

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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@ F. SMITH, Plaintiff

VS.

@NORFOLK SOUTHERN RAILWAY COMPANY, Defendant

Deposition of QWG H. GROCKET, taken pursuant to
notice, before Melonie N. Raun, a Notary Public, in the Offices
of Frances K. Haley & Associates, 10725 Courthouse Road, Suite
1300, Fredericksburg, Virginia, on May 9, 1994, at 2:30 p.m.

APPEARANCES:

Mr. Richard N. Shapiro, Wilson & Hajek
1294 Diamond Springs Road
Virginia Beach, Virginia 23455
Counsel for the Plaintiff;
Mr. Joseph Fisher, Cohen, Getting & Harrison
2200 Wilson Boulevard
Arlington, Virginia 22201
Counsel for the Defendant.

Reported by: Melonie M. Raun

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1 N D E X

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1 COURT REPORTER: Mr. Groce, would
2 you please raise your right hand. Do you solemnly
3 swear or affirm that the testimony you are about to
4 give in this case today will be the truth, the whole
5 truth, and nothing but the truth, so help you God?

6 MR. GROCE: I do.
7

8 CRAIG H. GROCE, a witness,
9 being called for examination by counsel for the
10 plaintiff, first being duly sworn, testified as
11 follows:
12

13 DIRECT EXAMINATION

14 BY MR. SHAPIRO:

15 Q Would you state your full name please, sir.
16 A Craig Horace Groce.
17 Q You spell your last name G-R-O-C-E?
18 A Yes.
19 Q okay, and what is your position with the
20 railroad?
21 A Assistant division engineer.

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direct - Craig H. Groce

- 1 Q And you're employed by which railroad?
2 A Norfolk Southern Railway.
3 Q How long have you been associated with
4 Norfolk Southern Railway or its predecessor corporations?
5 A Twenty-two years.
6 Q Could you just briefly summarize what jobs
7 you've had, and sort of approximately what year you've moved up
8 as you've started, from the beginning.
9 A I came to work on a college hire program as
10 a management trainee in 1972. I progressed through various
11 locations of supervision in the maintenance of way department.
12 Q Like gang supervisor type thing?
13 A Track supervisor.
14 Q okay.
15 A And assistant engineer, and division
16 engineer at various locations until my present assignment.
17 Q How long have you been an assistant
18 division engineer, not necessarily here, but anywhere on the
19 system?
20 A Well, seven and a half years.
21 Q And how long have you been in this

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direct - Craig H. Groce

1 particular region? I guess by this region, which I'll get
2 into, where we're at now.

3 A Six years.

4 Q And over what area of track or geographical
5 region do you supervise now as assistant division engineer?

6 A I have the old southern railway lines from
7 Alexandria to Salisbury, North Carolina; Manassas to
8 Harrisonburg, Virginia; east of Greensboro to Morehead City,
9 North Carolina; Plyinouth, North Carolina down to Jacksonville,
10 North Carolina.

11 Q All right, so part of North Carolina, you
12 get into North Carolina, Virginia, parts of Virginia. And any
13 other states that you touch on?

14 A No.

15 Q Okay, what's your home address, sir?

16 A 7 Cedar Knoll Drive, Greensboro, North
17 Carolina, 27407.

18 Q Okay, do you travel during the week up to
19 this area, Northern Virginia, or are you coming up here for the
20 deposition?

21 A Today?

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1 Q Yes.

2 A I'm coming up here for the deposition.

3 Q All right, but I take it you travel around
4 a good bit in the areas that you supervise?

5 A Yes.

6 Q Now, Earl Smith, the plaintiff in this
7 case, he's one of the employees that's under your general
8 supervision, isn't he?

9 A Yes.

10 Q And he's a maintenance of way worker with
11 the railroad?

12 A Yes.

13 Q Do you have an idea, just a rough estimate,
14 of how many maintenance of way workers are under your
super- vision?

15 A A hundred and fifty.

16 Q How long have you known Earl Smith
17 approximately?

18 A About six years.

19 Q Okay, and was he working in the
position

20 that he was working in when he went out on this injury
since

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1 you've known him?

2 A Yes.

3 Q All right, are you familiar with what his
4 job title is?

5 A Laborer.

6 Q Have you ever had any problems with Mr.
7 Smith prior to this date of this accident?

8 MR. FISHER: I'm going to object
9 to the formulation of the question. I think it's a
10 little vague. I think it ought to be a little more
11 specific. Do you mean job related injuries,
12 accidents?

13 MR. SHAPIRO: Right.

14 Q First, let's just say, have you had any
15 problems from a personnel standpoint with him prior to this
16 injury?

17 A I don't understand what the scope of
18 personnel problems are.

19 Q In the sense of your position as a super-
20 visory person having to deal with him for any type of -- any-
21 thing that -- I don't want be too limiting, any personnel type

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1 problems like in any company? Have you ever had to counsel
2 him, discipline him, or anything like that, for any type of
3 personnel problems prior to the date of the accident in this
4 case, which was January 26th, 1993?

5 A Yes.

6 Q Okay, and what was that?

7 A He had injured himself about a year prior
8 to that.

9 Q Prior to January of '93?

10 A Yes.

11 Q And what kind of injury?

12 A He had a pain in his back when he had
13 lifted a rail drill on the back of a truck.

14 Q Okay, so from the perspective of a person-
15 nel problem, what was it that -- What do you mean it fit into
16 the category of personnel problems?

17 A I don't remember the number of injuries,
18 but I seem to think that he had had four injuries at that time.

19 Q Prior to the one before this one, he had
20 four injuries?

21 A Yes, that's my recollection. I can't state

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direct - Craig H. Groce

1 that as a matter of fact.

2 Q And --

3 A That's high for the other employees that
4 work with him. And when he received that injury, I felt it was
5 necessary to personally counsel him with regard to his accident
6 record.

7 Q And what did you discuss with him at that
8 time?

9 A His previous accidents.

10 Q You had his file out and went through how
11 he was hurt in previous incidents?

12 A No.

13 Q okay, what did you have that told you what
14 his prior injuries were?

15 A I had a record of his prior injuries.

16 Q All right, so what is it that you talked to
17 him about?

is A I talked to him about the fact that inju-
19 ries had occurred in the past; that the frequency of injuries
20 was greater than those of his coworkers; and tried to heighten
21 his awareness of the need for him to personally commit to

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direct - Craig H. Groce
1 prevent him from hurting himself or accidents occurring to him
2 while he works on the railroad.
3 Q okay, first, let's talk about the injury, I
4 guess, you think was about a year before the date of the one
5 we're involved here in this litigation. You said that was a
6 pain in his back, correct?
7 A Yes.
8 Q Do you have a recollection of whether he
9 made a claim arising out of that injury?
10 A I don't know.
11 Q what about the prior injuries before that,
12 do you know if he ever made claims?
13 A I don't know.
14 Q Do your records reflect on whether he was
15 charged with any violations on any of those, rule violations, I
16 mean, company rule violations?
17 A They show no record of rule violations.
18 Q Not in any of them?
19 A That's correct.
20 Q Well, if he didn't violate a rule, couldn't
21 it have been that each of the injuries was caused by something

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direct Craig H. Groce
1 that he couldn't avoid?
2 A No.
3 MR. FISHER: Well, I'm going to
4 object. I'm going to object. It's cause for
5 speculation. I mean, anything is possible.
6 MR. SHAPIRO: All right.
7 MR. FISHER: I mean, that's my
8 objection on the record. He has already answered the
9 question, and he can continue to answer if he needs.
10 Do you need to add anymore?
11 THE WITNESS: Just that the
12 record that I had in my hands at that time would not
13 necessarily indicate completely the actions that
14 occurred, and his fault or not fault, and it's
15 entirely possible that he could have been charged
16 with and been guilty of rule violations, and they
17 weren't made a part of that record.
18 Q Okay, do you remember whether he was
19 charged with a rule violation for the problem involving the
20 rail drill, lifting the rail drill?
21 A Yes.

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direct - Craig H. Groce

- 1 Q Was he or wasn't he?
2 A He was not.
3 Q When did you first learn of his injury of
4 January 26, 1993?
5 A The day it happened.
6 Q And how did you learn about it?
7 A I was --
8 Q First, who told you?
9 A I don't remember.
10 Q Okay, tell me what you remember.
11 A I remember that I was making a rail inspec-
12 tion trip in eastern North Carolina, and I was paged, and I
13 called the office in Greenville to answer the page. But I can
14 speculate that it was assistant to the division engineer in the
15 Greenville office that told me about it, but I'm not positive
16 of that, but that's generally the way I'm notified when an
17 accident occurs.
18 Q Assistant division engineer in Greenville.
19 A Assistant to the division engineer.
20 Q Okay, so once you got paged, you were not
21 local to where he was, so what did you do next?

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- 1 A I continued my activities that I was
 2 engaged in at the time.
 3 Q What did you do next with reference to Mr.
 4 Smith's injury?
 5 MR. FISHER: If he did anything.
 6 A The next day, I left my home in Greensboro
 7 early that morning to drive to Manassas.
 8 Q Especially, because of his injury?
 9 A Yes.
 10 Q Why is it that you would drop what you were
 11 doing down there and go up --
 12 A To gather the facts and information about
 13 the accident.
 14 Q Okay, so you go up there alone, travel
 15 alone?
 16 A Yes.
 17 Q And once you got up there, what did you do?
 18 A I met with the track supervisor.
 19 Q Who was that?
 20 A Steve Moore.
 21 Q Okay, and then what?

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1 A We went to the site of the accident.
2 Q And what did you do?
3 A We met there with the other individual who
4 was working with Smith.
5 Q Who was that?
6 A Walter Foster.
7 Q Okay, anyone else?
8 A And the foreman who was at the scene.
9 Q Who was that?
10 A Joe Barb.
11 Q Barb?
12 A Barb, B-A-R-B.
13 Q Okay, anybody else present?
14 A No.
15 Q All right, and what did you guys do?
16 A We tried to reconstruct the events
17 surrounding the accident.
18 Q In what way?
19 A Asking questions.
20 Q Well, did you have the actual truck?
21 A Yes.

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1 Q So you all were standing around the truck?

2 A Yes.

3 Q Did you try to reenact someone getting off

4 the truck?

5 A Yes.

6 Q Who?

7 A Both myself and Steve.

8 Q okay, what did you do to try and reenact

9 physically?

10 A I tried to move in the manners that Walter

11 Foster indicated that he remembered Smith moving.

12 Q Was Walter Foster watching every moment

13 that Mr. Smith had gotten off the truck?

14 MR. FISHER: Well, I'm going to
15 object. There's no foundation laid to date that Mr.
16 Foster saw Mr. Smith descend from the truck. I mean,
17 we don't know whether or not Mr. Foster had hearsay
18 information or whether or not he saw it. So I'm
19 going to object to the foundation, because it assumes
20 a fact not in evidence.

21 Q All right, well, let me step back a second

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1 then, Mr. Groce, and ask you: You just stated Mr. Foster told
2 you how it happened?
3 A He told me what he -- He recounted the
4 information that he had.
5 Q Did he tell you whether he saw it happen?
6 A Yes.
7 Q And what did he tell you?
8 A No.
9 Q He said he did not see it happen?
10 A That's correct.
11 Q where did he say he was at the moment it
12 happened?
13 A Standing on the bed of the truck.
14 Q You mean the rear of the truck?
15 A No.
16 Q Inside the truck?
17 A Yes.
18 Q So by bed, you're saying the inner part in
19 the rear of the truck, is that what you mean by the bed?
20 A Yes.
21 Q Okay, did he say what he was doing at the

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1 moment that Mr. Smith says he fell?

2 A Yes.

3 Q What was that?

4 A Removing jumper cables and placing them on
5 the toolbox of the truck.

6 Q Did he say whether he was facing forward
7 toward the cab or rear toward the back at the moment that Mr.
8 Smith said he fell?

9 A He said neither thing.

10 Q I'm sorry?

11 A Neither one of those things.

12 Q Okay, what did he say?

13 A He said he was removing the jumper cables
14 and turning to place them on the side toolbox of the truck.

15 Q What did he say he was doing at the
16 specific moment that he heard something or knew something had
17 happened, just what you've said?

18 MR. FISHER: Do you understand
19 the question?

20 THE WITNESS: No. I think you
21 need to define it. I think you asked me two

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1 questions.

2 Q Well, did he say that he heard Mr. Smith
3 call out when he fell, or how did he discover that he had even
4 fallen?

5 A He looked down an the ground and saw Mr.
6 Smith holding his ankle. He looked down and saw Mr. Smith --
7 Let me say that again. He looked down on the ground and saw
8 Mr. Smith -- He looked down and saw Mr. Smith sitting on the
9 ground holding his ankle.

10 Q Well, something drew his attention. Did he
11 say whether Mr. Smith called out, or anything like that?

12 A He made no mention to me of Mr. Smith
13 calling out.

14 Q Okay, so we digressed at the point I asked
15 you what you physically did to try to recreate the accident.
16 Tell me what exactly you did.

17 A I had Walter Foster stand on the back of
18 the truck --

19 MR. FISHER: (interjecting)
20 Well, I'm going to object, and that is because,
21 again, there's no foundation for him to testify to

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1 what he reenacted. You haven't elicited any ques-
2 tions about how he learned of what happened, or what
3 purported to happen, for him to replicate or repro-
4 duce the event.
5 MR. SHAPIRO: Your objection is
6 stated. You need to state an objection to the form
7 of the question.
8 MR. FISHER: That's the
9 objection.
10 MR. SHAPIRO: You're making a
11 speaking objection.
12 MR. FISHER: It's assuming facts
13 that are not in evidence --
14 MR. SHAPIRO: (interjecting)
15 Fine, you're stated your objection.
16 MR. FISHER: --in the formulation
17 of your question.
18 MR. SHAPIRO: Okay. Now, I'm
19 going to go ahead.
20 MR. FISHER: Satisfied.
21 MR. SHAPIRO: Yes.

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1 MR. FISHER: All right.

2 Now, Mr. Groce, what did you do to try to
3 in your words reenact the accident?

4 MR. FISHER: Objection.

5 14R. SHAPIRO: You've stated it
6 for the record, okay. Go ahead, Mr. Groce. Are you
7 going to tell him not to answer the question?

8 MR. FISHER: No.

9 MR. SHAPIRO: Go ahead, Mr.

10 Groce.

11 A I positioned Mr. Foster on the back of the
12 truck, and had him recreate the things he was doing; and I
13 tried to move from the position that Mr. Foster saw him --

14 Q (interjecting) I need you to explain
15 exactly -- Don't tell me what Mr. Foster said. I want you to
16 physically tell me exactly where you went, because I want to be
17 very specific here. I want you to tell me step by step which
18 is ways you went. Don't refer to Mr. Foster told you. I'll go
19 back to that. So go ahead and tell me what you did.

20 A When I was trying to recreate the motions
21 that Mr. Smith went through?

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1 Q Yes, sir.

2 A Okay, as I said, I was standing on the back
3 of the truck and I positioned Mr. Foster in the place on the
4 back, where he was standing on the back of the truck.

5 Q Right.

6 A I had him move from the position that he
7 was in, turn towards the truck.

8 Q Turn to which side of the truck?

9 A Turn towards the right side of the truck in
10 the manner that he stated he performed his duties and then saw
11 Mr. Smith on the ground. At the same time, I tried to move
12 from where Mr. Smith was standing to the place that Mr. Foster
13 saw him on the ground.

14 Q Okay, tell me how you did it.

15 A I stepped across the back bumper of the
16 truck.

17 Q This is from inside the bed first?

18 A No.

19 Q Okay, let's do it with reference to this
20 photograph right here. Let me show you a photograph, and ask,
21 first of all, do you recognize what this appears to depict.P

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1 A Yes.

2 Q Okay, and what is this?

3 A It's a truck.

4 Q What kind of truck? Is it a high-rail

5 truck?

6 A Yes.

7 Q And does it generally appear, from your
8 review of the photograph to be a truck which is similar, maybe
9 not the exact truck, but, at least, similar in its structure to
10 the type of manufacturer of truck that Mr. Smith was injured
11 on?

12 A Yes.

13 Q Okay, now --

14 MR. FISHER: (interjecting) Are
15 you going to have that marked as Number One?

16 MR. SHAPIRO: Yes.

17 NOTE: The above referred to
18 photograph is now being marked and filed as
19 Plaintiff's Exhibit one.

20 Q Now, Mr. Groce, you were starting to tell
21 me that Mr. Foster was in the back of this truck, in the bed

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1 area?

2 A Yes.
3 Q And you were also in the bed area?
4 A No.
5 Q Were you standing up here on the back
6 bumper, is that what you are saying?
7 A Yes.
8 Q Well, I called it a bumper, but, I guess,
9 were you at the very top up here?
10 A No.
11 Q I'm pointing to the most, I guess, the
12 uppermost area of the back of the truck?
13 A No.
14 Q You were down one step?
15 A No.
16 Q Were you down to the step, which is the
17 step that goes all the way across the bottommost bumper of the
18 truck?
19 A Yes.
20 Q Okay, so you were standing there at the
21 beginning. Which way were you facing?

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1 A I was facing towards the front of the
2 truck.
3 Q okay, so in a position where you were sort
4 of climbing off, but you were facing the front?
5 A No.
6 Q Okay, what did I say that was wrong?
7 A Climbing off.
8 Q Okay, you were just standing there at that
9 moment?
10 A Yes.
11 Q And Mr. Foster, I guess, was not looking at
12 you, right?
13 A At the time that the reenactment began, he
14 was looking at me.
15 Q Okay, and then he turned?
16 A Yes.
17 Q Okay, and then what did you do?
is A I stepped across the back bumper.
19 Q Across from which way? In the photograph,
20 toward the right or toward the left?
21 A To the right.

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1 Q Okay.

2 A And then stepped down from the bumper.

3 Q With which foot?

4 A With my left foot into the stirrup, and
5 then down to the ground.

6 Q okay, this stirrup you're calling, is that
7 this -- There are two small little steps, one on the left and
8 one on the right, is that what you're referring to as

stirrups?

9 A Yes.

10 Q All right, now, the stirrup that you
11 stepped onto, is that a stirrup that is affixed to the lower-
12 most portion of the bumper but it can move slightly to the

left

13 and right, is that correct?

14 MR. FISHER: That's two
15 questions. objection, compound question.

16 Q okay, fine. First of all, it's

attached to

17 the lowermost bumper, right?

18 A Yes.

19 Q Okay, now, does it have areas on both

sides

20 that connect the step to the lower bumper?

21 A Yes.

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1 Q Okay, are those supports, are they sturdy
2 metal that won't move, or will they move?

3 A No.

4 MR. FISHER: Objection to the
5 characterization sturdy.

6 Q Well, are they rigid metal, first of all?

7 A No.

8 Q Okay, what are they made of?

9 A Wire rope.

10 Q Okay, will that allow the step to move some
11 back and forth left to right when it's stepped on?

12 A The --

13 Q It's a yes or no, and he can explain.

14 MR. FISHER: Well, if he can't
15 answer yes or no, he can explain I can't answer yes
16 or no.

17 MR. SHAPIRO: Well, I asked --
18 The question is --

19 MR. FISHER: (interjecting)
20 That's fine.

21 Q When you put your foot down, your weight

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1 onto it, will that step move somewhat left to right with the
2 weight of the foot on it?

3 A It's been my experience that that doesn't
4 happen.

5 Q Well, Mr. Groce, you've said it doesn't
6 have a rigid support that supports the step to the bottom of
7 the bumper, right? It's not a fixed metal support, is that
a correct?

9 A It's fixed in the sense that it's fastened
10 to it.

11 Q But it's not a solid metal support that
12 will stop any lateral movement to the left or to the right?

13 MR. FISHER: That's an
14 argumentative question.

15 MR. SHAPIRO: No, I think --

16 MR. FISHER: (interjecting) Yes,
17 it is.

18 MR. SHAPIRO: I think I'm
19 entitled to question the witness.

20 MR. FISHER: Well, he answered
21 your question.

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direct - Craig H. Groce

1 MR. SHAPIRO: He's being very
2 evasive.
3 A It's been my experience that that does not
4 happen.
5 Q Well, let's go this way, Mr. Groce, if you
6 walk up to this step, with your hand, and you try to move it to
7 the left and the right, can you do that?
8 A I've never had any experience to do that.
9 Q Well, you've walked on and off steps like
10 this on numerous occasions, correct?
11 MR. FISHER: He hasn't testified
12 to that.
13 MR. SHAPIRO: I'm asking him.
14 A I have on occasion, yes.
15 Q Well, what are these supports made of that
16 go between the step and the truck?
17 MR. FISHER: Asked and answered.
18 Cable, he said that.
19 Q Okay, so it's a cable?
20 A Yes.
21 Q And there's more than one cable, right?

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direct - Craig H. Groce

1 A Yes.

2 Q All right, now, is it your testimony that
3 there is no lateral movement on the step when a person, such as
4 yourself, or the approximate size of Mr. Smith steps on the
5 step?

6 MR. FISHER: Well, I'm going to
7 object to that. You're asking him for his recon-
8 struction. Now, you're asking a general question.

9 MR. SHAPIRO: I want an
10 objection, sir.

11 MR. FISHER: You've got the
12 objection.

13 MR. SHAPIRO: What is the
14 objection?

15 MR. FISHER: The objection is
16 you're asking a general question, and not what he
17 did; and the question is what he did.

18 MR. SHAPIRO: I don't want you to
19 make these speaking objections, and you keep making
20 them. You need to state leading, facts not in evi-
21 dence, whatever. You can't just try to lead your

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1 man, okay. Give me an objection and then state it,
2 okay. What was the objection?
3 MR. FISHER: The objection is
4 that you asked him when he was reconstructing what he
5 did, what he did.
6 MR. SHAPIRO: I don't know what
7 your objection is. I'm just going to go ahead.
8 Look, don't say I'm being argumentative with the
9 witness. The witness is being quite evasive on a
1D very obvious point.
11 MR. FISHER: I object to that.
12 The witness is not being evasive.
13 MR. SHAPIRO: All right, and I'm
14 going to --
15 MR. FISHER: (interjecting)
16 You're just being inarticulate in your questioning.
17 MR. SHAPIRO: I don't think so.
18 I think I've asked the man directly does the step
19 give a little bit to the left and the right when the
20 pressure of a foot is put on it, and he won't answer
21 the question. He says he's not sure.

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direct - Craig H. Groce

1 A It's been my experience that that does not
2 happen.

3 Q And why doesn't it happen, in your
4 experience?

5 A Because the cables are very stiff.

6 Q How many cables are there?

7 A Two.

8 Q So there's one on each side?

9 A Yes.

10 Q Okay, so your testimony is that these

are

11 rigid cables, and that they do not give to the left or the

12 right from pressure from a foot, because the cable is

sturdy?

13 A My testimony is, as I said, it's been my
14 experience that that they don't give to the left and the right,
15 because they're stiff cables.

16 Q Well, let me ask you this: Would a

rigid

17 metal piece be a possibility to put here on these steps?

18 MR. FISHER: Object to

19 possibilities.

20 MR. SHAPIRO: Well, I'm going to

21 ask him. He's the assistant division engineer. I'm

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1 going to ask him --

2 MR. FISHER: (interjecting)

3 Possibilities are not allowed into evidence.

4 Anything is possible.

5 MR. SHAPIRO: Look you need to

6 state an objection.

7 MR. FISHER: That is the

8 objection, possibilities.

9 MR. SHAPIRO: Okay, I'm going to

10 go ahead and ask the question, okay.

11 MR. FISHER: Um-hum.

12 Q Now, Mr. Groce, could one of your
13 mechanics, one of your very mechanics that works for the
14 railroad, take rigid metal and weld it from the step to the
15 bottom of the bumper, could that be done?

16 A Yes.

17 Q Okay, if that was done, and solid steel was
18 used to weld from the step to the bumper, would that be stur-
19 dier than the cable that you described, or less sturdy, in your
20 opinion?

21 A Well, it depends on the size of the metal

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1 that they were to weld, and it depends on the size of the cable
2 that's there.

3 Q All right, now, could the step and the
4 sturdiness, or rigidity, of the step that you're looking at in
5 Plaintiff's Exhibit Number One, could that be improved from a
6 safety position?

7 A No.

a Q Now, in fact, hasn't the railroad purchased
9 some other types of high-rail trucks?

10 A Yes.

11 Q What's the difference about some of the
12 newer high-rail trucks? Can you explain as far as the bed and
13 the opening to the rear, what kind of changes were instituted
14 in some of the newer trucks?

15 A They were newer models.

16 Q What about the way the men can step on and
17 off of the rear?

18 MR. FISHER: The way, or how the
19 step is constructed?

20 MR. SHAPIRO: The way it's
21 constructed, you're right.

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- 1 A I don't know of any change with the way
2 that the stirrup that you're referring to, I guess --
- 3 Q Don't some of the newer trucks have steps
4 that more gradually enter into the bed of the truck, plus the
5 entire bed of the truck has a lower to the ground opening along
6 the rear, so it's just a more gradual entry into the rear?
- 7 A No.
- 8 Q They don't?
- 9 A No.
- 10 Q Do some of the high-rail trucks have steps
11 to allow entry from the side of the truck?
- 12 A No.
- 13 Q They don't? What about grab irons? Are
14 there more grab irons on any of the newer trucks on the rear?
- 15 A No.
- 16 Q There aren't anymore, just the same ones,
17 two?
- 18 A There's still two.
- 19 Q Okay, so your position is that the way that
20 the steps are made on this particular high-rail truck, you said
21 from a safety perspective, it can't be improved?

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1 A Yes.

2 Q That's a correct answer, right?

3 A Yes.

4 Q All right, do you know what kind of truck

5 this is? Who makes this truck?

6 A No.

7 Q You don't know who the manufacturer of the

8 truck is?

9 A No, I don't even know for sure what truck

10 that is.

11 Q Okay, we're referring to Plaintiff's

12 Exhibit Number One. But you don't know what the manufacturer

13 of the truck that Mr. Smith was working off of was?

14 A That's a Chevrolet.

15 Q But you don't think this is a Chevrolet in

16 the photograph? I thought you previously stated it appeared to

17 be the similar type of high-rail truck?

18 A That's right.

19 Q So looking at the photo now, do you believe

20 that this is a Chevrolet?

21 A I can't tell from the photograph.

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direct - Craig H. Groce

1 MR. SHAPIRO: I'm looking to see
2 if any of them say Chevrolet, but they're all the
3 back.

4 MR. FISHER: Just off the
record.

5 (DISCUSSION OFF RECORD)

6 Q How had this particular truck been modified
7 to run on the rails?

8 A I don't know.

9 Q Well, it does run on the rails, right, the
10 truck such as the one we're looking at in Plaintiff's Exhibit
11 One, correct?

12 A Yes.

13 Q And this is similar to the one that Mr.
14 Smith was on, as far as you can tell, right?

15 A Yes.

16 Q Does it not have, I'm pointing to the
17 bottom to the inside, or to the underside of the truck, and
18 just to the interior underside of the truck from the tires,
19 don't there appear to be rollers, or some type of roller on
20 these trucks to allow them to run along the rails?

21 A Yes.

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direct - Craig H. Groce

1 Q You're quite familiar with high-rail
trucks

2 as the assistant division engineer, aren't you?

3 A Yes.

4 Q All right, now, was this truck, this type
5 of truck, used to transport men to and from job sites
6 occasionally?

7 A Yes.

8 Q Okay, and included in what we're talking
9 about is transporting them by rail to and from job sites,
10 correct, on occasion?

11 A Yes.

12 Q And it's also used to transport equipment
13 in the bed of the truck on occasion, correct, various types of
14 equipment?

15 A Yes.

16 Q Now, let me go back to your discussing the
17 reconstruction, reenactment, whatever. I don't know that we
18 quite finished it. We didn't, and I want to return to that.
19 You said that you were on the rear bumper, and then you stepped
20 down. It might have been the last point, but I don't want to
21 characterize your testimony. Tell me what happened when you

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1 were standing on the rear bumper and then you attempted to get
2 off.

3 A I moved from the -- As I faced the photo-
4 graph, and faced the front of the truck, I moved from the left
5 side of the bumper.

6 Q From looking at the picture?

7 A Um-hum.

8 Q okay.

9 A From the left side, stepped across the
10 bumper, placed my left foot in the stirrup.

11 Q Facing which way?

12 A Facing the front of the truck.

13 Q Still facing the front, okay.

14 A Yes. And stepped down with my right foot
15 onto the rail.

16 Q Okay, and why did you do it in that parti-
17 cular manner?

18 A Because Mr. Foster told me that that's the
19 way that Mr. Smith got off the truck; that's the side he used.

20 Q That's the side he used. But did Mr.
21 Foster specify exactly which foot he put into the stirrup and

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1 which foot supposedly hit the ground?

2 A No.

3 Q So that wasn't something that was directly
4 related to Mr. Foster by Mr. Smith, at least as far as you
5 knew?

6 A Mr. Smith told Mr. Moore that his left foot
7 got hung in the stirrup, and the left foot was the one that was
8 fractured, so that's the way I decided it was the left foot.

9 Q Okay, but was there any further description
10 of which way Mr. Smith was turned when his foot got caught in
11 the stirrup, because I noticed you just said you were facing
12 the front? Okay, I'm sorry, go ahead. You're nodding your
13 head, so what does that mean?

14 A Nothing, I'm just confirming that I under-
15 stand what you're saying.

16 Q Oh, I'm sorry. Okay, what I mean to say is
17 you said you were facing the front when you put your left foot
18 down. Is that what Mr. Moore told you that he had been told
19 Is that what Mr. Moore said had been related to him, I think
20 I'm trying to say, or was it just that his left foot, that is
21 Mr. Smith's left foot, got caught in the stirrup, is that the

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1 essence of what you were told, or is there more to it?

2 A Are you asking me how I decided that he was
3 facing the front of the truck instead of facing the rear of the
4 truck?

5 Q Right.

6 A It would be impossible for Mr. Smith to
7 step down facing the rear of the truck, because he wouldn't be
8 able to place his foot into the stirrup and hold on.

9 Q And hold on at the same time.

10 A He would have fallen face forward and been
11 unable to do the thing that Mr. Smith told me that he did.

12 Q Now, you started telling me at the begin-
13 ning that you tried to do some reconstruction, and did you say
14 that one of the other persons also tried to do it, or was that
15 just Mr. Foster?

16 A One of the other persons also tried to do
17 it.

18 Q okay, who was that?

19 A Steve Moore.

20 Q Any difference in what he did versus what
21 you did?

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- 1 A Yes.
2 Q Okay, what was that?
3 A I don't remember.
4 Q Did you watch him do what he was doing?
5 A Yes.
6 Q Okay, in your doing it, this reconstruc-
7 tion, were you going to actually try to lose your balance and
8 fall?
9 A No.
10 Q so you were doing it to try to make sure
11 that you didn't fall, right?
12 A No.
13 Q I'm trying to figure out how you can say
14 you can reconstruct it if you didn't end up on the ground.
15 A I was trying to do, based on what Mr.
16 Foster had seen, what Mr. Smith had told Mr. Moore, and put
17 myself in the positions that Mr. Foster saw him both before and
18 after within the time frame that Mr. Foster told me that it
19 happened.
20 Q How long did Mr. Foster say it took for
21 this to happen?

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1 A Not very long. He removed the cables and
2 turned one step to the right. So it was not a very long period
3 of time.

4 Q You're saying Mr. Foster picked up the
5 cables that he had been reaching for?

6 A The cables, the jumper cables, were
7 fastened to the welder.

8 Q In the bed of the truck?

9 A Yes.

10 Q He turned around and then he supposedly saw
11 Mr. Smith on the ground?

12 A That's right.

13 Q Okay, now, in doing your reconstruction, or
14 doing Mr. Moore's reconstruction, what did you determine as to
15 whether Mr. Smith could have been telling the truth in the way
16 the accident happened?

17 MR. FISHER: I'm going to object,
18 because I don't think we've established what Mr.
19 Smith said. All we've established is Mr. Smith told
20 Foster, and Mr. Smith told Moore, and what Moore and
21 Foster told him is double hearsay.

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1 MR. SHAPIRO: Sure.

2 MR. FISHER: Do you want to put
3 an the record what Smith says happened, and then ask
4 the question, or what you contend he says how it
5 happened?

6 MR. SHAPIRO: Well, he sort of
7 said a couple of times what Mr. Smith said,
8 apparently through other people.

9 Q You've testified already about what Mr.
10 Smith said happened, but do you want to say one more time, Mr.
11 Groce?

12 MR. FISHER: No. I think what he
13 testified to be precisely correct, he testified to
14 what --

15 MR. SHAPIRO: (interjecting)
16 He's got it through double hearsay anyway.

17 MR. FISHER: --Smith told other
18 people.

19 MR. SHAPIRO: Right. It's just a
20 discovery deposition. I mean, you know, I'm not
21 going to -- I'm doing this for purposes of discovery.

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1 I'm not conceding any of this is admissible. But I'm
2 trying to get at he obviously went to do a recon-
3 struction, and they based it on what they thought had
4 happened. So I want to find out what they thought
5 had happened, and what they found that was in their
6 opinion the usual reasons to say the plaintiff
7 couldn't have done it the way he said, so that's what
8 I'm getting at.

9 MR. FISHER: I'm going to object
10 that characterization.

11 MR. SHAPIRO: Okay. So anyway --

12 MR. FISHER: (interjecting)

13 That's your --

14 MR. SHAPIRO: True, it's my char-
15 acterization. But my last question to him essential-
16 ly was:

17 Q once he did the reconstruction, did you
is make any determinations as to whether the accident could have
19 happened the way you had been led to believe it supposedly
20 happened?

21 A Well

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1 MR. FISHER: (interjecting) I'm
2 going to object, because it's speculative the way you
3 asked. I think you can ask him -- you could rephrase
4 it more precisely.

5 MR. SHAPIRO: I don't know of any
6 other way to rephrase it right this second, but I
7 think he knows -- I'll try to characterize it. Let
8 me see if he can narrow it down for me.

9 A Would you ask me again.

10 Q Well, I can really cut to the bottom line
11 if you'd like, and then go back around, and that is: As a
12 result of your investigation, what did you find as to your
13 opinions as to the way the accident supposedly happened, and
14 whether an accident could have happened the way had been
15 reported?

16 MR. FISHER: Well, first, did he
17 have an opinion as to how the accident happened.

18 A I think what happened, Smith was trying to
19 move from the side of the bumper, step off the stirrup, and go
20 around to the right side of the truck. I think when he did
21 that, he had to cover a great deal of distance compared to what

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1 Mr. Foster did in the time from when Mr. Foster first saw him
2 and when he laid on the ground. So it's my opinion that Mr.
3 Smith moved from the left side to the right side, just as he
4 characterized to me, he stepped on the stirrup. He was trying
5 to step around the right end of the truck, and as he stepped in
6 the stirrup with his left foot, his leg twisted, because he was
7 twisting to go around the end of the bumper to go to the right
8 side of the truck.

9 Q okay, you're talking about the side, not
10 the rear, but the actual right side of the truck?

11 A Yes.

12 Q What was he going to do on the right side
13 of the truck supposedly?

14 A He was going to take the jumper cables from
15 Mr. Foster's hand off the side of the truck, and take them into
16 his hand so that he could disconnect them from the battery.

17 Q Mr. Foster was taking jumper cables, were
18 they connected to something, or were they just being stored in
19 the bed of the truck?

20 A No, they were connected. They were
21 connected from the battery of the truck to the battery of the

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1 welder.
2 Q To charge the welder, or were they actually
3 using the welder?
4 A To charge -- Both.
5 Q Both what?
6 A They were to charge the welder, and they
7 were using the welder.
8 Q Okay, so once Mr. Foster bent down to get
9 the cables, you're saying, what you understand is Mr. Smith was
10 going to stand back here, and take the cables from Mr. Foster?
11 A No.
12 Q Okay, what was he going to do?
13 A He was going to step down to the ground,
14 and walk to the right side of the truck.
15 Q And then take them from Mr. Foster?
16 A Yes.
17 Q Okay, but whether he had to do that or not,
18 he would still have to come down off the truck, correct?
19 A Yes.
20 Q So what are you -- You lost me somewhere
21 here.

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1
2 MR. FISHER: I think you're
3 losing yourself.

4 MR. SHAPIRO: No, I don't. Don't
5 testify for your client though.

6 Q Mr. Groce, do you agree that he was trying
7 to get down off of the truck when the accident happened?

8 A Yes.

9 Q Okay, do you have any opinion as to whether
10 he was trying to use the handhold that we see here in the right
11 rear of the truck at the time he went off?

12 A Yes.

13 Q What is that?

14 A He was using the handhold.

15 Q Okay, how do you know that?

16 A I don't think he could keep his balance
17 unless he was using the handhold as he stepped down.

18 Q You said he was going to put away the
19 cables once he was handed the cables?

20 A No.

21 Q Okay, what was he going to do with the
22 cables?

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1 A He was going to take them from the bed of
2 the truck down to the side of the truck where they were
3 connected to the battery.
4 Q So they were draped across here? I'm
5 pointing to the right side of the bed of the truck.
6 A They were draped -- No.
7 Q Okay, how does Mr. Foster get the cables
8 from inside the bed, and you're saying Mr. Smith was going to
9 have to do something outside the right side of the truck?
10 A Mr. Foster picks them up with his hands.
11 Q Both sides of the cables? Do you mean the
12 whole jumper cable?
13 A The ends of the jumper cables.
14 Q So all four?
15 A No.
16 Q Just two?
17 A Yes.
is Q Where are the other two connected, to the
19 battery?
20 A Yes.
21 Q okay, so at that point, is that when Mr.

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1 Smith, once he's off the truck, would come around and he would
2 take the two ends of the jumper cables?

3 A Yes.

4 Q Okay, and what, since I'm not that familiar
5 with this high-rail truck, what were they going to be connected
6 to, the ones that were handed to Mr. Smith?

7 A Nothing.

8 Q Then what was the reason that Mr. Smith
9 would go grab them for?

10 A To disconnect them from the battery.

11 Q And then would he have handed them back to
12 Mr. Foster, and they be put away, or what?

13 A No.

14 Q Okay, what was to be done next then?

15 A He would have disconnected the other end of
16 the jumper cables from the battery. Then they would have put
17 them in the storage compartment.

18 Q Which was outside of the truck, or back in
19 the bed area of the truck?

20 A The storage compartment is on the outside
21 of the truck, the doors for the storage compartment open to the

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1 outside of the truck.
2 Q Are you talking about the right side of the
3 rear of the truck?
4 A Yes.
5 Q Okay, did you take any photographs at the
6 time of your inspection?
7 A No.
8 Q You took no photographs. No one took any
9 photographs?
10 A No.
11 Q What does no mean? Does that mean, yes, no
12 one took any photographs, or that you didn't take any
13 personally?
14 A I didn't take any personally.
15 Q Okay, who took them?
16 A Steve Moore.
17 Q Do you know if you've turned those over to
18 the attorney for the railroad?
19 A I wasn't in possession of any photographs.
20 Q Do you know who might have those?
21 A No, I don't.

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direct - Craig H. Groce

- 1 Q You have no idea? Do you know if the
2 claims agent has them?
3 A I don't know.
4 Q What about video tape? Was any video tape
5 taken?
6 A No.
7 Q Were any statements recorded or written at
8 the time that everyone was crowded there?
9 A No.
10 Q Did anyone take notes?
11 A Yes.
12 Q Who?
13 A I did.
14 Q Were you the only one that took notes?
15 A The time that I was there, I was the only
16 one that did.
17 Q Was a claims agent there on the scene?
18 A No.
19 Q okay, what did you do with your notes?
20 A I used them to write a report.
21 Q Okay, where are those notes now?

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direct - Craig H. Groce

1 A I don't have them. I turned them in when
2 the discovery request -- I gave them --
3 Q Did you give them to your lawyers, or to
4 the claims agent?
5 A They were mailed to our claim department,
6 casualty and claim department.
7 Q Okay, but you said there was no claims
8 agent on the scene at the time you did the investigation?
9 A That's right.
10 Q Did you mail them off that week, or when
11 did you mail them off?
12 A After I received the discovery request.
13 Q So you were holding onto them that whole
14 time?
15 A Yes.
16 Q Until just recently with the discovery
17 request?
18 A Yes.
19 Q Did you do any drawings or take any
20 measurements?
21 A Yes.

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direct - Craig B. Groce

1 Q Okay, what kind of drawings or measure-
2 ments?
3 A I made a drawing of the bed of the truck,
4 and a drawing of the positions of the people.
5 Q And did you turn those over with the other
6 materials you've just described?
7 A Yes.
8 Q Okay, what about measurements?
9 A They were on the drawing that I turned
10 over.
11 Q What did you measure?
12 A I measured the dimensions of the truck bed.
13 Q Okay, was there anything significant about
14 that?
15 A No.
16 Q Then why take the measurements?
17 A To see if there was any -- to --
18 Q To be sure there wasn't anything
19 significant about it, or what?
20 A Yes, in a sense of completeness, I think
21 that would be a fair statement.

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direct - Craig H. Groce

- I Q You didn't find that that ended up to have
2 any real impact on the accident?
3 A No.
4 Q Okay, the report that you wrote up, who did
5 you write areport to?
6 A Mr. G. W. Woods.
7 Q Who is he?
8 A Chief engineer on line maintenance, eastern
9 lines.
10 Q And why was it completed?
11 A I'm sorry?
12 Q Why did you make a report?
13 A We have instructions from him to furnish a
14 written report following any accident.
15 Q Do you know what purpose you write the
16 report up for?
17 A To gather facts.
18 Q To help prevent further accidents in the
19 future is one of the reasons?
20 A Yes.
21 Q What other ones can you think of, that

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1 you're aware of?
2 A To inform management of those facts
3 concerning the accident, and so that management will have a
4 means for reviewing the accident.
5 Q At the time that you did this report, you
6 had no idea yet whether Mr. Smith had a lawyer or was going to
7 do anything as far as this lawsuit, right?
8 A That's right.
9 Q Okay, did you ever discuss the accident
10 personally with Earl Smith?
11 A Yes.
12 Q And when was that, about?
13 A The next day.
14 Q After --
15 A After I made the investigation.
16 Q Did you call him up?
17 A No, I saw him. I drove to the hospital and
18 saw him in the hospital.
19 Q Did you make any notes of your conversation
20 while you were at the hospital?
21 A No.

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1 Q Did you make any notes like right after you
2 left the hospital, say, in the parking lot or in the car?

3 A No.

4 Q Did you do any later that day?

5 A No.

6 Q Anytime after that day, have you recorded
7 any written notes of your conversation with Mr. Smith?

8 A Yes.

9 Q And how long after the day did you?

10 A Let's see, about nine months later.

11 Q Nine months later?

12 A Yes.

13 Q How good was your recollection of exactly
14 what he had said? Did you just try to generally paraphrase
15 what had been discussed, or did you try to write exactly what
16 was said?

17 MR. FISHER: That's a lot of
18 questions. I'm going to ask that you ask one at a
19 time. And I'm going to object to the characteriza-
20 tion of how good his recollection is, and just ask
21 him the question.

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1 MR. SHAPIRO: Will do that. It
2 was a complex question.

3 Q Let's start with just the first part. HOW
4 good was your recollection?

5 MR. FISHER: That's argumentative
6 really. I mean, I'm going to object.

7 MR. SHAPIRO: Well, no he can --

8 MR. FISHER: (interjecting) You
9 can ask him --

10 MR. SHAPIRO: --answer how good
11 his recollection was.

12 MR. FISHER: You can ask him what
13 he wrote down, and you can argue whether it was good,
14 bad, or indifferent. I'm going to object to that
15 formulation. I cannot let him characterize his own
16 testimony.

17 MR. SHAPIRO: All right.

18 A My recollection at that time was very good.

19 Q All right, did you type up your notes or
20 handwrite them?

21 A Both. They were typed. I didn't type

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1 myself.
2 Q But you handwrote it, and someone typed it
3 up?
4 A No.
5 Q When was it typed up?
6 A About two weeks later.
7 Q By who?
8 A By a secretarial service. I don't remember
9 the name.
10 Q Do you have one at the office where you
11 work, or do you have to go to an outside secretarial service?
12 A I went to an outside secretarial service.
13 Q Where are your notes now, do you know?
14 A I no longer have them in my possession.
15 Q Who did you turn those over to?
16 A I don't have them. They were thrown away.
17 Q By you?
18 A Yes.
19 Q Why would you have thrown them away if you
20 took the time to have them typed up?
21 MR. FISHER: Well, that's

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1 argumentative.
2
3 SO.
4 MR. FISHER: Yes, I think it is.
5 MR. SHAPIRO: I'm asking the
6 witness, if he took the time to have them typed up,
7 why would you discard them and throw them away.
8 A They were of no need to me any longer.
9 Q Well, you said this was nine months after
10 the date of the accident, that puts it at about September or
11 October of 193, that you said that you had them typed up,
12 correct?
13 A Yes.
14 Q When did you first know that there was a
15 lawsuit or anything involving this case?
16 A I don't remember.
17 Q Did you know there was a lawsuit at the
18 time that you threw them away?
19 A Yes.
20 Q Well, isn't it one of your general prac-
21 tices, as an assistant division engineer, to keep records and

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1 to keep good track of things that happen on the railroad?
2 A No.
3 Q That's not one of your general --
4 A No.
5 Q So your practice is -- What is your
6 practice?
7 MR. FISHER: Are we talking about
8 with regard to personal handwritten notes?
9 MR. SHAPIRO: I'm talking about
10 any -- I asked him -- I'll move on.
11 MR. FISHER: Well, I think you've
12 established he got a written typed report of what he
13 remembered. The question is: Did he throw his notes
14 away, and he explained why he did.
15 MR. SHAPIRO: Do you have an
16 objection?
17 MR. FISHER: (shaking head).
18 Q Okay, what do you remember now that Mr.
19 Smith told you?
20 A He said, "I don't know what happened. I
21 just stepped in the stirrup and I felt a pop."

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- 1 Q Did he say anything else about ending up on
2 the ground, or what?
3 A He said, "I felt a pop. I sat down on the
4 ground. I started to take my boot off to see what happened.,,
5 And then he went on to say, "I can't figure it out. I just
6 don't know what happened."
7 Q Now, you said you went and did an inspec-
8 tion the day after the accident, right?
9 A Yes.
10 Q And is that the same day you went and saw
11 Mr. Smith in the hospital?
12 A No.
13 Q How long was it after that you saw Mr.
14 Smith in the hospital?
15 A The next day.
16 Q So the very next day, after you did your
17 reconstruction, you went to see him?
18 A Yes.
19 Q Now, everything you did at that inspection
20 you said you took notes of, right?
21 A Yes.

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1 Q And you turned those notes over to Mr. G.
2 W. Woods, as you've just previously described, correct?

3 A Yes.

4 Q But after talking to Mr. Smith, and then
5 nine months later having it typed up, you decided that it
6 wasn't important, so you threw it away?

7 A No.

a Q Okay, then explain what the reason is you
9 didn't keep that when you keep everything else.

10 A The nine months later when Mr. Smith
11 returned to work, we held a formal investigation. The formal
12 investigation was the format that I discussed the accident with
13 Mr. Smith in, both before and after. On a formal investiga-
14 tion, we have the notes tape recorded and then transcribed. In
15 this particular formal investigation, the person who tran-
16 scribed the notes did not do them in an expeditious manner, nor
17 did they transcribe them correctly. There was a large number
is of sheets, because of that I was unable to use the investiga-
19 tion in assessing discipline in the case, because I was unable
20 to use the notes in assessing discipline in the case, because
21 the time period expired, I threw the notes away, because I

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1 didn't have time to go through and correct the notes that the
2 transcriber -- the errors that the transcribers made, and it
3 had no outcome on the formal investigation. So as a result, I
4 threw those things away.

5 Q okay, it's starting to make a little more
6 sense. But the formal investigation was conducted how long
7 after the accident?

8 A Nine months.

9 Q Okay, but that was the first time that you
10 took it upon yourself to write down what Mr. Smith had told you
11 two days after the accident also, right?

12 A No.

13 Q Oh, did you also write down what he had
14 told you two days after the accident before that?

15 A No.

16 Q Then explain.

17 A I didn't write down anything about what he
18 told me two days after the accident, nine months later, or two
19 days later. I just didn't write anything down.

20 MR. FISHER: I think he explained
21 that.

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1 Q So when you were referring to what you did
2 write down nine months later, you weren't referring to anything
3 Mr. Smith had said at the hospital two days after the accident,
4 you were referring to the investigation?

5 A That's correct.

6 Q Okay, well, you weren't really clear
7 before. I'm sorry. When you held the investigation, I know

we

8 have transcripts, I believe, did you type up a transcript --

9 A (interjecting) No.

10 Q --or do a transcript of the investigation?

11 A There's no transcript now of the investi-
12 gation.

13 Q Okay, but you did issue a letter at some
14 point to Mr. Smith, did you not?

15 A Yes.

16 Q But that did result from your investigation
17 even though there's no transcript, right? It says in the first
18 line, "This is in reference to your formal investigation held
19 in the track supervisor's office," so --

20 MR. FISHER: (interjecting) Do
21 you want to have that marked?

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1 MR. SHAPIRO: I will in a second,
2 yes.

3 Q You have a look of consternation.

4 MR. FISHER: I'm going to object
5 to your characterization of the witness.

6 A The letter -- I can't, because the time
7 period expired with respect to the formal investigation has
8 very little to do with the accident. Because the time period
9 expired for the formal investigation, the labor contract
10 requires that I cannot issue any kind of discipline as a result
11 of that formal investigation. You asked the question was it a
12 result of the formal investigation. It cannot be a result of
13 the formal investigation, and I tried to word the thing very
14 carefully, so that it was not a result of the formal investi-
15 gation. The language in that might be construed by one as
16 saying that. However, the facts are that it cannot literally
17 be a result of the facts discovered in the investigation. And
18 I tried to ascribe it as a letter of warning.

19 Q okay, besides that conversation with Mr.
20 Smith two days after the accident, did you have any other
21 discussions with him?

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1 A Yes.

2 Q Okay, when?

3 A He called me on the telephone in July, and
4 he told me that he was ready to come back to work.

5 Q Was there any discussion about the way the
6 accident happened at that time?

7 A No.

8 Q Any discussion about his physical condition
9 at that time, how he was doing?

10 A Yes.

11 Q And what did he say?

12 A He said he was doing very well. He said he
13 wanted to come back to work. He said he was ready to come back
14 to work. He was tired of sitting around the house, and he
15 asked me to do whatever I could to get him to come back to
16 work. He said that everyday he walked down the railroad track
17 to make sure that he was ready to come back to work; that he
is felt really good about coming back to work.

19 Q And he did return to work, didn't he,
20 eventually?

21 A Yes.

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1 Q Now, do you know the date that -- Well,
2 first of all, do you know the date that he returned to work?
3 A No.
4 Q Do you know the month or year?
5 A No, I don't.
6 q Okay.
7 A I know the year. It was 1993.
8 Q So in 1993. So it was sometime after this
9 letter of November 26th, 1993?
10 A No.
11 Q He was already back to work before that?
12 A Yes.
13 Q Okay, do you know when he marked up trying
14 to get back into work?
15 A Marked up is term that's used in train and
16 engine service. We don't have a process like that within our
17 craft.
18 Q Do you know when he first requested to come
19 back to work?
20 A Approximately, when he talked to me around
21 the 1st of July.

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- 1 Q And do you know why there was a delay
2 before he was actually able to come back?
3 A Yes.
4 Q Why was that?
5 A To have the return to work physical.
6 Q Well, couldn't that have been arranged
7 right away? Doctors are around, aren't they? Is there a back
8 up?
9 A I don't know why they -- what the reason
10 for that.
11 Q Is that the only thing you're aware of that
12 would delay him returning in that time?
13 A Yes.
14 Q Do you know who did the return to work
15 physical?
16 A No, I don't.
17 Q Did you give him any instructions when he
18 called you about where to get that?
19 A No.
20 Q Who was he supposed to find that out from?
21 A His supervisor.

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1 Q Who is?

2 A Steve Moore.

3 Q Do you know anything about what he did to
4 try to get that accomplished?

5 MR. FISHER: I'm not going to
6 interrupt through all of this. I mean, you can go
7 on. You weren't here, but last week, Moore testified
a at length about all of this. I mean, it's your bill
9 if you want to run it all up, and the doctor
10 testified about all of this.

11 MR. SHAPIRO: I'll go onto the
12 next one as soon as this is over. I'm sorry about
13 that.

14 A No, I don't remember exactly how it took
15 place.

16 Q All right, have you observed Mr. Smith back
17 at work since his return?

18 A Yes.

19 Q Have you had any problems with his work
20 since his return?

21 A No.

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I Q Have you heard about any complaints about
2 his work since his return?

3 A No.

4 Q Okay, now, going back to what you investi-
5 gated right after the accident, you had some discussions with
6 the crew members, did you record in any notes actual statements
7 of what those crew members had said?

8 A No.

9 Q So you didn't do individualized statements,
10 you did a report type of thing that summarized everything?

11 A I made a report.

12 Q Okay, but you did not record individualized
13 statements of witnesses?

14 A That's correct.

15 Q Okay, what about later on, have you done
16 that?

17 A No.

18 Q Now, let me talk to you, again, about
19 Exhibit -- Well, before we forget here, let's go ahead and mark
20 this as Number Two.

21 NOTE: The above referred to

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1 letter is now being marked and filed as Plaintiff's
2 Exhibit Two.

3 Q Let me ask the witness very briefly, take a
4 look at this letter, is this the letter we were talking about
5 on the record that you wrote to the plaintiff, dated November
6 26, 1993?

7 A Yes.

8 Q Okay.

9 MR. FISHER: Just make a note
10 that on the -- That appears to be a xeroxed copy of a
11 letter purportedly issuing under Mr. Groce's signa-
12 ture, although that one is not signed.

13 Does it appear to be the letter without the
14 signature?

15 A Yes.

16 MR. SHAPIRO: I'd move to intro-
17 duce that as Exhibit Number Two, and we can do it
18 later.

19 Q Now, let me turn your attention to Exhibit
20 Number One, Mr. Groce, and, again, the steps. Now, before the
21 date of the accident in January, 1993, were you aware of any

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1 prior complaints from anyone, any union person, or any worker
2 about the step or its safety?

3 A No.

4 MR. FISHER: I'm going to ask you
5 to clarify that, if you would, counsel. Do you mean
6 with regard to the particular truck on which your
7 client slipped?

8 MR. SHAPIRO: No, with respect to
9 any high-rail truck of this type, brand, or model
10 that had the two stirrups that had the cables.

11 Q Had you received any complaints, whatso-
12 ever, about the safety of those stirrup steps?

13 A No.

14 Q Now, are you sure that nobody in the divi-
15 sion engineers office had ever received complaints such as
16 those?

17 A No, I'm not sure.

18 Q But you say you are personally unaware of
19 any prior complaints?

20 A That's correct.

21 Q Are you aware of any prior injuries to any

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1 workers involving the stirrup steps?

2 A I'm not aware of any.

3 Q Since you've been involved in this inves-
4 tigation, have you done any research to check on whether there
5 were prior claims involving the stirrup steps?

6 A No, I did not do any research like that.

7 Q Do any other trucks that the railroad
8 utilizes have similar stirrup steps, besides these high-rail
9 trucks?

10 A Yes.

11 Q Which ones?

12 A Most all of our trucks have these stirrup
13 steps, the two ton large -- two ton and three ton trucks all
14 have stirrup steps in them.

15 Q What type of trucks are those?

16 A They're two ton trucks with a tool body on
17 the rear.

18 Q Are any of those used as high-rail
19 vehicles?

20 A Yes.

21 Q Are those mechanic's trucks that you're

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1 talking about?

2 A No.

3 Q What are they used for?

4 A They're used to transport workers to and
5 from the job, to haul materials to and from the job.

6 Q Who makes those?

7 A We use several; Ford, Chevrolet,
8 International.

9 Q And you're saying these Ford, Chevrolet,
10 and Internationals all have a cable and a stirrup step?

11 A Yes.

12 Q And some of those are used on the rail?

13 A Yes.

14 Q Okay, does this particular Chevrolet truck
15 have an operating manual?

16 MR. FISHER: I'm going to object.
17 I don't think we've established that was a Chevrolet.
18 I know you tried, but I don't think it was ever
19 established.

20 MR. SHAPIRO: I'm sorry. Did I
21 say Ford?

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1 MR. FISHER: You said Chevrolet.
2 And he said he couldn't figure it out, as I remember
3 his testimony.

4 Q okay, let me just ask him: Do Chevrolet
5 trucks, such as the one I'm pointing to in Exhibit one, have
6 operating manuals?

7 A Yes.

8 Q okay, who maintains those? Do mechanic's
9 maintain them, or do you have it at the district engineers
10 office, division engineers office?

11 A They're in the glove compartment of the
12 truck.

13 Q Have any of the newer more recent high-rail
14 trucks -- Do any of them have different types of steps on the
15 rear of the truck?

16 A No.

17 Q None of them have a fixed steel step as the
18 lowest step?

19 A That's right, none of them do.

20 Q We talked briefly about the handholds at
21 the top of the rear of the truck. Would it be possible to

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1 install an additional handhold lower down, is that something
2 that could be done?

3 A Yes, that's possible.

4 Q Was Mr. Smith charged with any rule
5 violations?

6 MR. FISHER: Asked and answered,
7 I think. I believe he explained that at great length
8 about that letter, and how it was written, why he
9 couldn't if he wanted, et cetera.

10 Q Well, I didn't really ask about it, but
11 that was in this letter of November 26?

12 A The investigation of that, I held that he
13 was charged with rule violations.

14 Q And these rule violations that you charged
15 him with, first, let's talk about rule M.

16 A That's not a charge letter that you're
17 referring to.

18 Q Okay, was there a different letter?

19 A Yes.

20 Q Do you have that with you?

21 A No.

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1 Q Is that it there?
2 A That's not a charge letter.
3 Q Did you write that before or after this
4 November 26 letter?
5 A Before.
6 Q What did you say in the letter, if you
7 remember?
8 A I don't remember.
9 Q You charged him with the same violations,
10 didn't you?
11 A No.
12 Q What was he charged with?
13 A I don't remember.
14 Q Well, in the letter, you said he was issued
15 a letter of warning, "Operating rule M states, "Employees must
16 not do work in any manner that will jeopardize their own safety
17 or the safety of others." This rule very clearly states the
18 importance of performing all your work safely. I'm instructing
19 you to perform every task with safety as the highest priority."
20 What about the way that he was hurt was unsafe that he per-
21 formed?

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1 A He moved too fast.

2 Q Anything else?

3 A He did not maintain three points of contact
4 as he was dismounting the vehicle.

5 Q What are the three points of contact? What
6 does that refer to?

7 A We have instructions to our employees when-
8 ever they mount or dismount equipment to maintain three points
9 of contact; that is: two hands, one foot; one hand, two feet.

10 Q So as he was stepping on the stirrup, which
11 is one foot, right?

12 A Um-hum.

13 Q Where should his other foot have been?

14 A His other foot was probably free. In other
15 words, it was moving from the bumper of the truck down to the
16 ground.

17 Q Well, how else can you get down without
18 moving that other foot from the bumper to the ground?

19 A You have to go like that.

20 Q okay, so invariably one of the two feet has
21 to be in movement, right?

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1 A Yes.

2 Q Okay, so based on what you learned about
3 the way the accident supposedly happened, what did he violate
4 about the three points of contact?

5 A If you remember earlier, I said either one
6 foot and two hands, or one hand and two feet. And in order for
7 him to twist as he said he twisted, and in order for the frac-
8 ture to be a torque type fracture as the doctor told Steve, he
9 had to twist, so he had to have a way to rotate around. So
10 that meant that it's impossible if you have two hands or two
11 feet along with one hand or one foot to twist, so it was
12 obvious he twisted. It was obvious he had only one hand and
13 one foot as he dismounted the truck.

14 Q Okay, what doctor says he twisted?

15 A The ER doctor told Steve that it was a tor-
16 sion type fracture, and he described it to Steve as twisting.

17 Q Well, to get that fracture, clearly his
18 leg, I guess, had to twist at some point, but how do you know
19 it didn't twist once he lost his balance on the way down?

20 A Well, Smith never indicated to me that he
21 lost his balance.

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1 Q Okay, well, when you described that you
2 thought he moved along the bumper, you said you did believe he
3 was holding a handhold?

4 A Yes.

5 Q And you, apparently, believe that he put
6 his left foot down on the stirrup, right?

7 A Yes.

8 Q Well, are you saying that he must have
9 moved and tried to jump across here over to the right side
10 without stepping down, is that the gist of what you're trying
11 to say?

12 A No.

13 Q Okay, what is it that you're trying to say?

14 A I'm trying to say as he stepped down with
15 his left foot, he twisted around, and pivoted around the rear
16 corner of the truck.

17 Q Going clockwise with his body, or going
18 counter-clockwise?

19 A Let's see, it would be counter-clockwise.

20 Q So this is going to be hard to put on the
21 record, if he was coming down, you said facing forward, right,

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1 puts his left foot down? Do you have any opinion as to which
2 hand he was holding onto the handhold with, or both?

3 A I think he probably had his left hand on
4 the handhold, and his left foot in the stirrup.

5 Q And you're saying he twisted towards the
6 right, which would be clockwise, or towards the left counter-
7 clockwise?

8 A Counter-clockwise.

9 Q So toward the left, okay. And what do you
10 base that on, what facts do you base that on, that he must have
11 twisted to the left, counter-clockwise?

12 MR. FISHER: He's testified to
13 that in hearsay testimony --

14 MR. SHAPIRO: (interjecting)
15 Yeah, well --

16 MR. FISHER: --in interviewing
17 your client, discussions with the doctor.

18 MR. SHAPIRO: No speaking
19 objections please.

20 Q What do you base that on?

21 A The fact of what I observed.

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1 Q You observed what?

2 A The positions that Foster told me he was in
3 when he first saw him, when he last saw him, where he was going
4 when he stepped off the bumper.

5 Q But if he turned, excuse me, I don't --

6 MR. FISHER: (interjecting)

7 Well, I think he ought to finish his explanation.

8 MR. SHAPIRO: Go ahead.

9 A Well, that's it, based on the observation
10 that I made, the conclusions I reached based on what people
11 told me they saw, where he was.

12 Q If he was trying to get around to the right
13 side of the truck, why would he twist towards his left, if he
14 was dismounting?

15 MR. FISHER: If you know.

16 A I think his momentum in moving from left to
17 right and around the end of the truck caused him to twist in
18 that manner.

19 Q Going back to the two -- Rule M, operating
20 rule M, which we just talked about. You said what you thought
21 he did unsafely, you just hit those two points. Under oper-

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1 ating rule GR-3, "All employees must follow instructions from
2 proper authority and must perform all duties efficiently and
3 safely." What about that rule did he violate?

4 A He did not maintain the three points of
5 contact.

6 Q Okay.

7 A And I might say, again, this is a letter of
8 warning. That letter does not imply that he violated that.
9 That's a letter of warning telling him not to do that in the
10 future. It doesn't imply any guilt, because I cannot do

that.

11 Q I understand. Now, these two particular
12 rules, couldn't these general rules about working safe,
13 couldn't they apply in almost any accident?

14 MR. FISHER: I don't understand
15 your question. I don't understand.

16 MR. SHAPIRO: I think he does.

17 MR. FISHER: I don't. I'm

going

18 to ask you to clarify the question.

19 Q Do you understand the question, Mr.

Groce?

20 A No, I don't.

21 Q I said those two particular safety rules --

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1 MR. FISHER: (interjecting) That
2 you quoted and that are in the letter of November 26?

3 MR. SHAPIRO: Yes.

4 Q Those could apply in almost any accident
5 case, couldn't they?

6 MR. FISHER: Well, not if it was
7 Chicken Little and the sky fell in. I mean, not
8 necessarily.

9 MR. SHAPIRO: Counsel, please,
10 you know, that's one thing you're not supposed to do.
11 Thank you.

12 A Not necessarily.

13 Q Okay, well, if a man hurts his back by
14 lifting up a three hundred pound keg of spikes, and you don't
15 think he did it right, couldn't he be cited with both of those
16 safety violations?

17 A Yes, he could.

18 Q In addition to others, right?

19 A Yes, he could be.

20 Q These are general types of safety instruc-
21 tions that could apply to a broad range of accidents, not just

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1 the type that Mr. Smith was in, you would agree?

2 A They could apply to other accidents besides
3 the one that Mr. Smith was in, I agree to that.

4 MR. SHAPIRO: That's all I have,
5 unless you have any, counsel.

6 MR. FISHER: I have no questions.

7

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10 WHEREUPON, the taking of
11 this deposition was concluded at 3:53 p.m.

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1 CERTIFICATE OF NOTARY PUBLIC

2 STATE OF VIRGINIA,

3 State at Large, to-wit:

4

5 I, Melonie M. Raun, the officer before whom the
6 foregoing deposition was taken, do hereby certify that the
7 witness, whose testimony appears in the foregoing deposition,
a was duly sworn by me; that the reading and signing thereto was
9 waived; that the said deposition is a true and accurate record
10 of the testimony given by said witness.

11 I further certify that I am not related to the
12 witness or counsel; that I have no interest in the outcome of
13 this case; and that there were two exhibits filed with me,
14 which are attached hereto and made a part of this deposition.

15 Given under my hand this 11th day of March, 1994.

16

17

18 NOTARY PUBLIC

19 Commissioned as: Melonie J. Martie

20

21 My Commission Expires:
June 30, 1995

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