

**Statement of Joan Claybrook, President Emeritus, Public Citizen
And former Administrator, National Highway Traffic Safety
Administration**

Concerning Sudden Acceleration in Toyota Vehicles

**Before the Committee on Oversight and Government Reform
House of Representatives
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Mr. Chairman and Members of the Committee, my name is Joan Claybrook, I am President Emeritus of Public Citizen, a national public interest organization, and former Administrator of the National Highway Traffic Safety Administration from 1977 to 1981. I appreciate the invitation to testify today about the issues surrounding sudden acceleration and other Toyota safety defects. I also want to express my appreciation to the Committee and the staff for your hard work in gathering information essential for this hearing, for holding Toyota and NHTSA accountable, and for rescheduling it around our snowstorms.

First and foremost, Mr. Chairman, Toyota has lost the trust and confidence of many American consumers by its overt tactics to avoid recalling defective vehicles that can kill and injure its customers and other highway users. Toyota officials have viewed the avoidance of recalls, and delays or cutbacks in safety standards, as more about dollars and cents in its pocket than safety, as “wins” for the Toyota so-called “safety group”. In its now infamous briefing for Mr. Yoshi Inaba in July 2009, Toyota staff estimated \$100 million of savings from (1) securing an agreement from the National Highway Traffic Safety Administration (NHTSA) in 2007 to require only an “equipment” recall instead of a vehicle recall on the Camry and Lexus floor mats and (2) dodging a finding of a safety defect for the sudden acceleration of these vehicles.

The number of deaths documented by NHTSA from sudden acceleration crashes in Toyota vehicles now stands at 34, along with hundreds of injuries, yet the only penalty in NHTSA’s statute for Toyota’s knowing and willful refusal to initiate a recall to correct safety defects is a maximum \$16.4 million dollar civil penalty. There are no criminal penalties for the company executives or agents. Compared to other consumer protection statutes such as the Consumer Product Safety Act, NHTSA lacks strong incentives for companies to comply with the law. Under that Act, any person who knowingly and willfully violated the mandatory provision of the Act is subject to criminal penalties of up to 5 years in prison and personal fines of up to \$250,000.

This highlights the need for change in the NHTSA statute. Criminal penalties would add a large incentive for a company not only to say that “Our first priority is the safety of our

customers” but to actually make decisions and carry out its business to achieve safety. And the civil penalty should also be raised with no maximum limit. A company the size of Toyota, the largest automaker in the world, must be fined \$100 million dollars or more before it really flinches.

If Toyota had been an honorable company and recalled the defective vehicles when it first learned of the problems in 2003/2004, or perhaps even earlier, and taken steps to redesign subsequent production, many of the resulting deaths and injuries would not have occurred. Now the only remedy for the families of these Toyota victims is a product liability law suit and payment by Toyota for the death—a few dollars for each precious life. Toyota may be interested in trading dollars for lives, despite the likelihood of its products causing deaths and injuries, but its customers are not. Car buyers will pay for safety. For a company that built its reputation on quality and reliability, this is an embarrassing and dark chapter that I hope will result in major internal changes at Toyota, is a clear warning to other auto manufacturers who put profits before safety, and will result in new legislation for NHTSA. The victims deserve nothing less.

Further, there are additional issues that raise questions about Toyota’s credibility. I would like to raise a few to reinforce the need for changes in the corporate culture and performance of this company.

For example:

1. **Questionable Scope and Timeliness of Toyota Recalls Are Unacceptable:** A number of deaths involving sudden acceleration that have been reported to NHTSA and Toyota involve vehicles that are not being recalled, for example, 2002- 2006 Camrys. NHTSA decided on February 16, 2010 to send Toyota three letters totaling 53 pages requesting information about the timing and the scope of its actions on sudden acceleration because so many questions have been raised about NHTSA’s closure of preliminary investigations with little data and analysis. NHTSA is also belatedly evaluating electronic issues Toyota denies exist with the throttles and electromagnetic interference. This work has been initiated because so many experts believe there are electronic issues causing the sudden acceleration in the so-called “floor mat” recalled vehicles and because a number of crashes and deaths have occurred in them without any floor mat involvement. In short, the recalls need be stringently critiqued in terms of scope and timing, and possibly expanded to cover all of Toyota’s defective vehicles, yet Toyota continues to deny there is an electronic problem.
2. **Revolving Door Influence on Safety Defects and Safety Rules:** About 25 top NHTSA officials have left the agency in the last 25 years to work for auto manufacturers in law and consulting firms. It’s been a brain drain for NHTSA and provides the recipient manufacturers with significant advantages. We are here today because in several years ago NHTSA was persuaded to narrow the scope of its Toyota investigations according to sworn testimony of Chris Santucci, a former NHTSA

enforcement official hired by Toyota in 2003 (following another former NHTSA official, Chris Tinto, hired earlier by Toyota). Santucci was intimately familiar with the methods used by NHTSA in defect investigations and the agency's dependency on company cooperation because of lack of resources. As a result, the agency failed to protect the public with effective recalls of sudden acceleration vehicles, closing 4 of 5 investigations in which these two former employees represented Toyota. Toyota said: "No evidence of a system or component failure was found and the vehicles were operating as designed" — a slick statement that could be accurate but does not mean there is not an electronic glitch. Toyota's goal appears to be avoiding responsibility with these former government officials, not in doing a better job for the public.

3. **Toyota's Secrecy Thwarts Public Accountability:** Toyota's resistance to supplying NHTSA with information requested caused the agency in December 2009 to send top officials to Japan to insist that the company comply with the law and be forthcoming. Toyota has also resisted downloading data from Event Data Recorders (EDR) in its vehicles to discern the circumstances of a crash. These recorders note speed, brake application, acceleration and other information crucial to determining the circumstances of a crash. In liability cases it has resisted supplying such information, requiring the injured consumer to get a court order for the data. By contrast, U.S. companies regularly make EDR data available. Toyota also regularly requests confidentiality for information it supplies to NHTSA. Toyota's secrecy does not enhance its standing but suggests it has something to hide. NHTSA should reevaluate its confidentiality rules and make more data routinely available to consumers as the President has urged.
4. **Floor Mats Cover Up the Real Solution:** As part of the fix in the "floor mat" recall for Lexus, Camry and Avalon vehicles, Toyota is installing a brake override system that will stop a vehicle experiencing sudden acceleration when the driver engages the brake. This suggests the acceleration problem is an electronic one because why go to the expense of an electronic override if the floor mat is the only problem and it has been fixed? It is long overdue for Toyota to investigate its electronic problem and fix their vehicles. On a related note, why is the brake override being applied only to these vehicles and not all vehicles being recalled for sudden acceleration? Curiously, Toyota has announced it will put the brake override in all new vehicles beginning at the end of this year. Many other manufacturers already offer electronic brake override as a safety precaution to protect against problems experienced with electronic throttles. In my view, all vehicles offered for sale in the United States should contain the brake override feature, but why has it taken so long for Toyota to do the right thing?
5. **Toyota Says Sudden Acceleration is Not Safety Related** In its October 5, 2009, letter to NHTSA announcing it was recalling 3.8 million vehicles (later revised to over 4 million) to address the risk of floor mat entrapment of accelerator pedals, Toyota said that although it was willing to identify the campaign as a safety recall in the owner communication about the campaign, "Toyota has not determined that the

vehicles...contain a ‘safety-related defect’ within the meaning of the federal vehicle safety laws. In other words, under pressure from the large number of complaints and deaths and injuries, the company was conducting a recall but still denying its vehicles are defective. This is a stunning failure of corporate judgment. Similarly, on January 8, 2010, Toyota in its notice about fuel tank corrosion in its Tundra pick up trucks said it did not consider the problem to be a “safety related defect.” How can Americans trust a company like Toyota that plays semantic games at the expense of American lives?

6. **Mixed Messages Misleading the Public:** In a letter dated February 2, 2010, to James E. Lentz, President and Chief Operating Officer of Toyota Motor Sales, U.S. A., Energy and Commerce Committee Chair Henry Waxman and Oversight and Investigations Subcommittee Chair Bart Stupak requested clarification regarding statements made by Mr. Lentz on the NBC Today Show in which he said that Toyota had studied unintended acceleration events and it was clear there are two different issues: (1) the Fall 2009 recall to prevent entrapment of accelerator pedals in floor mats; and (2) the later recall in January 2010 dealing with accelerator pedals that stick. But these statements were inconsistent with Toyota official’s representations on January 27, 2010, to Committee staff that causes of unintended acceleration are “very, very hard to identify” and that sticky accelerators were unlikely to result in full throttle acceleration. The Chairmen asked for clarification of these statements, documentation and analyses of the Toyota statements that electronics were not to blame for unintended acceleration.
7. **Toyota’s Failure to Notify About Foreign Safety Fixes Delayed Safety Solutions for U.S. Consumers:** The law requires a manufacturer to report to NHTSA within 5 days any recall or safety campaign conducted in foreign countries on vehicles or equipment that are “identical or substantially similar” to ones offered for sale in the U.S. It appears that Toyota violated this law. In mid-August 2009 Toyota corrected sticking accelerator pedals in Europe after beginning an investigation in March 2009. It found that the accelerator could stick in a partially depressed position where condensation occurs. It justified this based on right-hand drive vehicles where pedals are near the heater duct. To fix the problem, it lengthened the arm of the friction lever and changed its material to prevent smoothing on European vehicles. Not surprisingly, Toyota says it received field technical information from the U.S. and Canadian markets which showed sticking accelerator pedals occurring from October to January 2010. Yet, Toyota did not tell NHTSA about this problem until January 21, 2010, a month after NHTSA visited Japan expressing concern over Toyota recall problems and months after the safety recall in Europe, not 5 days as the law requires.
8. **Toyota’s Damage Control with a Friendly “Expert”:** Toyota recently commissioned Exponent to study Toyota and Lexus vehicles and components for concerns related to unwanted acceleration. However, Exponent is an engineering and consulting firm well known for defending corporate clients in product liability litigation when consumers are injured by defective products and producing corporation-friendly reports. This is exactly what it did for Toyota. This is hardly the

company Toyota should have hired for an “independent” analysis. Exponent says the ETCSi systems performed as designed but as professors and other independent experts have explained, the company did little real testing or analytical work. This is hardly the company that Toyota should have hired for a so-called “independent” analysis. Toyota is only going to regain public confidence if it uses truly independent outside experts to assess the electronic issue.

9. **Dealer Boycott & Corporate Censorship:** One-hundred-and-seventy-three Southeastern Toyota dealers, angry at reports on ABC television chief investigative reporter Brian Ross, have pulled their advertising from ABC affiliated stations because of his reporting. This is hardly the way to rebuild Toyota’s reputation while it is under severe criticism for its failure to recall defective vehicles.

The Toyota story also reveals severe deficiencies in the performance over the last decade of the National Highway Traffic Safety Administration in the U.S. Department of Transportation. While it has taken strong initiatives in recent months under Secretary of Transportation Ray LaHood and the new NHTSA Administrator, David Strickland, brief comments on its deficiencies are essential as we look to the future of NHTSA’s enforcement and rulemaking activities.

1. **NHTSA Has Become a Lapdog Not Watchdog:** NHTSA has been heavily dependent on manufacturers it regulates to cooperate with the agency and supply information. While NHTSA sends letters requiring response, it has not sent a subpoena that requires a full and complete response under threat of criminal penalties in decades. It also did not impose any penalties from 2004 to 2008, and the largest penalty the agency has ever imposed is one million dollars even though the TREAD Act of 2000 authorized a \$15 million dollar penalty (now \$16.4 with inflation adjustment). The agency also has not made a finding of a defect in over 20 years. In short, the agency has not asserted its hefty authority to serve as the federal cop on the corporate beat through demands for information from manufacturers, suppliers and dealers, through testing at its Ohio facility, through hiring the best experts worldwide and contacting consumer attorneys and their experts, as well as alerting consumers to supply information about their experiences. \Auto companies, including Toyota, treat the agency with contempt, failing to supply requested information, delaying actions requested, arguing against agency proposals, gloating when the agency backs off of proposed actions and boasting about its influence over the agency. This is a sad state for a crucial, and potentially potent safety regulatory agency. NHTSA’s new leadership must change this sad state of affairs.
2. **NHTSA Has Failed to Implement New Authority:** The TREAD Act of 2000, enacted after the Firestone/Ford Explorer debacle, gave NHTSA new powers that it has routinely refrained from using. In addition to not using its higher civil penalty power of \$16.4 million (which is still a meager amount for these multinational corporations), it has done little to take advantage of its new Early Warning Program. The purpose of this new system is to require manufacturers quarterly to alert the

agency when the company receives information about a death or injury in a particular make/model vehicle and to inform the agency about a suspected problem, the number of consumer complaints received by the company, the number of warranty claims and field reports, and the production numbers. In the past, the agency has routinely released these types of information in final reports on particular defects cases..

As the DOT Inspector General reported in 2004, NHTSA botched the creation of this electronic new system and then decided to keep early warning information collected by it secret. Two lawsuits by Public Citizen were needed just to give the public access to reports of deaths and injuries in the Early Warning system, but the other information is still kept secret by NHTSA. This needs to be changed immediately. It is not possible for the public to effectively oversee the agency without access to information about potential defects. As NHTSA's arbitrary rejection of petitions from citizens experiencing sudden acceleration reveal, citizens need to know early warning information to justify their petitions for defects investigations and to protect themselves from potential harm. Also, the Early Warning web page needs a major renovation. It is very difficult to get information about manufacturer reports and summaries of issues reported. Case in point: to this day, we still do not know the extent to which Toyota filed reports to the Early Warning system on sudden acceleration and whether NHTSA used this information on evaluating citizen defect petitions

- 3. NHTSA is the Poor Step-Sister in DOT.** NHTSA's regulatory resources are meager both in terms of money and personnel and it has been falling behind for years compared to inflation. It is responsible for 95 percent of transportation deaths yet receives one percent of the DOT budget. NHTSA's FY 2011 Operations and Research budget (which includes enforcement) request (not including safety grants in aid to states) is \$5 million less than Congress enacted for FY 2010, whereas grants to states will increase by \$14 million over FY 2010. NHTSA needs at least \$100 million more a year in budget dollars to carry out its congressional mandate.

When I was Administrator in the 1970's, we had 119 people in enforcement, and we were still shorthanded. Today, with more vehicles containing more complex features and systems, there are 57 people in enforcement, including only 18 investigators. Consequently, there is a serious and disabling imbalance in resources between the regulatory agency and any company being investigated. Also there is an imbalance in knowledge and expertise, which is exacerbated by the lack of funding. For example, NHTSA has no software or electrical engineers on staff in an era when motor vehicles are increasingly electronic and software dependent. As a result, in addition to being ill-equipped to conduct thorough investigations of Toyota's sudden acceleration defect, it regularly closed promising inquiries after Toyota refused to acknowledge any electronic problems. This type of agency failure must be changed.

- 4. A Federal Safety Standard on Event Data Recorders is Essential.** Event Data Recorders (EDR), or black boxes as we know them on airplanes, record the circumstances of a crash. Unfortunately, NHTSA decided to issue a voluntary EDR

standard that allows companies to choose whether to install black boxes and require that any installed recorders track certain types of information. Unfortunately, the implementation deadline for the tracking of information was postponed by NHTSA from the Fall of 2010 to the fall of 2012.

This standard needs to be updated immediately in several ways: to make black boxes mandatory, to expand the data collected, to require the uniform downloading of data (e.g., cable interface) so that police (as well as NHTSA) can affordably download the information in a routine way. Also, the standard should include protections against fire, water submersion and tampering, and a prohibition of on/off switches. Another needed change is the enhanced recording of rollover crashes (currently, only one event is recorded when multiple air bags deploy, which makes it difficult for investigators to conduct accurate post-crash analyses).

I cannot emphasize enough that data collected by event data recorders is a potential treasure trove of safety information. As owners of the information, vehicles owners should be educated by NHTSA about its potential to prevent injuries and save lives. In addition, it should be collected and turned over to NHTSA after any crash for statistical analysis, which would greatly support NHTSA research and evaluation in preparation for issuance of safety standards or defect recalls and enforcement. NHTSA now spends about \$20 million a year on crash investigations and evaluations but this is extremely inadequate. EDR data is an inexpensive way of significantly enhancing NHTSA's analytical capacity.

5. New Safety Standards Needed. The Toyota cases have demonstrated the need for at least these new safety standards:

- A new accelerator standard requiring fail-safe protection that updates the existing 1973 standard, which was written before the advent of electronically controlled accelerators.
- A standard requiring electronic brake override in all automobiles.
- A standard providing electronic magnetic interference protection.

Thank you, Mr. Chairman, for the opportunity to testify before the Committee today.