

Newsday

OPINION: On industry reform, courts can get there before regulators

March 3, 2010 By RICHARD BINKO

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This week, Toyota's top executives returned to Capitol Hill to face the Senate Commerce Committee, trying to explain accelerator and braking problems that appear to have led to dozens of fatal crashes. The lawmakers' questions were probing and stern - and the company, along with federal regulators who gave Toyota many passes, suffered embarrassment.

But the path from televised scolding in a Senate Committee room to bona fide improvements in auto safety is choked by lobbyists, politics and other terminal distractions. Under the best of circumstances, the journey is a long one. And we are not currently enjoying the best of circumstances in Washington.

But we already have a branch of government whose purpose is to find facts and produce results: the judicial branch. Already - and ironically, in this era of carping about our "litigious society" - experts called before the courts are finding out what Toyota knew and when Toyota knew it.

For several years, Toyota fended off its aggrieved customers and the National Highway Traffic Safety Administration while the families of victims turned to the civil justice system. Their cases brought Toyota's serious problems to public attention and compelled the manufacturer to document its decision-making process.

Among the cases now in court is a tragic one that has finally prompted a broad public response. The crash came moments after a terrifying 911 call last August, placed by a passenger in a 2006 Lexus that was accelerating wildly on a San Diego highway. The driver, Mark Saylor, was an off-duty California Highway Patrol officer riding with his wife, daughter and brother-in-law. Everyone in the car was killed when it hit an embankment going over 110 mph.

The Saylor case and others like it have already produced evidence that the cars' defects may lie in the electronic throttle system, rather than the loose floor mats and balky pedals that Toyota claims were responsible. The cases have also raised questions about whether the National Highway Traffic Safety Administration (NHTSA) has the necessary expertise to analyze the software that controls acceleration and braking. And unfortunately, it's hard to have faith that this week's call for a brake override system will be enacted swiftly.

While their malfunctioning cars were causing accidents - some of which killed people - Toyota officials were congratulating themselves last summer on a "win" from NHTSA regulators. An internal memo reported that the agency had become "more sensitive to public/Congressional

criticism, resulting in more investigations and more forced recalls," but that Toyota had "negotiated" a limited recall, with no finding of a defect. The move saved Toyota \$100 million, but it has cost a number of lives.

A spokeswoman for the Department of Transportation, NHTSA's parent agency, said the document was "very telling" and added: "We're going to hold Toyota's feet to the fire."

They should have been doing that all along. Instead, regulators brushed off Toyota owners' complaints for years, protesting that it lacked the resources to investigate them. Sadly, a federal safety agency that negotiates results with big business does not inspire confidence.

This dance takes place over and over in Washington as corporate lobbyists outspend, outwit and out-influence their regulators. Meanwhile, they prod legislators to call for tort reform to keep victims out of court.

It's a good bet that none of the advocates of tort reform in Washington or Albany would welcome back Pintos and Corvairs, asbestos, dioxin or any of the other products whose dangers came to light through the judicial system. In each of these instances, the courts not only provided justice for victims but warnings to manufacturers that they would be accountable for their actions. And so, over time, the auto industry, like drug and toy and chemical manufacturers, has become safer. But it's still not as safe as it should be.

Last week, a member of the Saylor family appeared before Congress to tell their story. This week, the family decided to tell it to the judge.