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**The case for regulation, part 2 - some - the politics of auto safety regulation - Cover Story**

**by Gareth G. Cook**

Do you really think the car companies voluntarily installed [airbags](http://findarticles.com/p/articles/mi_qa5325/is_200402/ai_n21344180/?lc=int_mb_1001)?

Lee Iacocca didn't know he was being taped. During a secret morning meeting on April 27, 01971, he sat in the Oval Office, next to his boss Henry Ford II, pressing his case on the president. He spoke frankly, unaware the meeting was another of Richard Nixon's famous Memorex moments. "You can see," declared Iacocca, "that safety has really killed all our business."

The Department of Transportation had just issued a rule requiring that new cars be equipped with passive restraint systems, such as automatic seat belts or airbags. The features would save thousands of lives annually, but Iacocca was determined to convince the president that the real national interest lay elsewhere. "What safety is doing to us is gonna make inflation," Iacocca can be heard to say. "The Japs are in the wings, ready to eat us up alive."

Iacocca's plea fell on eager ears. Nixon was deeply suspicious of the consumer-safety "Naderites," as he called them. "They're a group of people who aren't one really damn bit interested in safety," sputtered Nixon. "What they're interested in is destroying the system."

"We have these damn gadgets," the president continued, "and the [unintelligible] light in the seat belt is enough." As the two Ford executives left for lunch, Nixon assured them that he would "review" the situation and that "cost effectiveness is the word."

After the meeting, Nixon sent presidential pit bull John Ehrlichman to have a chat with Transportation Secretary John Volpe--to "slow [him] down, to get him off this business," as Ehrlichman later explained. It worked. In October 1973, Volpe delayed the automatic restraint requirement by two years.

That delay, sadly, was a typical episode in the three-decade Battle of the Bag. As early as the sixties, the automakers were gathering their political and economic muscle to steamroll a regulation that would add, at most, a few hundred dollars to the cost of a new car, while saving thousands of lives each year.

New evidence, like the Nixon transcript, is painting an ever more detailed portrait of the lobbying equivalent of total war. The fight took the car companies' soldiers to all three branches of government--from the Oval Office, to the halls of the Capitol, to the hallowed courtroom of the Supreme Court. Although carmakers have come to embrace--and even profit from--the airbag, the war became, for them, a larger-than-life symbol of government interference in their bottom line, a war they were absolutely determined to win.

When Iacocca made his pitch to President Nixon, car safety standards were still very new. Seat belts weren't even standard equipment until 1968. The safety-consciousness that we take for granted today was, for most of the automobile's history, confined to a few dissidents inside the auto industry and the Department of Transportation. Most Americans simply subscribed to the car companies' routine explanation for the injuries and deaths that resulted from car accidents: "It's the nut behind the wheel."

But in 1965 [an obscure young lawyer](http://findarticles.com/p/articles/mi_qn4188/is_20030315/ai_n11382371/?lc=int_mb_1001) named Ralph Nader published Unsafe at Any Speed, a detailed description of the dangers of the Chevy Corvair, and the car safety debate went public. Nader showed how little effort went into designing cars that were better able to withstand accidents. Fuel tanks, for example, ruptured easily, and poorly designed steering columns sometimes impaled drivers.

The airbag predates even this decade of activism. The first patent was granted in 1953. By the late sixties, several teams of American engineers had refined the concept. Actually, the airbag's operation is simple. When a sensor detects a front-end collision, tough fabric bags inflate with nitrogen gas in one-tenth of a second, faster than a blink of the eye. The bags provide a soft cushion for the passengers' heads and upper bodies, which would otherwise strike the steering wheel, the dashboard, or even the windshield.

But auto executives didn't like the idea of an upstart consumer activist telling them how to design their cars. So they tried to shut Nader up--Detroit-style. General Motors hired detectives to trail Nader and dig up dirt. "They talked to friends, employers, and my old teachers," he recalls today. "They even had women approach me."

One day, Nader slipped away from a detective in the maze of Capitol building hallways. Frantic, the detective asked one of the guards which way Nader had gone, and the game was up. The guard demanded the hapless detective's identification and reported the incident. When asked by the press whether they had hired the man to tail Nader, all the car companies responded with a firm "No." All, that is, except for GM, which issued a firm "No comment."

As the Iacocca tapes show, most car executives quickly lost sight of the practical issue--whether airbags worked well and saved lives. But Ed Cole, raised in the old school of engineering and then president of GM, was convinced that airbags would work. He promised that GM would install one million airbags in its 1974 model-year cars.

But the generation that succeeded Cole (he retired in 1973) was less-inclined to view the airbag with a scientist's clear eye. To them the airbag was a symbol of outside forces--the government, Nader, the consumers--forcing their hand. Even as powerful evidence emerged proving the airbag was a relatively cheap and effective way to save lives--evidence confirmed by the automakers, own research--the car companies were adopting a siege mentality. "For them," declares James Fitzpatrick, a lawyer who fought the car companies before the Supreme Court, "it was a jihad."

Lloyd of Washington

The car companies, however, were not completely thick-skulled. The detective fiasco made them realize that they could not play by Detroit rules inside the Beltway. And so, in 1965, like explorers facing an uncharted wilderness, they hired the best guide they could: a brilliant Washington lawyer-lobbyist named Lloyd Cutler.

Of course, the silver-haired Cutler has since become a Washington icon--Counsel to the last two Democratic presidents and one of the shining lights of the Georgetown dinner circuit. But in the 1960s, Cutler had not yet earned the highest title the Beltway has to offer--"wise man."

Cutler's first task was to derail the nation's first comprehensive auto safety legislation, which Congress had fashioned in response to the public outcry prompted by Nader's work. Hawks at the car companies wanted the bill killed, and they wanted Cutler to use everything in his insider's bag of tricks to get it done.

But Cutler was far more politically astute than that. The American auto industry's public image was already at an all-time low. Reeling from Unsafe at Any Speed, the industry was further set back by a Senate committee report that declared it had "met with disturbing evidence of the automobile industry's chronic subordination of safe design." An all-out, public assault against the safety legislation would be disastrous. Cutler knew he needed to take the back roads.

And so he went for the legislative jugular--committee staffers. "Cutler was a ferocious and brilliant lobbyist," recalls Mike Pertschuk, then a staff counsel with the Senate Commerce Committee, "but he was very subtle." For each provision of each new draft Cutler would suggest at least one alternative, almost imperceptibly reworded. And the changes were not always as innocuous as they seemed. A word change or two in the judicial review section of the bill, for example, would have made it easier for car companies to challenge any regulations in the courts. Had Nader not been down the hall, reviewing each of Cutler's proposed changes and telling staff members what effect the changes would truly have, the bill could easily have been eviscerated.

Congress ultimately passed the safety legislation, empowering the Department of Transportation (DOT) to issue minimum standards on auto safety. And Cutler, for his part, did win at least one important victory for his clients: Gone were the criminal penalties for not complying with the regulations.

Sucking in the Seventies

The next battle began in 1970, when Secretary of Transportation Volpe announced that all new cars sold in America would need to be equipped with passive restraints--either automatic seat belts or airbags--by 1973.

With that, the car makers went straight to their friends in the Nixon White House. They met so frequently that John Ehrlichman said he was concerned about breaking anti-trust laws and asked Attorney General John Mitchell to give official approval to the talks.

By the early seventies, though, Nader had an important, if unexpected, ally of his own. Don Schaffer, a fiery West Virginia lawyer who had climbed into the top leadership of the Allstate insurance company, had become convinced that airbags held tremendous potential to reduce car fatalities and injuries. That, he figured, would allow the insurance companies to lower their growing premiums--a frequent and growing source of complaints.

In 1973, Allstate offered a 30 percent discount for policies on airbag-equipped cars, and pIaced a special order for 800 Ford Mercury's that included the feature. Most of the special orders went to employees, but some were used in a series of tests which clearly demonstrated the bag's effectiveness. In one short film, a man and a woman climb into a '73 Ford Mercury. He accelerates up to 30 mph driving straight into a brick wall. The doors swing open and the two climb out of the wreck, smiling and unhurt. The airbag was proven effective more than two decades ago.

But by this time, the auto makers couldn't care less whether the airbag worked or not. To them, it had come to represent government interference, backed by a doggedly persistent consumer movement. "Regulation" was an epithet in the ambitious auto executive's vocabulary.

At the same time, the car companies were learning how to get things done in Washington. Hoping to defeat the new regulations, they poured money into their government affairs operations. By 1977 the Big Three had fifteen people devoted to lobbying.

According to records from the Federal Election Commission, the Political Action Committees of Ford, Chrysler and General Motors gave almost a quarter of a million dollars to members of Congress, in 1977-1978. Members of the Senate Commerce, Science and Transportation Committee, which oversaw the Department of Transportation, received an average of $1250 each in 1977-1978. (One member, Robert Griffin (R-MI), took in $15,000.

Congress was of the utmost importance to the car companies, because in 1976 they lost their friends in the White House. Nixon, of course, had been a great help delaying the airbag regulation. And Ford's Secretary of Transportation, William Coleman, negotiated a voluntary agreement with the companies under which they agreed to install airbags in some of their cars, an approach that Cutler now champions as the "most sensible" of the government's attempts.

But Carter's choice for Secretary of Transportation, Brock Adams, a former Washington state prosecutor, was determined to get airbags into all cars. In July 1977, Adams announced a new regulation, again requiring automatic restraints, but giving the car companies until 1983--six years--to fully comply.

Already, Michigan Democrat Rep. John Dingell and Pennsylvania Republican Rep. Bud Shuster had devised schemes to stop Adams. Dingell was well-known around Capitol Hill as the car companies' best champion. (His wife was even a former lobbyist for GM.) He was also next in line to be the chairman of the House Committee on Energy and Commerce.

Bud Shuster, the ranking minority member of the important transportation subcommittee, was another key airbag buster. The very day Adams announced his new rule, Shuster (who took in $2250 from the auto companies in 1977-1978) introduced a House resolution of disapproval with 161 co-sponsors.

This was the first of several Congressional attempts to thwart the Adams resolution during the Carter years, either directly through a "congressional veto" procedure that has since been declared unconstitutional, or indirectly, by attaching "riders" to Transportation's budget. General Motors took the lead, but lobbyists from all the auto makers swarmed to the Hill, making their case against the airbag.

"It was very hot and heavy," recalls former Congressman Tony Coelho. Coelho, who has suffered from epilepsy since receiving a head injury in a car accident at age 15, was a solid supporter of airbags. But the car companies could make congressmen pay for their support of airbags on completely unrelated measures. "If you were an [airbag] advocate," Coelho says bluntly, "they'd go after you on other legislation."

he car companies' lobbyists, of course, did not just use threats. They also made arguments. The most common was cost. In 1973, GM predicted that an airbag would cost $175; by 1981, their figure, at least to the public, had topped $1000. Making airbags mandatory, they argued, would make cars prohibitively expensive.

It was an old and effective ploy, but this time it didn't hold water for long. A DOT employee leaked a confidential memo showing that GM had purposely inflated the cost of the airbag three-fold. And a 1981 study by a Yale economics professor found that requiring airbags would save twice as much money--in saved lives and medical costs--than it would cost.

Grasping at straws, the car companies claimed that the chemical used to inflate the airbags, sodium azide, would cause cancer, even though it was far less of a health risk than, say, gasoline. They even circulated an old film showing pigs being gravely injured by inflating airbags.

In fact, the lobbyists' tactics on the Hill were just an extension of a broader campaign to sway public opinion against the airbag. One of the stranger examples of the public relations offensive involved a bit of self-sabotage. Before Cole retired from GM, he had established a marketing test program for the airbag. GM offered optional full front-seat airbags on its 1974 to 1976 model-year Cadillacs, Buicks, and Oldsmobiles. Although the bags themselves performed well, the experiment looked to be a disaster. Only 10,000 orders, as the car companies were to remind Congress again and again, came for the airbags. "Safety doesn't sell," the car makers declared.

But GM sabotaged its own sales. Its promotional efforts were tepid, and many dealers, acting on hints from the home office, actively discouraged customers from buying them, according to an article in The Wall Street Journal that appeared later. Many dealers, The Journal reported, knew "little about the airbag, did little to make buyers aware of it or whet their interest in it, and often sought to pour cold water on any interest that customers showed."

The auto companies were squashing interest wherever they could. When Allstate wanted to show a film demonstrating the airbags effectiveness, the insurance companies ran into an even more subtle weapon in the car companies' lobbying arsenal--the fuel of commercial television and magazines, the advertising dollar. All three networks refused to run an ad showing the airbag film, saying it was "too controversial." Life magazine, then a media powerhouse and cultural gatekeeper, also refused to run an Allstate ad explaining how the bag works.

While car makers were claiming as late as the early eighties that customers wouldn't buy cars equipped with airbags, their own marketing studies told a quite different story. According to a secret 1971 study, car buyers preferred airbags to automatic seat belts, which the industry was peddling as an alternative, by a wide margin. A 1978 study reached the same conclusion, even when the prospective customers were told airbags would cost an additional $350. The companies knew that safety would sell, but no amount of marketing research would sway them.

Car maverick John DeLorean saw first hand the lengths the auto companies would go to in the public relations battle. Before his failed car company and Jegal trouble, DeLorean was one of GM's shining stars. An early airbag advocate, DeLorean testified before the DOT--shortly after he resigned as a GM engineer--that airbags were practical, safe, and inexpensive. But when he returned to his Michigan home there was a telegram waiting for him from GM: "Your deferred bonus," it read, "has been canceled."

DeLorean also claims that GM destroyed many of its early airbag files, so that "nobody could say, `Look what GM could have done.'" (A GM spokesman refused to comment on this.

The car companies fought airbags any way they could. By the early seventies, the Washington law firm of Wilmer, Cutler, and Pickering was fighting the battle of delay in court. Representing Ford motor company in the Sixth Circuit Court, the automakers' home turf, the firm made a whole host of charges against the DOT, questioning whether it even had the legal right to require airbags. Although his broad claims were thrown out, Cutler's firm did win delay: The court ruled that the dummies used in crash tests were not specified carefully enough, and that until they were, no test results were valid. The DOT would not be able to enforce its requirements until it had built a better dummy. Pickering tried the same tactic again in the late seventies, but by that time the courts could not be convinced.

The Reagan Devolution

As the 1980 elections approached, the car companies were running out of delaying tactics: The Carter administration seemed intent on implementing the automatic restraint standard, albeit slowly, and the courts had upheld its right to do so. Lobbying was indeed building an anti-airbag majority, but not quickly enough.

Then came what the auto makers could interpret as nothing less than a gift from God: the Reagan presidency.

Reagan objected to governmental regulation in principle, believing, as Nixon did, that regulations caused inflation. "Federal regulations," he told a Detroit audience on the campaign trail, "are the cause of your problems."

Auto executives threw their support behind Reagan, and were soon glad they did. After winning the election, Reagan asked the car companies for a deregulatory "wish list." Then he picked his man to head the National Highway Transportation Safety Agency: Ray Peck, a former lawyer for the coal industry (never known for its concern for safety) with no transportation background.

In October, 1981, Peck came through for the Big Three. He overturned the mandate from Carter's DOT, thinking he had ended the debate by fiat.

But the airbag advocates took to the courts. State Farm Insurance, represented by Arnold Porter lawyer Jim Fitzpatrick, sued the DOT for rescinding the automatic restraint standard without any cause. The move, they argued, violated the DOT's mandate to protect the public.

The car companies called again on Lloyd Cutler (and his partner Pickering) to fight for them in the courts. Despite their skillful protests, though, the U.S Court of Appeals of the District of Columbia agreed with State Farm, saying that "NHTSA's arbitrary action presents a paradigm of ineffective regulation," and that their move was not supported by "one iota of evidence."

But even this rebuke was not clear enough to the new anti-regulators at the DOT. They appealed to the Supreme Court, with Cutler again filing a brief for the car companies. In June of 1983, the Court issued a surprisingly sharp decision against the Reagan administration's attempt to short-circuit the regulation without cause. It called the decision "arbitrary and capricious" and, in surprisingly strident (albeit accurate) language, added that "the car companies ... had waged the regulatory equivalent of war" on the regulation.

The victory was virtually decisive. Thirteen years after the DOT first issued the regulation, it looked as if airbags would finally make their way into cars and start saving lives. As if to agree with the court decision, a 1983 poll showed that more than 90 percent of Americans felt that automatic restraints should at least be offered in cars, and a 56 percent majority said they should be standard equipment.

Secretary of Transportation Elizabeth Dole, meanwhile, was under tremendous pressure from the White House to find a way out. On June 11, 1984, Dole issued a rule requiring automatic restraints in all cars by 1990; the rule would be void if states representing two-thirds of the U.S. population passed strict mandatory belt-use laws.

The car companies' interest in seat belt laws increased markedly. They set up an organization called "Traffic Safety Now" and raised a whopping $20 million. The car companies would improve their public image and, they hoped, finally kill their bete noir, the airbag.

But the insurance companies, buoyed by their success in the courts, had some tricks of their own. State Farm's Fitzpatrick realized that his clients could push for seat belt use laws, but shape them so they would fail to meet Dole's technical criteria for strictness. (The fine, for example, might be $20 instead of $25.) In the end, the car companies' effort to wriggle out of Dole's rule failed and--finally--they faced a real deadline.

Now-a-days, of course, it's difficult to watch TV for very long without seeing a car commercial that features the airbag. After years of demonizing the safety device and resisting it in every possible way, the car makers are making money off it. "The airbag," GM spokeswoman Nicole Solomon states plainly, "is a marketing feature."

Even Lee Iacocca, who once hated the airbag with a strange passion, came to see its marketing possibilities. In 1988, he ran a series of ads touting the airbag and promising that Chrysler (his new home) would be first to have the bag in all its cars. "Saul," jokes Arnold & Porter's Fitzpatrick, "became Paul on the road to safety."

Publicly, the car companies insist they could not have introduced the airbag any sooner. The bag, they say, was not technically ready. But Gm's own fleet of 10,000 cars, sold between 1974 and 1976, has performed without a hitch. One wonders what today's cars would look like if all the effort put into defeating a regulation that has actually helped the industry--and saved lives--had instead been devoted to refining auto safety features.

As soon as [car companies](http://findarticles.com/p/articles/mi_hb5245/is_8011_234/ai_n57916301/?lc=int_mb_1001) started to advertise for the bag, instead of against it, consumer demand skyrocketed.

"If we had it to do all over again, I think we'd do it differently," declares Richard Klimisch, who was a top Washington executive on safety issues for GM in the eighties. "I think we know now that we have to be more proactive."

Even Cutler and Pickering agree that airbags could have come sooner. "This is an area where government regulation is needed," says Pickering as the two recall [war stories](http://findarticles.com/p/articles/mi_qa4081/is_200403/ai_n9364160/pg_3/?lc=int_mb_1001) in Cutler's office. Cutler argues that the regulations were too overarching, and did not take the car companies' marketing problems into consideration. "The regulators and activists bear at least as much of the blame," Cutler says. "Coleman's voluntary approach was a lot more sensible. When Adams rescinded that rule, he set the cause back."

"That is ridiculous," retorts Adams. The car companies "were never going to go very far on the airbag unless forced." Indeed, there was nothing stopping the car companies from sticking to their voluntary agreement.

"A strange kind of abstraction can take hold," says Joan Claybrook, the head of NHTSA under Carter. "I believe that any one of these people would jump into a pond to save a drowning child, but for some reason, they could not see the human cost of [not implementing] the airbag." For Claybrook and Nader, Cutler's highly-skilled litigating was lobbying by another means.

The Advocates For Highway And Auto Safety do not view the airbag battle as merely symbolic. They estimate that tens of thousands of lives could have been saved if the airbag had been made standard equipment back in 1973.

But for people like Iacocca, the airbag was first a nuisance and then a call to arms against an ever-intrusive government. In the mid-eighties, Iacocca joked with reporters who were constantly asking about the airbag. Iacocca was willing to bet, he told them, that his first question from St. Peter at the gates of Heaven would be about airbags. He just might be right.

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