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DEATH ON THE TRACKS

A Crossing Crash Unreported and a Family Broken by Grief

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DECHERD, Tenn. - In those first raw days after his 17-year-old daughter died, Norman Feaster couldn't stop thinking about how easily she might have been saved: If only Hilary hadn't agreed to run an errand that took her down an unfamiliar road. If only the overgrown bushes hadn't blocked her view of the railroad tracks. If only there had been crossing gates to stop her from driving in front of a CSX locomotive on that autumn day in 1997.

Soon Mr. Feaster began calling politicians, regulators, railroad officials, anyone who could help to get gates installed at the crossing so that no one else's child had to die there. But he made little progress, he says, until one day he received a strange telephone call. A state transportation official wanted to arrange a clandestine meeting. Intrigued, Mr. Feaster agreed to drive an hour and a half to Nashville, where he met the official in the lobby of the Tennessee Performing Arts Center.

The state official, Terry Cantrell, said he had just discovered some hidden history behind Hilary's case: Two teenage boys had been killed at the same crossing four years earlier. But because the railroad had never reported the accident to the federal authorities, the government had not identified the crossing as especially perilous and had not ordered the railroad to put up gates, Mr. Feaster said the official told him.

If only CSX had complied with federal rules, Mr. Feaster remembers thinking, Hilary would not have died.

"To me this is just criminal," he said.

CSX's failure to report that first fatal crash may be its most serious reporting failure, but it is hardly an isolated omission. Over the last eight years, CSX and other railroads have failed to properly notify federal officials about hundreds of crossing accidents, according to federal records and a computer analysis of crash data by The New York Times.

Hilary Feaster's death is a harsh lesson in the cost of those broken rules, and of the government's lack of enforcement. The federal regulators did not punish CSX for its silence in Decherd, just as they only rarely enforced the rules in other cases. In fact, records obtained by The Times show that in 2000, after finding a "critical problem" with CSX's reporting, regulators acknowledged that they had treated the railroad with "extreme leniency," pardoning most of its violations.

The Feaster crash was reported, but the government never investigated it, beyond some preliminary inquiries by the local police. Yet when Mr. Feaster, his wife, Maryellen, and their lawyers began to unravel the case on their own, they found out, as so many victims' families do, how hard it can be to extract the truth from a railroad.

The town police officer at the scene that day observed that Hilary's view of the oncoming train had been blocked by the heavy brush alongside the road. Yet when it came time to describe the accident scene to regulators, as federal rules require, CSX said that nothing had obstructed her vision, records show.

One of the warning lights was found not to be working after the crash. But CSX did not inform the police officer that a maintenance worker had repaired the light while the officer was busy conducting his investigation. In doing so, the officer said, the railroad had "materially altered the scene of the Feaster accident."

What's more, when Mr. Feaster tried to find out if the train's horn had given Hilary ample warning, the railroad produced four conflicting accounts from the engine's black box event recorder before offering up a fifth one that showed the horn being sounded almost until the train entered the crossing.

The CSX Corporation, which runs one of North America's four biggest freight railroads, says it behaved fairly and ethically in all of its dealings with the police, the government regulators and the Feaster family. It described the failure to report the first fatal accident as "an isolated administrative error."

"Were there mistakes made? Yes," said a railroad spokesman, Adam Hollingsworth. "But they were simply that - mistakes."

Today, a pair of tall white gates stand guard at the Decherd crossing. Hilary Feaster's parents know all that it took to get them there.

"People have said to me after the crossing gates went up, 'Do you feel like her death wasn't in vain?' " Maryellen Feaster said the other day. "And I said no, I feel it was totally in vain. She was sacrificed, and it's not fair."

The Accident

Maryellen Feaster had always tried to avoid the spot, where Highway 127 crosses the CSX tracks on the

edge of town. It scared her, she says - the field dense with weeds and bushes lining the highway on the right, the trains coming out of nowhere, suddenly filling your view.

Decherd's railroad past is pretty much out of sight, too. But its story is very much the small-town American standard, of a place that grew up and prospered around the railroad - in this case The Nashville & Chattanooga - completed in the early 1850's then eased into a long, slow slide. The old Decherd depot is long gone, as are the passenger trains that called there eight times a day. What remains are the CSX freights running through town.

It was a clear, cool day when Hilary Feaster drove out to the Highway 127 crossing. Oct. 15, 1997.

After school, she had dropped by her father's office to say hello. They talked briefly, and he gave her some money. Norman Feaster, who practices poverty law at Legal Services of South Central Tennessee, remembers with pride the way his daughter had begun to appreciate good books, which they would discuss together in the evenings. He also remembers her last words that afternoon: "I love you, Daddy. I'll see you later."

Hilary then went to have her senior picture taken. It shows her as she remains in her mother's memory - forever confident, untroubled, coming into her own.

"You never saw her without a smile on her face," Ms. Feaster said. "She was excited when she got up in the morning."

Hilary had been planning for her senior-class trip, to Ireland, and had just finished her application to Emerson College in Boston.

She didn't usually drive Highway 127 either. But it was the best route to the new Wal-Mart, where she had to pick up a prescription for her mother.

Shortly before 5 p.m., she turned her 1989 Toyota station wagon onto the highway from the Decherd Estill Road. The field ran roughly 250 feet to the edge of the tracks on the right. Up ahead, two cars moved through the crossing, into the setting sun. From the west, a 34-car CSX train, going 54 miles an hour, came pounding out of the brush.

The Investigation

The train deposited Hilary's crumpled car and broken body nearly a quarter of a mile down the track.

Within minutes, Officer Glenn T. Summers, a 13-year veteran of investigations for the Decherd police, was there, examining the car, taking measurements and interviewing the engineer.

What happened from then on illustrates how limited the investigations of crossing accidents generally turn out to be.

As Officer Summers worked his way toward the crossing, he made two significant observations.

"The view of the track and any eastbound train is blocked by the elevation of surrounding field and trees and bushes growing alongside the road," he noted in his accident report. And in an interview, he added, "At that time of year, the sun is right in your eyes, and you can't hardly see."

In other words, with no crossing gates, the flashing signal lights might have been Hilary's last, best warning. Officer Summers found them in perfect working order.

"Railroad crossing lights were on and operational upon my arrival at the scene," he wrote in his accident report. The signal's warning bells were working, too, he said.

In writing that report, though, Officer Summers now says he did not know an important fact: While he was busy investigating the crash scene, a CSX maintenance worker named Philip Stephens had come to check on the signals. One of two flashing left-hand lights, the ones meant to alert a driver close to the crossing, was not working, Mr. Stephens found.

He quickly traced the malfunction to a loose wire - the signal had not been damaged in the crash - and fixed it. He then wrote a report documenting his repairs. But Officer Summers says there was no mention of a broken signal when he spoke with Mr. Stephens at the scene.

CSX had another chance to disclose that problem. The next day, Officer Summers said, he talked with Larry Lovette, a CSX claims agent, at the crossing and discussed his investigation. He also spoke briefly with Mr. Stephens, he said. Again, the broken signal did not come up.

Later, Mr. Stephens testified that he had carried out his duties by giving his repair report to Mr. Lovette a day or two after the crash.

Mr. Lovette said in a deposition that while he didn't recall when he had learned of the signal problem, he didn't believe it was soon after the accident.

Federal law requires the railroads, after an accident, to report significant malfunctions to the Federal Railroad Administration. "You should include any information that increases our knowledge of the underlying reasons why the accident occurred and its consequences," the railroad administration explains in a guidebook on accident reporting.

Even so, an agency spokesman said a malfunction of only one of the left-hand lights at the crossing on Highway 127 would not have had to be reported to the federal regulators. Because the two lights flash alternately on and off, the signal could have been entirely dark at regular intervals. Still, "it would not be

considered an activation failure, because more than 50 percent of the lights have to be out or inoperable," said the spokesman, Warren Flatau.

Besides, in CSX's judgment, the signal was working at the time of the accident. The railroad spokesman says witnesses, including another police officer and a rescue worker, saw the lights working immediately after the crash. But the Feaster family says there was nobody there to witness exactly what Hilary saw just before the accident.

Either way, Mr. Hollingsworth acknowledged that the railroad should have told the police about the broken signal. "Yes, we should have done that," he said.

Federal regulators also ask railroads to include sight obstructions in their accident reports. But CSX's report to federal regulators did not include anything about the overgrown vegetation that so concerned Officer Summers.

"There was no sight obstruction at the crossing," said Mr. Hollingsworth. "We do not have an obligation to report something that did not exist." He pointed out that the state had not cited CSX for failing to cut the brush at the crossing. However, in court papers, a state official said he could not say if any inspections had been done around the time of the accident.

According to the Federal Railroad Administration, railroads report sight obstructions in only a small fraction of crossing accidents. But when the National Transportation Safety Board looked at a sample of 60 accidents from 1996, it found at least partial sight obstructions in more than half.

Still, the federal regulators are virtually powerless to do much about them because no federal rule specifically requires railroads to keep crossings clear of vegetation and other hazards. And while many states do have such rules, they are not always willing to punish railroads for failing to keep crossings safe.

Last year, for example, Tennessee's transportation department had to threaten CSX with legal action before the railroad finally fixed 10 hazardous crossings. The railroad was not fined in any of the cases.

In South Carolina, CSX was fined a total of \$1.3 million in recent years for dozens of safety violations, including overgrown vegetation and defective warning signs, that went uncorrected for months. The state's transportation department did not collect one cent.

"The penalties were a tool to use to get the railroads to clear vegetation and do some other things," explained Linda McDonald, a lawyer for the department. Ms. McDonald compared CSX's fines to a letter a homeowner might receive for an overdue mortgage payment. "A lot of people ignore the first letter since they know what a problem it is to foreclose the mortgage," she said.

Mr. Hollingsworth said CSX had fixed the problems and improved vegetation control throughout its

system. That, he added, was the important thing.

But C. Bradley Hutto, a South Carolina state senator, said that because of the state's attitude, dangerous problems were not fixed quickly enough.

"The railroad knew the standard procedure was to waive fines, so why fix it?" Mr. Hutto said.

The Whistle-blower

In the days after the accident, Hilary's parents visited the crossing several times. Once Ms. Feaster stayed behind, but the story of that day still tugs at her: Norman, in tears, hacking wildly at the bushes, weeds and little trees by the tracks.

"That always seemed so sad to me," Ms. Feaster said, "picturing him out there crying, trying to do something, anything to make it better."

Among those he called to make it better was Mr. Cantrell, who oversaw rail safety for the Tennessee Department of Transportation. "He told me to speak to his lawyer," Mr. Feaster recalled.

Nine days after the accident, Mr. Lovette, the CSX claims agent, stopped by Mr. Feaster's office. After expressing condolences, he made an offer: while admitting no negligence, the railroad would pay \$25,000 to settle any potential claims.

It was just as the Feasters began to seriously consider the offer that Mr. Cantrell called back. He wanted to meet "on the sly," according to Mr. Feaster's notes of the conversation. Mr. Cantrell also gave Mr. Feaster his cellphone number and, Mr. Feaster recalls, advised him not to sign anything until they had talked.

Mr. Feaster says he didn't quite understand Mr. Cantrell's obsession with secrecy. But after meeting in the lobby of the Performing Arts Center, the two men walked to a spot where they could be alone.

Then Mr. Cantrell told Mr. Feaster that his office helped determine which of the state's thousands of crossings got lights and gates. Though the railroads do the work, the government actually pays the bills, and each year, there is enough money only to upgrade several dozen crossings. The crucial factor, Mr. Cantrell explained, is accident history.

Mr. Cantrell had brought along a thick binder, full of accident history.

"He flipped it open and pointed to Hilary's crossing and showed that there was no record of any deaths," Mr. Feaster said.

After Hilary's death, though, Mr. Cantrell's boss had happened to be talking with the mayor of a town near the crossing. "And in conversation," Mr. Cantrell told Mr. Feaster, "the mayor had mentioned, 'Well, you know that's where those two boys got killed.' "

One morning four years earlier, those two boys - Shilo T. Bush, 19, and Ryan M. Bush, 17 - had driven down Highway 127 and into the side of a CSX train running through heavy fog, according to a police report.

The CSX spokesman, Mr. Hollingsworth, said that even if the railroad had reported the 1993 accident, there was no proof that "additional warning protection" would have been installed.

But a letter from a state transportation official to the railroad, dated May 5, 1998, and obtained by The Times, indicates otherwise. "If that accident had been routinely reported," wrote the official, John B. Boynton Jr., "the department would have paid for a set of gates to be installed prior to the last fatality."

Mr. Cantrell declined to be interviewed about the meeting.

"I just got the strong impression that this whole thing disturbed him very much," Mr. Feaster said. "It was a very human kind of thing, trying to reach out to me as a grieving parent who had just lost his daughter."

The meeting lasted perhaps half an hour. Mr. Feaster said he left feeling less angry than numb. "I don't think I could have been hurt any more than I was," he said.

The Warning Signal

The revelation brought focus to the Feasters' flailing grief. As Norman Feaster saw it, the earlier, unreported fatalities in Decherd raised a crucial question, especially with CSX offering \$25,000 up front to be absolved of all blame. What else, he wondered, might the railroad have done wrong?

After consulting with Pamela R. O'Dwyer, a lawyer who has handled a number of crossing-death cases, he sent a letter to a lawyer for the railroad.

"My wife and I have no information to indicate that CSX, or its employees, acted improperly at the time of Hilary's accident, or failed to properly maintain the track or signals at that crossing," he wrote. "However, we would like some assurance that this was, in fact, the case."

Specifically, he asked for inspection records for the warning signals, to see if they had been properly maintained, as well as tapes of crew conversations with dispatchers, in case any safety problems had been discussed before the crash.

In a series of court cases in recent years, judges around the country have spoken out strongly about the

investigative importance of preserving such recordings after fatal crossing accidents.

In the Feaster case, Mr. Lovette, the CSX claims agent, soon reported that the tapes no longer existed.

Mr. Lovette, a claims agent for 27 years before Hilary's accident, would testify that he thought the tapes were recycled every 30 days. Another CSX official, however, said that Mr. Lovette had never asked for them.

"I can't tell you whether I requested them or not," Mr. Lovette said in court papers.

As for the warning lights, Mr. Lovette told the Feasters that the inspection records showed no problems; he even gave them a report that showed the lights working three weeks before the crash.

About a year after the accident, Mr. Lovette returned to Decherd to see the police investigator, Officer Summers. The officer remembers Mr. Lovette showing him the same signal-inspection report, then asking him to sign a statement: that he had found the warning lights in working order on the day of the accident.

Under oath and unaware of the railroad's signal-repair job as he had been the day it was done, Officer Summers signed.

By then, the Feasters had decided to refuse the \$25,000 and file suit. The truth of what had happened with the signals came out as their lawyers dug through documents from CSX. Buried in the middle of two bankers boxes of reports on track conditions was Philip Stephens's repair report, said Ms. O'Dwyer, the Feasters' lawyer.

The CSX spokesman, Mr. Hollingsworth, said that the railroad's "response to discovery was broad and robust," and that Mr. Lovette had acted properly. In an interview, Mr. Lovette, who recently retired, said any suggestion that he had been less than honest in his handling of the case was untrue.

In any event, it would be four more years, Officer Summers says, before he realized that he had not been told the entire story. As he said in court papers, "It appears that CSX materially altered the scene of the Feaster accident without ever advising me of that fact."

The Black Box

Whatever the precise state of the warning signal, the thickness of the vegetation at the crossing, the glare of the setting sun, Hilary Feaster should have had one more chance: the train's horn.

Under CSX's own rules, a train must sound its horn until it enters a crossing. To find out if it indeed had given Hilary sufficient warning, her father asked the railroad for the data in the engine's black box.

The black box, similar to those in airplanes, records a train's key movements and operations: how fast it was going, when it braked and when and for how long the horn sounded. But except for those rare cases in which federal officials investigate a grade-crossing accident, the black box remains in the custody of the railroad. As a result, CSX got to download the information from the Decherd crash and use one of its own software contractors to interpret the results.

Federal records show that the nation's railroads have a spotty record of keeping black boxes in working order and have sometimes lost or erased their data. In the Feaster case, finding out precisely when the horn sounded turned out to be extraordinarily difficult.

Initially, Mr. Lovette produced a printout that he said indicated that the horn had sounded until the train's emergency brake was applied. "It looked like the train whistle was sounded properly," he testified.

But that conclusion was later disputed by the company's own expert on black boxes, Chris DuBois. Mr. DuBois testified that the printout actually showed the company to be in violation of its own rules because the horn stopped sounding three seconds, or 166 feet, short of the crossing.

A second printout also turned out to be inaccurate. Then, in June of 2001, came yet another version - one potentially far more problematic for the railroad. This time, the horn appeared to have stopped sounding six seconds, or about 400 feet, before the crossing.

In February 2002, concerned about that result, Wayne L. Robbins Jr., a lawyer representing CSX, sent an e-mail message to company officials about the need "to clear up the problem with the different printouts." True, incompatible software might be producing unreliable results. But, Mr. Robbins added, "If no expert can prove that, we are stuck with six seconds of no whistle immediately before the accident."

The black box, though, held a few more surprises. In April of 2002, Mr. Dubois presented the Feasters with a sworn statement in support of a fourth version that showed the most serious violation of CSX operating rules yet. This time, the horn was silent for seven seconds before the train entered the crossing.

But four months later, just as the Feasters' lawyers were preparing to question Mr. Dubois under oath about the seven seconds of silence, CSX produced yet another version.

"We come down here yesterday only to receive a new version, a fifth version," John Chandler, one of the Feasters' lawyers, said at the time in exasperation. "We object to any use of any new versions, new printouts. You know, sometime it has to come to an end."

This fifth and final version brought all the calculation and recalculation full circle: it moved the sounding of the horn all the way back to a point just short of the crossing.

CSX blames its software contractor for the problems. "The early printouts were a result of a software glitch," Mr. Hollingsworth said. He added, "Once we were made aware of it, we worked with suppliers" to fix it.

Mr. Feaster is not so sure.

"I believe they massaged the data until they got a report that matched their theory of the case," he said.

Nonetheless, by admitting that earlier printouts were flawed, a CSX expert on event recorders had to acknowledge that thousands of black-box downloads in previous years were now unreliable.

A Pattern of Silence

As the Feasters' lawyers prepared their case, they bored in on the railroad's failure to report the earlier deaths at the Decherd crossing. And while this omission profoundly affected the Feaster family, it appears to have prompted little self-examination inside CSX.

Mr. Chandler raised the subject in a deposition with Ruth Ann Spears, who is now retired but at the time of the earlier crash was the top CSX official responsible for accident reporting.

MR. CHANDLER: Did CSX conduct any investigation to figure out how that had occurred?

MS. SPEARS: Not to my knowledge.

MR. CHANDLER: O.K., to your knowledge, has CSX ever tried to determine why an accident hadn't been reported? I'm talking about a crossing accident.

Ms. SEARS: Not to my knowledge.

MR. CHANDLER: O.K., so to your knowledge, there wasn't anybody at CSX that said, 'Well, you know, somebody dropped the ball here, we need to find out who that person was and perhaps discipline them for this?'

MS. SPEARS: Not to my knowledge.

The railroad spokesman, Mr. Hollingsworth, insisted that there had been no need to investigate the failure to report the earlier deaths because a 1996 federal audit had found that "our processes worked, and that our reporting was timely and accurate."

After citing that audit eight times in an interview, though, he called back the next day to say there was no audit. "I apologize for that confusion," he said.

Indeed, when a Federal Railroad Administration official named Robert Portsche visited CSX headquarters in Jacksonville, Fla., in 2001, he found the company's reporting record significantly wanting.

The railroad administration says it lacks the resources to do regular detailed reviews of the railroads' reporting practices. Mr. Portsche looked at data from a single year, 2000, comparing accidents in the company's files with those reported to his agency.

"It was a very significant failure in reporting," Mr. Portsche said in a recent interview. "Much more than I had expected." A spokesman for CSX said the company was already working on the problem when Mr. Portsche arrived.

In all, records show, CSX did not report 20 percent of its grade-crossing accidents in 2000. None of the cases were fatal, but in one, in July of 2000, CSX did not report that one person had been injured at a crossing in Cullman, Ala., the site of a previous fatal accident. Then, in 2002, a man was killed there when his car was hit by a CSX train. The state has since ordered lights and gates installed at the crossing.

In another unreported case, at a crossing in Indiana, lights and gates had not been working for two to three weeks when a CSX train hit a truck. A railroad employee was supposed to have stopped traffic but failed to do so.

When it came to punishing CSX for its reporting failures, the Federal Railroad Administration was characteristically reticent.

The agency could have fined CSX \$202,500, but it imposed only \$45,000 in fines. Three years later, CSX has paid just \$19,000. Seven cases of the original 80 are pending.

"We could go out there and fine them for the 80, but I had gotten their attention," Mr. Portsche said.

CSX earned special consideration because it cooperated with the railroad administration and demonstrated a willingness to deal with its shortcomings, said George A. Gavalla, associate administrator for safety at the agency. "There's discretion involved, like everything else in our regulations," Mr. Gavalla added.

On Oct. 4, 2001, in an internal memorandum, CSX's executive vice president for transportation, Al Crown, quoted the agency as saying it had "extended extreme leniency in this matter." But Mr. Crown, who has retired from the company, also noted that despite new reporting procedures instituted by the railroad, the problem was continuing: "a sampling of 2001 files" found that some reports were still not being submitted.

The railroad administration expressed strong concern but not much more. In a company memorandum, a top CSX official observed that the agency had extended "confidence in our ability to rectify a serious shortcoming."

To the Feasters, the evidence in the government's files binds the railroad and its regulators together in blame.

"Why should they report?" Ms. Feaster said of CSX. "Nobody is holding them accountable."

Hung Jury

The lawsuit that Maryellen Feaster hoped would hold the railroad accountable went to trial in the fall of 2002, a little more than five years after Hilary died.

By then, the trauma the Feasters shared had helped push them apart. They are still friendly, they say; they just turned out to have different ways of living with their grief.

Mr. Feaster continued to live in the family home and work in an office where the rumble and horn of every passing CSX train were ever present. Hearing those sounds was more than his wife could bear. She moved up the hill to Sewanee, the secluded community surrounding the University of the South, a small liberal arts college where she works as a registered nurse.

Mr. Feaster, the lawyer, says the lawsuit was actually what his wife wanted. He didn't see much point in it; it certainly wasn't going to bring his daughter back. "It's been a long time since I've been able to cry," he said a while back. "It may be just a way of keeping from feeling those hurts."

Ms. Feaster felt that without the suit, the truth about what happened would never be known, because no government agency had investigated Hilary's death.

"I want you to remember her," she told CSX's lawyer, Mr. Robbins, at one point in the legal proceedings. "And I want you to remember those other people whose families will not be the same."

The trial, in a Franklin County courtroom, lasted about two weeks. The testimony traced the Feasters' journey through uncertainty and discovery, the dodgy warning signals, black-box revisions and unreported deaths. Then it ended in a hung jury.

One of the jurors, Mike Papula, a young veteran of the Navy's nuclear submarine fleet, remembers that when he left the courthouse, "I was so emotionally distraught, I prayed that I would have some type of relief." The Feasters, Mr. Papula thought, had an "overwhelming" case. "I would have thought we'd be out of there in five minutes," he said in a recent interview.

Two particular things from the trial stick in Mr. Papula's mind. One is a statement by CSX that

vegetation was not an issue because the railroad had not been cited for it, Mr. Papula recalled, adding, "It shows a callousness." Then there was the testimony, he said, that the wire that came loose had never been inspected. That's certainly not the way things were done in the Navy, he said. Mostly, he says, he can't help wondering what if it had been any of his four children at the crossing that day.

Though Mr. Papula said he had his supporters on the deadlocked jury, so did the foreman, Mark Dudley, the county building commissioner. During deliberations, Mr. Dudley spoke about his daughter, too. She is the same age as Hilary would have been, and she looks like her, too. Had she been killed under the same circumstances, he told the other jurors, she would have been the one most responsible. And he would not have sued.

"I personally felt a reasonable person should have seen that a railroad track was in front of her and probably should have taken precautions if there are no barriers," he said recently in an interview.

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