

An Untold Irony in NHTSA's Recent Rearview Camera Debacle

November 12, 2013 [TAMING THE AMERICAN IDOL](#) – By: Lee Vinsel

A little over a month ago, news outlets reported on a controversy involving the National Highway Traffic Safety Administration (NHTSA). The news reports captured most of the essential facts: In 2008, the US Congress passed the Cameron Gulbransen Kids Transportation Safety Act. The law directed NHTSA, among other things, to revise its safety standards to "expand the required field" of rearward vision. The practical effect of this part of the law would be to require rearview cameras or similar technologies be installed in every new car sold in the United States so that drivers would back over fewer children who are often too short to be seen through traditional rearview mirrors.

The law ordered NHTSA to create the new rule by 2011. But NHTSA hasn't done it yet, meaning that the rule is more than two and half years late. In September of this year, NHTSA announced not that it was going to (finally) pass the rule but, instead, that it would make rearview cameras a part of its New Car Assessment Program, which recommends safety technologies in the hopes that consumers will buy them voluntarily.

In response to this announcement, Greg Gulbransen (Cameron's father), Susan Auriemma, and four consumer advocacy groups (Kids and Cars Inc., Advocates for Highway and Auto Safety, Consumers Union, and Public Citizen) filed a lawsuit against NHTSA, arguing that the agency has failed to enforce the law. These are the bare facts, and as I said, news outlets did a good job of reporting them, but they missed a deeper irony, which I will reflect on here.



Cameron Gulbransen, who died when his father accidentally ran him over in 2002. Source: [kidsandcars.org](#)

First, a bit of background. Congress does not normally legislate individual auto safety standards in the United States. Instead, NHTSA creates the safety standards, a process that involves going through a time-consuming and arduous series of steps.

In skeleton form, the process looks like this: staff members at NHTSA conduct a great deal of scientific, technical, engineering, and medical studies that act as the basis of a new standard. Then the agency publishes an initial rule. Interested parties, including regulated companies, comment on that rule. NHTSA revises the standards in light of these comments and publishes the standard again. Parties then comment again. Yada, yada. Like that. The whole process takes a *long* time. Literally years. If the agency is lucky, it eventually publishes the final rule that mandates a safety standard.

Inevitably, regulated firms respond by suing the agency, claiming that the new standard is both unfair and economically deleterious. Throughout the process of comments and the eventual lawsuits, safety standards are typically weakened because regulated firms—the automakers, in this case—bring their considerable resources to bear to beat back the regulators. It is difficult for any safety standard to make it through this gauntlet strong and intact.

The rearview camera standard, which safety advocates have been pressing for sometime, faced an additional difficulty. As part of the rule-making process, NHTSA, like all other federal agencies, is required to carry out cost-benefit analyses, which, as the name suggests, examine whether the economic cost of a new regulation outweighs the benefit or vice versa.

When NHTSA examined the cost of putting rearview cameras in all new cars versus the benefit of preventing injury and death in children (and others) from backover injuries, the kids lost. That is, according to federal cost-benefit formulae, the cost of putting a, say, \$200 camera in each an every new car is greater than the economic cost incurred from the



"approximately 228 fatalities and 17,000 injuries per year in backover incidents."

([KidsandCars.org](#)) About 110 of those deaths are children. When I teach US regulation policy, I usually tell my students this story. Most of them react in horror.

The display of a Lexus rearview camera. Source: Wikipedia.

The solution to this cost-benefit analysis problem was straightforward: get Congress to pass a law backing rearview cameras, thereby, by-passing the cost-benefit analysis. Various safety advocates, individual citizens, and other interests organized to do just this. Eventually, they formed around the story of Cameron Gulbransen, a two year old boy (photo above) who was killed on October 19, 2002, when his father accidentally ran him over.

As Cameron's father, Greg, recalled the incident on KidsandCars.org, "As always, I used both side view mirrors and the rear view mirror, as well as looked over my shoulder in an attempt to avoid hitting anything. Suddenly I noted a small bump with the front wheel and wasn't sure what it could have been. I knew I was too far from the curb to have hit that; and that there was no newspaper in the driveway. Quickly I jumped from the vehicle and saw the most devastating scene of my life. My little Cameron was lying down with his blanket in his hand while bleeding profusely from his head. As a physician I knew it was the end. I did everything I could do and so did the paramedics. Cameron had died a sudden and horrible death because he was too small for me to see him behind my vehicle."

Miraculously, given our current political climate, Congress passed the law named in honor of Cameron in 2008. But the fact that Congress passed the law and that George W. Bush signed it actually isn't so surprising. Most people, regardless of political persuasion, *want to protect children*. (Indeed, cost-benefit analysis often isn't a sufficient policy tool precisely because it can't account for these kinds of obvious realities, realities of our hearts.)



Katie Auriemma was three years old when her mother, Susan, backed over her in the driveway. Katie luckily escaped serious injury. Susan Auriemma has now joined the lawsuit against NHTSA. Source: KidsandCars.org

Since Congress passed the law, NHTSA has delayed issuing the new rule four times. It's not clear why. It is easy to say that the agency is captured by and does the bidding of the automakers but hard to prove. I also don't believe the world is that simple. Perhaps agency staff members feel that they are currently unable to answer some of the technical criticisms the auto firms have of the most recent version of the rule. Perhaps they know that the auto firms will sue if the rule is issued, and they believe that the agency would not fare well in the court's on this one. The agency's lack of transparency about its reasoning has helped not at all.

Then, in September, came word that the agency was going to add rearview cameras to the New Car Assessment Program. People saw this move for what it was—a half-assed attempt to appease safety advocates. But using the New Car Assessment Program in this way is perverse. It is also deeply ironic. Here's why.

The New Car Assessment Program began in 1979 when Joan Claybrook led NHTSA. Claybrook was at the agency at the beginning, in 1966, when the place was run by auto safety advocates. Then, after she left for a while, she went to work for none other than Ralph Nader. Later, President Jimmy Carter appointed her to run the agency. It was a coup for safety crusaders.

By the late-1970s, it was already a difficult, multi-year process to create and promulgate new safety standards. Claybrook's staff members hatched a plan to overcome this problem partially. They decided to carry out a series of tough tests of automobiles— tougher than the tests at the heart of federal auto safety standards—and publish the results of those tests. For instance, federal safety standards at that time included a frontal crash test conducted at 30 miles per hour. Claybrook's people decided to start crashing cars at 35 miles per hour, creating a grading system for the tests and publishing the results.



A recent label from the New Car Assessment Program. Source: Wikipedia.

This was the New Car Assessment Program (NCAP). It was a stroke of regulatory genius, and it pissed the automakers off to no end. The goal of the program was to create a market for safety and, hopefully, *push* the automakers to design cars that were safer than what was required by federal standards. (NCAP built on the logic of other federal initiatives, which were backed by Nader and other consumer advocates in the 1970s, that involved publishing ratings of consumer goods. The famed Energy Star program works in the same way.) Since the 1970s, NHTSA has gone beyond crash tests and added other safety technologies to NCAP in its effort to continue influencing automotive design in a progressive manner.

But here's the thing. Notice how NHTSA's recent decision to add rearview cameras to the New Car Assessment Program totally inverts the original logic of that program. Again, the program was meant to push design beyond what was currently required by federal standards or was in federal law. In the case of rearview cameras, exactly the opposite is true. Congress has handed NHTSA a mandate to build rearview cameras and the like into the federal code. Meanwhile, the agency has shunted those technologies into a consumer information program. Instead of being a tool for progressive change, the New Car Assessment Program has become a tool for regressive retrenchment. This inverted use of the New Car Assessment Program is nauseatingly ironic. (My bet is that long-time NHTSA-watchers, like Nader and Claybrook, would tell me that this perversion of NCAP happened long ago.)

NHTSA is nearly three years behind on issuing a Congressionally-mandated rule that would save the lives of hundreds of lives per year. As KidsandCars.org notes, "Since [Cameron's] law was passed . . . there have been over 1,100 deaths and 85,000 injuries in backover crashes." As I have made perfectly clear, I believe that NHTSA's use of the New Car Assessment Program in this case adds insult to injuries. Many of those injuries will be grievous, many of them will be fatal. Let me enumerate them one more time. This year, there will be "approximately 228 fatalities and 17,000 injuries" from "backover incidents."

For no good reason.

<http://leeinsel.com/blog/2013/11/11/an-untold-irony-in-nhtsas-recent-rearview-camera-debacle>