



D24 The Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) Prosecutorial Discretion: A Dichotomy of Effectiveness

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Learning Overview: The goal of this presentation is to discuss the undeniable dichotomy between the EPA and the NHTSA in their prosecutorial discretion, as exemplified by NHTSA's miniscule criminal prosecution rates of negligent manufacturers and corporate malfeasance, despite death and injury tolls in the thousands.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by providing a new perspective on the underlying environment in which crime is allowed to flourish in the automotive industry and enlighten the possibilities of ineffective prosecution by NHTSA, which negatively impacts regulatory compliance and vehicle safety. The forensic science community will benefit from salience of this research when investigating automotive defects by considering the industry-wide disposition toward compliance but also the degree to which NHTSA monitors and enforces such behavior.

By enumerating and highlighting the rigorous Department of Justice (DOJ) criteria that the EPA follows to warrant investigation of crimes, attendees will gain perspective on the small extent to which NHTSA has exercised its statutory power to investigate and charge individuals. The methodological purpose of comparing the two agencies is not only their underlying mission of protecting public health and safety and their similarities in permitting and documentation protocol, but also their jurisdictional cross-overs in policy, making the effectiveness of both agencies a concern to political and safety sciences in both disciplines.

To continue from previous research, "Criminal Engineering Without Consequence, Why?", the longstanding automotive industry behavior of violating safety standards, ignoring imminent defects, and falsifying scientific discovery has led to decades of dead and severely injured passengers.¹ The industry excuse for such behavior has been for budgetary bonuses and cost cutting in manufacturing materials, at the expense of human safety. The means to which NHTSA fights against such atrocities has been limited to defect reporting, with criminal sanctions available under 49 U.S.C. § 30170 and Title 18. However, unique patterns have presented themselves in the comparative analysis between NHTSA and EPA regarding the number of crimes prosecuted under respective agencies.

This research asserts that the massive difference in criminally prosecuted cases between the EPA and NHTSA is not due to EPA overzealousness, but rather NHTSA ineffectiveness. The EPA has an extensive database of federally criminally prosecuted cases, including those resulting in prison time for individuals. Meanwhile, NHTSA holds a long list of civil penalties but have yet to criminally charge and imprison an individual under 49 U.S.C. § 30170 or Title 18 for failure to report a defect. Only the small handful of high-profile defect scandals such as Toyota®, General Motors®, and Takata®, once they reached stifling publicity, have resulted in criminal charges against individuals and executives—yet they resulted in Deferred Prosecution Agreements (DPAs). To date, there is no known automotive executive that has served jail time pursuant of charges by NHTSA. Meanwhile, the methods that NHTSA utilizes to monitor and investigate defects relies on consumer complaint reports and manufacturer good faith and integrity to notify the agency of a potential problem. There is a gross disparity between the number of known automotive defects that caused death or catastrophic injury and the number of criminally charged manufacturers or their responsible officers. Though research supports preexisting literature regarding the corrosivity of DPAs in their inability to deter crime and support the mission of the agency, it primarily concludes with the troubling question: what of the crimes that were never investigated or charged, let alone received a DPA? This research lays the foundation for an even greater in-depth analysis, as shown in a follow-up presentation, of NHTSA effectiveness, prosecutorial discretion, and enforcement methods with the resultant theory of agency capture.

Reference(s):

¹. *Proceedings of the American Academy of Forensic Sciences, 72nd Annual Scientific Meeting, Anaheim, CA. 2020. D33.*

Ineffective Prosecution, Automotive Safety Defects, EPA vs. NHTSA