



To: Editorial Page Editors and Writers
From: CPR Member Scholars Rena Steinzor and Sidney Shapiro
Date: Monday, February 22, 2010
Re: The Toyota Mess: Were Government Regulators Asleep at the Wheel?

This week two congressional committees will hold hearings to investigate the "sudden unintended acceleration" problems in Toyota vehicles. They need to investigate not just what went wrong at Toyota, but the failures of the National Highway Traffic Safety Administration (NHTSA), the federal agency charged with protecting consumers from such dangers in the first place.

Toyota will have much to answer for, but so will NHTSA. Reports about safety failures began streaming into NHTSA's office several years ago, and yet the agency failed to contain the problem, or even to warn consumers. Congress needs to find out what went wrong, by pursuing these questions:

- Does NHTSA use its authority to force manufacturers to recall dangerous vehicles effectively, or does it rely too heavily on *voluntary* recalls, even in such life-and-death circumstances as these?
- Does NHTSA have the resources it needs to enforce existing regulations? Is NHTSA "captured" by the auto industry?
- Should NHTSA consider criminal enforcement against Toyota for withholding information?
- How can NHTSA be more aggressive in addressing safety problems preventively, before they happen?
- What steps should NHTSA take to prevent the failures of the Toyota case from happening again?

NHTSA's Current Authority

Congress provided NHTSA with both preventive and remedial tools. On the preventive side, the agency can issue safety standards for cars and trucks, and on the remedial, it can compel manufacturers to recall and repair vehicles with safety problems. In many situations, including the current problems with Toyota cars, the agency does not exercise either power, depending instead on voluntary recalls by automobile manufacturers.

Ideally, NHTSA should anticipate potential problems and mandate solutions, such as computer system fail-safe measures that prevent crashes that happen as a result of malfunctioning control computers, a problem that may affect Toyota cars. Unfortunately, the preventive efforts that NHTSA has put in place have relied on complicated design standards that try to affect how companies engineer a car, rather than performance standards that require high levels of safety performance, while leaving specific engineering decisions to manufacturers. This choice has

hampered the agency in promulgating new safety standards, even though it is not apparent why NHTSA does not switch to performance standards.

For after-the-problem fixes, NHTSA usually waits for a manufacturer to agree to a recall -- rather than exercising its recall authority immediately.

NHTSA's Resources

Another important issue for Congress to examine is whether NHTSA's budget provides it with sufficient resources to handle the workload involved in ensuring the safety of the 254 million passenger vehicles on the nation's roads.

President Obama's budget request for NHTSA in FY2011 is \$878 million, but of that total, fully two-thirds will be devoted to grants to the states to support driver misbehavior programs (drinking, texting, and problems with elderly drivers). In constant dollars, the NHTSA budget is millions short of its 1972 budget, soon after the agency was founded -- even as automobiles have become more complex, more varied, and more numerous, and as the number of passenger miles driven has increased.

Traffic fatalities remain the number one cause of death for Americans between the ages of 4 and 34. Congress should examine whether NHTSA's current funding level, and specifically its funding for rulemaking and enforcement, is adequate to the task of protecting consumers. On life-and-death matters like these, it is simply unacceptable to rely on the good intentions of automobile manufacturers.

Criminal Enforcement

Under the Motor Vehicle Safety Act, companies are required to notify NHTSA of safety-related defects in their vehicles. To put teeth into the requirement, Congress included criminal penalties in the Act for companies and individual executives who knowingly fail to inform NHTSA of a safety-related defect within a reasonable period of time if the defect causes death or serious bodily injury. Under regulations promulgated by NHTSA, companies must submit the report within 30 days after it was originally due, or risk criminal prosecution.

Christopher Santucci, a former NHTSA employee who had joined Toyota, reportedly not only steered NHTSA away from investigating a problem with 2002-2003 Camrys, but admitted that the company deliberately withheld information because NHTSA investigators had not explicitly requested it. Any similar foot-dragging or obfuscation by the company in this instance should be prosecuted to the full extent of the law. Strong enforcement is a crucial deterrent to further negligence by Toyota or other manufacturers, and consumers need to be reassured that NHTSA is not shirking its responsibilities to uphold these crucial reporting requirements aggressively.

If you'd like more information on any of these issues, please contact Ben Somberg in the Center for Progressive Reform's media office at 202-747-0698, or by email at bsomberg@progressivereform.org.

Thanks very much for your consideration.

The Center for Progressive Reform is a nonprofit research and educational organization dedicated to protecting health, safety, and the environment through analysis and commentary. Visit CPR on the web at www.progressivereform.org. CPR President Rena Steinzor is a professor at the University of Maryland School of Law. CPR Board Member Sidney Shapiro is a professor at Wake Forest University School of Law.

Some resources that might be of use:

- Steinzor/Shapiro letter to House Committee on Oversight and Government Reform proposing questions for Toyota and NHTSA, including timeline on NHTSA and Toyota, <http://www.progressivereform.org/articles/toyotaOGR020910.pdf>
- New York Times article on the very slow pace of recalls, <http://wheels.blogs.nytimes.com/2010/02/03/car-seat-recall-nearly-10-years-in-the-making/>
- ABC News story on Toyota withholding information, <http://abcnews.go.com/Blotter/RunawayToyotas/revolving-door-us-safety-agency-toyota-representative/story?id=9747342>