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3 HEARING ON ``NHTSA OVERSIGHT: THE ROAD AHEAD''

4 THURSDAY, MARCH 11, 2010

5 House of Representatives,

6 Subcommittee on Commerce, Trade, and Consumer Protection

7 Committee on Energy and Commerce

8 Washington, D.C.

9 The Subcommittee met, pursuant to call, at 1:48 p.m., in
10 Room 2123 of the Rayburn House Office Building, Hon. Bobby L.
11 Rush [Chairman of the Subcommittee] presiding.

12 Members present: Representatives Rush, Schakowsky,
13 Sutton, Barrow, Braley, Dingell, Markey, Stearns and
14 Whitfield.

15 Staff present: Michelle Ash, Chief Counsel; Anna
16 Laitin, Professional Staff; Will Cusey, Special Assistant;
17 Bruce Wolpe, Senior Advisor; Danny Hekier, Intern; Jeff
18 Wease, Deputy Information Officer; Elizabeth Letter, Special
19 Assistant; Lindsay Vidal, Deputy Press Secretary; Shannon

20 Weinberg, Minority Counsel; Brian McCullough, Minority Senior
21 Professional Staff; Sam Costello, Minority Legislative
22 Analyst; Robert Frisby, Minority FTC Detailee; Sarah Kelly,
23 Press Intern; and Kevin Kohl, Minority Professional Staff.

|
24 Mr. {Rush.} The subcommittee will now come to order.

25 Let me just say something in regards to those people who
26 have been waiting since 10 a.m. this morning. I sincerely
27 apologize, but as you know, the duties of the House are
28 varied and we did have to postpone this meeting for a series
29 of votes and other matters, so again, please accept my
30 sincere apologies for the delay. We are very cognizant of
31 your time and we value your time, so please accept our humble
32 apology. We will now proceed with this hearing.

33 This hearing today is a hearing of the Subcommittee on
34 Commerce, Trade, and Consumer Protection, and the subject
35 matter is NHTSA: The Road Ahead. The Chair recognizes
36 himself for 5 minutes for the purposes of an opening
37 statement.

38 The Subcommittee on Commerce, Trade, and Consumer
39 Protection again welcomes our participants here at this
40 meeting. Our main purpose for coming together today is to
41 assess NHTSA's functionality and its effectiveness. Last
42 month, I promised America's motorists, passengers, and
43 pedestrians that as this subcommittee takes up its
44 jurisdictional responsibility to reauthorize NHTSA, we would
45 help NHTSA regain the public's confidence.

46 This is our first occasion to welcome NHTSA's newest

47 administrator, Mr. David Strickland, to this hearing and to
48 this subcommittee and to this committee. Although
49 Administrator Strickland's first several months at NHTSA's
50 helm have been rocky and filled with difficult challenges, I
51 know him to be a highly intelligent, thoughtful and capable
52 professional. I expect that he will ``shoot straight'' with
53 us as we begin crafting reauthorization legislation that the
54 members of this subcommittee can quickly support and move
55 through this subcommittee and through the full committee and
56 take it to the Floor of the House.

57 I look forward to listening to both witness panels and
58 hearing their views on what NHTSA is currently doing through
59 its crash data analysis, its research and its rulemakings to
60 promote vehicular safety.

61 Although I am typically not very stringent about
62 enforcing time restrictions on member statements and
63 questioning, this is a different day. We are starting late,
64 and because of the timeliness, I will not hesitate to drop
65 the gavel today to keep us on point, and I might say, on the
66 right path, as much as possible. The right road may be more
67 appropriate. We have a lot of ground to cover and we expect
68 a number of members to participate. I would ask my
69 colleagues for their understanding and to be as cooperative
70 as possible as it relates to the time considerations.

71 Before I yield my time, I would like to say a few words
72 about the scope of today's hearing. Let me be clear, this is
73 not a hearing about Toyota's recalls or its practices.
74 Please try to restrain yourselves from veering too far away
75 from our purpose of examining NHTSA and NHTSA's
76 configuration, NHTSA's organization, and NHTSA's performance
77 in the areas of defects investigation, safety standards and
78 enforcement.

79 Again, I want to thank all of our witnesses for taking
80 the time out of your very important schedules in order to
81 advise this subcommittee. Again, I want to say we are more
82 than thankful to you for your patience. Let us work
83 collaboratively and constructively to ensure that NHTSA has
84 on hand the necessary resources and capacity to fulfill its
85 stated mission of saving lives, preventing injuries and
86 reducing economic costs due to road traffic crashes through
87 education, research, safety standards and enforcement
88 activity. You are all great Americans and you are becoming
89 greater Americans if you help us improve NHTSA. Thanking you
90 again. I yield back the balance of my time.

91 [The prepared statement of Mr. Rush follows:]

92 ***** COMMITTEE INSERT *****

|
93 Mr. {Rush.} And now I recognize the ranking member for
94 5 minutes, my friend from Kentucky, Mr. Whitfield.

95 Mr. {Whitfield.} Well, thank you, Mr. Chairman. I also
96 want to thank you all for your patience, and we welcome the
97 witnesses on both panels.

98 I would like to start out first of all this afternoon by
99 simply congratulating the National Highway Traffic Safety
100 Administration. I notice that today's vehicles are safer
101 than ever. In 2009, there were 33,963 highway fatalities,
102 which is too many, but the fewest since 1954. The rate of
103 fatalities in 2009 was 1.6 deaths per 100 million vehicle
104 miles, and when this record was first recorded back in 1979,
105 there were 3.34 fatalities per 100 million vehicle miles. I
106 think that should make the public feel more comfortable, even
107 though one death is one death too many.

108 As a result of all the focus on Toyota, some
109 commentators have opined that the system is broken and needs
110 to be fixed. Those opinions are wide ranging and point to
111 many different issues ranging from NHTSA's authority to the
112 way in which it has utilized its authority. Mr. Sean Kane,
113 who is president of the Safety Research and Strategies
114 Company, which does a lot of consulting work for plaintiff
115 trial lawyers, testified during the Oversight and

116 Investigation Subcommittee hearing last month when he was
117 asked the question, does NHTSA need more tools, more
118 authority. He simply said that ``I think the number of
119 errors were made in the process of these investigations, not
120 so much that the tools were not available as much as the
121 tools were not employed.'' So I think it is important that
122 we consider all of those things as we move forward.

123 As far as unintended acceleration, this is a problem
124 that has cut across 3 decades and multiple Administrations
125 without successful resolution. Similar to NHTSA's finding in
126 the late 1980s and early 1990s when it commissioned an
127 independent examination of unintended acceleration or the
128 more recent review conducted between 1999 and 2000, the
129 current investigation has not answered all questions and may
130 never do so to everyone's satisfaction.

131 Regarding NHTSA's action, it is also not clear what more
132 they could have done than what they have already done and
133 whether the outcome would be any different. Administrator
134 Strickland testified last week that there simply wasn't a
135 strong enough case to force the issue of a mandatory recall,
136 even if that had been decision NHTSA's decision, and if a
137 problem cannot be clearly identified, a proposed fix most
138 likely will not have a meaningful benefit.

139 I might also say that to date the Office of Inspector

140 General within the Department of Transportation announced the
141 initiation of an audit of NHTSA's Office of Defects
142 Investigation to conclude an examination of its handling of
143 Toyota as well as the broader issue of the process that ODI
144 employs to examine and investigate safety defects. The
145 Office of Inspector General's objectives are similar to those
146 of this hearing and that is simply to determine whether NHTSA
147 has the tools and information available to investigate safety
148 defects and identify possible improvements to its current
149 procedures, and I think that is what this hearing is all
150 about as we move forward with NHTSA, and I would yield back
151 the balance of my time.

152 [The prepared statement of Mr. Whitfield follows:]

153 ***** COMMITTEE INSERT *****

|
154 Mr. {Rush.} The Chair recognizes the vice chair of the
155 subcommittee, Ms. Schakowsky of Illinois, for 5 minutes for
156 the purpose of opening statements.

157 Ms. {Schakowsky.} Thank you, Mr. Chairman. I am so
158 happy that we are having this hearing today.

159 Without a doubt, the National Highway Traffic Safety
160 Administration's profile has risen dramatically as a result
161 of its role in responding to the dangerous problems with
162 Toyota vehicles, probably a little higher profile than
163 perhaps you had wanted or anticipated.

164 This hearing will give us the opportunity to explore
165 whether NHTSA has the resources, expertise and authority
166 necessary to sufficiently investigate reports of safety
167 problems and enforce existing safety rules.

168 I want to welcome Mr. Strickland and congratulate him on
169 his new position and welcome him to this committee. I know
170 that you really are an advocate for consumers and it was
171 really a pleasure to be able to work with you earlier on the
172 Consumer Product Safety Improvement Act when we worked
173 together when you were in the Senate. So I know of your
174 commitment to consumers and consumer safety.

175 My guess is, though, that right now we will find some
176 gaps that need to be filled, and I look forward to working

177 with Chairman Rush and the subcommittee and with NHTSA in
178 crafting legislation to address those gaps.

179 Mr. Strickland, in addition to discussing issues
180 surrounding NHTSA's oversight and enforcement activities, I
181 am looking forward to begin a dialog with you about
182 children's safety in and around cars and other proactive
183 safety measures. I appreciate that we had a moment before
184 this 10:00 hearing to discuss this a bit. In past year,
185 Congress has enacted legislation requiring NHTSA to issue
186 specific safety regulations. Dear to my heart has been the
187 Cameron Gulbransen Kids Transportation Safety Act signed into
188 law in 2008, requiring rulemaking on a rear visibility
189 standard and a power window standard, and I know that you are
190 working on both of these issues as we speak and it is my hope
191 that both standards will be very strong in order to protect
192 children.

193 I have to tell you that I think the hardest thing that I
194 have done in this Congress, I am in my 12th year now, is
195 having parents come with pictures of their children who are
196 no longer with us, sometimes because they themselves
197 inadvertently, and we know in large part due to design
198 problems actually were responsible for those children's
199 deaths. It is just the most unbearable thing to think about,
200 that these were preventable, and yet these parents have

201 turned this tragedy into a crusade to make automobiles safer,
202 not just in traffic but not in traffic. And so I am looking
203 forward to working with you to create standards that actually
204 do prevent those accidents from happening.

205 My concern is that in the past that Congress was forced
206 to take action because NHTSA was not initiating badly needed
207 rulemaking on its own and so I look forward to working with
208 you to make sure that NHTSA has all the tools it needs and
209 that it uses its tools to protect consumers. I look forward
210 to that very much.

211 Thank you, Mr. Chairman. I yield back.

212 [The prepared statement of Ms. Schakowsky follows:]

213 ***** COMMITTEE INSERT *****

|
214 Mr. {Rush.} The Chair now recognizes the gentleman from
215 Iowa, Mr. Braley, for 5 minutes.

216 Mr. {Braley.} Thank you, Mr. Chairman. I want to
217 applaud you and the ranking member for holding this important
218 hearing.

219 It is really an honor to have you here today, Mr.
220 Strickland. We haven't met before. You have an important
221 responsibility that is too often kept on the back pages of
222 most newspapers and magazines, and it is only when something
223 dramatic like these Toyota recall hearings comes up that the
224 public starts to understand the critical role that your
225 agency plays. You look to me like you are a young man, so I
226 don't know if you know where you were on December 2, 1994,
227 but I know where I was. I was not sitting in that chair,
228 even though I was supposed to be sitting in that chair,
229 because I was supposed to be testifying that day at a recall
230 hearing on side-saddle fuel tank explosions involving CK
231 General Motors pickup trucks, and I did not get the
232 opportunity to testify because a settlement was reached that
233 day between your agency and the Secretary of Transportation
234 and General Motors whereby \$51 million was paid for supposed
235 consumer safety programs so that the recall hearing would not
236 go forward where people like me would have an opportunity to

237 talk about the impact on human lives of defects that do not
238 get solved, and I was going to testify that day about a
239 client of mine, a young woman in Iowa, who had the right side
240 of her face burned off when the pickup truck she was riding
241 in was involved in a collision and the pickup rolled over on
242 its side, and because of the placement of those fuel tanks
243 outside the frame rails, the flames went up the side of that
244 pickup truck and engulfed her face in flames, and her
245 husband, who was driving the pickup truck, pulled her young
246 son, who was seated between them, through the broken
247 windshield and got him to safety, and when he went back to
248 try to rescue his wife, he reached into grab her and pulled
249 out big chunks of her hair that had burned off in the fire.
250 And he went back to his son and told him Mommy is in heaven
251 now, but miraculously, this brave woman survived and went
252 through months and years of grueling, painful skin grafts,
253 hair transplants and incredible disfigurement because of that
254 defect.

255 When we gather for these hearings, we spend a lot of
256 time talking in very arcane, technical language about sudden,
257 unanticipated acceleration and electronic control safety
258 devices, but we rarely talk about the human impact of the
259 failure to act, and so when you think about the important
260 responsibilities your agency has, it is important not just to

261 think about where we are today and where you are going to
262 take that agency going forward, it is important to look
263 backwards at the legacy of this agency and why there are some
264 people who feel it is not fulfilled its responsibility to
265 keep the American public safe.

266 So I look forward to the opportunity to have a
267 meaningful, long-term conversation with you about the
268 important responsibilities you have, and I look forward to
269 hearing your testimony today as we work together to get to
270 the bottom of this unexplained problem, and I yield back.

271 [The prepared statement of Mr. Braley follows:]

272 ***** COMMITTEE INSERT *****

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273 Mr. {Rush.} The Chair now recognizes the chairman
274 emeritus of the full committee, my friend from the State of
275 Michigan, Mr. Dingell, for 5 minutes.

276 Mr. {Dingell.} Mr. Chairman, I thank you for your
277 kindness and courtesy. I commend you for this hearing, which
278 is very important, and I also commend you for your fine
279 leadership of this subcommittee which you have done a
280 splendid job.

281 I want to observe that NHTSA's response to the safety
282 defects implicated in these recalls has been sluggish.
283 Likewise, NHTSA's decisions to terminate several internal
284 analyses related to the defective Toyota vehicles since 2003
285 due to a purported lack of resources leave one with the
286 impression that the agency lacks the appropriate level of
287 personnel and appropriations with which to fill its mandate.
288 We want to find out if that is the case today because if that
289 be so, then the safety of the American public is of course in
290 question.

291 As was the case with its sister agency, the Consumer
292 Products Safety commission, NHTSA has suffered years of
293 stagnation in funding and in many cases has endured a
294 reduction in personnel levels, most notably in its important
295 Office of Defects Investigation, ODI. Nevertheless, the

296 agency possesses a number of powerful enforcement tools, many
297 of which were augmented under the Transportation Recall
298 Enhancement Accountability and Documentation, or the TREAD
299 Act, of 2000. In addition to being able to compel
300 manufacturers to recall defective vehicles, NHTSA may impose
301 civil penalties for noncompliance and criminal penalties for
302 falsification or withholding of information. This in mind,
303 we must ask ourselves today why these authorities were not
304 used in the case of recent Toyota recalls. Put another way,
305 are the problems with NHTSA's response to the recalls better
306 traced to a lack of authority or rather to ineptitude and
307 lack of resources. At present, it appears that the latter is
308 more persuasive. Although I will not discount the
309 possibility that improvement can be made in the statutes of
310 conferring NHTSA its authority.

311 Our discussion of NHTSA's authorities and resources must
312 not lose sight of what I believe to be malfeasance on the
313 part of Toyota improperly addressing the problems that led to
314 the recall of over 8 million vehicles. To reauthorize NHTSA
315 without a view towards compelling better behavior by
316 automobile manufacturers would be a self-defeating exercise.

317 Two weeks ago, my questioning of Mr. James Lentz, Toyota
318 head of sales for North America, indicated that all of
319 Toyota's decisions relating to recalls are made in Tokyo.

320 More disquieting is the fact that U.S. officials, the
321 Secretary of Transportation, and the then-head of NHTSA had
322 to fly to Japan to persuade Toyota to initiate recalls in the
323 United States. In brief, we must examine how best to oblige
324 automobile manufacturers selling vehicles in the United
325 States to comply quickly and fully with our regulations and
326 law.

327 In closing, I suggest my colleagues bear these comments
328 in mind as we begin what must be the first of many
329 conversations about improving federal oversight of
330 transportation safety. I further ask that these discussions
331 and their resultant legislation will be bipartisan, collegial
332 and subject to the regular order for these are the hallmarks
333 of this committee's best work over the years.

334 Mr. Chairman, I thank you for your kindness. I thank
335 our witnesses for appearing before us and I yield back the 58
336 seconds remaining to me.

337 [The prepared statement of Mr. Dingell follows:]

338 ***** COMMITTEE INSERT *****

|
339 Mr. {Rush.} The Chair thanks the gentleman for his
340 extraordinary kindness.

341 [The prepared statement of Mr. Waxman follows:]

342 ***** INSERT 5 *****

|
343 Mr. {Rush.} It is the normal practice of this committee
344 to swear in the witnesses, so would you stand and raise your
345 right hand?

346 [Witness sworn.]

347 Mr. {Rush.} Let the record reflect that the witness has
348 responded in the affirmative.

349 The Chair recognizes himself now for 5 minutes for
350 questioning the witness. Oh, I am sorry. The Chair is
351 getting ahead of himself. The Chair wants to recognize now
352 the administrator, because he has certainly some opening
353 statements, so the Chair recognizes the administrator for 5
354 minutes for the purposes of opening statement.

|
355 ^TESTIMONY OF HON. DAVID L. STRICKLAND, ADMINISTRATOR,
356 NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

357 } Mr. {Strickland.} Thank you, Mr. Chairman. To be
358 perfectly honest with you, my statement is not as important
359 as the committee's questions, so I can understand you wanting
360 to hurry up and get to business.

361 Mr. {Rush.} A great beginning.

362 Mr. {Strickland.} Thank you so much for your kind
363 words, all of you, and before I begin my formal remarks, I
364 want to just take a second to acknowledge Mr. Braley and Ms.
365 Schakowsky's note about the human toll. We have a tremendous
366 amount of death on today's highways, and I am very happy to
367 report some very good news, but 33,000 people is a tremendous
368 amount of people to die, and one person is too many, and the
369 personal toll that it takes on a family is absolutely
370 catastrophic, and in my time that I served as a staffer on
371 the Senate Commerce Committee, I have had the opportunity to
372 spend time with countless victims including mothers and
373 fathers who have killed their children in unfortunate back-
374 over accidents and folks that have been disfigured and burned
375 because of traffic accidents, because of defects, and you can
376 never properly capture what this means to people, so I am

377 fully aware of the responsibility that I have and that every
378 day this agency has one goal. That is to keep people alive
379 and safe on the road, and we can never do that job well
380 enough. We just simply can't. But that doesn't mean that we
381 can't try, and we will continue to put forward maximum effort
382 as we have to make sure that we accomplish the goals. But
383 thank you so much for your observations and they are taken
384 well to heart.

385 Chairman Rush, Ranking Member Whitfield and members of
386 the committee, thank you for the opportunity to appear before
387 you today to discuss the Department of Transportation's
388 vision for the future of the National Highway Traffic Safety
389 Administration and its important safety programs.
390 Transportation safety is the Department's highest priority.
391 NHTSA's safety programs are an integral part of addressing
392 that priority. Even before I was sworn in as administrator
393 on January 4th, I knew NHTSA's programs worked and they work
394 well. We just released numbers that show a continuing
395 dramatic reduction in the overall number of highway deaths.
396 The Secretary this morning released a report that projects
397 that traffic fatalities have declined for the 15th
398 consecutive quarter and will be 33,963 in 2009, the lowest
399 annual level since 1954, but we must do more. The loss of
400 more than 33,000 people represents a serious public health

401 problem to our Nation. We will not rest until that number is
402 zero.

403 So how do we get there? Highway safety is a complex
404 problem, and NHTSA has built a broad spectrum of programs
405 that address both behavioral and vehicle-related causes of
406 highway deaths. The linchpin of all of our programs is good
407 data, good science and careful engineering.

408 When I was sworn in 2 months ago, I felt it was
409 important to look at whether there was a need to improve
410 NHTSA's effectiveness in this era of the global marketplace
411 and rapidly changing technologies. One of my first decisions
412 was to question whether NHTSA is being well served by the
413 four vehicle statutory authorities on which it relies to
414 regulate. The reality is, is that while current authority
415 does work and various constituencies have learned to work
416 with them, they were written in the 1960s and the 1970s when
417 the world and the automobile market were profoundly
418 different. The question I pose and the questions I want to
419 have is whether NHTSA's statutory authorities accommodate the
420 modern automobile, the modern competitive marketplace even.
421 More importantly, do they allow us to regulate in a way that
422 allows the industry to build and sell safe products that the
423 consumer wants to drive? Do they allow us to promote safety,
424 innovation and fuel efficiency while providing effective

425 regulatory and enforcement oversight? I have asked our legal
426 and program staff to take a look at our existing authorities
427 to answer these questions and to make their best
428 recommendations.

429 I believe this self-assessment is critical and supports
430 the President's goals for transparency and accountability in
431 government, and while we are taking a hard look at our
432 authorities, I also commit to look at the current ethics
433 rules. I believe the ethics standards set by this
434 Administration are the highest ever established by any
435 Administration, and I fully support Secretary LaHood's desire
436 to tighten and enforce these rules across the Department of
437 Transportation. If there is any evidence of any violations
438 of these rules, swift and appropriate action will be taken.

439 The next question I ask of NHTSA is, do we have the
440 programmatic expertise that we need to support our programs?
441 NHTSA has a diverse and experienced workforce and we will
442 take full advantage of their skills, talent and expertise.
443 If as we go forward we find that we need to shore up our
444 workforce in certain areas, we will recruit aggressively. We
445 are currently requesting the authority to hire 66 more people
446 next year and will target these positions to meet our program
447 needs.

448 Well, at this point it appears that I am out of time and

449 I will cut my remarks here, and I thank the committee for
450 their time and their patience and I stand ready for
451 questions.

452 [The prepared statement of Mr. Strickland follows:]

453 ***** INSERT 1 *****

|
454 Mr. {Rush.} The Chair thanks the administrator, and the
455 Chair recognizes himself for 5 minutes.

456 As has been stated, Mr. Administrator, our goal, the
457 goal of this subcommittee as it relates to NHTSA is to look
458 forward and to determine for ourselves what is the best way
459 that we can assist NHTSA in its primary goal of protecting
460 American citizens and American drivers. As I looked at this
461 scenario of this Toyota incident as a framework, I wonder
462 about the safety, the quality or the safety of the
463 automobiles on America's highways in general. The question I
464 have is, what reason can you give the subcommittee that we
465 should not think that the recent Toyota recall that it would
466 not replay itself for any other automobile dealer that
467 manufactures automobiles for America's highways? Can you
468 assure us that this Toyota recall is really just something
469 that is an aberration as it relates to automobile safety?

470 Mr. {Strickland.} I will say this, Mr. Chairman, that
471 the Toyota recall, while wide ranging, is I think indicative
472 of how NHTSA uses its authority in a way to get to the bottom
473 of something. When the Secretary of Transportation took
474 office, and at the time it was Acting Administrator Medford,
475 they were observing certain issues with Toyota and they felt
476 so strong about it that Mr. Medford went to Japan to inform

477 Toyota that they did not feel that Toyota was holding up its
478 obligations to inform and interact with NHTSA in a way to
479 address safety concerns and recall concerns. That was the
480 beginning. That effort began actually on December 15th. It
481 was the day of my confirmation hearing, which is a good
482 reason why the entire senior staff regarding defects was
483 actually in Japan and not at my hearing. But better that
484 they be there in Japan explaining to Toyota what they were
485 doing wrong than sitting in a hearing room here in
486 Washington, D.C. When I took office on January 4th, I was
487 updated about these issues, and Toyota was at that point
488 beginning to get the message. I again met with them
489 personally for the first time on January 19th, and I learned
490 about the sticky pedal situation, and they actually executed
491 their stop sale on January 21st. That effort was because of
492 the analysis of the NHTSA, the fast action of the career
493 staff and the leadership of the Secretary of Transportation.
494 So I don't see Toyota as an indicative example of failure, I
495 see it as NHTSA doing its job, and when our professionals use
496 the data, make the case and go forward, we get the results
497 that we need. So I think that Toyota in the wide-ranging
498 recall that it executed, that is the type of response that
499 frankly I would want as administrator and I think that this
500 agency is expecting, and I would hope that in the future that

501 other automakers would do the same in the same set of facts.

502 Mr. {Rush.} Can you give the subcommittee any
503 assurances that the automobiles right now as far as NHTSA is
504 concerned have a level of safety that is greater than what we
505 have experienced with Toyota?

506 Mr. {Strickland.} There are two parts of that answer.
507 First, I will go back to the success that we just had
508 regarding the current data. We have the lowest number of
509 deaths we have had since we have been recording this data
510 since 1954. NHTSA is succeeding in its mission.

511 The second part of your question, do I feel that
512 vehicles are generally safe or will be safe and we won't have
513 any other issue like Toyota, it is the automakers'
514 responsibility to warrant that their vehicles comply with the
515 federal motor vehicle safety standards. That is their
516 responsibility. We are not branding these cars safe. It is
517 our job to enforce and to police the marketplace, which we
518 will do. So as far as I am concerned, the automakers have to
519 uphold their obligation to not only comply with our standards
520 but basically the state of the art. It is my job to make
521 sure that they hold to those standards and this agency will
522 hold that line.

523 Mr. {Rush.} The Chair's time is up.

524 The Chair recognizes Mr. Whitfield for 5 minutes.

525 Mr. {Whitfield.} Well, Mr. Strickland, thank you again
526 for joining us this afternoon. As I said in my opening
527 statement, I do think that the agency should be commended
528 because the highways really are safer today than they have
529 ever been from a statistical standpoint. You would agree
530 with that, I am assuming?

531 Mr. {Strickland.} Yes, sir.

532 Mr. {Whitfield.} Now, we have heard a lot--there have
533 been a lot of articles written, a lot of testimony recently
534 that NHTSA has not fulfilled its responsibility, NHTSA is a
535 lapdog for the industry, not a watchdog for the industry, and
536 so there has been a lot of criticism out there about the
537 agency. And as the administrator, how would you respond to
538 that in just a general way? Do you think that criticism is
539 valid or not valid?

540 Mr. {Strickland.} No, sir, it is not valid at all. We
541 have been a very active agency since I have taken office.
542 The agency has been very active since Secretary LaHood has
543 taken office. And from my review of the work done, if we are
544 talking about Toyota specifically, this agency opened eight
545 separate investigations over the time period when there were
546 complaints about sudden acceleration. A lapdog doesn't open
547 eight investigations. Now, the goal is for us and our
548 statutory, you know, order is to find any vehicle safety

549 defect that presents an unreasonable risk. Any time a
550 complaint or any data or any anomaly in the number of
551 complaints or what we see from the early warning system, our
552 folks take a look at it, they go forward and they
553 investigate. If we cannot find the defect, we cannot under
554 the statute and force a mandatory recall, but that doesn't
555 mean that we think that vehicle is safe per se. At that
556 point we cannot make the statutory case but we will keep
557 looking, and as we have, we keep looking, and when we find a
558 defect such as in the instance of the floor mat entrapment or
559 the instance of sticky pedal or in the instance of the 2010
560 Prius brakes, we act and we act quickly. I don't think that
561 the history of our action in this area before I took office
562 or in the 10-year period that a lot of people are looking at,
563 I think that this agency has been quite active.

564 Mr. {Whitfield.} Now, if you find a defect, then you
565 can require a mandatory recall. Is that correct?

566 Mr. {Strickland.} Yes, sir, we can.

567 Mr. {Whitfield.} And I have heard a lot of discussion
568 about subpoena power, and it is my understanding that you can
569 issue information requests.

570 Mr. {Strickland.} Yes, sir.

571 Mr. {Whitfield.} And do the manufacturers have to
572 respond to that request? Is it--

573 Mr. {Strickland.} There is a difference between a
574 subpoena and an information request. I know a lot of people
575 talk about we have subpoena power and yes, we can compel a
576 subpoena for documents. We say we want every document you
577 have on a question, and yes, they have to give that to us.
578 Information requests, they also have to respond, but it has
579 actually a better purpose. We not only get documents, we
580 actually ask direct questions that they give us answers to.
581 It is a much sharper tool and the agency uses that quite
582 frequently. In fact, we sent three queries to Toyota, three
583 large queries, regarding the timeliness of their submission
584 of information to us regarding the floor mats and the sticky
585 pedal, and we sent a large recall query asking Toyota for all
586 their information and answer questions about all of sudden-
587 acceleration incidents, which will be a large amount of
588 documents and data for us to review. If we find in the
589 review of those documents that there is a violation, we will
590 move forward accordingly.

591 Mr. {Whitfield.} Now, have you found the lack of
592 subpoena power a hindrance to the agency doing its job
593 effectively?

594 Mr. {Strickland.} In my review of the work on Toyota,
595 they have been able to--while Toyota has been slow in years
596 past, I will say that they have not been as responsive as my

597 career staff feel they should have been in responses. Since
598 I have been in office, they have been very responsive, and I
599 would hope that that would continue in the future. But in
600 terms of our subpoena, our ability to get information
601 requests issued and responded to, I have gotten no evidence
602 that that has been a problem in terms of getting a response.

603 Mr. {Whitfield.} Now, I know most of your budget money
604 goes to the States for grants and then the rest is spent
605 basically between behavioral safety and vehicle safety. Is
606 that correct?

607 Mr. {Strickland.} That is correct, sir.

608 Mr. {Whitfield.} And I know in 2005, Congress directed
609 NHTSA to conduct a national motor vehicle crash causation
610 survey, and at that time they came back and they said that 95
611 percent of crashes were due primarily to driver fault or
612 negligence. Are you familiar with that study or do you have
613 any thoughts on that?

614 Mr. {Strickland.} I am tangentially familiar with it.
615 I can't give you song, chapter and verse about the study but
616 I can talk sort of in more specifics about behavior. That is
617 the largest component of risk on the highway, which is the
618 reason why the NHTSA budget is designed to attack the highest
619 risk. Impaired driving, not wearing belts, driving
620 distracted, those are all the hugest risks for everyone on

621 the road today. Vehicle defects are important. We have to
622 address them. They are significant. But in terms of the
623 overall risk profile for highway safety, the behavioral side
624 of the house, so to speak, comprises the largest risk and
625 that is the reason why our program for safety is designed the
626 way it is.

627 Mr. {Whitfield.} Thank you.

628 Mr. {Strickland.} Thank you, Mr. Whitfield.

629 Mr. {Rush.} The chairman emeritus is recognized for 5
630 minutes.

631 Mr. {Dingell.} Mr. Chairman, I thank for your courtesy.

632 My questions in view of the time shortage have to
633 require yes or no answers.

634 Mr. {Strickland.} Yes, Mr. Dingell

635 Mr. {Dingell.} Mr. Administrator, do you believe that
636 the NHTSA made mistakes in its response to the recent Toyota
637 recalls?

638 Mr. {Strickland.} No, sir, I do not.

639 Mr. {Dingell.} Should NHTSA have pushed Toyota to
640 initiate recalls earlier than it did?

641 Mr. {Strickland.} Sir, we pushed the recalls when we
642 had the evidence of an unreasonable risk defect.

643 Mr. {Dingell.} But yes or no?

644 Mr. {Strickland.} The answer is yes, we responded

645 appropriately.

646 Mr. {Dingell.} Okay. Thank you. What authorities does
647 NHTSA lack whether under TREAD Act or otherwise with which to
648 address defects in automobiles deemed hazardous to public
649 safety? Please submit that answer for the record.

650 Mr. {Strickland.} Yes, sir.

651 Mr. {Dingell.} Now, yes or no, does NHTSA have in place
652 a ranking system for determining the priority of defects
653 investigations, yes or no?

654 Mr. {Strickland.} The answer is no, but we rank risk by
655 profile internally. There isn't a one through ten.

656 Mr. {Dingell.} Thank you. Now, there seems to be broad
657 agreement about the need to increase resources available to
658 NHTSA to carry out its mission. Do you need additional
659 resources, yes or no?

660 Mr. {Strickland.} The President's budget gives us more
661 resources, so--

662 Mr. {Dingell.} Do you need more?

663 Mr. {Strickland.} --when the President's budget is
664 passed, we will have the resources we need.

665 Mr. {Dingell.} Please submit to us for the record how
666 much more resources you need in what area.

667 Mr. {Strickland.} Yes, sir.

668 Mr. {Dingell.} I want that submitted directly to the

669 committee and not through OMB.

670 Mr. {Strickland.} Yes, sir.

671 Mr. {Dingell.} Now, in my questioning of James Lentz,
672 Toyota's chief of sales for North America, he revealed
673 decisions to recall Toyota vehicles sold in North America are
674 made in Japan. Do any other manufacturers require that your
675 information for details or decisions made relative to recalls
676 are made in any country outside this United States? Is
677 Toyota unique in that, yes or no?

678 Mr. {Strickland.} It appears Toyota is unique, yes,
679 sir.

680 Mr. {Dingell.} All right. It strikes me that this is a
681 bad situation insofar as safety of the American people. Am I
682 correct or wrong?

683 Mr. {Strickland.} The system that Toyota uses could be
684 much more efficient.

685 Mr. {Dingell.} By requiring them to have a response to
686 be made in the United States by somebody empowered to comply
687 with our laws. Is that right?

688 Mr. {Strickland.} I would feel that if they had
689 somebody in America to respond directly, we could act more
690 quickly.

691 Mr. {Dingell.} Now, I would appreciate it if you would
692 submit to us for the record how this would be corrected.

693 Now, is there a quantitative difference in response
694 times between domestic and foreign automobile manufacturers
695 to NHTSA's data inquiries, yes or no?

696 Mr. {Strickland.} The domestic manufacturers tend to
697 respond faster than the foreign, yes, sir.

698 Mr. {Dingell.} What is the cause for this?

699 Mr. {Strickland.} There are several reasons in terms of
700 design of leadership, as you mentioned, and other factors.

701 Mr. {Dingell.} In the case of Toyota, it is because the
702 information has to be procured from Toyota instead of
703 receiving it directly from here. Is that right?

704 Mr. {Strickland.} That has been identified by Toyota
705 itself as a problem.

706 Mr. {Dingell.} This is also true with regard to the
707 question of recall?

708 Mr. {Strickland.} Yes, sir.

709 Mr. {Dingell.} The decision is made in Tokyo?

710 Mr. {Strickland.} That is correct.

711 Mr. {Dingell.} Now, is there a qualitative or
712 quantitative difference in the data provided to NHTSA by
713 domestic and foreign automobile manufacturers?

714 Mr. {Strickland.} The quality is--because they are
715 statutorily required, the quality of data is very similar
716 between foreign and domestic.

717 Mr. {Dingell.} Similar?

718 Mr. {Strickland.} Similar.

719 Mr. {Dingell.} That doesn't it is the same.

720 Mr. {Strickland.} They have different data sets because
721 of their manufacturing and information processes. They
722 comply to our system so they are similar.

723 Mr. {Dingell.} All right. Now, why was it that the
724 Secretary of Transportation and the acting head of NHTSA had
725 to go to Tokyo to get cooperation of Toyota on recalls and
726 production of information?

727 Mr. {Strickland.} They were responding to NHTSA and the
728 acting administrator and the Secretary too slowly.

729 Mr. {Dingell.} But they had to go over there. Why did
730 they have to go over there?

731 Mr. {Strickland.} Because at the time, the Secretary
732 and the acting administrator felt they needed to go directly
733 to convey that message.

734 Mr. {Dingell.} So they had to convey that message
735 because the message was to urge Toyota to comply more
736 expeditiously with the safety concerns of the Department of
737 Transportation?

738 Mr. {Strickland.} That is correct.

739 Mr. {Dingell.} So they had to do it to get more
740 expeditious cooperation from Toyota?

741 Mr. {Strickland.} Yes, sir, that is correct.

742 Mr. {Dingell.} Thank you.

743 Mr. Chairman, I thank you for your courtesy.

744 Mr. {Rush.} The Chair now recognizes Ms. Schakowsky for
745 5 minutes for questioning.

746 Ms. {Schakowsky.} Thank you, Mr. Chairman.

747 On September 1, 2009, proposed rules were put out
748 dealing with the automatic reverse system in windows. Let me
749 quote: ``NHTSA proposes requiring automatic reversal
750 systems, ARS, in those windows equipped with one-touch
751 closing or express up operation.'' In a letter March 10,
752 2010, sent to you, Mr. Strickland, Henry Waxman, Chairman
753 Rush and myself point out that such windows generally already
754 have auto reverse technology and are usually found in the
755 driver's window where children don't sit, and the intention
756 of the legislation of course was to protect children. But
757 here is really the point I want to make that I find stunning
758 is that you have a chart. This was alternative one of five
759 alternatives that were proposed at that time. This is before
760 your tenure. Alternative one is the one I described, and
761 when it says on this chart cost per window for this remedy
762 supposedly, it says zero dollars, total incremental cost near
763 zero dollars, annual fatality benefits zero, annual injury
764 benefits near zero. So the preferred alternative to protect

765 children was a no-cost, no-benefit solution. I would have
766 thought it embarrassing actually not only to put that in
767 writing but to choose that as the preferred option. I would
768 hope that nothing like that happens again.

769 Let me describe alternative two, requiring auto reverse
770 windows at all power side windows to meet ECE 21, which is
771 European standards. The cost per window, \$6, which I think
772 most people would find reasonable, the total incremental
773 cost, \$149.4 million. Annual fatality benefits, two, annual
774 injury benefits, 850. So two deaths and 850 injuries, which
775 I think is a pretty modest projection, pretty conservative,
776 could be saved. That was at 6 bucks a window. Again, I want
777 to go back to those families that came talking about children
778 who were choked by these windows. It has got to be maddening
779 to them that this is something that could have been corrected
780 for \$6 and that that is the European Union standard, why
781 isn't it the standard here. So really my request is that we
782 reject this alternative one, but how does that happen? Can
783 we expect that it will not happen any more, that a no-cost,
784 no-benefit solution will not be proposed?

785 Mr. {Strickland.} As you know, Representative
786 Schakowsky, I can't engage in a discussion about a rule that
787 is currently being worked on by NHTSA, but I understand that
788 we have received new data from a lot of constituencies

789 including the folks that have worked very closely with you
790 and other members on the Cameron Gulbransen Act and the
791 agency is taking a very hard look at that data, and when the
792 rule is finally promulgated, we hope that we will be-- I know
793 for a fact it will be based on sound data and sound science
794 that will be the most efficacious of safety. So that is the
795 one thing I can tell you.

796 Ms. {Schakowsky.} Well, let me make a very strong
797 recommendation that you don't propose rules that have
798 absolutely no effect when the Congress stated very clearly
799 that we want to protect children, and I am sure you will
800 agree with that, so I thank you very much, and I yield back,
801 Mr. Chairman.

802 Mr. {Strickland.} Thank you, Representative.

803 Mr. {Rush.} The Chair recognizes the gentleman from
804 Iowa, Mr. Braley, for 5 minutes.

805 Mr. {Braley.} Thank you, Mr. Chairman.

806 Mr. Strickland, in your opening statement that we
807 received, the written statement, on page 1, third paragraph,
808 you wrote, ``One of the first questions I asked when I became
809 the administrator of NHTSA is whether or our current
810 statutory authority drafted largely in the 1960s and 1970s is
811 sufficient to address the modern automobile and global
812 automotive marketplace.'' Have you answered that question?

813 Mr. {Strickland.} That question is still being worked
814 on by the staff. I have a great deal of experience in
815 looking at consumer product safety statutes from my prior
816 employ, and you have to be very careful in examining these
817 things. We have to make sure that there is a lot in those
818 statutes that are very functional and works well, and we want
819 to look to improve upon a strong authority, and both my legal
820 staff and my programmatic staff are undertaking that work
821 right now. When we have completed that work, we will be
822 happy and excited to share our thoughts with the committee
823 and looking forward to working with you on a going forward
824 basis.

825 Mr. {Braley.} And I look forward to having that
826 conversation, and let me get back to one of my earlier points
827 about the legacy of the agency that you now head, because in
828 your statement, you noted correctly that safety is the
829 Department of Transportation's highest priority, and you
830 stand by that statement today?

831 Mr. {Strickland.} Yes, sir, absolutely.

832 Mr. {Braley.} And we know that the Office of Defect
833 Investigation, often referred to by its acronym, ODI, is on
834 the front line of defect investigation and prevention as part
835 of the Department of Transportation.

836 Mr. {Strickland.} Yes, sir, that is correct.

837 Mr. {Braley.} And Mr. Whitfield asked you a very
838 appropriate question when he said you have mandatory recall
839 power and you answered yes. Do you remember that?

840 Mr. {Strickland.} Yes, sir.

841 Mr. {Braley.} Can you explain to all of us then why
842 your agency, NHTSA, has not initiated a recall since 1979?

843 Mr. {Strickland.} Because you can often influence a
844 recall by going through the initial stages of the process.
845 Most times an automaker will not want to go through the full
846 formal process. It takes approximately a year. It is a
847 public process, and a lot of automakers, realizing they are
848 facing public scrutiny of fighting a vehicle safety defect,
849 and when they know that the agency can prove it, they will go
850 forward and effectuate a voluntary recall. The universe is
851 that most recalls are voluntary--all recalls since that
852 period of time are voluntary but there is a huge number that
853 are influenced by this agency and that is the actual we want
854 you to look at, and we influence well over half of the
855 recalls that happen ever year. So that is the real number,
856 Mr. Braley. I think that is indicative of the power of ODI.
857 We don't have to get to a point where the administrator after
858 a year of public hearings and show-cause hearings has to sign
859 an order. Automakers will go forward and take care of that
860 recall voluntarily from ODI's work.

861 Mr. {Braley.} Well, count me as skeptical that in a 31-
862 year period there has not been an instance where automakers
863 acted responsibly in every particular case responding to
864 demand for recall of a product defect in a 31-year period.

865 One of the things that I also want to talk to you about
866 is how you described the agency's mission has changed in
867 response to changes in the automotive industry. Do you
868 remember that in your opening remarks?

869 Mr. {Strickland.} I don't think I will change it a
870 change in mission but it is a change in how we have to
871 approach the job because of the change in the marketplace.
872 There was a time when America was the world's leader in
873 automotive manufacturing. We are no longer that leader.

874 Mr. {Braley.} Well, I am talking about something
875 different so I want to make sure you understand.

876 Mr. {Strickland.} I apologize, Mr. Braley.

877 Mr. {Braley.} When I was growing up, it was during the
878 muscle car era where you could tear apart a Chevy large block
879 engine in your basement and put it back together having a
880 basic knowledge of the internal combustion engine. You
881 cannot do that anymore. Would you concede that?

882 Mr. {Strickland.} I agree, yes, sir.

883 Mr. {Braley.} And one of the things that came out
884 during our earlier hearing was this concept of black-box

885 technology that has crash data in it that is driven by
886 complex computer codes, sometimes which the manufacturer is
887 willing to share with your agency and sometimes manufacturers
888 have been very reluctant to share that data or to provide an
889 ability for your own employees to have the keys to the
890 kingdom so that they can download and interpret that
891 information independently. You would agree with that?

892 Mr. {Strickland.} Yes, sir, I agree.

893 Mr. {Braley.} So one of the things that I am concerned
894 about is our own internal committee report for this hearing
895 suggests that your agency's budget dedicated to vehicle
896 safety has remained stagnant relatively over the past 10
897 years and that your resources are far below the resources
898 that were available for this type of investigation than when
899 the agency was at its height, and my concern is, based upon
900 some of the testimony at the previous hearing, when you have
901 a demand for computer engineers and electrical engineers and
902 people who are not based on mechanical backgrounds, I am
903 concerned that the level of funding and the staffing of
904 personnel within your agency may not be adequate to meet the
905 incredible demands of the changing technology of this
906 automobile industry. Have you done an independent review
907 since assuming responsibility to make your own independent
908 judgment on whether or not that is a critical case we need to

909 address?

910 Mr. {Strickland.} I have a couple of responses to that,
911 Mr. Braley. The work of ODI and the automotive engineers
912 that do the work, they are some of the finest in the business
913 in this country, and as the technology evolves, the
914 experience of our investigators and our engineers also
915 evolves. I can give you the quantum number of folks that we
916 have on deck to do the job. We have 125 engineers in NHTSA.
917 We have five electrical engineers. We have a software
918 engineer. We have engineers that are based in our East
919 Liberty, Ohio, facility. We have resources for consultants
920 when we need additional expertise. My understanding from
921 what I know from when I have taken office, there is not a
922 notion that we don't have the proper expertise to handle
923 today's automobiles. I don't think that is the case at all.

924 However, recognizing that you can always buttress what
925 you have, the President has provided us resources to hire 66
926 new people, which we will use to leverage our resources and
927 to buttress and strengthen those folks, in addition to we
928 will be looking at ways how we can do longitudinal studies
929 and long-range studies on these complex systems, as the
930 Secretary spoke about in the prior hearings. Is my
931 confidence that we can handle the current marketplace with
932 our expertise? Yes, we can. Can we be stronger in that

933 area? Of course we can.

934 Mr. {Braley.} Of the 62 employees you have identified
935 that are in the President's budget request, how many of those
936 do you propose to allocate to ODI?

937 Mr. {Strickland.} That is part of the process I am
938 working with the career staff and with the Office of the
939 Secretary to figure out what our resource needs will be in
940 that area. I will be happy to come forward with that
941 information when a decision is made.

942 Mr. {Braley.} Can you also provide the committee with a
943 breakdown of the people working at ODI with engineering
944 degrees by their names, their job titles and what their
945 particular expertise in terms of being a professional
946 engineer is?

947 Mr. {Strickland.} I would be happy to do that, Mr.
948 Braley.

949 Mr. {Braley.} Thank you. I appreciate that, and I
950 yield back.

951 Mr. {Rush.} The Chair recognizes now the gentlelady
952 from Michigan, Ms. Sutton, for 5 minutes.

953 Ms. {Sutton.} Thank you, Mr. Chairman.

954 Mr. {Rush.} Ohio. I am sorry.

955 Ms. {Sutton.} I am close to Michigan but I am from
956 Ohio.

957 Mr. {Rush.} I apologize.

958 Ms. {Sutton.} That is okay.

959 Administrator Strickland, thank you for being here. I
960 have a number of questions and they touch on different areas,
961 so bear with me as we shift around.

962 Beginning with the question of the black-box technology,
963 we have heard a lot about when Secretary LaHood was here he
964 indicated difficulty getting the information that is in those
965 black boxes, that we don't have the capacity, whether it is,
966 as my colleague, Mr. Braley, described, that we don't have
967 keys to the kingdom, which is that information. But when I
968 heard you answer Representative Dingell about having access
969 to data, you said we have access to data in a similar way
970 whether it is Toyota, who keeps information in Japan, and our
971 domestic auto industry. But I was under the impression based
972 on the last hearing that we actually could access information
973 from our domestic auto manufacturers in a way that we can't
974 get from Toyota. So could you clarify for me?

975 Mr. {Strickland.} I would be happy to clarify. I took
976 from Mr. Dingell's question about early warning reporting
977 data, which is the quarterly data we receive from all
978 automakers, which is a set template of data that we receive.
979 There are some differences in how they collate and present it
980 but we can understand all of that. That is what I thought he

981 meant.

982 In terms of event data recorders, you are absolutely
983 right, Representative Sutton. Toyota has a proprietary
984 system that up until I guess a week or so ago there was only
985 one tool in the country that could be used to read it and we
986 did not have that tool. So if we ever wanted to get
987 information from an event data recorder on a Toyota vehicle,
988 it was very difficult. It is my understanding that Toyota
989 has provided my ODI staff three of these tools to read their
990 event data recorders. I am not sure of the status of whether
991 we have received them all yet but that is my understanding,
992 that Toyota has promised to us that they will provide those
993 tools. So in terms of Mr. Dingell's question, in terms of
994 the set data that comes in to us quarterly from all
995 automakers, yes, it is similar. On your question on event
996 data recorders, yes, there is a difference between the
997 Detroit automakers, which all use a commercially available
998 tool and we have the ability to read it, versus Toyota, where
999 we could not up until a week ago.

1000 Ms. {Sutton.} And now that you have this equipment,
1001 that was the only hindrance to having access to the black
1002 boxes? You can get them? You can always get access?

1003 Mr. {Strickland.} We can access it, Representative, but
1004 we still need a Toyota representative to help decode the

1005 data. It isn't fully transparent, even when we download the
1006 box. So I still believe that we need Toyota representation
1007 to assist us in decoding what happened 5 seconds pre crash
1008 and 1 second post crash I believe is the data that is being
1009 included in those boxes.

1010 Ms. {Sutton.} And is that something that they are
1011 required in any way to do or is that just a voluntary offer
1012 on their part?

1013 Mr. {Strickland.} At this point we are undergoing rule.
1014 By 2012, if an automaker chooses to have an EDR on board, it
1015 has to comport with certain readability and data standards
1016 but they don't have to have an electronic data recorder on
1017 board. It is not mandated.

1018 Ms. {Sutton.} Well, that is interesting. We will have
1019 to follow that and see what the consequences intended and
1020 others are of that rulemaking.

1021 Okay. With respect to what we have been reading, we
1022 have been reading in the Washington Post about the
1023 relationship between some of those who used to work at NHTSA
1024 and going over to work for some of the car companies, and in
1025 this moment, Toyota is in the headlines, and so the Post
1026 article mentioned that two former NHTSA defects investigators
1027 left the agency and immediately took jobs at Toyota managing
1028 federal defect investigations. Do you think that there is an

1029 apparent conflict of interest here? You know, we are
1030 charged, as Members of Congress, with ensuring that the
1031 public interest is always the key, and you can understand
1032 that people are more than a little concerned when they see
1033 sort of that cozy, quick turnover revolving door. Could you
1034 comment on that?

1035 Mr. {Strickland.} Certainly. I have two responses to
1036 that, Representative. No ethics laws were broken. You know,
1037 Mr. Santucci and Mr. Tinto, who are former employees of
1038 NHTSA, when they left their post employment, they were of the
1039 level of employee--everything that they did was fully
1040 compliant with the current federal laws regarding post-
1041 employment limitations. So no laws were broken.

1042 But I am not going to quibble with you on appearance.
1043 Perception is reality. And the Secretary was very clear in
1044 his statement to this committee and to Oversight and
1045 Government Reform and to the Senate Commerce Committee on
1046 this issue. He is committed to strengthening the ethics
1047 requirements in the Department of Transportation. I fully
1048 support his efforts, and as far as I am concerned, I am going
1049 to hold every employee in NHTSA to the highest ethical
1050 standard as the Secretary holds everybody in DOT to the
1051 highest standard and frankly the Obama Administration has
1052 made it a focal point that this will be the most ethical

1053 Administration in history. So we are looking forward to
1054 working with you on a going forward basis in dealing and
1055 handling this issue of appearance and arms-length distance
1056 for employees of NHTSA and when they move into a post-
1057 employment situation.

1058 Ms. {Sutton.} I appreciate that answer because the
1059 public trust is critically important in making sure that
1060 things are working as they should, and, Mr. Chairman, if I
1061 could just indulge in one last question.

1062 During the hearings that we have had in the past with
1063 representatives of Toyota and Secretary LaHood, we heard
1064 information about how recalls of vehicles had happened in
1065 other countries, and these recalls, you know, stemming from
1066 what appear to be problems that arose here in this country
1067 and led to eventual recalls after much tragedy had occurred.
1068 Is there anything that requires auto manufacturers to report
1069 to NHTSA problems beyond our borders with vehicles that are
1070 sold in this country?

1071 Mr. {Strickland.} Yes, there are a couple of
1072 requirements actually. They have to report to us foreign
1073 recalls that involve components used in United States
1074 vehicles and they have to also report foreign service
1075 campaigns in the vehicles. Now, the question is whether they
1076 did this timely. We definitely will investigate those

1077 issues. But we receive a lot of data from the early warning
1078 system and other obligations from the TREAD Act and we are
1079 definitely looking at other ways and other types of
1080 information that could be helpful to us in that mission and
1081 we are looking forward to working with the Congress and
1082 finding ways that we can buttress those abilities.

1083 Mr. {Rush.} We see that Mr. Markey has joined the
1084 subcommittee. He is not a member of the committee, so the
1085 Chair seeks unanimous consent that Mr. Markey be allowed to
1086 ask questions of the witness, and hearing no objection, so
1087 ordered. Mr. Markey, you are recognized for 5 minutes.

1088 Mr. {Markey.} Thank you, Mr. Chairman. Thank you for
1089 your hospitality.

1090 As you know, the early warning system that I helped to
1091 create during the 2000 TREAD Act was intended to provide the
1092 Department of Transportation and the public with early
1093 information that auto manufacturers receive about safety-
1094 related complaints. But the Bush Administration issued a
1095 regulation that deemed almost all of the information
1096 automakers to be confidential business information. As a
1097 result, as far as the public is concerned about my provision
1098 back in 2000, the early warning system has become an early
1099 warning secret. I have a summary here of the public
1100 information contained in all of the early warnings submitted

1101 by Toyota in the last quarter of 2008. It tells you that
1102 there were seven reports of deaths or serious injuries due to
1103 speed control but that is all the information you get. The
1104 public can't learn whether those reports relate to sudden
1105 unintended acceleration. They can't learn what happened and
1106 they can't learn whether any consumers made complaints about
1107 similar problems that didn't result in a serious injury or
1108 death.

1109 Do you agree that the public versions of early warning
1110 system data don't really tell the public anything specific or
1111 useful about potential automobile safety problems?

1112 Mr. {Strickland.} Mr. Markey, the one thing I would
1113 like to start off with saying is that the NHTSA databases and
1114 the information we provide are some of the most transparent
1115 in government, and we have been noted by the federal
1116 government about our data sources that we provide.

1117 In terms of the early warning system, as far as the
1118 Obama Administration is concerned, as far as I am concerned
1119 as administrator, the more transparency we have, the better.
1120 I definitely would like to have a dialog with you about the
1121 early warning reporting system and your thoughts on how we
1122 can improve transparency going forward.

1123 Mr. {Markey.} Now, consumers can report safety
1124 complaints to NHTSA as well and these reports are made

1125 public. Does it make sense to you that when a consumer
1126 reports a safety problem directly to NHTSA, it goes into a
1127 publicly searchable database, but when a consumer not knowing
1128 that they could complain to NHTSA instead reports the safety
1129 problem to a car company, that it becomes confidential
1130 business information without a requirement that the public
1131 learn about it? Do you think that is right or do you think
1132 that that information should as well have to be made public
1133 because it is given to NHTSA as part of a public report?

1134 Mr. {Strickland.} I clearly see that inconsistency.
1135 This Administration believes in transparency. I would
1136 happily talk to you on a going forward basis how we can make
1137 our databases more transparent.

1138 Mr. {Markey.} Do you think that information should be
1139 information that the public, me as an owner of a Toyota
1140 Camry, should I have had that information?

1141 Mr. {Strickland.} That information should not be
1142 hidden, in my personal opinion. However, there are other
1143 things that should come into play and I would be happy to
1144 talk to you on a going forward basis.

1145 Mr. {Markey.} When President Clinton signed the Act
1146 into law, he directed the Department of Transportation to
1147 implement the early warning system in a manner that ensures
1148 maximum public availability of information. That clearly

1149 hasn't happened. So my goal is to work with you, sir, in
1150 order to accomplish that goal. We thank you for taking this
1151 job, by the way.

1152 Mr. {Strickland.} Thank you, Mr. Markey.

1153 Mr. {Markey.} And we have enjoyed working with you over
1154 all the years, especially on the fuel economy standards and
1155 your work in the Senate.

1156 Let me ask if I may one final question. Although NHTSA
1157 can undertake a mandatory recall, doing so takes a great deal
1158 of time and can require you to go to court to prove the
1159 existence of a safety defect. There are times, however, when
1160 taking that long costs lives. As you know, since you were
1161 the lead staffer in the Senate 2 years ago, Congress gave the
1162 Consumer Product Safety Commission the authority to quickly
1163 inform the public of an imminent product safety hazard, even
1164 though the formal recall process was complete. Do you think
1165 that sort of authority could help NHTSA more effectively
1166 protect and inform the public of serious safety problems, and
1167 will you work with us to develop such a provision?

1168 Mr. {Strickland.} The imminent-hazard authority, Mr.
1169 Markey, is in several of our sister consumer safety agencies.
1170 The Federal Rail Administration, for example, has this
1171 authority and it has proven to be very helpful to them. I
1172 look forward to working with you and having a further

1173 discussion on this authority. It has proven very successful
1174 in other areas in consumer protection and it may bear fruit
1175 for NHTSA as well.

1176 Mr. {Markey.} Thank you, and our country is very
1177 fortunate that you were willing to accept this position.

1178 Mr. {Strickland.} Thank you, Mr. Markey. That is very
1179 kind.

1180 Mr. {Markey.} Thank you, sir.

1181 Mr. {Rush.} The Chair will ask the indulgence of the
1182 witness just for a few more minutes. The Chair will
1183 authorize a second series of questioning, and the Chair
1184 recognizes himself for 2 minutes.

1185 NHTSA's budget for vehicle safety programs has been
1186 stagnant, as was mentioned earlier, for the past 10 years.
1187 From my perspective, this year's budget request is down a few
1188 million dollars from the year before. ODI, which focuses its
1189 enforcement activities on new cars sold within the last 5
1190 years, has a budget of less than \$10 million to police a
1191 fleet of 80 million vehicles, and according to the Chicago
1192 Public News, adds up to about 10 cents a car. The budget for
1193 rulemaking has suffered as well. It has delayed major
1194 rulemaking efforts to the point that Congress has been
1195 compelled to legislate mandates for rollover standards and
1196 for child safety. I know that there is an increase of about

1197 66 new personnel but if you get more resources for your
1198 safety programs, where would you focus those increased
1199 resources?

1200 Mr. {Strickland.} Well, Mr. Chairman, you know, the
1201 safety mission is not simply in the ODI or the vehicle safety
1202 office. It is actually our entire mission. It is the
1203 behavioral side as well. And the President's budget provides
1204 resources for us to accomplish our mission with the new
1205 resources for those personnel. We will take a hard look at
1206 those 66 personnel and deploy them at the places where we
1207 need not only to improve and strengthen the Office of Defects
1208 Investigation but in other places where we can also help
1209 further our safety mission in the most efficient way.

1210 In terms of resources overall, we have accomplished our
1211 mission with the resources we have had. The President has
1212 given us a budget that gives us more resources to do more and
1213 we will use that for the safety mission.

1214 Mr. {Rush.} This Congress has to prepare a budget. The
1215 Congress has to approve a budget. Would you have any
1216 objections if we gave you more than a budget for 66
1217 employees?

1218 Mr. {Strickland.} Mr. Rush, the President's budget
1219 helps us accomplish our mission. If the decision of the
1220 Congress is to provide us more resources, we will use them

1221 judiciously for the purposes of improving safety.

1222 Mr. {Rush.} Sounds like a good answer to me.

1223 Mr. Whitfield for 2 minutes.

1224 Mr. {Whitfield.} I would just say, I don't know how
1225 much more we have to give you, but thank you.

1226 Mr. {Rush.} With that said, and seeing no more members
1227 seeking recognition, Mr. Administrator, you have done an
1228 excellent job. We thank you very much. And again, please
1229 forgive us but our duties have taken us away and so we
1230 weren't able to be as prompt as we wanted to be beginning
1231 this hearing, so thank you for your patience.

1232 Mr. {Strickland.} No, thank you, Mr. Rush. It has been
1233 an honor. Thank you, sir.

1234 Mr. {Rush.} Thank you.

1235 Mr. {Strickland.} Mr. Whitfield, thank you.

1236 Mr. {Rush.} The second panel will please be seated at
1237 the desk. The Chair thanks the second panel for your
1238 patience, and again, we want to reemphasize our apologies to
1239 you for our scheduling. It has been fairly horrendous and it
1240 has taken us away from our scheduled duties. And so please
1241 accept our sincere apologies.

1242 The Chair wants to introduce the witnesses now that
1243 comprise the second panel. On my left is Ms. Joan Claybrook.
1244 She is the former administrator for the National Highway

1245 Traffic Safety Administration, and Ms. Claybrook, we want to
1246 welcome you here once again. Seated next to Ms. Claybrook is
1247 Ms. Ami Gadhia, and Ms. Gadhia is the safety policy counsel
1248 for the Consumers Union, and Ms. Gadhia, we want to welcome
1249 you also to this hearing. And lastly we want to not just
1250 recognize but we want to also say hello to our former
1251 colleague, who was a member of this House, a very able Member
1252 representing the State of Oklahoma for many years, a very
1253 bright and intelligent human being, the Hon. David McCurdy,
1254 who is the president and the CEO of the Alliance for
1255 Automobile Manufacturers. Dave, it is good seeing you again
1256 and we welcome you again to this subcommittee hearing.

1257 Now we want to recognize for 5 minutes for the purposes
1258 of an opening statement the illustrious Ms. Joan Claybrook.

|
1259 ^STATEMENTS OF JOAN CLAYBROOK, FORMER ADMINISTRATOR, NATIONAL
1260 HIGHWAY TRAFFIC SAFETY ADMINISTRATION; AMI V. GADHIA, SAFETY
1261 POLICY COUNSEL, CONSUMERS UNION; AND DAVE MCCURDY, PRESIDENT
1262 AND CEO, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS

|
1263 ^STATEMENT OF JOAN CLAYBROOK

1264 } Ms. {Claybrook.} Thank you so much, Mr. Chairman.

1265 I am the last person to have required an auto company to
1266 do a recall, and that was 31 years ago, and I would like to
1267 say that when you do find a defect, the auto companies will
1268 often do a recall and you do not have to go to court. But
1269 sometimes you do have to go to court, and I think that there
1270 has been, and the Toyota case, I think, elaborates on this.
1271 I think there has been a misconception on what a defect is,
1272 and in the last case that was litigated by the Department of
1273 Transportation on this issue, the federal Court of Appeals
1274 made several important comments which I would just like to
1275 mention to you. This is not in my testimony. I hope my
1276 whole testimony will be in the record. But I think that this
1277 is a very important issue. It has come up now several times
1278 in recent days.

1279 What the court said was, to find a defect within the

1280 meaning of the Act, the NHTSA must show that the vehicle
1281 itself is defective whether the defect manifests itself in
1282 performance, construction, components or materials of the
1283 automobile. In other words, it can be a performance defect
1284 and they do not have to show that there are five or 500 or
1285 10,000 consumer complaints that have arisen, and often in
1286 fact those complaints are not allowed in court as evidence.
1287 So if the agency relies on it, then it is not going to have
1288 them find a successful result.

1289 Judge Leventhal, who was a Court of Appeals judge in a
1290 different case, said that a determination of a defect does
1291 not require any predicate of identifying engineering,
1292 metallurgical or manufacturing failures. A determination of
1293 a defect may be based exclusively on the performance record
1294 of a vehicle or component.

1295 Now, I think that this changes if you look at the Toyota
1296 case, and I know this is not just about Toyota but it is
1297 about the agency. It changes the way the agency should
1298 approach these defect investigations, and I do think that the
1299 agency has fallen into a trap, if you would, with the Toyota
1300 case and others, where it seems to be accepting the burden of
1301 having to define what the defect is in terms of the failure
1302 of performance. That is the responsibility of the
1303 manufacturer. The manufacturer put that vehicle together.

1304 They did the design drawings. They make the profit from it.
1305 And how this happens is their responsibility. If it has a
1306 failure in performance, the agency can find a defect and the
1307 company has to fix it and the company has to figure out what
1308 that fix is. That is what the courts have said, and I think
1309 it is very important to make that clear.

1310 My testimony that I submitted has seven points that I
1311 would like to just mention very briefly. One is that there
1312 has been a low priority on enforcement in the agency, a lack
1313 of resources, which you all have discussed, but there is
1314 another key issue which is that a court of appeals in the
1315 mid-1980s found that consumers did not have authority under
1316 the existing statute to sue if a defect was not found by the
1317 agency. In other words, if a case is closed, there is no
1318 authority of consumers to go to court. There is authority
1319 for consumers to go to court if a rulemaking decision is made
1320 that we don't think is proper, and we in fact have gone to
1321 court at Public Citizen on many, many occasions and helped to
1322 make the statute work better because of the cases that we
1323 have brought. We have brought them on uniform tire quality
1324 grading, the tire monitoring system for the amount of
1325 inflation in the tire, on the early warning system, which was
1326 kept secret, totally secret. We at least got part of it
1327 revealed in two different lawsuits. So we can sue when there

1328 is a rulemaking issue. We cannot sue when there is a defect
1329 disclosed, and I think that changes the balance of thinking
1330 by the administrator. There is no fear that if they close a
1331 case that it is finished, and what the court there said in
1332 the court of appeals in the mid-1980s was that the agency had
1333 the discretion to figure it out according to their resources
1334 and so in every case that NHTSA closes, it says it closes it
1335 on the basis of resources. They just are mimicking the words
1336 of the court decision. But the fact is that we should have
1337 that authority because we are not going to bring cases we
1338 don't think we can win because that is a waste of our time
1339 and energy, and I think there ought to be a better balance of
1340 power because if the agency finds a defect, then the company
1341 gets a change to get its words and say what it thinks, and if
1342 we bring a case, they can intervene.

1343 Secondly, the agency has been engaged in excessive
1344 secrecy. The early warning system, which Mr. Markey talked
1345 about, is a good example, and as I said, we had to sue to
1346 make it available. We don't even know how many times Toyota
1347 in the recent cases filed an early warning report to the
1348 agency and what it said and how many consumer complaints it
1349 had and how many warranty claims it had and how many field
1350 reports it had. All of that is secret. And if that were
1351 more open, then the public would have access to it and they

1352 could help the agency by letting them know when they had a
1353 problem, but their web page in addition is a mess, so if you
1354 went to the web page to try and figure out whether there have
1355 been early warning reports on the particular vehicle that you
1356 are driving that is not working right, you wouldn't be able
1357 to figure it out. I wouldn't be able to figure it out.

1358 The third point is that I think the penalties that the
1359 agency has authority to impose are insufficient. First, they
1360 should have the criminal authority for knowing and willful
1361 violation of the Act, which you put in the CPSC law most
1362 recently a year ago. It is in the FDA law. It is many of
1363 the sister agency laws. I think the same should be available
1364 for NHTSA. And in addition, the penalty for the civil
1365 penalty is \$16.2 million, which is a flyspeck for companies
1366 like Toyota. They spend that much in half a day on their
1367 communications activities and staff. So we think that it
1368 ought to be \$100 million because that is something that they
1369 would pay attention to.

1370 Fourth, the agency is drastically underfunded. The
1371 total budget for the motor vehicle program for the whole
1372 United States is \$132 million in this agency. That is it.
1373 And it is not much above what it was when I was there just
1374 individual dollars, and in terms of inflation, it is way
1375 below. It has been drastically cut. By the way, those 66

1376 new FTEs that were being discussed, it is actually only 33
1377 full-time ones. So that is not really 66. And in addition,
1378 they have allocated them. Twenty-three are for operations
1379 and research, eight for rulemaking, four of them for
1380 enforcement. So that is the tentative allocation. Now, they
1381 may be changing that and reconsidering it but that is what
1382 was in the budget. So the agency cannot handle the programs,
1383 the rulemaking programs which are critically important, as
1384 important certainly as the defect enforcement because of lack
1385 of capacity.

1386 Information gathering and the data systems are totally
1387 insufficient. They should have been funded at four or five
1388 times what they are now, given the design of these systems
1389 back when they were first created in the 1970s. I think that
1390 a key issue that has come up at this hearing to some extent
1391 is the black box. It is a voluntary standard. Voluntary
1392 standards don't work as evidenced by the fact that Toyota,
1393 you know, its system is not even being made available and the
1394 deadline for compliance was supposed to be 2010. It was
1395 extended to 2012, so it is delayed. It is a 5-year lead-in
1396 for a voluntary standard, which is ridiculous. We think that
1397 the black box ought to be mandatory and that the data, have a
1398 standardized downloading for the data so that the police
1399 don't have to have seven different computers depending on if

1400 it is a General Motors car or Toyota or Nissan or Mercedes.
1401 They ought to have one standardized downloading system. And
1402 I think that a way that the agency could be drastically
1403 enhanced, it is very exciting, would be to have that black-
1404 box data when it is downloaded when a crash occurs, a serious
1405 crash, a tow-away crash or an airbag crash, to have that data
1406 go to NHTSA, have NHTSA set up a data system to receive it so
1407 that that can be the basis for their evaluation of defects
1408 and evaluation of safety standards, and the data would be
1409 voluminous and it would be fabulous and far more than what
1410 they have today, and it would be much less expensive. So I
1411 hope that the committee will consider that issue as well.

1412 The new safety standards should come out of some of the
1413 work that goes in the defects area. For example, for years
1414 NHTSA has tested cars and seat backs have failed when they
1415 hit them in the rear at 30 miles an hour and yet they have
1416 never issued a standard to upgrade that seat back. The very
1417 dangerous circumstance of seat back fails, you can't control
1418 the car, and also many people become quadriplegic and
1419 paraplegic as a result. But in the Toyota case, I think a
1420 brake override standard and a new accelerator standard which
1421 was issued in 1973, it is not even electronic that is
1422 completely irrelevant to the current model should be done.

1423 And then finally, I believe that conflict-of-interest

1424 rules need to be strengthened as we have mentioned and I
1425 would mention that NHTSA has a test facility in Ohio but it
1426 is owned by Honda Motor Company. I created this back in the
1427 1970s when it was owned by the State of Ohio. Now it is
1428 owned by Honda because they bought it. And I think that that
1429 should be changed. They should change their facility and
1430 there are some opportunities for doing that.

1431 Thank you very much, Mr. Chairman. I have several
1432 submissions for the record. I am sorry that I am slightly
1433 over on my time.

1434 [The prepared statement of Ms. Claybrook follows:]

1435 ***** INSERT 2 *****

|
1436 Mr. {Rush.} The Chair by unanimous consent will accept
1437 the extraneous material and your full statement into the
1438 record.

1439 Ms. {Claybrook.} Thank you, sir.

1440 Mr. {Rush.} Ms. Gadhia, you are recognized for 5
1441 minutes.

|
1442 ^STATEMENT OF AMI V. GADHIA

1443 } Ms. {Gadhia.} Thank you. Chairman Rush, Ranking Member
1444 Whitfield and members of the subcommittee, thank you for the
1445 opportunity to testify on the road ahead for NHTSA. I am Ami
1446 Gadhia, policy counsel with Consumers Union, the nonprofit
1447 publisher of Consumer Reports.

1448 The recent Toyota recalls involving sudden, unintended
1449 acceleration have focused national attention on safety
1450 problems. Consumers Union believes that addressing this
1451 formidable challenge demands a coordinated effort by the
1452 government, automakers, the public and independent consumer
1453 groups such as our own. We recommend the following
1454 government actions to improve our auto safety net.

1455 Consumers Union believes government regulators could
1456 have moved more aggressively to pursue sudden, unintended
1457 acceleration and to protect consumer safety. Various news
1458 reports and our own analysis of documents from the investment
1459 point to a pattern of missed opportunities. NHTSA and Toyota
1460 were aware of unintended-acceleration complaints involving
1461 Toyota models as early as 2003 when the agency received a
1462 petition to investigate the problem. We are pleased that
1463 NHTSA is now looking into potential electronics issues behind

1464 the events involving Toyotas and we eagerly await the
1465 agency's findings. However, we believe that NHTSA can take
1466 actions now to improve safety.

1467 First, we would like to see improved public access to
1468 safety information. NHTSA's Office of Defects Investigations
1469 collects complaints and data about autos from the public and
1470 manufacturers in two separate databases: the consumer
1471 complaints database and the agency's early warning reporting
1472 system. They both have limitations, and the data they
1473 provide are not integrated, making it more difficult for
1474 investigators to spot issues and for consumers to find
1475 information. Consumers shouldn't have to visit different
1476 sites to see all of this information or be forced to search
1477 it using tools that are less than user-friendly. All
1478 complaint information should be visible by a single easy-to-
1479 use consumer-facing site. NHTSA should also initiate a
1480 program to raise public awareness and invite more drivers to
1481 participate in data gathering. The more public complaints
1482 there are to analyze, the greater the change that problems
1483 such as unintended acceleration will be identified at an
1484 early stage.

1485 Second, NHTSA should promulgate certain safety
1486 regulations to prevent unintended acceleration in all
1487 automobiles. They should require that cars be able to stop

1488 within a reasonable distance with a sustained press on the
1489 brake pedal even when the throttle is fully open. One method
1490 to reduce stopping distances is smart throttle technology
1491 that allows the brakes to override the throttle. Other
1492 methods may also become available. To us, the most important
1493 safety feature is to ensure that a vehicle can stop within a
1494 reasonable and safe distance. NHTSA should require simple
1495 standard controls that can easily turn off the engine in an
1496 emergency. In many current Toyota vehicles, when the car is
1497 moving, it requires a sustained 3-second push of the button
1498 to turn off the engine. Though that is a safety precaution
1499 to prevent accidental engine shutoff, it is an action many
1500 owners may not be able to do in a panic situation. Ignition
1501 controls should be easy to operate, especially in an
1502 emergency.

1503 NHTSA should require intuitive, clearly labeled
1504 transmission shifters in all cars. If your car is
1505 accelerating out of control, hitting the brakes and shifting
1506 into neutral is your best strategy but you want to know where
1507 neutral is when you are panicking. There should be
1508 consistency for shifters across all vehicles. NHTSA should
1509 also require a minimum distance between the gas pedal and the
1510 floorboard. Floor mats that entrap pedals have been a major
1511 focus in recent recalls but people frequently use thick mats

1512 or ill-fitting mats or stack the mats on top of each other.
1513 NHTSA should ensure that there is sufficient clearance
1514 between the pedal and the floor mat.

1515 We also think that NHTSA's cap on civil penalties should
1516 be lifted to act as a deterrent against future violations and
1517 that NHTSA could improve the recall compliance process. The
1518 average consumer response rate to vehicles is 74.1 percent.
1519 Currently, manufacturers notify dealers about recalls and the
1520 dealers in turn notify car manufacturers once the cars are
1521 repaired in response to a safety recall. Consumers Union
1522 suggests that going forward car manufacturers submit such
1523 data to NHTSA. This information, which manufacturers already
1524 have, should include individual vehicle identification
1525 numbers, or VINs, of cars that are subject to a particular
1526 recall as well as when the recall repairs were performed on
1527 the vehicles. NHTSA would then be able to match up safety
1528 recalls with the manufacturer-provided VIN in a consumer-
1529 friend searchable database. We would further encourage
1530 States to consider linking safety recall compliance with the
1531 ability to obtain a vehicle registration similar to the way
1532 consumers must show proof of insurance to register their cars
1533 now. This would help people who purchase used cars to know
1534 whether recall repairs have been made.

1535 We also recommend that Congress take a look at the

1536 reports of a revolving door at NHTSA and whether this may
1537 have impacted safety decisions. We are pleased to hear today
1538 the administrator's comment that NHTSA will be looking into
1539 this particular issue.

1540 Finally, we urge Congress to adequately fund NHTSA. In
1541 2007, motor vehicle crashes accounted for 99 percent of all
1542 transportation-related injuries and fatalities yet NHTSA's
1543 budget currently amounts to just over 1 percent of the
1544 overall DOT budget. The agency's budgeting and staffing for
1545 auto safety and consumer protection functions should be
1546 commensurate with the realities of traffic safety.

1547 Consumers Union thanks the committee for the opportunity
1548 to present its recommendations as you move forward.

1549 [The prepared statement of Ms. Gadhia follows:]

1550 ***** INSERT 3 *****

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1551 Mr. {Rush.} The Chair thanks the witness.

1552 The Chair now recognizes Mr. McCurdy for 5 minutes for
1553 the purposes of an opening statement.

|
1554 ^STATEMENT OF DAVE MCCURDY

1555 } Mr. {McCurdy.} Thank you, Mr. Chairman and Ranking
1556 Member Whitfield for the opportunity to appear and speak on
1557 behalf of the industry as a whole. I must admit as you made
1558 your introduction, there was some chagrin on my personal part
1559 when I looked at the membership of this subcommittee in that
1560 I actually served with the fathers of three of the members,
1561 so it is a homecoming of sorts but I hadn't thought I had
1562 been gone that long. It is good to be back with you.

1563 As you and your colleagues consider the road ahead of
1564 National Highway Traffic Safety Administration, it is
1565 important to remember three key points. The administrator,
1566 who we are all delighted that David Strickland is now the
1567 administrator of NHTSA, as he pointed out in the Department
1568 of Transportation highlighted today and actually I have a
1569 chart that is displayed here that motor vehicle crash
1570 fatalities and injuries are at historic lows. It is a very,
1571 very important point because that is the mission of the
1572 organization. Secondly, autos have never been safer and they
1573 are still getting safer every day because of innovative
1574 safety technologies including advanced electronics. And
1575 third, we need to be careful not to inhibit the innovation or

1576 the speedy identification and remedy of defects.

1577 On the first point, as the chart indicates, sometimes
1578 when you see a chart like that it is confusing for folks but
1579 to put it in perspective, this figure reports fatality per
1580 100 million vehicle miles traveled, so there are 1.16
1581 fatalities per 100 million miles traveled. That is down from
1582 in excess of two. Put that in terms of human lives, and
1583 again, we all know that this is far too many, that is a
1584 significant reduction from what Joan Claybrook would indicate
1585 back in the 1970s when it was at a high of 51,000. Now that
1586 is a decrease of 17,000. So I think that is a very important
1587 point that there is a significant and steady reduction
1588 despite increased ownership and increased vehicle miles
1589 traveled. So I think this is a goal that we share and we want
1590 to continue to work to support.

1591 As far as the safety of vehicles, by every single
1592 measure, these vehicles are dramatically safer than years
1593 ago, and in the last 15 years we have seen a revolutionary
1594 expansion of advanced vehicle safety technologies including
1595 increased number of electronic components and features. Mr.
1596 Braley mentioned being able to take apart a carburetor and
1597 engine in the basement. It is indeed impossible to do that
1598 today. But a lot of the technologies that we see to meet
1599 fuel economy requirements, to meet emission controls, to

1600 provide safety are because of these advanced electronics.
1601 Also, Ms. Claybrook said that voluntary standards don't work
1602 but in fact many of the incredible safety innovations were
1603 voluntary and were brought out before the agency ever
1604 considered regulating it. Electronic stability control--
1605 electronic stability control saves anywhere from 5,000 to
1606 9,000 lives annually. Lane departure warning, over 2,700
1607 lives. Safety belt reminders and safety belt interlock,
1608 again significant. Side airbags, forward collision warning,
1609 emergency brake assist, adaptive headlights, blind spot
1610 information systems, all of these are innovations that the
1611 industry introduced ahead of regulation.

1612 Secondly, it is really important to recognize that
1613 electronic systems are often far more reliable over time than
1614 mechanical systems. I used to represent the electronics
1615 industry and I will tell you that the advancements in solid-
1616 state technology provide increased performance. It enables
1617 vehicles to not only sense, diagnose and also to have
1618 failsafe modes that are not possible with traditional
1619 historic mechanical systems. So this is a very significant
1620 technology which is helping us to meet our goals of
1621 sustainable mobility.

1622 And third, as I indicated, I think we are going to have
1623 to be careful not to inhibit this cycle of innovation because

1624 this industry innovates more rapidly and gets into the
1625 marketplace technologies for consumers and so we need to
1626 maintain a policy framework that embraces technology-based
1627 solutions ahead of regulation, and I don't think the public
1628 would be well served if automakers were forced to wait for
1629 the government to catch up with industry's innovation.

1630 And it also important, we have talked a lot about
1631 recalls, but the vast majority of recalls are voluntary, and
1632 I have a chart here talking about detecting and correcting
1633 the defects sooner. In fact, the number of recalls is up.
1634 Some may say well, isn't that a sign of problems. In fact,
1635 that is a good point because the number of vehicles affecting
1636 is coming down so automakers are using the recall system
1637 based on data it receives not only from the consumer directly
1638 but also from the agencies to initiate these actions, to
1639 identify the defects and get them remedied and get the
1640 vehicles back into the marketplace.

1641 And then just in closing, I want to make a couple points
1642 about some suggestions for this committee, and I appreciate--
1643 I know how this chairman works and I know how this committee
1644 works, and you want to build a consensus on a bipartisan
1645 basis to address significant concerns. We would respectfully
1646 submit that Congress really does need to ensure that NHTSA
1647 has the resources to do its job and we would support this

1648 committee in its efforts. We have long advocated additional
1649 resources to fund the National Automobile Sampling System,
1650 the NASS system, which we believe is underfunded. We also
1651 support a number of other legislative elements that we hope
1652 would be included in this reauthorization such as State
1653 inducements, in other words, working to encourage States to
1654 adopt primary enforcement safety belt laws. I know that
1655 Chairman Oberstar is looking at this in his reauthorization.
1656 Our industry spent hundreds of millions of dollars in
1657 campaigns to try to pass primary seat belt enforcement laws
1658 across the country, and we have made real progress. We had
1659 three States this year alone.

1660 We also believe there should be a first offense with an
1661 ignition interlock requirement for impaired driving, drunk
1662 driving. The statistic that is not reported up there, the
1663 33,000 deaths, unfortunately, 30 percent of those or more are
1664 the result of less than 1 percent, one-half of 1 percent of
1665 the drivers and those that are impaired drunk driving. We
1666 have to get those people off the road.

1667 And then lastly, the graduated license laws for teens
1668 based on best practices, the STANDUP Act, we support that,
1669 and then there are other things that can really work to fund
1670 support high-visibility enforcement efforts such as Click It
1671 or Ticket and other limit under arrest or over the limit

1672 under arrest provisions. And again, there is an opportunity
1673 to support a driver alcohol interlock device research program
1674 called the ROADS SAFE Act, which puts money to try to develop
1675 research to prevent drunk drivers getting access to vehicles
1676 or starting vehicles.

1677 We appreciate very much your work. I understand how
1678 challenging it is. And we look forward to working with you
1679 to help develop commonsense solutions to some of these
1680 challenges.

1681 [The prepared statement of Mr. McCurdy follows:]

1682 ***** INSERT 4 *****

|
1683 Mr. {Rush.} The Chair thanks all the witnesses and the
1684 Chair thanks Mr. McCurdy for your statement. The Chair
1685 recognizes himself for 5 minutes for questioning.

1686 Mr. McCurdy, there has been a lot of testimony at this
1687 hearing and in past hearings, and some of it has centered on
1688 the black box as a technological solution or a recording
1689 device that would help in gathering data and also determining
1690 the causes for accidents. What is the industry's response to
1691 this phenomenon of the black box?

1692 Mr. {McCurdy.} We believe the information from event
1693 data recorders is important for NHTSA to do its job. They do
1694 have a rule that has standardized or recommended standards
1695 for the type of data that would be acquired. I think the
1696 industry is moving rapidly towards deployment of that system.
1697 Over 60 percent of all vehicles today, modern vehicles, have
1698 that capability. The only caution I would give, and again,
1699 having come from the intelligence and defense world, when we
1700 talk about black boxes or we come from the world of aerospace
1701 where some people think that in an aircraft there is this
1702 black box that they recover after an accident. Actually
1703 these data systems are embedded throughout vehicles and so it
1704 is not just one solitary device. But is important that there
1705 are commercially available tools to access that. So I think

1706 the agency is going to be addressing this and we look forward
1707 to working with them. I think this is something that can be
1708 addressed.

1709 Mr. {Rush.} Ms. Claybrook, you indicated that you think
1710 that NHTSA's current budget is inadequate and that the
1711 President's budget for this year, or next year, rather, is
1712 inadequate. What do you think as a former administrator in
1713 today's dollars, how much do you think NHTSA's budget should
1714 be and what do you think should be the categories that we
1715 should look at increasing personnel and other resources for
1716 NHTSA?

1717 Ms. {Claybrook.} Thank you, Mr. Chairman. I think that
1718 the budget should be doubled. It is \$132 million, which is a
1719 pittance by any measure in the federal government, and it
1720 should probably double the year after that. This agency is
1721 starving to death. It can't do the research it should. It
1722 can't collect the data that it should. It doesn't have the
1723 expertise that it should. It doesn't have the enforcement
1724 personnel that it should. And all of us suffer from that
1725 because of deaths in the highway, and I think that Mr.
1726 Strickland is going to be a good leader for this agency. I
1727 am looking forward to see his work, I think he needs the
1728 resources to do it, and I have already been talking to him
1729 and the Secretary a little bit about this, and I think his

1730 answer was very appropriate that they would use very wisely
1731 the resources that the Congress decided that they would give
1732 the agency. He didn't say we didn't want them or that they
1733 couldn't use them. He said that they would use them wisely,
1734 and I think that is as far as he is allowed to go under the
1735 President's rules and I am very pleased to see that he said
1736 that.

1737 Mr. {Rush.} You have given us seven--

1738 Ms. {Claybrook.} I would add one other thing, Mr.
1739 Chairman, which is that issues have been raised today about
1740 the reduction in death and injury on the highway, which is
1741 magnificent, but I would also point out that after the oil
1742 crisis of 1973, there was a reduction of 9,000 deaths a year
1743 because the economy was in the sink, and I think that if you
1744 look at the documents that were prepared by the agency
1745 itself, for example, here is there list that they put out
1746 today of their crash stats, you will see that every time
1747 there is a downturn in the economy, there is less
1748 discretionary driving and there is a downturn in death and
1749 injury, but it comes right back up again, and so should
1750 anyone suggest that this is a permanent fix for the agency,
1751 it is not. I think that you are still going to need those
1752 resources, new safety standards, and there are many others
1753 that I didn't mention today which I will submit a list of for

1754 the record of other safety standards that the agency is
1755 woefully behind in issuing.

1756 Mr. {McCurdy.} Mr. Chairman, may I inject one point on
1757 that, just clarification? I think the administrator said
1758 that it actually had decreased and decline for 15 and a half
1759 straight quarters. That is more than the current recession,
1760 so I think this is a long-term trend. It is because of the
1761 regulatory efforts and it is because of the work of the
1762 industry cooperatively with that agency and also the work of
1763 Congress.

1764 Ms. {Claybrook.} Well, I wouldn't say that. The acting
1765 administrator, the one who went to Japan, Mr. Medford, he
1766 gave a presentation which I will also submit for the record
1767 in which he said that safety technologies had between 1960
1768 and 2000 saved 328,551 lives, and so I do agree, I agree with
1769 Mr. McCurdy that cars are safer today. I am disappointed
1770 that the industry often opposes some of those improvements
1771 but they also do take initiatives on their own, which he has
1772 mentioned, and these safety features can make a huge
1773 difference. They have made a difference in the number of
1774 lives saved and the number of deaths on the highway today
1775 would be far, far greater were not this agency doing its
1776 work, but there is much more that can be done and we will see
1777 more deaths and injuries when the economy improves.

1778 Mr. {Rush.} My time is expired. The Chair recognizes
1779 Mr. Whitfield for 5 minutes.

1780 Mr. {Whitfield.} Thank you. This has been quite an
1781 interesting hearing, and of course, any time we talk about
1782 death on the highway, and all of us have known people who
1783 have been killed in car accidents or have had loved ones that
1784 have been disfigured, and there is no way not to be emotional
1785 about individual deaths on the highway. But I am walking
1786 away from this hearing feeling a little bit better really
1787 about things, understanding that the Toyota issue is out
1788 there but when you have this kind of a reduction in the
1789 deaths per 100 million miles from in the middle 1970s 3.34
1790 fatalities per 100 million vehicle miles down to last year
1791 1.16 per 100 million miles, and it doesn't really make any
1792 difference what the economy is or is not, we are talking
1793 about 100 million vehicle miles. So I think that is
1794 something we really should celebrate to see that the fact
1795 that this fatality rate is coming down.

1796 Now, when we talk about the budget of NHTSA, I think the
1797 total budget is somewhere in the neighborhood of \$900 million
1798 but a lot of that goes to State grants, and you all may be
1799 more familiar with those State grants than I am and I know
1800 that Ms. Claybrook is right as far as vehicle safety. There
1801 is about \$132 million a year for vehicle safety. But I

1802 referred earlier, for example, to this Congressionally
1803 mandated study in 2005 about the causes of vehicle accidents,
1804 and it said that 95 percent were due to the driver, primarily
1805 driver mistakes, and 2 percent, by the way, were related to
1806 vehicle or equipment defect but about 40 percent or 50
1807 percent of that related to tires. So I am just wondering if
1808 maybe we should look at this in a different way and try to
1809 start focusing more money on educating drivers, better
1810 educational programs for drivers. And every State sets their
1811 own laws for how old you have to be and what kind of program
1812 you have to go through to drive. Because of the fact that 95
1813 percent of all accidents are caused primarily because of
1814 driver neglect or whatever, should we be focusing on more
1815 programs to provide better educational opportunities for
1816 drivers to make them better prepared? And I would just ask
1817 each one of you that question and see how you would respond
1818 to that.

1819 Ms. {Claybrook.} Well, first of all, Mr. Whitfield,
1820 thank you so much for putting this out, and I appreciate your
1821 question. First of all, I would like to submit for the
1822 record the problems that we see with this causation study.
1823 It is quite complicated and I don't want to take the time
1824 today, but there are a lot of deficiencies in it. But even
1825 assuming, which I don't, that 95 percent of the crashes occur

1826 because of driver error, what you have to look at is what
1827 causes the death and injury, and Dr. William Haddon, who was
1828 the first NHTSA administrator, put together what he called
1829 the Haddon Matrix and it had pre crash, crash and post crash,
1830 and what you are talking about is the pre-crash issue, which
1831 is drunk driving, falling asleep, brakes don't work, whatever
1832 it may be in the pre-crash field.

1833 Mr. {Whitfield.} Ms. Claybrook, there is only about a
1834 minute left, so I am just going to say that you disagree with
1835 what I was saying, I am assuming, that--

1836 Ms. {Claybrook.} Well, no, not necessarily. I will
1837 submit for the record the information on that. But what you
1838 want to do is to protect the driver and the occupants, and
1839 the way you do that is making sure the car is safe regardless
1840 of what causes the crash, and on driver education, NHTSA
1841 itself has done lots of work on this and shown that driver
1842 education really doesn't do much in terms of the long-term
1843 driving capability of most people.

1844 Mr. {Whitfield.} What about you, Miss Gadhia?

1845 Ms. {Claybrook.} I like driver education. I mean, it--

1846 Mr. {Whitfield.} What about you, Ms. Gadhia? Do you
1847 have any comments on that?

1848 Ms. {Gadhia.} In our testimony that we submitted for
1849 the record, we took a look at the question that the committee

1850 is asking in light of all the recalls that we have seen in
1851 recent weeks, are there areas that we see for improvement,
1852 and so we have made our recommendations accordingly. We are
1853 pleased, though, that the agency and Secretary LaHood have
1854 put a great focus on distracted driving. That is something
1855 that has been obviously a big problem. So we do see a value
1856 in that particular kind of focus.

1857 Mr. {Whitfield.} Mr. McCurdy?

1858 Mr. {McCurdy.} Thank you, Mr. Whitfield. In fact, in
1859 addition to driver behavior and performance, there is the
1860 driving environment, so the condition of roads, the lack of
1861 safety features there, weather, et cetera is a fact in 2
1862 percent and then in the other instances, about 2 percent can
1863 be attributed to the vehicle. But I will tell you, since we
1864 had a reference to older vehicles, I will provide for the
1865 record a copy of our playbook. It has an interesting
1866 photograph of a 50th anniversary event at the National
1867 Institute of Highway Safety, the Insurance Institute, and
1868 they did a 40-mile-an-hour head-on crash of two vehicles.
1869 One was a 1959 Chevrolet Belair. We are not picking on
1870 Chevy. It is actually a good story here. As you know, in
1871 1959--well, some of you probably weren't around then but most
1872 of us who were know there is a lot of metal there--a 40-mile-
1873 an-hour head-on crash with a 2009 Chevy Malibu, which is a

1874 smaller car, and the results are dramatic. The cage, the
1875 front seat, the passenger area of the 1959, those passenger
1876 would have been killed. There is no doubt. I mean, severely
1877 injured, tremendous impact, crushing that compartment. In
1878 the new model, the cage is intact. It also has front
1879 airbags, side airbags, side curtains and also has other
1880 features that improve the likelihood of survival in a head-in
1881 crash regardless of the cause, whether it is someone
1882 swerving.

1883 The last point I would make in this, a comment made
1884 about the 3-second stop. I drive a vehicle that has push-
1885 button on stop. That is one of the features that many, many
1886 consumers are moving towards. Are we saying that consumers
1887 today, it is in the manual, it is in the instructions and all
1888 the rest, can't take 3 seconds to push a button? I know that
1889 we panic, I know there are instances, but there is a need for
1890 education. There is a need. And maybe one of the positive
1891 aspects of all this investigation, all the reporting is maybe
1892 consumers are having to pay attention to actually the
1893 vehicles that they are driving, what are those shifters,
1894 where is neutral. My son-in-law drives a Camry. When this
1895 came up, the ones in the recall, he asked what do you do. I
1896 said you put it in neutral, okay. You don't want to turn it
1897 off at first, and those buttons are there and that 3-second

1898 delay is there for a reason because you don't want
1899 inadvertent shutting off the engine because then you could
1900 lose power. That affects steering and other conditions.

1901 So I think there is a commonsense approach we need to
1902 take. Let us find out what it is. Let us work together.
1903 And I think that is what NHTSA and the industry should be
1904 discussing. So there is not one solution, but I think there
1905 is a genuine concern about it to try to develop some
1906 solutions.

1907 Ms. {Gadhia.} Mr. Chairman, may I briefly respond to
1908 the comment about the push button?

1909 Mr. {Rush.} Certainly.

1910 Ms. {Gadhia.} I would like to note that our
1911 recommendations have to do with when the consumer is in an
1912 emergency situation since we have been talking about sudden
1913 unintended acceleration, and I will note also that given what
1914 has happened, it is my understanding that Toyota is working
1915 on reconfiguring their push-button ignition so it can be
1916 turned off in an emergency situation with multiple quick
1917 presses in a short period of time. So that is what we are
1918 talking about.

1919 Mr. {Rush.} The Chair recognizes the gentlelady from
1920 Illinois for 5 minutes.

1921 Ms. {Schakowsky.} Thank you, Mr. Chairman. I want to

1922 apologize to the witnesses for not being here for your
1923 testimony, though I have looked at it. I want to also just
1924 take this moment to say what a tremendous resource we have in
1925 Joan Claybrook, who did serve as head of NHTSA, and I hope
1926 that not only our subcommittee but that NHTSA right now will
1927 take advantage of all of the years of experience she has had
1928 not only as an administrator but as an advocate. I thank Ms.
1929 Gadhia and also Mr. McCurdy for the work that you are doing,
1930 but I wanted to particularly just thank Joan for decades, I
1931 won't say how many, of being an advocate for consumers.

1932 In looking at the priorities that you laid out for
1933 legislative and administrative--I mean, there are a couple
1934 things that are clearly legislative. If you think that
1935 penalties need to be enhanced, I think that is legislative on
1936 our part. But what are those things that you think the
1937 committee in particular has to deal with that really can't be
1938 done administratively to meet the goals that you have set out
1939 or the problems that you have identified?

1940 Ms. {Claybrook.} Well, I would say certainly in the
1941 penalty area that that is a legislative issue, and in the
1942 funding, that is a legislative issue. The President's budget
1943 is what it is and it is totally insufficient, and so it is
1944 not this committee's responsibility, although you do
1945 authorize, of course. I think that in the area of

1946 transparency, there have been some decisions made by the
1947 agency that this committee could change. In the early
1948 warning act, while there was a lot of discussion about the
1949 information being open, in fact, the way that it was written
1950 was interpreted as not being open. So I think that it would
1951 helpful clarification on transparency with the early warning
1952 system because right now it is not available to any of us.

1953 Ms. {Schakowsky.} And that would require a change or a
1954 clarification or--

1955 Ms. {Claybrook.} I think it would be--yes, I think it
1956 would be very helpful to have a clarification of that.

1957 In terms of consumers being able to bring a lawsuit when
1958 a case is closed in the enforcement area, we definitely need
1959 to have legislation there because of the court of appeals
1960 decision, and then I think it would be very helpful to have
1961 some legislative support for improving the black block. This
1962 is something that could be done administratively by the
1963 agency. I think it would be really helpful because if the
1964 black box is mandatory, if it gathers a lot of really good
1965 data, if it can be downloaded easily, all of that data can
1966 come into NHTSA's data system and it would vastly enhance,
1967 excitingly enhance the capacity of the agency to analyze
1968 problems, to find out what is going on in the highway because
1969 this would be rich information from our crashes that occur

1970 right then on the highway, and this information is totally
1971 lacking in the agency now, and gathering it through the NASS
1972 system, which is this National Accident Sampling System,
1973 which is after the fact investigations, there was intended to
1974 be 20,000 of them a year, it is now 4,000 because of the
1975 cost, and this I think will never get to the 20,000. So why
1976 not take advantage of this data that is going to be collected
1977 anyway in black boxes under what I think has to be a mandate
1978 for the black box itself and use that data for the operation
1979 for the agency as well as particular crashes.

1980 Ms. {Schakowsky.} Mr. McCurdy, you seem to be nodding
1981 at that. Did you want to comment on this?

1982 Mr. {McCurdy.} Thank you, ma'am. Actually I did want
1983 to comment. We asked for additional resources for NASS. We
1984 think that data needs to be collected, and this committee has
1985 oversight of NHTSA and the data is there but we need to make
1986 sure that the agency has the tools and resources to gather
1987 it. My only caveat on that, and I think this is something
1988 that we need to work on, is I don't believe that the
1989 wholesale release of raw and unverified data would further
1990 objective of quickly identifying and correcting defects. If
1991 anything, it may lead to more litigation, and I don't believe
1992 that is the answer.

1993 Ms. {Claybrook.} Well, I should say, Mr. McCurdy--

1994 Mr. {McCurdy.} I actually have the mic, Mr. Chairman.
1995 You know, I don't believe it would in fact do that. I would
1996 hope before the gentlelady leaves or we at least have another
1997 round actually talk about one of the principle issues that
1998 you are the key sponsor of which we supported, the Cameron
1999 Gulbransen Act, and the role that we actually played because
2000 this is one of our priorities and it shows where we can
2001 actually work together to address significant problems, and
2002 those are some of the most tragic instances that we know.

2003 Ms. {Schakowsky.} They are.

2004 Mr. {McCurdy.} I worked with Senator Sununu and Senator
2005 Clinton at the time as well as your staff and the staff of
2006 the committee to make that happen, and the industry fully
2007 supported that. So I want to make sure that is on the
2008 record.

2009 Ms. {Schakowsky.} And I appreciate that.

2010 Ms. {Claybrook.} Could I--

2011 Ms. {Schakowsky.} Is there any way, Mr. Chairman, that
2012 Ms. Claybrook can respond back to that, or do you want--

2013 Ms. {Claybrook.} It is privacy information. I just
2014 want to make clear that I don't think that this data should
2015 be public as to individual crashes. It would be for
2016 statistical purposes. That is all I wanted to say.

2017 Ms. {Schakowsky.} Thank you.

2018 Mr. {Rush.} The gentlelady's time has expired. The
2019 Chair recognizes the gentleman from Florida, Mr. Stearns.

2020 Mr. {Stearns.} Thank you, Mr. Chairman.

2021 Ms. Claybrook, let me just follow up what Ms. Schakowsky
2022 talked about. In these boxes, isn't the box on a person's
2023 car, that box would belong to that person, wouldn't it?

2024 Ms. {Claybrook.} Yes.

2025 Mr. {Stearns.} So wouldn't they have the right to opt
2026 out if they wanted to? Could they flick a switch so that if
2027 they didn't want this to occur, they could do it, or do you
2028 think that should not be--

2029 Ms. {Claybrook.} I don't think there ought to be an
2030 on/off switch.

2031 Mr. {Stearns.} So you think there should be no opt-out?

2032 Ms. {Claybrook.} I do not think there should be an opt-
2033 out.

2034 Mr. {Stearns.} Okay. Secondly, the information they
2035 collect is obviously speed, perhaps location. Is it going to
2036 go beyond that in terms of weight in the car or driving
2037 habits? What, in your opinion--

2038 Ms. {Claybrook.} On the black box?

2039 Mr. {Stearns.} In the black box. It sounds like you
2040 want to expand it, and I think many people are concerned
2041 about how the federal government will handle this data. Say

2042 I can't opt out of the box under your persuasion, then if it
2043 goes to the federal government, is this going to be public on
2044 the Internet? Should private citizens be able to go and see
2045 that about their neighbors who are driving? I mean, there
2046 are some privacy implications I think that I am concerned
2047 about.

2048 Ms. {Claybrook.} I really appreciate you asking the
2049 question because I certainly didn't mean to suggest that
2050 every crash that occurs should be publicly exposed on the
2051 Internet with the name of the person and their car and all
2052 the rest of it. The black box generally collects data 20 to
2053 5 seconds before a crash and 5 to 10 seconds--

2054 Mr. {Stearns.} So it doesn't come on all during the
2055 whole time?

2056 Ms. {Claybrook.} No.

2057 Mr. {Stearns.} And so it is very, very limited time
2058 frame, and what it records is whether your foot was on the
2059 accelerator, whether it was on the brake, a lot of aspects of
2060 the engine itself, the speed of the vehicle and so on, and
2061 that data, what I am talking about having to go to the
2062 federal government, it would be only statistical data. All
2063 privacy information would be erased, so the federal
2064 government wouldn't even have it. It would just be
2065 statistical data. It would just be that a crash occurred and

2066 what the circumstances were so that you can then accumulate
2067 that data and say these are the kind of crashes that are
2068 occurring and these are the kind of remedies that we need to
2069 think about applying because of that. I do think it needs to
2070 be mandatory. I think it should be on every vehicle.

2071 Actually, General Motors, Ford and Chrysler readily reveal
2072 the contents of their black boxes in litigation because they
2073 think it is advantageous for them.

2074 Mr. {Stearns.} Well, I guess this committee would be
2075 concerned about the privacy. Let me move on. I have another
2076 question.

2077 Mr. McCurdy, welcome to the committee. It is nice to
2078 see you. Eddie Towns and I dropped a bill on January 28,
2079 2009, which would direct the Department of Transportation to
2080 issue regulations which would mitigate the safety hazard
2081 caused by near-silent hybrid and electric cars. I was in a
2082 parking lot going into the grocery store and I was just
2083 walking along with my BlackBerry and this car came up that
2084 was a hybrid and I didn't hear it, and it practically hit me,
2085 and so my question is, I think both General Motors and NHTSA
2086 have come up and proposed methods to address this, and I
2087 guess the concern of the ever-increasing desire now to have
2088 these cars that are hybrid and silent and you can't hear
2089 them. Winston Churchill almost got killed when he came to

2090 the United States and got off the wrong side of the road, and
2091 certainly if these cars are silent, he might not have been
2092 alive and so concerned with ever-increasing danger and sort
2093 of the inconsistency of the industry response so far. Do you
2094 think NHTSA needs to take further action to ensure an
2095 industry-wide solution, perhaps something like Congressman
2096 Towns and I, the bill we introduced which is called the
2097 Pedestrian Safety Enhancement Act of 2009. It has 210
2098 cosponsors. It is H.R. 734.

2099 Mr. {McCurdy.} I know the bill well, and it is good to
2100 see you, Mr. Stearns. Actually we refer to this as the quiet
2101 car legislation, and concern. Actually I think we ought to
2102 recognize--I don't know if John is still here--John Pare from
2103 the National Federation of the Blind. We at the Alliance
2104 have been working closely with NFB. Our member companies
2105 have been conducting acoustic testing. There are some
2106 challenges. You know, it is ironic, unintended consequences,
2107 but we have been pushed for years by some that say we have to
2108 reduce noise. We have been pushed by others to say we have
2109 to eliminate the internal combustion--

2110 Mr. {Stearns.} No one is ever happy.

2111 Mr. {McCurdy.} So we are moving, you know, rapidly to
2112 hybrid and electric technology and they are quiet, if not
2113 silent. I can't resist the point, though, when you say that

2114 you are walking along with your BlackBerry and don't hear it.
2115 It is a little bit of distracted walking, and we are mixing
2116 issues here, but we talk about distracted driving too. The
2117 point that--

2118 Mr. {Stearns.} But I am a pedestrian and I had the
2119 right-of-way with the hybrid.

2120 Mr. {McCurdy.} Actually I spoke to the NFB convention
2121 earlier in the year when they were in Detroit. I think they
2122 will tell you that we have reached out to them. We have
2123 worked closely with them. What we are trying to do is
2124 understand the challenges here, to really understand what the
2125 acoustic--

2126 Mr. {Stearns.} Is there a timeline? Can you give me a
2127 timeline?

2128 Mr. {McCurdy.} Well, we have been doing the research
2129 now. I think there are questions of length of implementation
2130 but I think we are not far from finding a solution.

2131 Mr. {Stearns.} A year, 2 years?

2132 Mr. {McCurdy.} It depends on front end and back. I
2133 think we are actually making real progress, and again, we
2134 want NHTSA to engage with us as well. So I think there is an
2135 opportunity for real stakeholder conversation here, and it is
2136 not confrontational at all. I think this is a question of
2137 really understanding the problem and bringing to bear the

2138 right science and engineering. But I think there will be a
2139 solution and I think it can be--

2140 Mr. {Stearns.} And you think NHTSA should have an
2141 industry-wide solution?

2142 Mr. {McCurdy.} It should be industry-wide. I think it
2143 is actually going to be global. I am involved
2144 internationally and I think Japan is--

2145 Mr. {Stearns.} Thank you, Mr. Chairman.

2146 Mr. {McCurdy.} --actively engaged and others will as
2147 well.

2148 Mr. {Rush.} I recognize Mr. Braley for 5 minutes.

2149 Mr. {Braley.} Thank you, Mr. Chairman.

2150 Mr. Stearns, there is a great episode on the TV show The
2151 Office where one of the characters engages in a low-speed
2152 chase with a Prius and sneaks up on one of the other
2153 characters, which demonstrates the importance of this
2154 legislation.

2155 Mr. McCurdy, voluntary can be a relative thing, and you
2156 talked earlier about some of the voluntary changes the
2157 industry has made to respond to safety concerns but a lot of
2158 those changes that were made were also things that the
2159 industry initially resisted, and one of the great things
2160 about the country we live in, we have a system that allows
2161 people from all different walks of life to work together both

2162 in a public setting like through NHTSA and through our
2163 private enforcement methods to try to hold people accountable
2164 and work together to improve the technology in automobiles.
2165 You mentioned that you had concerns about the use of
2166 electronic data recorder information and suggested it could
2167 lead to more litigation. I would challenge that statement
2168 because I believe if you had a system with standards for
2169 accessing and downloading that information and a clear
2170 understanding of what it represented, you could actually
2171 reduce litigation because right now much of the expense in a
2172 lot of these crash cases is people trying to understand how
2173 an accident occurred, how the occupant compartment was
2174 compromised and potentially contributed to the fatality or
2175 the severity of the crash. So one of the things that I am
2176 interested in hearing from you is, we have been talking about
2177 the standards for electronic data recorders and there has
2178 already been some proposals both by the Institute for
2179 Electric Engineers and also proposed regulations that NHTSA
2180 is considering, and it has been my impression that some
2181 members of your alliance have been objecting to the enactment
2182 of those regulations. Are you able to make a statement here
2183 at the hearing today on behalf of the Alliance that it
2184 supports the enactment of standardized regulations by NHTSA
2185 that govern the use of electronic data recorder information?

2186 Mr. {McCurdy.} I believe we are moving in that
2187 direction. I will put it that way. I think the industry,
2188 there is well over 64 percent I think is the most recent
2189 number of 2005 models that have EDRs. I may have been
2190 confused on all the information. I think some of the early
2191 warning information is where we have some concerns. The type
2192 of information in the EDR is probably less of concern. But
2193 again, I think there can be movement on this, and again, I
2194 think the stakeholders and working with NHTSA have an
2195 opportunity. My hesitation was because of my experience in
2196 the electronic field is that again some people have a very
2197 simplistic idea of what that is. It is not quite as simple
2198 as just saying everyone is going to have a black box, but I
2199 think we are moving in that direction.

2200 Mr. {Bralley.} And Ms. Gadhia, I want to talk to you
2201 about that because in your written statement you said the EDR
2202 information must also be standardized and expanded, and Mr.
2203 Stearns began his question by asking Ms. Claybrook about the
2204 ownership of that data and assumed that it belonged to the
2205 owner of the vehicle, and yet during the early years of EDR
2206 data availability, the manufacturers frequently took the
2207 position that was proprietary information that belonged to
2208 them, not the person who paid for the automobile. So how do
2209 we move forward from this point to try to come up with a

2210 system that makes easily available and downloadable
2211 information that achieves the privacy concerns we are worried
2212 about but provides us with better data that helps us solve
2213 the underlying problems that lead to occupant injury?

2214 Ms. {Gadhia.} As we noted in our written testimony that
2215 the NHTSA regulation is going to require EDRs to collect--the
2216 cars that do have EDRs to collect certain standardized
2217 amounts of data from 2013 model year cars. We would like to
2218 see that happen sooner. We think there is a utility to the
2219 information that they collect. But there are some privacy
2220 concerns about ownership of the data, as you mentioned,
2221 Representative Braley, and in the past Consumers Union has
2222 submitted comments to NHTSA as they were considering the
2223 regulation that the final rule that they put forward in 2006
2224 and I would be happy to share that with your office.

2225 Mr. {Braley.} Please do. That would be much
2226 appreciated.

2227 Ms. Claybrook, I want to finish with you. One of the
2228 things that we know from the medical field, there is a
2229 process called differential diagnosis, and that is when a
2230 physician is presented with a sick patient, they come with
2231 the hierarchy of the possible causes of their illness
2232 beginning with the most likely and descending to the least
2233 likely, and then the physician goes through a process of

2234 testing and evaluation to try to rule out what could be
2235 causing the illness to be able to reach a final diagnosis and
2236 a plan of treatment. And one of the concerns I have with the
2237 response we have seen to some of the problems with the Toyota
2238 recall is that the differential diagnosis that Toyota engaged
2239 in was limited, it appeared to many of us, to a mechanical
2240 failure, and they have now participated in massive recalls to
2241 address sticky accelerator pedals and problems with floor
2242 mats. And yet we still see reports of sudden unintended
2243 acceleration in vehicles where those retrofits have been
2244 made. So can you comment based on your experience as a
2245 former NHTSA administrator and as somebody involved in a long
2246 period of public safety advocacy on what you think needs to
2247 be done to get to the underlying cause?

2248 Ms. {Claybrook.} Well, Toyota is the only company, the
2249 only entity that can do that. They designed the vehicle,
2250 they created the software, they have software engineers who
2251 did it. The National Highway Traffic Safety Administration
2252 should not design the remedy. It never has in any case ever.
2253 And it doesn't have the capacity to do the kind of evaluation
2254 that is necessary to figure out what the underlying cause is.
2255 A lot of people have said that figuring out a software glitch
2256 is almost impossible in some cases, particularly if no marker
2257 is left that this glitch even occurred, a marker left in the

2258 computer. And so that is why a lot of people have talked
2259 about the brake override as the only possible solution
2260 because we just don't--at least we don't know, maybe Toyota
2261 does but we don't know what the problem is. I think it is
2262 very interesting that Toyota has said it is a floor mat
2263 recall of 5 million cars and yet the remedy that they are
2264 putting in most of those cars is not only to remove or fix
2265 the pedal and the floor mat but to put in a brake override
2266 system, which is an electronic fix. Why did they put an
2267 electronic fix in if it is the floor mat or the pedal? They
2268 say it is for customer, you know, so they will feel safe. I
2269 think it is because it is a software problem, and if the
2270 vehicles have been fixed with the floor mat and the pedal and
2271 the pedal and they still run away, then there is obviously
2272 another problem, and I think there are also vehicles that are
2273 not covered by the recall that may have these problems. They
2274 may not be identical. They may use different software so
2275 they are not identical problems. But there is no question in
2276 my mind that this is an electronic issue, and I think the
2277 company took the position early on that it wasn't because
2278 that hurts their sales with consumers. Consumers don't like
2279 software glitches they can't understand, and they couldn't
2280 change. Now if they change their mind, they are going to be
2281 subject to 18 U.S.C. 1001 lying to the government and going

2282 to jail. So they are in a very difficult position. Why
2283 would they do that now that they have taken this position in
2284 the hardcore way that they have.

2285 I was at a Senate hearing the other day and there were
2286 21 people representing Toyota sitting in front of me, and I
2287 said to them, gee, you have a lot of lobbyists, and they said
2288 oh, no, no, these are all communications people. I think
2289 that they are looking at this as a communications fix as
2290 opposed to a real fix.

2291 Mr. {Braley.} I want to thank all the witnesses for
2292 your impressive testimony and look forward to working with
2293 all of you as we move forward on these important issues, and
2294 I yield back, Mr. Chairman.

2295 Mr. {Rush.} The Chair thanks the gentleman, and the
2296 Chair himself also thanks all the witnesses again for your
2297 patience and for your time that you have contributed to us.
2298 Your testimony has been invaluable as we proceed down this
2299 path for reauthorizing NHTSA, and the Chair thanks you and
2300 wants you to know that you have done a great service to the
2301 American people, the driving public, today.

2302 Thank you very much. The subcommittee stands adjourned.

2303 [Whereupon, at 4:10 p.m., the Subcommittee was
2304 adjourned.]