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CRIMINAL LAW—THE INCREASING APPLICATION OF CRIMINAL LAW IN DISASTERS AND TRAGEDIES: A GLOBAL PHENOMENON

Denis Binder *

INTRODUCTION

The onset of the Environmental Age forty-five years ago witnessed a search for remedies to preserve, protect, and restore the nation’s environment. 1 Enforcement of the criminal laws was one of the remedies pursued. The criminal enforcement of environmental law became the norm; such that most environmental violations today will probably constitute a criminal violation at the local, state or federal level. Liability is no longer limited to administrative fines and sanctions, compensatory damages, and even punitive damages in personal injury cases. Criminal liability has become a global reality, especially in high profile cases.

Two additional threads of criminal liability emerged in the 1970s: food contamination and workplace safety. State and local prosecutors often established units not only for environmental crimes, but also for workplace fatalities. More recently, the lessons from these criminal prosecutions have globally emerged in society’s response to disasters and tragedies, building upon the precedence of the earlier cases.

Several earlier cases set the tone for the current wave of

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* Professor of Law, Dale E. Fowler School of Law, Chapman University. This paper is based on a Clason Lecture delivered at Western New England University on March 26, 2015. Lecture, The Increasing Application of Criminal Law in Accidents and Disasters, CLASON LECTURE SERIES (Mar. 26, 2015), http://web7.streamhoster.com/wnevideo/law-library/2014-15/clason/2015Binder.html. My thanks to Christine Harrah, a 3L at Chapman Law School, for her assistance in this paper. Furthermore, my deepest thanks to Dean Howard I. Kalodner and the faculty of Western New England in 1978 for extending an offer and saving my academic career.

criminal prosecutions. The toxic contamination disasters in Minamata, Japan and Bhopal, India gave rise to two of these landmark cases.

In the Minamata disaster, Chisso Corporation discharged twenty-seven tons of mercury into Minamata Bay from 1932 to 1968. The fishing community relied on the mercury-contaminated bounty of the sea. Symptoms of methyl mercury poisoning started developing in 1953 and it is now called the Minamata disease. Decades passed before the corporation became liable. The president and a second executive were convicted in March 1979 of pollution and sentenced to two years in prison. The Supreme Court of Osaka affirmed the verdict in 1988.

The fifty-one percent owned Union Carbide subsidiary in Bhopal, India experienced a horrific leak of methyl isocynate on December 2 and 3, 1984. As many as fifteen thousand residents of Bhopal perished, while hundreds of thousands incurred health problems from the release. Twelve Indian employees of the subsidiary were charged in 1987 with “culpable homicide not amounting to murder.” The India Supreme Court reduced the charges to “death by negligence.” Seven defendants were convicted of death by negligence twenty-six years after the tragedy. They were sentenced to two years’ imprisonment. The seven include the chairman of the subsidiary, vice president, managing director, works manager, production manager, plant superintendent, and production assistant.

The saga of Warren Anderson, Chief Executive Officer of the

5. Fusako & McCormack, supra note 3; see also TED CASE STUDIES, supra note 2.
corporate parent, is an object lesson for executives. He immediately flew to Bhopal to represent the company in the tragedy. He was arrested for manslaughter by authorities in Madhya Pradesh State, released on bail, and quickly flown out of the country. The charges were pressed against him with warrants issued in July 2009 for his arrest. An extradition request was filed with the United States in March 2011. He reportedly did not travel outside the United States for the remainder of his life.

The idea of a corporation being criminally prosecuted may seem odd at first glance since a corporation cannot be imprisoned, but a corporation is a person in the eyes of the law. Corporations can be fined, embarrassed, placed on probation, and monitored. The probation terms could allow the government to closely monitor the defendant’s compliance with environmental or safety statutes and the terms of probation. Criminal convictions can facilitate a private suit seeking monetary damages by the victims.

We need to understand that both corporations and governments can only act through individuals, to wit, officers and employees. Consequently, corporate managers, officers, and other employees are subject to both imprisonment and fines, as are government employees.

A criminal prosecution will have a different impact on an individual defendant than a civil lawsuit, for which liability may be covered by insurance or by the employer. The humiliation of being publicly arrested, handcuffed, fingerprinted, and raising bail are a jarring experience, but they are overshadowed by the threat of imprisonment and substantial fines, as well as the loss of employment. The stress, time, and emotional commitment, during the often drawn out criminal proceedings, can consume the defendant who is otherwise unfamiliar with the criminal law. Many employees will find it hard to maintain their equanimity when the criminal Sword of Damocles is hanging over their heads.

14. Id.
15. Id.
16. Id.
17. Id.
19. CICERO’S TUSCANAL DISPUTATIONS, MARCUS TULLIUS CICERO 185–86
Emotional distress may be a constant.

Several reasons exist for the increasing criminal prosecutions. First, they send a message. Civil penalties, especially when tax deductible, and small administrative fines, often fail to send a message that this type of misconduct is unacceptable to society. Small fines could be viewed as a cost of doing business. Criminal prosecutions send a message even stronger than civil liability, including punitive damages, especially when officers and employees are also indicted. Criminal fines are not deductible for tax purposes.  

Public sentiment for action is reinforced by viewing tragedies on the news. The internet and social media result in almost instantaneous distribution of news, good or bad. Mass tragedies are widely publicized, often internationally.

Retribution is another reason for criminal prosecutions. Some horrific tragedies, such as burning infernos and mass drownings, “cry out” for justice in the form of criminal prosecutions.

A prosecution, even if unsuccessful, will consume extensive amounts of corporate resources and time that could otherwise be put to productive uses, and may lead to the loss of corporate and individual goodwill if adverse publicity ensues.

Arrests and indictments do not always result in convictions or plea deals, as illustrated by the Triangle Shirtwaist Factory Tragedy a century ago. A fire broke out on March 25, 1911, on the eighth floor of the Asch Building in Greenwich Village. The exits were locked on the eighth, ninth, and tenth floors. The workers were unable to escape the fires. Some jumped out of the building to their death. One hundred forty-six died and seventy-one were

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23. AUTHENTIC HISTORY CENTER, supra note 21.

24. Id.

25. Id.
injured. A jury acquitted the two owners of first degree and second-degree manslaughter charges.

The Ford Pinto litigation foresaw the modern prosecution of corporations for criminal misdeeds. The exploding rear gas tank on the Pinto gave rise to substantial litigation and punitive damages. In Grimshaw v. Ford Motor Co., a Pulaski County, Indiana prosecutor brought four claims of reckless endangerment against the company for the deaths of three teenagers in his county. Although a 1980 criminal jury acquitted Ford on first and second-degree murder charges, a civil jury levied a heavy punitive damages award of $125 million, sending a strong message to companies.

*United States v. Park* illustrates the perils facing corporate officials. Park was the President of Acme Supermarkets. The Food and Drug Administration warned Park of rodent infestation at the Philadelphia warehouse. The same problem showed up later at the Baltimore warehouse. Both Park and Acme were indicted for violating the Pure Food, Drug, and Cosmetic Act. Park defended on the grounds that he delegated operating duties to subordinates.

The Supreme Court held the Pure Food, Drug, and Cosmetic Act imposes strict liability not only upon the corporation, but also on corporate officials if they have the authority to prevent or correct a violation of the act. The need to preserve food purity is so great as to impose strict liability in order to protect the “public interest in the purity of its food . . . .” Corporate officials have the

27. AUTHENTIC HISTORY CENTER, supra note 21.
29. Id.
33. Id. at 661.
34. Id.
35. Id. at 660.
36. Id. at 663.
37. Id. at 678–79.
38. Id. at 671 (citing Smith v. California, 361 U.S. 147, 152 (1959)). Liability will
duty to seek out and remedy violations unless they are powerless to prevent or correct it. 39

Conduct that appears shocking can trigger criminal liability. For example, Orkin Exterminating Company was fined $500,000 and placed on two years’ probation for violating the Federal Insecticide, Fungicide, and Rodenticide Act 40 for the deaths of an elderly couple in their apartment. 41 Orkin employees applied the pesticide Vikane with plastic sheeting encapsulating their apartment. 42 The employees did not test the air before letting seventy-three-year-old Hubert Watson and sixty-five-year-old Frieda Watson return to the apartment, where the poison overcame them. 43 The two employees (applicators) received suspended sentences of twelve months under state law. 44

More recently, criminal law has been applied to disasters and tragedies, which again, often entail substantial environmental consequences, and which build upon the earlier case law. A major difference this time is that criminal prosecutions are global on a variety of theories in both common law and civil law jurisdictions. Most, but not all, cases involve the loss of human life.

This legal article is descriptive rather than traditional legal analysis to show the global depth and breadth of criminal liability for disasters and tragedies. It focuses on criminal liability. Therefore, little reference is made to civil liability and fines imposed by state and national governments independent of a criminal prosecution.

39. Id.
44. ENV’T REP. (BNA) 1624 (Dec. 8, 1988).
I. OIL AND GAS

The fracking boom has resulted in a substantial increase in oil and gas production.\footnote{45} The problem for the producers is transporting the oil to refineries; either the existing pipelines to the wells have a limited capacity or no pipelines exist.\footnote{46} Therefore, the producers have turned to rail transport with long trains of flammable oil tank cars.\footnote{47} These trains have a high incident rate.\footnote{48}

An oil train derailed at 1:15 a.m. in Lac-Mégantic, Canada on July 6, 2013.\footnote{49} Forty-seven died in the ensuing inferno.\footnote{50} The corporation, train engineer, operations manager, and a third employee were indicted by the provincial government on forty-seven counts of criminal negligence, as was the Canadian subsidiary of the railroad.\footnote{51} The federal government filed criminal charges on June 22, 2015, against six individuals and two corporations for violations of the Railway Safety Act and the Fisheries Act.\footnote{52} The six individuals included the train’s engineer, the company’s CEO, the operations manager, the assistant transportation manager, the safety director, and the general manager of operations.\footnote{53} The engineer had improperly tested the hand brakes so that they could be effectively set,\footnote{54} while the railroad had a history of safety problems.\footnote{55}

\footnote{47} Id.
\footnote{48} Id.
\footnote{51} Id.
\footnote{52} Id.
\footnote{53} Id.
\footnote{55} Atkins & Stevenson, supra note 50.
Lac-Megantic is an example of a tragic accident caused by a simple human failure to follow fundamental braking requirements. The magnitude of the tragedy cried out for the government to seek retribution through the criminal process.

A. Oil Spills

Three major oil spills have struck the United States. The first was Union Oil’s Blowout on Platform A in Santa Barbara Channel on January 28, 1969, followed by the Exxon Valdez grounding on March 24, 1989, and the British Petroleum (“BP”) Gulf Blowout on April 20, 2010.\footnote{Julie Cohn, A History of Major Oil Spills, N.Y. TIMES (May 10, 2010), http://www.nytimes.com/interactive/2010/05/10/us/20100510_OIL_TIMELINE.html?_r=0.}

No criminal prosecutions were brought in the Santa Barbara Blowout.\footnote{Although no criminal prosecutions ensued, Union Oil was involved in civil litigation arising out of the environmental disaster. See Union Oil Co. v. Oppen, 501 F.2d 558 (9th Cir. 1974).} The situation changed with the Exxon Valdez, which ran aground on Bligh Reef in Prince William Sound on March 24, 1989.\footnote{Questions and Answers About the Oil Spill, Exxon Valdez Oil Spill Trustee Council, http://www.evostc.state.ak.us/?FA=facts.QA [http://perma.cc/9MBR-YCAB] (last visited Oct. 26, 2015).} Eleven million gallons of oil spilled into the Sound.\footnote{Id.}Extensive environmental damage resulted.\footnote{Id.}

Alaska brought a second-degree criminal mischief felony charge and three misdemeanors charges against the Exxon Valdez Captain Joseph Hazelwood.\footnote{See generally Hazelwood v. State of Alaska, 836 P.2d 943 (Alaska Ct. App. 1992).} The case illustrates the problems of legal delays.\footnote{Id.} A jury acquitted him on three counts and convicted him on one misdemeanor, which was reversed on appeal by the Alaska Court of Appeals,\footnote{State v. Hazelwood, 866 P.2d 827, 834 (Alaska 1993).} and was later reversed in turn by the Alaska Supreme Court,\footnote{State v. Hazelwood, 946 P.2d 875, 885 (Alaska 1997). The Alaska Supreme Court held that simple negligence would suffice for liability. Id. at 885.} which ultimately held negligence could be the basis for criminal liability.\footnote{State v. Hazelwood, 946 P.2d 875, 885 (Alaska 1997).} The appellate litigation regarding the misdemeanor lasted six years.

Exxon and its shipping subsidiary were charged with two
felony and three misdemeanor counts. The felonies were for letting an incompetent crew leave port under the Ports and Waterways Safety Act and the Dangerous Cargoes Act. The misdemeanors were for the Migratory Bird Treaty Act, the Clean Water Act and the Refuse Act. Exxon pled guilty to one misdemeanor, paying $1 billion in fines and restitution.

The Exxon Valdez litigation is believed to be the first in which a parent corporation was held criminally liable for the wrongdoing of a subsidiary. Piercing the veil is common in civil litigation, but not criminal.

The BP Gulf Oil Blowout on April 20, 2010, left eleven workers missing and presumed dead, seventeen injured, the sunken Deepwater Horizon drilling platform, and a catastrophic oil leak into the Gulf of Mexico. It unleashed a flood of criminal liability against the companies and employees involved in the disaster.

Transocean Deepwater owned the offshore drilling platform, BP Petroleum was the majority owner of the well and managed the drilling. The drilling holes were temporarily plugged with “mud,” actually cement, by Halliburton Corporation, until production commenced. The mud did not hold. The resulting pressure blew up, setting the platform on fire.

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72. Id.
73. See generally id.
76. Containing the Leak, BP GLOBAL, http://www.bp.com/en_us/bp-us/commitment-to-the-gulf-of-mexico/deepwater-horizon-accident/containing-the-leak.html [https://perma.cc/RBB5-XNYF]. The exploratory drilling would be sealed until the time came for actual production. The oil company has to decide either to proceed to production or to permanently cap the hole. Id.
77. See U.S. CHEM. SAFETY AND HAZARD INVESTIGATION BD.,
BP pled guilty to felony manslaughter and paid $4 billion in criminal fines and sanctions. It was charged with eleven counts of felony manslaughter, one count of Obstruction of Congress, as well as violations of the Clean Water Act and Migratory Bird Act. The settlement includes almost $1.3 billion in criminal fines, about $2.4 billion to the National Fish and Wildlife Fund, and $350 million to the National Academy of Sciences.

BP received five years of probation under the plea. It must appoint a process safety and risk management as well as an independent auditor to monitor safety, risk management, and drilling equipment maintenance in the Gulf of Mexico. A separate ethics monitor is to improve its code of ethics “to ensure BP’s future candor with the U.S. government.”

In addition, two BP rig supervisors were charged with eleven counts of involuntary manslaughter, eleven counts of seaman’s manslaughter, and one count of the Clean Water Act for negligence in supervising safety tests. A former BP Executive Vice President for Exploration in the Gulf of Mexico, was charged with Obstruction of Congress and providing false statements to law enforcement officers. A fourth employee, an engineer, was charged with destroying a text message chain.

The individual verdicts so far have been mixed. David Rainey

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79. Id.

80. Id.


82. Id.

83. Id.

84. Id.


was acquitted on June 5, 2015, of making false representations to investigators.\(^87\) The charge was that he stated an estimated five thousand barrels daily were leaking when he knew the amount was much higher.\(^88\) He claimed his estimates were an honest mistake.\(^89\) Kurt Mix was found guilty on December 18, 2013, for destroying evidence by deleting hundreds of text messages; however, the conviction was subsequently overturned.\(^90\) Before the retrial, the Justice Department offered a plea deal in which Mix pled guilty to a misdemeanor, receiving no jail time or fine.\(^91\)

The seaman’s manslaughter charges against the rig supervisors were dismissed\(^92\) and the remaining manslaughter charges dropped. Donald Vidrane pled guilty on December 2, 2015, to one pollution violation.\(^93\) A jury subsequently acquitted Robert Kaluza, the oil rig supervisor.\(^94\)

Transocean Deepwater, Inc., the owner of the drilling platform, pled guilty to violating the Clean Water Act.\(^95\) It agreed on January 3, 2013, to pay $400 million in criminal fines and $1


89. Id. The government claimed Rainey manipulated the calculations while the defense asserted, “Mr. Rainey’s figures were made honestly and that he had no reason to lie.” Id.


91. See Kurt Mix, I Was an Oil Spill Scapegoat, WALL ST. J. (Nov. 8, 2015, 4:46 PM) at A15, col.2, http://www.wsj.com/articles/i-was-an-oil-spill-scapegoat-1447019267.

92. United States v. Kaluza, 780 F.3d 647, 669 (5th Cir. 2015).


billion in civil penalties for one misdemeanor count of violating the Clean Water Act. 96

Halliburton, who applied the mud, which failed to plug the drill hole, was placed on three years’ probation for destroying evidence and made a $55 million contribution to the National Fish and Wild Life Foundation. 97 The company was also placed on three years’ probation. 98

Anthony Badalamenti, former cement technology director for Halliburton, pled guilty to one count of destroying evidence, and was sentenced to one year of probation. 99 He had ordered two Halliburton employees to delete data they uncovered during a post-incident review of the cementing. 100

Not all criminal cases involve oil spills on the magnitude as Santa Barbara, Exxon Valdez, or BP. John Joseph Cota was piloting a freighter out of San Francisco Bay when it grazed the San Francisco Oakland Bay Bridge on November 7, 2007. 101 Approximately 53,000 gallons of fuel were discharged into the Bay, fouling twenty-six miles of coastline and killing two thousand migratory birds. 102 He pled guilty to two counts of negligence under the Clean Water Act and violation of the Migratory Bird Act. 103 Fleet Management Ltd. of Hong Kong, the ship’s owner, was charged with multiple felonies for falsifying documents and two other felonies. 104 It pled guilty to the misdemeanors and paid

96. Id.
98. Id.
100. Id.
102. Id.
103. Id.
$10 million in fines and restitution.\textsuperscript{105}

Similarly, a barge captain was sentenced on June 26, 2015, to six months in prison for negligent manslaughter of a seaman and negligently discharging oil pollution into a navigable waterway for the 2005 explosion on a barge in the Chicago Sanitary and Ship Canal.\textsuperscript{106} The accident killed a crewmember and spilled 4,800 gallons of oil and thirty-two tons of oil solids into the canal.\textsuperscript{107} Egan Marine Corp., his employer, was also convicted.\textsuperscript{108} It was ordered to reimburse the government for $5.3 million in cleanup cost to the National Pollution Funds Center and was placed on three years of supervised release.\textsuperscript{109} There was a negligent release of combustible vapors from the cargo hold.\textsuperscript{110} Alexander Oliva, the deceased employee, was directed to use a propane-fueled open flame to heat a cargo pump.\textsuperscript{111} The use of the torch violated Coast Guard regulations.\textsuperscript{112}

B. \textit{Pipelines}

Underground oil and gas pipelines can explode, often through a piece of construction equipment piercing pipelines or through deterioration of the pipes.\textsuperscript{113} On September 9, 2010, an underground Pacific Gas & Electric (“PG&E”) natural gas pipeline in San Bruno, California, exploded in a fireball, causing eight deaths, injuring dozens, and destroying thirty-eight homes.\textsuperscript{114} The utility was initially indicted on twelve counts on April 1, 2014,

\begin{itemize}
  \item \textsuperscript{105} Id.
  \item \textsuperscript{107} Id.
  \item \textsuperscript{108} Id.
  \item \textsuperscript{109} Id.
  \item \textsuperscript{110} Id.
  \item \textsuperscript{111} Id.
  \item \textsuperscript{112} 48 ENV’T REP. (BNA) 2013–14 (July 3, 2015).
  \item \textsuperscript{113} Lena Groeger, \textit{Pipelines Explained: How Safe are America’s 2.5 Million Miles of Pipelines?}, PROPUBLICA (Nov. 15, 2012, 2:27 PM), http://www.propublica.org/article/pipelines-explained-how-safe-are-americas-2.5-million-miles-of-pipelines.
\end{itemize}
including failure to maintain proper records.\textsuperscript{115} On July 27, 2014, a superseding indictment was brought on charges of violating the Pipeline Safety Act and one charge of obstructing the National Transportation Safety Board investigation.\textsuperscript{116}

San Bruno is an example of a horrific tragedy in an urban area. Society cannot tolerate these accidents because of the risks posed to a large population. This message is sent through criminal prosecutions. However, oil and gas are transported through tanker ships, pipelines, and rail cars. Because of the nature of these modes of transportation, human error will inevitably cause an accident in all three modes of transportation, as shown by the BP Macondo Blowout, Lac-Megantic, and PG&E.

\section{Structural Failures}

Building collapses and fires do not usually make international news, absent a horrific tragedy. Yet, they are a constant source of criminal prosecutions. Sadly, some echo the Triangle Shirtwaist Factory Tragedy.

Twenty-five workers died and fifty-four were injured in Hamlet, North Carolina on September 3, 1991, when they were trapped in their chicken processing plant by a fire.\textsuperscript{117} The doors were locked trapping the workers.\textsuperscript{118} The owner had ordered the doors locked from the outside.\textsuperscript{119} The owner, owner’s son, and the plant manager were charged with involuntary manslaughter on March 13, 1992.\textsuperscript{120} The owner pled guilty to twenty-eight counts of involuntary manslaughter on September 15, 1992.\textsuperscript{121} He was sentenced to nineteen years, of which he served four.\textsuperscript{122}

\begin{itemize}
\item \textsuperscript{115} \emph{Id.}
\item \textsuperscript{116} \emph{Id.}
\item \textsuperscript{118} \emph{Id.} at 2.
\item \textsuperscript{122} \emph{Id.}
\end{itemize}
charges were dropped against the other defendants.\textsuperscript{123} The owner had ordered the doors to be locked from the outside.\textsuperscript{124}

The North Carolina Department of Labor also levied $808,150 in fines for fifty-four “willful,” twenty-three “serious,” and six “other than serious” violations of federal and state safety regulations.\textsuperscript{125} Violations included locked or unmarked exit doors, no fire alarms or sprinkler systems, and a lack of employee training in the use of fire extinguishers.\textsuperscript{126}

A fire broke out at the Jilin Baoyuanfeng Poultry Slaughterhouse in Julin Province, China on June 2, 2013, killing 121 and injuring 66.\textsuperscript{127} The emergency exits were locked.\textsuperscript{128} The owner, general manager, and eleven local officials were arrested.\textsuperscript{129} Thirty-five government officers and company executives were transferred to judicial authorities for prosecution.\textsuperscript{130} Seventy-four officials received disciplinary sanctions, including dismissal from office.\textsuperscript{131}

The chairman of the company was sentenced to nine years' imprisonment for not ensuring workplace safety, while the general manager received four years for installing substandard equipment.\textsuperscript{132} The local fire chief and deputy were sentenced to prison for failing to carry out safety inspections and falsifying information after the fire.\textsuperscript{133}

An interior stadium wall collapsed on May 29, 1985, at Heysel Stadium in Belgium under the weight of soccer fans resulting in

\textsuperscript{123} Id.
\textsuperscript{124} Id.
\textsuperscript{126} Id.
\textsuperscript{128} Id.
\textsuperscript{130} Id.
\textsuperscript{131} Id.
\textsuperscript{133} Id.


A fourteen-story building under construction imploded eight years earlier on August 28, 2007, in Baku.\footnote{Rovshan Ismayilov, *Azerbaijan: Building Collapse Exposes “Chaos” in Baku’s Urban Planning*, EURASIANET.ORG (Sept. 5, 2007, 7:00 PM), http://www.eurasianet.org/print/56116 [http://perma.cc/E49H-TNSZ].} Twenty construction workers perished in the disaster.\footnote{Id.} The director and three officers of the company were arrested, as was the head of the city government department for apartments and cooperative buildings on abuse-of-power charges.\footnote{Id.} The foundation was designed to support nine stories.\footnote{Id.} No approval was given for the final design.\footnote{Id.}

The eight-story Rana Plaza building collapsed on April 24, 2013, in Davaar, Bangladesh, resulting in the deaths of 1,136 textile workers and over two thousand injuries.\footnote{Syed Zain Al-Mahmood, *Bangladeshi Police Charge 42 With Homicide for 2013 Garment Factory Collapse*, WALL ST. J. (June 2, 2015, 1:54 PM), at B6, http://www.wsj.com/articles/bangladeshi-police-charge-42-with-homicide-for-2013-garment-factory-collapse-1433181270.} The world was riveted by the tragedy. Arrests immediately ensued. Forty-two indictments were issued on June 5, 2015, for “culpable homicide.”\footnote{Id.} Eighteen others were also indicted for building code violations by adding extra floors to a five-story building.\footnote{Id.} The building was constructed of sub-standard materials.\footnote{Id.} The building
owner and five factory owners were charged with criminal homicide for ordering the workers back into the building to return to work the day before the collapse. An engineer warned of safety problems because of visible cracks. Those indicted include the owner of the building, five owners of textile plants in the Rana Plaza, and over a dozen national and local government officials, including the mayor, who oversaw building safety and inspections, but failed to enforce the regulations.

One of the few lessons I remember from a high school economics class was that countries often started industrialization through textiles because labor costs can be low. Bangladesh became a large textile manufacturing country because it had the lowest wages for textile workers, coupled with hazardous working conditions.

A roof collapsed on November 21, 2013, at the Zolitude Shopping Center in Riga, Latvia when the roof support beams failed. The collapse resulted in fifty-four deaths, including three rescue workers, and 41 injured. The construction engineer and the expert analyst for the architectural firm were both arrested on January 14, 2015, for building code violations. The prosecutors also charged eight individuals on April 17, 2015. Five were charged with building code violations and three public officials were charged with negligence: Manka Trejia, the Riga City Council’s Construction Supervisory Board senior expert; Janis Balodis, former deputy chief building inspector; and Aija Melnokova, chief building inspector. The country’s prime minister resigned shortly after the tragedy. Zolitude was the first

146. Id.
147. Id.
148. Id.
152. Id.
153. Id.
154. Id.
test of Latvia’s new statute imposing criminal liability on corporations.\textsuperscript{156}

Seven people died on March 14, 2006, when the Kaloko Dam burst on the island of Kauai when a twenty-foot high wave swept out of the dam.\textsuperscript{157} James Pflueger, the owner, was indicted on seven counts of manslaughter and reckless endangerment.\textsuperscript{158} He had covered the spillway.\textsuperscript{159} He pled guilty to one count of reckless endangerment on July 18, 2013, and was sentenced to seven months in prison on October 15, 2014.\textsuperscript{160} In addition, his company pled guilty to seven counts of manslaughter charges and was fined $350,000 to be used to support Hawaii’s dam safety program.\textsuperscript{161} He entered prison on October 15, 2014. The eighty-nine-year-old was released on November 28, 2014, for medical reasons.\textsuperscript{162} The judge reduced the company’s fine to $1,000 per count.\textsuperscript{163}

A ten-meter tall lighting rig collapsed on Mount Herzl on April 18, 2012, during preparation for Israeli Independence day.\textsuperscript{164} An Israeli Lieutenant was killed.\textsuperscript{165} Six indictments followed, including the two owners of the construction company that erected the rig, the company’s operations manager, the structure’s engineer, the event’s safety manager, and the corporation.\textsuperscript{166} The corporation had not obtained all the requisite permits.\textsuperscript{167}

New York City has a Crane Ordinance regulating the safety of...
cranes in the city.\textsuperscript{168} Several accidents have resulted with cranes collapsing, causing deaths and injuries. Some have resulted in criminal prosecutions.

A crane operator pled guilty to second-degree assault and the contractor was found guilty of third-degree criminal assault and second-degree reckless endangerment when a crane toppled over, injuring the victim in the civil suit.\textsuperscript{169} The court held that the two defendants were collaterally estopped from defending the issue of their liability in the subsequent civil suit.\textsuperscript{170}

Another case involved the issue of whether a crane operator had the right to assert the Fifth Amendment privilege against self-incrimination in civil discovery after a statement in a “debriefing agreement” made with the District Attorney in a companion criminal case.\textsuperscript{171}

STB Investments was demolishing a four-story building in Philadelphia on June 5, 2013.\textsuperscript{172} The building adjoined a one-story building with a Salvation Army store in it.\textsuperscript{173} Griffin T. Campbell, the demolition contractor, submitted a substantially low bid and then pushed the demolition despite warnings of problems.\textsuperscript{174} The wall of the building collapsed on the Salvation Army structure, killing six and injuring fourteen.\textsuperscript{175} The deceased included the son of the city’s treasurer.

The contractor and Sean Benschop, the equipment operator, were both indicted.\textsuperscript{176} Benschop had painkillers and marijuana in his system at the time of the tragedy with a long history of drug, weapons, and other offenses.\textsuperscript{177} He pled guilty on June 21, 2015, to six counts involuntary manslaughter, twelve counts reckless indifference, and single counts of conspiracy and causing a
Griffin Campbell was charged on November 25, 2013, with six counts of third degree murder, six counts involuntary manslaughter, thirteen counts reckless indifference, and single counts of criminal conspiracy, risking catastrophe, and causing catastrophe.\textsuperscript{179}

III. MINING DISASTERS

Mining, especially underground coal mining, is a dangerous occupation. Fires, explosions, and cave-ins exact a high toll on miners, followed in life by silicosis. An explosion on April 5, 2010, at the Upper Big Branch Coal Mine in Montcoal, West Virginia killed twenty-nine miners.\textsuperscript{180} Investigators found numerous safety violations after the accident.\textsuperscript{181} Don Blankenship, CEO of the parent company, Massey Energy, was indicted on November 12, 2014, on four counts, including conspiracy to impede mine safety officials and conspiracy to violate mine safety standards.\textsuperscript{182} A former mine superintendent pled guilty to criminal charges in the case in March 2012 for conspiring to impede the Mine Safety and Health Administration investigation.\textsuperscript{183} He was sentenced to forty-two months in prison and three years supervised release.\textsuperscript{184}

The Massey litigation involved the liability of a parent corporation for the misdeeds of its subsidiary and its employees. Alpha Natural Resources acquired Massey in 2011 and paid $209

\begin{footnotesize}
\begin{enumerate}
\item[180.] Jonathan Mattise, CEO in Deadliest US Mine Accident in 4 Decades Facing Trial, ASSOCIATED PRESS (Sept. 27, 2015, 10:39 AM), http://bigstory.ap.org/article/824f61395f85453a8d4efb3da6a3a4ceco-deadliest-us-mine-accident-4-decades-facing-trial [http://perma.cc/ZBN2-NS8W].
\item[181.] Id.
\item[183.] Id; see also David Segal, The People v. the Coal Baron, N.Y. TIMES (June 20, 2015), http://www.nytimes.com/2015/06/21/business/energy-environment/the-people-v-the-coal-baron.html.
\item[184.] Berkes, supra note 182.
\end{enumerate}
\end{footnotesize}
million in criminal penalties for the Montcoal disaster.185 This included $46.5 million in restitution to the miners' families, and $35 million in federal penalties.186

Another Massey subsidiary, the Aracoma Alma Mine #1 experienced a fatal fire on January 19, 2006.187 Two miners died from carbon monoxide exposure.188 Four mine foremen pled guilty on July 20, 2010, for failure to conduct escapeway drills.189 Massey Energy Company and its subsidiary Aracoma agreed to pay $4.2 million in criminal fines and civil penalties.190

On May 9, 1992, an explosion resulted in the death of twenty-six miners at the Westray Mine in Plymouth, Nova Scotia, Canada.191 The mine owner and four managers were charged on October 5, 1992, with twenty-six counts of criminal negligence and manslaughter.192 The company went bankrupt in 1993193 and the charges were dropped against the individual employees in 1997.194

Nova Scotia Supreme Court Justice K. Peter Richard was asked to prepare a study of the Westray tragedy. The title of his report says it all: “The Westray Story: A Predictable Path to

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188. Id.

189. Id.


192. Id.


Disaster.” He found mismanagement, a lack of safety training at the mine, poor ventilation, and broken methane detectors. He wrote that the “tragic story” was one “of incompetence, of mismanagement, of bureaucratic bungling, of deceit, of ruthlessness, of cover-up, of apathy, of expediency, and of cynical indifference.” He wrote “management ignored or encouraged a series of hazardous or illegal practices, including having the miners work 12-hour shifts, improperly storing fuel and refueling vehicles underground, and using non-flameproof equipment underground . . . .” For example, the methane monitoring meters were outwitted or bypassed combined with an inadequate ventilation system. The result was that dangerous levels of methane accumulation.

China has also experienced a multitude of coal mining and other disasters, with only a few criminal prosecutions. Conversely, the Chinese government brought criminal charges in the Babao Coal Mine explosions that occurred on March 29 and April 1, 2013. Fifty-three deaths and twenty injuries resulted. “Sixteen people, including Zhao Xianwen, board chairman and general manager of Tonghua Mining Company, which owns the mine, as well as his deputies, have been prosecuted.” Han Chenglu, the general manager of the mine, received a five-year sentence. Nine others received sentences ranging from ten months to four years, while four safety workers received suspended sentences.

Beginning on November 19, 2010, twenty-nine miners and contractors died in a series of explosions that wracked the Pike River Mine in New Zealand. The mining company, contracting

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196. Id. at 3.
197. Id.
198. Id. at 29.
199. Id. at 29–30
201. Id.
202. Id.
204. Id.
205. Alex Heber, No Individual Will Face Criminal Charges Over Deadly Pike
company, and the CEO of the mining company were indicted. The contractor, Valley Longwall International Drilling, pled guilty to three charges of violating New Zealand’s Health and Safety Act. The mining company entered receivership, and charges against the CEO—who had been charged with twelve counts of violating the Health and Safety Act—were dropped for lack of evidence.

Three-hundred and one miners in Soma, Turkey, died in a coal mine explosion on May 13, 2014. Forty-five prosecutions followed for eight executives, including the chief executive, general manager, and the mine’s operations manager. First-degree murder charges were brought against the former board chairman and seven other senior officers. Involuntary manslaughter charges were brought against twenty-nine others, including mine managers, engineers, and security supervisors.

IV. ENVIRONMENTAL

A. Asbestos

Minamata and Bhopal were great environmental disasters, but they have seen minimal criminal enforcement against those responsible. Asbestos, lead paint, mercury, and tobacco have caused more injury, death, and disability across the spectrum.

207. Heber, supra note 205.
208. Id.
210. Id; see also Turkey Marks First Anniversary Of Soma Mine Tragedy, ARAB WEEKLY (May 13, 2015), http://www.thearabweekly.com/?id=347.
211. Hansen, supra note 209, at 38. See also Turkey Marks First Anniversary, supra note 210.
213. For example, at least 18,068 deaths were from mesothelioma between 1999 and 2005. Ctr. for Disease Control and Prevention, Malignant Mesothelioma Mortality—United States, 1999–2005, 58 MMWR 393, 393 (Apr. 22, 2009), http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5815a3.htm. Additionally, 9,024 deaths were caused by asbestosis from 1968 to 2005. Ctr. for Disease Control and
but criminal prosecutions are rare.\textsuperscript{214}

The operation of the vermiculite mine in Libby, Montana, from 1919 to 1990 is an exception to the absence of criminal prosecution relating environmental disasters. The mine created health risks to the miners as well as the residents who were exposed to the asbestos containing vermiculite wastes in the community.\textsuperscript{215} The company and seven executives were indicted under the Clean Air Act for discharging asbestos in the air.\textsuperscript{216} They were accused of knowingly endangering the residents of Libby and concealing information about the health hazards.\textsuperscript{217} No defendant was convicted.\textsuperscript{218}

B. \textit{Clean Water Act}

Two recent environmental spills gave rise to criminal prosecutions even though no human lives were lost. A Duke Energy (“Duke”) storm water pipe burst on February 2, 2014, spilling “39,000 tons of coal ash and 27 million gallons of ash slurry” into the Dan River in North Carolina.\textsuperscript{219} Subsequent investigations revealed problems at five Duke facilities.\textsuperscript{220} Duke pled guilty on May 14, 2015, to nine criminal counts of unpermitted discharges and maintenance issues.\textsuperscript{221} It agreed to pay $68.2 million in fines and restoration costs, an additional $24 million in community service fees to the National Fish and Wildlife Fund, and

\textsuperscript{214} But see United States v. Buckley, 934 F.2d 84 (8th Cir. 1991) (appealing from) (affirming a criminal conviction for improper disposal of asbestos).


\textsuperscript{216} See W.R. Grace, 434 F. Supp. 2d at 879.

\textsuperscript{217} Id.

\textsuperscript{218} See W.R. Grace, 434 F. Supp. 2d at 888 (D. Mont. 2006) (finding that the claims brought by the government could not survive because the statute of limitations had expired and there was no evidence to satisfy the overt act requirement of the conspiracy charge, which would have paused the tolling period and overcome the statute of limitations dilemma).


\textsuperscript{220} Id.

\textsuperscript{221} Id.
It also agreed to a five-year probationary period with an environmental compliance program and a court-appointed monitor to ensure compliance.

A Freedom Industries Corporation storage tank sprang a leak on January 9, 2014, and drained into the Elk River. The contaminated waters entered the intake pipes of the West Virginia American Waterworks Company about one and a half miles downstream, contaminating the water supply for three hundred thousand residents in the nine counties surrounding Charleston, West Virginia.

Charges were filed against six executives, owners, former owners, and employees. Gary Southern, former chief executive of the company, initially pled not guilty to violating the Clean Water Act, mail fraud, and bankruptcy fraud. Southern is accused of trying to hide assets in filing for bankruptcy after the spill. Dennis Farrell was charged with violating the Clean Water Act. Freedom Chemical pled guilty to a Clean Water Act felony and two misdemeanors of negligent discharge of a pollutant and unlawful discharge of refuse material. However, the company filed for bankruptcy eight days after the spill, so a high fine might be uncollectible.

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222. Id.
230. Id.
231. Associated Press, Freedom Industries Pleads Guilty to Pollution Charges in West Virginia Chemical Spill Case, FOX NEWS (Mar. 23, 2015),
Two former owners pled guilty to unlawful discharges. William Tis, the former secretary, said: “I don’t believe I have committed a crime, but I am pleading guilty.”232 Michael Burdette, the former plant manager and Robert J. Reynolds, the environmental compliance manager of the plant, also pled guilty on March 17, 2015, to a misdemeanor of negligently discharging a pollutant into the river.233

The main claim against the six officers and owners was that they “failed to exercise their authority to ensure that Freedom operated the . . . facility in a reasonable and environmentally sound manner.”234 They placed cost controls over safety.

C. Food Safety

Ensuring food safety is one of the most critical responsibilities of government, as illustrated by the enactment of the Pure Food & Drug Act of 1907, and the 1983 Food, Drug & Cosmetic Act.235 Criminal cases involving deleterious food have been rare, but are heating up. A recent example is when ConAgra Grocery Products, LLC agreed in May 2015 to pay $11.2 million for shipping contaminated peanut butter in 2006 and 2007.236 Over seven hundred consumers were sickened with salmonella.237

V. TRANSPORTATION

A. Maritime Disasters

Cruise ship and ferry tragedies have become a common source of criminal prosecutions. A reading of the incidents shows, in some countries, a history of corruption and overloading passengers. The

233. Id.
237. Id.
tragedies were waiting to happen.

The Canadian ferry, “Queen of the North,” struck Gil Island off the British Columbia coast on March 22, 2006, in inclement weather.\(^{238}\) Ninety-eight passengers and crew were saved while two passengers were lost.\(^{239}\) Four years after the sinking, the captain was indicted for death by criminal negligence and he was convicted on June 24, 2013, seven years after the accident.\(^{240}\) He was sentenced to a two-year concurrent term.\(^{241}\) His appeal was denied by the Court of Appeals, and the Supreme Court of Canada dismissed his leave to appeal.\(^{242}\) He allegedly steered straight towards the island at full cruising speed, when he should have turned.\(^{243}\)

Thirty-two passengers and crewmembers died in the grounding of the Costa Concordia cruise ship on January 13, 2012.\(^{244}\) The captain was sentenced to sixteen years’ imprisonment while five other crewmembers pled guilty.\(^{245}\) The captain’s sentence was ten years for manslaughter, five years for shipwreck, and one year for leaving the ship before the passengers.\(^{246}\)

The South Korean ferry “Sewol” capsized on April 16, 2014, resulting in 304 deaths, mostly high school students.\(^{247}\) An inexperienced third mate was at the helm when the overloaded ferry capsized in a notoriously treacherous waterway.\(^{248}\) Twenty-

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\(^{239}\) Id.

\(^{240}\) Id.

\(^{241}\) Id.

\(^{242}\) R. v. Her Majesty the Queen, 2015 CARSWELL BC 1285 (Can. B.C. S.C.C. 2015) (WL); see also Keith & Shelly, supra note 238.

\(^{243}\) Keith & Shelly, supra note 238.


\(^{245}\) Id.

\(^{246}\) Id; Gaia Pianigiani, Captain of Ship That Capsized Off Italy in ’12 is Convicted, N.Y. TIMES (Feb. 11, 2015), http://www.nytimes.com/2015/02/12/world/europe/captain-convicted-in-italy-for-role-in-costaconcordia-disaster.html?_r=0.


two of the twenty-nine crewmembers survived. The ferry was carrying three times its permissible cargo limit, with most of the ballast water dumped to add the extra weight.

The captain and three crewmembers were indicted for homicide through “willful negligence” and eleven crewmembers on misdemeanors. The owner and top manager of Chonghaejin Marine Company, the operator of the ferry, committed suicide. Sixty-nine year old Captain, Lee Jun-seok, was sentenced to thirty-six years’ imprisonment with five to twenty year sentences for the crewmembers, except the ship’s engineer who received thirty years. Park Gio-ho, the Chief Engineer was accused of abandoning two crewmembers that could have been saved. The South Korea’s Seafarers Act requires the captain to remain on the ship until the passengers are safely removed.

The prosecution presented evidence that the crew failed to timely evacuate the passengers while ordering them to remain in their cabins. Prosecutors also evidence that some crewmembers

18704579518993969767898; (stating that the ferry reported a cargo weight of 3,608 tons, but it’s the maximum recommended weight load was 987 tons).


255. Seafarers Act, Act No. 11690, Mar. 23, 2013, art. 10 (S. Kor.), http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=28908&type=new&key= (“A captain shall not leave his/her ship from the time cargoes are loaded and passengers start to go on board until the time all cargoes are unloaded from his/her ship and passengers leave his/her ship . . . .”).

had returned to their cabins to change uniforms and retrieve various objects, despite the recommended evacuations by emergency dispatchers.\(^\text{257}\)

In addition, the Korean Coast Guard Captain, who first arrived on the scene, was sentenced to four-years’ imprisonment for professional misconduct.\(^\text{258}\) The director and two employees of the Korea Shipping Association were arrested, accused of destroying evidence in the probe of the Sewol’s parent corporation.\(^\text{259}\) South Korea is prosecuting eleven ferry and cargo company officials as well as port inspectors on embezzlement and accidental homicide charges.\(^\text{260}\) The oldest son of the company’s owner was sentenced to three years in prison for embezzlement.\(^\text{261}\)

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The president of Chonghaejin Marine Company, the ferry operator, was sentenced to ten years’ imprisonment, while four other officers received three to six year sentences.\(^\text{262}\) Two officers received suspended sentences.\(^\text{263}\) In addition a Korean shipping association official, charged with overseeing ship safety, was sentenced to three years for letting the ferry leave port without checking its cargo and storage.\(^\text{264}\) Two dockworkers who loaded the vessel received two-year prison sentences.\(^\text{265}\)

The Sewol disaster gave rise to national mourning. The South Korean Prime Minister resigned for the government’s mishandling of the disaster.
of the ferry disaster. \(^{266}\) He said, “I offer my apology for having been unable to prevent this accident from happening and unable to properly respond to it afterwards.” \(^{267}\)

An overloaded Bangladesh ferry capsized and sank on August 4, 2014, in swollen waters of the Padma River. \(^{268}\) Over two hundred passengers were on the ferry, which had a capacity of eighty-five. \(^{269}\) Over one hundred people perished. \(^{270}\) The owner, captain, and four others were charged with culpable homicide. \(^{271}\) The ferry was operating on an expired license. \(^{272}\)

The Sea Smooth passenger ferry collided with the Lamma IV crew ferry in Hong Kong Harbor on October 1, 2012. \(^{273}\) Thirty-nine people died and ninety-two people were injured in the collision. \(^{274}\) The Sea Smooth Captain, Sai-ming was convicted on February 14, 2015, on thirty-nine counts of manslaughter and endangering the safety of others at sea, and sentenced to eight years in prison. \(^{275}\) Lamma IV Captain, Chow Chi-wai, was sentenced to nine months for endangering the safety of others. \(^{276}\) The retired senior boat inspector was subsequently charged with perjury and the marine department assistant director was charged with misconduct. \(^{277}\)

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\(^{269}\) Id.  
\(^{270}\) Id.  
\(^{271}\) Id.  
\(^{272}\) Id.  

\(^{274}\) Id.  

\(^{276}\) Id.  
\(^{277}\) Wendy Laursen, *Officials Charged Over Lamma IV Collision*, THE
A sixty-six foot trawler smuggling immigrants to Italy capsized on April 18, 2015, with an estimated 900 drownings. The captain was arrested for reckless multiple homicides while he and a crewmember were also charged with illegal immigration.

The Chinese cruise ship, Eastern Star (Oriental Star), was struck by a tornado on June 2, 2015, during a heavy storm on the Yangtze River. Only fourteen crew members and passengers, out of 456, survived. Two survivors were the captain and chief engineer. The captain was immediately taken into custody. Other captains had heeded a weather warning, but the Eastern Star sailed on.

A Philippine ferry capsized on July 2, 2015. At least fifty-nine perished, with 145 survivors, including all eighteen crew members. Police filed murder complaints against the captain and the crew. Perchance the captains should have gone down with their ships.

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281. Id.

282. Id.

283. Id.

284. Id.


286. Id.
B. Airplanes

Two major airplane crashes resulting in criminal prosecutions were ValuJet and the Air France Concorde. ValuJet Flight 592 took off from Miami International Airport at 2:03 p.m. on May 11, 1996. It crashed in the Everglades shortly after take off, killing all 110 on board.

The cause was quickly traced to unexpended oxygen tanks in the cargo compartment. ValuJet hired SabreTech to replace the current oxygen tanks that were over ten years old, from three airplanes it had recently acquired. The mechanics did not place plastic shielding caps over the firing pins of the removed tanks, but certified they had followed the proper steps. The oxygen containers should not have been shipped as cargo under the circumstances. An uncontrolled fire raged in the cargo hold. The pilot was unable to safely return to the airport with the tragic consequences.

A grand jury issued a twenty-four count indictment on July 13, 1999, against SabreTech, Daniel Gonzalez, the director of maintenance, and two mechanics, Eugene Flores, and Mauro Valenzuela. The jury acquitted SabreTech of willful violations of the Hazardous Materials Transportation Act but found the...
A company guilty of recklessly causing the transportation of hazardous materials in air commerce. Flores and Gonzalez were acquitted. Mauro Valenzuela was not tried because he skipped trial and became a fugitive from justice.

The Court of Appeals reversed eight of the nine years after the accident. The court held that the record indicated the personnel committed mistakes, but not crimes, under the existing statute. It affirmed the conviction on one count of willful failure to train.

The ValuJet saga ended in August 2002 when a judge fined SabreTech $500,000, which was probably uncollectible since the company had no assets or money.

The Miami-Dade County State Attorney also filed a 221-count indictment against SabreTech. It included 110 counts of third-degree felony murder, 110 counts of manslaughter, and one count of illegal transportation of hazardous waste.

Air France Concorde number 4590 crashed shortly after takeoff from Charles de Gaulle Airport on July 25, 2010. One hundred passengers and nine crewmembers died in the crash with four additional fatalities occurred on the ground.

France blamed the crash on a titanium metal strip, which fell off a Continental Airlines DC-10 onto the tarmac five minutes earlier.

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298. Id.
299. Id. at 1021 n.2.
300. Id. at 1018.
301. Id. at 1019.
302. Id. at 1025.
305. Id.
before the Concorde took off. The strip allegedly punctured a tire of the Concorde, sending rubber fragments into the plane’s fuel tank, which resulted in a fiery inferno. France indicted Continental Airlines, the mechanic who replaced the titanium strip, and the mechanic’s manager. Charges were also brought against the head of the Concorde program at Aerospatiale, Concorde’s chief engineer, and the head of Direction Générale de l’Aviation Civile, France’s airline regulator. The allegation is that they knew foreign objects could damage the fuel tanks, but nevertheless allowed the planes to be flown.

In 2010 a French court found Continental and the mechanic guilty of involuntary manslaughter, but acquitted the other defendants. A French appellate court reversed Continental’s and the mechanic’s convictions on November 29, 2012, twelve years after the crash.

Plane crashes are often tragic and spectacular. The ensuing investigation will usually pinpoint the cause of the crash. If the cause is pilot error, then there probably will not be a prosecution because the pilot would have perished in the crash. The Air France, Concorde, and ValueJet crashes reflect causes that were not pilot related.

VI. NATURAL DISASTERS

A. Storms

Hurricane Katrina was a major disaster for New Orleans. One thousand eight hundred thirty-three fatalities were recorded and an additional 135 people were missing in the Gulf States. Dr. Anna

311. Id.
312. Id.
314. Clark, supra note 306.
Pou and two nurses at Memorial Hospital in New Orleans were arrested for the alleged mercy killings of patients trapped in the squalid conditions of the hospital. A grand jury refused to indict Dr. Pou and the charges were dropped against the nurses.

On the other hand, the owners of the St. Rita Nursing Home, 112 miles outside of New Orleans, had to wait two years for a jury verdict of not guilty when they were prosecuted for not evacuating patients before Katrina struck. They were charged with thirty-five counts of negligent homicide and twenty-four counts of extreme cruelty.

Four police officers were convicted of killing two and wounding four persons attempting to flee the city. Another officer was convicted of covering up the misdeeds. An additional officer was acquitted.

Another natural disaster coupled with human culpability occurred in France, which barred development in designated coastal zones. Cyclone Xynthia struck the French coast on February 28, 2010, killing twenty-nine and flooding hundreds of homes in the neighboring villages of La Faute-sur-Mer and L’Aiguillon-sur-Mer. The homes were built in a “red zone,” where construction should have been barred. Many of the

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317. Id.
319. Id.
321. Id.
322. Id.
victims were the elderly or children who were trapped in their homes, where they drowned. The Mayor, a town councilor, her son, and the owner of a building company were charged with manslaughter. The Mayor was sentenced on December 7, 2011, to four years in prison. The official responsible for administering building permits received two years, and her son was sentenced to eighteen months for not ensuring the seawall was being monitored. The storm knocked down seawalls, allowing the coast to be flooded.

Natural forces, such as earthquakes and hurricanes can be devastating. The tragedy can be compounded when accompanied by human fault, as in Hurricane Katrina. The French prosecution raised the issue, which is present throughout the world, governments willing to allow development in areas with large natural vulnerabilities.

B. Earthquakes

An unusual case from Italy received great attention in the scientific community. A system of small swarm earthquakes struck the L’Aquila, Italy area from 2008 into early 2009. A special meeting of experts was held in L’Aquila to publicly discuss the risks. A devastating 6.3 earthquake struck L’Aquila one week later on April 4, 2009, killing 309 with over 1,100 severely injured. Six scientists and a public official at the conference were indicted in 2010 for manslaughter for criminal negligence because

327. See generally Wentz, supra note 323.
328. Mayor Sentenced, supra note 325.
333. Id.
334. Id.
their inadequate assessment of risks of earthquakes. They were found guilty in October 2013 after a yearlong trial. The convictions set off international controversy. The convictions of the six scientists were reversed on October 10, 2014, but the conviction was affirmed for the public official who said at the public meeting that “there was no danger.” Another Italian scientist said the trial “pushed scientists in Italy to become latter-day Cassandra, always erring on the side of catastrophe.”

VII. WORKPLACE

State courts, for a quarter-century, have allowed criminal prosecutions for workplace accidents, holding they were not preempted by the federal Occupational Safety and Health Administration statute. The reality is that a major workplace accident will normally violate safety rules and regulations, often opening the door to criminal prosecutions.

A California case led the way. Seven workers plunged to their deaths from an overloaded platform hanging from a rock. The California Court of Appeals held that a corporation could be prosecuted for manslaughter.

A germinal case involved the defunct Film Recovery Systems,

335. Id.
336. Id.
337. Id.
343. Id.
344. Id.
The state successfully prosecuted three senior workers on murder and reckless homicide charges after a worker died of cyanide poisoning. The judge also held Film Recovery Systems and two related corporations guilty of involuntary manslaughter. The company’s president, plant manager, and plant foreman were sentenced to twenty-five years in prison. The deceased, an undocumented Polish immigrant, labored over open vats filled with cyanide used to extract silver from x-ray films. The Film Recovery Systems case is believed to be the first one in legal history where “corporate executives were found guilty at the district court level of murder (i.e. second degree murder, killing by acting with reckless lack of caution) . . . .”

Another representative case is People v. Hegedus. The Michigan case involved an employee “dying of carbon monoxide poisoning while working in a company owned van.” A supervisory employee was charged with involuntary manslaughter.

An explosion at a BP refinery in Port Arthur, Texas, on March 23, 2005, resulted in the death of fifteen workers and more than 180 injured. BP pled guilty in October 2007 to one felony count of the Clean Air Act, paying a fine of $50 million.

Shri (Sheharbano) Sangji, a research assistant, was killed in a lab fire at the University of California, Los Angeles (“UCLA”) on December 29, 2008. She was not wearing a protective lab coat when she was attempting to transfer t-butyl lithium from one

346. Id.
347. Siegel, supra note 345.
348. Id.
349. Id.
352. Id. at 128.
353. Id. at 128.
sealed container to a second sealed container. The chemical is highly flammable. The syringe burst open. The chemical caught on fire when it came into contact with the open air. She died of her burns eighteen days later. The Los Angeles District Attorney charged UCLA with four felony counts of willfully violating California’s Health and Safety Standards, while Professor Patrick Harran, the supervising professor, was indicted on four counts for failure to provide proper safety training and failing to require protective gear to lab workers.

The allegations include violation of the state codes for employee training on handling hazardous chemicals and minimizing the risk of explosions as well as proper staff safeguards and clothing. The inexperienced, with little training or supervision, Ms. Dangji was wearing a sweatshirt rather than a protective vest when the accident occurred.

UCLA settled in July 2012 by agreeing to follow comprehensive safety measures and endowing a $500,000 scholarship in her name. The University also paid almost $4.5 million in defending the case. UCLA spent an additional $20 million in improving lab safety.

Professor Harran settled in June 2014 by entering into a five-year “deferred prosecution agreement,” agreeing to perform eight hundred hours of non-teaching community service in the UCLA hospital system, “develop and teach an organic chemistry course for college-bound inner-city students for five summers,” and pay

357. Id.
358. Id.
359. Id.
362. Id.
365. Id.
$10,000 to the Grossman Burn Center. The charges will be dropped after five years if he complies with the terms of the settlement. This case, believed to be the first against a laboratory, sent shock waves throughout the research community.

The Los Angeles County District Attorney also filed felony charges against Bumble Bee Foods, its former safety manager, and the director of plant operations on April 27, 2015 for a workplace fatality. Jose Melena, unbeknownst to his coworkers, entered a thirty-five foot covered oven for a repair on October 12, 2012. Workers poured twelve thousand pounds of tuna into the pressure cooker, shut the door, and turned it on. He was essentially cooked to death in the pressure cooker.

CONCLUSION

Most accidents, disasters, and tragedies, whether originating from natural or human causes, will have multiple causes. They will usually involve some degree of human error, which in turn can give rise to criminal prosecutions. The errors could involve emergency planning, design, construction, maintenance, response, or inspections.

Prosecutors have become aggressive in seeking out responsible parties. The net of criminal liability is no longer limited to those directly involved in causing the disaster, but may now extend to those involved in the response, as well as officials whose derelictions in office helped create the risk.

The trend is for increasing criminal prosecutions on a global
level in both civil law and common law jurisdictions. The crimes charged are not limited to traditional “common law” offenses, but include a seemingly infinite number of statutory crimes, often dependent on the creativity and ingenuity of prosecutors.

Criminal prosecutions are not only brought under traditional vicarious liability principles, since corporations can only act through individuals, but also against parent corporations for the misdeeds of subsidiaries.

Not all prosecutions will be successful, but the filing of criminal charges against corporations, and especially officers, directors, employees, and government officials sends a message about the misconduct.

Major categories of enforcement include oil spills, mining disasters, maritime disasters, structural failures, and workplace accidents. Not all cases involve a loss of life. A few cases, especially the UCLA lab tragedy and the L'Aquila Earthquake, sent tremors through the scientific community.

It is an interesting phenomenon that while many cases involve speedy justice, others drag on for a decade or longer, letting the criminal Sword of Damocles dangle over the defendants, both individuals and corporations.