

Tri-State Oversight Committee

Review of Hearing Transcripts from National Transportation Safety Board Inquiry into the January 12th Incident near L’Enfant Plaza on the Washington Metropolitan Area Transit Authority Metrorail System

Day 1: June 23, 2015

No.	Page	Line	Speaker	Party	Comment
001	9	15	Baryshev	TOC	Correction: Mr. Shih’s first name should be spelled “Joshu,” not “Josu.”

Day 2: June 24, 2015

Factual Corrections to the Record

No.	Page	Line	Speaker	Party	Comment
001	336	17	Littleton	FTA	Correction: “ISTEA,” and not “ISTE,” is the correct acronym for “Intermodal Surface Transportation Efficiency Act.”
002	344	12-14	Littleton	FTA	Clarification: Criminal and civil penalties are not part of FTA’s existing “enforcement portfolio.”
003	350	17-18	Baryshev	TOC	Clarification: Ms. Baryshev is referring to a specific TOC document, the “Program Standard and Procedures.”
004	352	2-13	Baryshev	TOC	Clarification: TOC does in fact maintain a database of accidents and hazards. This was provided to NTSB.
005	352	22-24	Baryshev	TOC	Clarification: To the extent that WMATA reports these hazards to TOC, then yes, TOC would in fact track and monitor such hazards. Though the TOC does not “track statistics,” it is nonetheless capable of monitoring trends in recurring hazards, as we have done in the past. TOC requires WMATA to document and report these hazards in accordance with our Program Standard and Procedures and WMATA’s System Safety Program Plan. It is worth noting that the entire State Safety Oversight (SSO) philosophy is built on Military Standard 882-E, the system safety approach. Integral to all TOC efforts is the use of a system safety approach to identifying hazards and managing the associated risks. Everything that TOC does as part of its State Safety Oversight program implementation is to identify hazards, rate the risk they pose, and consider mitigations to either eliminate or alleviate those risks. This is

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					also the same philosophy upon which WMATA's System Safety Program Plan (SSPP) is built. It is worth noting here that the effective regulation currently is 49 CFR Part 659. While MAP-21 legislation was passed, there is no rule currently in effect that mandates any different behavior of State Safety Oversight entities such as TOC. 49 CFR Part 659, the rule currently in effect, relies heavily on the Rail Transit Agency's willingness to cooperate with the SSO Agency and SSO's internal professional strength of its staff to extract an effective SSO program.
006	353	6-12	Baryshev	TOC	Clarification: As stated above, TOC does track radio communications hazards to the extent that WMATA reports these items to us in accordance with our program requirements. However, TOC has utilized various deliberations and work sessions — including accident investigations and triennial reviews — that it has had with varying departments at WMATA to request additional information on the Radio Upgrade project, radio failures, radio protocols, training that employees receive in radio usage, and other issues relating to radio and communications systems. It needs to be stated that, as with all other efforts associated with system safety, this too is a continuum with advances along the way and gaps being identified which then are addressed.
007	356	9-12	Baryshev	TOC	Clarification: All TOC reviews have been completed with extensive contractor technical support. TOC's contractor has expertise in all rail transit technical areas, including system safety, signals, vehicles, track, traction power, rail operations, rail control center operations, and policing/security. It is worth noting that FTA now cites the ongoing triennial review approach that TOC employs to conduct its triennial reviews as a best practice that is encouraged throughout the State Safety Oversight (SSO) community. These triennial reviews are in-depth, evaluating not only the immediate performance of activities by a given department, but also at resourcing and how the current operations and structure of the Metrorail operation either assists in the

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					performance of these duties or adds further burden.
008	358	17	Baryshev	TOC	<p>Clarification: The TOC is able to measure its effectiveness by relying upon the safety statistics prepared by WMATA and presented monthly at the Executive Safety Committee meetings, which TOC attends. WMATA's statistics on accident and injury rates are the main measuring stick. Additionally, TOC prepares monthly Key Activity Reports for jurisdictional leadership with key information on accidents, hazards, audit activities, and corrective action plan progress, among other data. A measure of effectiveness of TOC is the current strength of the State Safety Oversight Program that it implements. No other State Safety Oversight (SSO) agency in the US has three jurisdictions collaborating in this manner to perform SSO duties. TOC has evolved from a six-member technical staff team a decade ago, with minimal training and experience in rail transit safety and no dedicated full-time staff, to an organization that has direct support from the highest-level of executive leadership for each jurisdiction and having dedicated, full-time staff who work extensively with WMATA on system safety and who have a combined five decades of experience in safety and rail transit. Additionally, TOC is the only SSO agency in the US that has a Memorandum of Understanding (MOU) with the rail transit agency it oversees, ratified by the transit agency leadership, that commits to complying not only with 49 CFR Part 659 but to all the additional SSO requirements by the TOC. The depth of TOC's SSO program is nearly unmatched in the U.S. That is how TOC measures its effectiveness. TOC has monthly work sessions where TOC deliberates and scrutinizes accident investigations conducted by WMATA on TOC's behalf, Corrective Action Plan implementation by WMATA, and WMATA's Safety and Security Certification Program of Major Capital Projects, such as the 7000-Series railcars. TOC scrutinizes WMATA's Safety and Security Program of Major Capital Projects in particular in an environment where</p>

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					there is little guidance from FTA and almost no requirements to which TOC can compel WMATA to adhere. These are the ways the TOC measures its effectiveness.
009	359	17-21	Baryshev	TOC	Clarification: WMATA has in fact been providing a hazard log to TOC on a monthly basis; the reason the situation is not considered “corrected” is because WMATA does not sufficiently document hazards on the log. TOC has had numerous discussions and work sessions with WMATA to elaborate on this issue. TOC has issued several non-compliance findings in recent triennial reviews because of WMATA’s deficiency in having a comprehensive hazard management program that is a central repository of all hazards and not just hazards from a few sources.
010	360	12-13	Baryshev	TOC	Clarification: WMATA has in fact provided proposed CAPs to TOC, months behind schedule; however, TOC has reviewed these and determined that they were generally not acceptable, and continues to work with WMATA to obtain acceptable CAPs that sufficiently address TOC’s findings.
011	361	5-6	Baryshev	TOC	Clarification: WMATA has in fact submitted proposed CAPs months behind schedule; however, in TOCs view they do not sufficiently address the finding and have not been approved. TOC continues to work with WMATA to obtain an acceptable CAP.
012	376	16	Baryshev	TOC	Clarification: TOC members have the discretion to respond to any WMATA incident or accident – there is no criteria, written or otherwise, specifically precluding the TOC members from responding to an incident involving “just fires on the right-of-way.” In the recent past, TOC members have responded to incidents involving worker fatalities, involving train derailments, passenger fatalities, and infrastructure collapse. It is also worth noting that State Safety Oversight (SSO) Agencies are not rail transit agencies. Therefore there are diminishing returns when SSO Agencies try to match the breadth of resources that rail transit agencies have and the roles they are required to fulfill by the nature of their work – operating

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					<p>rail transit. A rail transit agency should be resourced to conduct operations, maintenance, investigations, analysis that matches the size of its operation. SSO Agencies such as TOC cannot and will not become analogues of rail transit agencies able to conduct duties that almost mirror those of the rail transit agency they oversee. That would be a complete waste of public resources. The better use of resources would be to for a set of national standards to be issued that SSO Agencies can apply to all rail transit agencies thereby predictably impacting safety, positively.</p>
013	384	7-14	Baryshev	TOC	<p>Clarification: TOC issues “Findings of Compliance with Recommendation” in instances in which WMATA is technically compliant with its own plans, policies, or procedures, but TOC believes WMATA’s existing plans, policies, or procedures are inadequate, inappropriate, or otherwise deficient. TOC also issues “Findings of Compliance with Recommendation” in instances in which there is no WMATA plan, policy, or procedure for a particular issue that TOC has identified, or that existing WMATA plans, policies, or procedures are silent on the issue, but TOC believes WMATA should take action to address the issue identified.</p>
014	385	11-12	Baryshev	TOC	<p>Clarification: TOC indefinitely postponed its planned special study of the ROCC because FTA specifically requested as such. FTA scheduled its audit of the TOC at the same time TOC planned to complete its ROCC study. Further, FTA indicated to TOC that the SMI would include an in-depth review of the ROCC.</p>
015	385	16-18	Burtch	FTA	<p>Correction: The TOC did not submit an “initial certified work plan.” Rather, the TOC, along with all other SSOAs, was required to submit a “Self Assessment and Gap Analysis.” Certification Work Plans (CWP) were first identified by FTA in Spring 2014; TOC’s initial CWP was approved by FTA on May 12, 2014.</p>
016	385	20	Littleton	FTA	<p>Correction: the document referred to was not a “certified work plan” but rather the Self-Assessment and Gap Analysis.</p>

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017	386	5-6	Littleton	FTA	Clarification: The TOC did not have the option to “designate one of the jurisdictions as the [oversight] entity and that jurisdiction would receive the money.
018	386	1-9	Littleton	FTA	Correction: TOC selected, based on FTA feedback, the option of forming the Metro Safety Commission, a new, free-standing agency that will be created through an Interstate Compact. The TOC did not elect to enter into a memorandum of understanding (MOU) to achieve MAP-21 compliance; TOC currently exists under an MOU, an approach that FTA rejected as being non-compliant with MAP-21 legislation.
019	391	15-18	Littleton	FTA	Correction: Missouri DOT and the St. Clair County Transit District in fact share SSO responsibilities for the Bi-State Development Agency’s MetroLink light rail system. They have not “elected to just designate one party as the SSO.”
020	393	1-2	Burtch	FTA	Correction: That TOC has “not taken advantage” of available funding assumes a fact not in evidence. The TOC jurisdictions are in fact working closely with MWCOG to obtain the referenced grant funding.
021	393	4-5	Littleton	FTA	Correction: There have been no “delays” in applying for the grant. No deadlines have been missed. One critical step in forming the Metro Safety Commission (MSC) is for FTA to issue its Final Rules, which are long overdue.
022	393	7-19	Littleton	FTA	Correction: This passage implies that the TOC is not moving expeditiously or moving on a fast-enough timeline. In fact the TOC jurisdictions have been actively working throughout the time since the approval of the CWP to advance the MOU with COG and the grant application requirements. FTA Approved the TOC Certified Work Plan in May 2014. This work plan included the timeframes that TOC has been working towards. These times frames were explicit and FTA chose to approve them in May 2014. FTA was satisfied with TOC’s trajectory until recently, when FTA then emphatically remarked that TOC is not working with enough momentum. There is a disconnect in FTA’s approach here.

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023	396	12-14	Sumwalt	NTSB	Correction: All TOC representatives are completely independent of WMATA. TOC Full-Time staff are full-time employees of either the District of Columbia, the State of Maryland, or the Commonwealth of Virginia. No part of TOC's program activities are funded through WMATA. The TOC Policy Staff are employees of either District of Columbia Government, the Commonwealth of Virginia, or State of Maryland, and not members of the WMATA Board.
024	396	11	Littleton	FTA	Correction: All TOC representatives are completely independent of WMATA.
025	398	5	Baryshev	TOC	Clarification: TOC does indeed lack traditional enforcement powers held by FRA; however, TOC has established a MOU with WMATA that expressly deals with dispute resolution. The jurisdictions have the authority to withhold funds.
026	399	6-8	Littleton	FTA	Correction: Though FTA has never had regulatory and enforcement powers like FRA, even prior to MAP-21 FTA has had the authority, and has used its authority, to conduct safety investigations of transit agencies.
027	403	9-12	Littleton	FTA	Correction: The suggestion that "...TOC does not have the capability to do some of the work that we can do right now" is demonstrably inaccurate. TOC in fact has all of the technical and resource capabilities and competencies needed to perform detailed technical reviews of WMATA. See, for example, all of the audits and special studies completed since 2009, which cover a wide range of topics requiring transit safety, security, operations, and maintenance subject matter expertise.
028	405	5-7	Littleton	FTA	Correction: For most of the duration of FTA's audit of the TOC as well as the Safety Management Inspection (SMI) of WMATA, there were in fact no FTA personnel present; rather, only their contractors.

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029	421-422	25-1	Baryshev	TOC	Clarification: TOC does not perform “random” inspections of WMATA; however, we do have the authority under our existing structure to perform special studies and audits in response to specific hazards or safety concerns based on our analysis of WMATA’s safety data, or in response to a particular incident or set of incidents. TOC has performed special audits of Roadway Worker Protection, Fatigue Management, Rule Compliance, Escalator Barriers, in-station and on-board Public Address System performance, and other topics.
030	422	3	Baryshev	TOC	Clarification: In addition to the three full-time staff members, TOC retains a technical support contractor providing extensive technical, programmatic, and administrative support, including facilitating audits.
031	422	23-25	Littleton	FTA	Correction: This statement, that “if the TOC had been effectively engaged at the level we are expecting of them out of MAP-21, that they would have been in a position to better screen and catch a lot of the issues” assumes facts not in evidence. There is no deficiency in the TOC’s level of “effective engagement,” and MAP-21, on its face, requires no demonstrable increase in “engagement” with the transit agency compared to what the activities already performed by the TOC on a regular basis, as documented in numerous reports and meeting minutes.
032	422-423	25-6	Littleton	FTA	Correction: With the exceptions of enforcement authority and the establishment of a legal entity, there is no demonstrable lack of “full capability” of the TOC with regard to the ability to detect and act upon safety deficiencies. There is no factual basis to support the implication that the Metro Safety Commission or some other MAP-21-compliant entity would have been able to “screen and catch” the events leading up to the January 12 th incident any more effectively than the TOC.
033	427	16	Baryshev	TOC	Correction: “DPM” should be “VPN,” which stands for Virtual Private Network.