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The Criminal Corporation: Is Ohio Prepared for Corporate Criminal Prosecutions for Workplace Fatalities

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THE CRIMINAL CORPORATION: IS OHIO PREPARED FOR CORPORATE CRIMINAL PROSECUTIONS FOR WORKPLACE FATALITIES?

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I. INTRODUCTION

Although the public perception of the meaning of the term "corporate crime" includes white collar crimes such as embezzlement and insider trading, today corporate crime encompasses another meaning in American jurisprudence—violent corporate crime. Corporations, along with their officers and employees, have been charged, tried, and even convicted of crimes of violence. Charges and indictments have included such offenses as murder, manslaughter, reckless homicide, and criminally negligent homicide.¹

Corporations charged with such violent crimes generally fall into two categories: (1) those that manufacture or market consumer products which cause death within the general public, and (2) those whose employees are killed due to fatal accidents within the workplace. The most infamous case in the former category occurred in 1978 when Ford Motor Company was indicted for manslaughter in the deaths of two young girls after a defectively designed Ford

¹Xavier K. McDonnell, Note, *Criminal Liability for Workplace Accidents*, 24 NEW ENG. L. REV. 293 (1989) (citing W. LAFAYETTE & A. SCOTT, *HANDBOOK ON CRIMINAL LAW* § 3.10(a) (2d ed. 1986)).

Pinto exploded.² In the latter category, the business community was stunned in 1985 after the conviction of Film Recovery Systems and its officers for involuntary manslaughter and murder respectively, as a result of the cyanide poisoning death of a plant employee.³

The usual legal recourse against a corporation responsible for the death of a person, in either of the above categories, is the filing of a civil wrongful death suit. In the event of an employee death, Occupational Safety and Health Administration (hereinafter "OSHA") regulations provide for further punishment in the form of civil fines. State prosecutors, however, have taken justice a step further by pursuing criminal actions against corporations, such as Ford and Film Recovery Systems, whose egregious conduct warrants criminal punishment.

A brief look at the number of workplace deaths per year demonstrates the need to increase measures ensuring the safety of America's workers. Statistics regarding the number of annual workplace deaths fluctuate greatly depending on the source. In its 1989 survey, the Department of Labor reported 3,600 work-related deaths in private-sector establishments with eleven or more employees.⁴ Officials from the Bureau of Labor Statistics, however, stated the report significantly understated the number of workplace fatalities for that same year because of the fluctuation in the statistics.⁵

After statistics in a 1988 survey ranged from 3,500 to 11,000 employee deaths per year,⁶ the Department of Labor developed the National Census of Fatal Occupational Injury in 1991 in an effort to begin a more predictable and reliable means of determining annual workplace fatalities.⁷ The 1993 census reported

²State v. Ford Motor Co., No. 5324 (Ind. Super. Ct., indictment filed Sept. 13, 1978). This Note focuses on corporate criminal liability for workplace deaths, rather than consumer deaths or defective product related deaths. For a general discussion of corporate criminal liability for homicide and the Ford Pinto Case, see FRANCIS T. CULLEN, ET AL., CORPORATE CRIME UNDER ATTACK: THE FORD PINTO CASE AND BEYOND (1987); LEE P. STROBEL, RECKLESS HOMICIDE? FORD'S PINTO TRIAL (1980). For a discussion of another well-known corporate homicide prosecution, see JAMES S. KUNEN, RECKLESS DISREGARD: CORPORATE GREED, GOVERNMENT INDIFFERENCE, AND THE KENTUCKY SCHOOL BUS CRASH (1994).

³People v. O'Neil, 550 N.E.2d 1090 (Ill. Ct. App. 1990). This case is discussed in Part II.C., *infra*.

⁴OCCUPATIONAL SAFETY AND HEALTH ADMIN., U.S. DEPT OF LABOR, REPORT OF THE PRESIDENT TO THE CONGRESS ON OCCUPATIONAL SAFETY AND HEALTH FOR FISCAL YEAR 1990 (1993).

⁵*Id.*

⁶Janice Windau & Donna Goorich, *Testing a Census Approach to Compiling Data on Fatal Work Injuries*, in FATAL WORKPLACE INJURIES IN 1991: A COLLECTION OF DATA AND ANALYSIS, U.S. DEPT OF LABOR, BUREAU OF LABOR STATISTICS, REP. 845, at 45 (1993).

⁷John K. Kane & Blaine Derstine, *Fatal Occupational Injuries: Test Results from the BLS Census*, in FATAL WORKPLACE INJURIES IN 1991: A COLLECTION OF DATA AND ANALYSIS, U.S. DEPT OF LABOR, BUREAU OF LABOR STATISTICS, REP. 845, at 53 (1993).

6,271 fatal occupational injuries, up from 6,217 workplace fatalities reported in 1992.⁸ After increasing in both 1993 and 1994, the reported number of work-related fatalities fell six percent in 1995 to 6,210 deaths.⁹

Whatever the source, workplace accidents claim the lives of thousands of American workers annually. One commentator noted work-related fatalities are six times more likely to occur than homicide, while another analyst observed that a person is "more likely to die trying to earn a living than at the hands of a common criminal."¹⁰ As a result of the number of workplace fatalities, the federal government has been subject to harsh criticism for the weak criminal penalties and enforcement measures available under OSHA. This criticism resulted in the introduction of new regulations to increase penalties and fines for corporations which violate safety regulations.¹¹ State officials have also increased enforcement efforts and penalties and have begun to pursue criminal prosecutions against corporations.¹²

Many scholars are critical of corporate criminal liability for any offense, especially homicide.¹³ Some will invariably argue criminal punishment is an improper method for dealing with corporate killers.¹⁴ The current civil penalties for corporations and individual penalties for corporate executives, however, have failed to effectively deter reckless endangerment of workers.¹⁵

⁸FATAL OCCUPATIONAL INJURIES IN 1993: A COLLECTION OF DATA AND ANALYSIS, U.S. DEPT OF LABOR, BUREAU OF LABOR STATISTICS, REP. 891, at 63 (1995) [hereinafter FATAL 1993]. Several causes contributed to work-related fatalities in 1993, including: transportation incidents (2,482 deaths), contact with objects and equipment (1,039 deaths), falls (611 deaths), exposure to harmful substances or environments (590 deaths), and fires or explosions (201 deaths). *Id.* at 64-65.

⁹*Census of Fatal Occupational Injuries*, U.S. DEPT OF LABOR, BUREAU OF LABOR STATISTICS (1996).

¹⁰NANCY K. FRANK & MICHAEL J. LYNCH, *CORPORATE CRIME, CORPORATE VIOLENCE: A PRIMER* 7 (1992) (citations omitted).

¹¹Peter J. Romatowski, *Workplace Crimes: Federal and State Enforcement*, in *CORPORATE CRIMINAL LIABILITY: REPRESENTING CORPORATIONS, CEOs, CORPORATE OFFICERS, AND THE IMPACT OF SENTENCING GUIDELINES* 259 (Stephen M. Axinn & Jed S. Rakoff, Co-Chairmen 1991).

¹²*Id.*

¹³See Daniel R. Fischel & Alan O. Sykes, *Corporate Crime*, 25 J. LEGAL STUD. 319 (1996); V.S. Khanna, Note, *Corporate Criminal Liability: What Purpose Does It Serve?*, 109 HARV. L. REV. 1477 (1996).

¹⁴Donald J. Miester, Jr., Comment, *Criminal Liability for Corporations that Kill*, 64 TUL. L. REV. 919 (1990) (citing John M. Hickey, Comment, *Corporate Criminal Liability for Homicide: The Controversy Flames Anew*, 17 CAL. W. L. REV. 465 (1981); Patricia B. Rodella, Comment, *Corporate Criminal Liability for Homicide: Has the Fiction Been Extended Too Far?*, 4 J.L. & COM. 95 (1984)). See also David J. Reilly, Comment, *Murder, Inc.: The Criminal Liability of Corporations for Homicide*, 18 SETON HALL L. REV. 378, 397-405 (1988) (arguing for individual accountability for corporate crime).

¹⁵Miester, *supra* note 14, at 920.

The notion that corporations should be criminally prosecuted for negligent and reckless homicide is gaining support from legal scholars, judges, and prosecutors.¹⁶ For example, Donald Miester, Jr., a legal commentator, stated "the unresponsiveness of the legal system in prosecuting corporate killers extracts a great cost from society by eroding confidence in our judicial institutions" and may eventually "undermine public perceptions of the legitimacy of our government and its ability to exert political power."¹⁷

The increased support of corporate criminal liability for homicide throughout the legal community is a step in the right direction but is far from enough in states like Ohio. Without the legal foundation to file an indictment, state prosecutors are forced to let corporate killers go with only a slap on the wrist. Under Ohio's present homicide statutes, virtually no statutory provision encompasses a corporate killer. Ohio state prosecutors, therefore, lack the necessary legal foundation to prosecute a corporation which recklessly or negligently causes the death of an employee. Ohio's lawmakers must remedy this situation by enacting the appropriate statute for charging a corporation with a violent crime. Two options are available to Ohio's legislators: (1) amend present homicide statutes to provide for criminally negligent or reckless homicide, or (2) pass provisions which specifically apply to corporations negligently or recklessly causing the death of an employee. With such measures in place, Ohio prosecutors will be prepared to file criminal charges in the event a corporation recklessly or negligently causes the death of an employee.

This Note first traces the history of corporate criminal liability in American jurisprudence. It then discusses the trend toward corporate criminal liability for homicide arising from workplace deaths by examining several notable cases. While the focus of this Note is corporate criminal liability for workplace death, this author will also discuss cases involving non-workplace fatalities since the legal issues involved are similar to all corporate criminal prosecutions. This Note next addresses the federal preemption defense to state corporate criminal prosecutions and the need for federal legislation barring this defense. Finally, this Note proposes several statutory provisions to expand corporate criminal liability for workplace deaths in Ohio.

¹⁶See *infra* Part II.B.-C. See also Kenneth M. Koprowicz, Note, *Corporate Criminal Liability for Workplace Hazards: A Viable Option for Enforcing Workplace Safety?*, 52 BROOK. L. REV. 183 (1986) (endorsing corporate criminal liability as a deterrent from irresponsible safety practices within the workplace).

The increasingly supportive view of corporate liability for homicide is also evident in non-workplace deaths. See *State v. Six Flags Corp.*, No. 65084 (N.J. Super. Ct., indictment filed Sept. 14, 1984) noted in Miester, *supra* note 14, at 929. Six Flags Corporation was indicted for reckless homicide after eight children were killed in a fire while trapped in a haunted house with no sprinkler system. *Id.* The corporation was acquitted. *Id.* See also *Sea Horse Ranch v. Superior Court*, 30 Cal. Rptr. 2d 681 (Cal. Ct. App. 1994) (indictment of corporation for involuntary manslaughter upheld after horse escaped from a ranch and fatally injured a passing motorist).

¹⁷Miester, *supra* note 14, at 920.

II. DEVELOPMENT OF THE CRIMINAL CORPORATION

A. Corporate Criminal Liability

Under early English common law, a corporation was immune from criminal liability, with courts holding corporations were not indictable for any wrongful action.¹⁸ In an anonymous case, Chief Justice Holt stated, "[a] corporation is not indictable but the particular members of it are."¹⁹ The rationale for corporate immunity was twofold. Theoretically, the corporation was not considered a natural person under the law but an artificial entity.²⁰ Only persons who committed an act with an evil or vicious will could be guilty of a crime.²¹ The corporation had no mind or soul and thus could not be punished.²² Further, early corporations were "few in number, well regulated, and chartered to perform specific tasks"; therefore, criminal liability for corporate misconduct was unnecessary.²³

While it was widely accepted that a corporation could be held accountable under civil law for the crimes of its agents acting within the scope of their employment, corporate criminal liability was virtually nonexistent.²⁴ In the seventeenth and eighteenth centuries, corporations became a more popular form of conducting business, but shareholders were generally not providing adequate supervision of corporate management.²⁵ Judges thus began to hold corporations accountable for criminal acts.²⁶ The first criminal liability cases involving corporations were prosecutions for failing to abate public nuisances.²⁷ English courts initially reasoned that while corporations could fail

¹⁸Kathleen F. Brickey, *Corporate Criminal Accountability: A Brief History and an Observation*, 60 WASH. U. L.Q. 393, 396 (1982).

¹⁹*Id.* at 396 (citing Anonymous, 88 Eng. Rep. 1518 (K.B. 1701)). See also 1 W. BLACKSTONE, COMMENTARIES *476 ("A corporation cannot commit treason, or felony, or other crimes, in its corporate capacity: though its members may in their distinct individual capacities.").

²⁰Brickey, *supra* note 18, at 396.

²¹Fischel & Sykes, *supra* note 13, at 333.

²²Brickey, *supra* note 18, at 396.

²³*Id.* at 396-97.

²⁴Fischel & Sykes, *supra* note 13, at 320.

²⁵Brickey, *supra* note 18, at 397.

²⁶*Id.*

²⁷Ann Foerschler, Comment, *Corporate Criminal Intent: Toward a Better Understanding of Corporate Misconduct*, 78 CAL. L. REV. 1286, 1292 (1990).

to act, they could not commit a positive act.²⁸ Corporations were subject to criminal liability for nonfeasance, but not held liable for misfeasance.²⁹

United States courts gradually modified the English common law rules of corporate liability to control criminal activity within the increasingly popular corporate form of business.³⁰ The distinction between nonfeasance and misfeasance did not endure in American jurisprudence.³¹ In rejecting a company's argument against corporate liability for misfeasance, the New Jersey Supreme Court reasoned that since a corporation could indisputably be liable as a natural person for the tortious acts of its agents, a corporation could also be held liable in a criminal prosecution for its affirmative acts.³²

In 1909, the law extended the theory of corporate criminal liability a step further in the pivotal case of *New York Central & Hudson River Railroad Co. v. United States*.³³ The United States Supreme Court upheld the constitutionality of a statute which imputed criminal liability to the corporate entity for the acts and omissions of its agents acting within the scope of their authority.³⁴ The criminal activity in *New York Central* involved the payments of rebates by a traffic manager who was presumably middle management.³⁵ A provision of the Elkins Act made it unlawful for railroads to offer rebates to shippers in violation of the government-enforced, price-fixing agreement among the railroads.³⁶ Pomeroy, the traffic manager, and New York Central and Hudson River Railroad Company were indicted and convicted.³⁷

The defendants in *New York Central* challenged the constitutionality of a provision within the Elkins Act which construed actions of corporate officials as both individual and corporate acts, thus imputing the intent of a corporate agent to the corporation itself.³⁸ In rejecting this constitutional challenge, the

²⁸*Id.*

²⁹Miester, *supra* note 14, at 924.

³⁰*Id.*

³¹Brickey, *supra* note 18, at 407.

³²*Id.* at 408 (citing *State v. Morris & Essex R.R.*, 23 N.J.L. 360, 367-68 (1852)).

³³*New York Central & Hudson River R.R. Co. v. United States*, 212 U.S. 481 (1909).

³⁴*Id.* at 494, 496-97.

³⁵*Id.* at 489. See also Nicolette Parisi, *Theories of Corporate Criminal Liability for Corporations (or Corporations Don't Commit Crimes, People Commit Crimes) in CORPORATIONS AS CRIMINALS* 54 (Ellen Hochstedler ed., 1984).

³⁶*New York Central*, 212 U.S. at 491.

³⁷*Id.* at 490.

³⁸*Id.* at 491-92. The defendants argued certain provisions of the Elkins Act were unconstitutional because Congress had no authority to impute criminal offenses to a corporation or to subject a corporation to a criminal prosecution. *Id.* at 492. This would in essence punish the innocent shareholders and deprive them of their property without due process of law. *Id.*

Court focused on public policy reasons for upholding the convictions. Since corporations could be liable in tort under the *respondeat superior* doctrine, the Court found no legal reason not to extend the civil liability rationale to criminal actions: "the act of the agent, while exercising the authority delegated to him . . . may be controlled, in the interest of public policy, by imputing his act to his employer and imposing penalties upon the corporation for which he is acting in the premises."³⁹

The Court went on further to state:

We see no valid objection in law, and every reason in public policy, why the corporation, which profits by the transaction, and can only act through its agents and officers, shall be held punishable by fine because of the knowledge and intent of its agents to whom it has intrusted authority to act . . . and whose knowledge and purposes may well be attributed to the corporation for which the agents act.⁴⁰

By holding an agent's intent could be imputed to the corporation, American law recognized for the first time that corporations could be criminally liable for crimes requiring a specific *mens rea*.

Although *New York Central* did not involve corporate criminal liability for homicide, the rationale underlying the case recognized corporate liability for intent crimes, which laid the foundation for corporate liability for criminal violence.⁴¹ The *New York Central* Court set forth the broad generalization that corporations could be held accountable for a "large class" of statutory offenses.⁴² The Court restricted its proposition, however, by noting there are "some crimes which, in their nature cannot be committed by corporations."⁴³ This language has been interpreted to mean that corporations could be liable for "general intent crimes but not for specific intent crimes."⁴⁴

The only remaining barrier to full corporate criminal liability was corporate accountability for crimes requiring a specific intent. In the early twentieth century, courts throughout the nation began breaking down this barrier by holding corporations responsible for the full scope of criminal liability to which

³⁹*Id.* at 494.

⁴⁰*Id.* at 495.

⁴¹Parisi, *supra* note 35, at 57.

⁴²*New York Central*, 212 U.S. at 494. In the same year, the United States Supreme Court allowed the prosecution of a corporation for violation of statutory bookkeeping and tax duties. *United States v. Union Supply Co.*, 215 U.S. 50 (1909). The Court stated "[corporations] are as much within the mischief aimed at as private persons, and as capable of a 'willful' breach of the law." *Id.* at 55.

⁴³*New York Central*, 212 U.S. at 494.

⁴⁴Foerschler, *supra* note 27, at 1293 (citing KATHLEEN F. BRICKEY, CORPORATE CRIMINAL LIABILITY: A TREATISE ON THE CRIMINAL LIABILITY OF CORPORATIONS, THEIR OFFICERS, AND AGENTS § 2.09, at 31-36 (1984)).

individuals are subject.⁴⁵ Today, many jurisdictions have expanded the notion to include corporate liability for intent crimes involving homicide charges.⁴⁶

B. The Trend Toward Corporate Criminal Liability for Homicide

Although the first case involving corporate criminal liability for homicide occurred in 1855, the trend toward holding corporations criminally accountable for workplace deaths evolved slowly over decades. Early courts focused on three distinct legal obstacles to finding a corporation guilty of a homicide charge: (1) whether the corporation was a "person" within the legal definition of the term; (2) whether a corporation could be guilty of intent crimes; and (3) whether the corporation was subject to an appropriate punishment. The problem of including a corporate entity within the statutory definition of a "person" was solved by legislative amendments which specifically included a corporation under the definition of "person."⁴⁷ The difficulty in finding a corporation guilty of specific intent crimes was overcome by imputing intent to a corporation in a manner similar to the rationale used to impute civil liability.⁴⁸ Finally, courts and legislatures began imposing monetary fines upon corporations as punishment for corporate violence.⁴⁹

In *Boston, Concord & Montreal Railroad v. New Hampshire*, the earliest United States case involving corporate liability for homicide, a corporation was charged with causing the death of a person through the negligence and

⁴⁵Brickey, *supra* note 18, at 415. See also Foerschler, *supra* note 27, at 1293.

⁴⁶See *infra* Part II.B.-C.

⁴⁷See *People v. Ebasco Services, Inc.*, 354 N.Y.S.2d 807 (N.Y. App. Div. 1974); *Vaughan & Sons, Inc. v. State*, 750 S.W.2d 17 (Tex. App. 1988). See also Carol L. Bros, *A Fresh Assault on the Hazardous Workplace: Corporate Homicide Liability for Workplace Fatalities in Minnesota*, 15 WM. MITCHELL L. REV. 287, 295-99 (1989).

⁴⁸See *People v. Rochester Ry. & Light Co.*, 88 N.E. 22 (N.Y. 1909). The court stated: It is said that an intent cannot be imputed to a corporation in criminal proceedings We think that a corporation may be liable criminally for certain offenses of which specific intent may be a necessary element. There is no more difficulty in imputing to a corporation a specific intent in criminal proceedings than in civil.

Id. at 23 (quoting *Telegram Newspaper Co. v. Commonwealth*, 52 N.E. 445 (1899)). For a discussion of imputing criminal intent to a corporation, see Bros, *supra* note 47, at 298-303; Foerschler, *supra* note 27, at 1296-98.

⁴⁹FRANK & LYNCH, *supra* note 10, at 125-26. Judges often demonstrate a reluctance to impose harsh criminal penalties and impose "the lenient treatment usually afforded first-time offenders." *Id.* at 126. A corporation may be sentenced to only small monetary fines, and such fines may become considered as a cost of doing business. *Id.* The authors cite several alternative punishments for corporate crime, including equity fines, publicity orders, internal discipline orders, preventive orders, corporate probation, and community service orders. *Id.* at 126-27. For differing views concerning corporate punishment, see Miester, *supra* note 14; John E. Stoner, Comment, *Corporate Criminal Liability for Homicide: Can the Criminal Law Control Corporate Behavior?*, 38 SW. L.J. 1275 (1985).

misconduct of its agents.⁵⁰ Almost fifty years later, in *United States v. Van Shaick*, a corporation, its board of directors, and the captain of its ship were charged with manslaughter.⁵¹ Due to the defendants' failure to properly equip its vessel with life preservers and fire equipment, more than 900 passengers drowned after a fire forced them to jump overboard.⁵² The *Van Shaick* court took the unprecedented step of imputing the negligent acts of the corporate directors and the captain of the ship to the corporate entity itself.⁵³ However, a statutory barrier existed to holding the corporation liable because the statute prescribed imprisonment as the sole penalty for manslaughter.⁵⁴ The court addressed this problem by stating the lack of a statutory penalty for a corporation (such as a monetary fine) was a legislative oversight: "It seems a more reasonable alternative that Congress inadvertently omitted to provide a suitable punishment for the offense, when committed by a corporation, than that it intended to give the owner impunity simply because it happened to be a corporation."⁵⁵

Despite the lack of an appropriate statutory penalty, the court upheld the indictment, thus violating the basic principle of criminal law that a crime must be punishable by law.⁵⁶ Perhaps the court's violation of this basic axiom provides an explanation of why the *Van Shaick* decision did not open the floodgates to corporate criminal liability for homicide.⁵⁷

After *Van Shaick* upheld the legal possibility of a corporate prosecution for homicide, the new trend in American courts was to dismiss indictments based upon ambiguous homicide statutes which arguably did not include a corporation within the statutory definition of "person."⁵⁸ In *People v. Rochester Railway & Light Co.*,⁵⁹ a utility company was indicted for manslaughter in the second degree.⁶⁰ Allegedly, the company was guilty of the "grossly improper"

⁵⁰*Boston, Concord & Montreal R.R. v. New Hampshire*, 32 N.H. 215 (1855). The court held there was no valid objection to a statute which subjected railroad corporations to an indictment and fines in case of the loss of life by reason of the negligence or carelessness of the proprietors or their servants. *Id.* See also *Commonwealth v. Punxsutawney St. Passenger Ry.*, 24 Pa. C. 25 (1900) (indictment of corporation quashed due to lack of precedent for holding corporations criminally liable for intent crimes).

⁵¹*United States v. Van Shaick*, 134 F. 592, 594-95 (S.D.N.Y. 1904).

⁵²*Id.* at 594.

⁵³*Id.* at 602.

⁵⁴*Id.*

⁵⁵*Id.* at 602.

⁵⁶*Parisi, supra* note 35, at 56.

⁵⁷*Id.*

⁵⁸*Id.*

⁵⁹*People v. Rochester Ry. & Light Co.*, 88 N.E. 22 (N.Y. 1909).

⁶⁰*Id.* at 22.

installation of a gas device which resulted in the asphyxiation death of an apartment resident.⁶¹ The court dismissed the indictment based upon the statutory definition of homicide as "the killing of one human being by . . . another."⁶² In affirming the trial court's decision, the New York Court of Appeals agreed that "another," as used in the statute, meant another human being.⁶³ Hence, the homicide statute clearly could not be interpreted to include corporations.⁶⁴

The statutory interpretation problem in *Rochester Railway* was overcome by the New Jersey Supreme Court in *State v. Lehigh Valley Railroad Co.*⁶⁵ In *Lehigh Valley*, a grand jury indicted the railroad company and other individuals for manslaughter after several railroad cars, overloaded with excessive quantities of highly explosive ammunition, exploded and killed a bystander.⁶⁶ Rejecting the widely accepted common law definition of homicide as the killing of one human being by another, the court set forth a more flexible definition which would allow for the growing trend toward corporate criminal liability.⁶⁷ The court expressly rejected the common law idea that the definition of person be limited to human beings and stated that the statutory definition included corporate bodies.⁶⁸ The *Lehigh Valley* decision was the first appellate court ruling to uphold the indictment of a corporation for criminal homicide.⁶⁹ The railroad corporation later plead *nolo contendere* and paid a \$1,000 fine.⁷⁰

The legal obstacles confronted by these early cases continued in cases involving corporate liability for workplace death. Some courts were willing to overcome these obstacles, while others were reluctant. With each indictment,

⁶¹*Id.*

⁶²*Id.* at 24.

⁶³*Id.* at 24.

⁶⁴*Rochester Ry.*, 88 N.E. at 24. This issue was also addressed in *Commonwealth v. Illinois Central R.R. Co.*, 153 S.W. 459 (1913), where the court held that a corporation cannot be criminally liable for intent crimes under the statutory definition of "person." *Id.* at 461-62.

⁶⁵*State v. Lehigh Valley R.R. Co.*, 106 A. 23 (N.J. 1919). This opinion, which this author utilized for the factual allegations against the corporation, is the second of two appeals in this case.

⁶⁶*Id.*

⁶⁷*State v. Lehigh Valley R.R. Co.*, 103 A. 685, 686-87 (N.J. 1917). Without explaining the factual allegations, this opinion explained the court's reasoning for the disposition of the case.

⁶⁸*Id.* The court stated "a corporate aggregate may be held criminally for criminal acts of misfeasance and nonfeasance unless there is something in the nature of the crime, the character of the punishment prescribed therefor, or the essential ingredients of the crime, which make it impossible for a corporation to be held." *Id.* at 685-86.

⁶⁹*Stoner, supra* note 49, at 1280.

⁷⁰*Lehigh Valley*, 106 A. at 23.

state courts became more receptive to the idea of holding corporations liable for the reckless or negligent endangerment of their employees.

C. Criminal Liability for Workplace Deaths and Film Recovery Systems

While the early cases of *New York Central*, *Lehigh Valley*, *Van Shaick*, and *Rochester Railway* seemingly opened the door to corporate criminal liability, courts virtually forgot these decisions in the following decades.⁷¹ Over the next sixty years, corporate criminal prosecutions were exceedingly rare, and most courts which addressed the issue failed to hold the corporation criminally liable.⁷² Modern courts continue to wrestle with the same conceptual and statutory interpretation problems presented to early courts.⁷³

After *Rochester Railway*, New York amended its criminal homicide statute to provide for a corporate prosecution.⁷⁴ A New York court subsequently considered the indictment of a corporation for criminally negligent homicide.⁷⁵ In *People v. Ebasco Services, Inc.*, the applicable New York statute stated "[a] person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person."⁷⁶ The indictment arose from the collapse of a cofferdam at a construction site which caused the death of two workmen.⁷⁷ Although the indictment was dismissed for legal insufficiency of the factual allegations, the court held "[t]he killing of a human being by a corporation is an act that can be proscribed by the Legislature."⁷⁸ While a corporation could not be a victim of a homicide under the statutory definition of "person," it could commit homicide and be punished for a homicide conviction.⁷⁹ The court found "no manifest impropriety in applying the broader definition of 'person' to a corporation in regard to the commission of a homicide."⁸⁰

Homicide charges against corporations were and are extremely rare, as they should be. In some instances, however, corporations and their executives, management, or other personnel allow unreasonably dangerous or even egregious conditions to persist in the workplace for the sake of corporate profit. In these circumstances, criminal prosecutions are not only appropriate but

⁷¹Parisi, *supra* note 35, at 57.

⁷²*Id.*

⁷³*Id.*

⁷⁴Miester, *supra* note 14, at 926 (citing N.Y. PENAL LAW § 125.05(1) (McKinney 1975)).

⁷⁵*People v. Ebasco Services, Inc.*, 354 N.Y.S.2d 807 (N.Y. App. Div. 1974).

⁷⁶*Id.* at 810.

⁷⁷*Id.* at 809.

⁷⁸*Id.* at 810.

⁷⁹*Id.* at 811.

⁸⁰*Ebasco Services*, 354 N.Y.S.2d at 811.

should be encouraged. When confronted with corporate behavior which warrants criminal action, courts are more willing to uphold a criminal indictment.

A wave of cases involving corporate liability for workplace deaths began in the 1980's, including the first guilty verdict against both a corporation and its agents.⁸¹ In *People v. O'Neil* (hereinafter "*Film Recovery Systems*"), Film Recovery Systems, a former president of the corporation, two officers, the plant manager, and the plant foreman were charged and convicted for the cyanide poisoning death of Stefan Golab, who had been an employee at the plant for about two months.⁸² This verdict, handed down by a Cook County, Illinois trial judge, shocked the national business community.⁸³ Considering the sparse history of corporate homicide prosecutions, the conviction of a corporation and its executives, for involuntary manslaughter and murder respectively, was unprecedented.⁸⁴

In order to understand the significance of the verdict in *Film Recovery Systems*, a thorough examination of the facts is necessary. Like many of the workers at the Film Recovery Systems plant, Stefan Golab, a sixty-one-year-old male, was an undocumented immigrant who spoke little English.⁸⁵ Film Recovery Systems was a corporation engaged in the business of extracting silver from used x-ray and photographic film for resale.⁸⁶ The recovery process involved gouging out the film product and dipping the pieces into large open

⁸¹*People v. O'Neil*, 550 N.E.2d 1090 (Ill. 1990). For work-related prosecutions, see *Granite Constr. Co. v. Superior Court*, 197 Cal. Rptr. 3 (Cal. Ct. App. 1983) (corporation may be prosecuted for manslaughter due to death of seven construction workers at a plant site); *People v. Deitsch*, 470 N.Y.S.2d 158 (N.Y. App. Div. 1983) (indictment for manslaughter, criminally negligent homicide, and reckless endangerment against individuals and corporation reinstated for employee death after warehouse fire); *People v. Warner-Lambert Co.*, 414 N.E.2d 660 (N.Y. 1980) (indictment against corporation and individuals for death of six employees dismissed because explosion was not foreseeable). For non-workplace related prosecutions, see *Commonwealth v. Fortner LP Gas Co.*, 610 S.W.2d 941 (Ky. Ct. App. 1980) (company indictment for manslaughter in second degree upheld after truck with grossly defective brakes caused the death of a child); *Commonwealth v. Penn Valley Resorts, Inc.*, 494 A.2d 1139 (Pa. Super. Ct. 1985) (conviction of corporation for involuntary manslaughter upheld); *Commonwealth v. McIlwain School Bus Lines, Inc.*, 423 A.2d 413 (Pa. Super. Ct. 1980) (corporation may be held liable for criminal homicide by vehicle); *Vaughan & Sons, Inc.*, 750 S.W.2d 17 (Tex. App. 1988) (corporation held criminally negligent under Texas statute based on definition of a person).

⁸²*O'Neil*, 550 N.E.2d at 1092-93. See Kathleen F. Brickey, *Death in the Workplace: Corporate Liability for Criminal Homicide*, 2 NOTRE DAME J.L. ETHICS & PUB. POL'Y 753, 771 (1986).

⁸³Brickey, *supra* note 82, at 753.

⁸⁴*Id.*

⁸⁵Michael B. Bixby, *Workplace Homicide: Trends, Issues and Policy*, 70 OR. L. REV. 333, 336 (1991).

⁸⁶*O'Neil*, 550 N.E.2d at 1092.