



NATIONAL TRANSPORTATION SAFETY BOARD
Investigative Hearing

Washington Metropolitan Area Transit Authority Metrorail train 302 that encountered heavy smoke in the tunnel between the L'Enfant Plaza Station and the Potomac River Bridge on January 12, 2015

GROUP	
EXHIBIT	

Agency / Organization

Title

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD

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Investigation of: *
*
WMATA INCIDENT AT L'ENFANT PLAZA *
STATION, WASHINGTON, D.C. * Docket No.: DCA-15-FR-004
JANUARY 12, 2015 *
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Interview of: MORTIMER DOWNEY

The interviewee was afforded an opportunity to review this transcript for accuracy. Corrections and clarifications are shown in underline/~~strikeout~~.

WMATA Headquarters
Jackson Graham Building
Washington, D.C.

Thursday,
April 16, 2015

The above-captioned matter convened, pursuant to notice.

BEFORE: MICHAEL FLANIGON
Railroad Accident Investigator

APPEARANCES:

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National Transportation Safety Board

ROBERT "JOE" GORDON, Investigator-in-Charge
National Transportation Safety Board

RICK NARVELL, Human Performance Investigator
National Transportation Safety Board

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National Transportation Safety Board

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1 I N T E R V I E W

2 MR. FLANIGON: Okay, it's April 16, 2015. My name is
3 Mike Flanigon, F-l-a-n-i-g-o-n. And we are interviewing Mr. Mort
4 Downey, D-o-w-n-e-y, who is Chairman of the WMATA Board of
5 Directors. And this is in regard to the January 12th arcing and
6 smoke incident at L'Enfant Plaza that the NTSB is investigating.

7 And I will ask my colleagues to identify themselves and
8 spell their last name.

9 MR. NARVELL: Rick Narvell, N like in Nancy, a-r-v like
10 in Victor, e-l-l, NTSB.

11 DR. GROFF: Loren Groff, G-r-o-f-f, NTSB.

12 MR. HILLER: Michael Hiller, H-i-l-l-e-r, NTSB.

13 MR. GORDON: Joe Gordon, G-o-r-d-o-n, NTSB.

14 INTERVIEW OF MORTIMER DOWNEY

15 BY MR. FLANIGON:

16 Q. I'd like to start and ask you to talk a little bit about
17 how long you've been on the WMATA Board of Directors and describe
18 kind of briefly what that job entails.

19 A. Yeah. I've been on the board 5 years, give or take a
20 couple of weeks, was appointed by the Obama administration in 2010
21 after legislation had been passed saying the federal government
22 should be represented on the board. So I was the first federal
23 appointee.

24 I've only been chair for a few months. So just as a
25 board member, until the 26th of January. I think it was the 26th

1 I took over from Tom Downs. I've had lots of other experiences
2 with WMATA over my career, particularly when I was in DOT, but
3 even when I was in the transit world, I've always had connections
4 with what went on here, learned from them in some respects.

5 The board, when I came on it, 2010, was very much
6 beginning a transition. The board that you all may have seen in
7 action at the time of Fort Totten crash and the follow-on to that,
8 many of those people were leaving and taking that opportunity to
9 reshape the vision of the board's responsibilities. I know at the
10 time of Fort Totten the then-chairman was insistent that the board
11 had only a policy role.

12 And I would respect that, if you draw the distinction
13 between a policy role and a management role. We don't run things.
14 General manager or CEO runs things. But I view the board's
15 responsibility as both policy setting, budgeting and oversight.
16 And we really have tried to put that in place, that in each of the
17 areas where we intersect with management, we want to establish the
18 policy relationships, we want to provide the resources that, to
19 the extent they can be afforded, to meet those goals, and we want
20 good oversight as to whether goals are being met.

21 The board is divided into committees with various
22 degrees, various areas of responsibility. There is a Finance
23 Committee, general oversight of the financial side. They do the
24 budgets. They do the review of operations. They also do policy
25 work in the administrative area. There is a Policy, Planning and

1 Real Estate Committee. Much of their workload turns out to be the
2 real estate stuff that's associated with the joint development.
3 There is an Audit and Investigations Committee. They work with
4 the auditors and with the inspector general on those issues.

5 ~~I'm probably forgetting at least one important~~
6 ~~committee, but it'll come back to me.~~ And there is a Customer
7 Service and Operations Committee that reviews how the system
8 functions for the user. But there are two others that were
9 established subsequent to my coming on the board. One was a
10 Governance Committee, which really looks at the board's role, the
11 way the board is organized, how the key management people who
12 report to the board are evaluated.

13 There are three individuals at the Authority who are
14 hired by and reviewed by the board. That's the CEO, the board
15 secretary and the inspector general. At one time the general
16 counsel also fell in that category, but we made a decision that
17 general counsel's role was much more management oriented. Ninety-
18 five percent of what they were doing was not transparent to us.
19 It was day-to-day activities, and we said the CEO should deal with
20 that.

21 Then the other key committee that was established since
22 I've been on the board was the Safety and Security Committee,
23 largely coming out of our own look at, post-Fort Totten, what
24 should the board's role be? How do you clearly distinguish
25 between concern about finance, concern about customer service and

1 concern about safety? I led the charge to have that committee
2 established, served as its chair right up to the time I took over
3 as board chair.

4 So for 3, maybe 4 years, I was chair of the Safety
5 Committee, which entails not just showing up and running the
6 meetings, but setting the agenda for the committee, setting the
7 agenda for the committee meetings, and really being the watchdog
8 for the board on the safety and security related issues. And I
9 can give you more about how a committee functions if you care to
10 know about that.

11 Q. Well, I think I'll probably get to that. You've talked
12 a little bit about how the board role has changed --

13 A. Yeah.

14 Q. -- since the Fort Totten era, we'll call it.

15 A. Yeah.

16 Q. And the Safety and Security Committee was a new board
17 role since that time. Were there -- the rest of the committee
18 structure --

19 A. Governance was also a new addition. That's during a
20 time of change with major turnover on the board, so Governance was
21 added.

22 Q. Okay. How does the board monitor or oversee the safety
23 of the system?

24 A. In the time we've had the Safety and Security Committee
25 in place, that's been the main locus. We meet every month. We

1 have a rotating general agenda that one meeting is safety, one
2 meeting is security, the third meeting is the Tri-state Oversight
3 comes in and directly reports to us on what they've learned. We
4 add other things as events occur or issues arise.

5 We have a regular set of reports that we receive. I'm
6 sure Jim Dougherty has gone through those with you. It's a safety
7 report, it's a security report, consistent format: how are we
8 doing, what kind of incidents have we had, what is the rate of
9 occurrence of both employee and customer injuries or incidents.

10 We do the same thing on the security side. The police
11 come in with good reports for us on not just what's happening but
12 why it's happening and what they're doing about it. Same thing is
13 true on the safety side.

14 What we've also done outside of that routine is when
15 there has been a significant incident, we actually ask management
16 to come in at the earliest safety meeting that they can come in
17 and talk coherently about the incident: what happened, why did it
18 happen, what did we learn from it, what are we going to do next.
19 So we've probably had 10 or so of those over the course of 2 or 3
20 years. And it's, again, it's the -- you know, we, obviously,
21 don't like to have incidents like L'Enfant or Fort Totten, but you
22 know that something else that may have happened could be an
23 indicator of a situation that needs to be dealt with.

24 So one that I recall fairly early in the committee's
25 history, there was a rash of the wheel brake discs on the railcars

1 flying off with significant potential consequences. I think none
2 of the incidents that actually occurred led to injury or death,
3 but clearly disruption, and you just don't have to be too well
4 educated to know that that's not something that should be
5 happening. So we said to management, come in, brief us. You
6 know, I'd say not a majority of the board have the technical
7 knowledge to even know what this part is or why it's there, but we
8 wanted to get to that level: why is it there, what does it do,
9 and what in the world happened to have them come flying off, and
10 what were the consequences of that.

11 We've had cases where, I remember, one of them hit third
12 rail, caused arcing, service was suspended. So that's the kind of
13 activity that we go through, both to educate the board as well as
14 the public that we're on the case, we're working on these things,
15 we don't just take them for granted. For the case of the discs,
16 management came back with a probable cause and a fix.

17 We had another couple of meetings where an event had
18 occurred that required a substantial evacuation of people, and we
19 used that, hopefully, as a learning experience. This was one that
20 happened over in Anacostia and, unfortunately, it was one where a
21 lot of people on the train decided to fend for themselves and
22 self-evacuate and wound up going up a vent shaft and arriving in
23 the middle of a giant field where they had no idea where they
24 were, because it just happened that that vent shaft was right in
25 the middle of nowhere.

1 But, you know, we went through, again, for board
2 education, for assurance that management had a plan for dealing
3 with this, and for educating the public, a lot of discussion about
4 why, in most cases, self-evacuation is not the thing to do, but if
5 it happens, how do deal with it? How did we respond? Who did we
6 get to the scene? What was the role of the police? What were the
7 communications? We also then involved our Riders' Advisory
8 Council in how can we communicate better with the riders.

9 So we use things that happen as an opportunity to say
10 how can we do better and that we take responsibility for doing
11 better.

12 We also, in the budget process for the Authority, even
13 though the Finance Committee has the lead on that, each year I've
14 had the Safety Committee redo the safety elements in the budget so
15 that we're able to go into the larger negotiation and say those
16 are off the table; this is what we need to do; that has to be part
17 of the adoptive budget; we're not going to save money there.

18 Q. Okay. There's an employee engagement survey that's --
19 we were just talking with Jim about this.

20 A. Yeah.

21 Q. Started out as a safety survey and --

22 A. First time out it was safety. Second two times it has
23 been more broadly engagement, but does have a good safety
24 component to it.

25 Q. What's the board involvement in that whole process?

1 A. Yeah, the original one came out of the activities that
2 were going on when I first came on board. This was before Safety
3 Committee. Learning process for me, how the board things were
4 working. But as we looked forward to a time of change, we did
5 actually get help from a lot of folks on what should we be doing
6 with respect to safety culture.

7 We had asked US DOT for their assistance. Secretary
8 Foxx assigned Peter Appel, who was then running RITA, to lead
9 that. He brought together all of the lead safety people from the
10 various DOT agencies and we interrelated on what we should be
11 doing. They also said you should get some outside advice and we
12 organized an outside advisory group. My ever weakening memory
13 doesn't come up with all the names. I know Bill Voss was one of
14 them and a couple of others. A couple of them were
15 transportation; a couple of them were non-transportation. But we
16 got, you know, their advice on what are the next steps we should
17 be taking.

18 It was also, and I think not a good outcome, but the
19 majority of the board did not want to do anything until the NTSB
20 report was issued, which I didn't agree with that, but the junior
21 guy on the board doesn't get to argue with everybody. But the
22 then-chairman -- the chairmanship had rotated in January. Peter
23 Benjamin came on as chairman.

24 Peter and I just said let's get our ducks in a row.
25 Let's get our plan together so that when we can get the board

1 comfortable moving forward, we can really move forward in high
2 gear. So one of the clear recommendations we got from that
3 advisory group, and to some extent from the DOT group, was get
4 a -- take the temperature of your employees, which led to the
5 initial survey. Which had pretty frightening results, if I
6 remember.

7 And they were presented to the board. These weren't
8 just for management's ~~representation~~information. They came to us.
9 I think, by that time, the Safety Committee had been created. But
10 we had real opportunity to dig into that. And the thing that just
11 hit me right in the forehead, most -- the majority of employees
12 indicated that, yes, they had seen unsafe practices in the course
13 of their daily routine. And the majority of those said, ~~and I~~
14 they wouldn't report them, for whatever reason -- fear of
15 retaliation, peer pressure; ~~I~~they just wouldn't do that.

16 And we said, okay, here's one of the first things we
17 absolutely have to do to start moving in the right direction, put
18 a plan, you know, a plan together, initial stage being much more
19 communication to the employees. I said you can tell your
20 supervisor about this stuff. That's where you really ought to go.
21 If for any reason, you're not comfortable raising it with your
22 supervisor, then there's a hotline; you can bring it there.

23 If you are not comfortable with that, there are other
24 courses of action you should take, but don't just sit there
25 silently. It's in your interest. It's in the customer's

1 interest. It's in your fellow employee interest to bring these
2 issues to attention so they can be dealt with.

3 Later on, we actually established the Confidential Close
4 Call reporting. I'm still advocating expanding that and
5 broadening it, but it's a delicate process of negotiating with the
6 union, on the ground rules and their role, getting their support
7 on that. We did have that. I think it's working. I'd like to
8 push it further. Right now we're getting a certain amount of
9 static from the union, premise that this is not a safe place. I
10 would argue it's a safer place, but always we could do more.

11 But that was our survey baseline. Then we said to
12 management, this is not a one-time event. We said we want to know
13 how are we doing? So safety questions have been included in the
14 next two reports. The board has been briefed on the one of a year
15 or so ago, and we just received the results of the most recent
16 one, but only as results. We will get into them at an appropriate
17 committee meeting.

18 But, from my reading, we're showing improvement. Far
19 more of the employees are indicating they are comfortable in
20 reporting things and they are reporting things. So to the extent
21 that that's a sign of progress, I see it as a sign of progress.
22 And as I said, the board has been very much involved in knowing
23 what these results are saying.

24 Q. Good. I know, as I understood it, that the first survey
25 had a fairly large list of safety-related questions --

1 A. Yes.

2 Q. -- on the questionnaire. And it's some number, 15, I
3 think I heard, but maybe that's not the right number. But some
4 proportion of them are moving forward in the subsequent surveys to
5 be kind of a --

6 A. Yes. Yeah, as an indicator of --

7 Q. -- baseline to, you know, compare --

8 A. Right, baseline as change to change.

9 Q. Yeah.

10 A. If at some point Jim Dougherty or the general manager
11 would come to us and say we really need another pure safety
12 survey, I'd be fine with that. But from my perspective, we're
13 getting enough valid information about the follow-up surveys to at
14 least say the thing we were most concerned about is being dealt
15 with.

16 I mean, we also follow what's the volume of calls we're
17 getting on the hotline. We had a really good briefing a few
18 months ago on the first 6 months of Confidential Close Call. Not
19 just that it's in existence, but we want to know what are we
20 getting, what kind of calls, what kind of follow-up. As I read
21 the information, none of them were terrible smoking guns of
22 something that's going on, but they were all valid concerns that
23 some employee had and that's the way they wanted to report it.
24 And then we could see who was followed up on.

25 We prefer, where we can, at least from my perspective,

1 to get reports other than anonymously, because if they are other
2 than anonymous, we can actually get back to the person and say,
3 hey, here's what we've done about it. But it's up to the employee
4 to do whatever they want as long as they're willing to talk to us.

5 Q. Okay. How about any policy decisions that the board has
6 made based on the survey results?

7 A. I think, again, with this finding that the employees
8 were unwilling to report, a lot of different things stem from that
9 -- not specific board operational decisions, but really trying to
10 create the basis where safety department and the operating
11 departments would take the actions necessary to show improvement.

12 We didn't tell them how to do it. We just said this is
13 an unacceptable circumstance. We know about it now; we have to
14 act on it now, and tell us both what you're doing and how we're
15 coming along with it. But we didn't tell them, you know, what
16 should be the phone number for the --

17 Q. Yeah.

18 A. We did have, you know, some conversations about if we do
19 have a hotline, where is it, how do we know it works, you know.
20 We said, no, your call about how best to do it, but we want to see
21 that it is being done and it is achieving results. Again, that's
22 the we don't just set policy. We take oversight to see that the
23 policies are being carried out.

24 Q. Okay. So WMATA was here and now we're today.

25 A. Yeah, I hope that's moving in a positive direction.

1 Q. Yeah, yeah. Well, we've heard a lot of positive --

2 A. Yeah.

3 Q. -- things.

4 A. Yeah.

5 Q. So looking forward, but what do you see as the biggest
6 challenge?

7 A. I think we've got to maintain the momentum that I think
8 we've achieved. The board has to continue to offer the
9 leadership. When we get to hiring a new CEO, which has to be
10 preceded by a little more consensus on the board as to what that
11 person should bring to the job, I want to be sure that safety
12 concern is a very valid part of that CEO's activities.

13 I think in the, again, in the post-Fort Totten reforms,
14 clearly one thing that we pressed -- didn't have to press too hard
15 with our then-CEO, but we pressed, got to upgrade the safety
16 function. It was pretty non-functional; very few people, very few
17 professional people, very little product.

18 We have carved out in the budget whatever the CEO has
19 said would be useful investments to build up that department. I
20 think it's five times bigger than it was. And we hold Jim and his
21 department really accountable, and back him up that he's got the
22 authority to intervene, to take the steps that are needed.
23 Whenever we have one of these discussions at the committee about a
24 particular incident, I want to hear from the operating people, but
25 I also want to hear from the safety department, what have you

1 done?

2 One other thing I should have mentioned in the context
3 of the reform and the Safety Committee, we put a very high
4 priority on understanding where we are in meeting recommendations
5 that have come to us, whether it's NTSB recommendations, whether
6 it's TOC recommendations, whether it's internal, what FTA or
7 things of internal audits or things from investigative reports.

8 Jim puts together a monthly report. I'm sure you've
9 seen it. It's this long and about this thick. It tracks all
10 corrective action plans that are still active and it looks
11 backward to say what have we achieved. I think this month's, if I
12 remember right, we've dealt with ~~790-801~~ corrective action plans
13 over the 5 or 6 years since we started this. ~~Less than~~ Just over
14 10 percent of them are still open. Most of the ones that are
15 still open are quite current.

16 With respect to NTSB, we typically say we've gotten 29
17 recommendations. I think there's actually a few more that
18 preceded Fort Totten. But of the 29 that either were open at the
19 time of Fort Totten or came in as a result of Fort Totten or came
20 in subsequent to it, all but 4 have been closed.

21 And we feel, and looking at your response, you feel that
22 they're being dealt with appropriately. We hope fairly soon, now
23 that the 7000 cars are out on the road -- and I rode one Tuesday
24 -- we can -- and we are funded to replace the entire 1000 series,
25 maybe you'll say this has now been dealt with, or maybe you'll

1 wait till we've retired a few of them, or maybe you'll wait till
2 we've retired all of them. But that's the one that's going to
3 take the longest. That whole action is going to take the longest
4 amount of time.

5 But we're very careful in hearing every quarter from Jim
6 when he does his safety reports where on we on corrective action,
7 including a hazard analysis because I think following up on those
8 things is the best way to make sure that things happen. And
9 getting everything that we're told into that screen is important.
10 And we also, but most of them require the oversight committee,
11 TOC, to sign off on what's been done. So we take that seriously
12 as well.

13 Q. Good.

14 MR. FLANIGON: I think that's all I have for the time
15 being. I'll pass it off to my colleague across the table.

16 MR. DOWNEY: At some point I also might want to talk
17 about board evolution going forward, some concerns we have there.
18 Our board, not your board.

19 MR. NARVELL: Okay.

20 MR. DOWNEY: Yeah.

21 MR. NARVELL: Thank you. This is Rick Narvell, NTSB.

22 BY MR. NARVELL:

23 Q. Mr. Downey, I have just a couple here.

24 A. Yeah.

25 Q. During your tenure on the board, roughly 5 years and

1 some change now, what concerns, safety concerns or issues do you
2 have today --

3 A. Today?

4 Q. -- with WMATA?

5 A. Yeah. Continue to have a concern, really brought to
6 bear by L'Enfant, of our relationship with first responders when
7 things have to go forward. And that's a lot of things that are
8 now being done to improve that relationship, to provide better
9 resources. But that, clearly, was shown to be an area of
10 weakness.

11 The other major concern I would have is the physical
12 condition of the system. There is amazing amount of work still
13 ahead and, frankly, permanently ahead, to keep -- get the system
14 to where it is at a state of good repair and keep it there. Lots
15 of things that happen, clearly attributable to aging equipment,
16 aging facilities. We can't fix everything at once. And even when
17 it's all fixed, we're going to have to then keep fixing it. But
18 to the extent that there are still parts to the system that are
19 out there that are old that -- old and tired -- that worries me,
20 and it will continue to worry me.

21 Continue to push on why we need a continued funding,
22 continued effort to make the system what it needs to be. We're in
23 year 5 of a funded, secure rebuilding effort. We need a second 5
24 or 6 year agreement to do work going forward. I'm also going to
25 be asking staff to revisit the inventory of "state of good repair"

1 that was done in preparation for the first 6-year plan. So we've
2 got -- we and our funding agencies have an idea of the importance
3 of the task.

4 You know, am I concerned about day-to-day operations?

5 Yes, because it's a busy place. A lot of different things can
6 happen. Bridges can fall on your track. Insulators can arc. I
7 gather there was one on the Green Line this morning. I do get
8 reports on all these things. And it's when you get more than one
9 or two, then you say, what are we going to be doing about it? But
10 a significant part of it really does deal, my view, with aging
11 equipment.

12 We also have to cope with the fact that we're not a
13 forgiving system when it comes to being able to do work. ~~To-As a~~
14 ~~two-track~~ railroad it's not like New York where you've got lots of
15 parallel lines. When I worked in New York the TA always prided
16 itself on, we never shut down, we run 24/7, every line operates.
17 Tom Prendergast has changed that, I think, for the better, and
18 said, you know, if we've got five lines running up and down in
19 Manhattan, we could get by shutting one of them down for 72 hours
20 or whatever and get some work done.

21 Other places do even more dramatic things. I was in
22 Vienna a couple of ~~—years ago --~~ not Vienna, Virginia, where I
23 live, but Vienna, Austria on a vacation. And I said I'd like to
24 go ride the subway. I went down to where I thought the station
25 was on the Red Line and they said, oh, it's closed for the summer;

1 we're rebuilding a track. But they have enough system they could
2 get away with that.

3 We have to find, really, the time to get things done.
4 That's not great for our customers. We need to get a better plan
5 for when is it that -- not, when are we finished? I always --
6 somebody says, when are you going to be finished rebuilding? I
7 said never; I hope you understand that. It's when are we going to
8 be getting down to a level of work that's kind of manageable in
9 the windows we have to do work. Because right now we've been
10 beating hard on the capital people to present it more coherently
11 for the purpose of the board and the public.

12 But, fundamentally, if you take things like track or
13 ties or insulators or circuit boards, we're doing 2 or 3 years'
14 work every year until we catch up for the stuff that hasn't been
15 done. So, you know, I want to get a better handle, when do we get
16 to the point where we just have 1 year's worth of work to do in
17 1 year. And then how do we remind people that, yes, we have to do
18 that; we can't stop; we have to go forward. The condition of the
19 system is a concern that I have.

20 A. Okay. You mentioned to Mike a moment ago about the
21 budget for -- I think ostensibly the safety department.

22 A. Yes.

23 Q. That is was, I think, five times what it was?

24 A. Something like that.

25 Q. Six, seven, yeah.

1 A. But I recall it was something like five or six people.

2 Q. Okay.

3 A. And they were improperly placed in the organization.

4 Q. Okay.

5 A. But, again, I wasn't on board even before we started

6 ~~saying recommendations for looking at issues raised by~~ Fort Totten.

7 Q. Right.

8 A. I came in and said, where does the safety department

9 report? And they said, oh, they report to the head of operations.

10 I said, well, that doesn't sound right to me from any experience

11 I've had in other modes or other places.

12 Q. Okay.

13 A. And one of the first things Rich Sarles did when he came

14 on board was bring them up to the executive level, bring them on

15 the Executive Leadership Team and assure that the safety director

16 -- first off, assure that we hired a good safety director, but

17 also, clearly, that that person reports to and communicates

18 directly with the CEO.

19 Q. Okay. And my question in all of this is --

20 A. Yeah.

21 Q. -- the principal question is, has the chief safety

22 officer, during your time here, has he ever come to you and said I

23 need more money and was it ever -- was it granted or not granted?

24 A. He's not come in the sense of saying I need more and I'm

25 not getting it.

1 Q. Okay.

2 A. He's been pretty well treated in the budget process.

3 But what I've done is, you know, validate that, make sure that the

4 resources are there.

5 Q. That was my follow-on.

6 A. Right. Yeah, yeah.

7 Q. So you feel that they're adequately funded at this

8 point?

9 A. Yeah, I do. Yeah.

10 Q. My last area here is actually something you just

11 mentioned a moment ago, that you would like to talk about kind of

12 the future.

13 A. Um-hum.

14 Q. And I'm going on -- I was part of the Fort Totten

15 investigative team for the NTSB.

16 A. Yeah, um-hum.

17 Q. And one of the things that came out of principally the

18 public hearing that we had was the notion of -- again, I'm going

19 on memory -- is that the board wasn't more, in so many words,

20 engaged in the safety --

21 A. Yes, yeah.

22 Q. -- aspects. And I know that predates your time here.

23 A. Right, yeah.

24 Q. I'm cognizant of that.

25 A. Yeah.

1 Q. So it sounds like that has been not the case anymore,
2 that you have --

3 A. I certainly hope it's not the case. Yeah.

4 Q. -- elevated the safety department up to and including --

5 A. Elevate the safety department, professionalize it, give
6 it the resources, and create the focus on the board level that
7 does that. Recognizing that I didn't want to be the safety chair
8 for the rest of my life, we brought on one of the -- another board
9 member to be the vice chair.

10 Q. Okay.

11 A. And when I became chair of the Authority, Michael
12 Goldman moved ~~came~~ up to the safety chair. So he didn't walk in
13 on Day 1 with no experience. He really had been part of the
14 process. He had been a member of the committee for 2 or 3 years.
15 He had been vice chair for a year. I really wanted to hand the
16 baton to him and say, you know, you've got the responsibility now.
17 Hopefully, that will continue. As long as I'm board chair, it's
18 going to continue.

19 Q. Great.

20 A. Yeah.

21 Q. Okay, good. Thank you. That's all I have right now.

22 A. Yeah.

23 Q. Thank you.

24 DR. GROFF: Loren Groff, NTSB.

25 MR. DOWNEY: Wait. One other thing on -- in terms of

1 board activity and culture. I spent a lot of time with NTSB Board
2 Member Robert Sumwalt over the last 3 or 4 years --

3 DR. GROFF: Okay.

4 MR. DOWNEY: -- in terms of what we've been doing, what
5 his expectations were. For a while we had a dog and pony show
6 that we took around the country to various transit properties or
7 others, where he would present the Fort Totten accident and I
8 would present what we've done since then. We've done it at a
9 couple of places: California, we've done it twice at APTA board
10 member ~~things~~ conferences. But it's a good opportunity to go back
11 and say why are we doing this and --

12 MR. NARVELL: Right.

13 MR. DOWNEY: -- and what have we achieved.

14 MR. NARVELL: Great. Well, thank you.

15 BY DR. GROFF:

16 Q. Loren Groff, NTSB, and continuing in that vein just a
17 little bit, you mentioned that one of the big changes had been,
18 with the board, has been a move to include not only policy but
19 also budget and oversight. And one of the things that I'm
20 interested there is maybe some examples of the sorts of actions
21 that the board realistically can take to affect safety based on
22 the information you receive.

23 A. Yeah, yeah. Obviously, we can't go out and fix the
24 tracks.

25 Q. Exactly.

1 A. Yeah.

2 Q. Exactly.

3 A. What I think we can do, if we're doing our job, is get
4 more granular on what is happening and then put the pressure on
5 management to -- what are you doing about it? I mean, when the
6 parts of the wheel started flying off, I said, you know, that's
7 unacceptable; what is going on? Actually, after several weeks,
8 they did discover that it was somebody in the shops who didn't
9 know how to put them back on. I don't remember the exact thing,
10 but it was like they put the bolts on the wrong direction. But
11 that's -- you know, we just said we care about this. We really
12 want to see these things fixed.

13 On the budget side -- budget, by the way, was not a new
14 responsibility for the board. Over time, policy and budget were
15 the board's activities. I think for too many years the budget
16 process was how can we avoid raising the fares and how can we
17 avoid taxing the jurisdictions, and not so much worry about the
18 consequences. What I've tried to do and my colleagues currently
19 on the board have tried to do is put a review process in place
20 that says the budget is not just how little can we get by with.
21 It's what are we getting for what we're putting in place. So,
22 much more of a we don't -- we just, as long as I'm here, we will
23 not accept a process that says, well, to get to where we want to
24 be by not raising the fare or not increasing the subsidies, we'll
25 just do a X percent across-the-board cuts.

1 That was done for a lot of years in this system,
2 particularly through the 1990s. It was pretty much complete.
3 There were still a few parts of Greenbelt and -- or the Green Line
4 that were being built, but it was really in place for the long
5 run. But what the Authority was benefitting from was, as they
6 were expanding the system, each year ridership would go up,
7 revenues would go up faster than ridership, because as you had
8 parts of the system that are more distant -- it's a distance-based
9 fare -- will generate more revenue.

10 For a while the stock market was doing well so they
11 didn't need to put much money into the pension system. And they
12 kind of fell asleep on the job. It was an error when they should
13 have been reinvesting in the physical condition of the system.
14 They weren't doing it. We would reap all of that come the mid-
15 2000s.

16 But, you know, I favor a budget process that says you
17 don't do anything if you don't know what the consequence is going
18 to be. So we're being pressed this year to live better within our
19 means. I have a commitment from staff to holding down any
20 increases in head count, but I'm insisting that what they do --
21 we've got to know what the consequences are that -- where are you
22 taking out people. Because in the old system of across the board
23 cuts, I think that's one of the thing that happened to the safety
24 function, as an easy target. Take people out of that. Nobody
25 will know the difference.

1 So we try to be sure that the budget process is informed
2 and realistic. And then on the oversight side what we go through
3 is, okay, what are the results we're getting? What do we need to
4 do to get better results. I think we've all accepted, for
5 example, on the safety side here is the programmatic approach that
6 we're taking: strong safety department, reviews of incidents,
7 independent outcomes, and you tell us what you're doing to deal
8 with issues that we don't want to see happen. So that, I think,
9 is an important function for the board, to get information even if
10 it's not the information you'd like to hear.

11 A. Well, and related to that, I think, you recognize that
12 you have the ability to go out and seek information but you have a
13 lot of information brought to you. Are there areas of -- that you
14 would like more information that you don't feel the board gets for
15 you?

16 Q. I think we get what we need, both the reporting that
17 comes from staff, the reporting that comes from the oversight
18 committee. And so we're going to get in some discussion with
19 them. But we get useful information from them, not always in the
20 way we might like to have it, but I think we're getting a
21 reasonable amount of information. And then pushing back to say
22 what are we doing about it? I'd like to have a better handle, for
23 example, on the physical condition of the system, something I'm
24 really going to be pushing for in terms of our next 6-year plan.

25 For the first couple of years of the current effort, the

1 measure of success was, have we spent the money? And that's very
2 embarrassing if you haven't spent the money. ~~I know~~ According to
3 media reports MBTA is dealing with that right now: "We gave you
4 \$5 billion to fix the system and you haven't spent but half of
5 it." We know we've been spending the money but at some point you
6 grow up and say, what are we getting for it? How many miles of
7 track have been replaced? How many ties have been replaced? How
8 many stations have been fixed? And how do we link the money with
9 the accomplishments?

10 Q. Do you have any examples that you can think of where
11 information was reported, safety information was reported, that
12 you felt, that the board felt you needed to go out and seek
13 additional information to understand this?

14 A. We have not, to my recollection, had to bring in outside
15 expertise. We have pushed on management in the safety department
16 to tell us more. And the other thing I -- at least speaking for
17 myself -- I'm a regular rider. I'm on the system all the time.
18 If I know that there is an issue, I get sensitive to what's, you
19 know, what is it, what's being done about it?

20 If it's, you know, something as simple as the pavers
21 that are in the stations, which are skating rinks whenever they're
22 wet, I take my own observations about, yeah, we know that's a
23 problem; what are we doing about it?

24 Occasionally, you do want to get out there and know
25 more. After L'Enfant, Mike Goldman, who's the new chair of the

1 Safety Committee, said, I don't understand enough about vent
2 plants and track conditions to really evaluate what I'm hearing.
3 And we said, okay, let's go out there and kick the tires. We
4 wound up in the middle of a blizzard on a Saturday, not actually
5 the same vent plant that was -- you guys were still inhabiting,
6 but a similar one, a little bit away, looking at what is a vent
7 plant, what's it do?

8 Probably -- well, we used to have two members of the
9 board with rail experience -- Tom Downs is gone now. But, you
10 know, so there's not one of us who's been around long enough to
11 have seen a lot of these. But I encourage others to get out there
12 and, you know, see this stuff. Put hands on it.

13 Q. And, I guess, finally, you mentioned looking forward and
14 where the board wants to go. Do you feel as though the structure
15 and the activities of the board are where they should be or you'd
16 like them to be? And maybe, if not, where do you see --

17 A. I'd think they --

18 Q. -- where do you see the role of the board going?

19 A. I'd say, for the most part, they are where I would like
20 them to be. I do have concern of can we sustain that. We're
21 going through a very, very massive turnover on the board: Two new
22 federal members that came on last year; two, maybe three members
23 from the District; a couple of new members from Maryland; one new
24 member from Virginia. Added all up, we could have 8 or 10 out of
25 16 board members with less than a year's tenure on the board.

1 | So ~~getting that under control~~making that transition is
2 something that I obviously worry about. We're also, if you've
3 been following the media, and we actually then had a actual
4 discussion around the board table. There's difference of opinion
5 as to where we should be headed on a CEO. I'd say a lot of the
6 media discussion is not as nuanced as I would like it to be.

7 They present it as a fistfight between the proponents of
8 having a turnaround artist, which they don't really define what
9 that person is, or a traditional transit manager which, again,
10 people who believe in the turnaround artist then present their
11 view of what a traditional transit manager is, which sounds like
12 somebody who is my age and ready to retire.

13 And, you know, my position is it is neither of those.
14 It is both of those. It's got to be a real-life person who
15 understands what needs to be done. We had -- after lots of shots
16 were fired in the media, we did have a Governance Committee
17 meeting a week ago to say let's sit around the table and talk
18 about this, and began to communicate. Because, you know, we had
19 made a lot of progress towards selection of a CEO and, with some
20 changes on the board, the general consensus the board had reached
21 was torpedoed.

22 So we lost our candidate. So we're back in a restart,
23 but we said, okay, we are where we are. Now let's talk about what
24 it is we really need and let's talk about it in public. My
25 comment at that meeting was we have been standing up here waving

1 caricatures at each other. Now let's talk about reality. We also
2 brought in people from the community, business community, others
3 with civic interest, to say what do they expect.

4 Next Thursday we're going to have another meeting of the
5 Governance Committee to present sort of what we've heard and where
6 we're going. But it is a time of considerable change. And
7 there's, in a couple of the jurisdictions, particularly Maryland
8 and to some extent the District of Columbia, a view that we
9 shouldn't be thinking about expanding the system. We shouldn't be
10 thinking about additional service. We should be thinking about
11 cost control. And, you know, I want to be sure that, if that's
12 the direction we're moving, we don't make the same mistakes of the
13 past of cost control at the expense of service and the expense of
14 safety. But with new board members, you know, you educate them as
15 fast as they're willing to be educated.

16 Q. Thank you. That's all.

17 BY MR. HILLER:

18 Q. This is Mike Hiller. Mort, before I get into --

19 A. Yeah.

20 Q. -- questions on the oversight --

21 A. Um-hum.

22 Q. -- your background is unique as a board member because
23 of your experience and your depth. And what I'm hearing is --

24 A. My pay doesn't reflect that, though.

25 Q. What I'm hearing is there had been a big effort on your

1 part to educate those board members that you work with in areas
2 that they don't have experience. And you do this by bringing in
3 people to explain things like brake systems or fan systems.

4 A. Right.

5 Q. And this change that is on the horizon with the many new
6 board members, it would seem that there is another risk, and the
7 involvement of the board in oversight almost requires a level of
8 experience of operations and train systems and transportation
9 rather than the board members that you're currently getting on
10 now, or some training that will help get them to the level.

11 A. Yeah.

12 Q. And you've kind of talked about it indirectly, but maybe
13 you can talk a lot --

14 A. Sure.

15 Q. -- a little more directly?

16 A. Obviously, we don't pick them.

17 Q. Explain.

18 A. Yeah, it's a board that functions within the context of
19 our interstate compact and legislation that has been put in place
20 in the various jurisdictions. So the board is what the board is,
21 six -- eight voting members: two each from Maryland, Virginia and
22 the District, and two from the federal government, and then each
23 of those voting members has an alternate member.

24 The way we have operated and we probably will continue
25 to operate, the alternate members' are full participants except

1 when it comes to the formality of the board meeting. They don't
2 get to raise their hand unless their principal isn't there that
3 day. But each of them is a participant.

4 In the wake of Fort Totten, in addition to all of the
5 activities that were going on, on the technical end, operational
6 side, there were several parallel governance studies of to what
7 extent was the condition the Authority found itself in and the
8 events that occurred on that day attributable to the governance
9 structure.

10 I will never forget the ~~then-Board Member who had been~~
11 ~~chairman,~~ chairman during the event, saying to your four NTSB
12 board -- or five, I guess it was at the time, who sat across the
13 table from us at a public event, and he said, I don't believe
14 there was anything I could have done that would have caused that
15 event not to happen. And I said, oh, boy. I said, okay, that's
16 what you think, but you're not -- it's not true.

17 So I think the quality of the board members is
18 important. But, again, we don't pick them. The Maryland members,
19 two come from the governor; one each comes -- two voting members
20 comes from the governor. Two alternates come from Montgomery and
21 Prince George's. They are whoever those entities put in place.

22 The District has four. By tradition, the council picks
23 one of the voting members, the mayor picks one, and then
24 alternates parallel to that.

25 In Virginia, the Northern Virginia Transportation

1 Commission actually provides the members. And to be a member of
2 the NVTC you have to be an elected official of a jurisdiction in
3 Virginia. So for most of the Authority's history, the four
4 Virginia members were members of the governing bodies of
5 Arlington, Alexandria and Fairfax.

6 The governor forced the commonwealth to that table when
7 the commonwealth starting putting up some significant money and
8 said, if I'm going to be putting 50 million a year into the
9 Authority, I want to be at the board. And now one of those four
10 Virginians is a governor's appointee to the NVTC, and the NVTC
11 pushes that person forward.

12 So a lot of -- and the federal members, the four federal
13 members are appointed by the General Services administrator. I
14 could explain to you why, because I think I may be one of the few
15 people who understand why.

16 When the legislation was moving through to create a
17 special federal contribution to WMATA, it was being handled by
18 Tom Davis, a congressman from Northern Virginia who, at the time,
19 was chairman of the Government Reform Committee in the House,
20 later ranking member when the Democrats took over. But Davis had
21 drafter the bill in such a way that it would stay within the
22 jurisdiction of his committee.

23 So he did not -- he didn't want to elevate this to be
24 presidential appointments. That's a whole other can of worms to
25 get in. But he didn't want to make it DOT because that would have

1 put the bill in another committee's jurisdiction. So GSA is part
2 of his realm. GSA makes the appointments. They definitely
3 consult with DOT.

4 I know, in my case, they consulted with the White House
5 presidential personnel, saying this would be a good person to put
6 on the board. But it really is up to the administrator. The
7 current federal members, it's myself, Harriet Tregoning is a HUD
8 employee but she has a lot of planning and transportation
9 background. My alternate is Tony Giancola.

10 Actually, Tony is a refugee from having been a District
11 appointee on the board. He was an alternate and when his term ran
12 out in that and we still had room for a federal alternate, I
13 convinced the GSA administrator to pick up Tony's option. And
14 then more recently Tony Costa was added. He's a career GSA person
15 with some good background. But those are what they are.

16 The three jurisdictions, legislatively, the District,
17 Maryland and Virginia did adopt legislation subsequent to the
18 governance studies that said board members should actually have
19 some qualifications. And you can look them up. They're --

20 Q. Okay.

21 A. It's the same -- I think the same terms, where they --
22 it wasn't a compact. It was legislation concurrently passed by
23 the three legislative bodies. But it said there should be
24 engineering expertise, transportation expertise, finance, maybe
25 some lawyers, whatever. But there's nothing that enforces that.

1 You know, we had that situation recently. As you may
2 know, we had some financial management issues a year or -- about a
3 year ago.

4 Q. Yeah.

5 A. And one of the FTA recommendations was there should be a
6 person on the board with financial expertise, a CPA or whatever.
7 And we said that sounds good to us, but we don't pick them. And
8 we actually leaned on FTA to lean on GSA to fill one of their
9 federal slots with someone, but they didn't. They went in a
10 different direction.

11 So they are -- there's a model of what they should be,
12 but there's not an enforcement process that said this is the
13 engineer's seat, you must produce an engineer. And with three
14 different, four different appointing jurisdictions, it's real hard
15 to enforce that.

16 The other thing they did put in that legislation was
17 that board members should be appointed for fixed terms. That's
18 been more -- it's been honored by certain of the jurisdictions but
19 not as well as they might. There was a lot of debate for a while
20 of who was in which term from the District, what were their terms.
21 I think that's now been clarified.

22 Maryland has got their folks on terms. Virginia,
23 because it's this process of the NVTC, is actually an annual
24 appointment. But the other thing that has now been respected is a
25 term limit that, it's a 4-year -- it is a 4-year term and

1 reappointment would only be for one more 4-year term. So we have
2 those activities.

3 We also, in the governance reform, the old process was
4 that the chairmanship strictly rotated among the three current
5 jurisdictions before four federal members. And it actually
6 rotated over a 6-year cycle, that it would be the Virginia member,
7 then the District member, and then the Maryland member, and then
8 the other person, around the 6-years. Which meant, first off, a
9 1-year term is real short for getting anything done. And,
10 secondly, we actually had situations where like the governor's
11 appointee from Maryland who came from Prince George's County came
12 on the board and then on her first day became the chair because it
13 was the term -- that seat was entitled to be the chair. So --

14 Q. Yeah.

15 A. You know, welcome to the board, you're the chair. Thank
16 you. That was changed because that was not a statutory
17 requirement. That was practice.

18 We also adopted bylaws. I was really shocked when I
19 came on the board and said can I read the bylaws and they said,
20 oh, we don't have any. We operate on ~~informal~~ procedures that the
21 chair can reinstitute and re-amend every year. I said, well that
22 doesn't seem particularly good to me. So we did go through a --
23 particularly as the new board came on, a process where we have
24 established bylaws and a process to amend those bylaws. So things
25 like the Safety Committee are in the bylaws, would take a formal

1 action by the board to not have a Safety Committee.

2 | It's not just like happened in New York. ~~We had one~~ ---
3 | ~~we~~ We didn't have ~~one~~ a safety committee when I was there. But
4 | after I had left, they did establish one but then they stopped
5 | meeting. Something I think now has been fixed, at least fixed for
6 | a while. And I did the blue ribbon panel for MTA and then they
7 | invited me to ~~a~~ their safety committee meeting. So I said -- took
8 | advantage of that to say make sure you continue to meet.

9 | But the other bylaw change that went in place was the
10 | chair elects its officers as opposed to rotating. So the board
11 | gets together and decides who is best to be chair. And that
12 | person can serve two terms as chair.

13 | Q. Thank you.

14 | A. Yeah.

15 | Q. Now --

16 | A. But, I said, with the new board, with 8 to 10 new
17 | members, a lot of things have to happen. And --

18 | Q. Right.

19 | A. -- we've got to do our best to make sure ~~they~~ we
20 | understand ~~their~~ our responsibilities and move forward on them.

21 | Q. In your experience with oversight agencies, how would
22 | you characterize the TOC insofar as their approach to oversight?

23 | A. Better than it used to be is about the best I can say.
24 | It was clear when I got here, when people began to look at what
25 | was going on post-Fort Totten that they were -- ~~I'm trying~~

1 ~~to ineffective-remember who said it. It was~~ When Bobby Wagner ~~when~~
2 ~~he~~ was on the MTA board. ~~He~~ he was talking about his former
3 tenure on the New York City Council and he said, to call the city
4 council a rubber stamp was overstating it; rubber stamps make an
5 impression.

6 The TOC that existed prior to 2000 did not even make an
7 impression. And we all knew that once we started looking at it,
8 strictly there to fulfill some requirement, staffed on a catch-as-
9 catch-can basis. Somebody said they have no letterhead and no
10 telephone number.

11 So I think there's been major steps forward in
12 regularizing that. There are still things that need to be done.
13 We're not in charge of getting them legislative status but they
14 now have to get that. We're certainly trying to help that to
15 happen by explaining to powers that be in the legislature that,
16 yes, you do have to do this; it is not optional. So we're getting
17 there.

18 But, you know, I think they've come a ways. Are they
19 perfect? No. I only deal with them, pretty much, when they show
20 up every 3 months to report, you know, what's been going on. But
21 I use that opportunity to say, do I feel comfortable with what I'm
22 hearing? And, you know, generally, yes. Then I get, you know,
23 Jim Dougherty's side of things, and it's somewhere in between yes,
24 they're getting stuff done, or no, they're really just fulfilling
25 ministerial kinds of duties.

1 But, as I said, it's better than it used to be. I think
2 it will get better, even more so when they have much more
3 permanency in terms of their status. I get the impression that
4 they are -- you know, it's still people from the three
5 jurisdictions. I don't know how the departments pick who's going
6 to do this or how much they're overseen, but it's very much then
7 driven by their consultants. They've got consultants on board who
8 are, you know, going over our reports, reacting to them, doing
9 whatever inspections they may do.

10 But we've, you know, we have gotten some good stuff from
11 them. We've also gotten some grief from time to time. Both the
12 certification of the Silver Line and, more recently, certification
13 of the 7K cars was a "how are we going to get to a yes on this
14 process?" In both cases we felt we were reasonably well along the
15 way and then caught in kind of a trap with the TOC on what did
16 they see as their role, how were they going to go about it.

17 I think with the 7K was particularly evident. They had
18 a philosophy about how you certify a new railcar that did not
19 match with ours. I think ours was better, frankly. It was
20 modeled on how does FAA certify a new aircraft. You look at the
21 design. You look at what gets built. You look at the first
22 models.

23 Q. Yeah.

24 A. You look at the process. They kind of wanted to take
25 every car apart and re- -- they couldn't really explain to me

1 effectively what it was they wanted to do, but I knew it didn't
2 make a lot of sense. And they said, no, you've got four
3 prototypes and you've got all the different parts that are in
4 them, and if you look at just one and they all work together, how
5 do you know that the other three are going to work that way?

6 I said, well, if the parts were built to spec and
7 assembled to spec and the car works, that's a pretty good
8 indication to me that we've got a good product. Yes, we're going
9 to test additional cars, but I don't think we tear down every
10 prototype to say they're all the same. But we went back -- we
11 continued to do it our way and, I guess, by now, they've said
12 they've accepted that.

13 I have said to FTA -- and I'm sure you want to ask about
14 their role in this ~~pageant-process~~ -- if you're going to have 18
15 different local SSO agencies setting standards for equipment
16 certification, you're headed to a train wreck. There's got to be
17 a better way to say here is the right way to do it. Agency,
18 WMATA, you're accountable for doing it the right way. Oversight
19 group, whether it's the Public Utilities Commission in New York or
20 the TOC, you're accountable for saying, are they doing it? We're
21 not asking you to set the standard. You're an oversight group
22 that says, are we meeting the standard?

23 And I don't know where FTA is on this, but I've
24 expressed it to them. We had the same -- we had some of the same
25 situation on the Silver Line, where it was, you know, down to the

1 wire, what is it that's been finished, what hasn't been finished,
2 what isn't finished yet that we can operate with while it gets
3 completed, and, you know, what standards have we met.

4 And I don't think the issue is resolved even yet that
5 the stations -- condition for opening the stations was there's
6 just a certificate of occupancy from the Commonwealth of Virginia
7 which met the standards of the agency that does that. It's, I
8 think, the equivalent of GSA for the commonwealth. But the TOC
9 was arguing, we don't like those standards and, you know, it got
10 down to what color is the exit sign and how many of them are
11 there.

12 And these are valid concerns, but I don't think it was
13 their role to say that they didn't like the way the constituted
14 agency that we had to satisfy -- if they're satisfied I'm
15 satisfied. If the TOC says you could do it better, that's
16 possible and maybe we should be talking with the commonwealth
17 about doing it better. But I don't think -- I would not have
18 wanted to explain to the public that we hadn't opened the Silver
19 Line because these two agencies were fighting with each other
20 about what color the exit signs should be.

21 Q. Right. So, according to the TOC program standard, they
22 meet with the board annually.

23 A. Four times a year.

24 Q. Okay. Can you characterize the substance of those
25 meetings?

1 A. Yeah. They come in with a presentation on what they've
2 done over the last quarter, what they think are the concerns that
3 we should be worried about, and what they intend to be doing in
4 the next quarter. Sometimes we see that presentation in advance,
5 sometimes we don't. And it's up to them. Sometimes we're seeing
6 it for the first time and staff is seeing it for the first time on
7 the day of the meeting. But that's their call.

8 Q. Yeah.

9 A. One of the things we have encouraged -- and there have
10 been some efforts on this, I'd say not so many in the last year
11 but previously. Where there is an issue that we jointly believe
12 there is a concern, we've encouraged WMATA staff and TOC staff to
13 work together on it.

14 We did that particularly on the issue of fatigue. That
15 was a board-initiated concern. Tom Downs and I particularly,
16 looking at some reports we picked up, frankly, looking at some
17 media coverage -- a very bright investigative reporter for the
18 former ~~and not lamented~~ *Washington Examiner*, was pointing out to
19 us that we had people working 7 days a week, 18 hours a day. And
20 I said, yeah, that doesn't sound good to me. What are we going to
21 do about it?

22 ~~Called~~ We called for a study and TOC said they had the
23 same concerns. So, okay, let's jointly establish a baseline of
24 what's going on and then we'll go forward with what we should be
25 doing about it. We're still going forward on that. We're not

1 finished yet but we're far better off than we were when people
2 were working 7 days a week, 18 hours a day.

3 Q. Can you describe your interaction with the Tri-state
4 Oversight Committee following the January 12th smoke incident?

5 A. I don't think I have anything I could say particularly
6 about that. I think we have had one TOC briefing since that time,
7 and they, you know, they described what they were doing. But it
8 was no kind of day to day, and I don't expect it to be that way.
9 I expect the day-to-day relationship with TOC is through safety
10 department. But we definitely want to hear the TOC's view. And I
11 don't recall hearing anything that was ~~alarming-unexpected~~ in
12 terms of what they were looking at.

13 Q. In 2014, the WMATA documentation shows there were 69
14 reported fires, 35 reported smoke incidents. Based on your
15 experience, how would you characterize this as a risk?

16 A. It's a risk.

17 Q. It's a risk?

18 A. Yeah. It is a risk.

19 Q. High?

20 A. Yeah, and I think a --

21 Q. Low? Medium?

22 A. Well, I really would have to dissect that to a degree.
23 What are the nature of the fires; what's the nature of the smoke?
24 I mean, is it a trash fire on the track? Is it, you know, is it
25 something else?

1 And we had, you know, when -- this was early part of
2 2014, we had the first -- we had a wave of arcing insulators.
3 Again, that was something we brought to the Safety Committee, got
4 a corrective plan put in place, reporting from management on what
5 they were doing about it. There is still a problem and we will be
6 following up with management for greater progress.

7 Q. And that would be my follow-up question.

8 A. Yeah.

9 Q. You know, what efforts did WMATA do?

10 A. Yeah. Right.

11 Q. And it sounds like you, from the board committee
12 level --

13 A. Right.

14 Q. -- on safety had some actions --

15 A. We were trying to create the environment --

16 Q. Right.

17 A. -- that these things are dealt with. And, again, if you
18 look at the corrective action report, the other thing we have and
19 introduced and followed is hazard analysis of these things. And,
20 you know, it's the classic, upper right-hand corner is red and way
21 down in the left-hand corner is something that doesn't even have a
22 color --

23 Q. Yeah.

24 A. -- and in between. And we particularly, especially got
25 some -- we got a couple of new board members who came on in 2012.

1 And when they saw that, they said we want to know what's happening
2 up there in the right-hand corner. And, obviously, you know,
3 Mike Barnes, who's a former congressman, said that's where I
4 should be most worried. And I said, yeah, that's why we do that.
5 And, you know, we focus particularly on either getting things down
6 that will close out those or getting mitigations in place that are
7 reducing the risk.

8 And on fire, that was one of them. You know, what are
9 we doing on insulators? Is there something going on or is it just
10 aging? I think we came to the conclusion, largely, it was aging.
11 But, you know, we keep focusing on it.

12 More recently, you know, with the L'Enfant incident, if
13 you recall, you've seen the various measures that management
14 decided to put in place. And some of them were immediate fixes,
15 some of them were looking at operating practices. But we became,
16 you know, immediately aware of them and now hold them accountable
17 for doing what you said you would do.

18 That, by the way, in -- I'd say not so much in my tenure
19 on the board, but on my exposure to Metro over a long period of
20 time, had been a feeling that the board, in particular, would feel
21 that getting a proposal to do something was the end of the
22 process. And I think management sometimes felt if we give them a
23 proposal, we've satisfied our responsibility; there's not actually
24 a responsibility to doing it.

25 The moment -- and I don't remember that so much in

1 safety areas but some of the other, financial or other areas, I
2 could just see that, what was going on. In Safety, if I tried to
3 do that when I was a management person, I would not have gotten
4 away with it in my board.

5 Q. What efforts did the TOC or the FTA initiate as a result
6 of the statistic of fires?

7 A. I don't know that there was anything particular from
8 FTA. I think TOC did kind of put it on their list that it's
9 things that we should be doing, but I don't remember specifics on
10 that.

11 Q. So if they put it on a list, does that elevate it to --

12 A. Yeah. If it's been identified --

13 Q. Okay.

14 A. If it's a TOC recommendation, that's one of those things
15 that goes directly into the corrective action program. It's going
16 to be evaluated as to where it belongs on a hazard scale and in a
17 general sense we know whether we're closing those out or not.

18 Q. Would I say we had a specific focus on that one? Not
19 that I recall. Our specific focus has been more on the NTSB
20 issues.

21 Q. I understand.

22 A. Yeah.

23 Q. But based on your characterization, the WMATA board
24 focused quite a bit on these as a risk.

25 A. We were made aware -- we were aware of it from what

1 we're hearing in the way of operational responses and said, you
2 know, here's something that we should be --

3 Q. Right.

4 A. -- taking a look at.

5 Q. The oversight agency, you think they may have put it on
6 a list?

7 A. I don't recall.

8 Q. Okay.

9 A. I don't recall.

10 Q. And would it -- what kind of a list? Would it be like a
11 presentation they give to you?

12 A. No, they would give us a formal --

13 Q. A formal?

14 A. -- whatever piece of paper it is, that says TOC thinks
15 you should be doing the following.

16 Q. Okay.

17 A. And it goes into -- and it's just like your
18 recommendations. It then goes into the document to say, you know,
19 now that they've said it, we've got to do it, or come up with a
20 very good reason why we're not going to do it. There are not very
21 many times that that's the outcome. But it does -- you know, it
22 then gets to the point where, process wise, it's in the mix of
23 getting things done.

24 And, as I said, 790-801 of those have been presented and
25 roughly 90 percent of them are closed out.

1 Q. So how has the FTA interacted with you, as a board
2 member, regarding its oversight role prior to the incident?

3 A. Prior to the incident, I've had a fair amount of
4 conversations with DOT leadership, with FTA leadership. I'm not
5 so much, I think -- it's a combination, being in the position I'm
6 in -- this is before being a chair -- and the positions I've been
7 in the past.

8 Q. Yeah.

9 A. So I'm not sure that other board members ~~in~~
10 Cleveland around the country (although I've brought these issues to
11 the APTA Board Member's conferences) may have had this same
12 exposure, but I've had, you know, again, a lot of opportunity to
13 talk through with FTA what they're doing, what they intend to do,
14 in two respects: One, if there are things that they believe we
15 should be doing in a process, since we want to be sure we're doing
16 them; and we want to try to influence them to move, you know, move
17 in the right directions.

18 In this very room a couple of weeks ago I had a similar
19 conversation with the FTA group that were in doing their safety
20 update study. -in their evaluation. And I was pretty frank with
21 them in terms of saying I don't think you do enough in some areas
22 where it would be helpful for you to be doing stuff.

23 I'm not necessarily in tune with a lot of my transit
24 colleagues. I said the same thing at a Senate Banking Committee
25 roundtable a couple of weeks ago. We had transit managers from

1 various places and the issue came up, can -- should FTA be doing
2 more in terms of safety? Maybe no. Maybe yes.

3 Q. And that's leading to my next question. Like federally
4 regulated railroads, the transits and rail fixed guideways and the
5 subway systems, they share the same risks.

6 A. Yes.

7 Q. In many cases the infrastructure is exactly the same,
8 yet the commodity is probably much more critical. It's not coal.
9 It's human beings.

10 A. Right, human beings. Crude oil might be a better
11 comparison. There's great -- there's risks in both.

12 Q. Yet there lacks this regulatory oversight to assess the
13 risk for rail fixed guideway, and how do you feel about the
14 current oversight in providing, you know, a meaningful impact on
15 not just providing safety but assuring safety?

16 A. Yeah.

17 Q. Safety assurance.

18 A. I think, particularly subsequent to the passage of
19 MAP-21 and the new federal framework, we've seen improvement in
20 what FTA does. They certainly are still feeling their way.
21 They're still bringing on resources. I see them -- I certainly
22 see them bringing on good people. I've had, you know, many
23 meetings with Tom Littleton about what I think he should be doing,
24 what he thinks I should be doing. And also, when I was in my
25 process of bringing on my vice chair we went down to meet with him

1 so that he knew there was somebody else, besides me, that he could
2 rely on.

3 I think they still have some direction to go. I share
4 the industry view that we shouldn't create a federally managed
5 safety regulatory environment of the nature of the FRA. That's
6 got 100 years' worth of history behind it. It does what it does.

7 When I was in the department, I was a strong proponent
8 of the states taking over a significant part of that and I was a
9 strong proponent of FRA dialing back on their direct inspections
10 and spending much more time with the railroads themselves in terms
11 of what the railroads were doing. That was basically our approach
12 during the 8 years I was there. And I think we had good results
13 to show from it.

14 I think FTA could follow that model. I'm not fully
15 convinced exactly how they're approaching it. They've jumped in
16 on a couple of, you know, events that have occurred with, you
17 know, indications of what they should be doing. Maybe it's
18 because you told them they should be doing it, but, you know,
19 we --

20 Q. Yeah.

21 A. -- we'll hear that.

22 I think there is room for some stronger standard setting
23 at the FTA level that probably, at least initially, as a
24 hypothesis, could be standards set at the national level by the
25 federal agency on obligation on the part of the transit property

1 to fulfill that oversight by the state safety oversight agency if
2 -- to be sure that it's done. If that doesn't work, then I think
3 you have to move upstream with more power at the FTA. Not move
4 away from it, but say all power back to the transit agency.

5 I'll give you my most compelling example on that one,
6 and that is in the area of fatigue. Obviously every other
7 regulated mode of transportation has very strong hours of service
8 machines in place. I can tell you, I've spent countless hours on
9 the FMCSA, hours of service regs, which 20 years ago we were
10 working on and they're still not fully in place. Same thing with
11 the FAA. Same thing with the FRA. It always needs to be looked
12 at. It always needs to be evolved.

13 I certainly took the position when it was in DOT that
14 the physiological and psychological issues are the same in every
15 one of the modes. These are -- this is human behavior, it's human
16 factors. We should learn from each other and then apply the
17 learning to the specifics of the individual mode.

18 That is what we at WMATA have been seeking to do, even
19 in the absence of any federal regulatory requirement. We have put
20 in a fatigue management system. We have brought in scientific
21 advice. We look at the individual work schedules of the
22 individual employee and determine what risks we're willing to take
23 with respect to fatigue, and it differs by the job.

24 I mean, for example, the bus driver whose shift starts
25 at 4 in the morning because they bring out the first bus has a

1 different fatigue risk than the person who's working an 8 to 4
2 schedule. And we have adjusted schedules to put less pressure on
3 the more likely to be fatigued individual. We also, we try to
4 work with every employee, this is what they should be doing.

5 But we run up against, in some areas of the Authority, a
6 union contract that says this senior individual has the absolute
7 right to pick overtime and you have no right to tell them they
8 can't have that overtime. And we're now actually processing a
9 class grievance from the union that said you've taken away the
10 overtime from all these deserving individuals, all of whom happen
11 to be both old and ready to retire.

12 For obvious reasons, a lot of overtime in their last
13 year or two is a permanent --

14 Q. Yeah.

15 A. -- part of their future well-being. And they're
16 ~~probably-possibly~~ the least capable individuals to be putting
17 their selves to that kind of a strain. But we can't say it's
18 against the law.

19 You know, if we were a motor carrier, if we were a
20 railroad under FRA, if we were Delta Airlines we could say, no,
21 you can't do that. You must take off 1 day a week. Or, in the
22 case of a motor carrier, 34 consecutive hours at the end of 5
23 working days, or whatever the current recommendation. We can't
24 say that.

25 And I'm not quite sure where we're ~~coming-going~~ -- I

1 have said to FTA, well, direct to the administrator and to the
2 team here, I think it's an area you should be looking at to create
3 a viable, scientifically based national standard that everybody
4 should have the obligation to enforce. I don't know where they'll
5 go on that, but I think that would be a big contribution. And
6 there may be some other areas that similar kinds of threshold-
7 setting regulatory activity might go in place.

8 Now, we all know that a good railroad or a good airline
9 takes the federal regulation as the floor, not as the ceiling. A
10 lot of -- most good operators get well beyond that. But to have a
11 floor that says you should do any less than this would be helpful.

12 Q. Thank you.

13 A. I don't know what it will take to get them there. I
14 think they have the authority to do it. The question is to what
15 extent are they willing to exercise that authority?

16 Q. Yeah. You've been very helpful.

17 A. Yeah.

18 Q. I appreciate that.

19 MR. HILLER: Mr. Gordon.

20 MR. GORDON: Joe Gordon --

21 MR. DOWNEY: Yeah.

22 MR. GORDON: -- with the NTSB.

23 MR. FLANIGON: Do you need a break?

24 MR. DOWNEY: No, I don't.

25 MR. FLANIGON: You doing good? Okay.

1 MR. DOWNEY: Even though I had a cup of coffee, I'm
2 still --

3 MR. FLANIGON: Keep rolling?

4 MR. DOWNEY: Yeah.

5 MR. GORDON: Yeah, I'm going to be short. I appreciate
6 how thorough you've been.

7 MR. DOWNEY: I do have a call I have to make at 1:30,
8 but I can do it from here. I don't have to go back to my office
9 to do that.

10 MR. GORDON: Okay. You have been very thorough with all
11 of your answers and you've answered a lot of my questions before
12 it got to me.

13 MR. DOWNEY: Yeah.

14 BY MR. GORDON:

15 Q. Going back to one of your major concerns when
16 Mr. Narvell asked you about the concerns on the system, aging,
17 aging system and the state of good repair.

18 A. Yeah.

19 Q. And you mentioned that there was some catch-up that
20 needed to be done. So that says --

21 A. And we're not done with it.

22 Q. Right, and that says that somewhere along the line it
23 fell behind.

24 A. Yeah.

25 Q. Primarily, just attribute to that -- that deficit to

1 deferred maintenance somewhere along the way?

2 A. Yeah, deferred -- not necessarily deferred day-to-day
3 maintenance, but no recognition that things wear out. You know,
4 and remember, the system opened in 1970- --

5 Q. '6.

6 A. -- 6. I was ~~thereworking in D.C. at the time~~. For
7 about 20 years you didn't need to do any of that. Everything was
8 still new. And the board and management kind of lived off that
9 investment for too long. And, you know, it came and caught up
10 with us in ~~2010~~the 2000's and going forward. So much stuff that
11 needs to get done, so little time to do it.

12 Q. And what is the biggest challenge to staying ahead of
13 those issues that --

14 A. Double challenge: one is getting the money, and second
15 is getting the access to the system to do the work in a timely and
16 professional fashion. In order to get as much done as we've had
17 to get done in the last couple of years, we have had, you know,
18 the never-ending weekend shutdowns, weekend single tracking,
19 really destroying a lot of our relationship with our riders.

20 I'm hopeful that we get beyond that but not to the point
21 where we're doing nothing. Getting to the point where we can
22 spend the money that we are capable of spending, getting the
23 results measured by the condition of the system and still being
24 able to operate a functional system.

25 But I will never say if we can't get it done, then we

1 shouldn't do it. We have to figure out how to get it done.

2 Q. We didn't ask you specifically about the geometry car
3 but I guess the data that's generated off of the geometry car,
4 it's not really an issue with identifying or inspections to
5 identify the areas of concern.

6 A. Yeah- and I will be scheduling a ride soon.

7 Q. It's more of a concern with assets and --

8 A. Getting it, right. Yeah, I have not been out on our
9 geometry car. I've got to do that sometime. I've been out on
10 railroad geometry cars. I've been on New York geometry car
11 recently. That was fascinating, by the way. They not only have
12 all the track condition, but they're getting constant video which
13 gets archived. And then if something happens, they actually can
14 look at what the condition of a particular piece of track was,
15 visually, a year ago, 6 months ago, 3 months ago. and when was it
16 that it developed the problem it had.

17 Q. You can get that information.

18 A. Yeah. That kind of stuff is really good. You've got to
19 use it, of course, but it's really good.

20 Q. Yeah, and from what I hear, your -- the car that is on
21 the WMATA system is very advanced.

22 A. Yeah.

23 Q. A very good system.

24 MR. GORDON: That's all I have. I'll let Mr. Flanigan
25 go.

1 BY MR. FLANIGON:

2 Q. I just had one follow-up. You mentioned -- and I may
3 have mischaracterized this so please correct me if I do, but what
4 I thought I heard was out of the January incident, your perception
5 at the board level was a big job going forward was repairing or
6 improving the communication/coordination with response agencies.

7 A. That's one, one thing. Obviously continuing and maybe
8 even accelerating the physical rebuilding of the system --

9 Q. Yeah.

10 A. -- is another. And, you know, 1 of the 10
11 recommendations from management was let's look at, for example, on
12 the cables, should we campaign ~~for the~~ replacement of the cables
13 as a separate project. That's probably not the most efficient way
14 to do that. The efficient way to do things like that is make them
15 part of a larger job and get it done. But if they conclude that
16 that's the right way to go, we will support going that way. All I
17 know so far is they're looking at it. ~~Hopefully they won't do~~
18 ~~that.~~

19 Q. But on the --

20 A. I go back also 40 years to when I lobbied then UMPTA for
21 the research money to develop a smokeless cable. We had some
22 problems up in the -- I was working for PATH at that time and we
23 said this is ridiculous. We've got this stuff that burns and
24 kills people. We've got to have something better. And we really
25 hammered on what was then UMPTA to take some of the research money

1 and develop a product that would get us ~~out of that hole~~ better
2 product.

3 So the product got developed but not ~~at a~~ in time ~~that it~~
4 to influenced some of the spec in ~~the~~ this system.

5 Q. Yeah. Going back to that communication/coordination
6 with the response agencies.

7 A. Yeah.

8 Q. What do you see the path forward on that?

9 A. First was establishing a better relationship with the
10 response agencies. I'm not sure we're there yet, but we're trying
11 hard to do it. The kind of crux of that discussion has been the
12 radio system, how well does it work? The answer is it doesn't
13 work well. What are we going to do about it? And as quickly as
14 we can, we want to replace it. This is the system that the
15 responders use. But in the meantime, let's do a better job of
16 managing what we have.

17 So, you know, we've committed to three times a week
18 inspections by our people. The responders in the various
19 jurisdictions have said they will also do similar frequency.
20 We'll share our results.

21 You know, one of the things in the aftermath is we began
22 to say, how does this thing actually get managed? When I heard
23 that whether or not the relay system for the responders was
24 working was a matter of them inspecting it and telling us it
25 wasn't working, and I said, well, that's not a very good system.

1 They only tell us if it isn't working; they don't tell us have
2 they inspected and found it wasn't working? So we do what we can
3 to get that back to a -- the game, but work with them on the specs
4 for a new system and then on how that system will operate.

5 I mean, one of the things I look forward to when you
6 guys finally finish your investigation is a much better
7 appreciation of what really went on and what the timeline was and
8 who said what to whom, so that we can -- you know, I see bits and
9 pieces of it.

10 I will now tell you one thing that really has concerned
11 me, which I think I've said to others. Fire department has been
12 out ~~forever~~ with their story on ~~what's-what was~~ going on and, you
13 know, their timeline. I'm not sure if it was accurate or not. I
14 do know that in one very important respect it was not complete.
15 You know, they put out their -- ~~a somewhat self-serving~~ report to
16 the mayor that said we told Metro about this problem up at
17 L'Enfant. End of their reporting.

18 You know, the fact was, yes, they told us about it. Our
19 guys, from what I believe, spent 2 days trying to bring it to
20 completion, figure out what was wrong, were unable to resolve the
21 problem. And then on the morning preceding the incident called
22 the emergency communications folks at D.C., said we can't get to
23 the bottom of this, we need to work with you, to work that. They
24 said, okay, how about Wednesday? And, in fact, on Wednesday, 2
25 days after the event, our guys went over to the communications

1 center and found a fairly simple change in the settings at their
2 end fixed the problem. You know, that's the kind of thing we need
3 to deal with on a much more emergency basis.

4 So one thing I said to our folks was, can you assure me
5 that operating the system in the absence of a workable response
6 system is a risk too great to undertake. I said, you know, we
7 wouldn't operate the system if it was totally dark in the
8 stations. We wouldn't operate if there was other things. Do you
9 feel comfortable if you don't know whether that response system is
10 working? And the answer was yes, there are mitigations. If the
11 response system isn't working, the responders can come into the
12 tunnel. We can provide them their communication. We have to know
13 that it's not working, but there are fallbacks. I said, okay, do
14 we know that those will be used? That's part of this issue now of
15 much more frequent drills, much more frequent opportunities to
16 work together.

17 Clearly, what happened on the 12th of January showed
18 that the system was not as effective as it could be. And I'm not
19 looking to point fingers. I'm looking to point each person, each
20 agency to point at itself and say, can we make this work better?
21 And I think at a regional level we've got some good cooperation
22 that's happening.

23 I, you know, take at face value the DC Fire people
24 saying they're going to do better. I like the new chief that's
25 coming on board. I don't know him, but I've heard good things

1 about him. There's clearly room for improvement. But we also all
2 had to internalize the fact that without the capability of first
3 responders, we'd be in a bad -- we and our customers would be in a
4 very bad place. We can't provide what ~~they~~ emergency responders
5 can provide. We have to be comfortable and confident that they
6 can provide what they have to provide. And, we're talking now,
7 what do you need to be able to do that? A new radio system would
8 be a pretty good step forward.

9 And some of the things that have been said are pretty
10 nonsensical. I don't know who told our press person to say, ~~well,~~
11 in response to a statement of course we didn't tell them -- ~~no,~~
12 ~~that -- well, they said we didn't tell them~~ that the system wasn't
13 working. And our response was, we never told you it was working,
14 which was one of these that's factually correct but pretty
15 useless. We never apparently said that that system that they're
16 supposed to rely on was a functioning system. But hopefully we
17 can all do better in the future.

18 Q. Yeah. Okay, that's all I --

19 A. And what we can learn from the report, I think in this
20 area in particular -- because it gets beyond what we can do; it's
21 really to what everybody can do -- will be very helpful in terms
22 of what the standards should be and show should agencies
23 cooperate, who has responsibility.

24 And there's good doctrine that's there. I mean, for
25 example, when the first fire department arrives at the scene, they

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1 are in charge. I'm comfortable with that. That's the way it
2 should be. But everybody has to understand what that then means
3 in terms of responsibilities and ability to cooperate.

4 MR. FLANIGON: Okay.

5 MR. NARVELL: Good to go.

6 MR. GORDON: No, sir.

7 MR. FLANIGON: No?

8 MR. GORDON: Nothing further.

9 MR. DOWNEY: Okay, I'll get out while I'm ahead.

10 MR. FLANIGON: All right. Thank you.

11 (Whereupon, the interview was concluded.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: WMATA INCIDENT AT L'ENFANT PLAZA
STATION, WASHINGTON, D.C.
JANUARY 12, 2015
Interview of Mortimer Downey

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

Kimberlee S. Kondrat
Transcriber