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General Motors: Another Slap on the Wrist for a Crime in the Suites

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In 1895, Eugene V. Debs -- the patriotic labor leader, socialist, and five-time presidential candidate -- observed: "There is something wrong in this country; the judicial nets are so adjusted as to catch the minnows and let the whales slip through."

In that regard, our justice system hasn't changed that much in the 119 years since Debs uttered those words. We spend many more resources policing and prosecuting crime in the streets than crime in the suites, even though corporate crime is much more costly in terms of death, injury and disease.

If you need evidence of this double standard, look no farther than how the federal government has "punished" General Motors for failure to provide timely information about mishandling its recall of about 2.5 million cars with a defective ignition switches that the company has linked to 13 deaths.

On March 4, the National Highway Traffic Safety Administration insisted that GM answers 107 questions about why the company waited until this February to begin its recall when it knew about the problem as early as 2001. The federal safety agency gave GM until April 3 to come up with its responses. On Tuesday -- four days after the auto giant failed to meet the deadline -- the NTSA announced it was fining General Motors $7,000 a day until it provides the information.

To an average American, $7,000 a day is a lot of money. That's $2.55 million a year. But to General Motors -- the nation's seventh largest company -- that amount is not even pocket change. Last year, GM had $152 billion in sales and over $6 billion in profits -- its best year since it emerged from federal bankruptcy in 2009. CEO

Mary Barra, who took the wheel at GM in January, will earn $14.4 million this year in total compensation. That's $39,452 a day -- more than five times the NHTSA fine.

Fines are not only supposed to be punishment for past wrongdoing. They are also supposed to prevent future malfeasance. Does anyone really think that a $7,000 slap-on-the-wrist will deter GM from avoiding compliance with other federal rules? No doubt the company's top executives view such fines as simply a cost of doing business. Of course, they may justifiably worry that the bad publicity around the 13 deaths may undermine public confidence in the company and its cars. But they surely aren't worried that a $7,000 a day fine will throw GM back into bankruptcy, hurt its ability to pay dividends to stockholders, or restrain its generosity to top executives when it comes to setting their outrageous salaries and benefits.

The puny size of the fine levied against GM for its "failure to fully respond" isn't NHTSA's fault. That is the maximum fine allowed by Congress.

Congress also sets maximum fine levels for other federal agencies (such as the Occupational Safety and Health Administration, the National Labor Relations Board, the Environmental Protection Agency, and the Food and Drug Administration) that regulate corporations. But in every case, companies that routinely endanger workers, consumers, and the environment pay a small price for their reckless practices. Corporations that spend millions on campaign contributions and lobbyists view these as investments. Congress does their bidding by keeping corporate taxes low, regulations weak, regulatory agencies understaffed, and penalties paltry.

Corporations calculate the odds of being caught for violating the law and, if caught, the likelihood and size of the penalties. For example, companies routinely fire employees who express pro-union sympathies during union organizing drives. The companies -- and their union-busting consultants and lawyers -- know this is illegal. But they figure it is worth breaking the law in order to keep their workplaces "union-free." Congress has so tied the hands of the National Labor Relations Board that it cannot impose fines and other penalties (including imprisonment) large enough to deter companies from breaking the law.

The current General Motors controversy illustrates how this corporate cost-benefit analysis operates in the real world.

GM documents reveal that the company knew about the problem with its ignition switches as far back as 2001. On several of its brands -- including the Chevrolet Cobalt and HHR and the Saturn Ion -- the ignition switches would slip out of its "run" position and shut off the engine while the car was still in motion. Without the engine power, drivers couldn't control the steering or the brakes, and the airbags wouldn't function in case of a crash.

The company says it is aware of 31 crashes, 12 deaths in the United States, and one death in Canada linked to the ignition switch problem. Apparently, GM engineers redesigned the switch in 2006, but the company failed to assign it a new part number, so neither dealers nor mechanics knew about the need to replace the old version.

GM waited until February and March of this year to issue a recall of 2.5 million small cars manufactured between 2003 and 2011. Congress called GM CEO Barra to answer questions on April 1 about what the company knew, when the knew it, and what they did about it. She told Congress she was "deeply sorry" and that under her leadership a "new GM" will do things differently. "We will learn from this, and we will make changes and we will hold people accountable," she said. But she failed to explain how or why GM failed to deal with the problem for more than a decade. Nor did she identify the GM employees who failed to fix the fatal flaw that led to the deaths and injuries.

That task is the responsibility of the NHTSA. It demanded that GM answer 107 questions. The company says it provided the agency with 21,000 documents totaling over 271,000 pages. But in a letter to the company, the agency wrote that GM "did not respond to over a third of the requests" and also failed "to answer under oath as required." Then, when GM failed to meet the deadline to answer all its questions, the agency slapped the $7,000/day fine.

The fine only covers GM's failure to provide the documents about the ignition switch defect. The NHTSA could still refer the matter to the Department of Justice for a civil action to compel compliance. And the DOJ could also bring criminal charges against GM for its mishandling of the recall, whether or not it determines that the company knowingly failed to protect drivers and passengers or if it finds that such reckless behavior was part of a pattern of corporate practices.

If GM failed to fix a flaw that turned out to be fatal, shouldn't its top executives be charged with criminal neglect and even homicide before a jury?

And what about the survivors of the car crashes and the families of those who were killed as a result of GM's see-no-evil practices? Don't they deserve their day in court in order to hold GM accountable for the death and human suffering it caused?

Ironically, GM's lawyers made sure that as part of its exit from bankruptcy, it would be immune from lawsuits for any injuries that occurred beforehand. As a PR gesture, GM may want to compensate the survivors and the families, but that's not the same as being found guilty of criminal wrongdoing.

GM can afford to pay puny $7,000 a day fines or even make settlement agreements with its victims for millions of dollars, just as the DOJ has forced major Wall Street banks to pay billions of dollars in settlements for engaging in risky, reckless and illegal lending practices that led to an epidemic of foreclosures, the housing market crash, and the deep recession.

But until some top GM executives enter a prison cell, and/or have to personally pay fines that put a huge dent in their own wealth, it will be difficult to say that General Motors has made restitution for the harm it caused and been forced to change the way it does business in the future.

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