**ISSUE 15**

**Was Ford to Blame in the**

**Pinto Case?**

**YES: Mark Dowie,** from “Pinto Madness,” *Mother Jones* (September–

October 1977)

**NO: Ford Motor Company,** from Closing Argument by Mr. James

Neal, Brief for the Defense, *State of Indiana v. Ford Motor Company*,

U.S. District Court, South Bend, Indiana (January 15, 1980)

**ISSUE SUMMARY**

**YES:** Mark Dowie’s article broke a new kind of scandal for American

manufacturing, alleging that Ford Motor Company had deliberately

put on the road an unsafe car—the Pinto—in which hundreds

of people suffered burn deaths and horrible disfigurement. The

accusations gave rise to a series of civil suits and one criminal

proceeding, in which Ford was charged with criminal homicide.

**NO:** James Neal, who was chief attorney for the Ford Motor

Company’s defense against the charge of criminal homicide in

connection with the burn deaths, persuaded the jury that Ford

could not be held responsible for deaths which were actually

caused by others—the driver of the van that struck the victims, for

example—and which resulted from Ford’s patriotic efforts to produce

a competitive small car. **S**ome cases in business ethics become “classics” in their own time. By 1980

we were considering “the Pinto Case” in our classes, wondering how safe “safe”

had to be where the automobile was concerned, wondering how much management

might be held accountable for, wondering if criminal penalties were

appropriate for respectable businessmen, no matter what they or their product

might be doing. This is arguably not the Pinto Case’s own time. Almost thirty

years have passed since the accident and what followed from it. But we still

teach the case. We still don’t know how “safe” a vehicle has to be; we still don’t

know how much responsibility for product failures to assign to corporations,

and what the appropriate way might be to force a corporation to take that

responsibility. The doubts remain, and the case retains its interest.

There is no doubt about the case that occasioned the criminal prosecution.

Three girls died horribly in an automobile accident on August 10, 1978.

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They had stopped their car, a 1973 Ford Pinto, on U. S. Highway 33 near

Goshen, Indiana, and were about to get under way again when they were

struck from the rear, at high speed, by a van with a possibly impaired driver.

The car immediately burst into flames, and the girls had no chance to escape

the accident before the flames reached them.

The van driver should have been watching where he was going. Beyond

that obvious comment, what was wrong with the car? Why did it burst into

flames so quickly? Mark Dowie, general manager of business operations of

the magazine *Mother Jones*, had argued a year earlier that there was a great

deal wrong with the Ford Pinto. He had put together the story printed here

from data obtained for him by some very disaffected Ford engineers. The data

suggested that the Pinto had been rushed into production without adequate

testing; that it had a very vulnerable fuel system that would rupture with any

rear-end collision; that even though the vulnerability was discovered before

production, Ford had hurried the Pinto to the market anyway; and that successful

lobbying thereafter had prevented the government regulators from

catching up with them and requiring a safer gas tank.

Most suggestive from the public’s point of view was a document supplied

by one of the engineers, an estimate of the probable costs of refitting

valves to prevent fire in a rollover accident. It was a cost-benefit analysis that

placed a dollar value on a human life, estimated the probability of fatal accident,

estimated the amount of money needed to settle a lawsuit for loss of

life, estimated the amount of money needed to do the refitting so that there

would not be that loss of life—and concluded that it was more economical to

let the people die and settle the suits afterward. For sheer bottom-lineoriented

cynicism, the document was unparalleled in the history of business

enterprise, and Ford Motor Company will never live it down.

When reading these selections, pause to enjoy not only the interesting

case, but also the finely directed passion of the contestants. Mark Dowie’s

trenchant prose is a fine example of investigative reporting, muckraking at its

best. And nothing can compare with the superb lawyering of James Neal. Who

is to blame for anything, if you are a lawyer? Not your client! Anything else!

Blame the van driver, marijuana, the government, professors, the service station,

the highway, the society at large, anything, but not your client. Then ask

yourself: does Neal give the wealthy corporation an unfair advantage in such

proceedings? Does the public have the money to hire such advocates? Would

you have that kind of money? The jury had a difficult task of sorting out the

situation: Was this deliberate malfeasance by Ford? Was it a series of unlucky

decisions made in good faith? Or was this just a very unfortunate accident?

Do we know what constitutes sufficient reason to attribute “responsibility”

to any person, company, or set of conditions? What kinds of risks do we

assume when buying a car, or a motorcycle, or a can of tuna fish? For what is

the manufacturer responsible? Should we be willing to assume more risks in

the enormously competitive market that prevails among small automobiles?

Does the product liability suit unjustly cripple American efforts to compete

in highly competitive industries? Is this something we should worry about?

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**Mark Dowie YES**

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**Pinto Madness**

**O**ne evening in the mid-1960s, Arjay Miller was driving home from his

office in Dearborn, Michigan, in the four-door Lincoln Continental that went

with his job as president of the Ford Motor Company. On a crowded highway,

another car struck his from the rear. The Continental spun around and burst

into flames. Because he was wearing a shoulder-strap seat belt, Miller was

unharmed by the crash, and because his doors didn’t jam he escaped the

gasoline-drenched, flaming wreck. But the accident made a vivid impression

on him. Several months later, on July 15, 1965, he recounted it to a U.S. Senate

subcommittee that was hearing testimony on auto safety legislation. “I still

have burning in my mind the image of that gas tank on fire,” Miller said. He

went on to express an almost passionate interest in controlling fuel-fed fires

in cars that crash or roll over. He spoke with excitement about the fabric gas

tank Ford was testing at that very moment. “If it proves out,” he promised the

senators, “it will be a feature you will see in our standard cars.”

Almost seven years after Miller’s testimony, a woman, whom for legal

reasons we will call Sandra Gillespie, pulled onto a Minneapolis highway in

her new Ford Pinto. Riding with her was a young boy, whom we’ll call Robbie

Carlton. As she entered a merge lane, Sandra Gillespie’s car stalled. Another

car rear-ended hers at an impact speed of 28 miles per hour. The Pinto’s gas

tank ruptured. Vapors from it mixed quickly with the air in the passenger

compartment. A spark ignited the mixture and the car exploded in a ball of

fire. Sandra died in agony a few hours later in an emergency hospital. Her

passenger, 13-year-old Robbie Carlton, is still alive; he has just come home

from another futile operation aimed at grafting a new ear and nose from skin

on the few unscarred portions of his badly burned body. (This accident is real;

the details are from police reports.)

Why did Sandra Gillespie’s Ford Pinto catch fire so easily, seven years

after Ford’s Arjay Miller made his apparently sincere pronouncements—the

same seven years that brought more safety improvements to cars than any

other period in automotive history? An extensive investigation by *Mother*

*Jones* over the past six months has found these answers:

● Fighting strong competition from Volkswagen for the lucrative smallcar

market, the Ford Motor Company rushed the Pinto into production

in much less than the usual time.

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● Ford engineers discovered in pre-production crash tests that rear-end

collisions would rupture the Pinto’s fuel system extremely easily.

● Because assembly-line machinery was already tooled when engineers

found this defect, top Ford officials decided to manufacture the car

anyway—exploding gas tank and all—*even though Ford owned the patent*

*on a much safer gas tank.*

● For more than eight years afterwards, Ford successfully lobbied, with

extraordinary vigor and some blatant lies, against a key government

safety standard that would have forced the company to change the

Pinto’s fire-prone gas tank.

By conservative estimates Pinto crashes have caused 500 burn deaths to

people who would not have been seriously injured if the car had not burst

into flames. The figure could be as high as 900. Burning Pintos have become

such an embarrassment to Ford that its advertising agency, J. Walter Thompson,

dropped a line from the end of a radio spot that read “Pinto leaves you with

that warm feeling.”

Ford knows the Pinto is a firetrap, yet it has paid out millions to settle

damage suits out of court, and it is prepared to spend millions more lobbying

against safety standards. With a half million cars rolling off the assembly

lines each year, Pinto is the biggest-selling subcompact in America, and the

company’s operating profit on the car is fantastic. Finally, in 1977, new Pinto

models have incorporated a few minor alterations necessary to meet that federal

standard Ford managed to hold off for eight years. Why did the company

delay so long in making these minimal, inexpensive improvements?

● Ford waited eight years because its internal “cost-benefit analysis,”

*which places a dollar value on human life,* said it wasn’t profitable to

make the changes sooner.

Before we get to the question of how much Ford thinks your life is

worth, let’s trace the history of the death trap itself. Although this particular

story is about the Pinto, the way in which Ford made its decision is typical of

the U.S. auto industry generally. There are plenty of similar stories about

other cars made by other companies. But this case is the worst of them all.

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The next time you drive behind a Pinto (with over two million of them on the

road, you shouldn’t have much trouble finding one), take a look at the rear

end. That long silvery object hanging down under the bumper is the gas tank.

The tank begins about six inches forward of the bumper. In late models the

bumper is designed to withstand a collision of only about five miles per hour.

Earlier bumpers may as well not have been on the car for all the protection

they offered the gas tank.

*Mother Jones* has studied hundreds of reports and documents on rear-end

collisions involving Pintos. These reports conclusively reveal that if you ran

into that Pinto you were following at over 30 miles per hour, the rear end of

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the car would buckle like an accordion, right up to the back seat. The tube

leading to the gas-tank cap would be ripped away from the tank itself, and gas

would immediately begin sloshing onto the road around the car. The buckled

gas tank would be jammed up against the differential housing (that big bulge in

the middle of your rear axle), which contains four sharp, protruding bolts

likely to gash holes in the tank and spill still more gas. Now all you need is a

spark from a cigarette, ignition, or scraping metal, and both cars would be

engulfed in flames. If you gave that Pinto a really good whack—say, at 40 mph—

chances are excellent that its doors would jam and you would have to stand

by and watch its trapped passengers burn to death.

This scenario is no news to Ford. Internal company documents in our

possession show that Ford has crash-tested the Pinto at a top-secret site more

than 40 times and that *every* test made at over 25 mph without special structural

alteration of the car has resulted in a ruptured fuel tank. Despite this,

Ford officials denied under oath having crash-tested the Pinto.

Eleven of these tests, averaging a 31-mph impact speed, came before

Pintos started rolling out of the factories. Only three cars passed the test with

unbroken fuel tanks. In one of them an inexpensive light-weight plastic baffle

was placed between the front of the gas tank and the differential housing, so

those four bolts would not perforate the tank. (Don’t forget about that little

piece of plastic, which costs one dollar and weighs one pound. It plays an

important role in our story later on.) In another successful test, a piece of steel

was placed between the tank and the bumper. In the third test car the gas tank

was lined with a rubber bladder. But none of these protective alterations was

used in the mass-produced Pinto.

In pre-production planning, engineers seriously considered using in the

Pinto the same kind of gas tank Ford uses in the Capri. The Capri tank rides

over the rear axle and differential housing. It has been so successful in over

50 crash tests that Ford used it in its Experimental Safety Vehicle, which withstood

rear-end impacts of 60 mph. So why wasn’t the Capri tank used in the

Pinto? Or, why wasn’t that plastic baffle placed between the tank and the

axle—something that would have saved the life of Sandra Gillespie and hundreds

like her? Why was a car known to be a serious fire hazard deliberately

released to production in August of 1970?

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Whether Ford should manufacture subcompacts at all was the subject of a

bitter two-year debate at the company’s Dearborn headquarters. The principals

in this corporate struggle were the then-president Semon “Bunky” Knudsen,

whom Henry Ford II had hired away from General Motors, and Lee Iacocca, a

spunky Young Turk who had risen fast within the company on the enormous

success of the Mustang. Iacocca argued forcefully that Volkswagen and the

Japanese were going to capture the entire American subcompact market unless

Ford put out its own alternative to the VW Beetle. Bunky Knudsen said, in

effect: let them have the small-car market; Ford makes good money on

medium and large models. But he lost the battle and later resigned. Iacocca

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became president and almost immediately began a rush program to produce

the Pinto.

Like the Mustang, the Pinto became known in the company as “Lee’s

car.” Lee Iacocca wanted that little car in the showrooms of America with the

1971 models. So he ordered his engineering vice president, Bob Alexander, to

oversee what was probably the shortest production planning period in modern

automotive history. The normal time span from conception to production of a

new car model is about 43 months. The Pinto schedule was set at just under 25.

. . . Design, styling, product planning, advance engineering and quality

assurance all have flexible time frames, and engineers can pretty much carry

these on simultaneously. Tooling, on the other hand, has a fixed time frame

of about 18 months. Normally, an auto company doesn’t begin tooling until

the other processes are almost over: you don’t want to make the machines

that stamp and press and grind metal into the shape of car parts until you

know all those parts will work well together. *But Iacocca’s speed-up meant*

*Pinto tooling went on at the same time as product development.* So when crash

tests revealed a serious defect in the gas tank, it was too late. The tooling was

well under way.

When it was discovered the gas tank was unsafe, did anyone go to

Iacocca and tell him? “Hell no,” replied an engineer who worked on the Pinto,

a high company official for many years, who, unlike several others at Ford,

maintains a necessarily clandestine concern for safety. “That person would

have been fired. Safety wasn’t a popular subject around Ford in those days.

With Lee it was taboo. Whenever a problem was raised that meant a delay on

the Pinto, Lee would chomp on his cigar, look out the window and say ‘Read

the product objectives and get back to work.’ ”

The product objectives are clearly stated in the Pinto “green book.” This

is a thick, top-secret manual in green covers containing a step-by-step production

plan for the model, detailing the metallurgy, weight, strength and quality

of every part in the car. The product objectives for the Pinto are repeated in an

article by Ford executive F. G. Olsen published by the Society of Automotive

Engineers. He lists these product objectives as follows:

1. TRUE SUBCOMPACT

Size

Weight

2. LOW COST OF OWNERSHIP

Initial price

Fuel consumption

Reliability

Serviceability

3. CLEAR PRODUCT SUPERIORITY

Appearance

Comfort

Features

Ride and Handling

Performance

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Safety, you will notice, is not there. It is not mentioned in the entire

article. As Lee Iacocca was fond of saying, “Safety doesn’t sell.”

Heightening the anti-safety pressure on Pinto engineers was an important

goal set by Iacocca known as “the limits of 2,000.” The Pinto was not to

weigh an ounce over 2,000 pounds and not to cost a cent over $2,000.

“Iacocca enforced these limits with an iron hand,” recalls the engineer quoted

earlier. So, even when a crash test showed that that one-pound, one-dollar

piece of plastic stopped the puncture of the gas tank, it was thrown out as

extra cost and extra weight.

People shopping for subcompacts are watching every dollar. “You have to

keep in mind,” the engineer explained, “that the price elasticity on these

subcompacts is extremely tight. You can price yourself right out of the market

by adding $25 to the production cost of the model. And nobody understands

that better than Iacocca.”

Dr. Leslie Ball, the retired safety chief for the NASA manned space

program and a founder of the International Society of Reliability Engineers,

recently made a careful study of the Pinto. “The release to production of

the Pinto was the most reprehensible decision in the history of American

engineering,” he said. Ball can name more than 40 European and Japanese

models in the Pinto price and weight range with safer gas-tank positioning.

Ironically, many of them, like the Ford Capri, contain a “saddle-type” gas

tank riding over the back axle. *The patent on the saddle-type tank is owned by*

*the Ford Motor Co.*

Los Angeles auto safety expert Byron Bloch has made an in-depth study

of the Pinto fuel system. “It’s a catastrophic blunder,” he says. “Ford made an

extremely irresponsible decision when they placed such a weak tank in such a

ridiculous location in such a soft rear end. It’s almost designed to blow up—

premeditated.”

A Ford engineer, who doesn’t want his name used, comments: “This

company is run by salesmen, not engineers; so the priority is styling, not

safety.” He goes on to tell a story about gas-tank safety at Ford.

Lou Tubben is one of the most popular engineers at Ford. He’s a friendly,

outgoing guy with a genuine concern for safety. By 1971 he had grown so

concerned about gas-tank integrity that he asked his boss if he could prepare a

presentation on safer tank design. Tubben and his boss had both worked on

the Pinto and shared a concern for its safety. His boss gave him the go-ahead,

scheduled a date for the presentation and invited all company engineers and

key production planning personnel. When time came for the meeting, a grand

total of two people showed up—Lou Tubben and his boss.

“So you see,” continued the anonymous Ford engineer ironically, “there

*are* a few of us here at Ford who are concerned about fire safety.” He adds: “They

are mostly engineers who have to study a lot of accident reports and look at

pictures of burned people. But we don’t talk about it much. It isn’t a popular

subject. I’ve never seen safety on the agenda of a product meeting and, except

for a brief period in 1956, I can’t remember seeing the word safety in an advertisement.

I really don’t think the company wants American consumers to start

thinking too much about safety—for fear they might demand it, I suppose.”

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Asked about the Pinto gas tank, another Ford engineer admitted: “That’s

all true. But you miss the point entirely. You see, safety isn’t the issue, trunk

space is. You have no idea how stiff the competition is over trunk space. Do

you realize that if we put a Capri-type tank in the Pinto you could only get

one set of golf clubs in the trunk?”

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Blame for Sandra Gillespie’s death, Robbie Carlton’s unrecognizable face and

all the other injuries and deaths in Pintos since 1970 does not rest on the

shoulders of Lee Iacocca alone. For, while he and his associates fought their

battle against a safer Pinto in Dearborn, a larger war against safer cars raged in

Washington. One skirmish in that war involved Ford’s successful eight-year

lobbying effort against Federal Motor Vehicle Safety Standard 301, the rearend

provisions of which would have forced Ford to redesign the Pinto.

But first some background:

During the early ’60s, auto safety legislation became the *bête-noire* of

American big business. The auto industry was the last great unregulated business,

and if *it* couldn’t reverse the tide of government regulation, the reasoning

went, no one could.

People who know him cannot remember Henry Ford II taking a stronger

stand than the one he took against the regulation of safety design. He spent

weeks in Washington calling on members of Congress, holding press conferences

and recruiting business cronies like W. B. Murphy of Campbell’s Soup

to join the anti-regulation battle. Displaying the sophistication for which

today’s American corporate leaders will be remembered, Murphy publicly

called auto safety “a hula hoop, a fad that will pass.” He was speaking to a

special luncheon of the Business Council, an organization of 100 chief executives

who gather periodically in Washington to provide “advice” and “counsel”

to government. The target of their wrath in this instance was the Motor

Vehicle Safety Bills introduced in both houses of Congress, largely in response

to Ralph Nader’s *Unsafe at Any Speed.*

By 1965, most pundits and lobbyists saw the handwriting on the wall and

prepared to accept government “meddling” in the last bastion of free enterprise.

Not Henry. With bulldog tenacity, he held out for defeat of the legislation

to the very end, loyal to his grandfather’s invention and to the company

that makes it. But the Safety Act passed the House and Senate unanimously,

and was signed into law by Lyndon Johnson in 1966.

While lobbying for and against legislation is pretty much a process of

high-level back-slapping, press-conferencing and speech-making, fighting a

regulatory agency is a much subtler matter. Henry headed home to lick his

wounds in Grosse Pointe, Michigan, and a planeload of the Ford Motor

Company’s best brains flew to Washington to start the “education” of the

new federal auto safety bureaucrats.

Their job was to implant the official industry ideology in the minds of

the new officials regulating auto safety. Briefly summarized, that ideology

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states that auto accidents are caused not by *cars,* but by 1) people and 2) highway

conditions.

This philosophy is rather like blaming a robbery on the victim. Well,

what did you expect? You were carrying money, weren’t you? It is an extraordinary

experience to hear automotive “safety engineers” talk for hours without

ever mentioning cars. They will advocate spending billions educating

youngsters, punishing drunks and redesigning street signs. Listening to them,

you can momentarily begin to think that it is easier to control 100 million

drivers than a handful of manufacturers. They show movies about guardrail

design and advocate the clear-cutting of trees 100 feet back from every highway

in the nation. If a car is unsafe, they argue, it is because its owner doesn’t

properly drive it. Or, perhaps, maintain it.

In light of an annual death rate approaching 50,000, they are forced to

admit that driving is hazardous. But the car is, in the words of Arjay Miller,

“the safest link in the safety chain.”

Before the Ford experts left Washington to return to drafting tables in

Dearborn they did one other thing. They managed to informally reach an

agreement with the major public servants who would be making auto safety

decisions. This agreement was that “cost-benefit” would be an acceptable

mode of analysis by Detroit and its new regulators. And as we shall see, costbenefit

analysis quickly became the basis of Ford’s argument against safer

car design.

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Cost-benefit analysis was used only occasionally in government until President

Kennedy appointed Ford Motor Company President Robert McNamara to be

Secretary of Defense. McNamara, originally an accountant, preached cost

benefit with all the force of a Biblical zealot. Stated in its simplest terms,

cost-benefit analysis says that if the cost is greater than the benefit, the

project is not worth it—no matter what the benefit. Examine the cost of every

action, decision, contract, part, or change, the doctrine says, then carefully

evaluate the benefits (in dollars) to be certain that they exceed the cost

before you begin a program or—and this is the crucial part for our story—pass

a regulation.

As a management tool in a business in which profits matter over everything

else, cost-benefit analysis makes a certain amount of sense. Serious

problems come, however, when public officials who ought to have more than

corporate profits at heart apply cost-benefit analysis to every conceivable decision.

The inevitable result is that they must place a dollar value on human life.

Ever wonder what your life is worth in dollars? Perhaps $10 million?

Ford has a better idea: $200,000.

Remember, Ford had gotten the federal regulators to agree to talk auto

safety in terms of cost-benefit analysis. But in order to be able to argue that

various safety costs were greater than their benefits, Ford needed to have a

dollar value figure for the “benefit.” Rather than be so uncouth as to come up

with such a price tag itself, the auto industry pressured the National Highway

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Traffic Safety Administration to do so. And in a 1972 report the agency

decided a human life was worth $200,725. (For its reasoning, see [Table 1].)

Inflationary forces have recently pushed the figure up to $278,000.

Furnished with this useful tool, Ford immediately went to work using it

to prove why various safety improvements were too expensive to make.

Nowhere did the company argue harder that it should make no changes

than in the area of rupture-prone fuel tanks. Not long after the government

arrived at the $200,725-per-life figure, it surfaced, rounded off to a cleaner

$200,000, in an internal Ford memorandum. This cost-benefit analysis argued

that Ford should not make an $11-per-car improvement that would prevent

180 fiery deaths a year. (This minor change would have prevented gas tanks

from breaking so easily both in rear-end collisions, like Sandra Gillespie’s,

and in rollover accidents, where the same thing tends to happen.)

Ford’s cost-benefit table [Table 2] is buried in a seven-page company

memorandum entitled “Fatalities Associated with Crash-Induced Fuel Leakage

and Fires.” The memo argues that there is no financial benefit in complying

with proposed safety standards that would admittedly result in fewer auto

fires, fewer burn deaths and fewer burn injuries. Naturally, memoranda that

speak so casually of “burn deaths” and “burn injuries” are not released to the

***Table 1***

**What’s Your Life Worth? Societal Cost Components**

**for Fatalities, 1972 NHTSA Study**

**Component 1971 Costs**

Future productivity losses

Direct

Indirect

Medical Costs

Hospital

Other

Property damage

Insurance administration

Legal and court

Employer losses

Victim’s pain and suffering

Funeral

Assets (lost consumption)

Miscellaneous accident costs

Total per fatality: $200,725

$132,000

41,300

700

425

1,500

4,700

3,000

1,000

10,000

900

5,000

200

Here is a chart from a federal study showing how the National Highway Traffic Safety Administration has

calculated the value of a human life. The estimate was arrived at under pressure from the auto industry. The

Ford Motor Company has used it in cost-benefit analyses arguing why certain safety measures are not “worth”

the savings in human lives. The calculation above is a breakdown of the estimated cost to society every time

someone is killed in a car accident. We were not able to find anyone, either in the government or at Ford, who

could explain how the $10,000 figure for “pain and suffering” had been arrived at.

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public. They are very effective, however, with Department of Transportation

officials indoctrinated in McNamarian cost-benefit analysis.

All Ford had to do was convince men like John Volpe, Claude Brinegar

and William Coleman (successive Secretaries of Transportation during the

Nixon-Ford years) that certain safety standards would add so much to the

price of cars that fewer people would buy them. This could damage the auto

industry, which was still believed to be the bulwark of the American economy.

“Compliance to these standards,” Henry Ford II prophesied at more than one

press conference, “will shut down the industry.”

The Nixon Transportation Secretaries were the kind of regulatory officials

big business dreams of. They understood and loved capitalism and thought like

businessmen. Yet, best of all, they came into office uninformed on technical

automotive matters. And you could talk “burn injuries” and “burn deaths” with

these guys, and they didn’t seem to envision children crying at funerals and

people hiding in their homes with melted faces. Their minds appeared to have

leapt right to the bottom line—more safety meant higher prices, higher prices

meant lower sales and lower sales meant lower profits.

So when J. C. Echold, Director of Automotive Safety (which means chief

anti-safety lobbyist) for Ford wrote to the Department of Transportation—

which he still does frequently, at great length—he felt secure attaching a

memorandum that in effect says it is acceptable to kill 180 people and burn

another 180 every year, *even though we have the technology that could save their*

*lives for* $*11 a car.*

Furthermore, Echold attached this memo, confident, evidently, that the

Secretary would question neither his low death/injury statistics nor his high

cost estimates. But it turns out, on closer examination, that both these findings

were misleading.

First, note that Ford’s table shows an equal number of burn deaths and

burn injuries. This is false. All independent experts estimate that for each

person who dies by an auto fire, many more are left with charred hands, faces

***Table 2***

**$11 vs a Burn Death: Benefits and Costs Relating to Fuel Leakage**

**Associated With the Static Rollover Test Portion of FMVSS 208**

**Benefits**

***Savings:*** 180 burn deaths, 180 serious burn injuries, 2,100 burned vehicles.

***Unit cost:*** $200,000 per death, $67,000 per injury, $700 per vehicle.

***Total benefit:*** 180 ($200,000) 180 ($67,000) 2,100 ($700) $49.5 million.

**Costs**

***Sales:*** 11 million cars, 1.5 million light trucks.

***Unit cost:*** $11 per car, $11 per truck.

***Total cost:*** 11,000,000 ($11) 1,500,000 ($11) $137 million.

From Ford Motor Company internal memorandum: “Fatalities Associated with Crash-Induced Fuel Leakage

and Fires.”

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and limbs. Andrew McGuire of the Northern California Burn Center estimates

the ratio of burn injuries to deaths at ten to one instead of the one to one Ford

shows here. Even though Ford values a burn at only a piddling $67,000 instead

of the $200,000 price of life, the true ratio obviously throws the company’s

calculations way off.

The other side of the equation, the alleged $11 cost of a fire-prevention

device, is also a misleading estimation. One document that was *not* sent to

Washington by Ford was a “Confidential” cost analysis *Mother Jones* has managed

to obtain, showing that crash fires could be largely prevented for considerably

*less* than $11 a car. The cheapest method involves placing a heavy rubber bladder

inside the gas tank to keep the fuel from spilling if the tank ruptures.

Goodyear had developed the bladder and had demonstrated it to the automotive

industry. We have in our possession crash-test reports showing that the

Goodyear bladder worked well. On December 2, 1970 (*two years before* Echold

sent his cost-benefit memo to Washington), Ford Motor Company ran a rearend

crash test on a car with the rubber bladder in the gas tank. The tank

ruptured, but no fuel leaked. On January 15, 1971, Ford again tested the bladder

and again it worked. The total purchase and installation cost of the bladder

would have been $5.08 per car. That $5.08 could have saved the lives of Sandra

Gillespie and several hundred others.

i

When a federal regulatory agency like the National Highway Traffic Safety

Administration (NHTSA) decides to issue a new standard, the law usually requires

it to invite all interested parties to respond before the standard is enforced—a

reasonable enough custom on the surface. However, the auto industry has taken

advantage of this process and has used it to delay lifesaving emission and safety

standards for years. In the case of the standard that would have corrected that

fragile Pinto fuel tank, the delay was for an incredible eight years.

The particular regulation involved here was Federal Motor Vehicle Safety

Standard 301. Ford picked portions of Standard 301 for strong opposition back

in 1968 when the Pinto was still in the blueprint stage. The intent of 301, and

the 300 series that followed it, was to protect drivers and passengers *after* a crash

occurs. Without question the worst postcrash hazard is fire. So Standard 301

originally proposed that all cars should be able to withstand a fixed barrier

impact of 20 mph (that is, running into a wall at that speed) without losing fuel.

When the standard was proposed, Ford engineers pulled their crash-test

results out of their files. The front ends of most cars were no problem—with

minor alterations they could stand the impact without losing fuel. “We were

already working on the front end,” Ford engineer Dick Kimble admitted. “We

knew we could meet the test on the front end.” But with the Pinto particularly,

a 20-mph rear-end standard meant redesigning the entire rear end of the

car. With the Pinto scheduled for production in August of 1970, and with

$200 million worth of tools in place, adoption of this standard would have

created a minor financial disaster. So Standard 301 was targeted for delay, and,

with some assistance from its industry associates, Ford succeeded beyond its

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wildest expectations: the standard was not adopted until the 1977 model year.

Here is how it happened:

There are several main techniques in the art of combating a government

safety standard: a) make your arguments in succession, so the feds can be

working on disproving only one at a time; b) claim that the real problem is

not X but Y (we already saw one instance of this in “the problem is not cars

but people”); c) no matter how ridiculous each argument is, accompany it

with thousands of pages of highly technical assertions it will take the

government months or, preferably, years to test. Ford’s large and active

Washington office brought these techniques to new heights and became the

envy of the lobbyists’ trade.

The Ford people started arguing against Standard 301 way back in 1968

with a strong attack of technique b). Fire, they said, was not the real problem.

Sure, cars catch fire and people burn occasionally. But statistically auto fires are

such a minor problem that NHTSA should really concern itself with other matters.

Strange as it may seem, the Department of Transportation (NHTSA’s

parent agency) didn’t know whether or not this was true. So it contracted with

several independent research groups to study auto fires. The studies took

months which was just what Ford wanted.

The completed studies, however, showed auto fires to be more of a problem

than Transportation officials ever dreamed of. Robert Nathan and Associates,

a Washington research firm, found that 400,000 cars were burning up

every year, burning more than 3,000 people to death. Furthermore, auto fires

were increasing five times as fast as building fires. Another study showed that

35 per cent of all fire deaths in the U.S. occurred in automobiles. Forty per

cent of all fire department calls in the 1960s were to vehicle fires—a public

cost of $350 million a year, a figure that, incidentally, never shows up in costbenefit

analyses.

Another study was done by the Highway Traffic Research Institute in Ann

Arbor, Michigan, a safety think-tank funded primarily by the auto industry

(the giveaway there is the words “highway traffic” rather than “automobile” in

the group’s name). It concluded that 40 per cent of the lives lost in fuel-fed

fires could be saved if the manufacturers complied with proposed Standard 301.

Finally, a third report was prepared for NHTSA by consultant Eugene Trisko

entitled “A National Survey of Motor Vehicle Fires.” His report indicates that

the Ford Motor Company makes 24 per cent of the cars on the American road,

yet these cars account for 42 per cent of the collision-ruptured fuel tanks.

Ford lobbyists then used technique a)—bringing up a new argument.

Their line then became: yes, perhaps burn accidents do happen, but rear-end

collisions are relatively rare (note the echo of technique b) here as well). Thus

Standard 301 was not needed. This set the NHTSA off on a new round of

analyzing accident reports. The government’s findings finally were that rear-end

collisions were seven and a half times more likely to result in fuel spills than

were front-end collisions. So much for that argument.

By now it was 1972; NHTSA had been researching and analyzing for four

years to answer Ford’s objections. During that time, nearly 9,000 people

burned to death in flaming wrecks. Tens of thousands more were badly

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burned and scarred for life. And the four-year delay meant that well over 10

million new unsafe vehicles went on the road, vehicles that will be crashing,

leaking fuel and incinerating people well into the 1980s.

Ford now had to enter its third round of battling the new regulations.

On the “the problem is not X but Y” principle, the company had to look

around for something new to get itself off the hook. One might have thought

that, faced with all the latest statistics on the horrifying number of deaths in

flaming accidents, Ford would find the task difficult. But the company’s rhetoric

was brilliant. The problem was not burns, but . . . impact! Most of the people

killed in these fiery accidents, claimed Ford, would have died whether the car

burned or not. They were killed by the kinetic force of the impact, not the fire.

And so once again, as in some giant underwater tennis game, the ball

bounced into the government’s court and the absurdly pro-industry NHTSA

began another slow-motion response. Once again it began a time-consuming

round of test crashes and embarked on a study of accidents. The latter, however,

revealed that a large and growing number of corpses taken from burned cars

involved in rear-end crashes contained no cuts, bruises or broken bones. They

clearly would have survived the accident unharmed if the cars had not caught

fire. This pattern was confirmed in careful rear-end crash tests performed by

the Insurance Institute for Highway Safety. A University of Miami study found

an inordinate number of Pintos burning on rear-end impact and concluded

that this demonstrated “a clear and present hazard to all Pinto owners.”

Pressure on NHTSA from Ralph Nader and consumer groups began

mounting. The industry-agency collusion was so obvious that Senator Joseph

Montoya (D-N.M.) introduced legislation about Standard 301. NHTSA waffled

some more and again announced its intentions to promulgate a rear-end collision

standard.

Waiting, as it normally does, until the last day allowed for response,

Ford filed with NHTSA a gargantuan batch of letters, studies and charts now

arguing that the federal testing criteria were unfair. Ford also argued that

design changes required to meet the standard would take 43 months, which

seemed like a rather long time in light of the fact that the entire Pinto was

designed in about two years. Specifically, new complaints about the standard

involved the weight of the test vehicle, whether or not the brakes should be

engaged at the moment of impact and the claim that the standard should only

apply to cars, not trucks or buses. Perhaps the most amusing argument was that

the engine should not be idling during crash tests, the rationale being that an

idling engine meant that the gas tank had to contain gasoline and that the

hot lights needed to film the crash might ignite the gasoline and cause a fire.

Some of these complaints were accepted, others rejected. But they all

required examination and testing by a weak-kneed NHTSA, meaning more of

those 18-month studies the industry loves so much. So the complaints served

their real purpose—delay; all told, an eight-year delay, while Ford manufactured

more than three million profitable, dangerously incendiary Pintos. To

justify this delay, Henry Ford II called more press conferences to predict the

demise of American civilization. “If we can’t meet the standards when they are

published,” he warned, “we will have to close down. And if we have to close

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down some production because we don’t meet standards we’re in for real

trouble in this country.”

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While government bureaucrats dragged their feet on lifesaving Standard 301, a

different kind of expert was taking a close look at the Pinto—the “recon man.”

“Recon” stands for reconstruction; recon men reconstruct accidents for police

departments, insurance companies and lawyers who want to know exactly

who or what caused an accident. It didn’t take many rear-end Pinto accidents

to demonstrate the weakness of the car. Recon men began encouraging lawyers

to look beyond one driver or another to the manufacturer in their search

for fault, particularly in the growing number of accidents where passengers

were uninjured by collision but were badly burned by fire.

Pinto lawuits began mounting fast against Ford. Says John Versace, executive

safety engineer at Ford’s Safety Research Center, “Ulcers are running

pretty high among the engineers who worked on the Pinto. Every lawyer in

the country seems to want to take their depositions.” (The Safety Research

Center is an impressive glass and concrete building standing by itself about a

mile from Ford World Headquarters in Dearborn. Looking at it, one imagines

its large staff protects consumers from burned and broken limbs. Not so. The

Center is the technical support arm of Jack Echold’s 14-person anti-regulatory

lobbying team in World Headquarters.)

When the Pinto liability suits began, Ford strategy was to go to a jury.

Confident it could hide the Pinto crash tests, Ford thought that juries of solid

American registered voters would buy the industry doctrine that drivers, not

cars, cause accidents. It didn’t work. It seems that juries are much quicker to

see the truth than bureaucracies, a fact that gives one confidence in democracy.

Juries began ruling against the company, granting million-dollar awards

to plaintiffs.

“We’ll never go to a jury again,” says Al Slechter in Ford’s Washington

office. “Not in a fire case. Juries are just too sentimental. They see those

charred remains and forget the evidence. No sir, we’ll settle.”

Settlement involves less cash, smaller legal fees and less publicity, but it is

an indication of the weakness of their case. Nevertheless, Ford has been settling

when it is clear that the company can’t pin the blame on the driver of the other

car. But, since the company carries $2 million deductible product-liability insurance,

these settlements have a direct impact on the bottom line. They must

therefore be considered a factor in determining the net operating profit on the

Pinto. It’s impossible to get a straight answer from Ford on the profitability of

the Pinto and the impact of lawsuit settlements on it—even when you have a

curious and mildly irate shareholder call to inquire, as we did. However, financial

officer Charles Matthews did admit that the company establishes a reserve

for large dollar settlements. He would not divulge the amount of the reserve and

had no explanation for its absence from the annual report.

Until recently, it was clear that, whatever the cost of these settlements, it

was not enough to seriously cut into the Pinto’s enormous profits. The cost of

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retooling Pinto assembly lines and of equipping each car with a safety gadget

like that $5.08 Goodyear bladder was, company accountants calculated,

greater than that of paying out millions to survivors like Robbie Carlton or to

widows and widowers of victims like Sandra Gillespie. The bottom line ruled,

and inflammable Pintos kept rolling out of the factories.

In 1977, however, an incredibly sluggish government has at last instituted

Standard 301. Now Pintos will have to have rupture-proof gas tanks. Or

will they?

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To everyone’s surprise, the 1977 Pinto recently passed a rear-end crash test in

Phoenix, Arizona, for NHTSA. The agency was so convinced the Pinto would

fail that it was the first car tested. Amazingly, it did not burst into flame.

“We have had so many Ford failures in the past,” explained agency engineer

Tom Grubbs, “I felt sure the Pinto would fail.”

How did it pass?

Remember that one-dollar, one-pound plastic baffle that was on one of

the three modified Pintos that passed the pre-production crash tests nearly ten

years ago? Well, it is a standard feature on the 1977 Pinto. In the Phoenix test

it protected the gas tank from being perforated by those four bolts on the differential

housing.

We asked Grubbs if he noticed any other substantial alterations in the

rear-end structure of the car. “No,” he replied, “the [plastic baffle] seems to be

the only noticeable change over the 1976 model.”

But was it? What Tom Grubbs and the Department of Transportation didn’t

know when they tested the car was that it was manufactured in St. Thomas,

Ontario. Ontario? The significance of that becomes clear when you learn that

Canada has for years had extremely strict rear-end collision standards.

Tom Irwin is the business manager of Charlie Rossi Ford, the Scottsdale,

Arizona, dealership that sold the Pinto to Tom Grubbs. He refused to explain

why he was selling Fords made in Canada when there is a huge Pinto assembly

plant much closer by in California. “I know why you’re asking that question,

and I’m not going to answer it,” he blurted out. “You’ll have to ask the

company.”

But Ford’s regional office in Phoenix has “no explanation” for the

presence of Canadian cars in their local dealerships. Farther up the line in

Dearborn, Ford people claim there is absolutely no difference between

American and Canadian Pintos. They say cars are shipped back and forth

across the border as a matter of course. But they were hard pressed to explain

why some Canadian Pintos were shipped all the way to Scottsdale, Arizona.

Significantly, one engineer at the St. Thomas plant did admit that the existence

of strict rear-end collision standards in Canada “might encourage us to

pay a little more attention to quality control on that part of the car.”

The Department of Transportation is considering buying an American

Pinto and running the test again. For now, it will only say that the situation is

under investigation.

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Whether the new American Pinto fails or passes the test, Standard 301 will

never force the company to test or recall the more than two million pre-1977

Pintos still on the highway. Seventy or more people will burn to death in

those cars every year for many years to come. If the past is any indication,

Ford will continue to accept the deaths.

According to safety expert Byron Bloch, the older cars could quite easily

be retrofitted with gas tanks containing fuel cells. “These improved tanks

would add at least 10 mph improved safety performance to the rear end,” he

estimated, “but it would cost Ford $20 to $30 a car, so they won’t do it unless

they are forced to.” Dr. Kenneth Saczalski, safety engineer with the Office of

Naval Research in Washington, agrees. “The Defense Department has developed

virtually fail-safe fuel systems and retrofitted them into existing vehicles.

We have shown them to the auto industry and they have ignored them.”

Unfortunately, the Pinto is not an isolated case of corporate malpractice

in the auto industry. Neither is Ford a lone sinner. There probably isn’t a car

on the road without a safety hazard known to its manufacturer. And though

Ford may have the best auto lobbyists in Washington, it is not alone. The antiemission

control lobby and the anti-safety lobby usually work in chorus form,

presenting a well-harmonized message from the country’s richest industry,

spoken through the voices of individual companies—the Motor Vehicle

Manufacturers Association, the Business Council and the U.S. Chamber of

Commerce.

Furthermore, cost-valuing human life is not used by Ford alone. Ford was

just the only company careless enough to let such an embarrassing calculation

slip into the public records. The process of willfully trading lives for profits

is built into corporate capitalism. Commodore Vanderbilt publicly scorned

George Westinghouse and his “foolish” air brakes while people died by the

hundreds in accidents on Vanderbilt’s railroads.

The original draft of the Motor Vehicle Safety Act provided for criminal

sanction against a manufacturer who willfully placed an unsafe car on the

market. Early in the proceedings the auto industry lobbied the provision out

of the bill. Since then, there have been those damage settlements, of course,

but the only government punishment meted out to auto companies for noncompliance

to standards has been a minuscule fine, usually $5,000 to

$10,000. One wonders how long the Ford Motor Company would continue to

market lethal cars were Henry Ford II and Lee Iacocca serving 20-year terms in

Leavenworth for consumer homicide.

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**Ford Motor Company NO**

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From U.S. District Court, South Bend, Indiana, State of Indiana v. Ford Motor Company ( January

15, 1980).

**Closing Argument by Mr. Neal**

**I**f it please the Court, Counsel, ladies and gentlemen:

Not too many years ago our broad American Industry straddled the

world like a giant.

It provided us with the highest standards of living ever known to man.

It was ended, eliminated, no more. Now it is an Industry weakened by

deteriorating plants and equipment, weakened by lack of products, weakened

by lack of manpower, weakened by inadequate capital, weakened by massive

Government controls, weakened by demands on foreign oil and reeling from

competition from foreign manufacturers.

I stand here today to defend a segment of that tattered Industry.

One company that saw the influx of foreign, small-made cars in 1967

and ’68 and tried to do something about it, tried to build a small car with

American labor that would compete with foreign imports, that would keep

Americans employed, that would keep American money in America.

As State’s witness, Mr. Copp, admitted, Ford Motor Company would

have made more profit sticking to the bigger cars where the profit is.

That would have been the easiest way.

It was not the way Ford Motor Company took.

It made the Ford to compete. And this is no easy effort, members

of the jury.

As even Mr. Copp admitted, the Automobile Industry is extremely regulated.

It has to comply with the Clean Air Act, the Safety Act, the Emissions

Control Act, the Corporate Average Fuel Economy Act, the Safety Act, and

OSHA as well as a myriad of Statutes and Regulations applicable to large and

small businesses generally, and, again, as Mr. Copp admitted, it now takes

twice as many Engineers to make a car as it did before all the massive Government

controls.

Nevertheless, Ford Motor Company undertook the effort to build a subcompact,

to take on the imports, to save jobs for Americans and to make a

profit for its stockholders.

This rather admirable effort has a sad ending.

On August 10, 1978, a young man gets into a van weighing over 4,000

pounds and heads towards Elkhart, Indiana, on a bad highway called “U.S. 33.”

He has a couple of open beer bottles in his van, together with his

marijuana which he may or may not have been smoking. . . .

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As he was cruising along on an open stretch of highway in broad

daylight at at least 50 to 55 miles per hour, he drops his “smoke,” ignores his

driving and the road, and fails to see a little Pinto with its emergency flashers

on stopped on the highway ahead.

He plows into the rear of the Pinto with enormous force and three young

girls are killed.

Not the young man, but Ford Motor Company is charged with reckless

homicide and arraigned before you.

I stand here to defend Ford Motor Company, and to tell you that we are

not killers. . . .

Mr. Cosentino gave you the definition of “reckless homicide” as “plain,

conscious and unjustifiable disregard of harm, which conduct involves substantial

deviation from acceptable standards of conduct.”

This case and the elements of this case, strictly speaking, involve 40 days,

July 1, 1978 to August 10, 1978, and the issue is whether, during that period of

time, Ford Motor Company recklessly, as that term is defined, omitted to warn of

a danger and repair, and that reckless omission caused the deaths involved. . . .

[I]n my opening statement, I asked you to remember nine points, and I

asked you to judge me, my client, by how well or how poorly we supported

those nine points.

Let me run through briefly and just tick them off, the nine points, with

you, and then let me get down to discussing the evidence and record with

respect to those nine points.

One, I said this was a badly-designed highway, with curbs so high the

girls couldn’t get off when they had to stop their car in an emergency.

Two, I said that the girls stopped there with their emergency flashers on,

and this boy in a van weighing more than 4,000 pounds, with his eyes off the

road, looking down trying to find the “smoke,” rammed into the rear of that

Pinto at at least 50 miles an hour, closing speed.

And by “closing speed,” I mean the differential speed.

That is Points 1 and 2.

Point 3, I said the 1973 Pinto met every fuel-system integrity standard of

any Federal, State or Local Government.

Point No. 4, I said, Ford Motor Company adopted a mandatory standard

dealing with fuel-system integrity on rear-impact of 20 miles per hour movingbarrier,

4,000 pound moving-barrier, and I said that no other manufacturer in

the world had adopted any standard, only Ford Motor Company.

Five, I said that the Pinto, it is not comparable to a Lincoln Continental,

a Cadillac, a Mercedes Benz or that Ascona, or whatever that exotic car was that

Mr. Bloch called—but I did say No. 5, it is comparable to other 1973 subcompacts.

No. 6, I said that . . . we would bring in the Engineers who designed and

manufactured the Pinto, and I brought them from the stand, and they would

tell you that they thought the Pinto was a good, safe car, and they bought it for

themselves, their wives and their children to drive.

No. 7, I told you that we would bring in the statistics that indicated to us

as to our state of mind that the Pinto performed as well or better than other

subcompacts.

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And, No. 8, I said we would nevertheless tell you that we decided to

recall the Pinto in June of 1978, and having made that decision for the reasons

that I—that I told you I would explain, we did everything in our power to

recall that Pinto as quickly as possible, that there was nothing we could have

done between July 1, 1978 and 8-10-1978, to recall the Pinto any faster.

And finally, No. 9, I said we would demonstrate that any car, any

subcompact, any small car, and even some larger cars, sitting out there on

Highway 33 in the late afternoon of August 10, 1978 and watching that van

roar down that highway with the boy looking for his “smoke”—any car would

have suffered the same consequences.

Those are the nine points I ask you to judge me by, and let me touch on

the evidence, now, with respect to those nine points. . . .

The van driver, Duggar, took his eyes off the road and off driving to look

around the floor of the van for a “smoke.”

Duggar had two open beer bottles in the car and a quantity of marijuana.

Duggar was not prosecuted for reckless homicide or for possession of

marijuana, even though his prior record of conviction was:

November, ’73, failure to yield right-of-way;

April, ’76, speeding 65 miles an hour in a 45 mile an hour zone;

July, ’76, running stop sign;

June, ’77, speeding 45 in a 25 zone;

August, ’77, driver’s license suspended;

September, ’77, driving with suspended license;

December, ’77, license suspended again.

Mr. Cosentino, you got up in front of this jury and you cried.

Well, I cry, too, because Mr. Duggar is driving, and you didn’t do anything

about him with a record like that except say, “Come in and help me convict

Ford Motor Company, and I will help you get probation.”

We all cry.

But crying doesn’t do any good, and it doesn’t help this jury.

The big disputed fact in this case regarding the accident, ladies and

gentlemen, is the closing speed. The differential speed, the difference between

the speed the Pinto was going, if any, and the speed the van was going.

That is the big disputed fact in regard to this accident.

And whether the Pinto was stopped or not is relevant only as it affects

closing speed. . . .

Mr. Duggar testified—I guess he is great about speed, because while he’s

looking down there for his “smoke,” he knows he is going 50 miles per hour

in the van.

But he said he was going 50 miles per hour at the time of impact, and he

said the Pinto was going 15.

But here is the same man who admits he was going at least 50 miles per

hour and looking around down “on a clear day,” trying to find the “smoke”

and looked up only to see the Pinto ten feet ahead of him.

Here is a witness willing to say under oath that the Pinto was going 15

miles per hour, even though he had one-sixth of a second—one-sixth of a second

to make the judgment on the speed.

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Here is a witness who says he had the time to calculate the speed of the

Pinto but had no time even to try to apply brakes because there were no skid

marks.

And here is a witness who told Dr. Galen Miller, who testified here, that—

told him right after the accident that in fact the Pinto was stopped.

And here was a witness who made a deal with the State.

And here was a witness who’s not prosecuted for recklessness.

And here is a witness who is not prosecuted for possession of marijuana.

So the State’s proof from Mr. Alfred Clark through Mr. Duggar is kind of

a smorgasbord or a buffet—you can go in and take your choice.

You can pick 15—5 miles per hour, if you want to as to differential speed,

or you can take 35 miles per hour.

And the State, with the burden of proof says, “Here,” “Here,” “Here.

I will give you a lot of choice.”

“You want choices? I will give you choices. Here. Take 5. Take 15. 10, 15,

20, 25, 30, 35.”

Because, ladies and gentlemen of the jury,—and I’m sure you are—the

alternatives the State offers you are closing speeds of anywhere from 5 miles—

on the low side—to 35 miles on the high side as a differential speed in this

accident. . . .

Mr. Toms, the former National Highway Traffic Safety Administrator,

told you that in his opinion the 20 mile per hour rear-impact moving-barrier

was a reasonable and acceptable standard of conduct for 1973 vehicles.

Why didn’t Ford adopt a higher standard?

Mr. MacDonald, a man even Mr. Copp—do you remember this? Mr. Mac-

Donald sitting on the stand, the father of the Pinto, as Mr. Cosentino called

him—and he didn’t deny it.

He says, “Yes, it is my car.”

Mr. MacDonald, a man even Mr. Copp—on cross examination I asked

him, I said:

“Q Mr. Copp, isn’t it a fact that you consider Harold MacDonald an

extremely safety-conscious Engineer?”

And he said:

“A Yes, sir.”

Mr. MacDonald, that extremely safety-conscious Engineer, told you he

did not believe a higher standard could be met for 1973 cars without greater

problems, such as handling, where more accidents and death occur.

Mr. Copp, let’s take the State’s witness, Copp.

Mr. Copp admitted that even today, seven years later, the Federal Government

Standard is only 30 miles per hour, 10 miles higher than what Ford

adopted—voluntarily adopted for itself for 1973.

And Mr. Copp further testified that a 30 mile an hour would be equivalent

only to a 31.5 or 32 mile car-to-car.

So, ladies and gentlemen of the jury, Mr. Cosentino tells you about, “Oh,

isn’t it terrible to put these cars out there, wasn’t it awful—did you know?”

Well, do you know that today, the—today, 1980 model cars are required to

meet only a 30 mile an hour rear-impact moving-barrier standard? 1980 cars.

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And that that is equivalent to a 32 mile an hour car-to-car, and yet Ford

Motor Company, the only company in the world, imposed upon itself a standard

and made a car in 1973, seven years ago, that would meet 26 to 28 miles

an hour, within 5, 6 or 7 miles of what the cars are required by law to meet

today.

Mr. Cosentino will tell you, frankly, the cars today, in his judgment, are

defective and he will prosecute.

What a chaos would evolve if the Government set the standard for automobiles

and says, “That is reasonable,” and then Local Prosecutors in the fifty

states around the country start saying, “I am not satisfied, and I am going to

prosecute the manufacturer.”

Well, Mr. Cosentino may say that the standard should be 40.

The Prosecutor in Alabama may say, “No, it should be 50.”

The Prosecutor in Alaska may say, “No, it should be 60.”

And the Prosecutor in Tennessee—they say—you know, “I am satisifed—

I am satisfied with 30,” or, “I think it should be 70.”

How can our companies survive?

Point 5, the 1973 Pinto was comparable in design and manufacture to

other 1973 subcompacts.

I say again, ladies and gentlemen, we don’t compare the Pinto with

Lincolns, Cadillacs, Mercedes Benz—we ask you to compare the Pinto with the

other three subcompacts.

Let’s take the State’s witnesses on this point first.

Mr. Bloch—Mr. Cosentino didn’t mention Mr. Bloch, but I don’t want

him to be forgotten.

Mr. Bloch and Mr. Copp complain about the Pinto, and that is easy.

Let’s descend to the particulars. Let’s see what they really said.

Well, they complain about the metal, the gage of the metal in the fuel

tank; you remember that?

And then on cross examination it was brought out that the general range

of metal in fuel tanks ranged between twenty-three-thousandths of an inch

and forty-thousandths of an inch.

That is the general range. Twenty-three-thousandths on the low to fortythousandths

on the high, and lo and behold, what is the gage of metal in the

Pinto tank?

Thirty-five-thousandths.

And Mr. Bloch admits that it is in the upper third of the general range.

And they complain about the bumper on the Pinto.

And, remember, I said we would show that the Pinto was comparable to

other ’73 subcompacts.

They complain about the bumper, but then they admit on cross examination

the Vega, the Gremlin, the Colt, the Pinto and the Toyota had about the

same bumper.

And they complain of a lack of a protective shield between the tank and

the axle, but they admitted on cross examination that no other 1973 car had

such a shield, and Mr. Copp admits that there was no significant puncture in

the 1973—in the Ulrich accident caused by the axle, and you remember I had

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him get up here and say, “Point out where this protective shield would have

done something, where this puncture source we are talking about—” and you

remember, it is so small—I can’t find it now.

So much for the protective shield.

And then they complained about the insufficient rear structure in the

Pinto, but they both admit that the Pinto had a left side rail hat section and

that the Vega had none, nothing on either side, that the Pinto had shear plates,

these plates in the trunk, and that neither the Vega, the Gremlin or the Colt or

Toyota had any of these.

And the Vega used the coil-spring suspension, when the Pinto had a leafspring,

and that was additional structure.

I am not going through all those—well, I will mention one more thing.

They talked about puncture sources, there is a puncture source there,

puncture source here, but on cross examination, they end up by admitting

that the puncture sources on all subcompacts have about the same—and in

about the same space. . . .

Mr. MacDonald testified, “Yes, I thought the Pinto was a reasonably safe

car. I think the ’73 Pinto is still a reasonably safe car, and I bought one, I drove

it for years for myself.”

Mr. Olsen—you remember little Mr. Frank Olsen?

He came in here, has his little eighteen-year-old daughter—he said, “I am

an Engineer responsible for the Pinto. I think it is a safe car. I bought one for

my little eighteen-year-old daughter, and she drove it for several years.”

And Mr. Freers, the man who Mr. Cosentino objected to going over

the fact that he was from Rose-Hullman, and on the Board of Trustees

there—Mr. Freers said, “I like the Pinto. I am an Engineer responsible for

the Pinto, and I bought a ’73 Pinto for my young son and he drove it several

years.”

And then Mr. Feaheny says, “I am one of the Engineers responsible for

the Pinto, and I bought one for my wife, the mother of my six children, and

she drove it for several years.”

Now, when Mr. Cosentino tried to say there was something phoney

about that—he brought out their salaries.

And I—I don’t know how to deal with the salary question.

It just seems to me to be so irrelevant, like some other things I am going

to talk about in a minute that I am just going to simply say, “It is irrelevant,”

and go on.

But he said to these people—he suggested to you, suggested to these

people, “Well, you make a lot of money, you can afford better than a

Pinto.”

Like, “You don’t really mean you had a Pinto?”

And Mr. Feaheny says, “Yes, I could afford a more expensive car, but, you

know, I—all of us, we have been fighting, we come out with something we

thought would fight the imports, and we were proud of it, and our families

were proud of it.”

Do you think, ladies and gentlemen of the jury, that Mr. MacDonald was

indifferent, reckless, when he bought and drove the Pinto?

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He drives on the same roads, he has the—subject to the same reckless

people that Mr. Cosentino didn’t prosecute.

Do you think that Mr. Olsen was reckless and indifferent when he gave a

Pinto to his eighteen-year-old daughter, a ’73 Pinto?

Do you think that Mr. Freers was reckless when he gave one to his

young son? . . .

Finally, ladies and gentlemen—not “finally,” but Point No. 8: Notwithstanding

all I have said, Ford Motor Company decided on June 8th, 1978, to

recall the Pintos to improve fuel systems and did everything in its power to

recall it as quickly as possible.

This is really what this case, I guess, is all about, because that period of

time involved is July 1, 1978 until August 10, 1978.

And the Court will charge you, as I said, the elements are whether we

recklessly failed to warn and repair during that period of time.

And whether that reckless omission, if any, caused the deaths.

And you may ask—and I think it is fair to ask—why recall the Pinto, the

’73 Pinto, if it is comparable to other subcompacts, if statistics say it is performing

as well as other ’73 subcompacts?

And if Ford had a standard for ’73 that no other manufacturer had?

And Feaheny and Mr. Misch told you why.

The Federal Government started an investigation. The publicity was

hurting the Company.

They thought the Government was wrong, but they said, “You can’t fight

City Hall.”

“We could fight and fight and we could go to Court and we could fight,

but it’s not going to get us anywhere. If we can improve it, let’s do it and let’s

don’t fight the Federal Government.”

Maybe the Company should not have recalled the ’73 Pinto.

Douglas Toms did not think, as he told you on the stand under oath, that

the ’73 Pinto should have been recalled.

He had information that the Pinto did as well as other cars;

That Pinto fire accidents equaled the total Pinto population or equaled

the percentage of Pinto population to all car population.

And Mr. Bloch, on the other hand, says, “All of them should be recalled.”

He said, “The Pinto should have been recalled.”

He said, “The Vega should have been recalled.”

He said, “The Gremlin should be recalled.”

And he didn’t know about the Dodge Colt.

Nevertheless, the Company did decide to recall the Pinto. And they

issued widely-disseminated Press Releases on June 9, 1978.

It was in the newspapers, TV, radio, according to the proof in this case.

And thereafter the Government regulated what they did in the recall.

That is what Mr. Misch told you.

He said, “From the time we started—June 9, 1978—to August 10, Mr.—the

Federal Government regulated what we did.”

Now, Mr. Cosentino is prosecuting us.

And the Federal Government has regulated us.

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Mr. Misch said, “The Federal Government reviewed what kind of Press

Releases we should issue, what kind of Recall Letter we should issue, what

kind of a Modification Kit that they would approve.”

Even so—it is undisputed, absolutely undisputed that we did everything

in our power to recall as fast as possible—nights, days, weekends.

And notwithstanding all of that, the first kit—the first complete kit was

assembled August 1, 1978.

And on August 9, 1978, there were only 20,000 kits available for

1,600,000 cars.

And this was not Ford’s fault. Ford was pushing the suppliers, the people

who were outside the Company doing work for them.

And Mr. Vasher testified that he got the names of the current owners

from R. L. Polk on July 17;

That the Ulrich name was not among them;

That he sent the Recall Letter in August to the original owner because he

had no Ulrich name.

Now,—and he said he couldn’t have gotten the Ulrich name by August 10.

Now, Mr. Cosentino said, “Well, the Ulrich Registration was on file with

the State of Indiana and it is open to the public.”

Well, Ford Motor Company doesn’t know where these 1,600,000 cars

are. It has to use R. L. Polk because they collect the information by the VIN

Numbers.

If Ford Motor Company went to each state, they would go to fifty states

and they would have each of the fifty states run through its files 1,600,000

VIN Numbers.

And Mr. Vasher, who is the expert in there, said it would take months and

months to do that.

And, finally, ladies and gentlemen, the Government didn’t approve the

Modification Kit until August 15, 1978.

But the State says that we should have warned—we should have warned

1973 Pinto owners not to drive the car.

But the Government never suggested that.

Based on our information, and confirmed by the Toms testimony, our

cars were performing as well—or better than—other ’73 subcompacts.

As Mr. Misch so succinctly stated, “We would have been telling the Pinto

owners to park their Pintos and get into another car no safer—and perhaps

even less safe—than the Pinto.” . . .

Well, we submit that the physical facts, the placement of the—the placement

of the gasoline cap, where it is found, the testimony of Levi Woodard,

and Nancy Fogo—demonstrate the closing speed in this case was at least 50 to

60 miles per hour.

Mr. Copp, the State’s witness, testified that no small car made in America

in 1973 would withstand 40 to 50 miles per hour—40 to 50 rear-impact. No

small car made in America in 1973 would withstand a 40-plus mile per hour

rear-impact.

The Dodge Colt would not have; the Vega could not have; the Gremlin

would not have; and certainly even the Toyota would not have.

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Mr. Habberstad told you that no small car—and some big cars—would

have withstood this crash.

And he established by the crash-tests you have seen that the Vega could

not withstand 50;

That the Gremlin could not withstand 50;

That the Toyota Corolla with the tank over the axle could not withstand

50;

And that even a full-sized Chevrolet Impala cannot withstand 50 miles

per hour.

If it made no difference what kind of car was out there, members of the

jury, how can Ford Motor Company have caused the deaths? . . .

I am not here to tell you that the 1973 Pinto was the strongest car

ever built.

I’m not here to tell you it is equal to a Lincoln, a Cadillac, a Mercedes—

that funny car that Mr. Bloch mentioned.

I’m not here to tell you a stronger car couldn’t be built.

Most of us, however, learn early in life that there is “no Santa Claus,”

and, “There’s no such thing as a free lunch.”

If the public wanted it, and could pay for it, and we had the gasoline

to drive it, Detroit could build a tank of a car—a car that would withstand

practically anything, a car that would float if a careless driver drove it into

the water.

A car that would be invulnerable even to the “Duggars” of the world.

But, members of the jury, only the rich could afford it and they would

have to stop at every other gasoline station for a refill.

I am here to tell you that the 1973 Pinto is comparable to other ’73 subcompacts,

including that Toyota, that Corolla with the tank over the axle.

I am here to tell you it was not designed by some mysterious figure you

have never seen.

It was designed and manufactured by Harold MacDonald, Frank Olsen

and Howard Freers.

I am here to tell you these are the decent men doing an honorable job

and trying to do a decent job.

I am here to tell you that Harold MacDonald, Frank Olsen, and Howard

Freers are not reckless killers.

Harold MacDonald is the same man, State’s witness, Copp, called an

“extremely safety-conscious individual.”

Frank Olsen is the same “Frank Olsen” Mr. Copp said was a “good

Engineer.”

And Howard Freers is the same “Howard Freers” Mr. Copp said was a

“man of honesty and integrity.”

I am here to tell you that these men honestly believe and honestly

believed that the 1973 Pinto was—and is—a reasonably safe car—so safe they

bought it for their daughters, sons and family.

Do you think that Frank Olsen believed he was acting in plain, conscious,

unjustifiable disregard of harm?

When he bought a ’73 Pinto for his eighteen-year-old daughter?

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Or Howard Freers, when he bought one for his young son?

I am here to tell you that the design and manufacture of an automobile

is not an easy task;

That it takes time to know whether a change in one part of the 14,000

parts of a car will or will not cause greater problems elsewhere in the car or its

performance.

I am here to tell you that safety is a matter of degree;

That no one can say that a car that will meet a 26 to 28 mile per hour

rear-impact is unsafe and one that will meet a 30 to 32 impact is safe.

I am here to tell you that if this country is to survive economically, it

is really time to stop blaming Industry or Business, large or small, for our

own sins.

I am here to tell you that no car is now or ever can be safe when reckless

drivers are on the road.

I am here to tell you that Ford Motor Company may not be perfect, but it

is not guilty of reckless homicide.

Thank you, members of the jury.

And God bless you in your deliberations.

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**POSTSCRIPT**

**Was Ford to Blame in the**

**Pinto Case?**

**W**ell, is Ford guilty? The jury said no, but the larger issue remains open:

how shall we allot responsibility, where many factors combine to bring about

an injury?

Consider the following: Ford Motor Company obeyed the law, but

the law was not all it should have been. The reason it was not is that the

Ford Motor Company spent a great deal of money lobbying Congress to put

obstacles in front of new and higher legal safety standards, in order to be able

to sell the Pinto for a lower price and thus increase its market share and yes,

its profits. Is not the government, through its agencies, just as guilty as Ford

for not fulfilling its role as protector of the consumer?

What was the government’s duty at this point? To protect those consumers

of the automobile? To protect the workers in the Ford Motor Company

factories? To protect the American manufacturers against further

encroachments from foreign competition? Does government have some

absolute duty in these cases, or are our legislators asked only to bring about

the greatest good for the greatest number? How would they have done *that*,

in this case? Three girls aren’t very many. Could it not be shown that all the

people who innocently and safely enjoyed their Pintos at the lower cost outweigh,

in their happiness, the enormous unhappiness of the very few who

got burned? Or is that the sort of thinking that we take ethics courses to learn

not to do?

Ford Motor Company found new structural allies when the criminal negligence

case was brought against it. Under our Constitution, the legal system

joins in to protect the defendant in these cases. When we enter the courtroom,

and The People stand at the bar training all Its accusatory weight against an

individual, the traditions weigh in heavily on the side of the individual—and in

general, that is as we want it to be. It seems odd that the same traditions apply

when the “individual” is one of the largest corporations in the world. If you are

very large and rich, you can hire lawyers like James Neal, who knows how to

discount every bit of evidence against his client, how to introduce every piece

of evidence in favor, and then also knows how to discredit witnesses, how to

argue by suggestion, and above all how to deflect attention from his client’s

wrongdoing. His facts are correct, his presentation is inherently plausible—*of*

*course* the driver of the van was at fault—and his style is immensely entertaining.

Could The People hire such a lawyer? Not on your life.

Have we lost perspective on risk? We know how to make a safe car. We

build it like a tank and rig it to go no faster than 30 miles per hour. But no

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one would buy it. So we make unsafe cars that people will buy—lighter, faster,

more likely to crumple and burn in an accident. Is this trade-off acceptable to

a trading nation that is used to making choices? Or should we be more diligent

about eliminating the last threats to safety?

**Suggested Reading**

For more information regarding the Pinto case and its subsequent effects, try

some of the following readings:

Lawrence A. Benningson and Arnold I. Benningson, “Product Liability:

Manufacturers Beware!” *Harvard Business Review* 53(3): 122–32 (May–

June 1974).

Richard DeGeorge, “Ethical Responsibilities of Engineers in Large Organizations:

The Pinto Case.” *Business and Professional Ethics Journal*

1(1): 4–14 (Fall 1981).

Richard A. Epstein, “Is Pinto a Criminal?” *Regulation* (March–April

1980), pp. 16–17.

Niles Howard and Susan Antilla, “What Price Safety? The ‘Zero-Risk’

Debate.” *Dun’s Review* (September l979), pp. 47–57.

Alvin S. Weinstein, *Products Liability and the Reasonably Safe Product: A*

*Guide for Management, Design and Marketing* (New York: John Wiley &

Sons, l978)

Mark B. Fuller and Malcolm S. Salter, “Ford Motor Company (A),” (Boston:

Case Study, Harvard Business School, l982), p. 4.