

1 U.S. DEPARTMENT OF TRANSPORTATION

2 FEDERAL RAILROAD ADMINISTRATION

3 SAFETY AT PRIVATE HIGHWAY-RAIL GRADE CROSSINGS

4 PUBLIC MEETING

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11  
12 WEDNESDAY, AUGUST 30, 2006

13 9:30 AM

14 BISHOP HENRY WHIPPLE FEDERAL BUILDING

15 1 FEDERAL DRIVE,

16 FORT SNELLING, MINNESOTA 55111

21

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1 Partial Roster of Attendees

2 1st USDOT/FRA Public Meeting

3 Safety Inquiry on the Safety at Private Highway-Rail

4 Grade Crossings

5 Fort Snelling, Minnesota

6

7 Name/Organization

8 Robert VanderClute\*, AAR

9 William Browder, AAR

10 Tim Spencer, MNDOT

11 Ron Adams, Wisconsin DOT

12 Mark Morrison, Wisconsin DOT

13 Dan Kahnke, MNDOT

14 Shane Whitemore, CSX Railroad

15 Michael Long, USDOT/FRA

16 Rod McCorkle, Canadian Pacific Railroad

17 Paul Bicha, Canadian Pacific Railroad

18 Jim Keinzler, Canadian Pacific Railroad

19 Patricia Abbate\*, Citizens for Rail Safety

20 Craig N. Rasmussen, BNSF

21 George Warren, BNSF

22 Randy Harris, Canadian National Railroad

23 Terry Lee, Canadian National Railroad

24

25 \* Indicates provided an oral statement at the meeting.

1 Partial Roster of Attendees (Continued)

2

3 Name/Organization

4 Susan Aylesworth, MNDOT

5 Alfonse J. Cocchiarella, BNSF

6 Spencer Abbot, BNSF

7 Peggy Baer, Iowa DOT

8 David Peterson, Union Pacific Railroad

9 Bob Opal, Union Pacific Railroad

10 Tim DePaepe\*, Brotherhood of Railroad Signalmen

11 Mike Hillman, TKDA

12 Stacy Crakes, TKDA

13 Paul Comstock, USDOT/FRA

14 Lynn Leibfried, BNSF

15 Tom Perkovich, BLET

16 Jim Kreiger, Canadian Pacific Railroad

17 Jim Kienzler, Canadian Pacific Railroad

18 Allen Pepper, Kansas City Southern Railroad

19 Tammy Wagner, USDOT/FRA

20 Chris Adams, USDOT/FRA

21 Bennie Howe, USDOT/FRA

22 Howard J. Gillespie, USDOT/FRA

23 Stacey Tuthill, WeberShandwick

24

25 \* Indicates provided an oral statement at the meeting.

1 PROCEEDINGS taken on this 30th day of August, 2006, at  
2 the Bishop Henry Whipple Federal Building in Fort  
3 Snelling, Minnesota, commencing at the hour  
4 of 9:30 a.m.

5  
6 PAUL COMSTOCK: Well, good morning  
7 everybody. And first of all, I want to  
8 apologize, I didn't know -- I wasn't told  
9 that we needed a PA system in the room. I'm  
10 Paul Comstock, chief inspector here, welcome  
11 to the Bishop Henry Whipple Federal  
12 Government Building. I'll give a short  
13 safety briefing just basically so we all know  
14 where to go. If something should occur where  
15 we have to evacuate the building, there will  
16 be an audible and visual warning and we would  
17 ask that you exit out the main hallway, take  
18 a left and go all the way down to the end,  
19 exit the building, there's a garage out  
20 there. Go ahead all the way to the far end

21 of the building. That's the Federal Railroad  
22 Administration meeting spot. So we can all  
23 join together there and sing Kumbaya or  
24 whatever.

25 The restrooms are right outside of



1 the entryway into the meeting room here and  
2 to your left, so -- in the main hallway. We  
3 have people here and FRA qualified for CPR  
4 and we have the defibrillator machine in the  
5 building so we won't need to worry about that  
6 as far as asking for volunteers. And the  
7 only other thing I ask is could you all set  
8 your pagers or cell phones or anything to  
9 quiet, vibrate or stun or whatever the case  
10 may be so that we have a nice, quiet meeting  
11 and can go on.

12 With that I'm going to introduce  
13 Mr. Grady Cothen, my fearless leader, and  
14 he'll take it from there. Thank you very  
15 much.

16 MR. GRADY COTHEN: Thanks, Paul. The  
17 betting was whether Paul could play that  
18 straight; he's FRA's official court jester  
19 and as you can see, I won.

20 So welcome to this session on

21       this -- safety of private highway-rail  
22       crossings. Thank you for being here. This  
23       is a little bit of an unusual facility for  
24       us, but it looks like it should work out  
25       okay. If you cannot hear during these

1 proceedings, waive your hand, stand up, move  
2 around, take a more comfort-proximate seat,  
3 whatever it takes so that you can participate  
4 in today's events. It'll be no problem at  
5 all with folks gathering around here closer  
6 if that's better for you.

7 My name is Grady Cothen. I'm the  
8 acting associate administrator for safety  
9 standards at FRA and as such I'm in charge of  
10 our regulatory program and am privileged to  
11 chair today. I think probably rather than me  
12 starting with a long speech I'll save it.

13 Let's do some welcomes and introductions.

14 I believe that Lavoy Little and  
15 Mike Long are in the hall. Could you stand,  
16 please? Lavoy and Michael are our deputy  
17 regional administrators for FRA Region 4  
18 headquartered in Chicago which includes the  
19 state of Minnesota. Thank you, gentlemen,  
20 for being here and providing logistical

21 support for the meeting. We appreciate it.  
22 You've met Mr. Comstock. I'm going to ask  
23 Ron Ries to introduce our far flung FRA multi  
24 highway-rail crossing team and can we do  
25 that -- it's a multi-regional team,

1       headquarters, field, Volpe. Could all you  
2       folks stand up and Ron will provide a little  
3       information about your roles. Ron Ries is  
4       our staff director for highway-rail crossing  
5       safety in Washington.

6           MR. RONALD RIES: Good morning. We have  
7       18 people that work in the field when we are  
8       a full complement, work full-time in train  
9       crossing safety trespass prevention. Most  
10      regions have two crossing managers, a  
11      crossing manager and assistant, in each of  
12      our eight regions. And we've recently  
13      augmented Region 4 with another assistant,  
14      and Region 5 which is down in Texas,  
15      Louisiana where there is another position; we  
16      are in the process of filling those now. So  
17      we are fortunate to have a number of our  
18      great policy managers and assistants with us.  
19      Tammy Wagner with Region 4 is the crossing  
20      manager, we hear she was very instrumental in

21 working with Paul getting this facility set  
22 up. Sitting next to her is Chris Adams who  
23 is our region aid for the Pacific northwest  
24 area, our newest crossing manager.  
25 Mr. Bennie Howe is the crossing manager for

1       Region 6 out of Kansas City.

2       Howard Gillespie assistant crossing manager

3       for Region 6 as well. And let's see, who

4       else? Our staff personnel, Miriam Kloeppel

5       is an operation research analyst that works

6       out of Washington, D.C. We have -- from

7       Volpe we have Anya Carroll. We have

8       Steve Peck in the back. And I knew I would

9       do this, Perla Garcia also from Volpe. Volpe

10      is providing the support for our safety

11      initiative study and they will be making sure

12      we get the proceedings done and helping us --

13      or put together all of the information we are

14      hoping to gather from that.

15      Ms. Kathy Shelton is an attorney from

16      Washington D.C. who has the pleasant task of

17      working with the great safety crossing

18      issues. She'll be giving us a little

19      briefing here in just a second. We

20      appreciate you being here. We know this is

21 sort of a new thing for us as far as looking  
22 at the private crossings. And as we are  
23 getting started we are looking for a lot of  
24 good information. We don't have any answers,  
25 we're not even really sure what the questions



1 are, and so you have a good opportunity to  
2 help provide us with that guidance. Have a  
3 great day and we are looking forward to a  
4 good meeting.

5 MR. GRADY COTHEN: What I would like to

6 do is introduce Susan Aylesworth, Susan is  
7 the director of railroad administration for  
8 the Minnesota Department of Transportation.

9 Each of these events we are holding in  
10 partnership with a state DOT or PUC, one of  
11 our state partners in highway-rail crossing  
12 program. The Federal Railroad Administration  
13 does nothing without its public and private  
14 partners, without the contributions of lots  
15 of folks. And in many cases our role is  
16 purely support and we try to give it, but one  
17 of the ways is to stir the pot sometimes and  
18 get some discussion going. Susan, thank you  
19 for joining us in welcoming this group, and  
20 I'll turn it over to you.

21 MS. SUSAN AYLESWORTH: Thanks. I'm here  
22 to welcome you all and when I was asked to  
23 speak, I was told there would be ten people  
24 here, so the joke is on me. I have nothing  
25 prepared, but ten people are easy to talk to.

1 Sometimes with people it's easier to talk to.  
2 Welcome to Minnesota, we are glad you all  
3 came and we are honored to be chosen as the  
4 first of several public meeting locations on  
5 this topic. Just by way of information,  
6 Minnesota has about 2,000, 2,500 private  
7 railroad crossings and this interestingly, we  
8 do have a rule that talks about the  
9 appropriate crossing treatment at private  
10 crossings, it's just that we don't think we  
11 have jurisdiction to implement it. That is  
12 an interesting quirk that may be unique to  
13 Minnesota, but our rules do talk about what  
14 is appropriate at private crossings and  
15 pretty much mirrors what we would expect to  
16 see at a public railroad crossing. One other  
17 issue that we struggle with, and maybe some  
18 of will you speak to this later, is that we  
19 are unsure of what the definition of a  
20 private crossing is.

21           We oftentimes go out and if the  
22           public is using a location, we can't be sure  
23           whether that public use continues on both  
24           sides of the track and therefore should be  
25           counted as a public crossing or whether we

1 should defer and leave it as a private  
2 crossing. And sometimes the railroads don't  
3 know that either. So it will be very  
4 interesting to hear what comments people make  
5 and what issues they raise of course with  
6 Quiet Zone this is an issue too so we are  
7 looking forward to this discussion on this  
8 timely topic.

9 Thank you.

10 MR. GRADY COTHEN: Thanks, Susan. I

11 just wanted to say a few words to sort of get  
12 us going, then I'll ask Kathy Shelton to give  
13 us the legal officer statement. The Federal  
14 Railroad Administration has been promising  
15 now for about a decade to undertake an  
16 initiative on private crossings to try to see  
17 what could be done to help all state and  
18 local partners, public and private move  
19 toward improved safety of highway-rail  
20 crossings. In a moment Miriam Kloepfel will

21 lay out some of the facts for us and they are  
22 not enormously encouraging. We made  
23 significant progress in safety of public  
24 highway-rail crossings over the years, and  
25 we've made moderate progress as well at

1 private crossings driven by railroad efforts  
2 to close unnecessary crossings driven by  
3 improvements in train conspicuity and other  
4 factors affecting people in motor vehicle  
5 operation in the United States.

6 Certainly Operation Lifesaver has  
7 done its part to try to promote awareness.  
8 We've done some things, all of us have in the  
9 areas of education and enforcement over the  
10 years, and we've had some moderate success.

11 But we still -- we still see a persistent  
12 issue at crossings which is not predicted to  
13 abate significantly any absence of further  
14 initiatives from someplace, and so how do we  
15 proceed? I think we have the opportunity  
16 today to begin to get issues on the table to  
17 define what those issues are, what is a  
18 private crossing, is it a good, solid and  
19 favored place to start and I thought I knew  
20 until I tried to get a train horn rule

21 written, and they told me I didn't. If you  
22 will help me today, I'd appreciate it.

23 We do not -- we don't have a preset  
24 agenda here. Our purpose over the next few  
25 months is to go to various locations around



1 the country to hear from folks who have  
2 information and views on the subject, and  
3 then our objective is to put together a plan  
4 of action which would carry forward the  
5 initiative that's described in the  
6 Secretary's 2004 action plan for highway-rail  
7 crossing safety. And there it is described  
8 in very general terms. Where that will take  
9 us specifically, I don't know, whether we'll  
10 need legislation in order to drive it forward  
11 at this point, I don't know. But there is no  
12 better place to start then here and now. So  
13 we ask your participation and indulgence,  
14 your ideas, your thoughts, your criticisms,  
15 whatever you've got. We do have today  
16 several organizations that have signed up  
17 ahead of time. And as a matter of fact, I  
18 believe that as of this hour at least they  
19 are inclusive of all those who indicated  
20 interest on the sign-in sheets. We may have

21 others here as the morning goes on.

22 When we begin, the testimony

23 will -- did I say testimony? Introductory

24 statements, we'll hear from those who signed

25 up ahead of time. If you haven't indicated

1 your interest in making some kind of opening  
2 statement, feel free to do so. Steve there  
3 at the back (indicating) can help you in that  
4 regard or any one of us here. When we get  
5 through with some general statements,  
6 whatever you want to lay on the table for us,  
7 we'll go to a discussion period. At that  
8 point what I would ask you, for the benefit  
9 of the court reporter and the benefit of us,  
10 is to come and occupy a seat at the table  
11 here, the front table, and utilize that spot  
12 there as long as you want to hold it. And  
13 then when you feel like you've got your --  
14 stated your piece, perhaps open it back up to  
15 someone else who might want to rotate in for  
16 the discussion. And again, please don't feel  
17 compelled by protocol to sit in the back row.  
18 Once we get the presentation out of the way  
19 here, the PowerPoint out of the way, you may  
20 feel more comfortable to bring a chair around

21 and gather in.

22 Okay. Kathy Shelton for the legal

23 officer's statement.

24 MS. KATHRYN SHELTON: Good morning. My

25 name is Kathy Shelton, and I will be the

1 legal officer for today's meeting. The  
2 purpose of this public meeting is  
3 fact-finding. This is the first of a series  
4 of public meetings nationwide in which you  
5 will have the opportunity to provide  
6 information to FRA about issues related to  
7 the safety of private highway-rail grade  
8 crossings. This public meeting is not meant  
9 to be a form for debate. Instead we are here  
10 to listen to you and to provide an  
11 opportunity for you to state your views on  
12 the record for review and consideration. In  
13 order to provide each of you an equal  
14 opportunity to express your views and  
15 comments, the following procedure will be  
16 used. Each person will be permitted to make  
17 an oral statement. However, persons  
18 representing the same organization may speak  
19 as a group.

20 At the beginning of your oral

21 statement, please identify yourself, spell  
22 your name and identify whether you are  
23 appearing in an individual or representative  
24 capacity. It may also be helpful to provide  
25 a business card to our stenographer at that

1 time. At the end, FRA representatives may  
2 ask questions in order to obtain  
3 clarifications of points made during your  
4 statement. We will then move on to the next  
5 oral statement. If you refer to a document  
6 in your oral statement that has not yet been  
7 provided to FRA, please provide a copy of the  
8 document to an FRA representative so that it  
9 can be marked for identification and added to  
10 the public docket.

11 Today's meeting is being  
12 transcribed and will become a part of the  
13 public docket on this issue. The transcript  
14 of this public meeting will be available for  
15 viewing and downloading at the Department of  
16 Transportation's docket management system web  
17 site at [HTTP://dms.dot.gov](http://dms.dot.gov). And please note  
18 the www is not used in the web site address.

19 The entire public docket on this issue is  
20 also available for inspection at the

21 Department of Transportation docket facility  
22 room which is located at 400 7th Street  
23 Southwest in Washington, D.C.

24 Thank you. And now for a moment

25 I'll turn the floor over to Dana, our



1 stenographer.

2 (Off the record.)

3 MR. GRADY COTHEN: Okay. Thank you.

4 The next order of business is an introductory

5 presentation sort of to put us on somewhat

6 equal -- common footing. Some would say we

7 are on equal footing because some of you know

8 a lot about this subject matter and some of

9 us don't know as much. But at least to go

10 over some items of common interest regarding

11 private crossings. Our presenter is Miriam

12 Kloeppele who is an operations research

13 analyst on our grade crossing staff within

14 the office of safety analysis and FRA.

15 Miriam comes to the subject matter with a

16 deep and abiding personal interest having

17 been, I believe, a principal author of the

18 NTSB's study on passive crossings in 1988

19 which generated a lot of this work.

20 Particularly rewarding to have somebody on

21 staff who now has to fulfill all of the  
22 various mandates that she wrote. With that  
23 in mind, Miriam, if you would, please.

24 MS. MIRIAM KLOEPPPEL: Good morning,  
25 ladies and gentlemen. Thank you for coming.

1 I thought I'd prime the conversational pump  
2 anyway by starting with a little background.

3 Private crossing safety has been a  
4 matter of concern to the United States  
5 Department of Transportation and to other  
6 federal agencies for some time. In 1993, the  
7 FRA held an open meeting to initiate  
8 industrywide discussions in its 1994 rail  
9 highway safety action plan. The USDOT  
10 proposed to develop national minimum  
11 standards for private crossings. In its 1997  
12 study on safety at passive grade crossings,  
13 the National Transportation Safety Board,  
14 I'll just call it NTSB for short, highlighted  
15 the need for some system to improve private  
16 crossing safety and recommended that the  
17 USDOT in conjunction with states determine  
18 governmental oversight responsibility for  
19 safety at private crossings. In 1999, the  
20 NTSB weighed in again in its report on a

21 private grade crossing accident in  
22 Portage, Indiana. In this case the NTSB  
23 recommended that the DOT eliminate any  
24 differences between public and private  
25 crossings with regard to funding or

1 requirements for safety improvement.

2 In 2004, the USDOT published an  
3 updated action plan in which the FRA  
4 committed to leading an effort to define  
5 responsibility for safety at private  
6 crossings. Today's meeting is a vital part  
7 of this effort. As you can see, regardless  
8 of the geographic region, private crossings  
9 constitute a significant percentage of all  
10 at-grade crossings. What I did here was I  
11 took numbers that had state-by-state counts  
12 of crossings that I just aggregated them into  
13 FRA geographic regions and if you're not  
14 familiar with our regions, I'll be happy to  
15 go over them at another time, but I just  
16 wanted to illustrate that regardless of where  
17 you are in the country, there is a fairly  
18 high percentage of the crossings that happen  
19 to be private. Total count nationwide is  
20 about 94,000.

21           Although accidents at public  
22           crossings have declined considerably over the  
23           past several years, declining by one-third  
24           over the past decade alone, the number of  
25           accidents at private crossings have remained

1 comparably stable, declining only 10 percent  
2 over the past decade. In most years, the  
3 number of fatalities occurring at accidents  
4 at private crossings exceeded the number of  
5 on-duty deaths for all railroad employees in  
6 all rail operations. As an illustration note  
7 of what goes on, here are a few examples.

8 About 1:00 p.m. on May 30th, 2006,  
9 Amtrak train number 350 struck an empty  
10 gravel truck at a private highway-rail grade  
11 crossing near Jackson, Michigan. The train  
12 was traveling about 74 miles per hour with a  
13 cab car in the lead when the truck entered  
14 the crossing in front of the train, one train  
15 crew member and 15 train passengers received  
16 minor injuries in the accident. The truck  
17 driver sustained fatal injuries. The private  
18 road at the accident crossing is used by an  
19 excavating company and by two residences.  
20 And on average, fewer than 30 highway

21 vehicles and a dozen trains, eight of which  
22 are Amtrak, traverse the crossing daily.  
23 It's estimated that the crossing was created  
24 about 1948 and there is no record of any  
25 maintenance contract between the business



1 owner and Norfolk-Southern Railway, the track  
2 owner.

3 About 4:40 p.m. on July 3rd, 2006,  
4 a southbound Amtrak train struck a passenger  
5 vehicle at a private crossing near  
6 Castle Rock, Washington. According to the  
7 Amtrak engineer, the accident occurred when  
8 the motorist entered the crossing after a  
9 northbound Union Pacific train cleared it.

10 Train crew and train passengers received no  
11 injuries, but all four motor vehicle  
12 occupants sustained fatal injuries. The road  
13 leading to this crossing is a county road,  
14 but county maintenance ends shortly before  
15 the crossing. And the private road that  
16 extends beyond the crossing dead-ends after  
17 serving 11 residences. About 60 trains daily  
18 traverse this crossing, and it is not known  
19 when the crossing was created and no  
20 maintenance contract has been located for

21 this crossing.

22 About 7 p.m. on June 21st, 2006,

23 Metro train number 921 traveling south at a

24 recorded speed of 79 miles per hour struck a

25 truck trailer traversing a private grade

1 crossing near Lemont, Illinois. A piece of  
2 the trailer became wedged under the snow plow  
3 of the locomotive and the locomotive derailed  
4 at the crossing. The driver of the  
5 tractor-trailer was not injured. There were  
6 170 passengers aboard the train, five  
7 passengers claimed minor injuries and were  
8 treated and released and no train crew  
9 members reported any injury. This crossing  
10 serves two commercial facilities to which  
11 there is no other access. Roughly 28 trains  
12 and fewer than 30 highway vehicles use this  
13 crossing daily. The crossing is maintained  
14 by Canadian National, but there is no formal  
15 agreement. As an additional note, about six  
16 months prior to this accident another  
17 accident occurred at this crossing. The  
18 truck driver in the accident in December  
19 of 2005 sustained fatal injuries.

20 The FRA maintains a national

21 inventory of all crossings, public, private,  
22 pedestrian, at-grade or grade-separated. The  
23 data are used by many state, federal or  
24 private organizations for research or for  
25 resource allocations determining which

1 crossings are most in need of improvements.  
2 It's updated by the states and by the  
3 railroads on a voluntary, not a mandatory  
4 basis.

5 As you can see, only about  
6 one-third of the records for private  
7 crossings have been updated within the past  
8 five years, and a significant portion of the  
9 records have never been updated. Analysis on  
10 this sort of data will of necessity be  
11 somewhat tentative. And in comparison -- I  
12 don't have the numbers, but the data for  
13 public crossings are typically updated much  
14 more often than this. I don't expect you to  
15 read this whole slide. This is just the shot  
16 of the form on which the data are collected  
17 for the national inventory. Almost all data  
18 on both of these pages are collected for  
19 public crossings, but for private crossings  
20 only the sections that I have shaded are

21 collected. As a result, even when the  
22 private crossing record is up to date,  
23 potentially useful data are not collected.  
24 This slide shows a small sample of the data  
25 collection differences. According to the

1 FRA's 2002 compilation of state laws and  
2 regulations affecting highway-rail grade  
3 crossings, the states' approaches to private  
4 crossings' safety are highly varied. Take  
5 these examples of the extent of control held  
6 over the creation or closure of private  
7 crossings. Here are some examples of the  
8 degree to which traffic-control devices are  
9 standardized at private crossings. In fact,  
10 only two states that I could find in our  
11 compilation listed any kind of control like  
12 this at all.

13 According to, again, the 2002  
14 compilation of state laws and regulations  
15 affecting highway railroad grade crossings,  
16 more than half the states have no laws or  
17 regulations related to private crossings.  
18 The federal government in the guise of  
19 various DOT agencies does offer some  
20 regulations for guidance documents that may

21 touch on safety at private crossings. As you  
22 can see in this sample however, none of these  
23 really covers a significant portion of the  
24 nation's private crossings. For example, the  
25 signal system inspection regulation, 49 CFR



1 part 234, really addresses about one percent  
2 of the private crossings as most of private  
3 crossings are passive. Freight car  
4 reflectorization only addresses probably  
5 fewer than 25 percent of all grade crossing  
6 accidents. And the manual on uniform  
7 traffic-control devices applies to only  
8 public crossings. In fact, there is no  
9 federal regulation or guidance that promotes  
10 safety at private grade crossings by  
11 specifically or uniformly addressing the  
12 special issues presented at private  
13 crossings.

14 Some private crossings may be used  
15 only seasonally like certain farm crossings  
16 used only for agricultural equipment  
17 movements, or they may be used only for  
18 routine personal use like crossings that  
19 serve residences. Other private crossings  
20 such as this industrial access crossing are

21 used extensively for private business  
22 purposes by employees, contractors and  
23 suppliers. In still other cases they may be  
24 used very heavily by the public to enter  
25 commercial facilities. This slide also

1 illustrates that in some cases there is no  
2 alternative access provided to the private  
3 property owner. And I hope you can see, in  
4 fact, the crossing that is on Maguire Parkway  
5 which is on the lower middle of the page  
6 there. But that is a couple of businesses  
7 that that's their only access.

8 The rights assigned to the private  
9 crossing holders very greatly. A holder of  
10 the right or privilege to cross may hold  
11 outright ownership of the underlying  
12 property, or they may have a documented  
13 easement over the railroad property. Where  
14 it's recognized, the holder may have a  
15 prescriptive easement or squatters rights.

16 There may be a documented license under  
17 contract, or there may be a verbal license  
18 which could be subject to revocation without  
19 notice. Railroads may require the crossing  
20 holders to purchase or to provide some other

21 protection in the event of a collision at the  
22 crossing. Contracts or other legal documents  
23 may further define responsibilities such as  
24 maintenance of the crossing surface or  
25 providing notifications under stated

1 conditions. The confirmation and use of  
2 signs, signals, pavement markings and any  
3 other traffic-control devices placed at  
4 public crossings generally conform to the  
5 guidance provided in the manual on uniform  
6 traffic-control devices. In most states,  
7 this is not true of private crossings. The  
8 arrangement of private crossing signs can be  
9 highly individual. I just have a series of  
10 slides here illustrating some of the  
11 configurations that we have found. Sign  
12 maintenance may be somewhat sketchy, or it  
13 may be almost nonexistent. The FRA solicits  
14 discussion and comments on all areas of  
15 safety at private crossings but particularly  
16 encourages discussion on the following  
17 topics: At-grade highway-rail crossings  
18 present an inherent risk to users including  
19 the railroad and its employees as well as to  
20 other persons in the vicinity should a train

21       derail into an occupied area or release  
22       hazardous materials. From the standpoint of  
23       public policy, how do we determine whether  
24       creation or continuation of a private  
25       crossing is justified. How do we determine

1 when a private crossing has a public purpose  
2 and is subject to public use? How should  
3 improvement or maintenance responsibilities  
4 be allocated? Is there a need for  
5 alternative dispute mechanisms to handle  
6 disputes between railroads and private  
7 crossing holders? Should some crossings be  
8 categorized as commercial crossings rather  
9 than private crossings? Should there be  
10 nationwide standards for warning devices at  
11 private crossings or for intersection design  
12 for newly created private crossings? Are  
13 there innovative traffic-control devices that  
14 could improve safety of private crossings on  
15 major rail corridors including those on which  
16 passenger service is provided? Is the  
17 current assignment of responsibility for  
18 safety at private crossings effective? Do  
19 risk management practices associated with  
20 insurance arrangements result in some kind of

- 21 regulation of safety at private crossings?
- 22 Should the state and federal governments
- 23 cooperatively work together to determine
- 24 responsibility and to provide oversight?
- 25 Should the USDOT request enactment of



1 legislation to address private crossings? If  
2 so, what should that legislation include?

3 As much as I like the sound of my  
4 own voice, I'm actually going to stop here,  
5 but I will leave this slide up here and, in  
6 fact, it's on the last slide of the  
7 presentations there in case any of you should  
8 choose to submit a written statement to the  
9 docket in addition to speaking here today.

10 Thank you.

11 MR. GRADY COTHEN: Thank you, Miriam,  
12 for that overview. Appreciate it.

13 I think we are ready to hear from  
14 our colleagues. I'd like to start if I may,  
15 with at least the first to sign up.

16 Peggy Baer is a valued colleague  
17 from the Iowa Department of Transportation;  
18 if you are ready.

19 MS. PEGGY BAER: I just signed up to  
20 come to the meeting. I didn't sign up to --

21 MR. GRADY COTHEN: Do we have others  
22 from state DOTs in the region?

23 Yes, sir?

24 MR. RONALD ADAMS: Ron Adams.

25 MR. GRADY COTHEN: Ron, good to see you

1       again, from Wisconsin. I should have greeted  
2       you earlier. There is one group we can  
3       always count on for a few good words to start  
4       off a discussion, and that's the Association  
5       of American Railroads. They are kind of camp  
6       followers; wherever we go, they show up. And  
7       we are appreciative that Bob VanderClute who  
8       is executive vice president at the AAR has  
9       seemed fit to travel and be with us, and so  
10      let's ask Bob to lead off then.

11       MR. ROBERT VANDERCLUTE: Thank you,  
12      Grady. On behalf of the association and its  
13      member railroads, I want to thank you for the  
14      opportunity to present the railroad  
15      industry's view on private highway-rail grade  
16      crossing safety. Grade crossing safety is  
17      certainly a very important issue, and I think  
18      we certainly covered the highlights very  
19      well. Most fatalities and injuries occurring  
20      at-grade crossings take place at public

21 crossings. However, as the FRA data shows,  
22 there are a significant number of incidents  
23 that occur at private crossings. As the FRA  
24 points out in the notice announcing this  
25 meeting, there is a number of different types

1 of private grade crossings. Consequently  
2 there is no easy answer to the question of  
3 how to reduce the occurrence of incidents at  
4 private crossings.

5 For example, some private grade  
6 crossings are equipped with active warning  
7 devices such as gates, lights and bells as we  
8 have seen. Some private crossings are  
9 heavily used by the general public such as  
10 crossings providing access to shopping  
11 centers or recreation areas. And some  
12 private crossings are for industrial use only  
13 but -- be made by -- might be used by  
14 business employees, contractors and  
15 suppliers. And some private crossings are  
16 used only for the access to a home or a farm.  
17 The frequency with which private crossings  
18 are used can also vary widely. Some farm  
19 crossings, for example, might be used only a  
20 couple of times annually while there are

21 commercial and industrial crossings which are  
22 used by many motor vehicles daily.  
23 Furthermore, as the FRA points out in the  
24 meeting notice, the legal status of private  
25 crossings vary considerably.

1           In many cases railroads have no  
2 authority to close or relocate private  
3 crossings or condition the use on the  
4 institution of appropriate safety measures.  
5 For example, a private crossing may exist as  
6 the result of a deed granted when the  
7 railroad right-of-way was created. Or a  
8 state might require a railroad to grant  
9 farmers "suitable and convenient crossings,"  
10 that they may continue in existence  
11 regardless of the frequency of which they are  
12 used.

13           Another issue is the nature of  
14 private crossings might change without the  
15 analysis of safety implications. A crossing  
16 that might only have been used by a land  
17 owner when first created could turn into a  
18 busy residential, industrial or commercial  
19 crossing later. If the crossing were a  
20 public crossing, a diagnostic team might

21 evaluate the consequences of the change in  
22 use. In the case of a private crossing  
23 however, there is no mandate that such an  
24 examination take place. Typically the users  
25 of private crossings should bear the cost of



1 the safety improvements at the crossing for  
2 the benefit they receive from the crossing,  
3 however, it may be appropriate for public  
4 funding to be provided at private crossings  
5 that resemble public crossings.

6 Finally, in the meeting notice the  
7 FRA asks about the extent to which insurance  
8 arrangements affect safety at public and  
9 private crossings. In the railroad's  
10 experience, insurance requirements do not  
11 drive the safety measures undertaken at a  
12 private crossing. The AAR and its member  
13 railroads look forward to this hearing, the  
14 ideas by others on how private crossings can  
15 be improved. And once again, I thank you for  
16 the opportunity to provide our views to you.

17 MR. GRADY COTHEN: Thanks, Bob. We have  
18 another thankful camp follower with us in the  
19 person of Tim DePaepe who is the director of  
20 research with Brotherhood of Railroad

21           Signalmen. And we want to hear from Tim  
22           concerning his research.

23           MR. TIM DEPAEPE: Thank you, Grady. And  
24           it is true that Bob and I travel together.  
25           We testify at Congress together, we get to

1 sit together a lot. People think that we are  
2 at odds sometimes, but we are not. A lot of  
3 times we are on the same page, and I think  
4 this is one of them. Originally I wasn't  
5 going to speak today, but after reading the  
6 notice, the FRA specifically asked a series  
7 of questions or comments and I felt and the  
8 Brotherhood of Railroads and Signalmen felt  
9 that it would be appropriate to comment on  
10 them. Our first comment is that it's our  
11 position that the FRA should prohibit the  
12 creation of new private crossings and work  
13 toward eliminating as many existing private  
14 crossings as possible. The best way to  
15 reduce accidents and fatalities is through  
16 the elimination of unprotected private  
17 crossings. However, if the FRA determines  
18 that it wants to allow the creation of new  
19 private crossings, then the new crossings  
20 should have at a minimum a set of grade

21 crossing signal system flashing light

22 signals.

23 You also asked about how the

24 improvement in our maintenance costs with

25 private crossings should be allocated. We

1 believe they should be split equally between  
2 the state government, federal government and  
3 the property owner, however, each case should  
4 be evaluated on its own merit. There may be  
5 some cases where the responsibility  
6 allocation should be adjusted. The state and  
7 federal government, for instance, should  
8 split the cost of the crossing warning system  
9 where school bus or other public  
10 transportation entity may utilize the  
11 crossing. You asked specifically should the  
12 state and federal government assume greater  
13 responsibility for safety of private  
14 crossings or the intersection design of new  
15 private crossings. My organization feels  
16 very strongly about that. Even at public  
17 crossings, design flaws have created  
18 terrible -- or resulted in terrible  
19 accidents.

20 Fox River Grove in Illinois is a

21 good example. I mean, that's a public  
22 crossing that had a poor design. And as the  
23 former maintainer on that railroad, I can  
24 speak specifically to that issue.

25 The private crossings, they have

1 nothing as your pictures showed, you know, in  
2 some of the cases where you put signage up,  
3 the vegetation covered it. There is nothing  
4 that says you have to cut vegetation at a  
5 private crossing. But we believe the state  
6 and federal government should assume greater  
7 responsibility, you know, clearly by -- if no  
8 other reason, by the amount of fatalities  
9 that are happening. Not only are you killing  
10 the general public; as you alluded to, the  
11 train crews, the engineers or conductors are  
12 the first ones that are usually -- sometimes  
13 the only ones that get killed at crossings.  
14 Then you have the hazmat release which  
15 creates even a bigger problem. There are way  
16 too many accidents and an unacceptable number  
17 of fatalities along with them. Again, we  
18 can't reiterate enough, we believe that no  
19 private crossing should be created in the  
20 future unless they are equipped with active

21 crossing warning devices. And we also  
22 believe there should be nationwide standards  
23 for warning devices at private crossings and  
24 for intersection design. As Miriam's slides  
25 show, we believe they should be patterned



1 after the standards contained in the Manual  
2 on Uniform Traffic Control Devices, Part 8  
3 which is subtitled Traffic Controls for  
4 Highway-Rail Grade Crossings. By taking this  
5 action, the users of the private crossings  
6 will be conditioned to respond to the stimuli  
7 that they encounter at other highway-rail  
8 grade crossings. We believe that there  
9 should be consistency in the message for the  
10 warning so that if there are public or  
11 private they get the same message and they  
12 take -- they take the same behavior.

13 You asked about how do you  
14 determine when a private crossing has a  
15 public purpose and subject to public use.  
16 It's our position that a private crossing  
17 should be defined as one used by a sole land  
18 owner or lessee. Once any other individuals  
19 routinely use the crossing, it should no  
20 longer be considered a private crossing but

21 as a public crossing. You talked about  
22 commercial crossings rather than private  
23 crossings. As the organization that  
24 represents the men and women that maintain,  
25 install and repair public grade crossing

1 warning devices, we are very familiar with  
2 what you are terming commercial crossings.  
3 Oftentimes the only vehicular traffic on a  
4 private crossing will be trucks servicing a  
5 local industry; for example, cement trucks  
6 going in and out of a stone quarry next to  
7 railroad tracks. We believe it's imperative  
8 that any private crossing that serves an  
9 industry should be held to the same standards  
10 for the highway-rail grade crossing signal  
11 system requirements. Due to the types of  
12 trucks and materials that they carry, the  
13 severity of an accident at these crossings  
14 would be greater than an accident between a  
15 car and a train. Trucks carrying hazardous  
16 materials pose an even greater danger.

17 You also -- you asked about  
18 innovative traffic control treatments that  
19 can improve safety at private crossings on  
20 major rail corridors. There is a lot of

21 things out there that a lot of people are  
22 trying to do to improve protection of  
23 passenger crossings. In our opinion they are  
24 not quite there yet. They don't offer the  
25 level of protection that improving technology

1 does, you know, the simple flashers, the  
2 signal system flasher arrangement that's out  
3 there now. Some of the things that they are  
4 proposing that ITS America is doing, pilot  
5 projects, they are innovative, but again they  
6 are not practical at this time. We believe  
7 you should stick with proven technology and  
8 utilize that.

9 We finally ask: Should the DOT  
10 request enactment of legislation to address  
11 private crossings? We believe they should  
12 request enactment of legislation to address  
13 private crossings. There is not enough being  
14 done to reduce accidents and fatalities at  
15 private crossings. At a minimum, the  
16 legislation should include the site-line  
17 distances signage requirements and grade  
18 crossing signal flashing light signals. We  
19 are killing too many people, and we believe  
20 that the DOT should step up and start taking

21 care of it.

22 On behalf of my president,

23 Dan Pickett, I appreciate the opportunity to

24 speak here, and I would be willing to answer

25 any questions that anyone may have.

1 MR. GRADY COTHEN: Thanks, Tim. We

2 appreciate you addressing those issues.

3 Competing for the greatest distance traveled

4 to come to this meeting is Ms. Patty Abbate

5 as director of Citizens for Rail Safety.

6 Patty, can we here from you now?

7 MS. PATRICIA ABBATE: Sure. Thank you.

8 I want to thank you all for the opportunity

9 this morning. It's my pleasure to be here,

10 and I look forward to a great discussion

11 after all the statements are out. I'm with

12 Citizens for Rail Safety. We are a national

13 nonprofit based in Massachusetts that deals

14 with all kinds of safety issues.

15 For far too long rail grade

16 crossing safety at private railroad crossings

17 has been a neglected issue on a national

18 scale. According to FRA records, there are

19 more than 94,000 virtually unregulated

20 private crossings in the U.S. today. Most of

21 these crossings have little more than a  
22 crossbuck or stop sign to alert an  
23 approaching motorist or pedestrian. In fact,  
24 fewer than 2 percent of private crossings are  
25 equipped with any kind of accurate warning



1 device. Despite the fact that the number of  
2 private grade crossings has been steadily  
3 declining since 1975, with 34 percent fewer  
4 crossings today than 30 years ago, the number  
5 of casualties is increasing at these sites.

6 The subject of railroad safety of  
7 these railroad crossings remains such a  
8 critical issue that we at Citizens for Rail  
9 Safety are currently working with professors  
10 and researchers at the University of  
11 Tennessee in a study that is exploring this  
12 very subject. Findings and recommendations  
13 from this study will be released in the fall  
14 of 2006. Along with the Federal Railroad  
15 Administration, we recognize that private  
16 railroad grade crossings present a unique set  
17 of challenges where safety is concerned. The  
18 lack of a uniform approach to safety for the  
19 nearly 100,000 private railroad crossings  
20 continues to be one of the main reasons why

21 we are still faced with a conundrum of how to  
22 ensure safety at these sites. Unfortunately  
23 accidents and deaths at private crossings  
24 continue to occur. Just three weeks ago  
25 today on August 16th one teenager died and

1 three of her friends were hospitalized when  
2 the car they were traveling in was hit by a  
3 train at a private crossing in Rome, New  
4 York. Police reports indicate that the  
5 tracks had no warning lights or gates.

6 However, the site did have a stop sign almost  
7 nearly completely covered with foliage and a  
8 crossbuck was posted as well. According to  
9 police, the crossing was used as an access to  
10 a quarry near a river where people visit to  
11 park or walk the trails. In this incident,  
12 the private crossing was known to be used not  
13 just by property owners, but by others as  
14 well on a regular basis.

15 In a case like this, who is  
16 ultimately responsible for the tragic  
17 accident; the property owner, the railroad,  
18 the local government, the federal government,  
19 the driver of the car? The conundrum  
20 continues. And for the families of the

21 victims, there is no resolution. As we  
22 continue to study safety issues of private  
23 highway-rail grade crossings, we must keep in  
24 mind that the railroads, both freight and  
25 passenger, are increasingly becoming more

1 important to our national economy. The rise  
2 in rail traffic that economists predict over  
3 the next decade will further put safety  
4 issues to the test at these private  
5 crossings. At this time, it is critical that  
6 we find a solution to the growing safety  
7 concerns that loom before us here. We also  
8 recognize that all private crossings are not  
9 created equal. Some are used infrequently  
10 and others are used so extensively that the  
11 term "commercial crossing" should be used  
12 instead of private crossing. Private  
13 crossing rights vary from crossing to  
14 crossing with legal rights of ownership and  
15 usage blurred.

16 But despite the differences in  
17 traffic volume, despite the differences in  
18 legal rights, despite the differences in  
19 ownership, it is clearly time for  
20 responsibility to be assumed and for safety

21 to become a priority at our private  
22 highway-rail grade crossings. Active warning  
23 devices have contributed to the decrease in  
24 casualties at public highway-rail grade  
25 crossings, so it stands to reason that the

1 introduction of lights and gates will also  
2 increase safety at private crossings. As the  
3 railroads, government, private industry and  
4 citizens take a closer look at this  
5 situation, together we need to consider  
6 revisiting a recommendation made back in '99  
7 to treat private crossings the same as public  
8 crossings with all the same safety  
9 regulations in place. We need to explore  
10 public private governmental partnerships to  
11 ensure that the most dangerous private  
12 highway-rail grade crossings are protected  
13 with active warning devices.

14 We need to actively eliminate the  
15 number of private crossings whenever  
16 possible. We need to create an atmosphere of  
17 cooperation and shared responsibility so that  
18 private crossings will get the attention to  
19 safety that public crossings have. It is not  
20 acceptable for dangerous private highway

21 grade crossings that are frequently used by  
22 the public to be identified with only a stop  
23 sign that is obscured by foliage. There must  
24 be action taken, responsibility assumed and  
25 safety regulations created and enforced so



1 that we can reduce the number of accidents,  
2 injuries and deaths that occur at these  
3 private highway-rail grade crossings.

4 Thank you.

5 MR. GRADY COTHEN: Thank you. I tried  
6 to prepare folks who called in and let us  
7 know they were coming with the signup list  
8 today and those who indicated an interest in  
9 speaking today in terms of an initial  
10 statement. And anyone is free, of course, to  
11 speak during the discussion period. Anyone  
12 is free, whether signed up or not, to make an  
13 initial statement. I don't find others  
14 signed up to make initial statements, but  
15 that may be because I'm misunderstanding what  
16 I have in front of me. Is there anyone else  
17 that would like to just lay out issues, views  
18 or concerns at the outset? I see a number of  
19 my friends and colleagues from the railroad  
20 industry that I know and I know that there

21 are others here that I have not met  
22 previously who are very knowledgeable on the  
23 subject matter. So they are certainly  
24 encouraged to speak. The ignorance of your  
25 government is beyond reproach unless you do.

1 Let me offer a few more things as openers, if  
2 you will, and then we'll take a courtesy  
3 break here and return for some discussion.

4 Part of this is: How do we  
5 organize this activity going forward, because  
6 I know your organization will be interested  
7 in it and as it proceeds to the next venue  
8 and moves toward some kind of conclusion.

9 First of all, let me remind you of the  
10 recommendations of the National  
11 Transportation Safety Board's report. In  
12 Miriam's mind, it was a 1997 report, but  
13 that's because it took her nearly a year to  
14 get it cleared; something that we bureaucrats  
15 know a lot about. Here are some key  
16 recommendations. There were a number of  
17 recommendations, and I certainly won't read  
18 all of them that were addressed in a number  
19 of organizations.

20 Here are some key recommendations:

21        Modify the grade crossing inventory system to  
22        include information on the site distances  
23        available to a motorist and presence of  
24        curves on the roadway and on the tracks;  
25        direct the states to include these data as a

1 part of regularly scheduled updates of the  
2 database. That's what's known, Susan, as an  
3 unfunded mandate.

4 For the board, it's a  
5 recommendation for us, it's an unfunded  
6 mandate. I would say that we have going on  
7 now the conclusion of an Office of Inspector  
8 General investigation at FRA that also asked  
9 us to look at the issue of additional data  
10 elements that would help us better understand  
11 why some of these events are according both  
12 at private and public crossings. So I think  
13 it's a very topical issue. We've had this  
14 NTSB recommendation too long already and are  
15 about to get further recommendations from  
16 Inspector General going generally to that  
17 same complex of issues. There are related  
18 issues. FRA tries to maintain a GIS database  
19 that includes the location of public and  
20 private crossings. It's been a challenge for

21 our folks in the office of policy to do that  
22 over the years. Railroads, major freight  
23 railroads have their systems, by in large,  
24 GIS mapped to a very high degree of  
25 resolution. However, those databases are not

1 available to us by in large.

2 We also have a very old, old Rail  
3 Garrison database which has some information  
4 which is still relevant but other information  
5 that's no doubt badly out of date. Another  
6 recommendation from the board, install within  
7 two years of receiving federal funding stop  
8 signs at all passive grade crossings unless a  
9 traffic engineering analysis determines that  
10 installation of the stop sign would reduce  
11 the level of safety at a crossing. Crossings  
12 where conditions are such that the  
13 installation of stop signs would reduce the  
14 level of safety should be upgraded with  
15 active warning devices or should be  
16 eliminated. Since the board's  
17 recommendation, the Federal Highway  
18 Administration and FRA have made additional  
19 efforts to clarify the department's position  
20 on use of stop signs and at public crossings

21 where the Federal Highway Administration has  
22 direct interest, there is encouragement to  
23 look at the use of stop signs, but with the  
24 crossbuck being still the basic unit.

25 Subsequent to that; and by the way,



1 Ron can correct me, but my memory of this  
2 situation is that the last analysis we did is  
3 that placement of stop signs has the effect  
4 overall, lots of crossings, of probably  
5 reducing the risk of crossing on the order of  
6 20 percent. And that's kind of a historical  
7 number and does not include locations where  
8 there's active enforcement. Obviously it's  
9 private highway-rail crossings. The issue of  
10 getting active enforcement is a much bigger  
11 one and indeed a lot of the resistances occur  
12 on the highway side to the use of stop signs  
13 and crossings in addition to the danger of  
14 rear-end collisions at those locations has  
15 been related to the concern over how much  
16 active enforcement there would be at those  
17 locations to the extent to which motorists  
18 heeding of stop signs might be diluted by the  
19 failure of enforcement. So here we have the  
20 board saying: Go do a traffic engineering

21 study, place a stop sign there unless it is  
22 unsafe to do so. And if it is, you really  
23 need to go to active warning devices or close  
24 the crossing which is a -- staking out a  
25 position that's different than the kind of

1 position generally applied at public  
2 highway-rail crossings, but the board was  
3 saying this for both public and private  
4 crossings in the passive crossing study. And  
5 then of course another recommendation would  
6 be the enforcement issue.

7           Something that we try to reinforce  
8 actively, a law enforcement liaison,  
9 enforcement of all signage at highway-rail  
10 crossings, but it's very difficult to get  
11 cooperation on obviously a private crossing  
12 setting for obvious reasons. Are you puzzled  
13 yet? We are.

14           Here is another one, and I think it  
15 will apropos some of Miriam's slides,  
16 evaluate periodically, at least every five  
17 years, all passive grade crossings to  
18 determine compliance. And this is the  
19 state's personal response, second and third  
20 year to the state. Evaluate periodically all

21 passive grade crossings to determine  
22 compliance with existing guidelines of the  
23 Federal Highway Administration and AASHTO  
24 regarding site distances, angle of  
25 intersections where the roadway meets the

1 track, curves on the roadway or tracks and  
2 nearby roadway intersections. Those  
3 crossings determined not to be in compliance  
4 with the guidelines initiate activity to  
5 bring these crossings into compliance  
6 wherever possible. Action item for one of  
7 our subsequent meetings would be to get some  
8 briefing on the AASHTO standards which are --  
9 perhaps I'm the only one in the room that  
10 needs help on that. I certainly could use a  
11 refresher. Where passive crossings cannot be  
12 brought in compliance for reasons such as  
13 permanent obstructions at the stop line,  
14 target those crossings for installation of  
15 active warning devices, grade separation at  
16 closure. Aren't you glad I'm not reading all  
17 of the recommendations. Here is one to the  
18 departmental agencies, AAR and APTA, American  
19 Public Transportation Association:  
20 Participate and cooperate fully with the

21 development of intelligent transportation  
22 systems that will be able to alert drivers of  
23 an oncoming train at passive grade crossings.  
24 I would like to say that in the intervening  
25 years, we really narrowed in on solutions

1 with regard to innovative devices. The FRA  
2 has been involved in this region in this  
3 state and the demonstration of an innovative  
4 warning system which have been placed at  
5 previously passive designed crossings and  
6 activated through GPS train location. And  
7 that's a really simple description of the  
8 technology. It was conducted under very  
9 careful FRA scrutiny, including  
10 Mr. Abie [ph.] and Mr. Comstock back there.  
11 And it looked like it produced some  
12 interesting results. There is a major vendor  
13 now that's talking about commercialization of  
14 that product, and we expect to see a product  
15 safety plan from that vendor on that  
16 technology before long under the -- our  
17 processor based rule. The board's passive  
18 crossing study is available on their web site  
19 and I would encourage anybody who hasn't read  
20 it or hasn't read it lately to go back to it

21 as an extremely useful resource. Let's take  
22 a break and return in 15 minutes which I  
23 think would be about ten minutes before the  
24 hour, and then we'll resume with discussion.  
25 If you would like to participate, feel free



1 to occupy a place at the table. If you feel  
2 you will not be wanting to participate in the  
3 discussion, if you could free up a spot, that  
4 would be great.

5 Thank you.

6 (Recess.)

7 MR. GRADY COTHEN: We've got in this  
8 room people from the railroads who are out  
9 there wrestling with this issue every day,  
10 closing crossings, getting agreements,  
11 talking to engineering to get some brush  
12 cleared and on and on and on. And a lot of  
13 you folks know what we need to know. So we  
14 encourage any of you who can to come to the  
15 table. Ron Adams has come to the table from  
16 the State of Wisconsin. I'd like to have a  
17 really productive and realistic discussion.  
18 The more realistic the discussion is, the  
19 more realistic our response will be. So you  
20 were warned. Okay. We are back on.

21 Paul, do you want to, for the  
22 people who didn't find coffee earlier, do you  
23 want to tell them about the cafeteria  
24 facilities we have available and see if you  
25 can determine how many people want to use

1       them when we get to a breaking point here a  
2       couple of hours from now, or whenever it is  
3       that we are going to break.

4       MR. PAUL COMSTOCK: Well, actually 11:30  
5       would be about the best time to go for lunch.

6       If you go right back by the elevators in the  
7       opposite direction there is a cafeteria in  
8       there. They do have a smoking area and there  
9       is a patio outside if you want to get some  
10      fresh air, ice water, coffee, the whole  
11      thing. Sandwiches, salad bar, entrees.

12      MR. GRADY COTHEN: How many people are  
13      likely to use the cafeteria facilities here  
14      just so we can warn them.

15      (Off the record.)

16      MR. GRADY COTHEN: Anya Carroll has  
17      passed out for you the list of questions from  
18      the public notice. And what we thought we  
19      would do as a first run at it, and we'll  
20      perfect this act as we continue to the next

21 stop on the road hopefully, is to do a  
22 general survey of these questions and try to  
23 get your thoughts on the subject matter. I  
24 don't know how many of you remember  
25 Gil Carmichael, but if you were in and about

1 the railroad industry at the time, I'm sure  
2 you do. And Mr. Carmichael was our  
3 administrator during the first Bush  
4 administration and -- George Herbert Walker  
5 Bush administration, and Mr. Carmichael would  
6 always surprise us by saying that you  
7 wouldn't build a road across a runway, would  
8 you? And you know it was a startling obvious  
9 observation, but his next point was always  
10 that the railroads are highways of interstate  
11 commerce, and really it's not a good way to  
12 plan your transportation system to have a  
13 grade crossing every mile. And of course  
14 it's not. It's not a good thing for railroads  
15 or communities, it causes us to disburse our  
16 resources and have a difficult time  
17 addressing safety needs at each of those  
18 locations rather than being able to focus on  
19 a smaller number of locations, but here we  
20 are. This is where we find ourselves still

21 even after all the efforts of the railroads  
22 and all the abandonments and consolidations  
23 and so forth and so on, with probably in  
24 excess of 90,000 private highway-rail  
25 crossings. So the first question has to do

1 with how do we determine whether creation or  
2 continuation of a private crossing is  
3 justified. And obviously we don't want  
4 anybody's property to be landlocked, and if  
5 there is insufficient alternative access, I  
6 think most of us would recognize that that's  
7 a legitimate concern that we've got to take  
8 into consideration. But being landlocked and  
9 inconvenienced are two different things, and  
10 I know that's a good part of the discussions  
11 that goes on.

12 Who would like to be first out on  
13 this topic? Anya and Steve will take some  
14 notes for us.

15 MR. ROBERT OPAL: Bob Opal, Union  
16 Pacific railroad, law department. Let me  
17 just make one observation on this question.  
18 One of the problems is that in most areas of  
19 the country there is not a decision-making  
20 process for whether a private crossing is

21 justified. The -- typically the decision --  
22 in the public crossing area, the decision of  
23 whether a public crossing is necessary and  
24 what it should look like is typically  
25 something that is done by a state regulatory



1 commission of some kind. But in most states,  
2 they don't do that with respect to private  
3 crossings. They don't decide whether a  
4 private crossing is necessary, or not  
5 necessary, what it should look like, whether  
6 it should still exist, whether it should be  
7 closed. So there really isn't a coordinated  
8 decision-making process for making the  
9 decision as to whether the creation or  
10 continuation of a private crossing is  
11 justified. To the extent there is a  
12 decision-making process, it tends to be state  
13 courts, real estate property law concepts  
14 like easements, prescriptions like you saw on  
15 your slide, but not a -- with a few  
16 exceptions, not an overall decision-making  
17 process as to whether the crossing should  
18 exist like you see in the public crossing  
19 area. Lack of process; typically because the  
20 agencies do not have jurisdiction.

21 MR. GRADY COTHEN: Nobody is required to  
22 answer any question asked, okay. And Bob  
23 knows that better than anybody. Would the  
24 Union Pacific have criteria that you would  
25 try to apply when someone steps forward with

1 a request for a new crossing?

2 MR. ROBERT OPAL: I would think Dave  
3 would have to answer that. Generally, we  
4 wouldn't be very receptive.

5 MR. GRADY COTHEN: I understand. We do  
6 have a docket -- to know that to make  
7 statements at public proceedings we do have a  
8 public docket and any thoughts that the  
9 railroads have as to the considerations that  
10 they look at in deciding whether or not to  
11 let somebody open a crossing. I'm sure in  
12 some cases, the prospective holder of this  
13 right to cross probably owns the underlying  
14 real estate and doesn't -- you know, perhaps  
15 not so much in the west, but certainly in the  
16 east it's not easy for the railroad to say  
17 no. But if you have considerations that  
18 you've applied that include public interest  
19 considerations beyond the safety of your  
20 operations, which certainly is an important

21 one, that might be of interest.

22 MR. TIM DEPAEPE: Tim DePaepe,  
23 brotherhood of Railroad Signalmen. There has  
24 got to be a process, Grady, because there are  
25 many locations, for example, by our

1       headquarters in Front Royal, Virginia, there  
2       is five private crossings before a public  
3       crossing, and it's within -- I don't even  
4       think it's a mile. And they have signage up  
5       at each crossing. I mean, there is no reason  
6       to have these five crossings there. I mean  
7       it would be nothing just to put one access,  
8       maybe put gates or flashers at it to protect  
9       it better, and then you've just eliminated  
10       five private crossings. But I'm not aware of  
11       any process out there that would get the  
12       different parties that have the different  
13       access together to come to a decision to  
14       eliminate them, but there should be a process  
15       in place where you can do things like that.

16       MR. GRADY COTHEN: Do you think -- Tim,  
17       certainly that's better to carry out at the  
18       state level, right?

19       MR. TIM DEPAEPE: If you can keep the  
20       feds out of it, you are much better off.

21 MR. GRADY COTHEN: Well, we have  
22 unanimity at the table then -- maybe not.

23 MS. SUSAN AYLESWORTH: Susan Aylesworth,  
24 Minnesota DOT. We have attempted to close  
25 public crossings in the state of Minnesota

1 and with limited success, certainly. And  
2 even though we have a very specific process  
3 to do it, generally speaking, the  
4 administrative law judge recommends that the  
5 crossing be created. Fortunately we have  
6 gotten them to agree to lights and gates at  
7 all of those crossings, but still we're  
8 creating crossings. We probably create as  
9 many crossings as we close so we're probably  
10 doing net zero right now. And the closures  
11 don't often come with the openings. In other  
12 words, we might negotiate a crossing that's  
13 closed in one location, we'll have one that's  
14 requesting an opening in another. And so I'm  
15 thinking that if it's that hard to close a  
16 public crossing then, how much harder would  
17 it be to close a private one. Some of it is  
18 a resource question, because to -- I'm  
19 involved in a hearing right now, we are going  
20 into our third day on the opening of a public

21 crossing and there is at least one additional  
22 day beyond the testimony. So that's four  
23 days, lots of witnesses, a lot of money going  
24 into requesting that this crossing be opened.

25 And while I can't predict the



1 outcome, as you can see it's a  
2 labor-intensive process, so I would suggest  
3 that a closure would involve as many days and  
4 as many witnesses. And who is going to bear  
5 the cost of that?

6 MR. RONALD ADAMS: Ron Adams, Wisconsin  
7 Department of Transportation. We are not the  
8 regulatory agency with jurisdiction to close  
9 crossings in Wisconsin, public or private in  
10 Wisconsin. Our only involvement with private  
11 crossings is our state law that says the  
12 railroads have to provide suitable and  
13 convenient farm crossings. That  
14 definition -- the wording "farm crossing" is  
15 misleading because statutorily -- by the  
16 courts, it's been interpreted to be anything  
17 other than a public crossing for any purpose,  
18 so it makes it difficult. A lot of the  
19 private crossings are out there for historic  
20 reasons, either they were given by the

21 landowner -- given to the landowner as part  
22 of the deal the railroad cut to initially  
23 have their line crossing his property. In  
24 some cases, it's -- they were created by  
25 inaction on the railroad's part of paying

1 attention to what's happening on their  
2 property, quite frankly. And the other  
3 difficulty if you want to change the  
4 character of the crossing in Wisconsin, we  
5 have -- the public has jurisdiction only when  
6 a crossing is going from a public access,  
7 public highway to a public road.

8 And so if public maintenance stops  
9 before the crossing, then it becomes a -- it  
10 is a private crossing. And in some cases  
11 those continuations of roads don't meet any  
12 public standards for the roadway, so the  
13 local road jurisdiction doesn't want them.  
14 They don't want the responsibility, not only  
15 for the crossing, but they don't want  
16 responsibility for maintaining the road in  
17 the future because it doesn't meet even  
18 minimal standards. Because in a lot of  
19 cases -- in some cases maybe, the  
20 construction of it was such that it was truly

21 a private entry into a small area at first  
22 that has changed the character over time.  
23 And I would argue that in some cases that  
24 character has changed without the railroads  
25 paying attention to it even if they had

1 permitted that crossing initially, they  
2 didn't keep up with what the changing  
3 character was going -- character rather  
4 was -- how it was changing over time, to see  
5 if it met their standards or the contract  
6 that they had in place if they had one in  
7 place.

8           So it's difficult now to go in and  
9 say this crossing that's been there for 100  
10 years is now a concern of the public even  
11 though the character has changed greatly and  
12 you have to find parties that are willing to  
13 accept other responsibilities. It's not just  
14 the service of the crossing or just warning  
15 devices. And if you put warning devices at  
16 a -- what is now a private crossing, whose  
17 responsibility are they? Is the railroad  
18 just going to say: Okay, we will give you a  
19 fee from our system as we do an  
20 interconnected highway railway signal devices

21 where we've got traffic signals, and someone  
22 else maintains them. And then do FRA rules  
23 apply to that other private maintainer that  
24 might be out there. So it's not just a  
25 simple matter of saying this private crossing

1 is now a public crossing, there is a host of  
2 things that go with it.

3 MS. PEGGY BARE: In Iowa we don't have a  
4 regulatory body that regulates crossings and  
5 the state DOT is only responsible for our  
6 crossings on the state system which is a very  
7 small part of the total. So if the whole  
8 issue of opening and closing crossings really  
9 falls back to the local highway jurisdiction  
10 and the railroad, and that often results in a  
11 lot of discussion, but frankly 95 percent of  
12 the time or more the local highway authority  
13 doesn't have the political will to close a  
14 crossing even if they know it's the right  
15 thing to do.

16 If one citizen complains, that  
17 crossing will stay open. That's a tough  
18 thing to -- it's just impossible to deal with  
19 in our state.

20 MR. RONALD ADAMS: I think another thing

21        somebody mentioned, well, separate them.  
22        Well, grade separations are extremely  
23        expensive, there are few pots of money that  
24        can really be used for grade separation  
25        either at the state or the federal level.



1 It's extremely difficult to get one in,  
2 especially in an urban area, you pay  
3 tremendous difficulty in doing that. Even in  
4 rural areas it's difficult to find the  
5 topography that makes it cheap to do it. So  
6 you're looking at a large expenditure of  
7 funds to separate any -- quite frankly, we're  
8 going to focus on the ones that have the most  
9 highway traffic. And so even if we could  
10 spend money on other ones, there are other  
11 crossings out there that have a much higher  
12 payback for taking proactive actions on.

13 MR. JAMES KIENZLER: Jim Kienzler, I'm  
14 director of regulatory affairs for Canadian  
15 Pacific, and I'm located out of Calgary,  
16 Alberta. Recognizing that Canadian  
17 legislation is very different and the  
18 regulatory schemes are different, Transport  
19 Canada currently has two initiatives that are  
20 relevant to this, they are continuing to

21 draft grade crossing regulations that include  
22 some safety jurisdiction over private  
23 crossings. They use different terminology  
24 than you use in here, but they have separated  
25 them between restricted and unrestricted

1 private crossings. They are drafting grade  
2 crossing regulations as we speak that have a  
3 decidedly different approach toward what they  
4 term restricted and unrestricted private  
5 crossings. Those regulations and the  
6 underlying engineering standards are  
7 available through their web site, and I would  
8 recommend this group review those if they  
9 have it.

10 Secondly, they have contracted with  
11 some consulting firms, IBI Group and UMA  
12 Engineering, to do an extensive study of  
13 private crossing safety. Again, I would  
14 refer you to look at that. They just issued  
15 an interim report, it deals with many of the  
16 same issues and concerns. Again, different  
17 legislative powers, different regulatory  
18 schemes. For instance, there are laws in  
19 Canada that have an appeal and binding  
20 arbitration process for private landowners

21 and railways in dealing with crossing access  
22 and crossing locations. I think it's worth  
23 you looking at.

24 MR. GRADY COTHEN: We will do that.

25 I've had some conversations with our

1 colleagues at Transport Canada in the past on  
2 the subject and need to refresh our status on  
3 that. Thank you.

4 MS. SUSAN AYLESWORTH: Grady, I'd like  
5 to just comment about the cost issue for a  
6 moment. When I arrived in Minnesota about  
7 four-and-a-half years ago using our pot of  
8 money from the Section 130 program, we were  
9 able to construct approximately 40 upgrades  
10 to grade crossings per year. Now, we are in  
11 2006. And although our pot of money has  
12 increased somewhat, the percentage of that  
13 amount has left it almost the same as it was  
14 in the past. In other words, the federal  
15 government is not giving us the full amount  
16 that was allocated. We are getting, I think,  
17 85 percent of that. We are only able to do  
18 about 28 crossings per year at the current  
19 costs which have gone up significantly. So  
20 as you can see, we are falling behind. There

21 are approximately 1,500 active warning  
22 devices in Minnesota leaving about 3,000  
23 public grade crossings without active warning  
24 devices.

25 If we were to add the approximately

1 2,000 private crossings to that list, several  
2 generations would be upgrading crossings at  
3 the rate of 25 or fewer per year. So it's  
4 some of -- the prospective of what we are  
5 faced with is the economic reality our state  
6 does not allocate additional funds for grade  
7 crossing safety with the exception of a small  
8 pot of money, half a million a year that is  
9 generated from fines collected by the state  
10 patrol. So we are able to add that to our  
11 allocation, but it still leaves us with very  
12 few projects and very little that we can do.  
13 Certainly we don't have enough money to do  
14 any grade separations with this fund unless  
15 we were able to allocate the entire amount to  
16 a grade separation. So just as some  
17 perspective of what the state is really able  
18 to do. And in addition, from a resource  
19 perspective, I think it's fair to say that  
20 our state has reduced our staff sufficiently

21 that I don't think we could meaningfully  
22 inventory or keep track of private crossings  
23 in addition to the public ones.

24 We are struggling to keep up with  
25 the demand of the staffing that we have. So



1 I think that is another issue that needs to  
2 be recognized. I don't think our private  
3 crossings have been inventoried any more  
4 recently than the FRA database has received  
5 the information. I believe there was a  
6 comprehensive inventory done in the early  
7 '90s, that may be the extent of it on private  
8 crossings.

9 MR. WILLIAM BROWDER: Bill Browder from  
10 the AAR. To add to Tim DePaepe's statement,  
11 and you may hear this in North Carolina, but  
12 just to see that a -- it gets to your  
13 attention in terms of numbers of private  
14 crossings, that same railroad and North  
15 Carolina DOT worked both very diligently in  
16 the early '80s to close a series of private  
17 crossings of a tank farm at Friendship, North  
18 Carolina, Piedmont Triad Airport without any  
19 success at all.

20 And in October of 1987, even though

21 the railroad had imposed a ten mile-per-hour  
22 speed limit through that particular section  
23 past Chimney Creek Road, a train hit a  
24 tanker, and it incinerated a set of five  
25 engines and the five crewmen that were on

1 board. And shortly thereafter, there were  
2 some additional negotiations and a program  
3 such as Tim described was empowered through  
4 public demand for such a program. But the  
5 railroad and the state had been unsuccessful  
6 in initiating and they were even willing to  
7 pay for it at that time because it was such  
8 an issue for them.

9 Thank you.

10 MR. RONALD ADAMS: Following up on Susan  
11 and Ron Adams, about the numbers of  
12 crossings. In Wisconsin at the beginning of  
13 the year we had just over 4,100 public  
14 at-grade crossings. 723 had gates and  
15 lights. 1,100 had flashing lights or another  
16 active warning device out there. We had  
17 2,383 private crossings. Something to do  
18 with it at some point in time if something is  
19 changed, a lot of ifs in there. Our  
20 legislative this year passed a law mandating

21 the installation of yield signs at all  
22 passively signed crossings that don't have  
23 stop signs at them, and the railroads are  
24 working diligently to get those installed,  
25 and several of them have them installed now,

1 by July 1st, 2007. Again, because of the --  
2 at public crossings, didn't do anything with  
3 private crossings because we don't have  
4 jurisdiction there. But to try and raise  
5 awareness that the people are supposed to pay  
6 attention to those crossbucks out there which  
7 railroads report they don't always do. Any  
8 more than they pay attention to stop signs in  
9 rural areas. It's not a -- the grade  
10 crossings are not a unique intersection. We  
11 have about 120 crashes at highway-railway  
12 intersections a year, it's somewhere in the  
13 order of 8,000 to 10,000 crashes at  
14 highway-highway intersections. So as I like  
15 to tell people when talking to them about  
16 highway railroad intersections, drivers do  
17 dumb things at intersections and it doesn't  
18 matter if it's a highway-highway intersection  
19 or a highway-rail intersection.

20 MR. TIM DEPAEPE: I've got to speak on

21 that issue about yield and stop signs. No  
22 one has been able to show me any data that,  
23 A, they've reduced incidents at private  
24 crossings once they are installed. And my  
25 personal experience and my organization's

1 position is it adds very little. We just  
2 have not seen that there is this big impact  
3 and there are people within government that  
4 think it's the end-all to the problem, just  
5 install stop signs or yield signs. What we  
6 have seen by talking to our members is people  
7 still, if they stop at all, they usually stop  
8 once they are on the track so they can look  
9 both ways and see if anything is coming. I  
10 think they just -- as you said, especially in  
11 the rural areas, and these are private  
12 crossings, people either stop now or they  
13 don't. I don't think putting up a stop sign  
14 is going to make that big of a difference. I  
15 really don't think that's where you want to  
16 go to think you are going to stop a problem.  
17 Because unless Volpe is aware of some studies  
18 that I don't know about, I haven't seen any  
19 data that it's working or that it's improving  
20 even what's going on today.

21 Thank you very much.

22 MR. GRADY COTHEN: I don't know if we

23 have any studies with passively signed

24 private crossings as to the effectiveness of

25 signs. I would think that we would be



1 looking hard for the data elements with  
2 regard to signage effectiveness at private  
3 crossings, you know, which is a little bit  
4 discouraging because you'd like to start with  
5 adequate data. And actually I think we've  
6 been pretty successful as a community in  
7 having enough, not the best, but everything  
8 we would like to have, but, you know, enough  
9 to do some analysis for the various  
10 activities that we've done related to our  
11 reflectorization and train horns and that  
12 sort of thing and in evaluating in a general  
13 kind of way effectiveness and counter  
14 measures.

15 But this really gets us down to a  
16 very difficult point. The states that  
17 have -- it appears that the states that have  
18 signage requirements for private crossings in  
19 general, the small handful specify stop  
20 signs. So there is a judgment exercise by

21 somebody that, you know, the stop sign is the  
22 signage of choice. As I indicated if you  
23 look macro at passive crossings in the nation  
24 as a whole, we do believe that stop signs  
25 help, but most of those would be on public

1 roadway where you would have some degree of  
2 enforcement, however small.

3 So that's a big issue for us. I  
4 mean, and how do we work through it other  
5 than just gathering up our opinions which are  
6 useful. And I think we have to do that, but  
7 you would like to drive these decisions based  
8 upon data. And certainly I think the highway  
9 community as a whole has pretty much come  
10 down to passively sign crossing. If we can't  
11 do any better, we'll at a minimum have a  
12 crossbuck and a yield sign, and if there are  
13 indications that a stop sign is needed, then  
14 the stop sign will go in. And because of the  
15 resource issues that Ron and Susan have been  
16 referring to, you don't go to automated  
17 warning devices until you get to a higher  
18 level of risk. Here we have the problem  
19 that, you know, do you apply MUTCD criteria  
20 or not. If you do, assuming a yield sign is

21 less effective, you may end up using a yield  
22 sign rather than a stop sign, including in  
23 places where stop signs are now at those  
24 crossings.

25 Is that a good thing? I don't

1 know. Maybe it is. And then if you want to  
2 go for some more substantial signage, how do  
3 you do the analysis to determine whether  
4 automated warning devices are required? You  
5 don't know what the average annual daily  
6 traffic is. I think Miriam's slide said we  
7 don't even know what the train count is at  
8 the crossing. The accident-prediction  
9 formula is built around public crossings. So  
10 we find ourselves in the year of our  
11 Lord, 2006, in a rather primitive stage of  
12 program development, and that's very  
13 discouraging. And, you know, what this set  
14 of meetings is all about really is: How do  
15 we get traction on this thing? How do we get  
16 traction?

17 Any more comments about private  
18 crossings? Can we do away with them? Do we  
19 have to have more?

20 MS. ANYA CARROLL: I'd like to respond

21 to Tim since he asked if Volpe had any ideas  
22 about studies or anything that have been  
23 going on. Based on our experience supporting  
24 FRA rule-making, Grady mentioned freight car  
25 reflectorization which was based on

1 25 percent of the accidents; passively signed  
2 crossings are more affected. It took us ten  
3 years worth of data collection to support  
4 that rule.

5 Another example I would bring to  
6 the table where it was very difficult to  
7 analyze the data in this forum is the Buckeye  
8 Shield which was implemented across Ohio,  
9 half of the passive crossings had them, half  
10 of them didn't, they collected data for ten  
11 years and could still not make it through the  
12 MUCTD process to be a legislated -- or guided  
13 sign by MUCTD. There is hope, though. DOT,  
14 I think it was 2001, put together a technical  
15 working group. That was made up of numerous  
16 agencies and affiliations, industries, the  
17 railroads looking at positive guidance for  
18 how you apply technology at-grade crossings.  
19 Of course it was more publicly oriented, this  
20 is a private crossing issue, but it may be

21 applicable.

22 They looked at the types of conditions  
23 at certain crossings and where a sign would  
24 be applicable and where a warning device  
25 would be applicable. And if we could collect



1 the data that talked to train frequency and  
2 vehicle frequency, we may be able to use that  
3 document as a baseline to start from.

4 MR. GRADY COTHEN: Good point. And one  
5 of our other colleagues mentioned the fact  
6 that we didn't brief on the technical working  
7 group report. We will endeavor to do that  
8 for the next time around. Where can it be  
9 found at this point? It was up on the web  
10 site.

11 MR. WILLIAM BROWDER: On Ron Ries' web  
12 site, we have a hyperlink right to it.

13 MS. SUSAN AYLESWORTH: On FRA's web site  
14 too.

15 MR. RONALD RIES: Both Federal Highway  
16 and Federal Railroad's web site.

17 MR. WILLIAM BROWDER: But yours is easy.

18 One more document that might be  
19 consistent with what you all are talking  
20 about is the Transportation Research Board

21 NHRP study Number 470 which is a data-driven  
22 study of identification of crossbucks by  
23 groups and reaches several conclusions, which  
24 I won't attempt to paraphrase, but you ought  
25 to include it in your efforts. And Tim is

1 probably the reason that the national  
2 committee is using traffic-control devices as  
3 recommended to the FHWA language in support  
4 of yield as a default supplemental sign at  
5 public passive crossings and where diagnostic  
6 studies show it's appropriate, a stop sign.

7 Did I get that right, Peterson?

8 MR: PETERSON: Yes.

9 MR. WILLIAM BROWDER: Thank you.

10 MR. GRADY COTHEN: If some of the  
11 Canadian work is to be believed, and I think  
12 it is, you know, there are crossings out  
13 there where you probably don't want to put a  
14 stop sign because you are going to bring a  
15 heavy truck to a stop at a location where  
16 with available sight distance they're going  
17 to have great difficulty making headway and  
18 clearing the crossing before the train  
19 arrives; location by location kind of  
20 concern. And those circumstances, a yield

21 sign may actually be better. But one of the  
22 really big questions it seems to me in this  
23 proceeding is what should the default sign be  
24 with the crossbuck. And again, as indicated,  
25 that the technical working group was

1 comfortable with the yield signs, certainly  
2 it's an important augmentation to the  
3 crossbuck, wherever the crossbuck stands  
4 alone simply as a matter of communicating  
5 clearly to the motorist what the expected  
6 behavior is. Taking Tim's point, can we say  
7 how effective that is, well, no, we can't. I  
8 don't think we have that data at this point.  
9 I know we are going to bounce around in this  
10 discussion and that's okay because Anya and  
11 Steve are keeping track of where we've been.

12 I think that there was indication  
13 earlier that insurance arrangements really  
14 have not influenced behavior of railroads or  
15 crossing holders. And these are questions,  
16 by the way, that we get asked by the office  
17 of management and budget and by people within  
18 the Office of the Secretary. Any further  
19 comment on that? I would say that certainly  
20 from the Federal Railroad Administration

21       standpoint I'm not aware of significant  
22       influences.

23           MS. SUSAN AYLESWORTH: I can just  
24       comment on my past experience in Vermont  
25       where I worked in a DOT rail office. We

1        tried to legalize a group of private  
2        crossings along a corridor that was going to  
3        carry commuter rail or passenger rail. What  
4        it really amounted to was negotiating  
5        agreements with these landowners who had had  
6        rights not necessarily in writing, but maybe  
7        verbal agreements to cross the railroad  
8        tracks more than 100 years ago. And then  
9        these properties became developed and became  
10       private homes and became very desirable  
11       private homes, so their value increased  
12       significantly. And in each and every case we  
13       were unable to achieve some sort of legal  
14       documents legalizing the crossing because the  
15       property owners refused to procure the  
16       insurance that the railroad requested in  
17       order to finalize the deal. We were unable  
18       to move the negotiation forward. We were  
19       deadlocked. And the railroad obviously was  
20       unwilling to actively close the crossings,

21 and so I think today it's still in limbo.

22 In that instance, the sticking

23 point were the insurance requirements that

24 were being requested of these private

25 landowners. And it was not an insubstantial



1 amount of money even though it might be  
2 divided amongst six properties, but there  
3 were quite a few crossings in there.

4 MR. GRADY COTHEN: In this case the want  
5 of insurance keeps us from seeing whether or  
6 not, had there been insurance in place,  
7 whether or not the underwriter or agent would  
8 have taken some action to evaluate the safety  
9 of arrangements at the location.

10 MS. SUSAN AYLESWORTH: In addition, we  
11 had -- the State had upgraded all the  
12 crossings for the commuter rail line, so the  
13 cost of the installation was borne by the  
14 State and the required easements or whatever  
15 we needed, since these were private rail  
16 lines was obtained. The one piece we can't  
17 do was formally legalize the crossings for  
18 the benefit of both the railroad and the  
19 State by retro of agreement.

20 MR. GRADY COTHEN: New commuter rail and

21 light rail starts are certainly something  
22 that are prominent on all of our horizons.  
23 And there are private crossings along those  
24 railroads as Susan has indicated; an issue of  
25 increasing concern.

1           Metrolink had one of its most  
2 serious accidents early on with a heavy truck  
3 at a private crossing. Thereafter the  
4 crossing was closed, but it's notably  
5 thereafter. There was adequate alternative  
6 access in that case. This goes to the  
7 example that Susan was just raising in that  
8 how should improvement in our maintenance  
9 costs associated with the private crossings  
10 be allocated. Ron has referred to the fact  
11 that very often arrangements are entered into  
12 and the level of activity and presumptively  
13 use of the crossing is maybe light at the  
14 time the arrangements are entered into. Time  
15 passes, and the use of the property changes  
16 or property is enhanced in some way and now  
17 you have heavier or different use. Those  
18 kind of considerations were behind some  
19 primitive guideline statements that we did  
20 back in 1994 suggesting that since the

21 railroad is not able to control the use of  
22 the property, that the holder of the right to  
23 cross should be responsible for enhanced  
24 warning or other engineering improvements  
25 associated with enhanced views.

1           We've heard reference to industrial  
2           and commercial crossings here. An example  
3           was recently cited to me where an eastern  
4           railroad was adding a passive signing  
5           resulting in reevaluation of the status of a  
6           private crossing which potentially could be  
7           blocked as a result of the train's use of the  
8           crossing. So we have things happening on the  
9           rail side and on the side of the crossing  
10          holder and one may not be able to control  
11          what the other is doing. And when you get a  
12          situation like that, sometimes you can't  
13          resort to law, you have to resort to equity,  
14          but how do you turn that into some kind of  
15          regulatory policy. Perhaps Michelle can do  
16          that for us.

17                Comments on who should bear the  
18                burden and why? I think -- let me pause at  
19                something first of all to narrow the field.

20           I think we've heard people say, you know: If

21 we've got public use, public access on a  
22 crossing, so the general public is going to  
23 benefit from safety enhancements to the  
24 crossing, suffer the detriment if they are  
25 not done, that that seems to kind of make a

1 case for public involvement.

2 Now, it doesn't increase the  
3 Section 130 allocation to these folks. It  
4 does not do that. But in the best of all  
5 possible worlds, wouldn't we want the public  
6 to be involved in participating at least in  
7 some way in evaluating conditions at the  
8 crossing and funding improvements?

9 Just to narrow the field; questions  
10 or discussion?

11 MR. RONALD ADAMS: Simple answer, no.

12 MR. GRADY COTHEN: And why not?

13 MR. RONALD ADAMS: For new crossings --  
14 new private crossings, there is a private  
15 owner that's coming to the railroad that's  
16 crossed the property, whether the private  
17 owner may have the underlying fee title, may  
18 not. But he's going to enter into some  
19 agreement with the railroad for that action  
20 whether it's because the state has a

21 prescriptive law that says you shall allow it  
22 or because the railroad may have a business  
23 opportunity by allowing a private crossing.  
24 And they will weigh those benefits versus  
25 what happens at that crossing for new ones



1        anyway. I think the railroad is in the  
2        driver's seat as to what they can require by  
3        agreement with a private property owner; more  
4        difficult I think with the ones that are in  
5        there historically. If there is a change in  
6        character, though, I think the railroad has  
7        to take a serious look at whatever agreement  
8        they can find to say what the character of  
9        that crossing was intended to be originally  
10       and go after enforcement of their agreements  
11       or whatever the document was that created  
12       that crossing.

13                And I know it's 150 years ago, it's  
14       hard to find those things and hard to find  
15       the section foreman that said: Oh, it's all  
16       right if you do this. But I think they have  
17       got to make that effort; time consuming as it  
18       may be, because you can't go to the title  
19       company to find out. If you do, you've got  
20       to tell them to go back to the creation of

21 the railroads to find out what the original  
22 deeds said. And then you've got to know what  
23 the state law was about how they acquired  
24 that property, who actually has the right to  
25 cross the track, whose property really is it.

1       It's not as simple as looking at the deeds  
2       because they might say warranty deed on it  
3       because they may not be.

4       MR. GRADY COTHEN: You suggested a --  
5       kind of tactical reason -- I mean, that the  
6       railroad is in a position to exact --

7       MR. RONALD ADAMS: Something.

8       MR. GRADY COTHEN: -- reasonable  
9       contributions to doing it right. From a  
10      public policy standpoint, is there a  
11      complimentary argument out of a local zoning  
12      law -- the, you know, there are differences  
13      in counties in Maryland.

14      MR. RONALD ADAMS: Yeah.

15      MR. GRADY COTHEN: I'm a Maryland  
16      resident. Between the extent of which a  
17      developer will be asked to contribute to the  
18      roads and sewers and so forth that serve the  
19      common good there with many suggesting that  
20      those public improvements should be financed

21 by those who will ultimately benefit and  
22 profit from sale of the properties. Is that  
23 in addition to the tactile reason that you  
24 suggested, is there a public policy reason of  
25 that sort that we should look to?

1 MR. RONALD ADAMS: In Wisconsin there is

2 pressure on the local units of government not

3 to be able to charge those development fees

4 to a developer. But in a lot of cases, the

5 municipalities, before they will accept

6 jurisdiction of a road, they want them to

7 their standards, and sometimes it's cheaper

8 for the developer not to bring them up to

9 town road or city road standards and keep

10 them as a private road so that the

11 community -- the larger community doesn't pay

12 for the snow removal or the blacktopping in

13 20 years or ten years when it falls apart

14 because there are more trucks on -- even on

15 local development road gets deliveries from

16 heavier vehicles and automobiles. And if

17 it's a condo association or something like

18 that, they forget to build it into their

19 annual fees, they get hit with a big bill at

20 the end of -- when they have to do something

21 on the roads. The locals don't want them if  
22 they are not going to last and the developer  
23 may not want to pay for them to last. And so  
24 again, mandating a crossing become public is  
25 only the first part of the process, I think.

1 It's only a small part of the process as far  
2 as determining who is doing the rest of it  
3 and who is maintaining it. Wisconsin has a  
4 program to pay the railroads for crossing  
5 signal maintenance based on the number of  
6 units, and at this point we don't -- I don't  
7 know if you have any private crossings with  
8 active warning devices, but I don't believe  
9 that those warning device units count towards  
10 that payment. We are supposed to pay  
11 50 percent of the cost of maintenance, but  
12 the appropriation hasn't increased in a  
13 number of years, so it's down to about  
14 25 percent of warning device payments that  
15 the state pays for.

16 MR. ROBERT OPAL: I just want to comment  
17 on the suggestion that the railroads are in  
18 the driver's seat on the question of the  
19 creation of public -- of private crossings or  
20 change of use in public crossings. It's only

21 true that railroads are in the driver's seat  
22 if the railroad has the right either under  
23 it's -- whatever documents may exist or under  
24 state law to say no.

25 And at least in my experience, that



1 very often is not the case and I remember a  
2 case in my Northwestern days in Illinois  
3 commuter territory where a private crossing  
4 which had been a farm crossing had changed  
5 into a -- into a development for -- I think  
6 it was condos, and we tried to get that  
7 crossing closed, and we just could not do it.  
8 And I mean, I think the gentleman from  
9 Wisconsin mentioned a little bit ago about  
10 they have a law in Wisconsin about farm  
11 crossings, but it's been traditionally  
12 expanded to be other kinds of crossings -- if  
13 you don't have the right to say no, you are  
14 not going to be able to -- you are not in the  
15 driver's seat. If the other party can compel  
16 the creation of a crossing, compel its  
17 continuation under state law or simply change  
18 the use without the permission or any other  
19 intervention of the railroad, can't say no,  
20 he's in the driver seat. So I just think

21 that -- I mean, with respect to the question  
22 of looking for documents, sure we are going  
23 to look for documents to the extent any  
24 exists. I mean, in the case of -- it's not  
25 sometimes as easy as you think. For example,

1 in the case of the old Northwestern railroad  
2 which was built in the Chicago area in the  
3 1850s and 1860s, records were all lost in the  
4 Chicago fire. It's not as simple as you may  
5 think.

6 MR. GRADY COTHEN: We've worked our  
7 court reporter so hard, I think it's probably  
8 time for lunch. We really should break now  
9 if we want to get into the cafeteria. Let's  
10 be back at 1:00, please.

11 (Whereupon, the deposition recessed for  
12 lunch.)

13  
14 AFTERNOON SESSION

15  
16 MR. GRADY COTHEN: We are feeling very  
17 lonely up here at the head table, Patty and I  
18 and the others. And so if anyone else would  
19 like to join us here, we would be delighted  
20 to have you. And we'll resume. Hope you all

21 had a good lunch. Anya Carroll is going to  
22 take us back to one of the issues that Susan  
23 raised as we started this activity this  
24 morning.

25 MS. ANYA CARROLL: Grady wants to take a

1       nap, so he asked me to stand up and lead the  
2       discussion on how do we define private  
3       crossings. A number of the speakers who made  
4       opening statements talked about commercial  
5       crossings, talked about industrial crossings.  
6       We heard from CN that they have restricted  
7       and unrestricted crossings. Does anybody  
8       have an opinion of how we start the process  
9       to define or redefine? Maybe that's the  
10      word; redefine private crossings.

11       MR. RONALD ADAMS: I'd say in Wisconsin  
12      our laws define a public crossing as one that  
13      has public roads on each side of it. If it's  
14      a private road on one side and a public road  
15      on the other side, it's a private crossing,  
16      and we have no jurisdiction.

17       MR. RONALD RIES: And that falls in line  
18      with the Federal Highway definition of a  
19      public roadway for use of the funds, have to  
20      be public on both sides of the crossing.

21 MR. GRADY COTHEN: Is that what you  
22 said; both sides?

23 MR. RONALD ADAMS: Yeah, to be a public  
24 crossing it has to have a public road on each  
25 side.

1 MS. ANYA CARROLL: Do the states follow  
2 FHWA guidance then in that you have to have  
3 public roadways on both sides of the  
4 crossing?

5 MR. RONALD ADAMS: We would not spend  
6 federal money without complying with FHWA  
7 rules, for the record.

8 MR. GRADY COTHEN: For the record.

9 MS. ANYA CARROLL: So it may be that FRA  
10 has to partner with FHWA if we want to even  
11 think about redefining what a public crossing  
12 is.

13 MR. RONALD ADAMS: The only money that I  
14 know about that can be spent on private  
15 crossings is through FRA from the High-Speed  
16 Grade Crossing 1103 program, and that's the  
17 only place we get federal dollars to spend on  
18 private crossings.

19 MR. RONALD RIES: That was done through  
20 statute.

21 MR. RONALD ADAMS: It was done through  
22 statute, correct.

23 MR. ROBERT OPAL: The issue I heard this  
24 morning was not really what is a public  
25 versus a private crossing, because I think



1 that's pretty well established. The real  
2 issue is: What are the different types of  
3 private crossings, because they differ  
4 significantly. And that's what I heard this  
5 morning. Maybe somebody else heard something  
6 else.

7 MR. GRADY COTHEN: And that's where she  
8 is going next. But we wanted to start out  
9 with --

10 MS. ANYA CARROLL: But I wanted to  
11 establish what the process is. I mean, it  
12 looks like we have to go to Federal Highway,  
13 it has to be a partnership among federal  
14 organizations to actually redefine what this  
15 is.

16 MR. WILLIAM BROWDER: Unless you  
17 redefine what a public crossing is.

18 MS. ANYA CARROLL: Okay. So that's  
19 another option.

20 MR. GRADY COTHEN: Is there any problem

21 with the Federal Highway Administration

22 definition? Does it get us in trouble

23 anywhere?

24 MS. SUSAN AYLESWORTH: Grady, I'll give

25 an example. If the Department of Natural

1 Resources has an access road to some sort of  
2 recreational spot and it's not a local road  
3 authority, we don't assume that that is a  
4 public crossing even though the public will  
5 drive down that access road to get there.  
6 That's a crossing owned by a state agency.  
7 We don't think it complies with the  
8 definition of a local road authority. I  
9 could be wrong on that, but we would assume  
10 that that would be a private crossing. So  
11 that's some of the conundrum that we have  
12 that we would not spend federal monies on a  
13 crossing in that context where both sides of  
14 the road are owned by another state agency.

15 MR. WILLIAM BROWDER: And another common

16 example that exists is where you have a  
17 public dump and the private road to the  
18 public dump is maintained by the landfill,  
19 county or local or even state agency, those  
20 crossings. And we've had several Amtrak

21 incidents in Florida at private crossings

22 like that.

23 MS. PEGGY BAER: Ron, you may remember

24 this one in Davenport where the Levy

25 Association owns some property on the other

1 side of the track and there is a crossing,  
2 but the Levy Association is not considered a  
3 highway authority, so it's a private  
4 crossing.

5 MS. ANYA CARROLL: Getting back to  
6 Grady's generic question, is there a problem  
7 with the definition of public crossings? Do  
8 we need to look at the definition of public  
9 crossings in order to address the other  
10 issues that we've been talking about this  
11 morning, commercial crossings, industrial  
12 crossings, natural resource crossings, farm  
13 crossings? I don't know how many -- maybe we  
14 want to talk about type before we go there.  
15 I don't know. Should we redefine public?

16 MR. WILLIAM BROWDER: I think that's a  
17 question you should put out there to  
18 investigators.

19 MS. ANYA CARROLL: In terms of public  
20 crossings, apparently a public crossing is

21 one that has public roads on either side of  
22 it, correct?

23 MR. RONALD ADAMS: Not necessarily. It  
24 could be a bike path, it could be a  
25 pedestrian crossing that's public. It may

1 not be a motor vehicle crossing.

2 MS. PATRICIA ABBATE: But if the access  
3 is a public road --

4 MR. RONALD ADAMS: Or a publicly owned  
5 path.

6 MS. PATRICIA ABBATE: Publicly owned.

7 But yet there are many crossings -- private  
8 crossings where the public passes, and lots  
9 of public. So maybe you do have to redefine

10 what that means if the public is at risk at  
11 these areas; even if it's privately owned or  
12 corporately owned or commercially owned.

13 Because these people have to be protected  
14 some way and you have to start somewhere, and  
15 safety is the number one issue. But who is  
16 responsible for that and there are shades of  
17 gray there. Maybe this is a good question to  
18 investigate.

19 MS. ANYA CARROLL: Any comments?

20 MR. GRADY COTHEN: For the purpose of

21       this proceeding, is there any objection to  
22       considering a private crossing to be all  
23       crossings other than those nominated as  
24       public by the Federal Highway Administration,  
25       that is the scope of things we are going to



1 look at?

2 MR. RONALD ADAMS: Current Federal  
3 Highway definition?

4 MR. GRADY COTHEN: (Nods.)

5 MR. RONALD ADAMS: Okay. I would go  
6 with that.

7 MR. GRADY COTHEN: So we would be  
8 looking at these other circumstances that  
9 you've identified as areas of need in the  
10 sense that there is not a federal funding  
11 authority, there's no clear delineation of  
12 responsibility, questions regarding  
13 applicability of MUTCD and so forth.

14 MR. RONALD ADAMS: I also don't think it  
15 would be as simple as changing the FHWA  
16 definition of what a public crossing is to  
17 make the ones that are termed private,  
18 public. I think it's -- you are going to get  
19 bogged down in state and local jurisdictions  
20 and precedents and all that kind of stuff.

21 MR. GRADY COTHEN: Sure.

22 MS. ANYA CARROLL: Well, let's pick up

23 where Grady left off. What are categories

24 of -- other than public crossings? I mean,

25 we heard a lot of discussion earlier this

1 morning.

2 MR. ROBERT OPAL: Farm crossings,  
3 industrial, other commercial, residential,  
4 parens, similar to driveways, close parens,  
5 residential, parens, similar to private  
6 driveways, residential multiunit in-plant, I  
7 guess that's a form of industrial in-plant.  
8 There's two types of industrial, industrial  
9 in-plant, industrial --

10 MR. RONALD RIES: Provides access.

11 MR. ROBERT OPAL: Yeah, industrial  
12 access versus industrial in-plant. That's my  
13 two cents worth.

14 MS. ANYA CARROLL: Anything else that  
15 you want to add to the list?

16 MS. SUSAN AYLESWORTH: I would add  
17 recreational to the extent that our  
18 interpretation is correct.

19 MR. ROBERT OPAL: Right. Do we want to  
20 talk about non-vehicular since that was

21 mentioned; pedestrian, bike trails, might be  
22 recreational with a subset.

23 MR. DAVID PETERSON: Institutional, say  
24 like universities. And an additional one  
25 would be government or public facilities.

1 MS. MIRIAM KLOEPPEL: That would cover  
2 the municipal dump sort of situation?

3 MR. DAVID PETERSON: It would cover  
4 military bases too.

5 MR. ROBERT OPAL: Another one is  
6 internal railroad facility crossings.

7 MR. TIM DEPAEPE: I don't know that you  
8 want to creep into that area. I mean, if you  
9 are going to regulate it all or -- I mean,  
10 like Proviso Hump Yard, there's tracks all  
11 over once you get in the facility off the  
12 public road. You'd almost have to carve out  
13 a niche for the railroads because there is no  
14 way you would want to put, you know, grade  
15 crossing equipment at all of those within the  
16 facility itself.

17 MR. GRADY COTHEN: Yeah, I think we are  
18 trying to account for categories here so that  
19 we don't do things that are inappropriate,  
20 you know, make appropriate distinctions.

21 MR. TIM DEPAEPE: Right.

22 MS. ANYA CARROLL: Anybody else? Any

23 other types of crossings that you've seen on

24 your railroad, in your state, in your local

25 area?

1           Some of the regional FRA folks?

2           Anything else?

3           MR. BENNIE HOWE: In our situation, we  
4           have a couple cases where there is also two  
5           categories of the military base. For --  
6           Leavenworth, for example, has an access road  
7           plus inner -- like you have inner plant  
8           industrial. And we do some regulations in  
9           there; although we were told once we entered  
10          that gate we are not in Kansas anymore.

11          (Laughter.)

12          MR. DAVE PETERSON: There is one more  
13          important category that I believe is missing;  
14          would be farm crossings, field farm  
15          crossings.

16          MS. ANYA CARROLL: That was the first  
17          one signed, Dave, the column. We couldn't  
18          get the engineers in fast enough to remove  
19          the column before we had the meeting. Are  
20          there different kinds of farm crossings? We

21 started to talk about government facilities,  
22 military facilities, access versus  
23 inter-plant in railroad yards. Are there  
24 distinctions amongst the farm categories that  
25 you want to bring out? I know temporally



1 some farm crossings are used in the summer  
2 and not in the winter -- or I'm sure it  
3 varies per region. Are there access versus  
4 inter-field, inter-plant on farm crossings  
5 you are concerned about?

6 MS. PEGGY BAER: In Iowa we have  
7 farm-to-farm or road-to-farm crossings, but  
8 under our state law there is also  
9 agricultural-use private crossings. And the  
10 one I'm thinking of is -- I got a call on the  
11 Burlington Northern line where it's a hog  
12 farm and they haul the hog waste across the  
13 track to the sewage dump.

14 MR. WILLIAM BROWDER: One more that I  
15 don't see really defined are temporary  
16 private crossings. And this probably was a  
17 big thing I can think that CSX had a big  
18 issue with this -- and may still have it with  
19 respect to logging and people cutting timber  
20 and even having agreements for temporary

21 private crossings on the railroad.

22 MS. SUSAN AYLESWORTH: Add to that

23 temporary private. We get a lot of requests

24 for contractors crossings. They may be

25 longer term, one to two years, but

1 construction crossings or contractor  
2 crossings for a duration of a particular  
3 project.

4 MS. ANYA CARROLL: I think we are on a  
5 roll now, everybody seems to be engaged.

6 What do you think if we take these numerous  
7 ones and try and generalize, commercial  
8 industrial -- it may help in the long run to  
9 have discussions about these things in that  
10 general framework because there may be  
11 certain characteristics of commercial  
12 crossings versus industrial versus farm.

13 MR. GRADY COTHEN: I don't know whether  
14 this takes you beyond where you want to go at  
15 this point --

16 MS. ANYA CARROLL: Okay.

17 MR. GRADY COTHEN: -- Anya, but the  
18 category of crossing may not correspond  
19 precisely to who the users are, the  
20 population of users. And I think, you know,

21 obviously residential -- for instance,  
22 residential seems to be obviously simple, but  
23 perhaps it's not because in addition to the  
24 person who maintains the residence, and let's  
25 take the simple case of an extended driveway,

1 that person also will have business guests on  
2 the property from time to time. You know,  
3 unless they are handier than I am, the  
4 plumber is going to come out, the electrician  
5 is going to come out, maybe a yard service  
6 will come out if they're really prosperous  
7 and so forth, so you have various members of  
8 the public entering as business guests on the  
9 property. And the extent of that may  
10 influence how you want to treat it.

11 MR. WILLIAM BROWDER: May not just be  
12 invited guests, it may be U.S. Postal Service  
13 or FedEx and DHL and those people providing  
14 services; not even solicitors.

15 MR. GRADY COTHEN: Right. Correct.

16 MR. ROBERT OPAL: Well, the functional  
17 differences between some of these have to do  
18 with the number and types of people that may  
19 be using these types of vehicles that use the  
20 crossings, the periods of the year in which

21 they are being used and things of that  
22 nature. The residential private driveways  
23 probably are going to be primarily the owner  
24 plus his contractors and guests. The  
25 multiunits probably going to have a lot more

1 general public just because of the nature of  
2 the structure. The industrial crossing is  
3 going to have general public plus big  
4 machines. The farm crossing has big machines  
5 not used as much, but they may be so large  
6 that you can't, for example, use  
7 conditional -- any kind of things we consider  
8 to be crossing signage because the combine  
9 will take it out; I mean, just a few  
10 observations I have.

11 MR. GRADY COTHEN: We are working at  
12 three levels at least here, the category of  
13 crossing, the type of user and the nature of  
14 the traffic, motor vehicles, industrial  
15 equipment, boats. Some of our favorite  
16 crossings in the FRA have been accesses to  
17 marinas, particularly in the northeast  
18 corridor where after 20 years of work we  
19 still got, I think, 12 left in the north end.

20 MS. ANYA CARROLL: Any other attribute

21 that anybody can think of that would help us

22 look at the functional category of crossings?

23 MR. BENNIE HOWE: I think that volume

24 has to be involved in there somewhere because

25 there is a big split on residential between



1 private -- going to one home and going into a  
2 trailer park or something. I think we have  
3 both of those in our region. And I think  
4 there has to be a distinction made there.

5 MS. ANYA CARROLL: For railroad, highway  
6 and other volume, traffic volume.

7 MR. BENNIE HOWE: I was thinking of  
8 traffic, but I suppose they both could make a  
9 big difference. I mean, we have some  
10 places -- different subject, but a private  
11 crossing goes into a Wal-Mart. And the  
12 Marina is, Peggy, all along this bank of the  
13 Mississippi River just, you know, up over the  
14 levy, just little sand crossings going over  
15 to the river, fishing or cabins or something  
16 like that; from here all the way to forever  
17 south.

18 MS. ANYA CARROLL: So how would we --  
19 how would we put that in a functional sense  
20 as far as the roadway is concerned? What we

21 are talking about is it's -- right now it's a  
22 private crossing going into a Wal-Mart or  
23 it's a private crossing going into somebody's  
24 private cabin on a lake. How do we  
25 categorize what we are looking for? Is it

1 use?

2 MR. RONALD RIES: Seems like that sort  
3 of goes to the question about public purpose  
4 and public use, seeing if there is a general  
5 open invitation for the public to come in  
6 like a Wal-Mart or an open boat ramp where  
7 the general -- anyone would be open to use  
8 it, this one type. Another would, you know,  
9 is this my home? If it's not -- I don't  
10 expect everybody to come in and drive over my  
11 crossing. So that might be one way of  
12 looking at it.

13 MR. JIM KRIEGER: I just wanted to  
14 mention that comment, it might be restricted  
15 or unrestricted how to describe it.

16 MS. SUSAN AYLESWORTH: Have we captured  
17 use that is not necessarily permitted, people  
18 who are trespassing or people who are just  
19 accustomed, the crossing is there, the owner  
20 may be absentee and people have just decided

21 they can cross there as sort of a -- it is a  
22 trespasser because they are not invited, it's  
23 not a public crossing, but it's  
24 common-to-common usage because of its  
25 location and access to something that people

1 are interested in. So it could be a farm  
2 crossing that leads to a wooded area that the  
3 kids like to go hang in because nobody sees  
4 that they are there or something like that.

5 MS. ANYA CARROLL: How would we define  
6 that?

7 MR. BENNIE HOWE: How about lovers'  
8 lane?

9 MS. ANYA CARROLL: I don't think lovers'  
10 lane is going to be one of the categories.

11 MR. GRADY COTHEN: We called them woods.  
12 This is -- the lawyers, right, Bob, would say  
13 this is really access to an attractive  
14 nuisance is what this is.

15 MS. MIRIAM KLOEPPPEL: Might interject at  
16 this point, these are very interesting  
17 elements that might help us categorize the  
18 private crossings, almost none of them are  
19 data that we have, and I'm curious to know  
20 whether people would find it useful to

21       conduct a massive inventory effort similar to  
22       what we did in the 1970s to collect this kind  
23       of information.

24           MS. SUSAN AYLESWORTH: We are in the  
25       process of doing an inventory of our public

1 at-grade crossings. We ambitiously thought  
2 we could inventory 1,500 crossings a year for  
3 a three-year cycle where every crossing would  
4 be inventoried every three years. Well, that  
5 was a little ambitious, we had one person  
6 doing it, so we probably inventoried  
7 two-thirds in the last three years. So  
8 really more like 1,000 a year. We have about  
9 2,000 or so, 2,500 private crossings in the  
10 state. The difficulty with inventorying  
11 private crossings is they are not easily  
12 locatable. Some of them are on roads that no  
13 longer look like roads, some of them are in  
14 between cornfields. So we have limited  
15 information on the location working off of  
16 either the FRA database or our own database.  
17 So I'm not sure we could even capture all of  
18 them if we went out on an inventory effort.  
19 But then you come to the question of  
20 resources. I mean, certainly that is an

21 issue that is always present, we would have  
22 to take that person who we have, take them  
23 away from doing the public crossing inventory  
24 and assign them that private crossing  
25 inventory activity which I would presume



1 would take a lot longer to do.

2 MR. RONALD ADAMS: Some of that  
3 information that's been mentioned about site  
4 distances, we don't even have that on public  
5 crossings in the database. So not only would  
6 you have to find it and identify the private  
7 crossings and gather all of the data that's  
8 in the inventory, but you would have to go  
9 out and reinventory for specific items on the  
10 public crossings that we already know about.

11 And we haven't really talked about pedestrian  
12 crossings, but in the inventory we frequently  
13 don't know if those are public or private at  
14 this point. And it gets confusing, it's  
15 difficult to ferret it out.

16 MR. LYN HARTLEY: BNSF Railroad, I don't  
17 want to discourage my friends at the FRA, but  
18 then the next question is: What database are  
19 you going to house this data in, are you  
20 going to create a modern easily maintainable

21 database to keep the data in? We certainly  
22 don't want to perpetuate what we have today.  
23 If any of the states as Susan has indicated  
24 have already done reinventory, they may or  
25 may not be sharing that because of

1 incompatibility of state databases and FRA  
2 databases.

3 MS. MIRIAM KLOEPPPEL: I guess I'm hoping  
4 for people to come up with suggestions.

5 Obviously the old way of doing things would  
6 be very cumbersome. If anyone has  
7 suggestions for ways to gather information  
8 using modern technology, I'd be very open to  
9 hearing them.

10 MR. TIM DEPAEPE: Track inspectors  
11 inspect the track on a weekly basis, there  
12 would be nothing -- they have high-rail  
13 vehicles that they have to use to inspect the  
14 track. And I'm not going to speak for the  
15 railroads here, but it would not be much of a  
16 burden to just tell the guy: Mark down the  
17 milepost. If they have some way to do it  
18 with GPS tracking, I know that some railroads  
19 are doing that now, but just when you go  
20 through your territory, just put down the

21 milepost of every private crossing, and then  
22 you'd capture them all. And then turn it in  
23 somehow, you know, to the FRA or whoever  
24 wants to maintain the database.

25 I mean, that's one way you could

1 get the information without -- it's not like  
2 you are having them make a special trip, as  
3 part of his inspection he can just note that.  
4 It would be in small enough bundles, you  
5 know, that they could get it done.

6 MR. ROBERT OPAL: It might get you  
7 locations, but it doesn't get you types  
8 because some of these types aren't evident  
9 just from the -- I mean, some of them are,  
10 some of them aren't. You just don't know  
11 from just the tracks.

12 MR. WILLIAM BROWDER: I'm not in a  
13 position to make a statement for the railroad  
14 industry or for the AAR, but to answer Lyn's  
15 question and Miriam's comments, I would  
16 suggest that the railroads and others make  
17 concrete recommendations to the FRA at the  
18 series of public hearings that they conducted  
19 in connection with the revision of the grade  
20 crossing inventory form. And to date I

21       haven't seen any results of those hearings,  
22       but I know they were on your web site and  
23       that the railroads made a number of specific  
24       recommendations to improve the inventory.  
25       And you might want to look at those

1 recommendations in consideration of this  
2 issue.

3 MS. MIRIAM KLOEPPEL: Be happy to.

4 MR. RONALD RIES: The inventory manual  
5 is in the process of being revised and  
6 updated and are working forward to getting  
7 the public -- making public the changes that  
8 came out of the inventory. And also, Lyn, we  
9 have a pilot project going -- undergoing now  
10 transferring inventory information using the  
11 web through an XML format, which doesn't mean  
12 anything to me, but from what I understand it  
13 will take almost any format and we'll be able  
14 to do it real-time on the web. So we are  
15 working on ways to facilitate exchanging  
16 information with states and railroads with  
17 the inventory.

18 MR. WILLIAM BROWDER: I think that much  
19 more addresses Lyn's question, that is the  
20 process rather than the physical properties

21 of the inventory.

22 MS. SUSAN AYLESWORTH: I would add

23 another comment, that, to the best of my

24 knowledge, the railroads are in the best

25 position to know what a private crossing is



1 and what isn't. I mean, I would guess at  
2 this point they would have some record, which  
3 is why we don't go out and make that  
4 determination. I'm assuming that they have  
5 that information and are able to get it.

6 There are certain circumstances where that's  
7 not possible, but I believe they have the  
8 best information available, certainly better  
9 than ours.

10 MR. LYN HARTLEY: I'm going to point out  
11 the obvious. The state DOTs by definition  
12 this morning know what public crossing is.  
13 So if you know what a public crossing is,  
14 therefore by default, the balance are  
15 private. I would say the states are in equal  
16 position to determine a public crossing as a  
17 railroad is to determine a private crossing.

18 MS. SUSAN AYLESWORTH: That is true if  
19 the private crossing has access to a public  
20 road. But commonly if it's between two farm

21 fields and there's a farm road leading to it,  
22 we wouldn't necessarily send our guy down the  
23 farm road to look for a private crossing. So  
24 in those instances, it's not as easy for us  
25 to discern whether there is even a crossing

1 in that location. And that's why I'm saying  
2 you might have better information about that  
3 than we do.

4 MR. LYN HARTLEY: Okay.

5 MR. WILLIAM BROWDER: I've got a  
6 question for Minnesota. Are you one of the  
7 30 states that participates in the FRA  
8 inspection program?

9 MS. SUSAN AYLESWORTH: Tim, do you want  
10 to answer that?

11 MR. TIM DEPAEPE: We do not.

12 MS. SUSAN AYLESWORTH: Too expensive.

13 MR. WILLIAM BROWDER: Okay. Then I  
14 would challenge your contention of not being  
15 able to get down if you had an inspector with  
16 the state that had an inspection.

17 MS. PEGGY BAER: Well, we do have track  
18 inspectors, state track inspectors, two of  
19 them. And from my perspective, that would  
20 not be the highest priority I would want my

21 track inspectors working on, is identifying  
22 farm crossings. They have a bigger job than  
23 that. So I don't know that it's something  
24 that would be priority.

25 MR. DAVID PETERSON: I'd like to just

1 comment on Susan's statement that the  
2 railroads have a better understanding of  
3 private crossings. The one area where  
4 railroads have a classic gap on private  
5 crossings is when a private landowner goes  
6 through the land use commission of whatever  
7 regulatory body or community they are in and  
8 has a private road converted to public,  
9 frequently the railroads are not notified  
10 that that occurs. And most states there is  
11 not a mechanism in place to formally notify  
12 the railroad or in many cases the DOTs that  
13 the designation has changed until such time  
14 as an incident occurs at the crossing, and  
15 then that becomes made available to us when  
16 we do the reporting.

17 MS. SUSAN AYLESWORTH: I would agree  
18 with Dave Peterson, that we don't get  
19 informed for local planning activities when  
20 crossings are converted from private to

21 public for development purposes. Every once  
22 in a while we'll get a phone call, but very  
23 seldom, so our database would be in error in  
24 that instance also.

25 MR. RONALD ADAMS: Wisconsin, if they

1 haven't made any public road on the other  
2 side, it's still a private crossing no matter  
3 what they've done to develop the other side,  
4 it's away from the road. Even if they have  
5 gone to the locals and gotten some massive  
6 rezoning on the other side of the railroad,  
7 it's still a private crossing by definition,  
8 unless the road authorities have taken  
9 jurisdiction of that.

10 MR. ROBERT OPAL: I don't think that's  
11 what he's saying. I think he's saying the  
12 road on both sides has changed from private  
13 to public. We don't --

14 MR. DAVID PETERSON: That is exactly  
15 what I'm saying, Ron. The notification when  
16 a public road authority takes over ownership  
17 of the road in many jurisdictions does not  
18 include notification of the railroads or the  
19 state's regulatory body that keeps track of  
20 the crossing inventory. So we don't even

21 know to change the warning devices to make  
22 them conform with what should be at a public  
23 road. It may be that way, but we may not be  
24 formally notified.

25 MR. RONALD ADAMS: It may or may not be



1 a public crossing, because in Wisconsin the  
2 office of the commissioner hasn't ruled that  
3 it is. That's a question I don't know the  
4 answer to.

5 MS. ANYA CARROLL: What other -- maybe I  
6 can ask another question: What other  
7 organizations do you work with on a daily  
8 basis that might have this information? Does  
9 somebody like AASHTO? Does -- I mean, there  
10 is the regional federal highway folks. Who  
11 else can we lean on to be a partner in trying  
12 to at least identify the problem and the  
13 issues that we need to address? What other  
14 partners can we reach out to?

15 MR. WILLIAM BROWDER: Who are you  
16 reaching out to?

17 MS. ANYA CARROLL: You mean the data  
18 collection or the entire issue of private  
19 crossings?

20 MR. WILLIAM BROWDER: Either one. Take

21 your choice. I don't understand the

22 question.

23 MS. ANYA CARROLL: What other private or

24 public entities can FRA reach out to to try

25 and collect data or try to bring into these

1 public meetings for their input that might be  
2 useful to move forward?

3 MR. WILLIAM BROWDER: You have FHWA.

4 MS. ANYA CARROLL: I don't think we do.

5 MR. WILLIAM BROWDER: I mean, you have  
6 it on your list.

7 MS. ANYA CARROLL: Yes.

8 MS. MIRIAM KLOEPPEL: Yes.

9 MR. WILLIAM BROWDER: The National  
10 Committee on Uniform Traffic Control Devices,  
11 railroad committee in particular, they are  
12 working on a number of areas to deal with  
13 private crossings and two of their  
14 representatives are on FRA's staff. AASHTO,  
15 AREMA, AFTA, TRB. I'm sure there are some  
16 others that have some better suggestions than  
17 me.

18 MR. ROBERT OPAL: Bill, any of those  
19 organizations likely to have data on public  
20 and private crossings?

21 MR. WILLIAM BROWDER: TRB is, I know  
22 that. It might be that BTS and a program  
23 that's out there that may have data, I'd have  
24 to look at it, it might be the FARS system  
25 under the -- it's NHTSA may have data on

1 public versus private crossings. I'm not  
2 sure anymore. They collect data, whether it  
3 includes delineation of public versus  
4 private, I'm not sure. And I'll tell you  
5 another that nobody -- you talked all around  
6 it, but you haven't confronted them, is NTSB.

7 MS: PEGGY BAER: Bill, what does FARS  
8 stand for?

9 MR. WILLIAM BROWDER: Fatal analysis  
10 reporting system. Every time a policeman  
11 makes out a report on a highway fatality,  
12 that's completed. It's about a 10- or  
13 12-page report on that fatality and submitted  
14 to NHTSA.

15 MS. PEGGY BAER: Which stands for the...

16 MR. WILLIAM BROWDER: The National  
17 Highway Traffic Safety Administration.  
18 They're part of these guys. I don't know  
19 that they'll ever admit it.

20 MR. GRADY COTHEN: This is information

21 the FRA periodically compares the fatalities  
22 as reported through the FARS system with the  
23 fatalities reported under the RAIRS system,  
24 Railroad Accident Incident Reporting System.  
25 And the general finding is that our database

1 is more complete and more accurate as to  
2 location. And in most cases there is a  
3 discernable and assigned crossing number  
4 which has an identity in the database as  
5 public or private; whether that's correct or  
6 not may be something else, but it has an  
7 identity in the database. So we do pay  
8 attention to that resource, but we find that  
9 the filters that that has to go through and  
10 the lack of knowledge probably on the part of  
11 the collecting official regarding the  
12 railroad side issues makes it less reliable  
13 than the data that we collect through the  
14 railroads.

15 MS. ANYA CARROLL: How about users of  
16 some of these crossings, do they have a stake  
17 in safety of these crossings? We talked  
18 about commercial, industrial, do some of  
19 these plants or, you know, industries that  
20 need access to their plants, do they have a

21 -- do they know how many trucks they -- you  
22 know, frequent that crossing on a daily  
23 basis? What types of trucks? Oil trucks?  
24 I'm just trying to figure out what other  
25 organizations might have an interest in



1 attending these public meetings. This is the  
2 first one that we are holding on a series of  
3 currently four we have scheduled, and we  
4 would like to be all inclusive in bringing  
5 everybody to the table to talk to the issues  
6 so that we collect a world of information.

7 MR. ROBERT OPAL: Well, individual  
8 industries would certainly know what their  
9 truck traffic is in and out. But I think the  
10 real issue is whether there is some kind of a  
11 compilation that would show use of a  
12 particular category at a grade crossing. I'm  
13 not aware of anything like that.

14 MR. RONALD RIES: I'm not either.

15 MS. ANYA CARROLL: How about federal  
16 motor carriers, they are a new partner in  
17 DOT, right, relatively new?

18 MR. ROBERT OPAL: Well, a lot of  
19 trucking occurs with private trucks, though,  
20 so that only gives you part of the picture.

21 MR. WILLIAM BROWDER: The only segment  
22 of the industry, and I was going to mention  
23 this as one that does identify and develop  
24 data on it, is the school bus industry. And  
25 they do develop information on highway-rail

1 grade crossings that impact school buses.

2 The NTSB has got data on highway-rail grade  
3 crossings within the highway segment rather  
4 than the railroad segment of their  
5 organization setup.

6 MS. MIRIAM KLOEPPEL: Not entirely.

7 MR. WILLIAM BROWDER: Well, they have a  
8 recommendation -- data and recommendation  
9 section. I know you worked in that. But  
10 it's very confusing to an outsider like me to  
11 reconcile data from the NTSB with the FRA,  
12 and a lot of people choose to ignore the NTSB  
13 data. But there may be categories collected  
14 that Anya may be interested in that we don't  
15 know about.

16 MS. ANYA CARROLL: We'll put them on the  
17 list.

18 MS. MIRIAM KLOEPPEL: We can talk with  
19 them. But typically what they have is  
20 isolated -- I mean, they would do case

21 studies. FRA will have a much fuller list of  
22 the accidents that occur. The NTSB will  
23 investigate a couple of accidents every  
24 couple of years. We will be happy to talk  
25 with them, though.

1 MR. GRADY COTHEN: They do publish data  
2 annually, but generally it's data obtained  
3 from the DOT. And then it's reorganized  
4 sometimes so that you get light rail and rail  
5 combined, for instance. FRA also publishes  
6 on the web currently rail transit as well as  
7 FRA data for convenience at the request of  
8 OIG.

9 MS. ANYA CARROLL: Would FTA be a  
10 partner here as well?

11 MS. MIRIAM KLOEPPPEL: I think so.

12 MS. ANYA CARROLL: And we've heard lots  
13 of things from our railroad friends. What  
14 are some railroad organizations that might  
15 have information? We've got the AAR was  
16 represented today.

17 MR. ROBERT OPAL: Some of the ones that  
18 Bill gave you are railroad organizations.

19 MS. ANYA CARROLL: How about short  
20 lines?

21 MR. TIM DEPAEPE: ASLRRRA, American Short  
22 Line and Regional Railroad Association.

23 MS. ANYA CARROLL: Aren't they supposed  
24 to provide the technology?

25 MR. TIM DEPAEPE: Well, they provide the

1 technology, but they wouldn't know where any  
2 of this -- where the crossings or things like  
3 that are.

4 MR. ROBERT OPAL: Probably the military  
5 has all this information somewhere in some  
6 database that probably we can access.

7 MS. ANYA CARROLL: Well, Grady mentioned  
8 the old rail garrison. You never know.

9 MR. WILLIAM BROWDER: I'm not  
10 qualified --

11 MS. ANYA CARROLL: Then we bring in DHS.

12 MR. WILLIAM BROWDER: Who keeps track of  
13 that data?

14 MR. GRADY COTHEN: The --

15 MR. WILLIAM BROWDER: You, me? Anybody  
16 else?

17 MR. GRADY COTHEN: The Strategic Rail  
18 network is defined between DOT and the  
19 Department of Defense, and the FRA Office of  
20 Policy can tell you at any given time which

21 segments are part of --

22 MR. WILLIAM BROWDER: But they don't

23 keep any separate information on data that

24 might be different in the FRA or more

25 categories or different categories.



1 MR. GRADY COTHEN: I'm not aware of

2 anything that's relevant to what we are doing

3 here. There may be something, but I'm not

4 aware of it. I think that -- granted that

5 there are a lot of people that we want to

6 reach out to, and these perspectives we want

7 to understand. I mean, I think we've met the

8 enemy, and he is us.

9 You know, the folks represented

10 here, by in large, are the folks who have

11 some knowledge and access to information that

12 is going to be critical to solving the

13 problem. And it doesn't mean we can't reach

14 out, we certainly can.

15 We had representatives from the

16 Twin Cities and western here, members for the

17 Atlanta association today, that's when

18 railroads are represented, their officers --

19 those FRA personnel participate in AREMA

20 committees. And it -- certainly a lot of

21 different organizations that represent there  
22 that have an interest and some relevant  
23 perspectives to bring to bear. But I think  
24 when we start going looking for data, we are  
25 going to find there are a very limited number

1 of sources of the highly detailed data that  
2 we need.

3 I've got just some interim action  
4 items here. Go ahead, Susan.

5 MS. SUSAN AYLESWORTH: I just wanted to  
6 make a comment about FHWA for a moment. And  
7 I don't know if this is shared by the other  
8 states, but we met with our FHWA safety  
9 person recently, and honestly, FHWA has very  
10 limited interest in railroads and railroad  
11 grade crossings because it represents such a  
12 negligible portion of the total number of  
13 accidents in a state any given year. And  
14 because their resources are constrained, the  
15 time and attention they can devote to the  
16 Section 130 program is limited. So I just  
17 want to make a statement that even though we  
18 feel that highway-rail grade crossings are  
19 highways and highway related, the closest  
20 federal agency we work with is the FRA who

21 really doesn't have the type of jurisdiction  
22 over the type of warning devices at FHWA. So  
23 it is a little bit confusing for us to be  
24 working with an agency that doesn't have much  
25 time for us and then to work closely with an

1 agency that has time for us but doesn't  
2 really have the kind of jurisdictional  
3 authority over the very thing that we are  
4 working on.

5 And part of the problem our funding  
6 is so short is because we are a highway  
7 agency, now more commonly referred to as a  
8 transportation agency, general philosophy is  
9 that the highways get most of the attention,  
10 hence most of the money.

11 So even within our own  
12 organization, if we were to request  
13 additional funds for the purpose of going out  
14 and serving private crossings, I think given  
15 the current financial situation in Minnesota,  
16 it would not be a successful appeal. I think  
17 we would end up with no additional money for  
18 that, because there is so many competing  
19 highway priorities that are going on within  
20 our agency.

21           So just to sort of give you an  
22           overview of what we are dealing with. You  
23           know, frankly, we have been told: You only  
24           killed eight people last year. And, you  
25           know, the State of Minnesota killed -- the

1 highway department killed 600; eight versus  
2 600 gets us out of the room. We are told to  
3 leave. We're not even part of the core  
4 safety program because we kill so few people.  
5 So just -- you need to carry that prospective  
6 on. Even if we were to add the deaths at  
7 private crossings, if we had that  
8 information, I don't think we'd get 12 people  
9 killed or 14 people killed. And we injure  
10 about -- we have about 70, 80 accidents a  
11 year, some of which are injury accidents. So  
12 really by comparison it's a big ho-hum for  
13 our state right now. It's not a high  
14 priority. It has been in the past, but --  
15 and it isn't right now. And I think we need  
16 to keep that in mind as we pursue this, that  
17 there may be few, if any, resources that we  
18 could put together to do anything.

19 MR. GRADY COTHEN: And we understand

20 that perspective and seen it mirrored at the

21 national level and we understand why that  
22 perspective is brought to bear. At the same  
23 time we do work cooperatively with the  
24 Federal Highway Administration, National  
25 Highway Traffic Safety Administration, the



1 FDA and others at DOT on these issues, and we  
2 help one another out a lot. And we  
3 appreciate you all taking the limited time to  
4 help us out here today.

5 You know, it's probably -- you want  
6 to define one of the worst kinds of public  
7 policy problems, this would certainly fall in  
8 the ballpark. It would be a candidate for  
9 that set because we have, you know, nobody  
10 responsible. But we all feel a sense of  
11 responsibility, and we all try to contribute  
12 something. We have limited resources,  
13 granted we have limited resources,  
14 transportation system that's craving  
15 resources, whether it's private railroad or  
16 the highway department. And we have a  
17 certain amount of risks that we are  
18 tolerating here unwillingly, we're at 35, 40  
19 fatalities and many serious injuries  
20 annually, but distributed, you know, over

21 90,000-plus locations with many disparate  
22 characteristics.

23 So, you know, when you want to talk  
24 about a problem at -- that can't -- it just  
25 isn't going to get solved, this is it, it's

1 not going to get solved. And at the same  
2 time we know from our experience that this is  
3 not the first problem to be so characterized.  
4 In the Federal Railroad Administration over  
5 the years, we work through them one by one  
6 and made some headway. Nothing has been  
7 solved ultimately and to the complete extent.  
8 We've been able to make headway together on a  
9 lot of these problems.

10 I think there's some things that we  
11 need to do, and I'm not at all going to cut  
12 off the discussion, but I wanted to sum up  
13 before I lost the thought some things that we  
14 need to do. We'll continue outreach, we had  
15 a very long list of people to whom we've made  
16 initial outreach prior to this meeting. We  
17 have some other additional letters going out  
18 and, you know, we'll make sure that we hit  
19 all the bases in terms of the organizations  
20 involved. But if there is something that you

21 all in the room can do for us because you  
22 served, for instance, on an AREMA committee  
23 and happen to know the information that we  
24 really ought to have here or on a national  
25 committee or whatever it may be to help set

1 us up with the relevant people, some of you  
2 have already started to do that, and we'll  
3 reach out to those additional contacts and  
4 try to make available on our web page for  
5 this activity which is under the FRA safety  
6 web page under highway rail crossings. There  
7 is a click there for private crossings. We  
8 will attempt to add information there for  
9 people to view and to think about as you  
10 consider -- continue to give us some input.  
11 Part of that will be a coordination with the  
12 National Committee on Uniform Traffic Control  
13 Devices. We'll have Ron on the wall, and  
14 have Brian give us what we will need there as  
15 well as contact the committee chair.

16 And then perhaps in our next  
17 session, for those of you who may follow  
18 this, we will try to get some further  
19 briefing on any AASHTO or AREMA standards  
20 that may be relevant as well as the status of

21 any MUTCD activity.

22 FRA clearly needs to complete its

23 rollout of a new interface for updating of

24 the inventory. And anything any of us, Ron,

25 the FRA need to do to see that that has

1 priority, let us know, I'd appreciate it.  
2 Put people in a much better frame of mind to  
3 talk about incremental improvements and the  
4 data that we have there as well as  
5 incremental enhancements of the specific  
6 fields that we might want to capture. And I  
7 think that going forward that's one of the  
8 areas that would be a very productive  
9 activity for these meetings. Really what  
10 that involves is getting an update so that we  
11 can make some headway on risk ranking private  
12 crossings.

13 We can establish all the  
14 identification and responsibility that we  
15 want to, but short of doing -- one major  
16 railroad just reported at a break that they  
17 have done, in terms of signing, all of their  
18 private crossings in a major effort,  
19 thousands of crossings, including all  
20 passively signed private crossings. Short of

21 that kind of effort, which is certainly to be  
22 commended, identifying the additional areas  
23 where investments appropriate at either  
24 enclosing or improving from an engineering  
25 standpoint the crossing really requires them



1 to know where to spend the money. And the  
2 railroad officers who have to deal with these  
3 problems every day, may have some sense of  
4 how to do that in terms of crew reports of  
5 problems at those locations and direct  
6 information that you get from communities  
7 becoming aware of increased activity at the  
8 locations and so forth and so on.

9 But from our standpoint, we are  
10 more in the dark on this than we are with  
11 respect to most of the risk analysis issues  
12 that FRA tackles from time to time. I would  
13 hope we could have another roundtable going  
14 forward on trying to get some resolution of  
15 standard recommendations for engineering. We  
16 can start with the technical working group  
17 report which we'll put out on this web page  
18 as well as a general link and see where that  
19 might take us along with the discussion about  
20 developments in the MUTCD committee. And

21        then I'd really like to see the group discuss  
22        triggers which I'll refer to as warrants for  
23        engineering improvements at private  
24        highway-rail crossings. This is probably an  
25        area that could present a significant

1 challenge in terms of waking up everybody  
2 that has an interest in this issue. I think  
3 most of the railroads are awake, alive and  
4 well on this because you deal with it every  
5 day. But those that hold the rights to cross  
6 spend most of their time, I think, worrying  
7 about something else.

8 In the MUTCD, then we have an  
9 indication that it's really indicated that on  
10 a double track main line that automated  
11 warning is really an appropriate thing to do.  
12 That does not mean we that have automated  
13 warning devices at every crossing on double  
14 track main lines, but it's clearly something  
15 that is warranted, and it should in most  
16 cases be done if there is any level of  
17 activity. And if there's not, the railroad  
18 probably wouldn't have turned that second  
19 main into a signing or pulled it out,  
20 cannibalize the materials.

21           Why not apply the same criterion to  
22   a private crossing that has public access at  
23   the industrial use or whatever other criteria  
24   might apply and ask those who would benefit  
25   from access to carry that burden. That would

1 require us to identify some warrants and some  
2 risk levels that were appropriate risk  
3 levels, and then to analyze the problems and  
4 determine whether or not on a cost-benefit  
5 basis the investment could be supported and  
6 the Federal Railroad Administration has  
7 looked at investment in public highway-rail  
8 crossings the addition of flashing lights and  
9 gates at locations where currently we only  
10 have passive signage. We've found very high  
11 multiples of benefit to cost such that it  
12 costs us to remain if not the most vigorous  
13 advocate, certainly one of the most biggest  
14 advocates within the Department of  
15 Transportation for continued investment in  
16 engineering improvements at highway-rail  
17 crossings. Even without knowing the  
18 specifics of individual crossings, we can  
19 easily conduct that kind of proforma analysis  
20 against various scenarios that might, in

21 fact, fit out there where you have heavy  
22 trucks, for instance, moving on a regular  
23 basis in and out of quarries, steel mills and  
24 other facilities. And we could certainly  
25 endeavor to add a twist to that with regard

1 to the rail side, the damage and casualties  
2 that does occur which isn't accounted for in  
3 the methodologies that we've used before.

4 But I would just ask the group to  
5 think about the possibility of warrants that  
6 might occur within a structure of federal or  
7 state oversight given the fact that there is  
8 certainly a national interest in doing  
9 something on this front. I don't think we  
10 can continue to build commuter rail service  
11 out without thinking more seriously about  
12 this issue. If there is an area where you  
13 have many public dollars spent and ideally  
14 you have private crossings closed and  
15 alternative access provided, but that's not  
16 the reality in many cases and certainly  
17 Amtrak on an inner-city basis continues to  
18 suffer from. And one of the challenges that  
19 it presented at many highway-rail crossings  
20 and some analysis that we've done indicates

21 that about a third of their lawsuits from a  
22 safety point of view in terms of train  
23 accidents result from events at highway-rail  
24 crossings, many of which are at private  
25 crossings. So from a point of view provision



1 of inner-city rail service, it's a matter of  
2 some interest. Commuter service, inner-city  
3 rail service and finally freight rail service  
4 including services that involves handling  
5 hazardous materials and importantly  
6 politically the lives of railroad crew  
7 members that may be subjected to death or  
8 serious injury in a collision with a heavy  
9 motor vehicle. The NTSB asked us to set up  
10 periodic safety reviews of highway-rail  
11 crossings. Railroads that have been  
12 aggressively trying to close private  
13 crossings may have some ideas of program  
14 models that make some sense there.

15 And then finally we have talked in  
16 the notice about resolution of disputes  
17 regarding who is going to be responsible for  
18 doing what out there. And the extent of  
19 which a private crossing should be retained  
20 or must be retained because of the need to

21 maintain the value of the property to which  
22 it provides access. It's been our experience  
23 in listening to the stories out of the states  
24 that have wrestled with this that the  
25 administrative processes in many states which

1 mirror language that you can find in the  
2 Federal Administrative Procedure Act are  
3 extraordinarily cumbersome in relation to the  
4 subject matter. And we don't have any  
5 particular interest in replicating that at  
6 the federal level, we are encouraging  
7 proliferation of that. But if you -- if one  
8 establishes sufficiently objective criteria  
9 for decision-making, one typically is not  
10 required to engage in that kind of  
11 fact-finding. Only when you entrust to the  
12 hearing officer significant amounts of  
13 discretion do you end up with that kind of  
14 procedure. You won't find that, I don't  
15 think, in a law book, but that's the way  
16 things happen. So I think it's highly  
17 desirable for this community together with  
18 the community of those who hold the rights  
19 plus the railroad, to come up with a set of  
20 sufficiently objective criteria to get these

21 issues resolved without extensive  
22 on-the-record proceedings in as many cases as  
23 possible. But that mechanism is an  
24 alternative mechanism, and however it is, I'm  
25 not sure. Obviously alternative dispute

1 resolutions greatly can be advocated and used  
2 more and more at the federal and state level  
3 with public matters as it is in private  
4 arbitration. But if you don't have a  
5 baseline method for resolving disputes, then  
6 the alternative methods sort of don't have  
7 anyplace to start from.

8 Other topics, issues that we need  
9 to be working on today before we do some more  
10 work?

11 MS. ANYA CARROLL: Grady, I just wanted  
12 to mention our next meeting is September 27th  
13 in Raleigh, North Carolina, and there will be  
14 an announcement coming out shortly. But  
15 North Carolina DOT was the lucky state to  
16 have been part of the high speed rail  
17 corridor development, and they have done a  
18 lot of work with the corridor. And they have  
19 data on their private crossings being  
20 upgraded to either signs or signals that we

21        may want them to present at that meeting in  
22        September.

23            MR. GRADY COTHEN: For general  
24        background on the issue, you'll want to look  
25        for the sealed corridor study in the Office

1 of Railroad Development's page, research and  
2 development page, I believe they are in. For  
3 general background, that would be useful  
4 reading. We also expect to go out to  
5 California in October.

6 MS. ANYA CARROLL: We hope the last week  
7 of October.

8 MR. GRADY COTHEN: Okay. Last week of  
9 October. Then to New Orleans.

10 MR. RONALD RIES: December 6th.

11 MS. ANYA CARROLL: December 6th in New  
12 Orleans.

13 MR. GRADY COTHEN: We will be putting  
14 out notices on all of this. And then we are  
15 looking at possibly going to New York state.  
16 I guess we ought to tell them people from New  
17 York state we're coming, call DOT; but  
18 looking at another possibility in the  
19 northeast in December as well to close out  
20 this round of public meetings.

21           MR. WILLIAM BROWDER: The last day of  
22           October, Halloween and the first of November  
23           is the 2006 Eastern Region Highway-Rail Grade  
24           Crossing Conference hosted by West Virginia  
25           DOT. I think that might conflict with what



1       you all are doing.

2       MS. ANYA CARROLL: Thank you, Bill.

3       MR. DAVID PETERSON: Grady, did you say  
4       what the date was for the San Diego meeting?

5       MS. ANYA CARROLL: It's San Francisco.  
6       And it's during the last week in October, but  
7       we have not found a facility yet.

8       MR. GRADY COTHEN: So we thank the State  
9       of Minnesota and look forward to visiting  
10       with our colleagues in North Carolina and  
11       California.

12       Anything else that you want to add  
13       to the cause? If not, I want to thank  
14       everybody offering statements, suggestions,  
15       comments, information today. We ask you to  
16       continue to follow the proceeding either  
17       being with us or through the public docket  
18       where we will post all of the information as  
19       well as the web site. And I'd like to have  
20       any written comments at all if you want to

21 make it part of the public docket at least be  
22 entered into it and reviewed. Thanks very  
23 much to all and the folks here for the use of  
24 the facility and the hospitality.

25 And with that, we hope you all

1 travel safely and we are adjourned.

2

3 (Whereupon, at 2:18 p.m., the foregoing

4 meeting was terminated.)

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6 \*\*\*REPORTER'S NOTE: The original transcript is being

7 delivered to Anya Carroll.

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1 STATE OF MINNESOTA )

2 COUNTY OF HENNEPIN )

3

I hereby certify that I reported the  
4 foregoing proceedings on the 30th day of August, 2006.

5 That the testimony was transcribed under my  
direction and is a true record of the testimony;

6

That the cost of the original has been  
7 charged to the party who noticed the meeting, and that  
all parties who ordered copies have been charged at  
8 the same rate for such copies;

9 That I am not a relative or employee or  
attorney or counsel of any of the parties, or a  
10 relative or employee of such attorney or counsel;

11 That I am not financially interested in the  
action and have no contract with the parties,  
12 attorneys, or persons with an interest in the action  
that affects or has a substantial tendency to affect  
13 my impartiality;

14

15 WITNESS MY HAND AND SEAL this 12th day of  
September, 2006.

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19 (Seal) \_\_\_\_\_  
Dana S. Anderson

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