.

6 Also present during this counseling session was  
7 Mr. Pescivic. Mr. Pescivic had a few words of advice or  
14:33:57 8 counseling for Mr. Sanchez also.

9 Q What did he say?

10 A I don't remember exactly, but he followed my  
11 lead that, yes, he has to follow the rules and be part of  
12 the team and unnecessary delay brings ill will towards us  
13 and maybe it could open us up for criticism. That was  
the  
14 general topic. I don't remember the exact verbiage of  
15 what was said.

16 Q Criticism because they're not working as a  
team?

17 A Well, it was an unnecessary delay that  
18 passengers didn't need to take because, you know, it was  
14:34:29 19 something that could have been handled over the radio  
over

20 a few seconds.

21 Q What did Mr. Sanchez say to each of you?

22 A Well, he told me, even in the beginning when I  
23 first interviewed him, prior to the counseling, that the  
24 reason that he went to look back is because he wanted to

25 see for himself.

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1 Q Did he say why he wanted to see for himself?

2 A That's all he told me. He told me that more  
14:34:56 3 than once, and that's why that prompted the teamwork  
4 counseling.

5 Q And 15, page 2, Exhibit 15, page 2, cites  
6 Rule 1.29, which is not the teamwork rule, is it

7 A Oh, yeah, that was one of them. That 1.29 was  
8 the delay of the train.

9 Q The four-minute delay?

10 A The four-minute delay. And Rule Violation C of  
11 the Rules of Conduct, must understand and obey policies,  
14:35:29 12 and that led into the teamwork portion of the counseling.

13 Q Is the violation of the teamwork rule more or  
14 less serious than the violation of the ones cited on  
15 page 2 of Exhibit 15?

16 A I'd say they're equal.

17 Q Did you have any other discussion with  
18 Mr. Pescivic at that meeting on September the 9th?

19 A With Mr. Pescivic?

14:35:56 20 Q I misspoke. Strike that.

21 Did you have any other discussion with  
22 Mr. Sanchez at that meeting on September the 9th?

23 A No.

24 Q Well, now, there is --

25 A Oh, I'm sorry, yes, yes, we did. I'm sorry, I

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1 misspoke.

2 Q Okay.

3 A There was another conversation that got cut off  
4 because he also lost his railroad keys, which is --

5 Q You're referring to Exhibit 15, page 1?

14:36:29 6 A Correct. Now, when I started to talk to him in  
7 this counseling session about his railroad keys,  
8 Mr. Pescivic informed me that this was no longer  
pertinent

9 and it needed to be removed because he had found his keys  
10 and I should not counsel him because he was able to  
11 recover his keys

12 Q "He" meaning Sanchez found his keys?

13 A Correct, which I didn't know about at the time.

14:36:58 14 And then after we had done the counseling, Mr. Pescivic  
15 had informed me that this counseling session, this  
portion

16 of it, is no longer valid.

17 Q Did you communicate that fact to Mr. Sanchez --

18 A He was there present, yes

19 Q This happened in his presence, Mr. Pescivic?

20 A Mr. Pescivic's and Mr. Sanchez's.

21 Q And Mr. Pescivic's title at the time was what?

22 A Transportation Manager.

23 Q Is that senior to you at the time or co-equal?

24 A Co-equal.

25 Q What is his jurisdiction or was his  
jurisdiction

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1 at the time?

2 A His main responsibility was Central Maintenance  
3 Facility at Taylor Yard.

4 Q I take it, then, that both conversations about  
5 the two different subjects, page 1 and page 2 of  
6 Exhibit 15, occurred in the same meeting, if you will?

14:37:57 7 A Yes.

8 Q And where was the meeting?

9 A In Mr. Pescivic's office at the Central  
10 Maintenance Facility.

11 Q How long did that meeting last?

12 A Probably five to ten minutes.

13 Q And you indicated that you talked about the  
lost

14 keys, as well as the time and delay, page 2 and page 1 of  
15 Exhibit 15, right?

16 A That's correct.

14:38:29 17 Q And about teamwork, correct?

18 A That's correct.

19 Q Did you have any discussion at all about the  
20 cell phone rule at that time?

21 A No.  
22 Q Did Mr. Pescivic?  
23 A No.  
24 Q Why not?  
25 A Again, there was no information that he was

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1 violating the cell phone rule.

2 Q You hadn't performed any more tests -- strike  
14:38:58 3 that.

4 When was the last test that you're aware was  
5 performed on Mr. Sanchez's private cell phone before  
6 September the 12th of '08?

7 A September, the morning of the 9th. Again, it  
8 was a couple days before September 12th, and Mr.  
Covington

9 was working that day.

10 Q You're talking about observing him?

11 A Yeah.

12 Q You just didn't see it?

13 A I did not see it, correct.

14 Q From where you stood?

14:39:27 15 A Correct.

16 Q I take it -- just to ask you, when was the last  
17 time before that, September the 9th of 2008, that his  
18 private cell number had been called, as far as you know,  
14:40:01 19 for purposes of a test?

20 A September of 2006.

21 Q Page 4 of Exhibit 16 has Connex Metrolink  
22 Electronic Device Policy, and it's dated October the  
27th,  
23 do you see that, 2008?

24 A Yes.

25 Q When was that -- when did that become effective

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14:40:28 1 in relation to Emergency Order 26 from the FRA, if you  
2 know?

3 A I believe it was in conjunction with Emergency  
4 Order 26.

5 Q So you're saying as a result of Emergency  
6 Order 26 regarding cell phone usage by the Federal  
7 Railroad Administration, page 4 of Exhibit 16 was  
8 promulgated?

9 A To the best of my knowledge. The author of  
that  
10 would know.

11 Q Who is the author of that, if you know?

14:40:59 12 A Mr. Konstanzer.

13 Q That's page 4 of Exhibit 16?

14 A (No audible response.)

15 Q "Yes"?

16 A Yes.

17 MR. SHOHET: Ed, when you get to a convenient place  
18 for a short break --

19 MR. PFIESTER: Sure.

20 Q Now, other than what you just described to us,  
21 had you had any more meetings with Mr. -- or  
conversations

14:41:26 22 with Mr. Sanchez that last week before the head-on  
23 collision?

24 A Like I said, I sat in on briefings, I talked  
25 with him about nothing in particular, saw him at several

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1 different locations, Montalvo, Oxnard.

2 Q That you already told us about, correct?

3 A Correct, yes.

4 Q And by "briefings" you mean the job briefing  
5 that occurs every morning with everybody, correct?

6 A Correct.

7 Q And how many people would be in the job  
briefing

14:41:58 8 where he began work each morning that week that he  
worked,

9 those days that he worked?

10 A There are two engineers and conductors at each  
11 one of the job briefings, unless there happens to be an  
12 extra crew member. They all would be included in the job  
13 briefing.

14 Q And did you conduct those?

15 A No.

16 Q Pardon?

17 A No.

18 Q Who did?

19 A They conducted them with each other.

20 Q But you were in their presence?

14:42:29 21 A I was, um, in my office, which is just around  
22 the corner approximately five, ten feet away with my door  
23 open, and I would either listen to them or I'll stand in  
24 the doorway and watch them.

25 Q This is -- the last week before the head-on

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1 collision, do you recall hearing them speak to each  
other?

2 A Yes.

14:42:57 3 Q Do you recall the substance of what they said,  
4 "they" meaning Sanchez and Heldenbrand?

5 A Just a job briefing. I mean, they went over  
6 their track warrants and bulletins, discussed the rules  
of  
7 the day. They discuss any unusual moves they may have to  
8 make out of the yard when they shove back and over.  
9 That's it.

10 MR. PFIESTER: Do you want to take a break?

14:43:27 11 MR. SHOHET: That would be great.

15:04:48 12 THE VIDEOGRAPHER: This is the end of tape and disk  
13 No. 2. Off record at 2:43.

14 (A recess was taken.)

15:04:56 15 THE VIDEOGRAPHER: This is the beginning of tape and  
16 disk No. 3 in the continuing video deposition of Richard  
17 Dahl. It's Wednesday, February 24, 2010. On record  
3:04.

18 BY MR. PFIESTER:

19 Q Mr. Dahl, with regard to the lost keys, page 1  
20 of Exhibit 15, how much does a set of keys cost that's  
21 referenced there, approximately?

22 A I don't know what the cost of them is.

23 Q How many keys are there?

24 A There's several keys.

25 Q To what do they go?

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1 A There is locomotive keys, switch lock keys,  
2 security keys, security cabinet keys, cab car door keys.  
3 There's probably six, eight different keys.

4 Q How are replacement keys obtained?

15:06:00 5 A They are -- all of these keys are issued and  
the  
6 employees sign for them, and then any ones that have to  
be  
7 replaced, of course, are noted, they are issued, and they  
8 have to sign for them again.

9 Q Are they special keys or are they keys -- I  
10 mean, are they specially configured keys or keys that  
11 could be reproduced at a locksmith?

12 A They cannot be reproduced.

13 Q Why is that?

14 A They're -- again, switch lock keys, locomotive  
15:06:27 15 keys, a lot of them have high security with them. We  
have  
16 the responsibility for the other keys, for an example,  
the  
17 UP or the BN, we have their switch lock keys and, again,  
18 responsible to take care of them. You know, if they were  
19 lost, somebody could actually open a switch, so it is the  
20 employee's responsibility to maintain their keys and take  
21 care of their property.

22 Q Now, from the time of the 2006 situation where  
23 Mr. Sanchez violated the cell phone rule -- you remember  
24 that?

25 A Yeah.

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1 Q We talked about it earlier -- up until the date  
2 of the head-on collision in Chatsworth, did you ever  
3 perform any operational test for his cell phone usage, in  
4 other words, any observation or test while the train was  
5 moving?

6 A Yes. Any time I rode the train, there were  
7 several things I was looking for, and cell phones were  
one  
15:07:28 8 of them.

9 Q But do you have a recollection of checking out  
10 on a moving train Mr. Sanchez between the dates 2006 and

11 the head-on collision?

12 A Yes.

13 Q When did you make those observations?

14 A Any time I was on the train and rode on it, any  
15 time -- and that would go for not just Mr. Sanchez, any  
16 engineer that I rode with -- did an evaluation with.

15:08:00 17 Q How frequently, again, in the same time period  
18 would you ride the train?

19 A I would ride trains, depending on the schedule  
20 and what was going on, a few times a week, sometimes  
21 several times a week.

22 Q Between where and where would you normally ride  
23 them?

24 A I would try to catch the train somewhere on the  
25 route, usually try to be a surprise, although sometimes

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1 I'd just get on with the engineer at either Montalvo,  
15:08:29 2 Moorpark or in Los Angeles.

3 Q If it's a surprise, you mean you get on at a  
4 place other than one of those you just mentioned,  
correct?

5 A Correct.

6 Q How would you get back to where you were going?

7 A Well, my car would be at some point on the  
8 railroad, and at the end of my check rides, however many  
9 they may be, I would just end my day at the location my

10 car was at.

11 Q And the engines were facing west, you use the  
15:09:00 12 term "Railroad West and "Railroad East," west towards  
13 Santa Barbara, correct?

UP 14 A West on the Metrolink territory, north on the  
15 territory.

16 Q Correct. But that's the same direction.

17 A Correct.

18 Q Same piece of track, correct, "yes"?

19 A Same track. They're linked together.  
Different  
20 owners.

21 Q And did you get on the train in both  
directions,  
15:09:26 22 approximately equal amount of time?

23 A I don't quite know what you mean. I mean, you  
24 get on the train. If my car was at one end, I would ride  
25 one direction, the other direction, at least, to get back

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1 to the car.

2 There are times where I would ride one  
direction  
3 and the managers would be testing or something, and they  
4 would pick me up, and I would end up at my car, but I  
5 would say normally they were equal. I would start at a  
15:09:57 6 point east or west and return to that point.

7 Q Again, you did not make any notation one way or

8 the other about his cell phone usage on any of those  
9 observation rides on the train; is that correct?

10 MR. SHOHET: Excuse me, could you read that back?

11 (The record was read.)

12 MR. SHOHET: Is your question did he make a written  
13 notation or did he note anything about that?

14 BY MR. PFIESTER:

15:10:27 15 Q Any notation of any sort, any documentation.

16 A No written documentation.

17 Q What other kind of documentation is there?

18 A Well, I mean verbal, I mean, observation of it,  
19 but I wouldn't -- I didn't make any other written or  
enter

20 it in any test.

21 Q Right. You've already testified that you  
didn't

22 enter it into the database, correct?

23 A Correct.

24 Q When you rode on the train in the direction  
25 where the engine was pulling -- so the engine would be

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15:10:58 1 ahead and that would be the west direction, correct?

2 A Correct.

3 Q -- did you always get up on the engine on each  
4 of those trips?

5 A No.

6 Q About what percentage of the time would you get  
7 on the engine between 2006 and the collision at  
8 Chatsworth?

15:11:25 9 A I would say probably 70, 80 percent of the  
time.

10 Q And to get on the engine, how would you do  
that?

11 A If it was a PH locomotive, I would walk up the  
12 steps in the front of the locomotive and go in through  
the

13 nose. You can also go in the back door. I have done  
14 that. It wasn't a normal practice unless I was getting  
on

15 unannounced at a station stop like L.A. or Moorpark or  
16 Montalvo so I wasn't in position that I couldn't open the  
17 door and the train would start to move, and if it was a  
18 PHI, the only option is to crawl up the ladder.

19 Q And the train that was involved in the  
20 Chatsworth head-on collision was what kind?

21 A That was a PH.

22 Q And what does that mean with regard to the  
23 doors?

24 A There is a nose door on the PH.

25 Q Let me show you Exhibit No. 25.

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1 (Exhibit 25 was marked for identification.)

15:12:29 2 BY MR. PFIESTER:

3 Q Does that depict the type train that was

4 involved in the head-on collision?

5 A Yes.

6 Q Strike that. Does that depict the type of  
7 locomotive? The answer is "yes"? I misspoke.

8 A Yes.

9 MR. SHOHET: This is Exhibit 25, Ed.

10 MR. PFIESTER: Yes.

11 Q The engineer can obviously see you -- someone  
12 approach and open the front door to the locomotive,  
15:12:58 13 correct?

14 A Yes.

15 Q Can you get in any other back door on this type  
16 of locomotive, the kind we see in Exhibit 25?

17 A Yes.

18 Q Where is that?

19 A It's at the engineer side, rear door, behind  
the  
20 HEP motor.

21 Q And is it kept locked?

22 A Yes.

23 Q As are the other front door?

24 A Yes.

25 Q During what part of the day is it kept locked  
or

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15:13:31 1 what part of the workday?

2           A     When it's in revenue service.

3           Q     Now, were locomotive engineers issued cell  
4 phones by the company?

5           A     No.

6           Q     So only conductors were issued cell phones, is  
7 that correct, by the company?

15:14:00 8           A     Yes.

9           Q     Do you know why that was the policy?

10          A     The engineers really had no business being on  
11 the cell phone unless they were troubleshooting the  
12 locomotive. Conductors did have responsibilities for  
cell  
13 phone for communication with MOC, with managers, with  
14 other conductors, and so the engineers had no business  
15:14:27 15 being on a company cell phone.

16          Q     In fact, under the rules they shouldn't have  
17 one -- strike that.

18                    They could violate the rule if they had one on  
19 that was turned on, even in a grip, correct?

20          A     Correct.

21          Q     Are you aware of any technology that would  
22 permit the management if they wanted to determine if cell  
15:14:59 23 phones were being used by members of the crew?

24          A     I'm not familiar with any technology. I've  
25 heard that there could be some jamming-type devices.

1 Again, it's beyond my knowledge and area of expertise.

2 Q Who would know about that, as far as you know?

3 A I don't know if Tom McDonald would. I don't  
4 know if he would be involved with that.

15:15:33 5 Q As far as you know, had that ever been  
discussed

6 before the Chatsworth head-on collision?

7 A I don't think so.

8 Q I'm handing you some pages marked Exhibit 24.  
9 (Exhibit 24 was marked for identification.)

10 MR. SHOHET: You just marked Exhibit 25.

11 MR. PFIESTER: Yeah, I know. I did them out of  
12 order.

13 MR. SHOHET: Okay.

14 BY MR. PFIESTER:

15:15:58 15 Q Now, referring you -- if you look in the lower  
16 right-hand corner, they have little numbers there, do you  
17 see that, C000-?

18 A Yes.

19 Q Go and look at C000570. Do you see that page?

15:16:23 20 A I do.

21 Q What is that?

22 A That is a Delay Report for Train No. 119 on 8-  
19  
23 of '08.

24 Q And that's the -- is that the document that  
25 Mr. Konstanzer -- strike that.

15:16:58 1                   How is that related to the four-minute delay  
for

2           which he was cited on page 2 of Exhibit 15?

3           A       Underneath Explanation of Delays, it shows a  
4           four-minute delay at Moorpark, check marker lights on  
5           rear.

6           Q       And that refers to -- when did the train arrive  
7           at Moorpark, 7:49?

8           A       7:49.

15:17:25 9           Q       And departed?

10          A       At 7:53.

11          Q       And at that time the train was running nine  
12          minutes late, if my math is correct; is that correct?

13          A       It was running -- it was due out at 44 -- well,  
14          coming in they were five minutes late. Departing, they  
15:17:56 15          were nine minutes late.

16          Q       Then the train ended up by the end of the trip  
17          being how late?

18          A       28 minutes late.

19          Q       And how did you calculate that?

20          A       Arrived Montalvo at 9:03.

15:18:28 21          Q       You said that the information came up in a  
22          morning meeting referencing Mr. Sanchez's train being  
23          late. Do you remember that testimony?

24          A       Yeah, that's my understanding.

25          Q       What is a morning meeting?

1           A     Every morning SCRRRA and their contractors have  
a  
2     meeting to discuss the previous day's event.  It was led  
15:19:01 3     when I was there by Mr. Lettengarver, and every one of  
the  
4     contractors had a representative there, and the delays of  
5     the previous days were discussed.

6           Q     The subject of the morning meeting was  
basically  
7     time and delays?

8           A     Delays and unusual events.

9           Q     But every day there was a question about  
delays,  
10    whether the trains ran on time or not, I gather; is that  
11    correct?

12          A     There were days that, you know, there were no  
13    delays.

14          Q     I know, but if there were delays, that was  
15    always discussed; is that correct?

15:19:29 16          A     Usually.  I mean, if they already had an  
17    explanation and a reason behind it, it may not be  
18    discussed.  I didn't sit in on these at this time.  I did  
19    it after March of 2009.

20          Q     At the time frame we're talking about here in  
21    August of '08, who would have sat in on them other than -

-  
22    well, just tell me whoever would have sat in on these  
23    morning meetings.

24          A     Mr. Konstanzer usually.

25 Q For Veolia/Connex?

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15:19:58 1 A For Connex, yes.

2 Q And then who else?

3 A There would be a representative from Signal, a  
4 representative from Track, a representative from  
5 Mechanical. There were SCRRA representatives at the main  
6 offices. I think there were three dial-in numbers that  
7 people would dial in.

8 Q And where were these meetings held?

9 A To my best knowledge, they were held at the  
10 Dispatch Center in Pomona.

11 Q Is that where Mr. Konstanzer's office was, as  
15:20:27 12 well?

13 A Yes.

14 Q And is that where Mr. McDonald's office was, as  
15 well?

16 A Yes.

17 Q How far apart were their offices inside that  
18 building in Pomona, approximately?

19 A 70 feet.

20 Q Different ends of the hall or down the hallway  
21 or what?

15:21:00 22 A Mr. McDonald's office was in the main entrance,  
23 and Mr. Konstanzer's office was down the hall on the way

24 towards the dispatching office.

25 Q Now, were there some rule violations that would

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1 cause either the contractor or Metrolink to be fined or  
2 lose money?

3 A Yes.

4 Q Which ones, generally speaking, and then under  
5 what circumstance?

6 A I don't know which exact ones were, and that is  
7 handled at the General Manager's level. Mr. McDonald  
8 would be aware.

15:21:58 9 Q You don't have any idea which ones were?

10 A I'd be guessing.

11 Q No, we don't want you to guess.

12 Who would lose the money, the Veolia/Connex  
13 entity or Metrolink?

14 A Well, on whatever criteria that they had set,  
it  
15 would come out of the bonus money that we spoke about  
16 earlier, the annual bonus that came out in September.

15:22:30 17 Q That thing you called a performance bonus?

18 A Yes.

19 Q Do you have any idea of the magnitude of what a  
20 violation would be to translate into however many  
dollars?

21 A It would only be a guess.

22 Q No, we don't want you to guess. You can't make

15:23:08 23 an estimate is what you're saying?

24 A No, I can't make an estimate.

25 Q It's fair to say, is it not, that you've been  
up

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1 and down the line where this head-on collision occurred  
2 many, many times, hundreds and hundreds of times; is that  
3 correct?

15:23:29 4 A Many times, yes.

5 Q So you're familiar with the signals and where  
6 they should be located or where they are located?

7 A Yeah, I'm familiar with where they are located.

8 Q And the same thing, the sidings and the  
9 stations?

10 A Yes.

11 MR. SHOHET: The question is does he know where  
12 they're located?

13 MR. PFIESTER: Yes.

14 Q And as a matter of fact, the crew members are  
15 all expected to know that, too, the ones who operate that  
15:23:56 16 line, right?

17 A Correct.

18 Q That includes the conductor, even though he or  
19 she is working in the back of the train?

20 A Correct.

monitor

21 Q Because they have a duty to call out, to  
22 whether or not the engineer is appropriately calling out  
23 on the radio the colors or aspects of the signals,  
24 correct?

25 A Yes, that is correct, although they don't have

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15:24:29 1 direct view of the signals. They have to look out their  
2 side windows and have a reference of where they should be  
3 and when they should be expecting a call from the  
4 engineer.

5 Q Right. But they learn that from going up and  
6 down the track so many times; is that correct?

7 A That's correct.

the

8 Q So if they don't have a view straight ahead,  
9 company expects them to know by looking at a landmark or  
10 whatever it is that the next signal is going to be coming  
11 up, correct?

12 A Correct.

13 MR. PFIESTER: I have marked an Exhibit 26.

15:25:02 14 (Exhibit 26 was marked for identification.)

15 BY MR. PFIESTER:

16 Q Do you recognize that?

15:25:29 17 A I recognize it.

18 Q What is it?

19 A It's a track diagram of the track sidings,

20 stations and signals between CP Bernson and the west end  
21 at CP Davis.

22 Q And CP Bernson is very close to De Soto Avenue  
23 in Chatsworth, correct?

24 A That's correct.

25 Q Now, to your knowledge, has the length of the

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1 siding, which is depicted between just Railroad West of  
2 De Soto Avenue and CP Topanga, has that siding length  
15:26:28 3 changed during your tenure at Connex/Veolia/Metrolink?

Ventura 4 A It hasn't changed since I was out in the  
5 line, but I believe it was extended prior to me going out  
6 there.

7 Q And what is your understanding about how much  
it 8 was extended, if any?

9 A I don't know the distance.

10 Q Do you know when that occurred, approximately?

11 A No, I don't.

12 Q Again, you went out there in what time?

15:26:56 13 A Somewhere in 2000 -- I could actually get my  
14 exact date of relocation.

15 Q Well, no, your best estimate, if you can give  
me 16 a month.

17 A 2000 -- we talked 2000 somewhere.

18 Q 2000 you mentioned once, 2000 to 2002 you  
19 mentioned, I believe, about something.

20 A You know, again, I would be glad to furnish you  
21 with the exact date.

22 MR. PFIESTER: Would you be willing to let him do  
15:27:29 23 that, Counsel, if we leave a blank?

24 MR. SHOHET: I suppose so. You're nice fellows.

25 MR. PFIESTER: That's off the record.

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1 MR. SHOHET: You get another chance at him, so you  
2 can ask him that question then.

3 MR. PFIESTER: Of course.

4 MR. SHOHET: The question, though, is when did they  
5 extend the siding on the Chatsworth Topanga signal?

6 THE WITNESS: And I don't know.

7 MR. SHOHET: If you leave a blank, I'll be happy to  
8 supply it.

9 (INFORMATION REQUESTED: \_\_\_\_\_  
10 \_\_\_\_\_.)

15:28:00 11 BY MR. PFIESTER:

12 Q Now, part of your duties are to investigate  
13 things that happen on the railroad, correct?

14 A Correct.

15 Q Including how the conductors did their job and  
16 how the engineers did their job, correct?

17 A Correct.

15:28:25 18 Q And you do that for what kind of purposes?

19 A To ensure that they are operating the train  
20 safely, efficiently, per the rules, and complying with  
not

21 only the General Code Rules, Safety Rules, and Metrolink  
22 issues their own supplemental instructions.

23 Q How do you go about doing that? I'm asking you  
24 to assume is if you want to find out what happened in a  
25 certain circumstance over a period of train movement. Do

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1 you have available, for example, if you want the radio  
15:28:59 2 tapes?

3 A Yes.

4 Q And you've used those in the past?

5 A Yes, I have.

6 Q What other tools do you have to reconstruct  
what  
7 happened?

8 A I have access to the Event Recorders.

9 Q Just for the record, what is that?

15:29:26 10 A Event Recorder is data that's saved in a secure  
11 box location on a locomotive and cab car that relays data  
12 on train speed, braking, several things, whistle bell,  
13 headlights, types of braking, faults.

14 Q And do you, yourself, know how to read those,  
15 the data from the Event Recorder, or do you have it done

16 by somebody?

17 A No. I'm able to read the train handling  
portion

15:29:59 18 of it. The mechanical faults and the information based  
on

19 what's going on with the motor or the engine, I'm not --  
I

20 haven't been trained in that.

21 Q Right. But when the engineer put on the  
brakes,

22 if they were put on, you could tell that?

23 A Yes.

24 Q You could tell the throttle position of the  
25 locomotive at various places?

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1 A Yes.

2 Q Do you also have available a way to determine  
15:30:27 3 what the record is of the aspects of a signal or the  
4 signals, the roadside or the track side signals?

5 A They do have information. I do not have access  
6 to those.

7 Q If you wanted to, could you find out from  
8 somebody what were the signal aspects on such and such a  
9 date when such and such a train movement was made?

10 A I could, but I wouldn't know how to read the  
11 data.

12 Q But could you ask somebody who is competent to

13 read it and tell you what it said?

14 A Yes.

15:30:59 15 Q Have you done that in the past?

16 A No.

17 Q Why not? It's just never come up?

18 A That may have been handled at a level higher  
19 than myself.

20 Q I see. Well, let me ask you this: You have  
21 become familiar with what happened to Train Metro No. 111  
22 as it went from Railroad East to Railroad West in the

area

15:31:37 23 depicted on this exhibit, correct?

24 A Correct.

25 Q And you're familiar with the signal

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the 1 requirements, are you, what the signals communicate to  
2 engineer?

3 A Yes.

4 Q And so if there is a flashing yellow signal,  
5 okay, are you with me?

15:31:58 6 A Yes.

7 Q What does that mean?

8 A That is an advance approach signal. It tells  
9 the engineer to proceed and prepare to stop in two  
10 signals.

is 11 Q Okay. And is it your understanding that that  
12 what occurred when Metrolink 111 came by from east to  
west 13 on the date of the accident, afternoon?

15:32:28 14 MR. SHOHET: Excuse me. Did you mention where?

15 MR. PFIESTER: Yeah, came by the signal depicted in  
16 our Exhibit No. 26, as it came by CP Bernson.

17 MR. SHOHET: CP Bernson, okay, thank you.

18 THE WITNESS: That is my understanding.

19 BY MR. PFIESTER:

20 Q And do you also understand that as with regard  
21 to that signal -- strike that.

22 With regard to signals, the rule is for the  
15:32:59 23 engineer to verbalize what he sees is what?

24 A The engineer must see and observe and announce  
25 the signals along the right-of-way, all signals,  
including

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1 green proceed signals.

2 Q The engineers?

3 A The engineers.

4 Q And do you have an understanding whether or not  
5 that was done on the day of the head-on collision?

6 MR. SHOHET: Objection. Calls for speculation, no  
15:33:27 7 foundation.

8 THE WITNESS: My understanding from the reports is

9 that the signal at CP Bernson was called.

10 BY MR. PFIESTER:

11 Q And that would comply with the signal calling  
12 part of the rules; is that correct?

13 A For the engineer, correct.

14 Q For the engineer, right. Then you're familiar  
15 with a delayed-in-block rule?

16 A Yes.

17 Q Delayed, past tense, in block, correct?

18 A Correct.

15:33:59 19 Q First place, what is the block and what is the  
20 delay? Explain that, please.

21 A The block is the section of track between two  
22 signals.

23 Q Go ahead.

24 A The delay is any train that drops below five  
25 miles an hour or comes to a stop must proceed not

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1 exceeding 40 miles an hour until the next signal can be  
2 clearly seen and it displays a proceed indication.

3 Q Okay. And that rule was in effect in September  
4 of '08?

5 A Correct.

15:34:32 6 Q And had been for many years, correct?

7 A Correct.

in

8 Q And you know, do you not, that the train did,  
9 fact, stop at Chatsworth as it proceeded west, correct?

10 A Correct.

11 Q And that would trigger the rule, would it not?

12 MR. SHOHET: The train you're talking about is  
13 Train 111 on September 12th; is that right?

14 MR. PFIESTER: Yes. Unless we indicate otherwise,  
15 I'm talking about the Metrolink No. 111 on September  
16 the 12th of 2008, the train that was involved in the  
15:35:00 17 head-on collision, okay?

18 THE WITNESS: Yes. So, yes, I do know the train did  
19 stop at Chatsworth, and that would trigger the  
20 delayed-in-block rule if the signal at CP Topanga could  
21 not be seen.

22 BY MR. PFIESTER:

23 Q Right, because you couldn't see the signal from  
24 that far away, correct?

25 MR. SHOHET: He said if the signal could not be  
seen.

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15:35:21 1 I'm sorry.

2 MR. PFIESTER: Could you read back his answer,  
3 please.

4 (The record was read.)

5 BY MR. PFIESTER:

6 Q If it could not be seen, okay. And do you have

7 any indication that the signal was -- that the signal  
8 could be seen from the platform at Topanga?

9 A Yes.

10 Q And what's the basis -- strike that.

15:35:58 11 What information do you have?

12 A Personally been able to see it from the  
platform

13 and from the locomotive and a green display.

14 Q At what time of day did you do that and what  
15 month?

16 A I've done that, as you referenced several  
times,

17 many times over the last, you know, several months prior  
15:36:28 18 to the accident with 111 on the 12th.

19 Again, we did that a few days after, did a test  
20 for signal compliance or signal visibility a few days  
21 after the incident, same time of day, same season where  
we

22 could visibly see the green signal from the locomotive  
and

23 from the mini-platform at the east end of the station,  
24 again, when it was green.

25 When the signal was in red aspect, couldn't see

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1 it from the platform station. It was a twinkle from the  
2 locomotive. You pulled several feet and prior to  
3 Devonshire Avenue the signal at Topanga came in full  
view.

4 Q From where?

5 A From the locomotive.

6 Q From the head end?

15:37:25 7 A Yes.

8 Q What kind of locomotive was it?

9 A That locomotive, I believe it was a PHI -- I

10 mean a PH.

11 Q You're not certain?

12 A But I'm not certain.

13 Q I forgot to ask you this earlier. You're not a

14 certified locomotive engineer, are you?

15 A Yes.

16 Q You are?

17 A Yes.

18 Q When did you become certified?

19 A Um, I could get you that information exactly.

20 Q Give me your best estimate for now.

21 A Eight years ago, eight to ten years ago.

15:38:01 22 Q How have you used your certification, if you

23 have, to actually operate locomotives?

24 A I don't understand the question.

25 Q Have you operated locomotives?

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1 A Yes.

2 Q Since that time?

3 A Yes.

4 Q And between where and where?

5 A For several years I operated between

15:38:28 6 San Bernardino and Los Angeles. Um, I operate between

7 Central Maintenance Facility and Los Angeles. I operate

8 on the Valley Sub between Los Angeles and CP Burbank

Burbank 9 Junction. I operate on the Ventura Sub between CP

10 Junction and CP Las Posas; Santa Barbara Sub between

11 CP Las Posas and CP Montalvo; and on the Montalvo Y, both

12 the east and west leg of the Y

13 Q Does that include the area depicted in

14 Exhibit 26?

15:38:59 15 A Yes.

16 Q How frequently before, in the year before the

17 date of the head-on collision, did you operate a

18 locomotive over those tracks in a westerly direction?

19 A Once every few months or could be even more.

20 Q Would you do it with only yourself in the cab

or

21 would there be an engineer or some other person in there?

22 A Both.

23 Q Under what circumstances would you operate a

24 locomotive in the area depicted in Exhibit 26 with you

25 alone in the locomotive?

engineer

1           A     If there was a -- if a Union locomotive  
2 was not available to operate, then the manager would  
3 operate the train.

15:40:00 4           Q     If the Union member was not available to work  
5 and do his job?

6           A     Correct.

7           Q     Who was with you when you made these  
8 observations after the head-on collision with regard to -  
-  
9 the ones you've just testified to with regard to the  
color

10 of the signal at CP Topanga?

15:40:24 11          A     I don't remember everybody that was there.

12          Q     Who do you remember?

13          A     The engineer, Kurt Bible.

14          Q     That's the name of the engineer?

15          A     Yeah.

16          Q     B-i-b-l-e?

17          A     Yes.

18          Q     Okay.

19          A     And I believe -- there were several people  
20 there, and I believe the FRA had a representative there.  
21 I believe -- again, I could supply that information for  
22 you.

15:40:58 23           MR. PFIESTER:  Would you agree?

24           MR. SHOHET:  Well, let's do it more formally by  
25 written discovery, if you want to get that.  You can

1 certainly get it, but I just don't like the idea of  
2 leaving a lot of blanks in the deposition and having to  
3 fill them in. Let's do it formally if you need it.

4 BY MR. PFIESTER:

5 Q And when in relation to September 12th of '08  
6 were those operations made?

7 A A few days after.

15:41:35 8 Q Were there any NTSB members present, as well?

9 A I believe so.

10 Q Now, we discussed the flashing yellow at  
11 CP Bernson, correct, and the obligation of the engineer  
to

12 call it out?

13 A Correct.

14 Q Okay. Before arriving at the Chatsworth  
15 station, there is a Signal 4451, correct?

16 A Correct.

17 Q An intermediate signal, correct?

15:41:56 18 A Correct.

19 Q And what's the obligation of the locomotive  
20 engineer if he sees a solid yellow signal?

21 MR. SHOHET: Excuse me, I think the question is  
22 what's the obligation if there is a solid yellow at the  
23 intermediate signal before Chatsworth, is that the  
24 question.

25 MR. PFIESTER: Yes.

1 MR. SHOHET: Okay, go ahead and answer.

2 MR. PFIESTER: Sorry.

3 MR. SHOHET: That's all right. There was just a gap  
4 in the question.

5 THE WITNESS: The engineer would call out the signal  
6 and immediately begin reduction to 40 miles an hour,  
15:42:30 7 prepare to stop short of the next signal.

8 BY MR. PFIESTER:

9 Q And the engineer is obligated to call out that  
10 signal over the radio, correct?

11 A Correct.

12 Q And it's your understanding that that did not  
13 happen to Metrolink 111?

14 MR. SHOHET: Objection. No foundation, calls for  
15 speculation.

16 BY MR. PFIESTER:

17 Q Shortly before the accident, head-on collision.

18 MR. SHOHET: Objection. No foundation, calls for  
19 speculation.

20 BY MR. PFIESTER:

21 Q Is that your understanding?

15:42:56 22 A There was no recorded announcement of him  
23 calling.

24 Q Now, let me show you -- do you have any  
25 information that he did call out signal -- "he" meaning

1 Mr. Sanchez -- call out Signal 4451?

2 A No, I don't.

3 Q What number is it?

4 A 27.

5 (Exhibit 27 was marked for identification.)

15:43:29 6 BY MR. PFIESTER:

7 Q Do you recognize that as the signal for  
8 westbound traffic at 4451?

9 A Yes.

10 Q Describe what the signal will depict visually  
if  
11 it's a solid yellow.

12 A If it's a solid yellow, the center aspect will  
13 be bright yellow.

14 Q And you're familiar with the signal before at  
15 Bernson, again for westbound traffic, are you?

15:43:59 16 A Yes.

17 Q And describe it if it's a flashing yellow.

18 A The aspect would flash yellow.

19 Q Which aspect?

20 A Center aspect.

21 Q The center aspect like we see here in Exhibit  
22 No. 27?

23 A Yes.

24 Q Except it's in a different location?

25 A Correct.

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1 Q Have you, yourself, studied the data downloaded  
2 out of the Event Recorder of Metrolink 111 post head-on  
3 collision?

4 A Yes.

5 Q Under what circumstances did you study it?

6 A Could you clarify your question, what  
7 circumstances?

15:44:57 8 Q Yeah. What did you do with regard to reading  
9 and/or analyzing the data from the Metrolink locomotive  
10 No. 111 after it left -- excuse me, after the head-on  
11 collision?

12 A Well, the data was secured by the NTSB. They  
13 downloaded the data and supplied Connex with the actual  
15:45:30 14 data, which was marked up and deciphered from the NTSB,  
15 and I was able to review that data and to review their  
16 markings on the Event Recorder.

17 Q What training do you have -- let me back up.

18 In what form was it when you reviewed the data  
15:46:02 19 and the markings as you just described?

20 A It was in both graph and tabular data.

21 Q A printout; is that correct?

22 A Correct.

23 Q Is there any certification program for being  
24 able to analyze Event Recorder data?

25 A No.

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15:46:30 1 Q It's true, is it not, that from reviewing it,  
2 that the engineer never applied the brakes before the  
3 collision? I'm talking about Metrolink 111.

4 MR. SHOHET: Object to the form of the question, no  
5 foundation, calls for speculation.

6 MR. PFIESTER: Let me rephrase the question.

7 Q From looking at the data that was downloaded  
15:46:58 8 from Metro No. 111 locomotive, it's true, is it not, that  
9 the data indicates there was no application of the brakes  
10 on Metrolink 111 locomotive before impact?

11 A The data shows no application of the automatic  
12 or independent brake.

13 Q Right. It's the automatic and independent  
14 brakes that provide braking power for the locomotive,  
15 correct?

16 A For the locomotive and the cars.

15:47:27 17 Q Yeah, and the cars, correct.

18 And in addition, did you go to the scene? Did  
19 you see the scene before it was cleaned up? You've  
20 already testified that you interviewed Mr. Heldenbrand,  
21 but did you actually go to the signal at CP Topanga?

22 A Yes.

23 Q And did you look at the switches and switch

Railroad 24 points? I'm talking about the switch immediately

25 East of CP Topanga.

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1 A Yes.

15:48:00 2 Q You see it on Exhibit No. 26?

3 A Yes.

4 Q And the switch had been run through, had it  
not?

5 A That's correct.

6 Q And explain what that means.

7 A Run-through switch, switched his line for a  
15:48:26 8 route other than the route of the train that ran through  
9 it, and when they run through it, they bend the rods and  
10 push the switch points away from the route that it was  
11 intended.

12 Q Right. So let me show you Exhibit 28.

13 (Exhibit 28 was marked for identification.)

14 BY MR. PFIESTER:

15 Q Do you recognize that location as CP Topanga?

15:49:00 16 A Yeah, that's the location CP Topanga.

17 Q And can you tell from looking at Exhibit 28  
18 which way the switch is lined mechanically?

19 A Well, I can't quite see the right side of the  
20 rail, but it appears that it's lined -- no, I don't have

a

21 clear view of the switch points.

a 22 Q And that's just because the photographer is at  
15:49:29 23 location lower than the engineer would be, correct? If  
24 you were in the engine in the front of the train, you'd  
be  
25 up in the air so you'd have a better view from this

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1 distance; is that correct?

2 A Yes.

3 Q And because we don't, you're saying you can't  
4 quite make out if the switch point -- exactly where the  
5 switch point is in relation to the rail?

6 A Well, it depends on the distance also, but  
7 correct.

15:49:57 8 Q Okay. Now, it's true, is it not, that  
9 locomotive engineers -- I mean, you train to look out for  
10 all sorts of hazards ahead at all times; is that correct?

11 A Correct.

12 Q And that's one reason that the cell phone rule  
13 is so important, correct?

14 A One reason, yes.

15 Q And when rails are used regularly, steel rails  
16 like those we see depicted in Exhibit 28, they become  
15:50:27 17 shiny, correct, they reflect the sun?

18 A Yes.

19 Q And you can see that the rails in Exhibit 28 --  
20 you can see the shine reflecting there on part of them,

21 correct?

22 A Correct.

23 Q And it's also true that an observant locomotive  
lined 24 engineer would be able to see whether the switch was  
25 for or against him?

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1 MR. SHOHET: Can I have the question back?

2 MR. PFIESTER: I haven't finished it.

3 MR. SHOHET: Oh, I'm sorry, excuse me.

15:50:59 4 MR. PFIESTER: I'll start over though.

5 Q It's true, is it not, that an experienced  
6 locomotive engineer can see ahead by looking at the  
track,  
7 the switch points and determine whether or not they are  
8 lined for movement in his direction, in this case if  
9 the -- on the day of the head-on collision going west or  
10 whether they're lined -- he's going west, okay -- or  
11 whether they're lined for end of the siding as the Union  
15:51:29 12 Pacific train was supposed to be diverted, correct?

13 MR. SHOHET: Object to the form of the question,  
14 vague and ambiguous, calls for speculation without  
15 foundation, compound.

16 THE WITNESS: Depends on the speed, visibility,  
17 conditions.

18 BY MR. PFIESTER:

day, 19 Q Well, as far as you know, wasn't it a clear

20 reasonably nice day, on September the 12th of '08?

21 A Yes.

22 Q In the afternoon, correct?

15:51:59 23 A Correct.

24 Q And it's true, is it not -- and the train was

25 going about what speed as it went past where the signal

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1 stand was?

2 MR. SHOHET: Object to the form of the question, no

3 foundation, calls for speculation.

4 BY MR. PFIESTER:

5 Q Based on your knowledge of the data you

6 downloaded, if you know.

7 A I didn't download any data .

8 Q Okay.

15:52:30 9 A But based on the downloaded data from the FRA  
or

10 NTSB, approximately 42 miles an hour.

11 Q Right. In your opinion, how far away would you

12 be able to see -- assuming a clear day in this location,

13 how far away would the engineer or should the engineer be

14 able to see the way the switch was mechanically lined by

15 looking at the switch points and the shine of the rail,  
if

16 you know?

17 MR. SHOHET: Object to the form of the question,  
18 calls for opinion of a lay witness, without foundation,  
15:52:57 19 calls for speculation, no foundation.

20 BY MR. PFIESTER:

21 Q If you don't know, that's fine too.

22 A Yeah, I would say I don't know.

23 MR. SHOHET: I would add incomplete hypothetical to  
24 my objections, but go ahead.

25 BY MR. PFIESTER:

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at 1 Q And it was clear, was it not, when you looked  
2 the particular switch that we see depicted -- this is  
15:53:28 3 replacement, is it not, Exhibit 28, than the one that was  
4 there just before the head-on collision?

5 MR. SHOHET: Objection. No foundation, calls for  
6 speculation. I don't think he said he saw it before --

7 MR. PFIESTER: No, afterward.

8 MR. SHOHET: I think your question said "before."

9 BY MR. PFIESTER:

10 Q You said that the switch was run through, the  
11 switch that we see depicted in Exhibit 28, correct?

12 A At the evening of the 12th when I arrived at  
the  
15:53:59 13 scene approximately 5:15, 5:20, as I walked by the  
switch,

14 I did see that the switch was ran through.

15 Q Which means the Metrolink Train No. 111 was on  
16 the right-hand track as we see there, right? Do you want  
17 to put an arrow in the middle of the track with a red pen  
18 in the direction of the Metrolink train?

19 A It was traveling on the main track westbound.

20 Q Correct.

21 A (Witness complies.)

15:54:28 22 Q And by the switch being run through, it means  
23 that the weight and force of the locomotive mechanically,  
24 physically, moved the switch to the direction and bent up  
25 parts of the apparatus of the switch as it ran through

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1 backwards, correct?

2 A As the train ran through the switch, it bent  
the  
3 switch points away from the line to the siding and in the  
15:54:59 4 line of the main track to single main track.

5 Q Right.

6 A You had said back through it. I just want to  
7 make sure -- they didn't run back. They ran directly.

8 Q Correct. There was -- based on your review of  
9 the data, you saw the Locomotive 111 continued  
10 straightforward in a westerly direction through the  
switch  
11 we see depicted there in Exhibit 28, correct?

12 A Correct.

13 Q How about putting an "E" down there at the

15:55:29 14 bottom of the page to show "east."

15 A (Witness complies.)

16 Q That's back towards L.A., right?

17 A Correct.

18 Q Do you have any training in signal -- the

19 signalman's profession? I'm talking about railroad

20 signal.

21 A No.

15:55:58 22 Q Since you started work on the railroad, which  
23 you told us earlier about your high school graduation and  
24 your college years, since you've been working on the  
25 railroad, have you gone to any courses on railroading or

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1 seminars?

2 A Yes.

3 Q Have any of them had anything to do with

4 signals?

5 A No.

15:56:29 6 Q What about reading data from an Event Recorder?

7 A No.

8 Q What have they been involved with, generally?

9 A Training as far as safety, seminars in all  
sorts

10 of things.

15:56:57 11 Q Things related to the railroad, correct?

12 A Things related to the railroad, not -- most of

13 them around corporate policies, procedures, safety,  
14 environmental, regulatory compliance, reporting injury,  
15 handling and reporting, all kinds of different seminars  
16 and stuff.

17 Q Right. And the ones that you've attended with  
18 regard to training is training of railroad employees,  
15:57:27 19 correct?

20 A Correct.

21 Q And it's very common for those courses or  
22 seminars to teach that repetition is important so that  
23 they can have the rule or rules instilled in their mind  
24 that becomes part of a habit; is that correct?

25 A Correct.

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that 1 Q And it's also -- as part of what you learn,  
2 it's important to follow up to be sure that the rule is  
15:58:09 3 being followed after it's once violated?

4 A Correct.

5 Q The switch being in the condition you saw it  
6 after the head-on collision, the mechanical switch -- are  
7 you with me?

8 A Yes.

9 Q -- would indicate that based on that  
10 information, would indicate that the aspect or color of  
15:58:28 11 the CP Topanga signal was red, correct?

12 MR. SHOHET: Objection. Calls for speculation, no  
13 foundation, incomplete hypothetical, calls for an  
opinion.

14 THE WITNESS: The switch being lined for the siding  
15 should have made a red indication on the signal at  
Topanga  
16 for a westbound move.

17 BY MR. PFIESTER:

15:59:02 18 Q Like Metrolink 111 did, correct?

19 A Yeah, the signal should have been red.

20 Q Well, you have no training in analyzing data  
15:59:47 21 from signals, I take it?

22 A No.

23 Q Now, there's also an obligation or was an  
24 obligation for Mr. Sanchez, the engineer of Metro 111, to  
25 call out the aspect of the CP Topanga signal on the  
radio,

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15:59:59 1 correct?

2 A Correct.

3 Q And as far as you know, he never did that or  
4 there's no recording that he did, correct?

5 MR. SHOHET: Object as compound, calls for opinion,  
6 speculation.

7 MR. PFIESTER: Let me restate it.

8 MR. SHOHET: Okay.

9 BY MR. PFIESTER:

10 Q Based on the information that you've received,  
16:00:27 11 there's no record, is there, that Mr. Sanchez, the  
12 engineer of Metrolink 111, called out the signal at  
13 CP Topanga before the accident, before the head-on  
14 collision?

15 MR. SHOHET: Objection. Calls for speculation, no  
16 foundation.

17 THE WITNESS: Correct.

18 BY MR. PFIESTER:

19 Q What information are you aware of? You're  
20 talking about the tapes as a result, correct?

21 MR. SHOHET: Objection. No foundation, calls for  
22 speculation, vague and ambiguous.

23 THE WITNESS: From what I'm told. I have not  
24 reviewed the voice tapes.

25 BY MR. PFIESTER:

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16:00:59 1 Q Yourself?

2 A Correct.

3 Q Have you in the past had occasion to check to  
4 see if employees texted or were texting on their phones?

5 A I guess -- could you explain how I would see  
the

16:01:29 6 texting or records? I wouldn't have any records of them  
7 testing -- texting.

8 Q T-e-x-t-i-n-g. Are you familiar with how

9       texting works on a telephone?

10       A       Yes.

11       Q       And do you know whether or not on a phone the  
12 record of the text is saved?

13       A       It is saved until it's deleted by the user.

14       Q       It's saved on the handset, right?

15       A       Yes.

16:01:57 16       Q       On the phone?

17       A       As far as I know.

18       Q       Right, okay. Did you ever check Mr. Sanchez's  
19 cell phone to see whether he had been texting?

20       A       No.

21       Q       Did you ever ask him -- if you'd asked him, he  
22 would have had to show you, correct?

23       MR. SHOHET: Excuse me, if he had asked him what?

24       MR. PFIESTER: Thank you.

25       Q       If you asked him to let you look at his phone,

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1       you would have -- he would have been required to show you  
16:02:30 2       on penalty of being cited for insubordination, correct?

3       A       No. I would have to -- to have him cited for  
4 insubordination, I would have to give him a direct order.

5       Q       Right. If you ordered him to please let me see  
6 your cell phone to see if you've been texting, that would  
7 be a direct order, would it not?

8 A No.

9 Q Why not?

direct

10 A A direct order would be "I'm giving you a  
11 order to show me your cell phone."

12 Q Okay. What you just said is a direct order,  
13 right?

14 A Correct.

15 Q If you did that, what you just said, then he  
16:02:59 16 would be obligated to let you see the texting that  
17 occurred during his work hours, correct?

18 A Yes, or he would be -- suffer the possibility  
of  
19 insubordination.

20 Q Yeah, and insubordination is one of the rules,  
21 very important rules of the railroad, correct?

22 A Correct.

23 Q And the penalty may be being dismissed, losing  
24 your job, correct?

25 A Correct.

171

1 Q And you've known railroaders to be fired for  
2 insubordination, correct?

16:03:28 3 A Yes.

4 Q And did you ever ask Mr. Sanchez to let you --  
5 not ask him -- I mean, did you ever give him a direct

to 6 order which would trigger the insubordination penalties  
7 please let you see his phone, the texting information on  
8 his phone?

9 A No.

10 Q Same question for other employees, before the  
11 collision, head-on collision of September the 12th of  
16:03:59 12 2008, did you ever ask or make a direct request to any  
13 other employee to let you check any texting they had done  
14 while on duty in potential violation of the cell phone  
15 rule?

16 A No.

17 Q After the head-on collision, have you or did  
you 18 ever ask anybody in a way that would subject them to  
19 insubordination to let you see if there were any texting  
20 messages in the memory of their cell phones?

16:04:27 21 A No.

22 Q Is there any reason why the locomotive  
engineers 23 such as Mr. Sanchez could not have been prohibited from  
24 bringing their cell phone on board, in other words, they  
25 would have to check it, for example?

172

16:04:57 1 A Could you repeat that question?

2 Q Yes. Is there any reason why -- before this  
3 incident, this head-on collision, was there ever

4 consideration about making it illegal, if you will, to --  
5 or against the rules for a locomotive engineer to have a  
6 cell phone with him while he was working?

7 A Not to my knowledge.

8 Q That would be a more effective prevention  
9 mechanism, would it not?

16:05:28 10 MR. SHOHET: Objection. Calls for --

11 By MR. PFIESTER:

12 Q In retrospect, at least?

13 MR. SHOHET: Objection. Calls for opinion, no  
16:05:37 14 foundation.

15 THE WITNESS: In retrospect, I would say anything we  
16 can do to enforce a policy would be, you know, valuable.

17 BY MR. PFIESTER:

18 Q Did you ever observe Mr. Sanchez -- strike  
that.

19 You know the term "foamer," f-o-a-m-e-r, the  
20 railroad term?

16:06:26 21 A Yes.

22 Q What does that mean?

23 A That means an individual that spends some of  
24 their time using or watching railroads as a hobby.

25 Q They're people who like trains a lot or the

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1 employees that work for railroads, correct?

2 A Correct.

3 Q Rail fans, correct?

16:06:54 4 A Correct.

5 Q Did you ever see Mr. -- any rail fans before  
the

6 date of the head-on collision around Mr. Sanchez that you  
7 recall.

8 A I don't recall. There are rail fans at several  
9 of the stations, and I've seen them wave for both the  
10 engineer and conductor at station stops. Burbank is a  
16:07:28 11 very -- Glendale is a very popular one, and so is  
12 Chatsworth.

13 Q And did you ever see any teenage boys around  
14 Mr. -- or boy around Mr. Sanchez before this head-on  
16:07:51 15 collision that occurred September the 12th of 2008?

16 A There are several rail fans that actually ride  
17 the trains, and they ride all the trains with all the  
18 crews. I have never seen a rail fan, you know, around an  
19 engineer. They're in the train while the engineer is  
20 operating.

16:08:25 21 Q Are some of these rail fans teenaged?

22 A Yes.

23 Q In what area do the teenager rail fans tend to  
24 congregate, if you will?

25 A The Moorpark area is the ones that I'm aware  
of.

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16:09:02 1 Q Teenage boys are the rail fans?

2           A     Yes.

3           MR. PFIESTER:  Can we take a break for about five  
4 minutes?

16:24:04 5           MR. SHOHET:  Sure.

6           THE VIDEOGRAPHER:  Off record 4:09.

7                   (A recess was taken.)

8           THE VIDEOGRAPHER:  On record 4:24.

9           BY MR. PFIESTER:

10          Q     Mr. Dahl, referring to Exhibit 16, which are  
the  
16:24:30 11 cell phone rules and their changes, okay, do you know  
what  
12 things triggered the 2006 changes?

13          A     No, I don't.

14          Q     You haven't heard from any source?

15          A     No, I haven't.

16          Q     And the rule would apply to video games, as  
17 well, wouldn't it, the hand-held video games?

18          MR. SHOHET:  Which rule, Counsel?

19          MR. PFIESTER:  Excuse me.  The General Code of  
20 Operating Rules.

21          MR. SHOHET:  Is there a particular rule number?  I  
16:24:58 22 don't mean to be difficult.  I'll just object vague and  
23 ambiguous.

24          THE WITNESS:  1.10, Electronic Devices.

25          BY MR. PFIESTER:

1 Q Calls it Electronic Devices, and they added a  
2 fourth bullet, "Use cellular telephones when operating  
the  
3 controls of moving equipment except in emergencies," but  
4 that is just part of the rule.

5 The rule is broad enough to include electronic  
6 devices, as written, correct, or do you recall?

16:25:29 7 MR. SHOHET: I'll object. Vague and ambiguous.

8 You can answer, if you can.

9 THE WITNESS: General Code Rule hasn't changed.  
10 Emergency Order 26 came out with the change, and all the  
11 railroads had to comply with that, and then the next  
12 General Code revision, from my understanding, will have a  
13 revision to Rule 1.10.

14 BY MR. PFIESTER:

15 Q Because of the changes that we were just  
16 discussing this afternoon?

16:25:59 17 A Yes.

18 Q Now, actual page 1 of Exhibit 16 just  
references

19 change in bullet four, correct?

16:26:18 20 A Yeah, fourth bullet is added underneath  
21 Rule 1.10

22 Q Right. My question is, do you remember --  
well,

23 but the rule itself -- let me show you. May we call it  
24 16-A?

25 MR. SHOHET: Sure.

16:26:55 1 MR. PFIESTER: MDE 16-A.  
2 (Exhibit 16-A was marked for identification.)  
3 MR. PFIESTER: -- is actually a copy of the GCOR  
4 rule, and includes, if I'm reading it correctly --  
16:27:25 5 MR. SHOHET: This is a three-page exhibit, Ed, 16-A?  
6 MR. PFIESTER: Yes.  
7 MR. SHOHET: Entitled "GCOR"?  
8 MR. PFIESTER: Yes.  
9 Q Do you have that in front of you?  
10 A Yes.  
11 Q It says "Unless permitted by the railroad,  
12 employees on duty must not: Play games..."  
13 That would include the video games, correct?  
14 A The way I understand electronic devices and  
15 "Play games" as a bullet, yes.  
16 Q Also "Use electronic devices not related to  
17 their duties," so video games would be a part of  
16:28:00 18 prohibited acts, correct?  
19 A Correct.  
20 Q Are you aware of anybody at Connex/Veolia who  
21 has gotten into trouble for using -- not gotten into  
22 trouble -- strike that.  
23 Are you aware during the time you've been at  
24 Connex/Veolia whether anybody has violated the rule with  
25 regard to video games?

1 A Not that I'm aware of.

2 Q Outside of the presence of counsel, in other  
3 words, not speaking to your lawyer, okay, have you told  
4 anyone that something other than the text messaging  
5 activities of Mr. Sanchez caused the head-on collision?

6 MR. SHOHET: Excuse me, can I have the question  
back?

7 I'm sorry, that it was my fault. I was daydreaming.

16:28:59 8 MR. PFIESTER: Just read it back.

9 MR. SHOHET: I don't think there was anything wrong  
10 with the question is what I was saying.

11 MR. PFIESTER: No, by all means.

12 (The record was read.)

13 THE WITNESS: I have made my speculations of  
16:29:29 14 different things that could have happened.

15 BY MR. PFIESTER:

16 Q And what do you mean by "speculation," just  
17 guesses?

18 A Yes.

19 Q Well, we didn't tell you, but we don't want you  
20 to guess.

21 A So I have spoken to other people of guesses.

16:30:00 22 Q But that's speculation on your part, correct?

23 A Correct.

24 MR. PFIESTER: We're going to pass the witness per  
25 our earlier discussion, Counsel.

1 MR. SHOHET: Okay, just so I'm clear, though, you're  
2 not done?

3 MR. PFIESTER: Right.

4 MR. SHOHET: But you're done for the day?

5 MR. PFIESTER: In more ways than one.

6 MR. KIESEL: For purposes of the record, what we  
have  
7 is this, we've agreed at the outset that we need to go  
8 through the documents. There's certainly lots of areas  
we  
9 have not had an opportunity to inquire into specifically  
16:30:28 10 and we will, so we'll need another day to cover at  
11 least -- hopefully complete within that day those areas  
12 that we haven't been able to cover. We can continue on  
13 right now, but it made some sense to pass it on to  
14 Metrolink, so that's what we're going to do.

15 MR. PFIESTER: Well, but I have other areas, things  
I  
16 haven't covered.

17 MR. KIESEL: We will not be foreclosed from asking  
18 additional questions on the theory that somehow you  
waived  
19 asking questions.

20 MR. SHOHET: I want to be respectful of the witness'  
16:30:59 21 time and efficient, and it would really be important for  
22 us to complete in one more day. If Marilyn going now  
will

23 help us do that, that will be great. The next day when  
24 you have all the records that you need we can try to  
start  
25 early and work late to get it done if we can.

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1 MR. KIESEL: That's my expectation.

2 MS. BACON: My understanding now is we'll go to 5:00  
3 and then we'll reconvene at a mutually convenient time,  
4 hopefully soon.

5 Is that correct?

6 MR. SHOHET: I can go later than 5:00 if people feel  
16:31:30 7 it's not going to be possible to complete this in one  
more  
8 day. I can continue on as long as people want to go, but  
9 what I do want to do is finish in one more day.

10 MS. BACON: I mean, it's impossible to sit here  
today  
11 without having a fair opportunity to look at the  
documents  
12 to say that we will definitely make it complete in one  
13 more day because we just don't know.

14 MR. KIESEL: I understand what you're saying. If  
15 they can go one hour now, that will make it shorter and  
16:31:58 16 you can go longer than 5:00.

17 MR. SHOHET: Or two or three, but I'm not going to  
be  
18 difficult to reach an agreement that it will go more than  
19 one day, but I will be willing to work late tonight and I

20 will be willing to start very early and work late on  
21 another day. That's my position, but I do want to  
22 complete in one day. Come on down.  
23 ///  
24 ///  
25 ///

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16:33:22 1

EXAMINATION

16:33:26 2

BY MS. BACON:

Marilyn

3

Q Good afternoon. As you know, my name is

4

Bacon, and I represent SCRRRA and MTA. I'm going to start  
5 by asking a few follow-up questions to Mr. Pfiester's  
6 questions raised this morning, and then we will go ahead  
7 from there.

8

about

When Mr. Pfiester was asking you questions

9

your understanding of the timing of Mr. Sanchez's text

10

messaging as he was traveling past CP Topanga on the day

16:33:59 11

of the accident, you stated something to the effect that

12

your understanding of the cell phone timing, the way the

13

messages bounce off the various towers.

14

Do you recall that?

15

A Yes.

16

Q What is your understanding about the timing of

17

the transmission of the cell phone messages through these

18 towers?

19 MR. SHOHET: I object. Calls for speculation, no  
20 foundation, calls for expert opinion.

21 You can answer the question.

16:34:29 22 THE WITNESS: What I was told after the incident on  
23 September 12th by somebody that has some expertise, I  
24 believe was with the NTSB, I don't know exactly, is that  
25 the number that they give for the timing of the text

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1 message was the time that it accepted at the tower, not  
2 necessarily the time that it was sent from the phone.

3 BY MS. BACON:

4 Q And who did you get that information from?

16:34:58 5 A I believe it was somebody at the NTSB.

6 Q You don't know who?

7 A No. It may have been in one of my meetings  
with

8 them.

9 Q That wasn't said at the public hearing that you  
10 testified at, was it?

11 A No.

16:35:20 12 Q Did I understand you correctly that from about  
13 September '06 forward to the time of this accident in  
14 September of '08, that Connex had discontinued cell phone  
15 testing, efficiency testing?

16 A No.

17 Q But during that time you weren't using the  
18 method of calling the person's cell phone to determine if  
19 it was on or off?

16:35:53 20 A That's correct.

21 Q You were testifying about the report you  
22 received from Mr. Heldenbrand that Mr. Heldenbrand had  
23 noted Mr. Sanchez using his cell phone while at the  
24 controls of the locomotive. Do you recall that  
testimony?

25 MR. SHOHET: Misstates the testimony. Objection,

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1 misstates the testimony.

2 THE WITNESS: The controls of a cab car at a station  
3 stop.

4 BY MS. BACON:

5 Q You testified that Mr. Heldenbrand told you  
that  
16:36:32 6 in early August of 2008?

7 A Yes.

8 Q On what are you basing the statement, that that  
9 occurred in early August?

10 A It was sometime during the period of the  
Ventura

11 County Fair. During that period, the Ventura line is  
16:36:59 12 extremely busy. There's a lot of action going on, and I  
13 remember his conversation was sometime during that  
14 two-week period in the beginning of August.

15 Q And the fair lasts two weeks?

16 A It lasts like 10 days, but it's over two  
17 separate weekends.

18 Q Have you seen the statements that  
16:37:29 19 Mr. Heldenbrand gave to the NTSB regarding his discussion  
20 with you about Sanchez's use of the cell phone?

21 A I don't believe so.

22 Q Have you ever spoken with Mr. Heldenbrand since  
23 this accident besides the one time you said you spoke to  
24 him at the triage the day of?

25 A Yes.

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1 Q When is the next time you talked to him after  
16:38:03 2 the time of the triage?

3 A A few days later in the hospital.

4 Q At the time of the triage, did you talk to him  
5 about Mr. Sanchez's use of the cell phone?

6 A No.

7 Q Then the next time you saw him was when  
8 Mr. Heldenbrand was in the hospital?

9 A Next time I saw Mr. Heldenbrand, yes, he was in  
10 the hospital.

11 Q Did you go visit him in the hospital?

16:38:30 12 A Yes.

13 Q What did you discuss with him at that time?

14 A I discussed that -- you know, see how he's

15 doing. I had some paperwork for him to sign that was a  
16 release of medical information to the corporation, told  
16:38:56 17 him, you know, whatever I can do to help. We had a  
18 conversation, brief conversation, about the accident.

19 We did discuss cell phone -- the fact that I  
did  
20 speak with Mr. Sanchez following his -- Mr. Heldenbrand's  
21 report to me of a cell phone use in early August.

22 Q Did Mr. Heldenbrand ask you about that or did  
23 you initiate that topic?

24 A That came up in conversation, and I believe I  
25 initiated that topic.

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1 Q What did Mr. Heldenbrand say to you when you  
2 told him you had spoken to Mr. Sanchez?

3 A I don't remember his response.

4 Q When is the next time you talked to  
5 Mr. Heldenbrand after the visit in the hospital?

16:39:56 6 A I spoke with him -- I don't know if I saw him  
7 again. I don't remember seeing him again. I spoke with  
8 him several times on the telephone. He at some point --  
9 he left his home or his place in Pasadena and he went to  
10 live with his parents while he was recuperating in Palm  
11 Springs, spoke with him several times during that and,  
16:40:25 12 actually, he came down and spent the day at Central  
13 Maintenance Facility and met a lot of the people and had

14 him in for an afternoon. I believe we were having some  
15 kind of a celebration, safety celebration or something,  
16 and we had sandwiches, and he was invited down there.

17 Q Was that before he returned to work?

18 A Yes.

16:40:59 19 Q How many times did you talk to him between the  
20 time in the hospital and his return to work?

21 A Um, half a dozen, six.

22 Q What were the reasons for talking with him on  
23 those six occasions?

24 A See how he was doing, let him know if there was  
25 anything going on. I had -- one of the occasions I had

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1 checks for him, payroll checks, wanted to know where to  
16:41:29 2 send them. He had called me a couple times just to see  
3 how things were going, you know, with the railroad.

4 he One of the times he called me to tell me that

5 had people, media, kind of hounding him. They were at  
his

6 door. They wanted to speak with him. I was able to get  
7 information as far as who he needs to contact, and we

also

8 contacted the person, and then I called Mr. Heldenbrand  
to

9 give him all that information.

10 Q About how to deal with the media?

16:41:58 11 A Yes.

12 Q Mr. Heldenbrand was one of the employees in  
your

13 charge at the time of the accident, correct?

14 A Correct.

15 Q As a manager, was it one of your duties to

16 investigate on-the-job employee injuries?

17 A Yes.

16:42:26 18 Q Were you involved in investigating

19 Mr. Sanchez's -- I mean, Mr. Heldenbrand's on-the-job

20 employee injury when this collision occurred?

21 A No. The only thing I did as far as the injury

22 investigation portion of it was retrieve whatever forms

16:42:58 23 needed to be finished and signed.

24 Q Did you obtain a statement from Mr.  
Heldenbrand?

25 A Yeah, at some point I think there's a statement

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1 have

2 that was turned in with the incident packet. I would

3 to review it to see it. The form that I had him sign was

4 a 488, Medical Release of Information.

5 Q The Medical Release of Information form, was

6 that so that Connex could get all of his medical

16:43:28 7 information for the care and treatment following the

16:44:09 8 collision?

9 A Yeah, for the -- yeah, correct.

9 Q Earlier you talked about a statement that  
16:44:31 10 Mr. Heldenbrand had given that involved a Mr. Michael  
11 Hyman. Do you remember that general testimony?

12 A Yes.

13 Q Mr. Hyman is also a Connex Transportation  
14 Manager?

15 A Yes. Was.

16 Q Was, okay. Where was Mr. Hyman's territory  
back  
17 in September of '08?

16:44:57 18 A Mr. Hyman was primarily responsible for the  
19 Valley Sub between Los Angeles and Lancaster.

20 Q And you were responsible for the Ventura Sub,  
21 correct?

22 A Correct.

23 Q And this Chatsworth collision happened in the  
24 Ventura Sub, correct?

25 A Correct.

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16:45:28 1 Q What did Mr. Heldenbrand tell you about the  
2 calling of the signals between he and Mr. Sanchez between  
3 CP Bernson and CP Topanga?

4 MR. SHOHET: I'd like to hear the question back.

5 (The record was read.)

6 MR. SHOHET: Go ahead.

7 THE WITNESS: At that time at the accident when I  
was

16:45:59 8 interviewing him.

9 BY MS. BACON:

10 Q That would have been the first time you spoke  
11 with him about it, correct?

12 A Correct.

13 Q Okay, what did he tell you that very first time  
14 at the scene of the accident?

15 A That he actually told me what happened. He  
said

16:46:25 16 that he saw green at Topanga, that he said he highballed  
17 the train on a green, is how he referenced to it to me,  
18 and when I asked him what colors the signals were  
arriving

19 into Chatsworth, I believe he told me the last signal was  
20 green, to the best of my recollection.

21 Q Did you interpret that to mean the intermediate  
22 just before Lawson Street as being green?

16:46:55 23 MR. SHOHET: Calls for speculation, no foundation.

24 THE WITNESS: At that time I wasn't sure exactly  
what

25 that meant. The last signal he either heard or the last

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1 signal into the station. I didn't know.

2 BY MS. BACON:

3 Q Did you discuss with Mr. Heldenbrand in that  
4 first talk whether he had repeated the signals that  
5 Sanchez had called?

6 A I think so.

7 Q And did Mr. Heldenbrand say he had repeated  
16:47:26 8 those signals?

9 A He was a little confused. If I remember --  
10 again, this is a while ago. The best that I can recall  
is

11 that he had first said "yes" and then I believe the  
second  
12 time I talked to him he said he didn't know or didn't  
13 remember.

14 Q Mr. Heldenbrand told you he highballed Sanchez  
16:47:57 15 from Chatsworth Station?

16 A Yes.

17 Q And where is your understanding of  
Heldenbrand's

18 location when he observed a green signal at the  
Chatsworth  
19 Station?

20 A According to Mr. Heldenbrand, it was on the  
last  
21 car of the train while standing on the mini-high PNA  
ramp.

16:48:29 22 Q What is your understanding of how he highballed  
23 Sanchez?

24 A From what I recall him saying is "Highball 111  
25 on a green."

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1 Q Was it a hand signal?

2           A     No.  He told me he said, "Highball 111 on a  
3 green."  
4           Q     So, presumably, over the radio?  
5           A     That would be what I'd presume.  
16:49:04 6           Q     And would you expect that radio transmission to  
7 be recorded on the dispatcher's radio recording?  
8           A     Normally, yes.  
9           Q     Is it your testimony that you have not heard  
10 those dispatcher recordings of Train 111 between  
16:49:37 11 CP Bernson and up to and after the time of the collision?  
12           A     I don't recall listening to them.  
13           Q     Mr. Heldenbrand claimed injury in the  
collision,  
14 correct?  
16:49:54 15           A     Correct.  
16           Q     And Mr. Hyman took a verbal statement from  
17 Mr. Heldenbrand, correct?  I believe it was -- it may  
have  
18 been in one of the documents you reviewed to prepare for  
19 the deposition.  
20           A     I didn't see a statement from Mr. Hyman.  
21           Q     From Mr. Heldenbrand taken by Mr. Hyman?  
22           A     No, I didn't see one.  
23           Q     Mr. Heldenbrand claimed injury in the accident,  
24 correct?  
25           A     Yes.

1 Q And you've had other employees working  
2 underneath you that have claimed on-the-job injuries,  
3 correct?

4 A Yes.

5 Q And you reviewed the Event Recorder tape in  
6 connection with the Chatsworth collision, correct?

7 A Yes.

8 Q And that's something you would usually do if an  
9 engineer was involved in or any crew member was involved  
10 in an accident that gave rise to an injury that may  
16:50:59 11 involve train operations, correct?

12 A Correct.

13 Q Did you take any photos out at the scene out at  
14 Chatsworth after the collision?

15 A No. No, not -- you mean the day of the  
16 collision?

17 Q The day of or the day after, the aftermath.

18 A I don't remember taking any photos.

16:51:23 19 Q Have you seen photos that Connex took of the  
20 collision area?

21 A I've seen several photos, both on the Internet,  
22 often T.V. I don't remember any, ones that Connex took.

23 Q Taking photos of an accident scene would be  
24 something you'd ordinarily do investigating an on-the-job  
25 injury as a manager?

1 A Usually, yes.

2 Q I think you referred to other paperwork that  
had

16:51:59 3 been assembled for this Chatsworth collision, including  
an

4 Unusual Occurrence Report?

5 A Yes.

6 Q You're familiar with those reports?

7 A Yes.

8 Q That's something that you give in the event of  
9 an employee injury, correct?

10 A Correct.

11 Q And if the timing of the train is involved,  
12 you'd also get the Time and Delayed Report and keep that?

13 A Yes.

16:52:25 14 Q What other types of items would you usually  
keep

15 in the file for investigating an employee injury?

16 A Um, an Employee Illness/Injury Report, Unusual  
17 Occurrence Report, Delayed Report, if it was associated  
18 with a train, speed tape, 488 medical review. I think  
19 that's pretty much it.

20 Q And you'd keep those as the Transportation  
16:52:59 21 Manager?

22 A No.

23 Q As a Train Master?

24 A No. Those would be kept in the General  
25 Manager's office.

1 Q So remind me, you were a Train Master at the  
2 time of this collision, correct?

16:53:29 3 A Transportation Manager.

4 Q Transportation Manager. So who would do that  
5 initial investigation and do that documentation and pass  
6 it on to the General Manager?

7 A On a -- on a normal incident, that would be  
8 either the Transportation Manager for the line or his  
16:53:59 9 designee or even could be another manager that has the  
10 time and/or ability.

11 Q What does the term "highball" mean to you as an  
12 experienced railroader?

13 A Depart.

14 Q The term "highball" alone has no reference to  
15 any signal indication, correct?

16 A No.

16:54:43 17 Q Yes, I'm correct?

18 A Correct.

19 Q Your efficiency database you were talking  
about,

20 I believe -- and it was hard to hear -- I believe you  
said

16:54:57 21 if there is any noncompliance with an efficiency test  
that

22 information would be recorded in the system, correct?

23 A Yes. Any time you're testing and have a

24 failure, you would enter that as a failure in the

25 efficiency test database.

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1 Q Would you also enter in the database the fact  
2 that you did an efficiency test?

3 A Sometimes.

4 Q Because there's a certain number of efficiency  
5 tests that you're required to conduct per month, correct?

16:55:29 6 A Correct.

7 Q And, presumably, not every efficiency test you  
8 conduct is going to result in a failure, correct?

9 A Very few result in a failure.

10 Q So in order to keep a record of how many  
11 efficiency tests you've conducted, you necessarily have  
to  
12 record them, even if you don't get a failure, correct?

13 A No, that's not quite correct. And maybe I can  
16:55:56 14 explain.

15 There are opportunities to do hundreds, maybe  
16 several hundred efficiency observation tests in a day.  
17 Everything you look at is associated with a rule.

18 The FRA frowns on what they would call fluff  
19 numbers that managers are entering tests just to enter  
20 tests and put the numbers very high.

16:56:26 21 Our instructions are when we go out and enter  
22 tests, that we want to enter -- we have a minimum number  
23 of 50 tests, every employee, but we want to enter the  
most

we're 24 critical or safety critical test of a group of tests  
25 doing.

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1 For an example, if I set up a stop signal test  
2 for an engineer or a train crew, the test that I would  
3 probably enter will be five or six tests that may involve  
16:57:00 4 train speed, radar, stopping at the signal, calling the  
5 signal, so I will take five or six of those critical  
6 tests.

7 The tests that I wouldn't take is -- you know,  
8 that I may not take, and it's at my discretion or other  
9 managers -- is as they were coming up to a stop, they had  
10 five gray crossings and they blew the whistle correctly  
11 five times, they went over and out about every other  
16:57:28 12 signal. You can do five tests on just a simple  
13 communication. You can do the ditch lights. You can do  
14 headlights, you know, all those tests, and in this simple  
15 event I could have literally 50 tests. I could have my  
16 entire quota in one test.

17 Well, the FRA would frown on all that and they  
18 would say, we want -- the purpose of the test was a stop  
19 signal, so that's what we want to see for your testing  
20 numbers.

16:57:59 21 Q Those would be your safety critical tests?

22 A Yes.

23 Q Did you have a practice of ever recording  
24 non-safety critical efficiency tests?

25 A Yes.

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1 Q And even when those resulted in passes versus  
2 failures?

3 A Yes.

4 Q How would you decide when to record a non-  
safety  
16:58:29 5 critical efficiency test, as opposed to not record it?

6 A It was at the discretion of the manager. It  
7 could be -- the purpose of the test could be a whistle  
8 test. There is a whistle test that's different depending  
9 on the speed of the train, so that would maybe be a  
10 purpose of the test. There are testing for dimming of  
11 headlights at proper locations, would be the purpose of  
12 the test.

16:58:58 13 Q How do you decide which employee you're going  
to  
14 test?

15 A Well, you don't really decide on employees.  
You  
16 try to position yourself to test everybody, but you  
17 position yourself at a location and you test everything  
18 that comes by.

19 Q But you, as a manager planning your day knowing  
20 which crews are working which runs, you can basically

21 choose where to position yourself to observe certain  
22 people, correct?

16:59:30 23 A Yes.

24 Q As a manager, when you know that a given  
25 employee seems to have more failures and less passes than

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1 others, do you tend to focus more on that person to help  
2 improve their safety and make sure they are following the  
17:00:02 3 rules consistently?

4 MR. SHOHET: Can I hear that question back, please.

5 (The record was read.)

6 MR. SHOHET: I'll object. It's vague and ambiguous,  
7 incomplete hypothetical.

8 THE WITNESS: No, I wouldn't focus on the employee,  
9 but I would use whatever opportunity I would have to test  
10 them.

17:00:26 11 BY MS. BACON:

12 Q Every opportunity you have to test them would  
be  
13 such as you're going to spend half a day doing efficiency  
14 tests, you know that person is going to be on a run,  
would  
15 you watch that run, as opposed to going over and  
16 positioning yourself somewhere else where you know that  
17 person would not be?

18 A I may do a follow-up, but for an example, if we

19 had an engineer that wasn't blowing the correct whistle  
17:00:59 20 signal, well, as they come by, I may not enter whistle  
21 signals on every crew that comes by, but if there was one  
22 person that had -- I had some concern with, then maybe I  
23 would enter that test as they went by instead of other  
24 tests.

25 Q Was it ever brought to your attention that

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1 Mr. Sanchez was not blowing proper whistle sequences at a  
17:01:26 2 crossing?

3 A I think at one time or another all the  
engineers  
4 have not blown the correct whistle signal at a crossing  
5 for several different reasons but, you know, there's  
6 hundreds of crossings a day that they do, and their  
timing  
7 may not be exactly correct on one hundred percent of  
them.

8 Q Do you ever recall specifically it being  
brought  
9 to your attention that Mr. Sanchez had not blown the  
17:02:00 10 proper sequence?

11 A Not that I recall.

12 Q I believe you testified you reviewed the Event  
13 Recorder data for 111, correct?

14 A Correct.

15 Q And I know you're not an expert on all areas,  
16 but you are familiar with how to determine the horn

17 sequence and read that aspect of the Event Recorder data,  
18 correct?

19 A Correct.

20 Q Did you look at the horn sequences that  
21 Mr. Sanchez blew for the Devonshire crossing the day of  
17:02:27 22 the accident?

23 A Yes, I did.

24 Q And what was your read on that?

25 A I don't remember what the sequence was.

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or 1 Q Do you remember it being an abnormal sequence  
2 noncompliant sequence?

3 A Not that I remember.

4 Q Do you remember the sequence he blew at the  
17:02:55 5 Chatsworth crossing, the second crossing?

6 A I don't remember the sequence. There was an  
7 unusual activation of the horn circuit somewhere between  
8 Devonshire and Chatsworth, but we haven't -- or I haven't  
9 been able to determine what that was.

10 Q In other words, randomly between two crossings  
17:03:53 11 he activated the horn?

12 A Yes.

13 Q Let me ask you some questions about some events  
14 that were taking place around June 24th of 2008. I guess

17:04:29 15 I'll mark these three pages next in order. I have no  
idea

16 what number that might be. That would apparently be  
17 No. 29.

18 These are Bates-stamped C0002049, -2071 and  
19 -2072.

17:04:49 20 (Exhibit 29 was marked for identification.)

21 MS. BACON: Why don't you take a look at those and  
22 we'll talk about them.

23 MR. SHOHET: Do you have another copy of that?

24 MS. BACON: No. I pulled those out of your  
25 production the other day.

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1 MR. SHOHET: Well, let me take a minute to look at  
2 them, and then I'll let the witness look. You want him  
to  
3 look at the first page or the whole thing?

4 MS. BACON: I was just showing them to him to  
refresh  
5 his memory so now we can just talk about them.

6 Q Have you looked at that, Mr. Dahl?

17:05:45 7 A Have I looked at that --

8 Q Today since I handed it to you.

9 A Right now I'm looking at it. Okay, I remember  
10 the situation

17:06:28 11 Q What was the situation?

12 A The best that I remember the situation was that

13 Mr. Sanchez actually approached Mr. Pescivic and told  
14 Mr. Pescivic that he wanted to shove the train out of CMF  
15 Taylor Yard over to L.A. Union Station, and this  
16 conversation with Mr. Pescivic, my understanding, went on  
17:07:00 17 for a while where Mr. Pescivic told Mr. Sanchez that, no,  
18 you're going to switch ends and pull the train over to  
the  
19 depot and explained to him why.

20 Well, during my conversation with Mr. Sanchez,  
21 he didn't care for Mr. Pescivic's instructions that he  
22 needed to pull, and so he approached me and told me that  
17:07:29 23 he wanted to shove, in which I told him that that's not a  
24 safe move, we're not going to do it, and there are  
several  
25 reasons why.

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1 And Mr. Sanchez complied with mine and Louis  
2 Pescivic's instructions, although he felt strongly that  
he  
3 wanted to shove the train.

4 Q Mr. Pescivic was also a Transportation Manager  
5 back in June of '08; is that correct?

17:07:57 6 A Yes.

7 Q Where was Mr. Pescivic's territory?

8 A He was at Central Maintenance Facility at  
Taylor  
9 Yard.

10 Q And you were stationed at Montalvo or Moorpark,

11 correct?

12 A Correct.

13 Q So is it your understanding Mr. Sanchez first  
14 went to Mr. Pescivic and asked if he could shove back to  
15 CMF?

16 A That's my understanding, to L.A. Union Station.

17 Q Okay, to L.A. Union Station, and Mr. Pescivic  
17:08:29 18 told him "no," correct?

19 A Yes, that's my understanding.

20 Q So, subsequently, Mr. Sanchez came to you and  
21 basically asked the same question?

22 A Yes.

23 Q And you told him "no," correct?

24 A Correct.

25 Q Is it your understanding that at least one of

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the 1 the reasons Mr. Sanchez wanted to shove was if he took

17:08:58 2 move as a shove, he wouldn't have to change positions  
from

3 the locomotive back to the cab car?

4 A From the cab car back to the locomotive  
5 departing L.A. Union Station.

6 Q So he wouldn't have to walk from the old front  
7 of his train to the new front of his train because he's  
8 reversing direction?

9 A Correct.

10 Q Did he give any other reason, apart from not  
11 wanting to walk the length of the train, to preferring  
the  
17:09:28 12 shove move?

13 A Yeah, he -- well, no other reason, but he tried  
14 to justify that Amtrak does that and conductors take the  
15 shove move all the time and there's no reason why his  
16 conductor couldn't take the shove move.

17 Q So it would basically require his conductor to  
18 walk to the rear and protect the point, as opposed to him  
19 walking to the opposite end of the train?

20 A Well, there's a lot of reasons it wouldn't be a  
17:09:57 21 good practice.

22 Q I'm not debating that. I'm just asking,  
23 Mr. Sanchez was saying Mr. -- whoever is his conductor  
was  
24 could protect the move?

25 A Well, they could but, again, it's not a good

202

1 practice. It takes the conductor out of position if they  
2 had to do a crossing protect. It also makes the person  
3 that is watching the right-of-way not controlling the  
17:10:28 4 train.

5 Q Correct. Did you ever have any discussion with  
6 Mr. Heldenbrand, Mr. Sanchez's regular conductor, about  
7 Mr. Heldenbrand's thoughts on taking the shove?

8 A I believe we did.

9 Q And what did Mr. Heldenbrand say about that?

10 A I don't remember exactly. He agreed with me,  
11 that it wasn't a good practice and wasn't going to  
happen.

17:10:59 12 And if I remember right, I told him that if  
that

13 does become a situation after Mr. Sanchez has been told  
14 not to do it, that he needs to contact either Mr.  
Pescivic  
15 at CMF or myself.

16 Q Let me ask you this question first: How did  
17:11:29 17 this first come to your attention, this situation?

18 A I don't know if it was Mr. Sanchez or  
19 Mr. Pescivic that first told me. I don't recall.

20 Q After you learned about it, what did you do?

21 A Well, I had a conversation with Mr. Sanchez.

22 Q Where did that conversation take place?

23 A I believe that was in Montalvo.

24 Q Was Mr. Heldenbrand present during that  
25 conversation?

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1 A I don't recall.

2 Q What was the gist of your conversation with  
3 Mr. Sanchez at Montalvo?

4 A Basically, that it wasn't good practice and  
5 there was no reason to do it, and unless there was some

17:12:28 6 emergency equipment problem, we weren't going to do it.

7 Q How did Mr. Sanchez react to that?

8 A He wasn't very pleased at my decision.

9 Q Did he -- what led you to believe he was not  
10 pleased? What in Mr. Sanchez's reaction led you to

17:12:53 11 believe he was not pleased with your decision?

12 A Well, he became argumentative and tried to  
13 justify why he wanted to do it, and I think that was it.

14 Q And you had to tell him we're not doing it  
15 because of this, this and that?

16 A Yes.

17 Q And he continued to try to say but here's  
18 reasons why we should?

19 A Yes.

20 Q About how long did this exchange go on?

17:13:27 21 A Maybe just once after I would have told him the  
22 decision.

23 Q But how long did this discussion with him or  
24 exchange with Mr. Sanchez last?

25 A I don't remember it lasting more than one

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1 go-around, one -- you know, I told him, you know, what

2 we're going to do. He explained why we should do it, and

17:13:56 3 I told him we're not going to do it, and the best I

4 remember that was the end of it.

5 Q Did you call him in to talk about that? How  
did  
6 you manage to find him and talk to him about that?  
7 A I don't recall. I see the crews several times  
a  
8 day, mostly in the morning. It might have been at one of  
9 the times in the morning.  
10 Q When did you discuss this with Mr. Heldenbrand?  
17:14:29 11 A I don't recall.  
12 Q Was it after you discussed it with Mr. Sanchez?  
13 A I believe so.  
14 Q What else did you do in handling this? Did you  
15 elevate it to one of your supervisors?  
17:14:56 16 A Yeah. I sent Mr. Konstanzer an email. Myself  
17 or Louis did.  
18 Q One of the three pages of Exhibit 29 is -2071.  
19 Is this your email to -- you sent an email to  
20 Gregg Konstanzer and cc'd Pescivic, correct, that's part  
17:15:34 21 of the exhibit?  
22 A Yes.  
17:16:18 23 Q Then you reported back to Konstanzer that you  
24 had spoken to Sanchez?  
25 A Okay, well, this was the original one to

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1 Mr. Konstanzer.  
2 MR. SHOHET: "This" being what?  
17:16:25 3 BY MS. BACON:

4 Q Say the number down at the bottom, please.

5 A C0002049. And this appears to be C002071,  
6 emails between Gregg Konstanzer and Tommy McDonald with

me

17:16:56 7 copied in. Then one from Tommy McDonald to Mr.  
Konstanzer

8 and myself, and another one from Mr. Konstanzer back to

9 Tommy McDonald and myself, and then from Louis Pescivic  
to

10 Mr. Konstanzer, copied Brenda Lettengarver.

11 Q Do you recall any other exchanges or

17:17:27 12 communications with Mr. McDonald about this June 24th,  
'08

13 incident with Mr. Sanchez, apart from what's in these

14 emails? Do you recall any other talk with Tommy  
McDonald,

15 apart from what's in the email?

16 A I may have. I don't recall the details.

17 Q Do you recall anything else from Mr.  
Konstanzer,

17:17:58 18 apart from his statement that we were hoping that Sanchez  
19 would refuse so we could pull him out of service?

20 A I don't remember another -- again, the details.

21 I do remember talking to Mr. Pescivic about this after  
22 these emails.

23 Q Would it have been your recommendation to pull  
24 Sanchez out of service if he had refused to do --

25 A The next step would have been to give

17:18:26 1 Mr. Sanchez a direct order, and then if he failed to  
2 comply, then we would have removed him from service for  
3 insubordination.

4 MS. BACON: Want to change the tape?

17:25:17 5 THE VIDEOGRAPHER: This is the end of tape and disk

17:25:47 6 No. 3. Off record 5:18.

7 (A recess was taken.)

8 THE VIDEOGRAPHER: This is the beginning of tape and  
9 disk No. 4 in the continuing video deposition of Richard

17:26:01 10 Dahl. It's Wednesday, February 24, 2010. On record  
5:25.

11 BY MS. BACON:

12 Q Mr. Dahl, I want to talk to you a bit now about  
13 the August 19, 2008 train delay at Moorpark Station.

14 How did you first learn about that?

17:26:31 15 A Mr. Konstanzer had contacted me and asked me to  
16 investigate it.

17 Q What did your investigation include?

18 A Interviews with both the conductor and the  
19 engineer, a review of the Delay Report, and I believe  
that

17:26:58 20 was it.

21 Q Did you ever check the audio radio tapes?

22 A I don't recall. I may have.

23 Q Do you recall writing emails between yourself  
24 and Mr. Konstanzer and Mr. McDonald around the time of  
25 this incident indicating you wanted to check the audio

1 tapes for the time frame during the delay to see if there  
2 was a radio communication between Heldenbrand and  
Sanchez?

3 A Yeah, I may have. I would have to request them  
4 through either Mr. Konstanzer or Mr. McDonald.

17:27:58 5 Q Do you recall having a discussion with  
6 Mr. Sanchez after that incident about what had happened,  
7 besides the letter of counseling meeting?

8 A I interviewed Mr. Sanchez and asked his -- you  
9 know, what had happened and the details of it.

10 Q And how was his behavior during your interview,  
17:28:30 11 that being Mr. Sanchez?

12 A I don't recall it being confrontational.

13 Q Was he argumentative with you?

14 A He may have been. I don't recall.

15 Q In that incident, the cause of the delay was  
16 Mr. Sanchez getting off the locomotive and walking the  
17 length of the train to the rear of the cab car to see for  
18 himself whether or not the lights were on properly,  
17:29:02 19 correct?

20 A Correct.

21 Q In your years of experience on the railroad,  
did  
22 you find it odd that the locomotive engineer left his  
23 position in the control cab and walked back to check  
24 something like that?

25 A Yes.

1 Q Did you find that additionally odd for  
17:29:30 2 Mr. Sanchez, who two months earlier was arguing with you  
3 over wanting to not have to walk the length of the train  
4 and shove instead?

5 A I never correlated the two.

17:29:57 6 Q But at the time you were working with  
7 Mr. Sanchez following the August 19 delay, you determined  
8 at that time it was a bit odd he had gotten off the train  
9 and walked, correct?

10 A Correct.

11 Q Did you explore that with him any more?

12 A I asked him, if I remember right, couple, two,  
13 three times, and his answer was the same, that he just  
14 wanted to see for himself.

15 Q Did that indicate to you that there was at  
least  
17:30:28 16 a disbelief that Heldenbrand was communicating with him  
17 honestly?

18 MR. SHOHET: Excuse me, can I hear the question  
back?

19 (The record was read.)

20 MR. SHOHET: Calls for a conclusion, no foundation.

17:30:49 21 THE WITNESS: I didn't know exactly what to think.  
I

22 didn't know if it was -- he was trying to make a  
23 statement, if he was -- I couldn't understand it. I

24 didn't agree with it, thus the counseling letter.

25 BY MS. BACON:

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1 Q How would you have expected a crew acting  
2 professionally to have handled that situation when they  
3 got a call from another train that the markers were off?

17:31:25 4 A I would expect -- in a locomotive pull, I would  
5 have expected the conductor to go to the cab car,  
activate  
6 the marker light switch and inspect them and radio the  
7 engineer that markers have been restored.

8 Q Did Mr. Heldenbrand tell you that's what he  
did?

9 A Mr. Heldenbrand told me he activated the  
switch,  
10 and then if I remember right, he tried to contact  
11 Mr. Sanchez on the radio with no response from  
17:31:59 12 Mr. Sanchez.

13 Q So did Mr. Heldenbrand ever tell you he made  
14 contact with Mr. Sanchez at any point before Mr. Sanchez  
15 walked the length of the train?

16 A I don't believe so. If I remember correctly,  
17 Mr. Heldenbrand told me that when he tried to call him,  
18 that Mr. Sanchez was either already off the locomotive or  
17:32:29 19 had switched to Channel 96, which at that location you go  
20 from the Metrolink road channel to the UP road channel.

21 Q Did Mr. Heldenbrand try Channel 96?

22 A I don't think so, because at that point  
23 Mr. Heldenbrand saw Mr. Sanchez outside the train.

24 Q What did Mr. Heldenbrand tell you about his  
25 conversation with Mr. Sanchez when he saw Mr. Sanchez on

210

17:33:00 1 the ground?

2 A I don't recall if they had a conversation.

3 Q With regard to this incident, do you now recall  
4 whether or not you checked the tapes, the audio tapes,  
5 having thought about it a little more?

6 A I may have. It doesn't stick in my mind.

17:33:30 7 Q Did you believe there had been a lack of  
8 communication between those two crew members?

9 A Yes.

10 Q Initially a Notice of Formal Investigation had  
11 been sent out to both Mr. Heldenbrand and Mr. Sanchez for  
12 this August 19th, '08 incident, correct?

17:33:59 13 A Correct.

14 Q And they were both charged with violation of  
15 Rule C of Connex Rules of Conduct, correct?

16 A I believe so.

17 Q Let me refresh your memory.

18 MR. SHOHET: And you're looking at what?

19 MR. PFIESTER: It's an exhibit, if you want to look  
20 at it.

21 MS. BACON: I don't know what you've got in this

17:34:25 22 pile.

23 MR. SHOHET: I'd like to have everything that he  
24 looks at marked and referred to by an exhibit number.

25 MS. BACON: I think it's this one. Give me that one

211

1 back. Thank you.

2 We're looking at Exhibit 24, which doesn't  
3 include the Notice of Full Investigation -- never mind,  
17:35:21 4 here it is. The fourth and sixth pages of Exhibit 24.

5 MR. SHOHET: Can we have the question back since  
6 there's been some time?

7 (The record was read.)

17:36:01 8 MR. SHOHET: You're looking at Exhibit 24, pages  
9 C0000559 and C0000560.

10 THE WITNESS: The second one, C0000561, and, yes,  
11 both of them were violation of Rule C, is what the Notice  
12 of Formal Investigation issued.

13 BY MS. BACON:

14 Q Did you agree that a formal investigation was  
15 proper in this situation for both Mr. Heldenbrand and  
17:36:26 16 Mr. Sanchez?

17 A I don't remember if that was my call. I think  
18 that was -- if I remember right, we were going to issue  
19 that per Mr. Konstanzer, and then Mr. Konstanzer had  
20 rethought it and wanted to issue the Notice of  
Counseling.

21 Q In the Connex Railroad, LLC hierarchy, how is  
17:36:56 22 the decision to issue a Notice of Formal Investigation  
23 made?

24 A It's made by the Assistant General Manager,  
25 Mr. Konstanzer, or the General Manager, Mr. McDonald.

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in 1 Q What is your role as a Transportation Manager  
17:37:28 2 providing input on whether it's appropriate to notice a  
3 formal investigation?

4 A I'm instructed to investigate and report my  
5 findings, along with anything else that may be unusual  
6 about the situation. I may or may not have a suggestion  
7 on the level of discipline. Usually not.

17:37:59 8 Q In this instance, the August 19th, '08 train  
9 delay instance, did you have a recommendation on whether  
a  
10 formal investigation for Mr. Sanchez was appropriate or  
11 not?

12 A I don't recall.

13 Q Did you provide any other input to  
14 Mr. Konstanzer or Mr. McDonald, apart from the emails and  
17:38:24 15 other documentation contained in Exhibit 24, regarding  
the  
16 delay incident?

17 A I may have had a conversation with them on the  
18 phone. I don't recall.

19 Q Did you tell Mr. Konstanzer that you thought it  
20 odd that Engineer Sanchez had left the locomotive and  
21 walked to the rear of the train?

22 A I believe so.

23 Q You would expect Mr. Konstanzer himself to find  
24 that a tad odd, correct?

25 A Correct.

213

17:38:58 1 Q And same as to Mr. McDonald, did you discuss  
2 that with him?

3 A I don't recall.

4 Q You would expect him, as an experienced  
5 railroader, to find an engineer leaving his post in the  
6 cab and walking the length of the train to be odd?

7 A Yes.

17:39:22 8 Q Do you have any information as to why the  
9 decision was made to revoke the letters of formal  
10 investigation and issue a counseling letter instead?

11 A Um, I don't recall any conversation that would  
12 change the discipline level.

13 Q Is it your testimony that that's a decision  
made  
17:39:57 14 by Mr. Konstanzer or Mr. McDonald and it was not your  
15 decision in this instance?

16 A Um, yeah, the decision is made at that level.

I

17 may or may not have had a recommendation.

18 Q In the situation where a Letter of Counseling  
is  
19 issued in lieu of a Notice of Formal Investigation, is  
20 there any reporting of a rule violation in connection  
with  
17:40:27 21 the incident?

22 A Could you clarify that question?

23 Q Sure. When you have a formal investigation on  
24 the railroad, you formally charge an employee with a rule  
25 violation, correct?

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1 A Usually. It could be a -- it could be a  
company  
2 policy. There are several different, you know, reasons  
3 for --

4 Q Sure, several different sources of rule. It  
5 could be a timetable rule, special instruction, GCOR  
rule,  
17:41:00 6 a company policy, et cetera, correct?

7 A Correct.

8 Q But the fact of the matter is they're formally  
9 charged with violation of a rule or policy?

10 A Yes.

11 Q And then the company holds a formal hearing,  
12 Union representation, company presents its side, an  
13 investigating officer issues a decision whether or not  
the

14 rule violation has been substantiated, correct?

15 A Correct.

17:41:30 16 Q And then that is a formal finding of a rule  
17 violation by a given employee, correct?

18 A Um, a rule or a procedure violation.

19 Q Sure. And that rule or procedure violation is  
20 noted in that employee's personnel file?

17:41:50 21 A Yes.

22 Q In the situation with the Connex and Metrolink  
23 SCRA Operating Agreement, are you aware of Connex  
24 reporting to SCRRRA when an employee is found to have  
25 violated a rule or policy?

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1 MR. SHOHET: Object to the form of the question,  
2 vague and ambiguous, calls for a legal conclusion, no  
17:42:27 3 foundation.

4 THE WITNESS: I believe -- I'm pretty sure there is  
a  
5 requirement to report. I don't know what exactly is the  
6 criteria for the level of reporting and the type of rule.

7 BY MS. BACON:

8 Q Is it your understanding, then, that if there's  
9 a finding through a formal investigation, that would be  
10 the type of rule violation that would be required to be  
11 reported to SCRRRA?

17:42:59 12 MR. SHOHET: Same objection.

13 THE WITNESS: I don't know, you know, again, what  
14 would be or strike the criteria for reporting to SCRRRA.

15 BY MS. BACON:

16 Q The Letter of Counseling, when it's determined  
17 that in lieu of a formal investigation or just on its  
face  
18 you're going to do a Letter of Counseling with an  
19 employee, how is that treated by Connex as far as a  
17:43:30 20 disciplinary measure?

21 MR. SHOHET: Object to the form of the question,  
22 vague and ambiguous, calls for a conclusion, no  
23 foundation.

24 THE WITNESS: It is -- the employee is given a  
25 counseling session, a review of the results that they

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1 violated. Depending on the level or severity, they have  
2 to sign for it. That is then put into their personnel  
3 file.

17:43:58 4 BY MS. BACON:

5 Q Oftentimes with a Letter of Counseling or a  
6 waiver, the charge is reduced, correct, from a --

7 A Yeah, I mean that's a negotiation issue usually  
17:44:29 8 on a waiver between the Union and Connex.

9 Q In this instance with Mr. Sanchez, was his  
10 Letter of Counseling from this August 19th, '08 event  
11 recorded in his permanent personnel file?

12           A     I believe so. That would have been handled at  
17:44:57 13 the General Manager's office at MOC.

14           Q     To your knowledge, does Connex report to SCRRRA  
15 the fact that an employee has been issued a Letter of  
16 Counseling on an alleged rule violation or policy  
17 violation?

18           MR. SHOHET: Objection. Calls for a conclusion, no  
19 foundation, incomplete hypothetical.

20           THE WITNESS: I don't think so.

21 BY MS. BACON:

22           Q     You testified earlier about fines that are  
23 levied when there's rule violations by various employees.  
24 Do you recall that testimony?

25           A     I do.

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1           Q     What is your understanding of the process  
2 whereby fines are imposed when there's a formal rule  
3 violation found?

4           A     It is my understanding that fines are imposed  
on  
5 rule violations that fall underneath CFR 240 guidelines.

17:46:02 6           Q     That's Engineer Certification Guidelines?

7           A     Yes.

8           Q     Fines to whom from whom?

9           A     Fines to Connex from SCRRRA.

10          Q     And the source of the funding that Connex uses

11 to pay those fines, what is that source, to your  
12 understanding?

17:46:30 13 A I believe, and it is my understanding, that it  
14 comes out of the incentive pool.

15 Q That would be the incentive pool that goes to  
16 pay managers' bonuses at the end of the year?

17 A Yes.

18 Q Are you aware of any other fines or liquidated  
17:47:00 19 damages, penalties, that Connex pays to SCRRRA in the  
event

20 of a rule or policy violation by an employee?

21 A No, I'm not aware. I know there's -- I know  
22 that there are fines and/or penalties associated with  
17:47:33 23 trains that are late beyond, I believe it is, 19 minutes  
24 from a fault or cause of Connex.

25 Q The day you had your counseling session with

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1 Mr. Sanchez about the August 19 train delay, I believe  
2 that was on September 9th, according to Exhibit 15, it  
was  
3 September 9th, what was Mr. Sanchez's -- strike that.

4 Let me ask you this first: Did you talk to  
5 Mr. Sanchez and Mr. Heldenbrand in issuing them these  
6 Letters of Counseling on different days?

7 A I did, yes.

17:48:29 8 Q Why was that?

9 A On September 9th when I was planning on talking

10 to them at CMF Taylor Yard, Mr. Heldenbrand had actually  
11 laid off sick, so I didn't have the advantage to talk to  
12 Mr. Heldenbrand that day with Mr. Pescivic. I did by  
13 chance have the opportunity to talk to Mr. Sanchez.

14 Upon Mr. Heldenbrand's return to work on the  
15 11th is when I had the opportunity to talk to

17:48:59 16 Mr. Heldenbrand about the delay.

17 Q Who was the extra board conductor who filled in  
18 for those two days that week when Mr. Heldenbrand was  
19 gone?

20 A It was Vince Covington, I believe, both the  
21 days, at least one of the days for sure, 'cause I saw  
him.

22 Q On September 9th of '08 when you did the Letter  
23 of Counseling meeting with Sanchez, when did you do that?

24 A That was done at, oh, approximately 2:30 in the  
25 afternoon.

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17:49:31 1 Q So you did it at CMF?

2 A Yes.

3 Q Was anyone else present the day you did this  
4 Letter of Counseling?

5 A Yes.

6 Q Mr. Pescivic?

7 A Yes.

8 Q What was Mr. Sanchez's attitude that day at  
this

17:49:56 9 Letter of Counseling discussion?

10 A He was, um, non-confrontational. He didn't  
11 argue about it. We went through the rules. We discussed  
12 it. He signed it. I handed him the Operation Notice,  
13 made him a copy of the Counseling Letter, and then he  
went

14 on with his business.

15 Q By this time, September 9th of '08,  
16 Mr. Heldenbrand had already told you that he had observed  
17:50:26 17 Mr. Sanchez using his phone at the Moorpark Station,  
18 correct?

19 A Yes. This is approximately a month later.

20 Q Did you discuss with Mr. Sanchez on September  
9,  
21 '08 at this Letter of Counseling meeting anything about  
22 cell phone use or abuse?

23 A No.

24 MR. SHOHET: I think you already asked that  
question.

25 BY MS. BACON:

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1 Q When you discussed with Mr. Heldenbrand when he  
2 returned to work the Letter of Counseling, what was his  
3 attitude?

4 A Mr. Heldenbrand's Letter of Counseling was a  
17:51:29 5 little different. If I remember right, Mr. Heldenbrand

6 wasn't charged with the delay of Train 119. He was  
7 charged with failure to turn the markers on at L.A. Union  
8 Station during his air test, and he acknowledged that he  
9 did fail to do that, was receptive to the discussion.

10 I asked both of them, obviously not together  
17:51:58 11 since it was a little unusual that the engineer would  
walk

12 back, if there was any issues involving the two of them  
13 that I need to be made aware of.

14 Mr. Sanchez on the 9th said no, there was  
15 nothing. Mr. Heldenbrand on the 11th said that no,  
17:52:20 16 everything was fine, there were no issues that he needed  
17 to discuss.

18 Q Referring back to Exhibit 24, the proposed --  
19 the Notice of Formal Investigation to Mr. Sanchez from  
the  
20 August 19th incident, to your knowledge, was the notice  
21 actually sent to the employee, Sanchez?

22 A I don't know.

23 Q Do you think Mr. Konstanzer would be the person  
24 to best address that?

25 A Yes.

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1 Q And the charge in the Formal Investigation  
2 Notice is violation of Rule C, if you want to take a look  
3 at what Rule C apparently is; however, it doesn't mention

4 a violation of GCOR Rule 1.29 in the Formal Investigation  
17:53:29 5 Letter, correct?

6 A Correct.

7 Q Then the Letter of Counseling referred to the  
8 GCOR Rule 1.29 in addition to Rule C, correct?

9 A Correct.

10 Q Do you know what that discrepancy is about?

11 A No, I don't know.

12 Q Who do you think would be best in the position  
17:53:55 13 to answer that type of question?

14 A Mr. Konstanzer.

15 Q To your knowledge, for your employees that  
17:54:28 16 you've been overseeing for Connex since June of '05 up to  
17 the time of the collision, how many of your employees  
18 actually went through a formal investigation hearing?

19 A I don't know.

20 Q What's your best estimate?

21 MR. SHOHET: Are you saying just his employees that  
22 he supervised on the Ventura line?

23 MS. BACON: Right. His employees that have been  
24 involved with a formal investigation.

25 THE WITNESS: That actually went through the whole

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1 process?

17:54:56 2 BY MS. BACON:

3 Q Correct.

4           A     Um, a few. I think, um, you know, one, two,  
5     three, and usually the Union and Connex will come to a  
17:55:27 6     decision on anything that doesn't involve termination,  
and  
7     the employee elects to take a waiver.

8           Q     And a waiver usually involves reduction in the  
9     charge?

10          A     Sometimes yes, sometimes no. Sometimes they  
11     realize that they're not going to get out of it in any  
way  
12     and that their case is not very strong and the Union  
13     advises them just to take the waiver.

14          Q     When you worked for Amtrak, were you involved  
17:56:01 15     with oversight rules, compliance, formal investigation  
16     charges? It looks like you were.

17          A     I did -- yes, I did go through a formal  
18     investigation class, and we did issue letters.

19          Q     But I'm just looking back on my notes. You  
were  
20     Transportation Manager at Montalvo, Moorpark crew base  
21     from 2000 to June '05 when you were with Amtrak, correct?

22          A     Yes.

17:56:27 23          Q     Approximaely, how many formal investigations  
24     were your employees involved with during that Amtrak  
25     stance in that same subdivision?

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1           A     I don't know.

2 Q More or less?

3 A Similar, I would say.

4 MS. BACON: All right. I'm ready to move off that  
5 topic. Why don't we just call it a day.

17:57:00 6 MR. SHOHET: No, I insist that we keep going.

7 MR. KIESEL: Off the record

8 THE VIDEOGRAPHER: This is the end of today's  
9 deposition. This is also the end of tape and disk No. 4.

17:58:27 10 Off record at 5:57.

11 (An off-the-record discussion was held.)

12 MR. KIESEL: Stipulate to relieve the court reporter  
13 of her duties under the Code of Civil Procedure; have the  
14 original of the transcript forwarded directly to  
15 Mr. Shohet, who will make it available to the witness to  
16 read, review and make any changes or corrections, if  
17 necessary, to the testimony and notify us within 45  
18 days --

17:58:58 19 MR. SHOHET: That's fine.

20 MS. KIESEL: -- of your receipt of the transcript.  
21 You'll maintain custody and control of the original. If  
22 asked, you'll produce the original for any purpose.  
23 Certified copy can be used for all purposes.

24 We'll be notified of any changes or corrections  
25 within that period of time or the original will be deemed

1 signed under penalty of perjury without any changes made.

only

2 MR. HIEPLER: I think it should just be said the

3 statutory responsibilities we're relieving her of are the

4 duty to maintain custody of the original and to get it

5 signed in her office. I just want to be accurate.

17:59:29 6 MR. SHOHET: And to be signed under penalty of

7 perjury.

8 MR. KIESEL: That's correct. So stipulated.

9 MS. BACON: So stipulated.

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11 (Whereupon, the proceedings adjourned

12 at 5:59 p.m.)

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Declaration Under Penalty of Perjury

I, RICHARD DAHL, the witness herein, declare under penalty of perjury that I have read the foregoing transcript in its entirety; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, corrected, is true and correct.

as

EXECUTED this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_  
(city)  
\_\_\_\_\_  
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RICHARD DAHL

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before

I, LEXANN CHRISTY, CSR No. 7932, in and for the state of California, do hereby certify:

That the foregoing proceedings were taken me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [ ] was [ ] was not requested.

I further certify that I am neither financially interested in the action nor a relative or employee of attorney or party to this action.

any

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: \_\_\_\_\_

\_\_\_\_\_

LEXANN CHRISTY

CSR NO. 7932

