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Corporate Violence as Crime: Anniversary of the West Virginia Chemical Spill

Posted: 01/12/2015 9:49 am EST | Updated: 01/12/2015 9:59 am EST

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A year ago, about 300,000 people in and around Charleston, West Virginia, lost their drinking water source when thousands of gallons of a toxic chemical known as MCHM (4-methylcyclohexanemethanol) leaked into the nearby Elk River through a hole in a rusted-out storage tank. Last month, the wheels of justice began to catch up with the owners of the responsible company when they were indicted by U.S. Attorney Booth Goodwin.

Coincidentally, the West Virginia indictments came down on the same day that the Justice Department charged 14 people in Massachusetts for their role in producing and distributing meningitis-tainted steroid injections that killed 64 people.
The same-day indictments framed a question business leaders would do well to contemplate: When do corporations and their executives cross the line between unavoidable human error and preventable criminal misconduct? Prosecutors seem increasingly ready to push reckless management to the criminal side of the line as one corporate fiasco after another claims lives and causes hugely expensive damage to communities and local economies.

Under American law, criminal prosecutions serve dual, mutually reinforcing purposes: they both punish and deter. Yet until recently, prosecutors have been excessively cautious about defining routine industrial behavior as a guilty act that triggers criminal culpability. Defense lawyers work hard to preserve this status quo, arguing that drugs are contaminated inadvertently, chemical spills are unavoidable, and in cases of deadly but preventable defects in automobiles, cars sometimes don't work. In other words, the high living standards we enjoy in the developed world depend on the occasional disaster.

Increasingly, such arguments fall on deaf ears among those sworn to prosecute criminal violations. In the past few years, federal prosecutors in five states have indicted corporations and their executives for particularly abhorrent practices. In Georgia, the owners and operators of a plant that shipped peanut paste that tested positive for salmonella, taking nine lives, were convicted of felonies. In West Virginia, Don Blankenship, known as the "dark lord of coal country," awaits trial after he allegedly threatened to fire supervisors who tried to comply with safety standards and the violations caused a mine explosion that killed 29.
These cases share similar management practices at their core: relentless cost-cutting, gross neglect of maintenance, systematic erosion of safety culture, and an obsession with doing work too quickly to save money. Senior executives consciously ignore warnings that safety failures are rampant. The pharmacy that made the steroid injections operated a supposedly sterile clean room, but shut down the air conditioner at night to save on electricity costs, allowing fungi and bacteria to grow. When employees complained about unsanitary conditions, managers said, "This line is worth more than all your lives combined, so don't stop it." (That's an actual quote!)

Even after the resulting catastrophe -- the worst prescription drug tragedy in recent memory -- Congress buckled to the pharmacy industry and enacted a pitifully weak law that allows individual companies to decide for themselves whether they want to register with the Food and Drug Administration and be subject to regulation. Hospitals will want their suppliers to step up, went the rationale. But because small pharmacies undercut big ones on price, it's anyone's guess if this theory will pan out in practice. Meanwhile, regulators found serious problems at every one of the two dozen facilities they audited after the Massachusetts incident.

State criminal laws incorporate the principle that corporate executives, who act recklessly, without the intent to cause a specific bad outcome but with the knowledge that it is very likely to occur, can be held culpable. And for good reason: When people die as a result of such wanton behavior, state prosecutors can and should prosecute senior executives for manslaughter. Alternatively, federal prosecutors may not be able to file manslaughter charges, but they have ample tools to punish such wrongdoing, including statutes that require reporting of adverse events and outlaw false statements to the government.

Conservative commentators argue that corporations are abstract paper entities that cannot go to jail and therefore should not be charged, and that if large criminal fines are imposed, innocent shareholders will end up as "collateral damage." These arguments ignore profits unfairly collected and distributed to shareholders as a result of criminal acts, as well as the crucial deterrence established by such cases. The vast majority of investors have little interest in allowing short-sighted managers to run companies into situations where they lose billions in damages, cleanup costs, and plummeting stock prices.

These recent prosecutions are a reminder to executives and boards of directors that when reckless behavior costs lives, there should be consequences for the company, its bottom line, and its leadership.

Professor Rena Steinzor (University of Maryland Carey School of Law) is the President of the Center for Progressive Reform, and the author of "Why Not Jail? Industrial Catastrophes, Corporate Malfeasance, and Government Inaction," published by Cambridge University Press.

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