



## D19 Why Not Jail for National Highway Traffic Safety Administration (NHTSA) Crimes: Is Agency Capture to Blame?

Rachel L. Pozzi, MS\*, Sandia Safety Sciences, Edgewood, NM 87015; Mark C. Pozzi, MS\*, Sandia Safety Sciences, Edgewood, NM 87015; David R. Bosch, PhD, Forensic Engineering, Inc, Phoenix, AZ 85008; Kenneth J. Saczalski, PhD, Newport Beach, CA 92661; Parris Ward, JD, Biodynamics Engineering, Inc, Pacific Palisades, CA 90272; Anne Egelston, PhD, Center for Environmental Studies, Stephenville, TX 76402

**Learning Overview:** After attending this presentation, attendees will have a new perspective on NHTSA ineffectiveness, prosecutorial discretion, and enforcement methods. This research utilizes the methodology of counterfactual examples of instances that should have been prosecuted and investigates the circumstances which warranted NHTSA's action but, most importantly, identifies the agency's awareness of a crime and exercises its discretion to not act. The theorization of this research, explaining the environment that NHTSA has allowed crime to flourish in the automotive industry and manufacturer-agency convergence to benefit the manufacturers, is agency capture.

**Impact on the Forensic Science Community:** This presentation will impact the forensic science community by presenting crucial new consideration to the law and order aspect of science and safety. The governing bodies that are relied on to enforce standards of safety are a persisting concern of the scientific community. Agency capture is always ripe for consideration. The impact of this research will permeate fields of forensics, policy, enforcement, and public health and safety, plus allow discussion and reopening of old conclusions.

To continue from the introductory research in "EPA and NHTSA Prosecutorial Discretion: A Dichotomy of Effectiveness," this research dissects the reason for sparse enforcement of crimes under the National Highway Traffic Safety Administration. NHTSA maintains a long list of civil settlement penalty cases. Digging into case details, one will encounter an array of phrases like "failure to timely file defect information reports; failure to notify NHTSA of a defect; and failure to report certain death and injury incidents." These actions by auto manufacturers, which were pursued only as civil penalties, are directly chargeable as criminal offenses with imprisonment under 49 U.S.C. § 30170 and Title 18. There are zero records of an auto manufacturer incarcerated for crimes under NHTSA jurisdiction. Prior theories suggest a lack of funding and manpower to investigate every defect report and consumer complaint as the issue, but NHTSA's defect reporting program was designed in favor of manufacturers, lobbied by automakers from the start. Defects are investigated on a basis of "extraordinarily more defective than other defects." This regulatory program has been a useful scapegoat for NHTSA not to investigate a manufacturer, despite the historical voluminous number of "crimtot" defect lawsuits in lower courts that NHTSA were (or should have been) notified of by law via the TREAD Act, providing evidence to warrant investigation.

In prior research asking "Why not jail for auto executives?," frequent themes identify problematic rule structures, insufficient staff, budgetary shortcomings, deferred prosecution agreements, criminal vs. civil penalties, lack of individual accountability, and lobbying at the rulemaking stage as the culprit for the lack of criminal cases. While the foregoing issues erode the integrity of motor vehicle safety, preexisting theories negate a significant possibility—agency capture. Using the following case studies, data indicative of agency capture persist: the Federal Motor Vehicle Safety Standard 207 insufficiency and 15-year cover-up by GM expert and NHTSA complacency; and intervention of NHTSA Administrator, Jaqueline Glassman, a former Chrysler lawyer, to stop Federal Motor Vehicle Safety Standards (FMVSS) 207 rulemaking action during the *Flax v. Chrysler* trial in Federal court in November 2004; wherein, Chrysler withheld prior findings of FMVSS 207 defects and prior Chrysler expert testimony proving known dangers of defective seats and seat belts.<sup>1</sup>

This research theorizes that NHTSA became aware of criminal incidents or defects, but some degree of responsible action was not taken by the agency, and there are relationships converged between NHTSA employees and auto manufacturers, indicative of agency capture resulting in ineffective prosecution. For the purposes of this theory, this study maintains the Bagley definition of agency capture: "The phenomenon whereby regulated entities wield their superior organizational capabilities to secure favorable agency outcomes at the expense of the diffuse public."<sup>2</sup> The financial incentives for avoiding defect recalls are immense. However, there is a far greater issue when root to tip there is an industry stronghold on the agency. From lobbying in rulemaking of material standards to save pennies on the dollar, avoiding multibillion dollar recalls by "playing ignorant," to ensuring that no true consequence will be paid for the crime. The environment in which criminal activity and unsafe vehicles flourish in the automotive industry has been bred and born from NHTSA's turn-cheek or collaborative disposition. The degree to which capture has eroded the agency is exhibited in the decades of continued faulty safety standards, frequent defects, and execrable resultant death and injury tolls.

### Reference(s):

1. Jeremy Flax et al. v. Daimler Chrysler Corporation et al. No. M2005-01768-SC-R11-CV. November 2004.
2. Bagley, Nicolas, "Agency Hygiene," Texas Law Review 89 (2010 [Google Scholar](#)): 1–14.

---

### Agency Capture, Crimtot, NHTSA Crime